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UNITED STATES OF AMERICA

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

UNITED STATES OF AMERICA,)
)

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE	2
II.	APPLICABILITY	3
III.	DEFINITIONS	4
IV.	CIVIL PENALTIES AND FDCPA CLAIM	6
V.	INJUNCTIVE RELIEF	8
VI.	STIPULATED PENALTIES	15
VII.	FORCE MAJEURE	19
VIII.	DISPUTE RESOLUTION	22
IX.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS	24
X.	COSTS	27
XI.	NOTICES	28
XII.	EFFECTIVE DATE	29
XIII.	RETENTION OF JURISDICTION	29
XIV.	MODIFICATION	29
XV.	TERMINATION	30
XVI.	PUBLIC PARTICIPATION	31
XVII.	SIGNATORIES/SERVICE	31
XVIII.	INTEGRATION	32
XIX.	26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION	32
XX.	FINAL JUDGMENT	33

APPENDIX A: Assessment of Bilge Retention Capacity and Oily Bilge
Water Generation

APPENDIX B: Oil Log Book

PARTIAL CONSENT DECREE

Plaintiff, the United States of America, on behalf of the United States Coast Guard, has filed a Complaint, concurrently with the lodging of this Partial Consent Decree, against Defendants, Azure Fishery LLC, Hanh Thi Nguyen, Khang Quang Dang, Andy Ngog Hoang, Tuan Hoang, and Linh Fishery LLC (collectively “Defendants”). The Complaint alleges willful discharges of oil, including oily bilge water, from the U.S.-flagged commercial longline fishing vessel *Jaxon T*, now known as the *St. Joseph*, into the ocean offshore of Hawaii in violation of Section 311(b)(3) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1321(b)(3), and related violations of the Coast Guard’s pollution control regulations. The Complaint also alleges the fraudulent transfer of the *Jaxon T* from Azure Fishery LLC to Linh Fishery LLC. The Complaint seeks civil penalties and injunctive relief pursuant to Section 311 of the Act and the recovery of the value of the transferred vessel under the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*

This Partial Consent Decree resolves the claims alleged against Hanh Thi Nguyen and Khang Quang Dang (“Settling Defendants”). Settling Defendants do not admit liability arising out of the occurrences or violations alleged in the Complaint. Nothing in this Consent Decree shall constitute or be construed as an admission of liability, fact or law, or of any wrongdoing on the part of the Settling

Defendants. Settling Defendants assert that they are committed to operating safely and in conformance with pollution control laws and regulations.

The other defendants, Azure Fishery LLC, Andy Ngog Hoang, Tuan Hoang, and Linh Fishery LLC are not parties to this Partial Consent Decree and the claims against them remain for future resolution.

The Parties recognize, and the Court by entering this Partial Consent Decree finds, that this Partial Consent Decree has been negotiated by the Parties in good faith and will avoid prolonged litigation between the Parties on the claims addressed in the Complaint, and that this Partial Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 311(b)(7)(E) and (n) of the Act, 33 U.S.C. § 1321(b)(3), and over the Parties. Venue lies in this district pursuant to 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E), and 28 U.S.C. §§ 1391 and 1395(a), because the claims arose in this district and Settling

Defendants are located and doing business in this district. For purposes of this Decree, or any action to enforce this Decree, Settling Defendants consent to the Court's jurisdiction over this Decree and any such action and over Settling Defendants and consent to venue in this judicial district.

2. For purposes of this Decree, Settling Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Section 311(b) and (e) of the CWA, 33 U.S.C. §1321(b) and (e).

II. APPLICABILITY

3. The obligations of this Partial Consent Decree apply to and are binding upon the United States, and upon Settling Defendants and any successors, assigns, or other entities or persons otherwise bound by law.

4. Settling Defendants shall provide a copy of the injunctive relief portion of this Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, including the entire crew of the vessel, as well as to any contractor retained to perform work required under this Decree. For those people identified in the preceding sentence who do not read English, Settling Defendants shall ensure that those people are provided an oral briefing of the pertinent provisions of this Decree. Settling Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Decree.

5. No transfer of ownership or operation of the vessel shall relieve Settling Defendants of their obligation to ensure that the requirements of this Partial Consent Decree are implemented, unless (1) the transferee agrees to undertake the obligations required by this Decree and to be substituted for Settling Defendants as a Party under the Decree and thus be bound by the terms thereof, (2) the United States consents to relieve Settling Defendants of their obligations, and (3) the Court approves a joint motion from the United States, Settling Defendants, and the transferee requesting that the Court approve a modification substituting the transferee as the Settling Defendant responsible for complying with the terms and conditions of the Decree.

6. In any action to enforce this Decree, Settling Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Decree.

III. DEFINITIONS

7. Terms used in this Partial Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Decree, including the Appendices to this Decree, the following definitions shall apply:

“Coast Guard” shall mean the United States Coast Guard and any of its successor departments or agencies;

“Complaint” shall mean the complaint filed by the United States in this action;

“Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

“Defendants” shall mean Azure Fishery LLC, Hanh Thi Nguyen, Khang Quang Dang, Andy Ngog Hoang, Tuan Hoang, and Linh Fishery LLC;

“Effective Date” shall have the definition provided in Section XII;

“FDCPA” shall mean the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*;

“Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;

“Partial Consent Decree” or “Decree” shall mean this Decree;

“Parties” shall mean the United States and Settling Defendants;

“Section” shall mean a portion of this Decree identified by a Roman numeral;

“Settling Defendants” shall mean Hanh Thi Nguyen and Khang Quang Dang in their individual capacities, as members of Azure Fishery LLC, and as members or shareholders in any other related company;

“United States” shall mean the United States of America, acting on behalf of the Coast Guard.

IV. CIVIL PENALTIES AND FDCPA CLAIM

8. Within 30 Days after the Effective Date, Settling Defendants shall each pay \$211,000.00 as civil penalties (total of \$422,000.00) for the Clean Water Act violations alleged in the Complaint, together with interest accruing from the date on which this Partial Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. Within 30 Days after the Effective Date, Settling Defendants shall pay, jointly and severally, \$53,000.00 as resolution of the portion of the FDCPA claim alleged against them in the Complaint, together with interest accruing from the date on which this Partial Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

10. Settling Defendants shall pay the civil penalties and FDCPA claim due by certified check or by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendants by the Financial Litigation Unit (“FLU”) of the United States

Attorney's Office for the District of Hawaii. Such monies are to be deposited in the Oil Spill Liability Trust Fund. The payment shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-11849 and shall specify that the payment is made toward CWA civil penalties to be deposited into the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. § 9509(b)(8).

11. At the time of payment, Settling Defendants shall send a copy of the check or EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalties owed pursuant to the Partial Consent Decree in this case, and shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-11849, to the United States in accordance with Section XI of this Decree (Notices) and to:

Thomas H. Van Horn
National Pollution Funds Center
US Coast Guard Mailstop 7605
2701 Martin Luther King Jr. Avenue, SE
Washington, DC 20593-7605

Chief
Office of Claims and Litigation CG-LCL
United States Coast Guard
2703 Martin Luther King Jr. Avenue, SE
Washington, DC 20593-7213

12. Settling Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section VI (Stipulated Penalties) in calculating their federal income tax.

V. INJUNCTIVE RELIEF

13. Settling Defendants shall ensure that the injunctive relief measures in this Section are performed with respect to the vessels listed in this Paragraph as well as any other vessels that become, owned, operated, or managed by Settling Defendants during the period of performance under this Section. The list of current vessels is as follows:

<u>Vessel</u>	<u>Official Number</u>
Capt Million I	944388
Autumn	543021
Paradise 2001	1081225
Princess Jasmine	1048217
Rising Phoenix II	1107128
Moana	651198
Golden Eagle II	963497
Alana	1250644
Aolani	1250647
Nahoa	910157
Rising Phoenix	615617
Seaspray	609841
Azure	687578
Paradise 2002	1081227
Princess Jasmine II	1050806
Seahawk	513575
Golden Eagle	1048418
Kaimi	615207
Kalani	576129
Sapphire III	964929

St. Peter	911298
Sapphire II	926208
Kaimana	1034463
Lanikai	1029712
Sapphire	905883

These vessels are subject to Coast Guard boarding and inspection at any time.

14. Settling Defendants shall perform steps to assess the vessels' working bilge capacity and the daily oily bilge generation rate and make appropriate repairs to the vessels to assure safe and lawful operations. The procedures and due dates for the assessment and repair effort are included as Appendix A, *Assessment of Bilge Retention Capacity and Oily Bilge Water Generation*. The work includes taking steps to make the engine room reasonably water tight and eliminate excess oil and water from entering the engine room bilge; hiring an independent consultant to review the work performed and to set a fixed location for consistently measuring the accumulation of waste in the bilge; measuring the daily bilge water generation volume during a typical fishing voyage; and determining the fishing voyage duration based on the bilge retention capacity and waste generation rate. The vessels shall not embark on or continue any voyages that exceed their safe working bilge capacity or the level of the high level alarm, whichever is lower. The United States retains the discretion to grant extensions to the due dates listed in Appendix A.

