

UNITED STATES OF AMERICA,
Plaintiff,
v.
AMITY PRODUCTS CARRIERS, INC.
Defendant.

STATE OF MAINE,
Plaintiff,
v.
AMITY PRODUCTS CARRIERS, INC.
Defendant.

CONSENT DECREE

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMITY PRODUCTS CARRIERS, INC.

Defendant.

Civil Action No.

STATE OF MAINE,

Plaintiff,

v.

AMITY PRODUCTS CARRIERS, INC.

Defendant.

Civil Action No.

CONSENT DECREE

I. INTRODUCTION

A. The United States of America ("United States") has filed a complaint in this action, pursuant to Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2702(b)(2)(A), against Amity Products Carriers, Inc. ("Settling Defendant"), seeking damages for injury to natural resources, including the reasonable cost of assessing the damages, arising from an oil spill that occurred in the Fore River, located between Portland and South Portland, Maine, on September 27, 1996. The complaint alleges that the spill occurred when the Tank Vessel Julie N,

which is owned by Settling Defendant, struck the south side of the Million Dollar Bridge as it went through the draw span (the "Julie N Oil Spill"). The complaint further alleges that 93,189 gallons of IFO 380 Heavy Fuel oil and 86,438 gallons of #2 diesel fuel were spilled into the Fore River, that the spill caused injury to natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, and that the United States has incurred costs in assessing the nature and extent of these injuries.

B. The State of Maine ("State") has also filed a complaint in this action, pursuant to Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), as well as Section 552(2) of the Maine Oil Discharge Prevention & Pollution Act, 38 MRSA § 552(2) (Supp. 1998), against Settling Defendant, seeking damages for injury to natural resources, arising from the Julie N Oil Spill. The allegations of the State's complaint are similar to the allegations of the United States's complaint.

C. The Parties agree and the Court finds that settlement of these civil matters 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.

D. The Parties agree and this Court, by entering this Decree, finds that settlement of this matter will avoid further prolonged and complicated litigation and that this Consent Decree is fair, reasonable, and in the public interest.

E. Settling Defendant does not admit any liability arising out of the transactions or occurrences alleged in this action.

NOW, THEREFORE IT IS ADJUDGED, ORDERED AND DECREED THAT:

II. JURISDICTION

1. This Court 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 and 1367. This Court also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District.

III. PARTIES BOUND AND NOTICE OF TRANSFER

2. The provisions of this Consent Decree shall apply to and shall be binding upon the United States, the State of Maine, and upon Settling Defendant and its successors and assigns.

3. No change in ownership or corporate status of the Settling Defendant will in any way alter the responsibilities of the Settling Defendant under this Consent Decree.

IV. DEFINITIONS

4. 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. Whenever the following terms are used in this Consent Decree, the definition specified hereinafter shall apply:

"DEP" shall mean the Maine Department of Environmental Protection.

"DIFW" shall mean the Maine Department of Inland Fisheries and Wildlife.

"DMR" shall mean the Maine Department of Marine Resources.

"DOC" shall mean the Maine Department of Conservation.

"DOI" shall mean the United States Department of the Interior.

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

"Interest," as that term is used in Section V ("PAYMENT OF NATURAL RESOURCE DAMAGES") of this Consent Decree, shall mean interest, accruing from December 14, 1999, until the date of payment, at the rate set forth at 28 U.S.C. § 1961. For the purpose of calculating the interest rate under 28 U.S.C. § 1961 for the payment required by Section V (PAYMENT OF NATURAL RESOURCE DAMAGES) of this Consent Decree, the date of judgment shall be deemed to be December 14, 1999. However, if Plaintiffs do not execute this Consent Decree within 30 days after Settling Defendant executes this Consent Decree, interest shall begin to accrue on the date that is the number of days after December 14, 1999, equal to the number of days between the 30th day after the Settling Defendant executes the Consent Decree and the date that Plaintiffs execute the Consent Decree, and the date of judgment, for the purpose of calculating the interest rate under 28 U.S.C. § 1961 shall be deemed to be the same date as the date that the

interest begins to accrue. For the purpose of calculating interest due for the late payment of stipulated penalty payments required by Section VI (INTEREST AND STIPULATED PENALTIES) of this Consent Decree, Interest shall begin to accrue on, and the "date of judgment" for the purposes of calculating the applicable interest rate under 28 U.S.C. § 1961 shall be, the date that the stipulated penalties are due. Interest shall be simple interest calculated on a daily basis.

"Julie N Oil Spill" shall mean the oil spill that occurred, on September 27, 1996, as a result of the collision of the Tank Vessel Julie N with the Million Dollar Bridge spanning the Fore River from Portland to South Portland, Maine, which resulted in the discharge of oil into the Fore River.

"Julie N Oil Spill Restoration Account" shall mean a separate project numbered account established within DOI's Natural Resource Damage Assessment and Restoration Fund, to be used, in accordance with Section VII (IMPLEMENTATION OF RESTORATION PLAN; JULIE N OIL SPILL RESTORATION ACCOUNT) of this Consent Decree, to implement or oversee restoration of natural resources or resource services in accordance with the Restoration Plan.

"Memorandum of Agreement" shall mean the Memorandum of Agreement entered into by the Trustees Regarding Natural Resource Damage Assessment, Restoration and Other Natural Resource Trustee Activities Arising from the M/T Julie N Oil Spill, as well as any

amendments thereof. A copy of the Memorandum of Agreement is attached hereto as Appendix A.

"Natural Resource Damages" shall mean the damages described at Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), and as described at Section 552(2) of the Maine Oil Discharge Prevention & Pollution Act, 38 M.R.S. § 552(2) (Supp. 1998).

"NOAA" shall mean the National Oceanic and Atmospheric Administration.

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

"Parties" shall mean the Plaintiffs and the Settling Defendant.

"Plaintiffs" shall mean the United States and the State of Maine.

"Restoration Plan" shall mean the Restoration Plan and Environmental Assessment for the September 27, 1996 Julie N Oil Spill, as well as any amendments thereof. A copy of the Restoration Plan is attached hereto as Appendix B.

"Settling Defendant" shall mean Amity Products Carriers, Inc. In addition, for the purposes of Paragraphs 18 and 19 (Plaintiffs' covenants not to sue), Paragraph 20 (Plaintiffs' reservation of rights), and Paragraph 21 (Settling Defendant's covenant not to sue), the term Settling Defendant shall also include Maritime Overseas Corporation, OSG Ship Management, Inc., as well as the officers, directors, and

employees of Amity Products Carriers, Inc., Maritime Overseas Corporation, and OSG Ship Management, Inc., to the extent that their liability arises from actions taken in their official capacities as officers, directors, or employees of these corporations.

"State" shall mean the State of Maine.

"Trustees" shall mean DEP, DIFW, DMR, DOC, NOAA and DOI.

"United States" shall mean the United States of America.

V. PAYMENT OF NATURAL RESOURCE DAMAGES

5. Within 30 days of entry of this Consent Decree, Settling Defendant shall Pay \$1,000,000, plus any Interest due on that amount, into the Julie N Oil Spill Restoration Account, a separate project numbered account established within DOI's Natural Resource Damage Assessment and Restoration Fund, Account No. 14X5198 (NRDAR) ("Julie N Oil Spill Restoration Account"). The funds in the Julie N Oil Spill Restoration Account shall be used in accordance with Section VII (IMPLEMENTATION OF RESTORATION PLAN; JULIE N OIL SPILL RESTORATION ACCOUNT) of this Consent Decree. Settling Defendant shall transfer these funds to the Julie N Oil Spill Restoration Account via an Electronic Funds Transfer ("EFT") through the Automated Clearing House in accordance with instructions to be provided by DOI within 15 days of the date of lodging of the Consent Decree. The addenda record shall be annotated "RE: Julie N Oil Spill Restoration Account"

and shall list Amity Products Carriers, Inc. as the responsible party. 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 to the persons listed in Section XII (NOTICES) of this Consent Decree for notices to the United States and the State, as well as to:

Bob White
DOI Restoration Fund
NBC Division of Financial Management Services
Branch of Accounting Operations
7301 W. Mansfield Avenue, D-2960
Denver, Colorado 80235-2230

Bruce Nesslage
DOI Restoration Fund
NBC/Division of Financial Services
Branch of Accounting Operations
Mail Stop 1313
1849 C Street, N.W.
Washington, D.C. 20240

NOAA Finance Services Division
Bills and Collection Unit, Caller Service 7025
20020 Century Boulevard
Germantown, Maryland 20874

6. NOAA acknowledges its receipt of a payment in the amount of \$410,000 from Settling Defendant in reimbursement of the costs incurred by NOAA in assessing the natural resource damages alleged to have arisen from the Julie N Oil Spill.

7. DOI acknowledges its receipt of a payment in the amount of \$53,057.09 from Settling Defendant in reimbursement of the costs incurred by DOI in assessing the natural resource damages alleged to have arisen from the Julie N Oil Spill.

8. The State acknowledges its receipt of a payment in the amount of \$24,531.79 from Settling Defendant in reimbursement of

the costs incurred by the State in assessing the natural resource damages alleged to have arisen from the Julie N Oil Spill.

VI. INTEREST AND STIPULATED PENALTIES

9. In the event that the payment required by Section V (PAYMENT OF NATURAL RESOURCE DAMAGES) of this Consent Decree is not paid in a timely manner, Interest shall continue to accrue on the overdue amount through the date of payment, and Settling Defendant shall, in addition to the Interest required by this Paragraph, pay as a stipulated penalty \$1,000 per day that the payment is late.

10. Stipulated penalties are in addition to, and not in lieu of, all other payments and Interest due under this Consent Decree. Stipulated penalties for failure to make the payment required by Section V (PAYMENT OF NATURAL RESOURCE DAMAGES) of this Consent Decree in a timely manner shall be paid 50% to the United States and 50% to the State.

