MEMORANDUM OF AGREEMENT

BETWEEN

THE UNITED STATES COAST GUARD

AND

THE STATE OF FLORIDA

WHEREAS, Congress enacted the Oil Pollution Act of 1990 (OPA 90) to protect the waters of the United States from oil pollution and to plan for the effective and immediate response in the event of an oil spill, and the President subsequently designated the Coast Guard as the Federal On Scene Coordinator (OSC) within the Florida coastal zone; and

WHEREAS, the State of Florida has enacted the Pollutant Discharge Prevention and Removal Act of 1970, hereinafter referred to as the Pollutant Discharge Prevention Control Act, to protect the waters of the State from oil pollution and to plan for the effective and immediate response, removal, abatement, and cleanup in the event of an oil spill and to augment State authority for the prevention and response to spills in waters under the jurisdiction of the State, and the Act provides that the Florida Department of Environmental Protection is the lead agency in responding to all discharges of pollutants in state waters; and

WHEREAS, Congress explicitly provided that the provisions of OPA 90 do not: (1) preempt or affect the authority of any state to impose additional liability or requirements respecting oil discharges or other oil pollution within such a state or removal activities in connection with such a discharge; (2) affect the authority of any state to establish or continue a fund any purpose of which is to pay for oil pollution or the substantial threat of oil pollution costs or damages, or to require any person to contribute to such a fund; or (3) affect the authority of any state to impose any fine or penalty for violation of law relating to a discharge; and

WHEREAS, the Florida Department of Environmental Protection, (FDEP), subject to the Governor's designation under OPA 90, has the primary State authority to direct prevention, removal, abatement, response containment and cleanup efforts, with regard to all aspects of any oil spill in the marine waters of the State, in accordance with any applicable marine facility or vessel contingency plan, and the Florida Coastal Pollutant Spill Contingency Plan; and

WHEREAS, the Commanders, Seventh and Eighth Coast Guard Districts are the senior Coast Guard Officers within the State of Florida exercising Federal authority under OPA 90 and other Federal laws with respect to oil pollution planning and response in waters subject to the jurisdiction of the United States in and outside the State of Florida and matters dealing with areas of vessel manning and safety equipage; and
WHEREAS, marine oil spills require a rapid, efficient, and coordinated response and cleanup by Federal, State, and local agencies as well as from private entities to minimize the deleterious effects on human, wildlife, and other natural resources; and

WHEREAS, both the Coast Guard and the State recognize the critical roles each has within their respective areas of authority in preventing oil spills and in planning for and responding to oil spills; and

WHEREAS, the Parties recognize the cooperation between them in the implementation and exercise of their respective statutory and regulatory authority is essential to avoid conflict and unnecessary duplication; and

WHEREAS, the Parties believe and intend that by acting in a cooperative and coordinated manner, the effect will be an enhanced oil spill prevention and response effort in the State of Florida.

NOW THEREFORE, the Parties agree, to the extent permitted by law, and as consistent with their respective policies and available resources, to cooperate and to coordinate their efforts in implementing and exercising their respective statutory and regulatory duties related to oil spill prevention and response.

I
PURPOSE AND SCOPE OF THE AGREEMENT

A. This Memorandum of Agreement (MOA), coordinates the relationship between the State of Florida and the United States Coast Guard to provide the foundation for cooperation in the full range of marine pollution related activities. The objective of this cooperative agreement is to ensure a sound State, regional, national and international marine environmental protection strategy by:

(1) minimizing duplication of requirements,

(2) making the most efficient use of State and Coast Guard resources, and

(3) eliminating barriers to marine transportation due to differing Federal and State regimes.
II
GENERAL PROVISIONS (JURISDICTION)

A. Under the provisions of Titles 14, 18, 19, 33, 40, 46, 49 and 50 United States Code (U.S.C.) the United States Coast Guard has authority to regulate vessels and shore facilities to ensure safety of life and property at sea, and protect the marine environment. The Coast Guard's regulatory and enforcement authority extends throughout the navigable waters of the United States, the high seas and other waters over which the United States has jurisdiction. The State of Florida has similar statutory authority for the protection of the marine environment on navigable waters within the state under the provisions of Chapters 370 and 376, Florida Statutes.

B. The body of Federal marine pollution law and regulation, particularly as enhanced by the Oil Pollution Act of 1990 (OPA 90) and new regulations issued under its authority, and other laws and regulations, provide for a coordinated marine environmental protection effort across all pollution sources, including all transportation modes.

C. The body of State law and regulation providing for marine environmental protection effort across all pollution sources, including all transportation modes, is Chapter 376, Florida Statutes, and Chapter 62N-16, Florida Administrative Code.

D. Each party recognizes that the Coast Guard and the State have various overlapping authorities, and are committed to working together to complement rather than duplicate programs and resources.

III
PARTIES

A. The parties to this MOA are the Coast Guard Seventh and Eighth Districts (the "Coast Guard") and the State of Florida (the "State"). The Commanders, Coast Guard Districts Seven and Eight have been delegated by the Commandant, U.S. Coast Guard final authority for performance within the coastal waters of Florida, which in general terms is maritime law enforcement, saving and protecting life and property, and safeguarding navigation and the environment.

B. The Governor of the State of Florida has designated the Department of Environmental Protection, (FDEP) to act on behalf of the State to oversee the development of and enter into this MOA.
C. Pursuant to 33 U.S.C. Section 2706 (b)(3), the Secretary of the Department of Environmental Protection is the designated trustee for all the State's natural resources, including its wildlife. Also, in accordance with s. 376.07(2)(e), F.S., the Department of Environmental Protection is responsible for creating and maintaining a contingency plan and response team. The Bureau of Emergency Response is the designated state responder. Employees of the bureau are predesignated as state on-scene-coordinators. The Chief of the Bureau of Emergency Response is the designated state official who can request state access to the Oil Spill Liability Trust Fund.

D. The Commanders, Seventh and Eighth Coast Guard Districts and the State enter into this MOA to the extent permitted by law and as consistent with their respective policies and available resources, to coordinate their respective statutory and regulatory duties related to protection of the marine environment.

E. Nothing in this MOA shall detract from the existing responsibilities or authority of each party.

IV
DEFINITIONS

Except where otherwise specifically defined in the context of its use herein, or where specifically set forth below, terms used in this MOA shall have the meaning as set forth in Federal and applicable State laws.

A. Specific definitions:

1. State Waters. Those navigable waters of the United States which lie within the jurisdiction of the State of Florida and over which the Coast Guard has concurrent Federal authority for oil spill response.

2. On-Scene Coordinator (OSC). In accordance with 40 CFR 300.5, the OSC is the predesignated Federal official responsible for ensuring immediate and effective response to a discharge or release. The USCG designates OSCs for the U.S. coastal zone, while the U.S. Environmental Protection Agency (USEPA) designates OSCs for the U.S. inland zones. The jurisdictional boundary between these zones is specified in Memorandum of Understanding between the USEPA and the USCG, and is specifically delineated in Appendix M of the Region IV Regional Contingency Plan.
V

PROGRAMMATIC PROVISIONS

NOTE: THIS IS NOT INTENDED TO BE AN ALL INCLUSIVE LIST OF POTENTIAL AREAS OF MUTUAL INTEREST.

A. Oil Spill Response Preparedness. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) establishes the response organization within the United States and requires tiered contingency planning efforts. The State, consistent with the NCP, defines its response organization through the Florida Coastal Pollutant Spill Contingency Plan pursuant to Section 376.07(2)(e), Florida Statutes.

1. Planning Documents

a. National Contingency Plan - NCP: The Environmental Protection Agency (EPA) is the lead agency in drafting and the Coast Guard and EPA are jointly responsible for implementing the NCP which governs actions concerning spill response and cleanup for Federal, State, local agencies, responsible parties, clean-up contractors and others participating in such actions in United States waters. The State will work with the Coast Guard to ensure State plans and policies for marine environmental protection are consistent with the NCP.

b. The Department of Environmental Protection's Environmental Emergency Response Plan: The FDEP is responsible for developing and maintaining the Statewide Contingency Plan that details State responsibilities, policies, and actions governing response to spills in waters of the State. The Department of Environmental Protection has specific statutory authority and responsibility concerning marine oil spills. The Coast Guard and the State will consult to ensure State plans and policies for marine environmental protection are consistent with the NCP.

