

Presented to the Court by the foreman of the Grand Jury in open Court, in the presence of the Grand Jury and FILED in the U.S. DISTRICT COURT at Seattle, Washington.

APRIL 7 2016

WILLIAM M. McCOOL, Clerk

By  Deputy

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CR16-100 RSL
NO.

UNITED STATES OF AMERICA,
Plaintiff

v.

BINGHAM FOX, RANDALL FOX,
Defendants.

INDICTMENT

18 U.S.C. § 371 (Conspiracy)

33 U.S.C. § 1319(c)(2)(A) (Clean Water Act)

33 U.S.C. § 1908(a) (Act to Prevent Pollution from Ships)

The GRAND JURY charges that at all times relevant to this Indictment:

LEGAL FRAMEWORK & PRELIMINARY MATTERS

INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS AND THE ACT TO PREVENT POLLUTION FROM SHIPS

a) The United States is a party to an international regime that regulates the discharge of oil from ships at sea: the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (hereinafter, "MARPOL"). MARPOL is embodied in numerous agreements that the United States has ratified and has been implemented in the United States by the "Act to Prevent Pollution from Ships"

UNITED STATES v. RANDALL FOX, et al.
INDICTMENT - 1

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1 (“APPS”), 33 U.S.C. §§ 1901, *et seq.* APPS makes it a crime for any person to
2 knowingly violate MARPOL, APPS, or regulations promulgated under APPS. These
3 regulations apply to all United States-flagged ships that engage in international voyages,
4 are certificated for coastwise service beyond three nautical miles from land, or operate at
5 any time seaward of the outermost boundary of the territorial sea of the United States, as
6 defined in 33 C.F.R. § 2.22(a)(2) (*i.e.* three nautical miles). 33 C.F.R. § 151.09(a). A
7 “ship” is defined by the APPS regulations as a vessel of any type whatsoever operating in
8 the marine environment. 33 C.F.R. § 151.05. APPS and MARPOL apply to fishing
9 vessels in the same manner as they apply to other ships. *See* 48 Fed.Reg. 45704 (Oct. 6,
10 1983).

11 b) MARPOL and APPS set the legal standard for the maximum amount of oil
12 that may be discharged overboard by a ship, namely, 15 parts per million (“ppm”) of oil
13 to water. Therefore, under MARPOL, oily mixtures can only be discharged overboard
14 into the ocean if it contains less than 15 ppm of oil. To prevent the discharge of an oily-
15 mixture containing more than 15 ppm of oil, MARPOL requires vessels to either have the
16 capacity to store oily mixtures on board or have approved oil-water separating equipment
17 for processing oily mixtures from bilges in order to legally discharge those oily mixtures
18 into the sea. 33 C.F.R. §§ 151.10, 155.350(a). “Oily-mixture” is defined as a mixture, in
19 any form, with any oil content. It includes, but is not limited to, (1) slops from bilges; (2)
20 slops from oil cargoes; (3) oil residue (sludge); and (4) oily-ballast water from cargo or
21 fuel oil tanks. 33 C.F.R. § 151.05.

22 c) Under APPS, the master or person in charge of a United States-flagged ship
23 must report a discharge, probable discharge, or presence of oil in accordance with
24 MARPOL and APPS regulations. 33 U.S.C. § 1906(b). The APPS regulations prescribe
25 that when a discharge occurs that is not made through proper oil separation equipment or
26 is greater than 15 ppm, a detailed report must be made to the nearest United States Coast
27 Guard Captain of the Port. 33 C.F.R. § 151.15.

