

★ NOV 22 2016 ★

LONG ISLAND OFFICE

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

-----X

4 UNITED STATES OF AMERICA

5 - against -

6 THOMAS KOKELL

7 Defendant.

8 -----X

9 THE GRAND JURY CHARGES THAT:

10 COUNT ONE
11 (Conspiracy - 18 U.S.C. § 371)

12 FACTUAL BACKGROUND

13 At all relevant times herein:

14 A. Defendant and Co-Conspirator

15 1. The defendant, THOMAS KOKELL ("KOKELL"), was a resident of East Northport
16 in Suffolk County, New York. KOKELL was a fishing captain and licensed National Oceanic
17 and Atmospheric Administration ("NOAA") operator of the Fishing Vessel (F/V) *Cindisea*, a
18 75.8-foot trawler/dragger. During 2011, KOKELL owned the *Cindisea* and was the Chairman
19 and Chief Executive Officer of Cindi Seafood Corp. The *Cindisea* almost always offloaded its
20 catch at Point Lookout, New York.

21 2. KOKELL routinely sold his catch to a fish dealer, Mark Parente, the president of
22 Lou's Fish Market in the Bronx, New York. Parente was a co-conspirator in KOKELL's scheme
23 to file false documents and defraud the State of New York, NOAA, and the NOAA Research
24 Set-Aside Program.

INDICTMENT

Cr. No. _____
(T. 18, U.S.C. § 371; T. 18,
U.S.C. §§ 1341 and 2; T. 18,
U.S.C. § 1519)

CR - 16 595

WEXLER, J.

LINDSAY, M.J.

1 **B. Legal Framework**

2 3. The commercial fishing industry was regulated by both state and federal authorities.
3 Operators of fishing vessels needed to comply with restrictions such as closed areas, seasonal
4 access, gear restrictions, and limits on the quantity or weight of fish caught. Under the
5 Magnuson-Stevens Fishery Conservation and Management Act (“Magnuson-Stevens”), 16
6 U.S.C. § 1801 *et seq.*, NOAA was responsible for ensuring a sustainable fishery for particular
7 species, such as fluke (also known as summer flounder). To this end, NOAA allocated certain
8 catch shares to states within a predetermined region.
9

10
11 4. Once the New York catch share was established by federal authorities, New York
12 established its own quota system for commercial fishing vessels that were based out of New
13 York ports. The principal species at issue in this matter is fluke. New York set a daily trip limit
14 for fluke on regulated vessels, which meant that a fishing vessel was confined to a hard limit of a
15 certain weight of fluke per day. New York had the option of changing its daily trip limit
16 throughout the course of the year provided that, at the end of the year, the total catch for all of its
17 vessels did not exceed the allocation from the federal government. This led to some variance in
18 the New York daily trip limit. For example, in 2010 and 2011, the New York daily trip limit for
19 fluke varied between 70 and 210 pounds.
20

21 5. Fisheries regulators could not directly observe everything that fishing vessels did on
22 the water. Therefore, fishing vessels were required to comply with various reporting
23 requirements. One requirement was that vessels must complete a Fishing Vessel Trip Report
24 (“FVTR”) at the end of each trip. 50 C.F.R. § 648.7(b)(1)(i). The FVTR required information
25 such as date, vessel name, permit number, Coast Guard document number, gear used, species
26 caught, species weight, number of hauls, port of landing, and if available, identity of the fish
27
28

1 purchaser(s) (dealers). Vessel operators were required to sign the FVTR under a text box that
2 read, "I certify that the information provided on this form is true, complete and correct to the best
3 of my knowledge, and made in good faith. Making a false statement on this form is punishable
4 by law (18 U.S.C. 1001)." For vessels such as the *Cindisea*, which held a Northeast multispecies
5 permit, FVTRs were required to be mailed to a NOAA office in Gloucester, Massachusetts on a
6 weekly basis. 50 C.F.R. § 648.7(f)(2). In addition, federal regulations provided that "[c]opies of
7 fishing log reports must be kept on board the vessel and available for review for at least 1 year,
8 and must be retained for a total of 3 years after the date the fish were last possessed, landed, and
9 sold." 50 C.F.R. § 648.7(e)(2).
10
11

