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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION
U.S. DISTRICT COURT
BAY CITY, MICHIGAN

UNITED STATES OF AMERICA, Criminal No. 09-20054

Plaintiff, Judge Thomas L. Ludington

v.

KEVIN BRIAN RUCINSKI,

Offense: 16 U.S.C. § 1538(e) and (g) Importation of
wildlife without filing declaration

Defendant.

Statutory Penalties:
1 year imprisonment/supervised release/\$100,000
fine/restitution/forfeiture of property and privileges

RULE 11 PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, defendant and the government agree as follows:

1. GUILTY PLEA

A. Count of Conviction

Defendant will enter a plea of guilty to an information which charges the defendant with importing, and causing the importation of, wildlife without filing the required declaration with the U.S. Fish and Wildlife Service.

B. Elements of Offenses

The elements of the violation of 16 U.S.C. §1538(e) and (g) charged in the information are that the defendant (1) imported or caused the importation of

wildlife into the United States; and (2) failed to file a Declaration for Importation or Exportation of Fish or Wildlife with the U.S. Fish and Wildlife Service.

C. Stipulations

The following facts and conditions are agreed to by the parties.

1) The defendant stipulates to the following facts, agrees that the government could prove those facts if this case were tried to a jury, and agrees that the facts would satisfy the elements of the offense to which he is pleading guilty:

In January of 2006, a package sent from Hong Kong and addressed to the Kevin Ruchinski at his dental office in Roscommon, Michigan, was intercepted at a United Parcel Service hub facility in the United States. The label on the package indicated that the package contained stationary. Inspection of the package by the U.S. Fish and Wildlife Service revealed that the package contained dried butterflies. An agent of the USFWS personally contacted the defendant, explained that importation of the butterflies was a violation of the Endangered Species Act, issued a violation notice to Rucinski, and directed the defendant to a website where he could learn about the laws and regulations governing the importation and exportation of fish and wildlife. Rucinski paid the fine for the violation notice and forfeited the contents of the intercepted package.

Nevertheless, Rucinski continued to buy and import dried insects, including butterflies listed in the Convention on International Trade in Endangered Species of Wild Fauna or Flora, and also spiders, beetles, and mollusks shells. Between October of 2005 and November of 2006, he made over a 1,000 successful bids for such items at auction on eBay, mostly by sellers from outside of the United States. At times Rucinski purchased lots of 600 specimens of a few butterfly species; at other times he paid \$150 for a single, dried butterfly. He received imported shipments of those items on a weekly basis, if not more frequently, at his office without filing a Declaration for Importation or Exportation of Fish or Wildlife (Form 3-177) with the USFWS, nor obtaining an Import/Export License from the Service. Though Rucinski paid over \$15,000 for the wildlife in those shipments, he evaded the \$55 per package importation fee, as well as the then \$100 license fee, at a cost to the United States of over \$5,000.

2) The defendant acknowledges that he could be prosecuted for multiple felony offenses, including violations of 18 U.S.C. §371 (defrauding the United States of import duties and licensing fees), 18 U.S.C. §§542 and 545 (smuggling), and 18 U.S.C. §§1341 and 1343 (fraud by mail and wire), and also multiple misdemeanor violations of 16 U.S.C. §1538, *et seq.* (Endangered Species Act), and 16 U.S.C. §3371, *et seq.* (Lacey Act). The defendant understands that he is

being allowed to enter a pre-indictment plea guilty to a single misdemeanor charge. In return, the defendant agrees to pay the United States a fine of \$15,000 to be credited the Lacey Act Reward Account, pay restitution of \$5,000 for lost revenues, to forfeit the items seized during the investigation, and to forego access to all federal hunting or fishing permits or stamps for one year, starting from the date on which he enters his guilty plea.

3) The defendant acknowledges that, after consideration of his retained counsel's advice, he has made his own decision to plea guilty because he is in fact guilty as charged.

4) The defendant also understands the his sentence very likely will include a term of imprisonment followed by supervised release. The defendant nevertheless reserves the right to ask for a sentence below the low end of the sentencing guideline range found in the attached guideline worksheets, that is a sentence lower than 6 months, recognizing that he cannot in any way enforce that request if it is denied by the sentencing judge.

5) Based on the present circumstances, the U.S. Attorney recommends that the defendant be granted a reduction of two levels for acceptance of responsibility. The U.S. Attorney may recommend against giving defendant credit for acceptance

of responsibility if, after the guilty plea has been entered, the U.S. Attorney's office learns of information inconsistent with the adjustment.

2. SENTENCING GUIDELINES

A. Standard of Proof

The court will find sentencing factors by a preponderance of the evidence.

B. Agreed Guideline Range

There are no sentencing guideline disputes. Except as provided below, defendant's guideline range is 6 to 12 months, as set forth on the attached worksheets. If the court finds that a) that defendant's criminal history category is higher than reflected on the attached worksheets, or b) that the offense level should be higher because, after pleading guilty, defendant made any false statement to or withheld information from his probation officer; otherwise demonstrated a lack of acceptance of responsibility for his offenses; or obstructed justice or committed any crime, and if any such finding results in a guideline range higher than 6 to 12 months, the higher guideline range becomes the agreed range, subject to the statutory maximum of 12 months.

Neither party may take a position concerning the applicable guidelines that is different than any position of that party as reflected in the attached worksheets,

except as necessary to the court's determination regarding subsections a) and b), above.

3. SENTENCE

The court will impose a sentence pursuant to 18 U.S.C. §3553, and in doing so must consider the sentencing guideline range.

A. Imprisonment

Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the sentence of imprisonment in this case may not exceed 12 months.

B. Supervised Release

A term of supervised release follows a term of imprisonment. The court may impose a 1-year term of supervised release. The agreement limiting the defendant's term of imprisonment to 12 months does not apply to any term of imprisonment that results from any later revocation of supervised release. Rather, the term of incarceration imposed on any supervised release violation, in combination with the sentence received on the offense to which the defendant is pleading guilty, may exceed the statutory maximum sentence of incarceration for the offense of conviction.

C. Special Assessments

Defendant will pay a special assessment of **\$25** and must provide the government with a receipt for the payment before sentence is imposed.

D. Fine

The court will impose a fine of \$15,000, to be credited to the Lacey Act Reward Account, plus restitution.

E. Restitution

The court shall order restitution in the amount of \$5,000 to be paid to the United States to compensate for import duties and fees lost as a result of the defendant's offense conduct.

4. WAIVER OF RIGHT TO DNA TESTING

Defendant waives any right he has to move for an order requiring the DNA testing of evidence that was secured in relation to the investigation or prosecution of this case.

5. OTHER CHARGES

If the court accepts this agreement, the government will not bring additional charges against defendant based on any of the conduct reflected in this agreement and the attached worksheets.

6. EACH PARTY'S RIGHT TO WITHDRAW FROM THIS AGREEMENT

The government may withdraw from this agreement if the court finds the correct guideline range to be lower than that computed in the attached guideline worksheets.

Defendant may withdraw from this agreement, and may withdraw his guilty plea, only if the court decides to reject this agreement and impose a larger fine or restitution obligation.

7. APPEAL WAIVERS

If the custodial portion of the defendant's sentence falls within the stipulated guideline range of 6 to 12 months, and the fine and restitution aspects of the sentence are in accordance with this agreement, the defendant waives any right to appeal his conviction or sentence. The defendant may appeal a fine or restitution order which is for an amount larger than stated in this agreement.

Defendant understands that defendants generally have the right collaterally to attack their convictions and sentences by filing post-conviction motions, petitions, or independent civil actions. As part of this agreement, however, defendant knowingly and voluntarily waives that right and agrees not to contest his conviction or sentence in any post-conviction proceeding, including—but not limited to—any proceeding under 28 U.S.C. § 2255.

The government agrees not to appeal any custodial sentence within the 6 to 12 month guideline range. The government retains the right to appeal any determination by the court to apply a lower range, to impose a sentence below the guideline range, or to impose a fine or restitution in amounts less than that stated in this agreement.

8. WITHDRAWAL OF GUILTY PLEA OR VACATION OF CONVICTION

If defendant is allowed to withdraw his guilty plea, or if the conviction entered pursuant to this agreement is vacated, additional charges, which relate directly or indirectly to the conduct underlying the guilty plea or to any conduct reflected in the attached worksheets, may be filed against defendant within six months after the date the order vacating defendant's conviction or allowing him to withdraw his guilty plea becomes final. Defendant waives his right to challenge the additional charges on the ground that they were not filed in a timely manner, including any claim that they were filed after the limitations period expired.

9. PARTIES TO PLEA AGREEMENT

Unless otherwise indicated, this agreement does not bind any government agency except the United States Attorney's Office for the Eastern District of Michigan.

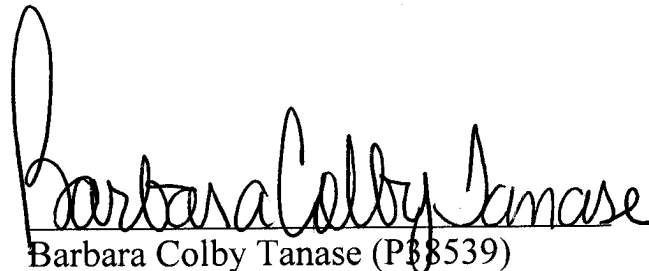
10. SCOPE OF PLEA AGREEMENT

This agreement, which includes the attached guideline worksheets, is the complete agreement between the parties. It supersedes all other promises, representations, understandings, and agreements between the parties concerning the subject matter of this plea agreement that are made at any time before the guilty plea is entered in court. Thus, no oral or written promises made by the government to defendant or to the attorney for defendant at any time before defendant pleads guilty

are binding except to the extent they have been explicitly incorporated into this agreement. This agreement does not prevent any civil or administrative actions against defendant, or any forfeiture claim against any property, by the United States or any other party.

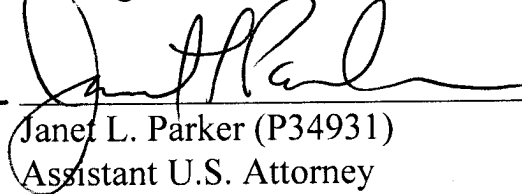
11. ACCEPTANCE OF AGREEMENT BY DEFENDANT

This plea offer expires unless it has been received, fully signed, in the Office of the United States Attorney by 5:00 P.M. on February 27, 2009. The government reserves the right to modify or revoke this offer at any time before defendant pleads guilty.



Barbara Colby Tanase (P38539)
Assistant U.S. Attorney
Chief, Branch Offices

TERRENCE BERG
Acting United States Attorney

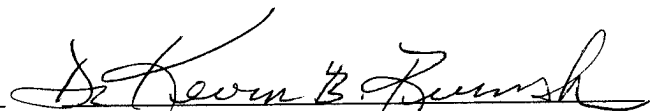


Janet L. Parker (P34931)
Assistant U.S. Attorney

By signing below, defendant acknowledges that he has read (or been read) this entire document, understands it, and agrees to its terms. He also acknowledges that he is satisfied with his attorney's advice and representation. Defendant agrees that he has had a full and complete opportunity to confer with his lawyer, and has had all of his questions answered by his lawyer.



Michael B. Kilpatrick
Attorney for Defendant



Kevin B. Rucinski
Defendant

Date: 3-4-09

Worksheet A (Offense Level)

Defendant	Rucinski, Kevin	District/Office	
Docket Number (Year-Sequence-Defendant No.)	- - - - -		
Count Number(s)	1	U.S. Code Title & Section(s)	: §
Guidelines Manual Edition Used:	2008		: §

Instructions:

For each count of conviction (or stipulated offense), complete a separate Worksheet A. Exception: Use only a single Worksheet A where the offense level for a group of closely related counts is based primarily on aggregate value or quantity (see §3D1.2(d)) or where a count of conspiracy, solicitation, or attempt is grouped with a substantive count that was the sole object of the conspiracy, solicitation, or attempt (see §3D1.2(a) and (b)).

1. Offense Level (See Chapter Two)

Guideline	Description	Level
2Q2.1(a)	base offense, offenses involving fish and wildlife	6
2Q2.1(b)(1)	pattern	2
2Q2.1(b)(3)(A)(ii) or	market value = \$15,000+ (per 2B1.1, \$10,000-\$30,000 = +4)	4
2Q2.1(b)(3)(B)(ii) or	offense involves listed species under Endangered Species Act = +4	
2Q2.1(b)(3)(B)(iii)	offense involves listed species under Convention on Int'l Trade in Endangered Species = +4	
Sum		12

2. Victim-Related Adjustments. (See Chapter Three, Part A)

Enter the applicable section and adjustment. If more than one section is applicable, list each section and enter the combined adjustment. If no adjustment is applicable, enter "0." § 0

3. Role in the Offense Adjustment. (See Chapter Three, Part B)

Enter the applicable section and adjustment. If more than one section is applicable, list each section and enter the combined adjustment. If the adjustment reduces the offense level, enter a minus (-) sign in front of the adjustment. If no adjustment is applicable, enter "0." § 0

4. Obstruction Adjustments (See Chapter Three, Part C)

Enter the applicable section and adjustment. If more than one section is applicable, list each section and enter the combined adjustment. If no adjustment is applicable, enter "0." § 0

5. Adjusted Offense Level

Enter the sum of Items 1-4. If this worksheet does not cover all counts of conviction or stipulated offenses, complete Worksheet B. Otherwise, enter this result on Worksheet D, Item 1. 12

X Check if the defendant is convicted of a single count. In such case, Worksheet B need not be completed.

I If the defendant has no criminal history, enter criminal history "I" here and on Item 4, Worksheet D. In such case, Worksheet C need not be completed.

Worksheet D (Guideline Worksheet)

Defendant _____ Docket Number _____

1. **Adjusted Offense Level** (from Worksheet A or B)
 If Worksheet B is required, enter the result from Worksheet B, Item 9.
 Otherwise, enter the result from Worksheet A, Item 5.

12

2. **Acceptance of Responsibility** (See Chapter Three, Part E)
 Enter the applicable reduction of 2 or 3 levels. If no adjustment is applicable, enter "0."

-2

3. **Offense Level Total** (Item 1 less Item 2)

10

4. **Criminal History Category** (from Worksheet C)
 Enter the result from Worksheet C, Item 9.

I

5. **Terrorism/Career Offender/Criminal Livelihood/Armed Career Criminal/Repeat and Dangerous Sex Offender**
 (See Chapter Three, Part A, and Chapter Four, Part B)

a. Offense Level Total

If the provision for Career Offender (§4B1.1), Criminal Livelihood (§4B1.3), Armed Career Criminal (§4B1.4), or Repeat and Dangerous Sex Offender (§4B1.5) results in an offense level total higher than Item 3, enter the offense level total. Otherwise, enter "N/A."

n/a

b. Criminal History Category

If the provision for Terrorism (§3A1.4), Career Offender (§4B1.1), Armed Career Criminal (§4B1.4), or Repeat and Dangerous Sex Offender (§4B1.5) results in a criminal history category higher than Item 4, enter the applicable criminal history category. Otherwise, enter "N/A."

n/a

6. **Guideline Range from Sentencing Table**
 Enter the applicable guideline range from Chapter Five, Part A.

6-12

Months

7. **Restricted Guideline Range** (See Chapter Five, Part G)
 If the statutorily authorized maximum sentence or the statutorily required minimum sentence restricts the guideline range (Item 6) (see §§5G1.1 and 5G1.2), enter either the restricted guideline range or any statutory maximum or minimum penalty that would modify the guideline range. Otherwise, enter "N/A."

n/a

Months

n/a

 Check this box if §5C1.2 (Limitation on Applicability of Statutory Minimum Penalties in Certain Cases) is applicable.

8. **Undischarged Term of Imprisonment** (See §5G1.3)

n/a

 If the defendant is subject to an undischarged term of imprisonment, check this box and list the undischarged term(s) below.

Worksheet D

Defendant _____ Docket Number _____

9. **Sentencing Options** (Check the applicable box that corresponds to the Guideline Range entered in Item 6 or Item 7, if applicable.)
(See Chapter Five, Sentencing Table.)

Zone A If checked, the following options are available (see §5B1.1):

Fine (See §5E1.2(a))

“Straight” Probation

Imprisonment

Zone B If checked, the minimum term may be satisfied by:

Imprisonment

Imprisonment of at least one month plus supervised release with a condition that substitutes community confinement or home detention for imprisonment (see §5C1.2(c)(2))

Probation with a condition that substitutes intermittent confinement, community confinement, or home detention for imprisonment (see §5B1.1(a)(2) and §5C1.1(c)(3))

Zone C If checked, the minimum term may be satisfied by:

Imprisonment

Imprisonment of at least one-half of the minimum term plus supervised release with a condition that substitutes community confinement or home detention for imprisonment (see §5C1.1(d)(2))

Zone D If checked, the minimum term shall be satisfied by a sentence of imprisonment (see §5C1.1(f))

10. **Length of Term of Probation** (See §5B1.2)

If probation is imposed, the guideline for the length of such term of probation is: (Check applicable box)

At least one year, but not more than five years if the offense level total is 6 or more

No more than three years if the offense level total is 5 or less

11. **Conditions of Probation** (See §5B1.3)

List any mandatory conditions ((a)(1)-(10)), standard conditions ((c)(1)-(14)), and any other special conditions that may be applicable:

Pay fine and restitution in accordance with schedule established by court and probation officer; substance abuse and mental health testing and treatment at discretion of probation officer; house and office subject to warrantless search by probation officer; maintain full-time employment; report as directed to probation officer; travel restricted to United States unless given prior written approval by probation officer; personal use of computer subject to monitoring by probation officer; buying, selling, trading or possessing plants or animal species prohibited unless approved in writing by the probation officer and USF&W.

Worksheet D

Defendant _____ Docket Number _____

12. Supervised Release (see §§5D1.1 and 5D1.2)

a. A term of supervised release is: (Check applicable box)

- Required because a term of imprisonment of more than one year is to be imposed or if required by statute
- Authorized but not required because of a term of imprisonment of one year or less is to be imposed

b. Length of Term (Guideline Range of Supervised Release): (Check applicable box)

- Class A or B Felony: Three to Five Year Term
- Class C or D Felony: Two to Three Year Term
- Class E Felony or Class A Misdemeanor: One Year Term

c. Restricted Guideline Range of Supervision Release

If a statutorily required term of supervised release impacts the guideline range, check this box and enter the required term.

13. Conditions of Supervised Release (See §5D1.3)

List any mandatory conditions ((a)(1)-(8)), standard conditions ((c)(1)-(15)), and any other special conditions that may be applicable:

see terms listed above in ¶ 11.

14. Restitution (See §5E1.1)

a. If restitution is applicable, enter the amount. Otherwise enter "N/A" and the reason: \$5,000

b. Enter whether restitution is statutorily mandatory or discretionary: by stipulation, based on lost import fees

c. Enter whether restitution is by an order of restitution or solely as a condition of supervision. Enter the authorizing statute:

15. Fines (Guideline Range of Fines for Individual Defendants) (See §5E1.2)

	<u>Minimum</u>	<u>Maximum</u>
a. Special fine provisions		
<input type="checkbox"/>	Check box if any of the counts of conviction is for a statute with a special fine provision. (This does not include the general fine provisions of 18 U.S.C. § 3571 (b)(2), (d))	
	Enter the sum of statutory maximum fines for all such counts	
	\$ 100,000	_____
b. Fine Table (§ 5E1.2(c)(3))		
	Enter the minimum and maximum fines	
	\$ 2,000	_____
	\$ 20,000	_____
c. Guideline Range of Fines (determined by the maximum of the fine table (Item 15(b)) and the greater maximum above (Item 15(a) or 15(b))		
	\$ 2,000	_____
	\$ 100,000	_____
d. Ability to Pay		
<input type="checkbox"/>	Check this box if the defendant does not have an ability to pay.	

Worksheet D

Page 4

Defendant _____ Docket Number _____

16. **Special Assessment** (See §5E1.3)

Enter the total amount of special assessments required for all counts of conviction:

- \$25 for each misdemeanor count of conviction
- Not less than \$100 for each felony count of conviction

\$ 25 _____

17. **Additional Factors**

List any additional applicable guidelines, policy statements, and statutory provisions. Also list any applicable aggravating and mitigating factors that may warrant a sentence of a particular point either within or outside the applicable guideline range. Attach additional sheets as necessary.

Completed by Janet Parker Date 1/6/09