

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 11-10012-CR-MARTINEZ

UNITED STATES OF AMERICA

v.

RUSH C. MALTZ,

Defendant.

PLEA AGREEMENT

The United States of America and Rush C. Maltz (hereinafter referred to as the “defendant”) enter into the following agreement:

1. The defendant agrees to plead guilty to Count 1 of the Indictment filed against him, which count charges the defendant with conspiracy to illegally harvest lobster both prior to and during the commercial spiny lobster harvesting season from artificial habitat within the Florida Keys National Marine Sanctuary, in violation of federal law and the laws of the State of Florida, that is Title 16, United States Code, Sections 3372(a)(1), 3372(a)(2)(A), and 3373(d)(1) and (2), and Florida Administrative Code, Sections 68B-24.006(10) and 68B-24.006(10), all in violation of Title 18, United States Code, Section 371. The United States agrees to seek dismissal of the remaining Counts of the Indictment, as to this defendant, after sentencing, and further agrees that it will not bring additional charges against defendant for the harvesting or sale of fish and wildlife based on conduct known to the United States at the time of the acceptance by the Court of defendant’s plea of guilty.

2. The defendant is aware that the sentence will be imposed by the court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter “Sentencing Guidelines”). The defendant acknowledges and understands that the court will compute an advisory sentence under the

Exhibit

Sentencing Guidelines and that the applicable guidelines will be determined by the court relying in part on the results of a Pre-Sentence Investigation by the court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

3. The defendant also understands and acknowledges that the court may impose a statutory maximum term of imprisonment of up to 5 years with respect to the charge against him, followed by a term of supervised release of up to 3 years. In addition to a term of imprisonment and supervised release, the court may impose a fine of up to \$250,000, or the greater of twice the pecuniary gain or loss arising under the relevant conduct, and may order restitution.

4. The defendant further understand and acknowledges that, in addition to any sentence imposed under paragraph 3 of this agreement, a special assessment in the amount of \$100.00 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

5. The United States and the defendant agree that they will jointly recommend that the court make the following findings and conclusions as to the proper calculation and application of the advisory Sentencing Guidelines under all the circumstances of this case:

- a. Base Offense Level: Pursuant to Section 2Q2.1(a) of the Sentencing Guidelines, the base offense level in this matter is Level 6.
- b. Specific Offense Characteristics: Pursuant to Section 2Q2.1(b)(1) of the Sentencing Guidelines, defendant's base offense level should be increased by 2 levels because the offense was committed for pecuniary gain.
- c. Market Value: That defendant's relevant conduct involved more than \$200,000.00 but less than \$400,000.00 in retail fair market value. Under Sections 2Q2.1(b)(3)(A) and 2B1.1(b)(1)(G), therefore, defendant's offense level should be increased by +12 levels.
- d. Chapter Three, Part B Adjustment: Defendant should receive neither an increase nor a decrease in his offense level pursuant to Section 3B1.2(b).
- e. Guideline range: That the applicable guideline range for the Count 1 conspiracy offense committed by the defendant is Level 20.

6. The Office of the United States Attorney for the Southern District of Florida (hereinafter "Office") reserves the right to inform the court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

7. The United States agrees that it will recommend at sentencing that the court reduce the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of

the Sentencing Guidelines by -2 levels, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility, resulting in a Total Adjusted Offense Level of 18, and to recommend a sentence at the low end of the Guideline Range as determined by the Court. However, the United States will not be required to make any of these sentencing recommendations if the defendant: (1) fails or refuses to make full, accurate, and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

8. The defendant agrees that in exchange for the undertakings by the United States herein, which are specifically conditioned on compliance with this paragraph, that he shall cooperate fully with this Office by providing to the United States Attorney's Office within 5 business days of entry of his plea in this matter, unaltered copies of navigational information, GPS data, nautical charts, or collections and depictions in whatever form recorded which document and reflect locations of artificial habitat within the Florida Keys National Marine Sanctuary and surrounding waters. Defendant warrants that he will retain no copy of any portion of the foregoing information, that he will not provide any such data to any third party, and that he will retrieve from any third party to the extent possible any information previously distributed for safekeeping or the use of that party. Further, defendant shall simultaneously deliver to the United States Attorney's Office or its designee all GPS receivers or electronic media of any description upon which such data was formerly or is currently maintained for forensic examination by the United States. Upon completion of such review,

all such hardware will be returned to defendant, with all site location data permanently expunged.

9. Defendant agrees to forfeit to the United States voluntarily and immediately all of his right, title and interest to any and all assets or their proceeds which are subject to forfeiture pursuant to Title 28, United States Code, Section 2461, Title 16, United States Code, Section 3374(a)(1), (a)(2), and Title 15 Code of Federal Regulations, Section 904.505(d), including the following:

- a. One 2006 29' Sea Vee, HIN: SXJ01024K505, including all equipment, accessories, engines, tackle, and trailer.
- b. One 1973 23' T-Craft, HIN: TCB23C781273, including all equipment, accessories, engines, tackle, and trailer.

