UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
CENTRAL ISLIP

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UNITED STATES OF AMERICA,

PLEA AGREEMENT

Case No. **2:13-cr-00282-JFB-1**

- against -

C & C OCEAN FISHERY, LTD.,

Defendant.

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Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the Environmental Crimes Section of the Environment and Natural Resources Division of the United States Department of Justice (the "Government") and C & C OCEAN FISHERY, LTD., also known as C&C Ocean Ltd. (together, "C&C OCEAN") agree to the following:

1. Counts of Conviction. The organizational defendant C&C OCEAN will waive indictment and plead guilty to Counts One, Two, Three, and Four of the four-count Information filed in the above-captioned matter, charging a violation of 18 U.S.C. § 1343 (Wire Fraud) and three violations of 18 U.S.C. § 1519 (Falsification of Federal Records). Count One (Wire Fraud) carries the following statutory penalties:

a. Maximum Fine: $500,000 or twice the gross pecuniary gain/loss, whichever is greater. Defendant has agreed to pay a total fine of $275,000.00, *see* numbered paragraph 6 *infra*. (18 U.S.C. § 3571(c)(3) and (d));

b. Restitution: In an amount to be determined by the Court, but as set forth in numbered paragraph 7 *infra*, the defendant has agreed to pay restitution of $99,800.00. (18 U.S.C. § 3663);

c. Special Assessment: $400.00.

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COURT EXHIBIT
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d. Maximum Organizational Probation: 5 years. As set forth in numbered paragraph 8 *infra*, the defendant has agreed to a term of probation and four Special Conditions of Probation, including dissolving the corporation. (18 U.S.C. § 3561(c)(1)).

Counts Two, Three, and Four (Falsification of Federal Records) carry the following statutory penalties:

a. Maximum Fine: Per count of conviction, $500,000 or twice the gross pecuniary gain/loss, whichever is greater. Defendant has agreed to pay a total fine of $275,000.00, *see* numbered paragraph 6 *infra*. (18 U.S.C. § 3571(c)(3) and (d));

b. Restitution: In an amount to be determined by the Court, but as set forth in numbered paragraph 7 *infra*, the defendant has agreed to pay restitution of $99,800.00. (18 U.S.C. § 3663);

c. Special Assessment: $400.00 per count of conviction. (18 U.S.C. § 3013); and

d. Maximum Organizational Probation: 5 years. As set forth in numbered paragraph 8 *infra*, the defendant has agreed to a term of probation and four Special Conditions of Probation, including dissolving the corporation. (18 U.S.C. § 3561(c)(1)).

2. Elements of Wire Fraud. Count One charges Wire Fraud, 18 U.S.C. § 1343. The elements of that offense are that:

(a) Within the Eastern District of New York;

(b) The defendant did knowingly and intentionally devised a scheme and artifice to defraud, or to obtain money or property;

(c) By means of materially false and fraudulent pretenses or representations; and

(d) For the purpose of executing such scheme and artifice, transmit and

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cause to be transmitted writings, signs, and signals by means of a wire communication in interstate commerce.

3. Elements of 18 U.S.C. § 1519. Counts Two, Three, and Four charge Falsification of Federal Records (Sarbanes-Oxley). The elements of that offense are that:

(a) Within the Eastern District of New York;

(b) The defendant did knowingly falsify or make false entries into records or documents;

(c) With the intent to impede, obstruct, or influence the proper administration of any matter; or

(d) In relation to and in contemplation of such matter;

(e) Within the jurisdiction of any department and agency of the United States.

4. Factual Basis. The defendant admits all of the charges and allegations contained in the Information. The defendant affirms that it is pleading guilty because it is in fact guilty of Counts One, Two, Three, and Four. C&C OCEAN agrees that the following facts are true, and if brought to trial, the Government could prove the following facts beyond a reasonable doubt, and that the following facts do not represent the entirety of the Government's evidence, and that these stipulated facts are sufficient to support a conviction on all counts in the Information:

(a) C&C OCEAN was a New York corporation based in Freeport, New York that was engaged in the business of purchasing seafood directly from a federally permitted vessel and then selling that seafood to secondary fish markets and distributors on Long Island. In order to purchase seafood directly from federally licensed vessels, C&C OCEAN was required by National Oceanic and Atmospheric Administration ("NOAA") regulations to hold a federal

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fisheries dealer permit. During the years 2009 - 2011, C&C OCEAN was the holder of Northeast Federal Dealer Permit No. 1823.

