ENVIRONMENTAL CRIMES SECTION

MONTHLY BULLETIN

January 2011

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: www.regionalassociations.org.

Logo from defendant Jeff Foiles' business; click here for more details.

AT A GLANCE:

- United States v. Southern Union Company, ___F.3d. ___ 2010 WL 5175181 (1st Cir. Dec. 22, 2010.)
- United States v. Bengis, ___F. 3d. ___ 2011 WL 9372 (2nd Cir. Jan. 4, 2011).
- United States v. Howard William Ledford, 389 Fed. Appx. 259 (4th Cir. 2010).
- United States v. Stutesman, 2010 WL 3070025, slip op. (9th Cir. Aug. 6, 2010).

DISTRICTS	ACTIVE CASES	*CASE TYPE*/ STATUTES
C.D. Calif.	United States v. Moun Chau et al. United States v. Jim Nguyen et al.	*Ivory Smuggling*/ Conspiracy, ESA, Smuggling *Asian Arowana Imports*/ Smuggling
N.D. Calif.	United States v. Rogelio Lowe	*Falsified Asbestos Certification*/ Mail Fraud
D. Colo.	[redacted] United States v. Richard O'Brien et al.	[redacted] *Rhino Horn Sales*/ Conspiracy, Smuggling, Money Laundering
D.D.C.	United States v. Oceanpro Industries Ltd d/b/a Profish Ltd.	*Striped Bass Harvesting*/ Lacey Act
M.D. Fla.	United States v. Kevin Montgomery United States v. Atlas Ship Management Ltd	*Trash Dumping*/ Degradation of Forest Service Land *Vessel*/ APPS, False Statement
S.D. Fla.	United States v. Palm Beach Polo Holdings, Inc. et al. United States v. Rufino Blanco et al. United States v. Hugo Pena et al. United States v. Prime Airport Services, Inc.	*Wetlands*/ CWA *Pigeon Egg Imports*/ Lacey Act, Smuggling, False Statement *Vessel*/ APPS, False Statement *Uninspected Plant Imports*/ Plant Protection Act
N.D. Ga.	United States v. Corey Beard et al.	*HCFC-22 Release*/ CAA
D. Hawaii	United States v. Kaua'i Island Utility Cooperative	*Newell's Shearwater Deaths*/ ESA, MBTA

DISTRICTS	ACTIVE CASES	*CASE TYPE/* STATUTES
D. Idaho	**United States v. Paul McConnell et al.**	***Fish Habitat Destruction/* ESA, CWA Misdemeanor**
C.D. Ill.	**United States v. Jeffrey Foiles**	***Waterfowl Hunts/* Conspiracy, Lacey Act, False Statement**
N.D. Ind.	**United States v. United Water, Inc. et al.**	***Wastewater Treatment/* Conspiracy, CWA**
W.D. Mo.	**United States v. Oak Mill, Inc. et al.**	***Wastewater Discharges/* CWA Misdemeanor**
S.D.N.Y.	**United States v. Saverio Todaro**	***Lead and Asbestos Falsification/* False Statement, TSCA**
D. Nev.	**United States v. David Eugene Nelson** **United States v. Eduardo Franco et al.**	***Vehicle Emissions Testing/* CAA**
E.D.N.Y.	**United States v. Tamba Kaba** **United States v. Lawrence Aviation Industries et al.**	***Ivory Smuggling/* Lacey Act** ***Aeronautics Industry Wastes/* RCRA**
E.D. N.C.	**United States v. Linda Allen Knox**	***Water Sampling/* Mail Fraud**
N.D. Ohio	**United States v. Stricker Refinishing Company et al.**	***Metal Plater/* CWA Pretreatment**
[redacted]	[redacted]	[redacted]
D. P. R.	**United States v. EPPS Shipping Company**	***Vessel/* APPS, False Statement**
D. Utah	**United States v. Andrew Costa**	***Hazardous Waste Storage/* RCRA**
E.D. Wash.	**United States v. William Wahsise et al.**	***Eagle Deaths/* BGEPA**

Additional Quick Links:

Significant Environmental Decisions

First Circuit

United States v. Southern Union Company, ___F.3d. ___ 2010 WL 5175181 (1st Cir. Dec. 22, 2010.)

On December 22, 2010, the First Circuit affirmed the convictions and sentencing of the Southern Union Company. As to the fine, in referring to the Supreme Court decision in *Oregon v. Ice, 550 U.S. 160 (2009),* the Circuit Court noted that *Apprendi* does not apply to statutorily prescribed fines: "[we] agree with the prosecution that we must follow the logic of *Ice's* reasoning, which further supports the conclusion that Apprendi does not apply to criminal fines."

Southern Union was sentenced in October 2009 to pay a $6 million fine and $12 million in payments to community initiatives, including the Rhode Island Foundation, the Rhode Island Department of Environmental Management Emergency Response Fund, and Hasbro's Children's Hospital. The company also will complete a two-year term of probation.

Southern Union, which owned several natural gas suppliers, was convicted by a jury in October 2008 on one RCRA storage violation for illegally storing mercury at a company-owned site in Pawtucket. It had been charged with two counts of illegal storage of waste mercury and one count of failing to immediately notify local authorities of a release of mercury from its facility.

During the three-week trial, the government presented evidence that Southern Union began a program in 2001 to remove from customers' homes gas regulators that contained mercury. Company employees brought the regulators to the facility in Pawtucket, on the edge of the Seekonk River. Southern Union initially hired an environmental services company to remove the mercury from the regulators, and then shipped the mercury to a facility in Pennsylvania for further processing. When the removal contract expired, gas company technicians continued to remove the regulators from customers' homes. Southern Union stored the mercury-containing regulators, as well as loose liquid mercury, in various containers including plastic kiddie pools in a vacant building at the facility.

In 2002, 2003, and 2004, a local gas company official drafted requests for proposals for removal of the mercury that was collecting at the facility. The company, however, never finalized the proposals or put them out to bid. By July 2004, approximately 165 mercury-containing regulators were stored at the site, as were various other containers, such as glass jars and plastic jugs, containing a total of more than a gallon of mercury.

In September 2004, vandals broke into the storage building and took several containers of liquid mercury. Some of the containers were shattered causing approximately 140 pounds of mercury to be spilled around the facility's grounds. They also took some of the mercury to a nearby apartment complex. For about three weeks, puddles of mercury remained on the ground at the site, and more of it lay spilled at the apartment complex. In October 2004, a gas company employee discovered mercury on the ground of the facility and evidence that there had been a break-in.

Back to Top

Second Circuit

United States v. Bengis, ___F.3d.___ 2011 WL 9372 (2nd Cir. Jan. 4, 2011).

On January 4, 2011, the Second Circuit held that a country (in this case South Africa) does have property interest in wild creatures, specifically, rock lobsters that were unlawfully harvested from its waters. The court further found that a country may be defined as a victim under the Mandatory Victims Restitution Act (MVRA) and the Victim Witness Protection Act, making it entitled to receive restitution.

The property interest was described as the proceeds from the sale of seized illegally harvested lobsters. In short, once the lobsters were illegally harvested, South Africa had a right to seize and then dispose by sale of the lobsters. The defendants' conspiring to conceal the illegal trade deprived South Africa of the proceeds from those sales.

South Africa was a victim of the defendants' acts because they smuggled the illegally harvested lobsters out of South Africa, thus depriving the country of its right to seize and sell the illegal lobsters, thereby causing direct harm to its government.

The court further stated that, despite the complexity involved in crafting a restitution order in this case, that is an insufficient reason to preclude the entry of such an order under the MVRA. The loss calculation method approved by the court multiplied the number of poached lobsters by the corresponding market price (that could have been gained at the time through seizure and sale), which in this case was estimated to be approximately $62 million.

In May 2004, Arnold Bengis, Jeffrey Noll, and David Bengis were sentenced for their involvement in a seafood poaching and smuggling scheme in which massive amounts of South African rock lobster and Patagonian toothfish (known as Chilean seabass) were over-harvested. Arnold Bengis was sentenced to serve 46 months' incarceration, Noll was sentenced to serve 30 months' incarceration and David Bengis was sentenced to serve 12 months' incarceration. Arnold Bengis and Noll also were ordered to forfeit $5.9 million and David Bengis was ordered to forfeit $1.5 million from the proceeds of the sale of his fish processing factory. The three operated seafood companies in South Africa, New York, and Maine.

Between 1987 and 2001, the defendants engaged in a practice of deceiving and sometimes bribing inspectors, as well as destroying documents in order to conceal the smuggling. After one of their shipments was seized in 2001 by U.S. Customs inspectors, the defendants went so far as to hire a

private investigator to keep track of the government investigators. The three pleaded guilty in April 2004 to conspiracy to violate the Lacey Act and three substantive Lacey Act violations.
Back to Top

Fourth Circuit

United States v. Howard William Ledford, 389 Fed. Appx. 259 (4th Cir. 2010).

On October 26, 2010, Howard William Ledford filed a motion pursuant to 28 U.S.C. §2255 alleging that he had received ineffective assistance of counsel in the negotiation of his plea agreement and in counsel's dealings with the government after the plea was entered. After briefing of the issues, on December 6th, the court, finding judicial error during the sentencing hearing, vacated the defendant's sentence and ordered that he be resentenced. On December 8th, the defendant was resentenced to time served, which was approximately 55 days, rather than the original one-year term of incarceration imposed. Other significant aspects of the original plea agreement remained in place, including the defendant's plea of guilty to two Lacey Act violations (Class A misdemeanors), the payment of a $50,000 fine, and the publication of an apology.

In July 2010, the Fourth Circuit issued an unpublished decision affirming Ledford's conviction and one-year sentence for selling and transporting wild ginseng in violation of the Lacey Act. The Court held that Ledford knowingly and voluntarily waived the right to appeal the sentence in his plea agreement, and that his sentencing arguments fell within the scope of the waiver. The Court rejected his claim of ineffective assistance of counsel in this direct appeal because the record did not conclusively establish that his trial counsel was ineffective. The Court noted that Ledford could bring his ineffective assistance claim in a 28 U.S.C. §2255 motion.

From 2003 through 2005, the Fish and Wildlife Service conducted an undercover operation to identify the illegal interstate and foreign sales/purchases of ginseng. Ginseng has declined from historic levels and continues to be under threat from overexploitation because demand and price for its roots remain high. Wild ginseng generally does not reproduce until it is eight years old. Some varieties of ginseng root can sell for as much as $1,000 a pound in the Asian market, where it is revered for its supposed medicinal properties. Ledford unlawfully purchased wild ginseng worth approximately $109,000.
Back to Top

Ninth Circuit

United States v. Stutesman, 2010 WL 3070025, slip op. (9th Cir. Aug. 6, 2010).

In an order filed August 6, 2010, the 9th Circuit affirmed the amount of restitution ordered to be paid to the United States Forest Service, but vacated and remanded the sentence with regard to joint and several liability. The court specifically affirmed the district court's consideration of the ecological value of the old-growth trees stolen and damaged by the defendants.

Defendants Floyd Stutesman, Craig James, and Bruce Brown conspired to steal timber resources belonging to the United States, and between them they felled 13 old-growth western red cedar trees in a protected area of the Olympia National Forest. Some of the trees were nearly 600 years

old. In addition to sentencing the three to serve terms of incarceration, the district court found the defendants jointly and severally liable for $336,466.33 in restitution to the Forest Service. All three defendants appealed the restitution amount and Stutesman appealed the imposition of joint and several liability.

The 9th Circuit found that the government met its burden under the Mandatory Victims Restitution Act by proving that the defendants were responsible for the destruction of the 13 old-growth cedars. The government adequately documented the value of the trees by submitting methods of valuation that allowed the district court to choose a reasonable restitution amount between these two estimates. The government further presented testimony from four expert witnesses as to the soundness of these estimates, which did not include punitive damages, but was a strict valuation of the immediate loss to the public caused by the defendants' acts, including the loss of the ecological and aesthetic value of the downed trees.

The government, however, did not submit enough evidence to prove that Stutesman's actions and involvement in the conspiracy were the cause of the destruction of more than one of the 13 trees. Therefore, the circuit court ordered that the amount of restitution Stutesman will pay must correspond to the amount of loss he actually caused. The government and defendants have been ordered to submit to the district court their positions with respect to restitution allotment on or before January 14, 2011.

Back to Top

Trials

United States v. Palm Beach Polo Holdings, Inc. et al., No. 9:10-CR-80087 (S.D. Fla.), AUSA Jose Bonau [redacted] and AUSA Jaime Raich [redacted]

Wetlands covered with wood chips

On December 17, 2010, the trial of Palm Beach Polo Holdings, Inc., and company owner Glen Straub ended in acquittals after a five-day jury trial. The defendants were Polo Club owners and developers in Palm Beach County, Florida, who, over the course of several years, had received numerous cease and desist orders from the Army Corps of Engineers for clear-cutting, filling, and seeding wetlands to make polo fields. Undeterred by these admonitions, the defendants clear-cut another 60 acres of wooded wetlands in 2005 and left a foot-high carpet of woodchips on the wetlands. The wetlands are adjacent to man-made canals that are pumped during periods of significant rainfall into the Loxahatchee National Wildlife Refuge. The indictment charged the defendants with illegally filling these wetlands. The judge excluded the prior history of cease and desist orders, and the jury acquitted the defendants after seven hours of deliberation.

This case was investigated by the Army Corps of Engineers and the Environmental Protection Agency Criminal Investigation Division.

