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15 IN THE UNITED STATES DISTRICT COURT
 16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

18 UNITED STATES OF AMERICA;
 PEOPLE OF THE STATE OF CALIFORNIA)
 19 and PEOPLE OF THE STATE OF)
 CALIFORNIA *ex rel.* DEPARTMENT OF)
 20 FISH & GAME, DEPARTMENT OF PARKS)
 & RECREATION, STATE LANDS)
 21 COMMISSION, and REGIONAL WATER)
 22 QUALITY CONTROL BOARD FOR THE)
 SAN FRANCISCO BAY REGION.)

23 Plaintiffs,)

24 v.)

25 PEARL SHIPPING CORPORATION and)
 26 ANAX INTERNATIONAL AGENCIES,)
 INC.,)

27 Defendants.)
 28

Consent Decree

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 SOUTHWEST REGIONAL OFFICE
 OFFICE OF GENERAL COUNSEL

CIVIL ACTION NO. 99-CV-04359

CONSENT DECREE

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26
27
28

1 CONSENT DECREE

2 This Consent Decree is entered into between the United States, including on behalf
3 of the United States Department of the Interior, Fish and Wildlife Service; the National Oceanic
4 and Atmospheric Administration; and the Department of Transportation, United States Coast
5 Guard, National Pollution Funds Center; the People of the State of California; and the People of
6 the State of California *ex rel.* California Department of Fish and Game, Office of Spill Prevention
7 and Response, the California Regional Water Quality Control Board - San Francisco Bay Region,
8 the California State Lands Commission, and the California Department of Parks and Recreation
9 ("the State"), hereafter referred to collectively as "the Plaintiffs"; and Pearl Shipping Corporation
10 ("Pearl") and Anax International Agencies, Inc. ("Anax"), hereafter referred to collectively as
11 "the Defendants."

12 INTRODUCTION

13 A. On September 24, 1998, the tanker vessel M/T Command ("the Command") a
14 Liberian-flag vessel owned by Pearl and operated by Anax, spilled approximately 50 gallons of
15 bunker fuel into San Francisco Bay ("the Bay Spill"). The fuel was spilled from a crack in the
16 vessel's starboard fuel tank during a bunkering operation at Anchorage 9 in the San Francisco
17 Bay. The Spill was promptly reported by the Master of the Command. The United States Coast
18 Guard (hereafter the "U.S. Coast Guard"), the California Department of Fish and Game, and the
19 San Francisco Police Department responded. On September 24, 1998, the U.S. Coast Guard
20 Captain of the Port issued an order requiring the Command to remain in San Francisco Bay until
21 the fuel tank repairs and clean up were completed. Clean up was completed on September 25,
22 1998, to the satisfaction of the U.S. Coast Guard. On September 26, 1998, the Captain of the
23 Port received confirmation that vessel repairs were sufficiently completed, and the Command was
24 released to depart San Francisco Bay. The Bay Spill did not cause damage to wildlife, the Bay,
25 or the City or County of San Francisco.

26 B. On or about September 26, 1998, the Command left the port of San Francisco and
27 sailed south, in the Southern Ship Traffic Lane, heading down the coast of California. Sometime
28 after entering the Southern Ship Traffic Lane, on or about September 26, 1998, the Command

1 discharged bunker fuel into and upon the navigable waters, adjoining shorelines, and exclusive
2 economic zone of the United States, with direct effect upon same, including the waters outside San
3 Francisco Bay and in the Gulf of Farallones and Monterey Bay National Marine Sanctuaries ("the
4 Ocean Spill").

5 C. On September 27, 1998, an oil slick was observed in the Southern Ship Traffic
6 Lane, outside the mouth of the San Francisco Bay. In the days that followed, the oil slick
7 dispersed in the ocean waters off the coast south of the Golden Gate, where it oiled numerous
8 seabirds, resulting in lethal and sublethal injuries. Some of the oil subsequently washed ashore
9 on beaches in San Mateo County, California, in the form of tarballs.

10 D. Commencing on or about September 28, 1999, following reports of the Ocean Spill
11 by persons other than the defendants, the U.S. Coast Guard and the California Department of Fish
12 and Game, Office of Spill Prevention and Response ("OSPR") initiated clean-up activities in
13 response to the Ocean Spill. As part of its cleanup and response activities, the U.S. Coast Guard
14 deployed a 378-foot Coast Guard Cutter (USCG BOUTWELL), aircraft, small boats and other
15 equipment, and numerous personnel, and retained the services of private contractor personnel and
16 equipment who were mobilized in response to the Ocean Spill. Wildlife operations were carried
17 out by OSPR, with the assistance of other state and federal agencies.

18 E. The involved federal and state agencies believe the Ocean Spill impacted thousands
19 of seabirds, including a number of California brown pelicans, which are listed as an Endangered
20 Species under Section 4(c) of the Endangered Species Act ("ESA"), 16 U.S.C. § 1533(c), and the
21 California Endangered Species Act, Fish & Game Code §§ 2050, *et seq.*

22 F. In addition to causing seabird mortality and other injuries, the involved federal and
23 state agencies believe that the Ocean Spill has impaired habitat and human use along the coast of
24 San Mateo County.

