MEMORANDUM OF UNDERSTANDING

Between the

NATURAL RESOURCE CO-TRUSTEES

for the

STATE OF INDIANA

and the

NATURAL RESOURCE TRUSTEE REPRESENTATIVES

for

REGION 3

UNITED STATES FISH AND WILDLIFE SERVICE

DEPARTMENT OF INTERIOR

MEMORANDUM OF UNDERSTANDING

I. INTRODUCTION

This Memorandum of Understanding (MOU) by and between the Indiana Department of Natural Resources (DNR), the Indiana Department of Environmental Management (DEM) and the United States Department of Interior Fish and Wildlife Service (USFWS) is entered into to ensure the coordination and cooperation of the Trustees in the preparation of the assessment and the pursuit of claims for damages for injuries to natural resources under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., the Federal Water Pollution Control Act, 33 U.S.C.1251 et seq., and the Oil Pollution Act of 1990, 33 U.S.C. 2701 et seq. (hereinafter collectively referred to as the "Acts"). Additionally, the aforementioned parties enter into this agreement to ensure coordination and cooperation in the application of any damages, recovered under the Acts for loss of or injuries to natural resources, toward the restoration, rehabilitation, replacement and/or acquisition of natural resources equivalent to those lost or injured.

II. PARTIES

The following officials (hereinafter collectively referred to as the "Trustees") are parties to the MOU and act on behalf of the public as trustees for natural resources under this MOU:

1. Deputy Director, Bureau of Water and Resource Regulation, Indiana Department of Natural Resources;
2. Assistant Commissioner, Office of Environmental Response, Indiana Department of Environmental Management; and
3. Regional Director, Region 3, United States Fish and Wildlife Service, Department of Interior.

III. EVENTS

This MOU is intended to address all releases, spills, or other incidents, occurrences, or events (hereinafter referred to as "events"), in the State of Indiana and its boundary waters, which give rise to a claim for Natural Resource Damages under the Acts.

IV . PURPOSE

The Trustees recognize the importance of integrating and coordinating the assessment of damages for injuries to natural resources and seeking compensation for those injuries to natural

resources and/or the services they provide, and restoration of those affected resources and/or services provided by those resources. The purpose of this MOU is to provide a very general framework for such coordination and cooperation between the Trustees, and for the implementation of the activities of the Trustees in furtherance of their responsibilities as trustees for natural resources under the Acts. The Trustees' activities will primarily involve assessing damages for injuries to natural resources, seeking compensation for those injuries to natural resources and restoring the injured natural resources and/or the services provided by those natural resources affected by the event.

V. AUTHORITY

The Trustees enter into this MOU in accordance with their responsibilities as trustees for natural resources under the Acts and, if utilized, the Natural Resource Damage Assessment Regulations, 43 C.F.R. Part 11, or the Oil Pollution Act of 1990 regulations when promulgated.

VI. ORGANIZATION OF A TRUSTEE COUNCIL

The Trustees recognize the importance of coordinating their efforts in order to meet their respective natural resource trustee responsibilities effectively and efficiently under the Acts. Accordingly, there is hereby created a Trustee Council to implement this MOU to which the USFWS Trustee will designate a representative, and to which the state Trustees shall act as their own representative or each shall designate a representative to act on their behalf. These representatives shall fully coordinate Trustee activities and may seek advisory participation from the United States Department of Justice, the State Attorney General or other legal advisors, and the United States Environmental Protection Agency, when appropriate.

VII. DUTIES AND RESPONSIBILITIES OF THE COUNCIL

The Trustee Council representatives shall coordinate and authorize all Trustee activities and matters under this MOU in accordance with the decision making requirements contained in Section VIII. The representatives may take whatever actions, in their discretion, are determined necessary to fulfill the responsibilities of each Trustee under the Acts and applicable state Laws. It is expected that the representatives, in accordance with applicable laws and policies, may take the following actions, <u>inter alia</u>, to address the Trustee's natural resource responsibilities:

A. Conduct scientific and technical studies, sampling and

other matters related to the assessment of natural resource damages for the event.

B. Seek compensation from responsible parties for the damages assessed by the Trustees and for the costs of planning and implementing the assessment.

C. Participate in negotiations with responsible parties in concert with attorneys for the Trustees.

D. Supervise, manage and obligate any money paid to the Trustees by or on behalf of responsible parties for the purpose of assessing, restoring, replacing, rehabilitating and/or acquiring the equivalent of the affected natural resources in accordance with applicable law.

E. Oversee the development and the implementation of a plan for the restoration, replacement, rehabilitation and/or acquisition of equivalent resources for those trust resources, and/or the services provided by those resources, that were injured, destroyed or lost.

F. Make all necessary decisions for the management and administration of funds pursuant to Section IX of this MOU in accordance with applicable law.

G. Arrange for one or more contracts with professional consultants, technical or otherwise, that the Trustees determine are necessary and best qualified to provide services to the Trustees, in accordance with applicable law.

H. Identify a contact for coordination with the Coast Guard regarding access to the Oil Spill Liability Trust Fund.

The duties of the representatives shall include, but are not limited to: coordination and monitoring of the progress of the natural resource damage assessment process; scheduling of meetings, and preparation of agendas for those meetings; acting as a central contact point for their respective Trustee(if applicable); and establishment and maintenance of records and relevant documents. The representatives will be responsible for informing the other Trustees of all pertinent developments on a timely basis.