15. Settling Defendants shall periodically assess and document each vessel's daily bilge water generation during voyages. The method to be used is described in Step 3 of Appendix A, *Assessment of Bilge Retention Capacity and Oily Bilge Water Generation*, including use of the Sounding Log and collection of photographs. This assessment shall be conducted on each vessel for at least one fishing voyage within every three-month period for three years after the Effective Date of this Decree. The results shall be described in the reports submitted under Paragraph 24 below.

16. For three years after the Effective Date of this Decree, (1) all oil transfers to or from the vessels, including but not limited to fuel oil, lube oil, hydraulic oil, and any waste oil, (2) all oil changes performed on the vessels, and (3) all discharges to shore reception facilities shall be recorded in an Oil Log Book that is maintained on board the vessels and subject to Coast Guard inspection. Each record entry shall include the date, time, type of material involved, activity involved, and volume handled, and each entry shall be signed by the operator of the vessel or a company manager. The Oil Log Book is included as Appendix B.

17. For three years after the Effective Date of this Decree, receipts for all transfers or discharges of engine room bilge water and other oily wastes from the vessels to shore reception facilities shall be obtained and retained on board the vessels with the Oil Log Book and subject to Coast Guard inspection. If no receipt

is available for small quantities of oily waste that the State allows to be transferred to the dock-side reception facility, Settling Defendants shall create and retain their own receipt for the waste that is placed at the facility. The self-issued receipt shall list the date, time, volume of waste, type of container used, and the name of the person placing the waste at the facility and shall be signed by a representative of Settling Defendants. Settling Defendants also shall take a photograph of the drums into which they place the waste and of any containers of waste they leave at the facility.

18. For three years after the Effective Date of this Decree, receipts for all purchases and transfers of fuel, lube oil, hydraulic oil, and other petroleum products or wastes brought onto the vessels shall be obtained and retained on board the vessels with the Oil Log Book and subject to Coast Guard inspection.

19. Within 30 Days of the Effective Date of this Decree, a garbage management plan that is in compliance with 33 C.F.R. § 151 shall be prepared or updated and placed on the vessels with a copy provided to Coast Guard Sector Honolulu. Thereafter, the plans shall be updated as needed, including the identification of the person who is in charge of ensuring compliance with the plan.

20. Within 10 Days of the Effective Date of this Decree, placards that are in compliance with 33 C.F.R. § 155.450 shall be posted on the vessels in each machinery space, including the engine room, or at the bilge and ballast pump

control station. The placards shall be posted in the languages understood by all members of the crew, including at a minimum English, Vietnamese, Indonesian, and Filipino.

21. Effective immediately after completing Step 3 of Appendix A and for one year after the Effective Date of this Decree, within three hours before departing port for a fishing voyage and no later than three hours after returning from a fishing voyage, Settling Defendants shall contact Coast Guard Sector Honolulu by telephone or email and report the bilge measurement from the designated bilge reference location.

22. Prior to every fishing voyage after the Effective Date of this Decree, the operator of the vessels shall provide instruction and training to every crewmember concerning the prohibition on discharges of oil, including oily bilge water and any other oily mixtures, and on the garbage management plan.

23. Effective immediately, no wastewater from showers or laundry shall be introduced into the engine room bilges, and no soaps, dispersants, or emulsifiers shall be introduced into the vessels' waste stream for the purpose of dispersing oily waste.

24. In the 6th, 12th, 24th, and 36th month after the Effective Date of this Decree, Settling Defendants shall submit a report on their vessels' oily waste management practices and compliance with this Decree to the Coast Guard and the

Department of Justice, in accordance with the Notices provision in Section XI. The reports shall describe each vessel's oily waste carrying capacity and provide evidence that it is sufficient for the length of all actual and intended voyages. The reports shall describe any plans and schedule for installing approved oily water separation equipment, any modification of the vessel's structures as it relates to waste management, or any or additional oily waste storage capacity on the vessels.

