

CL AREA

CRAF006A

Logged Total

Collection Point Log Remittance

Remittance ID Type * Received Date * Status

System Receipt PNR Check # * Amount *

Name *

First Middle Title Suffix

Address1

Address2

City ST Zip

Country Short Comments

PAYMENT (S)

Payment ID	Distribution CL Area	Rev Code ODN	Revenue Object	Description	Payment Amount	Reference#	Appl	Fund *	Grant	Project	BPIN	Status
1821556	NED	012008	012008	LCT-PENALTIES	13,000.00	201100		WQATF				COMPLETE

COMMIT FREQUENTLY

Payment Total

Sulema International LLC

169 E Flagler St. Suite 1001
Miami, FL 33131

97026

1630

63-8413/2670

DATE 12/18/2021

PAY TO THE ORDER OF

Florida Department of Environmental Protection \$ 13,000~~xx~~

Thirteen Thousand Only

DOLLARS



Photo Safe Deposit Details on back

JPMorgan Chase Bank, N.A.
www.Chase.com

FOR OGC File No. 20-1100
(Fisherman's marina 461 Trout River Dr. Jacksonville)



From: David Sulema
3130 NE 211 st
AVENTURA FL 33180

Received

DEC 21 2021

FDEP

To: Florida Department of Environmental Protection
Attn: Mr Jim Maher
8800 Baymeadows Way West suite 100
Jacksonville, FL 32256



Florida Department of Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

February 17, 2021

CERTIFIED MAIL-RETURN RECEIPT

7016 1370 0001 1735 4457

Fisherman's Marina, LLC
Mr. Ron Peled, Registered Agent
3340 NE 190th Street, #1504
Aventura, Florida 33180

**SUBJECT: Department of Environmental Protection vs. Fisherman's Marina
Executed Consent Order
OGC File No. 20-1100
Duval County – ERP Program Enforcement**

Dear Mr. Peled:

Enclosed is a copy of the executed Consent Order in regard to Case Number 20-0011. The effective date of this Order is February 16, 2021, and all time frames will be referenced from this date.

As a reminder, a Consent Order is a binding legal document and was voluntarily entered into by both parties.

Should you have any questions concerning the Consent Order, please contact Neil Hornick, at (904) 256-1574, or via email at Neil.Hornick@FloridaDEP.gov. Your continued cooperation in the matter is appreciated.

Sincerely,

A handwritten signature in blue ink that reads "James R. Maher".

James R. Maher, PE
Assistant Director

Enclosure: Executed Consent Order

ec: Lea Crandall, Agency Clerk, MS #35
Arlene Wilkinson, Neil Hornick, DEP_NED

2. The Department performs all staff duties and functions related to the administration of state lands as provided in Section 253.002, Fla. Stat., including the power and duty to protect state lands from damage, trespass, depredation, or unlawful use pursuant to Section 253.05, Fla. Stat. The Department is also the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapters 403 and 373 Fla. Stat., and the rules promulgated thereunder in Title 62, Fla. Admin. Code. In addition to its authority under Chapter 403, Fla. Stat., the Department is specifically authorized to administer and enforce the management and storage of surface waters and the environmental resource permitting programs in Chapter 373-Part IV, Fla. Stat.¹ The Department has jurisdiction over the matters addressed in this Consent Order.

3. Respondent is a Florida limited liability company with its principal place of business located at 3340 NE 190TH Street, Apt. 1504, Aventura, Florida 33180, and is a Sections 253.04, 403.031(5), and 373.019(15), Fla. Stat., and Rule 18-20.003(40), Fla. Admin. Code. Respondent's registered agent is Ron Peled, whose business address is 3340 NE 190TH Street, Apt. 1504, Aventura, Florida 33180. Mr. Peled has the authority to execute this Consent Order on behalf of Respondent.

¹ In part, the Department has implemented these statutes through Chapter 62-330, Fla. Admin. Code, and the *Environmental Resource Permit Applicant's Handbook* ("Applicant Handbook"), incorporated by reference in Rule 62-330.010, Fla. Admin. Code.

4. Respondent is the record owner of real property located at 451 Trout River Drive, Jacksonville, Florida 32208, further identified by Duval County Property ID # 033197-0000, and Department Environmental Resource Program ("ERP") Site ID No.: 261963 ("Property"), and holds a lease interest in submerged real property within the waters of the Trout River, identified by Duval County Property ID # 033197-0002.

5. The Property is located on the south bank of the Trout River, a Class III water of the state as defined in Chapter 62-302, Fla. Admin. Code.

6. Respondent owns and operates The Fisherman's Marina, a commercial docking facility which is connected to the Property and extends waterward of the mean high-water line of the Trout River ("Dock Marina").

7. The Board owns the bottom of the Trout River adjacent to the Property and waterward of the mean high-water line, including Respondent's leased-interest in the portion of submerged property identified by Duval County Property ID # 033197-0002. The Board deraigns title to the submerged real property in the Trout River upon which Respondent's Dock Marina is located, from the United States under the Equal Footing Doctrine, and by Florida's admission to the Union, Act of March 3, 1845, (Chapter 48, Subsection 1, 5 Stat. 742, Art. X, s. 11, Florida Constitution). The Board holds title to the submerged real property, not otherwise alienated or conveyed, in trust for all the people of the State of Florida. See, Art. X, s. 11, Florida Constitution; Sections 253.03, 253.12, Fla. Stat.; and Rule 18-21.003(65), Fla. Admin. Code.

8. On May 16, 2013, the Board renewed Sovereignty Submerged Lands ("SSL") Lease No. 160001762 ("Lease") to Respondent, which authorized the use 54,429 square feet of a sovereign submerged land of the Trout River and authorized the operation of a commercial docking facility for the mooring of commercial and non-commercial vessels in conjunction with an upland marina with fueling facilities, a sewage pumpout facility, provided it met the regulatory requirements of the Department or the State of Florida Department of Health, whichever agency has jurisdiction, and without liveboards on sovereign submerged lands located adjacent to the Property ("Facility"). The Lease, which expires on May 16, 2023, requires Respondent to submit annual lease fees to the Board and operate and maintain the Facility and premise in good coordination and in accordance with all lease conditions and applicable regulatory requirements.

9. An inspection of the submerged lands adjacent to the Property conducted by the Department on June 23, 2020, revealed the following:

- a. Dock, including associated mooring structures and decking, significantly dilapidated and in unusable, non-functional condition;
- b. Multiple dilapidated, non-functional vessels located within waters of the state at the Dock Marina, including several sunken vessels, two vessels with expired registration, and two vessels with no registration, one of which is listing and in danger of sinking.

10. A review of Department and Board records also revealed that Respondent failed to submit the required lease, renewal, or supplemental lease fees in the amount of \$14,729.71, for the Facility for the years 2019 and 2020.

Having reached a resolution of the matter, Respondent, the Department, and the Board mutually agree, and it is,

ORDERED:

11. The Respondent shall redress all outstanding violations and complete all of the corrective actions outlined below, within the timeframes established therein:

- (a) **Commencing immediately and henceforth**, Respondent shall comply with all Department and Board rules and statutes regarding environmental resource permitting and the use of state lands, including but not limited to Chapters 253, 373 Part IV, and 403, Fla. Stat., and the rules promulgated thereunder, and all terms of Respondent's SSL Lease No. 160001762.
- (b) **Within 30 days from the effective date of this Order**, Respondent shall submit payment in the amount of **\$14,729.71**, for all back and current lease fees owed to the State as of as of April 15, 2020. Payment shall be made in accordance with Paragraph 14 herein.
- (c) **Within 15 days of the effective date of this Order**, Respondent shall submit the following information to the Department, in writing in accordance with Paragraph 15 herein:

- i. The contractors/vendors retained for the project activities;
 - ii. Estimates for all of the project activities; and
 - iii. Timelines for completion of the proposed corrective actions.
- (d) **Within 15 days of the effective date of this Order**, Respondent shall submit to the Department for review and approval: (i) an upland disposal location for the proper disposal of all dock and demolition debris resulting from the above corrective actions; and (ii) an upland storage location for the storage of all the derelict and sunken vessels removed from the sovereign submerged waters of the State, during any required owner notification period; and (iii) a proposed final upland disposal location for the proper disposal of all the derelict and sunken vessels, following the owner notification period. The submission shall be made, in accordance with Paragraph 15 herein.
- (e) **Within 90 days of the effective date of this Order**, the derelict and/or sunken vessels shall be removed from the sovereign submerged lands of the State and properly disposed of to the upland location approved by the Department. Respondent shall provide the Department written confirmation, in accordance with Paragraph 15 herein, of the final disposal of the derelict and/or

sunken vessels, and provide any receipts evidencing disposal, within seven (7) days following the final disposal of all the vessels.

- (f) **Within 90 days of the effective date of this Order**, all Marina Dock structures shall be removed and/or repaired to a state of good condition, in the interests of public health, safety and welfare and in accordance with all lease conditions and applicable regulatory requirements.
- (g) **Within 90 days of the effective date of this Order**, all remaining floating vessels located within the waters of the Marina Dock shall be returned to a condition so as not to be at risk of sinking or becoming derelict.
- (h) **Within 90 days of the date of the effective date of this Order**, Respondent shall complete the corrective actions required by this Order in accordance with **Exhibit A**, attached hereto and incorporated herein, and all applicable Department rules and statutes. In addition, Respondent shall notify the Department, in writing, seven (7) days prior to the commencement of the activities authorized under this Order and following the completion of the activities authorized by this Order, in accordance with Paragraph 15 herein.

- (i) With the exception of the activities described in this Order, effective immediately and henceforth, Respondent shall not conduct any dredging, filling, or construction activities on or within the landward extent of waters of the state without first obtaining a valid Department permit or written notification from the Department that the activities appear to be exempt as proposed from Department permitting requirements; nor shall Respondent conduct any activities on state owned lands below the ordinary or mean high water lines without first obtaining a lease, easement, or other consent of use from the Department.
- (j) **Within 30 days of the effective date of this Order**, Respondent shall submit payment in the amount of **\$1,000.00**, to the Department for costs and expenses incurred during the investigation of this matter and the preparation and tracking of this Consent Order. Payment shall be made in accordance with Paragraph 13 herein.
- (k) **Within 30 days of the date of written demand by the Department pursuant to Paragraph 12 herein**, Respondent shall pay **\$7,500.00**, to the Department for the state lands proprietary administrative penalties imposed for the violations outlined herein. Payment shall be made in accordance with Paragraph 14 of this Order below.

(l) **Within 30 days of the date of written demand by the Department pursuant to Paragraph 12 herein**, Respondent shall submit payment in the amount of **\$5,500.00** to the Department for regulatory administrative penalties imposed for the violations outlined herein. Payment shall be made in accordance with Paragraph 13 herein.

12. The Department and the Board will not enforce the \$13,000.00 penalty requirements set out in Paragraphs 11(k)-(l) of this Order, provided Respondent complies with all of the provisions of Paragraphs 11(a)-(j) above. Should Respondent fail to comply with any requirement set forth in Paragraphs 11(a)-(j) of this Order or the provisions of Chapters 253, 373 and 403, Fla. Stat., or Chapter 62-330, Fla. Admin. Code, the \$13,000.00 penalties assessed in Paragraphs 11(k)-(l) of this Order, shall become within thirty (30) days of the date of written demand by the Department. In addition, Respondent agrees to pay the Department stipulated penalties in the amount of \$500.00 per day, per violation, for each and every day the Respondents fail to timely comply with any of the requirements set out in Paragraph 11 of this Order. A separate stipulated penalty shall be assessed for each violation of this Order. Any stipulated penalties assessed under this Paragraph shall be in addition to the penalties, fees and/or costs agreed to in Paragraphs 11(k)-(l) of this Order. Within 30 days of a written demand from the Department, the Respondents shall submit payment of the appropriate stipulated penalties in accordance with Paragraphs 13 and 14 herein. The

Department may demand stipulated penalties at any time after violations occur. Nothing in this Paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Should the Department be required to initiate a lawsuit to recover stipulated penalties under this Paragraph, the Department shall not be foreclosed from seeking civil penalties for violations of this Order in an amount greater than the stipulated penalties set out in this Paragraph.

13. All administrative regulatory payments required under this Order shall be made by cashier's check or money order, or online electronic payment. Cashier's check or money order payment shall be made payable to the "*State of Florida Department of Environmental Protection*," and shall include the notations "OGC Case Number 20-1100" and "Water Quality Assurance Trust Fund." Cashier's check or money order payment shall be sent to the State of Florida Department of Environmental Protection, Northeast District, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256. Online payments may be made by e-check at the DEP Business Portal: <http://www.fldepportal.com/go/pay/>. Please note it will take a number of days after this Order becomes final and effective filed with the Clerk of the Department before the ability to make online payment is available.

14. All administrative proprietary payments required under this Order shall be made by cashier's check or money order, or online electronic payment. Cashier's check or money order payment shall be made payable to the "*Internal Improvement Trust Fund*" and shall include the notations "OGC Case Number 20-1100" and "SSL Lease No.

No. 160001762." Cashier's check or money order payment shall be sent to the State of Florida Department of Environmental Protection, Northeast District, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256.

15. All submittals required under this Order shall be sent to: State of Florida Department of Environmental Protection, Northeast District, Attn: Neil Hornick, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256 and Neil.Hornick@FloridaDEP.gov, and shall include the notation "OGC Case No. 20-1100".

16. Respondent shall allow all authorized representatives of the Department access to the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

17. Respondent shall use all reasonable efforts to obtain any necessary access to implement the terms of this Order. If necessary, access cannot be obtained, or if obtained, is revoked by owners or entities controlling access to the properties to which access is necessary, the Respondent shall notify the Department within five (5) business days of such refusal or revocation. The Department may, at any time, seek to obtain access as is necessary to implement the terms of this Order. The Respondent shall reimburse the Department for any damages, costs, or expenses, including expert and attorney fees, that the Department is ordered to pay, or that the Department incurs in connection with its efforts to obtain access that is necessary to implement the terms of this Order. The Respondent shall pay these sums to the Department or arrange a

payment schedule with the Department within 30 days of written demand by the Department.

18. The sale or conveyance of the Property does not relieve the Respondent of the obligations imposed by this Order. In the event of a sale or conveyance of the Property, if all of the requirements of this Order have not been fully satisfied, the Respondent shall: (i) notify the Department of such sale or conveyance of the Property, at least 30 days prior to the sale or conveyance; (ii) provide the name and address of the purchaser/grantee, operator, or person(s) in control of the Property; and (iii) provide a copy of this Order with all attachments to the purchaser/grantee, operator, or person(s) in control of the Property.

19. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes a delay or the reasonable likelihood of delay, in complying with the requirements of this Order, the Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of the Respondent, nor shall the failure of a contractor, subcontractor, materialman, or other agents (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of the Respondent unless the cause of the contractor's late performance was also beyond the contractor's control. Upon the

occurrence of an event causing the delay, or upon becoming aware of a potential for delay, the Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven (7) days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures are taken or to be taken to prevent or minimize the delay and the timetable by which the Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such an agreement shall adopt all reasonable measures necessary to avoid or minimize the delay. Failure of the Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of the Respondent's right to request an extension of time for compliance with the requirements of this Order.

20. This Consent Order only addresses violations of the rules and statutes of the Department and the Board. Entry of this Consent Order does not constitute a permit from the Department nor does it convey any authority from the Board of Trustees of the Internal Improvement Trust Fund involving the use of sovereignty or other lands of the State, other than those lands leased by the Respondent in SSL Lease No. 160001762. In order to ascertain whether any authority is needed to use sovereign lands other than the lands set out in SSL Lease No. 160001762, the Respondent must contact the Department of Environmental Protection, Division of State Lands. A copy

of this Consent Order will be furnished to the Division of State Lands. The Respondent is hereby advised that Florida law states: "No person shall commence any excavation, construction or other activity involving the use of sovereign or other lands of the State, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund under Chapter 253, Florida Statutes, until such person has received from the Board of Trustees of the Internal Improvement Trust Fund the required lease, license, easement or other form of consent authorizing the proposed use." If such work is done without consent, a fine for each offense in an amount of up to \$10,000.00 may be imposed.

21. The entry of this Order does not relieve the Respondents of the need to comply with applicable federal, state, or local laws, regulations, or ordinances.

22. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69, 253.04, 373.129, and 403.121, Fla. Stat. Failure to comply with the terms of this Order shall constitute a violation of Sections 253.04, 373.430, and 403.161, Fla. Stat.

23. Respondent is fully aware that a violation of the terms of this Order may subject the Respondent to judicial imposition of damages, civil penalties of up to \$10,000.00 per day, per violation, and criminal penalties.

24. The Department and the Board hereby expressly reserve the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Order.

25. The Department and the Board, for and in consideration of the complete and timely performance by the Respondent of the obligations agreed to in this Order, hereby waives the right to seek the judicial imposition of damages or civil penalties for alleged violations addressed in this Order. This waiver does not affect any claim the Department or the Board may have for violations not addressed herein, notwithstanding that the other claims may involve the same activities addressed herein.

26. The Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat., on the terms of this Order. The Respondents acknowledges the right to appeal the terms of this Order pursuant to Section 120.68, Fla. Stat., and waive that right upon signing this Order.

27. This Order is a settlement of the Department and the Board's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

28. This Order is a final order of the Department pursuant to Section 120.52(7), Fla. Stat., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon the timely filing of a petition, this Order will not be effective until further Order of the Department.

29. Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. **Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.** The petition shall contain the following information:

- (a) The Consent Order identification number (20-1100) and the county in which the subject matter or activity is located;
- (b) The name, address, and telephone number of each petitioner;
- (c) The name, address, and telephone number of the petitioner's representative (if any), which shall be the address for service purposes during the course of the proceeding;
- (d) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- (e) A statement of when and how the petitioner received notice of the Consent Order;
- (f) A statement of all material facts disputed by petitioner, if any;

- (g) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- (h) A statement of which rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- (i) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department and/or the Board to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department and/or the Board with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Fla. Stat., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Fla. Admin. Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Fla. Stat., or may choose to pursue mediation as an alternative remedy under Section

120.573, Fla. Stat., before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department, the Board, and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, the Board, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 10 days after the deadline as set forth above for the filing of a petition. The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;

- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and
- (g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.
- (h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Fla. Stat., the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department and the Board must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department and the Board have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department and the Board shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute, and the notice will specify the

deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

30. Respondent shall publish the following notice in a newspaper of daily circulation in Duval County, Florida. The notice shall be published one time only within 15 days after the effective date of the Consent Order by the Department.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF CONSENT ORDER

The Florida Department of Environmental Protection and the Board of Trustees of the Internal Improvement Trust Fund give notice of agency action of entering into a Consent Order with Fisherman's Marina, LLC, pursuant to Section 120.57(4), Florida Statutes. The Consent Order addresses the failure failed to maintain the Dock Marina and the waters of the Dock Marina in a functional and safe condition, unpermitted fill within waters of the state and sovereign submerged lands without authorization from the Board or the Department, disposal and storage of solid waste at an unpermitted and unauthorized location on sovereign submerged lands, and the failure to submit annual lease fees for the use of the sovereign submerged lands within the Trout River. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department's Northeast District Office, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida 32256.

Persons whose substantial interests are affected by this Consent Order have a right to petition for an administrative hearing on the Consent Order. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General

Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, or received via electronic correspondence at Agency_Clerk@floridadep.gov, **within 21 days** of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. The petition shall contain the following information:

- (a) The Consent Order Number 20-1100 and the county in which the subject matter or activity is located;
- (b) The name, address, and telephone number of each petitioner;
- (c) The name, address, and telephone number of the petitioner's representative (if any), which shall be the address for service purposes during the course of the proceeding;
- (d) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- (e) A statement of when and how the petitioner received notice of the Consent Order;
- (f) A statement of all material facts disputed by petitioner (if any);
- (g) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- (h) A statement of which rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- (i) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department and/or the Board to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department and the Board's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the

Department and the Board with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. **Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding.** Any subsequent intervention will only be at the approval of the presiding officer upon petition filed pursuant to Rule 28-106.205, Florida Administrative Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department, the Board, and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, the Board, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order.

