

FILED
DISTRICT COURT OF GUAM

JUN 11 2019 

JEANNE G. QUINATA
CLERK OF COURT

ORIGINAL



1 SHAWN N. ANDERSON
United States Attorney
2 MARIVIC P. DAVID
Assistant U.S. Attorney
3 MIKEL W. SCHWAB
Chief, Civil Division
4 Sirena Plaza, Suite 500
108 Hernan Cortez Avenue
5 Hagåtña, Guam 96910
PHONE: (671) 472-7332
6 FAX: (671) 472-7215

7 KENNETH E. NELSON
Senior Trial Attorney
8 Environmental Crimes Section
Department of Justice
9 601 D St. NW, Suite 2120
Washington, DC 20004
10 Office: (202) 305-0435
Fax: (202) 514-8865

11 *Attorneys for Plaintiff*

12
13 **IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM**

14 UNITED STATES OF AMERICA,
15 Plaintiff

16 vs.

17
18 FUKUICHI GYOGYO KABUSHIKI
KAISHA,
19 Defendant

Case No.: 19-00024

INFORMATION

ACT TO PREVENT POLLUTION FROM
SHIPS

[33 U.S.C. § 1908(a)]

OBSTRUCTION OF AN AGENCY
PROCEEDING

[18 U.S.C. § 1505]

20
21 THE UNITED STATES ATTORNEY CHARGES:

22 **COUNT ONE**

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

24 **FACTUAL BACKGROUND**

1 At all times relevant herein,

2 1. The *F/V Fukuichi Maru No. 112* was an ocean-going, stern-chute, purse-seiner
3 fishing vessel. The vessel was 1,093 gross tons and was registered or “flagged” by Japan. The
4 *F/V Fukuichi Maru No. 112* was owned and operated by defendant Fukuichi Gyogyo Kabushiki
5 Kaisha (“FUKUICHI”).

6 2. FUKUICHI was a company registered in Japan with an operating address of
7 Kabushiki Kaiysa 5-9-25, Nakaminato, Yaizu-shi, Shizuoka-ken, 425-0021 Japan. FUKUICHI
8 owned and operated five fishing vessels including the *F/V Fukuichi Maru No. 112*. FUKUICHI
9 has owned and operated the *F/V Fukuichi Maru No. 112* since 1990.

10 3. The *F/V Fukuichi Maru No. 112* had a crew consisting of, among others, a Master,
11 Fish Master, Chief Engineer and First Officer. These crewmembers acted on behalf of
12 FUKUICHI to carry out activities on the vessel to ensure the vessel was able to operate
13 internationally. All of the actions taken by these crewmembers as described in this Information
14 were within the course and scope of their employment and/or agency on behalf of FUKUICHI
15 and for its benefit, at least in part.

16 4. On vessels like the *F/V Fukuichi Maru No. 112*, oily waste, also known as oil bilge
17 water and waste oil, is generated on a regular basis. Waste oil (sometimes referred to as oily
18 mixtures) is the result of oil leakages from various machinery as well as from replacing lubrication
19 oils in the machinery. Oily bilge water refers to oil and water that drips and leaks from machinery
20 and mechanical systems and accumulates in the bilge, which is the bottom-most portion of the
21 engine room. Waste oil and oily mixtures can only be disposed of in two manners: (1) incineration
22 in the vessel’s onboard incinerator, or (2) disposal to a barge or other shore-based disposal facility.
23 Oily bilge water can also be disposed of in only two manners: (1) processing through the onboard
24 Oil Water Separator and Oil Content Monitor resulting in an overboard discharge of water with

1 no more than 15 parts per million (“ppm”) of oil, or (2) disposal to a barge or other shore-based
2 disposal facility. Prior to disposal, oily bilge water is transferred to, and stored in, the vessel’s
3 bilge water holding tank. All disposals of waste oil, oily mixtures or oily bilge water, whether
4 through incineration, use of the Oil Water Separator, or transfer to a shore-based facility, must be
5 recorded by the person or persons in charge of those operations in the vessel’s Oil Record Book.
6 The Chief Engineer on the *F/V Fukuichi Maru No. 112* was the person in charge of these
7 operations and required to accurately record in the Oil Record Book. The Master of the *F/V*
8 *Fukuichi Maru No. 112* was required to maintain an accurate Oil Record Book.

9 5. The *F/V Fukuichi Maru No. 112* sailed into the United States Territory of Guam
10 on or about April 1, 2019, to effectuate repairs to its cargo refrigeration system.

