

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURTS
WESTERN DISTRICT OF WASHINGTON
CENTRAL DISTRICT OF CALIFORNIA
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
) Plaintiff,
) v.
HÖEGH FLEET SERVICES A/S,)
) Defendant.

NO. CR03-5765 RBL (W.D. Wash.)
NO. CR04-195 (C.D. Cal.)
NO. CR04-40030 DLJ (N.D. Cal.)

PLEA AGREEMENT

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, Mark Chutkow, Assistant United States Attorney for this district, and James Oesterle and Larry Kennedy, Special Assistant United States Attorneys; Debra W. Yang, United States Attorney for the Central District of California, and William W. Carter and Dorothy C. Kim, Assistant United States Attorneys for this district; Kevin V. Ryan, United States Attorney for the Northern District of California, and Maureen Bessette, Assistant United States Attorney for this district (collectively, the “Districts”); and Defendant Höegh Fleet Services A/S (“HFS” or “Defendant”), by and through its attorney, Irwin H. Schwartz, hereby enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11:

1. Waiver of Indictment in the Central and Northern Districts of California.

Defendant, having been advised of the right to be charged by Indictment in the Central and Northern Districts of California, agrees to waive that right and enter a plea of

1 guilty to the charges brought by the United States Attorneys by Informations filed in
2 those districts.

3 2. The Charges. Defendant, by and through its authorized representatives,
4 having been advised of the right to have this matter tried before a jury, agrees to waive
5 that right and enter pleas of guilty to the following Counts contained in the Indictment
6 filed in the Western District of Washington and the Informations filed in the Central
7 and Northern Districts of California. By entering these pleas of guilty, HFS hereby
8 waives all objections to the form of the charging documents.

9 a. Count 2 of the Indictment, charging HFS, by and through the
10 actions of the motor vessel (“M/V”) Höegh Minerva’s crew members, with knowingly
11 concealing, covering up, falsifying and making a false entry in a record, document and
12 tangible object, with the intent to impede, obstruct and influence the investigation and
13 proper administration of a matter within the jurisdiction of the United States
14 Department of Homeland Security, and in relation and contemplation of such a matter,
15 namely a United States Coast Guard MARPOL inspection of the M/V Höegh Minerva,
16 in violation of Title 18, United States Code, Sections 2 and 1519;

17 b. Count 3 of the Indictment and Count 1 of the Informations,
18 charging HFS, by and through the actions of the M/V Höegh Minerva’s crew
19 members, with knowingly and willfully using a false writing and document containing a
20 materially false statement concerning a matter within the jurisdiction of the United
21 States Coast Guard, in violation of Title 18, United States Code, Sections 2 and 1001;
22 and

23 c. Count 4 of the Indictment and Count 2 of the Informations,
24 charging HFS, by and through the actions of the M/V Höegh Minerva’s crew
25 members, with knowingly failing to maintain an Oil Record Book in which all disposals
26 of oil residue and all overboard discharges and disposals of bilge water were fully
27 recorded, in violation of Title 33, United States Code, Section 1908(a) and Title 33,
28 Code of Federal Regulations, Sections 151.25(a), (d) and (h).

1 3. Elements of the Offenses.

2 a. Count 2 of the Indictment. The elements of the offense of
3 obstruction of an investigation or proper administration of any matter within the
4 jurisdiction of any department or agency of the United States as charged in Count 2 of
5 the Indictment, in violation of Title 18, United States Code, Sections 2 and 1519, are as
6 follows:

7 (1) Defendant, by and through the actions of its agents and/or
8 employees, concealed, covered up, falsified or made a false entry in any
9 record, document or tangible object;

10 (2) Defendant, by and through the actions of its agents and/or
11 employees, acted knowingly, that is, it was aware of the fact that the
12 record or document was falsified, or that tangible object(s) were
13 concealed or covered up;

14 (3) Defendant, by and through the actions of its agents and/or
15 employees, acted with the intent to impede, obstruct or influence the
16 investigation or proper administration of a matter within the jurisdiction
17 of a department or agency of the United States, or in relation to or in
18 contemplation of any such matter or case.

19 b. Count 3 of the Indictment and Count 1 of the Informations. The
20 elements of the offense of using a false writing or document containing a materially
21 false statement as charged in Count 3 of the Indictment and Count 1 of the
22 Informations, in violation of Title 18, United States Code, Sections 2 and 1001, are as
23 follows:

24 (1) Defendant, by and through the actions of its agents and/or
25 employees, used a writing or document which contained a false
26 statement in a matter within the jurisdiction of the United States
27 Coast Guard;

28 (2) Defendant, by and through the actions of its agents and/or
employees, acted willfully, that is deliberately and with knowledge
that the writing or document was untrue; and

(3) The writing or document was material to the United States
Coast Guard's activities or decisions.

 c. Count 4 of the Indictment and Count 2 of the Informations. To
establish liability for the charged offense of violating the Act to Prevent Pollution from
Ships as charged in Count 4 of the Indictment and Count 2 of the Informations, in
violation of Title 33, United States Code, Sections 1308(a) and Title 33, Code of

1 Federal Regulations, Sections 151.25(a), (d) and (h), the Districts must prove that the
2 Defendant, by and through the actions of its agents and/or employees, knowingly failed
3 to maintain an Oil Record Book in which all disposals of oil residue and all overboard
4 discharges and disposals of bilge water were fully recorded.

5 Under well-established principles of corporate liability and *respondeat superior*,
6 as these principles apply in this case, the corporate defendant is liable for the actions of
7 its agents and employees. *New York Central and Hudson River R.R. v. United States*,
8 212 U.S. 481, 495 (1909); *United States v. Beusch*, 596 F.2d 871, 877 (9th Cir. 1979);
9 *United States v. Hilton Hotels Corporation*, 467 F.2d 1000, 1004-07 (9th Cir. 1972).

10 4. The Penalties. HFS understands that the statutory penalties applicable to a
11 corporate defendant for the offenses of (a) obstructing an agency matter in violation of
12 Title 18, United States Code, Sections 2 and 1519, as charged in Count 2 of the
13 Indictment; (b) using a false statement in violation of Title 18, United States Code,
14 Sections 2 and 1001, as charged in Count 3 of the Indictment and Count 1 of the
15 Informations; and (c) failing to maintain an accurate Oil Record Book in violation of
16 Title 33, United States Code, Section 1908(a) and Title 33, Code of Federal
17 Regulations, Sections 151.25(a), (d) and (h), as charged in Count 4 of the Indictment
18 and Count 2 of the Informations; are as follows: a maximum fine of up to Five
19 Hundred Thousand Dollars (\$500,000) per count, a term of probation of up to five (5)
20 years, and a special assessment of Four Hundred Dollars (\$400) per count.

21 HFS further understands that, as to each count, the statutory penalties include
22 the Alternative Fines Provision set forth in Title 18, United States Code,
23 Section 3571(d), which provides: “If any person derives pecuniary gain from the
24 offense, or if the offense results in a pecuniary loss to a person other than the
25 defendant, the defendant may be fined not more than the greater of twice the gross gain
26 or twice the gross loss unless imposition of a fine under this subsection would unduly
27 complicate or prolong the sentencing process.”
28

1 5. Rights Waived by Pleading Guilty. HFS understands that, by pleading
2 guilty, it knowingly and voluntarily waives the following rights:

- 3 a. The right to plead not guilty, and to persist in a plea of not guilty;
- 4 b. The right to a speedy and public trial before an impartial jury;
- 5 c. The right to the effective assistance of counsel at trial;
- 6 d. The right to be presumed innocent until guilt has been established
7 at trial, beyond a reasonable doubt;
- 8 e. The right to confront and cross-examine witnesses against them at
9 trial;
- 10 f. The right to compel or subpoena witnesses to appear on their
11 behalf at trial; and
- 12 g. The right to appeal a finding of guilt or any pretrial rulings.

13 6. Applicability of Sentencing Guidelines. HFS understands and
14 acknowledges that the United States Sentencing Guidelines promulgated by the United
15 States Sentencing Commission are applicable to the sentencing in this case, except that
16 pursuant to USSG §§ 8C2.1, Chapter 8 of the United States Sentencing Guidelines is
17 not applicable to the determination of the appropriate fine in this case.

18 7. Sentencing Agreement. Pursuant to Federal Rule of Criminal Procedure
19 11(c)(1)(C), the Districts and HFS agree that the sentence to be imposed by the Court
20 shall be as follows:

21 a. Fine. HFS shall pay an amount of Five Hundred Thousand Dollars
22 (\$500,000) on each of the seven (7) counts. The parties stipulate and agree that this
23 amount is the maximum fine and monetary penalty that may be imposed under this
24 Agreement, regardless of whether or how the Court may allocate a portion of that sum
25 to community service payments.

26 b. Mandatory Special Assessment. HFS shall pay a special
27 assessment of Four Hundred Dollars (\$400) on each of the seven (7) counts.
28

1 c. Payment of Fine and Assessments. HFS agrees that should the
2 Court accept the terms of this Plea Agreement, it will pay the special assessments and
3 the fine on the date of sentencing.

4 d. Probation. HFS will be placed on organizational probation for a
5 period of four (4) years pursuant to USSG §§ 8D1.1 and 8D1.2. The terms of
6 probation shall be:

7 (1) No Further Violations. HFS agrees that it shall commit no
8 further violations of federal, state or local law, and shall conduct all its operations in
9 accordance with the MARPOL Protocol.

10 (2) Environmental Management System/Compliance Plan.
11 Consistent with the sentencing policies set forth in USSG § 8D1.4, HFS agrees to
12 develop, adopt, implement and fund the Environmental Management
13 System/Compliance Plan (“EMS”) attached hereto as Exhibit A.

14 HFS shall be responsible for all costs associated with the development,
15 implementation, maintenance and monitoring of the EMS.

16 HFS agrees that during the period of probation, and at all reasonable times and
17 with as reasonable prior notice by the Districts as practicable, they will provide the
18 Districts with full access to its vessels listed in the EMS, as well as all facilities,
19 employees, and records that are relevant to monitoring compliance with the terms and
20 conditions of the EMS.

21 If HFS changes its name, the renamed company shall be obliged to meet all of
22 the obligations of HFS under this agreement. If HFS merges with another company
23 through a stock or asset purchase, the newly created or merged company shall be
24 obliged to meet all of the obligations of HFS under this agreement with regard to those
25 vessels managed by HFS at the date of the merger.

26 The parties recognize that during the term of probation, the number and identity
27 of vessels managed by HFS that call in the Districts may increase or decrease. Any
28 vessel the management of which is assumed by HFS and which calls in the United

1 States shall be included within the scope of its EMS. Any vessel removed from
2 management by HFS or which stops calling in the United States shall be excluded from
3 the scope of its EMS.

4 e. Community Service. The parties understand and agree that the
5 Districts will petition the Court at or before the time of sentencing to apply a portion of
6 HFS's settlement amount identified in paragraph 7(a), above, to community service
7 pursuant to USSG § 8B1.3 and in furtherance of the sentencing principles provided in
8 18 U.S.C. § 3553(a), for the purpose of funding one or more projects for the benefit,
9 preservation, and restoration of the environment and ecosystems in the waters of the
10 United States adjoining the coastlines of Washington State and California. HFS shall
11 not oppose such a petition, including the amount allocated to the community service
12 projects.

13 8. Application of the Agreement. This Agreement shall bind HFS and such
14 other companies as may be included in paragraph 7(d)(2), above. HFS shall provide
15 the Districts and the United States Probation Office with immediate notice of any name
16 change, business reorganization, sale or divestiture impacting its ability to pay the fine
17 or affecting this Agreement and the EMS. HFS shall not engage in any action to seek
18 to avoid the obligations and conditions set forth in this Agreement.

19 9. Statement of Facts. The parties agree on the following facts in support of
20 HFS's guilty pleas. HFS admits that it is guilty of: (a) Counts 2, 3 and 4, as charged in
21 the Indictment filed in the Western District of Washington; (b) Counts 1 and 2 in the
22 Informations filed in the Central and Northern Districts of California.

23 *A. Background*

24 a. Defendant HÖEGH FLEET SERVICES, A/S ("HFS") is a ship management
25 company incorporated and headquartered in Norway. HFS manages thirty-eight (38)
26 ocean going vessels, including bulk cargo ships that transport goods around the world.
Corporate affiliates of the Defendant own these ships and act as manning agents, which
supply and train crews for the vessels that HFS manages.

27 b. One of the marine vessels the Defendant operates and manages is the motor
28 vessel ("M/V") Höegh Minerva, IMO No. 7715953, a Norwegian International
Shipregister ("NIS") flagged freight ship weighing 30,995 gross tons owned by
Leif Höegh and Co. Shipping AS. Over the last several years, the M/V Höegh

1 Minerva has made a number of port calls in the United States, including ports in the
2 Western District of Washington, the Northern District of California, and the Central
District of California.

3 c. The M/V Höegh Minerva typically operates with a crew of approximately
4 twenty-three (23) persons. Ten (10) crew members of different rank work in the
vessel's engine room, including a chief engineer, a second engineer, a third engineer, a
5 fourth engineer, an electrician, two fitters, an oiler, a wiper, and an engine cadet.
During the period relevant to this Plea Agreement, the second engineer was primarily
6 responsible for properly disposing of waste oil that accumulated onboard the vessel and
was responsible for operating the vessel's Oil Water Separator ("OWS") and
7 incinerator. The second engineer reported to the chief engineer who had overall
responsibility for engine room operations. The chief engineer reported directly to the
8 captain, who was responsible for all vessel operations.

9 d. Large ocean going vessels, like the M/V Höegh Minerva, produce waste oil
as a result of the operation of machinery in the engine room. Some of the waste oil,
10 together with water and other liquids, accumulates in the bottom or "bilges" of the
vessel. This waste liquid typically drains into the "bilge wells," small compartments
11 set into the bottom of the engine room compartment. The bilge waste is then collected
and run through various processes designed to separate the oil and other wastes from
12 the water. These processes include settling tanks and an OWS (also known as a Bilge
Water Separator), a pollution control device designed to remove or separate out oil.
13 After processing by the OWS, bilge water containing very small amounts of oil may be
legally discharged overboard. Oil removed from the bilge waste, along with other
14 waste oils from the ship, are stored in a sludge tank. Some ships burn the sludge in an
incinerator or in the vessel's auxiliary boiler. Oil-contaminated bilge waste and other
15 waste oils, including sludge, may also be off-loaded while the vessel is in port and
properly disposed of onshore.

16 e. Under the MARPOL Protocol, an international treaty implemented in the
United States by the "Act to Prevent Pollution from Ships" ("APPS"), 33 U.S.C.
17 1901, *et seq.*, a ship may not discharge overboard oily waste with more than fifteen
(15) parts per million ("ppm") of oil. The MARPOL Protocol and the APPS require
18 that each oil tanker of 150 gross tons or more, or non-tanker vessels of more than 400
gross tons, maintain an "Oil Record Book" (also known as the "ORB"). All transfers
19 of oil, disposal of sludge and bilge water, and overboard discharges of bilge water that
have accumulated in machinery spaces and are thus contaminated with oil, must be
20 fully recorded in the ORB. 33 C.F.R. § 151.25(d). The captain of the ship must sign
every completed page of the ORB. 33 C.F.R. § 151.25(h). The ORB must be
21 maintained onboard for not less than three years and must be kept on board the vessel
readily available at all reasonable times.

22 f. The regulations authorize the U.S. Coast Guard to board and inspect all
23 vessels in United States ports to determine compliance with federal regulations and the
MARPOL Protocol. 14 U.S.C. § 89, 33 C.F.R. § 151.25. The inspection typically
24 includes an examination of the ORB. The U.S. Coast Guard relies upon the accuracy
of information contained in the ORB to assist in assessing the vessel operator's
25 compliance with all applicable rules and regulations.

26 *B. Factual Basis For Plea*

27 g. Second Engineer Vincent Genovana joined the crew of the M/V Höegh
Minerva in June 2003. A few weeks later he directed one of the ship's fitters to make a
28 pipe to divert the oil-contaminated wastewater around the oil content sensor and
directly overboard. Several engine room crew members, including the engine cadet,

1 the wiper, and an oiler assisted the second engineer by installing and removing what
2 they referred to as the magic pipe.

3 h. The engine room crew members first installed the pipe in June or July 2003.
4 When installed, the pipe remained in place for a number of days. The engine room
5 crew members used the pipe several times, at night, while steaming on the high seas.
6 When the bilge tank was full, the crew members would operate the OWS with the pipe
7 in place. The pipe was last used during the vessel's transit between Tokyo, Japan, and
8 the Port of Los Angeles, California in mid-August 2003. The last known use of the
9 pipe was on August 31, 2003, while the vessel was on the high seas, bound for the Port
10 of Los Angeles.

11 i. The participating engine room crew knew it was unlawful to discharge
12 untreated oily waste overboard into the ocean. They also knew the United States Coast
13 Guard enforced international and U.S. prohibitions against this type of pollution. The
14 second engineer was concerned that U.S. Coast Guard officials would discover the
15 vessel's discharging activity and ordered crew members to take steps to conceal
16 evidence of their conduct. Several days before arriving in the Port of Los Angeles, the
17 second engineer instructed the wiper and engine cadet to clean up the area around the
18 OWS. The second engineer removed the pipe and the cadet hid it. The second
19 engineer painted two pipe fittings installed on the OWS system to conceal the fact that a
20 pipe had been installed on the OWS system. The wiper, at the second engineer's
21 direction, then grabbed the fittings with his oil-stained hands so they would not look
22 freshly painted.

23 j. To further conceal the illegal discharges from port state control authorities,
24 the second engineer made false and fraudulent entries in the ship's Oil Record Book
25 ("ORB"). The entries falsely stated that the crew had discharged bilge water overboard
26 a number of times in July and August 2003, after being properly treated in the OWS.
27 On other dates in July and August 2003, the second engineer intentionally failed to
28 record in the ORB that oily waste had been discharged overboard without proper
treatment. The false and fraudulent entries and omissions created the false impression
that oily waste generated onboard the M/V Höegh Minerva was being managed
correctly in accordance with applicable regulations.

k. United States Coast Guard boarded the M/V Höegh Minerva on September 5,
2003 in the Port of Los Angeles, California. While in the Port of Los Angeles, Coast
Guard personnel conducted an inspection of the vessel's engine room in response to
smoke from an overheated safety relief valve. During this inspection, the Coast Guard
did not find or detect the use of the pipe. Thereafter, the vessel was permitted to
depart the Port of Los Angeles.

l. On September 8, 2003, the captain presented the ship's ORB to Coast Guard
inspectors in Richmond, California, who had boarded the ship to conduct a port state
control examination. The second engineer discussed certain entries in the ORB with
the inspectors, but did not apprise them that the ORB had been falsified.

m. On September 11, 2003, Coast Guard inspectors boarded the ship in
Vancouver, Washington to conduct an expanded MARPOL inspection. On request, the
captain presented the ship's ORB to the inspectors. While the inspectors were
investigating the ship, the fitter approached one of the inspectors and handed him a
note, which described the illegal pumping overboard and the location of the pipe used
to accomplish that.

n. The inspectors went to the area in the engine room described in the note and
discovered the pipe. They took the pipe to the OWS and determined that it fit between

1 the recently painted fittings. The inspectors removed the pipe leading from the OWS to
2 the overboard valve. Under normal operating conditions, any discharges through this
3 pipe should contain less than 15 ppm of oil -- essentially "clean" water. Instead of
4 clean water, the inspectors discovered oil inside the pipe. Similarly, the inspectors
5 discovered oil in the overboard discharge valve. Discovery of oil in these locations
6 indicated that the OWS was not being used to prevent the direct discharge of oil
7 contaminated wastewater.

8 o. The second engineer did not respond truthfully to the inspectors' questions
9 regarding the magic pipe. He falsely claimed that the painted fittings on the OWS were
10 used to install drain lines for routine maintenance. Following the Coast Guard's
11 departure, the second engineer met with engine room crew members and instructed
12 them that if questioned by the Coast Guard, they should not talk about the magic pipe
13 and should deny any knowledge about the operation of the OWS. The second engineer
14 took these actions to conceal the illegal discharging activity, and to impede and obstruct
15 the Coast Guard's inspection.

16 p. The Oil Record Book presented to the inspectors during their investigations
17 in Richmond and Vancouver contained materially false and fraudulent statements and
18 omissions, in that it omitted any reference to the fact that the engine crew members had
19 discharged oily waste directly overboard into the ocean while transiting between
20 commercial ports. At the time the entries in the ORB were entered, initialed and
21 presented, participating engine room crew members knew, in truth and in fact, that oily
22 wastes, including bilge water, had been discharged into the ocean, by bypassing the oil
23 content meter. The participating crew members also knew that these false and
24 fraudulent entries and omissions were material to the enforcement and regulatory duties
25 of the U.S. Coast Guard. By presenting a false ORB to the U.S. Coast Guard and
26 concealing evidence of the use of the pipe, the crew members' conduct influenced and
27 impeded the U.S. Coast Guard officials' inspection activities on board the M/V Höegh
28 Minerva.

q. HFS is vicariously liable for the conduct of engine room crew members of
the M/V Höegh Minerva who altered, concealed, covered up, falsified, and made false
entries in a record, document and tangible object with the intent to impede, obstruct
and influence the investigation and proper administration of a U.S. Coast Guard Port
State Control MARPOL inspection, in that crew members: (a) removed and hid a
bypass pipe used to discharge inadequately treated oily wastes overboard; (b) painted
valve fittings where the bypass pipe had been attached to the OWS system to make it
appear that the pipe had not been installed on the system; (c) presented and maintained
a falsified ORB for review by the Coast Guard, which failed to document the existence
and use of the bypass pipe and fittings to discharge inadequately treated oily wastes
overboard; and (d) made false statements, misrepresentations and omissions to the
Coast Guard, and instructed engine room crew members to make false statements,
misrepresentations and omissions, about the existence and use of the bypass pipe and
fittings to discharge inadequately treated oily wastes overboard.

r. HFS is vicariously liable for the second engineer's materially false entries in
the ORB that were presented to the U.S. Coast Guard inspectors.

s. HFS, is vicariously liable for the second engineer's failure to maintain an
ORB for the M/V Höegh Minerva in which all disposals of oil residue and all
overboard discharges and disposal of bilge water were fully recorded.

10. Non-Prosecution of Additional Offenses. As part of this Plea Agreement
and solely because of the promises made by HFS in this Agreement, the Districts agree

1 to dismiss the remaining counts of the Indictment at the time of sentencing. The
2 Districts further agree not to prosecute HFS or its affiliated companies (Leif Höegh
3 & Co., Ltd., Leif Höegh & Co. ASA, Leif Höegh & Co. Shipping AS, Hual AS,
4 HFS Manila and their subsidiaries) for any additional offenses that arise out of the
5 conduct giving rise to this investigation for which the Districts currently have
6 information. For purposes of this Agreement, it is understood that the HFS-affiliated
7 companies identified herein do not own or operate marine vessels in addition to the
8 thirty-eight (38) vessels referenced in paragraph 9(a) of this Agreement or the EMS
9 attached as Exhibit A.

10 The Districts, immediately following entry of the Plea Agreement, shall
11 discontinue their investigations of HFS-operated vessels for conduct occurring before
12 that date and shall withdraw all pending subpoenas. The Districts shall return to HFS,
13 thirty (30) days following the imposition of the sentence, all materials produced or
14 seized from HFS or its affiliated companies as part of the Districts' investigations of
15 this matter.

16 Nothing contained in this Agreement is meant to limit the rights and authority of
17 the United States to take further civil or administrative action against HFS, including
18 but not limited to, any listing and debarment proceedings to restrict rights and
19 opportunities of HFS to contract with or receive assistance, loans, and benefits from
20 United States agencies. The parties agree, however, that the United States Coast
21 Guard's Eleventh and Thirteenth Coast Guard Districts will not pursue any civil
22 penalties based upon the subject matter of this Agreement. Upon payment of the fine
23 and penalty assessments, the agreements on security posted by HFS shall be canceled
24 and the original documents returned to counsel for HFS.

