

"EASY GOING"
NATURAL RESOURCE DAMAGE AND RESTORATION
SETTLEMENT AGREEMENT AND RELEASE

1. Purpose

Upon signature of all the Parties, this agreement is effective and entered into by and among: (a) the National Oceanic and Atmospheric Administration (NOAA), an agency of the United States Department of Commerce; (b) the Board of Trustees of the Internal Improvement Trust Fund for the State of Florida (Florida Board of Trustees); and (c) Bryan Dewald, owner of the 35'9" Ocean Sportfish vessel Easy Going, *in personam*, and the vessel Easy Going *in rem* (hereinafter collectively referred to as the "Owner") for the purpose of fully and finally resolving all sanctuary resource damage claims and potential claims under the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1431 *et seq.* and the Florida Statutes § 253.04 related to the grounding of the Easy Going in the Florida Keys National Marine Sanctuary (FKNMS) that occurred on or about July 29, 2005, and the subsequent removal of the vessel. NOAA and the Florida Board of Trustees shall be collectively referred to hereinafter as "the Trustees." The Trustees and the Owner shall be collectively referred to as the Parties. The Parties intend that the full terms and conditions of settlement and release be set forth in this agreement.

2. Authorities

2.1. The Trustees enter into this Settlement Agreement in accordance with the legal authorities provided pursuant to the NMSA, 16 U.S.C. §§ 1431 *et seq.*, the Florida Keys National Marine Sanctuary Act, Pub. L. No. 101-605, 104 Stat. 3089 (1990) and the Florida Statutes §§ 253.001, 253.03 and 253.04.

2.2. Under NMSA in the event that any person "destroys, causes the loss of, or injures any sanctuary resource," the Secretary of Commerce is authorized to undertake response actions, assess natural resource damages and commence a civil action to recover response costs and damages. 16 U.S.C. § 1443. The Secretary is also authorized to conduct such enforcement activities as are necessary and reasonable. 16 U.S.C. § 1437. The Secretary executes this authority through NOAA, as provided in the NMSA. *Id.* Under sections 253.001 and 253.04 of the Florida Statutes, the Florida Board of Trustees has been granted the authority to sue for damages to natural resources associated with the lands under navigable waters belonging to the State of Florida

3. Statement of Facts

3.1. The Trustees allege that on or about July 29, 2005, the vessel Easy Going, a 35'9" Ocean Sportfish vessel grounded off the Calda Channel near Key West, Florida, within state waters in the FKNMS. The Trustees allege that approximately 410.839 square meters of sea grass, predominately *Halodule wrightii* (Shoal grass), *Thalassia testudinum* (Turtle grass) and *Syringodium filiforme* (Manatee grass) were originally

injured or destroyed as a result of the grounding and subsequent removal of the vessel. Another visit to the injured area on April 22, 2008 indicated that the total injury is now 236.96 square meters of sea grass.

3.2. The Trustees were seeking compensation to restore the sanctuary resources injured as a result of the grounding. The restoration plan included both primary and compensatory restoration components. Primary restoration was the placement of sediment tubes at the injury location. The compensatory component of the restoration plan included the transplanting of 33 seagrass units (*Halodule wrightii*) and the inserting 16 tubes over a total area of 47.447 square meters.

3.3. The Parties desire to settle all claims and causes of actions that the Trustees have, or may have in the future, arising from the alleged damages to the natural resources of the FKNMS as described above. If the Trustees secure funding from another source to address the injuries caused by this grounding or conditions change at the injury site, they reserve the right to implement restoration different from that described above.

3.4. The Trustees have reviewed the financial information submitted by the Owner and have determined the Owner is unable to pay the damages and response costs sought by the Trustees pursuant to the restoration plan. This settlement is based on the Owner's inability to pay. The Trustees agree to accept community service in lieu of payment for primary and compensatory restoration, monitoring, oversight and damage assessment costs incurred or expected to be incurred by the Trustees for the alleged damage to the natural resources of the FKNMS as described above.

3.5 This settlement is made in good faith, after arms' length negotiation. The Trustees and Owner agree that this Settlement Agreement has been negotiated by the Parties in good faith, that the settlement of this matter and execution of this Settlement Agreement will avoid litigation between the Parties, is the most appropriate means to resolve the matters covered herein, and is fair, reasonable and in the public interest.

4. Compliance and Community Service

4.1. Without admitting liability, the Owner agrees to perform 70 hours of community service at the Mote Research Lab. In the event that the Owner is unable or unwilling to perform community service at the Mote Research Lab, the Owner must perform 60 hours of community service in a recognized volunteer program of the Owner's choice but it must relate to marine life, its habitats, and/or the Sanctuary and must be approved in writing by Lisa Symons of NOAA or her legal representative. Such community service must be completed within three years of the effective date of this Settlement Agreement. The Owner must complete and document a minimum of 25 hours of service for each of the first two years and 20 hours the third year, during the three years which Respondent has to complete the community service, and such time shall be measured by the effective date of this Settlement Agreement. Acceptable documentation must be submitted on letterhead of the organization at which the community service is performed and executed

by a person with knowledge of the community service and the authority to verify such information. Such documentation shall be sent to:

National Oceanic and Atmospheric Administration
Attn: Lisa Symons
NOAA/NOS-N/NMS1
Office of National Marine Sanctuaries, Room 11606
SSMC4
1305 East West Highway
Silver Spring, MD 20910

A copy of the documentation should also be sent to:

Laurie J. Lee, Esq.
U.S. Department of Commerce
NOAA Office of General Counsel
501 West Ocean Blvd., Suite 4470
Long Beach, CA 90802

4.2. In addition, for a period of five years from the date of this Settlement Agreement, the Owner shall not operate a vessel within or engage or participate in any commercial or recreational fishery within the boundaries of the Sanctuary, as defined by 15 C.F.R. § 922.161 and Appendix I to 15 C.F.R. Part 922, Subpart P. This prohibition includes, but is not limited to, the harvest or sale of any fish, lobster or shellfish pursuant to any state or federal permits or licenses or Florida salt water products license and includes working under another person's state or federal permits or licenses as a crew member within the boundaries of the Sanctuary. Nothing in this paragraph prevents the Owner from holding, applying for or otherwise working under state or federal permits or licenses pertaining to commercial or recreational fisheries or fishing outside the Sanctuary.