11 LEGAL BACKGROUND

12 6. The United States is part of an international regime that regulates the discharge of
13 oil from vessels at sea: the International Convention for the Prevention of Pollution from Ships,
14 as modified by the Protocol of 1978 (together, “MARPOL”). MARPOL is embodied in
15 agreements that the United States has ratified and has been implemented in the United States by
16 the Act to Prevent Pollution from Ships (“APPS”), 33 U.S.C. §§ 1901 *et seq.* APPS makes it a
17 crime for any person to knowingly violate MARPOL, APPS, or regulations promulgated under
18 APPS. 33 U.S.C. § 1908. These regulations apply to all commercial vessels operating in the
19 navigable waters of the United States or while in a port or terminal under the jurisdiction of the
20 United States, including vessels operating under the authority of a country other than the United
21 States. 33 U.S.C. § 1902(a)(1)(3).

22 7. MARPOL Annex I (“Regulations for the Prevention of Pollution by Oil”)
23 established international standards governing the treatment and disposal of oily mixtures
24 generated from the machinery spaces of a vessel. Under MARPOL, oily bilge water may be

1 discharged overboard into the ocean only if it does not exceed 15 ppm of oil and the ship has in
2 operation required pollution prevention equipment. This equipment includes: an oil filter, known
3 as an Oil Water Separator; an alarm, known as an Oil Content Monitor; and an automatic stopping
4 device, known as a Three-Way Valve. This equipment prevents the discharge of oily bilge water
5 containing more than 15 ppm oil, the maximum legally permitted concentration of oil in the
6 dischargeable mixture.

7 8. Consistent with the requirements contained in MARPOL, APPS regulations
8 require that vessels such as the *F/V Fukuichi Maru No. 112* maintain a record known as an Oil
9 Record Book in which the disposal, transfer, and discharge overboard of sludge, oil residue, oily
10 mixtures, and oily bilge water must be recorded. 33 C.F.R. § 151.25(d). Discharges from the
11 machinery spaces must be fully and accurately recorded in the Oil Record Book without delay by
12 the person or persons in charge of the operations. 33 C.F.R. § 151.25(d) and (h). The Oil Record
13 Book also must record any emergency, accidental, or other exceptional discharges of oil or oily
14 mixtures, including a statement of the circumstances of, and reasons for, the discharge. 33 C.F.R.
15 § 151.25(g). The Oil Record Book must be maintained aboard the vessel for not less than three
16 years, and be readily available for inspection at all reasonable times. MARPOL Annex I
17 Regulation 17.6; 33 C.F.R. § 151.25(i). According to 33 C.F.R. § 151.25(j), “[t]he master or other
18 person having charge of a ship required to keep an Oil Record Book shall be responsible for the
19 maintenance of such record.” Other members of the ship’s crew, including Chief Engineers, may
20 aid and abet and cause the vessel Master’s failure to maintain an accurate Oil Record Book under
21 18 U.S.C. § 2.

22 9. The requirements contained in MARPOL Annex V and APPS regulations prohibit
23 the discharge overboard of plastic or garbage mixed with plastic. 33 C.F.R. § 155.67. In addition,
24 APPS and MARPOL regulations require that vessels such as the *F/V Fukuichi Maru No. 112* keep

1 a written record known as a Garbage Record Book in which any discharge overboard and
2 discharge to shore of garbage, including plastics, must be recorded, including the date and time,
3 volume and, if discharged at sea, the latitude and longitude. 33 C.F.R. § 151.55 and MARPOL
4 Annex V Regulation 9(3)(a). All discharges of garbage to a shore-side facility must be fully
5 recorded. 33 C.F.R. § 155.55 (a)(1). Each discharge operation shall be recorded in the Garbage
6 Record Book and signed for on the date of the discharge by the officer in charge and each
7 completed page of the Garbage Record Book shall be signed by the Master of the ship. MARPOL
8 Annex V Regulation 9(3)(a). Entries in the Garbage Record Book must be prepared at the time
9 of the operation, certified as correct by the Master or person in charge of the ship, maintained on
10 the ship for two years following the operation, and made available for inspection by the Coast
11 Guard. 33 C.F.R. § 151.55(f).

