

MINUTE ITEM

This Calendar Item No. C40 was approved as
Minute Item No. 40 by the California State Lands
Commission by a vote of 3 to 2 at its 12-09-03
meeting.

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A)
) Statewide
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12/09/03
W 30109.1
M. Meier

CONSIDER MEMORANDUM OF UNDERSTANDING REGARDING PARTICIPATION ON THE TORCH-PLATFORM IRENE OIL SPILL TRUSTEE COUNSEL

PROPOSAL

The Commission's Staff proposes that the Commission participate on the Trustee Council for the Torch-Platform Irene Oil Spill. This Council will oversee restoration, rehabilitation and replacement of natural resources injured as a result of the release of oil from a pipeline offshore of Santa Barbara County.

BACKGROUND

On the evening of September 28, 1997, a rupture occurred in a twenty-inch pipeline approximately 2.5 miles offshore from Vandenberg Air Force Base, resulting in the release of petroleum and petroleum products into State and Federal waters. The pipeline connects Platform Irene to onshore facilities near Lompoc, California. Platform Irene is owned by Nuevo Energy Company (Nuevo) and is operated by Torch Operating Company (Torch). At least 163 barrels (6846 gallons) of petroleum and 855 barrels (35,910 gallons) of produced water were discharged into the ocean, spreading along 40 miles of coastline from Minuteman Beach to Boathouse Point. The majority of the oil was not recovered.

A settlement of civil claims arising from the Oil Spill was reached between the Trustees and Defendants Torch Energy Services, Inc., Nuevo Energy Company, and Black Hawk Oil & Gas Company. This settlement was approved by the Commission on October 11, 2001. Following entry of the Consent Decree by the United States District Court for the Central District of California on July 25, 2002, the Defendants paid \$2,397,000 together with accrued interest (the "NRDA money") for to the Department of the Interior, on behalf of the State and Federal Trustees, for certain restoration purposes set out in the Consent Decree. These include, for example, the design, implementation, and monitoring of projects to restore, rehabilitate, replace or acquire the equivalent of any natural resources or its services injured, lost, or destroyed as a result of the Oil Spill. The NRDA money was deposited into the Natural Resources Damage Assessment and Restoration Fund created pursuant to 43 U.S.C. Section 1474b ("NRDAR Fund") as natural resource damages.

Pursuant to the Consent Decree, the NRDA money deposited into the NRDAR Fund will

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be maintained in a segregated account within the NRDAR Fund ("the Torch NRD Account") for the purpose of restoring the injured natural resources for which the United States and the State are joint trustees. The Consent Decree allows the Trustees to make the final decision regarding the use of the NRDA money for restoration projects, in accordance with applicable law, the Consent Decree and a memorandum of agreement (MOU) entered into by the Trustees. It is that proposed MOU which here presented to the Commission.

The Consent Decree requires the Department of the Interior, in accordance with law, to manage and invest the NRDA money. Additionally, the Consent Decree provides that any return on investments or interest accrued on the NRDA money is to be used by the Trustees in connection with the Restoration of Natural Resources impacted by the Oil Spill. Disbursements shall require approval of the Natural Resource Trustee Council created pursuant to this proposed MOU (hereafter referred to as the "Torch Trustee Council" or the "Council").

Under the Consent Decree, the Defendants also paid \$60,000 to the Kapiloff Land Bank Fund as settlement of trespass damage claims raised by the Commission. Neither those funds, nor any other funds or property under the Commission's jurisdiction, would be subject to the proposed MOU.

It is therefore proposed that the Commission direct the Executive Officer to execute the MOU substantially in the form set forth in Exhibit A. It should be noted that there may need to be further minor, nonsubstantive modifications to the MOU prior to execution. Further, it is proposed that the Commission direct the Executive Officer to designate certain members of the Commission's Staff to represent the Commission on the Torch Trustee Council in accordance with the MOU.

STATUTORY AND OTHER REGULATIONS:

A. P.R.C. Sections 71200 through 71271

PERMIT STREAMLINING ACT DEADLINE

N/A

OTHER PERTINENT INFORMATION

Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 10561), the Commission Staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: P.R.C. '21084 and 14 Cal. Code Regs. 15300.

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EXHIBIT

A. Proposed Memorandum of Understanding.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.
2. DIRECT EXECUTIVE OFFICER OF THE COMMISSION TO EXECUTE THE MEMORANDUM OF UNDERSTANDING SUBSTANTIALLY AS SET FORTH IN EXHIBIT A.
3. DIRECT THE EXECUTIVE OFFICER TO DESIGNATE STAFF TO REPRESENT THE COMMISSION ON THE TORCH TRUSTEE COUNCIL AS PROVIDED UNDER THE MEMORANDUM OF UNDERSTANDING.
4. DIRECT COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO CARRY OUT THE PROVISIONS OF THE MEMORANDUM OF UNDERSTANDING.

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**MEMORANDUM OF UNDERSTANDING
RELATING TO THE TORCH - PLATFORM IRENE OIL SPILL
BETWEEN THE CALIFORNIA DEPARTMENT OF FISH AND GAME,
OFFICE OF SPILL PREVENTION AND RESPONSE,
THE CALIFORNIA STATE LANDS COMMISSION,
THE U.S. DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE,
AND THE U.S. DEPARTMENT OF THE AIR FORCE**

I. INTRODUCTION

This Memorandum of Understanding (MOU), is between the California Department of Fish & Game (CDFG), Office of Spill Prevention and Response (OSPR), the California State Lands Commission (CSLC), the United States Department of Interior (USDOI), Fish and Wildlife Service (FWS), and the United States Air Force (USAF) (collectively referred to as the "Trustees"). This MOU is entered into to ensure the coordination and cooperation of the Trustees in restoring, rehabilitating, replacing, and/or acquiring the equivalent of the natural resources injured as a result of the release of oil on or about September 28, 1997 from a rupture in a pipeline running from Platform Irene to a processing facility onshore in the City of Lompoc in Santa Barbara County, California.

II. TRUSTEES

The following officials are executing this MOU as representatives of their respective agencies which act on behalf of the public as Trustees for natural resources under this MOU:

- Manager, California-Nevada Operations Office, USDOI/FWS;
- Administrator, CDFG/OSPR;
- Executive Officer, CSLC; and
- Deputy Assistant Secretary of the Air Force (Environment, Safety and Occupational Health), USAF.

III. AUTHORITY

The Trustees enter into this MOU pursuant to the authorities provided to Natural Resource Trustees by the Oil Pollution Act (33 U.S.C. § 2701 et seq.); the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); and the Oil Pollution Act Damage Assessment Regulations (15 C.F.R. Part 990). In addition, the Federal Trustees enter into this MOU pursuant to the authority provided in Subpart G of the National Contingency Plan (40 C.F.R. § 300.600 et seq.); and Executive Order 12580 (3 C.F.R., 1987 Comp. p. 193; 52 Fed. Reg. 2923 (January 23, 1987)), as amended by Executive Order 12777 (56 Fed. Reg. 54757 (October 19, 1991)). The CDFG/OSPR also enters into this MOU pursuant to its natural resource trustee authority under Fish and Game Code section 1802, and the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Government Code § 8670.1 et seq.). The CSLC also enters into this MOU pursuant to its authority under Public Resources Code section 6201 et seq.

IV. DEFINITIONS

Whenever the following terms are used in this MOU, they will have the following meanings:

A. Natural Resource and Natural Resources

"Natural Resource" and "Natural Resources" mean land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the State of California and/or the United States and the "services" that the resources provide to other natural resources and/or humans.

B. Oil Spill

"Oil Spill" means the discharge of oil into the Pacific Ocean from the pipeline connecting Platform Irene to an onshore pipeline facility in Santa Barbara County, California on or about September 28, 1997. The oil came ashore at sandy beaches and rocky intertidal areas from Minuteman Beach to the Boathouse on Vandenberg Air Force Base and impacted at least seventeen miles of Santa Barbara coastline.

C. Restoration or Restore

"Restoration" or "Restore" means any action or combination of actions to restore, replace, rehabilitate, and/or acquire the equivalent of the Natural Resources and the "services" that were injured, lost, or destroyed by the Oil Spill.

D. Voting Torch Trustee Council Members

"Voting Torch Trustee Council members" will mean the primary representatives appointed and authorized to vote on behalf of each Trustee, or in the event the primary representative(s) is(are) unable to participate at a given meeting of the Torch Trustee Council, their respective alternate(s). Participation at a given meeting of the Council may be either in person or by telephone conference, see Section XI.

V. THE SETTLEMENT OF THE OIL SPILL LIABILITY

The Trustees believe the Oil Spill directly harmed hundreds of seabirds and shorebirds, including western snowy plovers, which are listed as a threatened species, and brown pelicans, which are listed as an endangered species. (Endangered Species Act (SEA) (16 U.S.C. § 1533(c); California Endangered Species Act (Fish & G. Code § 2050 et seq.)). In addition, birds whose populations are declining or flat in Southern and Central California was impacted, such as Brandt's cormorants and common murrelets. The Oil Spill caused not only the loss of birds directly affected by the Oil Spill, but also loss of their progeny. Besides causing seabird mortality and other injuries, the Trustees believe the Oil Spill caused injury to other animal species such as black abalone, snowy plovers, and at least one marine mammal (a dead seal) was found oiled, and impaired habitat and human use along the coast of Santa Barbara County.

A settlement of civil claims arising from the Oil Spill has been reached between the Trustees and Defendants Torch Energy Services, Inc., Nuevo Energy Company, and Black Hawk Oil & Gas Company. Following entry of the Consent Decree by the United States District Court for the Central District of California on July 25, 2002, the Defendants paid \$2,397,000 together with accrued interest

(the "NRDA money") to the Department of the Interior, on behalf of the State and Federal Trustees for certain restoration purposes set out in the Consent Decree. These include, for example, the design, implementation, and monitoring of projects to restore, rehabilitate, replace or acquire the equivalent of any natural resources or its services injured, lost, or destroyed as a result of the Oil Spill. The NRDA money was deposited into the Natural Resources Damage Assessment and Restoration Fund created pursuant to 43 U.S.C. § 1474b ("NRDAR Fund") as natural resource damages. In addition, the Consent Decree required reimbursement of various costs and payment of other claims which are not subject to this MOU.

Pursuant to the Consent Decree, the NRDA money deposited into the NRDAR Fund will be maintained in a segregated account within the NRDAR Fund (the "Torch NRD Account") for the purpose of restoring the injured natural resources for which the United States and the State are joint Trustees. The Consent Decree allows the Trustees to make the final decision regarding the use of the NRDA money for restoration projects, in accordance with applicable law, the Consent Decree and this MOU.

Pursuant to the Consent Decree, the Department of the Interior is required, in accordance with law, to manage and invest the NRDA money. Additionally, the Consent Decree provides that any return on investments or interest accrued on the NRDA money is to be used by the Trustees in connection with the Restoration of Natural Resources impacted by the Oil Spill. Disbursements shall require approval of the Natural Resource Trustee Council created pursuant to this MOU (hereafter referred to as the "Torch Trustee Council" or the "Council"). (See, Section VIII. below pertaining to authorization of expenditures.)

Pursuant to the Consent Decree, all written materials, signs, pamphlets and similar writings concerning projects undertaken and paid for with NRDA money shall acknowledge the CSLC and the California Coastal Commission (CCC) as co-sponsors. The CCC and CSLC shall not be entitled to any financial or administrative cost reimbursement from the Torch NRD Account due to co-sponsorship status. Note - this prohibition on cost reimbursement does not pertain to reimbursement of the Trustees' costs of complying with the requirements of the law to conduct a Restoration planning and implementation process.