4.3. The Parties understand and agree that this is a settlement of a disputed claim and that nothing contained herein shall be construed as an admission of liability by or on behalf of the Owner, all such liability being expressly denied

5. Certification

The Owner hereby certifies that, to the best of his knowledge and belief, after thorough inquiry, he has submitted to NOAA financial information that fairly, accurately, and materially set forth his financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted and the time the Owner executes this Settlement Agreement. The Trustees expressly condition their agreement to this Settlement Agreement on the accuracy of the foregoing representations by the Owner, and upon the limitations on the Owner's ability to pay the amount of the response costs and damages described in the cost package summary sent to

the Owner on or around October 30, 2006 in the amount of \$96,366.45 and as revised on April 10, 2009 in the amount of \$46,702.38.

6. Stipulated Penalties/Default

6.1. Owner shall pay a stipulated penalty of \$500 for each failure to comply with any term of the compliance and community service requirements set forth in paragraph 4 of this Settlement Agreement. Specifically, for each year the Owner fails to submit documentation supporting the required hours of his community service, as described in paragraph 4.1, the Owner will pay a penalty of \$500 for such failure. To the extent that the owner fails to complete his community service subsequent to three years of the effective date of this Settlement Agreement, and as noted in paragraph 4.1, penalties shall continue to accrue \$500 annually until such time as the community service is completed or as otherwise waived in writing by the Trustees.

6.2. Pursuant to violations of paragraph 4.2, the Owner shall pay a stipulated penalty of \$500 for every time the Owner is found to have operated a vessel within or engaged or participated in any commercial or recreational fishery within the boundaries of the Sanctuary, as that term is defined in paragraph 4.2.

6.3. The payment of a stipulated penalty shall not affect the Owner's obligation to satisfy the requirements of this Settlement Agreement, except for the obligation to pay the stipulated penalty. The stipulated penalties are due and payable within 30 days of the date of demand for payment by the United States and shall be paid in the manner instructed by the United States. If the Owner fails to pay the stipulated penalty when due, interest shall continue to accrue on the unpaid balance to the date of payment. In addition, the United States may institute proceedings to collect the penalties, as well as any interest associated there.

6.4. The Owner shall be liable for attorney's fees and costs incurred by the United States associated with the collection of stipulated penalties.

7. Release of Liability

7.1. The Owner has cooperated with the officers of the Florida Fish and Wildlife Conservation Commission and representatives of NOAA, and has negotiated this Settlement Agreement in good faith.

7.2. Upon the Owner's compliance with the community service requirement and prohibition on operating a vessel within the Sanctuary, as noted above, the Trustees hereby agree to waive any and all claims and potential claims for civil liability they have or could have asserted against the Owner, whether statutory or arising out of common law, including fines, penalties or forfeitures for the destruction, loss, or injury to sanctuary resources arising out of or as a result of the alleged grounding of the Easy Going in the FKNMS on or about July 29, 2005, or the subsequent removal of the vessel.

7.3. This waiver is not effective until, and is conditioned upon, complete and satisfactory performance by the Owner of his obligations under this Settlement Agreement, including, but not limited to, paragraph four. This waiver is also conditioned upon the veracity and completeness of the financial information provided to NOAA by the Owner. If the financial information is subsequently determined by the United States to be false, or in any material respect, inaccurate, this waiver will be null and void.

7.4. The Trustees hereby represent and agree that they are unaware of any other claim or potential claim that the Owner is subject to as a result of the incident described herein. Provided that the owner fulfills the terms of this Settlement Agreement, NOAA specifically represents that it will not refer any civil or criminal enforcement claim arising under the NMSA to the Department of Justice, or any other enforcement arm of the federal government, for enforcement against the Owner to the extent such action arises out of the incident that occurred on July 29, 2005.

8. Reservation of Rights

The Parties understand and agree that this Settlement Agreement covers only liability for civil claims resulting from the grounding of the vessel Easy Going in the FKNMS on or about July 29, 2005, and the subsequent removal of the vessel. Nothing in this Settlement Agreement is intended to be, nor shall be construed as, a release for any claim or cause of action, administrative or judicial for: (a) sanctuary resource damages in the event that the Owner fails to abide by the terms of the Settlement Agreement as specified in Section 4 of this Settlement Agreement; (b) other past or future activities that result in destruction, loss, or injury to sanctuary resources; and (c) any and all criminal liability.

IN WITNESS WHEREOF, this Settlement Agreement and Release is executed by each of the Parties as of the dates written below.

FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Katherine A. Pease
Katherine A. Pease
Senior Counselor for Natural Resources
NOAA Office of General Counsel

6/4/09
Date

Bryan Dewald
Bryan Dewald, Owner

5-21-09
Date

FOR THE FLORIDA BOARD OF TRUSTEES

Lee Edmiston
Lee Edmiston, Director
Office of Coastal and Aquatic Managed Areas
Department of Environmental Protection

9/28/09
Date