25 G. The United States Department of the Interior, Fish and Wildlife Service
26 ("USFWS"), as authorized under Section 311(f)(5) of the Clean Water Act ("CWA"), 33 U.S.C.
27 § 1321(f)(5), and Section 1006 of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2706; the
28 National Oceanic and Atmospheric Administration ("NOAA"), as authorized under Section

1 311(f)(5) of the CWA, Section 1006 of OPA, and Section 312(c) of the National Marine
2 Sanctuaries Act ("NMSA"), 16 U.S.C. § 1443(c); and the California Department of Fish and
3 Game ("CDFG"), the California State Lands Commission ("CSLC"), and the California
4 Department of Parks and Recreation ("CDPR"), as authorized under Section 311(f)(5) of the
5 CWA, Section 1006 of OPA, and the Lempert-Keene-Seastrand Oil Spill Prevention and Response
6 Act, Government Code §§ 8670.1, *et seq.*, are joint Trustees for natural resources and are
7 authorized to assess injuries to federal and state natural resources caused by releases of oil and
8 hazardous substances and to recover damages for those injuries, to be used to restore, rehabilitate,
9 replace, or acquire the equivalent of the affected natural resources.

10 H. The state and federal Trustees have preliminarily evaluated the impacts from the
11 Ocean Spill to the affected natural resources and propose to carry out certain kinds of projects to
12 restore such resources or their services injured by the Spill. The Trustees will plan and
13 implement the necessary restoration projects, pursuant to the relevant statutory authorities and
14 regulations.

15 I. The Parties believe and this Court finds that this Decree has been negotiated by the
16 Parties in good faith and that it is fair, reasonable and in the public interest. The Trustees believe
17 that the Decree will expedite restoration, rehabilitation, replacement, or acquisition of the
18 equivalent of the natural resources that Plaintiffs assert have been injured, destroyed or lost and
19 will avoid potentially prolonged, difficult, expensive, and complicated litigation.

20 J. The United States of America has filed a criminal action as a result of the Spills,
21 United States v. Pearl Shipping Corporation, et al., No. CR-98-00384 MHP, in the United States
22 District Court for the Northern District of California (the "Criminal Case").

23 K. It is expressly understood and agreed that any monies to be paid by the Defendants
24 in the Criminal Case pursuant to any plea agreement are to be deemed wholly separate, and
25 wholly in addition to, the \$5,518,000.00, the payment of which is set forth below and is the
26 subject of this Consent Decree.

27 NOW, THEREFORE, before the taking of any testimony, before the adjudication
28 of the merits of this case, and without admission of any issue of law, fact, liability or

Consent Decree

1 responsibility by Defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

2 **JURISDICTION**

3 1. This Court has jurisdiction over the subject matter of this action pursuant to
4 28 U.S.C. §§ 1331, 1333, 1345, 1355, and 1367; Section 311(n) of the CWA, 33 U.S.C.
5 § 1321(n); Sections 307 and 312 of the National Marine Sanctuaries Act ("NMSA"), as amended,
6 16 U.S.C. §§ 1437, 1443; and Sections 1006 and 1017(b) of the Oil Pollution Act of 1990
7 ("OPA"), 33 U.S.C. §§ 2706, 2717(b). Venue is proper in this Court pursuant to 28 U.S.C.
8 §§ 1391(b), (c), and 1395(a); and 33 U.S.C. § 2717(b). The Court has personal jurisdiction over
9 the Parties to this Consent Decree, and no Party contests venue or the Court's jurisdiction for
10 purposes of this Decree.

11 **PARTIES BOUND**

12 2. This Decree shall apply to and be binding upon the United States, the State, and
13 the District Attorneys and upon Pearl, Anax, and their successors.

14 **DEFINITIONS**

15 3. Whenever the following terms are used in this Decree, they shall have the meanings
16 set forth below:

17 (a) "Natural Resource" and "Natural Resources" mean land, fish, wildlife,
18 biota, air, water, ground water, drinking water supplies, and other such resources belonging to,
19 managed by, held in trust by, appertaining to, or otherwise controlled by the United States
20 (including resources of the Gulf of the Farallones National Marine Sanctuary and the Monterey
21 Bay National Marine Sanctuary) and/or the State of California and/or the services provided by
22 such resources to other resources and/or humans.

23 (b) "Natural Resource Trustees" or "Trustees" mean those federal and state
24 agencies and/or officials designated or authorized pursuant to the CWA, OPA, the NMSA, and/or
25 state law to act as Trustees for the Natural Resources managed by, controlled by, or appertaining
26 to the United States and/or the State of California. Specifically, as used in this Decree, the
27 Trustees are USFWS, NOAA, CDFG, CSLC, and CDPR.

28

1 (c) "Restore" or "Restoration" means any action or combination of actions to
2 restore, rehabilitate, replace, or acquire the equivalent of any Natural Resource or its services
3 injured, lost, or destroyed as a result of the Ocean Spill.

4 (d) "Unified Command" means the federal On-Scene Coordinator, the state On-
5 Scene Coordinator, and representatives of the responsible party, as described in 40 C.F.R.
6 § 300.135(d).