VI. PURPOSE

The purpose of this MOU is to provide a framework for coordination and cooperation among the Trustees in the use of the NRDA money from the Oil Spill settlement for restoration projects. In allocating monies for these projects, the Trustees have and will continue to take into consideration their assessment and/or investigations of injuries caused by the Oil Spill. The Trustees have determined that the following resources and services were injured by the Oil Spill: seabirds, including common murres, cormorants, and brown pelicans; sandy beach flora and fauna, including snowy plovers; rocky intertidal flora and fauna, including abalone; and human recreational beach uses.

The Trustees commit to the expenditure of the NRDA money for the design, implementation, permitting (as necessary), monitoring and oversight of Restoration projects, and for the costs of complying with the requirements of the law to conduct a Restoration planning and implementation process. The Trustees will apply approximately \$1,193,833 of the NRDA money to fund Restoration projects benefitting seabirds. Approximately \$396,000 will be used for a Restoration project benefitting sandy shoreline and dune habitat, as well as western snowy plovers. Approximately \$104,650 will be allocated for a Restoration project benefitting mussel beds. Approximately \$136,500 will be allocated for a Restoration project benefitting abalone and approximately \$65,520 will be

allocated for Restoration projects benefitting human recreational beach use. An additional \$100,497 may be allocated to some or all of the project categories described above. This additional money was made available as a result of a reallocation of a portion of the settlement funds previously allocated to CDFG/OSPR as civil penalties.

Up to \$400,000 of the NRDA money may be used to pay the Trustees' costs of complying with the requirements of the law to conduct a Restoration planning and implementation process ("Trustee Costs"). This would include Trustee Costs associated with the development of a Restoration Plan and Trustee Costs associated with monitoring and oversight of Restoration projects. The Torch Trustee Council may approve an initial up-front allocation of up to \$50,000 per Trustee to cover anticipated Trustee Costs associated with Restoration planning, based on a preliminary estimate of personnel participation and expenditures prior to and during the first year this MOU is in effect. Thereafter, money for Trustee Costs may only be disbursed to a Trustee pursuant to a budget, which has been duly approved by the Torch Trustee Council. All expenditures must be documented and an accounting provided to the Torch Trustee Council.

Interest earned on the NRDA money and any excess funds from any of the project categories above, may be used for any of the purposes described in this section. Priority consideration will be given to additional restoration projects which address those resources injured by the Oil Spill.

The Trustees will develop a Restoration Plan consistent with applicable law. The Trustees will prepare a Draft Restoration Plan containing details for specific projects and project selection criteria. The Draft Restoration Plan will be made available to the public for review and comment. The Trustees will consider all public comments prior to developing a final Restoration Plan. The Final Restoration Plan will include responses to public comments, if applicable, and an indication of any changes made to the Draft Restoration Plan. The Trustees retain the ultimate authority and responsibility to determine the use of funds received for Natural Resource Damages in accordance with the provisions of applicable Federal and State law, any applicable regulations governing use of recoveries for Natural Resource Damages, and the terms of the Consent Decree.

VII. ORGANIZATION - TORCH TRUSTEE COUNCIL AND LEAD TRUSTEES FOR SPECIFIC PROJECTS

To implement this MOU, there is hereby created the Torch Trustee Council to which each of the Trustees will appoint one (1) primary representative and at least one alternate representative. Each Trustee shall have one (1) vote that shall be cast by the Trustee's primary representative, or in the absence of the primary representative, by an alternate representative.

Within twenty (20) working days after the final execution of this MOU, each Trustee shall notify the other Trustees of the names, addresses, email addresses, telephone numbers, and facsimile numbers of that Trustee's primary, alternative, and legal representatives to the Torch Trustee Council. Communications regarding Torch Trustee Council business shall be addressed to the primary and, unless the Torch Trustee Council directs otherwise, copied to the alternate representative(s) and the Trustee legal representatives.

