

**MEMORANDUM OF UNDERSTANDING  
RELATING TO THE NATURAL RESOURCE DAMAGE ASSESSMENT AND  
RESTORATION RESULTING FROM THE  
DEEPWATER HORIZON MOBILE OFFSHORE DRILLING UNIT AND THE  
SUBSEA MACONDO WELL  
AMONG  
THE STATE OF ALABAMA  
THE STATE OF FLORIDA  
THE STATE OF LOUISIANA  
THE STATE OF MISSISSIPPI  
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
THE TEXAS PARKS AND WILDLIFE DEPARTMENT  
THE TEXAS GENERAL LAND OFFICE  
THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
THE UNITED STATES DEPARTMENT OF THE INTERIOR**

**I. INTRODUCTION**

This Memorandum of Understanding (“MOU”) is among the United States Department of the Interior (on behalf of the Fish and Wildlife Service, the National Park Service, the Bureau of Land Management and the Bureau of Indian Affairs)(“DOI”); the National Oceanic and Atmospheric Administration(“NOAA”); the Coastal Protection and Restoration Authority, the Louisiana Oil Spill Coordinator’s Office, the Louisiana Department of Environmental Quality, the Louisiana Department of Wildlife and Fisheries, and the Louisiana Department of Natural Resources, for the State of Louisiana; the Mississippi Department of Environmental Quality, for the State of Mississippi; the Alabama Department of Conservation and Natural Resources and the Geological Survey of Alabama, for the State of Alabama; the Florida Department of Environmental Protection, for the State of Florida; and the Texas Parks and Wildlife Department, Texas General Land Office, and the Texas Commission on Environmental Quality, for the State of Texas (collectively referred to as the “Trustees” and each, individually, as a “Trustee”). This MOU is entered into to promote the coordination and cooperation of the Trustees in a Natural Resource Damage Assessment (“NRDA”) for the incident or incidents known as the *Deepwater Horizon* Oil Spill that began on April 20, 2010 in the Gulf of Mexico, Mississippi Canyon Block 252, and which includes all associated response actions (“the Oil Spill”).

**II. AUTHORITIES**

The Trustees enter into this MOU pursuant to the authority provided to Natural Resource Trustees by the Oil Pollution Act (“OPA”) (33 U.S.C. §§ 2701 *et seq.*); the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*); and the Natural Resource Damage Assessment Regulations (15 C.F.R. Part 990) promulgated pursuant to OPA (“OPA NRDA Regulations”). In addition, NOAA and the Department of Interior enter into this

MOU pursuant to the authorities provided in Subpart G of the National Contingency Plan (40 C.F.R. §§ 300.600 *et seq.*); and Executive Order 12580 ( 52 Fed. Reg. 2923 (January 23, 1987)), as amended by Executive Order 12777 (56 Fed. Reg. 54757 (October 19, 1991)). The State of Florida enters into this MOU pursuant to the Florida Pollutant Discharge Prevention and Control Act (Florida Statutes, 376.011 *et seq.*). The State of Louisiana enters into this MOU pursuant to the Louisiana Oil Spill Prevention and Response Act (La. R.S. 30:2451 *et seq.*) and accompanying regulations (La. Admin. Code 43:101 *et seq.*). The State of Mississippi enters into this MOU pursuant to the Mississippi Air and Water Pollution Control Law (Miss. Code Ann. §§ 49-17-1 through 49-17-43). The Texas General Land Office, Texas Parks and Wildlife Department, and the Texas Commission of Environmental Quality, for Texas, enter into this MOU pursuant to the Texas Oil Spill Prevention and Response Act (Tex. Nat. Res. Code §§ 40.001 *et seq.*) and applicable provisions of the Texas Water Code. The State of Alabama enters into this MOU pursuant to Alabama Code §§9-2-1 *et seq.* and 9-4-1 *et seq.*.

### **III. DEFINITIONS**

The terms, "natural resources," "natural resource damage assessment" or "assessment," "natural resource damages," "restoration" or "restore," "restoration plan" and "natural resource services" or "services," when used in this MOU, shall have the same meanings as provided in OPA or the OPA NRDA Regulations.