c. Regional Contingency Plan: The Regional Contingency Plan (RCP) is prepared to comply with the NCP and to implement the NCP at the Regional level. The plan provides the structure and mechanisms for responding to a pollution incident, or threat of a pollution incident, in a timely, coordinated and effective fashion. Procedures for coordinating with the USCG Area Contingency Plans and other Federal, state and local community emergency plans are presented in the RCP.
d. Area Contingency Plan: The Area Committees, established by the President under the authority of the Oil Pollution Act of 1990, are responsible for the development of Area Contingency Plans (ACP) for those Areas under the direction of the Federal On Scene Coordinator (OSC). The ACPs describe the responsibilities of owners, operators and Federal, State and local agencies in responding to oil spills or threats of spills, list equipment and personnel available to respond, describe procedures for the use of dispersants and describe how the ACP integrates with other plans. ACPs are adopted by amendments to the Florida Coastal Pollutant Spill Contingency Plan to facilitate and coordinate ongoing work with local municipalities and coastal counties. The objective is to create consistency between the local, State, and national contingency plans. The Parties agree to consult with each other to enhance contingency planning and to ensure that the ACPs and State plan are uniform, subject to the requirements of existing law.

e. Facility Oil Spill Response Plans: Facility Oil Spill Response Plans are required by both Federal and State law. These plans describe facility capabilities to prevent and respond to pollution emergencies. The State and the Coast Guard will coordinate with the U.S. Department of Transportation, Minerals Management Service, and the Environmental Protection Agency in assessing facility contingency plans. Subject to the requirements of applicable law, regulations and policy, the Parties will develop a system to coordinate, to the extent practicable, the Parties' cooperative review and approval of facility contingency plans. The Parties agree to endeavor to conduct reviews of facility contingency plans in as much of a coordinated and nonduplicative manner as is permitted by applicable laws, regulations and procedures. The Coast Guard and the State will cooperate to ensure that requirements for facility response plans are compatible and do not conflict. State regulations specifically allow the acceptance of plans prepared in accordance with Federal requirements for an oil transfer facility plan.

f. Vessel Oil Spill Response Plans: Vessel oil spill response plans are required by both Federal and State law. These plans describe vessel capabilities to prevent and respond to pollution emergencies. Although the Parties recognize the need to independently review vessel plans for compliance with their respective laws and regulations, the Parties
agree to endeavor to conduct reviews of vessel contingency plans in as much of a coordinated and nonapplicative manner as is permitted by applicable laws, regulations and procedures. The State shall accept to the maximum extent practicable the Federal vessel contingency plan requirements and shall prepare supplementary forms for parties to comply with State requirements in areas such as preventive measures which are in addition to Federal Requirements. The Parties will cooperate to ensure that requirements for vessel contingency plans are compatible and do not conflict. State regulations specifically allow the acceptance of ship-specific contingency plans prepared in accordance with federal guidelines.

2. Government Committees. The NCP directs the organization of government committees to prevent and respond to pollution emergencies.

a. Regional Response Team. The Region IV Regional Response Team (RRT) is established as a coordinating committee by the NCP and includes the State along with the Federal agencies with pollution prevention and pollution response responsibilities. The Parties agree to jointly participate as members of the RRT. RRT participation includes both attending regularly scheduled meetings and responding during incident specific RRT mobilization.

b. Area Committees. Area Committees were established by OPA 90 to maximize State and local participation in contingency planning. The Parties agree to coordinate local response planning by jointly participating in the Area Committee planning process. Both Parties are strongly committed to participating in ACP development and the use of the Area Committees in conducting exercises and drills, consistent with the provisions of the NCP and applicable State contingency plans.

3. Drills and Exercises. Drills and exercises are required to ensure the readiness and interoperability of pollution response organizations. It is the intention of the Parties to encourage coordination, participation, and cross-training in periodic drills and exercises to facilitate a better understanding of each Party's duties and responsibilities as well as to ensure a combined, effective, familiar working relationship at oil spill incidents. The Parties agree to interact in the planning, scheduling, design, conduct and evaluation of exercises as time and resources permit. In this context, the Parties recognize the role that the National Strike
Force Coordination Center, as the focal point for exercise strategy for all elements of the National Response System, will schedule, design, execute, evaluate and provide feedback on all National Response System exercises in conjunction with the appropriate RRT and Area Committees. The Parties agree to make available, as time and resources permit, any published annual reports as required by OPA 90 and State statutes and rules concerning evaluations of drills and recommended changes to the National and Area Contingency Plans.

4. Certification of Oil Spill Response Organizations. The State and various Coast Guard commands evaluate, categorize, and certify oil spill response organizations. Within the limitations of their respective authority, the Parties will cooperate to the maximum extent practicable, in the evaluation, categorization, and certification of oil spill response organizations and the development of joint certification guidelines. The Parties will develop joint certification guidelines consistent with Federal regulations, and conduct independent or joint reviews as necessary or desirable. The State shall accept to the maximum extent practicable the Federal compliance documents for Federal certification and shall prepare supplementary forms for compliance with State regulations.

B. Prevention.

1. Cooperative Implementation. The Parties are coordinating their efforts to prevent oil spills in the marine environment. To the extent permitted under applicable laws, the Parties agree to cooperate in the execution of their respective regulatory responsibilities, to minimize duplication of effort, and seek to identify opportunities for innovative implementation of casualty prevention plans. Both Parties recognize the importance of encouraging cross-training in each other's regulations and rules including the areas of inspection and response. Each Party must exercise its own rulemaking implementation responsibilities independently and in accordance with applicable rulemaking procedures. Federal inspection requirements associated with vessel safety are not subject to supplemental State regulation.

2. Vessel Inspection. Each Party recognizes that the other must independently exercise its respective examination responsibilities in accordance with applicable law, regulations and policies. The Coast Guard conducts inspection programs for the purpose of enforcing both international agreements and domestic law aboard United States and foreign flagged vessels. The Parties agree to work together to avoid inconsistent requirements and to
find ways to conduct vessel inspections in such a way that disruption to the industry is minimized and efficiency and safety maximized. In implementing any State examination programs, the State agrees to avoid conflicts and unnecessary duplication in reviewing Federal inspection programs by ongoing consultation with the Coast Guard. The Parties each agree to make inspection records available to the other and to cooperatively review inspection results, subject to applicable laws, regulations, and procedures. The State shall report to the responsible Officer in Charge Marine Inspection (OCMI) recognized discrepancies in meeting the requirements of international agreements believed to exist aboard United States and foreign flagged vessels. The Parties will cooperate to establish consistent pollution prevention requirements, and to cooperatively monitor, examine and exchange information relative to those requirements, for vessels to operate in State waters. The State will promptly inform the cognizant OCMI and the Coast Guard will promptly inform the State Department of Environmental Protection of any situation or circumstance relative to a vessel whose condition or equipment may significantly increase the potential for an unauthorized discharge or create an unusual or an unacceptable risk to public health and safety, or the safety of navigation within State waters. Both parties agree to share all applicable information obtained from their respective vessel inspections and examination.

3. Vessel Screening. When the State determines that a particular vessel or vessels pose a substantial threat of a discharge of oil or a hazardous substance, or pose an unreasonable risk of damage to the navigable waters or the resources therein, that determination will be forwarded to the cognizant Coast Guard Captain of the Port (COTP). The COTP shall consider that information in making a determination under Federal law, including but not limited to 33 U.S.C. 1321(c) and 33 CFR 160, as to appropriate action to be taken, if any.

4. Tank Vessel Equipment. The Coast Guard conducts inspections and examinations to ensure compliance with requirements for equipment to ensure safety of life at sea aboard vessels. The Parties will cooperatively examine pollution prevention and pollution response equipment aboard vessels and report noncompliance to the other party.

5. MARPOL 73/78. International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto. MARPOL is an international agreement implemented to reduce pollution from vessels. The Parties will cooperate in the enforcement of existing MARPOL requirements. The Coast
Guard will keep the State informed concerning MARPOL regulations and both Parties will work together to develop disposal services adequate to support port operations.

6. Facility Inspections. Facility inspections are conducted by both Parties to ensure compliance with pollution prevention and pollution response regulations. The State has statutory responsibility for oil transfer facilities and their operation with the State. Included in this responsibility is the requirement to establish regulation and inspection programs governing oil transfer facilities. This includes regulation and inspection of oil transfer operation between marine facilities and tank vessels. The Parties will coordinate their respective inspection and monitoring activities to the extent practicable to utilize the resources of both Parties efficiently and effectively. Cognizant inspectors from both Parties may carry out inspections and other activities jointly where appropriate. The Parties will cooperatively enforce requirements for pollution prevention and pollution response equipment at marine facilities. The Parties will cooperatively enforce requirements for trained and qualified personnel to be responsible for transfer operations at marine facilities. The Parties will work together to ensure adequate facilities are present to receive garbage, sewage, and oily wastes from vessels. The State will promptly inform the COTP and the USCG will promptly inform the State of any situation or circumstance relative to facilities whose operation or equipment may significantly increase the potential for an unauthorized discharge or create an unusual or an unacceptable risk to public health and safety, or the safety of navigation within State waters.