The reports shall also include:

- a. an identification of all sources and volumes of waste being generated by the vessels during each of the fishing voyages prior to the report deadline and comparing it to each vessel's retention capacity;
- b. a description of all efforts to minimize the generation of oily waste, including repair of piping, shaft seals, and machinery;
- c. a description of all efforts to minimize the introduction of non-oily water into the engine room bilge, including sealing of bulkheads, elimination of shower and laundry water from the engine room, and control of flow of ice melt from the fish holds;
- d. an assessment of whether the vessels are properly managing their oily waste streams;

- e. Results of the periodic bilge waste generation assessment required in Paragraph 15 above, including the Sounding Log Book and photographs for the applicable reporting period.
- f. a copy of the pages of each vessel's Oil Log Book for the applicable reporting period;
- g. a copy of receipts for all on- and off-loading of products and wastes identified above.

25. Each report, letter report, or certification submitted by Settling Defendants under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

26. The requirements of this Decree do not relieve Settling Defendants of any obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

27. Any information provided pursuant to this Decree may be used by the United States in any proceeding to enforce the provisions of this Decree and as otherwise permitted by law.

28. Until the conclusion of this civil action against all named defendants, Settling Defendants shall retain, and shall instruct their agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in their or their agents' possession or control, or that come into their or their agents' possession or control, and that relate in any manner to Azure Fishery LLC or the vessel *Jaxon T*, now known as *St. Joseph*. This information-retention requirement shall apply regardless of any contrary personal, company, or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Settling Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

VI. STIPULATED PENALTIES

29. Settling Defendants shall be liable for stipulated penalties to the United States for violations of this Partial Consent Decree as specified below, unless excused under Section VII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree according to all

applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

30. If a Settling Defendant fails to pay the civil penalties or the FDCPA claim required to be paid under Section IV (Civil Penalty and FDCPA Claim) when due, that Defendant shall pay a stipulated penalty of five hundred dollars (\$500) per Day for each Day that payment is late.

31. If a Settling Defendant fails to perform, or ensure performance of, the injunctive relief required under Section V (Injunctive Relief) when due, the Settling Defendant or Settling Defendants responsible for performing or ensuring performance shall pay to the United States stipulated penalties as follows:

- a. 1st to 30th day: \$500 penalty per Day;
- b. 31st to 60th day: \$1,250 penalty per Day; and
- c. More than 60 days: \$2,500 penalty per Day.

32. Late payment of the penalty due under this Decree and payment of any stipulated penalties shall be made in accordance with payment instructions in Section IV above. All transmittal correspondence shall state that any payment of stipulated penalties is for late payment of the penalty due under this Decree or for delayed performance of injunctive relief required under this Decree.

33. For all payments of stipulated penalties, Settling Defendants shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-

1-11849 and shall specify that payments are for stipulated penalties to be deposited into the United States Treasury.

34. Stipulated penalties under this Section shall begin to accrue on the Day after the performance is due and shall continue to accrue until performance is satisfactorily completed. Stipulated penalties shall accrue simultaneously for separate violations of this Decree.

35. Settling Defendants shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand.

36. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Decree.

37. Stipulated penalties shall continue to accrue as provided in Paragraphs 30, 31, and 34, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the United States that is not appealed to the Court, Settling Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of the United States' decision.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued

penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Settling Defendants shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

38. If any Settling Defendant fails to pay stipulated penalties according to the terms of this Decree, that Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for a Settling Defendant's failure to pay any stipulated penalties.

39. The payment of stipulated penalties and interest, if any, shall not alter in any way any Settling Defendant's obligation to complete the performance of the requirements of this Decree.

40. Subject to the provisions of Section IX of this Partial Consent Decree (Effect of Settlement/Reservations of Rights), the stipulated penalties provided for in this Decree shall be in addition to any other rights, remedies, or sanctions

available to the United States for a Settling Defendant's violation of this Decree or applicable law.

VII. FORCE MAJEURE

41. "Force majeure," for purposes of this Decree, is defined as any event arising from causes beyond the control of Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Settling Defendants' financial inability to perform any obligation under this Decree.

42. If any event occurs or has occurred that may delay the performance of any obligation under this Decree, whether or not caused by a force majeure event, Settling Defendants shall provide notice orally or by electronic or facsimile transmission to the Coast Guard within seventy-two (72) hours of when Settling Defendants first knew that the event might cause a delay. Within seven (7) Days thereafter, Settling Defendants shall provide in writing to the Coast Guard an

explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment.

Settling Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

43. If the United States agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Decree that are affected by the force majeure event will be extended by the United States for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force

majeure event shall not, of itself, extend the time for performance of any other obligation. The United States will notify Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

44. If the United States does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the United States will notify Settling Defendants in writing of its decision.

