

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA, <i>et al.</i>	§	
	§	
Plaintiffs,	§	Civil Action No. 99-2961
	§	
v.	§	Section "D"
	§	
EQUILON PIPELINE COMPANY LLC,	§	Magistrate Div. 5
	§	
Defendant.	§	
	§	

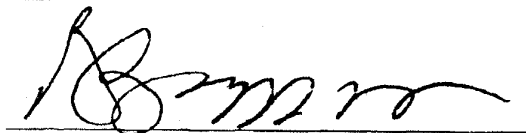
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**ORDER AUTHORIZING ENTRY OF CONSENT DECREE**

The United States, having received no comments in response to its published notice of lodging of a Consent Decree between the parties, has presented an unopposed motion for entry of the Consent Decree.

THEREFORE, IT IS HEREBY ORDERED that this Consent Decree is entered.

Dated this 15 Day of Nov, 1999.



Judge A. J. McNamara  
UNITED STATES DISTRICT JUDGE



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## EXHIBITS

Exhibit 1. Final Restoration Plan

Exhibit 2. Grant of Particular Use for Construction

Exhibit 3. Monitoring Plan

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA  
and the STATE OF LOUISIANA,

Plaintiffs,

v.

EQUILON PIPELINE COMPANY LLC,

Defendant.

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Civil Action No.

Judge

Mag.

**CONSENT DECREE**

This Consent Decree is made and entered into by and between the Plaintiff United States of America ("United States"), on behalf of the Fish and Wildlife Service, acting on behalf of the Department of the Interior ("DOI"), the National Oceanic and Atmospheric Administration ("NOAA"), acting on behalf of the Department of Commerce, and the Coast Guard, acting on behalf of the Secretary of the Department of Transportation; Plaintiff State of Louisiana ("State") through the Louisiana Oil Spill Coordinator's Office ("LOSCO"), the Louisiana Department of Environmental Quality ("LDEQ"), the Louisiana Department of Wildlife and Fisheries ("LDWF"), and the Department of Natural Resources ("LDNR"); and Defendant Equilon Pipeline Company LLC ("Equilon") successor by way of merger to Texaco Pipeline Inc. ("Texaco").

**BACKGROUND**

A. On May 16, 1997, a pipeline operated by Texaco ruptured and discharged at least 275,000 gallons of crude oil into Lake Barre, Terrebonne Parish, Louisiana. The Oil Spill spread over open water, beach, reef, and marsh habitats and caused injury to natural resources, including

but not limited to marsh, intertidal, subtidal, and water column habitats and to the plant, fish, shellfish, and wildlife species that use those habitats. Approximately 4,327 acres of marsh were exposed to oil as a result of the Oil Spill, and oyster harvesting was closed in Lake Barre for 74 days.

B. Texaco removed the oil from the affected area. The United States Coast Guard directed and monitored removal activities that were financed by Texaco. State agencies also participated in the removal activities and incurred response costs. The removal did not provide compensation for the natural resources or the natural resources services injured or lost as a result of the Oil Spill. Texaco paid response costs of \$40,630.49 that were incurred by the Coast Guard, NOAA, and the Department of Interior when those federal agencies responded to the Oil Spill.

C. In order to protect the public health and welfare and the environment, the discharge of harmful amounts of oil is prohibited pursuant to Section 311 of the CWA, 33 U.S.C. § 1321.

D. The NOAA, DOI, LOSCO, LDEQ, LDNR, and LDWF, have been designated, pursuant to Section 1006(b) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2706(b), and the National Contingency Plan, 40 C.F.R. Part 300, Subpart G, to act on behalf of the public as trustees for natural resources belonging to, managed by, controlled by, or appertaining to the United States and the State of Louisiana.

E. The United States, through NOAA and DOI ("Federal Trustees"), is authorized to seek natural resource damages, including the reasonable costs to assess the damages, pursuant to Section 1002 of OPA, 33 U.S.C. § 2702.

F. The State, through LOSCO, LDEQ, LDNR, and LDWF (“State Trustees”), is authorized to seek natural resource damages, including the reasonable costs to assess the damages, pursuant to Section 1002 of OPA, 33 U.S.C. § 2702. The State is further authorized, pursuant to the Louisiana Constitution, article IX, sections 1 and 7, L.R.S. 36:601, et seq., L.R.S. 56:1, et seq., Louisiana Environmental Quality Act, L.R.S. 30:2001 et seq., the Louisiana Coastal Wetlands Conservation, Restoration, and Management Act, L.R.S. 49:213.1 et seq., and the Louisiana Oil Spill Prevention and Response Act, L.R.S. 30:2431 et seq., to recover damages for injury to natural resources caused by the Oil Spill.