11. Payments of stipulated penalties to the United States shall be paid by certified check made payable to "U.S. Department of Justice." The payments shall be mailed to Financial Litigation Unit, United States Attorney's Office, District of Maine, East Tower, Sixth Floor, One Hundred Middle Street Plaza, Portland, ME 04101, and shall reference United States v. Amity Products Carriers, Inc. (D. Me.) and the name and address of the party making payment. Payments to the State shall be paid by certified check or cashier's check made payable to "Treasurer, State of Maine". The payments shall be mailed to Mark Margerum,

Bureau of Land and Water Quality, Southern Maine Regional Office, Department of Environmental Protection, 312 Canco Road, Portland, ME 04103, and shall reference State of Maine v. Amity Products Carriers, Inc. (D. Me.) and the name and address of the party making payment. Copies of checks paid pursuant to this Paragraph, and any accompanying transmittal letter, shall be sent, as applicable, to the United States or the State, as provided in Section XII (NOTICES).

12. All penalties due under this Section VI (INTEREST AND STIPULATED PENALTIES) of this Consent Decree shall be due and payable within 30 days of the Settling Defendant's receipt from the United States or the State of a demand for payment. Penalties shall accrue as provided above regardless of whether the United States or the State has notified Settling Defendant of the violation or made a demand for payment

13. If Settling Defendant fails to pay stipulated penalties when due, the United States or the State, as applicable, may institute proceedings to collect the penalties, as well as Interest. If the United States or the State must bring an action to collect any payment required by this Consent Decree, Settling Defendant shall reimburse the United States and the State for all costs of such action, including, but not limited to, the cost of attorney time.

14. Stipulated penalties under this Section VI (INTEREST AND STIPULATED PENALTIES) of this Consent Decree shall be in addition to any other remedies or sanctions available to

Plaintiffs by virtue of Settling Defendant's failure to make timely payment under this Consent Decree.

15. Notwithstanding any other provision of this Section VI (INTEREST AND STIPULATED PENALTIES) of this Consent Decree, the United States and the State may, in their unreviewable discretion, waive payment of any portion of the stipulated penalties due to them that have accrued pursuant to this Consent Decree.

VII. IMPLEMENTATION OF RESTORATION PLAN; JULIE N
OIL SPILL RESTORATION ACCOUNT

16. The Trustees shall implement the Restoration Plan and approve expenditures from the Julie N Oil Spill Restoration Account pursuant to the terms of their Memorandum of Agreement. If the Funds in the Julie N Oil Spill Restoration Account are not sufficient to complete the Restoration Plan, the Trustees shall not be required to expend additional funds to complete the Restoration Plan.

17. All funds in the Julie N Oil Spill Restoration Account, including any interest or return on investment thereon, shall be held in the Julie N Oil Spill Restoration Account solely for use by the Trustees to plan, implement or oversee restoration of natural resources or resource services in accordance with the Restoration Plan. DOI shall, in accordance with law, manage and invest the funds in the Julie N Oil Spill Restoration Account. DOI shall assign the funds in the Julie N Oil Spill Restoration Account a special project number 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 Julie N Oil Spill Restoration Account for investment, management, or any other services provided with respect to operation of the account.

VIII. COVENANT NOT TO SUE BY PLAINTIFFS

18. In consideration of the payment that will be made by the Settling Defendant under Section V (PAYMENT OF NATURAL RESOURCE DAMAGES) of this Consent Decree, the United States covenants not to sue or take administrative action against Settling Defendant pursuant to Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), for Natural Resource Damages caused by the Julie N Oil Spill. This covenant not to sue is conditioned upon receipt by the United States and the State of all payments required by Section V (PAYMENT OF NATURAL RESOURCE DAMAGES) and Section VI (INTEREST AND STIPULATED PENALTIES) of this Consent Decree.

19. In consideration of the payment that will be made by the Settling Defendant under Section V (PAYMENT OF NATURAL RESOURCE DAMAGES) of this Consent Decree, the State covenants not to sue Settling Defendant pursuant to Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), and pursuant to Section 552(2) of the Maine Oil Discharge Prevention & Pollution Act, 38 MRSA § 552(2) (Supp. 1998), for Natural Resource Damages caused by the Julie N Oil Spill. This covenant not to sue is conditioned upon receipt by the United States and the State of all payments required by Section V (PAYMENT OF NATURAL RESOURCE DAMAGES) and

Section VI (INTEREST AND STIPULATED PENALTIES) of this Consent Decree.

20. Reservations of rights. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters other than those expressly specified in the covenant not to sue set forth in Paragraphs 18 and 19 of this Section, including, but not limited to:

a. claims based upon a failure of the Settling Defendant to meet a requirement of this Consent Decree;

b. criminal liability;

c. 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 Julie N Oil Spill, except for any payments made by the Fund to the Trustees with respect to Natural Resource Damages caused by the Julie N Oil Spill;

d. claims under Section 1002(b)(1) of OPA, 33 U.S.C. § 2702(b)(1), for removal costs,

e. claims under Section 1002(b)(2)(B) - (F) of OPA, 33 U.S.C. § 2702(b)(2)(B) - (F), for damages to real or personal property, subsistence use, revenues, profits and earning capacity, or public services.

IX. COVENANT BY SETTLING DEFENDANT

21. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the

Plaintiffs, their employees, agents, experts or contractors with respect to the Julie N Oil Spill, except for claims for removal costs or damages submitted to the Fund under Section 1013 of OPA, 33 U.S.C. § 2713, to the extent permitted by Section 1008 of OPA, 33 U.S.C. § 2708.

X. EFFECT OF SETTLEMENT

22. 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. 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 Julie N Oil Spill against any person not a Party hereto.

23. In any subsequent administrative or judicial proceeding initiated by a Party against any another Party with respect to the Julie N Oil Spill, neither Party shall assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the other Party 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 VIII (COVENANT NOT TO SUE BY PLAINTIFFS) or Section IX (COVENANT BY SETTLING DEFENDANT).

XI. MODIFICATION

24. No material modifications of this Consent Decree shall be made without the agreement of the Parties and the approval of the court. Modifications of the Consent Decree that are not material may be made by written agreement of the parties. The Trustees may modify the Memorandum of Agreement pursuant to the terms of that agreement. The Trustees may also modify the Restoration Plan in accordance with the requirements of OPA and any other applicable laws.

XII. NOTICES

25. 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 index number of this court 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: 202-616-2427

Anton Giedt
National Oceanic and Atmospheric Administration
Office of General Counsel
One Blackburn Drive
Suite 205
Gloucester, MA 01930
Facsimile: 978-281-9389

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 State

Mark Margerum
Bureau of Land and Water Quality
Southern Maine Regional Office
Department of Environmental Protection
312 Canco Road
Portland, ME 04103
Facsimile: 207-822-6303

Dennis Harnish
Assistant Attorney General
Maine Attorney General's Office
State House Station #6
August, Maine 04333
Facsimile: 207-626-8828

As to the Settling Defendant

William Dougherty
Burke & Parsons
1114 Avenue of the Americas
New York, NY 10036-7743
Facsimile: 212-221-1432

John R. Bass II
Thompson, Bull, Furey, Bas & MacColl
120 Exchange Street
Portland, ME 04112
Facsimile: 207-772-1039

XIII. RETENTION OF JURISDICTION

26. 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.

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

27. This Consent Decree shall be lodged with the Court for a period of not less than forty-five (45) days for public notice and comment in accordance with Section 1006(c)(5) of OPA, 33 U.S.C. § 2706(c)(5), and 28 C.F.R. § 50.7. Pursuant to 28 C.F.R. § 50.7, the United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

28. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if the United States withdraws or withholds its consent pursuant to Paragraph 27, 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.

XV. FINAL JUDGMENT

29. 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 Defendant.

XVI. SIGNATORIES/SERVICE

30. The undersigned representatives of the Settling Defendant and the Trustees, as well as the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, certify 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.

31. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree.

32. Settling Defendant 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 Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees 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 _____, 2000.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this consent decree in the matters of United States v. Amity Products Carriers, Inc. and State of Maine v. Amity Products Carriers, Inc. relating to the Julie N Oil Spill.

FOR THE UNITED STATES:

Lois J. Schiffer
LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 12/27/99

Donald G. Frankel
DONALD G. FRANKEL
Trial Attorney
Environmental Enforcement Section
Department of Justice
One Gateway Center
Suite 616
Newton, MA 02458

Date: _____

JAY P. MCCLOSKEY
United States Attorney
District of Maine

DAVID R. COLLINS
Assistant United States Attorney
United States Attorney's Office
East Tower
Sixth Floor
One Hundred Middle Street Plaza
Portland, ME 04101

THE UNDERSIGNED PARTY enters into this consent decree in the matters of United States v. Amity Products Carriers, Inc. and State of Maine v. Amity Products Carriers, Inc. relating to the Julie N Oil Spill.

FOR THE STATE OF MAINE

ANDREW KETTERER
Attorney General

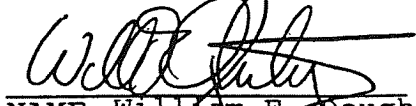
By:

Date: _____

DENNIS HARNISH
Assistant Attorney General
State House Station #6
Augusta, ME 04333

THE UNDERSIGNED PARTY enters into this consent decree in the matters of United States v. Amity Products Carriers, Inc. and State of Maine v. Amity Products Carriers, Inc. relating to the Julie N Oil Spill.

FOR AMITY PRODUCTS CARRIERS, INC.



Date: December 2, 1999

NAME William F. Dougherty, Burke & Parsons

TITLE Attorneys for
Amity Products Carriers, Inc.

Agent authorized to accept service on behalf of Amity Products Carriers, Inc.:

William F. Dougherty
Burke & Parsons
114 Avenue of the Americas
New York, NY 10036-7743
(212) 354-3800

APPENDIX- A

TRUSTEE MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT

AMONGST

DEPARTMENT OF THE INTERIOR

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

STATE OF MAINE, Acting By and Through
Its Designated Trustees:

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DEPARTMENT OF INLAND FISHERIES AND WILDLIFE

DEPARTMENT OF MARINE RESOURCES

DEPARTMENT OF CONSERVATION

REGARDING NATURAL RESOURCE DAMAGE ASSESSMENT,
RESTORATION AND OTHER NATURAL RESOURCE TRUSTEE
ACTIVITIES ARISING FROM THE M/T JULIE N. OIL SPILL

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MEMORANDUM OF AGREEMENT

AMONGST

DEPARTMENT OF THE INTERIOR

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

STATE OF MAINE, Acting By and Through
Its Designated Trustees:

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DEPARTMENT OF INLAND FISHERIES AND WILDLIFE

DEPARTMENT OF MARINE RESOURCES

DEPARTMENT OF CONSERVATION

REGARDING NATURAL RESOURCE DAMAGE ASSESSMENT, RESTORATION AND
OTHER NATURAL RESOURCE TRUSTEE ACTIVITIES ARISING FROM
THE M/T JULIE N. OIL SPILL

I. INTRODUCTION

This Memorandum of Agreement (Agreement) by and among the Department of the Interior (hereinafter "DOI"), the National Oceanic and Atmospheric Administration (hereinafter "NOAA"), the State of Maine, Department of Environmental Protection (hereinafter "DEP"), the State of Maine, Department of Inland Fisheries and Wildlife (hereinafter "DIFW"), the State of Maine, Department of Marine Resources (hereinafter "DMR"), and the State of Maine, Department of Conservation (hereinafter "DOC"), (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 Motor Tanker Julie N. Oil Spill which began on September 27, 1996 and resulted in the discharge and substantial threat of discharge of oil into the Fore River and Casco Bay in Portland and South Portland, Maine.

