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UNITED STATES OF AMERICA

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, Plaintiff, vs. HAMADA SUISAN CO. LTD a/k/a HAMADA SUISAN KABUSHIKI KAISHA (01), JF ZENGYOREN (02), HIROYUKI KASAGAMI (03), TOSHIYUKI KOMATSU (04), HIROSHI CHIBA (05), Defendants.	) MAG. NO. 18-1347 KJM)) CRIMINAL COMPLAINT)))))))))))

CRIMINAL COMPLAINT

I, the undersigned complainant, being duly sworn, state the following is true

and correct to the best of my knowledge and belief.

COUNT 1
Lacey Act Fish Trafficking—Transport and Attempt to Export
Fish Transported in Violation of
Magnuson-Stevens Act and Shark Conservation Act

On or about November 7, 2018, in the District of Hawaii and elsewhere, HAMADA SUISAN CO. LTD, JF ZENGYOREN, HIROYUKI KASAGAMI, TOSHIYUKI KOMATSU, and HIROSHI CHIBA, the defendants, did knowingly transport, and aid and abet the transport of, attempt to export, and aid and abet the attempt to export, fish, that is: shark fins, which defendants knew and in the exercise of due care should have known had been transported in violation of and in a manner unlawful under the laws and regulations of the United States, and which shark fins in fact had been transported in violation of the Magnuson-Stevens Fishery Conservation and Management Act (hereinafter "Magnuson-Stevens Act"), 16 U.S.C. § 1857(1)(A); and the Shark Conservation Act (codified within the Magnuson-Stevens Act), 16 U.S.C. § 1857(1)(P)(iv), and 50 C.F.R. § 600.1203(a)(5); which make it unlawful for any person to land any such fin that is not naturally attached to the corresponding carcass.

All in violation of Title 16, United States Code, Sections 3372(a)(1), (a)(4), and 3373(d).

COUNT 2

Lacey Act Fish Trafficking—Transport and Attempt to Export CITES-Listed Species Imported in Violation of Endangered Species Act

On or about November 7, 2018, in the District of Hawaii and elsewhere, HAMADA SUISAN CO. LTD, JF ZENGYOREN, HIROYUKI KASAGAMI, TOSHIYUKI KOMATSU, and HIROSHI CHIBA, the defendants, did knowingly transport, aid and abet the transport of, attempt to export, and aid and abet the attempt to export, fish, that is: fins from oceanic whitetip sharks, *Carcharhinus longimanus*, fins from silky sharks, *Carcharhinus falciformis*, and fins from bigeye thresher sharks, *Alopias superciliosus*, which defendants knew and in the exercise of due care should have known had been imported in violation of and in a manner unlawful under the laws and regulations of the United States, specifically: contrary to the Endangered Species Act, 16 U.S.C. § 1538(c)(1), which makes it unlawful for any person subject to the jurisdiction of the United States to engage in any trade contrary to the provisions of the Convention on International Trade in Endangered Species (CITES) and to possess any specimen so traded, which requires, pursuant to Article IV of the Convention and as implemented at 50 C.F.R. §§ 23.13, 23.20, 23.21(d), and 23.27(b), a valid CITES document and clearance from a U.S. Fish and Wildlife Officer, to engage in international trade by importing any CITES specimens, including oceanic whitetip sharks, silky sharks, and bigeye thresher

sharks.

All in violation of Title 16, United States Code, Sections 3372(a)(1), (a)(4), and 3373(d).

COUNT 3
Lacey Act Fish Trafficking—Transport and Attempt to Export ESA-Listed Threatened Species Imported in Violation of Endangered Species Act

On or about November 7, 2018, in the District of Hawaii and elsewhere, HAMADA SUISAN CO. LTD, JF ZENGYOREN, HIROYUKI KASAGAMI, TOSHIYUKI KOMATSU, and HIROSHI CHIBA, the defendants, did knowingly transport, aid and abet the transport of, attempt to export, and aid and abet the attempt to export, fish, that is: fins of oceanic white tip sharks, *Carcharhinus longimanus,* which defendants knew and in the exercise of due care should have known had been imported in violation of and in a manner unlawful under the laws and regulations of the United States, and which shark fins in fact had been imported in violation of the Endangered Species Act (ESA), 16 U.S.C. §§ 1538(d) and 1538(e), and 50 C.F.R. §§ 14.52, 14.54, 14.61, and 14.91, which require any person importing fish that are listed pursuant to Section 1533 of the ESA, including oceanic white tip sharks, to obtain clearance from a U.S. Fish and Wildlife Officer, to file a Declaration for Importation or Exportation of Wildlife upon import into the United States, and to have an import/export license.

All in violation of Title 16, United States Code, Sections 3372(a)(1), (a)(4), and 3373(d).

COUNT 4
Lacey Act Fish Trafficking—Transport and Attempt to Export
Fish Possessed in Violation of Hawaii Law

On or about November 7, 2018, in the District of Hawaii and elsewhere, HAMADA SUISAN CO. LTD, JF ZENGYOREN, HIROYUKI KASAGAMI, TOSHIYUKI KOMATSU, and HIROSHI CHIBA, the defendants, did knowingly transport and attempt to export, and aid and abet the transport and attempt to export, fish with a market value in excess of $350 intended for sale, that is: shark fins, which defendant knew and in the exercise of due care should have known were possessed in violation of underlying law, and which shark fins were in fact possessed in violation of the laws and regulations of the State of Hawaii, specifically: H.R.S. § 188-40.7(a), which renders it unlawful to possess shark fins in Hawaii.

All in violation of Title 16, United States Code, Sections 3372(a)(2)(A), 3372(a)(4), and 3373(d)).

