

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

v.

MICHAEL MURPHY

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CRIMINAL NO. 10-235

SECTION “R”

FACTUAL BASIS

Should this case proceed to trial, the parties stipulate that the following could be proven competent evidence and testimony beyond a reasonable doubt.

The United States is part of an international regime that regulates the discharge of oil from vessels at sea: the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (hereafter, the “MARPOL Protocol”). The MARPOL Protocol is embodied in numerous agreements that the United States has ratified and has been implemented in the United States by the “Act to Prevent Pollution from Ships” (“APPS”), 33 U.S.C. §§ 1901, et seq. APPS makes it a crime for any person to knowingly violate the MARPOL Protocol, APPS, or regulations promulgated under APPS. These regulations apply to all commercial vessels operating in United States waters or while at a port or terminal under the jurisdiction of the United States, including vessels operating under the authority of a country

other than the United States. The APPS regulations also apply to all American-flagged vessels regardless where they operate.

The MARPOL Protocol and APPS set the legal standard for the maximum amount of oil permitted to be discharged overboard by a vessel, namely, 15 ppm, unless there are exigent circumstances or in the case of an emergency. Therefore, under the MARPOL Protocol, only waste containing less than 15 ppm of oil can be discharged overboard into the ocean. The MARPOL Protocol also requires that vessels use an oil-sensing device (or oil content meter), such as that found on an Oily Water Separator, to prevent the discharge of a mixture containing more than the legally permitted concentration of oil.

The APPS regulations require that each non-tanker vessel of more than 400 gross tons, maintain a record known as an Oil Record Book. In this Oil Record Book, all transfers of oil, the disposal of sludge and waste oil, and overboard discharges of bilge water that have accumulated in machinery spaces, and thus are contaminated with oil, must be fully recorded by the person in charge of the operations. 33 C.F.R. § 151.25 (d). The Oil Record Book must be maintained on-board the vessel for not less than three years, and be readily available for inspection at all reasonable times. 33 C.F.R. § 151.25 (k).

The United States Coast Guard (“U.S. Coast Guard”), an agency of the United States Department of Homeland Security, is charged with enforcing the laws of the United States and is empowered under Title 14, United States Code, Section 89(a) to board vessels and conduct inspections and investigations of potential violations, and to determine compliance with the MARPOL Protocol, APPS, and related regulations.

In conducting inspections to determine compliance with environmental laws and regulations, U.S. Coast Guard personnel rely on the statements of the vessel's crew and official ship's documents, such as the Oil Record Book. The U.S. Coast Guard is specifically authorized to examine a vessel's Oil Record Book to determine, among other things, whether the vessel has operable pollution prevention equipment and has followed appropriate procedures, whether it poses any danger to United States ports and waters, and whether the vessel had discharged any oil or oily mixtures in violation of the MARPOL Protocol, APPS, or any other applicable federal law. 33 C.F.R. § 151.23(a)(3),(c).

Presenting or causing another to present an Oil Record Book containing false information to U.S. Coast Guard personnel is a criminal violation.

Defendant Michael Murphy was the chief engineer on the *R/V Laurence M. (L.M.) Gould* ("*R/V Gould*"), a 2966 gross ton American-flagged vessel that served as an ice-breaking research vessel working under contract for the National Science Foundation ("NSF").

The *R/V Gould* generated quantities of waste oil due to leaks and drips from the engines' lubrication and fuel systems and/or the normal operation of vessel machinery. This waste oil combined with water, detergents, solvents, and other wastes that accumulated in the bottom or the "bilges" of the vessel formed oily wastewater. This oil-contaminated bilge waste could not be discharged overboard if it contains more than fifteen (15) parts per million ("ppm") of oil. Accordingly, the *R/V Gould* have two choices: (1) store the oil-contaminated bilge waste on-board until such time as it can be discharged ashore, or (2) process the oil-contaminated bilge waste on board using a pollution prevention control device known as an Oily Water Separator.

An Oily Water Separator was a device that reduced the amount of oil in the bilge waste water to less than 15 ppm. After passing through the Oily Water Separator, bilge waste containing less than 15 ppm oil may be discharged overboard.

As chief engineer, defendant Michael Murphy was responsible for the operation of the ship's engineering spaces and ensuring that the vessel's waste-containing oil was properly disposed of from the vessel. Defendant Michael Murphy was responsible for keeping an accurate record of all discharges of waste oil from the *R/V Gould* in the vessel's Oil Record Book. This responsibility included ensuring that when the Oil Record Book was presented to U.S. Coast Guard personnel performing inspections aboard the *R.V. Laurence M. Gould*, the information recorded in the Oil Record Book was true and accurate.

Beginning in July 2004 and continuing until September 27, 2005, Defendant Murphy, on a routine and regular basis, while on the high seas, ordered crew members to discharge oily wastewater overboard to keep the bilge tank from filling to capacity. During this time period, while on the high seas, Defendant Murphy was aware that crew members could not be discharging the oily wastewater through the Oily Water Separator, because Defendant Murphy knew that the Oily Water Separator was not working properly, and had not been maintained or repaired

When U.S. Coast Guard personnel conducted inspections aboard the *R/V Laurence M. Gould*, on September 27, 2005, the defendant Michael Murphy presented the Oil Record Book to Coast Guard personnel for inspection, knowing that it contained false entries for the discharges of oily wastewater, because he knew that the Oily Water Separator was not being operated properly to keep the concentration of oil in the wastewater at or below 15 ppm.

Pursuant to 18 U.S.C. § 3238, for an offense that began or was committed upon the high seas or elsewhere out of the jurisdiction of any particular State or district, the trial shall be in the district in which the offender, or any one of two or more joint offenders is brought. Offshore Vessel Services, LLC (“OSV”), a limited liability company located in Galliano, Louisiana, in the Eastern District of Louisiana, was the owner and operator of the *R/V Laurence M. Gould*. OSV pled guilty on July 29, 2010 in federal court, Criminal Number 10-183 “L”, to an APPS violation, Title 33 United States Code, Section 1908, arising from the same set of facts as contained in this factual basis regarding the operation of the *R/V Laurence M. Gould* by the defendant Murphy. Consequently, under § 3238 defendant Murphy may be properly charged in the instant Bill of Information. Defendant Murphy consents to the charges filed in the Eastern District of Louisiana, and has confessed to presenting a false Oil Record Book to the Coast Guard. Defendant Murphy waives any issue of venue and agrees to enter his plea of guilty in the Eastern District of Louisiana.

IGNACIA S. MORENO
ASSISTANT ATTORNEY GENERAL
Environment & Natural Resources Division
U.S. Department of Justice

Daniel W. Doohar
Senior Trial Attorney
Environmental Crimes Section

Michael Murphy Defendant	Date
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