
ENVIRONMENTAL CRIMES SECTION



MONTHLY BULLETIN

October 2010

EDITOR'S NOTE:

If you have other significant updates and/or interesting photographs from a case, you may email these to Elizabeth Janes: [REDACTED] If you have information to submit on state-level cases, please send this directly to the Regional Environmental Enforcement Associations' website: <http://www.regionalassociations.org>.

AT A GLANCE:

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S.D. Ala.	<u>United States v. John J. Popa et al.</u>	<i>Seafood Misbranding/ Smuggling, Lacey Act</i>
D. Ariz.	<u>United States v. Eugene Mansfield et al.</u>	<i>Eagle Taking/ BGEPA</i>
N.D. Calif.	<u>United States v. Dimitrios Dimitrakis</u> <u>United States v. Mark Guinn</u>	<i>Vessel/ APPS</i> <i>Dredged Spoils Dumping/ CWA, Conspiracy</i>
D. Colo.	<u>United States v. Encana Oil & Gas (USA) Inc.</u>	<i>Oil and Gas Drilling/ MBTA</i>
M.D. Fla.	<u>United States v. Gunduz Avaz et al.</u>	<i>Vessel/ APPS</i>
S.D. Fla.	<u>United States v. Hugo Pena et al.</u> <u>United States v. Northern Fisheries, Ltd. et al.</u>	<i>Vessel/ APPS, False Statement, Conspiracy</i> <i>Seafood Mislabeling/ Lacey Act, Conspiracy</i>
D. Hi.	<u>United States v. Hiroki Uetsuki</u> <u>United States v. County of Kauai</u>	<i>Turtle Smuggling/ False Statement, Smuggling</i> <i>Newell's Shearwater Taking/ MBTA</i>
D. Idaho	<u>United States v. Paul McConnell et al.</u>	<i>Damage to Trout Habitat/ CWA Misdemeanor, ESA</i>
S.D. Ind.	<u>United States v. Todd Rorie et al.</u>	<i>Paint Waste/ RCRA</i>
S.D. Iowa	<u>United States v. G&K Services</u>	<i>Industrial Laundry/ CWA Misdemeanor</i>
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M.D. La.	<u>United States v. Gregory K. Dupont et al.</u>	<i>Alligator Hunting/ Lacey Act</i>
D. Md.	<u>United States v. Irika Shipping et al.</u>	<i>Vessel Recidivist / APPS, Obstruction</i>
E.D. N. C.	<u>United States v. Cooperative Success Maritime SA</u>	<i>Vessel/ Probation Violation</i>
D.N.M.I.	<u>United States v. Albert Taitano et al.</u>	<i>Fruit Bat Poaching/ ESA, Lacey Act</i>
D. Nev.	<u>United States v. Alexander Worster et al.</u>	<i>Vehicle Emissions Testing/ CAA</i>
S.D. Tex.	<u>United States v. Fleet Management Limited of Hong Kong et al.</u>	<i>Vessel/ APPS, False Statement, Obstruction</i>
D. V. I.	<u>United States v. Juan Oscar Garcia</u>	<i>Sea Turtle Egg Removal/ ESA</i>
E.D. Wash.	<u>United States v. Ricky Wahchumah et al.</u>	<i>Illegal Sale of Eagle Parts/ BGEPA, Conspiracy, Lacey Act</i>
W.D. Wash.	<u>United States v. Philip A. Smith</u>	<i>Wetlands/ CWA</i>

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Trials

United States v. Hugo Pena et al., Nos. 0:10-CR-60158 and 60189 (S.D. Fla.), AUSA Jaime Raich

On September 27, 2010, Hugo Pena, HP Maritime Consultants, Inc. ("HP Maritime"), Ronald Ramon, and Northon Eraso were convicted by a jury for their involvement in the illegal discharge of oily bilge wastes at sea. The jury convicted Pena and HP Maritime of a false statement violation and an APPS violation for failing to conduct a complete oil pollution prevention survey of the cargo ship *Island Express I*. The jury convicted Ramon and Eraso of conspiring to maintain a false oil record book (ORB) and of 17 and 25 substantive APPS violations, respectively, for failure to maintain an ORB. A fourth co-defendant, Coastal Maritime Shipping, LLC, previously pleaded guilty to two APPS violations for failing to maintain the ORB. The company was sentenced to pay a \$350,000 fine and will complete a three-year term of probation. The court further ordered Coastal Maritime to make a \$350,000 community service payment.

Coastal Maritime Shipping, LLC, was the owner of the *Island Express I*, a 155-foot cargo freighter registered in Panama. Defendant Ramon was the ship's captain, Eraso was the chief engineer, and Pena was an employee of HP Maritime, a classification surveyor. Ramon, Eraso, HP Maritime, and Pena conspired to conceal that the ship was discharging oily bilge waste. (The oily water separator was inoperable.) They did this by falsifying the ORB, by installing pumps and hoses to discharge wastes directly overboard, and by falsely certifying (merely weeks before scheduled inspections) that the ship's pollution prevention systems were adequate. In addition to the conspiracy charge, Eraso and Ramon were found guilty of multiple counts of failing to note the overboard discharges in the ORB on specific dates between February 7 and May 3, 2010.

The conviction of Pena and HP Maritime Consultants represents the first criminal case brought against a classification surveyor for failure to fulfill its pollution prevention responsibilities in the United States. Sentencing is scheduled for December 3, 2010.

This case was investigated by the Coast Guard and the Coast Guard Investigative Services.

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United States v. Ricky Wahchumwah et al., No. 3:09-CR-02035 (E.D. Wash.), AUSAs Timothy Ohms [REDACTED] and Tyler Tornabene [REDACTED]

On September 23, 2010, Yakama tribal members Ricky Wahchumwah and his wife, Victoria Jim, were found guilty by a jury of violations stemming from the illegal sale of bald and golden eagle parts.

After a 10-day trial, the jury found Wahchumwah guilty of conspiracy, three counts of selling or offering to sell eagle parts in violation of the Bald and Golden Eagle Protection Act (“BGEPA”), and one count of selling wildlife in violation of the Lacey Act. Jim also was found guilty of conspiracy, two BGEPA violations, and one Lacey Act count.

The evidence at trial showed that the defendants had been illegally acquiring and selling bald and golden eagle parts since approximately April 2008. An undercover Fish and Wildlife agent purchased golden eagle parts from them in April 2008, May 2008, and October 2008. Among the items seized during a search of the defendants’ home in March 2009 were four eagle carcasses with their wings and tail bases removed, at least 60 eagle wings, approximately 89 eagle feet with talons, and at least 728 loose wing feathers.

Eagles and other protected migratory birds are viewed as sacred in many Native American cultures, and the feathers of the birds are central to religious and spiritual Native American customs. By law, enrolled members of federally-recognized Native American tribes are entitled to obtain permits to possess eagle parts for religious purposes but federal law strictly prohibits selling eagle parts under any circumstances. The Fish and Wildlife Service operates the National Eagle Repository, which collects eagles that die naturally or by accident, to supply enrolled members of federally-recognized tribes with eagle parts for religious use.

The Service has worked to increase the number of salvaged eagles sent to the Repository from state and federal agencies as well as from zoos and is making it easier to send birds to the facility by providing free shipping materials. Sentencing is scheduled for January 19, 2011.

This investigation was conducted by the Fish and Wildlife Service, with the assistance of state and tribal wildlife authorities.

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Eagle talons

Informations and Indictments

United States v. Juan Oscar Garcia, No. 1:10-CR-00041 (D.V.I.), ECS Trial Attorney Christopher Hale [REDACTED] and AUSA Ronda Williams Henry [REDACTED]

On September 21, 2010, a grand jury on St. Croix returned a two-count indictment charging Juan Oscar Garcia for his role in removing sea turtle eggs from their nest. Garcia was charged with taking an endangered species and with possessing an illegally taken endangered species. According to

the indictment, on June 6, 2009, Garcia removed hawksbill sea turtle eggs from a nest in Frederiksted, St. Croix.

This case is the result of a joint investigation conducted by the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration.

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United States v. Hiroki Uetsuki, No. 1:10-CR-00660 (D. Hawaii), AUSA Tom Brady [REDACTED] with assistance from ECS Senior Trial Attorney Elinor Colbourn [REDACTED]



Indian Star Tortoises

On September 21, 2010, Hiroki Uetsuki, a Japanese citizen, was indicted on smuggling and false statement violations after customs inspectors at Honolulu airport allegedly found 42 exotic turtles in his suitcase after he arrived on a flight from Japan. Uetsuki allegedly tried to smuggle several Indian Star tortoises, white-fronted box turtles and Fly River turtles in his luggage. The white-fronted box turtle has been restricted for private and commercial import to Hawaii and must be cleared with the state. All turtles or tortoises also must be approved by the state’s Department of Agriculture before they can be brought into the islands.

Although these species, which are popular in the exotic pet trade, do not appear on Hawaii’s prohibited species list, they still pose a threat to native Hawaiian species, including freshwater shrimp and fish. In 2009, wildlife trade monitoring network TRAFFIC reported that species of Asian box turtles had nearly vanished from the wild due to widespread smuggling operations.

This case is being investigated by the Fish and Wildlife Service and Customs and Border Protection.

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United States v. Albert Taitano et al., No. 1:10-CR-00037 (D.N.M.I.), ECS Trial Attorney Christopher Hale [REDACTED] and AUSA Eric O’Malley [REDACTED]

On September 16, 2010, a five-count indictment was returned charging Albert Taitano, Adrian Mendiola, and David Santos with Endangered Species Act and Lacey Act violations related to their poaching of fruit bats. The violations occurred in 2008 on the island of Rota, in the Northern Mariana Islands, where two of the few remaining breeding colonies of the Mariana fruit bat were decimated by hunters using shotguns.

There has been a moratorium on hunting in the Mariana Islands since the 1990s and, in 2005, the U.S. Fish and Wildlife Service listed the Mariana fruit bats as threatened due to an alarming decline in the fruit bat population. Biologists estimated that about 10 to 14 percent of the total fruit bat population on Rota was killed during



Baby fruit bat

three separate poaching events over a six-month period.

This case was investigated by the Fish and Wildlife Service and the Commonwealth of the Northern Mariana Islands ("C.N.M.I.") Department of Land and Natural Resources Division of Fish and Wildlife, with assistance from the C.N.M.I. Department of Public Safety; the Bureau of Alcohol, Tobacco, and Firearms; the Drug Enforcement Agency; the Federal Bureau of Investigation; the National Marine Fisheries Service; Immigration and Customs Enforcement; the Coast Guard; the Marshals Service; the Naval Criminal Investigative Service; and the National Wildlife Forensics Laboratory.

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United States v. Gregory K. Dupont d/b/a Louisiana Hunters, Inc., et al., No. 3:10-CR-00140 (M.D. La.), ECS Senior Trial Attorney Claire Whitney [REDACTED] and ECS Trial Attorney Shennie Patel [REDACTED].

On September 15, 2010, a three-count indictment was returned charging Gregory K. Dupont with Lacey Act violations stemming from the illegal hunting and purchasing of alligators, a threatened species. Dupont is a licensed alligator hunter and owns Louisiana Hunters, Inc., a guiding and outfitting company in Plaquemine, Louisiana. In 2006 Dupont allegedly took clients to hunt in areas for which he did not have authority to hunt, and in 2005 he allegedly purchased an alligator killed by one of his clients, in violation of Louisiana regulations.

Alligator hunting is a highly regulated activity in Louisiana since alligators were over-hunted years ago. The state's regulations set up a strict system which allocates alligator hide tags (also known as CITES tags) to licensed alligator hunters every year. The tags are property specific and hunters may only hunt in the areas designated by the tags. Louisiana regulations also prohibit alligator hunters, like Dupont, from purchasing alligators from anyone; only designated fur buyers and fur dealers are allowed to purchase alligators.

The fees charged by Dupont for hunts are substantial, starting with a base rate of \$3,500 for three days of hunting. If a client kills a trophy-sized alligator, Dupont charged trophy fees of up to \$2,000, depending on the size of the alligator. Several of the alligators taken on the alleged dates of the illegal hunts were trophy-sized.

This case was investigated by the Louisiana Department of Wildlife and Fisheries and the United States Fish and Wildlife Service.

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United States v. Northern Fisheries, Ltd., et al., No. 1:10-CR-20678 (S.D. Fla.), AUSA Norman O. Hemming, III [REDACTED]

On September 9, 2010, a two-count indictment was returned charging two seafood companies and the company presidents with conspiracy and Lacey Act false labeling violations.

According to the indictment, between January and February 2010, Northern Fisheries, Ltd., its president Brian D. Eliason, Shifco, Inc., and company president Mark Platt engaged in a scheme wherein Platt oversaw the false and fraudulent repackaging and labeling of 1,500 pounds of frozen chum Salmon fillets. The Salmon, which had been purchased from a Chinese company, was subsequently relabeled as a "Product of Russia."

This case was investigated by the National Oceanic and Atmospheric Administration and the Florida Department of Agriculture and Consumer Services.

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United States v. Eugene Mansfield et al., No. 3:10-mj-04215 (D. Ariz.), AUSA Camille Bibles
[REDACTED]

On September 7, 2010, five Hopi tribal members were charged with violations of the Bald and Golden Eagle Protection Act for the taking of two golden eagles without a permit. According to the complaint, Eugene Mansfield, Brendan Mansfield, Eldrice Mansfield, Emmett Namoki, and Lucas Namoki, Jr., were all involved in taking two eaglets from their nest in May of this year at Elephant Butte on the Navajo Nation.

One of the defendants who received the permit allegedly told the others that they could collect the eaglets when apparently it was too early to do so. When questioned by authorities, one of the defendants stated that there is a great deal of competition for eaglets among Hopi collectors.

This case was investigated by the Fish and Wildlife Service, the Hopi Cultural Preservation Office, the Hopi Resource Enforcement Services, and the Navajo Fish and Wildlife Division of Natural Resources.

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Plea Agreements

United States v. John J. Popa et al., No. 1:10-CR-00011 (S.D. Ala.), ECS Senior Trial Attorney Wayne Hettenbach [REDACTED], ECS Trial Attorney Susan Park [REDACTED] AUSA Deborah Griffin [REDACTED], and ECS Paralegal Kathryn Loomis [REDACTED]

On September 22, 2010, John J. Popa pleaded guilty to 15 counts, which included smuggling and Lacey Act misbranding violations. Popa and codefendants Karen Blyth and David H. M. Phelps previously were charged in a 28-count indictment with conspiracy, as well as Lacey Act, smuggling, and misbranding violations.

Blyth and Phelps owned a seafood supply company in Arizona and also were co-owners with Popa and others of a seafood wholesaler in Pensacola, Florida, which sold seafood to customers in Alabama and the Florida Panhandle. From approximately October 2004 through November 2006, the defendants conspired to sell falsely labeled and unlawfully imported fish. Specifically, they bought imported catfish from Vietnam that had been falsely labeled and imported without paying the applicable duties, and then they sold that catfish as grouper. They also routinely substituted cheaper fish for more expensive fish by selling Lake Victoria perch as grouper, selling imported catfish as grouper, and selling grouper as snapper. Moreover, they were selling live oysters for which the harvest date had been changed to a more recent date.

Popa is scheduled to be sentenced on February 22, 2011. This case was investigated by the National Oceanic and Atmospheric Administration Office of Law Enforcement; Department of Homeland Security, Immigration and Customs Enforcement; United States Air Force Office of Special Investigations; and the Department of Defense Criminal Investigative Service.

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United States v. Paul McConnell et al., No. 3:10-CR-00205 (D. Idaho), ECS Senior Trial Attorney Ron Sutcliffe [REDACTED] and AUSA Nancy Cook [REDACTED]

On September 21, 2010, Paul McConnell, Donna McConnell, and James Renshaw pleaded guilty to a two-count information charging them with a negligent Clean Water Act violation and an Endangered Species Act violation stemming from their involvement in the damage of habitat critical to the survival of Snake River Steelhead trout.

The McConnells own property abutting Clear Creek in Kooskia, Idaho, which is approximately 1.5 miles upstream from the Kooskia National Fish Hatchery. The Hatchery raises Chinook salmon to replace stocks in the Clear Creek and Clearwater River drainage basin. Clear Creek above and below the hatchery is habitat for threatened steelhead trout, and the adjacent property was subject to springtime flooding.

The McConnells decided to channelize Clear Creek adjacent to the Clear Creek Property in an effort to prevent flooding during spring runoff. Renshaw performed stream channelization work with a bulldozer in August 2007, for the McConnells and a neighbor, Barton Wilkinson, who previously pleaded guilty. Renshaw dredged rock and soil from the creek over an area of approximately 400 yards and re-deposited material into the creek as well as on the banks of Clear Creek below and above the ordinary high water mark affecting approximately .25 acres. The channelization significantly modified fish habitat in the river and produced large amounts of siltation downstream from the site work. The defendants did not have a permit from the Army Corps of Engineers to perform the work in Clear Creek and caused damage to critical salmonid habitat.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the National Oceanic and Atmospheric Administration.

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United States v. Philip A. Smith, No. 3:09-CR-05590 (W.D. Wash.), AUSA Jim Oesterle [REDACTED]

On September 20, 2010, Phillip Smith pleaded guilty to one Clean Water Act violation for his involvement in dumping fill materials into wetlands he had owned between August 2005 and February 2008. Approximately 65 percent of the 190 acres Smith owned were covered in wetlands that drain into Lacamas Creek. The creek flows into the Cowlitz River and ultimately empties into the Columbia River. Neither Smith nor anyone associated with the property ever applied for the required permits. Sentencing is scheduled for January 10, 2011.

This case was investigated by the Army Corps of Engineers, the Washington State Department of Ecology, and the Environmental Protection Agency Criminal Investigation Division.

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United States v. Alexander Worster et al., Nos. 2:10-CR-0008 and 00012 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe ([REDACTED]) ECS Trial Attorney Sue Park ([REDACTED]) and AUSA Roger Yang ([REDACTED])

On September 13, 2010, Alexander Worster pleaded guilty to the single Clean Air Act false statement count charged in the indictment. Adolpho Silva-Contreras entered a similar plea on September 7th. To date, five defendants of the 10 charged have pleaded guilty for their involvement in a practice known as “clean scanning” vehicles. The scheme involved using vehicles the testers knew would pass emissions tests for the actual test, but entering into the computerized system the vehicle identification number (“VIN”) for a vehicle that would not pass. The testers did not realize that the

computer generated an electronic VIN from the car actually tested which was easily compared with the real vehicle's VIN that was entered in the report. The falsifications were performed in exchange for varying amounts of money over and above the usual emissions testing fee. Silva-Contreras is scheduled for sentencing on December 6, 2010 and Worster is scheduled to be sentenced on December 13, 2010. This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the Nevada Division of Motor Vehicles Compliance Enforcement Division.

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United States v. DRD Towing Company, LLC, et al., Nos. 2:10-DR-00190 and 191 (E.D. La.), AUSA Dorothy Taylor [REDACTED]

On September 3, 2010, maritime company DRD Towing Company, LLC, ("DRD") pleaded guilty to a felony violation of the Ports and Waterways Safety Act and a misdemeanor violation of the Clean Water Act. Company co-owner Randall Dantin pleaded guilty to obstruction of justice.

DRD owned and managed tugboats that pushed barges for other companies. On July 23, 2008, the DRD-owned *M/V Mel Oliver*, which was pushing a tanker barge full of fuel oil, crossed paths with the *M/T Tintomara*, a 600-foot Liberian-flagged tanker ship, causing a collision that resulted in the negligent discharge of approximately 282,686 gallons of fuel oil from the barge into the Mississippi River.

DRD admitted that it had created a hazardous condition by assigning employees without proper Coast Guard licenses to operate certain vessels and by paying licensed captains to operate a vessel for 24 hours a day without a relief captain. Dantin admitted that he obstructed justice by causing the deletion of electronic payroll records from a DRD laptop computer. These documents were material to a Coast Guard hearing that had been convened to investigate the collision. Dantin has been scheduled to be sentenced on December 8, 2010, and the company is scheduled for sentencing on December 15, 2010.

This case was investigated by Coast Guard Investigative Services and Environmental Protection Agency Criminal Investigation Division.

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United States v. G & K Services, Inc., No. 4:10-CR-00106 (S.D. Iowa), AUSA John Beamer [REDACTED]

On September 2, 2010, G & K Services, Inc., pleaded guilty to a Clean Water Act violation for negligently discharging wastewater from their facility.

G&K operated an industrial laundry facility. Between October 2005 and August 2008, on at least 18 different occasions, the business violated its pretreatment permit by exceeding allowable oil and grease levels in its discharged wastewater. The defendant also failed to disclose these permit violations to the proper authorities. Sentencing is scheduled for December 2, 2010.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division.

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Sentencings

United States v. Stanships, Inc., No. 2:10-CR-00172 (E.D. La.), ECS Senior Trial Attorney Richard Udell [REDACTED] and AUSA Dorothy Taylor [REDACTED].

On September 29, 2010, Stanships, Inc., was sentenced to pay a \$525,000 fine and to make a \$125,000 community service payment. The Greek operator of the *M/V Doric Glory* previously pleaded guilty to violations of the Act to Prevent Pollution from Ships and the Oil Pollution Act stemming from its bypassing the oily wastewater separator and illegally discharging oily waste overboard from approximately December 2009 through May 2010.

In May 2010, during a Coast Guard inspection of the ship while it was docked in the Port of New Orleans, a whistleblower alerted officials to the illegal discharges. Oil-contaminated waste was illegally discharged overboard from the *Doric Glory* approximately once a month on its voyages between Jamaica and the United States, none of which was recorded in the oil record book.

Additionally, the company admitted knowing that the ship had an oil leak in its stern tube while in U.S. waters. The problem was known to the crew since at least the middle of April, 2010, when the ship was in dry dock in Mexico. As a result of the leak, lubricating oil needed to operate the ship leaked into the stern tube and then overboard when the ship was operating. The oil was leaking from the stern tube to such an extent that the engineers had to add approximately 400 liters of oil after each four-hour shift. This also is approximately how much oil was being discharged overboard.

As one condition of a three-year term of probation, Stanships also will implement an environmental compliance plan. This case was investigated by the Coast Guard Criminal Investigative Service.

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United States v. Todd Rorie et al., No. 3:10-CR-00079 (S.D. Ind.), AUSA Donald Schmid**Testing of abandoned drum**

On September 27, 2010, Todd Rorie, and his brother, Robert Scott Rorie, each were sentenced to terms of incarceration for their involvement in the illegal transportation and disposal of hazardous waste, in violation of RCRA. Todd Rorie will serve 12 months and one day of imprisonment and Robert Rorie will serve 18 months' incarceration. They also will complete a two-year term of supervised release.

In the spring of 2009, the defendants transported six barrels containing more than 300 gallons of hazardous waste from Scott's business, Midwest Custom Painting, to his residence. After illegally storing these drums at the residence for several months, these same six barrels were found dumped near

roadsides that were in the vicinity of drinking water wells.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, the Indiana Department of Environmental Management-Office of Criminal Investigations, the St. Joseph County Health Department, and the St. Joseph County Police.

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United States v. Irika Shipping et al., No. 1:10-CR-00248 (D. Md.), ECS Senior Trial Attorney Richard Udell, AUSAs Michael Cunningham and Dorothy Taylor, Jim Oesterle

On September 21, 2010, Irika Shipping S.A. was sentenced to pay a \$3 million fine and to make an additional \$1 million community service payment. This ship management company, registered in Panama and headquartered in Greece, also will complete a five-year term of probation during which it will be subject to a compliance program that includes audits by an independent firm and oversight by a court appointed monitor. The court further awarded to four crew members \$125,000 each for notifying authorities about the illegal discharges of oil and plastic from the *M/V Iorana*. Of the \$1 million community service payment, \$750,000 will go to the congressionally-established National Fish and Wildlife Foundation and will be used for Chesapeake Bay projects in the District of Maryland. In the Western District of Washington, \$125,000 will fund environmental projects in and around the waters of Puget Sound and the Straits of Juan De Fuca. In Louisiana, \$125,000 will go toward funding habitat conservation, protection, restoration, and management projects to benefit fish and wildlife resources and habitats.

Irika Shipping previously pleaded guilty as part of a multi-district plea agreement arising out of charges brought in the District of Maryland, Western District of Washington and Eastern District of Louisiana, including felony APPS violations related to port calls in Baltimore, Tacoma, and New Orleans by the *M/V Iorana*, and obstruction of justice charges based upon false statements to the Coast Guard, destruction of evidence, and other acts of concealment.

The investigation into the *M/V Iorana* was launched in January 2010 after a crew member passed a note to inspectors upon the ship's arrival in Baltimore, alleging that the ship's chief engineer had directed the dumping of waste oil overboard through an illegal bypass hose. The evidence provided included numerous photographs taken by a crew member using his cell phone.

Significantly, Irika Shipping also was the operator of the *M/V Irika*, a vessel that was the subject of a prior prosecution in the Western District of Washington in 2007. Irika Maritime, SA, (the shell owner) and Irika Shipping failed to implement an environmental compliance program as they were ordered to do in the earlier case. Additionally, Irika Shipping retained the same chief engineer, who was convicted in the prior case and who continued to commit similar violations in the current case.

The guilty plea encompasses violations in three districts. The company pleaded guilty to six counts in Baltimore for an APPS oil record book violation, an APPS garbage book violation, and obstruction of justice. The company also pleaded guilty to one count of obstruction for the violations in both the Western District of Washington and the Eastern District of Louisiana. Chief engineer Triantafyllos Marmaras recently was sentenced to pay a \$5,000 fine and complete a term of probation.

Among the facts that Irika Shipping has admitted is that 23 tons of sludge were deliberately discharged while en-route between Gibraltar and Baltimore; that plastic bags filled with the oil-soaked rags used to clean out the tank holding the sludge were dumped just prior to arrival in Baltimore; that, in anticipation of the Baltimore inspection, the crew re-painted the pipes and flanges to conceal the wrench marks cause by the bypassing; and that, while in port in Baltimore, during and after the Coast Guard inspection, the master and chief engineer instructed crew members to lie to the Coast Guard. Specifically, after the Coast Guard asked the master to call crew members to be interviewed, he and the chief engineer first met with them in the master's cabin and told them to repeat a false story and to deny the bypassing.

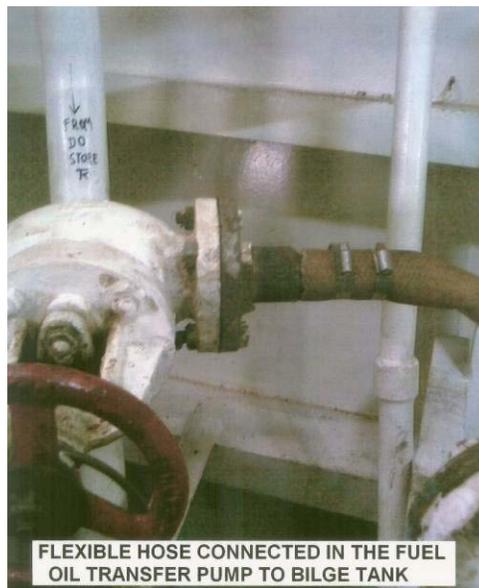
These cases were investigated by the Coast Guard, and the Environmental Protection Agency Criminal Investigation Division, with assistance from Customs and Border Protection.

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United States v. Fleet Management Limited of Hong Kong et al., Nos. 6:10-CR-00051-52 (S.D. Tex.), ECS Senior Litigation Counsel Howard Stewart

On September 9, 2010, ship operator Fleet Management Limited of Hong Kong (Fleet Management) was sentenced to pay a \$3 million fine and will complete a three-year term of probation. The company previously pleaded guilty to one APPS violation for failing to maintain an accurate oil record book (ORB), one count of making false statements to the Coast Guard, and one count of obstruction. Prem Kumar, a ship superintendent for the company, and Prasada Reddy Mareddy, the second engineer of the *M/V Lowlands Sumida*, previously pleaded guilty to conspiracy to make false statements and to obstruct justice.

In October 2009, the Coast Guard was conducting a routine port state control inspection of the *Lowlands Sumida* when an engine room crew member stated that the vessel was illegally discharging oily wastewater. He further alerted them that a center fuel oil tank on the ship was fitted with a "dummy" or false sounding tube and that oily waste water was being stored in the tank until it could be discharged overboard. The "dummy" sounding tube would show the tank to be empty, and a tank sounding log also was kept to show the tank as empty. When inspectors removed the false sounding tube and measured the contents of the tank they determined it to be almost half full with oily wastewater.



Acting on behalf of the company, both Kumar, a shore side manager, and Mareddy conspired to use the fabricated sounding tube to conceal the contents of the center fuel oil tank and to obstruct the Coast Guard's investigation. In addition to concealing the contents of the tank, Kumar and ship engineers obstructed the investigation by using the false sounding log to conceal the contents of the center fuel oil tank.

The vessel's chief engineer, John Porunnolil Zacharias, previously pleaded guilty to an APPS violation for failing to maintain an accurate ORB. He further pleaded guilty to an obstruction violation for providing inspectors with a false engine room sounding log and for his involvement in the installation of the fabricated sounding tube. Zacharias is scheduled to be sentenced on October 4, 2010,

This case was investigated by the Coast Guard Investigative Service, the Environmental Protection Agency Criminal Investigation Division, and the Texas Commission on Environmental Quality Environmental Crimes Unit.

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United States v. County of Kauai, No. 1:10-CR-00614 (D. Hawaii), ECS Senior Trial Attorney Elinor Colbourn and ECS Trial Attorney Todd Mikolop



Newell's shearwater

On September 9, 2010, the government filed a plea agreement and a one-count information charging the County of Kauai ("County") with a Migratory Bird Treaty Act violation for the killing of Newell's shearwaters.

The County manages football stadiums and other outdoor facilities (baseball fields, tennis courts, etc.) that operate at night with lights. The lights attract seabirds, particularly fledgling Newell's shearwaters that circle the lights eventually hitting something or falling to the ground in exhaustion.

Newell's shearwaters are threatened and migratory birds. Past efforts to cooperatively and voluntarily bring the County into compliance with the Endangered Species Act and the MBTA have failed. Following the indictment of Kauai Island Utility Co-op for similar takings last May, the County subsequently contacted the government stating that it wanted to resolve its exposure.

The County was sentenced to pay a \$15,000 fine and will complete a 30-month term of unsupervised probation, during which it will implement several corrective measures to minimize the killing of additional birds. Actions include, among other things, the re-scheduling of sporting events to avoid using the lights, making public service announcements at the games regarding seabirds, and the installation of shields around the lights when in use. The defendant is further required to submit status reports every six months on progress made toward these corrective measures.

Prior to sentencing, as community service aimed at the harm caused by the previous takings, the County was required to make a \$180,000 payment to the National Fish and Wildlife Foundation to be used to increase the population of Newell's shearwaters on the island of Kauai. In anticipation of the additional bird deaths likely to occur during the course of probation the County will make an additional \$30,000 community service payment to the Kauai Humane Society that will be used to

support the “Save Our Shearwater” program, which has been instrumental in rehabilitating and rescuing downed birds.

This case was investigated by the United States Fish and Wildlife Service.

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United States v. Gunduz Avaz et al., Nos. 8:10-CR-00264, 00286 (M.D. Fla.), ECS Trial Attorney Ken Nelson [REDACTED] and AUSA Jay Hoffer [REDACTED]

On September 7 and August 26, 2010, Turkish nationals Gunduz Avaz and Yavuz Molgultay each were sentenced after previously pleading guilty to a single APPS violation for failing to accurately maintain an oil record book (ORB). Both will complete five year-terms of probation; no fine was assessed.

Avaz was the chief engineer and Molgultay was the second engineer on board the *M/V Avenue Star* when the vessel made a port call in Tampa, Florida, in October 2009. As chief engineer Avaz admitted he knew that bilge wastes were being dumped from the ship at sea, and Molgultay admitted to participating in the dumping. During the vessel’s transit to Tampa from Honduras, Molgultay pumped

oily bilge waste into the aft port peak ballast tank, a tank that is designed to hold certain amounts of sea water depending on the stability needs of the vessel. Thereafter, during the transit, Molgultay dumped a large quantity of the oily waste from the ballast tank into the sea. Avaz knew that this was taking place, and neither defendant accurately recorded these activities in the ORB. Avaz presented the ORB with the false entries to Coast Guard personnel during the port call in Tampa.

This case was investigated by the Coast Guard and the Environmental Protection Agency Criminal Investigation Division.

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United States v. Dimitrios Dimitrakis, No. 4:10-CR-00552 (N.D. Calif.), ECS Trial Attorney Lana Pettus [REDACTED] and AUSA Chinhayi Cadet [REDACTED].

On September 3, 2010, Dimitrios Dimitrakis was sentenced to pay a \$5,000 fine and will complete a three-year term of probation after previously pleading guilty to an APPS violation for failing to maintain an oil record book (ORB).

Dimitrakis served as a chief engineer for the *M/V New Fortune*, which was operated by Transmar Shipping. In February 2010, during a routine inspection while at the port of Oakland, a crew member onboard notified Coast Guard inspectors that crew members had been directed by both the chief and second engineer to dump oily wastes at sea by using a flexible bypass hose. Multiple crew members provided the Coast Guard with photographs of the bypass hose in use while the ship was at sea. Further investigation revealed problems with the ship's oil water separator (OWS) and the incinerator. The ORB falsely reported that the OWS and incinerator were being routinely used to process and dispose of the ship's oily wastes.

Transmar Shipping was previously sentenced to pay a \$750,000 fine and to make a \$100,000 community service payment. It also will complete a three-year term of probation and implement an environmental compliance plan. Second Engineer Volodomyr Dombrovsky was sentenced to pay a \$500 fine and will serve a two-year term of probation.

This case was investigated by the Coast Guard.

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United States v. Mark Guinn, No. 09-CR-00414 (N.D. Calif.), AUSAs Stacey Geis [REDACTED] and Tina Hua [REDACTED]

On August 27, 2010, Mark Guinn was sentenced to serve 21 months' incarceration and will complete 200 hours of community service following his conviction by a jury last May. Guinn, the general manager of the Northern California operations of Brusco Tug & Barge, Inc., was convicted after a five-day trial of one count of conspiracy to violate the Clean Water Act and one substantive CWA violation.

