

AMENDMENT NUMBER 1 TO NATURAL RESOURCE DAMAGE FUNDING AND PARTICIPATION AGREEMENT FOR THE M/V *SELENDANG AYU* INCIDENT

I. PARTIES

This Amendment Number 1 ("Amendment") is made between the Parties to the Natural Resource Damage Assessment ("NRDA") Funding and Participation Agreement for the M/V *Selendang Ayu* Incident ("Agreement"). The Agreement is attached as Exhibit 1 to this Amendment.

II. BACKGROUND AND PURPOSE

Following the December 8, 2004 wreck of the M/V *Selendang Ayu* off the coast of Unalaska Island in Alaska, natural resources were adversely affected by releases of oil from the vessel and by activities in connection with responding to the oil releases (collectively, the "Incident").

The state and federal agencies designated as Natural Resource Trustees for the Incident ("Trustees") initiated a natural resource damage assessment ("Assessment") pursuant to the Oil Pollution Act of 1990. Since the Incident, the Responsible Party has cooperated with the Trustees to conduct the Assessment. Cooperative Activities have included funding studies to assess the nature and extent of natural resource injuries and to identify and assess the feasibility, cost, and potential benefits of restoration projects to compensate the public for harm to natural resources resulting from the Incident. A list of Cooperative Activities undertaken by the Parties to date is attached as Exhibit 2 to this Amendment.

Pursuant to Article VI(c) of the Agreement, the Responsible Party provided advance funding totaling \$135,000 to some of the Trustees. This advance funding was allocated among the Trustees, pursuant to Article VI(c), as follows: \$120,000 to the United States Department of the Interior; \$10,000 to the State of Alaska Department of Natural Resources; and \$5,000 to the Alaska Department of Fish and Game. In addition, the Responsible Party reimbursed certain Trustees' costs resulting from performing Cooperative Activities.

On January 27, 2012, the U.S. Coast Guard National Pollution Funds Center ("NPFC") granted the Responsible Party's petition to limit its liability under the Oil Pollution Act of 1990. As a result, the Parties are modifying the Agreement, as set forth below.

III. EFFECTIVE DATE

This Amendment is effective upon its execution by all of the Parties.

IV. MODIFICATION OF THE AGREEMENT

As of the Effective Date of this Amendment, the Responsible Party will no longer participate in Cooperative Activities according to the terms of Articles III, IV, and VI of the Agreement. The Responsible Party will only participate in and fund ongoing and future Cooperative Activities to the extent described in Articles V and VI of this Amendment or in future amendments to the Agreement.

Articles IV, V, and VI of this Amendment supersede and replace Articles III, IV, and VI of the Agreement for activities occurring after the Effective Date of the Amendment. Article XII (Notices) of the Agreement is updated with Article VI of this Amendment. The Amendment does not modify any other Article of the Agreement.

V. ONGOING AND FUTURE CONTINUED COOPERATION FOR SPECIFIC COOPERATIVE ACTIVITIES

Under this Amendment, the Responsible Party and the Trustees will cooperate in the following Cooperative Activities, further described in Exhibit 3, until the activities are completed or as otherwise agreed to by the Parties.

- A. *Compiling the Administrative Record for Restoration Planning.*** The Responsible Party has requested that certain documents be included in the Trustees' Administrative Record for Restoration Planning. The Trustees and Responsible Party will continue to work together with the objective of ensuring that the Record is complete and unbiased and does not inappropriately hinder any Trustee or Responsible Party in its pursuit of reimbursement of past assessment costs from the NPFC.
- B. *Assessing Injuries Related to Birds.*** The Parties will continue to discuss the estimation of total avian mortality, including inputs such as background carcass deposition.
- C. *Notice and Opportunity to Comment.*** The Trustees will continue to provide the Responsible Party notice of Trustee determinations and notice of opportunity to comment as required by NRDA regulations.

VI. LIMITATION ON FUNDING

Unless otherwise agreed in writing, the Responsible Party has no commitment to additional funding after the Effective Date of this Amendment. The Trustees will retain any remaining advance funding already provided by the Responsible Party pursuant to Article VI(c) of the Agreement and use it to perform the Cooperative Activities listed in Article V of this Amendment. The advance funding can also be used by the Trustees, during the NPFC's adjudication of the Assessment Plan, to address questions from the NPFC pertaining to the Cooperative Activities listed in Article V of the Amendment.

Within six months after the Assessment Plan is approved by the NPFC, the Trustees will report to the Responsible Party the amount of advance funding remaining unspent as of the approval date along with cost documentation for the expenditures made against the advance funding. The content and format of the cost documentation will be that which is acceptable under the NRDA claims process of the NPFC. Within six months after the Trustees complete the work described in Exhibit 3, the Trustees will return any remaining advance funding to the Responsible Party, unless an alternative arrangement is agreed to by the Responsible Party and Trustees, with written notification to the NPFC (if the NPFC has provided restoration planning funds to the Trustees).

VII. NOTICES

The information provided below updates Article XII of the Agreement. All written communications between the Trustees and Responsible Party, notices, and submissions of cooperative data shall be sent to the following designate representatives of the Parties.

RESPONSIBLE PARTY	Herbert H. Ray, Jr. Keesal, Young & Logan 1029 West Third Avenue, Suite 650 Anchorage, AK 99501-1954 (907) 279-9696 bert.ray@kyl.com	
DEPARTMENT OF THE INTERIOR	Veronica Varela U.S. Fish and Wildlife Service 1011 E. Tudor Rd, MS# 361 Anchorage, AK 99503 (907) 786-3866 veronica_varela@fws.gov	Kenneth M. Lord Regional Solicitor's Office -- Alaska Region Anchorage, AK (907) 271-4184 ken.lord@sol.doi.gov
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	Sarah Allan 222 West 7th Ave, Suite 552 Anchorage, AK 99513 (907) 271-5146 sarah.allan@noaa.gov	Katherine Pease Office of General Counsel 501 W. Ocean Blvd, Suite 4470 Long Beach, CA 90802 (562) 980-4077 katherine.pease@noaa.gov
ALASKA DEPARTMENT OF FISH AND GAME	Jeanette Alas 333 Raspberry Rd Anchorage, AK 99518-1565 (907) 267-2805 jeanette.alas@alaska.gov	
ALASKA DEPARTMENT OF NATURAL RESOURCES	Samantha Carroll 550 W. 7th Ave, Ste 1430 Anchorage, AK 99501-3577 (907) 269-8425 samantha.carroll@alaska.gov	