45. If Settling Defendants elect to invoke the dispute resolution procedures set forth in Section VIII (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of the United States' notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 41 and 42. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Decree identified to the United States and the Court.

VIII. DISPUTE RESOLUTION

46. Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree. Settling Defendants' failure to seek resolution of a dispute under this Section shall preclude Settling Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Settling Defendants arising under this Decree.

47. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Settling Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, Settling Defendants invoke formal dispute resolution procedures as set forth below.

48. Formal Dispute Resolution. Settling Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position

regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Settling Defendants' position and any supporting documentation relied upon by Settling Defendants.

49. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Settling Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Settling Defendants, unless Settling Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

50. Settling Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XI (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Settling Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the

relief requested and any schedule within which the dispute must be resolved for orderly implementation of this Decree.

51. The United States shall respond to Settling Defendants' motion within the time period allowed by the Local Rules of this Court. Settling Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

52. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 50, Settling Defendants shall bear the burden of demonstrating that its position complies with this Decree and better furthers the objectives of the Decree.

53. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Settling Defendants under this Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 37. If Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VI (Stipulated Penalties).

IX. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

54. This Partial Consent Decree resolves the civil claims of the United States against Settling Defendants for the violations alleged in the Complaint up to

the date of lodging of this Decree, including Settling Defendants' liability for the Clean Water Act civil penalties and injunctive relief claims and the FDCPA claim.

55. The civil claims of the United States alleged in the Complaint against the other, non-settling defendants—Azure Fishery LLC, Andy Ngog Hoang, Tuan Hoang, and Linh Fishery LLC—remain for future resolution.

56. The United States reserves all legal and equitable remedies available to enforce the provisions of this Decree.

57. The United States reserves all legal and equitable claims for, including but not limited to, injunctive relief, penalties, recovery of Oil Pollution Act (“OPA”) response costs and damages including natural resource damages, criminal liability, and other appropriate relief, except as expressly provided in Paragraph 54. This Decree shall not be construed to limit the rights of the United States to obtain penalties, injunctive relief, costs, damages, or other appropriate relief under the CWA or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly provided in Paragraph 54. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Settling Defendants' vessels or operations, whether related to the violations addressed in this Decree or otherwise, except as expressly provided in Paragraph 54.

58. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, costs, damages, criminal liability, other appropriate relief relating to Settling Defendants' violations, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon a contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 54.

59. This Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Settling Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Settling Defendants' compliance with this Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Decree, warrant or aver in any manner that Settling Defendants' compliance with any aspect of this Decree will result in compliance with provisions of the CWA or with any other provision of federal, State, or local laws, regulations, or permits.

60. This Decree does not limit or affect the rights of Settling Defendants or of the United States against any third parties, not party to this Decree, nor does it limit the rights of third parties, not party to this Decree, against Settling Defendants, except as otherwise provided by law.

61. This Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Decree.

62. Settling Defendants hereby covenant not to sue and agree not to assert any claims related to the discharges alleged in the Complaint or response activities in connection with the alleged discharges against the United States pursuant to the CWA, OPA, or any other state or federal law or regulation for acts or omissions through the date of lodging of the Decree. Settling Defendants further covenant not to sue and agree not to assert any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund or pursuant to any other provision of law.

X. COSTS

63. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalties or any stipulated penalties due but not paid by Settling Defendants.

XI. NOTICES

64. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Decree, they shall be made in writing and addressed as follows:

As to the United States

To the U.S. Department of Justice:

EES Case Management Unit
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
eescdcopy.enrd@usdoj.gov
Re: DJ #90-5-1-1-11849

To the U.S. Coast Guard:

Chief
Office of Claims and Litigation CG-LCL
United States Coast Guard
2703 Martin Luther King Jr. Avenue, SE
Washington, DC 20593-7213

Staff Judge Advocate
United States Coast Guard
Fourteenth Coast Guard District
300 Ala Moana Boulevard, Room 9-130
Honolulu, HI 96850

As to Settling Defendants:

Khang Dang
c/o Pacific Fishing & Supply
504 N. Nimitz Hwy
Honolulu, HI 96817

Ryan Steen
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101

65. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

66. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Decree or by mutual agreement of the Parties in writing.

XII. EFFECTIVE DATE

67. The Effective Date of this Decree shall be the date upon which this Decree is entered by the Court or a motion to enter the Decree is granted, whichever occurs first, as recorded on the Court's docket.