12 6. A fishing vessel located in New York that was targeting fluke was therefore limited to
13 the daily maximum catch set by the daily trip limit. However, NOAA provided an alternative
14 pathway for a fishing vessel to increase its overall annual catch by participating in a program
15 called the Research Set-Aside Program, or "RSA" Program. NOAA, in collaboration with the
16 New England and Mid-Atlantic Fishery Management Councils and the Atlantic States Marine
17 Fisheries Commission, established the RSA Program as a method to provide additional revenue
18 for fisheries research.
19

20 7. Through the RSA Program, a fishing vessel had the opportunity to bid on additional
21 quota of fluke. Assuming the vessel submitted a successful bid, the vessel would receive a set
22 amount of additional quota that it could use throughout the calendar year in any way the operator
23 saw fit. For example, if a vessel purchased 10,000 pounds of quota, it could have one lucky day
24 and expend the entire RSA quota, or it could use some of the quota in bits and pieces throughout
25 the year.
26
27
28

1 8. Participants in the RSA Program were required to notify NOAA, prior to the start of a
2 fishing trip, of their intent to fish under the RSA quota. At the end of any fishing trip where such
3 notification was given, participants were required to declare on their FVTR what portion of that
4 catch was allocated to the daily trip limit, and after that limit was exceeded, what portion was
5 allocated to their RSA quota.
6

7 9. Federally permitted fishing vessels, such as those with a federal summer flounder
8 permit or a multispecies permit, *e.g.*, *Cindisea*, were required to sell their catch to a federally-
9 licensed fish dealer. 50 C.F.R. § 648.14(c).
10

11 10. NOAA required that fish dealers submit weekly, electronic reports detailing
12 information about the fish purchased. To submit the reports, the dealer logged onto a NOAA
13 website using a username and password. 50 C.F.R. § 648.7(a)(1), 648.7(f). The website was
14 maintained by a NOAA contractor, and the contractor forwarded the dealer information to
15 NOAA through a website that was available to designated NOAA components. NOAA was able
16 to generate reports from the website.
17

18 11. Species about which dealers must provide information included summer flounder,
19 squid, and silver hake (whiting). The dealer reports included information such as date of landing,
20 port of landing, catch vessel, corresponding FVTR numbers, commercial grade, species, price,
21 and weight. NOAA utilized the dealer reports as a check on the information submitted in FVTRs,
22 as well as a source of information for fisheries management.
23

24 12. Pursuant to Magnuson-Stevens, at 16 U.S.C. § 1860(a), NOAA could seize and sell
25 “any fish (or the fair market value thereof) taken or retained, in any manner, in connection with
26 or as a result of the commission of any act prohibited by [a Magnuson-Stevens regulation].”
27 Magnuson-Stevens regulations made it unlawful for any person to “[m]ake any false statement or
28

1 provide any false information on, or in connection with, an application, declaration, record or
2 report under the [Magnuson-Stevens regulations].” 50 C.F.R. § 648.14(a)(5); *see also* 50 C.F.R.
3 §§ 600.725(1), 648.14(a)(6). The State of New York had an independent property interest in fish
4 that was landed in New York in excess of the daily trip limit or RSA quotas. *See* N.Y.
5 Environmental Conservation Law §§ 11-0519; 71-0907.

7 THE CONSPIRACY

8 13. Beginning on or about May 1, 2011, and continuing to on or about March 26, 2012,
9 in the Eastern District of New York, and elsewhere, KOKELL and Parente did knowingly and
10 willfully conspire, confederate, and agree with each other and with other persons known and
11 unknown to the Grand Jury:

- 13 a. to defraud the United States by interfering with and obstructing, by
14 deceitful and dishonest means, a lawful function of NOAA: the collection
15 and evaluation of biological and catch data;
- 16 b. to knowingly and intentionally defraud NOAA and the State of New York
17 of fish and the fair market value thereof, and to obtain money and property
18 from NOAA and the State of New York by means of materially false and
19 fraudulent pretenses and representations, and for the purpose of executing
20 such scheme and artifice, to place in any post office and authorized
depository for mail matter any matter and thing whatever to be sent and
delivered by the Postal Service, in violation of Title 18, United States
Code, Sections 1341 and 2; and
- 21 c. to knowingly and intentionally defraud NOAA and the State of New York
22 of fish and the fair market value thereof, and to obtain money and property
23 from NOAA and the State of New York by means of materially false and
24 fraudulent pretenses and representations, and for the purpose of executing
25 such scheme and artifice, to transmit and cause to be transmitted writings,
signs, and signals by means of wire communication in interstate
commerce, in violation of Title 18, United States Code, Sections 1343 and
26 2.

27 MANNER AND MEANS

1 15. In furtherance of the conspiracy, and to effect the objects thereof, there was
 2 committed by at least one of the co-conspirators in the Eastern District of New York at least one
 3 of the following overt acts, among others:

4 *Overt Act 1:* On or before May 13, 2011, approximately, KOKELL and Parente had a
 5 conversation where they agreed to each submit false records to NOAA and to make these records
 6 match in order to conceal overfishing.
 7

8 *Overt Act 2:* Between on or about May 16, 2011, and on or about December 23, 2011, on
 9 at least one occasion, KOKELL called the National Marine Fisheries Service's Interactive Voice
 10 Response System to give notification of his intent to fish for fluke under his RSA quota.
 11

12 *Overt Acts 3 to 42:* Between on or about May 16, 2011, and on or about December 29,
 13 2011, on 40 occasions, each occasion specified on the table below and constituting a separate
 14 overt act, KOKELL called the Interactive Voice Response System after a fishing trip and failed
 15 to accurately report the amount of fluke harvested under the RSA Program.
 16

Overt Act No.	Date	Overt Act No.	Date	Overt Act No.	Date	Overt Act No.	Date
3	5.16.2011	14	6.27.2011	25	8.24.2011	36	12.28.2011
4	5.23.2011	15	7.6.2011	26	8.30.2011	37	12.5.2011
5	5.27.2011	16	7.7.2011	27	9.6.2011	38	12.8.2011
6	6.1.2011	17	7.15.2011	28	9.11.2011	39	12.13.2011
7	6.4.2011	18	7.20.2011	29	9.17.2011	40	12.17.2011
8	6.8.2011	19	8.4.2011	30	9.26.2011	41	12.23.2011
9	6.11.2011	20	8.9.2011	31	10.11.2011	42	12.29.2011
10	6.15.2011	21	8.13.2011	32	10.14.2011		
11	6.18.2011	22	8.16.2011	33	11.8.2011		
12	6.21.2011	23	8.20.2011	34	11.25.2011		
13	6.26.2011	24	8.23.2011	35	11.28.2011		

25
 26 *Overt Act 43:* Between on or about May 13, 2011, and on or about December 27, 2011,
 27 on at least one occasion, KOKELL harvested fluke in excess of the daily trip limit.
 28

1 *Overt Acts 44 to 87:* Between on or about May 14, 2011, and on or about December 27,
 2 2011, on 44 occasions, each occasion specified on the table below and constituting a separate
 3 overt act, KOKELL created an FVTR that failed to state the total amount of fluke harvested
 4 during the trip, and which recorded the amount of over-harvested fluke under the name of a
 5 different species:
 6

Overt Act No.	Date	Overt Act No.	Date	Overt Act No.	Date	Overt Act No.	Date
44	5.14.2011	57	7.7.2011	70	9.22.2011	83	12.7.2011
45	5.21.2011	58	7.13.2011	71	9.26.2011	84	12.11.2011
46	5.25.2011	59	7.20.2011	72	9.28.2011	85	12.14.2011
47	5.31.2011	60	8.4.2011	73	10.4.2011	86	12.19.2011
48	6.2.2011	61	8.9.2011	74	10.10.2011	87	12.27.2011
49	6.7.2011	62	8.11.2011	75	10.12.2011		
50	6.9.2011	63	8.16.2011	76	10.18.2011		
51	6.14.2011	64	8.18.2011	77	10.22.2011		
52	6.16.2011	65	8.22.2011	78	10.31.2011		
53	6.20.2011	66	8.24.2011	79	11.22.2011		
54	6.22.2011	67	9.1.2011	80	11.27.2011		
55	6.27.2011	68	9.7.2011	81	11.29.2011		
56	7.5.2011	69	9.14.2011	82	12.2.2011		

17
 18 *Overt Act 88:* Between on or about May 13, 2011, and on or about December 28, 2011,
 19 on at least one occasion, KOKELL communicated with co-conspirator Parente after a fishing trip
 20 in order to report how he would be accounting for overharvested fluke on the respective FVTR.