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION	Jody Barthlow 555 Cordova Street Anchorage, AK 99501 (907) 269-3084 jody.barthlow@alaska.gov	
ALASKA DEPARTMENT OF LAW	Jennifer Schorr 1031 W 4th Ave #200 Anchorage, AK 99501 (907) 269-5274 jennifer.schorr@alaska.gov	

SIGNATURES

For each Party:

Ayu Navigation Sdn Bhd

By:



Title:

Lau Siit Yeng
Director

Date:

United States Department of the Interior

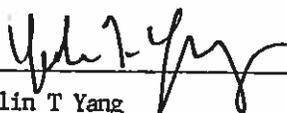
By:

Title:

Date:

IMC Shipping Co. Pte. Ltd.

By:



Title:

Yuelin T Yang
Director

Date:

National Oceanic and Atmospheric
Administration

By:

Title:

Date:



ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION	Jody Barthlow 555 Cordova Street Anchorage, AK 99501 (907) 269-3084 jody.barthlow@alaska.gov	
ALASKA DEPARTMENT OF LAW	Jennifer Schorr 1031 W 4th Ave #200 Anchorage, AK 99501 (907) 269-5274 jennifer.schorr@alaska.gov	

SIGNATURES

For each Party:

Ayu Shipping

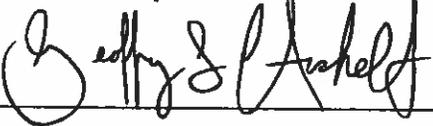
By:

Title:

Date:

United States Department of the Interior

By:



Title:

Date:

3/9/16

IMC Navigation

By:

Title:

Date:

National Oceanic and Atmospheric
Administration

By:

Title:

Date:

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION	Jody Barthlow 555 Cordova Street Anchorage, AK 99501 (907) 269-3084 jody.barthlow@alaska.gov	
ALASKA DEPARTMENT OF LAW	Jennifer Schorr 1031 W 4th Ave #200 Anchorage, AK 99501 (907) 269-5274 jennifer.schorr@alaska.gov	

SIGNATURES

For each Party:

Ayu Shipping

United States Department of the Interior

By:

By:

Title:

Title:

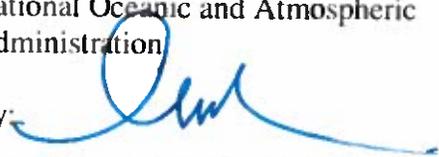
Date:

Date:

IMC Navigation

National Oceanic and Atmospheric
Administration

By:

By: 

Title:

Title: *Special Counsel*

Date:

Date: *2/24/16*

Department of Fish and Game, Alaska

By: SERGENT

Title: Commissioner

Date: 3/3/14

Department of Environmental Conservation,
Alaska

By: _____

Title: _____

Date: _____

Department of Natural Resources, Alaska

By: _____

Title: _____

Date: _____

Department of Law, Alaska

By: _____

Title: _____

Date: _____

Department of Fish and Game, Alaska

By: _____

Title: _____

Date: _____

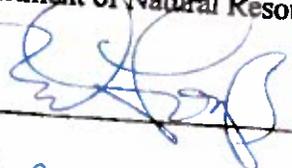
Department of Environmental Conservation,
Alaska

By: _____

Title: _____

Date: _____

Department of Natural Resources, Alaska

By:  _____

Title: DEPUTY COMMISSIONER

Date: 3/1/16

Department of Law, Alaska

By: _____

Title: _____

Date: _____

Department of Fish and Game, Alaska

By:

Title:

Date:

Department of Environmental Conservation,
Alaska

By: Gary B. Foley

Title: Manager, Prevention, Preparedness
& Response Program

Date: March 4, 2016

Department of Natural Resources, Alaska

By:

Title:

Date:

Department of Law, Alaska

By:

Title:

Date:

Department of Fish and Game, Alaska

By:

Title:

Date:

Department of Natural Resources, Alaska

By:

Title:

Date:

Department of Environmental Conservation,
Alaska

By:

Title:

Date:

Department of Law, Alaska

By:

_____ *Steven E. Mulder*

Title:

_____ *Assistant Attorney General*

Date:

_____ *3/1/2016*

Exhibit 1

Natural Resource Damage Funding and Participation Agreement for the M/V *Selendang Ayu* Incident

NATURAL RESOURCE DAMAGE FUNDING AND PARTICIPATION AGREEMENT FOR THE M/V SELENDANG AYU INCIDENT

I. PARTIES

This agreement is made between the Alaska Department of Environmental Conservation ("ADEC"), Alaska Department of Fish and Game ("ADF&G"), Alaska Department of Law ("ADOL"), Alaska Department of Natural Resources ("ADNR"), National Oceanic and Atmospheric Administration ("NOAA"), and the United States Department of Interior ("DOI"), acting through the United States Fish and Wildlife Service (collectively, the "Trustees"), Ayu Navigation Sdn Bhd, and IMC Shipping Pte. Ltd. (collectively, the "Responsible Party"). The Trustees and the Responsible Party are collectively referred to as the "Parties."

Sdn

Co. Pte.

II. BACKGROUND AND PURPOSE

Following the December 8, 2004 wreck of the M/V *Selendang Ayu* off the coast of Unalaska Island in Alaska, natural resources were adversely affected by releases of oil from the vessel and activities in connection with responding to the oil releases (collectively, the "Incident"). As of the date of this Agreement, the Trustees for the Incident have completed the Preassessment Phase of the Natural Resource Damage Assessment ("NRDA") in accordance with 15 C.F.R. § 990.40, and are preparing to issue a Notice of Intent to Conduct Restoration Planning in accordance with 15 C.F.R. § 990.44.

