

ELLEN MAHAN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

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

Attorneys for Plaintiff
UNITED STATES OF AMERICA

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

)

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

AZURE FISHERY LLC,)

HANH THI NGUYEN,)

KHANG QUANG DANG,)

ANDY NGOG HOANG,)

TUAN HOANG, and)

LINH FISHERY LLC,)

Defendants.)

**Civil Action No.
1:18-cv-00339-LEK-RLP**

**SECOND PARTIAL
CONSENT DECREE**

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE	3
II.	APPLICABILITY	4
III.	DEFINITIONS	5
IV.	INJUNCTIVE RELIEF	7
V.	STIPULATED PENALTIES	13
VI.	FORCE MAJEURE	16
VII.	DISPUTE RESOLUTION	19
VIII.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS	22
IX.	COSTS	25
X.	NOTICES	25
XI.	EFFECTIVE DATE	26
XII.	RETENTION OF JURISDICTION	27
XIII.	MODIFICATION	27
XIV.	TERMINATION	27
XV.	PUBLIC PARTICIPATION	28
XVI.	SIGNATORIES/SERVICE	29
XVII.	INTEGRATION	29
XVIII.	26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION	30
XIX.	FINAL JUDGMENT	30

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

APPENDIX B: Oil Log Book

SECOND PARTIAL CONSENT DECREE

Plaintiff, the United States of America, on behalf of the United States Coast Guard, has filed a Complaint 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 by all Defendants except Linh Fishery and Tuan Hoang. 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 (“FDCPA”), 28 U.S.C. § 3001 *et seq.*

The claims against defendants Hanh Nguyen and Khang Dang were resolved through a Partial Consent Decree (“First Partial CD”) entered by the Court on October 25, 2018. (ECF No. 20).

This Second Partial Consent Decree resolves the claims alleged in the Complaint against Linh Fishery LLC (“Settling Defendant”). Settling Defendant

does 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 Defendant. Settling Defendant asserts that it is committed to operating safely and in conformance with pollution control laws and regulations.

The other defendants, Azure Fishery LLC, Hanh Nguyen, Khang Dang, Andy Hoang, and Tuan Hoang, are not parties to this Second Partial Consent Decree.

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 Defendant is located and doing business in this district. For purposes of this Decree, or any action to enforce this Decree, Settling Defendant consents to the Court's jurisdiction over this Decree and any such action arising from this Decree and over Settling Defendant. Settling Defendant consents to venue in this judicial district.

2. For purposes of this Decree, Settling Defendant agrees 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 Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. Settling Defendant 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 Defendant shall ensure that those people are provided an oral briefing of the pertinent provisions of this Decree. Settling Defendant 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 Defendant of its 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 Defendant as a Party under the Decree and thus be bound by the terms thereof, (2) the United States consents to relieve Settling Defendant of its obligations, and (3) the Court approves a joint motion from the United States, Settling Defendant, 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 Defendant 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 XI;

“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 Defendant;

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

“Settling Defendant” shall mean Linh Fishery LLC;

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

IV. INJUNCTIVE RELIEF

8. Settling Defendant shall ensure that the injunctive relief measures in this Section are performed with respect to the *St. Joseph* (Official Number: 916657, formerly known as the *Jaxon T*). The *St. Joseph* and any other vessels owned by Settling Defendant are subject to Coast Guard boarding and inspection at any time.

9. Settling Defendants shall perform steps to assess the *St. Joseph*'s working bilge capacity and the daily oily bilge generation rate and make appropriate repairs to the vessel 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 *St. Joseph* shall not embark on or continue any voyages that exceed its 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.

10. Settling Defendant shall periodically assess and document the *St. Joseph'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 the *St. Joseph* for at least one fishing voyage within every three-month period for one year after the Effective Date of this Decree. This one-year period is conditioned on complete compliance with this Paragraph. In the event of non-compliance with this Paragraph during the one-year period, the period will be extended to a second year. In the event of non-compliance with this Paragraph during the second year, the period will be extended

to a third year. The results shall be described in the reports submitted under Paragraph 19 below.

11. For three years after the Effective Date of this Decree, (1) all oil transfers to or from the *St. Joseph*, including but not limited to fuel oil, lube oil, hydraulic oil, and any waste oil, (2) all oil changes performed on the vessel, and (3) all discharges to shore reception facilities shall be recorded in an Oil Log Book that is maintained on board the vessel 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.

12. 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 vessel 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 Defendant shall create and retain its 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 Defendant. Settling Defendant also shall take a photograph of the drums

into which it places the waste and of any containers of waste it leaves at the facility.

13. 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 *St. Joseph* shall be obtained and retained on board the vessel with the Oil Log Book and are subject to Coast Guard inspection.

14. 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 *St. Joseph* 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.

15. 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 *St. Joseph* 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.

16. 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 Defendant shall contact Coast Guard Sector Honolulu by telephone or email and report the bilge measurement from the designated bilge reference location.

17. Prior to every fishing voyage after the Effective Date of this Decree, the operator of the *St. Joseph* 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.

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

19. In the 6th, 12th, 24th, and 36th month after the Effective Date of this Decree, Settling Defendant shall submit a report on the *St. Joseph's* 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 the 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 vessel during each of the fishing voyages prior to the report deadline and comparing it to the 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 vessel is properly managing its oily waste streams;
- e. Results of the periodic bilge waste generation assessment required in Paragraph 10 above, including the Sounding Log Book and photographs for the applicable reporting period.
- f. a copy of the pages of the 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.

20. Each report, letter report, or certification submitted by 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.

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

22. 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.