7. Waterways Management.

   a. Port and Waterways Safety. The Coast Guard COTP is the predesignated Federal official with primary responsibility to exercise control of vessels to ensure the safety and security of ports and waterways. The State Department of Environmental Protection is responsible for the planning of safe navigation and operation of tankers, barges, and other vessels in harbors and harbor approaches. The State will promptly inform the COTP and the Coast Guard will promptly inform the appropriate State authority of any situation or circumstance relative to vessels whose operation or equipment may significantly increase the potential for an unauthorized discharge or create an unusual or an unacceptable risk to public health and safety, or the safety of navigation within State waters. The State is guided by recommendations from the Department of
Environmental Protection for the planning of safe navigation and operation of tankers, barges, and other vessels within each harbor. The State will coordinate regulations with the COTP.

b. Pilots. Federal law may require pilots aboard vessels sailing within the coastwise trade. Foreign vessels or United States vessels sailing on their registry endorsement of their certificate of documentation may be controlled by State pilotage requirements. In the absence of State pilotage regulations, the Federal government may impose pilotage requirements. The Coast Guard will regulate Federal pilotage where required.

c. Tug escorts. Federal and State law authorize the regulation of the use of tug escorts and may require either equipment or standards of performance deemed necessary for the function. Where circumstances permit, the State and the Coast Guard agree to consult with each other in issuing any regulations requiring tug escorts to ensure that they are consistent. The Parties agree to review requirements for tow equipment for barges and tank vessels carrying oil in bulk with the purpose of determining whether additional standards for equipment, maintenance, operation, and inspection should be adopted.

8. Public Information/Education. The Parties agree that public education in areas of pollution prevention, which includes oil, hazardous substances, and garbage, is a high priority and each agency shall seek opportunities to coordinate pollution prevention public awareness and education programs. Public information and education will be developed cooperatively and implemented targeting marina operations, small oil transfer facilities, and the recreational boating community to reduce pollution from oil, toxic substances, garbage, and sewage.

C. Response. Federal law establishes the Coast Guard as the primary Federal agency tasked with responding to oil spills on waters of the United States. In such cases, the Coast Guard OSC is the predesignated official responsible for cleanup operations. The OSC may direct or monitor all Federal, State, and private actions in response to an oil spill or a potential oil spill in State waters. The Parties will respond to marine oil spills as required by and in accordance with the NCP. The OSC will consult, as required by OPA 90 and other applicable Federal law, with the Bureau of Emergency Response within the Florida Department of Environmental Protection concerning oil spill response activities. State law provides that the Department of
Environmental Protection is responsible for coordinating oil spill cleanup efforts within Florida waters. The Parties agree to work together within the framework of their respective authorities to ensure a coordinated effort with a minimum of duplication is undertaken in response to oil spills.

1. Unified Command Systems (UCS). UCS establishes lines of communication, information sharing and control for the conduct of an oil spill response operation by the adoption of the Area Plan. This system ensures notification procedures are in place which inform cognizant agencies of the State when actual or potential spills that may affect State waters are reported. The Parties agree to provide the earliest possible notification of discharges of oil and hazardous substances and imminent threats of such discharges to each other in accordance with applicable law, regulations and policies and consistent with the NCP. In order to provide a single point of contact for the OSC in the event of an actual or potential discharge of oil or hazardous substances that may affect State waters, the Department of Environmental Protection's Florida Marine Patrol District Office represents all State agencies and will be the primary point of contact. The Parties agree to implement a UCS to ensure coordination of emergency response decision making during a pollution incident. In those circumstances where governmental action is required to develop and direct action to clean up or abate the effects of an oil spill, the Parties agree to consider best utilization of existing resources, avoiding duplication while taking advantage of resource availability. The OSC may request the State to undertake response actions on a case-by-case basis, utilizing the UCS to determine the capability of response. If the State assumes responsibility for response activity, the State will conduct those activities as directed by the OSC, in accordance with the NCP and ACP. The OSC will coordinate with the State in decision making relating to the conduct of the oil spill response operations including, but not limited to: salvage, lightering, safe haven, and other matters affecting the release of spilled oil, its containment or its cleanup. The Parties agree to establish a joint public information center to provide for the coordinated dissemination of information during a response operation. This provision does not preclude the Parties from making independent responses to the media and the public.

2. Approval for Federal Funded Response. Florida Division of Law Enforcement personnel responding to a pollution incident are often the first officials at the scene in a position to observe the facts relevant to the initiation
of a federally funded response. When, prior to the arrival of federal officials at the scene, such action appears appropriate, the designated state representative should make a specific request for a federally funded response to the Coast Guard OSC. If the OSC determines, based on information provided by the state representative, that a federally funded response is appropriate, then the Coast Guard may contract for spill response in the normal manner. In such instances appropriate Florida personnel will remain on-scene, investigate the source, and document the services being provided by the federal contractor until relieved by Coast Guard personnel or expressly released by the OSC at the conclusion of the response. Upon arrival, responding Coast Guard personnel will assume on-scene responsibility for the response activities and clean-up costs incurred pursuant to the federal contract. Florida will provide appropriate documentation of the source and the response to the Coast Guard OSC in a timely manner. The following guidelines have been established for use by designated state representatives to request approval for a federally funded response.

(a) The spill is in the waters of the U.S., poses a threat to the waters of the U.S., poses a threat to the public's health or welfare, or generates critical public concern.

(b) The spill will harm the environment by damaging or destroying state or federal resources including wildlife and their habitat.

(c) The spill is cleanable.

(d) Actions are in accordance with the NCP.

3. Natural Resource Protection. Both Parties recognize the importance of protecting and preserving natural resources in responding to an oil spill event. Both Parties agree that response strategies and procedures will be established through the UCS, in accordance with applicable laws, regulations and policies, and procedures.

4. Response Monitoring and Technology. Both Parties agree that the stringency and methods used to clean up oil and oily debris shall be established through the UCS. The UCS will decide what level of action is required by the responsible party, and may decide to direct the clean up operations by the responsible party or to assume responsibility for the cleanup operation. Both Parties agree, through the UCS, to provide timely input and recommendations to the OSC, to the extent practicable, on dispersant usage, in-situ burning, bioremediation, and
other non-mechanical cleanup technologies. Both Parties agree that decisions to discontinue cleanup operations and demobilize response activities shall be made through the UCS. The State retains the authority to undertake remedial or mitigating actions beyond the response actions required by the NCP.

A. Subject to the requirements and limitations of applicable State and Federal law, the parties agree to coordinate marine casualty investigations including the sharing of collected samples, information regarding witnesses, reports, and other available information that may assist in determining the cause of the casualty.

B. Although enforcement action undertaken by each of the parties must occur independently in accordance with applicable laws and regulations, the Parties agree that to the extent possible, they will consult with each other as to intended enforcement action.

C. Each party will endeavor, to the extent practicable, to ensure that reports documenting "elements of the violation" are sufficient to pursue both a Federal and State action. This documentation should be made available upon request to the extent permitted by law.
VII

INFORMATION MANAGEMENT

A. The exchange of information between Federal government and the State relative to marine pollution events and current risks is necessary to develop appropriate preparedness, prevention and response systems. The Coast Guard and the State will share information from the databases they maintain in order to make accurate and timely decisions to prevent, prepare for, and respond to marine pollution incidents.

B. The Coast Guard and the State will furnish each other with policy, studies, research and development projects, rulemakings, and reports on marine pollution that may be of interest to the other party.

C. The Coast Guard District office will coordinate requests for data, the status and results of investigations, studies, and civil penalty actions. The Department of Environmental Protection shall perform a similar function for the State.

D. The Coast Guard and the State will furnish each other with the texts of bills or laws, rules or regulations of mutual interest having to do with prevention of or response to pollution of the marine environment or any related matters that are the subject of this agreement, along with any published administrative interpretations thereof. Careful consideration will be given to all recommendations and comments by the State on regulatory proposals made by the United States Coast Guard as an Agency, under the requirements of the Administrative Procedure Act. The State will carefully consider all recommendations and comments by the Coast Guard on State proposed regulations, under the requirements of the Administrative Procedure Act, Chapter 120, Florida Statutes.

