

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 1:19-cv-10617-DJC
CARLOS RAFAEL,)	
VILA NOVA DO CORVO II, INC.,)	Judge Denise J. Casper
STEPHANIE RAFAEL DEMELLO, and)	
CARLOS PEREIRA,)	Mag. Judge Marianne B. Bowler
)	
Defendants.)	
_____)	

CONSENT DECREE

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CONSENT DECREE

Plaintiff, the United States of America, on behalf of the United States Coast Guard, has filed a Complaint concurrently with this Consent Decree against Defendants, Carlos Rafael, Vila Nova do Corvo II, Inc., Stephanie Rafael DeMello, and Carlos Pereira (collectively “Defendants”). The Complaint alleges Defendants discharged oil, including waste oil and oily bilge water, from the U.S.-flagged commercial fishing vessel *Vila Nova do Corvo II* into waters of the United States in violation of Section 311(b)(3) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1321(b)(3), and that Defendants violated the Coast Guard’s pollution control regulations.

No Defendant admits liability arising out of the occurrences or violations alleged in the Complaint.

Defendant Carlos Pereira asserts that he has a limited financial ability to pay penalties for the alleged violations and has submitted financial information to the United States that materially sets forth his financial circumstances. The financial information provided includes Defendant Pereira’s income tax returns and financial records including detailed income and expense statements.

The United States, with the assistance of an expert financial analyst, has reviewed the financial information submitted by Defendant Pereira to assess the asserted limited ability to pay. Based on the financial information provided, the United States has determined that Defendant Pereira has a limited ability to pay the full amount that would otherwise be appropriate for the serious violations alleged in the Complaint. Accordingly, the penalties assessed in this Consent Decree as to Defendant Pereira are reduced to the agreed levels presented herein based on the Defendant’s demonstrated limited ability to pay.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid continued litigation between the Parties on the claims addressed in the Complaint, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 311(b)(7)(E) and (n) of the Act, 33 U.S.C. § 1321(b)(7)(E) and (n), and over the Parties. Venue lies in this District pursuant to 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E), and 28 U.S.C. §§ 1391 and 1395(a), because the claims arose in this district and Defendants are located and doing business in this District. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action and over Defendants and consent to venue in this District.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Section 311(b) and (e) of the CWA, 33 U.S.C. §1321(b) and (e).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law.

4. Defendants shall provide a copy of the injunctive relief portion of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, including the entire crew of the vessel, as well as to any contractor retained to perform work required under this Consent Decree. Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

5. No transfer of ownership or operation of the vessel shall relieve Defendants of their obligation to ensure that the requirements of the Consent Decree are implemented, unless (1) the transferee agrees to undertake the obligations required by this Decree and to be bound by the terms thereof, (2) the United States consents to relieve Defendants of their obligations, and (3) the Court approves a joint motion from the United States, Defendants, and the transferee requesting that the Court approve a modification substituting the transferee as the Defendant responsible for complying with the terms and conditions of the Consent Decree.

6. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, including the Appendices to this Decree, the following definitions shall apply:

“Coast Guard” shall mean the United States Coast Guard and any of its successor departments or agencies;

“Complaint” shall mean the complaint filed by the United States in this action;

“Consent Decree” or “Decree” shall mean this Decree;

“Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

“Defendants” shall mean Carlos Rafael, Stephanie DeMello Rafael, Vila Nova do Corvo II, Inc., and Carlos Pereira;

“Effective Date” shall have the definition provided in Section XII;

“Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;

“Parties” shall mean the United States and Defendants;

“Section” shall mean a portion of this Decree identified by a Roman numeral;

“United States” shall mean the United States of America, acting on behalf of the Coast Guard.

IV. CIVIL PENALTIES

8. Within 30 Days after the Effective Date, Defendants Carlos Rafael, Stephanie Rafael DeMello, and Vila Nova do Corvo II, Inc., jointly and severally, shall pay \$500,000.00 as civil penalties, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. Within 30 Days after the Effective Date, Defendant Carlos Pereira shall pay \$11,000.00 as civil penalties, together with interest accruing from the date on which the Consent

Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

10. Defendants shall pay the civil penalties due by certified check or FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendants by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Massachusetts. Such monies are to be deposited in the Oil Spill Liability Trust Fund. The payment shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-12051 and shall specify that the payment is made toward CWA civil penalties to be deposited into the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. § 9509(b)(8).

11. At the time of payment, Defendants shall send a copy of the check or EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalties owed pursuant to the Consent Decree in this case, and shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-12051, to the United States in accordance with Section XI of this Decree (Notices) and to:

Thomas H. Van Horn
National Pollution Funds Center
US Coast Guard Mailstop 7605
2701 Martin Luther King Jr. Avenue, SE
Washington, DC 20593-7605

Chief
Office of Claims and Litigation CG-LCL
United States Coast Guard
2703 Martin Luther King Jr. Avenue, SE
Washington, DC 20593-7213

12. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section VI (Stipulated Penalties) in calculating their federal income tax.

V. INJUNCTIVE RELIEF

13. Defendants shall perform the following injunctive relief measures to ensure that unlawful discharges of oil and oily mixtures and the other violations of pollution control regulations that were discovered by the Coast Guard on the *Vila Nova do Corvo II* (Official No. 618384) in February 2018 will not be repeated. Defendants Carlos Rafael, Stephanie Rafael DeMello, and Vila Nova do Corvo II, Inc. are responsible for performing and ensuring performance of all of the requirements in this Section except Paragraph 25. Defendant Carlos Pereira is responsible for performing the requirements in Paragraph 25 and, if acting as an operator of the *Vila Nova do Corvo II*, the requirements of Paragraphs 14 – 20. The vessel is subject to Coast Guard boarding and inspection at any time.

14. Defendants shall perform steps to assess the vessel's working bilge capacity and the daily oily bilge generation rate and make appropriate repairs to the vessel to assure safe and lawful operations. The procedure and due dates for the assessment and repair effort are included as Appendix A, *Assessment of Bilge Retention Capacity and Oily Bilge Water Generation*. The work includes taking steps to make the engine room water tight and eliminate excess oil and water from entering the engine room bilge; hiring an independent engineering consultant to review the work performed and to set a fixed location for consistently measuring the accumulation of oily waste in the bilge; measuring the daily bilge water generation volume during a typical fishing voyage; and determining the fishing voyage duration based on the bilge retention capacity and waste generation rate. The vessel shall not embark on or continue any voyage that exceeds its safe working bilge capacity or the level of the high level alarm, whichever is lower. The United States retains the discretion to grant extensions to the due dates listed in Appendix A.

15. Defendants shall periodically assess and document the vessel's daily bilge water generation during voyages. The method to be used is described in Step 3 of Appendix A, *Assessment of Bilge Retention Capacity and Oily Bilge Water Generation*, including use of the Sounding Log and collection of photographs. This assessment shall be conducted on at least one fishing voyage within every three-month period for three years after the Effective Date of this Decree. The results shall be described in the reports submitted under Paragraph 21 below.

16. For three years after the Effective Date of this Decree, (1) all oil transfers to or from the vessel, including but not limited to fuel oil, lube oil, hydraulic oil, and any waste oil, (2) all oil changes performed on the vessel, and (3) all discharges to shore reception facilities shall be recorded by Defendants in an Oil Log Book that is maintained on board the vessel and subject to Coast Guard inspection. Each record entry shall include the date, time, type of material involved, activity involved, and volume handled, and each entry shall be signed by the operator of the vessel or a company manager. The Oil Log Book is included as Appendix B.

17. For three years after the Effective Date of this Decree, receipts for all transfers or discharges of engine room bilge water and other oily wastes from the vessel to shore reception facilities shall be obtained and retained by Defendants on board the vessel with the Oil Log Book and subject to Coast Guard inspection.

18. For three years after the Effective Date of this Decree, receipts for all purchases and transfers of fuel, lube oil, hydraulic oil, and other petroleum products or wastes brought onto the vessel shall be obtained and retained by Defendants on board the vessel with the Oil Log Book and subject to Coast Guard inspection.

19. Effective immediately and for one year after the Effective Date of this Decree, within three hours before departing port for a fishing voyage and no later than three hours after

returning from a fishing voyage, Defendants shall contact Coast Guard Marine Safety Detachment New Bedford by calling (508) 999-0072 or emailing bilge@uscg.mil and report the bilge measurement from the designated bilge reference location.

20. Prior to every fishing voyage after the Effective Date of this Decree, Defendants shall have the operator of the vessel provide instruction and training to every crewmember concerning the prohibition on discharges of oil, including oily bilge water and any other oily mixtures.

21. In the 6th, 12th, 24th, and 36th month after the Effective Date of this Decree, Defendants shall submit a report on the vessel's oily waste management practices and compliance with this Consent Decree to the Coast Guard and the Department of Justice, in accordance with the Notices provision in Section XI. The reports shall describe the vessel's oily waste carrying capacity and provide evidence that it is sufficient for the length of all actual and intended voyages. The reports shall describe any plans and schedule for installing approved oily water separation equipment, any modification of the vessel's structures as it relates to waste management, or any additional oily waste storage capacity on the vessel. The reports shall also include:

- a. an identification of all sources and volumes of waste being generated by the vessel during each of the three fishing voyages prior to the report deadline and comparing it to the vessel's retention capacity;
- b. a description of all efforts to minimize the generation of oily waste, including repair of piping, shaft seals, and machinery;
- c. a description of all efforts to minimize the introduction of non-oily water into the engine room bilge, including sealing of bulkheads, shaft seals, elimination of any

shower and laundry water from the engine room, and control of flow of ice melt from the fish holds;

d. an assessment of whether the vessel is properly managing its oily waste streams;

e. Results of the periodic bilge waste generation assessment required in Paragraph 15 above, including the Sounding Log Book and photographs for the applicable reporting period;

f. a copy of the pages of the vessel's Oil Log Book for the applicable reporting period;

g. a copy of receipts for all on- and off-loading of products and wastes identified above.

22. Within six months of the Effective Date of this Decree, Defendants shall pay for and send one of its employees or agents who is involved in vessel oil transfer or waste management, such as a port engineer, to a training course that covers best practices in oil transfers and oily waste management, such as the Qualified Individual training course for compliance with requirements of the Oil Pollution Act ("OPA").

23. Within the first year after the Effective Date of this Decree, Defendants shall have a company representative coordinate with the Coast Guard to make a presentation at a public meeting in the New Bedford area on the corrective measures Defendants are undertaking to address the violations addressed in this case.

24. Defendants shall have the vessel undergo a Coast Guard fishing vessel safety exam on a schedule of at least every two years, in addition to any other applicable schedule or requirements. Defendants also shall require the operators and crew of the vessel to annually

review the most recent publication of “Voluntary Safety Initiatives and Good Marine Practices for Commercial Fishing Industry Vessels,” United States Coast Guard, Office of Commercial Vessel Compliance (last published Jan. 2017).

25. For one year after the Effective Date of this Decree, Defendant Carlos Pereira shall complete and sign an Operator Certification Log before and after every fishing voyage where he serves as an operator of any commercial fishing vessel. Every four months after the Effective Date, for a period of one year, Defendant Carlos Pereira shall send a cover letter with copies of the completed Log sheets to the Coast Guard Marine Safety Detachment office in New Bedford; the cover letter shall comply with the certification requirement in Paragraph 26. If no fishing voyages were taken during any reporting period, only a cover letter is required to be submitted for that reporting period. Defendant Pereira shall retain the original Log sheets for a period of two years and shall make them available for inspection by the Coast Guard at any time. The Operator Certification Log is included as Appendix C to this Decree.

26. Each report, letter report, or certification submitted by Defendants under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

27. The requirements of this Consent Decree do not relieve Defendants of any obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

28. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VI. STIPULATED PENALTIES

29. Defendants shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

30. If Defendant Carlos Pereira fails to pay the civil penalties required to be paid in Paragraph 9 when due, he shall pay a stipulated penalty of five hundred dollars (\$500) per Day for each Day that the payment is late. If the remaining Defendants fail to pay the civil penalties required to be paid in Paragraph 8, they shall pay, jointly and severally, a stipulated penalty of five hundred dollars (\$500) per Day for each Day that the payment is late.

31. If Defendants fail to perform, or ensure performance of, the injunctive relief required under Section V (Injunctive Relief) when due, Defendants shall pay stipulated penalties to the United States. Defendant Carlos Pereira's stipulated penalty rate shall be \$100 per day for each non-compliance. The stipulated penalty rate for the remaining Defendants, jointly and severally, for each non-compliance shall be as follows:

- a. 1st to 30th day: \$500 penalty per day;
- b. 31st to 60th day: \$1,250 penalty per day; and
- c. More than 60 days: \$2,500 penalty per day.

32. Late payment of the penalties due under this Consent Decree and payment of any stipulated penalties shall be made in accordance with payment instructions in Section IV above. All transmittal correspondence shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

33. For all payments of stipulated penalties, Defendants shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-12051 and shall specify that payments are for stipulated penalties to be deposited into the United States Treasury.

34. Stipulated penalties under this Section shall begin to accrue on the Day after the performance is due and shall continue to accrue until performance is satisfactorily completed. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

35. Defendants shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand.

36. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

37. Stipulated penalties shall continue to accrue as provided in Paragraphs 30, 31, and 34, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the United States that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of the United States' decision.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or

order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

38. If any Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, that Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for a Defendant's failure to pay any stipulated penalties.

39. The payment of stipulated penalties and interest, if any, shall not alter in any way any Defendant's obligation to complete the performance of the requirements of this Consent Decree.

40. Subject to the provisions of Section IX of this Consent Decree (Effect of Settlement/Reservations of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for a Defendant's violation of this Consent Decree or applicable law.

VII. FORCE MAJEURE

41. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendants, or of Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force

majeure event (a) as it is occurring, and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

42. If any event occurs, or has occurred, that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants shall provide notice orally or by electronic or facsimile transmission to the Coast Guard within seventy-two (72) hours of when Defendants first knew that the event might cause a delay. Within seven (7) Days thereafter, Defendants shall provide in writing to the Coast Guard an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

43. If the United States agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the United States for such time as is

necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The United States will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

44. If the United States does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the United States will notify Defendants in writing of its decision.

45. If Defendants elect to invoke the dispute resolution procedures set forth in Section VIII (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of the United States' notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 41 and 42. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to the United States and the Court.

VIII. DISPUTE RESOLUTION

46. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute

under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

47. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

48. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

49. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

50. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XI (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

51. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

52. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 50, Defendants shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

53. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 37. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VI (Stipulated Penalties).

IX. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

54. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint up to the date of lodging of this Decree.

55. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree.

56. The United States reserves all legal and equitable claims for, including but not limited to, injunctive relief, penalties, recovery of response costs and damages including natural resource damages under OPA, criminal liability, and other appropriate relief, except as expressly provided in Paragraph 54. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties, injunctive relief, costs, damages, or other appropriate relief under the CWA or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly provided in Paragraph 54. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' vessel or operations, whether related to the violations addressed in this Consent Decree or otherwise.

57. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, costs, damages, criminal liability, or other appropriate relief relating to Defendants' violations, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon a contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 54.

58. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA or with any other provision of federal, State, or local laws, regulations, or permits.

59. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

60. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

61. Defendants hereby covenant not to sue and agree not to assert any claims related to the discharge or response activities in connection with the discharge against the United States pursuant to the CWA, OPA, or any other state or federal law or regulation for acts or omissions through the date of lodging of the Consent Decree. Defendants further covenant not to sue and agree not to assert any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund or pursuant to any other provision of law.

62. Notwithstanding any other provision of this Consent Decree, if the financial information provided by Defendant Carlos Pereira, or the financial certification contained in

Paragraph 63 of this Consent Decree made by Defendant Pereira in signing this Consent Decree, is subsequently determined by the United States to be, in any material respect, false or inaccurate, the Defendant Pereira shall forfeit all payments made pursuant to this Consent Decree, and the resolution of liability provided by Paragraph 54 shall be null and void as to that Defendant. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from the Defendant's materially false or inaccurate information.

63. Defendant Carlos Pereira hereby certifies that, to the best of his knowledge and belief, after thorough inquiry, he has: (a) submitted to the United States financial information that fairly, accurately, and materially sets forth his financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to the United States and the time Defendant Pereira executes this Consent Decree.

X. COSTS

64. The Parties shall bear their own costs of this civil action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalties or any stipulated penalties due but not paid by Defendants.

XI. NOTICES

65. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States:

To the U.S. Department of Justice:

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
eesdcopy.enrd@usdoj.gov
Re: DJ #90-5-1-1-12051

To the U.S. Coast Guard:

Chief
Office of Claims and Litigation CG-LCL
United States Coast Guard
2703 Martin Luther King Jr. Avenue, SE
Washington, DC 20593-7213

Staff Judge Advocate
United States Coast Guard
First Coast Guard District
408 Atlantic Avenue
Boston MA 02110

As to Defendants:

Stephanie Rafael DeMello
Manager, Vila Nova do Corvo II, Inc.
84 Front Street
New Bedford, MA 02740

John A. Markey, Jr., Esq.
Moses Smith, Markey & Walsh, LLC
50 Homers Wharf
New Bedford, MA 02740
*Counsel for Defendants Carlos Rafael, Stephanie
Rafael DeMello, and Vila Nova do Corvo II, Inc.*

Carlos Pereira
Care of: Christopher Markey, Esq.
Markey & Gauvin
555 Pleasant Street, Suite 5A
New Bedford, Massachusetts 02740
Counsel for Defendant Carlos Pereira

66. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

67. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XII. EFFECTIVE DATE

68. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XIII. RETENTION OF JURISDICTION

69. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of effectuating or enforcing compliance with the terms of this Decree.

XIV. MODIFICATION

70. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

71. Any dispute concerning modification of this Decree shall be resolved pursuant to Section VIII (Dispute Resolution), provided, however, that instead of the burden of proof provided in that Section, the Party seeking modification bears the burden of demonstrating that it is entitled to the required modification in accordance with Federal Rule of Civil Procedure 60(b).

XV. TERMINATION

72. After Defendants have completed the requirements of this Consent Decree, including injunctive relief, and have paid the civil penalties and any accrued stipulated penalties as required by this Consent Decree, Defendants may serve upon the United States a Request for

Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

73. Following receipt by the United States of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

74. If the United States does not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section VIII. However, Defendants shall not seek Dispute Resolution of any dispute regarding termination until thirty (30) Days after service of its Request for Termination.

XVI. PUBLIC PARTICIPATION

75. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

XVII. SIGNATORIES/SERVICE

76. Each undersigned representative of Defendants and the Deputy Section Chief for the Environmental Enforcement Section of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

77. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court.

XVIII. INTEGRATION

78. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XIX. FINAL JUDGMENT

79. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

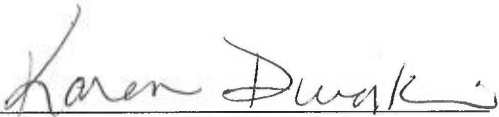
Dated and entered this _____ day of _____, 2019.

UNITED STATES DISTRICT JUDGE

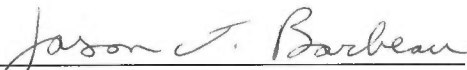
Signature Page to Consent Decree in *United States v. Rafael et al.*

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

8-8-19
Date


KAREN DWORKIN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice


8-8-19
Date


JASON T. BARBEAU
Senior Trial Attorney (D.C. Bar No. 468200)
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044
(202) 616-8908 (telephone)
(202) 616-6584 (facsimile)
jason.barbeau@usdoj.gov


Signature Page to Consent Decree in *United States v. Rafael et al.*

FOR PLAINTIFF THE UNITED STATES OF AMERICA (continued):

09 AUG 2019
Date


LCDR JESSE HOUCK
Acting Chief, Office of Claims and Litigation
United States Coast Guard
Coast Guard Headquarters
2703 Martin Luther King Jr. Ave, SE
Washington, DC 20593-7213

05 AUG 2019
Date


CAPT BRIAN KOSHULSKY
Staff Judge Advocate
United States Coast Guard
First Coast Guard District
408 Atlantic Avenue
Boston MA 02110

Signature Page to Consent Decree in *United States v. Rafael et al.*

FOR DEFENDANT CARLOS RAFAEL:

8.1.2019
Date

Stephanie Rafael-Dewelle
Carlos Rafael

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FOR DEFENDANT STEPHANIE RAFAEL DEMELLO:


8.1.2019
Date


Stephanie Rafael DeMello

Signature Page to Consent Decree in *United States v. Rafael et al.*

FOR DEFENDANT VILA NOVA DO CORVO II, INC.:

8.1.2019
Date


Carlos Rafael
President, Vila Nova do Corvo II, Inc.



John A. Markey, Jr.
Moses Smith, Markey & Walsh, LLC
50 Homers Wharf
New Bedford, MA 02740

*Counsel for Defendants Carlos Rafael, Stephanie Rafael
DeMello, and Vila Nova do Corvo II, Inc.*

Signature Page to Consent Decree in *United States v. Rafael et al.*

FOR DEFENDANT CARLOS PEREIRA:

7/31/19
Date



Carlos Pereira

APPENDIX A

Assessment of Bilge Retention Capacity and Oily Bilge Water Generation

1. Perform work needed to make engine room reasonably water tight and eliminate excess water from entering engine room bilge:

- a. Make appropriate permanent repairs, consistent with good marine practice, to bulkheads, hull, overhead decks, through-hull fittings, through-bulkhead fittings, shaft seals, etc.
- b. Eliminate draining non-oiled liquids into the engine room bilge, such as ice melt from fish holds and wash water from showers and laundry.

Due date: within four weeks of the Effective Date of the Consent Decree.

2. Hire consultant to assess work and document bilge levels:

- a. Consultant shall be an independent, qualified, professional marine engineer/marine surveyor/consultant (hereinafter, "Consultant") with expertise in the scope of work.
- b. Consultant shall check the repairs made under Step 1 above to ensure the repairs and changes are consistent with good marine practice.
- c. Consultant shall select and clearly mark a safe location in the deep portion of the bilge for taking representative measurements of the fluid levels in the bilge as required in Step 3.a below (e.g., near the high level alarm or along the centerline or side wall). Consultant shall also measure and record the location and existing height of the high level alarm setting in the engine room bilge and assess whether the height setting is consistent with good marine practice. It is the responsibility of the owners and operators to determine the vessel's safe working bilge capacity and the appropriateness of the high level alarm setting. The United States is not warranting that the high level alarm height is set at the safe working capacity of the vessel. Thus, the vessel should return to port before exceeding the safe working bilge capacity of the vessel or the high level alarm, whichever is lower.
- d. Consultant shall prepare a brief written report documenting the results of the work performed in Steps 2.b and 2.c. Consultant shall include a photograph showing the measurement of the height of the high level alarm setting, a photograph of the location selected for measuring the fluid level in the bilge, and a written description of the recommended method to be used to measure the fluid level in the bilge as required in Step 3.a below.

- e. Submit copy of Consultant's written report to Department of Justice and Coast Guard.

Due date: within six weeks of the Effective Date of the Consent Decree.

3. Measure daily bilge water generation volume during typical voyage:

- a. On the next fishing voyage, take measurements of the bilge water level at the same location marked by Consultant in Step 2.c above twice per day—once between 6 a.m. and 12 p.m. and once between 6 p.m. and 12 a.m.—with a tool capable of accurately measuring the level of fluid in the bilge to at least one quarter inch. The operator shall take a photograph of the sounding device showing the amount of fluid in the bilge at each sounding, and the operator shall record the amount of fluid measured in the bilge in a Sounding Log Book. Each photograph shall include a date and time stamp on the image. The Sounding Log Book shall include, at a minimum: (1) the date of the sounding; (2) the time of the sounding; (3) the name of the person who took the sounding; (4) the measured level of fluid in the bilge determined by the sounding to the nearest one quarter inch; and (5) the operator's initials. After each day's entries, the following statement shall appear followed by the operator's signature:

"I certify under penalty of law that the information recorded above for (INSERT DATE): is accurate and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

A Sounding Log Book entry form is attached as Attachment A below.

- b. Return to port ***before reaching*** the high level alarm level or the safe working retention capacity of the bilge, whichever is lower.
- c. Provide 24-hour and 1-hour advance notice to the Coast Guard prior to returning to port. This subparagraph (c) notice provision is only required for the first fishing voyage of each vessel conducted under this Paragraph 3.
- d. Take final measurement in the bilge upon returning to port and record result in the Sounding Log Book.
- e. Measure and record the volume of bilge water pumped to appropriate shore reception facility for disposal.
- f. Obtain and retain a copy of the receipt for bilge water disposal.
- g. Retain a copy of the Sounding Log Book and photographs.

Due date: on the next fishing voyage after performing Steps 1 and 2 above.

4. Determine estimated maximum fishing voyage duration based on bilge retention capacity and waste generation rate.

- a. Submit letter report to the Department of Justice and the Coast Guard that describes steps taken to assess the number of days of onboard retention capacity for the vessel based on the steps above. Include copies of the Sounding Log Book, photographs, and receipt specified in Step 3 above.

Due date: within 10 days after returning to port.

5. Meet with the Department of Justice and the Coast Guard to discuss results.

Due date: within 20 days after returning to port.

6. As needed, identify additional oil and water sources contributing to bilge waste volume:

- a. Machinery
- b. Fuel lines
- c. Pipes
- d. Drain lines
- e. Pumps
- f. Fish holds
- g. Deck leaks
- h. Other

Due date: within 30 days of returning to port.

7. As needed, perform additional waste minimization projects based on source identification effort:

- a. Make permanent repairs, consistent with good marine practice, to eliminate and reduce equipment leaks and other sources of oil and water into the bilge.
- b. Keep ice melt water separate from bilge.

Due date: within 60 days of returning to port.

8. Repeat Steps 3 – 5 before increasing maximum fishing voyage duration:

- a. If waste generation volume exceeded the retention capacity for the expected typical duration of a fishing voyage (compare Step 2 to Step 3 to Step 4), then repeat Steps 3, 4, and 5.

VESSEL SOUNDING LOG**DATE:**

	TIME	Name of Person Taking Measurement	Measurement in Inches	Operator's Initials
Initial Measurement Taken within 1 hour before Departure				
A.M. Measurement (Taken between 6 a.m. and 12 p.m.)				
P.M. Measurement (Taken between 6 p.m. and 12 a.m.)				
Final Measurement Taken within 1 hour of Mooring				

NOTES:

I certify under penalty of law that the information recorded above for **(INSERT DATE):** _____ is accurate and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Operator's Signature:**Operator's Name (Printed):****Date:**

OIL LOG BOOK

Vessel Name: _____

Official Number: _____

Notes:

1. Entries must be made in the Oil Log Book each time any of the following operations take place on the vessel: (1) all oil transfers to or from the vessel, including but not limited to fuel oil, lube oil, hydraulic oil, and any waste oil, (2) all oil changes performed on the vessel, (3) all cleaning of fuel oil tanks or other oily tanks, (4) all disposal of oily residues (sludge), (5) all discharges of bilge water that has accumulated in machinery spaces, and (6) all discharges to shore reception facilities.
2. Each record entry must be made without delay in the Oil Log Book so that all the entries in the Log Book appropriate to an operation are completed. Each entry must include the date, time, type of material involved, activity involved, and volume handled. Each entry must be signed and dated by the operator of the vessel or a company manager responsible for the operation.
3. The ownership of this Oil Log Book remains with the United States Government.
4. This Oil Log Book must be maintained on board the vessel and is subject to Coast Guard inspection at any time.

Date	Type of Event	Record of Observations	Signature of Operator and Date
<i>Example:</i> 2-JAN-2019	Disposal of bilge waste at shore facility	____ [#] gals bilge water from engine room bilge pumped to _____ [name of disposal company] Start: ____ [time] Stop: ____ [time] Obtained receipt	[__signature__] 2-JAN-2019
<i>Example:</i> 3-JAN-2019	Fuel transfer	___ [#] gals fuel oil transferred to fuel tanks from _____ [name of fuel supplier] Start: ____ [time] Stop: ____ [time] Obtained receipt	[__signature__] 3-JAN-2019

Date	Type of Event	Record of Observations	Signature of Operator and Date

Date	Type of Event	Record of Observations	Signature of Operator and Date

Date	Type of Event	Record of Observations	Signature of Operator and Date

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Date	Type of Event	Record of Observations	Signature of Operator and Date

Date	Type of Event	Record of Observations	Signature of Operator and Date

OPERATOR CERTIFICATION LOG

Name of Operator	Vessel Name and Official Number	Voyage Dates	
		From:	To:

Before departing port the operator shall certify that neither he nor his crew plan to discharge any oil or oily mixture from the machinery spaces (including sludge or fluids of any kind from the engine room bilge) overboard during the voyage.

Immediately after returning to port the operator shall certify whether he or his crew discharged any oil or oily mixture from the machinery spaces (including sludge or fluid of any kind from the engine room bilge) overboard during the voyage.

Certification before Departing Port: I hereby certify that neither I nor my crew plan to discharge any oil or oily mixture from machinery spaces (including sludge or fluid of any kind from the engine room bilge) overboard during this voyage.

Operator's Signature:

Date:

Certification after Returning to Port: I hereby certify that I or my crew (check box that applies) did discharge did not discharge any oil or oily mixture from machinery spaces (including sludge or fluid of any kind from the engine room bilge) overboard during this voyage. If an overboard discharge occurred during the voyage, the operator shall use the notes section below to describe the circumstances surrounding the discharge and identify the date, time, and location of the discharge.

NOTES:

I certify under penalty of law that the information recorded above is accurate and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Operator's Signature:

Operator's Name (Printed):

Date: