

03-CR-05765-MISC

Hon. Ronald B. Leighton

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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 Besette, 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 (9<sup>th</sup> Cir. 1979);  
9 *United States v. Hilton Hotels Corporation*, 467 F.2d 1000, 1004-07 (9<sup>th</sup> 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  
 5 vessel's engine room, including a chief engineer, a second engineer, a third engineer, a  
 6 fourth engineer, an electrician, two fitters, an oiler, a wiper, and an engine cadet.  
 7 During the period relevant to this Plea Agreement, the second engineer was primarily  
 8 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  
 incinerator. The second engineer reported to the chief engineer who had overall  
 responsibility for engine room operations. The chief engineer reported directly to the  
 captain, who was responsible for all vessel operations.

9 d. Large ocean going vessels, like the M/V Höegh Minerva, produce waste oil  
 10 as a result of the operation of machinery in the engine room. Some of the waste oil,  
 11 together with water and other liquids, accumulates in the bottom or "bilges" of the  
 12 vessel. This waste liquid typically drains into the "bilge wells," small compartments  
 13 set into the bottom of the engine room compartment. The bilge waste is then collected  
 14 and run through various processes designed to separate the oil and other wastes from  
 15 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.  
 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  
 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  
 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  
 17 United States by the "Act to Prevent Pollution from Ships" ("APPS"), 33 U.S.C.  
 18 1901, *et seq.*, a ship may not discharge overboard oily waste with more than fifteen  
 19 (15) parts per million ("ppm") of oil. The MARPOL Protocol and the APPS require  
 20 that each oil tanker of 150 gross tons or more, or non-tanker vessels of more than 400  
 21 gross tons, maintain an "Oil Record Book" (also known as the "ORB"). All transfers  
 22 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  
 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  
 maintained onboard for not less than three years and must be kept on board the vessel  
 readily available at all reasonable times.

23 f. The regulations authorize the U.S. Coast Guard to board and inspect all  
 24 vessels in United States ports to determine compliance with federal regulations and the  
 25 MARPOL Protocol. 14 U.S.C. § 89, 33 C.F.R. § 151.25. The inspection typically  
 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  
 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  
 28 Minerva in June 2003. A few weeks later he directed one of the ship's fitters to make a  
 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.  
28

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 12<sup>th</sup> 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

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21 \_\_\_\_\_  
22 MAUREEN BESSETTE  
23 Assistant United States Attorney  
24 Northern District of California

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26 \_\_\_\_\_  
27 MARK CHUTKOW  
28 JAMES D. OESTERLE  
LARRY KENNEDY  
Assistant United States Attorneys  
Western District of Washington

FOR THE DEFENDANT:  
  
\_\_\_\_\_  
Höegh Fleet Services, A/S

29 15/  
30 \_\_\_\_\_  
31 WILLIAM W. CARTER  
32 DOROTHY C. KIM  
33 Assistant United States Attorneys  
34 Central District of California

  
\_\_\_\_\_  
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  
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Assistant United States Attorneys  
Western District of Washington

FOR THE DEFENDANT:

25 /s/  
\_\_\_\_\_  
Høegh Fleet Services, A/S

26 /s/  
\_\_\_\_\_   
27 WILLIAM W. CARTER  
DOROTHY C. KIM  
28 Assistant United States Attorneys  
Central District of California

/s/  
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IRWIN H. SCHWARTZ  
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28 FOR THE DEFENDANT:

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\_\_\_\_\_  
Høegh Fleet Services, A/S

26  2/13/04  
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IRWIN H. SCHWARTZ  
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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