Back to Top

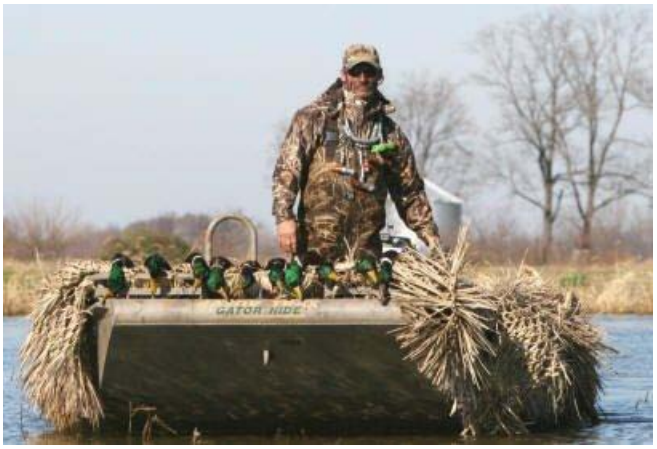
Informations and Indictments

[redacted]

Back to Top

United States v. Jeffery B. Foiles, No. 3:10-CR-30100 (C.D. Ill.), ECS Trial Attorney Colin Black [redacted] and AUSA Gregory Gilmore [redacted]

On December 9, 2010, Jeffrey B. Foiles was charged in a 23-count indictment with conspiracy, wildlife trafficking, and making false writings in connection with the illegal sale of guided waterfowl hunts.



Defendant Foiles

The indictment alleges that, between 2003 and 2007, Foiles conspired with others to knowingly transport and sell ducks and geese that had been hunted and killed in violation of federal laws protecting migratory birds. In particular, Foiles is alleged to have sold guided waterfowl hunts at the Fallin' Skies Strait Meat Duck Club in Pike County, Illinois, for the purpose of illegally hunting and killing ducks and geese in excess of hunters' individual daily bag limits. Foiles and his associates also are alleged to have falsified hunting records at the club in order to conceal the excesses and to have filmed the illegal hunts for inclusion in commercial hunting videos.

This case was investigated by the Fish and Wildlife Service, with assistance from the Illinois Department of Natural Resources, the Iowa Department of Natural Resources, and the Canadian government.

Back to Top

United States v. United Water, Inc. et al., No. 2:10-CR-00217 (N.D. Ind.), ECS Assistant Chief Kris Dighe [redacted], and ECS Trial Attorneys Jeremy Peterson [redacted] AUSA Toi Houston [redacted], RCEC Dave Mucha [redacted] and ECS Paralegal Christina Liu [redacted]

On December 8, 2010, a 26-count indictment was returned charging United Water Services, Inc., (UWS) and two of its employees with conspiracy and felony violations of the Clean Water Act. Specifically, UWS, Dwain Bowie, and Gregory Ciaccio are charged with manipulating daily wastewater sampling methods by increasing disinfectant treatment levels just before sampling and then decreasing them shortly after sampling.

UWS, the former contract operator of the Gary Sanitary District wastewater treatment works in Gary, Indiana, entered into a ten-year contract to operate the Gary Sanitary District wastewater treatment works in 1998 in exchange for $9 million annually. As contract operator, UWS handled the operation and maintenance of the treatment works and was responsible for environmental compliance. To ensure compliance with the discharge permit, UWS was required to take periodic representative wastewater samples, including a daily sample to determine the concentration of *E. coli* bacteria in the wastewater.

The indictment alleges that, from approximately 2003 through October 2008, the defendants directed that the daily samples for *E. coli* testing be taken *after* chlorine dosing had been increased, in violation of the NPDES permit. Chlorine, in the form of sodium hypochlorite, was the disinfectant used at the facility during the April through October disinfection season. After the *E. coli* sample was taken, the chlorine dosing level was decreased.

Bowie was the UWS project manager for the Gary facility beginning in 2002 and was in charge of the Gary operation. Ciaccio joined Bowie's staff in July 2003 and eventually became the plant superintendent in charge of day-to-day operations.

This case was investigated by the Northern District of Indiana Environmental Crimes Task Force, which includes the Environmental Protection Agency Criminal Investigation Division, the Federal Bureau of Investigation, and the Indiana State Police.

Back to Top

United States v. Stricker Refinishing Company et al., No. 1:10-CR-00505 (N.D. Ohio), SAUSA Brad Beeson [redacted]

On December 3, 2010, Stricker Refinishing Company (SRC), Thomas J. Stricker, and Gregory T. Stricker were charged in a one-count information with a Clean Water Act pretreatment violation for illegal wastewater discharges into the City of Cleveland's sewer system during 2007.

Thomas Stricker and Gregory Stricker were the owner/operators of this metal plating company located in Cleveland, Ohio. During the plating process, rinse waters from the use of copper, nickel, silver, zinc, and cyanide are generated. According to the facility's permit, this rinse water must be pretreated prior to its discharge into the sewer system.

The information alleges that on numerous occasions between March and August 2007, the defendants bypassed or directed SRC employees to bypass the facility's pretreatment system. Some of the rinse waters were pH treated while others were discharged directly to the sewer system without treatment.

This case was investigated by members of the Northeast Ohio Environmental Crimes Task Force, which includes the Northeast Ohio Regional Sewer District, the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, the Department of

Defense Criminal Investigative Service, and the Environmental Protection Agency Criminal Investigation Division.
Back to Top

United States v. Richard O'Brien et al., No. 1:10-CR-00588 (D. Colo.), ECS Senior Trial Attorney Jennifer Whitfield (and AUSA Linda McMahan .

On November 29, 2010, Irish Nationals Richard O'Brien, Michael Hegarty, and John Sullivan were charged in a three-count indictment with conspiracy, smuggling, and money laundering violations. The charges arose from the defendants' involvement in the unlawful purchase of four rhinoceros horns from an undercover Fish and Wildlife agent. O'Brien and Hegarty were arrested and released on bond. Sullivan remains a fugitive in Ireland.

According to the indictment, immediately prior to their arrest, O'Brien and Hegarty purchased four rhinoceros horns from an undercover agent for 12,850 euros (about $17,600). During a prior visit to the U.S., the defendants told the undercover agent that they worked for an antiques dealer (John Sullivan) in Ireland. After being informed several times that the purchase and transport of the rhinoceros horn would be illegal, the defendants said that they too were antiques dealers and intended to transport the rhinoceros horn to Ireland inside furniture, such as a large chest of drawers, packed in a shipping container. A large chest of drawers was found in the defendants' rental car following their arrest. In weeks leading up to the arrests, Sullivan emailed the agent stating he would claim to have purchased the rhino horn at a "car boot sale" and he further boasted that he has paid off so many customs agents that he would have no problem getting these items into the country. The defendants remain scheduled for trial to begin on February 7, 2010.

This case was investigated by the Fish and Wildlife Service.
Back to Top

Plea Agreements

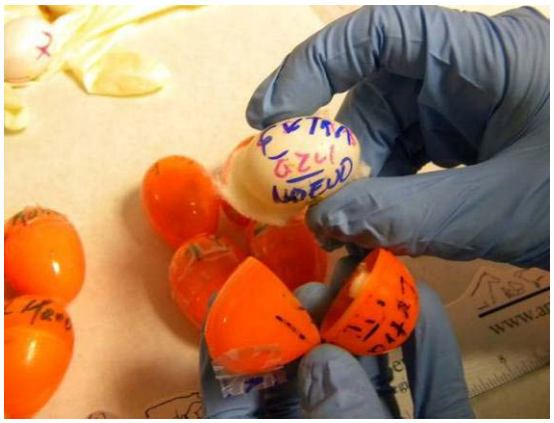
United States v. David Eugene Nelson, No. 2:10-CR-000 09 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe ECS Trial Attorney Sue Park , and AUSA Roger Yang

On December 15, 2010, David Eugene Nelson pleaded guilty to a single Clean Air Act false statement count for engaging in a practice known as "clean scanning" vehicles. Nelson is scheduled to be sentenced on March 23, 2011. [*See U.S. v. Franco, below, for more details.*]
Back to Top

United States v. Rufino Blanco et al., No. 2:10-CR-20782 (S.D. Fla.), AUSA Tom Watts-FitzGerald [redacted]

On December 22, 2010, Rufino Blanco and Claribel Blanco Cuellar pleaded guilty to smuggling, false statement, and Lacey Act violations for attempting to import into the United States 72 undeclared pigeon eggs from Cuba.

According to the court documents, in June 2010, Cuellar returned to Miami from Cuba with the eggs hidden in her luggage. When customs inspectors located the contraband, she claimed they were for her father Rufino Blanco, to be used in Santeria ceremonies. In fact, Blanco's intention was to hatch the viable eggs and market them through his pet store, El Morrillero, and over the Internet, to devotees of the homing/racing pigeon community.



Concealed Pigeon Eggs

The package Cuellar was carrying was color-coded, with the eggs divided into six sets, each secured inside a cotton-padded plastic Easter egg shell. Information regarding the eggs was written on the plastic shells, documenting the source and parentage of the eggs. Blanco offered Cuban-origin pigeons for sale through an on-line chat room, referring potential buyers to his pet store. Agents who visited the store found it catered exclusively to the sale of racing and homing pigeons.

Federal law prohibits the importation of fish or wildlife into the United States without providing proper documentation to both customs and wildlife officials, including a valid import/export license, which the defendants did not possess.

Additionally, USDA regulations specifically prohibit the importation of viable pigeon eggs unless accompanied by a certificate from a veterinary officer of the country of origin, certifying the eggs derive from a flock found free of communicable diseases. Several such diseases, notably Newcastle disease and European fowl pest (fowl plague), are of particular concern and carry mandatory quarantine requirements preceding any importation to avoid the risk of spreading diseases to domestic poultry stocks and wild birds.

Sentencing is scheduled for March 3, 2011. This case was investigated by the Department of Agriculture, the Fish and Wildlife Service, and Customs and Border Protection.

Back to Top

United States v. EPPS Shipping Company, (D.P.R.), ECS Trial Attorney Ken Nelson [redacted] and AUSA Marshal Morgan [redacted].

On December 21, 2010, EPPS Shipping Company agreed to plead guilty to a two-count information charging an APPS violation and a false statement violation stemming from the unlawful discharges of oily waste at sea.

The *M/V Carib Vision* was a 5,070 ton ocean-going ship owned and controlled by EPPS. The ship was registered in St. Kitts and Nevis and was engaged in international trade. During a port call made in November 2010 in Puerto Rico, inspectors uncovered evidence that the crew used the emergency bilge discharge system to pump oily waste directly into the ocean. The crew further failed to record these illegal discharges in the vessel's ORB as required.

This case was investigated by the Coast Guard.

Back to Top

United States v. Linda Allen Knox, No. 1:10-CR-00086 (W.D.N.C), AUSA Steven Kaufman

On December 17, 2010, Linda Allen Knox pleaded guilty to a one-count information charging her with mail fraud.

In 1988, Knox founded a company called If Its Water, which was in the business of collecting water samples, arranging for sample analysis with a state-certified lab, and submitting the required paperwork to regulatory agencies on behalf of its customers.

Investigation revealed that from approximately 2005 until May 2010, Knox frequently did not collect water samples for which she billed customers and, in some instances, customers were fined by the state for failure to submit sample analysis results which they had paid Knox to handle. In other cases, Knox used ordinary tap water, which was purported to be samples taken on behalf of customers who paid for its collection and analysis. In 2007, approximately 100 such samples were submitted to a state-certified lab, all of which were found to have identical levels of chlorine.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the North Carolina State Bureau of Investigation.

Back to Top

United States v. Corey Beard et al., No. 2:10-CR-00024 (N.D. Ga.), AUSA Paul Rhineheart Jones

On December 14, 2010, Corey Beard and Justin Joyner pleaded guilty to conspiracy and Clean Air Act violations. In addition to conspiracy, Joyner pleaded guilty to one CAA violation and Beard pleaded guilty to nine CAA violations.

A 13-count indictment was returned last June charging Beard, Joyner, Daniel Arnot, and Sabrina Westbrooks Arnot, with conspiracy to release ozone-depleting substances into the environment, along with 12 substantive CAA violations.

According to the indictment, beginning in early August 2008, the defendants targeted businesses with commercial-sized air conditioners in several counties. Arnot, working with his wife Sabrina or with his other accomplices, dismantled the air conditioning units so that they could steal the copper and aluminum parts. In order to take the copper parts they had to cut through a copper coil, which released hydrochlorofluorocarbon 22 (also known as HCFC-22), into the atmosphere. After dismantling the air conditioners, the defendants sold the copper and aluminum parts to scrap metal recycling businesses. The indictment alleges that the defendants' crimes involved the dismantling of approximately 35 air conditioning units from 14 locations.

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

Back to Top

United States v. Oak Mill, Inc., et al., No. 5:08-CR-06016 (W.D. Mo.), AUSA Jane Brown [redacted] and SAUSAs Anne Rauche and Kristina Gonzales [redacted]

On November 30, 2010, Oak Mill and company vice president Robert Arundale pleaded guilty to Clean Water Act violations.

Oak Mill, a soybean oil recycler, and Arundale were variously charged in an eight-count indictment with CWA violations for discharging pollutants into the City of St. Joseph's POTW. The defendants admitted that, on October 5 and 12, 2006, they violated federal pretreatment standards relating to the zinc and nickel levels they were permitted to discharge. The permit limits for zinc were 3.00 mg/l and .99 mg/l for nickel. On October 5th, the zinc levels discharged were measured at 20.9 mg/l, and nickel was 2.47 mg/l. On October 12th, the zinc level resulting from the discharge by Oak Mill was 19.6 mg/l, and nickel was 2.94 mg/l. Arundale pleaded guilty to a negligent CWA violation and Oak Mill pleaded guilty to two felony CWA violations.

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

Back to Top

Sentencings

United States v. Eduardo Franco et al., No. 2:10-CR-0005, 0006, 0008, 0012 (D. Nev.), ECS Senior Trial Attorney Ron Sutcliffe [redacted], ECS Trial Attorney Sue Park [redacted] and AUSA Roger Yang [redacted].

Four Nevada men were sentenced on December 3rd, 6th, 13th, and 16th for felony violations of the Clean Air Act by manipulating test results in hundreds of Nevada vehicle emissions inspections. Eduardo Franco will complete a five-year term of probation; Adolpho Silva-Contreras, Alexander Worster, and Louis Demeo each will complete three-year terms of probation.

A total of ten defendants were charged with a single CAA violation for causing false test results to be transmitted to the Nevada Department of Motor Vehicles (DMV). Typically the testers would use a vehicle they knew would pass the emissions test to produce a false result for a vehicle that could not otherwise pass the test.

The cases came to the attention of Nevada authorities in 2008 when the DMV hired a contractor to create a vehicle identification database to uncover possible emissions testing fraud. As a result, in 2008 alone, there were more than 4,000 false vehicle emissions certificates issued in Las Vegas. The database allows investigators to check the vehicle identification number that the emissions tester enters against the vehicle actually tested. Las Vegas and the surrounding Clark County are required by the EPA to conduct air emissions testing due to significant concentrations of carbon monoxide and ozone measured in the area.

These cases were investigated by the Environmental Protection Agency and the Nevada Department of Motor Vehicles.

Back to Top

United States v. Saverio Todaro, No. 1:10-CR-00268 (S.D.N.Y.) AUSA Anne Ryan [redacted]

On December 21, 2010, Saverio Todaro was sentenced to serve 63 months' incarceration, followed by three years of supervised release, for falsifying lead and asbestos inspection and testing reports for residences and other locations throughout the New York City area. In addition, he was ordered to pay a $45,000 fine, forfeit $304,395 to the government, and pay $107,194 in restitution to the victims of his crimes. In his capacity as an EPA-certified lead risk assessor, Todaro pleaded guilty to falsifying hundreds of lead and asbestos inspection and testing reports for residences and other locations throughout the New York City area. Among the charges in the 11-count information were several violations of lead regulations promulgated by EPA under the Toxic Substances Control Act. This case marks the first time that criminal charges have been filed under those regulations.

From approximately November 2001 through December 2009, Todaro operated a company called SAF Environmental Corporation, which was in the business of performing environmental inspection and testing services throughout the New York City area. During this period, the defendant failed to have an EPA approved laboratory analyze dust samples as part of lead clearance procedures in connection with lead abatements, and generated false lab reports that purported to show the results of laboratory analysis of samples when in fact no laboratory analysis had been conducted. Todaro submitted false documents to the New York City Department of Housing Preservation and Development and the New York City Department of Health, which regulate lead-based paint hazards in local buildings. He also admitted that, for years, he defrauded building management companies, landlords, building contractors, and others, by submitting fraudulent invoices and false laboratory reports for lead clearance testing and asbestos air monitoring that he never actually performed. Finally, Todaro admitted that he lost his New York City asbestos investigator's certificate in February 2004 but prepared backdated asbestos inspection forms for filing with New York City after that date, that he did so without performing actual inspections, and billed customers, for inspections that he had not actually conducted. The forfeiture count stems from the proceeds derived from these mail fraud violations.

In noting the seriousness of the defendant's crimes at sentencing, the court remarked: "The inventiveness of your lies was outstripped only by the callousness with which you put the health and lives of New York City children and adults at risk."

This case was investigated by the Environmental Protection Agency Criminal Investigation Division, the New York City Department of Investigation, and the New York Regional Office of the Department of Labor Office of Inspector General.

Back to Top

United States v. Hugo Pena et al., No. 0:10-CR-60158 (S.D. Fla.), AUSA Jaime Raich [redacted]

On December 20, 2010, three individuals were sentenced for their involvement in the illegal discharge of oily bilge wastes at sea. Hugo Pena was sentenced to complete a five-year term of probation, to include six months' home detention, and 250 hours of community service. Ronald Ramon and Northon Eraso each will complete three-year terms of probation and perform 150 hours of community service.

A jury convicted Pena and his company HP Maritime Consultant, Inc., 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. Coastal Maritime was sentenced to pay a $350,000 fine and will complete a three-year term of probation. The court further ordered the company to make a $350,000 community service payment.

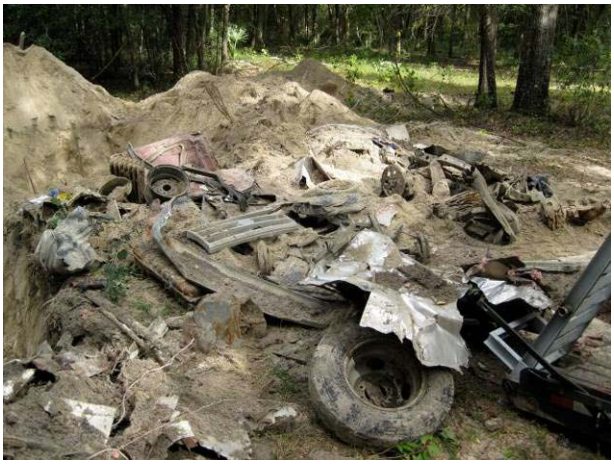
Coastal Maritime was the owner of the 155-foot cargo freighter, which was registered in Panama. Ramon was the ship's captain, Eraso was the chief engineer, and Pena was an employee of HP Maritime, a classification surveyor. Ramon, Eraso, HP Maritime, and Pena conspired to conceal that the ship was discharging oily bilge waste. (The oily water separator was inoperable.) They did this by falsifying the ORB, by installing pumps and hoses to pump wastes directly overboard and by falsely certifying (just 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 in February and May 2010.

The conviction of Pena and HP Maritime Consultants represented the first criminal case brought against a classification surveyor for failure to fulfill its pollution prevention responsibilities in the United States. Subsequent to trial, the government learned that HP Maritime was a completely fictitious entity. The company, therefore, cannot be sentenced and the indictment has been dismissed against it.

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

Back to Top

United States v. Kevin Montgomery, No. 5:10-CR-00027 (M.D. Fla.), ECS Trial Attorney Lana Pettus [redacted] and AUSA Cherie Krigsman [redacted]



Garbage from excavated pit

On December 17, 2010, Kevin Montgomery was sentenced to serve 18 months' incarceration followed by three years' supervised release. Montgomery also will work with the Forest Service to post a public announcement in which he admits to destroying a portion of the Ocala National Forest. He also will pay $200,000 in restitution to the Forest Service.