G. The Federal Trustees and the State Trustees (“Trustees”) have undertaken a natural resource damage assessment in accordance with NOAA’s Natural Resource Damage Assessment rule, promulgated at 15 C.F.R. Part 990.

H. Pursuant to Section 1006(c)(5) of OPA, 33 U.S.C. § 2706(c)(5), 15 C.F.R. 990.14(c), L.R.S. 30:2480(C)(6)(b) and (c), and LAC 43:XXIX.115, the Trustees invited Texaco to participate in the natural resource damage assessment process.

I. Subsequent to the Oil Spill, Equilon succeeded to the liabilities of Texaco, and both Texaco and Equilon participated in the natural resource damage assessment process.

J. The Trustees, Texaco, and subsequently Equilon, using assumptions protective of natural resources, have assessed the injuries to the natural resources and/or their services resulting from the Oil Spill, and they agree that the Oil Spill has or will result in 75.6 discounted acre-years of lost marsh services, over time.

K. The Trustees, Texaco, and subsequently Equilon, further agreed that 4 acres of marsh creation, or the ecological equivalent, would compensate for the injured birds and aquatic fauna.

L. Pursuant to the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et seq., 40 C.F.R. Ch. V, and 15 C.F.R. § 990.55, the Trustees prepared a Draft Assessment and Restoration Plan and Environmental Assessment (“Draft DARP/EA”), which evaluated a reasonable range of restoration alternatives to restore, replace, or acquire the equivalent of the natural resources and services injured or lost as a result of the Oil Spill. The Trustees selected a preferred restoration alternative that is not expected to have any significant adverse environmental or economic impact, but instead is expected to have positive environmental and economic benefits.

M. The preferred alternative involves the planting of salt marsh vegetation on East Timbalier Island, where a Coastal Wetlands Planning, Protection, and Restoration Act (“CWPPRA”) project is being undertaken to restore the island.

N. Pursuant to 15 C.F.R. §§ 990.23 and 990.55, the Draft DARP/EA was made available for public review, as provided in public notices published in the Federal Register on July 15, 1999, in the Baton Rouge Advocate and the Houma Courier on July 19, 1999, and in the Louisiana State Register on July 20, 1999. The Trustees received no comments on the environmental assessment provided in the Draft DARP/EA in response to the public notice. Comments on the preferred alternative were received in response to the public notice. After considering the comments, the Trustees concluded that the preferred alternative should be retained and issued the Final Restoration Plan on (date), 1999.

O. The Trustees and Equilon agree that, based on currently known information, the Final Restoration Plan is the appropriate restoration project to address the injury to natural resources and services resulting from the Oil Spill.



P. The United States filed a Complaint in this matter pursuant to Section 1002 of OPA, 33 U.S.C. § 2702. The United States in its Complaint seeks (1) natural resource damages for injuries to and loss of use of natural resources resulting from the Oil Spill, (2) past costs incurred by the Coast Guard, NOAA, and DOI in responding to and assessing the damage of the Oil Spill, and (3) future costs to be incurred by NOAA and DOI in implementing, overseeing, and monitoring the Restoration Project to be undertaken by Equilon.

Q. The State filed a Complaint in this matter pursuant to Section 1002 of OPA, 33 U.S.C. § 2702, L.R.S. 30:2025(A) and (B), and L.R.S. 30:2480(A) and (B). The State in its Complaint seeks (1) natural resource damages for injuries to and loss of use of natural resources resulting from the Oil Spill, (2) past costs incurred by the State Trustees in responding to and assessing the damage of the Oil Spill, and (3) future costs to be incurred by the State Trustees in implementing, overseeing, and monitoring the Restoration Project to be undertaken by Equilon.

R. The Trustees and Equilon recognize that this Consent Decree is a settlement of a contested matter and that neither this Decree nor payment or the acceptance of any consideration represents an admission of fact, liability, or responsibility by any Party, except where an agreement as to a fact or conclusion is expressly recited in this Decree at Paragraphs J, K, and O, above.

