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# ENVIRONMENTAL CRIMES



## MONTHLY BULLETIN

*July 2009*

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*EDITOR'S NOTE:*

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin.

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

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## ***ATA GLANCE***

[United States v. Timothy Boisture](#), 536 F.3d 295 (7<sup>th</sup> Cir. 2009).

[United States v. Fleet Management Limited et al.](#), No. 3:08-CR-00160 (N.D. Calif.).

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E.D. Mich.	<a href="#"><u>United States v. Comprehensive Environmental Solutions, Inc. et al.</u></a>	<i>Wastewater Treatment Facility/ CWA, False Statement</i>
W.D.N.Y.	<a href="#"><u>United States v. Keith Gordon-Smith</u></a>	<i>Asbestos Abatements/ CAA, False Statements, Obstruction</i>
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## *Significant Environmental Decisions*

### *Seventh Circuit*

#### **United States v. Timothy Boisture, 536 F.3d 295 (7<sup>th</sup> Cir. 2009).**

On April 20, 2009, the Seventh Circuit upheld a five-year prison sentence imposed on the defendant following his jury conviction for mail fraud. Boisture, a former partner in an environmental clean-up firm, was sentenced to incarceration as well as ordered to pay approximately \$500,000 in restitution stemming from his fraudulent actions during a well-closure project.

Boisture's firm was hired by the Indiana Department of Environmental Management in 1999 to close 51 abandoned and leaking oil and injection wells in southern Indiana. Leakage from the wells had contaminated a pond and a tributary of the Ohio River. Boisture was convicted of mail fraud in connection with (1) fraudulent charges of \$44,824 for nonexistent equipment and services and (2) for obtaining more than \$150,000 in kickbacks from subcontractors, which were disguised as project costs to hide them from Boisture's business partner.

A former Indiana Department of Natural Resources ("DNR") well inspector pleaded guilty to making false statements and bank fraud arising from the same matter, and he testified against Boisture at trial. Boisture appealed his sentence, claiming that the mailings of required pipe plugging forms occurred after the work had been paid for; thus they were in not furtherance of the scheme. The Seventh Circuit held, however, that submitting the forms was necessary for the scheme to avoid detection, which demonstrates the "in furtherance" requirement. The court also held that a mailing is sufficient if it is foreseeable by any of the "schemers." The court held that the mailings in question, between DNR offices in Evansville and Indianapolis, were foreseeable by the DNR inspector.

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## *District Court*

**United States v. Fleet Management Limited et al., No. 3:08-CR-00160 (N.D. Calif.), ECS Senior Trial Attorney Richard Udell [REDACTED] AUSAs Stacey Geis [REDACTED] and Jonathan Schmidt [REDACTED], and SAUSA Christopher Tribolet [REDACTED]**

On June 29, 2009, the Ninth Circuit summarily denied Fleet Management's ("Fleet") petition for a writ of mandamus and emergency stay, which was filed on June 24<sup>th</sup>. The district court previously issued an order denying Fleet's effort to plead open (without a plea agreement) to the CWA and MBTA counts of the second superseding indictment after the grand jury had returned a third superseding indictment. The new indictment alleges a loss amount of \$20 million from the discharge of oil from the *M/V Cosco Busan*, which crashed into the San Francisco Bay Bridge in November 2007. Fleet had argued that fines were limited to \$200,000 for the CWA offense unless a loss amount was alleged in the indictment.

Fleet is scheduled for trial to begin on September 14, 2009.

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## *Informations and Indictments*

**United States v. Keith Gordon-Smith, No. 6:08-CR-06019 (W.D.N.Y.), ECS Senior Trial Attorney Dan Doohar [REDACTED] and AUSA Craig Gestring [REDACTED]**

On June 18, 2009, Keith Gordon-Smith was charged in a 15-count indictment with violations stemming from his alleged involvement in the illegal removal of asbestos from several sites in the Rochester area and for attempting to hide this activity from authorities. Gordon-Smith is specifically charged with 11 Clean Air Act violations, three 18 U.S.C. §1001 false statement violations, and one obstruction violation.

