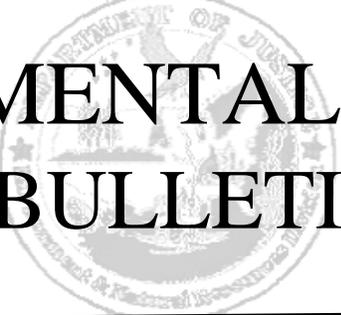

ENVIRONMENTAL CRIMES MONTHLY BULLETIN



February 2007

EDITORS' NOTE:

Please continue to submit information on relevant case developments in federal prosecutions for inclusion in the Bulletin. If you have a significant photograph from the case, you may email it, along with your information, to Elizabeth Janes at [REDACTED]. Material may be faxed to Elizabeth at (202) 305-0396. If you have information to submit on state-level cases, please send this to the Regional Environmental Enforcement Associations' website at <http://www.regionalassociations.org>.

You may quickly navigate through this document using electronic links for the *Active Cases* and *Quick Links*.

AT A GLANCE

Significant Opinions

- [National Ass'n of Home Builders v. U.S. Army Corps of Engineers, ___ F. Supp. 2d ___ 2007 WL 259944 \(D.D.C. Jan. 30, 2007\)](#)

Districts	Active Cases	Case Type / Statutes
C.D. Calif.	<u>United States v. Hisayoshi Kajima</u>	<i>Butterfly Smuggling/ Endangered Species Act</i>
D. Idaho	[REDACTED] <u>United States v. Gary Lehnherr</u>	[REDACTED] <i>Mule Deer Hunting/ Lacey Act</i>
S.D. Fla.	<u>United States v. William Wessinger, Jr.</u>	<i>White-Tail Deer Poaching/ Lacey Act</i>
[REDACTED]	[REDACTED]	[REDACTED]
D. Md.	<u>United States v. Pacific-Gulf Marine</u>	<i>Vessel/ APPS</i>
[REDACTED]	[REDACTED]	[REDACTED]
E.D. Pa.	<u>United States v. Kim Johnson</u>	<i>Smuggling African Artifacts/ Endangered Species Act</i>
E.D. Tex.	<u>United States v. Overseas Shipholding Group</u>	<i>Multi-District Vessel/ Conspiracy, APPS, Obstruction, False Statement, CWA</i>
W.D. Va.	<u>United States v. Brett Boyce</u>	<i>Elk Hunting/ Lacey Act</i>
W. D. Wash.	<u>United States v. Irika Maritime SA</u>	<i>Vessel/ APPS</i>
[REDACTED]	[REDACTED]	[REDACTED]

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Significant Opinions

District Court

National Ass'n of Home Builders v. U.S. Army Corps of Engineers, __ F. Supp. 2d __ 2007 WL 259944 (D.D.C. Jan. 30, 2007)

This decision invalidated the so-called “Tulloch II” rule, jointly issued by the Army Corps of Engineers and the EPA in 2001, governing when the use of “mechanized earth-moving equipment” results in the discharge of “dredged or fill material” and is thus subject to the permit regime administered by the Corps.

The District Court’s decision is the latest setback for the Corps and EPA in a longstanding legal dispute about what constitutes the discharge of dredged material. When the Corps expanded the definition of discharge of dredged material (with the “Tulloch I” rule) in 1993, industry trade associations successfully challenged the expanded definition. *See American Mining Cong. V. U.S. Army Corps of Engineers*, 951 F. Supp. 267 (D.D.C. 1997), *aff’d by National Mining Ass’n v. U.S. Army Corps of Engineers*, 145 F.3d 1399 (D.C. Cir. 1998). The Corps and EPA responded with the Tulloch II rule in January 2001, stating that earth-moving activity in the waters of the United States would be regarded as resulting in a discharge of dredged material unless project-specific evidence showed that the activity resulted only in “incidental fallback.” Incidental fallback was defined as “the redeposit of small volumes of dredged material that is incidental to excavation activity in waters of the United States when such material falls back to substantially the same place as the initial removal.” In the latest ruling the District Court concluded that the Tulloch II rule was inconsistent with the earlier decisions invalidating Tulloch I, because Tulloch II improperly required that the volume of incidental fallback be small and failed to address the amount of time that dredged material is held before it is dropped back into the water. The District Court thus held that the Tulloch II violated the Clean Water Act, granted the plaintiffs’ motion for summary judgment, and ordered that the rule be rewritten (again).

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Indictments





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United States v. Gary Lehnherr et al., No. 1:07-CR-00008 (D. Idaho), ECS Trial Attorney Ron Sutcliffe [REDACTED] and AUSA George Breitsameter [REDACTED].

