

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 99-10061-CIV-PAINE

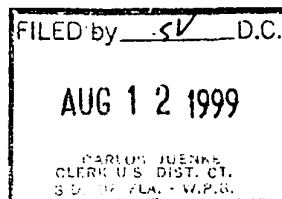
UNITED STATES OF AMERICA and THE BOARD
OF TRUSTEES OF THE INTERNAL TRUST
FUND OF THE STATE OF FLORIDA, an agency of
the State of Florida,

Plaintiffs,

vs.

ATLAS SHIPPING, LTD., and
TRANSPORTACION MARITIMA MEXICANA
S.A. de C.V.,

Defendants.

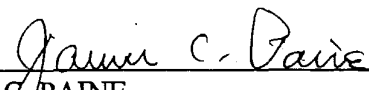


ORDER ADMINISTRATIVELY CLOSING CASE

THIS CAUSE came before the Court for review. The court notes that a Consent Decree was entered and approved on August 3, 1999. Because it appears to the Court that no further action is required in this case, it is hereby

ORDERED AND ADJUDGED that this case is administratively CLOSED.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 12th day of August,
1999.



JAMES C. PAINE
UNITED STATES DISTRICT JUDGE

cc: Lois Schiffer, AAG
Thomas Watts-Fitzgerald, AUSA
Lori Jonas, Esq.
Monica Medina, Esq.
Sharon Shutler, Esq.
Maureen Malvern, Esq.
Charles De Leo, Esq.

CLOSED CASE

FILED by AWK D.C.
AUG 3 - 1999
CARLOS JUENKE
CLERK U.S. DIST. CT.
S.D. OF FLA. - W.P.B.

COPY FOR THE JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION

FILED by _____ D.C.
AUG 3 - 1999
CARLOS JUENKE
CLERK U.S. DIST. CT.
S.D. OF FLA. - W.P.B.

UNITED STATES OF AMERICA and THE)
BOARD OF TRUSTEES OF THE INTERNAL)
TRUST FUND OF THE STATE OF FLORIDA,)
an Agency of the State of Florida)

REC'D by _____ D.C.
JUL 28 1999
CARLOS JUENKE
CLERK U.S. DIST. CT.
S.D. OF FLA. - W.P.B.

Plaintiffs,)
)
v.)
ATLAS SHIPPING, LTD. and)
TRANSPORTACION MARITIMA MEXICANA)
S.A. de C.V.,)
)
Defendants.)

CIVIL ACTION NO. 99-10061 CIV

PAINE
MAG. JOHNSO

FILED by _____ D.C.
JUL 28 1999
CARLOS JUENKE
CLERK U.S. DIST. CT.
S.D. OF FLA. - KEY WEST

CONSENT DECREE

Tommy

I. Background

A. The United States of America, on behalf of the National Oceanic and Atmospheric Administration ("NOAA"), and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("State Trustees") are concurrently filing a complaint pursuant to the National Marine Sanctuaries Act ("NMSA") (formerly the Marine Protection, Research, and Sanctuaries Act), 16 U.S.C. §§ 1431-45, the Florida Keys National Marine Sanctuary Act, Pub L. No 101-605, 104 Stat. 3089 (1990), and Florida Statutes § 253.04 against Atlas Shipping, Ltd. and Transportacion Maritima Mexicana S.A. de C.V. ("Defendants"). The complaint seeks response costs and damages for injury to natural resources

resulting from the grounding of the M/V OAXACA (formerly known as the Contship Houston) (the "Houston") in the Florida Keys National Marine Sanctuary ("FKNMS") on or about February 2, 1997.

B. On July 21, 1997, the Defendants completed emergency response and restoration actions by reattaching over 3,000 corals and boulders dislodged as a result of the Grounding at 82 different locations at the direction and under the oversight of the Plaintiffs.