### **IV. PURPOSE**

The Trustees recognize that they have common interests in sharing information, ideas and expertise necessary to assess and recover natural resource damages and to pursue and provide for the restoration, replacement, rehabilitation, or acquisition of natural resources and services equivalent to those injured as a result of the Oil Spill. To serve those common interests, the Trustees have entered into this MOU to promote communication, coordination and cooperation among the Trustees throughout the natural resource damage assessment and restoration process for this Oil Spill. Such cooperation is intended to limit unnecessary duplication of effort, enhance the efficient use of limited financial and personnel resources, and increase the probability of success in achieving natural resource damage recoveries and restoration that will make the public and the environment whole.

### **V. COORDINATION PRINCIPLES**

In coordinating and cooperating with each other on matters within the scope of the NRDA for the Oil Spill, the Trustees agree to be guided by the following general principles:

1. Working together to identify and assess natural resource injuries resulting from the Oil Spill, including human and environmental service losses (including interim losses) associated with such injuries.

2. Undertaking planning and implementation of a plan for the restoration of natural resources in order to make the public and the environment whole.
3. Encouraging cooperative, expeditious and cost effective solutions to assessment and restoration planning issues involving Trustees with adjacent or overlapping responsibilities.
4. Providing for and assisting in coordinated public outreach during appropriate phases of the NRDA process.
5. Encouraging the expeditious resolution of any disagreements among the Trustees that may impede the purpose and coordination principles set forth in this MOU.
6. Facilitating the sharing of relevant data and information among all Trustees and the public as appropriate;
7. Coordinating, as appropriate, consultations on initiatives, resource management plans, and scientific studies regarding natural resources impacted by the Oil Spill.

## **VI. DEEPWATER HORIZON OIL SPILL TRUSTEES**

A. Designated Natural Resource Trustee Officials. The following officials (“Designated Natural Resource Trustee Officials” or “DNRTOs”) have been duly designated to act on behalf of the public as State and Federal natural resource trustees. These Designated Natural Resource Trustee Officials, or their duly designated successors or alternates, will provide the primary policy guidance for NRDA activities undertaken on behalf of the public by the State and Federal natural resource trustees under this MOU. The DNRTOs may meet, at their discretion, to review and discuss matters relating to the NRDA subject to this MOU.

1. DOI Authorized Official, (Southeast Regional Director, U.S. Fish and Wildlife Service), representing the interests of the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, and Bureau of Indian Affairs.
2. NOAA Authorized Official, (Director, Office of Response and Restoration), representing the interest of the U.S. Department of Commerce, including all NOAA components.
3. Commissioner, the Alabama Department of Conservation and Natural Resources .
4. State Geologist, the Geological Survey of Alabama.
5. Secretary, Florida Department of Environmental Protection.

6. Chair, Louisiana Coastal Protection and Restoration Authority.
7. Coordinator, the Louisiana Oil Spill Coordinator's Office.
8. Secretary, the Louisiana Department of Environmental Quality.
9. Secretary, the Louisiana Department of Wildlife and Fisheries.
10. Secretary, the Louisiana Department of Natural Resources.
11. Executive Director the Mississippi Department of Environmental Quality.
12. Executive Director, Texas Parks and Wildlife Department.
13. Deputy Land Commissioner & Chief Clerk, Texas General Land Office.
14. Executive Director, Texas Commission on Environmental Quality.

**B. Other Natural Resource Trustees.** Other natural resource trustees with jurisdiction under OPA's natural resource provisions over natural resources affected by the Oil Spill may become parties to this MOU. Such other trustees may include, but are not limited to, Tribal governments, other state or federal agencies, trustee agencies in other affected states, or foreign governments. Upon a showing demonstrating statutory trusteeship under OPA, such other trustees may be added as parties with the Trustees identified in Section I of this MOU by signing a written addendum to this MOU that includes agreement to the MOU's provisions. If a Trustee withdraws from the MOU, and then desires to rejoin the Trustee Council, such Trustee may rejoin if no other Trustee affirmatively objects.

