



U.S. Department of Justice

Channing D. Phillips  
United States  
Attorney

*District of Columbia*

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*Judiciary Center  
555 Fourth St., N.W.  
Washington, D.C. 20530*

August 4, 2017

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Re: United States v. Yuh Fa Fishery (Vanuatu) Co., Ltd.,  
Criminal Case No. *17cr151 (KDM)*

Dear Counselors:

This letter sets forth the full and complete plea offer to your client, Yuh Fa Fishery (Vanuatu) Co. Ltd., (hereinafter referred to as "your client" or "defendant"), from the Office of the United States Attorney for the District of Columbia and the Environmental Crimes Section of the Department of Justice (hereinafter also referred to as "the Government" or "this Office"). This plea offer expires on June 30, 2017. If your client accepts the terms and conditions of this offer, please have your client execute this document in the space provided below.

Please include a notarized copy of the resolution of the Board of Directors or Principal Shareholders of your client which states that your client has authorized this plea agreement and has empowered you as its outside counsel to act on its behalf for purposes of this plea.

Upon receipt of the executed documents, this letter will become the Plea Agreement (hereinafter referred to as "this Agreement"). The terms of the offer are as follows:

1. **Charges and Statutory Penalties**

Your client agrees to plead guilty to a criminal Information, a copy of which is attached, charging your client with two counts of violating the Act to Prevent Pollution from Ships ("APPS"), 33 U.S.C. § 1908(a).

Your client understands that a violation of APPS carries a maximum sentence of a fine of \$500,000.00 per count or twice the pecuniary gain or loss of the offense pursuant to 18 U.S.C. § 3571; a term of probation of not more than 5 years, pursuant to 18 U.S.C. § 3561; and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.

In addition, your client agrees to pay a special assessment of \$800.00 to the Clerk of the United States District Court for the District of Columbia.

2. **Factual Stipulations**

Your client agrees that the attached "Statement of Offense" fairly and accurately describes your client's actions and involvement in the offense to which your client is pleading guilty. Please have your client sign and return the Statement of Offense as a written proffer of evidence, along with this Agreement.

3. **Additional Charges**

In consideration of your client's guilty plea to the above offenses, your client will not be further prosecuted criminally by this Office for the conduct set forth in the attached Statement of Offense.

4. **Agreed Sentence Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C)**

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, your client and the Government agree that a sentence of a total monetary fine of two and a half million dollars (\$2,500,000.00) consisting of a criminal fine of \$1,875,000.00, a community service payment of \$625,000.00, a 5-year period of probation, and a barment from entry into any port or place of the United States by any vessel that is now or in the future owned, operated, or managed by the defendant for the period of probation, is the appropriate sentence for the offenses to which your client is pleading guilty. Your client currently owns or operates the following vessels:

YUH FA No. 66 (IMO No. 8666977)

YUH FA No. 88 (IMO No. 8666953)

YUH FA No. 201 (IMO No. 8520032)

This Agreement, with respect to the appropriate sentence, affects only the fine, community service payment, probation, and the barment from entry. The Court may impose other applicable statutory provisions as part of the sentence, including other conditions of probation.

**A. Acceptance of Agreement by the Court**

The Government agrees, pursuant to Rule 11(c)(1)(C), to present this Agreement between the parties to the Court for its approval. In accordance with Rule 11(c)(4) and (5), the Court may accept or reject this Agreement. If the Court accepts this Agreement, the Court will sentence your client to a fine of \$1,875,000.00, a community service payment of \$625,000.00, a 5-year period of probation, and the barment of all of defendant's vessels for the period of probation. The parties agree that the fine, special assessment and community service payment shall be paid at the time of sentencing. Your client understands that if the Court accepts this Agreement, then the Court will embody in the judgment and sentence the disposition provided for in this Agreement, pursuant to Rule 11(c)(4) of the Federal Rules of Criminal Procedure. The community service payment shall be made to the National Marine Sanctuary Foundation ("the Foundation") for use in the National Marine Sanctuary of American Samoa ("NMSAS"), headquartered in Pago Pago, American Samoa. The funds shall support the protection and preservation of natural resources located in and adjacent to the NMSAS, including the following: the abatement, cleanup, and remediation of pollution in the NMSAS; and restoration of injured resources, particularly including coral reefs. The Foundation is established to solicit donations for the National Marine Sanctuaries Program ("the Program") as authorized by 16 U.S.C. § 1442(b), and the Program is authorized to accept donations of funds pursuant to 16 U.S.C. § 1442(c) for the designation and administration of national marine sanctuaries. The Program is also authorized to accept grants from any federal agency or persons notwithstanding any provision of law which prohibits assistance otherwise. 16 U.S.C § 1442(f). The Program manages the NMSAS, located in American Samoa.

Payments for the criminal fine and special assessment are to be made in the form of a check payable to "United States District Court Clerk;" the corporate community service payment shall be made to the Foundation. Because the community service payment is designated as a criminal payment by an organization, defendant further agrees that it will not seek any reduction in its tax obligations as a result of the community service payment. In addition, because the payment constitutes community service as part of defendant's guilty plea, neither defendant nor any related entity or agent will characterize, publicize, or refer to the community service payment as a voluntary donation or contribution.

**B. Rejection of this Agreement by the Court**

The parties understand that the Court may not agree that the sentence agreed to by the parties is an appropriate one and may reject this Agreement pursuant to Rule 11(c)(5) of the Federal Rules of Criminal Procedure. Your client understands that if this happens, the Court, in accordance with the requirements of Rule 11(c)(5), will inform the parties of its rejection of this Agreement, and will afford your client an opportunity to withdraw the plea or maintain the plea. If your client elects to maintain the plea, the Court will inform your client that a final disposition may be less favorable to your client than that contemplated by this Agreement. Your client further understands that if the Court rejects this Agreement, the Government also has the right to withdraw from this Agreement and to be freed from all obligations under this Agreement, and may in its sole discretion bring different or additional charges before your client enters any guilty plea in this case.

If the Court rejects this Agreement, your client elects to maintain this plea, and the Government does not exercise its right to withdraw from this Agreement, the parties agree that

your client will be sentenced upon consideration of the factors set forth in 18 U.S.C. §§ 3553(a) and 3572(a), and the Sentencing Guidelines. Your client further understands that, in such case, the sentence to be imposed is a matter solely within the discretion of the Court, and the Court is not obligated to impose a sentence within the Sentencing Guidelines range or to follow any recommendation of the Government at the time of sentencing.

5. **Sentencing Guidelines Analysis**

The parties agree that the determination of the amount of the fine with respect to your client's sentence is not governed by the Sentencing Guidelines. That is because, although the offense conduct to which your client is pleading guilty is covered by U.S.S.G. § 2Q1.3, "Mishandling of Other Environmental Pollutants; Recordkeeping, Tampering, and Falsification" that Guideline is not listed under § 8C2.1, which governs criminal fines for organizations. Accordingly, pursuant to U.S.S.G. § 8C2.10, the fine amount is determined by applying 18 U.S.C. §§ 3553 and 3572.

6. **Reservation of Allocution**

The Government and your client reserve the right to describe fully, both orally and in writing, to the sentencing judge, the nature and seriousness of your client's misconduct, including any misconduct not described in the charges to which your client is pleading guilty. The parties also reserve the right to inform the presentence report writer and the Court of any relevant facts, to dispute any factual inaccuracies in the presentence report, and to contest any matters not provided for in this Agreement. In the event that the Court considers any Sentencing Guidelines adjustments, departures, or calculations different from any agreements contained in this Agreement, or contemplates a sentence outside the Guidelines range based upon the general sentencing factors listed in 18 U.S.C. § 3553(a), the parties reserve the right to answer any related inquiries from the Court. In addition, if in this Agreement the parties have agreed to recommend or refrain from recommending to the Court a particular resolution of any sentencing issue, the parties reserve the right to full allocution in any post-sentence litigation. The parties retain the full right of allocution in connection with any post-sentence motion which may be filed in this matter and/or any proceeding(s) before the Bureau of Prisons. In addition, your client acknowledges that the Government is not obligated and does not intend to file any post-sentence downward departure motion in this case pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure.

7. **Court Not Bound by this Agreement or the Sentencing Guidelines (applicable only when Rule 11(c)(1)(C) plea is rejected**

In accordance with Paragraph 4 above, should the Court reject this Agreement, your client elects to maintain the plea, and the Government fail to exercise its right to withdraw from this Agreement, the parties further agree that the sentence proposed in Paragraph 4 does constitute a reasonable sentence in light of all of the factors set forth in 18 U.S.C. § 3553(a), should such a sentence be subject to appellate review notwithstanding the appeal waiver provided below.

Your client understands that should the Court reject this Agreement, your client then elects to maintain the plea, and the Government fails to exercise its right to withdraw from this

Agreement, the sentence in this case will be imposed in accordance with 18 U.S.C. § 3553(a), upon consideration of the Sentencing Guidelines. Your client further understands that the sentence to be imposed is a matter solely within the discretion of the Court. Your client acknowledges that the Court is not obligated to follow any recommendation of the Government at the time of sentencing. Your client understands that neither the Government's recommendation nor the Sentencing Guidelines are binding on the Court.

Your client acknowledges that should the Court reject this Agreement, your client elect to maintain the plea, and the Government fail to exercise its right to withdraw from this Agreement, your client's entry of a guilty plea to the charged offense(s) authorizes the Court to impose any sentence, up to and including the statutory maximum sentence, which may be greater than the applicable Guidelines range. The Government cannot, and does not, make any promise or representation as to what sentence your client will receive should the Court reject this Agreement, your client elect to maintain the plea, and the Government fail to exercise its right to withdraw from this Agreement. Moreover, it is understood that your client will have no right to withdraw your client's plea of guilty should the Court impose a sentence that is outside the Guidelines range or if the Court does not follow the Government's sentencing recommendation.

8. **Waivers**

A. **Venue**

Your client waives any challenge to venue in the District of Columbia.

B. **Statute of Limitations**

Your client agrees that, should the conviction following your client's plea of guilty pursuant to this Agreement be vacated for any reason, any prosecution, based on the conduct set forth in the attached Statement of Offense, that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (including any counts that the Government has agreed not to prosecute or to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against your client, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution of conduct set forth in the attached Statement of Offense that is not time-barred on the date that this Agreement is signed.

C. **Trial Rights**

Your client understands that by pleading guilty in this case your client agrees to waive certain rights afforded by the Constitution of the United States and/or by statutes or rules. Your client agrees to forego the right to any further discovery or disclosures of information not already provided at the time of the entry of your client's guilty plea. Your client also agrees to waive, among other rights, the right to be indicted by a Grand Jury, the right to plead not guilty, and the right to a jury trial. If there were a jury trial, your client would have the right to be represented by counsel, to confront and cross-examine witnesses against your client, to challenge the admissibility of evidence offered against your client, to compel witnesses to appear for the purpose of testifying

and presenting other evidence on your client's behalf, and to choose whether to testify. If there were a jury trial and your client chose not to testify at that trial, your client would have the right to have the jury instructed that your client's failure to testify could not be held against your client. Your client would further have the right to have the jury instructed that your client is presumed innocent until proven guilty, and that the burden would be on the United States to prove your client's guilt beyond a reasonable doubt. If your client were found guilty after a trial, your client would have the right to appeal your client's conviction. Your client understands that the Fifth Amendment to the Constitution of the United States protects your client from the use of self-incriminating statements in a criminal prosecution. By entering a plea of guilty, your client knowingly and voluntarily waives or gives up your client's right against self-incrimination.

Your client acknowledges discussing with you Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, which ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. Your client knowingly and voluntarily waives the rights that arise under these rules in the event your client withdraws your client's guilty plea or withdraws from this Agreement after signing it.

Your client also agrees to waive all constitutional and statutory rights to a speedy sentence and agrees that the plea of guilty pursuant to this Agreement will be entered at a time decided upon by the parties with the concurrence of the Court. Your client understands that the date for sentencing will be set by the Court.

#### **D. Appeal Rights**

Your client understands that federal law, specifically 18 U.S.C. § 3742, affords defendants the right to appeal their sentences in certain circumstances. Your client agrees to waive the right to appeal the sentence proposed in paragraph 4, including any term of imprisonment, fine, forfeiture, award of restitution, term of supervised release, authority of the Court to set conditions of release, and the manner in which the sentence was determined, except a claim that your client received ineffective assistance of counsel, in which case your client would have the right to raise on appeal a claim of ineffective assistance of counsel, but not to raise on appeal other issues regarding the sentencing. In agreeing to this waiver, your client is aware that your client's sentence has yet to be determined by the Court. Realizing the uncertainty in estimating what sentence the Court ultimately will impose, your client knowingly and willingly waives your client's right to appeal the sentence, to the extent noted above, in exchange for the concessions made by the Government in this Agreement.

#### **E. Collateral Attack**

Your client also waives any right to challenge the conviction entered or sentence imposed under this Agreement or otherwise attempt to modify or change the sentence or the manner in which it was determined in any collateral attack, including, but not limited to, a motion brought under 28 U.S.C. § 2255 or Federal Rule of Civil Procedure 60(b), except to the extent such a motion is based on newly discovered evidence or on a claim that your client received ineffective assistance of counsel.

**F. Privacy Act and FOIA Rights**

FG ASG

~~Your client also agrees to waive all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including and without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.~~

9. **Use of Self-Incriminating Information**

The Government and your client agree, in accordance with U.S.S.G. § 1B1.8, that the Government will be free to use against your client for any purpose at the sentencing in this case or in any related criminal or civil proceedings, any self-incriminating information provided by your client pursuant to this Agreement or during the course of debriefings conducted in anticipation of this Agreement, regardless of whether those debriefings were previously covered by an "off the record" agreement by the parties.

10. **Restitution**

Your client understands that the Court has an obligation to determine whether, and in what amount, mandatory restitution applies in this case under 18 U.S.C. § 3663A. Payments of restitution shall be made to the Clerk of the Court.

Your client understands and agrees that the restitution or fines imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States. If the Court imposes a schedule of payments, your client understands that the schedule of payments is merely a minimum schedule of payments and will not be the only method, nor a limitation on the methods, available to the United States to enforce the criminal judgment, including without limitation by administrative offset.

Your client certifies that your client has made no transfer of assets in contemplation of this prosecution for the purpose of evading or defeating financial obligations that are created by this Agreement and/or that may be imposed by the Court. In addition, your client promises to make no such transfers in the future for the purpose of evading or defeating financial obligations that are created by this Agreement until your client has fulfilled the financial obligations under this Agreement.

Your client and the Government do not believe that restitution is applicable in this case.

11. **Breach of Agreement**

Your client understands and agrees that, if after entering this Agreement, your client fails specifically to perform or to fulfill completely each and every one of your client's obligations under this Agreement, or engages in any criminal activity prior to sentencing, your client will have breached this Agreement. In the event of such a breach: (a) the Government will be free from its obligations under this Agreement; (b) your client will not have the right to withdraw the guilty

plea; (c) your client will be fully subject to criminal prosecution for any other crimes, including perjury and obstruction of justice; and (d) the Government will be free to use against your client, directly and indirectly, in any criminal or civil proceeding, all statements made by your client and any of the information or materials provided by your client, including such statements, information and materials provided pursuant to this Agreement or during the course of any debriefings conducted in anticipation of, or after entry of, this Agreement, regardless if the debriefings were previously characterized as "off-the-record" debriefings, and including your client's statements made during proceedings before the Court pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

Your client understands and agrees that the Government shall be required to prove a breach of this Agreement only by a preponderance of the evidence, except where such breach is based on a violation of federal, state, or local criminal law, which the Government need prove only by probable cause in order to establish a breach of this Agreement.

Nothing in this Agreement shall be construed to permit your client to commit perjury, to make false statements or declarations, to obstruct justice, or to protect your client from prosecution for any crimes not included within this Agreement or committed by your client after the execution of this Agreement. Your client understands and agrees that the Government reserves the right to prosecute your client for any such offenses. Your client further understands that any perjury, false statements or declarations, or obstruction of justice relating to your client's obligations under this Agreement shall constitute a breach of this Agreement. In the event of such a breach, your client will not be allowed to withdraw your client's guilty plea.

12. **Additional Provision**

In furtherance of the criminal investigation being conducted by the United States and in anticipation of litigation, the Master (Mr. Amin) and Chief Engineer (Mr. Liu) of the FV YUH FA No. 201, as well as the FV YUH FA No. 201, remained within the jurisdiction of the United States. Following the filing of this agreement, the United States will not object to and will take timely actions to facilitate these remaining crewmembers and the FV YUH FA No. 201 departing the jurisdiction of the United States and understands that your client will take action to repatriate these employees or former employees or otherwise continue their employment as may be agreed between the employee and your client.

13. **Complete Agreement**

No agreements, promises, understandings, or representations have been made by the parties or their counsel other than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by your client, defense counsel, an Assistant United States Attorney for the District of Columbia, and an Environmental Crimes Section attorney.

Your client further understands that this Agreement is binding upon the United States Attorney's Office for the District of Columbia and the Environmental Crimes Section. This Agreement does not limit the prosecuting authority of any other sections or divisions of the Department of Justice, including the United States Attorney of any judicial district not a party to

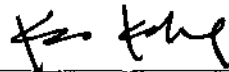


this Plea Agreement, or any other federal, state or local regulatory or prosecuting authorities. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against your client.

If the foregoing terms and conditions are satisfactory, your client may so indicate by signing this Agreement and the Statement of Offense, and returning both to me no later than August 4, 2017.

Sincerely,

CHANNING D. PHILLIPS  
United States Attorney



By: Kenneth Kohl  
KENNETH KOHL, Deputy Chief  
National Security Section



By: Frederick W. Yette  
FREDERICK W. YETTE  
Assistant U.S. Attorney

JEFFREY WOOD  
Acting Assistant Attorney General  
Environment and Natural  
Resources Division



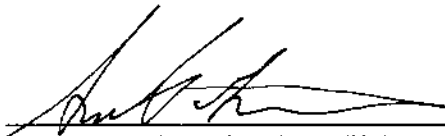
By: Stephen Da Ponte  
STEPHEN DA PONTE  
Trial Attorney Environmental  
Crimes Section

DEFENDANT'S ACCEPTANCE

I have read every page of this Agreement and have discussed it with my attorneys, Gregory Linsin and Ariel Glasner. I fully understand this Agreement and agree to it without reservation. I agree that I have had sufficient time to review this agreement and all relevant documents. I further agree that I am satisfied with the representation counsel provided. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Agreement fully. I am pleading guilty because I am in fact guilty of the offense identified in this Agreement.

I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this Agreement. I am satisfied with the legal services provided by my attorney in connection with this Agreement and matters related to it.

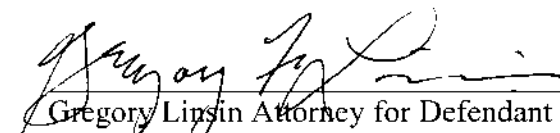
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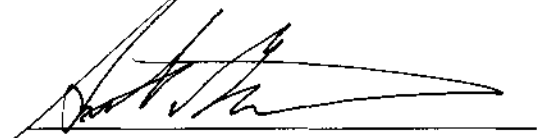
  
\_\_\_\_\_  
Representative of Yuh Fa Fishery  
(Vanuatu) Co. Ltd.  
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read every page of this Agreement, reviewed this Agreement with my client, Yuh Fa Fishery (Vanuatu) Co. Ltd., and fully discussed the provisions of this Agreement with my client. These pages accurately and completely set forth the entire Agreement. I concur in my client's desire to plead guilty as set forth in this Agreement.

Date: 8/30/17

  
\_\_\_\_\_  
Gregory Linsin Attorney for Defendant

  
\_\_\_\_\_  
Ariel Glasner Attorney for Defendant