On January 9, 2007, Gary Lehnherr was charged with a Lacey Act violation and three false statement violations. Ronnie Gardner was charged with two Lacey Act violations related to illegal mule deer hunting.

The indictment states that in October and November 2004 both hunters illegally killed mule deer and then made false statements to investigators concerning where and how the deer were killed. Specifically, they used a center fire rifle in a traditional muzzle-loading-only game management unit, and then falsely told investigators they had killed the deer in a different hunt area.

This case was investigated by the United States Fish and Wildlife Service in cooperation with the Idaho Department of Fish and Game.

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Pleas / Sentencings

United States v. Pacific-Gulf Marine, Inc. et al., No. 1:06-CR-00302 (D. Md.), ECS Senior Trial Attorney Richard Udell [REDACTED], ECS Trial Attorney Malinda Lawrence [REDACTED], ECS Senior Counsel Rocky Piaggione [REDACTED], and AUSA Tanya Kowitz [REDACTED]

On January 24, 2007, Pacific-Gulf Marine, Inc. (“PGM”), an American-based ship operator, was sentenced to pay a \$1 million fine with an additional \$500,000 to be devoted to community service. The community service projects, to be administered by the National Fish and Wildlife Foundation, will fund environmental projects on the Chesapeake Bay and will provide environmental training to those enrolled in U.S. maritime academies.



M/V Tanabata

PGM also must complete a three-year term of probation and institute a comprehensive environmental compliance plan.

The company pleaded guilty in August 2006 to a four-count information charging it with APPS violations for the deliberate overboard discharge of hundreds of thousands of gallons of oil-contaminated bilge waste from four of its ships through the use of a bypass pipe. PGM admitted to circumventing the oily water separator (“OWS”) on four giant “car carrier” ships used to transport vehicles.

The criminal investigation began in September 2003, after the U.S. Coast Guard inspected the *M/V Tellus* and *M/V Tanabata* in Baltimore. An inspection in March 2003 of the *M/V Fidelio*, another PGM-managed vessel, disclosed a bypass pipe loaded with oil hidden under the engine room floor. Engineers denied involvement in any illegal conduct during both the March and September inspections. On the *Tanabata*, the pipe used to bypass the OWS allegedly was thrown overboard by the ship’s chief engineer after the Coast Guard inspected the vessel in Baltimore. After learning of the federal investigation, PGM conducted an internal investigation, which it disclosed to the government.

Stephen Karas and Mark Humphries, former chief engineers of the *Tanabata*, were charged in June 2006 with conspiracy, APPS violations for failing to maintain an oil record book, and false statement violations. Karas also was charged with obstruction of justice for alleged witness tampering, while Humphries was further charged with obstruction for destruction of evidence, that is, allegedly throwing the bypass pipe overboard. The engineers’ trial which was scheduled to begin on March 5, 2007 recently was adjourned.

This case was investigated by the Chesapeake Regional Office of the United States Coast Guard Investigative Service and the United States Environmental Protection Agency Criminal Investigation Division. Additional assistance was provided by the Coast Guard Sector Baltimore, Coast Guard Activities Europe, Coast Guard Fifth District Legal Office, Coast Guard Office of International and Maritime Law, and Coast Guard Headquarters Office of Investigations and Analysis.

[Back to Top](#)**United States v. Irika Maritime SA, et al., No. 3:06-CR-05661(W.D. Wash.), AUSAs Jim Oesterle [REDACTED] and Carl Blackstone [REDACTED] and SAUSA Cmdr. Benes Aldana [REDACTED]**

On January 23, 2007, Irika Maritime SA was sentenced to pay a \$500,000 fine, plus an additional \$250,000 in community service payments, for failing to maintain an accurate oil record book in an attempt to conceal illegal discharges of oily sludge directly into the ocean. The company will complete a four-year term of probation, implement an environmental compliance plan, and the community service payments will be equally divided between the Columbia River Estuarine Coastal Fund and the Puget Sound Marine Conservation Fund. Both funds are administered by the National Fish and Wildlife Foundation for projects to restore and protect fragile marine habitats.

The *M/V Irika* is a 623-foot long Panamanian-flagged ocean-going bulk carrier. On October 5, 2006, U.S. Coast Guard inspectors boarded the ship at Vancouver, Washington, to conduct a routine inspection. Inspectors reviewed the ORB but were unable to identify any discrepancies. They were subsequently contacted by the ship's second engineer who discretely gave inspectors numerous digital photos of a flexible hose being used to bypass pollution prevention equipment. The photos prompted inspectors to conduct a second inspection on October 6, 2006, during which time they located the hose and found additional evidence of its use.

The court further approved the government's motion requesting that one half of the \$500,000 fine be awarded to the whistle blower. The second engineer told authorities he had objected to the waste dumping, but his protests were ignored by the chief engineer Ilias Dimitriou Ntais. Ntais pleaded guilty in November 2006 to an APPS violation for failing to maintain the ORB and was sentenced in December to pay a \$2,500 fine.

This case was investigated by the United States Coast Guard.

[Back to Top](#)**United States v. Overseas Shipholding Group, Nos. 1:06-CR-00065, 10408, 10420-423, (C.D. Cal., N.D. Cal, D. Mass., D. Me., E.D.N.C., E.D.Tex.), ECS Special Litigation Counsel Gregory Linsin [REDACTED], ECS Senior Trial Attorney Richard Udell [REDACTED] and ECS Trial Attorneys Malinda Lawrence [REDACTED] Lana Pettus [REDACTED] and Joe Poux [REDACTED] AUSAs: Dorothy Kim [REDACTED] Stacey Geis [REDACTED] Jon Mitchell [REDACTED] Rick Murphy [REDACTED] Banu Rangaragan [REDACTED], Joe Batte [REDACTED] and Malcolm Bales [REDACTED]**

On January 23, 2007, Overseas Shipholding Group ("OSG") officially entered into the plea agreement in Beaumont, Texas. Informations were filed in December 2006 in six districts charging the company with conspiracy, CWA, obstruction, false statement, and APPS violations which occurred on a total of 12 ships. Plea agreements were also filed at that time in Boston and Texas. Under the terms of the plea agreements, OSG will pay a total of \$10 million in Beaumont (\$7.4 criminal fine; \$2.6 community service), as part of a \$37 criminal penalty. Guilty pleas will be entered to Counts One (conspiracy) and Two (false statements) of the pending second superseding indictment in *United States v. Jho et al.* relating to the *M/T Pacific Ruby*, as well as to Counts One through Four (false statements) of the new information relating to the *M/T Uranus*, *M/T Overseas Shirley*, and the *M/T Pacific Sapphire*. Payments of \$9.2 million will be applied to organizational community service projects.

OSG will complete a three-year term of probation and be subject to the terms of an environmental compliance plan (to include a court appointed monitor and an outside independent auditor).

On December 4, 2006, an adverse opinion was issued in the *Jho* prosecution dismissing the APPS violations holding that the United States did not have jurisdiction to enforce the criminal provision of APPS for failing to maintain an Oil Record Book based upon the United Nation's Convention on the Law of the Sea and customary international law. A protective notice of appeal was filed on December 5, 2006. OSG has agreed to plead guilty to three of the APPS counts, if the government prevails on appeal, or will substitute false statement counts in the alternative. The outcome of the appeal will not impact the overall settlement or number of counts.

The investigation began in Boston in October 2003 with a referral from Transport Canada regarding the *Uranus*. The *Uranus* made discharges on voyages within U.S. waters in New England between August 2001 and October 2003 by using bypass equipment and by flushing oil sensing equipment with fresh water. Illegal discharges were concealed by falsifying the oil record book.

OSG had advised the government of two internal investigations prior to the government's criminal investigation. The company had concluded that allegations regarding the *Overseas Shirley* and *Neptune* involved no discharge of oil. The government's investigation, however, determined otherwise, finding that approximately 40,000 gallons of sludge and oily waste were deliberately discharged from the *Overseas Shirley* and approximately 2,600 gallons were discharged from the *Neptune* in the Exclusive Economic Zone off the coast of North Carolina.

Sentencing is scheduled in Texas on March 26, 2007. This case was investigated by the United States Coast Guard units in each port, the Coast Guard Investigative Service, Coast Guard Office of Maritime and International Law, Coast Guard Office of Investigations and Analysis, and the United States Environmental Protection Agency Criminal Investigation Division.

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United States v. Kim Johnson et al., No. 2:06-CR-00501(E.D. Pa.), AUSA Paul Gray [REDACTED] - [REDACTED]

On January 18 and 12, 2007, Virginia Smith and Kim Johnson pleaded guilty to a ten-count indictment charging them with smuggling, possessing, and selling products from endangered and threatened animal species.

The defendants operated a business known as Authentic Africa, located in Philadelphia, as well as a Web site called *AuthenticAfrica.com* where they sold a variety of African artifacts, decorative items, animal skins, and parts. The defendants sold animal parts in 2002 and 2003 to an undercover United States Fish and Wildlife Service agent. The items included ivory tusks sold for \$2,500, a gorilla skull for \$1,500, three helmet masks containing colobus monkey fur for \$1,225, a python skin for \$450, a tiger skin for \$5,500, and a jaguar skin for \$8,000.

Smith and Johnson are scheduled to be sentenced on April 26, 2007. This case was investigated by the United States Fish and Wildlife Service.

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United States v. Hisayoshi Kajima, No. 2:06-CR-00595 (C.D. Calif.), AUSA Joe Johns [REDACTED] - [REDACTED]

On January 16, 2007, Hisayoshi Kajima pleaded guilty to a 17-count indictment charging him with Endangered Species Act and smuggling violations for trafficking in rare and protected butterfly species.

A three-year undercover investigation revealed that Kojima sold and smuggled numerous endangered butterfly species into the United States, including a pair of Queen Alexandra's Birdwings. This is the largest known butterfly in the world with a wing span of 12 inches. Documents submitted with this particular shipment declared that the package was a gift of "dry butterfly" worth \$30, when in fact it consisted of the two giant butterflies which had been sold for \$8,500.

On two other occasions Kojima offered for sale the endangered Giant Swallowtail butterfly, an endangered species from Jamaica. The Giant Swallowtail butterfly is the largest butterfly in the western hemisphere.

Kajima is scheduled to be sentenced on April 16, 2007. This case was investigated by the United States Fish and Wildlife Service.

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United States v. William D. Wessinger, Jr. Nos. 3:06-CR-30068 and 3:06-CR-60321 (C.D. Ill., S.D. Fla.), AUSAs Gregory Gilmore [REDACTED] and Tom Watts-Fitzgerald [REDACTED]

On January 9, 2007, William D. Wessinger, Jr., pleaded guilty to, and was sentenced for, two misdemeanor Lacey Act violations for illegally poaching white-tail deer in Illinois during 2001 and 2003. Wessinger was sentenced to pay a \$12,000 fine which will be equally divided between the federal Lacey Act Reward Fund and a fund administered by the Illinois Department of Natural Resources. Wessinger was further ordered to forfeit all his right, title, and interest in the deer mounts, capes, molds, and replicas resulting from his illegal hunting activity and to forfeit a compound bow used in the illegal poaching of a trophy mount in 2003.



Defendant on left/Photo courtesy of Pike Press, Pittsfield, Illinois

In 2001 and 2003, Wessinger traveled to Illinois to hunt white tailed deer indigenous to the state. Illinois deer are highly prized because they are often bigger and have larger antlers than deer in many other parts of the United States. A trophy-sized animal can generate significant income to a hunter through equipment company endorsement deals, advertising fees, and sale of replica deer antlers produced from molds of the original rack.

Wessinger admitted that, in November 2001, he killed an eight-point buck, knowing he would not be allowed under Illinois law to harvest another antlered deer that season and thus would forgo the opportunity to collect a larger trophy. The following day, however, he encountered and killed a second eight-point buck and then sought to conceal it by having a second hunter tag and claim the animal as his own kill to the IDNR. Wessinger later transported both sets of heads and antlers to Florida.

In 2003, Wessinger returned to Illinois and assisted another hunter in locating a deer which had been wounded by an arrow two days earlier. After finding and fatally shooting the deer, Wessinger took it to a lodge where measurement of the antlers and consideration of the 32-point rack clearly identified it as an All-Time awards list trophy animal. No deer harvest tag was placed on the animal at the time it was killed and none of the active hunters were in possession of hunting permits. The defendant subsequently transported the antlers and cape to Florida and had replicas of the rack produced from a mold and exhibited in his home. The original rack was placed in a safe in his residence, where it was seized pursuant to a search warrant.

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

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United States v. Brett Boyce, No. 3:06-CR-00031(W.D.Va.), ECS Trial Attorneys Wayne Hettenbach [REDACTED] and David Joyce [REDACTED], and AUSA Jean Hudson [REDACTED]

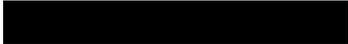
On January 9, 2007, Brett Boyce was sentenced to pay a \$500 fine and \$7,000 in restitution payable to the National Fish and Wildlife Foundation. Boyce is one of several hunters from Virginia who have been prosecuted for elk hunting in New Mexico in 2003 without any permits and then shipping their trophies back to Virginia. Boyce pleaded guilty in August 2006 to a misdemeanor Lacey Act violation for receiving wildlife in interstate commerce.

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

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