POLLUTION

Agreement Between the
UNITED STATES OF AMERICA
and the BRITISH VIRGIN ISLANDS

Signed at Tortola August 12, 2004

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

BRITISH VIRGIN ISLANDS

Pollution

Agreement signed at Tortola August 12, 2004;
Entered into force August 12, 2004.

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS
CONCERNING
ASSISTANCE TO BE RENDERED
DURING DISCHARGE OF OIL
OR OTHER HAZARDOUS AND NOXIOUS SUBSTANCES
INTO WATERS OF THE BRITISH VIRGIN ISLANDS

The Government of the United States of America and the Government of the British Virgin Islands (hereinafter referred to as the "Parties"):

Recalling the Protocol Concerning Cooperation in Combating Oil Spills in the Wider Caribbean Region, with annex, to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, done at Cartagena March 24, 1983 ("the Oil Spills Protocol");

Also recalling the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, done at London November 30, 1990 ("the International Convention");

Recalling also that the Annex to the Oil Spills Protocol provides that the Protocol shall be provisionally applied to hazardous substances other than oil;

Noting the definition of hazardous and noxious substances in the Protocol to the International Convention on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, done at London March 15, 2000 (hereinafter referred to as "hazardous substances");

Further recalling that Article 8 of the Oil Spills Protocol and Article 10 of the International Convention call on the Parties thereto to conclude bilateral agreements or arrangement for oil pollution preparedness and response;

Satisfied with the Parties' preparedness for effective response to major discharges of oil and other hazardous substances; and

Desiring to enhance their ability to respond to a major discharge of oil or other hazardous substances in the vicinity of the British Virgin Islands;

Have agreed as follows:

Article 1
Assistance in Combating Discharges of Oil or Other Hazardous Substances

1. In the event of a major discharge of oil or other hazardous substances in the territorial sea or internal waters of the British Virgin Islands or seaward thereof in circumstances which could result in significant pollution damage to the waters and coastal areas of the British Virgin Islands, the Government of the British Virgin Islands may request the assistance of the Government of the United States of America in removing such oil or hazardous substances and in minimizing and mitigating related damage.

2. The request may be made by written communication or through rapid communication methods between the points of contact designated in accordance with Article 7. If the request is made by other than written communication, it shall be confirmed by written communication delivered to the Government of the United States of America within 24 hours of the request.

3. Upon receipt of such a request, the Government of the United States of America may make available to the Government of the British Virgin Islands the services, including personnel, equipment and facilities, of the United States Coast Guard and other members of the U.S. National Response Team capable of providing the assistance requested.

4. The Government of the United States of America may provide such assistance to the Government of the British Virgin Islands pursuant to this Agreement only to the extent that personnel, equipment and facilities are available and not otherwise committed.

Article 2
Direction and Coordination of Assistance

1. The personnel, equipment and facilities of the Government of the United States of America made available to the Government of the British Virgin Islands pursuant to this Agreement shall at all times remain under the control and direction of the Government of the United States of America.

2. To the extent practicable, the activities of the personnel, equipment and facilities of the Government of the United States of America shall be

coordinated with the activities of the personnel, equipment and facilities of the Government of the British Virgin Islands.

3. The spill response activities of the personnel, equipment and facilities of the Government of the United States of America pursuant to this Agreement shall be authorized by the Government of the British Virgin Islands in accordance with its National Oil Spill Management Plan.

Article 3
Reimbursement

1. The Government of the British Virgin Islands shall reimburse the Government of the United States of America for all costs incurred by the Government of the United States of America relating to the use of its personnel, equipment and facilities provided pursuant to this Agreement.

2. This reimbursement shall be made within one hundred twenty days after receipt by the Government of the British Virgin Islands of an itemized statement of such costs provided by the Government of the United States of America.

3. The method of reimbursement shall be a Technical Services Foreign Military Sales (FMS) case developed in accordance with United States FMS policy.

Article 4
Liability

1. The Government of the British Virgin Islands shall release and forever discharge the Government of the United States of America, its agencies, officers and employees from any and all claims and causes of action arising out of the assistance provided by the Government of the United States of America pursuant to this Agreement.

2. The Government of the British Virgin Islands shall defend, indemnify and hold forever harmless the Government of the United States of America, its agencies, officers and employees, against any and all claims and causes of action in the courts of the United States of America or the British Virgin Islands which hereafter at any time are made or instituted for the purpose of

pursuing or enforcing a claim for damages resulting from provision of the aforesaid assistance.

Article 5
Access

The Government of the British Virgin Islands shall facilitate movement into, through and out of its territory, including its territorial sea and internal waters, free of all inspection requirements, duties, fees and other charges, of the personnel, facilities, equipment, supplies and other goods of the Government of the United States of America necessary, in the opinion of the Government of the United States of America, to provide assistance in response to a request made pursuant to Article 1 of this Agreement.

Article 6
Privileges and Immunities

Unless their status is specifically provided for in another agreement, personnel appointed and employed by the Government of the United States of America present in the British Virgin Islands pursuant to this Agreement shall be accorded the privileges and immunities equivalent to those of a consular officer of a consular post under the 1963 Vienna Convention on Consular Relations.

Article 7
Operational Guidance

1. Operational guidance for the implementation of this Agreement shall be included in a Joint Response Guide.

2. The Parties shall designate one or more points of contact for issues and activities within the scope of this Agreement, and in particular each shall designate a point of contact responsible for reimbursement and payment.

3. The Parties shall notify each other promptly in writing of contact information for these points of contact and of any changes in the identity or contact information.

4. The Joint Response Guide shall be maintained jointly by the Parties. Each Party shall be responsible for maintaining the currency of its information in the Guide.

Article 8
Prevention

In order to prevent discharges of oil and other hazardous substances, the Parties agree to cooperate by exchanging information regarding vessel safety and related prevention activities.

Article 9
Contingency Planning

The Parties agree to the principle of contingency planning based on geographical identification, environmentally sensitive area determination, and environmental risk assessment to determine the appropriate spill response protocols for designated sub-regions of the British Virgin Islands.

Article 10
Exchange of Information

The Parties agree to exchange periodically up-to-date information related to implementation of this Agreement, including the identity of the authorities responsible for such implementation and information on laws, regulations, institutions and operational procedures relating to spill prevention and response.

Article 11
Training

The Parties undertake to ensure that their respective response personnel are fully trained to respond to requests under the Agreement and to that end shall publicize and encourage training of their personnel in areas such as contingency planning, environmental sensitivity index mapping, response technologies, incident command system and wildlife rehabilitation, and attendance at International Maritime Organization responder courses and meetings of the Caribbean Regional Response Team.

Article 12
Exercises

1. The Parties shall conduct training exercises every two years to enhance spill response compatibility.

2. The training exercises may include notification, table-top, full scale or equipment deployment exercises.

3. The exercises may be conducted as part of the established national exercise program of each Party.

Article 13
Equipment

1. The Parties shall inform each other of their response equipment capabilities and maintain a current inventory of emergency response equipment, supplies and other goods, and available expertise.

2. The Parties may mutually agree in writing on such facilities, equipment, supplies and other goods to be left behind that were admitted pursuant to Article 5.

Article 14
Joint Committee

1. The Parties shall establish a Joint Committee that shall meet or otherwise confer at least once a year to consider matters pertaining to the implementation of this Agreement.

2. The Joint Committee shall establish communications exercise dates and procedures, shall communicate information regarding training and exercise opportunities to appropriate organs of the Parties in a timely manner, and may consider any other issues relating to the Agreement.

3. Membership on the Joint Committee shall be notified by an exchange of letters or notes between the Parties.

Article 15
Amendment

The Parties may only amend this Agreement in writing.

Article 16
Entry into Force

This Agreement shall enter into force upon signature and shall remain in force indefinitely.

Article 17
Termination

1. The Parties may, by mutual agreement in writing, terminate this Agreement in its entirety at any time.

2. Alternatively, either Party may unilaterally terminate this Agreement at any time by providing 60 days' written notice to the other Party of its intention so to do.

3. Notwithstanding termination of this Agreement, Articles 3, 4, and 6 of this Agreement shall continue to apply after termination with respect to any actions taken pursuant to this Agreement during the time it was in force, unless otherwise agreed by the Parties.

DONE in duplicate aboard the United States Coast Guard Cutter *Confidence* at Tortola, this twelfth day of August, two thousand four.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS: