UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Silver Spring, Maryland 20910

SEP 1 - 2006

MEMORANDUM FOR: Captain Kenneth W. Barton
Acting Director
Office of Response and Restoration

FROM: for John H. Dunnigan
Assistant Administrator

SUBJECT: Clearance and Approval of MOA-2006-093, an Agreement Between the National Ocean Service, U.S. Department of the Interior, and the State of North Carolina

AGREEMENT SUMMARY

I. NOS AGREEMENT CODE: MOA-2006-093/7313

II. PARTIES: The National Ocean Service (NOS), through the Office of Response and Restoration (OR&R), U.S. Department of the Interior, U.S. Fish and Wildlife Service, and the State of North Carolina, Department of Environment and Natural Resources

III. PROJECT TITLE/SUBJECT: "Weyerhaeuser – Plymouth Millsite Cooperative Framework"

The attached Agreement provides the framework for a cooperative natural resource damage assessment to facilitate the resolution of any claims for natural resource damages (NRD) arising from the release of hazardous substances from the Weyerhaeuser - Plymouth Millsite between the Trustees (Parties). The Parties intend to work efficiently and in a cost-effective manner to resolve NRD claims for natural resource damages alleged to have resulted from the release. .

This Agreement is intended to remain in effect until completion of its purpose or termination.

IV. NOAA CONTROL NUMBER: N/A

V. AUTHORITIES:

Agreement/Transfer Authority: CERCLA (42 USC 9607(f))
Programmatic Authority: EO 12580

Printed on Recycled Paper

VI. FUNDING/ACCOUNTING AND FISCAL DATA: N/A

VII. LEGAL CLEARANCE:

GCNR CLEARANCE: The Assistant General Counsel for Natural Resources programmatic attorney, Ms. Katherine Pease, cleared the Agreement on June 29, 2006.

DOC-OGC CLEARANCE: Review by The Department of Commerce, Office of General Counsel (OGC), General Law Division (GLD) is not required, because OGC-GLD waived legal review because GCNR are experts on nature resource damage assessment agreements.

VIII. SPECIAL INSTRUCTIONS:

This memorandum provides clearance and approval on the subject Agreement. Please reference the NOS Agreement Code: MOA-2006-093/7313, when you provide an original or certified copy of the fully executed Agreement to Management and Budget, Attn: Bruce Jackson/N/MB5. Should you have any questions, please contact Bruce Jackson at (301) 713-3070, extension 140 or Martin Freeman at extension 184.

Attachment

FUNDING & PARTICIPATION AGREEMENT
BETWEEN
THE NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION
THE U.S. DEPARTMENT OF THE INTERIOR
THE STATE OF NORTH CAROLINA
AND
WEYERHAEUSER COMPANY
CONCERNING

COOPERATIVE NATURAL RESOURCE DAMAGE ASSESSMENT, RESTORATION PLANNING, AND RESTORATION IMPLEMENTATION ACTIVITIES FOR THE WEYERHAEUSER PLYMOUTH MILLSITE MARTIN COUNTY, NC

I. PARTIES

This Memorandum of Agreement (Agreement) is between the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce; the U.S. Department of the Interior (DOI) through the U.S. Fish & Wildlife Service (FWS); the State of North Carolina through the Department of Environment and Natural Resources (collectively the "Trustees"); and Weyerhaeuser Company (Weyerhaeuser). The Trustees and Weyerhaeuser are collectively referred to as Parties and individually as a Party.

II. PURPOSE

The purpose of this Agreement is to provide an expedited, focused framework for a cooperative Natural Resource Damage Assessment (NRDA) to facilitate the resolution of any claims for natural resource damages (NRD) arising from the releases of hazardous substances (Release) from the Weyerhaeuser Plymouth Millsite (Facility) located in Martin County, North Carolina. This Agreement sets forth procedures for (a) coordinating data collection and assessment activities to determine the extent of natural resource injuries; (b) expediting restoration of any injured natural resource and/or the services provided by those resources; and (c) paying the assessment costs incurred by the Trustees. Through this Agreement, the Parties intend to work efficiently and in a cost-effective manner to advance the NRDA and resolve NRD claims related to the Release.

The real extent of the assessment encompasses: the lower Roanoke River, its tributaries and adjacent habitats from Jamesville, NC to the mouth of the river; the Facility, including, but not limited to, Welch Creek, Former Landfill No. 1, and the Former Chlorine Plant, and the impacted natural resources; and western Albemarle Sound and adjacent habitats out to Bull Bay and Harvey's Point.

III. AUTHORITIES

This Agreement is entered into pursuant to the Comprehensive Environmental, Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9607(f); Executive Order 12580; the National Contingency Plan, Subpart G, 40 C.F.R. §§ 300.600-300-615; the Department of the Interior's Natural Resource Damage Assessment Regulations (Regulations), 43 C.F.R. Part 11; and other applicable federal and North Carolina state law.

IV. DEFINITIONS

Unless otherwise defined, terms in this Agreement shall have the meaning ascribed to them in CERCLA and the Regulations.

A. "Assessment Costs" means the reasonable costs of determining injury and developing restoration projects, developing a restoration plan including, but not limited to, reasonable administrative and legal costs (including Trustee attorney costs); travel expenses; personnel costs; monitoring and oversight costs; costs associated with public participation; indirect costs and overhead charges.

B. "Cooperative Work" means all work performed pursuant to this Agreement as a Cooperative Study or Restoration project.

C. "Natural Resource Damage Assessment" or "NRDA" means the process of collecting and analyzing information to evaluate the nature and extent of injuries resulting from the Release of hazardous substances and determining the restoration actions needed to bring injured natural resources and services back to baseline and to make the environment and public whole for interim losses.

D. "Natural Resource Damage (s) Recovery (ies)" means any award, judgment, settlement or other payment to any of the Trustees which is received or controlled by any of the Trustees as a result of claims for natural resource damages related to the Release, except that such term does not include any award which is a judgment, settlement, or payment in reimbursement of costs of natural resource damage assessment incurred by any of the Trustees.

E. "Restore" and "Restoration" mean any actions undertaken by the Trustees pursuant to 42 U.S.C. § 9607(f)(1) and other applicable laws or regulations, including planning, implementation, monitoring, administration and oversight, which serve to restore, rehabilitate, replace, or acquire the equivalent of natural resources or natural resource services and compensate for the interim natural resource lost use or lost services, injured, destroyed or lost as a result of the Release.

V. COOPERATIVE FRAMEWORK

A. General

The Parties agree that a cooperative effort to determine the injuries to natural resources and/or resource services, to quantify such injuries, and to conduct restoration planning will be cost-effective, avoid duplication and effectively use limited personnel and other resources. To the extent practicable, the Parties agree to use existing data and literature to determine injuries to natural resources and/or their services. The Parties will use good faith efforts to reach consensus on the necessity, selection, design and protocols for Cooperative Studies and Restoration Projects, as well as the selection of consultants or contractors for implementation of the Cooperative Studies and Restoration Projects.

B. Organizational Structure

To advance the purpose of this Agreement, the Parties agree to establish an organizational structure that consists of 1) a Joint Assessment Team, 2) Technical Working Groups, and 3) Outside Resources. The roles and responsibilities of each are described below.

1. Joint Assessment Team

The Joint Assessment Team will be responsible for coordinating activities that will meet the goals of this Agreement.

a. Structure: The Joint Assessment Team shall consist of one representative of each Trustee and one representative from Weyerhaeuser. Each representative may bring such advisers to meetings as each deems appropriate. The Joint Assessment Team will be chaired by a Trustee Representative. Each representative shall have one vote on the Joint Assessment Team.

b. Functions: The functions of the Joint Assessment Team shall include, but not necessarily be limited to, the responsibility to:

- develop budgets
- evaluate suitability of existing data to address potential natural resource injury
- identify data gaps
- design plans for obtaining necessary additional information
- oversee implementation of Cooperative Studies
- evaluate restoration opportunities
- resolve disputes related to the implementation of Cooperative Studies pursuant to **Section XIII, "Dispute Resolution"**
- establish Technical Working Groups, as appropriate
- approve use of Outside Resources
- oversee budgets for Cooperative Studies.

In addition to the responsibilities listed above, the Joint Assessment Team shall develop a statement of work (SOW) describing the tasks to be completed to develop a Natural Resource Damage Restoration and Compensation Determination (NRDRCD) Plan for the NRD arising from the Release. The SOW will be attached and incorporated into this Agreement.
In fulfilling its responsibilities, the Joint Assessment Team shall use its best efforts to reach consensus. However, the Parties agree that all decisions implementing this Agreement will

require the consensus of the Parties unless this Agreement specifically provides that such decision is reserved for Trustees. For purposes of this Agreement, consensus means an agreement of all Parties that they can support an idea, proposal, alternative, or recommendation, recognizing that not every Party supports every idea, proposal, alternative, or recommendation with equal enthusiasm. If the Parties cannot reach consensus within a reasonable amount of time, any Party may undertake the work related to the idea, proposal, alternative or recommendation pursuant to **Section VIII, "Independent Studies."** It is understood that the Trustees retain the right to make all final decisions with regard to the discharge of their duties under CERCLA and other applicable law.

2. Technical Working Groups

The Joint Assessment Team may convene Technical Working Groups as necessary to expedite work. The Joint Assessment Team will establish the roles and responsibilities of each working group. Each working group will consist of a representative of each Party, unless otherwise agreed. A Technical Working Group will be co-chaired by a representative of a Trustee and Weyerhaeuser unless otherwise agreed.

3. Outside Resources

In fulfilling the goals of this Agreement, it may be necessary from time to time to draw upon the services of various resources outside the membership of the Joint Assessment Team and the Technical Working Groups. Such Outside Resources may be needed to implement specific studies, render advice on technical issues, facilitate the cooperation of the Parties in implementing the terms of this Agreement, or conduct other functions deemed appropriate under this Agreement. Any Party may propose the use of Outside Resources to the Joint Assessment Team.