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 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9607(f); 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).

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 Commissioner of the Maine Department of Environmental Protection,
2. The Commissioner of the Maine Department of Inland Fisheries and Wildlife,
3. The Commissioner of the Maine Department of Marine Resources,

4. The Commissioner of the Maine Department of Conservation,
5. The Secretary of the Interior, for the Department of the Interior,
6. The Under Secretary for Oceans and Atmosphere, Administrator of the National Oceanic and Atmospheric Administration, for the Department of Commerce.

III. DEFINITIONS

For purposes of this Agreement the following definitions shall apply:

- A. "Federal Trustees" means the Secretary of Commerce, acting through NOAA, and the Secretary of the Interior or their respective authorized designees.
- B. "Joint use" means use of natural resource damage recoveries by the State Trustees or the Federal 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 who is selected by all participating Trustees for the purpose of coordinating natural resource damage assessment activities, together with 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 Trustees or the 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 against any potentially responsible parties regarding 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 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 vessel, or the owner or operator of a facility, 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, 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. "Restoration Coordinator" means the person appointed/hired by the Trustee Council to conduct activities as described at Section VIII, Paragraph D.

J. "Spill" means the M/T Julie N. Oil Spill which began on September 27, 1996 and resulted in the discharge and substantial threat of discharge of oil into the Fore River and Casco Bay in Portland and South Portland, Maine, together with any and all impacts to natural resources arising therefrom.

K. "State Trustees" means the Commissioner of the Maine Department of Environmental Protection, or the Commissioner's authorized designee; The Commissioner of the Maine Department of Conservation, or the Commissioner's authorized designee; The Commissioner of the Maine Department of Inland Fisheries and Wildlife, or the Commissioner's authorized designee; The Commissioner of the Maine Department of Marine Resources, or the Commissioner's authorized designee.

L. "Trustees" means the Federal Trustees and the State Trustee.

M. "Trustee Representatives" means the six (6) authorized designees appointed by the Trustees of NOAA, DOI and Maine to the Trustee Council.

N. "Trustee Council" means the six (6) Trustee Representatives appointed by the Trustees of NOAA, DOI and Maine to oversee coordination of natural resource damage assessment and restoration arising from or related to the Spill.

IV. SCOPE

This Agreement is intended to cover Natural Resources belonging to or managed by, controlled by, or appertaining to the Trustees under OPA, CERCLA and the NCP which have been or may be affected by the Spill.

V. PURPOSE

The purpose of this Agreement is to provide a framework for intergovernmental coordination among the Trustees and for implementation of the Trustees' activities in furtherance of their natural resource trustee responsibilities under OPA and other applicable Federal law, and State statutory and common law, with respect to natural resource damage assessment, restoration, and other natural resource Trustee activities.

VI. OBJECTIVES

The Trustees shall coordinate their efforts to meet their respective natural resource trustee responsibilities under OPA, CERCLA and other applicable Federal law and State statutory and common law. In pursuing these objectives, the Trustees shall remain cognizant of all relevant 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 Parties 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 Parties in litigation, if necessary.

VII. FUNDING

A. Trustee Cooperation. 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 PRPs or others in the furtherance of this Agreement. Such funds shall be administered through the Trustee Council established pursuant to this Agreement.

B. PRP Funding. The Trustee Council may enter into an agreement with the PRPs in which the PRPs agree to fund and/or conduct natural resource damages assessment activities, and determine the terms of monetary disbursement and PRPs participation. Any such Trustee Council/PRPs agreement shall be consistent with subsection "A" above.

VIII. M/T Julie N. 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 one primary voting delegate to the M/T Julie N. Trustee Council ("Trustee Council"). Each Trustee shall also designate an alternate delegate to act in the absence of the primary voting delegate. The designated delegate for the Maine Department of Environmental Protection shall be Paul VanCott, with Brooke Barnes as alternate; the designated delegate for the Maine Department of Conservation shall be Steve Oliveri, with Herbert Hartman as alternate; the designated delegate for the Maine Department of Inland Fisheries and Wildlife shall be Rich Dressler, with George Matula as alternate; the designated delegate for the Maine Department of Marine Resources shall be Penn Eastabrook, with Seth Barker as alternate; the designated delegate for the National Oceanic and Atmospheric Administration shall be Frank Csulak, with John Catena as alternate. Until such designation is made, the interim voting delegate for DOI shall be Willie R. Taylor, with Andrew Raddant as alternate. In addition, the U.S. Department of Justice, the Office of the Attorney General for the State of Maine, and in-house counsel for each of the Trustees, each may provide one delegate in a legal/consultative role, who shall not be a member of the Trustee Council, but who shall nonetheless be able to attend all meetings of, or organized by, the Trustee Council. Each Trustee may, by written notification to all other Trustees, change the designated delegate and/or alternate.

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 the Trustee's primary and alternate delegates to the Trustee Council who shall receive, and shall be responsible for on behalf of that Trustee, 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 State of Maine, shall be directly and contemporaneously provided copies of all significant and relevant documents, notices and notifications.

C. Decisionmaking. The six (6) 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.

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 decisionmaking 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. The Trustee Council shall coordinate and authorize all Trustee activities and matters under this Agreement directed towards the resolution of natural resource damages claims arising from the Spill. In addition, 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. Towards this end, the Trustee Council may request and receive relevant materials and/or information from Trustee staff and/or the public. 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. 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. The Trustee Council is specifically authorized to assign specific duties or functions to individual Trustees.

1. Public Review and Comment. When the Trustee Council determines that a Restoration Plan or any other deliverable is acceptable for public review, that deliverable may be made available for public comment. The dates and length of the public comment period shall be established by the Trustee Council.

2. Community Involvement. The Trustee Council shall provide the community affected by the M/T Julie N 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. At a minimum, the Trustees shall designate members from their respective State or Federal agencies to: (i) attend and participate in public meetings and

other community forums convened by the Lead Administrative Trustee regarding the natural resource damage assessment and restoration process, (ii) prepare fact sheets concerning the activities conducted under this MOA for public distribution, (iii) and provide timely and appropriate responses to inquiries from the public.

F. Lead Administrative Trustee. The Trustees acknowledge that they have designated the Maine Department of Environmental Protection to act 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 Council may invite their respective staffs or attorneys to attend.

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. RESTORATION COORDINATION AND IMPLEMENTATION

A. Joint Use Of Natural Resource Damage Recoveries.

1. State and Federal Trusteeships. The Trustees recognize that each of them has trusteehip, through their respective natural resource Trustees, under OPA and CERCLA over natural resources affected by the Spill, and that the scopes of their respective trusteehips overlap.

2. 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.

B Restoration Implementation Duties of the Trustee Council.

In the event of a resolution of natural resource damages claims under which the PRP(s) either funds or agrees to undertake all or part of the restoration activities, the Trustee Council:

1. Shall coordinate on all decisions relating to restoration activities or the use of any natural resource damage recoveries, and any interest earned thereon, for restoration activities, including, but not limited to, the payment of reasonable and necessary costs for each Trustee's participation in the Trustee Council process and for the planning, implementation, administration and oversight of any activities that are reasonably necessary to carry out the purposes of this Agreement.

2. May reimburse, and/or directly pay out of funds recovered from the PRPs, reasonable Trustee oversight expenses as natural resource damages. The Trustee Council shall establish by resolution reasonable limits to the reimbursement of oversight expenses.

3. Shall provide for reasonable public involvement, including notice and comment, in accordance with applicable law and regulations, for all restoration projects under this Agreement.

4. May invite representatives of other public agencies and members of the public to its meetings unless, subject to applicable law, the Trustee Council determines 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.

5. May enter into contracts through its individual members, for the benefit of 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.

6. May, to the extent permitted by applicable law, collectively or through individual Trustees, receive grants or donations to be applied to the restoration of natural resources related to injuries arising from the Spill.

C. Technical Services.

1. The Trustee Council may determine that they need technical advisors, consultants or other service providers to assist in carrying out their responsibilities under this Agreement. The members of the Trustee Council, may individually enter into contracts for the benefit of the Trustee Council, or may otherwise expend natural resource damage assessment funds or natural resource damage recoveries to perform the following services, either directly, or through service providers:,

- a. provide project design and technology review, Spill related analysis, restoration planning or services, testing, sampling, and other services related to the development or implementation of a restoration plan for the Spill;

- b. provide the Trustee Council with logistical support and coordination;
- c. organize and prepare for Council meetings;
- d. provide technical advice to the Trustee Council during Council meetings;
- e. provide technical or other advice to the Trustee Council and the Technical Advisory Committee as required to carry out the purposes of this Agreement;
- f. provide such other services, consistent with applicable law, as requested by the Trustee Council.
- g. To obtain technical services, the Trustee Council may agree to designate the LAT, or any one or more Trustee(s) as authorized to enter into intergovernmental personnel transfers, one or more contracts, or other lawful agreements with professional consultants, advisors, or other service providers that the Trustee Council determines are qualified to provide services to the Trustee Council.

X. NOTIFICATION OF NEGOTIATIONS WITH PRPs

It is recognized that each Party to this Agreement has and reserves all rights, powers and remedies now or hereafter existing at law or in equity, or by statute or otherwise, and that nothing in this Agreement waives or forecloses the exercise of any such rights, powers or remedies. However, each Party to this Agreement agrees to the extent practicable to provide twenty (20) days prior written notice to each of the other Parties to this Agreement 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 Parties 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 Parties.

