## MEMORANDUM OF AGREEMENT BETWEEN

THE CALIFORNIA DEPARTMENT OF FISH AND GAME OFFICE OF OIL SPILL PREVENTION AND RESPONSE AND

THE NATIONAL MARINE FISHERIES SERVICE SOUTHWEST REGION

REGARDING THE CALIFORNIA MARINE MAMMAL STRANDING NETWORK AND THE OILED WILDLIFE CARE NETWORK

### ARTICLE I - BACKGROUND AND OBJECTIVES

Acting in furtherance of the purposes of the Marine Mammal Protection Act of 1972 (MMPA), 16 U.S.C. Section 1361 et seg.; the Endangered Species Act of 1973 (ESA), 16 U.S.C. Section 1531 et seg.; the Oil Spill Prevention and Response Act of 1990 (OSPRA), California Government Code Section 8670 et seg.; and the California Endangered Species Act, California Fish and Game Code Section 2050 et. seg., and

#### RECOGNIZING THAT:

- 1. The California Department of Fish and Game (DFG) is the State trustee agency for marine mammals and sea turtles. The Administrator of the Office of Oil Spill Prevention and Response (OSPR), acting through the DFG, 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 marine waters of the State, and the DFG has delegated to the OSPR the duty of directing all other DFG response efforts for spills impacting State waters.
- 2. The California State Legislature has mandated the OSPR to: (a) establish rescue and rehabilitation facilities to provide best achievable treatment for birds and marine mammals affected by oil spills in marine waters of the State; (b) establish these facilities in the Los Angeles Harbor area, San Francisco Bay area, San Diego area, Monterey Bay area, Humboldt County area, and the Santa Barbara area; (c) establish facilities in other coastal areas of the State that the OSPR deems necessary; and (d) whenever possible, improve existing authorized marine mammal rehabilitation facilities. These facilities collectively comprise the Oiled Wildlife Care Network (OWCN).
- 3. The California State Legislature has provided the OSPR with the authority to enter into agreements with organizations to establish and equip wildlife rescue and rehabilitation stations, and to ensure that they are operated in a professional manner.

- 4. The National Marine Fisheries Service (NMFS) is the Federal trustee agency responsible for pinnipeds, cetaceans, and sea turtles in the State of California, and the MMPA conveys pre-eminent Federal jurisdiction to the NMFS over all pinnipeds and cetaceans in the State of California.
- 5. The NMFS oversees the operation of the California Marine Mammal Stranding Network (CMMSN), which is responsible for the rescue and rehabilitation of all live-stranded pinnipeds, cetaceans, and sea turtles, and the disposition of all dead-stranded pinnipeds, cetaceans, and sea turtles in the State of California.
- 6. It is in the best interest of the pinniped, cetacean, and sea turtle resources in the State of California for the OSPR and the NMFS to cooperate jointly in the rescue, rehabilitation, and disposition of these resources affected by oil spills in marine waters of the State, as performed by the CMMSN and the OWCN.

### ARTICLE II - STATEMENT OF AGREEMENT

THE OSPR AND THE NMFS (THE PARTIES) DO HEREBY CONCLUDE THIS AGREEMENT TO govern the rescue and rehabilitation of livestranded pinnipeds, cetaceans, and sea turtles affected by oil spills in marine waters of the State, and the collection of life history information and disposition of dead-stranded pinnipeds, cetaceans, and sea turtles suspected of having been affected by oil spills in marine waters of the State.

### A. The OSPR hereby agrees to:

- 1. Cooperate fully with the NMFS and the CMMSN in the rescue and rehabilitation of pinnipeds, cetaceans, and sea turtles affected by oil spills in marine waters of the State.
- 2. Incorporate the NMFS guidelines and protocols on the rescue of live-stranded pinnipeds, cetaceans, and sea turtles, and the collection of life history information and disposition of dead-stranded pinnipeds, cetaceans, and sea turtles, as outlined in the NMFS/OSPR Contingency Plan for Response to Pinnipeds, Cetaceans, and Sea Turtles Affected By Oil Spills in Marine Waters of the State of California (Attachment A), into the OWCN protocols for response, rescue, rehabilitation, and medical treatment of pinnipeds, cetaceans, and sea turtles affected by oil spills in marine waters of the State.
- 3. Develop and implement cleaning and release protocols for use by the OWCN, in consultation with the NMFS, for pinnipeds, cetaceans, and sea turtles affected by oil spills in marine waters of the State.

- 4. Develop training materials, in consultation with the NMFS, for use by the OWCN dealing with species identification, restraint and capture techniques, medical care, biological sampling; and sample preservation consistent with applicable laws and regulations.
- 5. Ensure that the NMFS is fully informed prior to the release of information to the Information Officer and/or the Joint Information Center (JIC) regarding the numbers, species, or condition of pinnipeds, cetaceans, and sea turtles affected by oil spills in marine waters of the State.

#### B. The NMFS hereby agrees to:

- 1. Cooperate fully with the OSPR and the OWCN in the rescue and rehabilitation of pinnipeds, cetaceans, and sea turtles affected by oil spills in marine waters of the State.
- 2. Encourage the CMMSN to provide the OSPR, upon request, with copies of all data and medical records regarding pinnipeds, cetaceans, and sea turtles affected by oil spills in marine waters of the State.
- 3. Encourage the CMMSN to provide the OSPR with pelage, blood, tissue, and organ samples, as requested, to the extent that they are available or can be collected as part of regularly conducted veterinary practices.
- 4. Develop training materials, in consultation with the OSPR, for use by the CMMSN and the OWCN, dealing with species identification, restraint and capture techniques, medical care, biological sampling, and sample preservation consistent with applicable laws and regulations.
- 5. Ensure that the OSPR is fully informed prior to the release of information to the Information Officer and/or the Joint Information Center (JIC) regarding the numbers, species, or condition of pinnipeds, cetaceans, and sea turtles affected by oil spills in marine waters of the State.
- 6. Provide to the OWCN Program Director, with regular updates, contact phone numbers and addresses of all CMMSN rehabilitation facilities and scientific institutions, and provide, in advance, copies of all forms to be completed by the OSPR pursuant to the attached protocols.
- C. The OSPR and the NMFS further mutually understand and agree that:
  - 1. The primary purposes of this agreement are (a) to ensure that pinnipeds, cetaceans, and sea turtles affected by oil spills in marine waters of the State receive the best achievable treatment and (b) to ensure the collection of sound biological and chemical data on such affected resources

in order that natural resource injuries and/or damages can be accurately identified and assessed.

- 2. To the extent possible, and as determined by the Unified Command, pinnipeds, cetaceans, and sea turtles affected by oil spills in marine waters of the State will be captured and transported to an appropriate rehabilitation facility which is part of both the CMMSN and the OWCN. Factors to be considered by the Unified Command in deciding to which rehabilitation facility an affected animal will be transported include: (a) CMMSN member geographical area of authorization; (b) animal species; (c) medical condition and needs of the animal; and (d) special medical capabilities and current carrying capacity of individual CMMSN and OWCN members.
- 3. No pinnipeds, cetaceans, or sea turtles affected by oil spills in marine waters of the State and successfully rehabilitated will be released back into the wild without prior approval by the NMFS. All animals released will be fitted with NMFS-approved tags. The fate of non-releasable animals will be determined by the NMFS in consultation with the OSPR.
- 4. All original records and data collected by members of the CMMSN relating to pinnipeds, cetaceans, and sea turtles affected by oil spills in marine waters of the State and regarded as potential evidence in a natural resource damage assessment will be provided to the OSPR upon request. These records will continue to be the property of the State and Federal trustee agencies, but will be placed in the custody of the OSPR.
- 5. All dead pinnipeds, cetaceans, and sea turtles suspected of having been affected by oil spills in marine waters of the State will be, as practical, recovered by the OSPR or the CMMSN: The carcasses will be taken to the appropriate OWCN scientific facility for necropsy and/or storage, and then transferred to a secured storage facility identified by the OSPR, using appropriate chain of custody procedures, until full resolution of any State criminal or civil claims with the Responsible Party. During this time, the OSPR will be responsible for maintaining the chain of custody of these carcasses. Upon conclusion of full settlement, the OSPR will coordinate with the NMFS regarding proper disposition of the carcasses.
- 6. All dead pinnipeds, cetaceans, and sea turtles recovered by the OSPR but not suspected of having been affected by oil spills in marine waters of the State will be released to the CMMSN as soon as practicable following consultation with the NMFS. The OSPR will not dispose of any carcasses without the prior approval of the NMFS.