The indictment states that between June 2006 and August 2008, the defendant directed employees of his asbestos abatement company, Gordon-Smith Contracting, Inc., to remove asbestos from schools and a hospital in the Rochester area without ensuring that the asbestos was kept adequately wet or properly disposed. He is further alleged to have taken several steps to hide the abatements from authorities, by, among other things, failing to provide prior notification to EPA before the asbestos was removed from the schools and the hospital, and by giving false statements to an OSHA inspector.

After the defendant is arraigned, and in accordance with the Crimes Victims Rights Act, public notices will be published in the *Rochester Democrat and Chronicle* to notify potential victims who may have been exposed to asbestos at any of the abatement sites. The notice will include information directing potential victims to a website as well as to a contact phone number established by the U.S. Attorney's Office.

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

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**United States v. ExxonMobile Corporation, No. 09-CR-10073 (D. Kans.), ECS Senior Trial Attorney Robert Anderson [REDACTED] and AUSA Matthew Treaster [REDACTED]**

On June 18, 2009, ExxonMobile Corporation was charged in a one-count information with an MBTA violation for the killing of at least seven migratory birds plus three owls after they came into contact with open tanks containing oil at facilities in three separate counties in southwest Kansas.

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

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**United States v. Edward Wyman, No. 09-CR-00577 (C.D. Calif.), AUSA Joseph Johns [REDACTED]**

On June 16, 2009, Edward Wyman was charged with a RCRA violation, including a knowing endangerment allegation for storing toxic waste solvents, corroded ammunition, and lead-contaminated shooting range wastes in his back yard without a permit. The collection of hazardous wastes was discovered on June 1, 2009, by local firefighters who responded to a report of a fire and explosions at the Wyman residence. The indictment charges Wyman with knowingly placing another person in imminent danger of death or serious bodily injury by his illegal storage conduct.

This case was investigated by the United States Environmental Protection Agency and the Federal Bureau of Investigation.

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**United States v. David Place, No. 1:09-CR-10152 (D. Mass.), ECS Senior Trial Attorney Cathy Pisaturo ([REDACTED])**

On May 13, 2009, David Place was charged with crimes related to the illegal importation of and illegal trafficking in sperm whale teeth. The indictment, unsealed at the time of his arrest, charges Place with multiple counts of conspiracy and Lacey Act violations for buying and illegally importing sperm whale teeth into the United States, as well as for selling the teeth after their illegal importation.

From 2001 to 2004, Place is alleged to have knowingly purchased and imported sperm whale teeth into the United States without the required documentation and without declaring this merchandise to customs and wildlife inspectors. Sperm whales are classified as "endangered" under the Endangered Species Act, and are listed on CITES Appendix I.

The indictment further alleges that Place conspired with others located in Ukraine to illegally import the protected whale teeth for re-sale in the United States. The defendant is the owner of Manor House Antiques Cooperative in Nantucket. Sperm whale teeth are commonly used for scrimshaw, often sold for large sums of money to collectors and tourists.

This case was investigated by the National Oceanic and Atmospheric Administration, Office of Law Enforcement; the Fish and Wildlife Service, Office of Law Enforcement; and Immigration and Customs Enforcement.

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**United States v. Sony Dong et al., No. 2:09-CR-00439 (C.D. Calif.), AUSA Mark Williams ( [REDACTED]****Hidden birds**

On May 5, 2009, Sony Dong was charged with smuggling songbirds into the United States by hiding more than a dozen of them in an elaborate, custom-tailored pair of leggings during a flight from Vietnam to Los Angeles. Dong was arrested at Los Angeles International Airport in March after an inspector spotted bird feathers and droppings on his socks and tail feathers peeking out from under his pants.

Authorities later linked Dong to co-defendant Duc Le, who was arrested and charged after investigators searched his home and found 51 songbirds in an outdoor aviary. Both are charged with conspiracy, false statement and smuggling violations in an eight-count indictment.

Fish and Wildlife inspectors flagged Dong for inspection because he had abandoned a suitcase containing 18 birds at the Los Angeles airport in December of last year. Five of the birds died in transit. Dong went back to Vietnam in February to pick up more birds and returned a month later with three red-whiskered bul-buls, four magpie robins and six shama thrushes under his pants. The birds are now in quarantine and the bul-buls are listed as an injurious species, which means they pose a threat to people, native wildlife or the ecosystem and, additionally, could be avian flu carriers. The songbirds sell for \$10 to \$30 in Vietnam and are sold to collectors in the United States for about \$400.