The Parties 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 Party refuses to do so for any reason, that Party shall no longer be a Party to this Agreement unless all remaining Parties request in writing within ten days (10) that such Party remain a Party.

XI. COORDINATION AND CONFIDENTIALITY

A. Coordination. The Parties 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 Parties recognize that, in order to effectively and efficiently negotiate and litigate their claims, their counsel, employees and consultants may, at each Party's discretion, exchange documents and information including draft reports, analyses, opinions, conclusions, and advice prepared in anticipation of litigation, and/or subject to attorney-client privilege or other forms of privilege. The Parties therefore hereby agree as follows:

1. Except as provided by law or otherwise provided herein, the Parties shall treat all designated privileged documents generated, and designated privileged communications, by, between or among the Parties as privileged attorney-client communications, attorney work product or protected by other applicable privileges (or as a combination thereof), and shall protect such documents and communications from disclosure to the maximum extent possible under applicable Federal and State law. A "designated privileged document" is one identified on its cover page or elsewhere as subject to one or more privileges or forms of immunity. 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.

2. The transmittal of a privileged document to, or a privileged communication between or among any of the Parties (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.

3. Unless otherwise specifically provided, the Parties shall each be entitled to assert any applicable privilege with respect to any document or communication jointly transmitted, prepared, or funded by the Parties. Each Party shall be entitled to assert an applicable privilege with respect to any document or communication transmitted, prepared, or funded solely by that Party.

4. If a subpoena, discovery request, or other request in

any form, for a privileged document or information is received by any Party, a copy of the subpoena or request will be immediately forwarded to counsel for the Party or Parties 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 Parties agree to act in good faith to meet any such requirements.

5. Only by specific written agreement among the Parties or pursuant to Court Order shall disclosure of 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.

6. Nothing herein in any way affects or limits the authority of any Party to waive any privilege and release any documents, information, analysis, opinion, conclusion, or advice that are subject to privileges held exclusively by that Party.

7. Designated privileged documents shall be maintained in such a manner as to insure 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.

8. At the request and option of any Party, designated privileged documents shall be returned to the originating Party or destroyed.

C. The Parties 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 Parties. 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 Parties shall open and maintain a publicly available administrative record to the extent required by, and consistent with the requirements of, the Federal Natural Resource Damage Regulations that the Parties select for use in connection with the Spill.

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. The Trustees and the Lead Administrative Trustee are not authorized to enter into settlements on behalf of the other Trustees and a Trustee or the Lead Administrative Trustee does not represent another Trustee in any litigation that may be commenced by the other Trustees.

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 be effective when executed by all of the Parties. The effective date of this agreement will be the date on which the last signature is entered. 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 Parties 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. 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. Such withdrawal shall only be effective upon thirty (30) days written notice upon all Parties to this Agreement.

3. In the event that this Agreement is terminated or one of the Parties withdraws, the Trustees expressly agree that they will continue to coordinate their activities to the greatest extent practicable to 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 (Maine), by allocation of such recoveries and interest by the Court. In making a fair and reasonable allocation of these monies among the Trustees, the Court shall consider primarily the need to achieve, to the maximum extent practicable, the Natural Resource Objectives of this MOA and shall 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 Party to this Agreement for whatever reason, shall not affect the subsequent validity of this Agreement among the remaining Parties. 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. Antideficiency. Nothing in this Agreement shall be construed as obligating the United States or Maine, 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 M/T Julie N. OIL SPILL

THE FEDERAL NATURAL RESOURCE TRUSTEES

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATURAL RESOURCE TRUSTEE
AUTHORIZED OFFICIAL

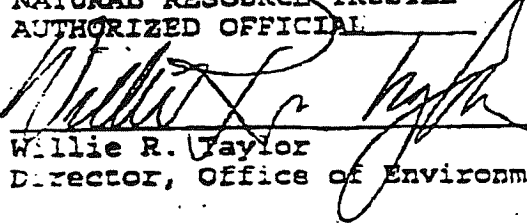


Charles N. Ehler
Director, Office of Ocean Resource Conservation and Assessment

/1996

Memorandum of Agreement Concerning Natural Resource Damages in
the Matter of THE M/T Julie N. OIL SPILL

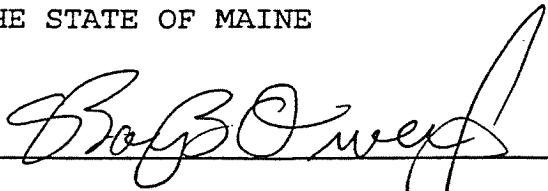
FOR THE DEPARTMENT OF THE INTERIOR
NATURAL RESOURCE TRUSTEE
AUTHORIZED OFFICIAL


Willie R. Taylor
Director, Office of Environmental Policy and Compliance

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Memorandum of Agreement Concerning Natural Resource Damages in
the Matter of THE M/T Julie N. OIL SPILL

FOR THE STATE OF MAINE

 12/9/1996

Commissioner, Maine Department of Inland Fisheries and Wildlife
State Trustee for Natural Resources

Memorandum of Agreement Concerning Natural Resource Damages in
the Matter of THE M/T Julie N. OIL SPILL

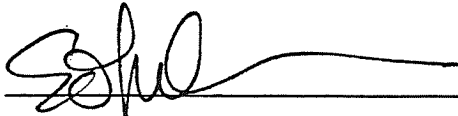
FOR THE STATE OF MAINE

Robin Alden 1/10/1996

Commissioner, Maine Department of Marine Resources
State Trustee for Natural Resources

Memorandum of Agreement Concerning Natural Resource Damages in
the Matter of THE M/T Julie N. OIL SPILL

FOR THE STATE OF MAINE



4/9/1996

Commissioner, Maine Department of Environmental Protection
State Trustee for Natural Resources

Memorandum of Agreement Concerning Natural Resource Damages in
the Matter of THE M/T Julie N. OIL SPILL

FOR THE STATE OF MAINE

Ron Perry 12/9 /1996

Commissioner, Maine Department of Conservation
State Trustee for Natural Resources

APPENDIX B

RESTORATION PLAN AND ENVIRONMENTAL ASSESSMENT
FOR THE SEPTEMBER 27, 1996 JULIE N OIL SPILL

**RESTORATION PLAN
AND ENVIRONMENTAL
ASSESSMENT FOR THE
SEPTEMBER 27, 1996
*JULIE N OIL SPILL***

Prepared by:

Maine Department of Environmental Protection
Maine Department of Conservation
Maine Department of Inland Fisheries and Wildlife
Maine Department of Marine Resources
National Oceanic and Atmospheric Administration
U.S. Department of the Interior

DRAFT
NOVEMBER 29, 1999

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1.1 PURPOSE

This draft Restoration Plan and Environmental Assessment (RP/EA) has been prepared by state and federal natural resource Trustees¹ as a proposal for the restoration of natural resources and public use services injured by the *Julie N* oil spill on September 27, 1996. The objective of this proposal is to make the public whole for injuries to natural resources and natural resource services resulting from the *Julie N* oil spill by returning the injured natural resources and natural resource services to their baseline conditions and compensating for interim losses.

It is the Trustees' responsibility pursuant to the Oil Pollution Act of 1990 (33 U.S.C. § 2706, *et seq.*) ("OPA") to determine the nature and extent of natural resource injuries, select appropriate restoration projects, and implement or oversee restoration. This document presents the Trustees' estimates of exposure/injury and service losses (Chapter Three) caused by the *Julie N* spill and the Trustees' restoration proposal (Section 1.5 below and Chapter Four). Implementation of the restoration proposal will be in association with a settlement that the Trustees have entered into with Amity Product Carriers, Inc., the responsible party under OPA for the *Julie N* spill ("RP").

The primary purpose of this draft RP/EA is to inform the public of and to solicit public comment on the Trustees' restoration proposal. As described in detail below, this proposal includes a project designed to reduce the amount of pollutants discharged into the Fore River, wetland and bird habitat restoration projects in the vicinity of the Fore River and Casco Bay, and the construction of a one-mile recreational trail along the Fore River. This draft RP/EA, along with the Consent Decree between the Trustees and the RP, will be made available to the public for a 45-day comment period following the publication of a notice of the availability of such documents in the Federal Register and the Portland Press Herald. Within fifteen days of the notice of availability, the Trustees will hold a public meeting to present the contents of the draft RP/EA and Consent Decree. Details

¹ Maine Department of Environmental Protection ("MDEP"); Maine Department of Conservation ("MDOC"); Maine Department of Inland Fisheries and Wildlife ("MDIF&W"); Maine Department of Marine Resources ("MDMR"); U.S. Department of Commerce/ National Oceanic and Atmospheric Association ("NOAA"); and the U.S. Department of the Interior ("DOI")/U.S. Fish and Wildlife Service ("USFWS")

regarding the time and location of the public meeting may be obtained from the MDEP's Southern Maine Regional Office at 207-822-6300. The deadline for submitting written comments on the draft RP/EA and Consent Decree will be specified in the notice of availability. Written comments should be sent to:

Donald G. Frankel
U.S. Department of Justice
Environmental and Natural Resources Division
Environmental Enforcement Section
Boston Field Office
One Gateway Center
Suite 616
Newton, MA 02458

The Trustees will consider written comments received during the public comment period prior to their finalizing the draft RP/EA and Consent Decree.

An administrative record containing a copy of the public documents in this matter is available for inspection by the public during normal business hours at MDEP's Southern Maine Regional Office, 312 Canco Road, Portland, Maine.

1.2 OVERVIEW OF THE *JULIE N* OIL SPILL

At approximately 11:05 A.M. on September 27, 1996, the oil tanker *Julie N*, inbound with a cargo of 8.8 million gallons of #2 fuel oil, struck the south side of the Million Dollar Bridge spanning Portland Harbor between Portland and South Portland as it went through the draw span. Following the collision, the vessel proceeded one mile up the Fore River to the Rolling Mills terminal where it was boomed off. In the collision with the bridge, the *Julie N* sustained a substantial hole to its port bow area. The forward bunker tank lost approximately 93,198 gallons of IFO 380 heavy fuel oil. The #1 port cargo tank lost approximately 86,436 gallons of #2 diesel, totaling 179,634 gallons of spilled oil. High winds and extremely high tides on September 28th and 29th caused an unspecified amount of oil to be released from the boomed area and to be carried into the upper Fore River and Stroudwater Marsh area, including Long Creek. The Portland side of the river was more heavily oiled than the South Portland side, which had areas that remained almost oil-free. Recovery efforts continued until clean up was declared complete on December 2, 1996; the final tally indicated that while 140,976 gallons of oil were recovered, approximately 38,618 gallons of oil were lost to the environment.