Designated representatives of the Legal Advisor of CDFG/OSPR and CSLC, the USDOJ, Office of the Solicitor, and the 30 Space Wing Staff Judge Advocate, shall serve as legal counsel to their respective Torch Trustee Council member. The Torch Trustee Council will seek advisory participation from representatives of the County of Santa Barbara and, as appropriate, from other

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Federal, State, or local agencies. Advisory participants shall not be entitled to any financial or administrative cost reimbursement from the Torch NRD Account due to their advisory status.

VIII. DECISION MAKING

A. Unanimous Approval of Voting Members Required

The Trustees agree that, except as specifically delegated to a specific Trustee pursuant to Section IX, below, decisions by the Torch Trustee Council implementing this MOU and the Consent Decree shall require the unanimous approval of the voting Torch Trustee Council members, as defined. Such decisions by the Torch Trustee Council shall be recorded in writing, either by resolution signed by the voting Trustee Council members participating in the Council meeting, or in minutes approved as to content and form by the voting Torch Trustee Council members participating in the Council meeting. The Trustees agree to use best efforts to ensure that each Trustee has a voting member (i.e., their primary representative or an alternate) available to participate in all meetings of the Torch Trustee Council to vote on decisions implementing this MOU and Consent Decree.

B. Authorization of Expenditures

All decisions by the Torch Trustee Council authorizing expenditures of the NRDA money, including without limitation disbursements to Trustees for agency costs, shall be memorialized in a Trustee Council resolution signed by the participating voting members. Such resolutions may cover the entire sum approved for a given project, project phase, or for particular activities. Approval authority for individual invoices associated with a particular project or activity may be delegated by the Torch Trustee Council to one or more of the Torch Trustee Council members. In all cases, use of NRDA money must be documented and an accounting provided to the Torch Trustee Council.

C. Dispute Resolution

The Trustees agree that decision making deliberations will focus on the Trustees' mutual purposes of Restoring injured Natural Resources and diminished services. In the event that unanimous agreement cannot be reached among the members of the Torch Trustee Council on a decision by the Council, the matter in dispute will be elevated within the Trustee agencies. If necessary, the Trustees may establish further mechanisms to resolve disputes.

IX. POWERS, DUTIES, AND RESPONSIBILITIES

A. Torch Trustee Council

On behalf of the Trustees, the Torch Trustee Council shall coordinate and authorize all Trustee activities and matters under this MOU in accordance with the procedures contained in Section VIII (Decision Making), above. The Torch Trustee Council, in its discretion, may take whatever actions it determines are necessary to fulfill the trust responsibilities of each Trustee under, and to effectuate the purposes of, applicable Federal and State law. The Trustees acknowledge and recognize that each Trustee brings to the Council special expertise as a result of its scientific knowledge, management experience, and exercise of their Trustee authority. Any Trustee on the Torch Trustee Council may convene a meeting of the full Torch Trustee Council. The Torch Trustee Council, in accordance with applicable laws and policies, may take the following actions to address the Trustees' Natural Resources Restoration responsibilities:

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1. Oversee the development and implementation of the Restoration Plan and ensure public notice, opportunity for public input, and consideration of all public comments prior to preparing the final Restoration Plan;
2. Arrange for the letting of contracts, through one or more of the Trustees, that the Torch Trustee Council determines are necessary with consultants or contractors best qualified to provide services to the Torch Trustee Council;
3. Oversee the management and administration of monies received in the settlement for the purpose of implementing the Restoration Plan;
4. Authorize or direct the Lead Trustee for specific projects to approve disbursements from the NRDAR Fund for specific Restoration Plan project costs, and to take all steps necessary to affect the disbursements when so directed by the Torch Trustee Council;
5. Select alternative Restoration projects if: (1) any of the preferred Projects described in the final Restoration Plan prove infeasible, impractical, or otherwise not in the public interest; or (2) any funds remain after the successful implementation of the projects described in the final Restoration Plan, provided that such alternative projects address the injuries caused by the Oil Spill, are subject to public review and comment, and otherwise meet the requirements of applicable Federal and State law;
6. Delegate specific duties to individual Trustee representatives. Certain duties set out below are hereby delegated to the Lead Trustee for specific projects.

