

DL6236X
NATURAL RESOURCE DAMAGE AND RESTORATION -
SETTLEMENT AGREEMENT AND RELEASE

I. Purpose

This Settlement Agreement is made and entered into by and among: (a) the National Oceanic and Atmospheric Administration (NOAA), and 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) Boat Owners' Association of the United States (BoatU.S.) and The Continental Insurance Company, as the insurer under Policy No. 04811034 for Douglas W. Mellette, owner of the vessel "DL6236X", *in personam* (hereinafter collectively referred to as the "OWNER"), and the vessel "DL6236X" *in rem*; 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 Florida Statutes § 253.04, related to the grounding of the vessel DL6236X that allegedly occurred on or about June 16, 2005 in the Florida Keys National Marine Sanctuary (FKNMS). The parties intend that the full terms and conditions of settlement and release be set forth in this Settlement Agreement.

II. Authorities

NOAA and the Florida Board of Trustees (hereinafter collectively "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.

Under the 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. § 1447. The Secretary executes this authority through NOAA, as provided in the NMSA. *Id.* Under §§ 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.

III. Statement of Facts

A. The Trustees allege that on or about June 16, 2005, the vessel "DL6236X", a 35-foot Luhrs Sportsfisherman, ran aground on Bethel Bank, a shallow seagrass bank off of Marathon, FL in state waters within the FKNMS. The Trustees determined that 64.931 m² of seagrass bottom cover, predominantly *Thalassia testudinum* (Turtle Grass), was impacted by the grounding.

B. The Trustees developed a restoration plan, consisting of both primary and compensatory restoration. The primary restoration component provides for the restoration of 64.931 m² of seagrass habitat at the grounding site. To make the public whole for the interim loss of ecological services, a compensatory restoration component will entail undertaking restoration of an additional 16.445 m² of seagrass habitat at a similar injury site within the FKNMS. In the event circumstances change, however, the Trustees reserve the right to implement a different array of resource restoration and protection projects than those identified in this paragraph.

C. The Parties desire to settle all claims and causes of action that the Trustees have, or may have in the future, arising from the alleged grounding on or about June 16, 2005, of the vessel DL6236X in the FKNMS.

IV. Owner Obligations

A. The Owner agrees to pay NOAA \$48,000.00 within 20 days of signature by all Parties to this Settlement Agreement. Monies received by NOAA shall be used to reimburse response and damage assessment costs, implement primary restoration of the injured resources, implement compensatory restoration, and pay for associated monitoring, oversight, or other related costs.

B. Payment shall be made by check payable to "NOAA, Department of Commerce" and annotated "DL6236X" DARRF Account. The check shall be sent to:

Kathy Salter
NOAA, N/ORR3
1305 East-West Highway, Room 9331
Silver Spring, MD 20910

A copy of the check should also be sent to:

M.E. Rollé
National Oceanic and Atmospheric Administration
Office of General Counsel for Natural Resources
263 13th Avenue South, Suite 177
St. Petersburg, FL 33701

V. Release of Liabilities

The Owner has cooperated with the officers of the Florida Fish and Wildlife Conservation Commission and representative of NOAA, and has negotiated this Settlement Agreement in good faith. Therefore, NOAA hereby agrees not to impose additional civil penalties upon the Owner arising from this grounding unless the Owner fails to comply with the terms of the Settlement Agreement and release.

Upon NOAA's receipt of the total payment of \$48,000.00, paid by Boat Owners' Association of the United States (BoatU.S.) and The Continental Insurance Company, on behalf of the Owner and the vessel "DL6236X", the Trustees will thereupon be deemed to have waived any and all claims for civil liability they have or could have asserted against the Owner, the vessel "DL6236X", Boat Owners' Association of the United States (BoatU.S.) and The Continental Insurance Company, and/or their respective shareholders, directors, officers, employees, attorneys, or agents, whether statutory or arising out of common law, including fines, penalties or forfeitures for the destruction, loss of, or injury to, sanctuary resources arising out of the grounding of the vessel "DL6236X" on or about June 16, 2005. The Trustees hereby represent and agree that they are unaware of any other claim or potential claim that the Owner and/or the vessel "DL6236X" are subject to as a result of the incident described herein. NOAA specifically represents that it will not refer any civil or criminal action arising under the NMSA in relation to the incident described herein to the U.S. Department of Justice or any other enforcement arm of the Federal Government, for enforcement against the Owner and/or vessel "DL6236X".

VI. Reservation of Rights

The Parties understand and agree that this Settlement Agreement covers only liability for civil claims resulting from the June 16, 2005, grounding of the vessel "DL6236X" in the FKNMS. Nothing herein is intended to be, nor shall it be construed as, a release for any claim or cause of action, administrative or judicial, for: (a) sanctuary resource damages and civil penalties in the event that the total sum of \$48,000.00 is not paid by The Northern Assurance Company of America on behalf of the Owner and vessel "DL6236X" to NOAA as specified in section IV of this Settlement Agreement; (b) past or future activities unrelated to the June 16, 2005 grounding of the vessel "DL6236X" in the FKNMS, that result in the destruction, loss of, or injury to sanctuary resources; and (c) any and all criminal liability.

IN WITNESS HEREOF, this Settlement Agreement and release is executed by each of the Parties as of the dates indicated below.

FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

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

12/14/09
Date

FOR THE FLORIDA BOARD OF TRUSTEES

Lee Edmiston

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

12/15/09

Date

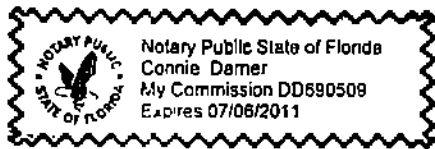
FOR BOAT OWNERS' ASSOCIATION OF THE UNITED STATES (BOATU.S.)

Alan Damer

11/13/09
Date

Connie Damer

11/13/09



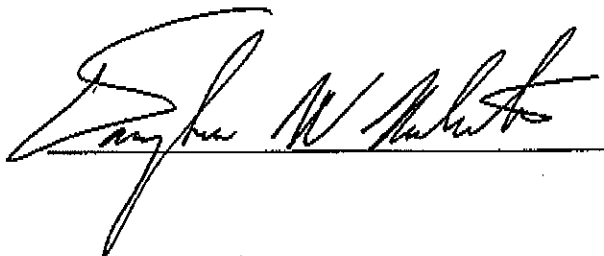
DOUGLAS W. MELLETTE

_____ Date

FOR BOAT OWNERS' ASSOCIATION OF THE UNITED STATES (BOATU.S.)

Date

DOUGLAS W. MELLETTE



Nov 18, 2009
Date

DM