- 7. The Parties may enter into funding agreements to upgrade rehabilitation facilities, provide supplies, and provide training in order to improve their efficiency in treating and rehabilitating pinnipeds, cetaceans, and sea turtles affected by oil spills in marine waters of the State.
- 8. The Parties may enter into agreements with research organizations, scientific institutions, or with other Federal or State agencies for the purpose of carrying out their responsibilities under this Agreement. Each Party shall give prior notice to the other Party of the intent to pursue such agreements. Any such agreement must be consistent with the provisions of this MOA, and any conflicts shall be resolved by the Parties before any such agreement is signed by a Party. Confirmed copies of any such agreements must be provided to both Parties. Any such proposed agreement related to natural resource damage assessment shall be confidential, shall include signed confidentiality agreements, and a copy shall be provided to the other Party for review and comment prior to signing.
  - 9. All samples, including biological and chemical materials, collected by the CMMSN which may be regarded as potential evidence in a natural resource damage assessment will be provided to the OSPR, upon request, using appropriate chain of custody procedures. These samples and materials will continue to be the property of the State and Federal trustee agencies, but will be placed in the custody of the OSPR. The OSPR will be responsible for maintaining the chain of custody of these samples and materials.
- 10. Nothing contained in this MOA is intended to conflict with current NMFS or OSPR authorities or responsibilities; each Party will advise the other of potential or known conflicts.
- 11. The NMFS will notify the OSPR within thirty days of authorizing a new rehabilitation facility or scientific institution to participate in the CMMSN or within thirty days of removing a rehabilitation facility's or scientific institution's authority to participate in the CMMSN. The OSPR may invite new CMMSN members to join the OWCN.

#### ARTICLE III - TERMS OF AGREEMENT

- 1. This agreement shall commence on the date of last signature, and shall be effective through June 30, 2003. This MOA will be automatically renewed every five years thereafter, unless the Parties agree otherwise.
- 2. The terms of this MOA may be modified by a written agreement signed by both Parties. Any action to modify or amend this agreement may only be taken by the Key Officials, or their designees.

3. Should any disagreement arise concerning the interpretation of the terms of this MOA that cannot be resolved at the staff level, the area (s) of disagreement shall be reduced to writing for consideration by both Parties. If agreement on interpretation is not reached within a reasonable amount of time, but not to exceed thirty days, the Parties shall forward the written presentation of the disagreement to respective higher officials for resolution.

ARTICLE IV - TERMINATION

This MOA may be terminated sixty days after written notice from either Party, or modified or extended by mutual agreement.

ARTICLE V - KEY OFFICIALS

Regional Administrator Southwest Region National Marine Fisheries Service

Administrator Office of Oil Spill Prevention and Response California Department of Fish and Game

Pete Bontadelli

DATE

Administrator

OFFICE OF OIL SPILL PREVENTION

AND RESPONSE

William J. Hogarth

26 march 1997

William T. Hogarth, Ph.D

Acting Regional Administrator

Southwest Region

NATIONAL MARINE FISHERIES SERVICE

#### ATTACHMENT A

NMFS/OSPR CONTINGENCY PLAN FOR RESPONSE TO PINNIPEDS, CETACEANS, AND SEA TURTLES AFFECTED BY OIL SPILLS IN MARINE WATERS OF THE STATE OF CALIFORNIA

### Free-Swimming Pinnipeds

- 1. Any sighting of a free-swimming pinniped believed to be affected by an oil spill is to be immediately reported to the OSPR personnel on site.
- 2. The OSPR personnel will investigate the sighting using one of the response vessels or support vessels listed in the appropriate Area Contingency Plan.
- 3. The OSPR personnel will then make a decision on whether or not to initiate a rescue attempt based on the NMFS guidelines on page 5 of this document.
- 4. If the OSPR personnel decide that a rescue attempt should be initiated, the OSPR personnel will contact the appropriate marine mammal rehabilitation center (MMRC) to coordinate the rescue.
- 5. Upon capture and prior to transport to the appropriate MMRC, a marine mammal stranding report form will be completed by either the MMRC or the OSPR personnel. At this time, the animal will be assigned a case number for damage assessment purposes. The case number will be recorded on the marine mammal stranding report form.

#### Live Beached Pinnipeds

- 1. Any sighting of a live beached pinniped in the general area of an oil spill is to be immediately reported to the OSPR personnel on site.
- 2. The OSPR personnel will then investigate the sighting and will make a decision on whether or not to initiate a rescue attempt based on the overall health of the animal.
- 4. If the OSPR personnel decide that a rescue attempt should be initiated, the OSPR personnel will contact the appropriate marine mammal rehabilitation center (MMRC) to coordinate the rescue.
- 5. Upon capture and prior to transport to the appropriate MMRC, a marine mammal stranding report form will be completed by either the MMRC or the OSPR personnel. At this time, the animal will be assigned a case number for damage assessment purposes. The case number will be recorded on the marine mammal stranding report form.

## Dead Beached Pinnipeds

- 1. Any sighting of a dead beached pinniped in the general area of an oil spill is to be immediately reported to the OSPR personnel on site.
- 2. The OSPR personnel will investigate the sighting and document the dead beached pinniped (whether or not the carcass is fresh or decomposed) following the protocol on Page 6 of this document.
- 3. Every carcass examined will be assigned a case number for damage assessment purposes. The case number will be recorded on the marine mammal stranding report form.
- 4. Every attempt will be made to transport all fresh dead carcasses to the appropriate scientific institution for a complete necropsy in a laboratory environment. A field necropsy should not be conducted, except in the case where a carcass is too large for transport.

### Free-Swimming and Live Beached Cetaceans

- 1. Any sighting of a free-swimming cetacean believed to be affected by an oil spill is to be immediately reported to the OSPR personnel on site.
- 2. The OSPR personnel will investigate the sighting using one of the response vessels or support vessels listed in the appropriate Area Contingency Plan.
- 3. If the OSPR personnel decide that a stranding is imminent, they will immediately contact the appropriate marine mammal rehabilitation center (MMRC), scientific institution (SI), and NMFS Stranding Coordinator for assistance. (No rescue attempts are to be made on free-swimming cetaceans).
- 4. Prior to returning a live beached cetacean back to the ocean or transporting the cetacean to the appropriate MMRC, a marine mammal stranding report form will be completed by either the MMRC, SI, or OSPR personnel. At this time, the animal will be assigned a case number for damage assessment purposes. The case number will be recorded on the marine mammal stranding report form.

## Dead Beached Cetaceans

- 1. Any sighting of a dead beached cetacean in the general area of an oil spill is to be immediately reported to the OSPR personnel on site.
- 2. The OSPR personnel will investigate the sighting, document the dead beached cetacean (whether or not the carcass is fresh or decomposed), and immediately contact the appropriate scientific institution (SI) and the NMFS Stranding Coordinator.
- 3. Every cetacean carcass will be assigned a case number for damage assessment purposes. The case number will be recorded on the marine mammal stranding report form.
- 4. Every attempt will be made to transport all cetacean carcasses (both fresh dead and decomposed) to the appropriate SI for a complete necropsy in a laboratory environment. (No necropsies are to be attempted in the field unless permission is granted by the NMFS Stranding Coordinator).

#### Free-Swimming and Live Beached Sea Turtles

- 1. Any sighting of a free-swimming sea turtle believed to be affected by an oil spill or a live beached sea turtle in the general area of an oil spill is to be immediately reported to the OSPR personnel on site.
- 2. The OSPR personnel will investigate the sighting using one of the response vessels or support vessels listed in the appropriate Area Contingency Plan.
- 3. If the OSPR personnel decide that a free-swimming or live beached sea turtle has not been affected by an oil spill, but is likely to become affected if no action is taken, the OSPR personnel will translocate the animal to another site for release. (Prior to release, the OSPR personnel will contact the appropriate scientific institution and the NMFS Stranding Coordinator to ensure proper species identification).
- 4. If the OSPR personnel decide that a free-swimming sea turtle has been affected by an oil spill, the OSPR personnel will capture the animal and immediately contact the appropriate sea turtle rehabilitation center (STRC) and the NMFS Stranding Coordinator for assistance.
- 5. Prior to translocating a free-swimming or live beached sea turtle to another site for release or transporting the animal to the appropriate STRC, a sea turtle stranding report form will be completed by either the STRC or the OSPR personnel. At this time, the animal will be assigned a case number for damage

assessment purposes. The case number will be recorded on the sea turtle stranding report form.

## Dead Beached Sea Turtles

- 1. Any sighting of a dead beached sea turtle in the general area of an oil spill is to be immediately reported to the OSPR personnel on site.
- 2. The OSPR personnel will investigate the sighting, document every dead beached sea turtle (whether or not the carcass is fresh or decomposed), and immediately contact the appropriate scientific institution (SI) and the NMFS Stranding Coordinator.
- 3. Every sea turtle carcass will be assigned a case number for damage assessment purposes. The case number will be recorded on the sea turtle stranding report form.
- 4. Every attempt will be made to transport all sea turtle carcasses (both fresh dead and decomposed) to the appropriate SI for a complete necropsy in a laboratory environment. (No necropsies are to be attempted in the field unless permission is granted by the NMFS Stranding Coordinator).

# NMFS GUIDELINES FOR RESCUING PINNIPEDS AFFECTED BY OIL SPILLS

(To be implemented under the guidance of CDFG-OSPR and NOAA NRDA staff for the Incident Commander)

- 1. No rescue should be initiated on free-swimming or beached pinnipeds in the vicinity of an oil spill unless the animal in question is in obvious distress. A good rule-of-thumb to follow is, if the animal attempts to evade capture, leave it alone.
- 2. No rescue attempt should be made of any pinnipeds hauled out on a mainland or offshore island rookery site; or hauled out on a breakwater, barge, or bell buoy. The primary goal at these sites should be to boom off the immediate area, thereby creating a buffer zone around the site.
- 3. No hazing of pinnipeds should occur unless authorized by the Incident Commander.

PROTOCOL FOR DETERMINING IF A PINNIPED HAS BEEN AFFECTED BY AN OIL SPILL

#### A. Live Animal

(In coordination with the CDFG-OSPR and the NOAA NRDA staff for the Incident Commander).

- 1. Determine if the animal is a candidate for capture based on the NMFS guidelines.
- 2. Capture-may be initiated by the appropriate marine mammal rehabilitation center under the guidance of the CDFG-OSPR and the NOAA NRDA staff.

#### B. Dead Animal

(In coordination with the CDFG-OSPR and the NOAA NRDA staff for the Incident Commander, determine if the carcass is fresh or decomposed).

#### 1. Fresh Carcass

- a. Complete a NMFS stranding report.
- b. Tag the carcass with a field identification number.
- c. Transfer the carcass to a designated holding facility (freezer storage).
- d. Perform a necropsy.
- e. Forward the original stranding report and a copy of the necropsy report to the NMFS.

#### 2. Decomposed Carcass

- a. Complete a NMFS stranding report.
- b. Tag the carcass with a field identification number and spray paint.
- c. Contact the responsible beach agency for disposal.
- d. Forward the original stranding report to the NMFS.

# NMFS GUIDELINES FOR RESCUING CETACEANS AFFECTED BY OIL SPILLS

(To be implemented under the guidance of CDFG-OSPR and NOAA NRDA staff for the Incident Commander)

- 1. No rescue should ever be initiated on free-swimming cetaceans in the vicinity of an oil spill.
- 2. A rescue should always be attempted on a beached cetacean. The animal should be covered with a light material such as a sheet or towel to protect it from heat stress and kept wet at all times. The eyes, snout, blowhole, flippers, and flukes should be left uncovered at all times. The animal should be positioned on its belly with shallow depressions made in the sand for the flippers to fit into.
- 3. No beached cetacean is to be pushed back out to sea without first being examined by a NMFS-approved marine mammal veterinarian. The animal should be affixed with a NMFS-approved tag or brand prior to being returned to the open ocean.

PROTOCOL FOR DETERMINING IF A CETACEAN HAS BEEN AFFECTED BY AN OIL SPILL

#### A. Live Animal

(In coordination with the CDFG-OSPR and the NOAA NRDA staff for the Incident commander).

- 1. Determine if the animal is a candidate for rehabilitation based on the NMFS guidelines.
- 2. Capture may be initiated by the appropriate marine mammal rehabilitation center under the guidance of the CDFG-OSPR and the NOAA NRDA staff.
- B. Dead Animal (Fresh or Decomposed)
  - . 1. Complete a NMFS stranding report.
    - 2. Tag the carcass with a field identification number.
    - 3. Transfer the carcass to a designated holding facility (freezer storage).
    - 4. Perform a necropsy.
    - 5. Forward the original stranding report and a copy of the necropsy report to the NMFS.

## NMFS GUIDELINES FOR RESCUING SEA TURTLES AFFECTED BY OIL SPILLS

(To be implemented under the guidance of CDFG-OSPR and NOAA NRDA staff for the Incident Commander)

- 1. A rescue should always be initiated on a free-swimming sea turtle in the vicinity of an oil spill unless the animal attempts to evade capture. If the animal is captured but does not appear to have been affected, the animal should be translocated and released at another site following consultation with the appropriate scientific institution or the NMFS Stranding Coordinator.
- 2. A rescue should always be attempted on a beached sea turtle. The animal should be covered with a light material such as a sheet or towel to protect it from heat stress and kept wet at all times. The head and flippers should be left uncovered at all times. The animal should be positioned on its belly with shallow depressions made in the sand for the flippers to fit into.
- 3. No beached sea turtle is to be pushed back out to sea without first being examined by a NMFS-approved sea turtle veterinarian. The animal must be affixed with a NMFS-approved tag prior to being returned to the open ocean.

PROTOCOL FOR DETERMINING IF A SEA TURTLE HAS BEEN AFFECTED BY AN OIL SPILL

### A. Live Animal

(In coordination with the CDFG-OSPR and the NOAA NRDA staff for the Incident Commander).

- 1. Determine if the animal is a candidate for capture based on the NMFS guidelines.
- 2. Capture may be initiated by the appropriate sea turtle rehabilitation center under the guidance of the CDFG-OSPR and the NOAA NRDA staff.
- B. Dead Animal (Fresh or Decomposed)
  - 1. Complete a NMFS stranding report.
  - 2. Tag the carcass with a field identification number.
  - 3. Transfer the carcass to a designated holding facility (freezer storage).

  - Perform a necropsy.
     Forward the original stranding report and a copy of the necropsy report to the NMFS.

IELD NO.:	NMFS RE	GISTRATION NO
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