

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
3 CENTRAL ISLIP

4 -----X

5 UNITED STATES OF AMERICA,

6 - against -

7 CHARLES WERTZ, JR.,

8 Defendant.

9 -----X

PLEA AGREEMENT

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

10 Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the
11 Environmental Crimes Section of the Environment and Natural Resources Division of the United
12 States Department of Justice (the "Government") and CHARLES WERTZ, JR. ("WERTZ")
13 agree to the following:

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15 **1. Counts of Conviction.** The defendant WERTZ will waive indictment and plead
16 guilty to Counts One, Two, and Three of the four-count Information filed in the above-captioned
17 matter, charging a violation of 18 U.S.C. § 1343 (Wire Fraud) and two violations of 18 U.S.C. §
18 1519 (Falsification of Federal Records). Count One (Wire Fraud) carries the following statutory
19 penalties:
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- 22 a. Maximum Term of Imprisonment: 20 years.
(18 U.S.C. § 1343);
 - 23 b. Minimum Term of Imprisonment: 0 years.
(18 U.S.C. § 1343);
 - 24 c. Maximum Supervised Released Term: 3 years; if a condition of
25 release is violated, the defendant may be sentenced to up to 2 years
26 without credit for pre-release imprisonment or time previously
27 served on post-release supervision; pursuant to numbered paragraph 8
28 *infra*, the defendant agrees to be subject to eight (8) Special Conditions.
 - d. Maximum Fine: \$250,000 or twice the gross pecuniary gain/loss,

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1 whichever is greater.
2 (18 U.S.C. § 3571(b)(3) and (d));

3 e. Restitution: In an amount to be determined by the Court, but as
4 set forth in numbered paragraph 7 *infra*, the defendant has
5 agreed to pay restitution of \$99,800.00.
6 (18 U.S.C. § 3663); and

7 f. Special Assessment: \$100.00.
8 (18 U.S.C. § 3013).

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

11 a. Maximum Term of Imprisonment: 20 years per count.
12 (18 U.S.C. § 1519);

13 b. Minimum Term of Imprisonment: 0 years.
14 (18 U.S.C. § 1519);

15 c. Maximum Supervised Released Term: 3 years; if a condition of
16 release is violated, the defendant may be sentenced to up to 2 years
17 without credit for pre-release imprisonment or time previously
18 served on post-release supervision; pursuant to numbered paragraph 8
19 *infra*, the defendant agrees to be subject to eight (8) Special Conditions.

20 d. Maximum Fine: Per count, \$250,000 or twice the gross pecuniary gain/loss,
21 whichever is greater.
22 (18 U.S.C. § 3571(b)(3) and (d));

23 e. Restitution: In an amount to be determined by the Court, but as
24 set forth in numbered paragraph 7 *infra*, the defendant has
25 agreed to pay restitution of \$99,800.00.
26 (18 U.S.C. § 3663); and

27 f. Special Assessment: \$100.00 per count.
28 (18 U.S.C. § 3013).

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

31 (a) Within the Eastern District of New York;

32 (b) The defendant did knowingly and intentionally devised a scheme

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- 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 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 and Three 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 he is pleading guilty because he is in fact guilty of Counts One, Two, and Three. Defendant WERTZ 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 of Counts One, Two, and Three in the Information:

- (a) The co-defendant C & C Ocean Fishery, Ltd. (“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

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1 then selling that seafood to secondary fish markets and distributors on Long
2 Island. From before 2009 to November 21, 2011, C&C OCEAN was a
3 non-public company that was owned and operated by an uncharged
4 individual (“MR. X”)¹. As of November 21, 2011, WERTZ had a
5 controlling interest in C&C OCEAN.
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7 (b) In order to purchase seafood directly from federally licensed vessels, C&C
8 OCEAN was required by National Oceanic and Atmospheric Administration
9 (“NOAA”) regulations to hold a federal fisheries dealer permit. During the
10 years 2009 - 2011, C&C OCEAN was the holder of Northeast Federal Dealer
11 Permit No. 1823.
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13 (c) WERTZ and MR. X were also the operators of the 64-foot, green hulled
14 trawler/dragger *F/V Norseman*. Before his passing, MR. X was the owner of
15 the *Norseman*. When Mr. X died, WERTZ received a controlling interest in
16 the *Norseman*.
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18 **Photo 1. *F/V Norseman*.**