COUNT 5
Smuggling of Goods Into the United States
Import in Violation of Endangered Species Act
CITES-Listed Species

On or about November 7, 2018, in the District of Hawaii and elsewhere,

HAMADA SUISAN CO. LTD, JF ZENGYOREN, HIROYUKI KASAGAMI, TOSHIYUKI KOMATSU, and HIROSHI CHIBA, the defendants, did willfully and knowingly import into the United States, and aid and abet the import into the United States of, certain merchandise, namely, fins from oceanic whitetip sharks, *Carcharhinus longimanus*, fins from silky sharks, *Carcharhinus falciformis*, and fins from bigeye thresher sharks, *Alopias superciliosus*, contrary to the laws and regulations of the United States, specifically: contrary to the Endangered Species Act, 16 U.S.C. §§ 1538(c)(1), which makes it unlawful for any person subject to the jurisdiction of the United States to engage in any trade contrary to the provisions of the Convention on International Trade in Endangered Species (CITES), which requires, pursuant to Article IV of the Convention and as implemented at 50 C.F.R. §§ 23.13, 23.20, 23.21(d), and 23.27(b), a valid CITES document and clearance from a U.S. Fish and Wildlife Officer, to import CITES specimens, to engage in international trade by importing any CITES specimens, including oceanic whitetip sharks, silky sharks, and bigeye thresher sharks.

All in violation of 18 U.S.C. Section 545.

COUNT 6
Smuggling of Goods Into the United States
Import in Violation of Endangered Species Act
ESA-Listed Threatened Species

On or about November 7, 2018, in the District of Hawaii and elsewhere,

HAMADA SUISAN CO. LTD, JF ZENGYOREN, HIROYUKI KASAGAMI, TOSHIYUKI KOMATSU, and HIROSHI CHIBA, the defendants, did willfully and knowingly import into the United States, and aid and abet the import into the United States of, certain merchandise, namely, fins from oceanic whitetip sharks, *Carcharhinus longimanus*, contrary to the laws and regulations of the United States, specifically: contrary to the Endangered Species Act, 16 U.S.C. §§ 1538(d) and 1538(e), and 50 C.F.R. §§ 14.52, 14.54, 14.61, and 14.91, which require any person importing fish that are listed pursuant to Section 1533 of the ESA, including oceanic white tip sharks, to obtain clearance from a U.S. Fish and Wildlife Officer, to file a Declaration for Importation or Exportation of Wildlife upon import into the United States, and to have an import/export license.

All in violation of 18 U.S.C. Section 545.

COUNT 7
Smuggling of Goods Into the United States
Import in Violation of the Lacey Act—Marking

On or about November 7, 2018, in the District of Hawaii and elsewhere, HAMADA SUISAN CO. LTD, JF ZENGYOREN, HIROYUKI KASAGAMI, TOSHIYUKI KOMATSU, and HIROSHI CHIBA, the defendants, did knowingly import, and aid and abet the import of, into the United States, certain articles and objects, namely, shark fins, contrary to the laws and regulations of the United

States, specifically: contrary to the Lacey Act, 16 U.S.C. § 3372(b) and 50 C.F.R. § 14.81 which makes it unlawful for any person subject to the jurisdiction of the United States to import or attempt to import any wildlife without marking the package with the name of the shipper and consignee and the species and number of the wildlife items therein,

All in violation of 18 U.S.C. Section 554(a).

COUNT 8
Smuggling of Goods From the United States
Attempt to Export in Violation of
Magnuson-Stevens Act & Shark Conservation Act

On or about November 7, 2018, in the District of Hawaii and elsewhere, HAMADA SUISAN CO. LTD, JF ZENGYOREN, HIROYUKI KASAGAMI, TOSHIYUKI KOMATSU, and HIROSHI CHIBA, the defendants, did knowingly attempt to export and aid and abet the attempt to export, from the United States, certain articles and objects, namely, shark fins, contrary to the laws and regulations of the United States, specifically: contrary to the Magnuson-Stevens Act, 16 U.S.C. §§ 1857(1)(A) and (G), which makes it unlawful for any person subject to the jurisdiction of the United States to export any fish retained in violation of Chapter 18 of Title 16 of the United States Code or in violation of any regulation issued pursuant to Chapter 18, including the prohibition against landing any such fin that is not naturally attached to the corresponding carcass, in violation of the

Shark Conservation Act, § 1857(1)(P)(iv) and 50 C.F.R. § 600.1203(a)(5).

All in violation of 18 U.S.C. §§ 554(a).

COUNT 9
Smuggling of Goods From the United States
Attempt to Export in Violation of Endangered Species Act
CITES-Listed Species

On or about November 7, 2018, in the District of Hawaii and elsewhere, HAMADA SUISAN CO. LTD, JF ZENGYOREN, HIROYUKI KASAGAMI, TOSHIYUKI KOMATSU, and HIROSHI CHIBA, the defendants, did knowingly attempt to export, and aid and abet the attempt to export, from the United States, certain articles and objects, namely, fins from oceanic whitetip sharks, *Carcharhinus longimanus*, fins from silky sharks, *Carcharhinus falciformis*, and fins from bigeye thresher sharks, *Alopias superciliosus*, contrary to the laws and regulations of the United States, specifically: contrary to the Endangered Species Act, 16 U.S.C. §§ 1538(c)(1) and 1538(g), which makes it unlawful for any person subject to the jurisdiction of the United States to engage in, or attempt to engage in, any trade contrary to the provisions of the Convention on International Trade in Endangered Species (CITES), which requires, pursuant to Article IV of the Convention and as implemented at 50 C.F.R. §§ 23.13, 23.20, 23.21(d), and 23.27(b), a valid CITES document and clearance from a U.S. Fish and Wildlife Officer, to import CITES specimens, to engage in international trade by importing

any CITES specimens, including oceanic whitetip sharks, silky sharks, and bigeye thresher sharks.

All in violation of 18 U.S.C. Section 554(a).

COUNT 10
Smuggling of Goods From the United States
Attempt to Export in Violation of Endangered Species Act
ESA-Listed Threatened Species

On or about November 7, 2018, in the District of Hawaii and elsewhere, HAMADA SUISAN CO. LTD, JF ZENGYOREN, HIROYUKI KASAGAMI, TOSHIYUKI KOMATSU, and HIROSHI CHIBA, the defendants, did knowingly attempt to export, and aid and abet the attempt to export, from the United States, certain articles and objects, namely, fins from oceanic whitetip sharks, *Carcharhinus longimanus*, contrary to the laws and regulations of the United States, specifically: contrary to the Endangered Species Act, 16 U.S.C. §§ 1538(d) and 1538(e), and 50 C.F.R. §§ 14.52, 14.63, and 14.91, which require any person exporting fish that are listed pursuant to Section 1533 of the ESA, including oceanic white tip sharks, to obtain clearance from a U.S. Fish and Wildlife Officer, to file a Declaration for Importation or Exportation of Wildlife upon import into the United States, and to have an import/export license.

All in violation of 18 U.S.C. Section 554(a).

COUNT 11

Smuggling of Goods From the United States
Attempt to Export in Violation of the Lacey Act—Marking

On or about November 7, 2018, in the District of Hawaii and elsewhere, HAMADA SUISAN CO. LTD, JF ZENGYOREN, HIROYUKI KASAGAMI, TOSHIYUKI KOMATSU, and HIROSHI CHIBA, the defendants, did knowingly attempt to export, and aid and abet the attempt to export, from the United States, certain articles and objects, namely, shark fins, contrary to the laws and regulations of the United States, specifically: contrary to the Lacey Act, 16 U.S.C. § 3372(b), and 50 C.F.R. § 14.81 which makes it unlawful for any person subject to the jurisdiction of the United States to export or attempt to export any wildlife without marking the package with the name of the shipper and consignee and the species and number of the wildlife items therein.

All in violation of 18 U.S.C. Section 554(a).

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I further state that I am a U.S. Fish and Wildlife Special Agent and that this Complaint is based upon the facts set forth in the attached "Affidavit in Support of Criminal Complaint", which is attached hereto and incorporated herein by reference.

KEITH SWINDLE
Special Agent
U.S. Fish and Wildlife Service

Sworn to under oath before me telephonically and attestation acknowledged pursuant to FRCP 4.1(b)(2), this 11th day of December, 2018:

Kenneth J. Mansfield
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, Plaintiff, vs. HAMADA SUISAN CO. LTD a/k/a HAMADA SUISAN KABUSHIKI KAISHA (01); JF ZENGYOREN (02)) HIROYUKI KASAGAMI (03), TOSHIYUKI KOMATSU (04), HIROSHI CHIBA (05) Defendants.	) MAG. NO. 18-1347 KJM)) AFFIDAVIT IN SUPPORT OF) CRIMINAL COMPLAINT)))))))))

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, KEITH SWINDLE, being duly sworn, depose and state as follows:

1. I am a Special Agent with the U.S. Fish and Wildlife Service in Honolulu, Hawaii, and have served in that capacity for more than 17 years. I served as a Field Agent in Sacramento, California from 2001-2002, and in Honolulu, Hawaii from 2002-2012. I served as a Senior Special Agent in the U.S. Fish and Wildlife Service Headquarters in Falls Church, Virginia from 2012-2015, and I am currently the Resident Agent in Charge of the Office of Law Enforcement, Honolulu. I am responsible for enforcing violations of U.S. Fish and Wildlife laws and regulations in Hawaii, and the U.S. territories and possessions in

the Pacific. My primary duties are to conduct investigations and to oversee investigations conducted by Special Agents and Wildlife Inspectors. The majority of that work involves facilitating lawful importation or exportation of fish and wildlife products, and investigating the unlawful importation or exportation of fish and wildlife products to and from the United States and its Territories, pursuant to the Convention on International Trade in Endangered Species (CITES), the Endangered Species Act, the Lacey Act, the Migratory Bird Treaty Act, and a number of other laws, regulations, and treaties that govern international and interstate transport and commerce in fish and wildlife products. I have investigated numerous violations and arrested or otherwise effected the prosecution of dozens of individuals for unlawful conduct in multiple states across the country and throughout the Pacific.

2. Prior to working as a Special Agent, I worked as a Faculty Researcher for Oregon State University. I am a Certified Wildlife Biologist. I am the primary or co-author of several publications in peer-reviewed scientific journals. I hold a Bachelor's degree in Fisheries and Wildlife Management, with a minor in Forestry, and a Master of Science degree in Wildlife Science with a minor in Statistics. I hold relevant professional and academic affiliations, and have studied the ecology of fish and wildlife for my entire career.

BACKGROUND REGARDING SHARK FINNING

3. Shark finning is the practice of cutting off and retaining the fins, and throwing away the rest of the fish. Shark finning is a wasteful practice that causes immense harm to ocean ecosystems worldwide. Every year, humans kill an estimated 100 million sharks, driven in significant part by the shark fin trade. Removing sharks in such large numbers has ripple effects that throw entire ecosystems out of balance. According to the Smithsonian Institution:

> Many fishermen prefer to practice shark finning instead of bringing whole sharks to the market because the fins are far more valuable than the rest of the body, sometimes selling for as much as $500 a pound ($1,100 a kilogram). Instead, fishermen choose to keep just the shark fins—only one to five percent of a shark's weight—and throw the rest of the shark away rather than have the less valuable parts take up space on the boat. The finned sharks are often thrown back into the ocean alive . . . .
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> . . . .
>
> Approximately 100 million sharks are killed globally each year, and one of the major incentives for this is the shark fin trade. With their slow growth and low reproductive rates, sharks are highly susceptible to extinction, and it is difficult for many shark species to replenish their populations as quickly as they are being diminished. Many species of sharks are currently in danger due to shark finning, including the scalloped hammerhead, which is endangered, and the smooth hammerhead, which is vulnerable according to the International Union for the Conservation of Nature. . . . Today, some shark populations have decreased by 60-70% due to human shark fisheries.
>
> Such dramatic population plunges are not only dangerous for sharks but also for entire ecosystems. When shark populations decrease, a ripple effect can spread throughout the rest of the ecosystem. For

> instance, the loss of the smooth hammerhead caused their prey, rays, to increase. The larger ray population now eats more scallops, clams, and other bivalves. This not only hurts the bivalve populations and therefore the biodiversity of the ecosystem; it also harms human fisheries.

Caty Fairclough, "Shark Finning: Sharks Turned Prey," Smithsonian Institution (August 2013), *available at* https://ocean.si.edu/ocean-life/sharks-rays/shark-finning-sharks-turned-prey.

4. Declining shark populations have led to international cooperation in the area of shark conservation and management. Regional Fisheries Management Organizations ("RFMOs") are international organizations that work cooperatively to properly manage fisheries and bycatch[1] in their respective areas of responsibility. The United States, Japan (the flag state of the vessel at issue in this case, the Kyoshin Maru No. 20), and Indonesia (the nationality of the vessel's crewmembers involved in this case) all participate in two such RFMOs that manage fishing in the Pacific Ocean: the Inter-American Tropical Tuna Commission ("IATTC") and the Western and Central Pacific Fisheries Commission ("WCPFC").

5. Records reflect that Defendants engaged in fishing and shark finning within the Pacific Ocean, in an area between Tahiti and Mexico that is managed by

[1] "Bycatch" is fish and other marine life caught during commercial fishing targeted at a different species.

IATTC and WCPFC.

6. RFMOs adopt binding measures, called "Resolutions" or "Conservation and Management Measures," which address, for example, shark finning within their respective areas. Members are required to implement these binding RFMO measures through their own domestic laws and regulations. RFMO measures are not enforceable against individual vessels or persons. Rather, they obligate Members to ensure that individuals or vessels subject to their jurisdiction are required to do or not do certain acts. In general, the flag state of the vessel has the primary responsibility to enforce its own domestic laws and regulations, which in turn implement the RFMO measures, against its own fishing vessels. The RFMO measures described below are provided for context regarding the international controls related to taking, finning, and landing of sharks in the areas where the Kyoshin Maru No. 20 operated.

Inter-American Tropical Tuna Commission

7. IATTC was created by the Convention for the Establishment of an Inter-American Tropical Tuna Commission, which is an international convention to which Japan and the United States, among others, are parties. Indonesia is a "Cooperating Non Member" of IATTC. IATTC is responsible for the conservation and management of tuna and other marine resources in the eastern Pacific Ocean.

8. The Kyoshin Maru No. 20 currently holds an "active" registration

with IATTC, and is authorized to fish in IATTC waters. Defendant HAMADA SUISAN CO. LTD is the registered owner and manager of the vessel according to IATTC records.

9. IATTC has adopted the following Resolutions, among others:

a. Resolution C-11-10, "Resolution on the Conservation of Oceanic Whitetip Sharks Caught in Association With Fisheries in the Antigua Convention Area," which, in relevant part, requires members to:

(i) prohibit retaining or storing onboard any part of oceanic whitetip sharks. *Id.* ¶ 1;

(ii) require their vessels "to promptly release unharmed, to the extent practicable, whitetip sharks when brought alongside the vessel." *Id.* ¶ 2;

(iii) require the recording of "the number of discards and releases of oceanic whitetip sharks with indication of status (dead or alive) and report it to IATTC." *Id.* ¶ 3.

c. Resolution C-05-03, "Resolution on the Conservation of Sharks Caught in Association With Fisheries in the Eastern Pacific Ocean," ¶ 4, which, in relevant part, requires members to "require their vessels to have onboard fins that total no more than 5% of the weight of sharks onboard, up to the first point of landing."

b. Resolution C-16-06, "Conservation Measures for Shark

Species, With Special Emphasis On The Silky Shark (*Carcharhinus falciformis*), For The Years 2017, 2018, and 2019," ¶ 1, which requires members to prohibit the retaining or storing, in whole or in part, carcasses of silky sharks.

Western and Central Pacific Fisheries Commission

10. WCPFC was established by the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which is an international convention to which Japan, the United States, and Indonesia, among others, are parties. WCPFC is responsible for the conservation and management of highly migratory fish stocks, such as tuna, in the western and central Pacific Ocean.

11. The Kyoshin Maru No. 20 is registered on the WCPFC Record of Fishing Vessels. Defendant HAMADA SUISAN KABUSHIKI KAISHA is the registered owner of the vessel, according to WCPFC records.

12. WCPFC has adopted the following Conservation and Management Measures, among others:

a. CMM 2010-07, "Conservation and Management Measure for Sharks," which, in relevant part, requires members to:

(i) require full utilization of sharks, which is defined as: "retention by the fishing vessel of all parts of the shark, excepting the head, guts, and skins, to the point of first landing or transshipment." *Id.* ¶ 6;

(ii) require their vessels "to have on board fins that total no more than 5% of the weight of sharks on board up to the point of first landing," or ensure compliance through certification, monitoring by an observer, or other appropriate measure. *Id.* ¶ 7; and

(iii) "take measures necessary to prohibit their fishing vessels from retaining on board, transshipping, landing, or trading any fins harvested in contravention of this Conservation and Management Measure." *Id.* ¶ 9

b. CMM 2011-04, "Conservation and Management Measure for Oceanic Whitetip Sharks," ¶ 1, which, in relevant part, requires members to prohibit "retaining on board, transshipping, storing on a fishing vessel, or landing any oceanic whitetip shark, in whole or in part, in the fisheries covered by the Convention."

c. CMM 2013-08, "Conservation Management Measure for Silky Sharks," ¶ 1, which, in relevant part, requires members to prohibit vessels from "retaining on board, transshipping, storing on a fishing vessel, or landing any silky shark caught in the Convention area, in whole or in part, in the fisheries covered by the Convention."

Japanese Domestic Law

13. Japan's Fisheries Agency has issued a National Plan of Action for Conservation and Management of Sharks ("NPOA"), which describes the domestic

laws regarding sharks that Japan has implemented. According to Japan's NPOA, Japan prohibits the retention of oceanic whitetip sharks in both IATTC and WCPFC convention areas, and prohibits the retention of silky sharks in the WCPFC convention area. According to Japan's NPOA, Japan requires longline fishing vessels to retain all parts of the shark up until the first point of landing, "except the case [sic] when parts of the shark was landed in and outside of Japan." National Plan of Action for Conservation and Management of Sharks, Japan Fisheries Agency, Attachment 1, "Conservation and management measures for sharks implemented by Japanese fishing vessels," *available at* http://www.fao.org/3/a-bt662e.pdf.

14. As discussed in greater detail below, Defendants may have violated these provisions of Japanese law, which implement Japan's obligations under IATTC and WCPFC Conventions, by: retaining oceanic whitetip sharks and silky sharks, and discarding shark carcasses into the ocean while retaining shark fins onboard the vessel.

U.S. Federal and State Laws Regarding Shark Fins

15. The Shark Conservation Act is codified within the Magnuson-Stevens Fishery Management Act (hereinafter "Magnuson-Stevens Act") at 16 U.S.C. 1857(1)(P). Among other things, the Shark Conservation Act makes it unlawful for any person to land any shark fin that is not naturally attached to the

corresponding carcass. 16 U.S.C. § 1857(1)(P)(iv).

16. Hawaii was the first state in the United States—and the first government in the world—to completely ban the shark fin trade. It is unlawful for any person to possess, sell, offer for sale, trade, or distribute shark fins in Hawaii. H.R.S. § 188-40.7(a).

THE DEFENDANTS

17. Marine Vessel Kyoshin Maru No. 20 (the "Kyoshin Maru") was a 51-meter Japanese-flagged commercial fishing vessel that was engaged in longline tuna fishing at various locations in and around the Pacific Ocean, as relevant here, from on or about November 2017 to on or about November 2018.

18. The Kyoshin Maru was owned and operated by Defendant HAMADA SUISAN CO. LTD a/k/a HAMADA SUISAN KABUSHIKI KAISHA, which is a commercial fishing business in Japan. Defendant HAMADA SUISAN CO. LTD also owns and operates at least two other commercial fishing vessels, the Kyoshin Maru No. 1 and Kyoshin Maru No. 31.

19. Defendant JF ZENGYOREN was a Japanese fishing cooperative, in which Defendant HAMADA SUISAN CO. LTD or its affiliate was a member. JF ZENGYOREN managed some relevant aspects of the business of the Kyoshin Maru fishing vessel on behalf of HAMADA SUISAN CO. LTD.

20. Defendant HIROYUKI KASAGAMI, a Japanese national, was the

Captain of the Kyoshin Maru. KASAGAMI was aware of all fishing activities that took place on, and from, the vessel, including the discarding of shark carcasses, and the possession and transportation of shark fins.

21. Defendant TOSHIYUKI KOMATSU, a Japanese national, was the Chief Officer of the Kyoshin Maru, and was known as the "fishing master." KOMATSU oversaw and managed all fishing activities on and from the vessel, including the discarding of shark carcasses, and the possession and transportation of shark fins.

22. Defendant HIROSHI CHIBA, a Japanese national, was the Chief Engineer of the Kyoshin Maru, also known as the First Engineer. CHIBA directed fishermen to package some of the shark fins for CHIBA and KOMATSU to take with them after the fishermen disembarked from the Kyoshin Maru. CHIBA skinned some of the detached shark fins while on board.

FACTS ESTABLISHING PROBABLE CAUSE

23. The following facts are based on my own knowledge and personal observations, as well as the knowledge and observations of other law enforcement officers and government agents, and the statements of the fishermen.

24. In or about November 2017, Defendant HAMADA SUISAN CO. LTD, acting through various manning agents entered into written employment agreements with a number of Indonesian nationals, in order to hire them to work as

fisherman on the Kyoshin Maru during the following year.

25. At least two of the employment agreements were signed by both the individual fishermen and the manning agent, and executed in both Indonesian and English. The agreements made clear that the manning agent was acting "as the agent for the employer (=ship owner)."

26. At least two of the employment agreements contained a clause specifically anticipating harvesting sharks and selling shark fins. The clause read as follows: "In case of any sales of shark fins, it is up to fishing master's decision whether to give share to the fishing worker or not."

27. The Indonesian fishermen and Japanese crew boarded the Kyoshin Maru at Shimizu, Japan on or about November 2, 2017.

28. The ship traveled to an area on the high seas, in the Southeastern Pacific Ocean, east-northeast of Tahiti, approximately one-third of the way from Tahiti to Mexico, where it engaged in commercial longline tuna fishing.

29. The Indonesian fishermen, under the supervision of the captain and fishing master, engaged in shark finning during the voyage. The fishermen primarily removed the fins from sharks that were bycatch. After removing the fins, the finless shark carcasses were discarded unused into the ocean. The fishermen cooked and ate some of the shark fins.

30. The fishermen sometimes cut the fins from sharks that were landed

alive, but were intentionally weakened or killed, in order to save the hooks and avoid potential injury to the fishermen. The fishermen then threw the finless sharks into the ocean. In total, approximately 300 sharks were caught and finned over the course of the voyage. Finning and fin drying were done in plain view of the captain, fishing master, and crew.

31. The fishing master directed the fishermen to kill the sharks in order to remove the hook and save the rigged line. The fishing master ordered the fishermen not to simply cut the fishing line, and release the shark alive, because that would have meant losing the hook and rigged line. Sometimes the fishermen cut the line anyway, when the fishing master was not looking, because they were afraid of being injured by the sharks.

32. The fishermen dried the shark fins on the deck, as well as on the roof of a rear storage room. After the fins were dried, each fisherman stored his own fins in a storage bin.

33. Defendant HIROYUKI KASAGAMI, the Captain of the Kyoshin Maru, and Defendant TOSHIYUKI KOMATSU, the fishing master, authorized the shark finning that took place on the vessel. KASAGAMI, KOMATSU, and CHIBA personally observed the shark finning that took place on the vessel. KOMATSU and CHIBA explicitly directed the fishermen to cut fins from sharks. KASAGAMI, KOMATSU, and CHIBA ate shark fins with the Indonesian

fisherman. KASAGAMI, KOMATSU, and CHIBA kept shark fins for themselves on the vessel. Those shark fins remained on the vessel in the possession of KASAGAMI, KOMATSU, and CHIBA after the Indonesian fishermen disembarked, without the corresponding shark carcasses.

34. Defendant HIROSHI CHIBA, the Chief Engineer, directed the fishermen to cut the fins from sharks; possessed shark fins onboard the vessel; peeled the skin from shark fins that were retained onboard after the Indonesian fishermen disembarked; ate shark fins; and took shark fins home with him to Japan. CHIBA told the fishermen that he was taking the shark fins home with him to Japan as "souvenirs." CHIBA also brought along a large supply of Ziploc bags, which were specifically intended for storing shark fins, and were used for no other purpose during the voyage. CHIBA stored shark fins in those Ziploc bags for himself and KOMATSU, which were located in the ship's freezer at the time the Indonesian fishermen disembarked.

35. Over the course of the year, the Kyoshin Maru caught between approximately 300 and 500 metric tons of tuna, in total. Some of that tuna was offloaded onto another ship midway through the voyage. The Kyoshin Maru had approximately 250 tons of tuna onboard when the fishermen disembarked on or about November 7, 2018. Based on information provided to me by the National Oceanic and Atmospheric Administration Office of Law Enforcement, 500 metric

tons of tuna would generate approximately $4.4 to $5 million U.S. dollars in revenue for the vessel operator, depending on the species.

36. Defendant JF ZENGYOREN, on behalf of Defendant HAMADA SUISAN CO. LTD, retained a local marine navigation corporation in Honolulu to assist the Indonesian fisherman in returning to Indonesia at the end of their year-long employment agreement. The fishermen were provided tickets to fly from Honolulu to Jakarta, Indonesia via Tokyo.

37. On or about November 7, 2018, at a location near Honolulu, Hawaii, within the exclusive economic zone of the United States, but more than 12 miles from shore, and therefore outside U.S. territorial waters, the Kyoshin Maru met a water taxi that had been arranged by a Vessel Agent from the local marine navigation corporation. Eighteen (18) Indonesian fishermen disembarked the Kyoshin Maru and boarded the water taxi. After the Kyoshin Maru dropped the fisherman off, it departed for Japan.

38. The Vessel Agent brought the Indonesian nationals on the water taxi from international waters to Pier 36 in Honolulu Harbor, where they met with a representative from U.S. Customs and Border Protection ("CBP"), who had previously been notified of their arrival.

39. Four (4) of the Indonesian nationals were crew members with visas to depart the United States. They were permitted to enter the United States, pursuant

to their visas.

40. Fourteen (14) of the Indonesian nationals did not have visas, and with the assistance of the Vessel Agent, they requested Parole to Depart, which is a form of discretionary authority, granted on a case-by-case basis, that allows a person to temporarily enter the United States without a visa, in order to promptly depart. After review by CBP, including a criminal history check, the 14 Indonesian nationals were eventually granted Parole to Depart by CBP, and were placed under the supervision of the Vessel Agent, for the purpose of promptly departing on an upcoming flight. The Vessel Agent then took all 18 of the Indonesian nationals to Honolulu International Airport, in order to board previously-ticketed flights to Indonesia, via Tokyo, on Al Nippon Airways.

41. During routine screening of the Indonesian nationals' checked luggage by the Transportation Security Administration, three of their checked bags triggered alarms. Two of those bags were found to contain dried shark fins.

42. Approximately 30 pieces of luggage were determined to have been checked through to Indonesia by the 18 Indonesian nationals, and were held or recalled for further inspection.

43. Of those approximately 30 pieces of luggage, 13 were found to contain shark fins. The fins were bundled together, and some were wrapped in foil. Some fins were sealed into clear and opaque plastic bags, such as empty bags

of rice, that obscured the contents, and those bags were, in turn, sealed within other opaque bags. Some bags were taped shut, and some were sealed with a heat process that created a seam. This packaging contained the odor and otherwise obscured the contents.