The purpose of this Agreement is to set forth the nature and scope of cooperative activities to be performed by the Parties in the Restoration Planning and Restoration Implementation Phases, in accordance with the NRDA regulations, 15 C.F.R. § 990.14, *et seq.*, and to establish procedures for the Responsible Party's payment to the Trustees of past and prospective reasonable assessment costs arising from the Incident, as defined in 15 C.F.R. § 990.30 ("Reasonable Assessment Costs").¹ The Parties believe that this Agreement is in their best interests, as it may facilitate expeditious and cost-effective restoration of the natural resources and services injured as a result of the Incident.

¹ "Reasonable assessment costs means, for assessments conducted under this part, assessment costs that are incurred by trustees in accordance with this part. In cases where assessment costs are incurred but trustees do not pursue restoration, trustees may recover their reasonable assessment costs provided they have determined that assessment actions undertaken were premised on the likelihood of injury and need for restoration. Reasonable assessment costs also include: administrative costs, legal costs, and other costs necessary to carry out this part; monitoring and oversight costs; costs associated with public participation; and indirect costs that are necessary to carry out this part." 15 C.F.R. § 990.30.

III. COOPERATIVE ASSESSMENT AND RESTORATION PLANNING

A. *Cooperative Activities.* The Parties agree that a cooperative effort to further determine the injuries to natural resources and services, quantify such injuries, and develop, evaluate and select projects to restore, rehabilitate, replace or acquire the equivalent of the injured resources and services may be cost-effective, avoid duplication of work, and effectively use limited personnel and other resources. Such cooperative efforts shall be referred to as "Cooperative Activities."

B. *Scopes of Work.* Each Cooperative Activity will be described in a detailed Scope of Work ("SOW") agreed to by the Parties. Each SOW will include a brief description of the work, objective, and product of the Cooperative Activity. As SOWs are executed by the Parties, they will become attachments to this Agreement, and their terms will form a part of this Agreement. The Responsible Party will fund the Trustees' Reasonable Assessment Costs incurred in implementing Cooperative Activities as set forth in SOWs pursuant to the terms of Section VI of this Agreement. If there are material changes in a SOW, the Parties may amend the SOW to reflect these changes.

IV. DATA AND REPORTS

A. *Collection of Data.* When undertaking Cooperative Activities, the Parties will cooperatively and collaboratively decide what data to collect and the procedures for such collection.

B. *Exchange of Data and Reports.* Unless subject to an alternative arrangement, the Parties agree to exchange data and reports pertaining to Cooperative Activities within two weeks after the data or reports become available, or within two weeks of the effective date of this Agreement, if such are already available upon the effective date. If a Cooperative Activity results in the preparation of a report, all Parties will be provided with a proposed final draft version of the report or written analysis and allowed a reasonable amount of time agreed upon by the Parties within which to review and comment on the document before it is issued in final form. Any such comments must be included as part of the final report or otherwise made a part of the Administrative Record maintained by the Trustees.

C. *Interpretation of Data.*

1. The Parties will attempt to reach consensus on the interpretation of, and conclusions to be drawn from, data collected or generated pursuant to a Cooperative Activity. Any such consensus and/or conclusion may be memorialized as a stipulation to be agreed to by all Parties. Any Party may propose a stipulation at any time. A stipulation may address issues of fact or law or both. Such stipulations shall be attached to this Agreement, shall survive the termination of this Agreement, and shall not be challenged by any Party.

2. If the Parties are unable to reach consensus on the interpretation of data collected or generated pursuant to a Cooperative Activity, each Party reserves the right to disagree on the interpretation

of the data resulting from a Cooperative Activity and to develop separate and independent findings and conclusions, which will be included in the Administrative Record.

D. Access to Information. All Parties shall have access to all data, notes, logs, or other records of observations that are related to a Cooperative Activity. When the Parties retain an outside consultant as part of the SOW, all Parties shall have equal access to the consultant's work product, including access to any drafts, reports, or other documents prepared by the consultant, and records of communications between the consultant and any Party.

V. INDEPENDENT ACTIVITIES

The Parties reserve the right to perform NRDA studies or activities independent of the Cooperative Activities performed and funded in accordance with this Agreement. The Parties, however, may not introduce in a judicial or administrative proceeding related to natural resource liability arising from the Incident new or different data collected, generated by or resulting from independent activities to challenge the validity of the data collected or compiled pursuant to a Cooperative Activity.

VI. FINANCIAL RESPONSIBILITY

A. Scope. The Responsible Party agrees to pay all Reasonable Assessment Costs resulting from the Incident incurred by the Responsible Party, the Trustees, or their contractors to date, and prospectively.

B. Past Reasonable Assessment Costs. Each Trustee has incurred Reasonable Assessment Costs prior to the effective date of this Agreement. Pursuant to the procedures contained in Subpart D, "Invoices," of this Section, as soon as reasonably practicable after the effective date of this Agreement, the Trustees will submit invoices to the Responsible Party for Reasonable Assessment Costs incurred, and the Responsible Party will process payment of any undisputed amounts in accordance with Subpart D.

C. Advance Funding. To participate fully in this cooperative effort, DOI, ADF&G and ADNR require funding in advance. NOAA, ADOL and ADEC will seek reimbursement of costs incurred from the Responsible Party.

Within thirty (30) days of the effective date of this Agreement, the Responsible Party shall provide \$135,000 (ONE HUNDRED THIRTY FIVE THOUSAND DOLLARS) in advance funding to DOI, as federal lead administrative trustee, through deposit in a reimbursable account. The funds will be divided for use as follows: \$120,000 to DOI; \$5,000 to ADF&G; and \$10,000 to ADNR. Advance funding will allow DOI to avoid any potential for violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. The Responsible Party agrees to provide to DOI, ADF&G and ADNR further advance funding to fulfill their obligations under this Agreement upon request from these parties to replenish this reimbursable account.

D. Invoices. Each Trustee shall submit to the Responsible Party an accounting of Reasonable Assessment Costs incurred pursuant to this Agreement on a regular basis in order to

seek reimbursement or document the expenditure of advanced funding. This accounting shall consist of a summary of labor, travel, contract and supply costs, along with supporting documentation for those costs. The Responsible Party recognizes that each Trustee has different accounting processes and understands that the accounting from each Trustee may not be in the same format.

The Responsible Party agrees to review promptly the accounting provided by Trustees and shall process payment of undisputed amounts to the individual Trustee, or its contractors where direct payments are authorized, or to DOI's reimbursable account (for DOI, ADF&G and ADNR) within forty-five (45) days of receipt of the accounting. The Parties agree to attempt to resolve any disputed amounts within thirty (30) days after the initial response is received by the Trustees. If the dispute cannot be resolved, or if for any other reason the reimbursement has not been paid within seventy-five (75) days after receipt of the accounting, and should a Trustee subsequently prevail in any action to collect any disputed or other such unpaid amounts, the Responsible Party shall pay, in addition to the amount determined to be owed, interest on said amount calculated from the date that the reimbursement was payable under this Agreement. Any such interest payable to federal Trustees shall be calculated in accordance with the Debt Collection Act, 31 U.S.C. § 3717, and any such interest payable to state Trustees shall be calculated in accordance with AS 09.30.070.

Upon the agreement of the Parties, the Responsible Party may directly contract for goods or services as part of a Cooperative Activity when the cost of those goods or services is anticipated to exceed \$5,000, and the Responsible Party may directly pay the provider of goods or services accordingly. In those instances, the Responsible Party agrees to make such payment within thirty (30) days of the receipt of an invoice. If the provider of goods or services sends its invoice to the Trustees, the Trustees will promptly forward such invoices to the Responsible Party for payment.

E. Cost Documentation. The cost accounting shall include documentation of all Reasonable Assessment Costs pursuant to this Agreement, excluding confidential business information, information withheld under the federal Privacy Act, 5 U.S.C. § 552(a), and information otherwise privileged under state or federal law.

F. Commitment of Funds. Nothing herein shall be considered as obligating the Trustees to expend any funds in excess of appropriations authorized by law. The Responsible Party and the Trustees recognize and agree that DOI must operate within specific requirements of the Federal budget process and legal restrictions concerning the obligations of funds. No provision of this Agreement shall be construed to require DOI to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, in any fiscal year for actions subject to this Agreement.

G. Excess Funds. Any excess funds in DOI's reimbursable account at the end of the restoration implementation phase shall be returned to the Responsible Party in accordance with applicable DOI procedures, or credited against Restoration Costs that the Responsible Party pays as part of any settlement or judgment in this matter.

VII. DISPUTE RESOLUTION

The Parties agree to attempt to resolve any disputes concerning the implementation of this Agreement, or arising from any of the provisions of this Agreement, through good faith negotiations between the individuals listed in Section XII (Notices) or their designees. Disputes that cannot be resolved at that level shall be elevated to appropriate officials of the Parties. In the event a dispute cannot be resolved within a reasonable time, the Parties reserve their rights and claims in accordance with Section IX of this Agreement, including, when applicable, the right to bring claims, seek declaratory relief, or seek review of any disputes arising under this Agreement in the United States District Court for District of Alaska. The Trustees or the Responsible Party may terminate this Agreement in its entirety or with respect to a particular Cooperative Activity that is the subject of the dispute, in accordance with Section XIII of this Agreement.

VIII. PUBLIC PARTICIPATION

The Parties recognize and agree that public participation during the restoration planning process is both desirable and necessary. The Parties recognize that the Trustees are required by law to give public notice of the intent to conduct restoration planning, and may solicit public review and comment during certain phases of the restoration planning process. The Trustees will provide for public participation as required by law and shall exercise their discretion to interact with the public as needed.

IX. RESERVATION OF RIGHTS AND CLAIMS

A. Except as otherwise stated herein, by entering into this Agreement the Parties make no admission of fact or law. The Agreement may be admissible in an action to enforce its terms, but execution of the Agreement itself shall not be evidence or proof of liability or non-liability. Nothing in the Agreement is to be construed to abrogate the right of any Party to pursue claims against, or contribution from, any other Party. Nothing in the Agreement is intended nor shall it be construed as a waiver by the Parties of defenses or affirmative claims in any proceedings relating to the Incident or of any other rights or remedies. Nothing in this Agreement is intended, nor shall be interpreted, to limit the scope of the NRDA or restoration appropriate for this Incident, or to otherwise restrict or abrogate the authority or discretion of the Trustees to determine the scope of that assessment.

B. By entering into this Agreement, the Responsible Party is not released from any potential liability arising from the Incident, including but not limited to claims for damage, injury, loss, or destruction of natural resources or their uses; claims for the costs of assessing damage, injury, loss, or destruction of natural resources or their uses; claims for restoration or replacement of natural resources or lost uses of these resources; claims, causes of action, or requests for relief in admiralty; or any other causes of action or requests for relief, either administrative or judicial, under either State or federal law. Notwithstanding the foregoing, although not admissible as evidence of liability, payments made by the Responsible Party under terms of this Agreement

may be admissible to reduce the amount of any claim asserted by a Trustee for natural resource damages allegedly arising from the Incident.

X. RETENTION OF PRIVILEGES

A. Any and all data, photographs, maps, or reports collected, developed, prepared or exchanged between Trustees and the Responsible Party, pursuant to Cooperative Activities under this Agreement shall not be considered work product, attorney-client or otherwise privileged, and the Parties shall not challenge admissibility of such items on privilege grounds in any administrative or judicial proceeding regarding natural resource damages liability arising from this Incident.

B. Paragraph X.A shall not be deemed a waiver of privilege or work product protection for internal deliberations, oral and written, among a Party's representatives or consultants, or between Trustees, regarding the data, reports, or other materials referred to in Paragraph X.A. Nothing in this Agreement is intended to waive any Party's privileges or protection from the disclosure of internal discussions or deliberations among its representatives and consultants.

C. The Parties intend that all discussions and negotiations, including written communications between the Parties' counsel concerning the scaling of restoration activities, to be in furtherance of settlement, and shall be subject to Federal Rule of Evidence 408 and/or Alaska Rule of Evidence 408, as applicable. Nothing in this Agreement is intended to imply otherwise.

D. Any Party wishing to assert a claim of privilege is responsible for asserting its own claim. Where a claim of privilege has been asserted, the written communication or document shall be considered to be privileged and confidential in accordance with Section XI (Confidentiality).

XI. CONFIDENTIALITY

A. Where a Party claims a written communication or other document to be confidential, it shall not be disclosed to anyone other than the Parties to this Agreement unless and until one of the following circumstances exists:

1. The prior written consent of the Party claiming it to be confidential has been provided.
2. Such document (including photographs) has been included in the Administrative Record.
3. Such document is determined by state and/or federal agencies to be subject to disclosure in accordance with AS 40.25.100-220 (Alaska Public Records Act) and/or the federal Freedom of Information Act, 5 U.S.C § 552; is required to be produced pursuant to any applicable federal or state law; or is ordered to be produced by a competent court of law.

B. With respect to Subpart 3 above, any Party who receives a request for documents pursuant to the Alaska Public Records Act or the federal Freedom of Information Act or who is served with a subpoena or discovery request for any document which a Party has claimed as confidential, shall provide notice to the other Parties at the earliest opportunity so as to allow any of them, if

they so choose, to assert a privilege or protection seeking to prevent the release of such documents.

XII. NOTICES

Unless otherwise indicated in this Agreement, all written communications, submission of data and notices shall be sent to the following designated representatives of the Parties:

RESPONSIBLE PARTY	<p>Gary Mauseth Polaris Applied Sciences, Inc. 12525 131st CT NE Kirkland, WA 98034-7725 Tel: (425) 823-4841 Fax: (425) 823-3805</p>	<p>Herbert H. Ray, Jr. <i>Keesal, Young & Logan, Ste 650 1029 W. Third Ave Anchorage, AK 99501-1954</i> Tel: (907) 279-9696 Fax: (907) 279-4239 <u>Bert.Ray@kyl.com</u></p>
DOI	<p>Jenifer Kohout <i>Alaska Regional Office US Fish and Wildlife Service 1101 E. Tudor Rd Anchorage, AK 99503</i> Tel: (907) 786-3687 Fax: (907) 786-3848 Jenifer_Kohout@fws.gov</p>	<p>Lisa Toussaint <i>Office of the Regional Solicitor 4230 University Dr, Ste 300 Anchorage, AK 99508</i> Tel: (907) 271-4131 Fax: (907) 271-4143</p>
NOAA	<p>Norman Meade <i>Damage Assessment Center (N/ORR32) 1305 East-West Hwy Silver Springs, MD 20910</i> Tel: (301) 713-3038, ext. 201 Norman.Meade@NOAA.gov</p>	<p>Craig O'Connor Tel: (206)526-4564 Craig.R.O'Connor@NOAA.gov</p>
ADF&G	<p>Mark Fink <i>Alaska Dept. Fish & Game 333 Raspberry Road Anchorage, AK 99518</i> Tel: (907) 267-2338 Fax: (907) 267-2464 Mark_Fink@fishgame.state.ak.us</p>	

ADNR	Carol Fries <i>Alaska Dept. Natural Resources</i> <i>550 West 7th Ave.</i> <i>Anchorage, AK 99501</i> <i>Tel: (907) 269-8425</i> <i>Fax: (907) 269-8913</i> <i>Carol_Fries@dnr.state.ak.us</i>	
ADEC	Dale Gardner <i>Alaska Dept of Env'tl Conservation</i> <i>555 Cordova St.</i> <i>Anchorage, AK 99501</i> <i>Tel: (907) 269-7682</i> <i>Fax: (907) 269-7648</i> <i>Dale_Gardner@dec.state.ak.us</i>	
ADOL		Rita Lovett <i>Alaska Dept of Law</i> <i>1031 West 4th Ave</i> <i>Anchorage, AK 99501</i> <i>Tel: (907) 269-5283</i> <i>Fax: (907) 269-7022</i> <i>Rita_Lovett@law.state.ak.us</i>

Submittals may be electronic or via U.S. mail or other delivery service. A Party may change its designated representative by providing written notification to the remaining Parties.

XIII. MODIFICATION AND TERMINATION

A. Any modification of this Agreement must be in writing, and except for modifications to Section XII (Notices), must be executed by all of the Parties.

B. In the event that a dispute cannot be resolved by the Parties through the process described in Section VII, the Trustees jointly or the Responsible Party may withdraw from participation in the disputed Cooperative Activity. Any withdrawal is effective 48 hours after the withdrawing Parties provide written notification of the withdrawal to all Parties. Withdrawal from one or more Cooperative Activities shall not, by itself, void this Agreement as to the remaining Cooperative Activities and other provisions.

C. Any Party may terminate its participation in this Agreement at any time by giving a thirty (30) day written notice to all other Parties. Termination by one or more Trustee(s) or by the Responsible Party shall not void the Agreement as to the remaining Parties.

D. Should the Responsible Party terminate this Agreement in its entirety or with respect to one or more Cooperative Activities, it shall remain responsible, under the terms of this Agreement,

for any Reasonable Assessment Costs related to the completion of Cooperative Activities, based on the agreed scope and budget of such Cooperative Activities at the time of termination or withdrawal.

E. The Parties agree, as to the Cooperative Activities terminated pursuant to this Section, to exchange all data, reports, analyses and other products resulting from those Cooperative Activities, in their state of completion at the time of termination, within thirty (30) days of termination.

F. Nothing in this Section is intended to limit the ability of the Trustees to recover from the Responsible Party any un-reimbursed Reasonable Assessment Costs.

G. Termination of this Agreement is prospective only. As such, data and reports generated pursuant to Cooperative Activities, and all Attachments and stipulations incorporated into this Agreement prior to the date of termination, survive and shall remain in effect following termination.

XIV. EFFECTIVE DATE

This Agreement shall be effective upon its execution by all of the Parties.

XV. DURATION

The term of this Agreement is from the effective date until the purposes set forth herein are accomplished unless the Parties agree otherwise or it is terminated pursuant to Section XIII.