VIII. DECISION MAKING BY THE COUNCIL

The Trustees agree that decisions implementing this MOU shall require unanimous approval. In the event that unanimous agreement cannot be reached among representatives, the matter in dispute will be elevated to the officials designated as parties in Section II of this MOU to act as Trustees to either resolve the dispute or to establish further mechanisms by which disputes may be resolved. The

Trustees further agree that decision making deliberations will focus upon the Trustees' mutual purpose of assessing, restoring, rehabilitating, replacing and/or acquiring the equivalent of the affected natural resources, rather than upon control or respective trusteeship over those resources.

IX. FUNDS

The Trustees through their representatives may agree to cooperate in good faith to establish, to the extent consistent with applicable law, a joint trust fund for purposes of receiving, holding, disbursing, managing, and expending all natural resource damage recoveries obtained or received by the Trustees relating to the natural resource injuries arising out of the event and interest earned thereon. By agreement the Trustees may establish an individual and independent account or accounts on a case by case basis into which they may deposit damages received from recovery resulting from litigation or settlement of any event under the Acts. Such recovered damages shall be used for restoration activities conducted under this MOU to address those injuries to natural resources and the services that they provide. Any damage recoveries for injury to natural resources obtained or received by or on behalf of any Trustee may be deposited in this joint fund.

Alternatively, subject to the requirements of applicable law, each Trustee may, by agreement, establish an individual account or accounts on a case by case basis into which the recovered damages may be deposited. Such recovered damages shall be used for restoration activities conducted under this MOU to address those injuries to natural resources and the services that they provide.

The Trustee representatives, in accordance with the decision making process in Section VIII, shall establish standards and procedures governing the joint use of all natural resource damages received by the Trustees for the purposes of restoring, replacing, rehabilitating and/or acquiring the equivalent of natural resources injured and the lost services provided by such resources. The Trustees further agree that monies for the following costs shall be advanced or reimbursed to each Trustee out of any damage assessment cost recoveries or payments thereon, including funds received from the Oil Spill Liability Trust Fund: reasonable unreimbursed costs jointly agreed upon for the planning, conduct, evaluation and coordination of all natural resource damage assessment activities pursued by the Trustee representatives.

X. CONFIDENTIALITY

The Trustees agree that it is in the public interest that all scientific data arising out of their review of the injury to

natural resources as a result of the occurrence be made public. Therefore, such data shall be made public as soon as its publication will not prejudice or adversely effect any claim for natural resource damages. All parties to this MOU recognize that all written or oral communications related to the assessment and recovery of damages for injury to natural resources are being undertaken in anticipation of litigation. Accordingly, all oral and written communications and work products will be treated as privileged attorney-client communications, attorney work product or protected by other applicable privilege (or a combination thereof), as appropriate, and will be protected from disclosure to the maximum extent possible under applicable Federal or State law. They further agree that whenever a request for production of such a record is received pursuant to any applicable Federal or State law, the request will be forwarded for response to the Trustee to whom the privilege applies, or who originally generated or contributed the record requested. Nothing contained herein shall be construed as prohibiting or restraining the Trustees from agreeing to release any record.

XI. RESERVATION OF RIGHTS

Except for the confidentiality agreement contained in Section X, all parties understand that this document is not intended to create any further legal rights or obligations between the parties, the Trustees, or any other persons not a party to this MOU.

XII. MODIFICATION OF AGREEMENT

It is acknowledged that additional agreements may be executed by the Trustees with regard to natural resource damage claims that arise and for the restoration, replacement, rehabilitation and/or acquisition of equivalent natural resources that may be injured, destroyed or lost at specific sites in response to events. Such site specific agreements may include additional Trustees as parties or otherwise reflect the needs of the site, but will not be interpreted as modifying this general agreement by implication. Therefore, modification of this MOU must be in writing and upon approval of all Trustees currently parties to the MOU.

XIII. TERMINATION

This MOU shall be in effect from the date of execution until termination by agreement of the Trustees. In the event any Trustee withdraws from the MOU, such withdrawal must be in writing at least thirty days in advance of the withdrawal. In the event of such withdrawal, this MOU remains in full force and effect for the remaining parties.

In the event of the withdrawal of any Trustee, or at the termination of this MOU, there shall be a full and complete accounting of all funds received, deposited, held, disbursed, managed, or expended pursuant to Section IX of this MOU, or otherwise controlled in any joint account by the Trustees as a result of any occurrence.

XIV. LIMITATION

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

XV. THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this MOU are subject to the availability of funding and are intended to be guidance for the respective Trustees. They shall not be the basis of any third party challenges or appeals.

XVI. EXECUTION: EFFECTIVE DATE

This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU.

The effective date of this MOU shall be the date of the signature of the Trustee who is last to sign.

Greta Hawvermale
Indiana Co-Trustee
Assistant Commissioner
Indiana Department of
Environmental Management

Date: 7/29/93

Kathy Prosser
Commissioner
Indiana Department of
Environmental Management

Date: 8-2-93

David L. Herbst
Indiana Co-Trustee
Deputy Director
Indiana Department of
Natural Resources

Date: 7-12-93

Patrick R. Ralston
Director
Indiana Department of
Natural Resources

Date: 7-12-93

David C. Hudak
Field Supervisor
Bloomington Field Office
U.S. Fish and Wildlife
Service
Department of Interior

Date: 7/14/93

Sam Marler
Samuel Marler
Regional Director
U.S. Fish and Wildlife
Service
Department of Interior

Date: 24 July 1993