7 **SETTLEMENT PAYMENT BY DEFENDANTS**

8 4. On the date this Consent Decree is lodged, defendants shall deposit the sum of
9 FIVE MILLION, FIVE HUNDRED AND EIGHTEEN THOUSAND DOLLARS
10 (\$5,518,000.00) into an escrow account bearing interest on commercially reasonable terms, in a
11 federally-chartered bank. Such monies shall remain in escrow until entry of the Decree (including
12 entry after remand from any appeal of an initial disapproval of the Decree by the District Court).
13 If the Decree is not entered by the District Court, and the time for any appeal of that decision has
14 run, or if the District Court's denial of entry is upheld on appeal, the monies placed in escrow,
15 together with accrued interest thereon, shall be returned to defendants. If the Decree is entered
16 by the District Court, defendants shall, within 15 days thereof, cause the monies in escrow to be
17 released and disbursed as follows:

18 (a) \$4,007,242.00 (together with accrued interest on the total amount of
19 \$5,518,000.00 placed in escrow) to the Department of the Interior, on behalf of the state and
20 federal Trustees for the purposes set forth in Subparagraphs (iii) and (iv), below, by Electronic
21 Funds Transfer ("EFT") in accordance with instructions to be provided to Defendants by the
22 Department of Interior upon lodging of this Decree. A transmittal letter indicating that the EFT
23 has occurred shall be sent to the Parties in accordance with Paragraph 10 ("Notices") and to:

24 Charles McKinley, Esq.
25 Assistant Field Solicitor
26 U.S. Department of the Interior
27 600 Harrison Street, Suite 545
28 San Francisco, California 94105

and

1 Bruce Nessler
2 DOI Restoration Fund Manager
3 1849 "C" Street, N.W.
4 Mail Stop 4449
5 Washington, D.C. 20240

6 The EFT and transmittal letter shall reflect that the payment is being made to the "Natural
7 Resources Damage Assessment and Restoration Fund, Account No. 14X5198 - M/T COMMAND
8 Oil Spill." The Department of the Interior will assign these funds a special project number to
9 allow the funds to be maintained as a segregated account within the Department of the Interior
10 Natural Resource Damage Assessment and Restoration Fund, Account No. 14X5198 (the "M/T
11 COMMAND NRD Account").

12 (i) The Department of the Interior shall, in accordance with law,
13 manage and invest funds in the M/T COMMAND NRD Account and any
14 return on investments or interest accrued on the Account for use by the
15 Natural Resources Trustees in connection with Restoration of Natural
16 Resources impacted by the Ocean Spill. The Department of the Interior
17 shall not make any charge against the M/T COMMAND NRD Account for
18 any investment or management services provided.

19 (ii) The Department of the Interior shall hold all funds in the M/T
20 COMMAND NRD Account, including return on investments or accrued
21 interest, subject to the provisions of this Decree and any Memorandum of
22 Understanding ("MOU") entered into by the Natural Resource Trustees.

23 (iii) The Natural Resources Trustees commit to the expenditure of the
24 funds set forth in this subpart "(a)" (after deduction of past federal damage
25 assessment costs) for the design, implementation, permitting (as necessary),
26 monitoring, and oversight of Restoration projects, and for the costs of
27 complying with the requirements of the law to conduct a restoration
28 planning and implementation process.

(iv) The details for specific projects will be contained in a Restoration
plan proposal or proposals to be developed jointly by the Natural Resource

1 Trustees. In allocating monies for Restoration projects, the Trustees shall
2 take into consideration their preliminary determination of the injuries
3 caused by the Ocean Spill. The Trustees have determined that seabirds,
4 primarily common murre, suffered the greatest injury as a result of the
5 Ocean Spill and that, as a result, the restoration money will primarily be
6 used for projects benefitting seabirds. The Trustees are in the process of
7 preparing an MOU that will set forth more precisely the allocation of the
8 restoration monies. The final Restoration plan will be prepared and
9 implemented jointly by the Trustees, after providing public notice,
10 opportunity for public input, and consideration of any public comment.
11 The Trustees jointly retain the ultimate authority and responsibility to use
12 the funds in the M/T COMMAND NRD Account to Restore Natural
13 Resources in accordance with applicable law, this Decree, and any MOU
14 entered into by the Trustees.

15 (b) \$196,200 for a civil penalty pursuant to the NMSA, to be used for purposes
16 consistent with Section 307(e)(1)(C) of the NMSA, 16 U.S.C. § 1437(e)(1)(C), by EFT according
17 to instructions to be provided to Defendants upon lodging of this Decree. A transmittal letter
18 indicating that the above payment has been made pursuant to the terms of this Decree shall be sent
19 to the Parties in accordance with Paragraph 10 ("Notices").

20 (c) \$242,092.38 by trust check, certified check, or money order payable to the
21 Department of Fish and Game, Office of Spill Prevention and Response for response costs. The
22 check or money order shall be sent by certified mail to:

23 The Department of Fish and Game
24 Office of Spill Prevention and Response
25 ATTN: Steven Sawyer and Katherine Verrue-Slater, Staff Counsels
1700 "K" Street, Suite 250
Sacramento, California 95814.

26 The check shall reflect that it is a payment to the Oil Spill Response Trust Fund created pursuant
27 to Government Code Section 8670.46. Any amount remaining after reimbursement of costs
28 associated with the Bay Spill and the Ocean Spill shall be deposited into the Environmental
Consent Decree

1 Enhancement Fund.

2 (d) \$ 36,767.00 by trust check, certified check, or money order payable to the
3 Department of Fish and Game, Office of Spill Prevention and Response, for damage assessment
4 costs. The check or money order shall be sent by certified mail to:

5 The Department of Fish and Game
6 Office of Spill Prevention and Response
7 Attn: Steven Sawyer and Katherine Verrue-Slater
8 Staff Counsels
9 1700 "K" Street, Suite 250
10 Sacramento, California 95814

11 The check shall reflect that it is a payment to the Oil Spill Response Trust Fund created pursuant
12 to Government Code Section 8670.46.

13 (e) \$324,707.62 by trust check, certified check, or money order payable to the
14 Department of Fish and Game, Office of Spill Prevention and Response for civil penalties. The
15 check or money order shall be sent by certified mail to:

16 The Department of Fish and Game
17 Office of Spill Prevention and Response
18 ATTN: Steven Sawyer and Katherine Verrue-Slater, Staff Counsels
19 1700 "K" Street, Suite 250
20 Sacramento, California 95814.

21 The check shall reflect that it is a payment to the Environmental Enhancement Fund created
22 pursuant to Government Code Section 8670.70.

23 (f) \$ 300,000 by trust check, certified check, or money order payable to the
24 Department of Fish and Game, Office of Spill Prevention and Response. The check or money
25 order shall be sent by certified mail to:

26 The Department of Fish and Game
27 Office of Spill Prevention and Response
28 ATTN: Steven Sawyer and Katherine Verrue-Slater, Staff Counsels
1700 "K" Street, Suite 250
Sacramento, California 95814.

The check shall reflect that it is a payment to the Oil Spill Prevention and Administration Fund
created pursuant to Government Code Section 8670.38.

(g) \$5991.00 by trust check, certified check, or money order payable to the
California State Lands Commission, for damage assessment costs. The check or money order

1 shall be sent by certified mail to:

2 The California State Lands Commission
3 100 Howe Ave., Suite 100-South
4 Sacramento, California 95825

5 (h) \$90,000 by trust check, certified check, or money order payable to the
6 California State Lands Commission, Trustee for the Kapiloff Land Bank Fund, to be deposited
7 in the Land Bank Fund, Fund 0943 in the State Treasury, as compensation for trespass damages.

8 The check or money order shall be sent by certified mail to:

9 The California State Lands Commission
10 100 Howe Avenue, Suite 100-South
11 Sacramento, California 95825.

12 (i) \$5,000 by trust check, certified check, or money order payable to the State
13 Water Resources Control Board Cleanup and Abatement Account for civil liability penalties. The
14 check or money order shall be sent by certified mail to:

15 State Water Pollution Cleanup and Abatement Account
16 Water Resources Control Board
17 901 "P" Street, P.O. Box 100
18 Sacramento, California 95812,

19 with a copy of the transmittal letter sent to:

20 Loretta K. Barsamian
21 California Regional Water Quality Control Board
22 for the San Francisco Bay Region
23 1515 Clay Street, Suite 1400
24 Oakland, California 94612

25 The check shall reflect that it is for payment of a civil liability penalty for the M/T Command
26 Bay Spill and Ocean Spill.

27 (j) \$70,000 by trust check, certified check, or money order payable to The
28 Estuary Institute for a supplemental environmental project for assessment of on-shore ballast waste
treatment. The check or money order shall be sent by certified mail to:

 The San Francisco Estuary Institute
 1325 South 46th Street
 Richmond, CA 94804

A copy of the check or money order, together with a transmittal letter reflecting that the required
payment has been made shall be sent by certified mail to:

Consent Decree

1 California Department of Justice
2 Attn.: Mary E. Hackenbracht
3 1515 Clay Street, Suite 2000
4 Oakland, California 94612

5 with a copy of the transmittal letter sent to:

6 Loretta K. Barsamian
7 California Regional Water Quality Control Board
8 for the San Francisco Bay Region
9 1515 Clay Street, Suite 1400
10 Oakland, California 94612

11 The check shall reflect that it is payment for the M/T Command Bay Spill and Ocean Spill.

12 (k) \$150,000.00 by trust check, certified check, or money order payable to the
13 National Fish and Wildlife Foundation for a supplemental environmental project for wildlife
14 response activities. The check or money order shall be sent by certified mail to:

15 The National Fish and Wildlife Foundation
16 c/o Eric Hammerling
17 116 Montgomery Street, Suite 203
18 San Francisco, California 94105

19 The check or money order shall reflect that it is to be deposited into a Trust fund account. The
20 funds are to be used to fund the following activities: 1) the maintenance, training and deployment
21 of an aerial survey team for the documentation of the status of wildlife resources at risk in the area
22 of future spills in order to assist the development of effective and timely response strategies and
23 to document resources at risk; 2) the training and deployment of a wildlife hazing team and
24 purchase of hazing equipment to deter wildlife from utilizing oiled habitat and to reduce spill
25 casualties; and 3) to train and equip a team to process oiled wildlife in order to provide accurate
26 and timely documentation and to keep the Unified Command informed of the status of impacts to
27 wildlife.

28 (l) \$90,000 by trust check, certified check, or money order payable to the
District Attorney of the County of San Mateo, as trustee for the funds. The check or money order
shall be sent by certified mail to:

Parker S. Kelly
Deputy District Attorney
400 County Center, Fourth Floor
Redwood City, California 94063

1 The check or money order shall reflect that \$60,000 of said sum shall be paid to the San Mateo
2 County Health Services Agency, Public Health & Environmental Protection Division, for the cost
3 of training hazardous materials specialists concerning the recognition, identification, and sampling
4 of suspected hazardous materials, for the costs of acquisition of an emergency response trailer,
5 and for a digital camera and related attachments, and that \$30,000 shall be paid to the account of
6 the San Mateo County District Attorney in the San Mateo County general fund.

7 5. (a) Subject to Paragraph 5(b), below, in consideration for the receipt of the
8 payments as specified in Paragraph 4 of this Decree, the United States covenants not to sue or take
9 administrative action under the CWA, OPA, the NMSA, or the ESA, or to assert any admiralty
10 and maritime claims, arising out of the Bay Spill and Ocean Spill, and the State, the City and
11 County of San Francisco, and the County of San Mateo covenant not to sue or take administrative
12 action on any claim for response costs, natural resource damages, civil penalties, or other
13 damages, or assert any charge for criminal liability, arising out of the Bay Spill and Ocean Spill.
14 The benefits of this Paragraph extend to Defendants Pearl and Anax: to Aran Shipping and
15 Trading, S.A. ("Aran"); and to Pegasus Shipping (Hellas), Ltd., to the extent of liability that
16 could be asserted as to that corporation based upon its status as a parent of Pearl, Anax, and/or
17 Aran. The benefits of this Paragraph also extend to current and former officers, directors, and
18 employees of the corporate entities named in this Paragraph, but only to the extent that any
19 obligations of, or liability that might be asserted against, such officers, directors, or employees
20 is based upon their status as officers, directors, or employees of any such corporate entity and
21 upon actions or omissions in such capacity, and not to the extent that any obligations or liability
22 arises independently of actions or omissions committed in their capacity as officers, directors, or
23 employees.

24 (b) As part of the Plea Agreement in the Criminal Case, defendants therein have
25 agreed to pay restitution to the United States in the amount of \$1,231,737.76, said restitution
26 representing the response costs otherwise recoverable by the United States pursuant to 33 U.S.C.
27 § 2702(b)(1) as a result of the matters alleged in the Complaint in this action. It is expressly
28 understood and agreed, without limitation, that any and all releases of civil liability for such

Consent Decree

1 response costs provided to defendants or to any other person or entity, whether or not referred
2 to in this Consent Decree herein, and whether or not made a party or a signatory to this Consent
3 Decree herein, shall be, and hereby are, expressly conditioned upon, and shall not be effective
4 until, the final, unconditional, and irrevocable disbursement of the full amount of said restitution
5 monies to the United States, by and through the National Pollution Funds Center. It is further
6 expressly understood and agreed, without limitation, that unless and until plaintiff United States'
7 foregoing response costs have been paid pursuant to the final, unconditional, and irrevocable
8 disbursement of the full amount of said restitution monies to the National Pollution Funds Center,
9 this Consent Decree, whether entered and approved or not entered and approved, shall be, and
10 hereby is, wholly and unconditionally without prejudice to any and all of the United States'
11 rights, demands, and causes of action to recover said response costs against defendants or any
12 other person or entity, whether or not referred to in this Consent Decree herein, and whether or
13 not made a party or a signatory to this Consent Decree herein.

14 (c) As part of the Plea Agreement in the Criminal Case, the defendants therein
15 have agreed to pay a penalty to the United States in the amount of \$200,000 for violation of
16 Sections 9(a)(1) and 11(b)(1) of the ESA, 16 U.S.C. §§ 1538(a)(1), 1540(b)(1). It is expressly
17 understood and agreed, without limitation, that any and all satisfaction of civil-liability for such
18 ESA violations provided to defendants or to any other person or entity, whether or not referred
19 to in this Consent Decree, and whether or not made a party or a signatory to this Consent Decree,
20 shall be, and hereby is, expressly conditioned upon, and shall not be effective until, the final,
21 unconditional, and irrevocable disbursement of the full amount of said penalty monies to the
22 United States. It is further expressly understood and agreed, without limitation, that unless and
23 until the ESA penalty has been paid pursuant to the final, unconditional, and irrevocable
24 disbursement of the full amount of said penalty, this Consent Decree, whether entered and
25 approved or not entered and approved, shall be, and hereby is, wholly and unconditionally without
26 prejudice to any and all of the United States' rights, demands, and causes of action to pursue a
27 penalty for the violation of ESA against Defendants or any other person or entity, whether or not
28 referred to in this Consent Decree and whether or not made a party or a signatory to this Consent

Consent Decree

1 Decree.

2 6. The Defendants and Pegasus Shipping (Hellas), Ltd. and Aran Shipping and
3 Trading, S.A. hereby release all claims that they have or may have against the Plaintiffs, including
4 their current and successor officers, employees, and agents under federal, state, or local law.

