



GOVERNMENT OF BERMUDA

Memorandum of Understanding

Developing and implementing a Blue Prosperity
Plan for Bermuda's Marine Economic Exclusive
Zone

WVAITT
FOUNDATION

OCEANS
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WVAITT
INSTITUTE

BIOS 
Bermuda Institute of
Ocean Sciences



GOVERNMENT OF BERMUDA

THIS MEMORANDUM OF UNDERSTANDING is made on the ____ day of _____, 20____.

BY AND BETWEEN:

(1)

Ministry: Home Affairs

Department:

Address: Government Administration Building, First Floor

30 Parliament Street, Hamilton, HM12, Bermuda

(hereinafter called the "Government") of the one part; and

(2) The person or entity as identified and set out in Schedule 1 (hereinafter referred to as "you") of the other part.

The Government and you are referred to individually as a "party" or collectively as the "parties".

The parties to this MOU have collaborated and agreed to jointly enter into and agree to the terms and conditions of this MOU, which is non-binding, unless otherwise stated.



NOW THEREFORE, the following is hereby agreed by and between the parties:

That in this MOU, capitalized terms have the respective meanings referred to in this MOU, words by their context importing the plural shall include the singular and vice versa, references to either gender includes any other gender or a neutral entity where appropriate, and a reference to any statute or regulation or law means as amended from time to time and include any successor legislation, regulations or laws and unless the context otherwise requires, the expressions set forth below have the following meanings in any schedules or annexes hereto.

1. DEFINITIONS

"Confidential Information" means the terms and existence of this MOU as well as any information or data disclosed which (i) if in tangible form, is marked clearly as proprietary or confidential, (ii) if oral, is identified as proprietary, confidential, or private on disclosure or (iii) any other information which is not in the public domain, which upon receipt by the Recipient should reasonably be understood to be confidential, provided, however, that such information or data is provided under or in contemplation of this MOU and the fact that any discussions between the parties have been held or are being held;

"Disclosing Party" means the party disclosing any particular item of Confidential Information;

"Effective Date" means the date first written above in this MOU;

"MOU" means this memorandum of understanding and includes any schedules, appendices or annexes attached in accordance with the obligations or deliverables under this agreement;

"Recipient" means, in relation to any particular item of Confidential Information, the party which receives or otherwise obtains such information;

"Purpose" means the purpose as identified in Schedule 1;

"Schedule 1" means the schedule which forms a part of this MOU and contains your contact details, statement of the Purpose, objectives, Term and any special terms and other information related to this MOU; and

"Term" means the commencement date and completion date of this MOU as identified in Schedule 1.

1. NATURE OF THIS MOU

1.1 This MOU confirms the intentions and commitment of the parties to achieve meaningful cooperation in the areas outlined herein and to support and advance the objective and Purpose.

1.2 This MOU establishes an understanding and cooperative working relationship in key areas whereby you will assist the Government in promoting the Purpose in ways that are consistent with respective mandates, policies and resources of the Government, which shall be provided to you from time to time.

2. TERM OF MOU

This MOU shall take effect from the Effective Date for the period as set out in Schedule 1 (subject to early termination under clause 5). This MOU may continue thereafter until terminated by either party on 30 days prior written notice, however, in the event of such continuation, the parties shall remain under the obligations of this MOU until termination.

**3. SCOPE OF MOU**

- 3.1. This MOU is concerned solely with the Purpose and does not apply to any other activities in which the parties may be involved in.
- 3.2. Each party shall be liable for any costs, expenses and disbursements incurred by it in relation to any actions or omissions pursuant to this MOU.
- 3.3. This MOU is an expression of present intent between the parties and shall except for clauses 6 and 9.2, be non-binding.
- 3.4. The parties agree to act in good faith at all times when working together on the Purpose.

4. OBJECTIVE AND PURPOSE

The objectives and Purpose of this MOU are as set out in Schedule 1.

5. TERMINATION

- 5.1. Either party may terminate this MOU upon prior written notice:
- (a) if the other party is in material breach of any of the terms of this MOU and has failed to remedy such breach (if it is capable of remedy) within 30 (thirty) days of receipt of notice of the breach or such reasonable shorter period specified in the notice; or
 - (b) by giving the other party the notice period, without cause, as set out in Schedule 1.
- 5.2. This MOU may be terminated without notice by a party if the other party engages in an act of dishonesty or misconduct which brings either party into disrepute, or if, there are reasonable grounds for believing that there has been a breach of the obligations of confidentiality.
- 5.3. Termination of this MOU for whatever reason or its expiry shall be without prejudice to the accrued rights and obligations of the parties.
- 5.4. Clauses 6 and 9.2 shall survive the termination or expiry of this MOU.

6. Duty to Keep Information Confidential

- 6.1. The Recipient shall keep any confidential information received from or belonging to the Disclosing Party ("Confidential Information") confidential and shall not disclose such Confidential Information to anyone (except on a need to know basis for internal use only where necessary to perform its obligations under this Agreement to its employees or contractors bound by express written non-disclosure obligations) or use such Confidential Information other than to perform its obligations under this MOU without the prior written consent of the Disclosing Party.
- 6.2. Either party may however (i) share information with its advisers (including potential partners, lenders, attorneys and consultants) or employees on a need-to-know basis, provided however that such party shall ensure that its advisers and employees shall keep the confidentiality of such information and such party shall also be liable for breach of confidentiality caused by their advisers or employees and (ii) disclose such information, including this MOU, to its direct or indirect shareholder(s) and its present or future creditors.
- 6.3. This section shall not apply to any Confidential Information to the extent that:



- (a) disclosure is required to or by any court, tribunal or governmental authority with competent jurisdiction, provided that the Recipient shall give the Disclosing Party prompt written notice of such required disclosure in order to afford the Disclosing Party an opportunity to seek a protective order or other legal remedy to prevent the disclosure, and shall reasonably cooperate with the Disclosing Party's efforts to secure such a protective order or other legal remedy to prevent the disclosure;
 - (b) it is or becomes generally and freely publicly available through no fault of the Recipient or its servants or agents; or
 - (c) it can be shown to have been independently originated by the Recipient without reference to the Confidential Information, or communicated to it in circumstances otherwise than where its disclosure to the Recipient imparted a duty of confidence.
- 6.4 In consideration of the Disclosing Party's disclosure to the Recipient of the Confidential Information, the Recipient agrees that, from the date of this MOU, the Recipient shall:
- (a) use the Confidential Information solely for the Purpose;
 - (b) keep the Confidential Information strictly confidential and shall not, without the Disclosing Party's prior written consent, disclose or distribute the Confidential Information to any person other than for the purposes of the Purpose;
 - (c) disclose any Confidential Information only to such employees, agents, professional advisors and approved sub-contractors to whom disclosure is strictly necessary for the Purpose;
 - (d) ensure that its employees, agents, professional advisers and sub-contractors comply with the provisions of this clause and are bound by terms and conditions of use and non-disclosure at least equivalent to those contained in this MOU;
 - (e) keep the Confidential Information stored securely and marked as the Confidential Information of the Disclosing Party and use its commercially reasonable efforts to prevent unauthorised persons having access to the Confidential Information;
 - (f) comply at all times with all policies and procedures of the Disclosing Party relating to confidential information from time to time notified to the Recipient (including, for the avoidance of doubt those in relation to IT and data security); and
 - (g) hold the Confidential Information to the Disclosing Party's order and, on expiry or termination of this MOU for whatever reason or (if earlier) forthwith upon the request of the Disclosing Party, return to the Disclosing Party thereof or, if requested by the Disclosing Party, destroy all copies, summaries and notes of the contents or parts of the Confidential Information and any documents or materials compiled as a result of the disclosure of the Confidential Information, save that copies of Confidential Information may be retained which have been created pursuant to the Recipient's automatic archiving and back-up procedures or as otherwise may be required by a party's document retention policies or by applicable law, provided that such Confidential Information shall remain subject to the continuing obligation of confidentiality under this section.
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6.5 The Recipient understands and acknowledges that (other than may be separately agreed between the parties in writing) neither the Disclosing Party nor its officers, directors, employees or agents make any representations or warranties, express or implied, as to the accuracy or completeness of the Confidential Information, nor shall they have any liability to the Recipient or any other person resulting from the Recipient's use of the Confidential Information.

7. FORCE MAJEURE

7.1 Neither party shall be liable to the other party for any delay or non-performance of its obligations under this MOU to the extent that its performance is interrupted or prevented by anything beyond the reasonable control of either party.

7.2 Such delay or failure shall not constitute a breach of this MOU and the time for performance shall be extended by a period equivalent to that during which performance is so prevented subject to clause 7.3.

7.3 Should such delay or failure persist for 60 days, or such shorter period as is reasonable in the circumstances, the party not affected, may, at its option and if it is reasonable for it to do so, terminate this MOU immediately.

8. NOTICES

8.1 Any notices or consents required to be given under this MOU shall be in writing, signed by an authorised signatory and delivered personally by commercial courier, first class post or electronic mail to the address of the parties as set out in Schedule 1:

8.2 Any notice served by the following means shall be deemed served as indicated:

- (a) personal delivery: at the time of delivery;
- (b) commercial courier: on the date of signature of the courier's delivery receipt;
- (c) first class post: at the start of the second business day after posting; and
- (d) if e-mailed, at the time that the e-mail was sent.

8.3 If deemed receipt is not within business hours (meaning 9:00 am to 5:00 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice, approval or consent is deemed to have been received when business next starts in the place of receipt.

8.4 Either party may change the details of its address, or electronic mail address by notice to the other party by any of the means set out above.

9. Miscellaneous Provisions

9.1 Entire Agreement

- (a) This MOU is effective on the Effective Date. Where this MOU refers to past or current obligations, this MOU applies retrospectively from that date. Each of the parties represents that this MOU is executed by its duly authorized signatories and that it has all required authorizations and capacity to perform its obligations.



- (b) This MOU together with any documents referred to in it supersedes, extinguishes and replaces all previous agreements, promises, assurances, warranties, representations and understandings, whether written or oral including whether in invoices, emails or otherwise between the parties with respect to the Purpose and is the complete agreement between the parties. There shall be no covenants, conditions, warranties, representations, terms or provisions, express or implied, relating thereto except as herein set forth. A person who is not a party to this MOU shall have no right to enforce it.

9.2 Public Announcement

No public announcement will be made regarding the arrangements contemplated by this MOU, unless the parties will have first agreed in writing on the form, content and timing of such announcement or notice.

9.3 Implementing this MOU

Each party will review its internal procedures and, where appropriate, will revise them to accommodate the provisions of this MOU. Each party will also designate in writing one person who will be responsible for coordinating and implementing the provisions of this MOU.

9.4 Amendments

This MOU may be amended in writing signed by the parties.

9.5 Assignment

A party may not assign this MOU or any of its rights, interests nor obligations hereunder without the prior written consent of the other party and any assignment without such consent shall be void.

9.6 Severability

If any part of this MOU shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of this MOU and the parties hereby agree to negotiate in good faith with respect to any such invalid or unenforceable part to render such part valid and enforceable to the extent legally possible.

9.7 Settlement of Disputes

If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed upon conciliator in Hamilton, Bermuda. The parties shall share any costs and fees, other than attorney fees associated with the conciliation, equally. If the dispute is not resolved through conciliation, the parties agree to submit the dispute to binding arbitration in Hamilton, Bermuda before a single arbitrator under the provisions of Bermuda Arbitration Act 1986. The parties shall share any costs and fees, other than attorney fees associated with the arbitration, equally. Judgment upon the award rendered by the arbitrator may be entered in any court with jurisdiction to do so.



9.8 Waiver

A failure or delay of either party to enforce any provision of this MOU will not be construed as a waiver of such provision or any other rights under this MOU, unless in writing and signed by the party granting such waiver.

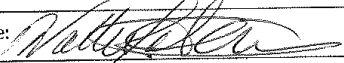
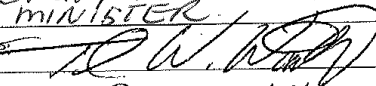
9.9 Counterparts


This MOU may be executed in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same MOU.

9.10 Governing Law

This MOU and any dispute or claim arising out or in connection with it or its subject matter shall be governed by and construed in accordance with the laws of Bermuda and the parties hereby submit to the exclusive jurisdiction of the Bermudan courts.

IN WITNESS WHEREOF, the parties, or their authorized representatives, have read and agree to the terms and conditions of this MOU on the Effective Date.

SIGNED by a duly authorised officer/ representative for and on behalf of the Government	Signature: 
	Print Name: WALTER H. ROBAN
	Title: DEPUTY PREMIER & MINISTER
SIGNED by you or your duly authorised officer/representative for and on your behalf	Signature: 
	Print Name: Ted W. Watt
	Title: Chairman


WILLIAM B. CURRY
PRES. + CEO, BIOS



SCHEDULE 1

DECLARATION OF COMMITMENT TO BLUE PROSPERITY

The Parties hereby agree to the following:

Whereas:

- (1) Bermuda's "*A Strategy for the Sustainable Use of Bermuda's Living Marine Resources*," document outlines Bermuda's need for better management of its marine resources,
- (2) Bermuda has a robust history of marine conservation, including early bans on pot fishing, sea turtle protections, a whale sanctuary, membership in the Sargasso Sea Commission, and various other measures;
- (3) There is need for a vibrant Blue Economy to achieve the sustainable use of ocean resources for economic growth, improved livelihoods and jobs and ocean ecosystem health;
- (4) The Parties share the goals of building a sustainable Blue Economy through Marine Spatial planning resulting in:
 - a. a healthy, productive, and sustainable ocean;
 - b. economic growth through marine spatial planning for long-term sustainable management and conservation of ocean resources;
 - c. a full-scale economic development plan with scientifically sound conservation goals; sustainable fisheries policies and programs that create positive incentives to encourage responsible fishing;
 - d. in particular, assessing and operationalizing Bermuda's *Department of Environment and Natural Resources'* 2018 "*Fishery Data Improvement and Assessment Action Plan*"
 - e. durable government and financial human capacity to carry out the above; and
 - f. durable civil society financial and human capacity to rebuild fisheries where needed and grow a sustainable *Blue Economy* through myriad industries;
- (5) Best available science calls for protection of at least 30% of the marine environment;
- (6) The Convention on Biological Diversity Aichi Target 11 and SDG 14 calls for protection of at least 10% of the marine environment; Aichi Target 6 calls for the sustainable management and harvest all fish, invertebrates and aquatic plants; and
- (7) The International Union for Conservation of Nature (IUCN) adopted Resolution 050 at the 2016 World Conservation Congress for countries to designate and implement at least 30% of each marine habitat in a network of highly protected MPAs.

The Purpose of this agreement is therefore to develop and implement a Blue Prosperity Plan within 30 months of signing the agreed upon Program of Work and Year 1 work plan, including accomplishing the following objectives:

- a. Passing any necessary new laws in order to develop and adopt an enforceable, comprehensive, EEZ-wide Marine Spatial Plan designed to sustain the marine environment while growing the blue economy.
- b. Designating at least 20% of Bermuda's waters as fully protected fisheries replenishment zones within the comprehensive Marine Spatial Plan. *The Parties will work closely together to assemble the necessary science to support this strong protection of at least 20%, particular with regard to Bermuda's own ecological and socioeconomic realities.*



- c. From the outset of this partnership, immediately begin developing and, ultimately implementing public and private sustainable finance for ocean management by passing necessary laws, forming relevant national and international partnerships, and the like.

The Parties agree to the following Term:

- (1) Commencement Date: within 3 months of Effective Date of the MOU, after the completion of a 30-month Program of Work that is agreed up in writing and signed by all Parties; and
- (2) Completion Date: 30 months after the commencement date.

In undertaking this ambitious endeavor, the Parties will:

- (1) Develop an annual workplan to be reviewed and revised as necessary every six months by the Parties;
- (2) Conduct science, analysis, policy development, and engagement as expressed in the Addendum to follow; and
- (3) Pass laws as identified herein within 30 months of signing this Declaration.

Upon the passage of such laws, the Blue Prosperity Coalition will commit to an additional 30 months of support for implementation.

The Parties agree that this endeavor may include one or more of the following Areas of Collaboration, as indicated in the Program of Work:

- Marine Spatial Planning & Protected Area Plans
- Sustainable Blue Economy Long-Term Planning
- Sustainable Financing for MSP
- Scientific Surveys and Assessments
- Legal Analysis, Development and Advocacy
- Community Consultation, Education and Outreach
- Communications and Political Strategy
- Whole of Government Capacity Building
- Enforcement Planning & Assistance
- Civil Society & Government Capacity Building
- Disaster Preparedness within MSP
- Monitoring & Evaluation
- Offshore Renewable Energy Assessment
- Customized Implementation Strategy & Transition/Exit Plan
- Joint Development of Other Customized Solutions



Contact Details

Full Name: Dr. Kathryn Mengerink
Address: 7817 Evanhoe Avenue, Suite 300
Mailing Address: Same
Tel No.: 1-619-635-4945
Email address: mengerink@waittstitute.org

MOU Details


Commencement Date: _____
Completion Date: _____
Termination Notice Period: _____

Address for Notices

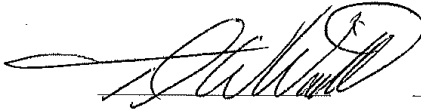
Full Name: Dr. Kathryn Mengerink
Address: Same as above
Mailing Address: _____
Tel No.: _____
Email address: _____

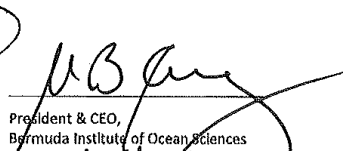


Signed:


Deputy Premier and Minister, Home Affairs
Government of Bermuda

Date: 12 April 2019.


Founder & Chairman,
Waitt Foundation
on behalf of the
Blue Prosperity Coalition
Date: April 10, 2019


President & CEO,
Bermuda Institute of Ocean Sciences
Date: April 15, 2019