

FMP APPENDIX 3

DRAFT MEMORANDUM OF UNDERSTANDING BETWEEN UTMSI , GLO, USFWS, CBLT, FENNESSEY RANCH, TPWD, TXDOT, CBBEP, AND ARANSAS COUNTY NAVIGATION DISTRICT

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) serves to establish the contractual framework for coordination, cooperation, collaboration, and communication regarding the Mission-Aransas National Estuarine Research Reserve (Reserve) among the following ten parties (parties-in-interest): The University of Texas at Austin (The University), a state institution of higher education and a component of The University of Texas System serving as the state lead entity ; Texas General Land Office, Texas Parks and Wildlife Department, Texas Department of Transportation, U.S. Fish and Wildlife Service, The Nature Conservancy, Coastal Bend Land Trust, Coastal Bend Bays and Estuary Program, Fennessey Ranch, and the Aransas County Navigation District. Subject to the MOU's below-conditions, this MOU is a binding contract that is entered into by the parties-in-interest.

WHEREAS, the State of Texas (Texas) has received a grant (Grant) from the United States Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA) for the development and operation of certain portions of the Mission-Aransas Estuary (MAE), described below in Attachment A, as the Mission-Aransas National Estuarine Research Reserve (Reserve), and

WHEREAS, the purpose of the DOC grant is to create new opportunities for coordinated MAE coastal resource management, research, monitoring, stewardship, and public education (Program), and

WHEREAS, such Program has wide public support, as evidenced by the implementation of the Coastal Bend Bay Plan, the Mission-Aransas Watershed Wetland Conservation Plan, the Seagrass Conservation Plan, and

WHEREAS, the parties-in-interest have evidenced support for such a Program through their approval of the 2004 Site Nomination Proposal for the Reserve,

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this MOU as well as the mutual benefits to be derived from implementing this Program, the parties-in-interest agree to the following:

1. The lands described in Attachment A (attached to this MOU and incorporated into this MOU by this reference) are designated as sites participating in the Reserve.
2. There is a program management plan (Plan) for the Reserve that provides a framework for conducting a specified Program on Reserve sites (Attachment B). Revisions of the Plan shall be developed by the Reserve staff and reviewed by an advisory board (Board) composed of the parties-in-interest, as defined in

Article 6a. The Plan shall be reviewed every five (5) years and revised in consultation with the Board and NOAA.

3. A primary purpose of the Program is to provide funding, staff, and other resources and guidance that will assist Reserve land managing entities to develop site-specific activities that are consistent with the Plan. This Program will focus on identifying and conserving sensitive ecological resources, promoting on-site research and long term monitoring, engaging local communities in stewardship activities that support the conservation of sensitive reserve resources, and acting as a regional educational resource that serves the public of the MAE region.

4. Parties-in-interest agree to exert their reasonable best efforts to support the implementation of the Plan. Nothing in this MOU diminishes the independent authority or coordination responsibility of any party-in-interest in administering its respective statutory and legal obligations. Nothing in this MOU is intended to conflict with current written directives or policies of any party-in-interest. If the terms of this MOU are inconsistent with existing written directives or policies of any party-in-interest entering into this MOU, then those portions of the MOU that are determined to be inconsistent with such written directives and policies shall be invalid; but the remaining terms not affected by the inconsistency shall remain in full force and effect. At the first opportunity for revision of this MOU, all necessary changes will be made by either an amendment to this MOU or by entering into a new superseding MOU, whichever is deemed expedient to the interest of all parties. Issues that arise that may be contrary to the terms or intent of the Plan will be brought to the Board for discussion and resolution by consensus or majority vote of its members. Should disagreement arise on decisions of the Board or in the interpretation of the provisions of this MOU, or amendments and/or revisions to the MOU, that cannot be resolved by negotiations at the operating level of each party-in-interest, the area(s) of disagreement shall be stated in writing by each party-in-interest and promptly presented to a unanimously approved mediator for non-binding mediation. If the parties-in-interest cannot agree on the choice of a mediator or if the mediation does not resolve the dispute to the unanimous approval of the parties-in-interest, the parties-in-interest are free to pursue any other legal remedies that are available or to terminate their participation in this MOU.

