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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

UNITED STATES OF AMERICA, Plaintiff, v. F/V NORTH WIND, Inc., *in personam*, Defendant.	Civil No. 1:06-cv-00272-DAE-BMK IN ADMIRALTY **CONSENT DECREE**

I. INTRODUCTION

A. On or about July 1, 2005, the R/V CASITAS, a 145-foot research vessel owned and operated by F/V North Wind, Inc. ("Defendant"), ran aground on the reef near North Island at Pearl and Hermes Atoll, a part of the Hawaiian Islands National Wildlife Refuge, and which is also within the Papahanaumokuakea Marine National Monument (the "Incident"). At all relevant times, Defendant was the owner and operator of the CASITAS.

B. Defendant North Wind promptly responded to the grounding and cooperated with authorities from the State of Hawaii and the United States Government through the Incident Command Structure. As a result of the joint efforts of the Defendant, its insurers and contractors, on the one hand, and the State and Federal authorities on the other, the R/V CASITAS was removed from the reef.

C. The United States has filed a complaint in this civil action, alleging that the Incident posed a substantial threat of discharge of oil and the actual discharge of oil into and upon the navigable waters of the United States, and caused injury to, loss of, or destruction of natural resources, including the reef. The United States' Complaint alleges that the Incident caused the United States to incur Response Costs as defined herein. The United States also alleged that Defendant is liable for all such Response Costs. In addition, the United States alleged that Defendant is liable for civil penalties under the Clean Water Act ("CWA").

D. In addition, the United States also has potential claims for Damages, as defined herein, which are recoverable under the Oil Pollution Act ("OPA") or under state law.

E. In addition, the State of Hawaii (the "State") has potential claims for Damages, as defined herein, which are recoverable under the OPA or under state law. The State has not yet filed its claims and is thus not yet a party. Under this Consent Decree, the State will become a plaintiff for purposes of settling the claim.

F. The National Oceanic and Atmospheric Administration ("NOAA") the U.S. Fish and Wildlife Service of the Department of the Interior ("USFWS"), and the State have investigated the site of the Incident, as part of a Defendant-funded pre-assessment trip. Based on the data gathered during that trip, Plaintiffs estimated the amount and severity of coral reef harmed by the Incident, and estimated costs for monitoring recovery of the reef, and for projects intended to compensate for injuries to natural resources, including to coral. NOAA, the USFWS, and the State have determined that the amounts recovered as Damages under this Consent Decree are sufficient to provide for compensatory restoration for injuries to the natural resources, for monitoring of their recovery, and for the planning and oversight of the implementation of such restoration. Based on the data it gathered during that trip, Defendant disputed those

amounts, disputed the causal connection between the amounts sought in compensation and disputed jurisdiction for certain claims under OPA '90.

G. The Parties, without the necessity of trial or adjudication of any issues of fact or law and without any admission of liability by Defendant agree, and the Court finds, that this 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, and with the consent of the Parties,

IT IS HEREBY ADJUDGED, ORDERED AND DECREED as follows:

II. PARTIES

1. This Consent Decree is made and entered into by and between Plaintiff, the United States of America, on behalf of and including, but not limited to, the United States Coast Guard, National Pollution Funds Center, Oil Spill Liability Trust Fund ("OSLTF"); the National Oceanic and Atmospheric Administration ("NOAA") Department of Commerce; the U.S. Fish and Wildlife Service ("USFWS"), Department of the Interior; and Plaintiff, the State of Hawaii; and Defendant, F/V North Wind, Inc. The State, prior to entry of this Consent Decree is not a party to this civil action. The Parties to this Consent Decree stipulate, and by Entry of this Consent Decree the Court hereby ORDERS, that upon Entry of the Consent Decree the State shall be deemed to be a plaintiff in this civil action.

III. JURISDICTION AND VENUE

2. The United States is authorized to bring suit and the Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 (Federal question) 28 U.S.C. § 1333 (Admiralty), and 1345 (United States as plaintiff), 33 U.S.C. §§ 1321 (CWA) and 2717 (OPA), and 42 U.S.C. § 9613(b) (CERCLA). The States's claims are also brought pursuant to federal law, and so raise a federal question. 28 U.S.C. § 1331.

3. Venue is properly in this Court pursuant to 28 U.S.C. §§ 1391 and 1395, 33 U.S.C. § 2717, and 42 U.S.C. § 9613(b).

IV. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon Plaintiffs, including agencies, departments and political subdivisions thereof, and upon Defendant, and any of Defendant's successors, assigns, subrogees, subrogors, insurers, or other entities or persons otherwise bound by law. Any change in ownership or corporate status of Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Defendant's responsibilities under this Consent Decree.

V. DEFINITIONS

5. Unless otherwise specified, terms used in this Consent Decree shall have the meaning assigned to them in OPA, CWA, and CERCLA, as applicable. Whenever the following terms are used in this Consent Decree, the definitions specified hereinafter shall apply.

a. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9001, *et seq*.

b. "Consent Decree" means this Decree herein.

c. "CWA" means the Clean Water Act, 33 U.S.C. §§ 1251, *et seq*.

d. "Damages" means any damages recoverable by the United States for injury to, destruction of, loss of, loss of use of, or impairment of natural resources as a result of the Incident, including, but not limited to: (I) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to the Incident; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost natural resources or of acquisition of equivalent resources; (iii) the costs of planning and overseeing implementation of such restoration activities; and (iv) compensation for injury, destruction, loss, loss of use, or impairment of natural resources.

e. "Defendant" means F/V North Wind, Inc., *in personam*.

f. "Entry of the Consent Decree" means the date when this Decree, after signing by the Judge, is entered in the civil docket under Rule 79(a) of the Federal Rules of Civil Procedure.

g. "Incident" means the grounding of the M/V CASITAS on approximately July 1, 2005, on the reef near North Island at Pearl and Hermes Atoll.

h. "NRDAR Fund" means DOI's Natural Resource Damage Assessment and Restoration Fund.

i. "OPA" means the Oil Pollution Act of 1990, 33 U.S.C. § 2701, *et seq.*

j. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral.

k. "Parties" means the Defendant, the United States, and the State.

l. "Plaintiffs" shall mean the United States and the State.

m. "Response Costs" includes both "removal costs" as defined in Sections 1001(31) and 1002(b) of OPA, 33 U.S.C. §§ 2701(31) and 2702(b); and costs of "response" as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

n. "Section" shall mean a portion of this Decree identified by a roman numeral.

o. "State" means the State of Hawaii.

p. "Trustees" means NOAA, the USFWS, and the State, acting as trustees for natural resources impacted by the discharge and/or substantial threat of discharges of oil, under 40 C.F.R. Part 300.

q. "United States" shall mean the United States of America including its departments, agencies and instrumentalities, including, but not limited to, the United States Coast Guard, National Pollution Funds Center, Oil Spill Liability Trust Fund ("OSLTF"); the National Oceanic and Atmospheric Administration ("NOAA"), Department of Commerce; the U.S. Fish and Wildlife Service ("USFWS"), Department of the Interior; and the U.S. Coast Guard.

VI. SETTLEMENT PAYMENTS

6. Within thirty (30) days after this Decree has been lodged with this Court, the Defendant shall deposit the amount of three million eight hundred thousand dollars ($3,800,000) into an account bearing interest on commercially reasonable terms, in a federally-chartered bank (hereinafter, the "CASITAS Account"). If the Decree is not entered by this Court, and the time for any appeal of that decision has run, or if this Court's denial of Entry is upheld on appeal, the monies placed in the CASITAS Account, together with accrued interest thereon, shall be returned to the Defendant. If the Decree is entered by this Court, the Defendant shall, within

fifteen (15) Days of the date of Entry of the Consent Decree, cause the monies in the CASITAS Account, and all accrued interest thereon, to be released and disbursed in accordance with the separate payments specified in the immediately following sub-paragraphs.

(a) Payment for Coast Guard Response Costs. Within 15 days of the Entry of the Consent Decree $818,334.17 shall be transferred via Electronic Funds Transfers (EFTs) through the United States Department of Justice for disbursement to the OSLTF (FPN Number H05013) according to instructions to be obtained by defendants from the Dept. of Justice, Torts Branch, Civil Division. A copy of the paperwork documenting the EFTs, and any accompanying correspondence shall reference DOJ # 62-939 and shall be sent to:

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Senior Admiralty Counsel
West Coast Office
Torts Branch, Civil Division
U.S. Department of Justice
7-5395 Federal Bldg., Box 36028
450 Golden Gate Avenue
San Francisco, California 94102-3463
Telephone: (415) 436-6648, (415) 436-6635
scott.blaze@usdoj.gov

(b) Payment for Trustee-Sponsored Restoration. Within 15 days of the Entry of the Consent Decree, the sum of $2,857,626.48, together with all the accrued interest on the total amount of the monies deposited in the CASITAS Account, shall be paid to the Department of the Interior (DOI), on behalf of the Trustees, for the purposes set forth in Subparagraphs (iii) and (iv) below. Such payment shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions that the Financial Litigation Unit of the U.S. Attorney's Office for the District of Hawaii shall provide to the Defendant following Entry of this Decree by this Court. The Defendant shall send a transmittal letter, indicating that the EFT has occurred, to the Parties in accordance with Section IX of this Decree ("Notices") and to:

Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attention: Restoration Fund Manager
1849 "C" Street, N.W., Mail Stop 4449
Washington, D.C. 20240

The EFT and transmittal letter shall reflect that the payment is being made to the "Natural Resources Damage Assessment and Restoration Fund, Account No. 14X5198 – CASITAS OPA

Incident." DOI will assign these funds a special project number to allow the funds to be maintained as a segregated account within the Department of Interior Natural Resource Damage Assessment and Restoration Fund (the "CASITAS OPA Incident NRD Account").

(I) DOI shall, in accordance with law, manage and invest funds in the CASITAS OPA Incident NRD Account and any return on investments or interest accrued on the Account for use by the Trustees in connection with the further assessment and restoration of Natural Resources affected by the Incident. DOI shall not make any charge against the CASITAS OPA Incident NRD Account for any investment or management services provided.

(ii) DOI shall hold all funds in the CASITAS OPA Incident NRD Account, including return on investments or accrued interest, subject to the provisions of this Decree.

(iii) The Trustees commit to the expenditure of the funds set forth in this Subparagraph (b) for further assessment and for the design, implementation, permitting (as necessary), monitoring, and oversight of restoration projects and for the costs of complying with the requirements of the law to conduct a restoration planning and implementation process.

(iv) The allocation of funds for specific restoration projects will be contained in a Restoration Plan prepared and implemented jointly by the Trustees, for which public notice, opportunity for public input, and consideration of public comment will be provided. The Trustees jointly retain the ultimate authority and responsibility to use the funds in the CASITAS OPA Incident NRD Account to Restore Natural Resources in accordance with applicable law, this Consent Decree, and any Memorandum of Understanding among them. Decisions regarding any use or expenditure of funds under this Section shall be made by the Trustees, and Defendants shall not be entitled to dispute, in any forum or proceeding, any decision relating to use of funds or restoration efforts under this Section.

(c) Payment for DOI Assessment Costs. The sum of $14,018 to DOI, Natural Resource Damage Assessment and Restoration Fund, Account No. 14X5198- CASITAS OPA Incident NRD Account, for reimbursement of its unpaid Natural Resource Damage Assessment costs through June 7, 2008, associated with the Incident. Payment shall be made by EFT to the U.S. Department of Justice in accordance with instructions that the Financial Litigation Unit of the

U.S. Attorney's Office for the District of Hawaii shall provide to the Defendant. At the time of payment, the Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which shall reference DOJ case number 90-5-1-1-09389) to the Parties in accordance with Section IX of this Decree ("Notices").

(d) Payment for NOAA Assessment Costs. The sum of $70,021.35 to NOAA for reimbursement of its unpaid Natural Resource Damage Assessment costs through June 7, 2008, associated with the Incident. Payment shall be made by EFT to the U.S. Department of Justice in accordance with instructions that the Financial Litigation Unit of the U.S. Attorney's Office for the District of Hawaii shall provide to the Defendant. At the time of payment, the Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which shall reference DOJ No. 90-5-1-1-09389) to the Parties in accordance with Section IX of this Decree ("Notices").

(e) Payment for NOAA Response Costs. The sum of forty thousand dollars ($40,000) to NOAA for reimbursement of its unpaid Response Costs associated with the Incident. Payment shall be made by EFT to the U.S. Department of Justice in accordance with instructions that the Financial Litigation Unit of the U.S. Attorney's Office for the District of Hawaii shall provide to the Defendant. At the time of payment, the Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which shall reference DOJ No. 90-5-1-1-09389) to the Parties in accordance with Section IX of this Decree ("Notices").

7. In the event that the Defendant fails to make any of the payments referred to in Paragraph 6 on time, compound interest shall be assessed on such unpaid payment(s) at the annual rate established pursuant to 28 U.S.C. § 1961 for each day that the payment is late.

8. In the event that Defendant fails to make the payments referred to in Paragraph 6 on time, and in addition to any interest accrued thereon, Defendants shall pay a stipulated penalty of $1,000 per day of non-payment.

9. Any stipulated penalty owing to the United States shall be paid by EFT in accordance with instructions to be provided by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Hawaii, or by certified or cashier's check in the amount due,

payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-09389, and delivered to the office of the United States Attorney, Financial Litigation Unit, District of Hawaii, PJKK Federal Building, 300 Ala Moana Blvd., #6-100, Honolulu, HI 96850, Phone: (808) 541-2850. Payment of stipulated penalties shall be accompanied by transmittal correspondence stating that any such payment is for late payment of amount(s) due under this Decree and shall reference DOJ No. 90-5-1-1-09389 and the civil action name and number.

10. Defendant shall not deduct any stipulated penalty paid under this Section in calculating its federal income taxes.

VII. EFFECT OF SETTLEMENT

11. In consideration of the payments that will be made by Defendant pursuant to this Consent Decree, and effective solely upon Defendant's performance of its payment obligations as set forth in Section VI of this Decree, Plaintiffs covenant not to sue and agree not to assert any civil claims or causes of action against the Defendant pertaining to the Incident for (a) Damages or Response Costs under OPA, CERCLA, or state law, and (b) civil penalties under Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7). Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against the Defendant with respect to all matters not expressly included within this Paragraph.

12. Notwithstanding any other provision of this Consent Decree, Plaintiffs reserve the right to institute proceedings against Defendant in this action or in a new action seeking recovery of Response Costs, Damages, or injunctive relief based on: (I) conditions caused by the Incident, unknown to Plaintiff as of the date of lodging of this Consent Decree; or (ii) information received by Plaintiff after the date of lodging of this Consent Decree, and such conditions or information indicate that the Incident has resulted in injury to, destruction of, or loss of Natural Resources of a type or future persistence that was unknown to Plaintiffs as of the date of lodging of this Consent Decree, or that these previously unknown conditions or new information indicate that the Response Actions taken to date are not protective of human health or the environment.

13. Effective upon Entry of the Consent Decree, Defendant and any of Defendant's successors, assigns, subrogees, subrogors, and insurers hereby covenant not to sue and agree not to assert any claims or causes of action of any nature or kind against the United States or the State with respect to any and all claims or causes of action arising out of, relating to, or pertaining to this Decree or to the Incident, including, but not limited to, any claims against the Hazardous Substance Superfund established under CERCLA or the Oil Liability Trust Fund established under OPA, and any claims for contribution under CERCLA or OPA. These covenants not to sue shall not apply in the event that the United States or the State brings a cause of action pursuant to the reservations set forth in Paragraph 12, but only to the extent that Defendant's claims arise from the same Response Costs or Damages that the United States or the State is seeking pursuant to the reservation.

14. This Decree does not limit or affect the rights of Plaintiffs or Defendant against any third parties, not party to this Decree, nor does it limit the rights of third parties, not party to this Decree, against Defendant. 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.

15. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for injunctive relief, recovery of Response Costs or Natural Resource Damages, or other relief relating to the Incident, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, statute of limitations, or other defenses based upon any contention that the claims raised by the Plaintiffs in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not To Sue set forth in Section VII.

VIII. COSTS

16. Plaintiffs shall be entitled to collect the costs (including reasonable attorneys' fees) incurred in any action necessary to collect any portion of the amounts due under Section VI or any stipulated penalty due but not paid under Section VI, above.