XVI. LIMITATION

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

XVII. SEVERABILITY

The terms of this Agreement are severable. If any term, covenant or condition of this Agreement is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

XVIII. EXECUTION

This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

SIGNATURES

IMC Shipping ^{Co.} Pte. ^{Sdn} Ltd. ^M ^{x 454}
By: Yuelin T. Yang

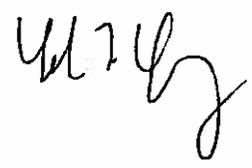
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By: SOFIAN BEN MOHD ARIFF

Title: DIRECTOR

Date: _____



United States Department of the Interior

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National Oceanic and Atmospheric Administration

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Department of Fish and Game, Alaska

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IMC Shipping, Pte, Ltd.

By: _____

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Ayu Navigation Snd, Bhd

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United States Department of the Interior

By: Thomas O. Melton

Title: Regional Director - Alaska

Date: April 16, 2007

National Oceanic and Atmospheric Administration

By: _____

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Department of Fish and Game, Alaska

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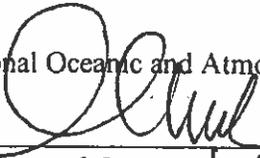
United States Department of the Interior

By: _____

Title: _____

Date: _____

National Oceanic and Atmospheric Administration

By:  _____

Title: Special Counsel

Date: 4/11/07

Department of Fish and Game, Alaska

By: _____

Title: _____

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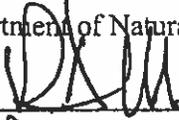
Department of Fish and Game, Alaska

By: Jefferson

Title: Director

Date: 5/10/07

Department of Natural Resources, Alaska

By: 

Title: Deputy Commissioner

Date: April 11, 2007

Department of Environmental Conservation, Alaska

By: _____

Title: _____

Date: _____

Department of Law, Alaska

By: _____

Title: _____

Date: _____

Department of Natural Resources, Alaska

By: _____

Title: _____

Date: _____

Department of Environmental Conservation, Alaska

By: Keshi D Pearson

Title: Env. Program Manager III

Date: May 23, 2007

Department of Law, Alaska

By: _____

Title: _____

Date: _____

Department of Natural Resources, Alaska

By: _____

Title: _____

Date: _____

Department of Environmental Conservation, Alaska

By: _____

Title: _____

Date: _____

Department of Law, Alaska

By: Rita Lovett

Title: Assistant Attorney General

Date: 05-01-07

Exhibit 2

Cooperative Activities Implemented Jointly by the Parties Under the Funding and Participation Agreement for the M/V *Selendang Ayu* Incident

The formal Funding and Participation Agreement was executed in May 2007, but agreements to cooperatively conduct pre-assessment activities occurred as early as late January 2005. Section III.B of the 2007 Funding and Participation Agreement provided that each Cooperative Activity would be described in a detailed Scope of Work (SOW) agreed to by the Parties; however, while SOWs were seldom developed or finalized, cooperative activities still took place. As of September 2013, the following Cooperative Activities have been implemented over the course of the natural resource damage assessment for the M/V *Selendang Ayu* incident. (Note: the following is not a comprehensive list of all natural resource damage assessment activities conducted by either the Trustees or the Responsible Party.)

I. PREASSESSMENT ACTIVITIES

A. Nearshore Vegetation

The U. S. Fish and Wildlife Service (USFWS), on behalf of the M/V *Selendang Ayu* Natural Resource Trustees, and Polaris Applied Sciences (representing the Responsible Party) assessed potential injuries to native vegetation on Alaska Maritime National Wildlife Refuge lands using quantitative vegetation measurement and qualitative rankings of oiling and cleanup activity damage. On July 19 to 24, 2005, USFWS representatives, Polaris representatives, and a local botanist conducted a nearshore vegetation survey at nine locations in the Makushin and Skan Bay areas on Unalaska Island. The USFWS and Polaris prepared a joint report that is published on the USFWS M/V *Selendang Ayu* case website.¹

B. Intertidal, Subtidal, and Anadromous Stream Habitats

Trustee and Responsible Party representatives worked together to survey intertidal, subtidal, and anadromous stream habitats in December 2004 to January 2005 and in June 2005. The work aimed to document patterns of oiling in habitats, identify resources at risk, and collect samples of biota to assess exposure to oil. The National Oceanic and Atmospheric Administration (NOAA) generated a report of findings. The Responsible Party was provided an opportunity to comment on this report, and the Trustees incorporated received comments as appropriate. The final report is published on the USFWS case website.²

C. Birds: Carcass Persistence

The USFWS and Responsible Party jointly conducted a study ("Cooperative Reference Beach Study") in February 2005 with components to evaluate carcass persistence, searcher efficiency,

¹ Rocque, D. A. and G. M. Erickson. 2008. Preassessment Data Report #1: Assessment of Potential Injuries to Nearshore Vegetation Communities on Unalaska Island following the *Selendang Ayu* Oil Spill.

² National Oceanic and Atmospheric Administration. Damage Assessment, Remediation, and Restoration Program. 2008. Preassessment Data Report #2: M/V *Selendang Ayu* Oil Spill, Surveys of Intertidal, Subtidal, and Anadromous Stream Habitats.

and background carcass deposition. The cooperative carcass persistence component was conducted at Chernofski Harbor on Unalaska Island. The Responsible Party produced a draft report for the three-part cooperative study that was shared with Trustees for review and comment.³

D. Birds: Searcher Efficiency

The USFWS and Responsible Party jointly conducted a study (“Cooperative Reference Beach Study”) in February 2005 with components to evaluate carcass persistence, searcher efficiency, and background carcass deposition. The cooperative searcher efficiency component was conducted at Chernofski Harbor on Unalaska Island. The Responsible Party produced a draft report for the cooperative study that was shared with Trustees for review and comment.³

