

**MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES COAST
GUARD, NATIONAL POLLUTION FUNDS CENTER AND THE FEDERAL NATURAL
RESOURCE TRUSTEES FOR THE M/V NEW CARISSA OIL SPILL**

Whereas counsel for the United States and counsel for Britannia Steamship Insurance Association Limited, Green Atlas Shipping, S.A., Taiheiyo Kaiun Co., TMM Co., Ltd., Benjamin Morgado, and Shipowners Insurance and Guarantee Co., Ltd. (collectively, the AVessel Interests@) propose to resolve *Green Atlas Shipping, et. al. v. United States, CV01-156 KI (D. Oregon)*, as well as all potential natural resource damages claims that the United States could have brought against the Vessel Interests pertaining to the *M/V New Carissa* Oil Spill (the AIncident@), in the manner described in the AAgreement of Counsel: Proposed Settlement Of New Carissa Federal Case@ attached hereto (AAgreement of Counsel@);

Whereas under the Agreement of Counsel, Green Atlas Shipping, S.A. and TMM Co., Ltd. are to pay \$4 million to the United States (the ALump Sum Payment@) in satisfaction of any liability they may have for natural resource damages stemming from the Incident and the United States is to provide the Vessel Interests, their officers, employees, agents, representatives, insurers and re-insurers a covenant not to sue for natural resource damages resulting from the Incident;

Whereas the Lump Sum Payment is an element of the global resolution of claims by and among the United States and the Vessel Interests that represents a compromise of federal liabilities associated with the Incident and does not reflect the value of the natural resource damages claim held by the trustees of the natural resources that were injured, lost, destroyed, or suffered a loss of use as a result of the Incident (the ATrustees@);

Whereas it is the desire of the Trustees to ensure that the consent of the Department of the Interior and the Department of Agriculture (the AFederal Trustees@) to the United States= provision to the Vessel Interests of a covenant not to sue for natural resource damages resulting from the Incident and that the Federal Trustees= acceptance of the Lump Sum Payment does not affect the Trustees= rights to recover from the Oil Spill Liability Trust Fund full compensation for such natural resource damages;

Whereas both the United States Coast Guard, which administers the Oil Spill Liability Trust Fund through its National Pollution Funds Center, and the United States Department of the Interior, which administers the Natural Resource Damage Assessment and Restoration Fund, desire that the Lump Sum Payment be used in part to provide reimbursements to those funds for their advances to the Trustees of pre-assessment and restoration planning costs incurred as part of the natural resource damage assessment for the Incident;

IT IS HEREBY AGREED THAT:

1. The acceptance by the Federal Trustees from Green Atlas Shipping, S.A. and TMM Co., Ltd. of the Lump Sum Payment or any portion thereof and the Federal Trustees= consent to the United States= provision of a covenant not to sue the Vessel Interests for past, present, or future natural resource damages resulting from the Incident shall be without prejudice to the rights of the Trustees to present a claim to, and receive funding from, the Oil Spill Liability Trust Fund (AOSLTF@) for natural resource damages resulting from the Incident. Specifically, the Trustees need not first present their claim to the responsible parties or the guarantor because the Trustees= claim to the OSLTF will be one for which Afull and adequate compensation is unavailable@ within the meaning of Section 1013(d) of the Oil Pollution Act of 1990, as amended (AOPA@). Further, the rebuttable presumption accorded the Trustees= determination or assessment of damages to natural resources made in accordance with the regulations promulgated under Section 1006(e)(1) of OPA (the Arebuttable presumption@) shall not be affected by the Trustees= acquisition, in advance of finalizing a damage assessment and restoration plan, of purchase options that would facilitate the acquisition of habitat to restore one or more of the seabird species injured by the Incident.

2. Any claim submitted to the OSLTF by the Trustees, or any of them, for uncompensated natural resource damages stemming from the Incident will be processed and adjudicated in accordance with the applicable regulations appearing at 33 C.F.R. Part 136. The National Pollution Funds Center will make a determination whether the Trustees= damage assessment was conducted in accordance with applicable provisions of the natural resources damage assessment regulations promulgated pursuant to Section 1006(e)(1) of OPA. Mere use by the Federal Trustees of the Lump Sum Payment for reimbursements to the Natural Resource Damage Assessment and Restoration Fund (NRDA-R Fund) or for restoration planning costs does not, in and of itself, make the Trustees= determination or assessment of damages to natural resources inconsistent with those regulations. In order to show that they have uncompensated natural resource damages and demonstrate adherence to the foregoing regulations, the Trustees shall submit the entire claim and all supporting documentation to the OSLTF, including documentation for all sums expended from the Lump Sum Payment. The amount paid on the Trustees= claim from the OSLTF will first deduct all monies in the Lump Sum Payment plus accrued interest, except that the \$867,899.72 reimbursement to the OSLTF referred to in Paragraph 3 below will not be so deducted. If the entire claim and all supporting documentation is presented in an organized format and clearly demonstrates adherence to applicable regulations, the National Pollution Funds Center will usually be able to adjudicate the claim within less than a three-to-six-month time frame.

3. Of the Lump Sum Payment, \$867,899.72 shall be allocated to the OSLTF for reimbursement of its payments to the Trustees for pre-assessment costs associated with their natural resource damage assessment of the Incident and \$248,000 shall be allocated to the NRDA-R Fund for reimbursement of the funding it provided to the Trustees for the restoration planning phase of their damage assessment. The remainder of the Lump Sum Payment shall be placed in an interest-bearing sub-account of the NRDA-R Fund dedicated to the payment of damage assessment and restoration costs associated with the *M/V New Carissa* Oil Spill.

4. This Memorandum of Agreement may be modified in writing by agreement of the United States

Coast Guard and the Federal Lead Administrative Trustee, with the consent of the Federal Trustees.

For the United States Coast Guard:

Dated this ____ day of December, 2003

JAN LANE
Director, National Pollution Funds Center
United States Coast Guard

For the Federal Trustees:

Dated this ____ day of December, 2003

ELAINE MARQUIS-BRONG
State Director for Oregon/Washington
Bureau of Land Management
U.S. Department of the Interior
Federal Lead Administrative Trustee