C. On November 13, 1997, the Defendants completed restoration activities related to injured sanctuary resources. The restoration effort was comprised of the following components, all of which were executed by the Defendants at the direction and under the oversight of the Plaintiffs: (a) stabilization of four berms consisting of small diameter broken staghorn coral through application of underwater epoxy, (b) stabilization of 7,650 square feet of crushed coral reef substrate at locations PL- I and RP-2 using Armorflex mats, (c) creation of three dimensional habitat through application of boulders on the Armorflex mats, and (d) stabilization of crushed coral reef substrate through application of boulders at PL-4 and RP-2. See Attachment 1 for Figure identifying location of restoration actions. See Attachment 2 for Description of Restoration Activities Undertaken.

D. Defendants have reimbursed the United States Coast

Guard \$53,907.35. This sum represents all response costs incurred by the Coast Guard with regard to the Grounding of the Houston. Defendants have paid NOAA \$135,038.00, which reimburses NOAA for response and damage assessment costs for the time period February 2, 1997, through November 1, 1997. Defendants have also paid the State of Florida \$11,011, which reimburses the State Trustees for response and damage assessment costs for the time period February 2, 1997 through October 15, 1997.

E. Defendants have paid to NOAA \$30,000 in administrative penalties, as assessed by the Secretary of Commerce.

F. The Parties, without the necessity of trial or adjudication of any issues of fact or law and without any admission of liability by Defendants agree, and the Court finds, that this Consent Decree is fair, reasonable, and in the public interest.

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 in 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. "Baseline" means the condition of the sanctuary resources that would have existed had the Grounding not occurred;

c. "Compensatory Restoration" means the restoration undertaken to compensate the public for value of the lost use of sanctuary resources and services resulting from their injury or destruction until full restoration and recovery of those resources and services to baseline has been attained;

d. "Consent Decree" means this Decree and all attachments. In the event of conflict between this Decree and any attachment, this Decree shall control;

e. "Defendants" means the Defendants in this action, Atlas Shipping, Ltd., and Transportacion Maritima Mexicana S.A. de C.V.;

f. "Grounding" means the event that occurred on or about February 2, 1997 through February 8, 1997 in which the Houston ran aground on the "Site";

g. "Plaintiffs" means the United States of America, on behalf of NOAA, and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida;

h. "Parties" means the United States and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Plaintiffs); and Atlas Shipping, Ltd., and Transportacion Maritima Mexicana S.A. de C.V. (Defendants);

i. "Restoration " means restoration of sanctuary resources and/or services injured or destroyed as a result of the Grounding;

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

k. "Site" means that portion of the FKNMS where the Houston ran aground on or about February 2, 1997 including areas designated as the inbound track, the stern area, and final vessel resting place, as delineated in Attachment 1 of this Consent Decree;

l. "State Trustees" means Board of Trustees of the Internal Improvement Trust Fund of the State of Florida;

m. "Trustees" means NOAA and the State Trustees.

III. Jurisdiction

2. The Parties agree and consent that this Court has jurisdiction over the subject matter and over the Parties pursuant to 16 U.S.C. § 1433(c) and also pursuant to 28 U.S.C., §§ 1331, 1345, 1355, and 1367.

IV. Parties Bound

3. The provisions of this Consent Decree shall apply to and be binding upon the United States, the State Trustees, and upon the Defendants and their officers, directors, agents,

servants, employees, successors, and assigns. No change in ownership, corporate or partnership status relating to the Defendants will in any way alter the responsibilities of the Defendants under this Consent Decree. All obligations of Defendants under this Decree shall be joint and several.

V. Compensatory Restoration

4. The Defendants have purchased 14 RACON transponder beacons from Tideland Signal Corporation per specifications which were provided to the Defendants by the U.S. Coast Guard with the agreement of the Trustees. The specifications are included as Attachment 3. Defendants have also purchased one year warranties on each RACON unit and have transferred these warranties to the U.S. Coast Guard. Eight of the RACON units have been installed by the U.S. Coast Guard at locations specified in Attachment 4 of this Decree, extending from Fowey Rocks to the Dry Tortugas. The remaining six units are to be reserved for replacement as necessary. The installation of the RACONS is estimated to prevent approximately 56% of major coral reef groundings in the Sanctuary over the next 10 years, thereby preventing injury to an estimated 9,900 square meters of hard and soft corals within the Sanctuary. The basis of this compensatory restoration analysis and supporting calculations are contained in Attachment 5 of this Consent Decree.

VI. Monitoring Plan

5. The Trustees plan to undertake a ten year Monitoring Plan to assess the biological condition of the injured sanctuary resources and the physical integrity of restored areas. These monitoring activities shall be funded by the Defendants pursuant to Section VII of this Decree.

VII. Payment of Costs to the United States

6. The Defendants shall pay \$112,531.40 for NOAA's past damage assessment costs not included in paragraph I(D). Defendants shall also pay \$1,400,000.00 for costs to be incurred jointly by the Federal and State Trustees in executing the Monitoring Plan and undertaking any mid-course corrections.

7. Within 30 days of the date of entry of this Consent Decree, the Defendants shall make the two payments specified in the previous paragraph. Both payments to the United States shall be transferred via Electronic Funds Transfers (EFTs) through the United States Department of Justice for disbursement to NOAA (Agency Account 11-13801), according to instructions to be obtained by defendants from the Office of the U.S. Attorney, Southern District of Florida, Financial Litigation Unit. One transfer shall be in the amount of \$112,531.40 and another in the amount of \$1,400,000.00. The addenda records of both payments shall be annotated "RE Contship Houston-DARFF Account". A copy of the paperwork documenting the EFTs, and any accompanying correspondence shall reference DOJ # 90-5-1-1-4534 and shall be

sent to:

United States Attorney's Office
Southern District of Florida
Financial Litigation Unit
99 N.E. 4th Street
Miami, FL 33132
attn: Elizabeth Stein

Chief, Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

Sharon K. Shutler, Esq.
NOAA Office of General Counsel, Natural Resources 1315 East-
West Highway, Room 15132
Silver Spring, MD 20910-3282

VIII. Payment of Costs to Florida DEP

8. The Defendants shall pay a total of \$3334.99 to the Florida Department of Environmental Protection (DEP), which represents the amount spent by the State Trustees for past damage assessment costs not included in paragraph I(D);

9. Within 30 days of the date of entry of this Consent Decree, the Defendants shall make the payment specified in the previous paragraph. Payments to Florida DEP shall be made by certified check annotated "012020- Coral Reef Restoration - Contship Houston" and made payable to:

Department of Environmental Protection
Ecosystem Management and Restoration Trust Fund
Florida Department of Environmental Protection.

The certified check shall be mailed to:

Maureen M. Malvern, Esq.
Florida Department of Environmental Protection

3900 Commonwealth Blvd. M.S. 35
Tallahassee, Florida 32399-3000.

10. In the event that the Defendants fail to make any of the payments referred to in paragraphs 7-10 on time, interest shall be assessed at the annual rate established pursuant to 31 U.S.C. § 3717 for each day that the payment is late.

X. Covenant Not to Sue by Plaintiffs

11. In consideration of the actions that have been performed and the payments that have been and will be made by Defendants pursuant to this Consent Decree, the United States covenants not to sue and agrees not to assert any claims or causes of action against the Defendants for damages for the destruction or loss of sanctuary resources pursuant to 16 U.S.C. § 1437 or general maritime law, civil penalties pursuant to 16 U.S.C. § 1437(c) and response costs pursuant to 16 U.S.C. § 1432(7) arising from the Grounding. The State Trustees covenant not to sue and agree not to assert any claims or causes of action against the Defendants for damages for the destruction or loss of state resources and response costs pursuant to Florida Statutes § 253.04 or general maritime law arising from the Grounding. These covenants not to sue are not effective until, and are conditioned upon, complete and satisfactory performance by the Defendants of all their obligations under this Consent Decree, specifically those obligations contained in Sections VII, VIII, XIII, and XV. In addition, the Trustees agree to return

the Letter of Undertaking given by Steamship Mutual Underwriting (Bermuda) Ltd. on February 7, 1997, which Letter of Undertaking will then be considered void and all obligations of Steamship Mutual Underwriting (Bermuda) Ltd. under said letter will be deemed fully satisfied. This agreement is not effective until, and is conditioned upon, complete and satisfactory performance by the Defendants of all their obligations under this Decree, specifically those obligations contained in Sections VII, VIII, XIII, and XV.

XI. Reservation of Rights

12. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights which Plaintiffs have against Defendants with respect to all matters other than those expressly specified in the Covenant Not to Sue set forth in Section X.

13. This Consent Decree shall not be construed as a ruling or determination of any issue related to any Federal, state, or local permit, if required in order to implement this Consent Decree, and Defendants shall remain subject to all such permitting requirements.

XII. Covenant Not to Sue by the Defendants

14. Defendants hereby covenant not to sue and agree not to

assert any claims or causes of action against the Plaintiffs, their employees, agents, experts or contractors with respect to the Grounding.

XIII. Transfer and Retention of Records

15. Within 60 days of the date of entry of this Consent Decree, Defendants shall have delivered to NOAA, 216 Ann Street, Key West, FL 33040, the documents listed in Attachment 6.

XIV. Modification

16. There shall be no material modification or amendments to this Consent Decree without the written consent of all Parties and an order of this Court. Any other modification may be made by the written consent of all Parties.

XV. Notices

17. Whenever under the terms of this Consent Decree or its Attachments, 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 or its Attachments. Any change in the individuals designated below by any Party must be made in writing to the other Parties. Any correspondence submitted to the United States shall include a reference to the case caption, index number of this court action and DOJ case # 90-5-1-1-4534.

For the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
Post Office Box 7611
Washington, D.C. 20044

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

For the State of Florida:

Maureen M. Malvern, Esq.
DEP Office of General Counsel
3900 Commonwealth Blvd. MS 35
Tallahassee, FL 32399-3000

For the Defendants:

Charles G. De Leo
Fowler, White, Burnett
Hurley, Banick & Strickroot
100 Southeast 2nd Street
Miami, FL 33131

18. Such communication is intended to facilitate meeting the objectives of this Consent Decree and shall not relieve the Parties of the notice and reporting requirements set forth elsewhere in this Consent Decree and its Attachments.

XVI. Effective and Termination Dates

19. This Consent Decree shall be effective upon the date of its entry by the Court.

20. When Defendants determine that they have complied with

all requirements of this Consent Decree, they shall certify such compliance in writing to the Plaintiffs. The certification shall indicate the case name and civil action number of this action and include the following language:

"I certify pursuant to Section XVI of the Consent Decree entered on _____ that Atlas Shipping, Ltd. and Transportacion Maritima Mexicana S.A. de C.V. have completed all the requirements set forth in the Consent Decree including all requirements of the Attachments."

Should the Plaintiffs disagree with said certification, the Plaintiffs shall invoke the dispute resolution provisions pursuant to Section XVII of this Consent Decree.

21. After Defendants submit the certification required by paragraph 20, the Plaintiffs will move to terminate this Consent Decree if they conclude that all requirements of this Consent Decree have been satisfied.

XVII. Dispute Resolution

22. The dispute resolution mechanisms identified in this section shall constitute the exclusive means of dispute resolution under this Consent Decree.

23. A dispute that arises with respect to the meaning or application of this Consent Decree shall initially be subject to a period of informal negotiations, which shall not extend beyond 30 days from written notification of any Party of a dispute, unless the Parties otherwise agree in writing.

24. In the event that a dispute regarding any provision of this Consent Decree is not resolved during the period of informal negotiations, then the position advanced by the Plaintiffs shall be considered binding, unless the Defendants serve on Plaintiffs a written position on the subject of the dispute. Plaintiffs shall then provide to the Defendants a written position on the subject of the dispute, which shall be binding unless Defendants invoke the dispute resolution provisions of paragraph 25.

25. Defendants may elect to dispute Plaintiffs' position or interpretation by filing with the Court a petition describing the nature of the dispute and proposing a resolution of the dispute. Such petition shall be served on the United States on behalf of NOAA, and on the Florida Department of Environmental Protection on behalf of the State Trustees. Any such petition shall be filed within 20 days from the date of the close of the informal negotiations period. The Plaintiffs shall have 30 days to respond to the petition.

26. The filing of a petition asking the Court to resolve a dispute shall not, in itself, postpone the deadlines for Defendant's to meet their obligations under this Consent Decree. If Defendants do not file a petition with the Court within the appropriate period of time, Defendants will have waived their right to challenge Plaintiffs' position on the matter.

XVIII. Retention of Jurisdiction

27. This Court shall retain jurisdiction over the subject matter of this Consent Decree and the Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any Party to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XVII.

XIX. Lodging and Public Notice Requirements

28. This Consent Decree shall be lodged with the Court for a period of not less than thirty days for public notice and comment in accordance with the procedures set forth in 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to the entry of this Consent Decree without further notice.

29. If for any reason the Court should decline to approve this Consent Decree in the form presented, 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.

XX. Signatories, Service

30. Each undersigned representative of the Defendants to this Consent Decree, the Assistant Attorney General for Environment and Natural Resources of the Department of Justice, and the Assistant General Counsel of the Florida DEP for the State Trustees certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

31. Defendants 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 Defendants with respect to all matters arising under or relating to this Consent Decree. Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.


SO ORDERED THIS 2nd DAY OF August, 1999.

Jama C. Paine
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America, The Board of Trustees of the Internal Trust Fund of the State of Florida v. Atlas Shipping, Ltd. and Transportacion Maritima Mexicana S.A. de C.V., relating to the Grounding of the Houston.

FOR THE UNITED STATES OF AMERICA:

Date: 5/18/99




LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

THOMAS E. SCOTT
United States Attorney
Southern District of Florida

THOMAS WATTS-FITZGERALD
Assistant U.S. Attorney
Southern District of Florida
99 N.E. 4th Street, Suite 328
Miami, Florida 33132

Date: 5/24/99



LORI JONAS
Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Date: _____

MONICA MEDINA
NOAA General Counsel
United States Department of

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America, The Board of Trustees of the Internal Trust Fund of the State of Florida v. Atlas Shipping, Ltd. and Transportacion Maritima Mexicana S.A. de C.V., relating to the Grounding of the Houston.

FOR THE UNITED STATES OF AMERICA:

Date: _____

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

THOMAS E. SCOTT
United States Attorney
Southern District of Florida

THOMAS WATTS-FITZGERALD
Assistant U.S. Attorney
Southern District of Florida
99 N.E. 4th Street, Suite 328
Miami, Florida 33132

Date: _____

LORI JONAS
Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Date: 5/6/99

Monica Medina
MONICA MEDINA
NOAA General Counsel
United States Department of

Commerce
14th & Constitution Ave., N.W.
Washington, D.C. 20230

Date: 4/31/99

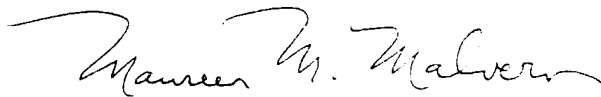
Sharon K. Shutler
SHARON K. SHUTLER
NOAA Office of General Counsel,
Natural Resources
1315 East-West Highway
Silver Spring, MD 20910-3282

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FOR THE BOARD OF TRUSTEES OF THE
INTERNAL TRUST FUND OF THE STATE OF
FLORIDA:

Date:

May 27 1999




MAUREEN M. MALVERN
Assistant General Counsel
Florida Department of Environmental
Protection
3900 Commonwealth Blvd. M.S. 35
Tallahassee, Florida 32399-3000.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America, The Board of Trustees of the Internal Trust Fund of the State of Florida v. Atlas Shipping Ltd. and Transportacion Maritima Mexicana S.A. de C.V., relating to the Grounding of the Houston.

FOR DEFENDANTS:

Date: 23 April 1999



Charles G. De Leo
Fowler, White, Burnett
Hurley, Banick & Strickroot
100 Southeast 2nd Street
Miami, FL 33131

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

Charles G. De Leo
Fowler, White, Burnett
Hurley, Banick & Strickroot
100 Southeast 2nd Street
Miami, FL 33131