E. Birds: Background Carcass Deposition

The USFWS and Responsible Party jointly conducted a study (“Cooperative Reference Beach Study”) in February 2005 with components to evaluate carcass persistence, searcher efficiency, and background carcass deposition. The cooperative background carcass deposition component was conducted at Chernofski Harbor on Unalaska Island and Nikolski Bay on Umnak Island. The cooperative activities included fingerprinting oil found on collected carcasses. The Responsible Party produced a draft report for the cooperative study that was shared with Trustees for review and comment.³ The Trustees also produced a draft report that was shared with the Responsible Party for review and comment.⁴ The Trustees and Responsible Party cooperatively discussed their incongruent data interpretations.⁵

F. Birds: Chronic Oil Exposure of Seaducks

Chronic oil exposure in seaducks, specifically, harlequin ducks (*Histrionicus histrionicus*), was evaluated in several years of study (2005, 2006, and 2008). These studies collected liver biopsy samples from live harlequin ducks to evaluate the induction of the cytochrome P450 IA gene (P450), an indicator of hydrocarbon exposure. The Trustees produced a report of findings from the 2005 and 2006 sampling efforts that was shared with the Responsible Party for review and comment.⁶ The Responsible Party agreed to fund a cooperative seaduck exposure survey to be implemented in February 2008.⁷ The Responsible Party added a mussel collection and analysis component to the study. The Trustees did not participate in the mussel portion of the study due to inadequate time to cooperatively develop and agree upon the final details of the study design, but the duck sample portion was cooperatively implemented. The Responsible Party submitted the results of the mussels sampling and analysis to the Trustees.⁸

³ Varoujean, D., and Polaris Applied Sciences. 2005. M/V SELENDANG AYU Oil Spill, December 8, 2004, Unalaska, Alaska; NRDA Pre-Assessment Studies: Summary of Field Surveys of Bird Carcass Persistence, Searcher Efficiency, and Background Bird Stranding Rates of Chernofski, Unalaska Island and Nikolski, Umnak Island, Alaska (DRAFT).

⁴ Ford, G., V. Byrd, and J. Reynolds. 2007. Preassessment Data Report: M/V *Selendang Ayu* Background Beaching and Oiling Rates for Bird Carcasses. (draft final report, February 23, 2007)

⁵ Trustee meeting notes, June 2008.

⁶ Flint, P.L., J.L. Schamber, K.A. Trust, A.K. Miles, and B.W. Wilson. 2008. Preassessment Data Report #10: Chronic exposure of seaducks to oil released by the *Selendang Ayu* at Unalaska Island. 30 January 2008 – Final Report.

⁷ Flint, P.L., and J. Schamber. 2008. Study Plan: “Continuing Exposure of Harlequin Ducks to Oil Released by the *Selendang Ayu* at Unalaska Island, January 2008”

⁸ “XXX_MusselTissue_Feb2008_PAHdata.xls” available at online Administrative Record (http://www.fws.gov/alaska/fisheries/contaminants/spill/sa_record.htm)

II. ASSESSMENT ACTIVITIES

For purposes of this document, the demarcation between Preassessment and Assessment Studies is the general time period between the publication in the Federal Register of the Trustees' Notice of Intent to Conduct Restoration Planning (March 30, 2007) and the finalization of the Preassessment Data Reports (roughly early 2008). After this period, the Preassessment Activities were considered completed. The Trustees and Responsible Party then implemented the following cooperative assessment activities.

A. Seabird Mortality Assessment

Soon after the Funding and Participation Agreement was executed in May 2007, the Trustees and Responsible Party engaged in cooperative discussions involving the interpretation of bird injury data, the drafting of a cooperative total bird mortality report, and restoration planning associated with the bird injury, among other cooperative discussions. The Trustees and Responsible Party had been attempting to reach agreement on the extent and magnitude of the bird injury, but that cooperative activity ceased after the Responsible Party received a Limit of Liability ruling in January 2012.

To aid in reducing the uncertainty associated with the seabird mortality quantification, the Responsible Party organized an additional background carcass deposition effort implemented in January and February 2010. The Trustees provided input into the design of this study. The Responsible Party provided a report of findings to the Trustees in 2011.⁹

B. Lingering Oil Studies

In 2008, the Trustees and Responsible Party began cooperatively discussing the investigation of whether oil may still be present in the spill area in amounts that may be harmful to natural resources, particularly aquatic biota. The Responsible Party agreed to fund the lingering oil assessment as a cooperative study implemented in summer 2008.¹⁰ The Responsible Party and the Trustees exchanged technical papers discussing the results of the lingering oil study, but in the end, each party's interpretations of the data were not completely congruous.

III. RESTORATION ALTERNATIVES

In April 2006, the Trustees and Responsible Party started a series of cooperative discussions regarding potential restoration alternatives for various potentially injured natural resources.

A. Seabirds

In 2009, the Responsible Party proposed two pilot restoration projects relevant to birds. After a large volcanic eruption deposited thick layers of ash on top of auklet breeding sites on Kasatochi Island, the Responsible Party proposed an emergency restoration project that involved removing the ash covering the auklet nesting sites. Secondly, the Responsible Party proposed a study to assess whether the removal of vegetation from auklet breeding colonies would increase nest sites

⁹ Varoujean, D.H. 2011. 2010 Bird Background Carcass Deposition, Carcass Persistence, and Searcher Efficiency Studies in the Region of the *Selendang Ayu* Grounding, Unalaska Island, Alaska.

¹⁰ Natural Resource Trustees. 2008. *M/V Selendang Ayu* 2008 Study Plan for Assessment of Remaining Oil. Draft, June 13, 2008.

and thus increase auklet production at those colonies. A study protocol was developed by Dr. Ian Jones, an auklet biologist under contract to the Responsible Party, for vegetation manipulation on Gareloi Island, and the Trustees met with Dr. Jones and the Responsible Party to discuss it. The Responsible Party went forward with the funding and implementation of this study. The study lasted several years, and the Responsible Party and the Trustees received annual progress reports from Dr. Jones and met with Dr. Jones to discuss his reports and modifications to the study design. Further development of restoration ideas for birds will be non-cooperative, Trustee-only activities.

