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# ENVIRONMENTAL CRIMES SECTION



## MONTHLY BULLETIN

*June 2010*

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### *EDITOR'S NOTE:*

If you have other significant updates and/or interesting photographs from a case, you may email these to [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:*

- [Wilmina Marine, AS et al. v. United States](#), No. 2:10-CV-00137 (S.D. Tex.).

DISTRICTS	ACTIVE CASES	CASE TYPE/STATUTES
C.D. Calif.	<a href="#"><u>United States v. Andree Gunawan et al.</u></a>	<i>Asian Arowana Fish Sales/ Smuggling</i>
N.D. Calif.	<a href="#"><u>United States v. Mark Guinn</u></a>	<i>Dredging Company/ Conspiracy, CWA</i>
S.D. Calif.	<a href="#"><u>United States v. Atticus Gee</u></a>	<i>Landfill Gas Emissions/ CAA Tampering</i>
M.D. Fla.	<a href="#"><u>United States v. Aksay Denizcilik Ve Ticaret A.S.</u></a>	<i>Vessel/ APPS, False Statement</i>
S.D. Fla.	<a href="#"><u>United States v. Kelvin Soto-Acevedo</u></a>	<i>Spider and Reptile Sales/ Lacey Act</i>
	<a href="#"><u>United States v. Robbie Franklin Smith et al.</u></a>	<i>Queen Conch and Spiny Lobster Import/ Lacey Act</i>
D. Hawaii	<a href="#"><u>United States v. Kauai Island Utility Co</u></a>	<i>Utility Company/ MBTA, ESA</i>
D. Kans.	<a href="#"><u>United States v. James Bobby Butler, Jr., et al.</u></a>	<i>Interstate Deer Sale/ Conspiracy, Lacey Act, Obstruction</i>
D. Md.	<a href="#"><u>United States v. Triantafyllos Marmaras</u></a>	<i>Vessel/ False Statement, Obstruction</i>
E.D.N.C.	<a href="#"><u>United States v. Vaja Sikharulidze</u></a>	<i>Vessel/ APPS</i>
S.D. Ohio	<a href="#"><u>United States v. James Schaffer et al.</u></a>	<i>Interstate Deer Sale/ Lacey Act, Conspiracy</i>
S.D. Tex.	<a href="#"><u>United States v. Fleet Management Limited of Hong Kong et al.</u></a>	<i>Vessel/ APPS, Obstruction, False Statement, Conspiracy</i>

### *Additional Quick Links:*

- ◇ [Significant Environmental Decisions](#) p. 3
- ◇ [Trials](#) pp. 3 - 4
- ◇ [Informations and Indictments](#) pp. 4 - 6
- ◇ [Plea Agreements](#) pp. 6 - 8
- ◇ [Sentencings](#) pp. 8 - 10
- ◇ [Editor's Reminder](#) p. 11

## *Significant Environmental Decisions*

### *District Courts*

#### **Wilmina Marine, AS et al. v. United States, No. 2:10-CV-00137 (S.D. Tex.).**

On May 19, 2010, Judge Janis Jack denied a petition on behalf of Wilmina Marine, AS, in which petitioners attempted to invoke the jurisdiction of a district court to set the terms of an Agreement on Surety that was being negotiated between petitioners and the United States Coast Guard. During an inspection of the *M/V Wilmina*, owned by the petitioners, the Coast Guard discovered evidence that the vessel was engaged in the illegal dumping of oil at sea. The Coast Guard administratively requested that customs departure clearance be withheld until a satisfactory surety agreement was entered. The Coast Guard provided the surety terms it found to be satisfactory to the petitioner, which included posting a bond and providing care and support for crewmember witnesses in the Southern District of Texas until the resolution of this matter. In return the petitioner would gain departure clearance and be able to continue to use the vessel in commerce instead of remaining detained in the United States. The petitioners filed the action challenging the surety terms. After two hearings, the court dismissed the petition for a lack of subject matter jurisdiction as the petitioners had failed to exhaust their administrative remedies. The court further noted that the other jurisdictional grounds that petitioner relied upon, including claims in admiralty, also were unfounded.

[Back to Top](#)

### *Trials*

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



**Barge used to dump dredged spoils**

On May 12, 2010, Mark Guinn, the general manager of the Northern California operations of Brusco Tug & Barge, Inc., was convicted by a jury after a five-day trial of one count of conspiracy to violate the Clean Water Act and one substantive CWA violation.

The jury, after deliberating for a day and a half, found 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. The jury also convicted the defendant of one specific offload of

dredged spoils that occurred on January 7, 2007. He was acquitted of another substantive CWA count, and the jury did not reach a verdict on the remaining CWA violation.

Evidence at trial showed that 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 such 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 the contents of the barge directly into the surrounding waters instead of properly offloading all of the material onto the island. Witnesses testified that the proper 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. At no time did the company or Guinn have a permit to discharge this material into these waters.

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 Investigative Division.

[Back to Top](#)

## ***Informations and Indictments***

**United States v. James Bobby Butler, Jr., et al. No. 6:10-CR-10089 (D. Kans.), ECS Trial Attorney Colin Black [REDACTED] and AUSA Matt Treaster [REDACTED].**

On May 25, 2010, a grand jury returned a 23-count felony indictment charging two brothers with conspiracy and wildlife trafficking stemming from the illegal interstate sale of deer. The indictment charges James Bobby Butler, Jr., with conspiracy to violate the Lacey Act, 18 substantive violations of the Lacey Act, and three counts of obstructing justice. His brother, Marlin Jackson Butler, is charged with conspiracy to violate the Lacey Act and 12 substantive Lacey Act violations.

The indictment alleges that, from 2005 to 2008, James and Marlin Butler conspired to knowingly transport and sell in interstate commerce deer that had been hunted in violation of Kansas state law. Specifically, the brothers are alleged to have operated a guiding service and a hunting camp where they sold guiding services to out-of-state hunters for the purpose of illegally hunting and killing white-tailed deer and mule deer.

According to the indictment, hunters guided by the Butler brothers killed deer in excess of annual bag limits, hunted deer without permits or used permits for the wrong deer management unit,

killed deer using illegal equipment, and hunted using prohibited methods, such as spotlighting. In addition to selling their guiding services, the brothers are further alleged to have arranged for the transportation of the deer or parts of the deer (particularly the antlers) from Kansas to Texas. James Butler is further charged with lying to investigators during the investigation and with instructing others to lie and/or conceal evidence. Individual hunters allegedly paid approximately \$2,500-\$3,500 to hunt using archery equipment and approximately \$5,000 to hunt with a rifle.

This case was investigated by the Fish and Wildlife Service, the Kansas Department of Wildlife and Parks, and the Texas Parks and Wildlife Department.

[Back to Top](#)

**United States v. Kauai Island Utility Cooperative, No. 1:10-CR-00296 (D. Hawaii), ECS Senior Trial Attorney Elinor Colbourn** [REDACTED]

On May 19, 2010, a 19-count indictment was returned charging the Kauai Island Utility Cooperative (KIUC) with nine counts of violating the Endangered Species Act and 10 counts of violating the Migratory Bird Treaty Act.

According to the indictment, Newell's shearwaters, seabirds native only to Hawaii and predominantly to the island of Kauai, are known to 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 also may strike 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 be unable to regain flight and may succumb to a predator, be run over by a car, or starve to death. According to the indictment, more than 30,000 Newell's shearwaters are documented to have been collected from the ground since 1978 and the population of fledgling Newell's shearwaters is estimated to have declined by more than 70 percent just between 1993 and 2008. The species is identified as endangered on the International Union for Conservation of Nature "red list" of endangered species.

The indictment specifies the taking of 53 Newell's shearwaters over a five-year period, as well as the taking, by electrocution, of a Laysan albatross. Previous attempts to bring the company into compliance without enforcement action were fruitless since KUIC failed to follow through on the recommended actions and mitigation plans.

This case was investigated by the Fish and Wildlife Service.

[Back to Top](#)

**United States v. Andree Gunawan et al., Nos. 2:10-CR-00470 - 475 (C.D. Calif.), AUSAs Christine Ewell** [REDACTED] **and Joseph Johns** [REDACTED].

On May 11, 2010, seven people were indicted on charges related to illegally smuggling Asian arowana fish into the United States. The indictments, variously charging Andree Gunawan, Tom Ku, Sam Lam, Everette Villota, Jim Nguyen, Thy Tran, and Tien Le, with Endangered Species Act and smuggling violations stem from 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



**Lucky Fish**

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. Fleet Management Limited of Hong Kong et al., Nos. 6:10-CR-00039, 00051 (S.D. Tex.), ECS Senior Litigation Counsel Howard Stewart**



**Bypass hose**

On April 30, 2010, a shipping company and two employees were charged with obstruction of agency proceedings, making false statements, and failing to keep accurate pollution control records. Fleet Management Limited of Hong Kong is charged with 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*, each are charged with conspiracy. Kumar is further charged with obstruction of a Coast Guard investigation.

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.

According to the indictment, 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, recently 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.

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.

[Back to Top](#)



## *Plea Agreements*

### **United States v. Aksay Denizcilik Ve Ticaret A.S., No. 8:10-CR-00116 (M.D. Fla.), ECS Trial Attorney Ken Nelson [REDACTED] and AUSA Terry Zitek [REDACTED]**

On May 21, 2010, Aksay Denizcilik Ve Ticaret A.S. (“Aksay”), the Turkish operator of the commercial ship *M/T Kerim*, pleaded guilty to an APPS oil record book violation and to a false statement violation. The company was sentenced to pay a \$725,000 fine and will complete a three-year term of probation, during which time it will implement an environmental compliance plan.

Aksay operated the *Kerim* between approximately 2006 and 2009. Based on a tip from crew members, the Coast Guard boarded the vessel in March 2009 at the Port of Tampa. During the inspection, a “magic pipe” used to bypass the ship’s oil pollution prevention equipment was uncovered. Acting on behalf of the company, ship’s officers and crew members constructed and used the pipe to discharge oil-contaminated sludge directly into the ocean. These discharges were not recorded in the vessel’s oil record book.

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

[Back to Top](#)

### **United States v. Triantafyllos Marmaras, No. 1:10-CR-00248 (D. Md.), ECS Senior Trial Attorney Richard Udell [REDACTED] and AUSA Micheal Cunningham [REDACTED]**

On May 19, 2010, Triantafyllos Marmaras pleaded guilty to an information charging him with two counts of obstruction of justice and one count of making a false statement. Marmaras was the chief engineer for the *M/V Iorana*. The Coast Guard inspected the ship on January 8, 2010, after crew members reported that the ship had illegally discharged oily waste overboard through a bypass. Marmaras admitted to his involvement in the bypassing, to falsifying the oil record book, and to instructing witnesses to lie to the inspectors.

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

[Back to Top](#)

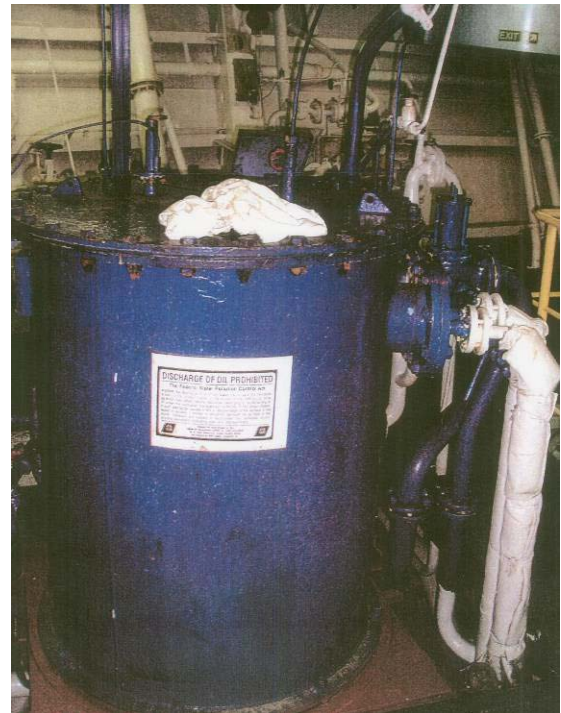
**United States v. Vaja Sikharulidze, No. 4:10-CR-00032 (E.D.N.C.), ECS Trial Attorney Shennie Patel [REDACTED] and AUSA Banu Rangarajan [REDACTED].**

On May 3, 2010, Vaja Sikharulidze, the chief engineer for the *M/T Chem Faros*, pleaded guilty to an APPS violation for his involvement in the illegal overboard discharge of oily bilge waste via a bypass pipe system. The *Chem Faros* is a chemical cargo ship operated by Cooperative Success Maritime SA, a company privately incorporated in Panama and headquartered in Athens, Greece.

On March 29, 2010, a Coast Guard port state control inspection team boarded the ship 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.

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

[Back to Top](#)



Tank with oil discharge warning

**United States v. Kelvin Soto-Acevedo, No. 1:10-CR-20244 (S.D. Fla.), AUSA Tom Watts-FitzGerald [REDACTED]**

On April 28, 2010, Kelvin Soto-Acevedo pleaded guilty to Lacey Act violations for the illegal smuggling of 50 Puerto Rican slider turtles and 25 Puerto Rican brown tarantulas into South Florida from Puerto Rico. The New Wildlife Law of Puerto Rico prohibits the take, possession, transportation, and export of Puerto Rican slider turtles (*Trachemys stejnegeri*) and Puerto Rican brown tarantulas (*Cyrtopholis portoricae*) for use in commercial activities unless a valid permit has been obtained.

In February 2009, Soto-Acevedo received the restricted wildlife through the mail from two Puerto Rican residents after sending them \$275 in payment. The wildlife had a retail value of more than \$8,000 on the mainland. The defendant then sold the animals through his business, *A Touch of Class Reptiles* located in Hialeah, Florida, using various internet sites specializing in reptiles. Neither the defendant nor his Puerto Rico-based suppliers possessed the appropriate permit to engage in these activities.

A sale made to a customer in Nebraska, who subsequently attempted to re-sell the wildlife, led to this investigation by the Fish and Wildlife Service. Sentencing is scheduled for July 19, 2010.

[Back to Top](#)



## *Sentencings*

### **United States v. James Schaffer et al., No. 2:08-CR-00022 (S.D. Ohio), AUSA Mike Marous ( [REDACTED] ) and SAUSA Heather Robinson ( [REDACTED] )**

On May 27, 2010, James Schaffer was sentenced to complete six months' home confinement as a condition of a one-year term of probation. He also will pay \$235,000 and perform 500 hours of community service within the South Carolina park system during the next six months.

Schaffer's company, Graham's Turnout Hunt Company, catered to hunters from states such as South Carolina, Florida, and Georgia. Between August and November 2005, Schaffer conspired with Danny Parrott to transport a total of 54 white tail deer from Ohio to South Carolina without the proper documentation and without proper testing. Through a series of transactions, the defendant and others falsified invoices stating that the deer were being transported to Florida. Schaffer also never obtained the proper state permits to allow the deer to be transported into South Carolina. Without proper testing for diseases, the imported deer could infect the local deer population in South Carolina.

Schaffer previously pleaded guilty to a Lacey Act conspiracy and two Lacey Act violations. A jury convicted Parrott in October of last year on two counts of conspiracy and 12 counts of violating the Lacey Act. Parrott was recently sentenced to serve 21 months' imprisonment followed by six months of home confinement.

Of the \$235,000 Schaffer was ordered to pay, \$100,000 will be used to test the deer for possible disease; \$50,000 will go toward the National Wildlife Trust Fund; \$50,000 will be paid into the Harry Hampton South Carolina Wildlife Trust; and \$35,000 will reimburse the South Carolina Department of Natural Resources for the direct loss of more than 200 deer.

These cases were investigated by the Fish and Wildlife Service, the South Carolina Department of Natural Resources, the Florida Fish and Wildlife Conservation Commission, the Ohio Bureau of Criminal Identification and Investigation, and the Ohio Division of Wildlife.

[Back to Top](#)

### **United States v. Atticus Gee, No. 09-CR-004121 (S.D. Calif.), AUSA Melanie Pierson ( [REDACTED] )**

On May 13, 2010, Atticus Gee was sentenced to complete a two-year term of probation. A fine was not assessed. Gee previously pleaded guilty to tampering with a monitoring method stemming from his preparation of false landfill gas emission reports by copying data he had in his possession without conducting the actual monitoring.

Between October 2004 and May 2007, Gee was employed as a technician by a company under contract with the San Diego County Department of Public Works and was responsible for taking readings of the emissions of landfill gases from several closed landfills within the County of San Diego. When landfills reach their final capacity, they can be capped by covering them with earth and other substances. In order to prevent underground fires, methane extraction vents are installed. The emissions to the air from such methane extraction vents are regulated in San Diego by permits issued by the San Diego County Air Pollution Control District. Those permits place limits on the emissions and require periodic monitoring reports and certifications of compliance to be submitted by the San Diego County Department of Public Works. On September 23, 2005, an underground fire was

discovered at the Palomar Airport Landfill, although no unusual readings had been reported in the monitoring data from the methane extraction wells and migration probes at that location.

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

[Back to Top](#)

**United States v. Robbie Franklin Smith et al., No. 1:08-CR-20644 (S.D. Fla.), AUSA Tom Watts-FitzGerald**



**Forfeited sport fishing vessel**

On May 6, 2010, Robbie Franklin Smith was sentenced to serve a year and a day of incarceration, followed by a three-year term of supervised release. A fine was not assessed due to an inability to pay. Smith, a Bahamian native, previously pleaded guilty to charges stemming from the illegal import of queen conch and spiny lobster from the Bahamas to the United States in violation of the Lacey Act and of Bahamian law.

In December 2005, a vessel operated by a Miami-based seafood dealer, James Hanson, was intercepted by a Coast

Guard patrol vessel. During a boarding and inspection, officers found more than

1,000 pounds of undeclared spiny lobster and approximately 340 pounds of queen conch, which had been supplied to Hanson in the Bahamas by Smith. Hanson's intention was to land the seafood in the United States and market it through Hanson Seafood, Inc., a company that he owned. Between June and December 2005, on approximately a dozen occasions, Hanson purchased spiny lobster and conch from Smith and imported it illegally into the United States. According to court documents, the total fair market value of the trips exceeded \$87,000.


Hanson, who received a lesser sentence for cooperating with the government's investigation, was sentenced to pay a \$75,000 fine, ordered to perform 300 hours of community service, and will complete a three-year term of probation. He further was ordered to relinquish any claim to the proceeds of the seized product, which was valued at \$13,930. His 37.8-foot sport fishing vessel, which was valued at approximately \$750,000, was forfeited and is now being used at the FLETC facility in Glynnco, Georgia.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Law Enforcement; the Fish and Wildlife Service; Immigration and Customs Enforcement; with assistance from the Ministry of Agriculture and Marine Resources, Department of Marine Resources, of the Commonwealth of the Bahamas.

[Back to Top](#)

## **Are you working on Pollution or Wildlife Crimes Cases?**

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in the *Environmental Crimes Monthly Bulletin* by email to:*

  
Elizabeth R. Janes  
Program Specialist  
Environmental Crimes Section  
U.S. Department of Justice

**THANK YOU!**