1.3 OVERVIEW OF OPA REQUIREMENTS

A natural resource damage assessment conducted pursuant to OPA and the regulations promulgated thereunder at 15 C.F.R. Part 990, consists of three phases: 1) Preassessment; 2) Restoration Planning; and 3) Restoration Implementation. OPA authorizes state and federal natural resource trustees to initiate a damage assessment when, among other requirements, natural resources may have been injured and/or natural resource services impaired as a result of the incident.

OPA regulations provide specific definitions for the following terms:

- "Injury" is "an observable or measurable adverse change in a natural resource or impairment of a natural resource service";
- "Natural resources" are "land, fish, wildlife, biota, air, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any state or local government or Indian tribe"; and
- "Natural resource services" are "functions performed by a natural resource for the benefit of another resource and/or the public".

Based on information collected during the Preassessment phase, the Trustees must make a preliminary determination whether natural resources or natural resource services have been injured and/or are threatened by ongoing injury. If injuries have occurred, and feasible restoration alternatives exist to address such injuries, trustees may decide to proceed with the Restoration Planning phase.

The purpose of the Restoration Planning phase is to evaluate potential injuries to natural resources and natural resource services, and to use that information to determine the need for and the appropriate scale of restoration actions. The goal of injury assessment is to determine the nature and extent of injuries to natural resources and services, thus providing a factual basis for evaluating the need for, type of and scale of restoration actions. As the injury assessment progresses, trustees develop a plan for restoring the injured natural resources and services. Trustees must identify a reasonable range of restoration alternatives, evaluate and select the preferred alternative(s), develop a draft Restoration Plan/Environmental Assessment, solicit public comment on the Plan, and consider and respond to those comments before issuing a final Restoration Plan/Environmental Assessment.

Natural resource trustees may settle claims for natural resource damages under OPA at any time during the damage assessment process, provided that the settlement is: 1) adequate in the judgment of the trustees to satisfy the goals of OPA, and 2) fair, reasonable, and in the public interest, with particular consideration of the adequacy of the settlement to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources and services. Sums recovered

in settlement of such claims, other than reimbursement of trustee costs, may only be expended in accordance with a restoration plan, which may be set forth in whole or in part in a consent decree or other settlement agreement, which is made available for public review.

1.4 NEPA COMPLIANCE

Any restoration of natural resources under OPA must comply with the National Environmental Policy Act ("NEPA") (40 C.F.R. § 1500, *et seq.*) and the Council on Environmental Quality ("CEQ") regulations implementing NEPA. In compliance with NEPA and the CEQ regulations, this draft RP/EA summarizes the current environmental setting, describes the purpose and need for action, identifies alternative actions, assesses their applicability and environmental consequences, and summarizes opportunities for public participation in the decision-making process.

1.5 TRUSTEE RESTORATION PROPOSAL

In response to the *Julie N* oil spill, the Trustees initiated natural resource damage assessment efforts pursuant to OPA and the Maine Oil Discharge and Pollution Prevention Act (38 MSRA § 541, *et seq.*, 1989 and sup. 1998). The Trustees and representatives for RP cooperatively conducted and reviewed the results of 16 preassessment studies to make a preliminary determination whether natural resources or natural resource services were injured and/or threatened by ongoing injury due to the *Julie N* spill. Three technical working groups, consisting of representatives from the Trustees and the RP, were formed to address the following potential injury categories: marine communities, wetlands/birds, and lost public uses. These preassessment studies and the related work of the technical working groups are described in detail in the *Julie N* Preassessment Data Report (PDR), which was finalized in September 1998 and is part of the administrative record.

The Trustees have estimated the nature and extent of the natural resources exposed to and/or injured and the lost public uses resulting from the *Julie N* oil spill. The Trustees believe that further injury assessment would result in the confirmation of such injuries to natural resources and natural resource services. However, in order to move more quickly towards the goal of restoration, the Trustees have selected and are proposing a set of restoration projects that they believe will adequately restore the injured natural resources and compensate the public for the lost uses resulting from the *Julie N* spill. The Trustees believe that it is in the public's interest to settle with the RP for the costs associated with the implementation of these projects in lieu of undertaking full assessment-type studies.

The Trustees selected the following projects to include in their restoration proposal after carefully considering a range of restoration alternatives. For marine communities, the "Portland Oil and Grease Removal Project" is proposed to reduce the discharge of oil and greases to the Fore River and thereby enhance the marine environment's overall quality. For wetlands/birds, the Trustees have selected projects which have as their goals the enhancement of approximately 130 acres of salt marsh habitat for bird species affected by the *Julie N* spill and the acquisition and protection of marine bird nesting habitat. For lost public uses, the Trustees propose the construction of a one-mile segment of recreational trail along the Fore River.

The RP has agreed to pay \$1,000,000 to the Trustees for the estimated costs of implementing these proposed projects, including the costs to the Trustees for oversight during the implementation of the projects. The title of the specific projects and the breakdown of the \$1,000,000 are shown in Exhibit 1-1 below. The cost figures set forth below are estimates. The actual costs incurred for the projects and oversight may be somewhat higher or lower. The projects themselves are described in greater detail in Chapter 4 below.

Exhibit 1-1		
SUMMARY OF PROPOSED <i>Julie N</i> OIL SPILL RESTORATION PROJECTS AND COSTS		
Resource/Service	Proposed Restoration Project	Total Cost to RP
Marine Community	Portland Oil and Grease Removal Project	\$350,000
Wetlands/Birds	Wetland/Bird Habitat Restoration Projects	\$475,000
Lost Public Uses	Fore River Trail Project	\$125,000
Total Estimated Cost of Restoration Projects		\$950,000
Total Estimated Trustee Oversight Costs		\$ 50,000
Total Restoration and Oversight Costs Payment by RP to Trustees		\$1,000,000

The area most heavily affected by the *Julie N* spill was a portion of the Fore River extending from its outlet at the entrance to Portland Harbor upstream for a distance of approximately 3 miles (see Exhibit 2-1). This area also includes Long Creek, which flows into the Fore River upstream of the I-295 Bridge. The Fore River is located along the southern coast of Maine at the southwest end of Casco Bay and discharges into Casco Bay at the entrance of Portland Harbor. Portland Harbor functions as an estuary where the freshwater from the Fore River and sea water from Casco Bay mix.

Portland Harbor is a major port in New England, and is the largest commercial port in Maine. It is also used extensively by the public for recreational boating and fishing, and for ferry, tour and whale-watching trips. Casco Bay has been designated an estuary of national significance and is included in the USEPA's National Estuary Program. Its shoreline covers 578 miles, including 785 islands, islets, and exposed ledges. Casco Bay's water surface encompasses nearly 200 square miles, and it provides 229 square miles of marine habitat. Twelve significant lake and river systems feed the bay, including Sebago Lake and four major tributaries, including the Fore River.

Natural resources are abundant in the Fore River and its tributaries. A diverse array of intertidal marine vegetation, including *Spartina alterniflora*, *Spartina patens*, *Phragmites* sp., growing on soft, unconsolidated sediment substrate, and *Fucus* sp. and *Ascophyllum* sp., covering harder, rockier surfaces, is found in the Fore River. Similarly, "vertical wall communities", comprised of hydroids, stalked ascidians, barnacles, anemones and mussels, exist on vertical walls in the river such as granite, concrete, steel and wood pilings and crib work.

The varied marine habitats, including tidal mud flats and the sloped walls of the federal channel of the Fore River, support many benthic species including marine worms, green crabs, mussels, starfish, sponges, periwinkles, clams, and mussels. Lobster burrows line the walls of the federal channel, particularly near the mouth of the harbor.

Salt marsh habitat can be found in the area of the Fore River above Veteran's Memorial Bridge. The salt marsh provides important habitat for numerous sea bird, waterfowl, wading bird species, fin fish, shellfish, and crustaceans.

Tanker JULIE N Incident

Exhibit 2-1

Overflight Map

prepared by NOAA

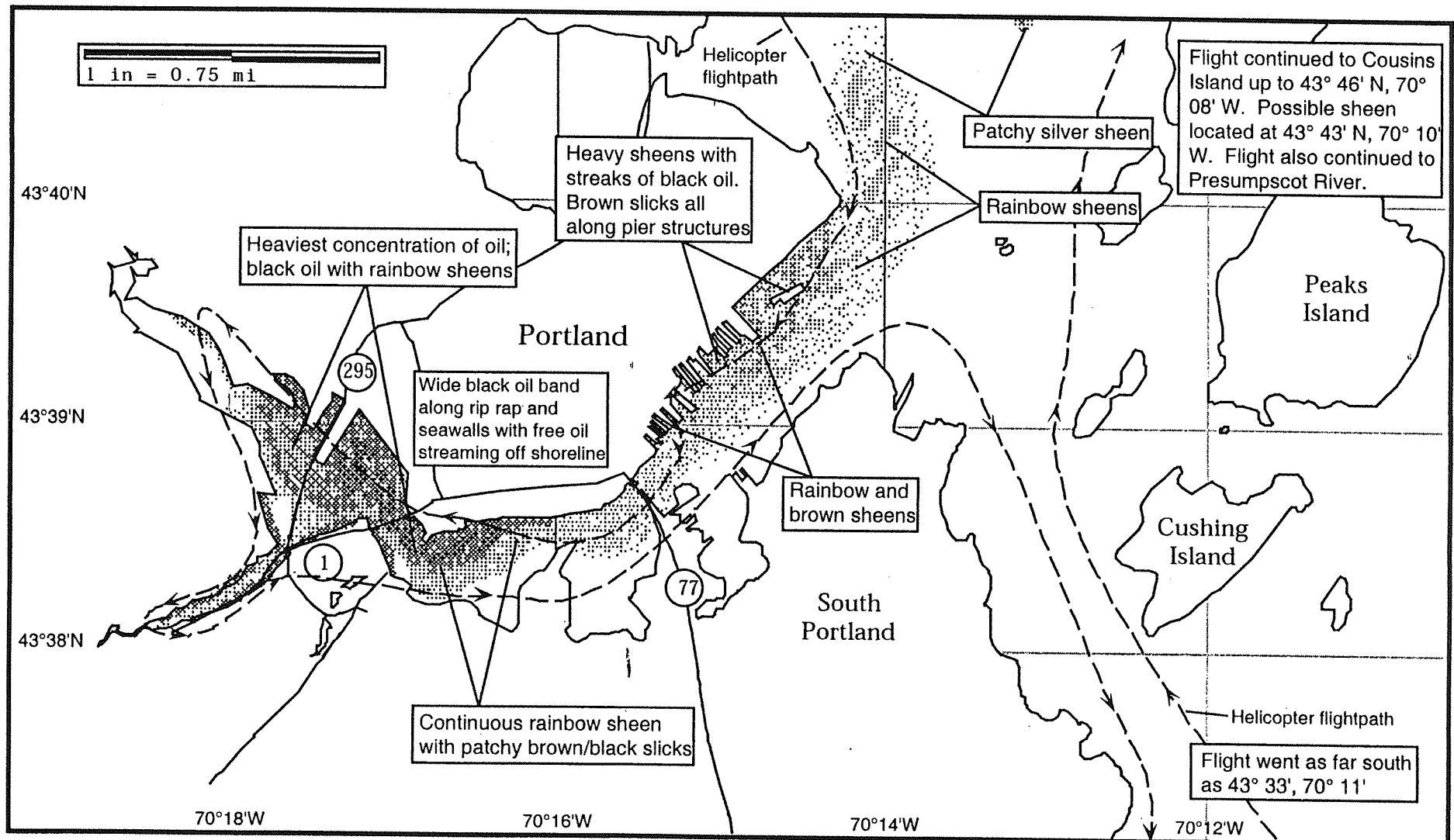
Date/Time: 28 SEP 96, 0825-0915

Platform: Bell Helicopter

Observers: Michel, Simecek-Beatty (NOAA)

USE ONLY AS A GENERAL REFERENCE

Graphic does not represent precise amounts or locations of oil



JULIE.Ovflt.09/28.0825

CJH

3.1 INTRODUCTION

The Trustees have estimated the nature and extent of the natural resources exposed to and/or injured by oil from the *Julie N* and the lost public uses resulting from *Julie N* oil spill. The affected resource/resource service categories considered by the Trustees include the following:

- marine communities;
- wetlands/birds; and
- public uses.

The Trustees' estimates are described on a resource-specific basis below and are summarized in Exhibit 3-1.

3.2 MARINE COMMUNITIES

3.2.1 Macroalgae

Macroalgae are marine plants that are important as primary producers and as structural components of intertidal and subtidal marine habitat. As a result of spill response efforts, oiled macroalgae was removed from shoreline areas in the Fore River. The total amount of macroalgae reported as having been removed is 1,143 square feet and 340 pounds wet weight. Additional macroalgae injury was accounted for by considering macroalgae as part of the vertical wall communities discussed below.

3.2.2 Blue Mussels

Polycyclic Aromatic Hydrocarbons ("PAHs") concentrations in mussels collected from the Fore River were generally 10-30 times higher after the oil spill than concentrations found in Fore River mussels collected from the same areas in 1994. Total PAH concentrations in mussel tissue

ranged from 27,000 to 290,000 ppb (dry weight). With the exception of two samples, one from Fore River Cove and one from Mill Cove, fingerprinting analyses of Fore River mussel samples indicated that the PAHs were consistent with *Julie N* oil.

3.2.3 Softshell Clams

Total PAH concentrations were up to eight times higher in softshell clams collected in oiled areas of the Fore River (e.g. Thompson Point) relative to softshell clams from Fore River areas receiving little-to-no *Julie N* oil contamination (i.e. Fore River Cove). Total PAH concentrations in softshell clam tissue ranged from 14,000 to 110,000 ppb (dry weight). Fingerprinting analyses of all Fore River softshell clam samples indicated that the PAHs were consistent with *Julie N* oil.

3.2.4 Vertical Wall Communities

Vertical wall communities are comprised of plants and animals (hydroids, stalked ascidians, anemones, macroalgae and other marine organisms) which attach themselves to pilings and other hard, vertical surfaces. The Trustees' injury estimates for vertical wall communities represent the areal extent of such surfaces that were heavily oiled and cleaned by spraying the surfaces with hot water. The linear distance of such surfaces, estimated to be approximately 11,558 feet, was multiplied by the tidal range of 10 feet to provide an estimate of the areal extent of affected vertical wall communities, or approximately 115,580 square feet.

3.2.5 Sediment

Sediment can be a major repository for contaminants entering marine ecosystems. Sediment contamination has the potential to adversely affect resident biota associated with the sediment (e.g. infaunal organisms such as marine worms and clams) and higher organisms dependent upon those biota as a prey (e.g., fish, birds). The Trustees observed oil in intertidal sediments in the vicinity of Thompson's Point and at depths ranging from 2 to 6 cm. Out of 25 sediment samples taken from selected intertidal areas throughout the area affected by the *Julie N* spill, only 4 of those analyzed contained PAHs attributable to *Julie N* oil. Total PAH concentrations for these 4 sediment samples ranged from 3,600 to 67,000 ppb (dry weight) and they were all collected in the vicinity of Thompson's Point, Long Creek and Airport Cove. It should be noted, however, that all of the sediment samples were collected after the October 20, 1996, Northeaster storm, which may have resulted in the resuspension and redistribution of oil-contaminated sediments in the Fore River.

3.3 WETLANDS/BIRDS

3.3.1 Wetlands

A detailed analysis of the wetlands oiled in the Fore River was conducted in 1996 and 1997 through a combined aerial survey and ground-truthing approach. Photographs and ground-truth data were used to map the aerial extent of wetland vegetation. Approximately 25.6 acres of intertidal emergent wetland in the Fore River were exposed to *Julie N* oil.

3.3.2 Birds

Between September 29 and November 19, 1996, 1,679 cumulative observations of oiled birds (80% seagulls; 9% double-crested cormorants; the remainder were black ducks, wading birds, and shorebirds) were documented in the Fore River area. Since these were cumulative observations made during daily surveys, some oiled birds were probably counted more than once. Eighty-seven birds were counted as "heavily oiled", 508 as "moderately oiled" and 1,084 as "lightly oiled". Twenty-eight live oiled birds were processed through the rehabilitation center; 15 died, 12 were released, and one was held because of an injury limiting its flight capability. In addition, 12 birds were already dead when they were brought into the rehabilitation center.

3.4 PUBLIC USES

Impacts to the public's use of spill-contaminated resources in the Fore River/Portland Harbor and western Casco Bay areas were varied, increasing with proximity to the spill site and heavily contaminated areas.

3.4.1 Ferry Boat Trips

To assess the losses incurred by the *Julie N* oil spill, the Trustees consulted with spokespersons at the two ferry lines servicing Portland Harbor: Casco Bay Lines and Prince of Fundy Cruises, Limited. While Casco Bay Line ferries were not impacted, service provided by the Prince of Fundy Cruises, Limited ferry, the *Scotia Prince*, was seriously disrupted from September 27-29, resulting in 250 lost ferry boat passenger/person trips and 2,700 diminished use ferry boat passenger/person trips.

3.4.2 Wayneflete School Trail Activities

The oil impacted marshes adjacent to the Wayneflete School public trail system. Based on discussions with Wayneflete School regarding the recreational usage of the trails, the Trustees estimated the number of lost and diminished use trips at the Wayneflete School from the time of the spill through June 30, 1997 at 1,380 lost person trips and 1,380 diminished use person trips.

3.4.3 Party/Charter Boat Recreational Fishing Trips

The spill occurred as marine sport fishing approached the end of its normal season. The Trustees consulted with captains of three vessels which charter recreational fishing trips to assess the losses incurred by the *Julie N* oil spill. Patronage of party/charter boat recreational fishing businesses was lighter than normal because of the spill. Based upon data collected, an estimated 124 party/charter boat recreational fishing person trips were lost in late September and October of 1996.

3.4.4 Recreational Boating Trips

Casco Bay recreational boating season generally ends in late September, with the season extending for another month in the Fore River/Portland Harbor area. Recreational boats docked at marinas located outside the spill response area were generally not affected by vessel traffic restrictions. Marinas and mooring areas located within the response areas experienced closures, ranging from several days in duration on up to six weeks (in the case of Merrill's Marina). Adjusting for the uncertainties of weather, the Trustees have estimated that approximately 4,862 recreational boating person trips would have been taken had the spill not occurred.

3.4.5 Tour Boat Trips

The Trustees consulted with the owner of House Island Tours and Charters to assess the losses incurred by the *Julie N* oil spill. Educational tour boat trips to House Island for approximately 300 secondary school students were canceled due to the spill.

3.4.6 Whale Watching Trips

The Trustees consulted with the captain of the *Odyssey*, a whale watching boat, to assess the losses incurred by the *Julie N* oil spill. An estimated 225 whale watching person trips were lost during spill response/cleanup operations in late September and October.

3.5 SUMMARY OF *JULIE N* EXPOSURE/INJURY ESTIMATES

A summary of the Trustees' estimates of the nature and extent of the natural resources exposed to and/or injured by oil from the *Julie N* and the lost public uses resulting from *Julie N* oil spill is provided in Exhibit 3-1.