CLEAN WATER ACT

d) Through the Federal Water Pollution Control Act (the "Clean Water Act"), as amended by the Oil Pollution Act, 33 U.S.C. § 1321(b)(1), Congress declared that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States or the adjoining shorelines.

e) The Clean Water Act makes it a crime for a person to knowingly discharge oil into or upon the navigable waters or the contiguous zone of the United States in such quantities as may be harmful. 33 U.S.C. §§ 1319(c)(2), 1321(b)(3).

f) The Clean Water Act defines the "navigable waters" of the United States as the waters of the United States and the territorial seas, which are defined to be water extending three miles seaward of the ordinary low tide mark. 33 U.S.C. § 1362(7), 1362(8). Navigable waters also includes internal waters, which are "the waters shoreward of the territorial sea baseline." 33 C.F.R. §§ 2.24(a), 2.36. The Clean Water Act defines the "contiguous zone" as "the entire zone established or to be established by the United States under article 24 of the [1958] Convention on the Territorial Sea and the Contiguous Zone." 33 U.S.C. § 1362(9). Under this Convention, "[t]he contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured." 1958 Convention on the Territorial Sea and the Contiguous Zone art. 24, Apr. 29, 1958, 15 U.S.T. 1606, 516 U.N.T.S. 205. Therefore, the contiguous zone, for purposes of the Clean Water Act, is a nine nautical mile belt of sea from the outer limit of the territorial sea at three nautical miles outward to twelve nautical miles.

g) The Clean Water Act defines a "discharge" as any spilling, leaking, pumping, pouring, emitting, emptying, or dumping. 33 U.S.C. § 1321(a)(2). The Clean Water Act defines "oil" as oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, and oil residue. 33 U.S.C. § 1321(a)(1).

h) Federal regulations promulgated under the Clean Water Act define a "harmful" quantity of oil as any discharges of oil that cause a film or sheen upon, or

1 discoloration of, the surface of the water or adjoining shorelines or that cause a sludge or
 2 emulsion to be deposited beneath the surface of the water or adjoining shorelines. 40
 3 C.F.R. § 110.3.

4 i) Federal regulations further prohibit the use of dispersants or emulsifiers that
 5 circumvent the harmful quantity definition. 40 C.F.R. § 110.4.

6 **BACKGROUND**

7 j) Defendant Bingham Fox purchased the *Fishing Vessel (F/V) Nakoa*
 8 *Maluhia* in July 2011, and renamed it the *F/V Native Sun* in September 2011.

9 k) The *F/V Native Sun* was a 168 gross ton ocean-going fishing vessel built in
 10 1979. The *F/V Native Sun* was approximately 81 feet in length, was documented in the
 11 United States, was registered for Coastwise service, and had an official number of
 12 611548. It routinely operated more than three nautical miles offshore.

13 l) Defendant Randall Fox was hired to work on the vessel in 2013, first as a
 14 crew-member and later as a captain.

15 **COUNT 1** 16 **CONSPIRACY** 17 (All Defendants)

18 1. Paragraphs *a* through *l* of this Indictment are hereby re-alleged and
 19 incorporated by reference as though fully set forth herein.

20 2. Between approximately July 1, 2011, and September 8, 2013, within the
 21 Western District of Washington and elsewhere, defendants BINGHAM FOX and
 22 RANDALL FOX, along with co-conspirators both known and unknown to the Grand
 23 Jury, did combine, confederate, conspire, and agree together and with others, both known
 24 and unknown to the Grand Jury, to knowingly commit offenses against the United States,
 25 that is to:

- 26 a. Violate the Clean Water Act, 33 U.S.C. §§ 1311(a), 1319(c)(2)(A), and
- 27 1321(b)(3), related to discharging oil into waters of the United States; and
- 28 b. Violate APPS, 33 U.S.C. § 1908, and 33 C.F.R. §§ 151.10(a-b), 151.15.

Means & Manner

3. BINGHAM FOX and RANDALL FOX, along with other unindicted co-conspirators, operated the *F/V Native Sun* between on or about July 1, 2011, and on or about September 8, 2013, without a functioning system to separate machinery-space bilge water, oil, oily residues, and oily mixtures from water and without sufficient capacity to store machinery-space bilge water, oil, oily residues, and oily mixtures on board so that it could be lawfully discharged and treated at a facility able to receive and process such materials.