B. Lead Trustee for the Restoration Projects

A Lead Trustee (State or Federal) shall be designated for each project selected in the Restoration Plan. Each Lead Trustee shall, for those projects for which it has been designated:

1. Ensure that the amounts allocated toward the Project(s) are well managed for the benefit of the injured resources;
2. Ensure that the Project(s) and any use of funds for the Project(s), comply with all applicable laws, including the National Environmental Policy Act (NEPA) (42 U.S.C.A. § 4321 et seq.), the ESA (16 U.S.C. § 1531 et seq.), the Coastal Zone Management Act ("CZMA") (16 U.S.C. § 1451 et seq.), the regulations pertaining to Essential Fish Habitat (50 C.F.R. § 600.805 et seq.), and the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.);
3. Provide for the Torch Trustee Council's approval a detailed statement of the proposed projects, project schedules, and estimated budgets for the life of the project(s), including an estimate of any contract, administrative, or overhead costs to be charged to the Project(s);
4. Obtain the Torch Trustee Council's written authorization to commence the Project(s);
5. Oversee, coordinate, and monitor the progress of the Project(s);
6. Submit quarterly reports (unless otherwise agreed) to the Torch Trustee Council, which shall include a progress report and an estimate of funds spent and funds remaining;

7. Establish and maintain records and relevant documents and provide these on a timely basis to the Co-Lead Administrative Trustees (see section IX. C) for inclusion, as appropriate, in the administrative record;
8. Provide a final accounting to the Torch Trustee Council when the Project(s) is(are) completed and an interim accounting at any other time requested;
9. Prepare agenda items for meetings of the Torch Trustee Council regarding the Project(s);
10. Inform the other Trustees of all pertinent developments regarding the Project(s) on a timely basis; and
11. Carry out such other duties as directed by the Torch Trustee Council.

C. Lead Administrative Trustees

There shall be two Co-Lead Administrative Trustees, the CDFG/OSPR and the USDO/I/FWS. Except as otherwise specified below, the Co-Lead Administrative Trustees may carry out their responsibilities jointly and/or divide their administrative duties between themselves. The Co-Lead Administrative Trustees shall carry out the following duties:

1. Coordinate and monitor all aspects of the Natural Resource Restoration process even if not specifically addressed above;
2. Schedule, provide notice of, and prepare agendas for general meetings of the Torch Trustee Council;
3. Act as the central contact points for the Torch Trustee Council;
4. Establish and maintain records and relevant documents other than those regarding specific Restoration projects and with the assistance of all Trustees establish and maintain any administrative record that is required; and
5. Carry out such other duties as directed by the Torch Trustee Council.
6. The USDO/I/FWS Co-Lead Administrative Trustee shall routinely obtain from the NRDAR Fund and distribute to the Torch Trustee Council statements regarding the status of the Torch NRD Account (including any return on investments and accrued interest) and, as directed by the Torch Trustee Council, shall communicate to the NRDAR Fund any Council decisions regarding any investment of the funds held in the Torch NRD Account or disbursements from it.

The Co-Lead Administrative Trustees may delegate any of their duties to another Trustee with the concurrence of the Torch Trustee Council.

X. **CONFLICT OF INTEREST**

A Torch Trustee Council representative will abstain from discussing and voting on any issue coming before the Torch Trustee Council in which that representative has a personal financial interest.

The Trustee Council representative will identify this conflict to the Torch Trustee Council prior to consideration and voting on the issue(s).

XI. TELECONFERENCING

A Trustee Council meeting may be convened by telephone conference call. Should a Trustee Council representative(s) be unable to travel to a meeting, that representative(s) may participate by telephone conference and may vote by telephone on any issue requiring a vote by the voting Torch Trustee Council members.

