

ATTACHMENT A

**MEMORANDUM OF UNDERSTANDING FOR
NATURAL RESOURCE RESTORATION AND DISBURSEMENT OF DAMAGES
FOR THE *FORTUNA REEFER* GROUNDING INCIDENT**

BETWEEN

THE DEPARTMENT OF NATURAL AND ENVIRONMENTAL RESOURCES
OF THE COMMONWEALTH OF PUERTO RICO

AND

THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
OF THE UNITED STATES DEPARTMENT OF COMMERCE

I. PURPOSE

This Memorandum of Understanding (MOU) between the Department of Natural and Environmental Resources (DNER) and the National Oceanic and Atmospheric Administration (NOAA) (together, "the Trustees") is entered into in order to fulfill the Trustees' joint and mutual responsibilities to restore, replace, rehabilitate, and/or acquire the equivalent of (hereinafter, "restoration") the natural resources injured, destroyed or lost as a result of the grounding of the M/V FORTUNA REEFER off the coast of Mona Island, Puerto Rico on July 24, 1997 (hereinafter, the "incident"). The Trustees have jointly conducted natural resource damage assessment activities, have made some, and will make further, determinations respecting appropriate emergency and compensatory restoration actions as discussed herein, and, pursuant to the Settlement Agreement entered into by the United States on behalf of NOAA, by the Commonwealth of Puerto Rico on behalf of DNER, and by Rama Shipping Company, Ltd. on September 10, 1997 ("Settlement Agreement"), shall receive a lump-sum payment of one million

and two-hundred and fifty thousand dollars (\$1,250,000) from Rama Shipping as settlement of their liability for natural resource damages, and certain past costs of the Commonwealth associated with arrest and maintenance of the M/V FORTUNA REEFER. This MOU shall govern the Trustees' joint conduct of restoration and joint management and disbursement of monies received pursuant to the Settlement Agreement.

II. AUTHORITIES

The Trustees enter into this MOU in accordance with the natural resource trustee authorities provided for each Trustee by the Oil Pollution Act, 33 U.S.C. § 2701 et seq., the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R., Subpart G, §§ 300.600-300.615, and the Natural Resource Damage Assessment Regulations at 15 C.F.R. Part 990. In addition, DNER enters into this MOU pursuant to authorities provided by various statutes of the Commonwealth of Puerto Rico.

III. CONTACTS AND DECISION MAKING

The principal contacts for the Trustees shall represent their respective agencies in the administration of this MOU and are hereby designated as follows:

For DNER: Blanche Gonzales, Esq.
Tel. (787) 723-3090
FAX (787) 723-4255

For NOAA: Cheryl Scannell, Esq.
Tel. (813) 570-5365
FAX (813) 570-5376

The principal contacts shall consult with other representatives of their agencies as necessary and appropriate to fulfill the purposes of this MOU.

Certain determinations and decisions covered by this MOU shall require consensus

between the Trustees, including, as governed by Section IV below: certain decisions concerning disbursement of the \$400,000 restoration fund held in trust by DNER; the determination of the appropriate compensatory restoration project(s) to fund from damages received by the Trustees pursuant to the Settlement Agreement and held in trust by DNER; and the decision to reimburse the Trustees for their documented future costs of administering the emergency restoration, oversight of the emergency restoration contractor, monitoring of the progress and success of emergency and compensatory restoration.

The Trustees shall endeavor to consult one another and reach consensus on all other material matters respecting fulfillment of the purposes of this MOU, including, but not limited to, issuance of notices concerning the settlement and restoration, and the nature and extent of public participation in development of appropriate plans for compensatory restoration.

Any disputes arising in the administration of this MOU that cannot be resolved between the principal contacts shall be resolved by informal consultation between the contacts' supervisors and/or signatories to this MOU.