S. The Trustees and Equilon recognize, and this Court finds, that the Parties have negotiated this Consent Decree in good faith, that implementation of this Decree will expedite the restoration of natural resources and avoid lengthy and protracted litigation, and that this Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

**I. JURISDICTION**

1. This Court has jurisdiction over the subject matter and of this action pursuant to 28 U.S.C. §§1331 and 1345 and Section 1017(b) of OPA, 33 U.S. C. § 2717(b). This Court also has supplemental jurisdiction over the state law claims in the action pursuant to 28 U.S.C. § 1367. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and Section 1017(b) of OPA, 33 U.S.C. § 2717(b). Defendant has voluntarily appeared, and, solely for the purposes of this Decree, it waives all objections and defense it may have to the personal and subject matter jurisdiction of this Court or to venue in this District.

**II. PARTIES BOUND**

2. This Consent Decree shall apply to and be binding upon and inure to the benefit of the United States, the State of Louisiana, Equilon, and Equilon's predecessor Texaco, and as applicable, the present and former officers, directors, employees, and agents of each of the aforementioned entities.

3. Equilon shall provide a copy of this Consent Decree to its Supervising Contractor, to each contractor hired to perform the Work required by this Consent Decree, and to each person representing Equilon with respect to the Work, and it shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Equilon or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Equilon shall

nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree.

4. This Consent Decree shall apply to Equilon and to its successors and assigns, and a copy of this Consent Decree shall be provided to any successor in interest. Any change in ownership or corporate status of Equilon including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Equilon's responsibilities under this Consent Decree, absent the prior written consent of the Project Manager. If the Project Manager approves, the grantee may perform some or all of the Work under this Consent Decree.

### III. DEFINITIONS

5. Unless, otherwise expressly provided herein, terms used in this Consent Decree that are defined in Section 101, et seq. of the Clean Water Act, 33 U.S. C. § 1251 et seq., including 1001 et seq. of OPA, 33 U.S.C. 2701, et seq., or in regulations promulgated under the CWA, including 15 C.F.R. Part 990, shall have the meaning assigned to them in such statutes and regulations. Whenever terms listed below are used in this Consent Decree, or in the exhibits attached hereto and incorporated herein, the following definitions shall apply:

- (a) "Assessment Costs" means the reasonable costs incurred by the Trustees in assessing the natural resource damages and in planning the Restoration Project, including but not limited to administrative and legal costs and costs associated with public participation.
- (b) "Day" means a calendar day.
- (c) "Federal Trustees" means the United States Fish and Wildlife Service (FWS) of the United States Department of the Interior (DOI) and the

National Oceanic and Atmospheric Administration of the United States  
Department of Commerce (NOAA).

- (d) "Final Approval of this Decree" means the later of (1) the date on which the District Court has approved and entered this Decree as a judgment and all applicable appeal periods have expired without an appeal being filed, or (2) if an appeal is taken, the date on which the District Court's judgment is affirmed and there is no further right to appellate review.
- (e) "Final Restoration Plan" means the Final Restoration Plan attached to this Consent Decree as Exhibit 1, and incorporated herein as a part of this Consent Decree, and any modifications to that Plan.
- (f) "Monitoring Plan" means the Monitoring Plan attached to this Consent Decree as Exhibit 3, and incorporated herein as a part of this Consent Decree, and any modifications to that Plan.
- (g) "Natural Resource" or "Natural Resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the State of Louisiana or any of its parishes or by the United States.
- (h) "Natural Resource Damages" means civil compensatory relief, including Assessment Costs and Restoration Costs, recoverable by the Trustees on behalf of the public for injury to, destruction of, loss of, or

loss of use of any or all Natural Resources or services provided by the Natural Resources resulting from the Oil Spill.

- (i) "Oil Spill" means the discharge of crude oil from a ruptured Texaco pipeline on May 16, 1997, in Lake Barre, Louisiana, and the resulting Oil Spill onto lands, marsh, and navigable waters.
- (j) "Party" or "Parties" means Equilon, the United States, and the State of Louisiana.
- (k) "Project Manager" or "Alternate Project Manager" means the individual who has been designated as the representative of the lead Trustee for purposes of coordinating the review and approval of specified activities on behalf of the United States and the State. For purposes of this Consent Decree, the Project Manager is the Natural Resource Specialist at LOSCO assigned to this Restoration Project and the Alternate Project Manager is the Deputy Oil Spill Coordinator, LOSCO.
- (l) "Response Costs" means all costs, including, but not limited to, direct and indirect costs, that (i) the Coast Guard paid for costs incurred by the Coast Guard, NOAA, and DOI, and (ii) the State incurred in connection with the removal of oil as a result of the Oil Spill.
- (m) "Restoration Costs" means the reasonable costs to implement the Restoration Project, including monitoring and oversight costs.