5 RESERVATION OF RIGHTS

6 7. Subject to the express provisions of Paragraphs 5 and 6 of this Decree, each Party
7 reserves against any person not a Party to this Decree all rights, claims, or defenses available to
8 it arising from or relating to the Bay Spill and Ocean Spill.

9 8. Nothing in this Decree creates, nor shall it be construed as creating, any claim in
10 favor of any person not a Party to this Decree. Subject to the express provisions of Paragraphs
11 5, 6, and 10 of this Decree, nothing in this Decree shall be construed as limiting, barring, or
12 otherwise prejudicing claims for contribution and indemnification arising from this settlement
13 against any person or entity not a Party to this Decree.

14 9. The resolution of claims pursuant to this Decree shall not apply to claims for
15 criminal liability brought by the United States, which may be addressed in a separate plea
16 agreement taken by this Court in the Criminal Case.

17 CONTRIBUTION PROTECTION

18 10. The parties resolving their liability through this Consent Decree are entitled to the
19 contribution protection provided by law.

20 COMPLIANCE PROGRAM

21 11. Anax agrees to enter into a Corporate Compliance Agreement with the United
22 States designed to minimize the risk of future oil spills and other possible civil and criminal
23 violations of the laws of the United States involving any ships under its operational or managerial
24 control. In addition, Anax's corporate affiliate, Aran, while not a party to this Consent Decree,
25 voluntarily agrees to enter into a similar Corporate Compliance Agreement with the United States
26 in order to extend compliance with the maritime environmental, pollution and safety laws and
27 regulations of the United States to all ships under its operational or managerial control. The
28 Corporate Compliance Agreements between both Anax and Aran (hereafter the "Companies") and
Consent Decree

1 the United States will set out the following policies and procedures: Whereby both Companies:
2 a. will undertake a comprehensive review of their existing Environmental
3 Compliance Programs and ensure that they encompass the International Convention for the
4 Prevention of Pollution from Ships ("MARPOL") and the requirements of the United States as set
5 out in Title 33, Code of Federal Regulations, Subchapter O - Pollution with Emphasis on Oil
6 Spill Reporting Requirements. The redrafted Environmental Compliance Program shall be subject
7 to government review and approval by the Court;

8 b. will maintain, at their cost, an effective Environmental Compliance and
9 Training Program regarding the operation of all oil tankers under their operational and managerial
10 control, including the M/T Command, as it relates to the management, handling and disposal of
11 oil and waste oil, including slops and bilge waste. Both Companies agree to engage the services,
12 at their cost, of an independent environmental and maritime consultant, after consultation with the
13 government and subject to the approval of the Court, to reassess the current operation and training
14 needs on each vessel under their operational and managerial control, of: (1) the engine room,
15 including the handling and disposal of fuel and bilge waste; (2) the cargo oil system, including
16 tank washing activities and the disposal of residues; and (3) fuel oil and oil spill reporting
17 procedures;

18 c. agree to use their best efforts to implement the compliance and training
19 recommendations of the above-referenced consultant so as to ensure that the vessels under their
20 operational and managerial control will comply with all relevant rules, regulations and laws,
21 including MARPOL and U.S. laws, regarding the proper management, handling and disposal of
22 bunker fuel oil, bilge oil, and oily slops and residues;

23 d. the first line managers and crew members of both Companies, whether
24 employees or independent contractors, shall receive training through an independent consultant
25 on environmental compliance and reporting requirements. Both Companies will maintain records
26 of the type of training provided to each employee and the frequency of such training;

27 e. shall ensure that compliance with MARPOL and U.S. environmental
28 policies is a positive factor in all appropriate personnel evaluations and that failure to comply with

1 such policies and laws is a negative factor;

2 f. shall identify, on each vessel under their operational and managerial control,
3 an officer who shall be responsible for ensuring compliance with the reporting requirements of
4 MARPOL and U.S. laws. This officer will also be familiar with the provisions of the
5 Environmental Compliance Program. This officer shall report directly to the Chief Engineer or
6 equivalent level and may report directly to the Master of the ship and Vice President or other
7 senior management official regarding environmental matters. Both Companies shall also identify,
8 on each vessel, an officer responsible for regular "all hands" training on environmental
9 compliance and reporting requirements;

10 g. will hire an independent auditing firm acceptable to the United States which,
11 for a period of three years from the date of this Consent Decree, will assist in inspecting all
12 vessels under their operational and managerial control to look for possible pollution and/or safety
13 problems and make at least yearly reports to the United States Coast Guard and Environmental
14 Protection Agency concerning all safety, waste stream and pollution issues;

15 h. will increase crew training, monitoring, inspections and internal reporting
16 as set forth in the Environmental Compliance Program to avoid any future oil spills;

17 i. agree to maintain their compliance training programs for all tanker ships
18 under their operational and managerial control for as long as they remain under their operational
19 management and control. Both Companies further agree that this compliance and training
20 program will be diligently enforced by both the officers and crew of each vessel as well as by on-
21 shore managers of the vessel and that a senior management official will be designated to be
22 directly responsible for monitoring, maintaining and enforcing the provisions of this Compliance
23 Agreement; and agree to make reports on environmental compliance and training a part of their
24 Board of Directors' meeting agendas. Both Companies also agree that their Boards will establish
25 procedures whereby they will receive and review reports on internal environmental policies,
26 incidents and training.