E. In order to promote the efficiency and effectiveness of investigations where there is concurrent jurisdiction, the Coast Guard and the State agree to share information on such investigations in a timely manner. Under exemptions provided by law and in accordance with policies and procedures established by the Department of Justice and the Coast Guard, the Coast Guard agrees it will seek to withhold information provided by the State from release under the Freedom of Information Act if the State has determined that such information is specifically exempted from disclosure by State statute. If the Coast Guard releases information to State investigatory agencies which it has determined to be exempt from public disclosure under 5 U.S.C. Section 552(b), the State will not disclose such information to persons or agencies not involved in the investigation to the extent provided by the exemptions in Chapter 119, Florida Statutes. If the State determines that the information must be disclosed pursuant to Florida law, the State shall notify the
Coast Guard of its duty to disclose as soon as it becomes apparent to the State. The State agrees to notify the Coast Guard of any request for documents or information which involve joint or shared investigations of marine incidents.

VIII
EVALUATION OF MOA

A. The Parties shall independently evaluate the effectiveness of this MOA in light of the purpose and scope, particularly with respect to the underlying principles of cooperation, the minimization of regional regulatory impacts on industry, and environmental protection.

B. At least every three years, the Parties shall present their findings and any proposals to revise this MOA as appropriate.

IX
MISCELLANEOUS

A. This agreement represents a voluntary understanding between the Commanders, Coast Guard Districts Seven and Eight and the State of Florida.

B. Provisions of this MOA shall be effective when signed by the three parties involved. This MOA will remain in effect until rescinded by any party in writing.

C. The terms of this agreement may be changed at any time by the Parties by a written, signed amendment hereto with or without notice to any other person. The agreement may be terminated by either party at any time without notice to any person other than the other parties. Any action to modify, amend or terminate this agreement may only be taken by the Secretary of the State of Florida Department of Environmental Protection or the Commanders, Seventh or Eighth Coast Guard Districts or persons to whom this authority is specifically delegated by them.

D. This agreement does not create, alter, modify, or abridge, or in any way affect any rights, duties, obligations, or liabilities of any person under the laws of the United States or the State of Florida. No legal action or claim based upon this agreement may be brought against the United States, U.S. Coast Guard, or the State of Florida by any person.

E. In the event that individual and severable portions of this agreement are found to be in conflict with either State or
Federal law, regulations or policies and therefore of no effect, the agreement will remain in effect without those provisions unless either party notifies the other in writing that the entire agreement is terminated.

FOR THE STATE OF FLORIDA:  

VIRGINIA B. WETHERELL  
Secretary, Dept. of  
Environmental Protection  
State of Florida  

DATE: 7.27.95

FOR THE UNITED STATES COAST GUARD:  

W. P. LEAHY, JR.  
Rear Admiral, USCG  
Commander,  
Seventh Coast Guard District  

DATE: 6.21.95

R/C NORTH  
Rear Admiral, USCG  
Commander,  
Eighth Coast Guard District  

DATE: 7.3.95
ANNEX A

National Pollution Funds Center (NPFC)
Funding Information Annex
Pursuant to Section 1012(d)(1) of
the Oil Pollution Act of 1990 (OPA 90)
(P.L. 101-380)

1. Introduction. This Annex is reserved for funding information that the NPFC may eventually develop in order to enter into agreements with the State; currently, however, this annex is available for use only as a reference for accessing the Oil Spill Liability Trust Fund (the Fund) and does not constitute a binding agreement. To the extent allowed, a State may access the Fund under currently published regulations and NPFC procedures.

2. The Fund.

   a. The NPFC administers the Fund in order to: provide State access to the Fund, conduct cost recovery, accept and process claims, and evaluate requests by federal trustees to fund the initiation of the assessment of natural resource damages. Also, the NPFC administers Certificates of Financial Responsibility and provides CERCLA/Superfund funding to Coast Guard OSCs responding to hazardous material incidents.

   b. An individual State may receive payments from the Fund in the State's role as a response organization engaged in removal activities consistent with the NCP, as an appropriate claimant for damages, and in its role as a natural resource trustee. In addition to the text herewith concerning Section 1010(d)(2) of OPA 90, States recognize the following provisions outline alternative funding methods for State removal activity.

(1) Section 1012(d)(1). Regulations under Section 1012(d)(1) of OPA 90 allow the NPFC, upon the request of the Governor of a State and as authorized by the OSC, to obligate the Fund for payment in an amount not to exceed $250,000 for removal costs, consistent with the NCP, required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, or oil. The NPFC's Technical Operating Procedures (TOPs) for State access under Section 1012(d)(1) of OPA 90, and the TOPS for Resource Documentation under OPA 90 are approved guidelines for State use to access the Fund under this section.

(2) Claims. Regulations under Section 1010(a)(4) of OPA 90 authorize use of the Fund for "the payment of claims in accordance with Section 1013 of OPA 90 for
uncompensated removal costs determined by the President (Coast Guard) to be consistent with the NCP or (for) uncompensated damages." Procedures for claims are found in 33 CFR Part 136. States have a special status under Section 1013 of OPA 90 regarding claims for uncompensated removal costs which allows States to make such claims directly to the Fund rather than first to the responsible party.

(3) Working Directly for the OSC. State agencies may work directly for the Coast Guard OSC in performing removal actions. In these situations, the OSC issues a Pollution Removal Funding Authorization (PRFA) to the State to establish a contractual relationship and to obligate the Fund. The OSC actively directs and is responsible for the response actions. (Additionally, a Coast Guard OSC may request State assistance and participation in emergency removal actions under CERCLA in response to a hazardous materials incident or threatened incident and where funding for these actions is via a PRFA).

c. Natural Resource Damage Assessments. Working through a Federal Lead Administrative Trustee (one of the Federal Trustees designated in the NCP), a State trustee may, in accordance with the procedures established by the NPVD, request access for the initiation of an assessment of natural resource damages resulting from a discharge of oil (section 6002(b) of OPA 90).
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BETWEEN
THE UNITED STATES COAST GUARD
AND
THE STATE OF FLORIDA

ADDENDUM NO. 96-01

The United States Coast Guard, Seventh District and Eighth District ("USCG"), and the State of Florida (collectively "the parties") entered into a Memorandum of Agreement ("MOA") on July 5, 1995. The intent of this MOA was to cooperate and coordinate response efforts related to oil spill prevention and response in a manner which would avoid conflict and unnecessary duplication of response actions.

While the original intent of this MOA was to coordinate efforts and minimize duplication of actions when a discharge or imminent threat of a discharge occurred, it was not intended to provide procedures or guidelines to the State of Florida for submittal of claims to the National Pollution Funds Center for processing and payment from the federal Oil Spill Liability Trust Fund ("OSLTF") pursuant to 33 U.S.C. § 2701 et seq. ("OPA 90").

The parties now agree that the MOA should be expanded to provide a procedure to guarantee and memorialize coordination efforts between the parties when responding to a discharge or imminent threat of a discharge. The parties have developed a Preliminary Pollutant Discharge Report which shall be completed by Florida Marine Patrol personnel and the Duty Officer at the USCG MSO responsible for responding to the discharge or imminent threat of a discharge. (A copy of this Preliminary Pollutant Discharge Report is attached as Exhibit A.)

This Report shall be completed in full and faxed between the parties to ensure notification, preliminary assessment and coordination as required by OPA 90. The Report shall be completed and executed by the State representative and the federal onscene coordinator within
24 hours if possible. State personnel shall attach the completed Report to any claim submitted to the National Pollution Funds Center for reimbursement of unrecovered response costs from the OSLTF.

This Report shall be sufficient evidence of state coordination of removal actions with the federal onscene coordinator to meet the requirements of 33 CFR 136.203 and 33 CFR 136.205 and the policies and procedures of the National Pollution Funds Center.

This Addendum may be executed in one or more counterparts. All counterpart signature pages shall be considered part of the original document.

ADDENDUM No. 96-01

FOR THE STATE OF FLORIDA:

[Signature]

Virginia B. Wetherell, Secretary
Department of Environmental Protection
DATE: __________________________

FOR THE UNITED STATES COAST GUARD:

[Signature]

Rear Admiral, USCG
Commander, Seventh Coast Guard District
DATE: MAY 22, 1997

[Signature]

Rear Admiral, USCG
Commander, Eighth Coast Guard District
DATE: JULY 30, 1997