B. Aquatic Natural Resources

In 2009, the Responsible Party agreed to fund a cooperative feasibility study to identify and evaluate potential Oil Abatement Projects (i.e., projects that would remove existing oil in the environment and/or prevent future releases). The feasibility study included a literature review to identify candidate projects and preliminary scaling calculations for several potential projects. The results of the study indicated that the major contributors of oil to the environment in the vicinity of the M/V *Selendang Ayu* spill, besides the M/V *Selendang Ayu* itself, included creosote pilings, vessel bilge discharges, and vessel oil spills.¹¹ Potential abatement projects included wrapping or removing creosote-treated pilings from the marine environment; distributing bilge socks and sorbent pads to vessel operators; and upgrading, expanding, and/or maintaining the number of real-time Automatic Identification System (AIS) stations that provide vessel monitoring in the Aleutian Islands. The Trustees will pursue further development of the AIS idea as a non-cooperative, Trustee-only activity.

IV. ADMINISTRATIVE ACTIVITIES

Since the granting of the Responsible Party's Limit of Liability, the Trustees and Responsible Party have maintained a cooperative relationship for discrete activities, primarily administrative in nature, as described below.

A. Amending the Funding and Participation Agreement

With the granting of the Responsible Party's Limit of Liability, the Trustees and Responsible Party recognized the need to restructure the cooperative relationship designed by the 2007 Funding and Participation Agreement. The Trustees and Responsible Party worked together to generate an amendment to the Agreement.

B. Drafting Background Section of the Assessment Plan

The Trustees intend to request Restoration Planning funds from the NPFC in order to complete the injury assessment and develop a Restoration Plan. The foundation of the funding request is an Assessment Plan, describing the Trustees' approach to quantifying natural resource injuries, including the Cooperative Activities undertaken, and the approach to developing restoration alternatives. In August 2015, the Trustees provided the Responsible Party an opportunity to contribute to, review, and comment on the portion of the Assessment Plan that describes the factual background, including the performance of Cooperative Activities. The Trustees incorporated the Responsible Party's comments as appropriate into the final document.

¹¹ Oasis Environmental. 2012. Oil abatement program; Evaluation of oil reduction anticipated from control of major sources. Prepared for IMC Shipping and M/V *Selendang Ayu* Oil Spill Natural Resource Trustees. Oasis Environmental. Anchorage, Alaska. April 18, 2012.

C. Compiling the Administrative Record for Restoration Planning

The Trustees maintain a publicly accessible Administrative Record for Restoration Planning online. A major update to the online Record occurred at the time that the draft Assessment Plan was made publicly available in October 2015. The Responsible Party provided a list to the Trustees of the documents requested for inclusion in the Record, and the Trustees and Responsible Party worked together to address the request. The Trustees and Responsible Party will continue to work together with the objective of ensuring that the Record is complete and unbiased and does not inappropriately hinder any Trustee or Responsible Party in its pursuit of reimbursement of past assessment costs from the NPFC. The online record will be updated as appropriate as the case progresses.

Exhibit 3

Ongoing and Future Cooperative Activities for the M/V *Selendang Ayu* Incident

This Exhibit provides additional details regarding the ongoing and future cooperative activities described in Section IV of the “Amendment Number 1 to Natural Resource Damage Funding and Participation Agreement for the M/V *Selendang Ayu* Incident.” These details are provided in lieu of a detailed Scope of Work for the activities listed below. The target product completion dates are guidelines that were estimated at the time that the Amendment was executed; they are not binding.

A. **Compiling the Administrative Record for Restoration Planning**

Description: The Trustees maintain a publicly accessible Administrative Record for Restoration Planning online. A major update to the online Administrative Record occurred at the time that the draft Assessment Plan was made publicly available in October 2015. The Responsible Party provided a list to the Trustees of the documents requested for inclusion in the Administrative Record, and the Trustees and Responsible Party worked together to address the request, but some work remains. The online Administrative Record will be updated as appropriate as the case progresses. Recognizing that the Trustees’ responsibility for maintaining an Administrative Record is not relieved until the after case is closed (i.e., restoration implemented and post-construction monitoring completed), the extent of the cooperative activity will end on the date that the final Restoration Plan is published.

Objective: The Trustees and Responsible Party will continue to work together with the objective of ensuring that the Administrative Record is complete and unbiased and does not inappropriately hinder any Trustee or Responsible Party in its pursuit of reimbursement of past assessment costs from the NPFC.

Product: Online Administrative Record that is updated as necessary and contains all necessary documentation to support the Trustees’ final Restoration Plan.

Target product completion date: date that the final Restoration Plan is completed (~ late 2018)

B. **Assessing Injuries Related to Birds**

Description: The Parties will continue to discuss the estimation of total avian mortality, including inputs such as background carcass deposition. The Responsible Party provided to the Trustees a report of findings from its background carcass deposition study performed in 2010. The Trustees will provide comments on the Responsible Party’s background deposition study and its effect on the Trustees’ avian mortality estimate. Further discussions on avian injury quantification will be considered as necessary.

Objective: Demonstrate the Trustees’ fair consideration of the Responsible Party’s background deposition study with respect to the Trustees’ avian injury estimate.

Product: At a minimum, the Trustees will prepare a letter to the Responsible Party, which will also be included in the Administrative Record.

Target product completion date: December 2016

C. Notice and Opportunity to Comment

Description: The Trustees will continue to provide the Responsible Party notice of Trustee determinations and notice of opportunity to comment as required by Oil Pollution Act NRDA regulations.

Objective: Comply with requirements of Oil Pollution Act Natural Resource Damage Assessment and Restoration regulations and of the NPFC with respect to requests for reimbursement of past assessment costs and funding of restoration activities.

Products: The Trustees anticipate providing drafts of the following documents to the Responsible Party for review and comment:

- Restoration Plan, which includes a request for restoration implementation funds.
- Administrative Record index associated with the finalization of the Restoration Plan.

Target dates for providing documents to Responsible Party for review and comment:

- Draft Restoration Plan: late 2018
- Draft Final Administrative Record index: late 2018 (before the release of the draft Restoration Plan), although regular updates will be shared during the interim between the October 2015 update and the date that the Final Restoration Plan is published.