

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter, "Agreement") is made and entered into on the last day executed below, among the Karen Beasley Sea Turtle Rescue and Rehabilitation Center ("Plaintiff") and the North Carolina Division of Marine Fisheries; Dr. Louis Daniel III, in his official capacity as Director of the North Carolina Division of Marine Fisheries; and the North Carolina Marine Fisheries Commission ("hereinafter, collectively, "Defendants").

WITNESSETH

WHEREAS, on February 23, 2010, Plaintiff filed a complaint against the Defendants in the United States District Court for the Eastern District of North Carolina, Southern Division, file no. 7:10-CV-32-BO ("Complaint").

WHEREAS, in the Complaint, Plaintiff contends that Defendants are in violation of the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531 *et seq.* by authorizing gill nets to operate and to "take" protected sea turtles in state waters not covered by Incidental Take Permit ("ITP") No. 1528 issued to the North Carolina Division of Marine Fisheries ("DMF") by the National Marine Fisheries Service ("NMFS"), and not complying with the ITP requirements for observer coverage and enforcement.

WHEREAS, Defendants contend that the Court lacks jurisdiction over them on various grounds including sovereign immunity, lack of subject matter jurisdiction and personal jurisdiction, and further contend that they are not in violation of the ESA.

WHEREAS, the DMF is in the process of preparing an application for a statewide ITP from NMFS under Section 10 of the ESA to cover incidental takes of protected sea turtles by gill nets within the internal coastal waters of North Carolina.

WHEREAS, the Plaintiff and Defendants each acknowledge the efforts of the other to amicably resolve the controversy over the protection of sea turtles listed under the ESA while also maintaining a viable commercial gill net fishery.

NOW THEREFORE, in order to avoid further controversy and expense, without in any way waiving the Defendants' claims regarding sovereign immunity, the parties to this Agreement have agreed upon the following terms and conditions:

1. Restrictions on Large Mesh Gill Nets.

(a) For the purpose of this Agreement, large mesh gill nets are defined as 4-inch stretched mesh to 6 ½-inch stretched mesh, inclusive.

(b) Until such time that a statewide ITP is issued to DMF by NMFS, the following interim restrictions on large mesh gill nets apply within the internal coastal waters of North Carolina, as defined in 15A N.C.A.C. 31.0101(1)(c):

(i) Soak times shall be limited to approximately 12 hours, from sunset to sunrise, Monday through Friday. More specifically, the start and end times

for each soak period is as follows: sunset on Monday to sunrise on Tuesday; sunset on Tuesday to sunrise on Wednesday; sunset on Wednesday to sunrise on Thursday; sunset on Thursday to sunrise on Friday. Large mesh gill nets may be set no sooner than 1 hour before sunset and must be retrieved no later than 1 hour after sunrise. Any nets deployed earlier than this specified time or nets that remain deployed after the specified time will be subject to enforcement action by the N.C. Marine Patrol in accordance with state law and marine fisheries rules and regulations.

(ii) Large mesh gill nets shall be low-profile configured as follows:

- (1) a net height of no more than 15 meshes.
- (2) a lead core or leaded bottom line.
- (3) no corks, floats or other buoys unless needed for identification requirements, except as provided in Paragraph 2(e) of this Agreement.

(iii) A maximum of 2,000 yards of large mesh gill net may be used per vessel, except as provided in Paragraph 2(e) of this Agreement.

(iv) Large mesh gill nets must be set in individual 100-yard shots with at least a 25 yard break between individual shots.

(v) Gill nets shall not choke coastal creeks in violation of 15A N.C.A.C. 3J .0101. There must be passage for sea turtles and other non-targeted species.

(vi) No gill nets over 6 1/2- inch stretched mesh will be allowed in internal coastal waters.

2. Applicability of Restrictions.

(a) Upon execution of this Agreement, the Restrictions as listed in the above Paragraph 1 and below Paragraphs 2(e) and 2(i) ("restrictions") will be implemented by proclamation to go into effect beginning May 15, 2010, effective year-round as interim measures until the DMF is issued a statewide ITP from NMFS pursuant to section 10 of the ESA, except that DMF may implement more restrictive measures if required by NMFS.

(b) The Pamlico Sound Gillnet Restricted Area (PSGNRA) covered by ITP No. 1528 is not subject to this Agreement, while the permit is in effect. ITP No. 1528 will remain in effect from September 1, 2010 to December 31, 2010, after which time the PSGNRA will be subject to this Agreement.

(c) The Currituck Sound, for the purpose of this Agreement, is defined as the area north of the Currituck Sound Bridge, which is located between the following coordinates: 36° 04.828'N, 75° 47.405'W (western end) and 36° 05.577'N, 75° 44.585'W (eastern end). The Currituck Sound is not subject to the provisions of this Agreement.

(d) The Albemarle Sound, for the purpose of this Agreement, is defined as the area west of a line running from coordinates 36° 09.928' N, 75° 54.695' W (northern end) and 35° 57.559' N, 75° 56.820' W (southern end). The Albemarle Sound is not subject to the provisions in this Agreement except for the observer coverage provisions as specified in Paragraph 3(d) of this Agreement.

(e) For the area south of the NC Highway 58 bridge, which is located between coordinates 77° 4.02738 W, 34° 40.78489 N (northern end) and 77° 3.7438 W, 34° 39.86202 N (southern end), floats are allowed to be used on nets and a maximum of 1000 yards of gill net may be used per vessel. All other restrictions specified in this Agreement shall apply to this area.

(f) The restrictions set forth in this Agreement shall apply only to set large mesh gill nets. They shall not apply to strike nets, runaround nets, drop nets or any other gear that is immediately retrieved.

(g) In recognition that low profile nets have not been tested at scale, adaptive management and monitoring measures will need to be implemented to assess their feasibility. Therefore, the restrictions in this Agreement shall not apply to scientific research or collection pursuant to N.C. Gen. Stat. § 113-200 (Fisheries Resource Grants), 15A N.C.A.C. 30.0503(g) (Scientific or Educational Collection Permits), or conducted by the DMF or its employees or agents in efforts to assess, manage and monitor the large mesh gill net fishery in North Carolina, including but not limited to testing of low profile nets and alternative harvest methods.

(h) No provision of this Agreement shall be interpreted to supersede any existing DMF proclamation that is more restrictive.

(i) The restrictions shall apply to standard commercial fishing license ("SCFL") holders and recreational commercial gear license ("RCGL") holders.

3. Observer Program.

(a) The DMF shall provide observer coverage of large mesh gill net fishing beginning on May 15, 2010 on various platforms. Observers will consist of DMF staff, the N.C. Marine Patrol, and volunteer observers certified by DMF's observer training program. The observer coverage will not be static and may adapt according to season, sea turtle behavior and location, and other environmental and biological conditions.

(b) The DMF shall deploy resources sufficient to provide observer coverage with a target of 10% coverage and a minimum of 7% coverage per week of the total large mesh gill net fishing effort within internal coastal waters, except for areas exempted pursuant to this Agreement. For each fishing year, DMF will calculate observer coverage by using the previous year's effort data from the North Carolina trip ticket program.

(c) If the DMF is unable to provide minimum coverage due to financial, budget or staffing constraints, then the large mesh gill net fishery will be closed by proclamation until such time that the minimum coverage can be resumed.

(d) This subsection (d) applies only to Albemarle Sound as an interim measure until the DMF obtains a statewide ITP from NMFS. In the Albemarle Sound, as defined above in Paragraph 2(d), each N.C. Marine Patrol officer assigned to that area within the Northern District will be responsible for conducting one observed trip per week. Should reliable reports of sea turtle presence be submitted, additional observer coverage in such area will be required.

4. The Sea Turtle Advisory Committee (STAC).

(a) The Sea Turtle Advisory Committee shall be established as an advisory committee of the MFC.

(b) The STAC will consist of 12 members appointed by the MFC Chairman and the Karen Beasley Sea Turtle Rescue and Rehabilitation Center. The Karen Beasley Sea Turtle Rescue and Rehabilitation Center may appoint six of the twelve members of the STAC. The STAC may be dissolved by mutual agreement of the parties at any time.