IV. MANAGEMENT AND DISBURSEMENT OF SETTLEMENT MONIES

The Trustees have or will each receive a payment of natural resource damages from the parties responsible for the incident, as described in the Settlement Agreement to which this MOU is attached. The Trustees agree that, except for past assessment and administrative costs incurred by the Trustees as identified below, all of the damages received as a result of the Settlement Agreement, and any interest earned on such sums, are monies to which the Trustees have a joint and undivided interest. Such damages shall be used by NOAA and DNER to select, plan and implement emergency and compensatory restoration projects and to reimburse the Trustees for

future assessment costs, including monitoring and oversight costs, as follows:

A. Six hundred and fifty thousand dollars (\$650,000) transferred to NOAA as described in paragraph 4.a. of the Settlement Agreement shall be immediately available to accomplish emergency restoration of the coral reef resources injured as a result of the incident. The Trustees agree that NOAA is hereby authorized to disburse up to \$650,000 to hire and employ a restoration contractor to perform said emergency work which shall consist of the permanent reattachment to stable substrate of Acropora palmata colonies that were dislodged or broken off of parent colonies as a result of the incident. Should less than \$650,000 be required to complete emergency restoration as determined by the Trustees, such balance shall be available for compensatory restoration or reimbursement of the Trustees' costs as discussed below.

Said emergency restoration shall be performed under NOAA's oversight and according to restoration performance and success criteria developed by NOAA and included in the restoration contract.

Performance monitoring shall be conducted by NOAA and DNER representatives to evaluate the effectiveness of the emergency restoration, to design any mid-course corrective actions, and to evaluate the need for disbursement of funds in excess of \$650,000 toward completing the emergency restoration work.

B. Four hundred thousand (\$400,000) received by DNER as described in paragraph 4.c. of the Settlement Agreement shall be deposited into the Mona Island Trust Account administered by DNER and shall be disbursed only with the concurrence of NOAA and DNER, except as provided otherwise in this paragraph. Said \$400,000 shall be retained in trust through the duration of the emergency restoration work and shall be available in the first instance to complete

emergency restoration. NOAA, as overseer of the emergency restoration project, shall notify DNER of the need for further expenditures by telephone and Facsimile communications with DNER's principal contact. Unless NOAA agrees otherwise, the Secretary of DNER shall authorize and effect disbursement of the requested monies for completion of emergency restoration to NOAA no later than five (5) calendar days following receipt of NOAA's request to disburse monies out of the Mona Island Trust Account as follows:

1. The preferred method of transfer shall be via an Electronic Funds Transfer (EFT) through the Automated Clearing House (AFT) in a CCD+ format to NOAA's account at the First National Bank of Chicago (FNBC). (FNBC TRANSIT ROUTING: 071000013 AND AGENCY ACCOUNT 11-13801). The addenda record shall be annotated "RE: M/V FORTUNA REEFER ACCOUNT." A copy of the paperwork documenting the EFT and any accompanying correspondence to the NOAA Finance Services Division shall be sent to:

Cheryl Scannell, Esq.
NOAA Office of General Counsel, Natural Resources
Southeast Regional Office
9721 Executive Center Drive North, Room 137
St. Petersburg, FL 33702
FAX: (813) 570-5376

Joel Gross, Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044

2. If an Electronic Funds Transfer is not feasible, transfer of requested funds shall be made by sending a check in the requested amount to NOAA, referencing the case name and number, "M/V FORTUNA REEFER #8K3B3001FR" and payable to NOAA, U.S. Department of

Commerce, and sent to:

NOAA Finance Services Division
Bills and Collection Unit, Caller Service 7025
20020 Century Blvd.
Germantown, MD 20874

with a copy of the check sent to:

Cheryl Scannell, Esq.
NOAA Office of General Counsel, Natural Resources
Southeast Regional Office
9721 Executive Center Drive North, Room 137
St. Petersburg, FL 33702
FAX: (813) 570-5376

Any interest earned on the \$400,000 held in the Commonwealth account shall be applied toward compensatory restoration or reimbursement of the Trustees' future costs as discussed below.

