

KAREN L. LOEFFLER
United States Attorney

KEVIN R. FELDIS
YVONNE LAMOUREUX
Assistant U.S. Attorneys
District of Alaska

KENNETH E. NELSON
Trial Attorney, Environmental Crimes Section

JOHN D. CASHMAN
Special Assistant U.S. Attorney
Federal Building and U.S. Courthouse
222 West Seventh Avenue, #9, Room 253
Anchorage, Alaska 99513-7567
Phone: (907) 271-5071
Fax: (907) 271-1500

Email: kevin.feldis@usdoj.gov
yvonne.lamoureux@usdoj.gov
kenneth.nelson3@usdoj.gov
john.d.cashman@uscg.mil

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	No.
)	
)	<u>COUNTS 1-5:</u>
Plaintiff,)	ACT TO PREVENT
)	POLLUTION FROM SHIPS
vs.)	Vio. of 33 U.S.C. § 1908(a)
)	
)	
NOBLE DRILLING (U.S.) LLC,)	
)	
Defendant.)	

) COUNT 6:
) NONINDIGENOUS AQUATIC
) NUISANCE PREVENTION
) AND CONTROL ACT
) Vio. of 16 U.S.C. § 4711(g)(2)
)
) COUNTS 7-8:
) PORTS AND WATERWAYS
) SAFETY ACT
) Vio. of 33 U.S.C. § 1232(b)(1)

I N F O R M A T I O N

The United States Attorney charges that:

GENERAL ALLEGATIONS

At all times relevant to this Information:

1. Defendant, NOBLE DRILLING (U.S.) LLC (NOBLE), was the operator and bare boat charterer of the Motor Vessel Noble Discoverer (Noble Discoverer), IMO No. 6608608, which operated under the flag of the Republic of Liberia.

2. NOBLE was also the drilling operator of the Mobile Offshore Drilling Unit (MODU) Kulluk, IMO No. 802785, which operated under the flag of the Republic of the Marshall Islands. The Kulluk was a conical-shaped vessel, weighing 27,968 gross tons, and is 265.7 feet in

diameter. The Kulluk was not self-propelled, but rather had to be towed.

3. NOBLE is organized under the laws of the State of Delaware and based in Sugar Land, Texas. NOBLE's ultimate parent corporation, Noble Corporation plc, owns and operates through its subsidiaries a fleet of 35 mobile offshore drilling units located worldwide. In July 2010, Noble Corporation plc acquired the Noble Discoverer, which was under contract with Shell Offshore, Inc. and Shell Development, Ltd. for the purpose of drilling in the arctic in Alaska.

4. The Noble Discoverer, a mobile drillship, weighed approximately 15,296 gross tons, was 572 feet long, and was propelled by a single main engine. The Noble Discoverer was built in 1965 as a log carrier, and was converted to a drillship in 1976 and underwent major refits in 2007 and 2010.

5. The Noble Discoverer engaged in international voyages, including a transit from New Zealand to the United States and between multiple United States' ports in 2012. In 2012, the Noble Discoverer made several U.S. port calls in Washington and Alaska.

Marine Vessels' Generation and Disposal of Oil-Contaminated Waste

6. The operation of large marine vessels like the Noble Discoverer generates large quantities of oil-contaminated machinery space bilge water and waste oil. Machinery space bilge water is created when water mixes in the bottom of the vessel, known as the bilges, with oil leaked and dripped from the machinery and engines' lubrication and fuel systems.

7. In the proper operation of a vessel, machinery space bilge water is collected, stored, and processed to separate the water from oil and other wastes. This process uses an onboard pollution prevention control device known as an Oil Water Separator, together with an Oil Content Meter. After passing through the Oil Water Separator, bilge water containing fifteen (15) parts per million ("ppm") or less of oil (measured by the Oil Content Meter) may be discharged overboard. When properly installed and used, sensors in the Oil Content Meter detect an oil content of greater than 15 ppm, sound an alarm, and trigger an automatic shut-down of such overboard discharge. Regardless of its oil content, all water entering the machinery space(s) must be processed through a properly functioning Oil Water Separator

and Oil Content Meter, or transferred to shore side reception facilities for disposal.

8. Waste oil is created through various means on a vessel. Engine oil changes, purification of fuel and lubrication oil, and leaks from oil-seal interfaces throughout the vessel generate waste oil. There are only two means in which waste oil can be properly disposed of: (1) to a shore-side facility or (2) burned in an on-board incinerator.

Legal Framework Governing Recordkeeping and Disposal of Machinery Space Bilge Water and Waste Oil; Act to Prevent Pollution from Ships

9. The United States is part of an international regime that regulates the discharge of oil from vessels at sea, known as the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (“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 (“APPS”), 33 U.S.C. §§ 1901 et seq. APPS makes it a crime for any person knowingly to violate MARPOL, APPS, or regulations promulgated under APPS. These regulations apply to all commercial vessels of a certain tonnage, including the Kulluk and the Noble

Discoverer, operating in United States waters or while at a port or terminal under the jurisdiction of the United States.

10. MARPOL and APPS set the legal standard for the maximum oil content of waste water permitted to be discharged overboard by a vessel, namely, 15 ppm. Therefore, under MARPOL, wastes may be discharged overboard into the ocean only if they contain 15 ppm of oil or less. MARPOL also requires that discharges pass through an oil-sensing device (or Oil Content Meter), such as that found on an Oil Water Separator, to prevent the discharge of any mixture containing more than the legally permitted concentration (15ppm) of oil.

11. Consistent with the requirements of MARPOL, the APPS regulations require that every ship of 400 gross tons and above maintain a record known as an Oil Record Book. In this Oil Record Book, transfers of oil, the disposal of sludge and waste oil, and overboard discharges of bilge water that has accumulated in machinery spaces, and thus may be contaminated with oil, must be fully and accurately recorded by the person in charge of the operations. 33 C.F.R. § 151.25(d). The Oil Record Book must also record any emergency, accidental, and other exceptional discharges of oil or mixtures. 33

C.F.R. § 151.25(g). The Oil Record Book must be maintained onboard the vessel for not less than three years, and be readily available for inspection at all reasonable times. 33 C.F.R. § 151.25(k). MARPOL further requires that any failure of the oil filtering equipment shall be recorded in the Oil Record Book. MARPOL Regulation 17, 1340 U.N.T.S. 61, 62 & 184.

12. The APPS regulations require that every ship of 400 gross tons and above must have on board a valid International Oil Pollution Prevention (IOPP) Certificate. 33 C.F.R. § 151.19(b). An IOPP Certificate ceases to be valid if significant alterations have taken place in the construction, equipment, fittings or arrangements of the pollution prevention equipment. 33 C.F.R. § 151.19(e)(1).

13. Failure to comply with international standards, including MARPOL, can form the basis of an order to prohibit a vessel from entering port, or to prohibit the vessel from leaving port without remedial action until the United States Coast Guard determines that the vessel does not present an unreasonable threat to the marine environment. 33 C.F.R. § 151.07(b) and 151.23(b). In conducting their inspections pursuant to Title 14, United States Code, Section 89(a),

United States Coast Guard personnel routinely rely on statements of the vessel's crew and on documents, including information contained in the Oil Record Book and IOPP Certificate. The United States Coast Guard is specifically authorized to examine a vessel's Oil Record Book to determine, among other things, whether the vessel has operable pollution prevention equipment and appropriate procedures, whether it poses any danger to United States ports and waters, and whether the vessel has discharged any oil or oily mixtures in violation of MARPOL, APPS, or other applicable federal regulations. 33 C.F.R. § 151.23(a)(3) and (c).

Nonindigenous Aquatic Nuisance Prevention and Control Act

14. The Nonindigenous Aquatic Nuisance Prevention and Control Act, 16 U.S.C. §§ 4701-4728, established a legal framework designed to reduce the introduction of marine invasive species into the waters of the United States. Invasive species can disrupt local ecosystems, crowd out native species, and cause millions of dollars in economic damage to coastal areas. Marine invasive species can arrive as barnacles or other organisms that transit the world's oceans by

attaching themselves to the hulls of ships. Another pathway for marine invasive species is through ballast water.

15. In order to mitigate the risk of introduction of marine invasive species through ballast water, the Coast Guard has promulgated Ballast Water Management for Control of Nonindigenous Species regulations pursuant to 16 U.S.C. § 4711(f). See 33 C.F.R. §§ 151.1500-151.2080. Any person who knowingly violates the regulations promulgated under the Nonindigenous Aquatic Nuisance Prevention and Control Act is guilty of a Class C felony. 33 C.F.R. § 151.2080. These regulations apply to non-U.S. vessels when those vessels operate in the waters of the United States or are bound for U.S. ports or places. 33 C.F.R. §§ 151.2010, 151.2070. The regulations provide that (1) no ballast water shall be discharged, unless pre-treated using an approved method, in U.S. waters if the ballast water originated from a foreign source, (2) that prior to coming to a U.S. port, water to be de-ballasted must have been treated or undergone an open water ballast water exchange, whereby the coastal ballast onboard is swapped for open ocean ballast water, (3) ballast water carried in any tank containing a residue of oil or any other pollutant must be discharged in accordance

with applicable laws and regulations, (4) a report of the ballast water exchange and other information must be submitted to the Coast Guard and the National Ballast Information Clearinghouse prior to arrival in port, and (5) the vessel must maintain other detailed ballast water records as to the total ballast capacity, total volume of ballast water onboard, and total number of tanks in ballast. 33 C.F.R. §§ 151.2025, 151.2060, 151.2070. The regulations allow Coast Guard inspectors to view these records as well as undertake other measures, such as water and sediment sampling, to determine compliance with the ballast management regulations. 33 C.F.R. § 151.2075.

Ports and Waterways Safety Act

16. The U.S. Congress enacted the Ports and Waterways Safety Act (“PWSA”), 33 U.S.C. §§ 1221, et seq., in recognition of the fact that increased supervision of vessel and port operations was necessary to reduce the possibility of vessel or cargo loss, or damage to life, property, or the marine environment. 33 U.S.C. § 1221(c)(1). Pursuant to 33 U.S.C. § 1232(b)(1), any person who willfully and knowingly violates a regulation promulgated under the PWSA commits a class D felony. PWSA regulations govern a wide variety of vessel operations. One such

regulation requires that the owner, agent, master, operator, or person in charge of a vessel must immediately notify the nearest Coast Guard office whenever there is a hazardous condition, either aboard a vessel or caused by the vessel or its operation. 33 C.F.R. § 160.215. “Hazardous condition” is defined as “any condition that may adversely affect the safety of any vessel, bridge, structure, or shore area or the environmental quality of any port, harbor, or navigable waterway of the United States. It may, but need not, involve collision, allision, fire, explosion, grounding, leaking, damage, injury or illness of a person aboard, or manning-shortage.” 33 C.F.R. § 160.204.

17. The requirement to notify the Coast Guard of hazardous conditions is applicable to non-U.S. vessels when those foreign vessels are bound for or are departing from ports or places in the United States. 33 C.F.R. § 160.202(a).

18. NOBLE was required to record transfers and disposals of oil, oil-contaminated waste, and machinery space bilge water in the Oil Record Books for the Noble Discoverer and the Kulluk. NOBLE was also required to verify that all systems, including the Oil Water Separator, which was a required piece of pollution prevention

equipment, were functioning properly and to ensure compliance with all laws concerning the prevention of pollution of the environment. NOBLE was also required to maintain accurate ballast records reflecting the source of ballast water in the ballast water tanks, discharges from the tanks, and the total volume of ballast water onboard. NOBLE was also required to immediately notify the United States Coast Guard of all hazardous conditions aboard the Noble Discoverer.

COUNT 1

ACT TO PREVENT POLLUTION FROM SHIPS

19. Paragraphs 1, 3-13, and 18 of this Information are re-alleged and incorporated herein.

20. On or about July 7, 2012, within the District of Alaska, the defendant, NOBLE DRILLING (U.S.) LLC, did knowingly fail to have a valid IOPP Certificate and did knowingly fail to maintain an accurate Oil Record Book for the Noble Discoverer, in which all disposals of oil residue, all overboard discharges, and all disposals of bilge water were required to be accurately recorded. Specifically, on that date, in Dutch Harbor, Alaska, defendant maintained an Oil Record Book that (1)

included false entries regarding the use of the Oil Water Separator; (2) omitted entries regarding the inoperability of the Oil Water Separator; (3) omitted entries regarding the transfers and storage of machinery space bilge water and waste oil; and (4) omitted entries relating to the improper discharge of machinery space bilge water via a barrel and pump; and defendant did not have a valid IOPP Certificate for the modifications made to the Oil Water Separator system.

All of which is in violation of Title 33, United States Code, Section 1908(a) and Title 33, Code of Federal Regulations, Sections 151.19 and 151.25.

COUNT 2

ACT TO PREVENT POLLUTION FROM SHIPS

21. Paragraphs 1, 3-13, and 18 of this Information are re-alleged and incorporated herein.

22. On or about November 1, 2012, within the District of Alaska, the defendant, NOBLE DRILLING (U.S.) LLC, did knowingly fail to have a valid IOPP Certificate and did knowingly fail to maintain an accurate Oil Record Book for the Noble Discoverer, in which all disposals of oil residue, all overboard discharges, and all disposals of

bilge water were required to be accurately recorded. Specifically, on that date, in Nome, Alaska, defendant maintained an Oil Record Book that (1) included false entries regarding the use of the Oil Water Separator; (2) omitted entries regarding the inoperability of the Oil Water Separator; (3) omitted entries regarding the transfers and storage of machinery space bilge water and waste oil; and (4) omitted entries relating to the crew's improper discharge of machinery space bilge water via a barrel and pump; and defendant did not have a valid IOPP Certificate for the modifications made to the Oil Water Separator system.

All of which is in violation of Title 33, United States Code, Section 1908(a) and Title 33, Code of Federal Regulations, Sections 151.19 and 151.25.

COUNT 3

ACT TO PREVENT POLLUTION FROM SHIPS

23. Paragraphs 1, 3-13, and 18 of this Information are re-alleged and incorporated herein.

24. On or about November 7, 2012, within the District of Alaska, the defendant, NOBLE DRILLING (U.S.) LLC, did knowingly fail to

have a valid IOPP Certificate and did knowingly fail to maintain an accurate Oil Record Book for the Noble Discoverer, in which all disposals of oil residue, all overboard discharges, and all disposals of bilge water were required to be accurately recorded. Specifically, on that date, in Dutch Harbor, Alaska, defendant maintained an Oil Record Book that (1) included false entries regarding the use of the Oil Water Separator; (2) omitted entries regarding the inoperability of the Oil Water Separator; (3) omitted entries regarding the transfers and storage of machinery space bilge water and waste oil; and (4) omitted entries relating to the crew's improper discharge of machinery space bilge water via a barrel and pump; and defendant did not have a valid IOPP Certificate for the modifications made to the Oil Water Separator system.

All of which is in violation of Title 33, United States Code, Section 1908(a) and Title 33, Code of Federal Regulations, Sections 151.19 and 151.25.

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COUNT 4

ACT TO PREVENT POLLUTION FROM SHIPS

25. Paragraphs 1, 3-13, and 18 of this Information are re-alleged and incorporated herein.

26. On or about November 26, 2012, within the District of Alaska, the defendant, NOBLE DRILLING (U.S.) LLC, did knowingly fail to have a valid IOPP Certificate and did knowingly fail to maintain an accurate Oil Record Book for the Noble Discoverer, in which all disposals of oil residue, all overboard discharges, and all disposals of bilge water were required to be accurately recorded. Specifically, on that date, in Seward, Alaska, defendant maintained an Oil Record Book that (1) included false entries regarding the use of the Oil Water Separator; (2) omitted entries regarding the inoperability of the Oil Water Separator; (3) omitted entries regarding the transfers and storage of machinery space bilge water and waste oil; (4) omitted entries regarding the nonfunctioning Oil Content Meter audible alarm; and (5) omitted entries relating to the crew's improper discharge of machinery space bilge water via a barrel and pump; and defendant did

not have a valid IOPP Certificate for the modifications made to the Oil Water Separator system.

All of which is in violation of Title 33, United States Code, Section 1908(a) and Title 33, Code of Federal Regulations, Sections 151.19 and 151.25.

COUNT 5

ACT TO PREVENT POLLUTION FROM SHIPS

27. Paragraphs 2-13 and 18 of this Information are re-alleged and incorporated herein.

28. On or about November 22, 2012, within the District of Alaska, the defendant, NOBLE DRILLING (U.S.) LLC, did knowingly fail to maintain an accurate Oil Record Book for the MODU Kulluk, in which all disposals of oil residue, all overboard discharges, and all disposals of bilge water were required to be accurately recorded. Specifically, on that date, in Dutch Harbor, Alaska, defendant maintained an Oil Record Book that omitted entries regarding the use of the Oil Water Separator and related discharges and the transfer and disposal of waste oil.