21 *Overt Act 89:* Between on about May 14, 2011, and on or about December 27, 2011, on
 22 at least one occasion, KOKELL landed over-harvested fluke from the *Cindisea* at Point Lookout,
 23 New York.

24 *Overt Acts 90 to 138:* Between on or about May 16, 2011, and on or about December 28,
 25 2011, on 49 occasions, each occasion specified on the table below and constituting a separate
 26 overt act, KOKELL sold over-harvested fluke to Parente and Lou's Fish Market:
 27
 28

Overt Act No.	Date	Overt Act No.	Date	Overt Act No.	Date	Overt Act No.	Date
90	5.16.2011	103	7.6.2011	116	8.23.2011	129	11.1.2011
91	5.23.2011	104	7.8.2011	117	8.25.2011	130	11.23.2011
92	5.26.2011	105	7.12.2011	118	9.2.2011	131	11.28.2011
93	6.1.2011	106	7.14.2011	119	9.8.2011	132	12.1.2011
94	6.3.2011	107	7.18.2011	120	9.15.2011	133	12.5.2011
95	6.8.2011	108	7.21.2011	121	9.23.2011	134	12.8.2011
96	6.10.2011	109	7.29.2011	122	9.27.2011	135	12.12.2011
97	6.15.2011	110	8.2.2011	123	9.29.2011	136	12.15.2011
98	6.17.2011	111	8.5.2011	124	10.5.2011	137	12.21.2011
99	6.21.2011	112	8.10.2011	125	10.11.2011	138	12.28.2011
100	6.24.2011	113	8.12.2011	126	10.13.2011		
101	6.28.2011	114	8.17.2011	127	10.20.2011		
102	6.30.2011	115	8.19.2011	128	10.26.2011		

Overt Act 139: Between on or about May 16, 2011, and on or about January 3, 2012, on at least one occasion, co-conspirator Parente caused to be created a dealer report that failed to accurately record the amount of fluke purchased from KOKELL.

Overt Act 140: Between on or about May 16, 2011, and on or about January 3, 2012, on at least one occasion, co-conspirator Parente caused the interstate electronic transmission to NOAA of a dealer report that failed to accurately report the amount of fluke purchased from defendant KOKELL.

Overt Act 141: Between on or about May 16, 2011, and on or about March 26, 2012, on at least one occasion, KOKELL caused the mailing of a fraudulent FVTR to NOAA that failed to accurately report the amount of fluke caught during a fishing trip.

Overt Act 142: Between on or about May 14, 2011, and on or about January 3, 2012, on at least one occasion, checks with payment by Lou's Fish Market for over-harvested fluke, signed by co-conspirator Parente, were deposited into a bank account owned by Cindi Seafood Corp.

1
2 COUNTS TWO, THREE, and FOUR

3 (Mail Fraud - 18 U.S.C. § 1341)

4
5 16. Paragraphs 1 through 12 of Count One of this Indictment are hereby re-alleged and
6 incorporated by reference herein.

7 17. **Fraudulent Scheme:** During the year 2011, KOKELL captained the *Cindisea*. In
8 2011, KOKELL knowingly and unlawfully harvested fluke in excess of New York State daily
9 trip limits, which was also unreported on FVTRs. In order to conceal and cover-up his illegal
10 harvest of fluke, KOKELL knowingly falsified the vessel's FVTRs. In the course of the scheme,
11 from on or about May 1, 2011, through on or about March 26, 2012, KOKELL mailed false
12 FVTRs to NOAA. NOAA and New York State each had the legal right to seize and sell over-
13 harvested fluke or fluke that were unreported on FVTRs.
14

15 18. On or about the dates set forth in the table below, within the Eastern District of New
16 York, the defendant,