(b) From before 2009 to November 21, 2011, C&C OCEAN was a non-public company that was operated by an uncharged individual ("MR. X")[1]. As of November 21, 2011, Charles Wertz, Jr. ("WERTZ") had a controlling interest in C&C OCEAN.

(c) WERTZ and MR. X were also the operators of the 64-foot, green hulled trawler/dragger *F/V Norseman.* Before his passing, MR. X was the owner of the *Norseman*. After Mr. X passed away, WERTZ received a controlling interest in the *Norseman.*

Photo 1. *F/V Norseman.*

(d) During the years 2009 - 2011, C&C OCEAN purchased over 97% of its fish from the *Norseman*, and the *Norseman* sold 100% of its fish (that it landed in New York) to C&C OCEAN. Although, on paper, the operations of the *Norseman* and C&C OCEAN were legally separate, in real life, the transactions between WERTZ and MR. X as operators of the *Norseman* and WERTZ and MR. X as operators of C&C OCEAN were not at arm's length. During the course of the charged conduct, C&C OCEAN was operated to

[1] MR. X passed away in February 2013.

cover up and aid and abet a variety of systematic overharvesting violations involving the illegal take of summer flounder (fluke) from the *Norseman*, as well as to facilitate the falsification of federal fishing logs that were perpetrated by WERTZ and MR. X as operators of the *Norseman*.

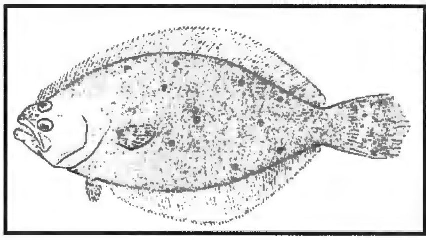

Photo 2. Summer flounder (fluke).

(e) Pursuant to NOAA regulations, all of the *Norseman*'s catch had to be reported to NOAA on federal fishing logs known as Fishing Vessel Trip Reports ("FVTR").[2] During the years 2009, 2010, and 2011, the *Norseman* principally targeted fluke. However, on multiple occasions the vessel exceeded its relevant federal and New York State quotas for fluke, as set forth in the table below:

Year	Start/End Dates	No. of Trips with Overharvested/ Unreported Fluke	Weight (Pounds)	Value
2009	May 1, 2009 to October 9, 2009	27	8,585	$21,694.60
2010	April 30, 2010 to November 16, 2010	40	14,180	$35,421.45
2011	May 2, 2011 to December 14, 2011	73	63,315	$142,483.95
TOTAL (overharvested)		**137**	**86,080**	**$199,600.00**

[2] For the year 2009, the *Norseman* falsely represented to NOAA that it caught only 24,940 pounds of fluke. For 2010, the fluke catch was falsely represented as 26,845 pounds, and for 2011, the fluke catch was falsely represented as 29,180 pounds.

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(f) In order to cover up the illegal fluke harvesting, the operators of the *Norseman* falsified the FVTRs that were submitted to NOAA. For each trip in the table, at 4(e) *supra*, a false FVTR was submitted. During 2009 and 2010, MR. X was the person who submitted the false FVTRs, but by May 2, 2011, WERTZ was falsifying and submitting the FVTRs. C&C OCEAN, through its agents, owners, and operators, was aware of the false FVTRs. C&C OCEAN was also aware that the FVTRs were utilized by NOAA as part of the administration of its statutory-mandated fisheries management program. The defendant concedes that NOAA had the legal right to seize and sell fish that was unreported on FVTRs.