The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or received via electronic correspondence at Agency_Clerk@floridadep.gov, **within 10 days** after

the deadline as set forth above for the filing of a petition. The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement;
- (g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference; and
- (h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department and the Board must enter a final order incorporating the agreement of the parties. Persons whose substantial

interests will be affected by such a modified final decision of the Department and the Board have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department and the Board shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes. The Respondent reserves the right to challenge the Department and Board's actions mentioned in this Consent Order.

31. The Department and the Board hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order.

32. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat., on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Fla. Stat., and waives that right upon signing this Consent Order.

33. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals.

34. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by the Respondent, the Department and the Board.

35. Copies of Department rules referenced in this Order may be examined at any Department Office or may be obtained by written request to the District Office referenced in Paragraph 15 above. The rules referenced in this Order are also available at <https://floridadep.gov/ogc/ogc/content/rules>.

36. The undersigned certifies that as President of Respondent LLC, he is authorized and empowered to negotiate, enter into and execute, in the name and on behalf of the Respondent, FISHERMAN'S MARINA LLC, any agreements, documents, instruments, certificates, including and without limitation, this Consent Order entered into between Respondent and the State of Florida Department of Environmental Protection.

FOR THE RESPONDENT: FISHERMAN'S MARINA LLC


Name: RON PELED
Title: MANAGER

February 16, 2021
Date

[THIS SPACE INTENTIONALLY LEFT BLANK]

DONE AND ORDERED this 16th day of February, 2021, in Duval, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Gregory J. Strong, Director
Northeast District

Filed, on this date, pursuant to Section 120.52, Fla. Stat., with the designated Department Clerk, receipt of which is hereby acknowledged.



Clerk

February 16, 2021

Date

Executed Copies furnished to:

Lea Crandall - FDEP Agency Clerk
John W. Wallace, Esq. - Counsel for Respondent (JWallace@SmithHulsey.com)
Kirk S. White, Deputy General Counsel - FDEP OGC Litigation Section
Kelley F. Corbari, Senior Assistant General Counsel - FDEP OGC Litigation Section
Starla Wagner - FDEP DSL
James Maher - FDEP NED
Neil Hornick - FDEP NED

EXHIBIT A

CORRECTIVE ACTION CONDITIONS

1. All activities shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management practices shall be implemented and maintained immediately prior to, during, and after construction as needed to stabilize all disturbed areas, including other measures specified in the permit to prevent adverse impacts to the water resources and adjacent lands. Erosion and sediment control measures shall be installed and maintained in accordance with:

- (i) *State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Environmental Protection and Florida Department of Transportation, June 2007)*, available at:
<https://www.flrules.org/Gateway/reference.asp?No=Ref-04227>; and
- (ii) *Florida Stormwater Erosion and Sedimentation Control Inspector's Manual (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008)*, available at:
http://publicfiles.dep.state.fl.us/DEAR/Stormwater_Training_Docs/erosion-inspectors-manual.pdf

2. Barges or other work vessels used to conduct in-water activities shall be operated in a manner that prevents unauthorized dredging, water quality violations, and damage to submerged aquatic communities.

3. Respondent shall comply with the following when performing work within waters accessible to federally- or state-listed aquatic species, such as manatees, marine turtles, smalltooth sawfish, and Gulf sturgeon:

4. All vessels associated with the project shall operate at "Idle Speed/No Wake" at all times while in the work area and where the draft of the vessels provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.

5. All deployed siltation or turbidity barriers shall be properly secured, monitored, and maintained to prevent entanglement or entrapment of listed species.

6. All in-water activities, including vessel operation, must be shut down if a listed species comes within 50 feet of the work area. Activities shall not resume until the animal(s) has moved beyond a 50-foot radius of the in-water work, or until 30 minutes elapses since the last sighting within 50 feet. Animals must not be herded away or harassed into leaving. All onsite project personnel are responsible for observing water-related activities for the presence of listed species.

7. Any listed species that is killed or injured by work associated with activities performed shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1(888)404-3922 and ImperiledSpecies@myFWC.com.

8. Respondent shall hold and save the Department and/or the Board harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any activity authorized herein.

9. Respondent shall immediately notify the Department in writing of any submitted information that is discovered to be inaccurate.

10. The construction, alteration, or use of the authorized corrective actions authorized herein shall not adversely impede navigation or create a navigational hazard in the water body.