- (n) "Restoration Project(s)" means those activities that will restore natural resources and/or services injured as a result of the Oil Spill, as described in the Final Restoration Plan, or any modification to the Plan.
- (o) "Restoration Property" means East Timbalier Island, Lafourche Parish, Louisiana, or any other property selected for the Restoration Project.
- (p) "State" means the State of Louisiana, and its departments and agencies.
- (q) "State Trustees" means the Louisiana Oil Spill Coordinator's Office (LOSCO), the Louisiana Department of Environmental Quality (LDEQ), the Louisiana Department of Natural Resources (LDNR), and the Louisiana Department of Wildlife and Fisheries (LDWF).
- (r) "Supervising Contractor" means the principal contractor retained by Equilon to supervise and direct the implementation of the Work under this Consent Decree.
- (s) "Trustees" means those federal and state agencies designated or authorized pursuant to OPA and/or state law to act on behalf of the public as Trustees for the natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State of Louisiana. Specifically, as used in this Decree, the Federal Trustees are the United States Fish and Wildlife Service (FWS) of the United States Department of the Interior (DOI), the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA), and the State Trustees are the

Louisiana Oil Spill Coordinator's Office (LOSCO), the Louisiana Department of Environmental Quality (LDEQ), the Louisiana Department of Natural Resources (LDNR), and the Louisiana Department of Wildlife and Fisheries (LDWF).

- (t) "Work" means all activities that Equilon is required to perform under the Consent Decree, including the activities described in the Final Restoration Plan, and all other plans and reports required by this Consent Decree.

#### IV. GENERAL PROVISIONS

6. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to restore natural resources and services, to reimburse the Trustees for unreimbursed costs incurred in undertaking a natural resource damages assessment, and to resolve the natural resource damage claims of Plaintiffs against Defendant Equilon as provided in this Consent Decree.

7. Commitments by Equilon. Equilon shall finance and perform the Work required by this Consent Decree, including the Final Restoration Plan, the Monitoring Plan, and all designs, reports, plans, standards, specifications, schedules, and other information set forth herein or developed by Equilon and approved by the Project Manager pursuant to this Consent Decree and any modification thereto. For all payments, except where lump sum payments for future costs are specifically allowed at Paragraph 37(b) of this Decree, Equilon also shall reimburse the United States and the State for past unreimbursed documented Assessment Costs

and for future documented Assessment Costs and Restoration Costs that the Trustees will incur for planning, oversight, monitoring, and, if necessary, implementing the Restoration Project.

8. Compliance With Applicable Law. All Work and other activities undertaken by Equilon pursuant to this Consent Decree, shall be performed in accordance with the requirements of all applicable federal, state, and local laws and regulations. Where any portion of the Work requires a federal, state, or local permit or approval, Equilon shall submit a timely and complete application and take all other actions necessary to obtain all such permits and/or approvals.

9. Consent Decree Not a Permit. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation. The United States and the State do not, by their consent to this Decree, warrant or aver in any manner that Equilon's compliance with this Decree will constitute or result in compliance with any federal or state law or regulation.

10. Failure of Compliance with Performance Criteria. The Trustees do not, by consenting to the entry of this Consent Decree, warrant or aver in any manner that actions taken by Equilon pursuant to this Consent Decree will result in satisfaction of the Performance Criteria specified in the Monitoring Plan. Notwithstanding the Trustees' issuance of the Final Restoration Plan and the Trustees' approval and/or review of any designs, plans, reports, and other information formulated pursuant to this Consent Decree, Equilon shall remain solely responsible for compliance with the Performance Criteria specified in the Monitoring Plan in accordance with the terms of this Decree.



## V. STATE REAL PROPERTY ISSUES

11. Equilon has procured a Grant of Particular Use for Construction related to the Restoration Property from the State Land Office, Division of Administration, in accordance with the conditions established by Exhibit 2, attached hereto and incorporated into this Consent Decree.

## VI. NATURAL RESOURCE RESTORATION REQUIREMENTS

### 12. Supervising Contractor.

(a) Equilon has selected ENTRIX as its Supervising Contractor. If Equilon subsequently proposes to change its Supervising Contractor, it shall give written notice to the Trustees, and it must obtain authorization to proceed from the Project Manager, after obtaining approval from all Trustees, before the new Supervising Contractor may perform, direct, or supervise any Work under this Consent Decree.

(b) If the Project Manager disapproves a proposed Supervising Contractor, the Project Manager will notify Equilon in writing. Equilon shall submit to the Trustees a list of proposed Supervising Contractors, including the qualifications of each contractor, that would be acceptable to it within 30 days of receipt of the disapproval of the Supervising Contractor previously proposed. The Project Manager, after obtaining consensus among the Trustees, will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Equilon may select any Supervising Contractor from the list that is not disapproved and shall notify the Trustees of the name of the Supervising Contractor selected within 14 days of receipt of the authorization to proceed.

13. Implementation Schedule.

(a) If this Decree has been lodged with the Court by September 30, 1999, Equilon shall undertake the Work in accordance with the following schedule:

- (i) Equilon shall order plantings, and shall notify the Trustees that the plantings have been ordered within 5 days thereafter;
- (ii) If Equilon has received notice from the Project Manager by December 9, 1999, that the East Timbalier Island platform has been built in accordance with the specifications and approved by CWPPRA and Equilon has received the as-built survey or comparable information, Equilon shall arrange a pre-design inspection by Equilon and the Trustees to view the platform on East Timbalier Island, with transportation to be provided by Equilon, and Equilon shall provide notice to the Trustees of the inspection date at least 10 days in advance of the scheduled date so that the Trustees' representatives may accompany Equilon;
- (iii) If the schedule specified in subparagraph (ii) has been met, Equilon shall submit a Draft Planting Design no later than February 15, 2000. The Draft Planting Design shall include, at a minimum, the following information:
  - a. a substrate analysis that determines nutrient levels and contamination in the proposed planting area;
  - b. surveys, maps, and other information describing elevations and other site-specific information required by the Monitoring Plan;

- c. a planting configuration that satisfies the planting requirements in the Final Restoration Plan;
- d. any permit requirements.

The Trustees shall comment on the Draft Planting Design by February 28, 2000. Equilon shall make any recommended revisions to the Draft Planting Design and shall submit a Final Planting Design by March 15, 2000. The Trustees shall review the Final Planting Design in accordance with Section X (Trustees' Review of Submittals and Corrective Action).

- (iv) If the Trustees approve the Final Planting Design by March 31, 2000, then Equilon shall commence planting at the Restoration Property. Equilon shall provide notice to the Trustees of the commencement of planting at the Restoration Project at least 14 days prior to the commencement date.
- (v) Within 120 days of receiving notice of approval of the Final Planting Design, Equilon shall complete the planting on East Timbalier Island in accordance with the terms of this Consent Decree, including but not limited to the Final Restoration Plan, and the approved Final Planting Design.
- (vi) Equilon shall notify the Trustees of completion of the planting in accordance with the Final Restoration Plan and the Final Planting Design and shall arrange for an inspection of the Restoration Project to be conducted with the Trustees' representatives, with transportation to be

provided by Equilon, during the planting process and within seven (7) days after Equilon has finished planting at the Restoration Property.

b. If this Decree has been lodged with the Court later than September 30, 1999, or Equilon receives notice from the Project Manager later than December 9, 1999, that the East Timbalier Island platform has been built in accordance with the specifications and approved by CWPPRA, or if Equilon receives the as-built survey or comparable information after December 9, 1999, and the Trustees and Equilon determine that the proposed Restoration Project is still viable:

- (i) Equilon shall arrange a pre-design inspection by Equilon and the Trustees to view the platform on East Timbalier Island, with transportation to be provided by Equilon. Equilon shall provide notice to the Trustees of the inspection date at least 10 days in advance of the scheduled date so that the Trustees' representatives may accompany Equilon;
- (ii) The Trustees shall rescale the Restoration Project to account for the delay in implementation, and not later than September 1, 2000, the Project Manager, after obtaining concurrence from the Trustees, shall provide notice to Equilon of the revised scaling for the proposed Restoration Project;
- (iii) If the schedule specified in subparagraph (ii) has been met, Equilon shall order plantings, and shall notify the Trustees that the plantings have been ordered within 5 days thereafter, and Equilon shall submit a Draft Planting Design by the later of December 1, 2000, or within 60 days of receiving

the notice of completion of the platform, the as-built survey or comparable information, and notice of the rescaled Restoration Project. The Draft Planting Design shall include, at a minimum, the following information:

- a. a substrate analysis that determines nutrient levels and contamination in the proposed planting area;
- b. surveys, maps, and other information describing elevations and other site-specific information required by the Monitoring Plan;
- c. a planting configuration that satisfies the planting requirements in the Final Restoration Plan;
- d. any permit requirements.

The Trustees shall comment on the Draft Planting Design by December 15, 2000. Equilon shall make any recommended revisions to the Draft Planting Design and shall submit a Final Planting Design by January 17, 2001. The Trustees shall review the Final Planting Design in accordance with Section X (Trustees' Review of Submittals and Corrective Action).

- (iv) If the Trustees approve the Final Planting Design by February 18, 2001, then Equilon shall complete the planting on East Timbalier Island in accordance with the terms of this Consent Decree, including but not limited to the Final Restoration Plan and the approved Final Planting Design in accordance with the schedule specified by the Trustees which shall allow not less than 160 days for implementation.
- (v) Equilon shall notify the Trustees of completion of the planting in accordance with the Final Restoration Plan and the Final Planting Design

and shall arrange for an inspection of the Restoration Project to be conducted with the Trustees' representatives, with transportation to be provided by Equilon, during the planting process and within seven (7) days after Equilon has finished planting at the Restoration Property.

(c) The schedule described in subparagraphs (a) and (b), above, may be revised by agreement of the Project Manager, after obtaining the concurrence of the Trustees, and the Supervising Contractor or Equilon representative, as designated in Paragraph 21.

14. Planting Completion Date. The date upon which Equilon notifies the Trustees that the planting has been completed in accordance with the requirements of the Final Restoration Plan and the Final Planting Design shall be deemed the "Planting Completion Date." The Planting Completion Date must meet the applicable due date from Paragraph 13(a)(v), (b)(iv), or (c).

## VII. MONITORING AND COMPLIANCE WITH PERFORMANCE CRITERIA

### 15. Initial Monitoring and Report.

(a) Equilon shall monitor the progress of the planting within 60 days of the Planting Completion Date ("the Initial Monitoring"), provided however that the actual site visit to conduct the Initial Monitoring shall take place within 50-70 days of the Planting Completion Date. Equilon shall give notice of the Initial Monitoring to the Trustees 21 days in advance and arrange transportation so that the Trustees' representatives may accompany Equilon on the Initial Monitoring visit to East Timbalier Island. The date of the Initial Monitoring visit may be revised upon agreement of the Parties if weather conditions justify rescheduling.

(b) The Performance Criteria and monitoring requirements specified in the Monitoring Plan shall apply to the Initial Monitoring for the Restoration Project.

(c) Equilon shall submit a written report regarding the Initial Monitoring within 30 days of the Initial Monitoring site visit. The Initial Monitoring Report shall document compliance with the Final Restoration Plan, the Planting Design and the Monitoring Plan, including the Initial Performance Criteria. Documentation shall include maps showing the location of the plantings, elevations, and other relevant data as well as a narrative description of compliance with the requirements. The Trustees shall review the Report, and Equilon shall undertake any further actions in accordance with Section X (Trustees' Review of Submittals and Corrective Action) of this Decree.

16. Interim Monitoring. Equilon shall monitor the East Timbalier Island planting at intervals of (1) one year and sixty days, and (2) two years and sixty days following the Planting Completion Date, provided however that the actual site visit to conduct the Interim Monitoring shall take place within a three-week period more or less than the prescribed times. Equilon shall give notice of the Interim Monitoring to the Trustees 21 days in advance and provide transportation so that the Trustees' representatives may accompany Equilon on the Interim Monitoring visit to East Timbalier Island. The date of the monitoring visit may be revised upon agreement of the Parties if weather conditions justify rescheduling. Within 60 days after the site visit, Equilon shall provide to the Trustees a report describing the condition of the plantings compared to the Final Performance Criteria. After consulting with the Project Manager about the Trustees' written comments and any written recommended corrective action(s), Equilon shall take such corrective actions as are appropriate as a result of the Interim Monitoring in order to be

in a position to achieve compliance with the Performance Criteria for the Final Monitoring specified in the Monitoring Plan.

17. Final Monitoring and Report.

(a) Equilon shall monitor the progress of the planting within three years plus 60 days of the Planting Completion Date (“the Final Monitoring”), provided however that the actual site visit to conduct the Final Monitoring may take place within a three-week period more or less than the prescribed time. Equilon shall give notice of the Final Monitoring to the Trustees 21 days in advance so that the Trustee representatives may accompany Equilon on the Final Monitoring visit to East Timbalier Island. The date of the monitoring visit may be revised upon agreement of the Parties if weather conditions justify rescheduling.

(b) The Performance Criteria and monitoring requirements specified in the Monitoring Plan shall apply to the Final Monitoring for the Restoration Project.

(c) Equilon shall submit a written report regarding the Final Monitoring within 60 days of the Final Monitoring site visit. The Final Monitoring Report shall document compliance with the Performance Criteria in the Monitoring Plan. The Trustees shall review the Report, and Equilon shall undertake any further actions in accordance with Section X (Trustees’ Review of Submittals and Corrective Action) of this Decree.

18. Excused Performance.

(a) The Parties recognize that the risk of a named storm, drought, and/or disease exists and that, should such circumstances arise subsequent to the lodging of this Consent Decree, to the extent that Equilon demonstrates by a preponderance of the evidence that one or more of these circumstances affected Equilon’s ability to perform or to meet the Final



Performance Plan and/or Monitoring Plan requirements, then Equilon's performance obligations will be excused or altered to the extent specified below:

- (i) if a named storm results in Equilon being unable to plant at the Restoration Property, the Project Manager, after consulting with Equilon and the Trustees, shall designate another area for planting;
- (ii) if a named storm destroys the platform after planting has been completed, Equilon will be completely excused from future performance under this Decree after Equilon has paid all State Response Costs, Assessment Costs and Restoration Costs, and any penalty required by this Decree;
- (iii) if, after a named storm that adversely affects plantings at the Restoration Property or after a drought event or disease outbreak that adversely affects vegetation similarly at the Restoration Property and on other barrier islands included in the Barataria/Terrebonne National Estuary Program, more than 50% of the plantings do not survive at the Restoration Property, Equilon shall for the plantings in the remaining area, continue monitoring in accordance with the Monitoring Plan and meet the Performance Criteria for the Final Monitoring specified in the Monitoring Plan with respect to the remaining area.
- (iv) if, after a named storm that adversely affects plantings at the Restoration Property or after a drought event or disease outbreak that adversely affects vegetation similarly at the Restoration Property and on other barrier islands included in the Barataria/Terrebonne National Estuary Program,

25-50% of the plantings do not survive at the Restoration Property, then

Equilon shall either:

- a. implement physical improvements to stabilize the remaining plants, or
- b. if more cost effective and technically feasible, replant equivalent acreage in the same or another area of the island.

In the replanted areas, Equilon shall conduct Initial Monitoring and meet the Initial Monitoring Performance Criteria, and shall conduct Final Monitoring and meet the Excused Performance Criteria, specified in the Monitoring Plan; and for the plantings in the remaining area, continue monitoring the plantings and meet the Performance Criteria for the Final Monitoring specified in the Monitoring Plan.

- (v) if, after a named storm that adversely affects plantings at the Restoration Property or after a drought event or disease outbreak that adversely affects vegetation similarly at the Restoration Property and on other barrier islands included in the Barataria/Terrebonne National Estuary Program, less than 25% of the plantings do not survive at the Restoration Property, Equilon shall:

- a. replant the affected acres. In the replanted areas, Equilon shall conduct Initial Monitoring and meet the Performance Criteria for Initial Monitoring with respect to the replanted areas, and shall

conduct Final Monitoring and meet the Excused Performance Criteria, specified in the Monitoring Plan; and

- b. for the plantings in the remaining area, continue monitoring the the plantings and shall meet the Performance Criteria for the Final Monitoring specified in the Monitoring Plan.

(h) If one of the foregoing circumstances occur, Equilon shall notify orally the Project Manager or, in his or her absence, the Alternate Project Manager within 10 days of the date that Equilon, its contractors, or any entity controlled by Equilon first knew or should have known that the circumstances might justify excused or modified performance. For purposes of this Paragraph, Equilon or its contractors or any entity controlled by Equilon knew or should have known that circumstances might justify excused or modified performance based on information available upon request by Equilon or its contractors or agents from the National Weather Service and the Project Manager, East Timbalier Project, LDNR, Office of Coastal Restoration. Within 21 days thereafter, Equilon shall submit to the Trustees an Excused Performance Report describing the circumstances, the effect of the circumstances on the platform and the plantings at the Restoration Project, and the basis for Equilon's claim that the circumstances justify an excused performance pursuant to Paragraph 18(a). The Trustees shall review such Report in accordance with Paragraphs 22-29. The Project Manager, after consultation with the Trustees, shall notify Equilon whether the circumstances justify excusing Equilon's performance of the Restoration Project, and if so, the extent to which performance will be excused in accordance with Paragraph 18(a). The Project Manager will direct Equilon to submit an Excused Performance Plan for any actions required under Paragraph 18(a). Equilon shall submit an

Excused Performance Plan, in accordance with Paragraphs 24-26. Equilon will not be required to perform any additional corrective action or monitoring of the Restoration Project for more than two additional years after implementation of the first Excused Performance Plan.

(c) If Equilon elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than 15 days after receipt of the Project Manager's notice regarding the excused performance claim. In any such proceeding, Equilon shall have the burden of demonstrating by a preponderance of the evidence that the circumstances described in Paragraph 18(a) occurred and justify Equilon's excused or mitigated performance. If Equilon carries this burden, Equilon's performance requirements under this Consent Decree will be modified and no stipulated penalty will accrue for the delay in submitting an Excused Performance Plan.

(d) Events that only delay rather than prevent or impede performance in whole or in part shall be dealt with under Section XIV (Force Majeure).

19. Certification of Completion. The Project Manager, after obtaining concurrence from the Trustees, shall issue a Certification of Completion after the Trustees have determined that Equilon 1) has satisfied the Performance Criteria for the Final Monitoring specified in the Monitoring Plan, 2) has been excused from the performance obligations in accordance with Paragraph 18, or 3) has satisfied the requirements of any Excused Performance Plan.

#### VIII. REPORTING

20. All plans and reports required to be submitted by the terms of this Consent Decree shall contain a certification signed by the Supervising Contractor or Equilon's representative, as designated in Paragraph 21. The certification shall read as follows:

“To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this (submission/document) is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

#### IX. NOTICE

21. Whenever under the terms of this Decree, written notice is required to be given or a report or other document is required to be forwarded by one Party to another Party or Parties, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the Parties:

As to the United States:

NOAA

Jed Brown  
NOAA/NMFS/RC  
Room 15245  
1315 East West Highway  
Silver Spring, MD 20910-3282

Linda Burlington, NOAA/GCNR  
1315 East West Highway  
SSMC3, Rm. 15132  
Silver Spring, MD 20910-3282

DOI

Sam D. Hamilton  
Authorized Official  
U.S. Fish and Wildlife Service  
1875 Century Blvd.  
Atlanta, GA 30345

Field Supervisor  
Attention: Buddy Goatcher  
U.S. Fish & Wildlife Service  
646 Cajundome Blvd., Suite 400  
Lafayette, LA 70506

Department of Justice ("DOJ")

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
DJ # 90-5-1-1-06628

As to the State:

LDEQ

Bruce Hammatt, Administrator  
Office of Environmental Compliance  
P.O. Box 82215 street: 7290 Bluebonnet Road  
Baton Rouge, LA 70884-2215

LDWF

Louisiana Department of Wildlife and Fisheries  
Attention: Heather Finley  
P.O. Box 98000 street: 2000 Quail Drive  
Baton Rouge, LA 70898-9000

LDNR

Louisiana Department of Natural Resources  
Attention: Dr. Terry Howey  
P.O. Box 94396  
Baton Rouge, LA 70804-9396

street: 625 North Fourth St.; 13<sup>th</sup> Floor

LOSCO

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Attorney General

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Assistant Attorney General  
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Baton Rouge, LA 70804

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Baton Rouge, LA 70801

As to Equilon:

James B. Merrell (Representative for all purposes, including fiscal  
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Jerry F. Hall (Representative for all purposes except fiscal.)  
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