(g) C&C OCEAN was not only aware of the false *Norseman* FVTRs, but it aided and abetted the perpetration of the FVTR scheme through its preparation of federal dealer reports. As a federal dealer, C&C OCEAN was required to prepare and submit federal dealer reports to NOAA. The dealer reports include information such as date of landing, port of landing, catch vessel, corresponding FVTR numbers, commercial grade, species, price, and weight. In order to cover up the overharvesting that occurred on the water, C&C OCEAN's dealer report had to match the catch data that was submitted on the corresponding FVTR. In other words, if the FVTR falsely underreported the *Norseman*'s catch of fluke, then the scheme would likely be detected unless unless the corresponding dealer report was similarly falsified. Through its

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agent WERTZ, C&C OCEAN prepared and submitted false dealer reports for each of the trips set forth in the table at 4(e) *supra*.

(h) WERTZ and C&C OCEAN electronically submitted the one hundred thirty-seven (137) false dealer reports from WERTZ's desktop computer in East Meadow, New York, through an out-of-state internet server, to NOAA's Regional Fisheries Administrator in Gloucester, Massachusetts. C&C OCEAN was aware that the dealer reports were utilized by NOAA as a check on the information submitted in FVTRs as well as part of the administration of NOAA's statutory-mandated fisheries management program. The defendant concedes that NOAA had the legal right to seize and sell fish that was unreported on the dealer reports.

(i) C&C OCEAN admits that the total net pecuniary loss to NOAA, also equal to the total net pecuniary gain, was $199,600.00

5. U.S. Sentencing Guidelines. The defendant understands that although imposition of a sentence in accordance with the United States Sentencing Guidelines ("Guidelines") is not mandatory, the Guidelines are advisory and the Court is required to consider any applicable Guidelines provisions as well as other factors enumerated in 18 U.S.C. §§ 3553(a), 3572 to arrive at an appropriate sentence in this case. The defendant acknowledges that although the parties have agreed on sanctions such as the fine, restitution, probation term, and Special Condition of Probation, the sentencing Court is free to sentence the defendant up to and including the statutory maximums set forth in numbered paragraph 1 *supra*. A sentence in excess of the stipulated penalty amounts shall not be a basis for the defendant to withdraw its guilty plea.

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6. Fine. The defendant agrees to pay a fine of $275,000.00. With regard to the Guidelines, both the defendant and the Government agree that pursuant to USSG §8C2.4(a), the base fine is $199,600.00, which is equivalent to both the pecuniary gain to C&C OCEAN and the pecuniary loss to the victim, the National Oceanic and Atmospheric Administration ("NOAA"). Pursuant to USSG §8C2.5(a), the parties stipulate that the overall culpability score is 5, with no additions or subtractions. According to USSG §8C2.6, the minimum multiplier is 1.00, and the maximum multiplier is 2.00. The base fine of $199,600.00 multiplied by 1.37775 approximately yields a total fine of $275,000.00. In the alternative, given the pervasive utilization of false dealer reports, the parties agree that C&C OCEAN is properly deemed a criminal purpose organization, and that pursuant to USSG §8C1.1, the fine shall be a set at a level high enough to divest C&C OCEAN of its net assets, which the parties agree are $275,000.00. Unless otherwise ordered by the Court, the stipulated fine of $275,000.00 shall be paid at sentencing.

7. Restitution. Pursuant to 16 U.S.C. § 1861(e) and 18 U.S.C. § 3663, on the day of sentencing, C&C OCEAN shall pay $99,800.00 in restitution to NOAA in the form of a certified or cashier's check made out to the "NOAA Asset Forfeiture Fund" to be delivered to NOAA Finance, ATTN: Asset Forfeiture Fund Payment, 20020 Century Blvd., Germantown, Maryland 20874. Once payment is transmitted and delivery confirmed, the defendant shall file a Notice with the Court as proof of payment. C&C OCEAN acknowledges that the total restitution due for this case (both defendants) is $199,600.00 and that C&C OCEAN's share of the restitution is half of that amount, with the other half payable by the co-defendant Charles Wertz, Jr. If Charles Wertz, Jr. does not pay his share of the restitution within the time period specified in his plea agreement, then the other $99,800.00 shall be immediately due and collectable from C&C OCEAN without limitation to whatever remedies are available against Charles Wertz, Jr.