Evidence at trial proved that Guinn had conspired to dump contaminated dredged spoils into the San Francisco Bay without a permit from approximately April 2003 until around January 2007. Guinn also was found guilty of offloading dredged spoils on a specific occasion. He was acquitted of another substantive CWA count, and the jury did not reach a verdict on the remaining CWA violation.

Beginning at least as early as 2003 and continuing until 2007, Guinn participated in the routine discharge of large amounts of contaminated dredged materials into navigable waters of the United States without a permit. Guinn unlawfully dumped this material into the Bay as well as ordering employees to do so. The defendant and others opened the hull of a barge while the barge was at or near Winter Island and then emptied its contents directly into the surrounding waters instead of properly

offloading all of the material onto the island. Witnesses testified that the offloading of dredged spoils would have taken 12-18 hours, while the dumping took just minutes.

As part of its operations, Brusco Tug & Barge towed and disposed of dredged material generated during various dredging projects. Many of the projects Guinn oversaw involved the transportation and disposal of dredged material by barge onto Winter Island where it was intended for use in levee rehabilitation and maintenance. Winter Island, a privately owned 453-acre property located on the western edge of the Sacramento-San Joaquin River Delta in Contra Costa County, is managed as a freshwater wetland habitat and duck hunting club. The island is one of the few places in the Bay Area with an identified beneficial use for dredged material and it accepted certain limited types of material pursuant to a permit. The discharge of dredge materials to surface waters or drainage courses surrounding Winter Island is prohibited.

The company previously pleaded guilty to a felony CWA violation and was sentenced to pay a \$1.5 million fine, including a \$250,000 community service payment to fund a variety of environmental projects in the Bay. The company also was required to enter into a comprehensive environmental compliance plan.

This case was investigated by the Coast Guard Criminal Investigative Service and the Environmental Protection Agency Criminal Investigation Division.

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United States v. Encana Oil & Gas (USA) Inc., No. 1:10-mj-01139 (D. Colo.), ECS Senior Trial Attorney Robert Anderson

On August 26, 2010, Encana Oil & Gas (USA), Inc. (“Encana”) pleaded guilty to a two-count information charging the company with two Migratory Bird Treaty Act violations that resolve migratory bird fatalities at its facilities in Colorado and Wyoming.

The company is headquartered in Denver and extracts oil and natural gas from drilling and production operations in the western United States. Several migratory birds have died as the result of landing on open or insufficiently protected pits, ponds, and tanks and other facilities. The government’s investigation began in 2005 at Encana’s facilities in the Piceance Basin of Colorado and expanded in 2009 to the company’s operations in Wyoming. The company eventually cooperated with the investigation providing voluntary self-disclosure of mortalities, promising continued cooperation, and already has spent millions of dollars on remedial and compliance measures at both plants in Colorado and Wyoming.

The company was sentenced to pay the maximum statutory fine of \$15,000 per count, which was directed to the North American Wetlands Conservation Fund, and will make a community service payment of \$85,000 per count to the National Fish and Wildlife Foundation, directed to waterfowl habitat remediation in Colorado and Wyoming. Encana also will complete an 18-month term of probation during which it will develop and implement an environmental compliance plan focused on preventing future avian mortality at its sites.

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Other Litigation Events

United States v. Cooperative Success Maritime SA, No. 4:10-CR-00035 (E.D.N.C.), ECS Trial Attorney Shennie Patel [REDACTED] and AUSA Banu Rangarajan [REDACTED]

On September 7, 2010, Cooperative Success Maritime's (CSM) fleet was banned from using all U.S. ports and the company was ordered to immediately pay its outstanding \$350,000 fine following a probation violation hearing. After being sentenced in June, CSM was required to implement an environmental compliance plan (ECP). The company failed to respond to numerous phone calls and voice mails from the probation office regarding implementation of the plan.

CSM was the operator of the *M/T Chem Faros*, a 21,145 gross-ton ocean-going cargo ship. The company pleaded guilty to, and was sentenced for, an APPS violation and for making false statements. The company was ordered to pay a \$700,000 fine (half of which was paid to whistleblower crew members) and was to make a \$150,000 community service payment toward the National Fish and Wildlife Fund. CSM also was to begin serving a five-year term of probation and to implement the ECP.

On March 29, 2010, a Coast Guard port state control inspection team boarded the *Chem Faros* in Morehead City, North Carolina. While conducting the inspection, a crewmember approached Coast Guard inspectors and handed them a note stating that the ship had illegally discharged oil-contaminated waste overboard through the use of a "magic pipe." Other crew members, including the chief and second engineers, corroborated the allegations of improper waste discharges. The chief engineer, Vaja Sikharulidze, previously pleaded guilty to an APPS violation for his involvement in these illegal overboard discharges. Sikharulidze further acknowledged making false entries in the oil record book to hide the true amount of oil-contaminated bilge waste that was stored in a specific tank aboard the ship. He admitted that he was continuing the practice of a former chief engineer of making false entries for that particular tank. He was sentenced to serve seven days home detention and one year of probation. No fine was imposed.

This case was investigated by the Coast Guard Investigative Service and the Environmental Protection Agency Criminal Investigation Division, with assistance from the Federal Bureau of Investigation's Computer Forensic Team.

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