XIII. RETENTION OF JURISDICTION

68. The Court shall retain jurisdiction over this case until termination of this Decree, for the purpose of effectuating or enforcing compliance with the terms of this Decree.

XIV. MODIFICATION

69. The terms of this Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where

the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

70. Any dispute concerning modification of this Decree shall be resolved pursuant to Section VIII (Dispute Resolution), provided, however, that instead of the burden of proof provided in that Section, the Party seeking modification bears the burden of demonstrating that it is entitled to the required modification in accordance with Federal Rule of Civil Procedure 60(b).

XV. TERMINATION

71. After Settling Defendants have completed the requirements of this Decree, including injunctive relief, and have paid the civil penalties and any accrued stipulated penalties as required by this Decree, Settling Defendants may serve upon the United States a Request for Termination, stating that Settling Defendants have satisfied those requirements, together with all necessary supporting documentation.

72. Following receipt by the United States of Settling Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Settling Defendants have satisfactorily complied with the requirements for termination of this Decree. If the United States agrees that the Decree may be terminated, the

Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

73. If the United States does not agree that the Decree may be terminated, Settling Defendants may invoke Dispute Resolution under Section VIII. However, Settling Defendants shall not seek Dispute Resolution of any dispute regarding termination until thirty (30) Days after service of its Request for Termination.

XVI. PUBLIC PARTICIPATION

74. This Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Decree disclose facts or considerations indicating that the Decree is inappropriate, improper, or inadequate. Settling Defendants consent to entry of this Decree without further notice and agree not to withdraw from or oppose entry of this Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Decree.

XVII. SIGNATORIES/SERVICE

75. Each undersigned representative of Settling Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the

terms and conditions of this Decree and to execute and legally bind the Party he or she represents to this document.

76. This Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Settling Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XVIII. INTEGRATION

77. This Decree, including Appendices, constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Decree.

XIX. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

78. For purposes of the identification requirement of Section 162(b)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Applicability), Paragraph 4, and Section V (Injunctive

Relief), Paragraphs 14–25 and related Appendices A and B, is restitution or required to come into compliance with law.

XX. FINAL JUDGMENT

79. Upon approval and entry of this Partial Consent Decree by the Court, this Decree shall constitute a final judgment of the Court as to the United States and Settling Defendants.


Dated and entered this _____ day of _____, 2018.

UNITED STATES DISTRICT JUDGE

Signature Page to Consent Decree in *United States v. Azure Fishery LLC et al.*


FOR PLAINTIFF THE UNITED STATES OF AMERICA:

9/6/18
Date



JEFFREY H. WOOD
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

9/6/18
Date



JASON T. BARBEAU
Senior Trial Attorney (D.C. Bar No. 468200)
STEFAN J. BACHMAN
Trial Attorney (S.C. Bar No. 102182)
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044
(202) 616-8908 (telephone)
(202) 616-6584 (facsimile)
jason.barbeau@usdoj.gov
stefan.bachman@usdoj.gov

KENJI M. PRICE
United States Attorney
District of Hawaii

RACHEL S. MORIYAMA #3802
Assistant U.S. Attorney
Room 6-100, PJKK Federal Building
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-2958
Email: Rachel.Moriyama@usdoj.gov

Signature Page to Consent Decree in *United States v. Azure Fishery LLC et al.*

FOR PLAINTIFF THE UNITED STATES OF AMERICA (continued):

30 AUG 2018

Date

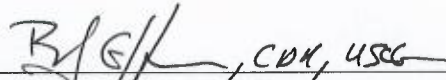


BRIAN JUDGE

Chief, Office of Claims and Litigation
United States Coast Guard
Coast Guard Headquarters
2703 Martin Luther King Jr. Ave, SE
Washington, DC 20593-7213

8/22/18

Date



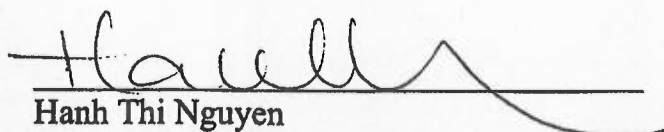
ROBIN ELLERBE

Staff Judge Advocate
United States Coast Guard
Fourteenth Coast Guard District
300 Ala Moana Boulevard, Room 9-130
Honolulu, HI 96850

Signature Page to Consent Decree in *United States v. Azure Fishery LLC et al.*

FOR DEFENDANT HANH THI NGUYEN:

Aug 27-18
Date

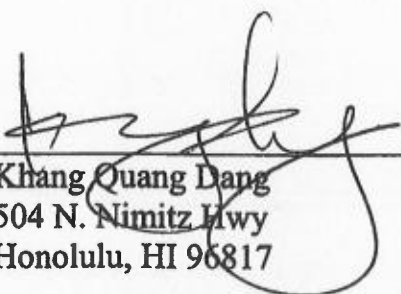


Hanh Thi Nguyen
504 N. Nimitz Hwy
Honolulu, HI 96817

Signature Page to Consent Decree in *United States v. Azure Fishery LLC et al.*

FOR DEFENDANT KHANG QUANG DANG:

8/27/18
Date


Khang Quang Dang
504 N. Nimitz Hwy
Honolulu, HI 96817

APPENDIX A

APPENDIX A

Assessment of Bilge Retention Capacity and Oily Bilge Water Generation

1. Perform work needed to make engine room reasonably water tight and eliminate excess water from entering engine room bilge:

- a. Make appropriate permanent repairs, consistent with good marine practice, to bulkheads, hull, overhead decks, through-hull fittings, through-bulkhead fittings, shaft seals, etc.
- b. Eliminate draining non-oiled liquids into the engine room bilge, such as ice melt from fish holds and wash water from showers and laundry.

Due date: At least 3 vessels per month beginning after the Effective Date of the Consent Decree until completed for all vessels listed in Paragraph 13 of the Decree. For the vessel Kaimana, the due date shall be within four weeks of returning to port in Honolulu.

2. Hire consultant to assess work and document bilge levels:

- a. Consultant shall be an independent, qualified, professional marine engineer/marine surveyor/consultant (hereinafter, "Consultant") with expertise in the scope of work.
- b. Consultant shall check the repairs made under Step 1 above to ensure the repairs and changes are consistent with good marine practice.
- c. Consultant shall select and clearly mark a safe location in the deep portion of the bilge for taking representative measurements of the fluid levels in the bilge as required in Step 3.a below (e.g., near the high level alarm or along the centerline or side wall). Consultant shall also measure and record the location and existing height of the high level alarm setting in the engine room bilge and assess whether the height setting is consistent with good marine practice. It is the responsibility of the owners and operators to determine the vessel's safe working bilge capacity and the appropriateness of the high level alarm setting. The United States is not warranting that the high level alarm height is set at the safe working capacity of the vessel. Thus, the vessel should return to port before exceeding the safe working bilge capacity of the vessel or the high level alarm, whichever is lower.
- d. Consultant shall prepare a brief written report documenting the results of the work performed in Steps 2.b and 2.c. Consultant shall include a photograph showing the measurement of the height of the high level alarm setting, a photograph of the location selected for measuring the fluid level in the bilge, and a written

description of the recommended method to be used to measure the fluid level in the bilge as required in Step 3.a below.

- e. Submit copy of Consultant's written report to the Department of Justice and the Coast Guard.

Due date: for each vessel, within two weeks after completing Step 1.

3. Measure daily bilge water generation volume during typical voyage:

- a. On the first fishing voyage following completion of Step 2 (above) and for one voyage per vessel during each three-month period following the Effective Date of the Consent Decree, take measurements of the bilge water level at the same location marked by Consultant in Step 2.c above twice per day—once between 6 a.m. and 12 p.m. and once between 6 p.m. and 12 a.m.—with a tool capable of accurately measuring the level of fluid in the bilge to at least one quarter inch. The operator shall take a photograph of the sounding device showing the amount of fluid in the bilge at each sounding, and the operator shall record the amount of fluid measured in the bilge in a Sounding Log Book. The Sounding Log Book shall include, at a minimum: (1) the date of the sounding; (2) the time of the sounding; (3) the name of the person who took the sounding; (4) the measured level of fluid in the bilge determined by the sounding to the nearest one quarter inch; and (5) the operator's initials. After each day's entries, the following statement shall appear followed by the operator's signature:

"I certify under penalty of law that the information recorded above for **(INSERT DATE):** is accurate and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

A Sounding Log Book entry form is attached as Attachment A below.

- b. Return to port ***before reaching*** the high level alarm level or the safe working retention capacity of the bilge, whichever is lower.
- c. Provide 24-hour and 1-hour advance notice to the Coast Guard prior to returning to port. This subparagraph (c) notice provision is only required for the first fishing voyage of each vessel conducted under this Paragraph 3.
- d. Take final measurement in the bilge upon returning to port and record result in the Sounding Log Book.
- e. Measure and record the volume of bilge water pumped to appropriate shore reception facility for disposal.
- f. Obtain and retain a copy of the receipt for bilge water disposal.
- g. Retain a copy of the Sounding Log Book and photographs.