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8. Organizational Probation and Special Conditions of Probation. C&C OCEAN shall be placed on organizational probation for five (5) years, unless and until, to the satisfaction of the Government and the U.S. Probation Office, C&C OCEAN fully complies with the four Special Conditions of Probation contained in this numbered paragraph. In any event, without regard to the length of probation, C&C OCEAN agrees to be bound by the following four Special Conditions of Probation, in addition to whatever conditions of probation are imposed by the Court:

> **Special Condition No. 1.** As of the date of sentencing, C&C OCEAN shall be banned and prohibited from engaging in the sale, purchase, storage, transfer, barter, or transport of seafood and seafood products.
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> **Special Condition No. 2.** As of the date of sentencing, C&C OCEAN shall relinquish, and shall not seek to retrieve or obtain anew, its federal dealer license.
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> **Special Condition No. 3.** Within 90 days of sentencing, C&C OCEAN shall divest itself of any and all of its interest in the *F/V Norseman* and *F/V Norseman*'s Northeast Federal Fishing Permit. This interest cannot be transferred to the spouse or children of Charles Wertz, Jr. The deadline for divestiture is subject to an extension of 90 days with the consent of the Government and the U.S. Probation Office.
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> **Special Condition No. 4.** Within 90 days of sentencing, C&C OCEAN shall wind itself up, dissolve, cease doing business, and surrender its New York State business license. The initial deadline for wind up and dissolution is subject to an extension of 90 days with the consent of the Government and the U.S. Probation Office.

9. Special Assessment. The defendant shall pay a special assessment of $1,600.00, which is due in full at sentencing.

10. Appellate and Other Waivers. C&C OCEAN agrees to give up its right to appeal its conviction, the judgment, and orders of the Court. C&C OCEAN also agrees to waive any right it might have to appeal any aspect of the sentence, including any orders relating to restitution. The defendant agrees not to file any collateral attack on the conviction or sentence, including a petition under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, or motion under 18 U.S.C. §

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3582, at any time in the future after the defendant is sentenced. Nevertheless, the defendant may bring a post-conviction claim if the defendant establishes that ineffective assistance of counsel directly affected the validity of this waiver of appeal and collateral challenge rights or the validity of the guilty plea itself. Subject to the foregoing, the defendant reserves the right to bring a direct appeal of any sentence imposed in excess of the statutory maximum. The foregoing waivers are binding without regard to the sentencing analysis used by the Court. The defendant understands that the Government might not preserve any physical evidence obtained in this case and in no way shall the defendant rely on the Government preserving physical evidence for any purpose. C&C OCEAN hereby waives any claim to any physical evidence, papers, or electronic media in the possession, custody, or control of the Government. The defendant waives any further disclosure or discovery from the Government. C&C OCEAN further waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and further agrees not to file any request for documents from any agency or department of the Executive Branch. Further, the defendant waives any right to seek attorney's fees or litigation expenses under 18 U.S.C. § 3006A (the "Hyde Amendment"), and the defendant acknowledges that the Government's position in the instant prosecution was not vexatious, frivolous, or in bad faith.

11. Government's Obligations. The Government agrees not to file any additional criminal charges against the defendant arising from or related to any and all conduct, such conduct known to the Government as of the date the last person signed this Plea Agreement, which concerned the (i) catch, purchase, or sale of seafood or (ii) accuracy of forms submitted to NOAA or the state of New York by or on behalf of C&C OCEAN or the *F/V Norseman* that occurred from January 1, 2009, through May 1, 2013. Further, the Government agrees that the reasonable and appropriate sentence in this case is set forth above, and the Government agrees not to advocate for a different sentence unless the defendant violates the terms of the Plea Agreement.

12. Parties Bound by the Plea Agreement. This Plea Agreement is only binding upon the defendant and the Environmental Crimes Section of the Environment and Natural Resources

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Division of the U.S. Department of Justice, also known as the Government. This Plea Agreement does not bind any other federal, state, or local prosecuting authority other than the Government. The Plea Agreement does not preclude the initiation of any civil, tax, or administrative action against the defendant by any authority.