XII. CONFIDENTIALITY

The Trustees agree that it is generally in the public interest that scientific data arising out of their review of the injury to Natural Resources caused by the Oil Spill be made public. Public sharing of scientific data, wherever possible, will be the general policy of the Trustees. However, all parties to this MOU recognize that oral and written communications that are privileged attorney-client communications, attorney work product, or protected by other applicable privileges (or a combination thereof) ("Privileged Communications") will be protected from disclosure to the extent possible under applicable Federal and State law. Nothing in this MOU is intended as, nor shall it be construed to be, a general waiver of any attorney-client privilege, joint enforcement privilege, or any protection afforded under the work product doctrine or any other doctrine or privilege under applicable law that has been or may be asserted in this matter.

The parties to this MOU further agree that whenever a request for production of any written communication is received pursuant to any applicable Federal or State law, the request will be forwarded for response to the Trustee to which any privilege applies or whose representatives originally generated or contributed to the record requested. Nothing contained herein shall be construed as prohibiting or restraining a Trustee or the Torch Trustee Council from agreeing to release any record. Nothing contained herein shall be construed as requiring a Trustee or the Torch Trustee Council to release Privileged Communications.

XIII. RESERVATION OF RIGHTS

Nothing in this MOU is to imply that any Trustee is in any way abrogating or ceding any responsibility or authority inherent in its control or trusteeship over Natural Resources.

IV. LIMITATION

Nothing in this MOU shall be construed as obligating the United States, the State of California 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

Nothing in this MOU may be the basis of any third party challenges or appeals. Nothing in this MOU creates any rights or causes of action in persons not parties to this agreement.

XVI. MODIFICATION OF AGREEMENT

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

XVII. TERMINATION

At any time that 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 other parties to this MOU at least thirty days in advance of the withdrawal.

In the event of the withdrawal of any Trustee or the termination of this MOU, the Trustees shall give a full and complete accounting to the Torch Trustee Council of all restoration funds received, deposited, held, disbursed, managed, expended, or otherwise controlled by a Trustee in any joint or separate account as a result of the Oil Spill, pursuant to the Consent Decree or this MOU.

XVIII. SEVERABILITY

The terms of this MOU are severable. If any term or condition of this MOU is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms and conditions.

XIX. EFFECTIVE DATE/ EXECUTION

This MOU shall be in effect from the date it is fully executed until termination by agreement of the Trustees. The effective date shall be the date of the last signature, i.e., the date of the signature of the last Trustee to sign the MOU. This MOU may be executed in counterpart. A copy with all

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**MEMORANDUM OF UNDERSTANDING
RELATING TO THE TORCH-PLATFORM IRENE OIL SPILL**

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original executed signature pages affixed shall constitute the original MOU and will be retained by the Co-Lead Administrative Trustee responsible for maintaining records, (see section IX C 4 above).

SIGNATURES:

Dated: _____, 2003

**CALIFORNIA DEPARTMENT OF FISH AND GAME
OFFICE OF SPILL PREVENTION AND RESPONSE**

By: _____

Carlton Moore
Interim Administrator
Office of Oil Spill Prevention and Response

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RELATING TO THE TORCH-PLATFORM IRENE OIL SPILL**

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Dated: _____, 2003

CALIFORNIA STATE LANDS COMMISSION

By: _____

Paul Thayer
Executive Officer

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RELATING TO THE TORCH-PLATFORM IRENE OIL SPILL

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Dated: _____, 2003

UNITED STATES AIR FORCE

By:

Print Name: _____

Deputy Assistant Secretary of the Air Force (Environment, Safety
and Occupational Health).

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**MEMORANDUM OF UNDERSTANDING
RELATING TO THE TORCH-PLATFORM IRENE OIL SPILL**

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Dated: _____, 2003

**UNITED STATES DEPARTMENT OF INTERIOR
FISH AND WILDLIFE SERVICE**

By: _____

Steve Thompson
Manager
California-Nevada Operations Office

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