44. In total, at least 962 shark fins weighing approximately 190 pounds (87 kilograms) were recovered from the 13 pieces of luggage.

45. Attached as Exhibits A and B to this Criminal Complaint are photographs of the shark fins that were recovered.

46. Based on my training and experience, dried shark fin ranges in price from $75 to $650 per kilogram, depending upon quality and species. The approximately 190 pounds of shark fins seized therefore represent approximately $6,695 to $57,850 in street value.

47. Based on my training and experience, a dish that includes shark fin sold at a restaurant in Tokyo can cost many hundreds of U.S. dollars. One restaurant in Tokyo, for example, listed a shark fin dish that cost approximately $613.00.

48. The U.S. Fish and Wildlife service determined that some of the fins were from oceanic whitetip sharks, *Carcharhinus longimanus*, which is a species listed in, and subject to, both the Convention on International Trade in Endangered Species (CITES) and the U.S. list of threatened species. Other fins were later

identified by the National Fish and Wildlife Forensic Laboratory as being from silky sharks, *Carcharhinus falciformis*, and bigeye thresher sharks, *Alopias superciliosis*, which are also listed in, and subject to, CITES.

49. None of the Indonesian nationals had a valid CITES document to engage in international trade in oceanic whitetip sharks, silky sharks, bigeye thresher sharks, or anything else.

50. None of the Indonesian nationals held U.S. wildlife import/export permits, or submitted any of the fins for clearance by a U.S. Fish and Wildlife Service Officer, or filed a Declaration for the Importation or Exportation of Wildlife.

51. The 13 pieces of luggage that contained shark fins were checked under the names of ten of the Indonesian nationals. Those individuals were: ABDURAHMAN,[2] DIAN ANDRIYANTO, YULI HARYANTO, TAUFIK HIDAYAT, BUDI MULYANA, DENI NURYANTO, PURWANTO,[3] MAMAN RUKMANA, TEGUH IMAM SANTOSO, and IBNU FAHMI ZAKI, each charged separately in *United States v. Abdurahman*, et. al., Mag No. 18-01253 (D. Haw. 2018).

52. Each of the 10 fishermen signed forms abandoning the shark fins to

[2] ABDURAHMAN goes by a single name.
[3] PURWANTO goes by a single name.

the United States.

53. On November 8, 2018, the Vessel Agent brought all 18 Indonesian nationals back to the airport. At the request of the U.S. Fish and Wildlife Service, they did not board their scheduled flight, and were transported to the United States Postal Inspection Service's Office for questioning.

54. The 10 fishermen targets and the 8 fishermen witnesses were separated into two groups and provided food, water, seats in air-conditioned rooms or vehicles, and access to restroom facilities. All 18 were given *Miranda* warnings, and 15 of them agreed to be interviewed.

55. On or about November 8, 2018, after waiving his *Miranda* rights verbally and in writing, with the aid of an interpreter, Indonesian fisherman DENI NURYANTO stated that he believed that shark fins are illegal to possess in Indonesia and many other countries. Although he denied knowing one way or the other whether shark fins were illegal in the United States, he admitted that he should have checked the laws of the United States first.

56. On or about November 8, 2018, after waiving his *Miranda* rights verbally and in writing, with the aid of an interpreter, Indonesian fisherman TEGUH IMAM SANTOSO admitted that he had shark fins and that he gave shark fins to Indonesian fishermen DENI NURYANTO and MAMAN RUKMANA to carry back to Indonesia "for their families" and that NURYANTO and

RUKMANA knew that they received shark fins from SANTOSO. SANTOSO admitted to cutting fins off of sharks.

57. On or about November 8, 2018, after waiving his *Miranda* rights verbally and in writing, with the aid of an interpreter, Indonesian fisherman ABDURAHMAN stated that while on the vessel they cut the fins off of sharks that were captured alive, and threw the bodies back. ABDURAHMAN admitted to having fins in his luggage. ABDURAHMAN stated that he uses the internet and Facebook.

58. On or about November 8, 2018, after waiving his *Miranda* rights verbally and in writing, with the aid of an interpreter, Indonesian fisherman TAUFIK HIDAYAT admitted that he knew it was against the law to sell shark fins. HIDAYAT said he cut shark fins and ate shark fins. He admitted to knowing that some sharks were protected species, but did not want dead sharks to go to waste.

59. On or about November 8, 2018, after waiving his *Miranda* rights verbally and in writing, with the aid of an interpreter, Indonesian fisherman W., who did not possess shark fins in his baggage, and who is not charged in this Complaint or elsewhere, said that he knew it was illegal to possess shark fins. He stated that he has known it was illegal to possess shark fins for a long time. He was not sure if the others knew nor why they took the risk. He admitted that while

on the ship, they cut fins off sharks, dried the fins in the sun, and threw out the bodies.

60. The ten Indonesian nationals whose luggage contained shark fins were then arrested, admitted to the Federal Detention Center, and later charged with export smuggling and fish trafficking. The remaining eight were released.

61. According to the employment agreements, and based on interviews with the fisherman, their basic salary for the year, converted to U.S. dollars, was approximately $5000 to $5500 each, excluding bonuses or proceeds from shark fin sales. One fisherman, who also served as cook, was paid approximately $9500. The shark fins seized from the 10 fishermen's luggage, therefore, may very well have been worth more than their entire collective income for the year.

62. During subsequent interviews with the fishermen, I learned the following information:

63. The Japanese crew members took approximately the same number of shark fins with them back to Japan as the Indonesian fishermen had brought to Hawaii, but the Japanese crew members took the larger (and therefore more valuable) tail and dorsal fins, and left the Indonesian crew members with the smaller (and therefore less valuable) pectoral fins.