Montgomery previously pleaded guilty to a one-count information charging him with the destruction and degradation of Forest Service land. Between 2004 and 2007, the defendant lived on property adjacent to Ocala National Forest. He also was the owner of an excavation business. During this three-year period he buried, among other things, refuse and car parts, including car batteries and the frame of an Econoline van, in large holes he dug on Forest Service property using heavy equipment that he employed in his landscaping and excavating business. On several occasions, Montgomery carried out his digging and burying operations at night. After an investigation was initiated in 2007, state investigators took soil samples from the impacted area and found high concentrations of petroleum in the soil on Forest Service land.

In November 2008, the Forest Service conducted an excavation of an area behind the defendant's property, where it was believed large items had been buried. The pit that was excavated measured approximately 82 feet long, 15 feet wide and six to eight feet deep. During the nine-hour excavation, investigators removed a total of over 5,000 pounds of refuse from the pit dug on Forest Service land, which also yielded the discovery of the van.

This case was investigated by the United States Forest Service.

Back to Top

United States v. William Wahsise, et al., 2:09-CR-02034 (E.D. Wash.), ECS Senior Trial Attorney Elinor Colbourn [redacted] ECS Trial Attorney Todd Mikolop [redacted] and AUSAs Stacie Beckerman [redacted] and Timothy Ohms [redacted]

On December 17, 2010, Yakama tribal members Alfred L. Hawk, Jr., and William R. Wahsise were each sentenced to serve six months' confinement followed by one year of supervised release after previously pleading guilty to killing bald eagles and conspiring to take and sell bald and golden eagle parts. Hawk and Wahsise hunted and killed eagles by baiting them with wild horses that were killed to attract the eagles. There have been five defendants prosecuted as the result of an undercover operation in 2008, with wildlife agents seizing a significant number of golden and bald eagle parts.

This case was investigated by the Fish and Wildlife Service with assistance from state, federal, and tribal law enforcement agencies.

Back to Top

United States v. Andrew Costa, No. 2:09-CR-00744 (D. Utah), AUSA Jared Bennett [redacted]

On December 16, 2010, Andrew Costa was sentenced to serve 21 months' incarceration and will pay $70,392 in cleanup costs. Costa previously pleaded guilty to a RCRA violation for storing 67 drums containing liquid and dry hazardous waste.

In May 2005, Costa purchased two semi-truck trailers that contained these drums. At the time of purchase, the two trailers were located in a salvage yard. In or about April or May 2006, the defendant moved them out of the salvage yard and onto the street in front of the yard. In June 2006, a Salt Lake City Parking Enforcement Officer observed a liquid leaking from one of the trailers onto the public street. Hazmat units responded to the scene and confirmed that some of the drums contained hazardous waste. When Costa was notified by authorities he refused to claim the drums.

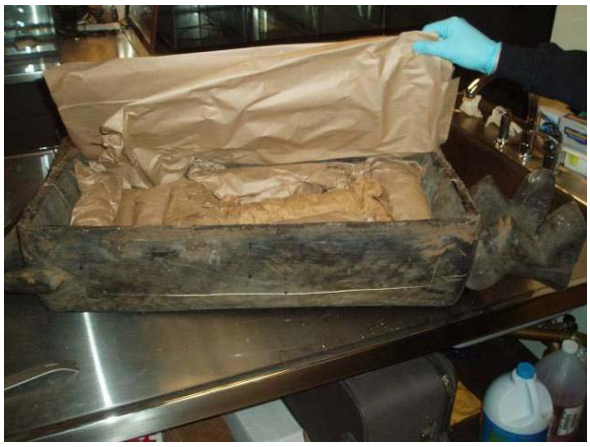
The United States Environmental Protection Agency spent more than $70,000 performing removal and cleanup of the hazardous waste found in the two trailers.

Back to Top

United States v. Tamba Kaba, No. 1:09-CR-00858 (E.D.N.Y.), AUSA Vamshi Reddy [redacted]

On December 15, 2010, Tamba Kaba was sentenced to serve 33 months' incarceration and to pay a $25,000 fine, which will be paid into the Lacey Act Fund. The court further ordered a $73,000 forfeiture judgment.

Kaba was previously convicted by a jury on all counts stemming from his involvement in an illegal elephant ivory smuggling ring. On several occasions in 2007 and 2008, Kaba attempted to smuggle into the U.S. via JFK International Airport pieces of illegal elephant ivory that were concealed inside of African statues imported from Uganda and



Ivory concealed in statue

Nigeria. He was convicted on two smuggling violations and one Lacey Act charge. Elephants are listed on Appendix 1 of the Convention of International Trade in Endangered Species of Wild Flora and Fauna.

This case was investigated by the Fish and Wildlife Service.

Back to Top

United States v. Lawrence Aviation Industries, Inc. et al., No. 2:06-CR-00596 (E.D.N.Y.), AUSA Mark Lesko and AUSA Richard Lunger

On December 14, 2010, Lawrence Aviation Industries, Inc., ("LAI") and its owner and operator, Gerald Cohen, were sentenced. Cohen will serve a year and a day of incarceration followed by three years' supervised release. Cohen and the company are jointly and severally liable for $105,816 in restitution to be paid to the Environmental Protection Agency.

Cohen and LAI pleaded guilty in 2008 to RCRA violations for the storage of more than 12 tons of hazardous waste at the facility. The company began operating in 1959 and manufactured titanium sheets used primarily in the aeronautics industry. Cohen became the sole owner and company operator in 1982. Part of the manufacturing process required the use of large tanks containing corrosive acid and base liquids. At some point in time, LAI converted two of the tanks in the manufacturing operations in order to store liquids and sludge.

An inspection and testing of the tanks' contents in 2003 by state and federal officials confirmed that they contained corrosive hazardous waste that had been stored without a permit.

This case was investigated by the Environmental Protection Agency Criminal Investigation Division and the New York Department of Environmental Conservation.

Back to Top

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

On December 14, 2010, Paul McConnell and Donna McConnell, along with co-defendant James Renshaw, were each sentenced to pay a $2,500 fine and will complete two-year terms of probation. All three defendants will be held jointly and severally liable for restoration costs 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 channelized Clear Creek adjacent to the Clear Creek Property in an effort to prevent flooding during spring runoff. Renshaw performed the stream channelization work with a bulldozer in August 2007 for the McConnells and a neighbor Barton Wilkinson who owned adjacent property. 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. The McConnells and Renshaw previously pleaded guilty to a two-count information charging them with a negligent Clean Water Act violation

and an Endangered Species Act violation. Wilkinson was previously sentenced to pay a $2,000 fine and will complete a two-year term of probation.

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

Back to Top

[redacted]

Back to Top

United States v. Kaua'i Island Utility Cooperative, No. 10-CR-00296 (D. Hawaii), ECS Assistant Chief Elinor Colbourn [redacted] and ECS Trial Attorney Todd Mikolop [redacted]

On December 2, 2010, Kaua'i Island Utility Cooperative (KIUC) pleaded guilty to, and was sentenced for, one Endangered Species Act violation and one Migratory Bird Treaty Act violation. Specifically, KIUC pleaded guilty a violation of the ESA for knowingly "taking" at least 14 Newell's shearwaters, a threatened species, at or near Keÿlia Beach. The Cooperative also pleaded guilty to a violation of the MBTA for the "taking" of at least 18 Newell's shearwaters, also protected as a migratory species, at KIUC's Port Allen facility. The seabird is endemic to Hawaii and found predominantly on the island of Kaua'i.

