

CR-13 282

**BIANCO, J.
LINDSAY, M**

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
3 CENTRAL ISLIP

4 _____X

5 UNITED STATES OF AMERICA,

6 - against -

7 CHARLES WERTZ, JR. and C & C OCEAN
8 FISHERY, LTD.,

9 Defendants.

10 _____X

11 THE ENVIRONMENTAL CRIMES SECTION OF THE
12 UNITED STATES DEPARTMENT OF JUSTICE CHARGES:

INFORMATION

Cr. No. _____
(T. 18, U.S.C., §§ 1343,
2, and 3551 *et seq.*; T. 18,
U.S.C., §§ 1519 and 2)

FILED
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U.S. DISTRICT COURT E.D.N.Y.

★ JUL 31 2013 ★

LONG ISLAND OFFICE

13 At all times material to this Bill of Information, and incorporated by reference in all counts:

14 A. The Defendants

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16 1. There are two defendants, one individual and one organization. The individual is
17 CHARLES WERTZ, JR. ("WERTZ"), who is a resident of East Meadow, New York in Nassau
18 County. The organizational defendant is C & C OCEAN FISHERY, LTD., also known as C&C
19 Ocean Ltd. (together, "C&C OCEAN"), which is a New York State business corporation with
20 headquarters in Freeport, New York. During the years 2009 - 2011, C&C OCEAN was the
21 holder of a federal fisheries dealer permit, to wit: Northeast Federal Dealer Permit No. 1823. An
22 uncharged individual ("MR. X")¹ owned and operated C&C OCEAN during 2009 through
23 November 21, 2011. As of November 21, 2011, WERTZ had a controlling interest in C&C
24 OCEAN.
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28 ¹ MR. X passed away in February 2013.

1 2. WERTZ and MR. X were operators of the 64-foot, green hulled trawler/dragger *F/V*
2 *Norseman*. Before his passing, MR. X was the owner of the *Norseman*. When Mr. X died,
3 WERTZ received a controlling interest in the *Norseman*.
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5 **B. Legal Framework**

6 3. The commercial fishing industry is highly regulated by both state and federal
7 authorities. Operators of fishing vessels must comply with restrictions such as closed areas,
8 seasonal access, gear restrictions, and limits on the quantity or weight of fish caught, *e.g.*, quotas.
9 In order to ensure a sustainable fishery for a particular species, such as fluke (also known as
10 summer flounder), the National Oceanic and Atmospheric Administration ("NOAA"), in
11 fulfilling its mandates under the Magnuson-Stevens Fishery Conservation and Management Act
12 ("Magnuson-Stevens"), 16 U.S.C. § 1801 *et seq.*, allocates certain catch shares to states within a
13 predetermined region. For instance, New York is part of the Northeast Region for share
14 allocation of fluke. *See* 50 C.F.R. § 648.102(c)(1) (New York allocated 7.64699% of annual
15 commercial summer flounder quota in the Northeast Region).
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18 4. Once the New York catch share is established by federal authorities, New York
19 establishes its own quota system for commercial fishing vessels that are based out of New York
20 ports. For the principal species at issue in this matter, fluke, New York sets a daily trip limit on
21 regulated vessels. This means that a fishing vessel is confined to a hard limit of a certain weight
22 of fluke per day. New York has the option of changing its daily trip limit throughout the course
23 of the year as long as, at the end of the year, the total catch for all of its vessels does not exceed
24 the allocation from the federal government. This is why one encounters some variance in the
25 New York daily trip limit. For example, in the years 2010 and 2011, the New York daily trip
26 limit for fluke typically varied between 70 and 210 pounds.
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1 5. It is difficult for fisheries managers to directly observe what fishers are doing out on
2 the water, and as such, fishing vessels are required to comply with various reporting
3 requirements. One such requirement is that vessels must complete a Fishing Vessel Trip Report
4 ("FVTR") at the end of each trip. 50 C.F.R. § 648.7(b)(1)(i). The FVTR requires not only
5 general information such as date, vessel name, permit number, and Coast Guard document
6 number, but also detailed catch data such as gear used, species caught, species weight, number of
7 hauls, port of landing, and if available, identity of the fish purchaser(s) (dealers). Vessel
8 operators are required to sign the FVTR under a text box that reads, "I certify that the
9 information provided on this form is true, complete and correct to the best of my knowledge, and
10 made in good faith. Making a false statement on this form is punishable by law (18 U.S.C. [§
11 1001). For vessels such as the *Norseman*, which held a Northeast multispecies permit, FVTRs
12 were required to be mailed to a NOAA office in Massachusetts on a weekly basis. 50 C.F.R. §
13 648.7(f)(2). In addition, federal regulations provide that "[c]opies of fishing log reports must be
14 kept on board the vessel and available for review for at least 1 year, and must be retained for a
15 total of 3 years after the date the fish were last possessed, landed, and sold." 50 C.F.R. §
16 648.7(e)(2).

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20 6. A fishing vessel located in New York that was targeting fluke was therefore limited to
21 the daily maximum catch set by the daily trip limit. However, NOAA provided an alternative
22 pathway for a fishing vessel to increase its overall annual catch by participating in a program
23 called the Research Set-Aside Program, or "RSA" Program. NOAA, in collaboration with the
24 New England and Mid-Atlantic Fishery Management Councils and the Atlantic States Marine
25 Fisheries Commission, established the RSA Program as a method to provide additional revenue
26 for fisheries research. With fluke, there was a "pie" of quota that was set for the year for the
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1 states in the Northeast Region. Ninety-seven percent of that pie was allocated to the states for
2 their quota systems, but three percent was auctioned off, and the funds generated from the RSA
3 auction were designated for fisheries research grants.

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5 7. Through the RSA Program, a fishing vessel had the opportunity to bid on additional
6 quota of fluke. Assuming the vessel submitted a successful bid, the vessel would receive a set
7 amount of additional quota that it could use throughout the calendar year in any way the operator
8 saw fit. For example, if a vessel purchased an extra 10,000 pounds of quota, it could have one
9 very lucky day and burn through the entire RSA quota, or it could use some of the quota in bits
10 and pieces throughout the year.

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12 8. The presence of a lump sum of quota, in contrast to a relatively modest daily trip limit,
13 provided an opportunity for the unscrupulous operator to manipulate the system. The
14 opportunity to manipulate the RSA Program is as follows: governmental resources available to
15 do actual boardings and dockside inspections are finite and limited. Nevertheless, there is
16 always some risk of government inspection. If a vessel with no RSA quota returned to the dock
17 with a catch that exceeded its daily trip limit, the vessel risked exposure because the trip limit
18 number is a hard cap. In other words, an operator (with no spare RSA quota) that is found to be
19 over the daily cap is instantly in violation. Now take the example of the summer flounder fisher
20 that is operating under the daily trip limit system, but who also purchased a large share of RSA
21 quota, e.g., 10,000 pounds. If that vessel is randomly boarded or inspected and found with a
22 catch amount over the daily trip limit, the operator could simply declare that the excess is
23 coming from the RSA quota. For an honest operator, this is not a problem, but the ability exists
24 for a dishonest fisher to regularly underreport his catch so that it seems consistent with the daily
25 trip limits, unless and until it appears that fisheries authorities are about to ascertain the true
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1 nature of the catch. Once an inspection or boarding appears likely, then the unscrupulous fisher
2 could adjust the FVTR to reflect the actual catch - daily trip limit and RSA - for that day. To be
3 sure, the RSA quota is reduced somewhat for the remainder of the year, but due to resource
4 constraints, in all likelihood another inspection would not happen for some time; thus, the
5 underreporting could continue throughout the fishing season.

7 9. Participants in the RSA Program were required to declare on their FVTRs what
8 portion of their catch was allocated to the daily trip limit, and after that was exceeded, what
9 portion was allocated to their RSA quota.

11 10. Federally permitted fishing vessels, such as those with a federal summer flounder
12 permit or a multispecies permit, *e.g.*, *Norseman*, must only sell their catch to a federal fish
13 dealer. 50 C.F.R. § 648.14(c). It is possible under the regulatory scheme for a corporation to be
14 a fish dealer, while the human owners/officers of the corporate dealer are also fishing vessel
15 operators.

17 11. NOAA requires that fish dealers submit weekly, electronic reports detailing
18 information about the fish purchased. In order to submit the reports, the dealer must log onto a
19 NOAA website using a username and password. 50 C.F.R. § 648.7(a)(1), 648.7(f). The website
20 is maintained by a NOAA contractor, and the contractor forwards the dealer information to
21 NOAA through a website that is available to designated NOAA components. NOAA is able to
22 generate reports from the dealer website.