12 10. The United States Coast Guard, an agency of the United States Department of
13 Homeland Security, is charged with enforcing the laws of the United States and is empowered
14 under Title 14, United States Code, Section 511(a), to board vessels and conduct inspections and
15 investigations of potential violations and to determine compliance with MARPOL, APPS, and
16 related regulations. In conducting inspections, United States Coast Guard personnel rely on the
17 statements of the vessel's crew and documents, including information contained in the Oil Record
18 Book and Garbage Record Book. The United States Coast Guard is specifically authorized to
19 examine a vessel and its Oil Record Book and Garbage Record Book for compliance with
20 MARPOL and APPS. 33 U.S.C. § 1907(d); 33 C.F.R. § 151.23(a)(3) and (c); MARPOL, Annex
21 I, Regulation 11 & Annex V, Regulation 9; and 33 C.F.R. § 151.61(a) and (c).

22 11. On or about April 1, 2019, in Apra Harbor, within the District of Guam, and
23 elsewhere, defendant FUKUICHI, acting through its employees and agents, who acted within the
24 scope of their employment and agency on behalf of FUKUICHI and for the benefit of FUKUICHI,

1 at least in part, did knowingly fail to maintain, and caused the failure to maintain, an Oil Record
2 Book for the *F/V Fukuichi Maru No. 112* in which the recording of all oily bilge water and oily
3 mixtures occurred as required. Specifically, defendant FUKUICHI, failed to record in the Oil
4 Record Book that all oily bilge water and oily mixtures that had accumulated in the engine room
5 of the vessel had been regularly and routinely discharged directly into the sea without using an
6 Oil Water Separator.

7 All in violation of Title 33, United States Code, Section 1908(a); Title 18, United States
8 Code, Section 2; and Title 33, Code of Federal Regulations, Section 151.25(a), (d) and (j).

9 **COUNT TWO**
10 **(Act to Prevent Pollution from Ships - 33 U.S.C. § 1908(a))**

11 12. Paragraphs 1 through 10 of this Information are hereby re-alleged and incorporated
12 by reference herein.

13 13. On or about April 1, 2019, in Apra Harbor, within the District of Guam, and
14 elsewhere, defendant FUKUICHI, acting through its employees and agents, who acted within the
15 scope of their employment and agency on behalf of FUKUICHI and for the benefit of FUKUICHI,
16 at least in part, did knowingly fail to maintain, and caused the failure to maintain, a Garbage
17 Record Book for the *F/V Fukuichi Maru No. 112* in which the recording of all discharges of
18 garbage, including plastics, is required. Specifically, defendant FUKUICHI, failed to record in
19 the Garbage Record Book (1) disposals of garbage to shore-side facilities; (2) discharges
20 overboard from the vessel of fishing gear, that included plastics; and (3) proper documentation of
21 what person was in charge of the garbage discharge operations.

22 All in violation of Title 33, United States Code, Section 1908(a); Title 18, United States
23 Code, Section 2; and Title 33, Code of Federal Regulations, Section 155(a), (b) and (d).

24 //

COUNT THREE
(Obstruction of an Agency Proceeding - 18 U.S.C. § 1505)

14. Paragraphs 1 through 10 of this Information are hereby re-alleged and incorporated by reference herein.

15. On or about April 2, 2019, in Apra Harbor, within the District of Guam, and elsewhere, defendant FUKUICHI, acting through its employees and agents, who acted within the scope of their employment and agency on behalf of FUKUICHI and for the benefit of FUKUICHI, at least in part, did corruptly influence, obstruct, and impede, and endeavor to influence, obstruct, and impede the due and proper administration of the law under a pending proceeding by the U. S. Coast Guard and the Department of Homeland Security, that is, during a vessel examination of the *F/V Fukuichi Maru No. 112* to determine the vessel's compliance with MARPOL, APPS, and United States law, defendant FUKUICHI altered twenty-six entries in the vessel's Oil Record Book. Specifically, FUKUICHI, acting through the Chief Engineer, erased twenty-six entries in the Oil Record Book that had falsely recorded oily bilge water had been processed through the Oil Water Separator above the actual maximum capacity of the Oil Water Separator and replaced them with entries that falsely recorded the Oil Water Separator was used at its regulated capacity.

All in violation of Title 18, United States Code, Section 1505.

RESPECTFULLY SUBMITTED this 11th day of ^{June} ~~May~~, 2019. *ml*

SHAWN N. ANDERSON
United States Attorney
Districts of Guam and the NMI

By: 

MARIVIC P. DAVID
Assistant U.S. Attorney

By: 

KENNETH E. NELSON
Senior Trial Attorney