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UNITED STATES OF AMERICA

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

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UNITED STATES OF AMERICA, )  
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## **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 JM Fisheries LLC, G.S. Fisheries Inc., James Sousa, and Edward DaCosta (“Defendants”). The Complaint alleges that in April 2018 Defendants’ discharged harmful quantities of oil from the U.S.-flagged commercial fishing vessel, *Capt. Vincent Gann* (Official Number: 953794), into Pago Pago Harbor in American Samoa in violation of the Coast Guard’s pollution control regulations promulgated under Section 311 of the Clean Water Act (“CWA”), 33 U.S.C. §1321. The Complaint seeks civil penalties and injunctive relief for these alleged violations.

This Partial Consent Decree resolves the allegations in the Complaint against JM Fisheries LLC, G.S. Fisheries Inc., and James Sousa (“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 on the part of Settling Defendants. Settling Defendants have also already paid to the National Pollution Funds Center (NPFC) \$27,478.74 in cleanup costs associated with the alleged discharge referenced in the Complaint.

The other defendant, Edward DaCosta is not a party to this Partial Consent Decree and the claims against him will be resolved separately.

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, CWA Section 311(b)(7)(E), (e) and (n), 33 U.S.C. § 1321(b)(7)(E), (e), (n) and over the Parties. Venue lies in this district pursuant to CWA Section 311(b)(7)(E), (e), and (n), 33 U.S.C. § 1321(b)(7)(E), (e), (n), and 28 U.S.C. §§ 1391 and 1395(a). 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 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 can be granted pursuant to CWA Section 311(b) and (e), 33 U.S.C. §1321(b), (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, in a language they understand, 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 CWA or in regulations promulgated pursuant to the CWA 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 JM Fisheries LLC, G.S. Fisheries Inc., James Sousa, and Edward DaCosta;

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

“Garbage Record Book” shall mean the record required under 33 C.F.R. § 151.55;

“Oil Record Book” shall mean the book required under 33 C.F.R. § 151.25;

“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 JM Fisheries LLC, G.S. Fisheries Inc., or James Sousa (together, “Settling Defendants”);

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



#### IV. CIVIL PENALTY

8. Settling Defendants shall pay \$720,000 as a civil penalty, plus interest as described in this Paragraph. This payment shall be made in four consecutive payments of \$180,000 in accordance with the following schedule:

- First Payment:** Due within 30 Days after the Effective Date;
- Second Payment:** Due by the last Day of the 6th month following the Effective Date;
- Third Payment:** Due by the last Day of the 12th month following the Effective Date; and
- Fourth Payment:** Due by the last Day of the 18th month following the Effective Date.

Settling Defendants shall include with the first installment payment an additional amount for interest accrued at the rate of 3.25% per year on the total penalty amount from date of lodging through the date of payment. Settling Defendants shall include with each subsequent payment an additional amount for interest accrued at the rate of 3.25% per year on the unpaid balance from the date of the previous payment through the date of the payment being made. After the Effective Date, the Financial Litigation Unit (FLU) of the U.S. Attorney's Office for the District of Hawaii will provide to Settling Defendants a calculation of the interest due for each payment.

9. Settling Defendants shall pay the civil penalty required under Paragraph 8 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 Settling Defendants by the 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 90-5-1-1-11245/1 and shall specify that the payment is made toward CWA civil penalties pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. § 9509(b)(8).

10. 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 90-5-1-1-11245/1, 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

11. Settling Defendants may pay any payment prior to its due date, but must contact the FLU in advance for a determination regarding the amount of interest to be included with the payment. If any installment payment includes an overpayment, the amount of the overpayment will be applied to the remaining principal.

12. If Settling Defendants fail to make any payment required under Paragraph 8 by the due date, the United States may send Settling Defendants a written notice of late payment. If Settling Defendants fail to make the payment and to pay all interest and stipulated penalties owed within 30 Days of receipt of the notice, all remaining payments and all accrued interest will be due immediately. Interest will continue to accrue on any unpaid amounts until Settling Defendants pay the total amount due. Interest required under this Paragraph is in addition to any stipulated penalties owed under Paragraph 32.

13. If one or more of Settling Defendants become the subject of a proceeding under the Bankruptcy Code, 11 U.S.C. § 101-1532, all remaining payments and all accrued interest will be due immediately. Interest will continue to accrue on any unpaid amounts until Settling Defendants pay the total amount due. Interest required under this Paragraph is in addition to any stipulated penalties owed under Paragraph 32.

14. 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

15. Settling Defendants shall perform the following injunctive relief to help ensure that oil discharges from the *Capt. Vincent Gann* and pollution prevention regulatory violations identified in the Complaint will not be repeated. The measures in this Section apply to the *Capt. Vincent Gann* and any other vessel that is or becomes owned, operated, or managed by Settling Defendants during the period of performance under this Section. Settling Defendants' vessels are subject to Coast Guard boarding and inspection at any time.

16. Within 30 Days of the Effective Date of this Decree, Settling Defendants shall hire and assign an independent maritime consultant to conduct a comprehensive review of compliance with Coast Guard regulations and best practices, even if not covered by the regulations, of the vessel. Such review shall be completed within three months of the Effective Date. For the next three years after the Effective Date, Settling Defendants shall continue this compliance and best practices monitoring by using either a retained consultant or a full time qualified compliance professional employed by Settling Defendants, who can be

the same independent maritime consultant that conducted the initial compliance review.

17. Within 30 Days of the Effective Date of this Decree, within 30 Days of acquiring any other vessel, and within 7 Days of hiring any new master or any engineering officer, Settling Defendants shall conduct training with that new master or engineering officer for any such vessel they join or the entire crew on any newly-acquired vessel. Instruction shall include, among other things:

- position-specific training in the operation, maintenance, and repair the oil water separator (“OWS”) and other pollution prevention equipment;
- instruction on proper record keeping in connection with the Oil Record Book and Garbage Record Book;
- a comprehensive review to ensure understanding of the injunctive relief requirements within this Section of the Consent Decree, and other applicable marine environmental protection and pollution prevention requirements and best practices; and
- a review to ensure understanding of the internal and external reporting systems used, including the requirements to report any discharge of oil or oily mixture or any other non-compliance with applicable environmental regulations or this Decree.

Settling Defendants shall document and retain records of every training session provided under this Section. Training records will include, at minimum, (1) the name and position of the person who conducted the training, (2) a list of topics covered at each training, and (3) a verified roster of attendees for each training. In addition, Settling Defendants shall provide refresher training on an annual basis for a period of three years after the Effective Date of this Decree.

18. Upon the Effective Date of this Decree and for three years after the Effective Date, Settling Defendants shall accurately record all internal oil transfers, including all events connected to storage or transfer of fuel oil, and all onboard waste oil retention and processing activities, including cleaning slops and transfers to and from oily waste tanks, in the Oil Record Book. Settling Defendants shall also create a monthly summary of the volume of machinery space bilge waste that was treated and discharged, transferred to shore, or retained on board. The requirements of this Paragraph are in addition to, and do not alter, other existing requirements for entries in the Oil Record Book.

19. Upon the Effective Date of this Decree, Settling Defendants shall operate and maintain their OWS and oil content meter systems at least in accordance with the manufacturer's specifications and recommendations. In addition, upon the Effective Date of this Consent Decree and for three years after the Effective Date, Settling Defendants shall perform a monthly test of the OWS

and oil content meter to assess whether the equipment is operating properly and in accordance with the manufacturer's specifications and recommendations. The results of each test under this Paragraph shall be logged in the vessel's Oil Record Book.

20. Upon the Effective Date of this Decree and for three years after the Effective Date, Settling Defendants shall obtain and retain on the vessel all receipts for any bilge and/or other oily waste transfers to shore reception facilities.

21. 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 vessel with a copy provided to Coast Guard Sector Honolulu. Thereafter, the plans shall be updated as needed or as required, including the identification of the person who is in charge of ensuring compliance with the plan.

22. Within 10 Days of the Effective Date of this Decree, Settling Defendants shall post placards that are in compliance with 33 C.F.R. § 155.450 on the vessel 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, Spanish, and Filipino or Tagalog.

23. Prior to every fishing voyage after the Effective Date of this Decree, Settling Defendants shall ensure that instruction is provided 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.

24. Within 5 months of the Effective Date of this Decree, and again 18 months and 36 months after the Effective Date, Settling Defendants shall submit a written report to the Coast Guard and the Department of Justice, in accordance with Section XI of this Decree (Notices), regarding the progress on and compliance with the requirements of this Section, including a list of vessels added or removed during the reporting period, the results of the independent maritime consultant's comprehensive review required in Paragraph 16, documentation of training sessions completed during the reporting period, results of the monthly testing of the OWS and oil content meter, copies of the oily waste disposal receipts, copies of the pages of the Oil Record Book and Garbage Record Book for the reporting period, and a monthly summary of the volume of machinery space bilge waste that was (a) treated and discharged overboard, (b) transferred to a shore reception facility, or (c) retained on board the vessel for each month of the reporting period. The United States retains the unreviewable discretion to allow a short-term extension of time for these reports in response to an advance request from Settling



Defendants based on inaccessibility of records due to the remote location of a vessel during a fishing voyage.

25. Within 6 months of the Effective Date of this Decree, and again 18 months and 36 months after the Effective Date, Settling Defendants shall, at their expense, have the person identified in Paragraph 16 above prepare a written report of his or her work under Paragraph 16. The report shall include, among other things, review of the operation of the OWS and identification by location, size, and purpose of all permanent or temporary piping not originally approved or documented in the current IOPP Certificate (if any) and an assessment of whether design, piping, and valve arrangements connected to each vessel's bilge, fuel oil, and ballasting systems are in accordance with current International Maritime Organization (IMO)/ United States Coast Guard (USCG) standards and requirements or, if allowed, in compliance with the originally approved plan review diagram. Settling Defendants shall send each report to the Coast Guard and the Department of Justice by the last day of each corresponding month identified in the first sentence of this Paragraph (i.e., the sixth month, eighteenth month, and thirty-sixth month after the Effective Date), in accordance with the Section XI of this Decree (Notices).

26. Within 60 Days of the issuance of each report in Paragraph 25, Settling Defendants shall submit a letter report to the Coast Guard and the

Department of Justice, in accordance with the Section XI of this Decree (Notices), that describes how any deficiencies, violations, or other concerns identified in the report have been, or are being, addressed. The letter report shall include documentation of any repairs or changes made in response to the reports.

27. Each report, letter report, or certification submitted by any Settling Defendant 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.

28. Such reports may be submitted as a single report on behalf of all Settling Defendants. The reporting requirements of this Consent Decree do not relieve Settling Defendants of any reporting obligations required by the CWA, or any implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

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

30. 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 the vessel *Capt. Vincent Gann*. 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 promptly provide copies of any documents, records, or other information required to be maintained under this Paragraph.

## **VI. STIPULATED PENALTIES**

31. 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.

32. If Settling Defendants fail to pay the CWA civil penalty required to be paid under Section IV (Civil Penalty) when due, Settling Defendants shall pay a stipulated penalty of five thousand dollars (\$5,000) per Day for each Day that payment is late.

33. If Settling Defendants fail to perform, or ensure performance of, the injunctive relief required under Section V (Injunctive Relief) when due, the Settling Defendants shall pay to the United States stipulated penalties as follows:

- a. 1<sup>st</sup> to 30<sup>th</sup> day: \$1,000 penalty per Day;
- b. 31<sup>st</sup> to 60<sup>th</sup> day: \$2,000 penalty per Day; and
- c. More than 60 days: \$5,000 penalty per Day.

34. Late payment of the penalties 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 penalties due under this Decree or for delayed performance of injunctive relief required under this Decree.

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

1-11245/1 and shall specify that payments are for stipulated penalties to be deposited into the United States Treasury.

36. 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.

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

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

39. Stipulated penalties shall continue to accrue as provided in Paragraphs 32, 33, and 36 during any Dispute Resolution procedures set forth in Section VIII, 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.

40. If Settling Defendants fail to pay stipulated penalties according to the terms of this Decree, Settling Defendants shall be liable for interest on such penalties, at the rate specified 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 Settling Defendants' failure to pay any stipulated penalties.

41. 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.

42. 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**

43. "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.

44. 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 event. 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.

45. 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.

46. 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.

47. 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 43 and 44. 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

48. 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.

49. 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.

50. 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.

51. 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.

52. 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 sixty (60) 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.

53. 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.

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

55. 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 39. 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**

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

57. The civil claims of the United States alleged in the Complaint against the other, non-settling defendant—Edward DaCosta—remains for future resolution.

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

59. The United States reserves all legal and equitable claims for, including but not limited to, injunctive relief, penalties, recovery of any remaining removal costs or damages, including natural resource damages, under the Oil Pollution Act (OPA), criminal liability, and other appropriate relief, except as expressly provided in Paragraph 56. 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 56. 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 56.

60. 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 56.

61. 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.

62. 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.

63. 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.

64. 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**

65. 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

66. 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  
eesdcopy.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: James Sousa  
JM Fisheries LLC  
GS Fisheries, Inc.  
c/o GS Fisheries, Inc.  
2535 Kettner Blvd, Suite 1B  
San Diego, CA 92101

George Kontakis  
K&L Gates LLP  
599 Lexington Avenue  
New York, NY 10022-6030  
*Counsel for Settling Defendants*

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

68. 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**

69. 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**

70. 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**

71. 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.

72. 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**

73. 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.

74. 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 motion to terminate the Decree.

75. 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**

76. 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**

77. 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.

78. 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**

79. 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**

80. 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), is restitution or required to come into compliance with law.

**XX. FINAL JUDGMENT**

81. 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. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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UNITED STATES DISTRICT JUDGE

**Signature Page to Consent Decree in *United States v. JM Fisheries LLC et al.***

**FOR PLAINTIFF THE UNITED STATES OF AMERICA:**

TODD KIM  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

November 17, 2021

Date

*s/ Jason T. Barbeau*

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


JUDITH A. PHILIPS  
Acting 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. JM Fisheries LLC et al.***

**FOR PLAINTIFF THE UNITED STATES OF AMERICA (continued):**

5 OCT 2021  
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

15 OCT 2021  
Date

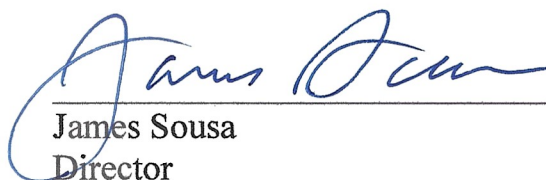
  
CDR TAMARA WALLEN  
Staff Judge Advocate  
United States Coast Guard  
Fourteenth Coast Guard District  
300 Ala Moana Boulevard, Room 9-130  
Honolulu, HI 96850

**Signature Page to Consent Decree in *United States v. JM Fisheries LLC et al.***

**FOR DEFENDANT JM FISHERIES LLC:**

10/4/21

Date

A handwritten signature in blue ink, appearing to read "James Sousa", written over a horizontal line.

James Sousa  
Director  
JM Fisheries LLC

George Kontakis  
K&L Gates LLP  
599 Lexington Avenue  
New York, NY 10022-6030  
*Counsel for Settling Defendants*

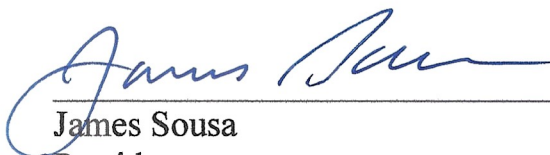


**Signature Page to Consent Decree in *United States v. JM Fisheries LLC et al.***

**FOR DEFENDANT G.S. FISHERIES INC.:**

10/4/21

Date

A handwritten signature in blue ink, appearing to read "James Sousa", written over a horizontal line.

James Sousa  
President  
G.S. Fisheries Inc.

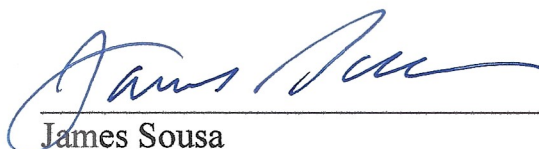
George Kontakis  
K&L Gates LLP  
599 Lexington Avenue  
New York, NY 10022-6030  
*Counsel for Settling Defendants*

**Signature Page to Consent Decree in *United States v. JM Fisheries LLC et al.***

**FOR DEFENDANT JAMES SOUSA:**

10/4/21

Date

  
\_\_\_\_\_  
James Sousa

George Kontakis  
K&L Gates LLP  
599 Lexington Avenue  
New York, NY 10022-6030  
*Counsel for Settling Defendants*