17. Subject to Paragraph 16, each Party shall bear its own attorneys fees and costs in this action.

IX. NOTICES

18. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed to the persons identified below. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. 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.

To the United States:

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Senior Admiralty Counsel
Torts Branch, Civil Division
U.S. Department of Justice
7-5395 Federal Bldg., Box 36028
450 Golden Gate Avenue
San Francisco, California 94102-3463
Telephone: (415) 436-6648
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Chief
Environmental Enforcement Section
DJ# 90-5-1-1-09389
United States Department of Justice
P.O. Box 7611
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Charles McKinley
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To the State:

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Deputy Attorney General
Department of the Attorney General
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To Defendants:

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Holmes Weddle & Barcott
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999 Third Avenue, Ste. 2600
Seattle, Washington 98104
Telephone: (206) 292-8008
Fax: (206) 340-0289
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Telephone: (562) 436-2000
Fax: (562) 436-7416
al.peacock@kyl.com.

X. RETENTION OF JURISDICTION

19. 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.

XI. MODIFICATION

20. The terms of this Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

XII. PUBLIC PARTICIPATION

21. This Decree shall be lodged with this Court for a period of not less than thirty (30) days to allow the opportunity for public notice and comment. The United States reserves the right to withdraw from or withhold their consent to this Decree if the comments from the public regarding the Decree disclose facts or considerations indicating that the Decree is inappropriate, improper, or inadequate.

22. Defendant consents to Entry of this Decree without further notice. Defendant agrees not to oppose the Entry of this Decree by the Court or to challenge any provision of the Decree, unless the consent of the United States has been withdrawn or withheld under the circumstances set forth in the preceding Paragraph, or Plaintiffs have notified Defendant in writing that Plaintiffs no longer support or agree to the Entry of this Decree.

23. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIII. SIGNATORIES/ SERVICE

24. Each undersigned representative of Defendant, the State, and the United States 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 or Parties he or she represents to this document.

25. This Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

26. Should Plaintiffs, after Entry of this Decree, commence an action in this Court or any other court of competent jurisdiction to enforce any of the terms of this Decree, then, with respect to such action and only with respect to such action, Defendant agrees to accept service of process by mail of such action 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.

XIV. INTEGRATION

27. This Decree 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. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XV. FINAL JUDGMENT

28. Upon approval and Entry of this Decree by the Court, this Decree shall constitute a final judgment of the Court, in accordance with Rules 54 and 58 of the Federal Rules of Civil Procedure, as among the Parties.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: _____

_____
DAVID ALAN EZRA
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. F/V North Wind, Inc.:

FOR THE UNITED STATES OF AMERICA:

GREGORY G. KATSAS
Acting Assistant Attorney General
EDWARD H. KUBO, JR.
United States Attorney
R. MICHAEL UNDERHILL
Attorney in Charge, West Coast Office
Torts Branch, Civil Division

Date: 11/13/06

R. SCOTT BLAZEVICH
Senior Admiralty Counsel
Torts Branch, Civil Division
U.S. Department of Justice
7-5395 Federal Bldg., Box 36028
450 Golden Gate Avenue
San Francisco, California 94102-3463
Telephone: (415) 436-6635

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. F/V North Wind, Inc.:

FOR THE UNITED STATES OF AMERICA:

Date: 8 November 2008

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C.

Date: Oct 17, 2008

STEVE O'ROURKE
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Washington, D.C. 20044
Telephone: (202) 514-2779

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. F/V North Wind, Inc.:

FOR THE STATE OF HAWAII:

Date: 10/27/08

Kathleen Ho
Deputy Attorney General
Department of the Attorney General
State of Hawaii
465 S. King Street, Room 200
Honolulu, Hawaii 96813
(808) 587-3050

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. F/V North Wind, Inc.:

FOR THE DEFENDANT F/V NORTH WIND, Inc.:

Date: Sept 30, 2008

Peter Kelly
President
F/V North Wind, Inc.

Date: 9/30/08

Michael A. Barcott
Holmes Weddle & Barcott
Wells Fargo Center
999 Third Avenue, Ste. 2600
Seattle, Washington 98104
Telephone: 206-292-8008
Fax: 206-340-0289

Date: 10/10/08

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