24 12. Species that dealers must provide information about include summer flounder, squid,
25 black sea bass, scup, hake, and bluefish. The dealer reports include information such as date of
26 landing, port of landing, catch vessel, corresponding FVTR numbers, commercial grade, species,
27 price, and weight. NOAA utilizes the dealer reports as a check on the information submitted in
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1 FVTRs, as well as a source of information used in fisheries management. For example,
2 according to the 2010 dealer permit application, "The purpose and use of permits is to (1)
3 register fish dealers and processor[s], (2) list the characteristics of dealer/processor operations,
4 (3) exercise influence over compliance (e.g. withhold issuance pending collection of unpaid
5 penalties), (4) provide a mailing list for the dissemination of important information to the
6 industry, (5) provide a universe for data collection samples, and (6) *obtain first purchase*
7 *information on landings to evaluate the biological, economic and social implications of*
8 *management measures.*" (emphasis added). Furthermore, "[a]ny record, as defined in § 648.2
9 [(includes dealer reports)], related to fish possessed, received, or purchased by a dealer that is
10 required to be reported, must be retained and made available for immediate review for a total of
11 3 years after the date the fish were first possessed, received, or purchased. Dealers must retain
12 the required records and reports at their principal place of business." 50 C.F.R. § 648.7(e)(1).
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16 13. Because the dealer reports identify the catch vessel and corresponding FVTR, in
17 theory, a mismatch between the dealer report and the FVTR is an exhibition of a mistake or some
18 fraudulent conduct. Therefore, in order to perpetuate an ongoing fraud, there needs to be some
19 level of collusion between vessel operator and dealer, lest a fisheries regulator discover the
20 error(s) and take corrective or enforcement action.
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22 14. Pursuant to Magnuson-Stevens, at 16 U.S.C. § 1860(a), NOAA has a property
23 interest in "any fish (or the fair market value thereof) taken or retained, in any manner, in
24 connection with or as a result of the commission of any act prohibited by [a Magnuson-Stevens
25 regulation]." Magnuson-Stevens regulations make it unlawful for any person to "[m]ake any
26 false statement or provide any false information on, or in connection with, an application,
27 declaration, record or report under this part [Magnuson-Stevens regulations]." 50 C.F.R. §
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1 648.14(a)(5); *see also* 50 C.F.R. §§ 600.725(l), 648.14(a)(6); *U.S. v. Bengis*, 631 F.3d 33, 38-40
2 (2nd Cir. 2011) (governmental entity has a property interest in seafood that was subject to
3 forfeiture and sale under fisheries regulations).
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5 **C. Charged Counts**

6 **COUNT ONE - Wire Fraud**

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8 15. **Fraudulent Scheme:** During the years 2009 - 2011, WERTZ and MR. X were
9 jointly involved in fishing for fluke from the vessel *Norseman*. During those years, WERTZ and
10 MR. X knowingly and unlawfully harvested fluke that was also unreported on FVTRs. The
11 unreported quantities of fluke were as follows: 8,585 pounds in 2009; 14,180 pounds in 2010;
12 and 63,315 pounds in 2011. NOAA had the legal right to seize and sell fluke that was
13 unreported on FVTRs. In order to conceal and cover-up their illegal harvest of fluke, WERTZ,
14 through C&C OCEAN, filed correspondingly false federal dealer reports that represented that the
15 fish purchased from the *Norseman* matched what was reported as actually caught on the
16 *Norseman*. However, the catch weights, fish species, and price paid that WERTZ and C&C
17 OCEAN submitted to NOAA on these dealer reports were false. WERTZ and C&C OCEAN
18 purposely falsified the dealer reports to match the *Norseman*'s false FTVTRs. During the course
19 of the scheme, from May 12, 2009, through December 14, 2011, WERTZ and C&C OCEAN
20 transmitted one hundred thirty-seven (137) separate, false dealer reports. NOAA had the legal
21 right to seize and sell fish that was unreported on federal dealer reports.
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25 16. On or about May 12, 2009, through December 14, 2011, within the Eastern District
26 of New York, the defendants,