All of which is in violation of Title 33, United States Code, Section 1908(a) and Title 33, Code of Federal Regulations, Section 151.25.

COUNT 6

NONINDIGENOUS AQUATIC NUISANCE PREVENTION AND
CONTROL ACT

29. Paragraphs 1, 3-5, 14-15, and 18 of this Information are re-alleged and incorporated herein.

30. On or about November 7, 2012, within the District of Alaska, the defendant, NOBLE DRILLING (U.S.) LLC, did violate the Nonindigenous Aquatic Nuisance Prevention and Control Act, 16 U.S.C. § 4711(g)(2) by knowingly violating a regulation promulgated under 16 U.S.C. § 4711(f). Specifically, while the Noble Discoverer was in Dutch Harbor, Alaska, defendant did knowingly fail to maintain written ballast records, as reflected in defendant's ballast spreadsheet, which contained inaccuracies with respect to the total volume of ballast water onboard and with respect to the source of the ballast water in the ballast water tanks. For example, NOBLE knowingly failed to record the transfers of the oil-contaminated contents of the skimmer tank to

ballast water tanks 7 Port, 10 Port, 10 Starboard, 11 Port, and 11 Starboard, and subsequent discharges from those ballast water tanks.

All of which is in violation of Title 16, United States Code, Section 4711(g)(2) and Title 33, Code of Federal Regulations, Section 151.2070.

COUNT 7

PORTS AND WATERWAYS SAFETY ACT

31. Paragraphs 1, 3-5, and 16-18 of this Information are re-alleged and incorporated herein.

32. Between on or about October 30, 2012 and on or about November 2, 2012, within the District of Alaska, the defendant, NOBLE DRILLING (U.S.) LLC, knowingly and willfully failed to immediately notify the nearest U.S. Coast Guard Sector Office or U.S. Coast Guard Group Office that hazardous conditions existed aboard the Noble Discoverer that was bound for, and departing from, a port or place in the United States. Specifically, prior to the Noble Discoverer's arrival in Nome, Alaska, and thereafter upon the vessel's departure, defendant, while aware of a hazardous condition aboard the vessel that may have adversely affected the safety of any vessel, bridge, structure, and shore area and the environmental quality of any port, harbor, and navigable

waterway of the United States, namely, a structurally compromised main propulsion shaft and a severely unreliable main propulsion engine which experienced shut-downs and equipment failures and created backfires and other unsafe conditions, failed to report these hazardous conditions to the nearest Coast Guard Sector Office or Group Office prior to the vessel's arrival in and departure from port.

All of which is in violation of Title 33, United States Code, Section 1232(b)(1) and Title 33, Code of Federal Regulations, Section 160.215.

COUNT 8

PORTS AND WATERWAYS SAFETY ACT

33. Paragraphs 1, 3-5, and 16-18 of this Information are re-alleged and incorporated herein.

34. Between on or about November 7, 2012, and on or about November 21, 2012, within the District of Alaska, the defendant, NOBLE DRILLING (U.S.) LLC, knowingly and willfully failed to immediately notify the nearest U.S. Coast Guard Sector Office or U.S. Coast Guard Group Office that hazardous conditions existed aboard the Noble Discoverer that was bound for, and departing from, a port or place in the United States. Specifically, prior to the Noble Discoverer's

arrival in Dutch Harbor, Alaska, and thereafter upon the vessel's departure, defendant, while aware of a hazardous condition aboard the vessel that may have adversely affected the safety of any vessel, bridge, structure, and shore area and the environmental quality of any port, harbor, and navigable waterway of the United States, namely, a structurally compromised main propulsion shaft and a severely unreliable main propulsion engine which experienced shut-downs and equipment failures and created backfires and other unsafe conditions, failed to report these hazardous conditions to the nearest Coast Guard Sector Office or Group Office prior to the vessel's arrival in and departure from port.

All of which is in violation of Title 33, United States Code, Section 1232(b)(1) and Title 33, Code of Federal Regulations, Section 160.215.

DATED this 8th day of December, 2014, at Anchorage, Alaska.

KAREN L. LOEFFLER
United States Attorney

s/ Kevin R. Feldis
KEVIN R. FELDIS
Assistant U.S. Attorney
United States of America