5. Multiple uses of Reserve lands are encouraged to the extent that such uses are compatible with the Program and its purpose as expressed in the Plan. Oil and gas activities are an existing and traditional use that will continue to occur and be regulated by State law. The parties-in-interest having jurisdiction over the Reserve site (or sites) will exert their reasonable best efforts to ensure uses or levels of use are consistent with the goals of the Plan.

6. Management Structure

a. Board membership. The Board shall be comprised of members from the parties-in-interest. The Texas General Land Office shall have one representative from each of three divisions that have direct interest in the Reserve: Coastal Resources, Energy Resources, and Professional Services. The University, Texas Parks and Wildlife Department, Texas Department of Transportation, U.S. Fish and Wildlife Service, The Nature Conservancy, Coastal Bend Land Trust, Coastal Bend Bay and Estuary Program, and Fennessey Ranch shall each have one representative on the Board. To provide an appropriate linkage to the broader community so the Reserve reflects the concerns and ideas of this regional constituency, a local governmental representative mutually agreed upon by Aransas County and the city of Rockport shall be a member of the Board. Board terms shall be of three years duration, commencing on (date) and ending three years thereafter.

b. Board role. The Board shall act on behalf of the agencies/entities having jurisdiction over sites comprising the Reserve. Members of the Board will serve without compensation from the Reserve. In addition, the purpose of the Board is to advise The University regarding implementation of the Plan. The Board shall review the Plan every five (5) years and shall advise The University regarding modification of the Plan.

c. Board meetings. Board members will be provided notice ten (10) working days in advance of a meeting. Fifty percent (50%) plus one (1) members of the parties in interest present in person or by proxy shall constitute a quorum for transaction of business at all meetings of the Board. Each member of the Board will have one vote in decisions put before the Board. Decisions regarding advice to The University shall be made by an eighty percent (80%) majority vote of the Board members present at a meeting.

d. Program implementation. The University shall implement the Program by hiring and directing Reserve staff, supervising and coordinating implementation of the provisions of the Plan, and by receiving and acting upon the recommendations of the Board and participating site managers. The Reserve staff will be directly responsible for Program coordination with agency/entity representatives having jurisdiction over Reserve sites. The University's obligation to implement the Plan is contingent upon continued receipt of Grants for the purpose of operating the Program.

e. Advisory committees. The Board may create committees or subcommittees to provide technical information or linkage to the broader community pertaining to the three main missions of the Reserve Program: research, education, and stewardship. Members of committees or subcommittees will serve without compensation from the Reserve.

f. New Board members affiliated with new parties-in-interest may be added to the Board by a majority vote.

7. No projects shall be carried out on Reserve lands without the approval of the agency/entity having jurisdiction over such lands. The requesting agency/entity shall maintain all facilities built on in furtherance of a project [this probably requires more explanation and should possibly be addressed in an Appendix], and shall cooperate with Reserve staff in carrying out the approved Program.

8. The Reserve staff, Board, and appropriate advisory participants, if any, shall confer regularly to ensure coordination between the Reserve Program and the broader goals and mandates of regional coastal management programs that affect the MAE.

9. This MOU shall not be construed to preclude additional transfers of property among the parties-in-interest, or to preclude additions or subtractions of appropriate lands to Reserve sites.

10. This MOU shall continue on an on-going basis so long as the Reserve Program is funded and remains viable. This MOU may be amended or terminated by the parties-in-interest at any time by majority vote and by written amendment to all parties-at-interest. Nothing in this MOU shall preclude the partial or unilateral withdrawal of any of the parties-in-interest. In such an eventuality, it is understood that the lands of the withdrawing party-in-interest would be de-designated from the Reserve, and it is further understood that, should the withdrawing party-in-interest have received federal awards related to the Reserve Program, it will notify such federal agencies as required with respect to modification or termination of current or pending grants.

11. All parties-in-interest agree to exert their reasonable best efforts to cooperate with the Reserve Program so that it can achieve its mission to serve as a regionally-scaled scientific and educational resource to help promote and recover the ecological health of the MAE and to create a more sustainable regional environment for future generations.

12. The parties-in-interest understand that The University's primary mission is education and the advancement of knowledge and research, and consequently The University's activities under this MOU are designed to carry out that mission.