27 CHARLES WERTZ, JR. and C&C OCEAN,
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1 did knowingly and intentionally devised a scheme and artifice to defraud NOAA of fish and the
2 fair market value thereof (to wit: 86,080 pounds of summer flounder (fluke) valued at
3 \$199,600.00), and to obtain money and property from NOAA by means of materially false and
4 fraudulent pretenses and representations (to wit: that the fish represented as caught on Federal
5 Vessel Trip Reports and as purchased on federal dealer reports were of a certain species,
6 quantity, and weight, when in fact, the fish were not as represented on federal forms, and in fact
7 were in excess of New York State daily trip limits and RSA fluke quotas), and for the purpose of
8 executing such scheme and artifice, transmit and cause to be transmitted writings, signs, and
9 signals by means of wire communication in interstate commerce (to wit: the internet submission
10 and transmission of one hundred thirty-seven (137) federal fisheries dealer reports from
11 WERTZ's desktop computer in East Meadow, New York to NOAA's Regional Fisheries
12 Management Office in Gloucester, Massachusetts).

13 All in violation of Title 18, United States Code, Sections 1343, 2, and 3551 *et seq.*

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17 **COUNT TWO - Falsification of Federal Records**

18 17. On or about May 12, 2009, through December 14, 2011, within the Eastern District
19 of New York, the defendants,

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21 **CHARLES WERTZ, JR. and C&C OCEAN,**

22 did knowingly falsify and make false entries into records and documents (to wit: one hundred
23 thirty-seven (137) federal fisheries dealer reports required to be prepared, maintained, and
24 transmitted to the U.S. Government by 50 C.F.R. § 648.7(a)(1), 648.7(f) with the intent to
25 impede, obstruct, and influence the proper administration of any matter (to wit: the detection of
26 illegal fishing activity by catcher vessels and the collection and evaluation of biological and
27 economic data utilized to manage fisheries pursuant to the Magnuson-Stevens Fishery
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1 Conservation and Management Act) and in relation to and in contemplation of such matter,
2 within the jurisdiction of any department and agency of the United States (to wit: NOAA, an
3 agency of the Department of Commerce).

4 All in violation of Title 18, United States Code, Sections 1519 and 2.

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7 **COUNT THREE - Falsification of Federal Records**

8 18. On or about May 2, 2011, through December 14, 2011, within the Eastern District of
9 New York, the defendants,

10 CHARLES WERTZ, JR. and C&C OCEAN,

11 did knowingly falsify and make false entries into records and documents (to wit: seventy (70)
12 Fishing Vessel Trip Reports, also known as fishing logs, required to be prepared, maintained,
13 and sent to the U.S. Government by 50 C.F.R. § 648.7(b)(1), 648.7(f)(2), 648.7(e)(2)) with the
14 intent to impede, obstruct, and influence the proper administration of any matter (to wit: the
15 collection and evaluation of biological and catch data utilized to manage fisheries pursuant to the
16 Magnuson-Stevens Fishery Conservation and Management Act) and in relation to and in
17 contemplation of such matter, within the jurisdiction of any department and agency of the United
18 States (to wit: NOAA, an agency of the Department of Commerce).

19 All in violation of Title 18, United States Code, Sections 1519 and 2.

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22 **COUNT FOUR - Falsification of Federal Records**

23 19. On or about May 12, 2009, through November 16, 2010, within the Eastern District
24 of New York, the defendant,

25 C&C OCEAN,
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1 did knowingly falsify and make false entries into records and documents (to wit: sixty-seven (67)
2 Fishing Vessel Trip Reports, also known as fishing logs, required to be prepared, maintained,
3 and sent to the U.S. Government by 50 C.F.R. § 648.7(b)(1), 648.7(f)(2), 648.7(e)(2)) with the
4 intent to impede, obstruct, and influence the proper administration of any matter (to wit: the
5 collection and evaluation of biological and catch data utilized to manage fisheries pursuant to the
6 Magnuson-Stevens Fishery Conservation and Management Act) and in relation to and in
7 contemplation of such matter, within the jurisdiction of any department and agency of the United
8 States (to wit: the NOAA, an agency of the Department of Commerce).

10 All in violation of Title 18, United States Code, Sections 1519 and 2.

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14 ROBERT G. DREHER
15 ACTING ASSISTANT ATTORNEY
16 GENERAL OF THE ENVIRONMENT
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18 U.S. DEPARTMENT OF JUSTICE

19 Dated: July 26, 2013

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