17
18 THOMAS KOKELL,

19 having knowingly and intentionally devised a scheme and artifice to defraud NOAA and the
20 State of New York of fish and the fair market value thereof, and to obtain money and property
21 from NOAA and New York State by means of materially false and fraudulent pretenses and
22 representations (to wit: that the fish represented as caught on a Fishing Vessel Trip Report were a
23 certain species, quantity, quota authorization, and weight, when in fact, the fish were not as
24 represented on federal forms, and were in excess of New York State daily trip limits and/or RSA
25 fluke quotas), for the purpose of executing such scheme and artifice, placed in any post office
26 and authorized depository for mail matter any matter and thing whatever to be sent and delivered
27
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1 by the Postal Service (to wit: the mailing of a Fishing Vessel Trip Report to NOAA's Regional
2 Fisheries Management Office in Gloucester, Massachusetts).

COUNT	DATE (On or about, and between)	FISHING VESSEL TRIP REPORT NUMBER
2	November 22, 2011, and December 27, 2011	11739983
3	November 27, 2011, and December 27, 2011	11739984
4	December 15, 2011, and December 27, 2011	11739991

9 All in violation of Title 18, United States Code, Sections 1341 and 2.

11
12 **COUNTS FIVE, SIX, and SEVEN**
13 **(Falsification of Federal Records - 18 U.S.C. § 1519)**

14 19. Paragraphs 1 through 12 of Count One of this Indictment are hereby re-alleged and
15 incorporated by reference herein.

16 20. On or about the dates set forth in the table below, within the Eastern District of New
17 York, the defendant,

18
19 THOMAS KOKELL,

20 did knowingly falsify and make false entries into records and documents, and aided and abetted
21 and willfully caused the falsification and making of false entries into records and documents (to
22 wit: a Fishing Vessel Trip Report, also known as a fishing log, required to be prepared,
23 maintained, and sent to the U.S. Government under 50 C.F.R. §§ 648.7(b)(1), 648.7(f)(2) &
24 648.7(e)(2); and a dealer report, required to be prepared, maintained, and sent to the U.S.
25 Government under 50 C.F.R. § 648.7(a)(1) & 648.7(f)) with the intent to impede, obstruct, and
26 influence the proper administration of any matter (to wit: the collection and evaluation of
27 biological and catch data used to manage fisheries and ensure the integrity of Fishing Vessel Trip
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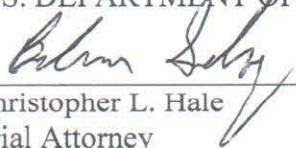
1 Reports and dealer reports pursuant to the Magnuson-Stevens Fishery Conservation and
2 Management Act) and in relation to and in contemplation of such matter, within the jurisdiction
3 of any department and agency of the United States (to wit: NOAA, an agency of the Department
4 of Commerce).
5

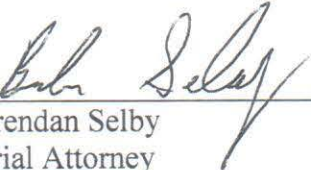
COUNT	DATE (On or about)	FISHING VESSEL TRIP REPORT NUMBER	CORRESPONDING DEALER REPORT CONFIRMATION NUMBER
5	November 22, 2011	11739983	6788510
6	November 27, 2011	11739984	6812036
7	December 15, 2011	11739991	6848856

14 All in violation of Title 18, United States Code, Section 1519.

16 JOHN C. CRUDEN
17 ASSISTANT ATTORNEY GENERAL
18 ENVIRONMENT AND NATURAL
19 RESOURCES DIVISION
20 U.S. DEPARTMENT OF JUSTICE

19 Dated: November 22, 2016

20 By: 
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A TRUE BILL



Foreperson



Date

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No. _____

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK
CRIMINAL DIVISION

UNITED STATES OF AMERICA

vs.

THOMAS KOKELL,

Defendants.

INDICTMENT

T. 18, U.S.C., §§, 371; T. 18, U.S.C. §§ 1341 and 2; T. 18, U.S.C., § 1519

A true bill.


Foreman

Filed in open court this _____ day.

of _____ A.D. 20 _____

Clerk

Bail. \$ _____

CHRISTOPHER L. HALE, TRIAL ATTORNEY
BRENDAN SELBY, TRIAL ATTORNEY
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