27 NOTICES

28 12. If written notice is required to be given by one Party to another for any reason, it
Consent Decree

1 shall be directed to the individuals and addresses specified below, unless the individuals specified
2 or their successors give notice, in writing, to the other Parties that notices should be directed to
3 a different individual or address. All notices shall reference the civil action settled through this
4 Decree, and the United States Department of Justice file number, ENRD 90-5-1-1-06455.

5 Notice to the United States:

6 Chief, Environmental Enforcement Section
7 Environment and Natural Resources Division
8 United States Department of Justice
9 P.O. Box 7611 Ben Franklin Station
10 Washington, D.C. 20044-7611

11 David B. Glazer
12 Environmental Enforcement Section
13 Environment and Natural Resources Division
14 United States Department of Justice
15 301 Howard Street, Suite 870
16 San Francisco, California 94105

17 Philip A. Berns
18 Attorney in Charge, West Coast Office
19 Torts Branch, Civil Division
20 Michael Underhill
21 Trial Attorney
22 Torts Branch, Civil Division
23 United States Department of Justice
24 10-4640 Federal Bldg., P.O. Box 36028
25 450 Golden Gate Avenue
26 San Francisco, California 94102-3463

27 Notice to the State:

28 Administrator, California Office of
Spill Prevention and Response
1700 "K" Street, Suite 250
Sacramento, California 95814

Executive Officer
California Regional Water Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1500
Oakland, California 94612

Executive Officer
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825

California Department of Parks and Recreation
Attn: Laura Reimche
1416 9th Street

1 Sacramento, California 95814

2 Ken Alex
3 Supervising Deputy Attorney General
4 California Attorney General's Office
5 1515 Clay Street, Suite 2000
6 Oakland, California 94612-1413

7 Notice to the San Francisco District Attorney:

8 Judy Lee
9 Deputy District Attorney
10 San Francisco District Attorneys Office
11 732 Brannan Street, Second Floor
12 San Francisco, California 94103

13 Notice to the San Mateo County District Attorney:

14 Parker S. Kelly
15 Deputy District Attorney
16 400 County Center, Fourth Floor
17 Redwood City, California 94063

18 Notice to Pearl Shipping Company:

19 Faith E. Gay
20 Sidley & Austin
21 875 Third Avenue
22 New York, New York 10022

23 Notice to Anax International Agencies, Inc.:

24 John M. Hogan
25 Holland & Knight, LLP
26 701 Brickell Avenue, Suite 3000
27 Miami, Florida 33131

28 **REPRESENTATIVES**

13. Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such Party to this Decree.

MODIFICATION

14. Minor modifications not materially altering this Decree may be effected by the written agreement of the Parties. No other modifications to this Decree may be made unless the Parties agree in writing to the modification and the Court approves of the requested modification.

1 PUBLIC COMMENT AFTER LODGING

2 15. Final approval of this Consent Decree by the United States and the State will be
3 subject to public notice and comment. The United States and the State may withdraw or withhold
4 their consent to the entry of the Decree if public comments establish, in the view of either, that
5 entry of this Consent Decree would be inappropriate, improper, or inadequate. After reviewing
6 the public comments, if any, the United States and the State shall advise the Court and the other
7 Parties whether the United States and the State seek entry of this Consent Decree. The other
8 Parties agree to the entry of this Consent Decree without further notice and agree not to withdraw
9 their consent to entry of the Decree pending consideration of public comments and approval by
10 the Court. Should the United States or the State withdraw its consent to the entry of this Consent
11 Decree, the Decree shall be null and void.

12 CONTINUING JURISDICTION

13 16. The Court retains jurisdiction to enforce the terms of this Consent Decree and to
14 resolve any disputes arising hereunder.

15 ENTIRE AGREEMENT

16 17. Except as to any separate plea agreement in the Criminal Case, this Consent Decree
17 contains the entire agreement of the parties hereto with respect to the subject matter hereof and
18 supersedes all prior agreements and understandings, whether oral or written.

19 COSTS

20 18. Subject to Paragraph 4, each Party shall bear its own attorneys fees and costs in
21 this action.

22 COUNTERPARTS

23 19. The Parties agree that this Decree may be executed in counterparts.

24 APPROVED AND ENTERED:

25
26
27 Dated: March 31, 2000

28 
MARILYN HALL PATEL
Chief United States District Judge

Consent Decree

1 WE HEREBY CONSENT to the entry of this Decree (subject to the public
2 comment provisions of Paragraph 15 of this Decree):

3 FOR THE UNITED STATES OF AMERICA:

4
5 By: Lois J. Schiffer / by David B. Glazer
6 LOIS J. SCHIFFER
7 Assistant Attorney General
8 Environment and Natural Resources Division
9 United States Department of Justice
10 Washington, D.C. 20530

11 Dated: 9-24-99

12 ROBERT S. MUELLER, III, State Bar No. 59775
13 United States Attorney
14 GAIL KILLEFER, State Bar No. 157248
15 Assistant United States Attorney
16 Northern District of California
17 450 Golden Gate Avenue, Box 36055
18 San Francisco, California 94102
19 Telephone: (415) 436-7180

20 By: David B. Glazer
21 DAVID B. GLAZER
22 Environmental Enforcement Section
23 Environment and Natural Resources Division
24 United States Department of Justice
25 301 Howard Street, Suite 870
26 San Francisco, California 94105
27 (415) 744-6491

28 Dated: 9-24-99

Of Counsel:
Charles McKinley, Esq.
Office of the Solicitor
U.S. Department of Interior
San Francisco, California
Katherine A. Pease, Esq.
NOAA Office of General Counsel
Long Beach, California


Consent Decree

1 WE HEREBY CONSENT to the entry of this Decree:

2
3 FOR THE UNITED STATES OF AMERICA:

4 DAVID W. OGDEN
5 Assistant Attorney General
6 Civil Division
7 United States Department of Justice
8 Washington, D.C. 20530

9 By: PHILIP A. BERNIS
10 Attorney in Charge, West Coast Office
11 Torts Branch, Civil Division

12 
13 MICHAEL UNDERHILL
14 Trial Attorney
15 Torts Branch, Civil Division
16 U.S. Department of Justice

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Dated: 9/24/99

1 WE HEREBY CONSENT to the entry of this Decree (subject to the public
2 comment provisions of Paragraph 15 of this Decree):

3 FOR THE STATE OF CALIFORNIA DEPARTMENT OF FISH AND GAME
4

5
6 By: 

7 GARY GREGORY, Administrator
8 Office of Spill Prevention and Response
California Department of Fish and Game

9 Dated: 4/23/99
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14 Of Counsel:

15 Ken Alex
16 Mary Hackenbracht
Supervising Deputy Attorneys General
Oakland, California

17 Steven Sawyer, Esq.
18 Katherine Verrue-Slater, Esq.
19 California Department of Fish and Game
Office of Spill Prevention and Response
20 Sacramento, California
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Consent Decree

1 WE HEREBY CONSENT to the entry of this Decree (subject to the public
2 comment provisions of Paragraph 15 of this Decree):

3 FOR THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD FOR THE
4 SAN FRANCISCO BAY REGION

5
6 By: *Loretta K. Barsamian*
7 LORETTA K. BARSAMIAN
8 Executive Officer
9 California Regional Water Quality Control
Board - San Francisco Bay Region


10 Dated: 9-22-99
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17 Of Counsel:
18 Mary Hackenbracht
19 Supervising Deputy Attorney General
Oakland, California
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1 WE HEREBY CONSENT to the entry of this Decree (subject to the public comment
2 provisions of Paragraph 15 of this Decree):

3 FOR THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION
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5
6 By:

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8 RUSTY AREIAS, Director
9 California Department of Parks
10 And Recreation

11 Dated:

12 9/23/97
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1 WE HEREBY CONSENT to the entry of this Decree (subject to the public comment
2 provisions of Paragraph 15 of this Decree):

3 FOR THE CALIFORNIA STATE LANDS COMMISSION
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5
6 By: Paul Thayer
7 PAUL THAYER
8 Executive Officer
9 California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825

10 Dated: September 23, 1999
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20 Of Counsel:

21 Dennis Eagan
22 Supervising Deputy Attorney General
Oakland, California


23 Mark Meier
24 Staff Counsel
25 California State Lands Commission
Sacramento, California

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Consent Decree

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WE HEREBY CONSENT to the entry of this Decree:

FOR THE DISTRICT ATTORNEY'S OFFICE FOR THE CITY AND COUNTY OF SAN FRANCISCO:

By: 
RICHARD D. ISELHART
Chief Deputy District Attorney
San Francisco District Attorney's Office
850 Bryant Street, Suite 300
San Francisco, California 94103
(415) 553-1752


Dated: 9/23/99

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WE HEREBY CONSENT to the entry of this Decree:

FOR THE DISTRICT ATTORNEY'S OFFICE FOR THE COUNTY OF SAN MATEO:

By:



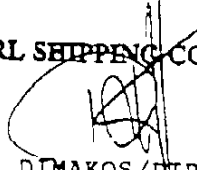
JAMES P. FOX
District Attorney
County of San Mateo
400 County Center, Fourth Floor
Redwood City, California 94063
(650) 363-4877

Dated: 11-23-97

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WE HEREBY CONSENT to the entry of this Decree:

FOR PEARL SHIPPING COMPANY



By: C. DIMAKOS/DIRECTOR

Dated: 24 September 1999

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WE HEREBY CONSENT to the entry of this Decree:

FOR ANAX INTERNATIONAL AGENCIES, INC.

[Handwritten Signature]

By: S. VAGIAS/DIRECTOR

Dated: 24 September 1999

[Handwritten Signature]

JOHN M. HOGAN
Holland & Knight, LLP
701 Brickell Avenue, Suite 3000
Miami, Florida 33131

Dated: 9/15/99