VI. COOPERATIVE STUDIES

It is anticipated that the Parties will identify data gaps requiring further study. To avoid duplication of effort and to reduce costs, the Parties will attempt to reach consensus on the study design, study protocols, including appropriate quality assurance/quality control standards, and selection of the principal investigator.

A. Process for Proposing and Selecting Cooperative Studies

Any Party may propose a study to the Joint Assessment Team for consideration. Any proposed study agreed to by the Joint Assessment Team shall be deemed a "Cooperative Study."

1. Development of Work Plans

For each Cooperative Study, the Joint Assessment Team will request that a draft work plan be developed by the (a) appropriate Technical Working Group or (b) consultants or contractors for either the Trustees or Weyerhaeuser. The draft work plan for each Cooperative Study will include the following technical information:

- purpose and need
- study design/methods
- qualifications of the study team
- analytical work, including the laboratory to be used and quality assurance/quality control plan (QA/QC)
- products/deliverables
- duration
- budget.

The draft work plan will be provided to the Joint Assessment Team for review and comment. Comments from individual members of the Joint Assessment Team that are approved by the Joint Assessment Team will be incorporated into the final work plan. The Joint Assessment Team must approve the final work plan.

2. Modification of Work Plan

If a Party proposes to modify a final work plan, it will notify the Technical Working Group overseeing the implementation of the study and describe the modification prior to the implementation of the study. The Technical Working Group may approve, in writing, any change that is not substantial. If the Technical Working Group decides that the modification is substantial, it will elevate the issue to the Joint Assessment Team. Proposed modifications to any study being overseen by the Joint Assessment Team will be made to the Joint Assessment Team. Any modifications agreed to by the Joint Assessment Team will be in writing and attached to the final work plan.

B. Retention of Persons to Perform Cooperative Studies

Cooperative Studies may be undertaken by any Party, its contractors or consultants, provided, however, that the Joint Assessment Team must specifically approve the entity that will undertake such activities. As part of the approval process, the Joint Assessment Team will have the opportunity to review the qualifications of any proposed contractor or consultant prior to making a final decision. Any potential contractor or consultant will disclose any potential conflicts of interest as early in the contractual process as possible and, in any event, before the contractor or consultant is retained.

Any Cooperative Studies to be performed by Weyerhaeuser, its consultants or contractors will be conducted pursuant to oversight by the Trustees.

Each Party may call as a witness any consultant or contractor performing a Cooperative Study, in any judicial or administrative proceeding relating to NRD arising from the Release, to testify regarding the conduct of, and conclusions reached, in performing such activities. The Parties agree not to object to the testimony of such person on the basis of his or her prior participation on behalf of the Parties. Any consultant or contractor previously engaged in Cooperative Work may be retained by any Party for subsequent work related to NRD arising from the Release without objection from the other Parties.

C. Data Collection, Dissemination, and Retention

1. Data Collection

Consistent with laboratory and field collection protocols and procedures and field safety concerns, any Party may be present during data collection activities for Cooperative Studies. The Parties agree to give each other at least fifteen (15) days advanced written notice of any data collection activity for Cooperative Studies, unless otherwise agreed upon or impracticable. In the latter event, the Parties agree to notify each other of the upcoming data collection activity as soon as reasonably practicable.

2. Data Dissemination

All data collected for Cooperative Studies shall be shared among the Parties as soon as is reasonably practicable. Any Party has the right to use any data collected pursuant to a Cooperative Study. Data shall be provided to the Parties in both paper and electronic formats, when practical.

3. Data Retention and the Use of Archived Data

Samples collected in the course of a Cooperative Study shall be retained until the Trustees approve of their disposition. Each Party shall have access to all samples pursuant to procedures determined by the Joint Assessment Team.

D. Modification of Cooperative Studies

Any Party may propose to modify any Cooperative Study based on preliminary results, changed circumstances, or for other reasons. If a Party proposes to modify an on-going study, it will notify the Technical Working Group overseeing the implementation of the study and describe the modification. The Technical Working Group may approve, in writing, any change that is not substantial. If the Technical Working Group decides that the modification is substantial, it will elevate the issue to the Joint Assessment Team. Proposed modifications to any study being overseen by the Joint Assessment Team will be made to the Joint Assessment Team. Any modifications agreed to by the Joint Assessment Team will be in writing and attached to the Cooperative Study.

E. Data Interpretation

1. Consensus on Interpretation

The Parties will employ good faith efforts to reach consensus on the interpretation of, and conclusions to be drawn from, data collected pursuant to a Cooperative Study.

2. Independent Interpretations

In the event that the Parties fail to reach consensus on the interpretation of, and conclusions to be drawn from, data collected pursuant to a Cooperative Study, the Parties expressly reserve the right to produce and present separate and independent interpretations and conclusions. All separate and independent interpretations and conclusions, produced pursuant to this paragraph, shall be provided to the other Parties. Separate and independent interpretations and conclusions, however, are not part of a Cooperative Study, unless adopted by the Joint Assessment Team.