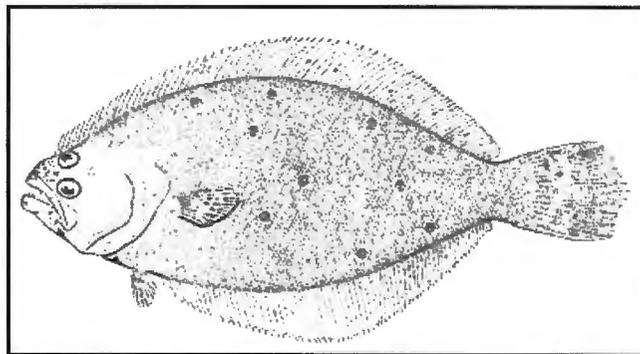
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24 (d) During the years 2009 - 2011, C&C OCEAN purchased over 97% of its fish
25 from the *Norseman*, and the *Norseman* sold 100% of its fish (that it landed in
26 New York) to C&C OCEAN. Although, on paper, the operations of the
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¹ MR. X passed away in February 2013.

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1 *Norseman* and C&C OCEAN were legally separate, in real life, the
2 transactions between WERTZ and MR. X as operators of the *Norseman* and
3 MR. X and WERTZ as operators of C&C OCEAN were not at arm's length.
4 During the course of the charged conduct, WERTZ and MR. X operated
5 C&C OCEAN to cover up and aid and abet a variety of systematic
6 overharvesting violations involving the illegal take of summer flounder
7 (fluke) from the *Norseman*, as well as to facilitate the falsification of federal
8 fishing logs that were perpetrated by WERTZ and MR. X as operators of the
9 *Norseman*.



**Photo 2. Summer
flounder (fluke).**

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18 (e) Pursuant to NOAA regulations, all of the *Norseman*'s catch had to be reported
19 to NOAA on federal fishing logs known as Fishing Vessel Trip Reports
20 ("FVTR").² During the years 2009, 2010, and 2011, the *Norseman* principally
21 targeted fluke. However, on multiple occasions the vessel exceeded its
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26 ² For the year 2009, the *Norseman* falsely represented to NOAA that it caught only 24,940
27 pounds of fluke. For 2010, the fluke catch was falsely represented as 26,845 pounds, and for
28 2011, the fluke catch was falsely represented as 29,180 pounds.

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1 relevant federal and New York State quotas for fluke, as set forth in the table
2 below:

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4 Year	5 Start/End Dates	6 No. of Trips with 7 Overharvested/ 8 Unreported Fluke	9 Weight (Pounds)	10 Value
11 2009	12 May 1, 2009 to 13 October 9, 2009	14 27	15 8,585	16 \$21,694.60
17 2010	18 April 30, 2010 to 19 November 16, 2010	20 40	21 14,180	22 \$35,421.45
23 2011	24 May 2, 2011 to 25 December 14, 2011	26 73	27 63,315	28 \$142,483.95
TOTAL (overharvested)		137	86,080	\$199,600.00

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

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21 (g) WERTZ was not only aware of the false *Norseman* FVTRs, but he aided
22 and abetted the perpetration of the FVTR scheme through his preparation of
23 federal dealer reports. As a federal dealer, C&C OCEAN was required to
24 prepare and submit federal dealer reports to NOAA. The dealer reports
25 include information such as date of landing, port of landing, catch vessel,
26 corresponding FVTR numbers, commercial grade, species, price, and weight.
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28 In order to cover up the overharvesting that occurred on the water, C&C

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

(h) WERTZ electronically submitted the one hundred thirty-seven (137) false dealer reports, that WERTZ knew to be false, 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. WERTZ 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) WERTZ 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 terms such as the Guidelines offense level, restitution, and Special Conditions of Release, the sentencing Court is free to sentence the defendant up to and including

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1 the statutory maximums set forth in numbered paragraph 1 *supra*. Notwithstanding the
2 stipulated facts in numbered paragraph 4, the Government may advise the Court and the
3 Probation Office of additional information relevant to sentencing and such information may be
4 used by the Court in determining the defendant's sentence. A sentence in excess of the
5 stipulated Guidelines offense level or other penalty amounts shall not be a basis for the defendant
6 to withdraw his guilty plea. The parties agree that the defendant is at a Criminal History
7 Category I, though recognize that this could change if contrary information becomes available.

8 The Government and WERTZ stipulate that the Guidelines calculation is as follows:
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10 Base Offense Level (USSG §2B1.1(a)(1)) 7

11 Plus: Loss of \$196,000.00. (USSG §2B1.1(b)(1)(F)) +10

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13 Less: If the defendant meets requirements of
14 USSG §3E1.1(a), he may be entitled to a two level
15 reduction for acceptance of responsibility, provided that
16 he forthrightly admits his guilt, cooperates with the Court
17 and the Probation Office in any presentence investigation
18 ordered by the Court, and continues to manifest an acceptance
19 of responsibility through and including the time of sentencing. -2

20 Less: If the defendant pleads guilty on or before August 15,
21 2013, and if he otherwise meets the requirements of USSG
22 §3E1.1(a), the Government will move for a one level reduction.
23 (USSG §3E1.1(b)) -1

24 Adjusted Offense Level: 14

25 This offense level (14) is within Zone D and carries a range of imprisonment of 15 to 21
26 months. The defendant stipulates that no other adjustments, enhancements, or variances apply to
27 the stipulated offense level, nor will the defendant argue for any such adjustments,
28 enhancements, or variances. The parties agree, however, that the defendant reserves the right
and shall be permitted, if he chooses, to argue for a sentence outside the stipulated Guidelines
range by arguing the factors set forth in 18 U.S.C. § 3553(a). The defendant acknowledges that

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1 the Government will advocate for a sentence of imprisonment within the applicable Zone D
2 range: assuming the full application of USSG §3E1.1, 15 to 21 months.

3 The defendant further recognizes that the stipulated offense level is not binding on the
4 Probation Office or the Court. If the Guidelines offense level determined by the Probation
5 Office or the Court is for any reason, including error in calculation, different from the stipulated
6 offense level, WERTZ will not be entitled to withdraw his guilty plea and the Government will
7 not be deemed to have breached the Plea Agreement. The Government commits that, apart for
8 its judgment as to the application of USSG §3E1.1 (whether it applies, and whether it is a 2 or 3
9 level reduction), it will not advocate for a prison sentence outside of the stipulated Guidelines
10 offense level.
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13 **6. Fine.** The parties have not reached an agreement with regard to a specific dollar
14 amount for a criminal fine. The parties agree that for the purposes of this Plea Agreement only,
15 the applicable fine range (assuming full application of USSG §3E1.1) is \$4,000 to \$40,000
16 pursuant to USSG §5E1.2(c)(3). The Government and WERTZ each agree not to advocate for a
17 criminal fine outside of the applicable range set forth in USSG §5E1.2(c)(3). In any event, the
18 defendant agrees to pay whatever fine is imposed by the Court as long as the fine does not
19 exceed the statutory maximum.
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22 **7. Restitution.** Pursuant to 16 U.S.C. § 1861(e) and 18 U.S.C. § 3663, on the day of
23 sentencing, WERTZ shall pay \$99,800.00 in restitution to NOAA in the form of a certified or
24 cashier's check made out to the "NOAA Asset Forfeiture Fund" to be delivered to NOAA
25 Finance, ATTN: Asset Forfeiture Fund Payment, 20020 Century Blvd., Germantown, Maryland
26 20874. Once payment is transmitted and delivery confirmed, the defendant shall file a Notice
27 with the Court as proof of payment. WERTZ acknowledges that the total restitution due for this
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1 case (both defendants) is \$199,600.00 and that WERTZ's share of the restitution is half of that
2 amount, with the other half payable by the co-defendant C&C OCEAN.

3 **8. Special Conditions of Release.** Defendant agrees to be sentenced to a term of
4 supervised release of three (3) years. WERTZ agrees to be bound by the following eight Special
5 Conditions of Supervised Release, in addition to whatever conditions of release are imposed by
6 the Court:
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8 **Special Condition No. 1.** Within 90 days of sentencing, WERTZ shall divest
9 himself of any and all of his interest in the *F/V Norseman* and *F/V Norseman's*
10 Northeast Federal Fishing Permit. This interest cannot be transferred to the
11 spouse or children of Charles Wertz, Jr. The deadline for divestiture is subject to
12 an extension of 90 days with the consent of the Government and the U.S.
13 Probation Office.

14 **Special Condition No. 2.** The defendant is immediately banned and prohibited
15 from participating in NOAA's Research Set-Aside Program and from holding or
16 being a designee on a NOAA Exempted Fisheries Permit or New York State
17 Scientific Collectors' Permit.

18 **Special Condition No. 3.** The defendant shall immediately relinquish, and shall
19 not seek to retrieve or obtain anew, any NOAA Operator Permit.

20 **Special Condition No. 4.** The defendant shall immediately relinquish, and shall
21 not seek to retrieve or obtain anew, any New York Summer Flounder Permit.

