

MINUTE ITEM

This Calendar Item No. C33
was approved as Minute Item
No. 33 by the State Lands
Commission by a vote of 3
to 0 at its 2-25-93
meeting.

CALENDAR ITEM

C33

A 10

S 7

02/25/93

G 13-01

Fossum

Valentine

J. Smith

CONSIDER A MEMORANDUM OF UNDERSTANDING
CONCERNING ASSESSMENT OF INJURIES
RESULTING FROM RELEASE OF CRUDE OIL AT
AVILA BEACH, SAN LUIS OBISPO COUNTY

PARTY:

State Lands Commission
1807 13th Street
Sacramento CA 95838

BACKGROUND:

On August 3, 1992, a pipeline at the UNOCAL tank farm in Avila Beach failed. Approximately 150 barrels of San Joaquin Valley heavy crude oil was spilled, of which 120 barrels was estimated to have reached the ocean. Approximately one-fourth to one-half mile of shoreline was oiled. The area impacted is shown on Exhibit "A".

The sovereign lands impacted were legislatively granted to the Port San Luis Harbor District, pursuant to Chapter 647, Statutes of 1955, and as amended.

Initial damages included:

- In excess of 120 tons (wet) of kelp beds removed to facilitate skimming;
- Temporary closure of sandy beach;
- Oiled recreational and fishing vessels in Avila Harbor;
- Death of 91 birds, several sea otters and sea lions.

In order to provide for the coordination and cooperation involved in assessing injuries to natural resources as a result of the spill, a Trustee Council was formed of the responsible agencies represented by the California Department of Fish and Game, the California State Lands Commission, the U.S. Fish and Wildlife Service, and the Port San Luis Harbor District.

A Memorandum of Understanding (MOU) was developed to provide the framework for assessing damages associated with this spill. The MOU defines the roles and responsibilities of the various trustee agencies in this process. The MOU also provides for establishment of a joint trust account or, if not feasible, separate trust accounts for recovery or receipt of damages arising out of the oil spill.

Staff has participated with the parties specified above in the preparation of the MOU and concur with its terms and conditions, including the representation of the State Lands Commission on the Trustee Council by the Port San Luis Harbor District as the local grantee. However, if a meeting of the Trustee Council is scheduled outside of San Luis Obispo County, for example, in Sacramento, the Port San Luis Harbor District has requested that the State Lands Commission designate a representative to attend to represent the District's interests.

Staff recommends that the Commission authorize the Executive Officer to execute the MOU substantially in the form attached as Exhibit "C".

AB 884:

N/A

EXHIBIT:

- A. Site Map
- B. Location Map
- C. Memorandum of Understanding

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. CODE REGS. 15378.
2. AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE THE SUBJECT MEMORANDUM OF UNDERSTANDING, IN SUBSTANTIALLY THE FORM ATTACHED AS EXHIBIT "C", CONCERNING THE ASSESSMENT OF INJURIES RESULTING FROM THE RELEASE OF CRUDE OIL AT AVILA BEACH ON AUGUST 3, 1992.

Unocal Tank Farm Incident

Overflight Map
prepared by NOAA

Date/Time: 05 August 92, 1230
Observers: Dickerson, Waldron,
Thurber, and McCleneghan

USE ONLY AS A GENERAL REFERENCE

Graphics depict the approximate location and amount of oil.

