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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	No. 3:11-cr-00067-HRH
)	
Plaintiff,)	GOVERNMENT’S SENTENCING
)	MEMORANDUM
vs.)	
)	
ARNE JAY FUGLVOG,)	
)	
Defendant.)	
)	
_____)	

INTRODUCTION

COMES NOW the United States of America and, by and through the undersigned Attorney, submits this Sentencing Memorandum for the sentencing scheduled for February 7, 2012, at 8:00 a.m.

SUMMARY OF SENTENCING RECOMMENDATIONS

INCARCERATION.	5 months
SPECIAL ASSESSMENT.	\$25
COMMUNITY SERVICE PAYMENT	\$100,000
FINE.	\$50,000
SUPERVISED RELEASE	1 year

I. BACKGROUND

The defendant Arne Fuglvog, at the time of his criminal conduct was a high profile policy-maker in the fishing industry with a family history in the business. Fuglvog was once named the “Fisherman of the Year” by United Fisherman of Alaska, and yet for years it was his practice to fish in one area and falsely report that he caught the fish in another area. The worst of Fuglvog’s illegal conduct was in the year 2005 when he doubled his allowable catch in a specific area by lying about where he caught the fish.

This type of conduct is difficult to detect by law enforcement and thus difficult to deter. In this particular case, law enforcement first received complaints from a disgruntled former crew member of Fuglvog’s who has since publicly admitted in an interview with APRN that he was upset with Fuglvog because he had lost his job and that he was complicit in the illegal

activity while he was a crew member for Fuglvog. These complaints were later substantiated when a fishing logbook was provided anonymously to law enforcement with the allegation that it was Fuglvog's private fishing logbook.

After a handwriting analysis of the logbook was completed it was determined that some of the relevant entries were completed by Fuglvog. Computer data was subsequently obtained from the F/V Kamilar, the fishing vessel that Fuglvog owned and operated at the time of the alleged illegal conduct. A careful and thorough review of the computer by an expert was able to resurrect some historical fishing data that corroborated some of the relevant logbook entries. The information in the logbook and computer established that some of the catch locations reported to the National Marine Fisheries Service by Fuglvog—as required by law—were falsified.

When Fuglvog was confronted with the illegal activity, he accepted responsibility and provided a thorough debrief to the government regarding his and others' illegal fishing activities. As the Court noted at the change of plea, there is a cooperation agreement in this case. This is normally something that is kept under seal for the protection of the individual that is cooperating. Because the Court has already made the agreement public, and

because Fuglvog has agreed to allow it to be public, the Government will discuss the cooperation briefly here. Fuglvog has continued to the present, and will continue after sentencing, to cooperate fully with the government's investigation of fisheries crimes.

A. Instant Offense

As set out in the plea agreement, From 2001 to 2006, the defendant, Arne Fuglvog, was the owner and operator of the Fishing Vessel (F/V) Kamilar. Fuglvog had permits to fish in the Gulf of Alaska for sablefish and halibut. As noted above, management of these fisheries depends on accurate and truthful reporting by fisherman regarding how many fish were caught and in what location. On several occasions between 2001 and 2006, Fuglvog fished in one area and falsely reported that he had caught both sablefish and halibut in areas other than where he caught the fish.

Specific to the year 2005, Fuglvog had an Individual Fishing Quota (IFQ) permit for sable fish in the statistical area designated as "Western Yakutat." Fuglvog's permit allowed him to catch approximately 30,000 pounds of sablefish in the Western Yakutat area in 2005. Fuglvog actually caught approximately 63,000 pounds of sablefish in the Western Yakutat area in 2005. Fuglvog covered up his illegal fishing by submitting false

statements on several trips in 2005 when he landed the fish totaling over 30,000 pounds of sablefish caught in the statistical area designated as “Central Gulf,” when in fact the fish were caught in the Western Yakutat area. The approximate value of the fish caught and landed by Fuglvog in 2005, that Fuglvog provided a false location for in a landing report, was approximately \$100,000.

The investigation established that it was common practice for Fuglvog to catch sablefish and halibut in one area and report that the fish were caught in another area. Sometimes Fuglvog caught the fish in an area very near the regulatory line where he falsely reported they were caught, and other times the distance was much greater. The motive was to save time and money and avoid the competition of other fishermen that clustered in certain areas, as well as avoiding whale depredation that was attracted by the concentrated fishing vessels. The time saved by false reporting the location of the catch was often so that Fuglvog could make it back to attend meetings of the North Pacific Fishery Management Council, a body that oversees management of ground fish in the Gulf Alaska.

The market value for the fish falsely reported in 2005 was approximately \$100,000. Taking into account additional trips that were

likewise falsely reported over the years, the government believes that the market value of the fish falsely reported is closer to \$1 million. These amounts are not all profit for Fuglvog as crew shares and boat and other related costs had to be paid out of that amount. The crew members, including the complainant, also benefitted from the time and cost savings of the false reporting by Fuglvog.

B. Defendant's Criminal History

The defendant has no prior criminal history. In 1994 Fuglvog was fined \$150 for having an unlicensed crew member aboard a fishing vessel.

II. SENTENCING CALCULATION AND RECOMMENDATION

A. Statutory Maximum Sentence

The maximum sentence that may be imposed on the defendant pursuant to Count 1 of the information is 1 year in prison, a \$100,000 fine, one year of supervised release, and a \$25 mandatory special assessment.

B. Sentencing Guidelines Calculation

The PSR accurately calculates the Total Offense level based on the market value of all trips as a 23. Because the statutory maximum for this violation is 12 months and the Guideline range exceeds the maximum, the maximum applicable sentence is 12 months.

III. APPLICATION OF 18 U.S.C. § 3553(a) SENTENCING FACTORS

In addition to the Guidelines, the following sentencing factors set forth in 18 U.S.C. § 3553(a) apply: (1) the nature and circumstances of the offense and history and characteristics of the defendant; (2) the need for the sentence to reflect the seriousness of the offense, afford deterrence, protect the public from further crimes and provide the defendant training and treatment; (3) the kinds of sentences available; (4) the established Guidelines sentencing ranges; (5) any pertinent Guidelines policy statements; (6) the need to avoid unwarranted sentence disparity between defendants with similar records convicted of similar crimes; and (7) the need to provide restitution to victims of the offense. 18 U.S.C. § 3553(a)(1) through (7). The relevant factors are discussed below.

The history and characteristics of Fuglvog include the following. Fuglvog was in a position of trust, responsibility, leadership and authority in the fishing industry when he repeatedly chose to violate fisheries laws. While he was falsely reporting his catch locations, Fuglvog had a seat on the North Pacific Fishery Management Council, a body that oversees management of ground fish in the Gulf Alaska. During this time, Fuglvog

advocated against the use of vessel tracking devices as a regulatory enforcement tool leaving accuracy in reporting up to the individual fisherman, while at the same time falsely reporting his own catches.

This contrasts with what appears to be a person who has devoted significant time to public service, has no other criminal history, and has been a contributing member of society. The sentencing factor regarding protecting the public and the resource does not appear to be a concern at this time as Fuglvog no longer has permits in the fishery, or a boat, and his acceptance and cooperation in this case indicate that Fuglvog is unlikely to re-offend.

However, as noted above regarding the nature and circumstances of the offense, these types of fisheries crimes are difficult to detect and consequently when they do come to light it is important to impose a significant sentence so that others will be deterred from engaging in this type of conduct. This together with the consistency of the illegal conduct of a long period of time, and Fuglvog's position of responsibility in the industry during the illegal conduct, support the significant sentence recommended by the parties as being sufficient but not greater than necessary to achieve sentencing goals.

For all these reasons, the terms of the plea agreement are a reasonable resolution to these charges. The \$50,000 fine is punitive. The \$100,000 directed toward community service, which will be distributed as grants targeting enhancement of fisheries in the coastal areas of the Gulf of Alaska, addresses the harm to the resource as a result of Fuglvog's false reporting. The plea agreement recommends a sentence of 10 months incarceration.

Because Fuglvog has accepted responsibility, debriefed his own illegal conduct and that of others, and because he has cooperated and continues to cooperate with the government's investigation of fisheries crimes, a further reduction of his sentence to 5 months incarceration is appropriate. Finally, as part of the plea agreement, Fuglvog has agreed to issue a public apology in the National Fisherman's Magazine regarding his conduct in this case. This term of the agreement will further serve the purpose of deterrent for these types of crimes.

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IV. CONCLUSION

For the forgoing reasons, the following sentence is just and reasonable: 5 months incarceration, \$50,000 fine, \$100,000 community service payment, \$25 special assessment and 1 year supervised release along with a published public apology.

RESPECTFULLY SUBMITTED this 31st day of January, 2012, at Anchorage, Alaska.

KAREN L. LOEFFLER
United States Attorney

s/ Andrea T. Steward
ANDREA T. STEWARD
Assistant U.S. Attorney
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2012 a true and correct copy of the foregoing was served electronically on:

Jeffrey M. Feldman, Esq.

s/ Andrea T. Steward
Office of the U.S. Attorney