

**USE AGREEMENT BETWEEN THE DEPARTMENT OF FISH AND GAME
AND THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
REGARDING THE USE OF DEPARTMENT OF FISH AND GAME VESSELS
FOR OIL
SPILL RESPONSE OR PREVENTION**

RECITALS:

The State of Alaska, through its Departments of Fish and Game and Environmental Conservation enter into the following agreement involving the use of motor vessels owned and operated by the Alaska Department of Fish and Game, in support of oil spill clean up activities and prevention operations.

1. PARTIES:

The parties to this agreement are the State of Alaska Departments of Fish and Game (hereafter ADF&G), and Environmental Conservation (hereafter ADEC).

2. SCOPE OF THE AGREEMENT:

ADF&G is the owner of several vessels, which ADEC desires to use to assist in support of oil spill clean up activities. It is the intent of the parties that this agreement governs the use of all ADF&G vessels in support of oil spill clean up and prevention activities.

3. USE OF VESSELS AND SERVICES PROVIDED BY ADF&G:

- a. Upon request by any ADEC State On Scene Coordinator, ADF&G shall provide vessels to be used under this agreement to support oil spill cleanup and prevention activities. However, it is understood that the release of any vessel to the covenants of this agreement shall be at the sole option of the Commissioner of ADF&G.
- b. During the use of the vessel under this agreement, ADF&G shall provide:
 1. transportation of ADEC personnel and equipment to the response site, as requested,
 2. supervision of loading and unloading the vessel.
 3. sleeping accommodations and three hot meals per day for all responders aboard, unless ADEC requests cold meals for consumption off the vessel,

4. all fuel, lubricants, food, water, and other supplies necessary to provide the services referenced in this section; and
 5. all crew and officers necessary for the operation of the vessel.
- c. Subject to paragraph 9 below, the appropriate use of the vessel during a spill response or prevention activity is to be determined by ADEC.
 - d. In addition to the vessels listed in Appendix 1 of this agreement, ADF&G maintains a list of smaller vessels in various locations throughout the State. Upon request by ADEC, these vessels may, at the discretion of ADF&G be made available for oil spill remediation. Terms for use of these smaller vessels shall be negotiated at the time of the incident.

4. RESPONSIBILITIES OF ADEC:

During the use of the vessel under this agreement, ADEC shall have the following responsibilities:

- a. ADEC shall provide supervision and discipline of all ADEC personnel or individuals who are on board in support of oil spill clean up or prevention activities. This shall specifically include an absolute ban on the use of drugs and alcohol while those individuals are aboard the vessel. However, it is understood that all personnel aboard are under command of the Master of the vessel with respect to ship operations, ship safety, and ship's rules.
- b. ADEC shall, under the general direction of the Captain, arrange to load and unload freight transported aboard the vessel.

5. INDEMNIFICATION:

- a. Subject to sub paragraph (b) and (c) below, ADEC shall indemnify, save harmless, and defend ADF&G, its agents and its employees from any and all claims or actions for injuries or damages sustained by any person or property resulting directly or indirectly from the use or operations of the vessel during the term of this agreement, or resulting directly or indirectly from any activity of ADEC, its agents and its employees related to the use or operation of the vessel during the term of this agreement.
- b. ADEC and ADF&G agree that liability for any claim or action for damages arising from or based upon an act, error or omission of both the State and ADEC relating to the use or operation of the vessel during the term of this agreement shall be apportioned according to the respective percentage of fault attributable to ADF&G and ADEC as determined by agreement or by the trier of fact.
- c. Subparagraph 5(a) above has no effect if, but only if the sole proximate cause of the injury or damage is ADF&G's or the vessel master's negligence or willful misconduct.

6. CLEANUP AND DAMAGE TO VESSEL:

- a. Except where the sole proximate cause of damage to the vessel is negligence or willful tortuous misconduct by ADF&G or the vessel's master and subject to subparagraph (b) below, ADEC shall be responsible for and will directly reimburse ADF&G for all reasonable and necessary costs and expenses incurred by ADF&G in the repair of any damage occurring to the vessel as the result of its use or operation during the term of this agreement. The phrase "repair of any damage" as used here includes any repair or replacement of any parts of the vessel, including any repair or replacement of its fixtures, and any clean up of the vessel, including any clean up of its fixtures, that is required because of damage or soiling sustained as a result of the use and operation of the vessel under this agreement. The phrase "repair of damage" does not mean any normal wear and tear, which would occur to the vessel were it used in its normal capacity.
- b. ADEC and ADF&G agree that the responsibility for the costs and expenses incurred in the repair of damage that occurs to the vessel as a result of its use or operation during the term of this agreement and that is caused by an act, error or omission of both ADEC and ADF&G shall be apportioned according to the respective percentage of cause or fault attributable to ADF&G and ADEC as determined by agreement or by the trier of fact.

7. COST OF MOVING VESSEL:

In the event of any damage to the vessel under paragraph 6, in addition to the costs of cleaning the vessel and repairing damages to the vessel, ADEC shall pay ADF&G the sum on attached list for the cost of moving the vessel to a shipyard capable of performing the work under the provisions of AS 36.90.050.

8. COMPENSATION:

- a. ADEC shall pay ADF&G the daily rate under Appendix I for each day or part of a day it has use of the vessel. The daily use fee is contained in Appendix I to this agreement. The daily use fee covers the daily expenses of operating any vessel. Any claims arising under paragraphs 4,5, or 6, and 7 shall be in addition to the charges specified in Appendix I. In either case, ADEC agrees to pay the daily use fee until the vessel returns to service by the most expeditious route. Fees specified in Appendix I may be updated annually by amending this agreement.
- b. Billings under this paragraph and paragraph 4 will be sent to ADEC monthly.

9. SAFETY OF THE VESSEL:

ADF&G or its agent shall, in the exercise of its sole discretion, take all steps necessary to protect the ship, its equipment, engines, crew or others aboard the vessel.

These actions include, but are not limited to, deciding to proceed on a trip in the face of adverse or changing weather or sea conditions, moving the vessel to a place of safe moorage, ordering any person off the vessel under the supervision and control of ADEC, and refusing to carry any freight or equipment which, in its sole discretion, may jeopardize the safety of the vessel. Permissibility of size, weight, and/or configuration of freight or equipment shall be determined by the vessel Master.

10 PROVISIONING, FUELING AND CHANGE OF CREW OF THE VESSEL:

It shall be necessary from time to time to provision, fuel and change the crew of the vessel. ADF&G shall, in the exercise of its sole discretion, determine the provisioning and fueling schedule and the crew change schedule and shall provide not less than 12 hours notice to ADEC of its intent to do so. The fueling of the vessel will only occur at a dock or other facility which ADF&G shall select and the time spent provisioning, fueling and changing the crew of the vessel shall not result in a reduction of the daily charge for its use.

11 APPLICABLE LAW, JURISDICTION AND VENUE:

- a. Except for claims relating to indemnification or a duty to defend under paragraph 5 above, all claims by either party against the other arising out of, under or based on this agreement shall be adjudicated under the provisions of AS 36.30.620 through AS 36.30.699.
- b. The applicable law for the construction and interpretation of this agreement shall be the law of the State of Alaska. Any judicial appeal from an administrative decision issued pursuant to AS 36.30.620 through AS 36.30.699 or any other suit arising out of, under or based on this agreement shall only be filed in the Superior Court for the First Judicial District at Juneau and shall not be removed to the Federal District Court for the District of Alaska or any other federal forum regardless of any other provisions of law.

12. TERM OF THE AGREEMENT:

The term of this agreement is to begin on the date of the signing of this agreement and continue for a period of 5 (five) years. The expiration of this agreement does not relieve ADEC of any obligation it might have under paragraphs 5,6,and 7, above.

13. NOTICES AND BILLINGS:

- a. Billings and any notices required by this agreement shall be sent by mail to the respective parties as indicated below:

ADF&G
John White
Division of Administration

Phone (907) 465-6178
Fax: (907) 465-607

P.O. Box 25526
Juneau, Alaska 99802-5526

ADEC
Geoff Harben
Division of Spill Prevention and Response
410 Willoughby Ave. Suite 303
Juneau, AK 99801

Phone (907) 465-5234
Fax: (907) 465-2237

- b. Notices of requests for use of the vessels shall be sent by FAX to the office of the Commissioner of the ADF&G

14. OPERATION AND COMPLIANCE WITH LAW:

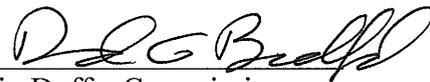
If, during the term of this agreement, ADF&G fails to operate, man and maintain the vessel in compliance with any applicable state and federal laws and regulations, including, but not limited to, life saving requirements, and if any such failure is found to be a cause of any injury or damage sustained by any person or property, the State will be liable for such injury or damage to the extent of the percentage of fault that is attributed to such failure of compliance as determined by agreement or by the trier of fact. This section creates no additional obligations on the part of ADF&G beyond those set out in paragraph 5 above.

15. INTEGRATION AND AGREEMENT:

This agreement constitutes the whole agreement between the parties. There are no understandings or obligations between the parties except those specifically stated. Any amendments the agreement shall only be in writing and signed by the parties.

DATED: 6/13/2003

State of Alaska,
Department of Fish & Game

By: 
for Kevin Duffy, Commissioner

DATED: 7-22-03

State of Alaska,
Department of Environmental Conservation

BY:  for
Ernesta Ballard, Commissioner

Appendix I

Alaska Department of Fish & Game Vessel Information Table				
Home Port	R/V Medeia Juneau	R/V Kestrel Petersburg	R/V Pandalus Homer	R/V Resolution Kodiak
Length (feet)	110	106	65	81
Beam (feet)	26	26	20	25
Service Speed (knots)	9.5-10	10	9.5	10
Fuel Consumption (GPH at SS)	50	N/A	19	17
Fuel Storage Capacity	26,500	12,600	7,000	14,000
Tankage aboard for servicing skiffs	None	None	Drums	1 Tank
Clear Deck Space	40	24x30	35x20	20x40
Crew	4	3	2 - 3	3
Berthing (Incl. Crew)	16	13	7	10
Galley and Food Service	Yes	Yes	Yes	Yes
Compressed Air	Yes	Yes	Yes	Yes
Satellite Communications	Yes	N/A	no	Yes
SSB radio	Yes	N/A	Yes	Yes
Sonar	Side Scan	Side Scan	Side Scan	180 degree
D-GPS	Yes	Yes	Yes	Yes
Can stay out (with full compliment)	30+ days	20	30	30-40 days
Onboard shop	Yes	Yes	Yes	Yes
Daily Cost	\$3,800.00	\$3,600.00	\$2,500.00	\$3,100.00