(c) The duties of the STAC include but are not limited to the following: reviewing observer reports, devising means for fishermen to report turtle interactions, assisting with fishermen education, determining measures to reduce the incidental take of sea turtles, monitoring observer program issues, and reviewing all future ITP provisions and take calculations prior to formal application to NMFS.

5. ITP Development.

(a) The restrictions as listed in Paragraphs 1, 2(e) and 2(i) are minimum requirements for the 2010 statewide ITP application.

(b) The STAC will advise in the development of the new ITP applications and the overall take calculations.

(c) Effective for the 2012 license year (May 15, 2011), the dealer report required by the DMF will be expanded to include effort data recorded in terms of the number of 100-yard shots set by fishermen.

(d) The restrictions as listed in Paragraphs 1, 2(e) and 2(i) are deemed solely interim measures and will be in effect within internal coastal waters, not otherwise exempt, until NMFS issues the DMF an ITP for the affected areas. Furthermore, this Agreement shall not foreclose more lenient or more restrictive provisions in future ITP applications if warranted by biological data collected through reliable sources including but not limited to NMFS and the DMF.

6. Dismissal with Prejudice. Plaintiff shall dismiss its Complaint against Defendants with Prejudice within 10 calendar days of the execution of this Agreement by all the parties.

7. Release of Claims. The Plaintiff hereby releases and waives all claims and causes of action that it has against the Defendants, the State of North Carolina, and all other departments, agencies, divisions, and other components of the State of North Carolina and all past and present agents, employees, officials, and representatives of the State of North

Carolina on account of and/or in any way growing out of the actions or omissions arising from the use of gill nets in North Carolina's internal coastal waters alleged or which could have been alleged in Plaintiff's Complaint. This release and waiver of claims and causes of action continues in effect until a new Section 10 Permit under the ESA is issued by NMFS for North Carolina's internal coastal waters. Once the Section 10 Permit is issued, there will be no further need for the proclamation provided for in Paragraph 2(a) to remain in effect.

8. Cost. Each party shall bear its own costs, including attorney fees.

9. No Admission of Liability. The undersigned agree that this Agreement is a full and complete compromise settlement of disputed claims and causes of action set forth in Plaintiff's Complaint and is intended merely to terminate any and all claims or causes of action relating to the allegations therein. There is no admission of fault, wrongdoing, or liability by any party. Defendants do not waive their claim of sovereign immunity by entering into this Agreement.

10. Full Cooperation. The parties agree to cooperate fully, to execute any and all supplementary documents necessary to effectuate this Agreement, and to take all additional actions that may be necessary to give full force and effect to the terms of this Agreement.

11. Enforceability. In the event of breach of this Agreement, the parties have an action at law in any court having jurisdiction over the matter. The Agreement is not enforceable by third parties.

12. Entire Agreement. This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this settlement except as expressly set forth herein.

13. Reading of Agreement. The parties hereby acknowledge that the individual executing the Agreement on his/her behalf is authorized to execute this Agreement on his/her behalf and to bind the respective entities to the terms contained herein and that he or she has read this Agreement, conferred with his or her attorney, fully understands its contents, consents to the settlement of the claims on the terms set forth herein, and does so in reliance upon his or her own judgment and advice of his or her attorney and not in reliance on any other representations or promises of Defendants or their representatives or attorneys.

IN WITNESS WHEREOF, this Agreement is executed in counterparts effective on the last date of execution indicated on the subsequent signature pages. This Agreement shall become effective upon the execution by all named parties.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

PLAINTIFF:

BY: *Jean Beasley* dated *13 May*, 2010
Jean Beasley, Director
Beasley
Karen Beasley Sea Turtle Rescue and
Rehabilitation Center

DEFENDANTS:

BY: *Dr. Louis Daniel III* dated *5/13/*, 2010
Dr. Louis Daniel III, Director
For: North Carolina Division of Marine Fisheries

BY: *Dr. Louis Daniel III* dated *5/13/*, 2010
Dr. Louis Daniel III, Director
In his official capacity as Director of the
North Carolina Division of Marine Fisheries

BY: *W. Robert Bizzell* dated *May 13*, 2010
W. Robert Bizzell, Chairman
For: North Carolina Marine Fisheries Commission