V. STIPULATED PENALTIES

23. Settling Defendant 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.

24. If a Settling Defendant fails to perform, or ensure performance of, the injunctive relief required under Section IV (Injunctive Relief) when due, Settling Defendant 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.

25. Settling Defendant shall pay any stipulated 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 Settling Defendant 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 United States Treasury.

26. For all payments of stipulated penalties, Settling Defendant shall reference Civil Action Number 1:18-cv-00339-LEK-RLP and DOJ Number 90-5-1-1-11849 and shall specify that the payments are (1) for stipulated penalties for delayed performance of injunctive relief required under this Decree and (2) to be deposited into the United States Treasury.

27. At the time of payment, Settling Defendant shall send a copy of the check or EFT authorization and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for stipulated penalties pursuant to the Partial Consent Decree in this case, and shall reference Civil Action Number 1:18-cv-00339-LEK-RLP and DOJ Number 90-5-1-1-11849, to the United States in accordance with Section X of this Decree (Notices).

28. 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.

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

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

31. Stipulated penalties shall continue to accrue as provided in Paragraphs 24 and 28, 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 Defendant 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 Defendant 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 Defendant shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

32. If Settling Defendant fails to pay stipulated penalties according to the terms of this Decree, Settling 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 Settling Defendant's failure to pay any stipulated penalties.

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

34. Subject to the provisions of Section VIII 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 Settling Defendant's violation of this Decree or applicable law.

VI. FORCE MAJEURE

35. "Force majeure," for purposes of this Decree, is defined as any event arising from causes beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors, that delays or prevents the performance of any obligation under this Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that Settling Defendant 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 Defendant's financial inability to perform any obligation under this Decree.

36. 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 Defendant shall provide notice orally or by electronic or facsimile

transmission to the Coast Guard within seventy-two (72) hours of when Settling Defendant first knew that the event might cause a delay. Within seven (7) Days thereafter, Settling Defendant 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 Defendant's 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 Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Settling Defendant 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 Defendant 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 Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known.

37. 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 Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

38. 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 Defendant in writing of its decision.

39. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section VII (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of the United States' notice. In any such proceeding, Settling Defendant 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 Defendant complied with the requirements of Paragraphs 35 and 36. If Settling Defendant carries this burden,

the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Decree identified to the United States and the Court.

VII. DISPUTE RESOLUTION

40. 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 Defendant's failure to seek resolution of a dispute under this Section shall preclude Settling Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Settling Defendant arising under this Decree.

41. 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 Defendant sends 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 Defendant invokes formal dispute resolution procedures as set forth below.

42. Formal Dispute Resolution. Settling Defendant 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 Defendant's position and any supporting documentation relied upon by Settling Defendant.

43. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Settling Defendant's 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 Defendant, unless Settling Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

44. Settling Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section X (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 Defendant's 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.

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

46. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 44, Settling Defendant shall bear the burden of demonstrating that its position complies with this Decree and better furthers the objectives of the Decree.

47. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Settling Defendant 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 31. If Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section V (Stipulated Penalties).

VIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

48. This Partial Consent Decree resolves the civil claims of the United States alleged in the Complaint against Settling Defendant up to the date of lodging of this Decree.

49. The civil claims of the United States alleged in the Complaint against Azure Fishery LLC, Andy Ngog Hoang, and Tuan Hoang are being addressed through separate filings.

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

51. 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 48. 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 48. 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 Defendant’s vessels or operations,

whether related to the violations addressed in this Decree or otherwise, except as expressly provided in Paragraph 48.

52. 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 Defendant's violations, Settling 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 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 48.

53. This Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Settling Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Settling Defendant's 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 Defendant's 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.

54. This Decree does not limit or affect the rights of Settling Defendant 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 Defendant, except as otherwise provided by law.

55. 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.

56. Settling Defendant hereby covenants not to sue and agrees 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 Defendant further covenants not to sue and agrees 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.

IX. COSTS

57. 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 Defendant.

X. NOTICES

58. 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 Defendant: Linh Fishery LLC
 c/o Linh Pham
 1108 Clio Street
 Honolulu, HI 96822

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

60. 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.

XI. EFFECTIVE DATE

61. 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.

XII. RETENTION OF JURISDICTION

62. 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.

XIII. MODIFICATION

63. 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.

64. Any dispute concerning modification of this Decree shall be resolved pursuant to Section VII (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).

XIV. TERMINATION

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

66. Following receipt by the United States of Settling Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Settling Defendant has 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.

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

XV. PUBLIC PARTICIPATION

68. 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 Defendant consents to entry of this Decree without further notice and agrees 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 Defendant in writing that it no longer supports entry of the Decree.

XVI. SIGNATORIES/SERVICE

69. Each undersigned representative of Settling Defendant 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.

70. This Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Settling Defendant agrees 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.

XVII. INTEGRATION

71. 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

72. 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 IV (Injunctive Relief), Paragraphs 10–20 and related Appendices A and B, is restitution or required to come into compliance with law.

XX. FINAL JUDGMENT

73. 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 _____, 2019.

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:

3/12/19
Date



ELLEN MAHAN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

3/12/19
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):

11 MAR 2019
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

4 March 2019
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 LINH FISHER LLC:

Mar 3 / 2019
Date



Linh Pham
Managing Member, Linh Fishery LLC
1108 Clio Street
Honolulu, HI 96822

Bryan Y.Y. Ho¹
Attorney for Linh Fishery LLC
841 Bishop Street, Suite 909
Honolulu, HI 96813

¹ Approved as to form and content.

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: within four weeks of the Effective Date of the Consent Decree.

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: within six weeks of the Effective Date of the Consent Decree.

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 next fishing voyage after performing Steps 1 and 2 above.

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

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

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