

L. No 101-605, 104 Stat. 3089 (1990). The complaint seeks the recovery of response costs and damages against Great Lakes Dredge and Dock and Coastal Marine Towing ("Coastal" or the "Defendant") due to the grounding and dragging of dredge pipe by the Captain Joe and the Miss Necie, and their support vessels, the Cavalier State and the Volunteer State in the Florida Keys National Marine Sanctuary ("FKNMS") on May 26, 1993 (the "Incident").

B. Under the National Marine Sanctuaries Act ("NMSA"), 16 U.S.C. § 1431, et seq., any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury. Id. §§ 1437(i) and 1443(a)(1).

C. The United States of America, on behalf of the Secretary of the Department of Commerce and NOAA and Coastal (collectively referred to as the "Parties") enter into this Consent Decree to settle, without further litigation, the claims alleged in the amended complaints.

D. The Parties agree and the Court finds that settlement of this civil matter without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving these matters.

E. The Parties, without the necessity of trial or adjudication of any issues of fact or law and without any admission of liability of any issue of fact or law by Defendant, consent to the entry of the following Consent Decree resolving the Plaintiff's claims.

NOW, THEREFORE IT IS ADJUDGED, ORDERED AND DECREED THAT:

II. Definitions

1. Unless otherwise specified, terms used in this Consent Decree which are defined under the NMSA shall have the meaning assigned to them under the NMSA. Whenever the following

terms are used in this Consent Decree, the definition specified hereinafter shall apply:

- a. "The Act" or "NMSA" means the National Marine Sanctuaries Act, 16 U.S.C. § 1431, et seq.;
- b. "Compensatory Restoration" ("CR") shall mean restoration of propeller scar sites to compensate the public for interim losses resulting from injury to or destruction of Sanctuary resources until full restoration of those resources has been attained;
- c. "Damages" shall mean (a) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; (b) the value of the lost use of sanctuary resources pending their restoration or replacement or the acquisition of equivalent sanctuary resources; (c) the costs of compensatory restoration; (d) the costs of the damage assessment activities, studies, and analysis, and; (e) the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources;
- d. "Defendant" means Coastal Marine Towing, one of the Defendants in this action;
- e. "Parties" means the United States, on behalf of NOAA, and Coastal Marine Towing;
- f. "Plaintiff" shall mean the United States of America, on behalf of NOAA.
- g. "Response Costs" means the costs of actions taken or authorized by the Secretary to minimize the destruction or loss of, or injury to, Sanctuary resources, or to minimize the imminent risks of such destruction, loss, or injury;
- h. "Restoration Plan" ("RP") shall mean the plan to restore sanctuary resources and/or services injured or destroyed by the Vessels;

i. "The Sanctuary" or "Sanctuary" means the Florida Keys National Marine Sanctuary ("FKNMS");

j. "Site" shall mean that portion of the FKNMS, damaged or destroyed by the grounding of the Vessels which occurred (1) approximately .75 nautical miles NNW of Red Bay Bank off Marathon Key on the Gulf of Mexico side of the seven mile bridge, known as "the Blowhole" and (2) north of Pigeon Key in Florida Bay for 13 miles to the boundary of the FKNMS, known as "the Pipescar;"
and;

k. "Vessels" shall mean the Captain Joe, Miss Necie, Cavalier State, and Volunteer State.

III. Jurisdiction

2. The Parties agree and consent that this Court has jurisdiction over the subject matter of the claims alleged in the Amended Complaints and over the Parties pursuant to 16 U.S.C. § 1433(c) and 1437(i) and also pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367. The Amended Complaints filed herein state claims for which relief could be granted.

IV. Parties Bound and Notice of Transfer

3. The provisions of this Consent Decree shall apply to and be binding upon the Plaintiffs and upon Defendant and its officers, agents, successors, assigns and all persons acting on its behalf. Each undersigned representative of the Defendant and the Plaintiffs, is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Consent Decree, to execute it on behalf of the Party, and to legally bind the Party on whose behalf he or she executes this Consent Decree.

4. No change in ownership, corporate or partnership status relating to the Defendant will in any way alter the responsibilities of the Defendant under this Consent Decree.

V. Payment of Costs

5. Within 5 days of entry of this Consent Decree by the Court, the defendant shall pay to NOAA \$618, 484. 86 (the "Settlement Amount"). This sum shall be transferred via an Electronic Funds Transfer (EFT) through the Automated Clearing House (AFT) in a CCD+ format to NOAA's account at the First National Bank of Chicago (FNBC). (FNBC TRANSIT ROUTING: 071000013 AND AGENCY ACCOUNT 11-13801). The addenda record shall be annotated "RE: GREAT LAKES-DARRF ACCOUNT." A copy of the paperwork documenting the EFT and any accompanying correspondence to the NOAA Finance Services Division shall be sent to:

Sharon K. Shutler, Esq.
NOAA Office of General Counsel, Natural Resources
Building 3, 15th Floor
1315 East-West Highway
Silver Spring, MD 20910-3282

Chief
Environmental Enforcement Section
U.S. Department of Justice
DOJ Ref. No. 90-11-3-1636
POB 7611
Washington D.C. 20044

6. The Parties agree that the Settlement Amount is calculated based on available insurance coverage of \$999,000 less the legal fees, expenses, experts' charges and disbursements incurred by Coastal's insurer through February 28, 1999. The amount of the deduction for these costs is \$312, 995.30.

7. The Settlement Amount is further calculated after deduction of the payment of

\$17,519.84 made to the State of Florida pursuant to an independent and separate agreement with Coastal resolving the State's claims in these consolidated actions.

8. The Parties agree that the Settlement Amount also includes a \$50,000 Reserve (the "Reserve"), which the Parties have stipulated will be set aside for legal fees, expenses, experts' charges and disbursements incurred in the continued defense of Coastal after February 28, 1999, in this action.

9. The Parties further agree that if any balance remains in the Reserve after the payment of all legal fees, expenses, experts' charges and disbursements incurred after February 28, 1999 through the conclusion of trial, any such balance will be paid to the United States pursuant to the terms of paragraph 5, above.

10. In the event that the Defendant fails to make timely payments of the Settlement Amount specified in this Section, interest shall be assessed at the annual rate established pursuant to 31 U.S.C. § 3717. Interest on all payments shall accrue beginning 30 days from the date the Consent Decree is entered by the Court.

11. Should the Defendant fail to make timely payments of the Settlement Amount specified in this Section, this Consent Decree shall be considered an enforceable judgement for purposes of post collection under Federal Rule of Civil Procedure 69 and other applicable statutory authority without further order of this Court.

VI. Use of Funds

12. Funds received by NOAA pursuant to this Consent Decree shall be used to reimburse past damage assessment costs, including interest on Federal assessment costs incurred by NOAA. To the extent that funds are left over upon reimbursement of damage assessment costs, those

funds shall also be used to help fund any or all of the following activities: (a) implementation of the RP, attached as Appendix A, (b) compliance with the National Environmental Policy Act and Federal permit costs, (c) implementation of the CR projects, attached as Appendix B, and (d) monitoring the restoration and the CR projects pursuant to the monitoring plan, attached as Appendix C.

VII. Certification of Financial Condition

13. Coastal certifies that to the best of its knowledge and belief it has fully and accurately disclosed to the United States all information which is currently in Coastal's possession and in the possession of its agents and which relates in any material way to its finances and/or its ability to pay Damages and Response Costs in this matter. Until payment of the total amount due under Section V above is remitted, Coastal shall continue to make available to the United States, upon reasonable request, any additional financial and insurance records of Coastal not already furnished to the United States, including, but not limited to, federal, state and local tax filings, and financial statements prepared by Coastal or its agents prior to the date of such request. It is understood that all financial information which has been provided by Coastal to the United States and any additional information which will be provided pursuant to Sections V and VII is confidential and proprietary, and none of this information shall be disclosed by the United States to any person except the Court and employees or agents of the United States who are responsible for enforcing compliance with this Consent Decree, and shall not be used by the United States for any purpose other than enforcing compliance with this Consent Decree. The United States expressly conditions its consent to this Decree on the accuracy of the foregoing representations by Coastal.

VIII. Covenant Not to Sue by Plaintiffs

14. In consideration of the payments that will be made by Defendant under the terms of this Consent Decree, except as expressly set forth in Sections VII and IX, the United States covenants not to sue and agrees not to assert any claims or causes of action against Defendant for Response Costs or Damages for the destruction or loss of Sanctuary resources as alleged in its Amended Complaint. This covenant not to sue is not effective until, and are conditioned upon, complete and satisfactory performance by Defendant of its obligations under this Consent Decree.

IX. Reservation of Rights

15. Notwithstanding any other provision of this Consent Decree, the Plaintiff reserves, and this Consent Decree is without prejudice to, all rights against Defendant with respect to all matters other than those expressly specified in the covenant not to sue set forth in Section VIII.

16. The entry of this Consent Decree and Defendant's consent to comply herewith, shall not limit or otherwise preclude the United States from taking additional enforcement action pursuant to any Federal or state laws, regulations or permitting conditions, consistent with the covenant not to sue set forth in Section VIII.

X. Covenants Not to Sue by the Defendant

17. Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the Plaintiffs, their employees, agents, experts or contractors with respect to the allegations contained in the Amended Complaints.

XI. Modification

18. There shall be no major modification or amendments of this Consent Decree without the written agreement of the parties and further order of this Court.

XII. Notices

19. Whenever under the terms of this Consent Decree notice is required to be given or a report or other document is required to be forwarded by one Party to another, it shall be directed to the following individuals at the addresses specified below, unless it is otherwise specifically provided in this Consent Decree. Any change in the individuals designated by either Party must be made in writing to the other Party. Any correspondence submitted to the government shall include a reference to the case caption and index number of this court action.

For the United States:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
POB 7611
1425 New York Avenue, NW
Washington, D.C. 20044
DOJ Ref. No. 90-11-3-1636

Sharon K. Shutler, Esq.
NOAA Office of General Counsel, Natural Resources
1315 East-West Highway
Silver Spring, MD 20910-3282

For the Defendant:

Coastal Marine Towing

Joe Smith
937 Bulkhead Rd.
Green Cove Springs, Florida 32043

and

John M. Woods
Thacher, Proffitt and Wood
Two World Trade Center
New York, New York 10048

20. The communication set forth in paragraph 19, above, is intended to facilitate meeting the objectives of this Consent Decree and shall not relieve the Defendant of the notice and reporting requirements set forth elsewhere in this Consent Decree and its attachments.

XIII. Effective and Termination Dates

21. This Consent Decree shall be effective upon the date of its entry by the Court. The Consent Decree shall be terminated upon completion of all requirements of this Consent Decree.

22. Upon entry this Decree shall become a final judgment pursuant to Fed.R.Civ.P. 54 and 58.

23. After the Defendant has paid all costs pursuant to Section V, the Plaintiffs will move to terminate this Consent Decree, and the Court may order such termination after conducting such inquiry as it deems appropriate.

XIV. Retention of Jurisdiction

24. This Court shall retain jurisdiction of this matter until further order of the Court.

25. The Parties retain the right to seek to enforce the terms of this Consent Decree and take any action authorized by Federal or State law not inconsistent with the terms of this Consent Decree to achieve or maintain compliance with the terms and conditions of this Consent Decree or otherwise.

26. If for any reason the Court should decline to approve this Consent Decree in the form presented, and the Parties cannot reasonably agree on modifications necessary to cure any objection of the Court, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.


27. Defendant shall identify on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of the Defendant with respect to all matters arising under or relating to this Consent Decree.


SO ORDERED THISDAY OF,1999

Chief Judge Davis

SIGNATURES

For the United States of America:


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Washington, D.C. 20530



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For NOAA:

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General Counsel, NOAA

14th & Constitution Ave., N.W.

Washington, D.C. 20044

For Coastal Marine Towing:

John M Woods

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