Exhibit 3-1

JULIE N OIL SPILL: SUMMARY OF EXPOSURE/INJURY ESTIMATES

MARINE COMMUNITIES

Injured Resource/Service	Exposure
Marine Vegetation	1,143 sq. ft and 340 lbs. of vegetation cut and removed
Blue Mussels	Total PAH concentrations ranged from 27,000 - 290,000 ppb (dry weight)
Softshell Clams	Total PAH concentrations ranged from 14,000 - 110,000 ppb (dry weight)
Vertical Wall Communities	115,580 sq. ft. of vertical wall exposed to either heavy oiling and/or hot washing
Sediment	Four of the 25 sediment samples analyzed contained PAHs attributable to <i>Julie N</i> oil. Total PAH concentrations for these four sediment samples ranged from 3,600 to 67,000 ppb (dry weight)

WETLANDS AND BIRDS

Injured Resource/Service	Exposure
Wetlands	25.6 acres of wetlands lightly to heavily oiled
Birds	27 dead birds and 1,679 cumulative observations of birds with visible oiling

PUBLIC USE

Lost Public Uses	Service Losses and Interruptions	
	Lost Use	Diminished Use
Ferry Boat Trips	250 lost ferry trips	2,700 diminished ferry trips
Waynelete School Trail Activities	1,380 lost trail activities trips	1,380 diminished trail activities trips
Party/Charter Boat Recreational Boating Trips	124 party/charter boat trips lost	
Recreational Boating Trips	4,862 lost person-day boating trips	
Tour Boat Trips	300 lost tour boat trips	
Whale Watching Trips	225 lost whale watching trips	

4.1 INTRODUCTION

The Trustees evaluated a range of compensatory restoration alternatives which would enhance the natural recovery of resources injured by the *Julie N* oil spill, and/or would provide additional resource services to compensate the public for losses pending natural recovery. In the following sections the preferred and non-preferred restoration alternatives for the three categories of affected natural resources and natural resource services (marine communities, wetlands/birds and lost public uses) are presented and discussed.

In evaluating the possible restoration alternatives, the Trustees have considered, among other things, the following:

- The extent to which each alternative is expected to meet the Trustees' goals and objectives of returning the injured natural resources and services to baseline and/or compensating for interim losses;
- The likelihood of success of each alternative;
- The extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative;
- The extent to which each alternative benefits more than one natural resource and/or service;
- The effect of each alternative on public health and safety; and
- The cost to carry out the alternative.

Information supporting the Trustees' selection of restoration alternatives is provided throughout the remainder of this chapter.

4.2 NO-ACTION ALTERNATIVE

NEPA requires the Trustees to evaluate the "no-action" alternative. Here, the "no-action" alternative would mean that the Trustees would take no direct action to restore injured natural resources or to compensate for lost services pending environmental recovery, relying instead solely on natural recovery for the achievement of restoration goals. While the Trustees believe that natural recovery will occur over varying time scales for the resources exposed to and/or injured by oil from the *Julie N* spill, the interim losses suffered would not be compensated for under a "no-action" alternative.

The Trustees' responsibility to seek compensation for interim losses is clearly set forth in OPA. Thus, while the Trustees consider natural recovery to be appropriate as a primary restoration option for all injuries resulting from the *Julie N* spill, they are seeking compensatory restoration for the interim losses as set forth in detail below.

4.3 RESTORATION ALTERNATIVES FOR MARINE COMMUNITY RESOURCES

4.3.1 Preferred Alternative: Portland Oil and Grease Removal Project

Project Description

The Portland Oil and Grease Removal Project includes capital purchases and improvements to assist the City of Portland in implementing an aggressive effort to reduce the discharge of oil and grease to the Fore River and other receiving waters. The project consists of the purchase of a new vacuum truck and the rehabilitation of an existing vacuum truck to enable the City to collect sediments contaminated with oil and grease from storm systems throughout the City. The project also includes the purchase of an articulating boom for an existing City truck that will enable the City to clean contaminated sediments from a greater portion of the sidewalk, street and median strip areas throughout the City. Absent the collection efforts that the City has committed to undertake with this equipment, the oil and grease contaminated sediments would be discharged into the Fore River and Portland Harbor. Contaminated sediments collected by the City will be disposed of at authorized solid waste management facilities.

Restoration Objectives

This project is intended to provide compensatory restoration for the marine resources that were exposed to and/or injured by *Julie N* oil by reducing the amounts of oil and grease discharged into the Fore River and Portland Harbor from the City of Portland.

Environmental and Socio-Economic Impacts

No adverse environmental or economic impacts are expected from this project.

Cost

The Trustees propose to implement this project with funds from the settlement with the RP. The estimated costs to fund this project are \$350,000. The City of Portland will assume responsibility for operation and maintenance of the capital improvements purchased with settlement monies, and for the evaluation of the success of the project.

Evaluation

By reducing the storm water discharge of oil and grease contaminated sediments to the Fore River and Portland Harbor, this project would enhance the overall quality of the Fore River/Portland Harbor marine environment. In addition, the mobile equipment acquired for this project, such as the vacuum truck, would be used throughout the City of Portland. The substantial commitment by the City of Portland to aggressively use the new equipment throughout the City and to evaluate the success of the project also significantly enhances the value of this project. For these reasons, the Trustees believe that the Portland Oil and Grease Removal Project would adequately compensate for the marine community injuries and interim losses resulting from the *Julie N* spill, and have selected it as the preferred restoration alternative for marine community resources.

4.3.2 Non-Preferred Alternatives Discussion

The Trustees considered two alternatives for addressing marine community resource injuries and interim losses, but have identified both of them as "non-preferred". Both projects would provide for the installation of inline oil, grease and grit removal and filtration systems to separate and collect oils and greases from storm water prior to its discharge into the Fore River and Portland Harbor. One of the projects would treat storm water presently discharged into Casco Bay near Portland's East End Beach for a capital cost of approximately \$175,000; the other project would treat storm water now discharged into the Fore River near Merrill's Marine Terminal for a capital cost of approximately \$245,000. Neither of these projects would be effective for reducing oil and grease discharges absent the equipment to be purchased for the Portland Oil and Grease Removal Project, as the inline systems require a vacuum truck for removal of the sediments that they collect. Also, while each of these two projects would reduce the oil and grease discharged from one of the 30+ Portland discharge points into the Fore River, Back Cove and Casco Bay, the equipment from the Portland Oil and Grease Project will be used at all of the City's discharge points. Thus, the Portland Oil and Grease Project is preferable to these alternatives, since it is a stand-alone project that will compensate for the injuries and interim losses to marine communities and can more cost-effectively provide environmental benefits for marine communities in receiving waters throughout the Portland watershed.

4.4 RESTORATION ALTERNATIVES FOR WETLANDS AND BIRDS

4.4.1 Preferred Alternative: Wetland/Bird Habitat Restoration Projects

Project Description

To compensate for injuries and interim losses sustained by wetlands, waterfowl, wading birds, and shorebirds, the Trustees propose to enhance the productivity of a specific area of a salt marsh in Scarborough, Maine. Scarborough Marsh is located on the northwestern and southeastern sides of U.S. Highway 1 (US 1). The specific area of Scarborough Marsh that has been proposed for restoration is located to the northwest of US 1, near the intersection of US 1 and Milliken Road, and is locally known as the "Dunstan River Marsh". Scarborough Marsh encompasses 3,000 acres and is Maine's largest salt marsh. MDIF&W and USFWS consider it to be an important coastal wetland and waterbird habitat. USFWS has also identified this marsh as an important area for anadromous fish.

The Dunstan River Marsh has been degraded due to hydrological constraints and aggressively growing invasive species, such as reedgrass and cattail, which have replaced the naturally occurring *Spartina* and reduced the natural resource services provided by Scarborough Marsh. The Trustees propose to undertake a hydrological assessment of the Dunstan River Marsh to determine the most ecologically beneficial method for enhancing the site. The assessment will evaluate tidal hydrology both upstream and downstream of US 1; determine the degree of tidal restriction caused by the road; evaluate freshwater input to the system; and provide recommendations for restoring the natural hydrology of the system. Options that the Trustees would evaluate for restoring the marsh include adding an additional culvert under US 1, creating pannes and new tidal channels, and removing fill. The Trustees would determine the most effective combination of marsh improvement actions to implement subject to the specific physical, chemical, and biological requirements of the marsh.

To compensate for injuries and interim losses sustained by marine birds, namely various species of gulls, leach's storm petrel and cormorants, the Trustees propose to study the feasibility of acquiring and protecting marine bird nesting habitat in Casco Bay. The Maine Wildlife Habitat Initiative, a cooperative effort involving MDIF&W, USFWS and local conservation groups, would make recommendations to the Trustees for potential acquisitions. Funds from this proposed settlement would be used, with matching funds from other sources to the extent that such funds are available, to acquire appropriate nesting island habitat which becomes available for purchase.

Restoration Objectives

The *Julie N* oil spill resulted in the injury and/or interim loss of estuarine mudflats and intertidal emergent wetland habitats in the Fore River similar to those that would be enhanced through the implementation of this project. Waterfowl, wading birds, and shorebirds that were oiled as a result of the *Julie N* oil spill frequently use Scarborough Marsh. Following the spill, oiled water birds from the Fore River were observed in Scarborough Marsh. Scarborough Marsh has been identified as a high value habitat, so birds, wetlands, fish, and other animals in this area of Maine,

including the Fore River watershed, would benefit from this proposed habitat improvement. Marine birds that were oiled as a result of the *Julie N* oil spill use island nesting habitat in Casco Bay and therefore would benefit from any acquisition and protection of such habitat.

Environmental and Socio-Economic Impacts

Implementation of these projects would enhance bird/wetland habitats in the vicinity of the Fore River and Casco Bay. Certain construction activities that the Trustees are considering would cause some short-term environmental impacts. These include excavation of wetland areas for creation of tidal channels, short-term sedimentation due to road and marsh construction activities, and filling small wetland areas to create areas of additional open water in the marsh. These impacts would be minimized by early coordination between the Trustees and federal and state regulatory agencies and by direct oversight of the project by the Trustee agencies.

Cost

The Trustees propose to implement these projects with funds from the settlement with the RP. The estimated cost for the projects is \$475,000, of which up to \$25,000 could potentially be spent on the acquisition and protection of marine bird nesting habitat.

Evaluation

Scarborough Marsh near US 1 has been degraded due to hydrological constraints and invasive species. If these constraints are removed, the invasive species are controlled, along with other improvements, this area would provide additional habitat nesting, brood rearing, and foraging for black ducks and other bird species injured by the *Julie N* oil spill. In addition, the public would be compensated for *Spartina* wetland habitat that was exposed to the *Julie N* oil. This project's potential for success is high, based on similar work completed in other coastal marshes. It would benefit all wildlife, fish and invertebrates inhabiting the marsh.

Acquisition of island nesting habitat by the Trustees would compensate for injuries and interim losses to marine birds as a result of the *Julie N* oil spill. Based on the past successful acquisition and protection of marine bird nesting habitat by the Maine Wildlife Habitat Initiative, the potential for success of this project is very high.