The defendants are scheduled for trial to begin on October 27, 2009. This case was investigated by the United States Fish and Wildlife Service.

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## *Pleas*

**United States v. Carlos Seafood, Inc., et al., No. 1:07-CR-20898 (S.D. Fla.), AUSA Norman O. Hemming III ( [REDACTED]**

On June 17, 2009, Carlos Seafood, Inc., pleaded guilty to an FDA misdemeanor violation of introducing misbranded seafood into intrastate commerce. The company was sentenced at the time of plea to pay a \$1,000 fine.

In February 2001, Carlos Seafood imported approximately 6,240 pounds of frozen fish filets from Nicaragua of the species *Centropomus undecimalis*, also known as snook. When the boxes entered the United States they were labeled as containing Golden Sea Bass and/or Sea Bass. These are not approved market names for this species.

Carlos Seafood was one of four defendants named in a multi-count indictment filed in November 2007 involving a scheme to falsely label and import snook exported from Nicaragua into this country.

This case was investigated by the National Oceanic and Atmospheric Administration, the United States Department of State Diplomatic Security Services, the United States Food and Drug Administration, United States Immigration and Customs Enforcement, and the State of Florida Fish and Wildlife Conservation Commission. Nicaraguan law enforcement authorities and the Nicaraguan Attorney General provided substantial assistance in this case.

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**United States v. John Evans, No. 8:09-CR-00203 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach [REDACTED] and AUSA Stacy Belf [REDACTED]**

On June 16, 2009, commercial fisherman John Evans pleaded guilty to a felony Lacey Act violation for false labeling of striped bass.

Between October 2003 and November 2007, Evans, with the assistance of a Maryland-designated fish check-in station employee, falsely recorded the amount of striped bass that he harvested. Within each year, he failed to record some of the striped bass that was caught or recorded a lower weight of striped bass than was actually caught. Evans and the check-in station operator also would falsely inflate the actual number of fish harvested. By under-reporting the weight of fish harvested and over-reporting the number of fish taken, the records would make it appear that the defendants had failed to reach the maximum poundage quota for the year, but had nonetheless run out of tags. As a result, the state would issue additional tags that could be used by the defendant allowing him to catch striped bass above his maximum poundage quota amount. The fair market retail value of this fish was \$23,400. Sentencing is scheduled for September 2, 2009.

This investigation was conducted by an interstate task force formed by the United States Fish and Wildlife Service, the Maryland Natural Resources Police, and the Virginia Marine Police Special Investigative Unit.

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**United States v. Mark Harrison et al., No. 1:09-CR-00278 (M.D. Ga.), ECS Senior Trial Attorney Elinor Colbourn [REDACTED] and AUSA Mary Roemer [REDACTED]**

On June 12, 2009, Mark Harrison and Harrison International LLC, pleaded guilty to charges stemming from the illegal purchase and export of shark fins. Harrison and the company both pleaded guilty to one Lacey Act trafficking violation for receiving shark fins that had not been properly reported. Harrison also pleaded guilty to an additional Lacey Act violation for attempting to export shark fins from species that are prohibited from harvest under Florida state law and to a Food and Drug Act violation for introducing food into interstate commerce that had been prepared, packed, or held under unsanitary conditions. Shark fins are used to make shark fin soup which is considered to be an Asian delicacy.

According to the indictment, Harrison described himself as the nation's largest shark fin buyer, purchasing "millions" of shark fins since approximately 1989. In February 2005, Harrison purchased shark fins in Florida from an individual fisherman and later resold them in interstate commerce. No report of the landing or sale of those fins was filed with any Florida authorities, as required by law. Accurate reporting statistics of shark harvests are crucial for managing and regulating the populations of the various shark species that inhabit U.S. waters. In August 2007, Harrison attempted to export a shipment of shark fins through Atlanta that included at least 211 fins from Caribbean sharp-nosed sharks, two fins from bignose sharks, and two fins from night sharks, all of which are protected by Florida and/or federal laws due to their low population levels.

Over an approximately four-year period, Harrison processed the fins by drying them on open air racks and/or tarpaulins laid on the ground of his property. The fins were left out at all times until dry and were exposed to bird droppings and insects, with dogs running freely among the drying racks. Harrison subsequently sold and shipped the dried fins in interstate commerce.

Since 1993, the National Oceanic and Atmospheric Administration (“NOAA”) Fisheries Service has managed, through federal fishery management plans, the commercial harvest and sale of sharks in or from federal waters of the Atlantic Ocean, Gulf of Mexico and Caribbean Sea. In 1998, the United Nations’ Food and Agriculture Organization finalized and adopted an “International Plan of Action for the Conservation and Management of Sharks,” recognizing the worldwide pressure being placed on declining shark populations by commercial fishing and the demand for shark fin soup. In the U.S. management of sharks has included prohibitions against keeping and/or selling particular species, some of which have suffered such a severe population decline that further harvesting cannot be sustained. There are currently 19 federally protected species of sharks.

The defendants are scheduled to be sentenced on August 19, 2009. This case was investigated by the NOAA Office for Law Enforcement, the United States Fish and Wildlife Service Office of Law Enforcement, and the Food and Drug Administration Office of Criminal Investigations.

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**United States v. Golden Eye Seafood et al., No. 8:09-CR-00204 (D. Md.), ECS Senior Trial Attorney Wayne Hettenbach [REDACTED] AUSA Stacy Belf [REDACTED] AUSA Christen Sproule [REDACTED] and ECS Paralegal Stephen Foster [REDACTED]**

On June 11, 2009, fish wholesaler Golden Eye Seafood, LLC, (“Golden Eye”) and its owner Robert Lumpkin pleaded guilty to Lacey Act violations for their operation of a check-in station that assisted a number of fishermen in a widespread striped bass poaching scheme. Specifically, Golden Eye pleaded guilty to a Lacey Act conspiracy and two Lacey Act false labeling violations. Lumpkin pleaded guilty to a Lacey Act conspiracy and three Lacey Act false labeling and trafficking violations.

In addition to operating the check-in station, Golden Eye and Lumpkin also purchased from an undercover agent fish that were outside the legal size limit and sold those fish to purchasers in New York, Virginia, and California. They further conspired to falsely record and verify lower weights and higher numbers of the commercially harvested rockfish than actually were being caught. By increasing the number of fish allegedly checked-in and decreasing the weight, the defendants made it appear as if they and other Maryland fisherman were using more tags and catching lower weights of fish. They in turn would request more tags as it appeared they had not reached their poundage quota.

These cases were investigated and developed by the Interstate Watershed Task Force, formed by the United States Fish and Wildlife Service, and comprised of agents from the Maryland Natural Resources Police and the Virginia Marine Police, Special Investigative Unit.

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## Sentencings

**United States v. Comprehensive Environmental Solutions, Inc. et al., Nos. 07-CR-20030 and 20037 (E.D. Mich.), ECS Senior Counsel James Morgulec [REDACTED], AUSA Mark Chutkow [REDACTED] and SAUSA Dave Mucha [REDACTED].**

On June 22, 2009, Comprehensive Environmental Solutions, Inc. (“CESI”), was sentenced to pay \$750,000, which included a \$600,000 fine. The remaining \$150,000 will be paid as a community service payment to the International Wildlife Reserve Alliance, a Michigan non-profit that works with the United States Fish and Wildlife Service in an effort to restore the environment and wildlife habitat along the Detroit River. The company will complete a five-year term of probation that will include cleanup of the remaining waste at the facility as well as the implementation of an environmental compliance program.



CESI pleaded guilty in September 2008 to **Above ground tanks** violating the Clean Water Act and to making false statements in connection with illegal discharges of untreated liquid wastes from its facility. Defendants Bryan Mallindine, Charles Long, and Michael Panyard previously were sentenced in March and April 2009, after being convicted at trial.

In 2002, CESI took over ownership and operations at a plant that had a permit to treat liquid waste brought to the facility through a variety of processes and then discharge the resulting pre-treated waste to the Detroit sanitary sewer system. The facility contained 12 large above-ground tanks capable of storing more than 10 million gallons of liquid industrial wastes. Although the plant’s storage tanks were at or near capacity, the defendants continued to accept millions of gallons of liquid wastes which the plant could not adequately treat or store. In order to create storage space at the facility for additional wastes, the defendants often bypassed treatment processes and discharged untreated wastes directly to the sewer. Employees also made false statements, and engaged in other surreptitious activities in order to conceal their misconduct.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division and the Federal Bureau of Investigation, with assistance from the United States Coast Guard and the Michigan Department of Environmental Quality Office of Criminal Investigations.

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**United States v. Gregory Wagner, No. 1:08-CR-20913 (S.D. Fla.), AUSA Tom Watts-FitzGerald [REDACTED]**

On June 18, 2009, Gregory Wagner was sentenced to complete a five-year term of probation, to include a one-year period of home confinement, and will perform 250 hours of community service. The defendant previously pleaded guilty to misprision of a felony.

Wagner was a career employee of the U.S. Army Corps of Engineers (“Corps”), assigned to the Jacksonville Area Engineer's Office. He was a Construction Representative and Construction

Inspection Technician administering contracts in South Florida awarded by the Corps. His duties involved direct supervision and oversight of Corps projects related to the Comprehensive Everglades Restoration Program ("CERP"), which is the multi-agency effort to restore and revitalize the Everglades.

As part of its participation in the CERP restoration effort, the Corps was involved in the acquisition of lands bordering Everglades National Park for conversion from their present uses, including farmland, into restored wetlands and flow-ways.

In June 2008, Wagner was observed on video tape accepting an \$11,000 bribe in exchange for allowing private parties to farm on property acquired by the Corps. The payment represented only a portion of the completed deal, which involved 149 acres of land, for which Wagner was to receive \$200 per acre in bribe money, and a percentage of the profit once the crops were harvested.

This case was investigated by the United States Environmental Protection Agency Criminal Investigation Division, the Department of Defense Criminal Investigative Service, the Department of the Army Criminal Investigation Command, Immigration and Customs Enforcement, the Miami-Dade Police Department Environmental Investigations Unit, and the Army Corps of Engineers, Jacksonville Area Engineer's Office.

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### **United States v. Timothy Allen, No. 3:08-CR-05853 (W.D. Wash.), AUSA Jim Oesterle**



#### **Egg shells from fallen nest**

In fact, immediately after the initial interview, he drove two hours to meet with the logger who had removed the tree, to discuss the story they would tell investigators.

Allen's sentence reflects the fact that, as a forestry consultant, he was well aware of state and federal law requiring special protections for eagle nesting sites. It also reflects the effort he made to remove the tree (and the nest) to avoid imposition of a Bald Eagle Management Plan and the associated use restrictions. State management for bald eagle nests requires a permit for activity occurring within 800 feet of a nest in forest land and within 250 feet of shoreline if also within a half mile of a nest.

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

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On June 16, 2009, Timothy Allen was sentenced to serve two months' incarceration, followed by four months' home detention and one year of supervised release in connection with the taking of a bald eagle nest in violation of the Bald and Golden Eagle Protection Act.

Allen is the owner of Allen's Forestry Services, a timber management company. In early 2004, while preparing a client's property in Clallam County for development, the defendant discovered an eagle nest in a tree, for which he paid a subcontractor \$500 to cut the tree down. When later interviewed by law enforcement Allen repeatedly denied any involvement in the

**United States v. Tyson Foods, Inc., No. 4:09-mj-04001 (W.D. Ark.), ECS Assistant Chief Deborah Harris [REDACTED] AUSA Katrina Spencer [REDACTED] and ECS Paralegal Stephen Foster [REDACTED]**

On June 12, 2009, Tyson Foods, Inc., was sentenced to pay the maximum fine of \$500,000 after pleading guilty earlier this year to a willful OSHA violation, which resulted in the death of an employee.

Tyson operated several plants that recycled poultry products into protein and fats for the animal food industry. As part of the rendering process in four of the plants, the company used high-pressure steam processors called hydrolyzers to convert the poultry feather into feather meal. Decomposition of biological material such as poultry feathers produces hydrogen sulfide gas, an acute-acting toxic substance. Employees at the Tyson facilities often were exposed to the toxic gas when working on or near the hydrolyzers, which required frequent adjustment and replacement.

This case arose out of the death of Jason Kelley, who was exposed to this gas while repairing a leak from a hydrolyzer in October 2003. Kelley was employed at the River Valley Animal Foods plant located in Texarkana, Arkansas. Another employee and two emergency responders were hospitalized due to exposure to the gas during the rescue attempt, and two employees were treated at the scene.

Although well aware of the presence of this deadly gas, Tyson Foods did not take sufficient steps to implement controls or protective equipment to reduce worker exposure to this gas nor did it provide effective training to employees despite an *identical* exposure that resulted in hydrogen sulfide poisoning of a Texarkana employee in March 2002.

This case was investigated by the United States Occupational Safety and Health Administration.

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**United States v. Robert Hammer et al., No. 4:08-CR-10079 (S.D. Fla.), AUSA Tom Watts-FitzGerald [REDACTED]**

On June 11, 2009, two additional defendants were sentenced in this case involving a multi-defendant illegal lobster harvesting conspiracy. Robert Hammer was sentenced to serve two months' imprisonment followed by two years' supervised release. Sean Reyngoudt was sentenced to complete a four-year term of probation. On June 1<sup>st</sup>, Michael Delph was sentenced to serve ten months' imprisonment followed by two years' supervised release. A total of six defendants were either convicted at trial or pleaded guilty to conspiracy to harvest spiny lobsters from artificial habitat placed in the Florida Keys National Marine Sanctuary.



**Frozen lobster tails**

As part of the effort to preserve the marine environment, Sanctuary regulations prohibit placing any structure or material on the seabed. In addition, Florida Administrative Code specifically prohibits the harvest of any spiny lobster from artificial habitat. Lobster traps, such as those used by the defendants, fall within the category of artificial habitats. Other regulations prohibit any person from commercially harvesting, attempting to harvest, or having in their possession, regardless of where taken, any spiny lobster during the closed season.

In July 2008, investigators apprehended the defendants as they traveled on a boat within the Sanctuary, having harvested out of season approximately 140 pounds of spiny lobster tails. The lobster tails were subsequently placed in a freezer at a lower Keys residence, which already held about 650 pounds of previously harvested and frozen tails. Officers returned to the sites within the Sanctuary and found artificial habitats plus freshly wrung spiny lobster heads.

This case was investigated by the National Oceanic and Atmospheric Administration Office for Enforcement, the United States Fish and Wildlife Service, the Florida Fish and Wildlife Conservation Commission, and the Damage Assessment and Resource Protection Office of the National Marine Sanctuary Program.

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**United States v. Jesse Barresse, No. 8:08-CR-00304 (M.D. Fla.), AUSA Cherie Kringsman (**

On June 6, 2009, Jesse Barresse was sentenced to serve six months' incarceration and was further ordered to pay \$500 in restitution to the North American Wetlands Conservation Account. This fund supports projects that protect or restore wetlands as well as the protection of migratory birds that inhabit wetlands.

Barresse pleaded guilty to an indictment charging one violation of the Bald and Golden Eagle Protection Act. Barresse admitted to knowingly shooting a bald eagle while he was illegally duck hunting in Ruskin, Florida, on January 13, 2008. He bragged about the killing to several individuals. During a subsequent interview with federal agents, he initially claimed that he thought he had shot an osprey, which is another federally protected species



**Bald eagle carcass**

This case was investigated by the United States Fish and Wildlife Service, with assistance from the Florida Fish and Wildlife Conservation Commission; the United States Marshal's Service; the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives; and the Hillsborough County Sheriff's Department.

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**United States v. Nicholas Slogick, et al., Nos. 5:08-CR-00299 and 00313 (E.D.N.C.), AUSA Jason Cowley**

On June 4, 2009, Nicholas Slogick was sentenced to serve three years' probation and will complete 50 hours of community service, stemming from his involvement in falsifying drinking water test data.

Co-defendant Daniel Smith, the public works director for Mocksville, North Carolina, was previously sentenced to serve one year and one day of incarceration and ordered to pay \$56,625 in restitution to the Town of Mocksville.

Smith previously pleaded guilty to violating the Safe Drinking Water Act and the Clean Water Act. As the town's public works director, Smith oversaw the town's public drinking water system and was required to submit information about the water's turbidity to the North Carolina Department of Environment and Natural Resources ("DENR"). Smith admitted to knowingly directing employees to

send false data that understated drinking water turbidity. Slogick, the official in charge of the town's POTW, previously pleaded guilty to an 18 U.S.C. §1001 violation for knowingly submitting false data about the turbidity levels of drinking water samples provided to the DENR.

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

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**United States v. James L. Stovall, III., et al., No. 1:08-CR-00032 (M.D. Ga.), AUSA K. Alan Dasher**

On June 2, 2009, James L. Stovall, III, and Guy S. Stovall were sentenced for their involvement in a scheme to obtain fish imported contrary to state law and to import mislabeled Vietnamese catfish. Both were sentenced to serve 60 days' incarceration followed by 60 days of home confinement as a condition of a five-year term of probation. They also each will pay a \$7,500 fine. James Stovall pleaded guilty to two felony Lacey Act false labeling violations based upon his falsely labeling and identifying imported Vietnamese catfish as grouper. Guy Stovall pleaded guilty to a Lacey Act conspiracy. Co-defendants Jeffrey Canon, Robbie Jenkins, James Nations, Jr., Gary Brown, and Eric Woods were sentenced previously.

James and Guy Stovall own and operate Road Runner Seafood, Inc., a retail and wholesale seafood business in Georgia. Brown and Jenkins owned and operated seafood businesses in Florida, and Nations, Cannon, and Woods were engaged in commercial fishing in the Gulf of Mexico. Between April 2004 and August 2006, Road Runner made 106 purchases of fish from Nations, Cannon, Brown, Woods, Jenkins and other sellers. These purchases included fish known to have been taken and sold in violation of Florida laws and regulations. Frequent violations included harvesting and selling fish such as red snapper, grouper and speckled trout during closed seasons, and harvesting and selling fish without the required state licenses. Upon each purchase, Guy Stovall would either fail to submit required records to the state of Florida or would submit false records that listed a different species of fish from the actual species that had been illegally sold.

Road Runner also purchased relatively inexpensive imported catfish fillets commonly known as swai, sutchi or sutchi catfish (the scientific name being *pangasius hypthalmus*). James Stovall falsely invoiced the fillets, however, as a different species of fish, primarily grouper. When a search warrant was executed at Road Runner's business, agents discovered what they suspected to be sutchi catfish for sale in the retail section of the business. The fish was advertised for sale as "imported grouper" and "imported grouper *pengoseous*." Samples of the fish were tested at a laboratory and identified as sutchi catfish (*pangasius hypthalmus*).

Nations, Cannon and Brown each pleaded guilty to a felony Lacey Act conspiracy violation. Nations was sentenced to serve 90 days' incarceration followed by 90 days of home confinement, and two years' supervised release. He also must pay a \$2,000 fine. Cannon and Brown each were sentenced to complete two-year terms of probation; Cannon was further ordered to pay a \$1,000 fine and Brown was ordered to pay a \$5,000 fine. Woods and Jenkins each pleaded guilty to a misdemeanor Lacey Act violation and were sentenced to pay fines of \$650 and \$1,000, respectively.

This case was investigated by the National Oceanic and Atmospheric Administration and the Florida Fish and Wildlife Commission.

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**United States v. Joel Udell et al., No. 2:05-CR-00402 (E.D. Pa.), SAUSA Martin Harrell ( [REDACTED] ) and AUSA Joseph Minni ( [REDACTED] )**

On June 1, 2009, after a contentious four-hour hearing about his ability to pay the outstanding \$1.1 million balance due, Joel Udell was ordered to pay \$450,000 in overdue restitution within ten days and then begin paying \$10,000 a month.

Udell and two defunct companies he controlled, Pyramid Chemical Sales

Co. and Nittany Warehouse LP, were sentenced in February 2006 to pay

approximately \$1.8 million in restitution and \$200,000 in fines in connection with the mishandling of hazardous wastes in Pottstown, Pa., and in Rotterdam, the Netherlands, between 1998 and 2000. The defendants pleaded guilty to storing hazardous waste without a permit in Pottstown from May 1998 to early 2001, exporting hazardous waste outside the United States without consent of the receiving country on various dates in 2000, and transporting hazardous waste without manifests to unpermitted facilities in 2000.

This case developed out of the defendant's operation of a surplus chemical brokerage business in Pennsylvania. Beginning in May, 1998, Pottstown authorities attempted to get Udell to repair the Nittany Warehouse and to improve the storage of thousands of containers of chemicals, including flammable, corrosive and toxic material stored in deteriorated or broken drums and buckets. Pottstown ultimately sued Udell and Nittany Warehouse in state court in 1999, obtained a state court order in April, 2000, and EPA forced the defendants to perform a Superfund clean-up from July of 2000 to early 2001. During that period, the defendants shipped 29 forty-foot containers of aging chemicals to Rotterdam. The containers stayed at the port for three years when the Dutch refused to permit them to be reshipped because of their poor condition, and the defendants refused to have them repackaged and returned to the United States. Udell also ignored an EPA RCRA administrative order issued in 2003 directing him to return the chemicals to the U.S. The restitution imposed as part of the sentences covers the port operator's costs for storing the chemicals for three years, the Dutch government's costs in incinerating almost 300 tons of chemicals at the end of 2003, and EPA's costs in overseeing the warehouse clean up in Pottstown.

Udell paid \$350,000 shortly after sentencing, and another \$250,000 in April, 2007. He failed to make his 2008 payment in March, informing the court he could not afford to do so. He had been paying \$5,000 monthly since then, pending a financial investigation, for a total outlay of \$655,000. Udell, an accountant and a former attorney, testified on his own behalf asking the court to change the amount of restitution that he still owes (which the court has no authority to do), and then asked the court to change the payment schedule based on a material change in his financial condition from the economic downturn.

Pursuant to the Crime Victims' Rights Act, additional testimony was heard from representatives of the Kingdom of the Netherlands (the victim owed the most money) and the company that operates the port of Rotterdam, one of the largest ports in the world. They urged the court to ensure payment of the full restitution amount in a timely manner.



**Abandoned containers**

The judge urged the parties to work to reach an agreement, but that failed. The court then rejected Udell's claim that his major asset, a profit-sharing plan he had failed to disclose in 2005 during his sentencing investigation, should not be liquidated in part. While the value of the stock investments in the plan has dropped substantially to around \$950,000, the judge found it was proper to force Udell to make catch up payments. He acknowledged the reduced assets, decreasing the post-hearing annual payments from \$250,000 to \$120,000, but required that they be paid monthly. Udell also will pay taxes on money withdrawn from this asset.

After Udell's attorney protested the court's ruling, the judge stated that the agreement Udell made in 2006 to pay restitution also kept him out of prison and that he had to pay what he agreed to pay. The Dutch representatives were satisfied with the result. This case was investigated by the United States Environmental Protection Agency's Criminal Investigation Division, with assistance from EPA's National Enforcement Investigations Center, the Netherlands Ministry of the Environment, and the Borough of Pottstown. Assistance was also provided by the United States Department of Homeland Security Bureau of Immigration and Customs Enforcement.

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**United States v. Anna Goyda, No. 08-CR-00364 (D. Ore.), AUSA Stacie Beckerman** [REDACTED]

On May 11, 2009, Anna Goyda was sentenced to complete a two-year term of probation and must perform 250 hours of community service for illegally importing three leopard skins from Africa. Goyda was further ordered to contribute \$500 to a fund administered by the Oregon Zoo to support projects that help endangered and threatened species. She previously pleaded guilty to a misdemeanor violation of the Endangered Species Act.

The case came to light in May 2007, when a package containing three pelts was addressed to Goyda from the Democratic Republic of Congo. The shipping label listed the contents as works of art. The package, however, was mistakenly delivered to the Heineken Brewery in The Netherlands. Upon opening the package, brewery employees contacted U.S. authorities. The package containing Heineken bottle caps was delivered to the defendant's Goyda's apartment. When the shipping company received a complaint, federal investigators began investigating Goyda.

In July 2007, Fish and Wildlife Service agents posed as delivery drivers and brought the skins to Goyda's apartment, where her sister accepted them. Goyda, a Ukrainian national, was arrested shortly afterward and admitted she had arranged delivery of the pelts.

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

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