KIUC was sentenced to the maximum statutory fine of $40,000 and it will complete an 18-month term of probation with the following specific conditions: KIUC has agreed to modify and reconfigure power lines associated with the highest incidences of bird deaths. It also must monitor two stretches of inland power lines to help determine the number of protected birds colliding with those lines. KIUC also is required to apply for an incidental take permit that would authorize the taking of such threatened species under certain conditions and requirements.

The agreement further requires that KIUC make a community service payment of $225,000 to the Save Our Shearwaters program, a federally-established program that KUIC has been supporting since 2003. In its plea KIUC admitted to knowing that the birds will collide with power lines,

sometimes while flying at speeds of up to 50 miles an hour. In other cases the collisions may occur when young birds circle bright lights to which they are attracted, including streetlights operated by KIUC on its power line poles. The birds may also hit other structures or simply fall to the ground out of exhaustion while circling bright lights. If the bird is not killed by the impact of the collision, but falls to the ground, it will likely to be unable to regain flight and may succumb to a predator, be run over by a car, or starve to death.

KIUC had knowledge of a scientific report made public in 1995 that recommended actions to reduce the take of seabirds by utility lines, including modifying the configuration and locations of power lines. According to court documents, KIUC did not undertake any of the recommended line modification/reconfiguration actions except for a limited stretch of power line near Keÿlia Beach after being notified in March 2007 that it was a target of a federal investigation.

This case was investigated by the Fish and Wildlife Service.

Back to Top

United States v Rogelio Lowe, No. 3:09-CR-01013 (N.D. Calif.), AUSA Stacey Geis [redacted]

On December 2, 2010, Rogelio Lowe was sentenced to serve five months' incarceration plus three months' home confinement followed by three years' supervised release. Lowe also will perform 300 hours of community service

Lowe previously pleaded guilty to two counts of mail fraud stemming from his operation of E&D Environmental Safety Training, Inc., a company that offered occupational training for asbestos workers. According to the plea agreement, starting in 2007 and continuing into 2009, Lowe devised a scheme wherein he charged students for asbestos training, but did not train them for the required amount of time and in several instances provided little or no training. By law, any person seeking accreditation as an asbestos worker must complete a 32-hour training program over the course of four days. The course must include lectures, demonstrations, and at least 14 hours of hands-on training, culminating in a closed-book examination.

The classes Lowe provided were no longer than 30 minutes in length. Further, he provided answers to the closed-book examinations and forged tests for students who did not attend the test day. Lowe then issued certificates to students and charged their employers accordingly. The defendant submitted class rosters to the California Division of Industrial Relations, Division of Occupational Safety and Health, (Cal/OSHA) which falsely reflected that these students had successfully completed the training and passed the examination. Cal/OSHA used and relied on these rosters to add the names of students to its list of state-qualified asbestos workers.

This case was investigated by the Federal Bureau of Investigation and the Environmental Protection Agency Criminal Investigative Division, with assistance provided by Cal/OSHA.

Back to Top

United States v. Atlas Ship Management Ltd., No. 8:10-CR-00863 (M.D. Fla.), ECS Trial Attorney Ken Nelson [redacted] and AUSA Jay Hoffer [redacted]

On December 2, 2010, Atlas Ship Management Ltd., (ASM) a Turkish Corporation, pleaded guilty to making false statements and to an APPS violation for failing to accurately maintain an oil record book. The company was sentenced to pay an $800,000 criminal fine, pay $100,000 in community service to the Pinellas County Environmental Fund, and to implement a comprehensive environmental compliance program.

ASM operated the *M/V Avenue Star*, a 10,965 ton, commercial ocean-going bulk cargo carrier. In October 2009, during a Coast Guard inspection at the port of Tampa, two crewmembers provided information indicating that senior engineers on the vessel were illegally dumping oily waste from the engine room directly into the sea. They informed the inspectors that oily waste was being stored in the clean sea water ballast tanks on the vessel, which was confirmed by Coast Guard personnel. Inspectors further confirmed that engineers had installed a bypass hose made to fit between the sludge pump discharge line and the "gooseneck" on the oil water separator discharge line in order to bypass pollution prevention equipment.

The company admitted that, between October 10 and October 21, 2009, engineering officers and other crew members transferred oily bilge wastes into the aft port peak ballast tank. The ballast tanks are used to adjust the stability of the vessel and are filled with clean sea water. They are not intended to be used to store oily waste. Prior to October 21, 2009, while the *Avenue Star* was travelling from Honduras to Tampa, a large quantity of the oily waste was discharged from the ballast tank directly into international waters. None of these discharges were recorded in the ORB.

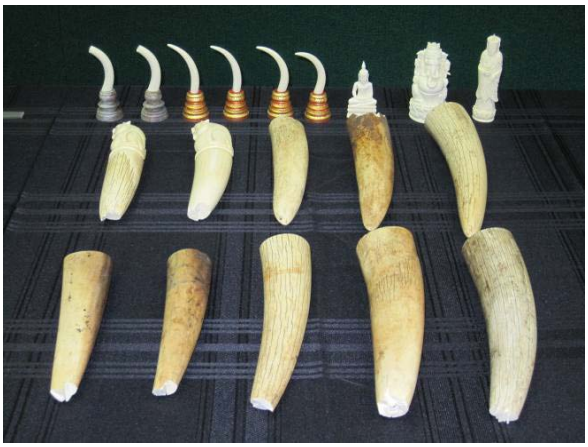
Chief engineer Gunduz Avaz and second assistant engineer Yavuz Molgultay previously pleaded guilty to and were sentenced for their roles in covering up the illegal overboard oil discharges. Two whistleblower crewmembers were each awarded $125,000 of the criminal fine to be paid by the company.

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

Back to Top

United States v. Moun Chau et al., No. 2:10-CR-00048 (C.D. Calif.), AUSA Bayron Gilchrist [redacted]

On November 29, 2010, Moun Chau was sentenced to pay a $3,800 fine and will complete a two-year term of probation after previously pleading guilty to conspiracy to illegally import elephant ivory.



Seized ivory

Chau and Thai national Samart Chokchoyma were charged in a multi-count indictment for their involvement in a scheme to smuggle ivory from endangered African elephants into the United States. They specifically were charged with conspiracy, illegally offering to sell endangered species, illegal importation of wildlife, entry of goods by false statement, and smuggling wildlife.

According to the indictment, Chokchoyma offered ivory for sale on eBay. Between September 2006 and July 2009, the defendants engaged in six separate transactions involving illegal ivory. In one instance, Chau purchased four ivory tusk tips. In another shipment, Chokchoyma allegedly claimed on a customs declaration that the ivory shipment was a "Gift" containing "Toys." Investigators seized dozens of ivory specimens from Chau's business, many of which came from African elephants. Chokchoyma is in Thailand and is being prosecuted there for his actions. The government is waiting for the final results of that proceeding to determine whether it will seek extradition to the United States.

This case was investigated by the Fish and Wildlife Service Office of Law Enforcement, with substantial assistance from the Customs and Border Protection and Immigration and Customs

Enforcement. In addition, the investigation of this case was the first cooperative international law enforcement effort related to wildlife crime between the Fish and Wildlife Service and the Royal Thai Police. The Asia-based Freeland Foundation, a non-governmental conservation organization, was instrumental in bringing together law enforcement authorities from both nations.
Back to Top

United States v. Oceanpro Industries, Ltd d/b/a Profish, Ltd et al., No. 8:09-CR-00634 (D. Md.), Former ECS Senior Trial Attorney Kevin Cassidy, ECS Senior Trial Attorney Wayne Hettenbach [redacted] AUSA Stacy Belf [redacted], and ECS Paralegal Kathryn Loomis [redacted]

On November 24, 2010, Ocean Pro Ltd., d/b/a Profish, one of the District of Columbia's largest seafood wholesalers, as well as its vice-president and its fish buyer, were sentenced for their roles in a conspiracy spanning more than a decade to illegally harvest striped bass from the Potomac River. Timothy Lydon, a co-owner and company officer, was sentenced to serve 21 months in prison and will pay a $60,000 fine. Fish-buyer Benjamin Clough was sentenced to serve 15 months in prison and ordered to pay a $7,500 fine. The company was sentenced to complete a three-year term of probation, pay a $575,000 fine, and pay restitution in the amount of $300,000 (for which both Lydon and Clough are held jointly and severally liable). The defendants' fines will be paid into the Cooperative Endangered Species Conservation Fund, and the restitution will be paid to the Commonwealth of Virginia Marine Resources Commission and the State of Maryland Department of Natural Resources.

Also sentenced was Gordon Jett, the last of seven fishermen who supplied the striped bass that Lydon, Clough, and Profish knew were illegal. Jett was sentenced to serve five months' incarceration followed by five months' home detention and will pay $4,572 in restitution.

Lydon, Clough and Profish were found guilty by a jury after a five-week trial of purchasing illegally harvested striped bass, known locally as rockfish. The rockfish had been illegally harvested from the Potomac River in Virginia and Maryland from 1995 through 2007. All the defendants were convicted of conspiracy and violations of the Lacey Act. Clough also was convicted of making a false statement when he denied to law enforcement of having purchased illegally harvested fish. The evidence at trial proved that Profish and Lydon began buying striped bass from Virginia fishermen fishing on the Potomac River in 1995. Lydon and Profish agreed to buy striped bass that they knew were illegally harvested by seven fishermen between 1995 and 2007. Clough joined Profish in 2001, and he continued to knowingly purchase the illegally harvested striped bass through 2007. In total, the defendants purchased more than 212,700 pounds of striped bass illegally harvested from Maryland and Virginia waters, with a fair market retail value of more than $875,000. Evidence also showed that they altered records regarding their striped bass purchases, and they changed records indicating shellfish harvest date to make it appear that they were harvested more recently than they were. Profish, Lydon and Clough also bought commercially caught striped bass above the applicable size limit during the spawning season and did not have the required tags affixed. This allowed commercial fishermen to catch and sell more striped bass than they were allowed and to catch and sell protected spawning striped bass.

Jett, who, along with a number of other fishermen testified at trial, pleaded guilty to a Lacey Act felony for his role in the scheme. Jett admitted that in 2007 he caught 14,850 pounds of rockfish from the Potomac River in Virginia that were either above size limits designed to protect spawning fish, were untagged, or were falsely tagged. Profish, Lydon and Clough then bought those illegal rockfish.

These sentencings cap a multi-state investigation of illegal commercial striped bass harvesting and sales that began in 2003 in the Chesapeake Bay watershed, and resulted in the conviction of 19

individuals in Maryland, Virginia, and the District of Columbia, in addition to three corporate fish wholesalers. Combined, the individuals have been sentenced to more than 140 months in prison, and total fines and restitution have exceeded $1,361,000.

These prosecutions are the result of an investigation by an interstate task force formed by the Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police, Special Investigative Unit.

Back to Top

United States v. Jim Nguyen et al., Nos. 2:10-CR-00470 - 476 (C.D. Calif.), AUSAs Christine Ewell [redacted] and Joseph Johns [redacted]

On November 15, 2010, Everette Villota was sentenced to pay a $3,800 fine and to complete a two-year term of probation. Thy Tran was sentenced on November 29th to pay a $5,000 fine and to complete a two-year term of probation. The two defendants previously pleaded guilty to a smuggling violation for their involvement in the illegal importation of Asian arowana or "lucky fish" into the United States.

Sam Lam, Jim Nguyen, Andree Gunawan, Tom Ku, Tien Le, Villota, and Tran were charged as the result of a 2005 undercover sting operation in which a Fish and Wildlife agent acted as a middleman working for an exporter in Bogor, Indonesia. Many Southeast Asian cultures believe the Asian arowana, or dragon fish, brings luck and protects their owners from evil spirits. The juvenile fish sell for approximately $1,000 each while the more colorful adults, which grow to up to two-feet long, can sell for upwards of $20,000.

This case was investigated by the Fish and Wildlife Service and the California Department of Fish and Game.

Back to Top

United States v. Prime Airport Services, Inc., No. 1:10-CR-20671 (S.D. Fla.), AUSA Jaime Raich [redacted]

On October 22, 2010, Prime Airport Services, Inc., (PAS) pleaded guilty to violations of the Plant Protection Act and was sentenced to pay a $1,000,000 fine.

Enacted in 2000 in response to the outbreak of citrus canker, the Plant Protection Act requires importers of plants and plant products to follow regulations designed to stem the release of harmful plant pests. This conviction represents the first felony case for a violation of the Plant Protection Act nationwide.

PAS operates as a ground cargo handler at the Miami International Airport. In May 2006, Customs and Border Protection officials detected the pest *coleoptera* on 198 kilograms of imported hydrangeas in the custody of PAS and placed a “hold” on the plants. *Coleoptera* is an order of insects that includes the Colorado potato weevil, the boll weevil, and the bark beetle, which have caused billions of dollars of damage to American agriculture and forests. Despite the hold, the defendant released the pest-laden hydrangeas to their buyer. In December 2006, the company received 685 kilograms of imported asparagus. Two weeks later, inspectors discovered the asparagus next to an open-air dumpster. The boxes and insect-proof mesh holding the asparagus were broken and torn.

This case was investigated by Customs and Border Protection and the Department of Agriculture Animal and Plant Health Investigative Services.

Back to Top