Due date: on the first fishing voyage after performing Steps 1 and 2 above and for one voyage per vessel during each three-month period following the Effective Date of the Consent Decree.

4. Determine estimated maximum fishing voyage duration based on bilge retention capacity and waste generation rate.

- a. Submit letter report to the Department of Justice and the Coast Guard that describes steps taken to assess the number of days of onboard retention capacity for the vessel based on the steps above. Include copies of the Sounding Log Book, photographs, and receipt specified in Step 3 above.

Due date: within 10 days after returning to port following a voyage documented in Step 3.

5. Meet with the Department of Justice and the Coast Guard to discuss results.

Due date: within 20 days after returning to port following a voyage documented in Step 3.

6. As needed, identify additional oil and water sources contributing to bilge waste volume:

- a. Machinery
- b. Fuel lines
- c. Pipes
- d. Drain lines
- e. Pumps
- f. Fish holds
- g. Deck leaks
- h. Other

Due date: within 30 days of returning to port following a voyage documented in Step 3.

7. As needed, perform additional waste minimization projects based on source identification effort:

- a. Make permanent repairs, consistent with good marine practice, to eliminate and reduce equipment leaks and other sources of oil and water into the bilge.
- b. Keep ice melt water separate from bilge.

Due date: within 60 days of returning to port following a voyage documented in Step 3.

8. Repeat Steps 3 – 5 before increasing maximum fishing voyage duration:

- a. If bilge water volume exceeded the retention capacity for the expected typical duration of a fishing voyage (compare Step 2 to Step 3 to Step 4), then repeat Steps 3, 4, and 5.

VESSEL SOUNDING LOG

DATE:

	TIME	Name of Person Taking Measurement	Measurement in Inches	Operator's Initials
Initial Measurement Taken within 1 hour before Departure				
A.M. Measurement (Taken between 6 a.m. and 12 p.m.)				
P.M. Measurement (Taken between 6 p.m. and 12 a.m.)				
Final Measurement Taken within 1 hour of Mooring				

NOTES:

I certify under penalty of law that the information recorded above for **(INSERT DATE):** _____ is accurate and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Operator's Signature:

Operator's Name (Printed):

Date:

APPENDIX B

OIL LOG BOOK

Vessel Name: _____

Official Number: _____

Notes:

1. Entries must be made in the Oil Log Book each time any of the following operations take place on the vessel: (1) all oil transfers to or from the vessel, including but not limited to fuel oil, lube oil, hydraulic oil, and any waste oil, (2) all oil changes performed on the vessel, (3) all cleaning of fuel oil tanks or other oily tanks, (4) all disposal of oily residues (sludge), (5) all discharges of bilge water that has accumulated in machinery spaces, and (6) all discharges to shore reception facilities.
2. Each record entry must be made without delay in the Oil Log Book so that all the entries in the Log Book appropriate to an operation are completed. Each entry must include the date, time, type of material involved, activity involved, and volume handled. Each entry must be signed and dated by the operator of the vessel or a company manager responsible for the operation.
3. The ownership of this Oil Log Book remains with the United States Government.
4. This Oil Log Book must be maintained on board the vessel and is subject to Coast Guard inspection at any time.

Date	Type of Event	Record of Observations	Signature of Operator and Date
<i>Example:</i> 2-JAN-2018	Disposal of bilge waste at shore facility	____ [#] gals bilge water from engine room bilge pumped to ____ [name of disposal company] Start: ____ [time] Stop: ____ [time] Obtained receipt	[__signature__] 2-JAN-2018
<i>Example:</i> 3-JAN-2018	Fuel transfer	____ [#] gals fuel oil transferred to fuel tanks from ____ [name of fuel supplier] Start: ____ [time] Stop: ____ [time] Obtained receipt	[__signature__] 3-JAN-2018

Date	Type of Event	Record of Observations	Signature of Operator and Date

Date	Type of Event	Record of Observations	Signature of Operator and Date

Date	Type of Event	Record of Observations	Signature of Operator and Date

Date	Type of Event	Record of Observations	Signature of Operator and Date

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Date	Type of Event	Record of Observations	Signature of Operator and Date

Date	Type of Event	Record of Observations	Signature of Operator and Date