

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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CLARENCE MADDOX
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S. D. OF FLA. - MIAMI

IN ADMIRALTY

Case No. 07-10027

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
HECTOR LOSADA, *in personam*)
and the ANDROW,)
VIN FL 1759KK, *in rem*)
)
Defendants.)
_____)

CIV-KING
MAGISTRATE JUDGE
GARBER

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the National Oceanic & Atmospheric Administration ("NOAA"), files this complaint and alleges as follows:

1. This action arises under the National Marine Sanctuary Act ("NMSA"), 16 U.S.C. §§ 1431 *et seq.*, for damages and response costs resulting from the grounding of a vessel known as the ANDROW¹ on March 14, 2003 in the Florida Keys National Marine

¹The Florida Fish and Wildlife Conservation Commission citation identifies the name of the boat as "ANDROW." Photos taken by law enforcement personnel show the name "ANDREW" displayed.

Sanctuary ("FKNMS").

PARTIES

2. Plaintiff is the United States of America ("United States") pursuant to 16 U.S.C. § 1443.

3. Defendant Hector Losada² ("Losada") is an individual, the owner and operator of the ANDROW and on information and belief resides in Miami, Florida.

4. Defendant ANDROW is a commercial vessel, approximately 34 feet in length, Vessel ID No. FLZW9933G880 At the time of the grounding, the ANDROW was owned and/or operated by Losada. The vessel is presently, or during the pendency of this action is expected to be, within the district of this court.

JURISDICTION AND VENUE

5. This Court has jurisdiction in this matter pursuant to the NMSA, 16 U.S.C. §§ 1443 and 28 U.S.C. §§ 1331 and 1345. This is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Venue is proper within the Southern District of Florida pursuant to 28 U.S.C. §§ 89(c) and 1391(b) because it is the judicial district in which Losada resides, and in which the grounding occurred.

STATUTORY SCHEME

6. In November 1990, Congress established the Florida Keys National Marine Sanctuary ("the Sanctuary"), pursuant to the Florida Keys National Marine Sanctuary and

²Defendant Hector Losada A.K.A. Hector Lozado and Hector Losado.

Protection Act ("the Sanctuary Act") § 5, Pub. L. No. 101-605, § 5, 104 Stat. 3089 (1990).

7. In establishing the Sanctuary, Congress specifically found that the Sanctuary's marine environment is "fragile and easily susceptible to damage from human activities," Sanctuary Act § 2(4), Pub. L. No. 101-605, 104 Stat. 3089 (1990), and that "[t]hese marine environments are subject to damage and loss of their ecological integrity from a variety of sources of disturbance," *Id.* § 2(5).

8. Congress established the Sanctuary in order to protect the "spectacular, unique, and nationally significant marine environments, including sea grass meadows, mangrove islands, and extensive living coral reefs" within the boundaries of the Sanctuary. Sanctuary Act § 2(2), Pub. L. No. 101-605, § 2(2), 104 Stat. 3089 (1990).

9. The President designated the Secretary of the Department of Commerce as the trustee of natural resources managed or protected by the Department and that are found in or under waters navigable by deep draft vessels. 40 C.F.R. § 300.600(b)(1).

10. Pursuant to Department Organization Order 25-5A, the Secretary of the Department of Commerce delegated trusteeship over the sanctuary resources found within the Florida Keys National Marine Sanctuary to the Under Secretary for Oceans and Atmosphere in the National Oceanic and Atmospheric Administration (NOAA).

11. 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 and for injunctive relief to restore or replace sanctuary resources. Id. §§ 1437(i) and 1443(a)(1).

12. Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable *in rem* to the United States for response costs and damages resulting from such destruction, loss, or injury. Id. § 1443(a)(2).

13. The NMSA defines "sanctuary resource" as "any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the sanctuary." 16 U.S.C. § 1432(8).

14. The NMSA defines "response costs" as "the costs of actions taken by the Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risks of such destruction, loss, or injury." Id. § 1432(7).

15. The NMSA defines "damages" as:

a) compensation for (i)(I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource, and; (II) the value of the lost use of a sanctuary resource pending its restoration or replacement or acquisition of an equivalent sanctuary resource; or (ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired; and

b) the cost of damage assessments. Id. § 1432(6).

16. The NMSA empowers the Secretary to undertake all enforcement actions necessary to carry out the purposes of the NMSA. Id. § 1437(a). That includes requesting that the Attorney General commence a civil action for the recovery of response costs, damages and injunctive relief from a party who has violated the Act. Id. § 1443(c).

GENERAL ALLEGATIONS

17. On or about March 14, 2003, Losada ran the ANDROW aground in the southwest corner of the Marquesas in the FKNMS, resulting in the destruction or loss of and injury to seagrass and seagrass habitat.

18. NOAA conducted a natural resource damage assessment and determined that a total of 187.83 square meters of seagrass and seagrass habitat was injured or destroyed as a result of the grounding. This includes 156.73 square meters of seagrass excavated and 31.10 square meters of seagrass buried.

19. NOAA developed a restoration plan to determine the costs of restoration of these sanctuary resources in accordance with 16 U.S.C. §§ 1432(6) and 1443.

20. NOAA incurred costs in responding to the grounding, assessing injury to and losses of these sanctuary resources, and developing a plan to restore the sanctuary resources.

21. Losada and the ANDROW are jointly and severally liable under the NMSA for all costs of response, damage assessment, restoration or replacement and restoration monitoring attributable to the grounding and the injury, loss or destruction of sanctuary

resources caused from the grounding. 16 U.S.C. §§ 1443(a)(1) and (2). At the time NOAA developed the restoration plan, the costs of response, damage assessment, restoration or replacement, and restoration monitoring were \$126,797.

FIRST CLAIM FOR RELIEF (Response Costs)

22. The United States repeats and realleges paragraphs 1 through 21 herein.

23. The United States incurred “response costs” within the meaning of the NMSA as a result of the grounding. 16 U.S.C. § 1432(7).

24. Because the ANDROW and Losada caused the loss of and injured sanctuary resources, they are jointly and severally liable to the United States for all “response costs” incurred as a result of the grounding. 16 U.S.C. § 1443(a)(1).

SECOND CLAIM FOR RELIEF (Damages)

25. The United States repeats and realleges paragraphs 1 through 21 herein.

26. The United States incurred “damages” within the meaning of the NMSA as a result of the grounding. 16 U.S.C. § 1432(6).

27. Because the ANDROW and Losada caused the loss of and injured sanctuary resources, they are jointly and severally liable to the United States for all “damages” incurred as a result of the grounding. 16 U.S.C. § 1443(a)(1) and (2).

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays:

1. That judgment be entered in favor of Plaintiff United States of America against Losada and ANDROW for all "response costs" and "damages" initially calculated in the amount of \$126,797 incurred, or to be incurred, by the United States as a result of the grounding within the FKNMS, along with pre-judgement and post judgement interest;
2. That issuance of a warrant for the arrest of ANDROW be held in abeyance;
and
3. For such other and further relief as the Court deems just and proper.

Dated: 4/23, 2007

Respectfully submitted,

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Dated: _____, 2007

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

OF COUNSEL:

STEPHANIE WILLIS
National Oceanic & Atmospheric Admin.

VERIFICATION

I am an attorney employed by the Aviation & Admiralty Office, Torts Branch, Civil Division, U.S. Department of Justice, and one of the attorneys for Plaintiff United States of America herein, and make this verification by authority of Plaintiff and on its behalf. I have reviewed the foregoing Complaint, know the contents thereof, and, from information officially furnished to me, believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

 SHARON K. SHUTLER

Dated:

4/23/07