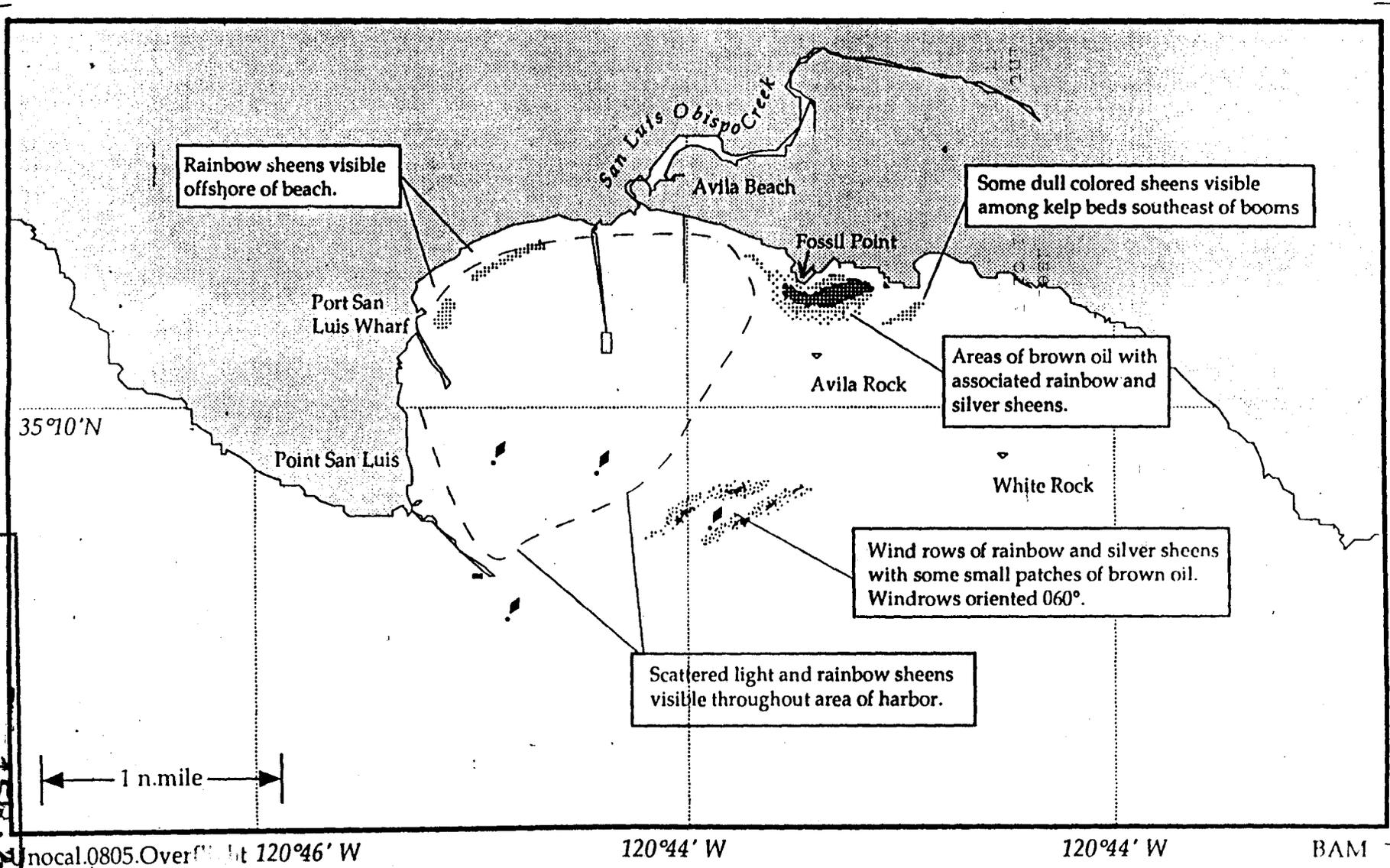
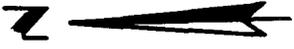


EXHIBIT "A"
G 13-01

CALENDAR PAGE 158
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Unocal.0805.Overflight 120°46' W

BAM



G13-01

This map is a portion of the USGS 7.5' quads:
 Pismo Beach (1965 - photorevised 1978) and Port San Luis (1965 - photo revised 1978)

The shaded area indicates the approximate location of the grant to the
 Port San Luis Harbor District

See Chapter 302; Statutes of 1957 for the amended description of the lands described.
 See also State Lands Commission Survey Maps CB 268 and CB 785 - 796.
 See also Exhibits "A" & "B" of BLA 119 (CB 1539) for the fixed boundaries within the grant.

Scale: 1 inch = 2000 feet

prepared 10/5/92

↑
NORTH

CALENDAR PAGE 158.3
MINUTE PAGE 13

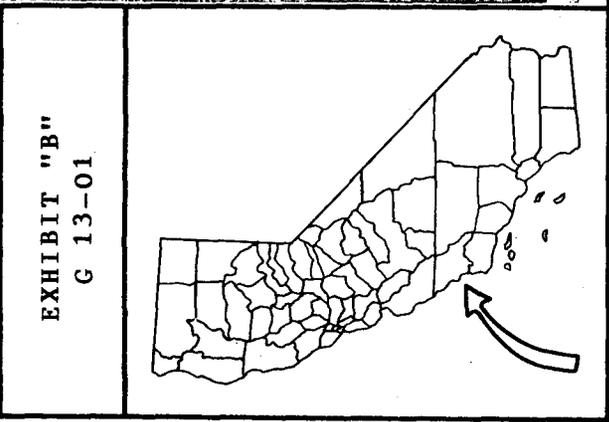
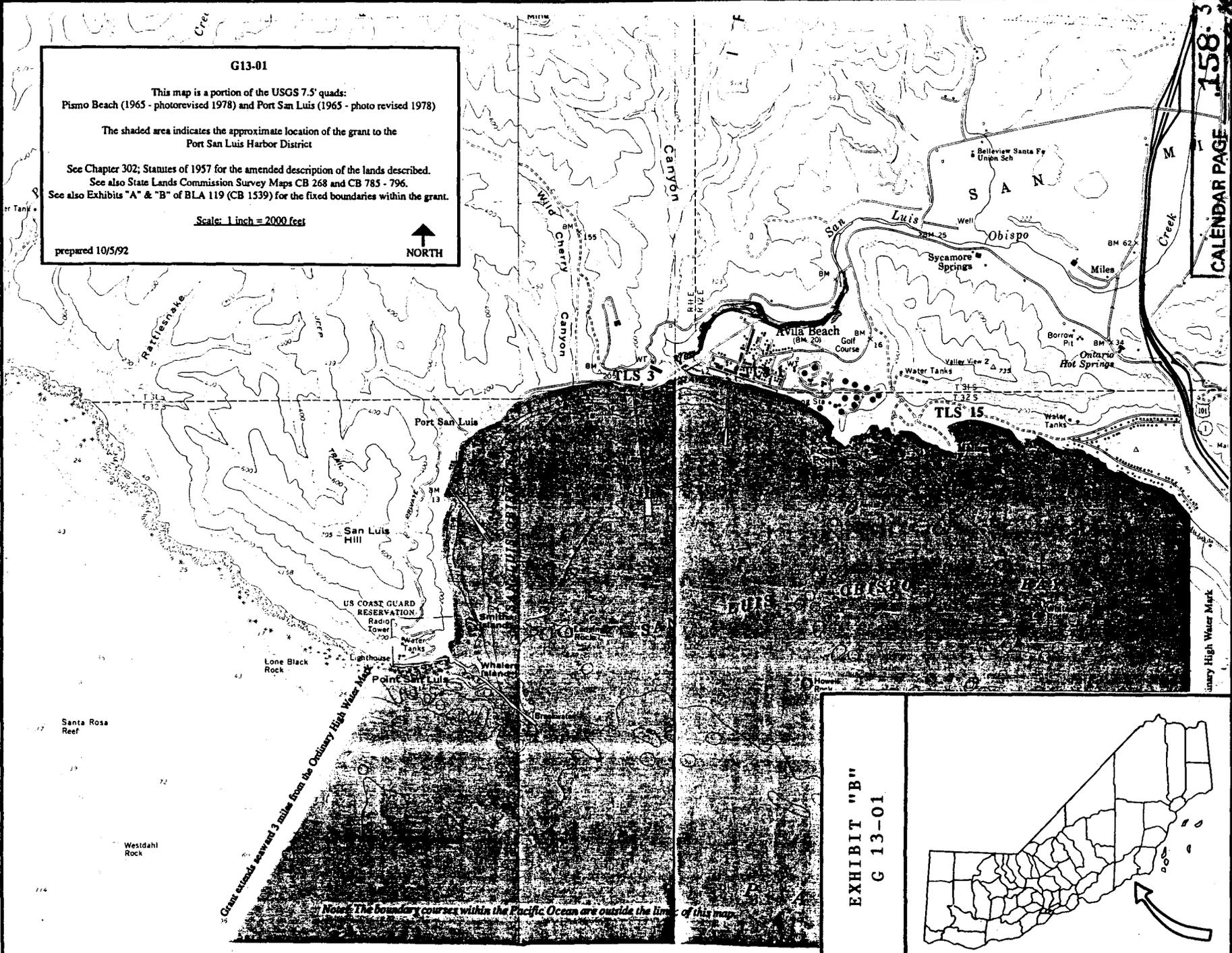


EXHIBIT "C"

ATTORNEY WORK
PRODUCT
PRIVILEGED

MEMORANDUM OF UNDERSTANDING
AMONG THE
THE CALIFORNIA DEPARTMENT OF FISH AND GAME
CALIFORNIA STATE LANDS COMMISSION
THE U.S. FISH AND WILDLIFE SERVICE
AND
THE PORT SAN LUIS HARBOR DISTRICT

I. Introduction

This Memorandum of Understanding (MOU) is entered into by the California Department of Fish & Game (DFG), the State Lands Commission (Commission), which shall be represented on the Trustee Council (as defined below) by the San Luis Port Harbor District (District), and the U.S. Department of the Interior as delegated to the Fish and Wildlife Service (FWS) (hereafter collectively referred to as the Trustees or Trustee Council), to ensure the coordination and cooperation of the Trustees in assessing injuries to natural resources resulting from the release of crude oil at Avila Beach on August 3, 1992, and in restoring, rehabilitating, and/or replacing such injured resources, and/or acquiring the equivalent natural resources.

II. Parties

The following officials, or their designees, are parties to this MOU and shall act on behalf of the public as Trustees for natural resources under this MOU:

- (a) The Administrator of the Office of Oil Spill Prevention and Response, DFG;
- (b) The Executive Officer of the Commission;
- (c) The Regional Director of the Pacific Region of the FWS; and
- (d) The Harbor Manager of the District acting on behalf of the Commission.

III. Location of Injured Natural Resources

This MOU is intended to address natural resources injuries resulting from the oil spill from the Union Oil Company (UNOCAL) facility at Avila Beach, California, on August 3, 1992 (the oil spill). The term "injured natural resources" in this MOU includes any resources that have been lost or destroyed as a result of the oil spill.

IV. Purpose

The Trustees recognize the importance of integrating and coordinating: (1) the assessment of natural resource damages for injuries to natural resources resulting from the oil spill; (2) the pursuit of compensation for injuries to such natural resources and the foregone services provided by such natural resources; and (3) the restoration, rehabilitation, and/or replacement of the affected resources and services, and/or the acquisition of equivalent natural resources (hereafter collectively referred to as restoration).

Accordingly, the purpose of this MOU is to provide a framework for such coordination and cooperation among the Trustees, including the implementation of the Trustees' activities in furtherance of their natural resource Trustee responsibilities. The Trustees' activities will primarily involve assessing injuries to natural resources, quantifying natural resource damages, seeking compensation for such damages, and restoring the injured natural resources and the foregone services provided by those natural resources. Nothing in this MOU is to imply that any signatory Trustee is in any way abrogating or ceding any responsibility or authority inherent in its control or trusteeship over natural resources.

V. Authority

The Trustees enter into this MOU in accordance with the natural resource Trustee authorities provided for each Trustee by the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.*; the Oil Pollution Act of 1990 (OPA), 33 U.S.C. Section 2701, *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, *et seq.*; the Natural Resource Damage Assessment Regulations, as amended, 43 CFR Part 11, if utilized; the OPA regulations, when promulgated; and other applicable Federal and State law.

VI. Organization

A Trustee Council is hereby created to implement this MOU to which each Trustee will designate a representative. The Council may create subcommittees if deemed necessary to effectuate the purposes of this MOU. The DFG will serve as Lead Administrative Trustee under this MOU and shall fully coordinate its activities with the Council.

In view of the decision by the Trustees to conduct a phased joint assessment with UNOCAL, the primary potentially responsible

party for the spill, it is agreed by the Trustees that to facilitate and expedite such joint assessment, DFG is hereby granted authority by the Trustees to negotiate and execute the two joint study plan agreements presently being negotiated with UNOCAL on behalf of the Trustee Council along with stipulations relating to confirmation of oil product and wildlife mortality. The two study plan agreements cover Phase 1 of a joint assessment of the impacts to recreation uses arising from the oil spill, and Phase 1 of a joint assessment of the injuries to natural resources arising from the oil spill.

It is agreed that the signature of the Administrator of the Office of Oil Spill Prevention and Response, DFG, on the agreements shall be deemed assent by the Trustees to the agreements. If further agreements with UNOCAL are contemplated, the Trustees may similarly authorize the Administrator to negotiate and execute such agreements so long as the Trustees have had an opportunity to review and approve in principle such agreements in advance of any negotiations with UNOCAL.

VII. Duties and Responsibilities

On behalf of the Trustees, the Trustee Council shall coordinate and authorize all Trustee activities and matters under this MOU in accordance with the decision-making procedures contained in Section VIII below. The Trustee Council may take whatever actions the Council, in its discretion, determines are necessary to fulfill the trust responsibilities of each Trustee under applicable Federal and State law.

It is expected that the Trustee Council, in accordance with applicable laws and policies, may take the following actions, among others, to address the Trustees' natural resource Trustee responsibilities:

- (a) Conduct and/or oversee scientific and technical studies, sampling and other matters related to the assessment of injury to natural resources resulting from the oil spill, the quantification of damages, and the restoration of injured resources and foregone services.
- (b) Seek compensation from responsible parties for the damages assessed by the Trustees, and for the costs of planning and implementing the assessment and recovering natural resource damages.
- (c) Acting in concert with its attorneys, and participate in negotiations with responsible parties.

- (d) In accordance with applicable law, supervise, manage and obligate any money paid to the Trustees by or on behalf of responsible parties for the purposes of assessing natural resource damages, recovering natural resource damages, and restoring the injured natural resources and any lost services.
- (e) Oversee the development and implementation of a plan for the restoration of the injured natural resources and foregone services provided by those resources.
- (f) In accordance with applicable law, make all necessary decisions for the management and administration of funds pursuant to Section IX below.
- (g) In accordance with applicable law, arrange for one or more contracts with professional consultants, technical or otherwise, that the Trustee Council determines are necessary and best qualified to provide services to the Council.
- (h) Identify a contact for coordination with the Coast Guard regarding access to the Oil Spill Liability Trust Fund.

The duties of the Lead Administrative Trustee shall include, but are not limited to: negotiation and execution of joint study plans with UNOCAL on behalf of the Trustees; collection of data pursuant to joint study plans with UNOCAL; coordination and monitoring of the progress of the natural resource damage assessment process; scheduling of meetings of the Trustee Council and preparation of agendas for those meetings; acting as a central contact point for the Trustee Council; establishment and maintenance of records and relevant documents; and such other duties as directed by the Trustee Council. The Lead Administrative Trustee will be responsible for informing the other Trustees of all pertinent developments on a timely basis.

VIII. Decision-making

The Trustees agree that all decisions implementing the responsibilities set forth in this MOU shall require unanimous approval of the Trustee Council. In the event that unanimous agreement cannot be reached among the members of the Trustee Council, the matter in dispute will be elevated within the Trustee agencies for resolution. If necessary, the Trustees may establish further mechanisms to resolve disputes. The Trustees further agree that decision-making deliberations will focus on the Trustees' mutual purposes of assessing natural resource damages and restoring injured resources and foregone services

rather than on control or respective trusteeship over those resources.

IX. Funds

The Trustees agree to cooperate in good faith to attempt to establish, to the extent consistent with applicable law, a joint trust account for purposes of receiving, depositing, holding, disbursing, managing and expending natural resource damage recoveries obtained or received by the Trustees relating to the natural resource injuries arising out of the oil spill, and interest earned thereon. If a joint trust account is not feasible, separate trust accounts may be established but, consistent with applicable law, must be used for the purposes of assessing natural resource damages, recovering damages, and restoring injured resources and lost services. Any natural resource damage recoveries obtained or received by or on behalf of any Trustee relating to the natural resource injuries arising out of the oil spill shall be deposited in the joint trust account, or if such joint trust account is not feasible, in the respective separate trust accounts. This agreement does not govern cost recoveries or any penalties which may be assessed in connection with the oil spill.

Decision-making by the Trustees on expenditures of money in the joint trust account, or in the various trust accounts, must be by agreement of the Trustees for any projects to restore, rehabilitate or replace resources injured by the spill. The Trustee Council, in accordance with the decision-making process in Section VIII, shall establish standards and procedures governing the joint use of all natural resource damages obtained or received by the Trustees, and used for projects to restore, rehabilitate or replace resources injured by the spill.

X. Confidentiality

The Trustees agree that it is in the public interest that all scientific data arising out of the assessment of natural resource injuries resulting from the oil spill be made public. Therefore, such data shall be made public as soon as publication will not prejudice the ongoing assessment or subsequent recovery efforts. Public sharing of scientific data, wherever possible, will be the general policy of the Trustees.

However, the Trustees recognize that all written or oral communications related to the assessment and recovery of natural resource damages are being made in anticipation of litigation. Accordingly, all oral and written communications and work product will be treated as privileged attorney-client communications,

attorney work product or protected by other applicable privileges (or a combination thereof), as appropriate, and will be protected from disclosure to the maximum extent possible under applicable Federal or State law.

The Trustees further agree that whenever a request for production of any such written communications is received pursuant to any applicable federal or state law, the request will be forwarded for response to the Trustee or Trustees to which the privilege applies or whose representatives originally generated or contributed the record requested. Nothing contained herein shall be construed as prohibiting or restraining the Trustees or the Trustee Council from agreeing to release any record.

XI. Reservation of Rights

Each Trustee reserves the right to take whatever action is necessary to pursue or preserve any legal remedies available to that Trustee in connection with the oil spill, and nothing in this MOU is intended to waive or foreclose any such right.

XII. Modification of Agreement

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

XIII. Termination

This MOU shall be in effect from the date of execution until termination by agreement of the Trustees. At any time the Trustees determine that the purposes set forth in this MOU have been satisfied, the MOU may be terminated. In the event any Trustee withdraws from the MOU, such withdrawal must be in writing and provided to the rest of the Trustees at least thirty-days (30) in advance of the withdrawal. In the event of such withdrawal, this MOU remains in full force and effect for the remaining parties.

In the event of the withdrawal of any Trustee and at the termination of this MOU, the Trustees shall undertake a full and complete accounting of all funds received, deposited, held, disbursed, managed, and expended from the joint or separate trust accounts established in accordance with Section IX of this MOU.

XIV. Limitation

Nothing in this MOU shall be construed as obligating the United States, the State or any other public agency, their

officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

XV. Third-Party Challenges or Appeals

The rights and responsibilities contained in this MOU are subject to the availability of funding and are intended to be guidance for the respective Trustees. They may not be the basis of any third party challenges or appeals.

XVI. Execution: Effective Date

This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU. The date of execution shall be the date of the last Trustee's signature.

SIGNATURES:

California Department of Fish and Game

Administrator
Department of Fish and Game
Office of Oil Spill Prevention and Response

Date: _____

Trustee Memorandum
of Understanding

8

State Lands Commission

By: _____
Executive Officer
State Lands Commission

Date: _____

Trustee Memorandum
of Understanding

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U.S. Fish and Wildlife Service

By: _____
Regional Director
U.S. Fish and Wildlife Service

Date: _____