4. Instead of repairing the *F/V Native Sun*, the conspirators installed a series of hoses and submersible pumps in the *F/V Native Sun*'s machinery-space bilges in the engine room (hereinafter "machinery-space bilges"). The submersible pumps were submerged in the machinery-space bilge waters, and the hoses were routed up out of the engine room and over the side of the *F/V Native Sun*.

5. BINGHAM FOX and RANDALL FOX operated, and directed others to operate, the submersible pumps to discharge machinery-space bilge water, oil, oily residues, and oily mixtures that continuously accumulated in the bilge areas and machinery spaces of the *F/V Native Sun* into waters of the United States, the contiguous waters of the United States, and the sea.

6. In an effort to prevent and conceal any visible sheens resulting from the aforementioned discharges, BINGHAM FOX and other unindicted co-conspirators purchased bulk quantities of soap and directed others to discharge it along with the machinery-space bilge water, oil, oily residues, and oily mixtures.

Overt Acts

7. Shortly after purchasing the *F/V Native Sun*, and recognizing that it was in a state of disrepair and that the machinery-space bilges were filling with water and oil, BINGHAM FOX, RANDALL FOX, and other un-indicted co-conspirators, installed one or more submersible pumps and a series of hoses in the machinery-space bilge areas.

1 8. While the *F/V Native Sun* was docked in Blaine, Washington, between on
2 or about July 1, 2011, and on or about May 31, 2012, the co-conspirators ran the
3 aforementioned submersible pumps and discharged machinery-space bilge water, oil, oily
4 residues, and oily mixtures overboard through hoses and into the navigable waters of the
5 United States approximately every other day.

6 9. While the *F/V Native Sun* was underway on or about June 15, 2013,
7 RANDALL FOX and other unindicted co-conspirators operated submersible pumps in
8 the machinery-space bilges without using oil-separating equipment, a bilge monitor, bilge
9 alarm, or combination thereof, and discharged machinery-space bilge water, oil, oily
10 residues, and oily mixtures through overboard hoses and into the sea. That same day, the
11 following was entered in the *F/V Native Sun*'s log book: "[s]tart mains, Grease shaft,
12 pump bildge [sic]."

13 10. While the *F/V Native Sun* was underway on or about August 30, 2013,
14 RANDALL FOX, and others acting at his direction, operated submersible pumps in the
15 engine-room bilges without using oil-separating equipment, a bilge monitor, bilge alarm,
16 or combination thereof, and discharged machinery-space bilge water, oil, oily residues,
17 and oily mixtures through overboard hoses and into the sea. That same day, RANDALL
18 FOX entered "[s]tart mains, grease shafts, check oil levels & pump forward bilge" in the
19 *F/V Native Sun*'s log book.

20 11. While the *F/V Native Sun* was underway on or about September 1, 2013,
21 RANDALL FOX, and others acting at his direction, operated submersible pumps in the
22 engine room bilges without using oil-separating equipment, a bilge monitor, bilge alarm,
23 or combination thereof, and discharged machinery-space bilge water, oil, oily residues,
24 and oily mixtures through overboard hoses and into the sea. That same day, RANDALL
25 FOX entered "[s]tart main pump forward bilge" in the *F/V Native Sun*'s log book.

26 12. While the *F/V Native Sun* was underway on or about September 2, 2013,
27 RANDALL FOX, and others acting at his direction, operated submersible pumps in the
28 engine-room bilges without using oil-separating equipment, a bilge monitor, bilge alarm,

1 or combination thereof, and discharged machinery-space bilge water, oil, oily residues,
 2 and oily mixtures through overboard hoses and into the sea. That same day, RANDALL
 3 FOX entered “[s]tart mains, pump forward bilge, set course for Neah Bay” in the *F/V*
 4 *Native Sun*’s log book.

5 13. While the *F/V Native Sun* was underway on or about September 7, 2013,
 6 RANDALL FOX, and others acting at his direction, operated submersible pumps in the
 7 engine-room bilges without using oil-separating equipment, a bilge monitor, bilge alarm,
 8 or combination thereof, and, using hoses, discharged machinery-space bilge water, oil,
 9 oily residues, and oily mixtures through overboard hoses and into the contiguous zone
 10 and the sea.

11 14. Between on or about July 1, 2011, and on or about May 31, 2012,
 12 BINGHAM FOX, and other co-conspirators, purchased bulk quantities of soap to conceal
 13 the discharges of machinery-space bilge water, oil, oily residues, and oily mixtures.

14 15. Between on or about July 1, 2011, and on or about May 31, 2012,
 15 BINGHAM FOX, and others acting at his direction, discharged soaps, detergents, and
 16 other substances into waters of the United States and the seas to disperse, emulsify, and
 17 conceal any visible sheen of oil and to thereby prevent detection by the United States
 18 Coast Guard, United States Environmental Protection Agency, and other law-
 19 enforcement and regulatory authorities.

20 All in violation of 18 U.S.C. § 371.

21 COUNT 2

22 **ACT TO PREVENT POLLUTION FROM SHIPS** 23 **OIL DISCHARGE VIOLATIONS** 24 (As Against RANDALL FOX)

25 16. Paragraphs *a* through *l* of this Indictment are hereby re-alleged and
 26 incorporated by reference as though fully set forth herein.

27 17. On or about August 30, 2013, in the Western District of Washington and
 28 elsewhere, defendant RANDALL FOX did knowingly discharge, and directed others to

1 discharge, machinery-space bilge water, oil, oily residues, and oily mixtures into the sea
 2 from an ocean-going ship subject to APPS oil discharge regulations found at 33 C.F.R.
 3 §§ 151.10(a-b), by discharging machinery-space bilge waste overboard without having in
 4 operation properly functioning oil water separating equipment, a bilge monitor, bilge
 5 alarm, or combination thereof, to wit: defendant RANDALL FOX, and other crew
 6 members acting at his direction, did operate one or more submersible pumps and hoses in
 7 the *F/V Native Sun*'s machinery-space bilges to discharge machinery-space bilge water,
 8 oil, oily residues, and oily mixtures into the sea.

9 All in violation of 33 U.S.C. § 1908(a), 18 U.S.C. § 2, and 33 C.F.R. §§ 151.10(a-
 10 b), 155.350.

11 **COUNT 3**
 12 **CLEAN WATER ACT DISCHARGE OF OILS**
 13 **(As Against BINGHAM FOX)**

14 18. Paragraphs *a* through *l* of this Indictment are hereby re-alleged and
 15 incorporated by reference as though fully set forth herein.

16 19. From on or about August 17, 2011 until on or about October 21, 2011 and
 17 from on or about May 2, 2012 until on or about June 9, 2012, in the Western District of
 18 Washington and elsewhere, defendant BINGHAM FOX did knowingly discharge oil into
 19 a water of the United States and upon adjoining shorelines and into the contiguous zone,
 20 in quantities that were harmful, to wit: between on or about August 17, 2011 until on or
 21 about October 21, 2011 and from on or about May 2, 2012 until on or about June 9, 2012,
 22 defendant BINGHAM FOX did direct crew members of the *F/V Native Sun* to operate
 23 one or more submersible pumps in the engine-room bilges of the *F/V Native Sun* and to
 24 discharge machinery-space bilge water, oil, oily residues, and oily mixtures into the sea
 25 into the waters and adjoining shorelines of Blaine, Washington in quantities that left
 26 visible sheens on the surface of the waters.

1 All in violation of 33 U.S.C. §§ 1319(c)(2)(A), 1321(b)(3), 18 U.S.C. § 2, and 40
2 C.F.R. § 110.3.

3 A TRUE BILL:

4 4.6.2016


5 DATED:


6 *Signature of Foreperson redacted pursuant*
7 *to the policy of the Judicial Conference of the*
8 *United States.*

FOREPERSON

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10 ANNETTE L. HAYES
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