C. The Trustees hereby agree that a minimum of \$150,000 of the \$400,000 deposited into the Mona Island Trust Account as described above, or whatever lesser sum remains following completion of emergency restoration as described in paragraphs A and B above, shall be reserved for planning and implementing of compensatory restoration designed to replace or acquire the equivalent of the resources or services lost as a result of the incident and not fully compensated through the emergency restoration. The Trustees shall concur in the selection of appropriate compensatory restoration projects. DNER shall be responsible for implementation, oversight and monitoring of compensatory restoration.

D. The Trustees agree to document their future costs of administering and overseeing the emergency restoration work, and of monitoring the performance of the emergency restoration.

The Trustees agree that monies remaining from the \$400,000 deposited into the Mona Island Trust Account after completion of the emergency restoration work and funding of compensatory restoration projects shall be disbursed to reimburse the Trustees for said documented costs. The Trustees may agree to forego reimbursement of all or some portion of their costs as necessary and appropriate in order to accomplish emergency and/or compensatory restoration. Within five (5) calendar days of receipt of an accounting of future costs to be reimbursed as agreed to in this paragraph, the Secretary of DNER shall authorize and effect disbursement of monies to NOAA by Electronic Funds Transfer or check as specified in paragraph IV.B. above.

E. The Trustees agree that one hundred thousand dollars (\$100,000) of the five hundred thousand dollars (\$500,000) paid to the Commonwealth as described in paragraph 4.c. of the Settlement Agreement, shall be immediately available to DNER to reimburse the Commonwealth for its assessment and administrative costs, and vessel arrest and maintenance costs, incurred as of the date of execution of the Settlement Agreement.

F. The Trustees agree that ninety-seven thousand dollars (\$97,000) received by NOAA from the \$100,000 paid to the U.S. Attorneys Office as described in paragraph 4.b. of the Settlement Agreement shall be immediately available to NOAA for reimbursement of its assessment and administrative costs incurred as of the date of execution of the Settlement Agreement.

V. PUBLIC PARTICIPATION

The Trustees acknowledge the requirements of OPA, the National Environmental Policy Act, the Natural Resource Damage Assessment regulations for oil spills, and various statutes of the Commonwealth, to afford the public meaningful opportunities to participate in the assessment and restoration selection process. The public shall be notified of the emergency restoration work

in an appropriate manner as soon as practicable following initiation of the work, in accordance with the above authorities. The Trustees shall also afford appropriate opportunity for public participation in development of a plan for implementation of compensatory restoration, in accordance with the above authorities.

VI. RESERVATION OF RIGHTS

The Trustees acknowledge that this document is not intended to create any legal rights or obligations between the Trustees other than those set forth in this MOU, or any rights or obligations of any person not a party to this MOU.

VII. MODIFICATION OF AGREEMENT

The Trustees acknowledge that additional agreements may be needed concerning the planning for and implementation of compensatory restoration, and any such agreement shall be in writing, signed by both Trustees, and appended to this MOU.

VIII. EFFECTIVE DATE AND TERMINATION

This MOU shall be in effect from the date of signature by the Trustees until expenditure of all funds received through the Settlement Agreement, or other later date as agreed to by the Trustees.

IX. LIMITATION

Nothing in this MOU shall be construed as obligating the United States, the Commonwealth, or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

X. SIGNATURE

The undersigned representatives of the Trustees certify that they have the authority to enter into and effect implementation of this MOU.

For the PUERTO RICO DEPARTMENT OF NATURAL AND ENVIRONMENTAL RESOURCES:



Secretary, DNER

Dated 9/10/, 1997

For the NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:

Deputy General Counsel, NOAA

Dated _____, 1997

X. SIGNATURE

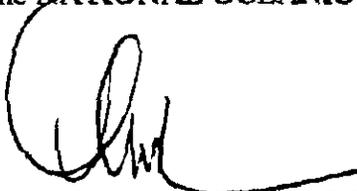
The undersigned representatives of the Trustees certify that they have the authority to enter into and effect implementation of this MOU.

For the PUERTO RICO DEPARTMENT OF NATURAL AND ENVIRONMENTAL RESOURCES:

Secretary, DNER

Dated _____, 1997

For the NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:



Deputy General Counsel, NOAA

Dated 9/11, 1997