13. Corporate Resolution. Contemporaneous with the execution of this Plea Agreement, C&C OCEAN shall provide the Government with a corporate resolution identifying the corporate representative and authorizing the entry of the guilty plea, including the completion and signing of related court forms and paperwork.

14. Complete Agreement. No promises, agreements, side deals, or conditions have been entered into by the parties other than those set forth in this Plea Agreement and none will be entered into unless memorialized in writing and signed by all parties. This Plea Agreement supersedes all prior promises, agreements, and conditions between the parties. To become effective, this Plea Agreement must be signed by all signatories listed below.

ROBERT G. DREHER
ACTING ASSISTANT ATTORNEY
GENERAL OF THE ENVIRONMENT
AND NATURAL RESOURCES DIVISION
U.S. DEPARTMENT OF JUSTICE

Dated: July 24, 2013

By: ______________________
Christopher L. Hale
Trial Attorney
Environmental Crimes Section

I have read the entire Plea Agreement and have discussed it with my attorney. I understand all of its terms and am entering into the Plea Agreement knowingly and voluntarily. I have the authority to enter into this Plea Agreement on behalf of the defendant C&C OCEAN.

____
CHARLES WERTZ, JR.
Authorized corporate representative
for the defendant C&C OCEAN

____
Ronald G. Russo, Esq.
Attorney for C&C OCEAN

C&C OCEAN FISHERY, LTD.
CORPORATE RESOLUTION

The undersigned, the sole Shareholder of C&C OCEAN FISHERY, LTD., does hereby certify that the following resolutions were duly adopted at a meeting of the Board of Directors of C&C OCEAN FISHERY, LTD. at which a quorum was present and action throughout and that such resolutions have not been amended or rescinded and are in full force and effect, to wit:

RESOLVED, that C&C OCEAN FISHERY, LTD. is a domestic corporation, duly organized under the laws of the State of New York;

FURTHER RESOLVED, that all corporate shares of C&C OCEAN FISHERY, LTD. are owned by Charles Wertz, Jr.;

FUTHER RESOLVED, that the as the sole shareholder of C&C OCEAN FISHERY, LTD. Charles Wertz, Jr. has authorized C&C OCEAN FISHERY, LTD. to enter into and be bound by the Plea Agreement and resulting sentence;

FURTHER RESOLVED, that as the sole shareholder of C&C OCEAN FISHERY, LTD. Charles Wertz, Jr. is authorized to act as the corporate representative in order to appear in Court on behalf of the company, to execute all papers, applications, waivers and forms necessary to effectuate and comply with the terms of the Plea Agreement and any sentence imposed;

FURTHER RESOLVED, that as the sole shareholder of C&C OCEAN FISHERY, LTD. Charles Wertz, Jr. represents that by the time of sentencing, C&C OCEAN FISHERY, LTD. will make arrangements so that the sum of $376,000.00 (to cover the costs of the jointly recommended fine, restitution and special assessment as set forth in the Plea Agreement attached hereto) will be able to be paid to the government;

FURTHER RESOLVED, that the signing of these corporate resolutions shall constitute full ratification hereof.

IN WITNESS WHEREOF, we have, jointly and severally, hereunto set our hands and seals of C&C OCEAN FISHERY, LTD. this 9th th day of August, 20013.

C&C OCEAN FISHERY, LTD.

BY: Charles Wertz Jr.
CHARLES WERTZ, Jr.
Director, Shareholder and/or President

ACKNOWLEDGMENT PAGE

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

On the 9 th day of August in the year 2013, before me, the undersigned, personally appeared CHARLES WERTZ, Jr., individually and as Director, Shareholder and/or President of C&C OCEAN FISHERY, LTD. personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Carmela Stanga
NOTARY PUBLIC

CARMELA STANGA
Notary Public, State of New York
No. 01ST6012023
Qualified in Nassau County
Commission Expires 2-5-15