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OCT 14 1994

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE
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DEC 23 1994

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, THE STATE OF
WASHINGTON, AND THE MAKAH INDIAN TRIBE

Plaintiff,

CIVIL ACTION

v.

NO.

MARUHA CORPORATION (formerly known
TAIYO GYOGYO K.K.), THE JAPAN SHIP
OWNERS' MUTUAL PROTECTION & INDEMNITY
ASSOCIATION, TIANJIN OCEAN SHIPPING
COMPANY, CHINA OCEAN SHIPPING COMPANY,
THE UNITED KINGDOM MUTUAL STEAM SHIP
ASSURANCE ASSOCIATION (BERMUDA) LIMITED
in personam, and M/V TUO HAI, in the
nature of in rem.

C94-1537
AGREEMENT AND
CONSENT DECREE

Defendants.

FRANK M. HUNGER
Assistant Attorney General
Civil Division
LOIS J. SCHIFFER
Assistant Attorney General
Environment & Natural Resources Div.
KATRINA C. PFLAUMER
United States Attorney
PHILIP A. BERNIS
Attorney in Charge, WCO
Torts Branch, Civil Division
WARREN A. SCHNEIDER
Ass't Attorney in Charge, WCO
Torts Branch, Civil Division
JAMES NICOLL
Trial Attorney
Environment & Natural Resources Div.
BRADLEY CAMPBELL
Trial Attorney
Environment & Natural Resources Div.

OF COUNSEL
IRVING PIANIN
Legal Counsel
National Pollution Funds Center, USCG

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CHRISTINE O. GREGOIRE
Washington State Attorney General
JERRY ACKERMAN
Assistant Attorney General
Ecology Division
MARY MCCREA
Assistant Attorney General
Ecology Division
WILLIAM FRYMIRE
Assistant Attorney General
Fish and Wildlife Division

JOHN B. ARUM
Ziontz, Chestnut, Varnell,
Berley & Slonim

JAMES P. WALSH,
Davis Wright Tremaine

RICHARD W. BUCHANAN,
LeGros, Buchanan, & Paul

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AGREEMENT AND CONSENT DECREE

This Agreement and Consent Decree (the "Consent Decree") is made and entered into by the United States of America, the State of Washington, and the Makah Indian Tribe, as their respective interests appear in the complaint, including as trustees for natural resources (collectively referred to as "Plaintiffs") and Maruha Corporation (formerly known as Taiyo Gyogyo K.K.) ("Maruha"), the owner of the fish processing vessel TENYO MARU, The Japan Ship Owners' Mutual Protection & Indemnity Association, Tianjin Ocean Shipping Company ("Tianjin"), the owner of the cargo vessel TUO HAI, China Ocean Shipping Company ("COSCO"), The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited and M/V TUO HAI in the nature of in rem (collectively referred to as "Defendants").

I. INTRODUCTION

1. On July 22, 1991, the cargo vessel TUO HAI, owned by Tianjin and registered under the laws of the People's Republic of China, collided with the Japanese fish processing vessel TENYO MARU, owned by Maruha, in waters of the Exclusive Economic Zone of Canada approximately 20 miles west of Cape Flattery. The TENYO MARU sank at the point of collision. The vessel was carrying intermediate fuel oil, diesel oil, lube oil, and fish oil. As a result of the collision, oil was discharged from the sunken vessel and

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1 subsequently entered into or upon the Waters of the United
2 States, impacting the State of Washington and the Makah
3 Indian Reservation.

4 2. Removal actions were undertaken by Plaintiffs to
5 clean up the oil that entered the Waters of the United
6 States. Removal actions for oil discharged to date from the
7 TENYO MARU have been concluded. Vessel owners assisted in
8 the removal actions and voluntarily paid \$2,403,188.72 to
9 the Oil Spill Liability Trust Fund (hereinafter referred to
10 as the "National Pollution Fund"), through the National
11 Pollution Funds Center (hereinafter referred to as the
12 "NPFC") for oil removal expenses. The NPFC has paid other
13 Removal Costs and has also paid certain Third Party Claims
14 pursuant to the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701
15 et seq.

16 3. On or about July 21, 1993, the State of
17 Washington, through the Department of Ecology, issued a
18 Notice of Penalty seeking a \$1 million civil penalty against
19 Tianjin/COSCO in connection with the collision and resulting
20 Oil Spill, part of which entered waters of the State of
21 Washington. Tianjin timely responded with a Petition for
22 Remission or Cancellation of the Notice of Penalty. The
23 matter remains unresolved.

24 4. The United States of America, the Department of
25 Commerce through the National Oceanic and Atmospheric
26 Administration, the Department of the Interior (collectively

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1 referred to hereinafter as the "Federal Trustees"), the
2 State of Washington Department of Ecology, as lead State
3 Trustee (hereinafter referred to as the "State Trustee"),
4 and the Makah Indian Tribe (the "Tribal Trustee") are
5 trustees for Natural Resources belonging to, managed by,
6 controlled by, or appertaining to the United States, the
7 State of Washington, and the Makah Indian Tribe,
8 respectively.

9 5. The United States and the Department of
10 Transportation, acting through the United States Coast
11 Guard, is authorized to seek civil penalties under the Clean
12 Water Act, 33 U.S.C. § 1321, among other remedies.

13 6. The United States, on behalf of the National
14 Pollution Fund, pursuant to the Oil Pollution Act of 1990,
15 33 U.S.C. §§2701 et seq., is authorized to recover any
16 Removal Costs incurred directly by the National Pollution
17 Fund, any Removal Costs and damages incurred by the National
18 Pollution Fund through compensation for Third Party Claims,
19 and all costs incurred by the National Pollution Fund by
20 reason of any such Third Party Claims, including, interest,
21 prejudgment interest, administrative and adjudicative costs,
22 and attorney's fees.

23 7. The State of Washington, acting through the
24 Department of Ecology, is authorized to seek civil penalties
25 under the Water Pollution Control Act, chapter 90.48 RCW,

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1 and the Oil and Hazardous Substance Spill Prevention and
2 Response Act, chapter 90.56 RCW, among other remedies.

3 8. The State of Washington, pursuant to the Water
4 Pollution Control Act, chapter 90.48 RCW, is authorized to
5 recover damages for injury to natural resources caused by a
6 violation of chapter 90.48 RCW or chapter 90.56 RCW, and
7 pursuant to the Oil and Hazardous Substance Spill Prevention
8 and Response Act, chapter 90.56 RCW, is authorized to
9 recover any costs of investigating, removing, containing,
10 treating or dispersing any oil discharged into waters of the
11 state.

12 9. Plaintiffs have filed, contemporaneously with the
13 lodging of this Consent Decree, a civil complaint alleging
14 that Defendants discharged oil into the Waters of the United
15 States, including waters of the State of Washington.

16 10. The parties recognize, and this Court finds, that
17 the parties have negotiated this Consent Decree in good
18 faith, and that implementation of this Consent Decree will
19 avoid lengthy and protracted litigation, is fair, equitable,
20 and in the public interest.

21 NOW, THEREFORE, the parties agree, and it is hereby
22 ORDERED ADJUDGED, AND DECREED as follows:

23 II. PARTIES

24 A. Plaintiffs

25 11. "United States" means the United States of
26 America, in all its capacities, including inter alia all

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1 departments, administrations, natural resource trustees,
2 agencies of the Federal Government, and the National
3 Pollution Fund.

4 12. "State of Washington" means the State of
5 Washington, in all its capacities, including all
6 departments, administrations, natural resource trustees, and
7 agencies of the state government.

8 13. "Makah Indian Tribe" means the sovereign Makah
9 nation, in its capacity as trustee for natural resources
10 belonging to, managed by, controlled by, or appertaining to
11 the Makah Indian Tribe.

12 **B. Defendants**

13 14. "Maruha Corporation," formerly known as Taiyo
14 Gyogyo K.K., owner of the fish processing vessel TENYO
15 MARU, means the corporation organized under the laws of
16 Japan and headquartered in Tokyo, Japan.

17 15. "The Japan Ship Owners' Mutual Protection &
18 Indemnity Association" (hereinafter the "Japan Club") means
19 the corporation, association, or other business entity
20 organized and existing under the laws of Japan, insuring
21 against oil pollution liabilities incurred by the vessel
22 TENYO MARU.

23 16. "Tianjin Ocean Shipping Company," owner of the
24 cargo vessel TUO HAI, means the state-owned corporation,
25 agency or instrumentality, organized under the laws of the
26 Peoples' Republic of China and headquartered in Tianjin.

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17. "China Ocean Shipping Company" ("COSCO") means the state-owned corporation, agency or instrumentality of the People's Republic of China and headquartered in Beijing.

18. The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (hereafter "U.K. Club") means the corporation, association, or other business entity organized and existing under the laws of a foreign country, insuring against oil pollution liabilities incurred by the vessel M/V TUO HAI.

19. M/V TUO HAI, in the nature of in rem, Official Number 8220216, means the vessel registered under the flag of the People's Republic of China.

III. JURISDICTION

20. This is a case of admiralty and maritime jurisdiction and within Rule 9(h) of the Federal Rules of Civil Procedure. The Court's jurisdiction over the subject matter of this action arises pursuant to 28 U.S.C. §§ 1331, 1332, 1333 and 1345, and 33 U.S.C. §§ 1321 and 2717(b). The Makah Indian Tribe also alleges court jurisdiction under 28 U.S.C. § 1362. This Court also has subject matter jurisdiction over the pendant State law claims in this action. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c), and 33 U.S.C. §§ 1321(b)(7)(E) and 2717(b). Defendants have voluntarily appeared, and waive all objections and defenses they may have to the personal jurisdiction of this Court or to venue

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1 in this district solely for the purposes of this Consent
2 Decree.

3 IV. DEFINITIONS

4 21. Whenever the following capitalized terms are used
5 in this Consent Decree, they shall have the following
6 meaning:

7 a. "Final Approval" shall mean the earliest date
8 on which all of the following have occurred: (1) the Court
9 has approved and entered the Consent Decree as a judgment,
10 without modification of the Agreement, prior to or at the
11 time of approval, in a manner inconsistent with the parties'
12 intentions; and (2) the time for appeal from that judgment
13 has expired without the filing of an appeal, or the
14 judgement has been upheld on appeal and either the time for
15 further appeal has expired without the filing of an further
16 appeal or no further appeal is allowed.

17 b. "National Pollution Fund" means the Oil Spill
18 Liability Trust Fund established by section 9509 of the
19 Internal Revenue Code of 1986 (26 U.S.C. § 9509), which has
20 incurred Removal Costs and has been subrogated to certain
21 Third Party Claims pursuant to the Oil Pollution Act of 1990
22 (33 U.S.C. §§ 2701 et seq.).

23 c. "Natural Resources" includes land, fish,
24 wildlife, biota, air, water, groundwater, drinking water
25 supplies, and other such resources belonging to, managed by,
26 held in trust by, appertaining to, or otherwise controlled

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1 by the United States (including the resources of the
2 exclusive economic zone), the State of Washington, or the
3 Makah Indian Tribe.

4 d. "Natural Resource Damages" means compensatory
5 and remedial relief recoverable by the Federal, State, and
6 Tribal Trustees of Natural Resources on behalf of the public
7 or tribal members for injury to, destruction of, or loss of
8 use of any and all Natural Resources resulting from the Oil
9 Spill, whether under the Oil Pollution Act of 1990, 33
10 U.S.C. § 2702(b)(2), or any federal or state statute or
11 maritime or common law relating to the environment,
12 including (1) costs of damage assessment; (2) compensation
13 for loss, injury, impairment, damage or destruction of
14 Natural Resources, whether temporary or permanent, or for
15 loss of use value, non-use value, passive value, option
16 value, amenity value, bequest value, existence value,
17 consumer surplus, economic rent, or any similar value of
18 Natural Resources; (3) any diminution in value of Natural
19 Resources pending restoration; and (4) costs of restoring,
20 rehabilitating, replacing, or acquiring the equivalent of
21 the Natural Resources.

22 e. "Oil Spill" means the discharge of oil from
23 the TENYO MARU following its collision with the TUO HAI on
24 July 22, 1991.

25 f. "Removal Costs" means all costs, including
26 but not limited to, direct and indirect costs, monitoring

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1 costs, and interest, that the United States incurred or paid,
2 to prevent, minimize or mitigate oil pollution from the Oil
3 Spill.

4 g. "Third Party Claims" means any claim arising from
5 the Oil Spill made by any person other than Plaintiffs and paid
6 by the National Pollution Fund pursuant to any law.

7 h. "Waters of the United States" means the waters of
8 its Exclusive Economic Zone, the territorial waters, and the
9 navigable waters of the United States and adjoining shorelines
10 of the United States, the State of Washington, and the Makah
11 Indian Tribe, as their respective interests may appear.

12 **V. PAYMENT; CIVIL PENALTIES**

13 22. In accordance with ¶ 23, Defendants shall pay the sum
14 of Nine Million Dollars (9,000,000) to the Office of the United
15 States Attorney, which in turn shall deposit these funds into
16 the Registry of the Court. Upon Final Approval of the Consent
17 Decree Five Hundred Thousand Dollars (\$500,000) of this payment
18 will be a Federal civil penalty paid by Maruha. In
19 consideration of this payment the State of Washington agrees to
20 rescind, with prejudice, its Notice of Penalty issued to
21 Tianjin/China Ocean Shipping Company.

22 **VI. DEPOSIT; PAYMENT AND RELATED MATTERS**

23 23. Payments and provisions related thereto are as
24 follows:
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1 a. Within 30 days of the lodging of this Consent Decree,
2 Defendants shall deliver a certified check(s) payable to Clerk,
3 United States District Court, Western District of Washington, in
4 the amount of Nine Million Dollars (\$9,000,000.00) to

5 Barbara Brouner
6 Financial Litigation
7 Office of the United States Attorney
8 3600 SeaFirst Fifth Avenue Plaza
9 800 Fifth Avenue
10 Seattle, WA 98104

11 Defendants shall provide written notification of the aforesaid
12 delivery to the Department of Justice officials designated in
13 ¶ 31 immediately after it is made. Defendants' obligation to
14 deposit such sum in the Registry is a contractual obligation to
15 Plaintiffs effective as of the day of lodging of the Decree and
16 enforceable as a contract regardless of when the Decree is
17 entered by the Court. The consideration for this contractual
18 obligation is the mutual stay of this litigation by the parties.

19 b. The Office of the United States Attorney shall
20 immediately deposit the payment referred to in the previous
21 paragraph into the Registry of the Court in accordance with the
22 accompanying Order Directing the Deposit of Funds into the
23 Registry of the Court. (Attachment "A").

24 c. Upon Final Approval of the Decree, counsel for the
25 United States shall notify the Clerk of the Court. Upon
26 notification of Final Approval and in accordance with the Order
27 Directing the Deposit of Funds into the Registry of the Court,
28 the Clerk of the Court shall make the following payments:

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1 Payee: U.S. Coast Guard-Oil Pollution
2 Amount: \$3,000,000.00
3 Address: U.S. Coast Guard-Oil Pollution
4 RE: FPN 131019
5 P.O. Box 7777-W7615
6 Philadelphia, PA 19175-7615
7 Payee: U.S. Coast Guard- Civil Penalty
8 Amount: \$500,000.00
9 Address: U.S. Coast Guard-Civil Penalty
10 RE: MP91007416
11 P.O. Box 100160
12 Atlanta, GA 30384
13 Payee: Secretary of the Interior
14 Amount: \$161,991.00
15 Address: Chief, Division of Finance
16 U.S. Fish and Wildlife Service
17 4401 N. Fairfax Dr., Room 380
18 Arlington, VA 22203
19 Acct. # 14X5198/Tenyo Maru
20 Payee: National Oceanic and Atmospheric Administration
21 Amount: \$10,475.76
22 Address: Manager
23 NOS/Damage Assessment Center
24 6001 Executive Blvd., Rm. 425
25 Rockville, MD 20852
26 Payee: State of Washington/Dept. of Ecology
27 Amount: \$83,828.87
28 Address: State of Washington
 Department of Ecology
 Attention: Cashiering Section
 P.O. Box 5128
 Lacey, WA 98503-0210

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1 Payee: Washington Department of Fish and Wildlife

2 Amount: \$31,339.66

3 Address: As designated by counsel for the State

4
5 Payee: Makah Indian Tribe

6 Amount: \$52,392.00

7 Address: Makah Indian Tribe
8 Attention: Bud Denny
 P.O. Box 115
 Neah Bay, WA 98357

9
10 d. The balance remaining after the payments specified in
11 the previous paragraph shall remain in the Registry of the Court
12 as Natural Resource Damages pursuant to the Order Directing the
13 Deposit of Funds into the Registry of the Court.

14 e. All funds paid into the Registry of the Court by
15 Defendants shall remain in the Registry and shall not be
16 returned to Defendants unless: (i) Final Approval of this
17 Consent Decree does not occur; or (ii) the United States
18 withdraws its consent to the Decree. If this Consent Decree
19 does not become final for either of the foregoing reasons, all
20 sums paid into the Registry of the Court including accrued
21 interest, shall, immediately upon the date of maturity of the
22 securities currently owned, be returned to Defendants by the
23 Clerk of the Court after deducting all administrative costs for
24 maintaining the account.

25 f. Natural Resource Damages in the Registry of the Court
26 shall be used only for restoring, rehabilitating, replacing or

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1 acquiring the equivalent of injured natural resources as
2 provided in 33 U.S.C. § 2706(f). These funds shall be managed
3 pursuant to the Order Directing Deposit of Funds into the
4 Registry of the Court and the attached Memorandum of Agreement
5 (Attachment B), which is hereby incorporated into this Decree.

6 g. If Defendants fail to timely make any payment required
7 under this Consent Decree, then, commencing the day after
8 payment is due, Defendants shall be liable for interest on the
9 unpaid balance at the federal judgment interest rate computed in
10 accordance with 28 U.S.C. § 1961 as of the date payment is due,
11 and, if incurred, the costs of enforcement and collection
12 pursuant to the Federal Debt Collection Procedure Act, 28 U.S.C.
13 § 3001 et seq. or, for late payment of the Federal civil
14 penalty, as specified by 33 U.S.C. § 1321.

15 **VII. COVENANT NOT TO SUE DEFENDANTS**

16 24. In consideration of and provided that Defendants are
17 in timely compliance with the terms of this Consent Decree,
18 Plaintiffs covenant not to sue or take administrative action,
19 after entry of this Consent Decree, against Defendants for any
20 civil claim, penalty, or other such civil action arising from
21 the Oil Spill, except as specifically provided in ¶¶ 26, 27 and
22 28. This Covenant Not to Sue applies only to civil claims which
23 arose in connection with the Oil Spill and extends only to
24 Defendants and their officers, members, directors, trustees,
25 shareholders, insurers, agents, representatives, employees,
26 subsidiaries, successors, assigns or affiliates.

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1 VIII. COVENANT NOT TO PRESENT CLAIMS TO NATIONAL POLLUTION
2 FUND

3 25. All parties covenant not to present any claim for
4 removal costs or damages arising from the Oil Spill, pursuant to
5 the Oil Pollution Act of 1990, 33 U.S.C §§ 2708 and 2713, to the
6 National Pollution Fund.

7 IX. FUTURE DISCHARGE FROM TENYO MARU

8 26. Notwithstanding any other provision of this Consent
9 Decree, Plaintiffs reserve, and this Consent Decree is without
10 prejudice to, the right to institute proceedings in a new
11 action, to issue administrative orders, or to make claims
12 against the Defendants, the National Pollution Fund or any other
13 person or entity, if after lodging of this Consent Decree
14 Plaintiffs receive information indicating the presence of
15 additional oil in Waters of the United States discharged from
16 the TENYO MARU after the date of lodging of this Consent Decree.

17 27. In the event that any Plaintiff makes a claim or
18 institutes a new action pursuant to ¶ 26, or any other authority
19 of law, seeking additional penalties, payment of Removal Costs
20 or damages of any kind relating to or arising out of a future
21 release of additional oil from the TENYO MARU, the parties
22 hereby expressly reserve any and all rights, claims, and
23 defenses as to any such new claims or action. However,
24 Defendants agree not to assert any claim, by way of set-off or
25 otherwise, for payments made under this Consent Decree that they
26 have or may have in the future; except that Defendants may

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1 assert that they have paid an amount equal to the TENYO MARU
2 limit of liability, if applicable, under 33 U.S.C. § 2704(a)(2).

3 **X. RE-OPENER FOR CERTAIN CLAIMS ARISING FROM ORIGINAL**
4 **DISCHARGE**

5 28. In addition to the payment specified in ¶ 22,
6 Defendants agree to indemnify and reimburse the National
7 Pollution Fund for any amounts paid by the National Pollution
8 Fund by reason of any Third Party Claims presented to the
9 National Pollution Fund within the applicable statute of
10 limitations and before May 8, 1995.

11 **XI. DISCLAIMER OF LIABILITY**

12 29. Neither entry of this Consent Decree nor any action in
13 accordance with this Consent Decree shall constitute an
14 admission of liability under any federal, state or local
15 statute, regulation, ordinance, general maritime law or common
16 law for any fine, penalty, response costs, damages, or claims or
17 any issues of fact or law or of responsibility for the Oil Spill
18 by Defendants, their present or former officers, members,
19 directors, trustees, shareholders, insurers, agents,
20 representatives, employees, subsidiaries, successors, assigns or
21 affiliates.

22 30. The parties further agree that none of the provisions
23 of this Consent Decree or evidence of negotiations shall be
24 offered or received in evidence in this action or any other
25 action or proceedings by any other party for any purpose, except
26 for enforcement of this Consent Decree or except as specifically
27 provided herein.

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XII. NOTICES AND SUBMISSIONS

31. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to the other, it shall be directed to individuals at the addresses specified below, unless those individuals or their successors give written notice of a change. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

As to the United States:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Philip A. Berns
Attorney in Charge
Department of Justice
Civil Division, Torts Branch
West Coast Office
450 Golden Gate Avenue
San Francisco, CA 94102

Irving A. Pianin
Legal Counsel
National Pollution Funds Center
U.S. Coast Guard

As to the State of Washington:

Mary McCrea
Office of the Attorney General
Ecology Division
P.O. Box 40117
Olympia, WA 98504-0117

For the State of Washington

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1 As to the Makah Indian Tribe:

2 John B. Arum
3 ZIONTZ, CHESTNUT, VARNELL, BERLEY, SLONIM
4 2101 4th Avenue, Suite 1230
5 Seattle, WA 98121

6 As to Maruha (formerly Taiyo GYOGYO K.K.) and The Japan
7 Ship Owners' Mutual Protection & Indemnity Association:

8 James P. Walsh
9 DAVIS WRIGHT TREMAINE
10 2600 Century Square
11 1501 Fourth Avenue
12 Seattle, Washington 98101
13 (206) 622-3150

14 As to Tianjin, China Ocean Shipping Company, United Kingdom
15 Mutual Steam Ship Assurance Association (Bermuda) Limited, and
16 M/V TUO HAI:

17 Richard W. Buchanan
18 LeGros, Buchanan, & Paul
19 2500 Columbia Center
20 701 Fifth Avenue
21 Seattle, Washington 98104-7098

22 **XIII. NATURAL RESOURCES RESTORATION PLAN**

23 32. Plaintiffs agree to promptly submit to Defendants a
24 copy of the final Natural Resources Restoration Plan developed
25 and to be implemented with respect to the Natural Resources
26 affected by the Oil Spill.

27 **XIV. ENTRY OR DISAPPROVAL OF DECREE**

28 33. Consistent with the procedures in 28 C.F.R. § 50.7,
29 Plaintiff United States shall be responsible for issuing a
30 public notice of the Consent Decree, which shall be issued as
31 soon after the Consent Decree is lodged with the Court as
32 possible. Following the issuance of the public notice, the
33 public shall have at least 30 days to comment on the Consent

34 AGREEMENT AND CONSENT DECREE

35 U.S. DEPT. OF JUSTICE
36 CIVIL DIVISION, TORT BR.
37 450 GOLDEN GATE AVENUE
38 SAN FRANCISCO, CA 94101
39 TELE: 415-556-3146

1 Decree. The United States reserves the right to withdraw or
2 withhold its consent to this Consent Decree if the comments
3 disclose facts or considerations which indicate that the Consent
4 Decree is inappropriate, improper, or inadequate.

5 34. This Consent Decree shall be considered an enforceable
6 judgement for purposes of post-judgement collection in
7 accordance with Rule 69 of the Federal Rules of Civil Procedure
8 and other applicable federal statutory authority.

9 35. This Court retains jurisdiction over both the subject
10 matter of this Consent Decree and Parties hereto for the
11 duration of the performance of the terms and conditions of this
12 Consent Decree solely for the purpose of enforcing those terms
13 and conditions.

14 36. In the event this Consent Decree is not given Final
15 Approval, this Consent Decree and all agreements contained
16 herein shall become null and void and of no further force and
17 effect, and shall not be used or referred to for any purpose
18 whatsoever. In such event, this Consent Decree and all
19 negotiations and proceedings relating thereto shall be deemed to
20 be without prejudice to the rights of the parties, who shall be
21 restored to their respective positions immediately prior to the
22 lodging of this Consent Decree in Court.

23 **XV. MISCELLANEOUS**

24 37. This Consent Decree shall not affect any party's
25 rights against any person or entity not a party to this Consent
26 Decree. No person or entity other than the parties hereto shall

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1 have the authority to seek to enforce the terms of this Consent
2 Decree.

3 38. This Consent Decree constitutes the entire agreement
4 among the parties with regard to the subject matter hereof and
5 can be modified or amended only with the express written consent
6 of all the parties to this Consent Decree.

7 39. The undersigned representatives of Plaintiffs and
8 Defendants each certify that he or she is fully authorized to
9 enter into the terms and conditions of this Consent Decree and
10 to execute and legally bind the party whom he or she represents
11 to this Consent Decree.

12 40. This Consent Decree may be executed in several
13 counterparts and by facsimile and, as executed, shall constitute
14 one agreement, binding on all parties hereto, even though all
15 parties do not sign the original or the same counterpart.

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1 41. Except as otherwise provided herein each party to this
2 Consent Decree shall bear his, her or its own costs, attorneys
3 fees and disbursements.

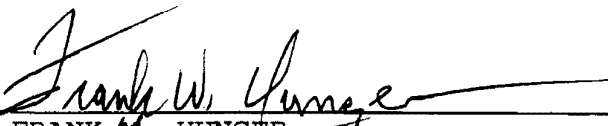
4 SO ORDERED THIS 23rd DAY OF Dec., 1994.


5
6 
7 United States District Judge
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27 AGREEMENT AND CONSENT DECREE
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1 We hereby consent to the entry of the foregoing
2 Agreement and Consent Decree:

3 
4 FRANK W. HUNGER
5 Assistant Attorney General
6 Civil Division

7 
8 LOIS J. SCHIFFER
9 Assistant Attorney General
10 Environment & Natural Resources Div.

11 KATRINA C. PFLAUMER
12 United States Attorney

13 
14 PHILIP A. BERNES
15 Attorney in Charge, WCO
16 Torts Branch, Civil Division
17 WARREN A. SCHNEIDER
18 Ass't Attorney in Charge, WCO
19 Torts Branch, Civil Division

20 JAMES NICOLL
21 Trial Attorney
22 Environment & Natural Resources Div.
23 BRADLEY CAMPBELL
24 Trial Attorney
25 Environment & Natural Resources Div.

26 For United States of America

27 CHRISTINE O. GREGOIRE
28 Washington State Attorney General

AGREEMENT AND CONSENT DECREE

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1 Jerry Ackerman

2 JERRY ACKERMAN
3 Assistant Attorney General
Ecology Division

4 Mary McCrea

5 MARY MCCREA
6 Assistant Attorney General
Ecology Division

7 William E. Frye

8 WILLIAM FRYMIRE
9 Assistant Attorney General
10 Fish and Wildlife Division

11 For the State of Washington

12
13
14 JOHN B. ARUM,
15 Zions, Chestnut, Varnell, Berley, Slonim for the
16 Makah Indian Tribe

17
18 JAMES P. WALSH,
19 Davis Wright Tremaine for Maruha Corporation (formerly known
20 as
& Indemnity Association

21
22
23
24 Richard W. Buchanan,
25 LeGros, Buchanan & Paul for Tianjin Ocean Shipping Company,
26 China Ocean Shipping Company, The United Kingdom
Mutual Steam Ship Assurance Association (Bermuda) Limited
and M/V TUO HAI, in the nature of in rem.


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1 JERRY ACKERMAN
2 Assistant Attorney General
3 Ecology Division
4

5 MARY McCREA
6 Assistant Attorney General
7 Ecology Division
8

9 WILLIAM FRYMIRE
10 Assistant Attorney General
11 Fish and Wildlife Division
12 For the State of Washington
13

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16 Zientz, Chestnut, Varnell, Berley, Slonim for the
17 Makah Indian Tribe
18

19 JAMES P. WALSH,
20 Davis Wright Tremaine for Maruha Corporation (formerly known
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22 Taiyo Gyogyo K.K.), The Japan Ship Owners' Mutual Protection
23 & Indemnity Association
24

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28 Mutual Steam Ship Assurance Association (Bermuda) Limited
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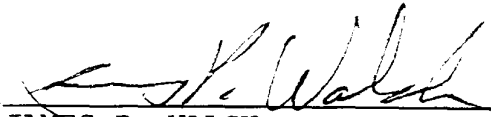
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9

10 JOHN B. ARUM,
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12 Makah Indian Tribe

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14 JAMES P. WALSH,
15 Davis Wright Tremaine

16 For Maruha Corporation (formerly known as Taiyo Gyogyo K.K.),
17 The Japan Ship Owners' Mutual Protection & Indemnity Association
18

19 Richard W. Buchanan,
20 LeGros, Buchanan & Paul

21 For Tianjin Ocean Shipping Company,
22 China Ocean Shipping Company, The United Kingdom
23 Mutual Steam Ship Assurance Association (Bermuda) Limited
24 and M/V TUO HAI, in the nature of in rem.
25

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27 AGREEMENT AND CONSENT DECREE
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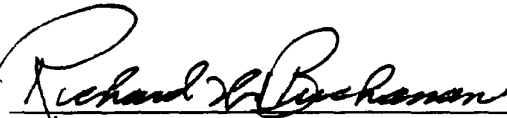
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11 Fish and Wildlife Division
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22 & Indemnity Association
23

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28 Mutual Steam Ship Assurance Association (Bermuda) Limited
and M/V TUO HAI, in the nature of in rem.

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TELE: 415-556-3146

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 14 1994, I
mailed by first class mail a copy of the foregoing Agreement and
Consent Decree to:

James P. Walsh, Esq.
Davis Wright Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, Washington 98104

Richard Buchanan
LeGros, Buchanan & Paul
2500 Columbia Center
701 Fifth Avenue
Seattle, Washington 98104-7098

Ziontz, Chestnut, Varnell, Berley & Slonim
Attn: John B. Arum
2101 4th Avenue, Suite 1230
Seattle, WA 98121

Jerry Ackerman
Assistant Attorney General
Office of the Attorney General
State of Washington
629 Woodloand Square Loop SE
P.O. Box 40117
Olympia, WA 98504-0117



JAMES NICOLL

AGREEMENT AND CONSENT DECREE

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TELE: 415-556-3146

ATTACHMENT A

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6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA, THE STATE OF)
WASHINGTON, and THE MAKAH INDIAN TRIBE)

11 Plaintiffs,)

CIVIL ACTION

12 v.)

NO.

13 MARUHA CORPORATION (formerly known as)
14 TAIYO GYOGYO K.K.), THE JAPAN SHIP)
OWNERS' MUTUAL PROTECTION & INDEMNITY)
ASSOCIATION, TIANJIN OCEAN SHIPPING)
15 COMPANY, CHINA OCEAN SHIPPING COMPANY,)
THE UNITED KINGDOM MUTUAL STEAM SHIP)
16 ASSURANCE ASSOCIATION (BERMUDA))
Limited, in personam, and M/V TUO HAI,)
17 in the nature of in rem.)

ORDER DIRECTING THE
DEPOSIT OF FUNDS
INTO THE REGISTRY
OF THE COURT

18 Defendants.)
19

20 This case arises out of an oil spill following a collision
21 between the cargo vessel TUO HAI and the fish processing vessel
22 TENYO MARU in July 1991. This Order is entered pursuant to and in
23 furtherance of an Agreement and Consent Decree (the "Decree")
24 between Plaintiffs United States of America, State of Washington
25 and Makah Indian Tribe and Defendants Maruha Corporation, Japan
26 Ship Owners' Mutual Protection & Indemnity Association, Tianjin

27 ORDER DIRECTING DEPOSIT OF FUNDS
28 INTO THE REGISTRY OF THE COURT - 1

1 Ocean Shipping Company, China Ocean Shipping Company, United
2 Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited
3 and M/V TUO HAI in the nature of in rem ("Settling Defendants").
4 Under the Decree, Settling Defendants have agreed to pay \$9 million
5 to the Office of the U.S. Attorney, which will in turn deposit this
6 money into the Registry of the Court pending final approval of the
7 Decree, as defined in the Decree. Upon final approval of the
8 Decree, certain payments will be made out of the Registry to
9 reimburse plaintiffs for certain claims, while a portion of the
10 funds will remain in the Registry to satisfy claims by the Natural
11 Resource Trustees (National Oceanic and Atmospheric Administration
12 of the U.S. Department of Commerce, the U.S. Department of the
13 Interior, the Washington Department of Ecology [on behalf of the
14 Washington Department of Fisheries, the Washington Department of
15 Natural Resources, and the Washington Department of Wildlife], and
16 the Makah Indian Tribe) for Natural Resource Damages resulting from
17 the spill. This Order addresses handling and investment of those
18 funds by the Registry of the Court.

19 Pursuant to Rule 67 of the Federal Rules of Civil Procedure,
20 28 U.S.C. § 2041, and Local Rule GR 6, and in accordance with the
21 terms of the Consent Decree, it is hereby ORDERED that:

22 1. An account shall be established forthwith by the Clerk of
23 the Court in the Registry for payments received in this case and
24 the account shall be entitled "TENYO MARU Settlement Account."

25 2. The Clerk of the Court shall administer the funds so
26 received as follows:

27 ORDER DIRECTING DEPOSIT OF FUNDS
28 INTO THE REGISTRY OF THE COURT - 2

1 a) Prior to notification by counsel for the United States
2 of final approval of the Decree, the funds received shall
3 immediately be used to purchase seven-day government securities, at
4 the highest prevailing interest rate available for such securities,
5 and shall be similarly re-invested until payment and other
6 investment are to take place in accordance with this order or the
7 funds are to be returned to Defendants in accordance with paragraph
8 23.e of the Decree;

9 b) Following notification by counsel for the United
10 States of final approval of the Decree, the Clerk shall,
11 immediately upon the date of maturity of the securities then
12 currently owned, make the payments specified in paragraph 23.c of
13 the Decree.

14 c) After making the payments specified in paragraph 23.c
15 of the Decree, the balance of the funds shall immediately be used
16 to purchase 91-day government securities, at the highest prevailing
17 interest rate available for such securities;

18 d) upon maturity of the securities referred to in
19 subparagraph c), the Clerk shall consult with counsel for the
20 United States regarding the purchase of additional short-term
21 securities. Counsel for the United States shall consult with
22 representatives of the Natural Resource Trustees and, depending
23 upon the Natural Resource Trustees' anticipated funding needs,
24 shall advise the Clerk regarding the desired reinvestment in
25 government securities. The Clerk may make any such allocations of

1 funds as directed by counsel for the United States without further
2 Order of the Court.

3 3. All income earned as interest on funds so invested or
4 deposited shall be credited to the TENYO MARU Settlement Account.

5 4. The Natural Resource Trustees may apply to the Court for
6 an Order establishing an investment procedure or vehicle
7 alternative to that identified in paragraph 2(c) above that
8 provides a comparable level of security and earnings potential,
9 which application may be acted upon by the Court without notice to
10 or consent by Settling Defendants.

11 5. The Clerk shall prepare quarterly reports on the status
12 and activity of the TENYO MARU Settlement Account showing payments
13 received, disbursements made, income earned, maturity dates of
14 securities held, and principal balance, and shall distribute the
15 reports to counsel for the United States, the State of Washington
16 and the Makah Indian Tribe.

17 6. Funds then remaining in the TENYO MARU Settlement Account
18 after payments have been made in accordance with paragraph 23.c of
19 the Decree shall remain in the Registry until further order of this
20 Court.

21 7. Expenditures of funds from the TENYO MARU Settlement
22 Account by the Natural Resource Trustees shall be governed by the
23 procedures established in the Memorandum of Agreement, Attachment B
24 to the Decree. Applications for orders for disbursements from the
25 TENYO MARU Settlement Account shall be made by Plaintiffs on behalf
26 of the Natural Resource Trustees, upon certification by each of the

1 Natural Resource Trustees that their determination to make such
2 disbursement was in compliance with the terms of the Decree, the
3 Memorandum of Agreement, applicable law and such other decision
4 making procedures as the Natural Resource Trustees may adopt. Such
5 applications may be acted upon by the Court without notice to or
6 consent by Settling Defendants.

7 8. The Clerk is authorized and directed by this Order to
8 deduct for maintaining funds in the Registry Account the fee as
9 authorized in the Federal Register Vol. 56, No. 213 at page 56356
10 (November 4, 1991).

11 9. A certified copy of this Order shall be served upon the
12 Clerk of this Court.

13
14 Dated _____

United States District Judge

15
16 Presented by:

17 Philip A. Berns
18 Attorney in Charge, WCO
19 Torts Branch, Civil Division
20 U.S. Department of Justice
450 Golden Gate Avenue
San Francisco, CA 94102
(415) 556-3146

21 James L. Nicoll
22 U.S. Department of Justice
NOAA GC-DOJ DARC BIN C15700
23 7600 Sand Point Way NE
Seattle, WA 98115
24 (206) 526-6604

25 Counsel for the United States

26
27 ORDER DIRECTING DEPOSIT OF FUNDS
28 INTO THE REGISTRY OF THE COURT - 5