**C. Role of Other Agencies.** As determined to be appropriate by the Trustees, the Trustees will coordinate with and seek input and counsel from other federal and state government agencies and departments, including, but not limited to:

1. State Attorneys General
2. The U.S. Department of Justice
3. The U.S. Environmental Protection Agency
4. The U.S. Coast Guard.

## **VII. DEEPWATER HORIZON OIL SPILL TRUSTEE COUNCIL**

To assist the Trustees in implementing this MOU, there is hereby created the Deepwater Horizon Trustee Council ("Trustee Council"). The Trustee Council will support the work of the Trustees by coordinating, planning for, and implementing NRDA studies and protocols undertaken by or for the benefit of the Trustees, searching for and identifying appropriate restoration alternatives, and undertaking primary responsibility for day to day case management decisions. The DNRTOs will give policy level direction to the Trustee Council members, and may directly participate in Trustee Council meetings. Agency

experts, State and regional managers, scientists, resource economists, and legal counsel may also attend and participate in Trustee Council meetings.

Each DNRTO will designate a primary member of the Trustee Council to represent the position of the respective Trustee at Trustee Council meetings. Alternate members to act in the absence of the primary member should also be designated. If desired, a DNRTO may also appoint legal counsel to advise his or her Trustee Council member. Within ten (10) working days after execution of this MOU, each DNRTO shall notify the other DNRTOs of the names, addresses, email addresses, telephone numbers, and facsimile numbers of that party's primary and alternate Trustee Council member and designated legal counsel. DNRTOs may designate themselves to serve on the Trustee Council and/or to act on behalf of their Trustee agencies at Trustee Council meetings.

### **VIII. DECISION MAKING**

A. The decision making authority of all Trustees shall be equal. Alabama, Florida, Louisiana, Mississippi, Texas, DOI, and NOAA, shall each have one vote in any decision, notwithstanding that a State may have multiple natural resource trustee agencies participating in the NRDA and notwithstanding that the Federal government has Departments with more than one agency participating in the NRDA. The Trustee Council will strive to take unified actions and positions. During any decision making process the Trustee Council members will focus on their common purpose of restoring affected natural resources, rather than on control or trusteeship over those resources.

B. Although the Trustee Council members will strive for unanimity in actions and positions, any Trustee Council member, who does not wish to approve or disapprove an action or position, may refrain from voting. The decision to refrain will be deemed a non-objection. Accordingly, unless any Trustee Council member affirmatively objects to a position or action, such position or action shall be deemed that of the Trustee Council. If any Trustee Council member affirmatively objects to a position or action, the position or action shall not be deemed that of the Trustee Council. If a Trustee cannot make a decision regarding an action or position proposed in a Trustee Council meeting, and, thereafter, fails to make an affirmative written objection within 2 weeks of the meeting, the proposed position or action shall be deemed that of the Trustee Council.

C. Trustee Council actions or positions may be approved only at either regularly scheduled meetings of the Trustee Council or at meetings specially called by the Trustee Council, provided all Trustee Council members receive at least one week's notice prior to the date of the specially called meeting. The Trustee Council members may unanimously waive this notice and proceed with a specially called meeting without at least one week's notice. Trustee Council members may participate in person or by telephone in any meeting. A Trustee agency may authorize another Trustee agency to act in its place; such proxy must be noted in written minutes or a Trustee Council resolution.

D. Decisions to take a unified action or position may be recorded in writing, either by resolution signed by the Trustee Council members, or in minutes approved as to content and form by the Trustee Council members.

E. The Trustee Council may adopt bylaws, not inconsistent with this MOU, further addressing decision making procedures for the Trustee Council.

F. In the event of a dispute involving any decisions under this MOU, the Trustee Council members shall initially attempt to resolve the dispute through good faith discussions directed towards obtaining a unified position. If a unified position cannot be reached among Trustee Council members after good faith discussions, the matter may be elevated for further discussions. If necessary, the DNRTOs and/or the Trustee Council members may establish further mechanisms to resolve disputes.

G. Though unified positions and actions of all Trustees is the goal of this MOU, nothing herein shall be construed as abrogating or limiting the authority of any Trustee to reach conclusions, make decisions, and act independently or in concert with any other Trustee with respect to any matter pertaining to the NRDA for the Oil Spill. Provided, however, that any Trustee proposing to take actions or positions that are inconsistent with prior unified decisions of the Trustee Council members shall provide prior notice to the Trustee Council members and agree to consult upon request with any other Trustee Council member on the proposed action.

## **IX. NRDA DATA AND INFORMATION**

Public sharing of scientific and technical information, upon certification of its validity (QA/QC) shall be the general policy of the Trustees. However, the Trustees recognize that some information and communications related to the pre-assessment, assessment, and restoration of natural resources injured by the Oil Spill may be prepared in anticipation of litigation, or may be otherwise protectable from disclosure to third parties as attorney-client communications, attorney work product, or otherwise privileged information. The sharing of such information and communications among the Trustees is in their common interest and is not intended to waive any applicable privileges. When such information or communications are exchanged between Trustees – including between the members of the Trustee Council and their respective legal advisors – the generator or contributor of the information or communication agrees to clearly identify materials as litigation sensitive, privileged attorney-client communications, attorney work product, or protected by other applicable privileges. Failure to so identify the material, however, shall not, by itself, cause the information or communication to lose its privileged status. Whenever a request for production of information or communications designated as privileged by a Trustee is received, the Trustees will endeavor to protect it from disclosure to the extent permitted by applicable State or Federal law. Any Trustee intending to disclose such information or communications in order to comply with applicable law will provide prior notice of the intended disclosure to the other Trustees consistent with applicable law. Nothing contained herein shall be construed as requiring

a Trustee to release a privileged document, or prohibiting or restraining a Trustee from releasing any information or communication for which disclosure is required by law.

Once shared with another Trustee, the contents of any common data base (a data base utilized by one or more Trustees, and including any original format data, documents, images, etc. used to populate such databases), shall continue to be made available for the use of that Trustee(s) as follows. If any Trustee maintaining such a database withdraws from this MOU or resolves its claims with one or more Responsible Parties, the contents of the common data base will remain available to the remaining Trustees who have not resolved their claims. If any Trustee with whom such a database has been shared withdraws from this MOU or resolves its claims with one or more Responsible Parties, the contents of the common database existing as of the effective date of that Trustee's withdrawal or resolution shall remain available to the withdrawing Trustee. Nothing contained herein shall prevent data generated pursuant to a jointly approved technical work plan from being shared among the Trustees pursuant to instructions contained in the individual technical work plan notwithstanding a Trustee's withdrawal from this MOU.

#### **X. LIMITATIONS AND RESERVATION OF RIGHTS**

This MOU recognizes that each Trustee operates under its own respective authorities and responsibilities and that the ability of each Trustee to dedicate funding or other resources to the NRDA is dependent upon the availability of funds and resources. Nothing in this MOU shall be construed as obligating the United States, the State of Louisiana, the State of Mississippi, the State of Alabama, the State of Florida, or the State of Texas, or any public agency, their officers, agents or employees, to expend any funds, or to expend any funds in excess of appropriations authorized by law.

Nothing in this MOU shall be construed to mean that any party to this MOU is in any way abrogating or ceding any responsibility or authority inherent in its trusteeship over Natural Resources.

#### **XI. MODIFICATION OF MOU**

Modification of this MOU, including but not limited to the addition of a new natural resource trustee as a participant, shall be in writing and approved by all Trustees who are then parties to this MOU. This MOU acknowledges that additional agreements may be executed by the Trustees, or a subset of the Trustees, with regard to Natural Resource Damage claims that arise out of the Oil Spill or the planning of restoration activities.

#### **XII. TERMINATION OR WITHDRAWAL**

This MOU shall be in effect from the date of execution until termination by agreement of all Trustees. Any Trustee may withdraw from this MOU for any reason. In the event any Trustee withdraws from the MOU, it must provide written notice to the other Trustees. A Trustee's withdrawal from this MOU shall be effective at the time such notice is provided. In the event of such withdrawal, this MOU remains in full force and effect for

the remaining Trustees. A Trustee shall be deemed to have withdrawn from this MOU in accordance with this Section, if its Trustee Council member or alternate fails to attend (in person or telephonically) three successive regularly scheduled meetings of the Trustee Council. At such time, and following notification of each DNTRTO, the Trustee Council will provide notice to the non-attending Trustee to confirm the withdrawal from this MOU.