The defendant admits that the above listed assets were fish or wildlife transported, sold, received, acquired, or purchased contrary to the provisions of Title 16, United States Code, Section aa3372, or any regulation issued pursuant thereto, or were vessels, vehicles, and other equipment used to aid in the transporting, selling, receiving, acquiring, or purchasing of fish or wildlife, and that the defendant was the owner of such vessel, vehicle, or equipment who consented to its use and the violation involved the sale or purchase of, or the intent to sell or purchase fish or wildlife.

10. Defendant further agrees to fully cooperate and assist the Government in the forfeiture of the listed assets or proceeds thereof. The parties jointly agree that the physical assets are no longer available, and that the substitute proceeds to approximately \$62,000, which amount shall be verified prior to sentencing and adjusted as appropriate to the full value of the proceeds. The United States agrees to consider defendant's financial circumstances as reflected in the Pre-Sentence Report, and to join in recommending a payment schedule for the proceeds. Defendant further knowingly and

voluntarily waives the following rights as to assets subject to forfeiture: (1) all constitutional, legal and equitable defenses to the forfeiture of the assets in any judicial or administrative proceeding; (2) any judicial or administrative notice of forfeiture and related deadlines; (3) any jeopardy defense or claim of double jeopardy, whether constitutional or statutory; (4) any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of excessive fine, to the forfeiture of these assets by the United States; and (5) any right to appeal any order of forfeiture entered by the Court pursuant to this plea agreement. Defendant further understands that the forfeiture of these assets or proceeds shall not be treated as satisfaction or offset against any fine, restitution, cost of imprisonment, or any other penalty this court may impose on the defendant.

11. The defendant further agrees in consideration for the undertakings herein that he shall, within 5 business days of the entry of his plea, surrender to the State of Florida, Fisheries Wildlife Conservation Commission, any and all Commercial Crawfish and Dive Endorsements.

12. Should the defendant, jointly with his co-defendant Titus Werner, at their own expense and utilizing their own vessels, under the supervision of a designee of the Superintendent of the FKNMS, recover and remove from the Sanctuary the approximately 200+ artificial habitat sites employed during their criminal conduct, the parties shall jointly inform the Court at sentencing of the progress and results of that effort.

13. The defendant is aware that the sentence has not yet been determined by the court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the government, or the probation office, is a prediction, not a promise, and is not binding on the government, the probation office or the court. The defendant understands further that any recommendation that the

government makes to the court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the court and the court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 2 above, that the defendant may not withdraw his plea based upon the court's decision not to accept a sentencing recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

14. In further consideration of the undertakings by the United States herein, and in recognition of the requirements of the Internal Revenue Code, defendant agrees to cooperate with the IRS in its civil examination and determination of any taxes due and owing, arising from the events and transactions described in the Information, and further agrees not to conceal or dissipate funds or property that could be used to satisfy such taxes. Nothing in this agreement shall be taken to limit the authority of the IRS in its determination of taxes, interest and penalties, or the defendant's right to available process to contest such civil determinations.

15. The defendant is aware that Title 18, United States Code, Section 3742 would normally afford the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings of the United States in this plea agreement, the defendant hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure from the advisory guideline range that the court establishes at sentencing. Subject to the preceding provision, this appeal waiver includes a waiver of the right to appeal the sentence on the ground that under the advisory Sentencing Guidelines range determined by the court, the sentence imposed in this case

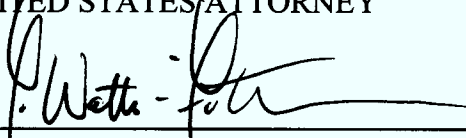
is not a reasonable sentence. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that he has discussed the appeal waiver set forth in this agreement with his attorney. The defendant further agrees, together with the United States, to request that the district court enter a specific finding that the defendant's waiver of his right to appeal the sentence imposed in this case was knowing and voluntary.

15. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

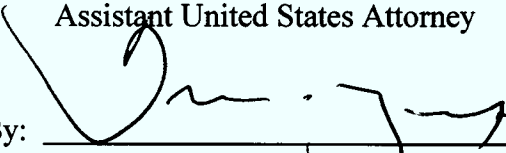
Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY


Date: 1/3/12

By: 
Thomas A. Watts-FitzGerald
Assistant United States Attorney

Date: 1/3/12

By: 
BRUCE A. ZIMET, ESQ.
ATTORNEY FOR DEFENDANT

Date: 1/3/12

By: 
RUSH C. MALTZ
DEFENDANT