F. Cooperative Study Reports

Upon completion of a Cooperative Study, the Party, contractor, or consultant that undertook the Cooperative Study shall produce a draft report describing the study and its conclusions and provide copies of that report to the Joint Assessment Team for review and comment. Comments from individual members of the Joint Assessment Team that are approved by the Joint Assessment Team will be incorporated into the final report. The Joint Assessment Team must approve the final report.

Time lines for providing draft and final reports, submitting comments, and revising the report will be established for each Cooperative Study by the Joint Assessment Team on a study-by-study basis.

G. Withdrawal from Cooperative Studies

Provided that a study is being conducted consistently with the approved work plan and any agreed modifications thereto, Weyerhaeuser shall perform or fund all Cooperative Studies through to completion, unless the Parties agree to the contrary or the study plan calls for discontinuation upon the occurrence of a specified event. Events that will trigger discontinuation of a study will be further defined in a specific study work plan. The obligation of Weyerhaeuser to perform Cooperative Studies shall end if Weyerhaeuser terminates its participation in accordance with the requirements of **Section XIV, "Modification, Duration and Termination,"** paragraph C. With respect to Cooperative Studies being performed by the Trustees or their contractors, the obligation of Weyerhaeuser to perform Cooperative Studies shall end if Weyerhaeuser terminates its participation in accordance with the requirements of **Section XIV, "Modification, Duration and Termination,"** paragraph C; provided, however, that if a study or studies has been undertaken in phases and Weyerhaeuser terminates its participation before the completion of a phase, Weyerhaeuser shall fund that phase until it is completed.

H. Challenges to Studies

The Parties agree that any data collected pursuant to a Cooperative Study, including the associated study design, data collection methodologies, and quality assurance procedures, as well as conclusions or interpretations, that are not challenged by a Party in writing with an explanation of the basis for such challenge within sixty (60) days of receipt of the final report, shall be binding upon such Party in any civil judicial or administrative proceeding between or among the Parties relating to natural resource damages arising from the Release. A Party has the right to challenge in any such proceeding only those results, conclusions or interpretations that a

Party has timely challenged pursuant to this paragraph. Provided, nothing in this Agreement will be construed as an agreement by any Party that any Cooperative Work is admissible or binding in any judicial or administrative proceeding relating to natural resource damages involving any party not a signatory to this Agreement, other than the United States acting on behalf of the signatory federal Trustees or the North Carolina Department of Justice acting on behalf of the signatory state Trustee.

I. Adopted Studies

The Joint Assessment Team may adopt all or portions of studies undertaken, or data collected by other entities, where such studies or data are deemed relevant to the Release (Adopted Studies). Adopted Studies shall be binding upon such Parties in any civil judicial or administrative proceeding in the same way as Cooperative Studies as provided in this section.

VII. STIPULATIONS

The Parties shall endeavor to enter into stipulations whenever appropriate during the course of the cooperative natural resource damage assessment and restoration process. Any Party may propose a stipulation at any time. A stipulation may address issues of fact or law or both. A stipulation, agreed to by all the Parties, the United States Department of Justice and the North Carolina Department of Justice shall be attached to this Agreement and shall survive the termination of this Agreement. Any matter covered by a stipulation or other form of agreement under this Agreement shall not be subject to objection or challenge by any Party.

VIII. INDEPENDENT STUDIES

Notwithstanding any other provision of this Agreement, the Parties expressly reserve the right to perform independent NRDA studies (Independent Studies) in connection with the Release. Independent Studies include only those studies or work whose primary purpose is NRDA. Each Party agrees not to undertake any Independent Study unless such study has first been proposed as a Cooperative Study to all the Parties. If the proposed study is not approved as a Cooperative Study, or the Parties are otherwise unable to reach consensus on the proposed study, a Party may conduct the proposed study as an Independent Study at its own expense. If a Party conducts an Independent Study, the data dissemination requirements applicable to Cooperative Studies, as set forth in **Section VI, "Cooperative Studies,"** shall apply to any data collected pursuant to the Independent Study.

IX. PUBLIC PARTICIPATION & OUTREACH

The Parties recognize and agree that public participation during the injury assessment and the restoration planning processes is both desirable and necessary. The Parties will work together to develop and implement a plan to communicate with the public.

At a minimum, the Trustees shall ensure that public participation in the processes shall meet all legal requirements. The Trustees will undertake public outreach consistent with CERCLA and its Regulations. Accordingly, the Trustees will provide public notice and solicit public review and

comment of documents the Trustees deem appropriate. The Trustees reserve the right to provide information about the Release and the NRDA process to the public.

X. RESTORATION PLANNING AND IMPLEMENTATION

The Trustees will ensure that all cooperative efforts related to restoration planning and implementation of restoration projects comply with the National Environmental Policy Act (NEPA) and any North Carolina state law equivalent.

A. Identification of Restoration Criteria

The Parties shall propose restoration criteria that will be used when considering the appropriateness of restoration project proposals. These factors will be based, in part, on factors identified in 40 C.F.R. §11.82(d) and, once adopted by the Trustees, shall be attached to and incorporated by reference into this Agreement.

B. Identification and Selection of Restoration Projects

Any Party may propose a restoration project to the Joint Assessment Team for consideration. The Joint Assessment Team will evaluate each proposal based on the restoration criteria developed pursuant to this section. If after evaluation of the proposed restoration project, the Joint Assessment Team agrees that the proposed restoration project meets the restoration objectives of the NRDA, and the Joint Assessment Team approves of such project, it will be deemed a preliminary restoration project.

The Trustees will provide a draft restoration plan, proposing the preliminary restoration project(s) as the preferred alternative, for public review and comment. Upon completion of the public notice and comment process and consideration of any public comments, the Joint Assessment Team will determine whether to recommend that the Trustees adopt a preliminary restoration project(s) for implementation. If the Trustees, in their discretion, adopt a preliminary restoration project(s)/preferred alternative(s) for implementation, they will release to the public a final restoration plan documenting that decision.

For each restoration project adopted by the process described in this section, the Joint Assessment Team will request that a draft work plan be developed by the (a) appropriate Technical Working Group or (b) consultants or contractors for any Party. The draft work plan will be provided to the Joint Assessment Team for review and comment. Comments from members of the Joint Assessment Team that are agreed to by the Joint Assessment Team will be incorporated into the final work plan. The Joint Assessment Team must approve the final work plan. A copy of the final work plan for each restoration project shall be attached to this Agreement.

C. Implementation of Restoration Projects

Upon finalization of a work plan for a restoration project, the Joint Assessment Team will determine whether to implement the restoration project prior to signing a final settlement

agreement related to the Trustees' NRD claims. If the Joint Assessment Team agrees to implement a restoration project, it will authorize a Party, its consultants or contractors, to implement the restoration project. Each restoration project shall be conducted pursuant to the final work plan and the provisions of this Agreement. Upon completion of a restoration project, a report on the restoration project will be prepared by the (a) appropriate Technical Working Group or (b) consultants or contractors for any Party and provided to the Parties. The report will be included in the administrative record maintained by the Trustees.

The Trustees shall oversee implementation of restoration project(s) for which Weyerhaeuser, its consultants or contractors have been selected to implement pursuant to this subsection. The Joint Assessment Team shall quantify restoration benefits accruing from each implemented restoration project. After it has quantified the benefits, the Joint Assessment Team will recommend to the Trustees the adoption of the quantification of the benefits.

D. Restoration Credits

Upon adoption by the Trustees of the quantification of the level of restoration benefits accruing from the restoration projects that have been implemented, the Trustees shall credit those benefits toward the amount of restoration ultimately determined to be owed by Weyerhaeuser and such credit shall be documented in any settlement agreement resolving the Trustees' NRD claims against Weyerhaeuser resulting from the Release from the Facility.

E. Pending Restoration Project

Prior to entering into this Agreement, the Parties have been working cooperatively and have formed a technical working group. That group has developed a pending preliminary restoration project. The Trustees have prepared a draft restoration plan, proposing the pending preliminary restoration project as the preferred alternative, for public review and comment. Should this Agreement not be effective to all parties upon completion of the public notice and comment process and consideration of any public comments, the technical working group will determine whether to recommend that the Trustees adopt the preliminary restoration project for implementation. If the Trustees, in their discretion, adopt the pending preliminary restoration project/preferred alternative for implementation, they will release to the public a final restoration plan documenting that decision. As provided in subsections C. and D. above, the restoration benefits of the implemented project will be quantified and credited toward the amount of restoration ultimately determined to be owed by Weyerhaeuser. The Parties recognize that the pending preliminary restoration project, if implemented, may or may not resolve all of Weyerhaeuser's NRD liability.

XI. FINANCIAL RESPONSIBILITY

A. Cooperative Studies and Restoration Plans

Weyerhaeuser or its consultants or contractors shall either (1) develop and/or implement any Cooperative Study or restoration project under Trustee oversight and according to the terms of

this Agreement, or (2) provide funding to the Trustees to develop and/or implement a Cooperative Study or develop or implement a restoration project, in accordance with the terms of this Agreement.

B. Assessment Costs

Weyerhaeuser agrees to fund all reasonable Assessment Costs, as defined in **Section IV, "Definitions,"** A, incurred and, to be incurred, by the Trustees. Payment instructions are outlined in Attachment A, "Payment of Funds and Notice."

1. Payment of Incurred Costs

By January 1, 2007, each Trustee shall provide Weyerhaeuser with a statement of Assessment Costs previously incurred together with supporting documentation as specified below. Weyerhaeuser recognizes that the time period for the previously incurred Assessment Costs will be different for each Trustee.

2. Payment of Future Costs

Beginning July 1, 2007, and no more frequently than every six (6) months until final settlement of all of the Trustees' NRD claims arising from the Release, each Trustee shall submit to Weyerhaeuser a request for payment with supporting documentation for Assessment Costs incurred since the last payment to that Trustee. Subject to its reservation of rights below, Weyerhaeuser agrees to pay all undisputed Trustee Assessment Costs within forty-five (45) days of its receipt of the Trustee's request for payment and supporting documentation.

3. Cost Documentation

When presenting a statement of Assessment Costs for payment, the Trustees shall include the following types of information, as applicable:

- labor and overhead rates of each employee or contractor including the employee's or contractor's name, title, grade and/or hourly rate, and total hours per billing period, subject to any contractor objections to release of information considered to be confidential business information or proprietary;

- a list of NRD activities performed by each employee or contractor - for payment of incurred costs (subsection B.1.) the list will be by employee or contractor for the time period covered by the billing. For payment of future costs (subsection B.2.) the list will cover activities performed each month by the employee or contractor along with the total number of hours charged by such employee or contractor for each month;

- travel and transportation costs, including travel orders, vouchers, and receipts;

- building or equipment rental costs;

- printing and reproduction costs;
- contract costs including billing period, amount of invoice, and report of activities;
- supplies and materials costs, including copies of bills for purchase and supporting receipts; and
- equipment costs for equipment acquired in direct support of the case, including copies of bills for purchase and supporting receipts.

C. Disputed Costs

Weyerhaeuser reserves the right to dispute Assessment Costs that it believes are insufficiently or inaccurately documented or which it does not believe are eligible for reimbursement. In the event that Weyerhaeuser objects to any Assessment Costs, Weyerhaeuser shall provide a written statement identifying the contested Assessment Costs and the basis of its objection within forty-five (45) days of receipt of the Trustee's cost documentation package. Failure to contest timely any Assessment Costs shall be deemed a waiver of any objections by Weyerhaeuser. The Parties agree to use the dispute resolution procedures specified in **Section XIII, "Dispute Resolution,"** to resolve any contested issues related to such costs.

D. Costs of Independent Studies

Weyerhaeuser is not obligated under this Agreement to pay the costs of Independent Studies conducted by the Trustees. The Trustees, however, reserve their right to seek reimbursement of Assessment Costs arising from or related to Independent Studies. Weyerhaeuser reserves any rights it has or may have to defend against and otherwise contest any such reimbursement request.

XII. RESERVATION OF RIGHTS AND CLAIMS

This Agreement does not release Weyerhaeuser from any potential liability except for the liability for costs reimbursed by Weyerhaeuser pursuant to **Section XI, "Financial Responsibility,"** and restoration projects implemented by Weyerhaeuser pursuant to **Section X, "Restoration Planning and Implementation."** The Trustees reserve all claims against Weyerhaeuser related to natural resource liability arising from the release of hazardous substances from the Facility, including, but not limited to, claims for restoration, replacement, acquisition of the equivalent, or loss of use of, natural resources; or any other causes of action or requests for relief either administratively or judicially, as well as any penalties or criminal liability, arising from the release of hazardous substances from the Facility.

Except as specifically provided in this Agreement or in any attachments or stipulations incorporated into this Agreement, the Parties agree that none of them is making any admission of fact or law by entering into this Agreement. This Agreement shall not be admissible as evidence

or proof of liability or non-liability. Except as provided in this Agreement or in any attachments or stipulations entered into pursuant to this Agreement, nothing in this Agreement is intended nor shall be construed as a waiver by any Party of any rights, defenses, privileges or affirmative claims in any proceeding related to natural resource liability arising from the release of hazardous substances from the Facility. This Agreement does not waive any attorney client privilege. This Agreement or any Cooperative Work performed by the Parties does not create any rights, admit any liability or non-liability, establish any fact, or waive any defense or claim as to any party not a signatory to this Agreement, other than the United States acting on behalf of the signatory federal Trustees or the North Carolina Department of Justice acting on behalf of the signatory state Trustee.

Nothing in this Agreement is intended, nor shall be interpreted, to limit the scope of the natural resource injury assessment or restoration appropriate for this site or to otherwise restrict or abrogate the authority or discretion of the Trustees to determine the scope of that assessment, recognizing that during the duration of this Agreement, the Trustees will follow the procedures outlined in this Agreement.

Data and factual information collected pursuant to the Cooperative Studies provisions of this Agreement shall not be considered privileged unless protected under applicable laws and regulations.

The Parties may engage in settlement negotiations during the term of this Agreement, and in such event, the Parties may designate any documents or information included as part of such negotiations as subject to Federal Rules of Evidence 408 and to be treated by the Parties as confidential to the extent permitted by applicable state or federal law.

This Agreement does not affect any Weyerhaeuser obligations under other statutes, regulations, agreements, consent orders, permits, etc., issued by any agency of the Federal government or any state government.

XIII. DISPUTE RESOLUTION

A. Written Notice

A dispute shall be considered to have arisen when one Party provides the Joint Assessment Team with a written Notice of Dispute. The notice shall describe the dispute with enough specificity to allow the other Parties to identify the issues involved and to respond effectively. To the extent practicable, such notice shall be provided at least fifteen (15) calendar days prior to the initiation of any field, analytical, or other assessment activity which is the subject of the disagreement, or which may be affected thereby.

B. Informal Resolution

The Joint Assessment Team will immediately forward the Notice of Dispute to each Trustee and Weyerhaeuser. The Parties shall attempt to resolve any disputes concerning the implementation of this Agreement through good faith, informal negotiations.

C. Effect of Dispute

An unresolved dispute regarding an on-going Cooperative Study or portion thereof, or over the implementation of a restoration project or portion thereof, other than a dispute solely regarding costs, has the effect of removing that study or portion thereof from the Cooperative Study category or removing the restoration project or portion thereof, from further implementation requirements. An unresolved dispute, however, does not result in termination of this Agreement, nor does it absolve Weyerhaeuser from its obligation to fund the Cooperative Study or the restoration project should the Trustees decide that they will continue the on-going Cooperative Study or restoration project.

D. Trustees' Decision to Conduct an Independent Study

If the Trustees decide to conduct an Independent Study, or to continue a study which was begun as a Cooperative Study as an Independent Study because of an unresolved dispute, the Trustees reserve the right to seek reimbursement from Weyerhaeuser for the costs of that study, or any portion not paid for by the Weyerhaeuser previously.

XIV. MODIFICATION, DURATION AND TERMINATION

A. Modification

Any modifications to this Agreement and any attachments must be in writing and executed by all of the Trustees and Weyerhaeuser.

B. Duration of this Agreement

This Agreement is intended to continue in full force and effect until either (1) the completion of the purposes of the Agreement or (2) termination of this Agreement pursuant to subsection C below.

C. Termination of this Agreement

The Parties shall use good faith efforts to resolve disputes and follow the dispute resolution procedures in **Section XIII, "Dispute Resolution,"** prior to terminating the Agreement. After following the dispute resolution procedures, any of the Parties may, at its sole discretion, terminate its participation in this Agreement by giving thirty (30) days written notice, stating the reason for termination, to all other Parties involved. A Party's termination of its participation in the Agreement shall become effective thirty (30) days from the date of receipt of the Party's written notice of termination by all the other Parties involved. Termination by one or more of the Trustees shall not terminate this Agreement as to remaining Parties, unless otherwise agreed by the remaining Parties. Termination of this Agreement is prospective only. As such, this Agreement, including all attachments, stipulations and modifications incorporated prior to the effective date of termination shall remain in full effect.

In the event of termination of this Agreement, each Party shall either (1) provide to the other Parties, upon their request, all samples, records or data from Cooperative Studies or restoration projects in its possession or control or (2) continue to comply with the data and record retention procedures specified in any work plan pertaining to such samples, data or records.

XV. GENERAL PROVISIONS

A. Parties Bound

This Agreement shall be binding on the Trustees and on Weyerhaeuser and its officers, directors, agents, successors in interest, representatives and assigns.

B. Third Party Rights

This Agreement is not intended to create any rights or causes of action enforceable by third persons not a party to this Agreement. Nothing in this Agreement may be the basis of any third party challenges or appeals.

C. Severability

The terms of this Agreement are severable. If any term 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.

D. Limitation

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

E. Effective Date

This Agreement may be executed in one or more counterparts, all of which shall be considered an original. This Agreement shall be effective when signed by Weyerhaeuser and one Trustee. The Effective Date for any Trustee signing after Weyerhaeuser shall be the date of that Trustee's signature. Trustees that have not executed the Agreement may participate in matters covered, but Weyerhaeuser has no obligation under this Agreement to reimburse costs for such Trustee until that Trustee has signed the Agreement. The Effective Date of any attachment or stipulation hereafter developed and incorporated into this Agreement shall be the date set forth in such attachment or stipulation.

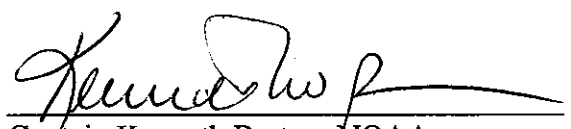
XVI. SIGNATURES

Signature on the lines provided below shall constitute acceptance of the terms and of this Agreement. The undersigned representative of each Party certifies that he or she is authorized to enter into this Agreement and to bind that Party to it.

Funding & Participation Agreement Between the National Oceanic & Atmospheric Administration, the U.S. Department of the Interior, the State of North Carolina and Weyerhaeuser Company Concerning the Cooperative Natural Resource Damage Assessment, Restoration Planning, and Restoration Implementation Activities for the Weyerhaeuser Plymouth Millsite Martin County, NC

FOR THE TRUSTEES:

U.S DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION



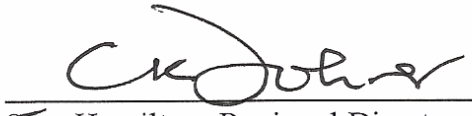
Captain Kenneth Barton, NOAA
Acting Director
Office of Response & Restoration
Authorized Official
MOA-2006-093/7313

9/6/06
Date

Funding & Participation Agreement Between the National Oceanic & Atmospheric Administration, the U.S. Department of the Interior, the State of North Carolina and Weyerhaeuser Company Concerning the Cooperative Natural Resource Damage Assessment, Restoration Planning, and Restoration Implementation Activities for the Weyerhaeuser Plymouth Millsite Martin County, NC

FOR THE TRUSTEES:

DEPARTMENT OF THE INTERIOR
BY AND THROUGH THE US FISH & WILDLIFE SERVICE



10/12/06

Sam Hamilton, Regional Director
US Fish & Wildlife Service, Region 4
Authorized Official

Date

Funding & Participation Agreement Between the National Oceanic & Atmospheric Administration, the U.S. Department of the Interior, the State of North Carolina and Weyerhaeuser Company Concerning the Cooperative Natural Resource Damage Assessment, Restoration Planning, and Restoration Implementation Activities for the Weyerhaeuser Plymouth Millsite Martin County, NC

FOR THE TRUSTEES:

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

William G. Ross, Jr.
Secretary

July 31, 2006
Date

Funding & Participation Agreement Between the National Oceanic & Atmospheric Administration, the U.S. Department of the Interior, the State of North Carolina and Weyerhaeuser Company Concerning the Cooperative Natural Resource Damage Assessment, Restoration Planning, and Restoration Implementation Activities for the Weyerhaeuser Plymouth Millsite Martin County, NC

FOR WEYERHAEUSER:

_____ 8/3/06

Date

Name (print) John P. Gross

Title Sr Environmental Manage

ATTACHMENT A
PAYMENT OF FUNDS AND NOTICE

A. Payment of funds to the Trustees shall be made as follows:

1. For NOAA: Payment shall be made electronically according to instructions, which will be provided to Weyerhaeuser. If electronic fund transfers are not possible, checks shall be made payable to "NOAA, U.S. Department of Commerce" and reference "Weyerhaeuser Plymouth Millsite."

Checks shall be mailed to:

Kathy Salter, DARRF Manager
NOAA/NOS/OR&R
1305 East West Highway
Silver Spring, MD 20910 - 3281

Notification of payment and a copy of the check shall be mailed to:

Sharon Shutler, Esq.
NOAA Office of General Counsel for Natural Resources
1315 East West Highway
Silver Spring, MD 22903

2. For Department of the Interior: Payment shall be made electronically according to instructions, which will be provided to Weyerhaeuser. If electronic fund transfers are not possible, checks shall be made payable to the "Department of the Interior." Checks shall reference NRDAR Account No. 14X5198 (NRDAR) and "Weyerhaeuser Plymouth Millsite, Martin County, NC, and Weyerhaeuser Company PRP."

Checks shall be mailed to:

U.S. Department of Interior
NBC/Division of Financial Management Services
Branch of Accounting Operations
Mail Stop 1313
1849 C Street NW
Washington, DC 20240

Notification of payment and a copy of the check shall be mailed to:

Bruce Nesslage, Restoration Fund Manager
Natural Resource Damage Assessment and Restoration Program
Mailstop 4449
1849 C Street, NW

Washington, D.C. 20240; and,

Holly Deal, Esq.
U.S. Department of the Interior
Office of the Regional Solicitor
75 Spring Street S.W., Suite 304
Atlanta, GA 30306

3. For the State of North Carolina: Payment shall be made electronically according to instructions, which will be provided to Weyerhaeuser. If electronic fund transfers are not possible, checks shall be made payable to "NC Department of Environment and Natural Resources" and shall reference "Weyerhaeuser NRDA Reimbursement."

Checks shall be mailed to:

Doug Lewis
NC Department of Environment and Natural Resources
Budget, Planning and Analysis
1602 Mail Service Center
Raleigh, NC 27699-1602

Notification of payment and a copy of the check shall be mailed to:

Dan Oakley
NC Department of Environment and Natural Resources
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1602

B. All correspondence relative to this Agreement shall be directed to the following persons on behalf of the Parties:

1. For the Trustees:

Legal

Sharon Shutler, Esq.
NOAA Office of General Counsel
for Natural Resources
1315 East West Highway
Silver Spring, MD 22903

Holly Deal, Esq.
U.S. Department of the Interior

Technical

Kate Clark
NOAA Office of Response &
Restoration
Narragansett Lab
28 Tarzwell Drive
Narragansett, RI 02882

Tom Augspurger
U.S. Fish and Wildlife Service

Office of the Regional Solicitor
75 Spring Street S.W., Suite 304
Atlanta, GA 30306

Dan Oakley
NC Department of Environment
and Natural Resources
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1602

Wallace Finlator, Esq.
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-1646

Ecological Services
551-F Pylon Drive
Raleigh, NC 27606

Dexter Matthews
NC Department of Environment
and Natural Resources
Division of Waste Management
1646 Mail Service Center
Raleigh, NC 27699-1646

2. For Weyerhaeuser:

Legal

Joseph P. Jackowski
Senior Legal Counsel
Weyerhaeuser Company
Law Department
Mail Stop CH 1J28
PO Box 9777
Federal Way, WA 98063-9777

Technical

John P. Gross
Senior Environmental Manager
Weyerhaeuser Company
Mail Stop EC2-2C1
PO Box 9777
Federal Way, WA 98063-9777