13. The manner of performance of The University's activities under this MOU shall be determined by The University. The University does not guarantee specific results. The University is free to continue similar research and educational activities on other projects. The University may discuss its activities under this MOU with other entities and individuals.

14. The University shall have the right to use, publish, and disclose data, information, or writings generated by University activities under the Program.
15. Nothing in this MOU or subsequent financial assistance awards shall obligate any party-in-interest in the expenditure of funds, or for future payments of money, in excess of appropriations authorized by law.
16. The parties-in-interest agree to comply with all applicable federal, state, and local laws regulating ethical conduct of public officers and employees.
17. Each party-in-interest will comply with all applicable laws, regulations, and executive orders relative to Equal Employment Opportunity.
18. Upon termination of this MOU, any equipment purchased by a party-in-interest for activities initiated in furtherance of this MOU will be retained by the respective party-in-interest, as permitted if purchased with third party or federal funds, that made the initial purchase.
19. A free exchange of research and assessment data among the parties-in-interest is encouraged and is necessary to insure the success of these cooperative activities.
21. This MOU is subject to availability of appropriated funds.
22. This MOU is the entire agreement between the parties-in-interest regarding the subject matter contained in this MOU.
23. The parties-in-interest are independent entities and are not legal partners or joint venture parties. The employees of one party-in-interest are not employees of any other party-in-interest.
24. The parties-in-interest shall not be liable for any incidental, indirect, special or consequential damages arising out of or related to this MOU.
25. The parties-in-interest are not making any express or implied warranties of merchantability, fitness for a particular purpose, freedom of infringement, or any other warranties of any kind or nature.
26. This MOU shall be binding on the successors and/or assigns of the parties-in-interest.
27. This MOU shall be construed and enforced in accordance with the laws of the State of Texas, exclusive of its choice of law provisions, as well as any applicable United States federal laws and regulations.

28. If any clause, sentence or other portion of this MOU shall become illegal, null or void for any reason, the remaining portions of this MOU shall remain in full force and effect.

29. No waiver of right by any party-in-interest of any provision of this MOU shall be binding unless expressly confirmed in writing by the party-in-interest giving the waiver.

30. No party-in-interest shall be liable for delays in performing the MOU due to factors beyond the reasonable control of such party-in-interest.

31. Those provisions of this MOU which by their nature extend beyond termination or expiration of this MOU shall survive such termination or expiration.

UNDERSTOOD AND AGREED

The University of Texas at Austin

By: _____

Name: William C. Powers, Jr., J.D.

Title: President

Date: _____

Texas General Land Office

By: _____

Name: Jerry Patterson

Title: Commissioner

Date: _____

Texas Parks and Wildlife Department

By: _____

Name: Robert L. Cook

Title: Executive Director

Date: _____

**Texas Department of
Transportation**

By: _____

Name: Michael Behrens

Title: Executive Director

Date: _____

U.S. Fish and Wildlife Service

By: _____

Name: Charles Holbrook

Title: Superintendent

Date: _____

**Coastal Bend Bay and Estuary
Program**

By: _____

Name: Ray Allen

Title: Director

Date: _____

The Nature Conservancy

By: _____

Name: Carter Smith

Title: Texas State Director

Date: _____

Coastal Bend Land Trust

By: _____

Name: _____

Title: Director

Date: _____

Fennessey Ranch

By: _____

Name: Brien O'Connor Dunn

Title: Owner

Date: _____

Aransas County Navigation District

By: _____

Name: Charles LeBlanc

Title: Commissioner

Date: _____

ATTACHMENT A

Properties included in the Reserve:

- State Submerged lands in part of the Mission-Aransas Estuary - Texas General Land Office.
- Goose Island State Park and Seagrass Scientific Area (Lessee) -Texas Parks and Wildlife Department.
- Aransas National Wildlife Refuge and part of the Matagorda National Wildlife Refuge - U.S. Fish and Wildlife Service.
- Johnson Ranch - The Nature Conservancy.
- Buccaneer Cove - Coastal Bend Land Trust.
- Fennessey Ranch - Brien O'Connor Dunn.
- Aransas County Navigation District land adjacent to Rockport Beach Park – Aransas County Navigation District

ATTACHMENT B

The Mission-Aransas National Estuarine Research Reserve Management Plan