64. It is commonplace for Indonesian fishermen aboard Japanese fishing vessels to cut shark fins from shark bycatch, at the direction of the fishing master.

Sometimes, the shark carcasses are retained onboard to the first point of landing. When shark fins are sold for profit at port, the fishing master sometimes gives the Indonesian fishermen an additional ¥10,000 (approximately $88.25) in "fin money," at the end of the voyage.

65. Shark finning took place on the Kyoshin Maru No. 20 from 1999-2002, and from 2002-2010, under the direction of two different fishing masters. During those years, the Indonesian fishermen onboard often received approximately ¥10,000 in "fin money" from the sale of shark fins, which was also referred to as "shopping" money. KOMATSU became the fishing master in 2010, and from 2010 to 2017, no shark finning took place onboard the vessel. In 2018, KOMATSU directed that shark finning resume, but no "fin money" was paid, because the fishermen were allowed to keep shark fins for themselves.

66. One of the fishermen had previously worked on a different Japanese-flagged ship. That vessel had an "observer" onboard. Because there was an observer onboard, the fishing master of that vessel directed the fishermen to keep both the shark fins and the shark "meat" (*i.e.*, the shark carcasses) in the freezer. When the vessel made port in New Zealand at the end of the voyage, the observer disembarked. At that point, because the observer was no longer on the vessel, the fishing master directed the fishermen to dump the shark carcasses into the ocean, and retain only the shark fins onboard. The vessel then returned to Japan, where

the shark fins were sold, and the fishermen were paid ¥10,000 in "fin money." This caused the fisherman to think that there must have been rules about keeping the shark carcasses onboard.

VIOLATIONS OF DOMESTIC LAW

67. The Lacey Act, 16 U.S.C. § 3372(a)(1) and (a)(4), makes it unlawful to transport or attempt to export fish that have previously been possessed in violation of law. Counts 1-4 charge violations of the Lacey Act.

68. Title 18, United States Code § 545 makes it unlawful to import merchandise contrary to U.S. law. Counts 5-7 charge such import violations.

69. Title 18, United States Code § 554(a) makes it unlawful for a person to export articles and objects contrary to U.S. law. Counts 8-11 charge such export violations.

70. Each of these charged counts is predicated upon a violation of one of the following laws, relating to the unlawful landing and import of shark fins:

71. The Magnuson-Stevens Fishery Conservation and Management Act (hereinafter "Magnuson-Stevens Act"), 16 U.S.C. § 1857(1)(A), and the Shark Conservation Act, 16 U.S.C. § 1857(1)(P)(iv), and 50 C.F.R. § 600.1203(a)(5), make it unlawful to land a shark fin that is not naturally attached to the corresponding shark carcass.

72. The Endangered Species Act, 16 U.S.C. § 1538(c)(1) and 1538(g),

makes it unlawful to engage in any trade contrary to the Convention on International Trade in Endangered Species (CITES), or to possess a specimen traded contrary to CITES, or to attempt to do so. CITES requires, pursuant to Article IV of the Convention, as implemented by 50 C.F.R. §§ 23.13, 23.20, 23.21(d), and 23.27(b), a valid CITES document and clearance from a U.S. Fish and Wildlife Officer to engage in international trade in any CITES specimen, including oceanic whitetip sharks, silky sharks, and bigeye thresher sharks.

73. The Endangered Species Act, 16 U.S.C. §§ 1538(d) and (e), and 50 C.F.R. §§ 14.52, 14.54, 14.61, 14.63, and 14.91, requires any person importing fish that are listed pursuant to Section 1533 of the ESA, including oceanic whitetip sharks, to obtain clearance from a U.S. Fish and Wildlife Officer, to file a Declaration for Importation or Exportation of Wildlife upon import into the United States, and to have an import/export license.

74. Hawaii state law makes it unlawful for any person to possess, sell, offer for sale, trade, or distribute shark fins in Hawaii. H.R.S. § 188-40.7(a).

75. The Lacey Act, 16 U.S.C. § 3372(b) and 50 C.F.R. § 14.81, makes it unlawful to import or attempt to import any wildlife without marking the package with the name of the shipper and consignee, and the species and number of the wildlife items inside.

76. Defendants arranged for the fishermen to travel from Honolulu to

Indonesia, and caused them to board the water taxi, land at Pier 36, travel to Honolulu International Airport, and attempt to board a flight to Indonesia. Defendants did so knowing that the fishermen possessed shark fins. This conduct violated the law, because the fins: had been landed without the corresponding shark carcasses, as required by the Magnuson-Stevens Act and Shark Conservation Act (Counts 1 and 8); were CITES-listed species that had been imported without a valid CITES document or clearance (Counts 2, 5, and 9); were listed as "threatened" under the Endangered Specials Act and had been imported without an Endangered Species Act Declaration or license (Counts 3, 6, and 10); were possessed in violation of Hawaii state law (Count 4); and had been imported or exported without proper markings under the Lacey Act (Counts 7 and 11).

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CONCLUSION

77. For the foregoing reasons, there is probable cause to believe that the Defendants have committed the offenses set forth in Counts 1 through 11.

FURTHER AFFIANT SAYETH NAUGHT.

DATED: Honolulu, Hawaii, December 11, 2018.

KEITH SWINDLE
U.S. Fish and Wildlife Service

This Criminal Complaint and Affidavit in support thereof were presented to, approved by, and probable cause to believe that the defendant above-named committed the charged crime found to exist by the undersigned Judicial Officer at 4:00 p.m. on December 11, 2018.

Sworn to under oath before me telephonically and attestation acknowledged pursuant to FRCP 4.1(b)(2).

Kenneth J. Mansfield
United States Magistrate Judge

EXHIBIT A

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EXHIBIT B