25 This Plea Agreement does not limit the right of HFS or the United States to
26 speak at the time of sentencing or in connection with the presentence investigation,
27 consistent with the provisions set forth in this Plea Agreement, to provide the Court or
28 the United States Probation Office with evidence of all relevant conduct committed by

1 HFS. The parties agree that at sentencing each will support the agreed disposition set
2 forth in this Plea Agreement pursuant to Federal Rule of Criminal Procedure
3 11(c)(1)(C).

4 11. Corporate Authorization. HFS represents that it is authorized to enter
5 into this Agreement. On or before the date of entry and filing of the Plea Agreement,
6 HFS shall provide to the Districts and the Court a written statement under corporate
7 seal, certifying that HFS is authorized to enter into and comply with all of the
8 provisions of this Plea Agreement. The resolutions further shall authorize HFS'
9 counsel to take these actions, and that all corporate formalities for such authorizations
10 have been observed.

11 12. Waiver of Appeal. HFS is aware that 18 U.S.C. § 3742 gives the right
12 to appeal the sentence to be imposed, and that other federal statutes give HFS the right
13 to appeal other aspects of the conviction. In consideration of the agreement of the
14 Districts as set forth herein, HFS knowingly and voluntarily agrees to waive the
15 following rights:

16 a. The right, conferred by 18 U.S.C. § 3742, to appeal any sentence
17 imposed by the Court for the conviction of these offenses, except if the sentence
18 imposed varies from that agreed upon above under Rule 11(c)(1)(C);

19 b. The right to appeal any aspect of HFS' conviction, including any
20 pre-charge or pre-trial dispositions of motions or other issues; and

21 c. The right to bring any collateral attack against HFS' conviction or
22 sentence, except as it may relate to the effectiveness of its legal representation or as
23 permitted under subparagraph (a) above.

24 13. Voluntariness of the Plea. HFS acknowledges that it has entered into this
25 Plea Agreement freely and voluntarily and that it has been fully advised by counsel, and
26 that no threats or promises were made to induce it to enter into the guilty pleas called
27 for by this Agreement.

1 14. Statute of Limitations. In the event that this Agreement is not accepted
2 by the Court for any reason, or HFS has breached any of the terms of this Plea
3 Agreement, the statute of limitations shall be deemed to have been tolled from the date
4 of the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea
5 Agreement by the Court; or (2) 30 days following the date on which a breach of the
6 Plea Agreement by HFS is discovered by the Districts.


7 15. Completeness of Agreement. The Districts and HFS acknowledge that
8 these terms constitute the entire Plea Agreement between the parties. This Agreement
9 only binds the United States Attorney's Offices for the Western District of Washington,
10 the Central District of California and the Northern District of California, and the
11 United States Coast Guard in these Coast Guard Districts. It does not bind any other
12 United States Attorney's Office or any other office or agency of the United States, or
13 any state or local prosecutor, except as provided herein.

14 Dated this 12th day of March, 2004.

15
16 FOR THE UNITED STATES:

17 
18 _____
19 FLOYD G. SHORT
20 Assistant United States Attorney
Western District of Washington

15/1
18 _____
19 MAUREEN BESSETTE
20 Assistant United States Attorney
Northern District of California

21 
22 _____
23 MARK CHUTKOW
24 JAMES D. OESTERLE
LARRY KENNEDY
Assistant United States Attorneys
Western District of Washington

21 FOR THE DEFENDANT:

22 
23 _____
24 Höegh Fleet Services, A/S

25 15/1
26 _____
27 WILLIAM W. CARTER
DOROTHY C. KIM
Assistant United States Attorneys
28 Central District of California

26 
27 _____
28 IRWIN H. SCHWARTZ
Counsel for Höegh Fleet Services, A/S

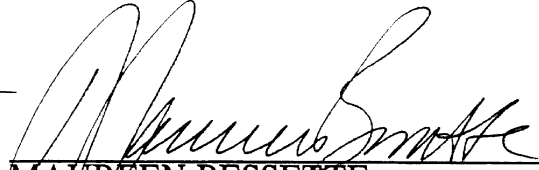
1 14. Statute of Limitations. In the event that this Agreement is not accepted
2 by the Court for any reason, or HFS has breached any of the terms of this Plea
3 Agreement, the statute of limitations shall be deemed to have been tolled from the date
4 of the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea
5 Agreement by the Court; or (2) 30 days following the date on which a breach of the
6 Plea Agreement by HFS is discovered by the Districts.


7 15. Completeness of Agreement. The Districts and HFS acknowledge that
8 these terms constitute the entire Plea Agreement between the parties. This Agreement
9 only binds the United States Attorney's Offices for the Western District of Washington,
10 the Central District of California and the Northern District of California, and the
11 United States Coast Guard in these Coast Guard Districts. It does not bind any other
12 United States Attorney's Office or any other office or agency of the United States, or
13 any state or local prosecutor, except as provided herein.

14 Dated this 12th day of March, 2004.

15
16 FOR THE UNITED STATES:

17 
18 _____
19 FLOYD G. SHORT
20 Assistant United States Attorney
21 Western District of Washington


_____ MAUREEN BESSETTE
Assistant United States Attorney
Northern District of California

21 
22 _____
23 MARK CHUTKOW
24 JAMES D. OESTERLE
25 LARRY KENNEDY
26 Assistant United States Attorneys
27 Western District of Washington

FOR THE DEFENDANT:

28 /s/

Höegh Fleet Services, A/S

26 /s/

27 WILLIAM W. CARTER
28 DOROTHY C. KIM
Assistant United States Attorneys
Central District of California

/s/

IRWIN H. SCHWARTZ
Counsel for Höegh Fleet Services, A/S

1 14. Statute of Limitations. In the event that this Agreement is not accepted
2 by the Court for any reason, or HFS has breached any of the terms of this Plea
3 Agreement, the statute of limitations shall be deemed to have been tolled from the date
4 of the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea
5 Agreement by the Court; or (2) 30 days following the date on which a breach of the
6 Plea Agreement by HFS is discovered by the Districts.


7 15. Completeness of Agreement. The Districts and HFS acknowledge that
8 these terms constitute the entire Plea Agreement between the parties. This Agreement
9 only binds the United States Attorney's Offices for the Western District of Washington,
10 the Central District of California and the Northern District of California, and the
11 United States Coast Guard in these Coast Guard Districts. It does not bind any other
12 United States Attorney's Office or any other office or agency of the United States, or
13 any state or local prosecutor, except as provided herein.

14 Dated this 12th day of March, 2004.

15
16 FOR THE UNITED STATES:

17 
18 _____
19 FLOYD G. SHORT
20 Assistant United States Attorney
Western District of Washington

17 /s/
18 _____
19 MAUREEN BESSETTE
20 Assistant United States Attorney
Northern District of California

21 
22 _____
23 MARK CHUTKOW
24 JAMES D. OESTERLE
25 LARRY KENNEDY
26 Assistant United States Attorneys
Western District of Washington

21 FOR THE DEFENDANT:

22 /s/
23 _____
24 Höegh Fleet Services, A/S

25 
26 _____
27 WILLIAM W. CARTER
28 DOROTHY C. KIM
Assistant United States Attorneys
Central District of California

25 /s/
26 _____
27 IRWIN H. SCHWARTZ
28 Counsel for Höegh Fleet Services, A/S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plea Agreement was served upon defendant by depositing the same in the United States mail at 601 Union Street, Suite 5100, Seattle, Washington 98101-3903:

Irwin Schwartz
Attorney at Law
710 Cherry Street
Seattle, WA 98104-1925

This 11th day of March, 2004.

s/Anna Chang
ANNA CHANG
Paralegal
United States Attorney's Office
601 Union Street, Suite 5100
Seattle, Washington 98101-3903
Telephone: (206) 553-2274
Facsimile: (206) 553-2502
E-mail: Anna.Chang@usdoj.gov