Rights and obligations arising under Section IX NRDA DATA AND INFORMATION of this MOU shall survive the expiration or termination of this MOU or the withdrawal of any party to this MOU.

### **XIII. THIRD-PARTY CHALLENGES OR APPEALS**

Nothing in this MOU creates any rights or causes of action in persons not parties to this agreement.

### **XIV. EXECUTION: EFFECTIVE DATE**

This MOU may be signed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU. The MOU shall be effective as to each Trustee upon the date of each such Trustee's DNTRTO's signature. Accordingly, this MOU is immediately effective among any Trustees that have executed it.

**SIGNATURES:**

Dated: 11/16, 2010

**UNITED STATES DEPARTMENT OF  
THE INTERIOR**

By:



Cynthia K. Dohner  
Southeast Regional Director  
U.S. Fish and Wildlife Service  
Authorized Official for DOI

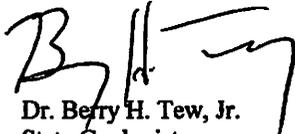
Dated: 11/19, 2010

**NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION**

By:   
David G. Westerholm  
Director  
Office of Response and Restoration

Dated: 11/22, 2010

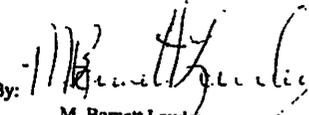
**GEOLOGICAL SURVEY OF  
ALABAMA**

By:   
Dr. Berry H. Tew, Jr.  
State Geologist

*[Faint, illegible text or stamp]*

Dated: 1-16, 2010

**ALABAMA DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES**

By:   
M. Barnett Lawley  
Commissioner

Dated: 11/17, 2010

**FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

By:   
Mimi Drew  
Secretary,

Dated: \_\_\_\_\_, 2010

**LOUISIANA COASTAL PROTECTION  
AND RESTORATION AUTHORITY**

By: Garret Graves  
Chair

Dated: \_\_\_\_\_, 2010

**LOUISIANA OIL SPILL COORDINATOR'S  
OFFICE**

By: Roland Guidry  
Louisiana Oil Spill Coordinator

Dated: \_\_\_\_\_, 2010

**LOUISIANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY**

By: **Peggy Hatch**  
**Secretary**

Dated: \_\_\_\_\_, 2010

**LOUISIANA DEPARTMENT OF  
WILDLIFE AND FISHERIES**

By: **Robert Barham**  
**Secretary**

Dated: \_\_\_\_\_, 2010

**LOUISIANA DEPARTMENT OF  
NATURAL RESOURCES**

By: **Bob Harper**  
**Secretary**

Dated: \_\_\_\_\_, 2010

**MISSISSIPPI DEPARTMENT OF  
ENVIRONMENTAL QUALITY**

By:

Trudy D. Fisher  
Executive Director

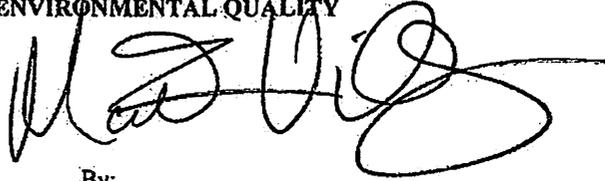
Dated: 5 Dec. 2010

TEXAS PARKS AND WILDLIFE  
DEPARTMENT

By:   
Carter Smith  
Executive Director

Dated: 12-14, 2010

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

A handwritten signature in black ink, appearing to read 'Mark R. Vickery', written in a cursive style.

By:

Mark R. Vickery, P.G.  
Executive Director

Dated: 11/18, 2010

TEXAS GENERAL LAND OFFICE

By:   
\_\_\_\_\_  
Larry L. Laine  
Deputy Land Commissioner  
& Chief Clerk