For these reasons, the Trustees believe that these projects would adequately compensate for wetland and bird injuries and interim losses caused by the *Julie N* spill, and have selected them as the preferred restoration alternatives for wetlands and birds.

4.4.2 Non-Preferred Alternatives Discussion

The Trustees considered a salt marsh restoration project in Long Creek that would provide for the removal of fill and restoration of salt marsh in an area adjacent to I-295 along the Fore River. The site is approximately 4 acres in size and is owned by the State of Maine. The project would involve the removal of 53,000 cubic yards of fill and would create approximately 4 acres of salt marsh.

The Trustees believe that this project could also adequately address the injuries and interim losses to wetlands and birds exposed to oil from the *Julie N* spill. However, Portland International Jetport is located in South Portland adjacent to the Fore River and Jetport officials have expressed concern about any project there that might increase the number of birds within the flight path of planes flying into and out of the airport. Based on that concern, the Trustees have designated this project a "non-preferred" restoration alternative.

4.5 RESTORATION ALTERNATIVES FOR LOST PUBLIC USES

4.5.1 Preferred Alternative: Fore River Trail Project

Project Description

Portland Trails, a nonprofit organization, would construct a one-mile section to the Fore River Trail System, which is part of a planned 30-mile green way network connecting open space, shorelines, schools, businesses, and neighborhoods throughout the City of Portland, and along the banks of the Fore River. Ten miles of this network of trails already exist and are heavily used by the public. The proposed one-mile segment would link two existing trail systems, one that is part of the 85-acre Fore River Audubon Sanctuary and the other located on property owned by the Waynelete School. The path of the trail would cross property owned by the City and several private property owners; easements across these properties have already been obtained for approximately 2/3 of the distance. The Maine Conservation Corps would do most of the trail construction work and volunteers would assist Portland Trails in obtaining any necessary permits or other approvals. Portland Trails would place a series of interpretive signs along the trail to inform visitors of the importance of preserving land, the ecology, natural, and cultural history of the area, as well as the oil spill and efforts to mitigate its effects. From Thompson's Point, subsequent proposed sections of trail would proceed past Merrill's Marine Terminal, under the new Casco Bay bridge and through the proposed Harbor View Park, linking up with the Eastern Promenade Trail via Commercial Street to circumnavigate the peninsula.

Restoration Objectives

The objective of this project is to compensate the public for the lost use of Portland Harbor and the Fore River during the *Julie N* oil spill. Oil was visible along the shoreline and in the Stroudwater Marsh following the spill. Construction of the trail and educational signage would enhance the visitation experience of future trail users by increasing usage and awareness of the sensitive ecology along the Fore River.

Environmental and Socio-Economic Impacts

No adverse environmental or economic impacts are expected from this project.

Cost

The Trustees propose to implement this project with funds from the settlement with the RP. The estimated cost for implementing this project is \$125,000.

Evaluation

The proposed addition to the Fore River Trail System along an area of shoreline heavily oiled by the *Julie N* spill would provide a wide array of recreational and ecological benefits to the public. By linking two existing trail systems, the project would enhance the use and value of the entire trail system as a public recreational resource. The proposed trail segment would provide walking, biking, hiking, jogging, and scenic and wildlife viewing opportunities to the public. It would provide access to the scenic waterfront along the upper Fore River and would parallel a portion of an abandoned, historic canal. The right-of-way for the trail would also provide a corridor of preserved habitat for wildlife. The interpretive signs would enhance the recreational and ecological benefits provided by the proposed trail by educating the public and creating an outdoor classroom for use by area schools.

Portland Trails would plan, implement and manage the proposed trail segment. Because of the organization's experience in developing and managing existing trails, it is highly likely that the proposed project would be implemented successfully.

For these reasons, the Trustees believe that the Fore River Trail Project would adequately compensate for lost public uses resulting from the *Julie N* oil spill, and have selected it as the preferred restoration alternative for lost public uses.

4.5.2 Non-Preferred Alternatives Discussion

The Trustees considered a project consisting of the construction and installation of park infrastructure at the old touch down for the Million Dollar Bridge in South Portland (the "Thomas Knight Park Project"), but have designated it a "non-preferred" restoration alternative. Since the Casco Bay Bridge has opened, the Million Dollar Bridge has been dismantled and the City has

drafted plans to transform this section of the waterfront into a scenic coastal park. Although this project would provide adequate compensation for the lost public uses resulting from the *Julie N* oil spill, the Trustees believe that the Fore River Trail Project is preferable as a restoration alternative. The Trustees selected the Fore River Trail Project over this project because it would be constructed along a portion of the shoreline that was more heavily oiled by the *Julie N* spill and would provide more shoreline access points and educational opportunities for the public than this project. For these reasons, the Trustees have designated the Thomas Knight Park Project as a "non-preferred" restoration alternative.

The Trustees also considered an alternative consisting of the purchase of certain open spaces identified by the South Portland Land Trust that are adjacent to the South Portland Greenbelt and Pleasantdale Cove in South Portland. Pleasantdale Cove encompasses the area from the site of the Casco Bay Bridge, to the ends of Mildred, Chapel, and Chestnut Streets. The alternative calls for the purchase of open spaces adjacent to the Greenbelt area and the shoreline of Pleasantdale Cove. The Trustees prefer the Fore River Trail Project to this alternative because it would be constructed along a portion of the shoreline that was more heavily oiled by the *Julie N* spill and would provide more shoreline access and educational opportunities for the public. For these reasons, the Trustees have designated this project as a "non-preferred" restoration option.

4.6 ESSENTIAL FISH HABITAT CONSULTATION

The Magnuson-Stevens Act (16 U.S.C. 1801 et seq.) as amended and reauthorized by the Sustainable Fisheries Act (Public Law 104-297) established a program to promote the protection of essential fish habitat (EFH) in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. After EFH has been described and identified in fishery management plans by the regional fishery management councils, Federal agencies are obligated to consult with the Secretary of Commerce with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH.

The Portland Oil and Grease Removal Project and the Fore River Trail Project will not adversely affect EFH as neither project involves the alteration of habitat. The Scarborough Marsh Restoration Project will take place in waters discharging into Saco Bay. Saco Bay has been designated EFH for one or more life stages of the following species: Atlantic salmon (*Salmo salar*), pollock (*Pollachius virens*), whiting (*Merluccius bilinearis*), red hake (*Urophycis chuss*), white hake (*Urophycis tenuis*), winter flounder (*Pleuronectes americanus*), yellowtail flounder (*Pleuronectes ferruginea*), windowpane flounder (*Scopthalmus aquosus*), American plaice (*Hippoglossoides platessoides*), ocean pout (*Macrozoarces americanus*), Atlantic halibut (*Hippoglossus hippoglossus*), Atlantic sea scallop (*Placopecten magellanicus*), Atlantic sea herring (*Clupea harengus*), bluefish (*Pomatomus saltatrix*), and Atlantic mackerel (*Scomber scombrus*). These species are managed by both the New England and Mid-Atlantic Fishery Management Councils under the following fishery management plans (FMP): Salmon; Northeast Multispecies; Atlantic Sea Scallop; Atlantic Herring; Bluefish; and Squid, Mackerel, and Butterfish FMPs.

The Scarborough Marsh Restoration Project described in Section 4.4.1 proposes to enhance a degraded salt marsh caused by tidal restrictions and aggressively growing invasive plant species such as reedgrass (*Phragmites australis*) and cattail (*Typha angustifolia*). Exact project details will not be determined until a thorough ecological and hydrological assessment has been conducted for the marsh system. The Trustees will consider options such as adding an additional culvert under U.S. Route 1, creating pannes and new tidal channels to increase tidal flow into the *Phragmites* and *Typha* dominated areas, and removing fill. These actions should serve to enhance tidal flow into these areas to reverse the spread of *Phragmites* and *Typha* and encourage the growth of typical salt marsh vegetation (e.g. *Spartina* spp.). Resident salt marsh fish species will directly benefit from the additional tidal flow to areas of the marsh that are now receiving only infrequent storm tides. Minor, temporary construction impacts associated with the various restoration options could cause short-term turbidity plumes in the water column of the Dunstan River. However, with the implementation of appropriate Best Management Practices, these impacts will be minimized. For the foregoing reasons, the Scarborough marsh restoration project will not adversely affect EFH.

After conceptual restoration project details were developed, the Trustees evaluated and coordinated their plans with the National Marine Fisheries Service Northeast Region to ensure no adverse impacts to EFH. If the proposed project plans are substantially revised or if new information becomes available that affects this determination then supplemental consultation will be undertaken.

4.7 SUMMARY OF PREFERRED RESTORATION ALTERNATIVES AND COSTS

The Trustees have selected compensatory restoration alternatives which they believe would enhance the natural recovery of resources injured by the *Julie N* oil spill, and/or would provide additional resource services to compensate the public for interim losses pending natural recovery. The Trustees believe that the four selected projects, the Portland Oil and Grease Removal Project, the two Wetland/Bird Habitat Restoration Projects and the Portland Trails Project, would adequately address the injuries and interim service losses resulting from the *Julie N* oil spill. In addition to the costs of implementing the preferred restoration alternatives, the Trustees must also recover any costs that they incur overseeing the implementation of the projects. Exhibit 4-1 presents the total estimate of all costs, including the estimated costs for implementing the selected restoration alternatives and the Trustees' estimate of their oversight costs. The cost figures set forth below are estimates. The actual costs incurred for the projects and oversight may be somewhat higher or lower.

Exhibit 4-1		
SUMMARY OF PREFERRED <i>Julie N</i> OIL SPILL RESTORATION ALTERNATIVES AND COSTS		
Resource/Service	Proposed Restoration Alternative	Estimated Cost
Marine Community	Portland Oil and Grease Removal Project	\$350,000
Wetlands and Birds	Wetland/Bird Habitat Restoration Projects	\$475,000
Lost Public Uses	Fore River Trail Project	\$125,000
Total Estimated Cost of Implementing Preferred Restoration Alternatives		\$950,000
Total Estimated Trustee Oversight Costs		\$ 50,000
Total Restoration and Oversight Costs Payment by RP to Trustees		\$1,000,000

If the Trustees obtain new information indicating that any of these projects should not be implemented, or if excess funds are available after completion of the projects, the Trustees will select alternative projects for implementation and will provide further public notice to the extent required by OPA and NEPA.