

SETTLEMENT AGREEMENT BETWEEN
the
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
and
JACK F. DAVIES

I. Introduction

The National Oceanic and Atmospheric Administration (“NOAA”) and Jack F. Davies (“Responsible Party” or the “RP”) (NOAA and the RP are referred to collectively as the “Parties”) enter into this Settlement Agreement to resolve, without litigation, NOAA’s civil claims under Section 312 of the National Marine Sanctuaries Act (“NMSA”), 16 U.S.C. § 1443, for destruction, loss, or injury to sanctuary resources resulting from the loss of a keel and engine during the grounding of the S/V EAN NA MARA on or about January 12, 2018 within the Monterey Bay National Marine Sanctuary (“MBNMS”) (the “Incident”).

The execution of this Settlement Agreement shall not constitute, nor is it in any way, an admission by the RP of any liability. The Parties have negotiated in good faith and assert that this Settlement Agreement: (i) is fair, reasonable, and in the public interest; (ii) will allow MBNMS to implement salvage and restoration activities to benefit sanctuary resources as defined in *16 U.S.C. 1432 § 8*; and (iii) will enable all Parties to avoid the risks and expense of litigation.

Removal of obstructions and debris are the best means of facilitating natural recovery and restoring the ecological services within this area of the MBNMS. Prompt removal of wreckage and debris extracts the discharged matter from the sanctuary, facilitates immediate commencement of natural recovery processes, and is the best restoration option for habitats where engineered solutions for accelerated recovery are not available or effective, such as rocky reefs.

II. Parties Bound

The provisions of this Settlement Agreement shall apply to and be binding upon the RP and upon NOAA.

III. Definitions

Except as otherwise expressly provided herein, the terms used in this Settlement Agreement which are used in the NMSA, 16 U.S.C. § 1432, or in regulations promulgated under the NMSA shall have the meanings assigned to them by such statute or regulation.

IV. Payment of Certain Costs and Damages

Within thirty (30) days after the Effective Date of this Settlement Agreement, the RP shall pay to NOAA as specified below:

- a. Forty thousand, four hundred and seventy-seven dollars (\$40,477.00), which will be utilized to restore, replace, or acquire the equivalent of MBNMS resources injured by the Incident, including salvage, monitoring and oversight costs.
- b. Payment shall be in the form of a check or wire transfer made payable to NOAA in accordance with instructions to be given by NOAA. At the time of payment, the RP, or their agent, shall email a written notice of payment and a copy of any transmittal documentation to:

Ericka Hailstocke-Johnson
NOAA Office of General Counsel, Natural Resources Section
Ericka.Hailstocke-Johnson@noaa.gov

- c. The RP shall be liable for attorneys' fees and costs incurred by NOAA to collect any amount due under this Settlement Agreement that is not timely paid.

V. Covenant Not to Sue and Reservation of Rights by NOAA

- a. In consideration of the payments to be made by the RP, NOAA covenants not to sue or take any administrative action against the RP for:
 - i. damages for destruction, loss, or injury to any sanctuary resources resulting from the Incident; and
 - ii. except as set forth in Section IV.c above, costs (including assessment, salvage, and response costs), attorneys' fees, other fees, or expenses incurred by NOAA to recover such damages for destruction, loss, or injury to any sanctuary resources resulting from the Incident.
- b. This covenant not to sue is not effective until, and is conditioned upon, complete and satisfactory performance by the RP of its obligations under Section IV of this Settlement Agreement.
- c. Notwithstanding any other provision of this Settlement Agreement, NOAA reserves, and this Settlement Agreement is without prejudice to: (1) claims based upon a failure of the RP to meet a requirement of this Settlement Agreement; (2) criminal liability; and (3) other claims not within the scope of the covenant not to sue in Section V.a. of this Settlement Agreement for costs or damages that NOAA may have under applicable law.
- d. These covenants not to sue do not extend to any other person.

VI. Signatories

Each of the undersigned representatives of the RP and NOAA certifies that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and bind legally such Party to this document.

VII. Entire Agreement

This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Agreement and supersedes all prior agreements and understandings, whether oral or written. No other document, nor any representation, inducement, agreement, understanding, or promise constitutes any part of this Agreement or the settlement it represents, nor shall it be used in construing the terms of this Agreement.

VIII. Modification

The terms of this Agreement may be modified only by a subsequent written agreement signed by all of the Parties.

IX. Execution

This Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Chauncey Kelly
Section Chief
Natural Resources Section
Office of the General Counsel
National Oceanic and Atmospheric Administration

July 1, 2020

Date

JACK F. DAVIES

Jack F. Davies

Date