22 **Special Condition No. 5.** Except as necessary to comply with the Special
23 Conditions of Probation imposed upon C&C OCEAN, the defendant is
24 immediately banned and prohibited from holding a federal dealer license, or being
25 an officer or owner of any entity that holds a federal dealer license.

26 **Special Condition No. 6.** Except as necessary to comply with the Special
27 Condition No. 1 *supra*, the defendant is immediately banned and prohibited from
28 having an ownership interest in a vessel that (i) engages in commercial fishing
and (ii) is required to have a federal fisheries permit.

Special Condition No. 7. The defendant is immediately banned and prohibited
from selling fish to C&C OCEAN.

Special Condition No. 8. The defendant is immediately banned from being
employed in a position where the defendant has a legal or employment duty to
complete federal Fishing Vessel Trip Reports or federal dealer reports.

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1 **9. Special Assessment.** The defendant shall pay a special assessment of \$300.00, which
2 is due in full at sentencing.

3 **10. Appellate and Other Waivers.** WERTZ agrees to give up his right to appeal his
4 conviction, the judgment, and orders of the Court. WERTZ also agrees to waive any right he
5 might have to appeal any aspect of the sentence, including any orders relating to restitution. The
6 defendant agrees not to file any collateral attack on the conviction or sentence, including a
7 petition under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, or motion under 18 U.S.C. § 3582, at any
8 time in the future after the defendant is sentenced. Nevertheless, the defendant may bring a post-
9 conviction claim if the defendant establishes that ineffective assistance of counsel directly
10 affected the validity of this waiver of appeal and collateral challenge rights or the validity of the
11 guilty plea itself. Subject to the foregoing, the defendant reserves the right to bring a direct
12 appeal of any sentence imposed in excess of the statutory maximum. The foregoing waivers are
13 binding without regard to the sentencing analysis used by the Court. The defendant understands
14 that the Government might not preserve any physical evidence obtained in this case and in no
15 way shall the defendant rely on the Government preserving physical evidence for any purpose.
16 WERTZ hereby waives any claim to any physical evidence, papers, or electronic media in the
17 possession, custody, or control of the Government. The defendant waives any further disclosure
18 or discovery from the Government. WERTZ further waives any and all rights under the
19 Freedom of Information Act relating to the investigation and prosecution of the above-captioned
20 matter and further agrees not to file a request for case-related documents from any agency or
21 department of the Executive Branch. Further, the defendant waives any right to seek attorney's
22 fees or litigation expenses under 18 U.S.C. § 3006A (the "Hyde Amendment"), and the
23 defendant acknowledges that the Government's position in the instant prosecution was not
24 vexatious, frivolous, or in bad faith.

25 **11. Government's Obligations.** The Government agrees not to file any additional
26 criminal charges against the defendant arising from or related to any and all conduct, such
27 conduct known to the Government as of the date the last person signed this Plea Agreement,
28 which concerned the (i) catch, purchase, or sale of seafood or (ii) accuracy of forms submitted to

1 NOAA or the state of New York by or on behalf of C&C OCEAN or the *F/V Norseman* that
2 occurred from January 1, 2009, through May 1, 2013. Further, the Government agrees that the
3 reasonable and appropriate sentence in this case is set forth above, and the Government agrees
4 not to advocate for a different sentence unless the defendant violates the terms of the Plea
5 Agreement.

6 **12. Parties Bound by the Plea Agreement.** This Plea Agreement is only binding upon
7 the defendant and the Environmental Crimes Section of the Environment and Natural Resources
8 Division of the U.S. Department of Justice, also known as the Government. This Plea
9 Agreement does not bind any other federal, state, or local prosecuting authority other than the
10 Government. The Plea Agreement does not preclude the initiation of any civil, tax, or
11 administrative action against the defendant by any authority.

13 **13. Collateral Licensing Consequences.** The defendant acknowledges that pleading
14 guilty to these charges may have consequences with regard to his ability to maintain and/or
15 obtain governmental licenses and certifications, *e.g.*, vessel operator licenses, fishing permits,
16 and seafood sales permits. The defendant further acknowledges that although he has agreed to
17 relinquish certain licenses and permits pursuant to stipulated Special Conditions of Supervised
18 Release, state and federal agencies could legally and independently suspend, revoke, or withhold
19 the issuance of permits or licenses based on the administrative and regulatory authority of those
20 agencies. Nevertheless, WERTZ affirms that he desires to plead guilty regardless of any
21 licensing and certification consequences that may result from his guilty plea.

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28 *Continued on page 13.*

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