



UNITED STATES ATTORNEY'S OFFICE

Southern District of New York

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OFFICERS OF FISHING AND SEAFOOD CORPORATIONS ORDERED TO PAY NEARLY \$22.5 MILLION TO SOUTH AFRICA FOR ILLEGALLY HARVESTING ROCK LOBSTER AND SMUGGLING IT INTO THE UNITED STATES

Largest Lacey Act Restitution Order Ever Obtained

Preet Bharara, the United States Attorney for the Southern District of New York, announced today that the United States obtained a restitution order against ARNOLD MAURICE BENGIS, DAVID BENGIS, and JEFFREY NOLL in the amount of nearly \$29.5 million and in favor of the Republic of South Africa. This is the largest known restitution order in a Lacey Act case in history. The restitution order follows the Government's successful appeal to the U.S. Court of Appeals for the Second Circuit of the District Court's 2007 orders that restitution was not available for crimes prosecuted under the Lacey Act. The Lacey Act is a federal statute that makes it a crime to, among other things, import into the U.S. any fish, wildlife, or plants taken in violation of state or foreign law. After a credit of more than \$7 million already paid to South Africa as part of a separate criminal case there, the total restitution to be paid by the defendants is approximately \$22.5 million. The restitution was ordered by U.S. District Judge Lewis A. Kaplan. In addition, Judge Kaplan also restrained the defendants from depleting accounts in the Channel Islands to amounts below the approximately \$22.5 million restitution to be paid.

Manhattan U.S. Attorney Preet Bharara said: "As today's order demonstrates, those who violate the environmental laws of another country by illegally taking fish, wildlife, or plants and then import these items into the U.S. will be required to pay back the victims of their offenses. This Office remains committed to ensuring, no matter how long it takes, that those who would damage another country's environment and seek to profit in the U.S. market will have to remedy their violations of law and repay those foreign governments."

According to documents filed in Manhattan federal court and in the U.S. Court of Appeals for the Second Circuit:

ARNOLD MAURICE BENGIS was the Managing Director and Chairman of Hout Bay Fishing Industries (PTY) Ltd. ("HBFI") in Cape Town, South Africa, and he also exercised control over Icebrand Seafoods, Inc. ("Icebrand") and Associated Sea Fisheries Inc. ("Associated") in Manhattan. NOLL was the Chairman and President of both Associated and Icebrand in New York. DAVID BENGIS was the President of Icebrand Seafoods Maine Inc. in Portland, Maine.

From 1987 to August 1, 2001, ARNOLD MAURICE BENGIS, his son DAVID BENGIS, NOLL, and their co-conspirators, engaged in an elaborate scheme to, among other things, harvest illegally large quantities of South and West Coast rock lobster, far in excess of applicable quotas, and then to export the illegally harvested lobster from South Africa to the U.S.

The defendants underreported the fish harvested to South African authorities and bribed South African fisheries inspectors to help them carry out their illegal harvesting scheme. They also submitted false export documents to South African authorities to conceal their overharvesting.

As part of the scheme, the defendants arranged for previously-disadvantaged South African citizens who did not have valid U.S. working permits to work for low wages at their fish processing facility in Portland, Maine, where the employees were required to process, among other things, illegally harvested South African rock lobster.

In 2003, all three defendants were charged with importing, among other things, illegally-harvested South African South Coast and West Coast rock lobster into the U.S. The Indictment alleged, among other things, that the lobster had been harvested in violation of both South African law and international convention, by being caught in amounts well in excess of the quota established by South African law or without required permits.

In April 2004, ARNOLD MAURICE BENGIS and NOLL each pled guilty to one count of conspiracy to violate the Lacey Act and to commit smuggling, and three separate counts of violating the Lacey Act. In April 2004, DAVID BENGIS pled guilty to one misdemeanor count of conspiracy to violate the Lacey Act.

In July 2004, Judge Kaplan sentenced each of the defendants to a term of imprisonment, specifically: ARNOLD MAURICE BENGIS – 46 months; JEFFREY NOLL – 30 months; and DAVID BENGIS – 1 year. As part of their sentences, ARNOLD MAURICE BENGIS and NOLL forfeited \$5.9 million to the Government. DAVID BENGIS forfeited the proceeds of the sale of his fish-processing factory in Portland, a sum of \$1.5 million. Each of the defendants was also sentenced to a term of supervised release. The defendants have all completed their prison terms and supervised release.

In 2007, Judge Kaplan rejected the Government's application for restitution and held, among other things, that South Africa did not have a property interest in the illegally harvested rock lobster and that South Africa was not a victim within the meaning of the applicable restitution statutes.

In January 2011, the U.S. Court of Appeals for the Second Circuit overturned Judge Kaplan's 2007 ruling and held instead that: (1) South Africa had a property interest in illegally harvested rock lobsters and, therefore, that the defendants had committed an "offense against property," thereby entitling South Africa to restitution; and (2) South Africa was a victim within the meaning of the applicable restitution statutes. The Court of Appeals left the determination of the precise amount of restitution to the District Court on remand.

In August 2012, U.S. Magistrate Judge Andrew J. Peck recommended to Judge Kaplan that he order more than \$54.8 million in restitution to South Africa. Today's order by Judge Kaplan adopts Judge Peck's report and recommendation in substantial part by ordering the defendants to pay restitution in the amount of \$29,495,800 for illegally harvested West Coast lobster that was imported into the United States. As part of separate criminal prosecution in South Africa, HBFI paid South Africa \$7,049,080 for its illegal conduct. Judge Kaplan credited that amount against

the restitution of \$29,495,800, to arrive at a total amount to be paid by the defendants to South Africa of \$22,446,720.

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ARNOLD MAURICE BENGIS, 77, and his son DAVID BENGIS, 43, reside in London, England. JEFFREY NOLL, 62, resides in Boca Raton, Florida.

Mr. Bharara praised the outstanding efforts of the Department of Homeland Security, Bureau of Immigration and Customs Enforcement, and the National Oceanic and Atmospheric Administration, Office of Law Enforcement.

Mr. Bharara also thanked the Office of the Attorney General of Jersey, the States of Jersey Police, and the South African Department of Justice and Constitutional Development for their outstanding assistance in the restitution proceedings.

This criminal case is being handled by the Office's Complex Frauds Unit. Assistant U.S. Attorney Daniel W. Levy is in charge of the prosecution.

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