

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 11-0073
)
Lee Marvin Greenly,)
)
Respondent) **Decision and Order**

PROCEDURAL HISTORY

On November 29, 2010, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this adjudicatory proceeding under the Animal Welfare Act, as amended (7 U.S.C. § 2131-2159) [hereinafter the Animal Welfare Act]; the regulations issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-2.133) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice], by filing an Order to Show Cause Why Animal Welfare License 41-C-0122 Should Not Be Terminated [hereinafter Order to Show Cause].

The Administrator alleges: (1) Lee Marvin Greenly was convicted in *United States v. Greenly*, Crim. No. 06-235 (PAM) (D. Minn.), of criminally conspiring to violate and violating the Lacey Act by maintaining bear-baiting stations on a federal wildlife refuge where bear hunting is unlawful and guiding paying clients onto the federal wildlife refuge to unlawfully hunt bears and coyotes, resulting in the deaths of no fewer than two bears and one coyote; (2) on February 12, 2009, August 14, 2010, and October 19, 2010, Mr. Greenly placed animals and people in danger by failing to house animals in secure enclosures and by exhibiting dangerous animals without any distance and/or barriers between the animals and the public, resulting in injuries; (3) on December 19, 2006, June 12, 2007, February 13, 2008, February 23, 2009, and May 13, 2009, Mr. Greenly failed to permit inspection of his animals, premises, and records by the Administrator; and (4) Mr. Greenly made false statements and provided false documents to government officials regarding the death of a bear and the maintenance of bear-baiting stations on a federal wildlife refuge.¹ The Administrator seeks an order terminating Mr. Greenly's Animal Welfare Act license and disqualifying Mr. Greenly from obtaining an Animal Welfare Act license for not less than a period of 2 years.² On January 14, 2011, Mr. Greenly filed an Answer to Show Cause Order in which he admitted he

¹Order to Show Cause at 2-3 ¶¶ 3-7.

²Order to Show Cause at 4.

entered into a plea agreement in *United States v. Greenly* (Plea Agreement and Sentencing Stipulations), Crim. No. 06-235 (PAM) (D. Minn. Nov. 27, 2006).³ On January 14, 2011, Mr. Greenly also filed a motion to consolidate the instant proceeding with *In re Lee Marvin Greenly*, AWA Docket No. 11-0072. On January 19, 2011, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] granted Mr. Greenly's motion and consolidated the instant proceeding with *In re Lee Marvin Greenly*, AWA Docket No. 11-0072, for the purposes of hearing.⁴

On February 8, 2011, the Administrator filed Complainant's Motion for Summary Judgment and, on March 4, 2011, Mr. Greenly filed Respondents [sic] Response to Complainant's Motion for Summary Judgment. On March 8, 2011, the Chief ALJ issued an Order deferring a ruling on Complainant's Motion for Summary Judgment pending argument on Complainant's Motion for Summary Judgment during the consolidated hearing.

³ Answer to Show Cause Order at 1-2 ¶ 3.

⁴ Chief ALJ's Summary of Teleconference and Order filed January 19, 2011.

On May 1-2, 2012, the Chief ALJ conducted a consolidated hearing in Minneapolis, Minnesota. Colleen A. Carroll, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Administrator. Larry D. Perry, Knoxville, Tennessee, represented Mr. Greenly. The Administrator called 12 witnesses and Mr. Greenly called seven witnesses.⁵ The Administrator introduced 51 exhibits which were admitted into evidence,⁶ and Mr. Greenly introduced 48 exhibits which were admitted into evidence.⁷

On August 22, 2012, after the parties submitted post-hearing briefs, the Chief ALJ filed a Decision and Order in which he: (1) concluded that Mr. Greenly, having been found guilty of conspiracy to violate the Lacey Act, is unfit to hold an Animal Welfare Act license; (2) ordered that, should the Chief ALJ's Order in *In re Lee Marvin Greenly*, AWA Docket No. 11-0072 (Aug. 22, 2012), revoking Mr. Greenly's Animal Welfare Act license be vacated, Mr. Greenly's Animal Welfare Act license would be terminated; and (3) disqualified Mr. Greenly from becoming licensed under the Animal Welfare Act for a period of 2 years.⁸

⁵References to the transcript of the May 1-2, 2012, hearing are indicated as "Tr." and the page number.

⁶The Administrator's exhibits are identified as "CX" and the exhibit number.

⁷Mr. Greenly's exhibits are identified as "RX" and the exhibit number.

⁸Chief ALJ's Decision and Order at 8-9.

On September 27, 2012, Mr. Greenly appealed the Chief ALJ's Decision and Order to the Judicial Officer. On October 17, 2012, the Administrator filed Complainant's Response to Petition for Appeal, and on October 22, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

Based upon a careful review of the record, I affirm the Chief ALJ's termination of Mr. Greenly's Animal Welfare Act license and the Chief ALJ's disqualification of Mr. Greenly from becoming licensed under the Animal Welfare Act for a period of 2 years; except that, the Order terminating Mr. Greenly's Animal Welfare Act license in this Decision and Order is not contingent upon the ultimate disposition of *In re Lee Marvin Greenly*, AWA Docket No. 11-0072.

DECISION

Discussion

The Animal Welfare Act provides that the Secretary of Agriculture shall issue licenses to dealers and exhibitors upon application therefore in such form and manner as the Secretary may prescribe (7 U.S.C. § 2133). The power to require and to issue licenses under the Animal Welfare Act includes the power to terminate licenses and to disqualify persons from becoming licensed.⁹

⁹*In re Vanishing Species Wildlife, Inc.*, 69 Agric. Dec. 1068, 1070 (2010); *In re Animals of Montana, Inc.*, 68 Agric. Dec. 92, 94 (2009); *In re Amarillo Wildlife Refuge, Inc.*,

68 Agric. Dec. 77, 81 (2009); *In re Loreon Vigne*, 67 Agric. Dec. 1060, 1062 (2008); *In re Mary Bradshaw*, 50 Agric. Dec. 499, 507 (1991).

The basis for the Administrator's determination that Mr. Greenly is no longer fit to hold an Animal Welfare Act license is the evidence that Mr. Greenly made false statements and provided false records to a government agency and was convicted of conspiring to violate and violating the Lacey Act. Mr. Greenly admits entering a plea agreement in *United States v. Greenly* (Plea Agreement and Sentencing Stipulations), Crim. No. 06-235 (PAM) (D. Minn. Nov. 27, 2006).¹⁰

The Regulations specify certain bases for denying an initial application for an Animal Welfare Act license (9 C.F.R. § 2.11) and further provide that an Animal Welfare Act license, which has been issued, may be terminated for any reason that an initial license application may be denied (9 C.F.R. § 2.12). The Regulations provide an initial application for an Animal Welfare Act license will be denied if the applicant is unfit to be licensed and the Administrator determines the issuance of the Animal Welfare Act license would be contrary to the purposes of the Animal Welfare Act, as follows:

§ 2.11 Denial of initial license application.

(a) A license will not be issued to any applicant who:

....

(6) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation,

¹⁰Answer to Show Cause Order at 1-2 ¶ 3.

ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

9 C.F.R. § 2.11(a)(6).

The purposes of the Animal Welfare Act are set forth in a congressional statement of policy, as follows:

§ 2131. Congressional statement of policy

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

- (1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;
- (2) to assure the humane treatment of animals during transportation in commerce; and
- (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

7 U.S.C. § 2131.

The evidence establishes that on November 27, 2006, the United States and Mr. Greenly entered into a Plea Agreement and Sentencing Stipulations whereby Mr. Greenly pleaded guilty to an Information charging him with conspiracy to violate the Lacey Act and violating the Lacey Act (16 U.S.C. §§ 3372(a)(1), 3372(c)(1)(A), and 3373(d)(1)(B) and 18 U.S.C. § 371). *United States v. Greenly* (Plea Agreement and Sentencing Stipulations), Crim. No. 06-235 (PAM) (D. Minn. Nov. 27, 2006); (CX 120 at 1-10). On March 5, 2007,

judgment was imposed on Mr. Greenly and on March 14, 2007, Senior United States District Judge Paul A. Magnuson, United States District Court for the District of Minnesota, issued an order of judgment which states that Mr. Greenly pleaded guilty to Count 1 - Conspiracy to Violate the Lacey Act-Bear Guiding (16 U.S.C. §§ 3372(a)(1), 3372(c)(1)(A), and 3373(d)(1)(B) and 18 U.S.C. § 371) and to Count 2 - Violation of the Lacey Act-Bear Guiding (16 U.S.C. §§ 3372(a)(1), 3372(c)(1)(A), and 3373(d)(1)(B)). *United States v. Greenly* (Judgment in a Criminal Case), Crim. No. 06-235 (PAM) (D. Minn. Mar. 14, 2007); (CX 120 at 11-15).

In addition to the admissions contained in the Plea Agreement and Sentencing Stipulations, the record contains evidence reflecting that Mr. Greenly made false statements and provided false records to the Minnesota Department of Natural Resources in which he represented that he had guided Troy Gentry on a commercial hunt “in a no-quota zone” where Mr. Gentry had killed a bear from the wild population, when, in fact, the bear was a tame captive-reared bear that Mr. Gentry killed while the bear was enclosed in a pen on Mr. Greenly’s property (CX 32-CX 33, CX 35, CX 121).

Mr. Greenly’s Appeal Petition

Mr. Greenly raises two issues in his Appeal Petition. First, Mr. Greenly contends the Chief ALJ erroneously concluded that this Animal Welfare Act license termination proceeding does not subject Mr. Greenly to double jeopardy in violation of the Double Jeopardy Clause of

the Fifth Amendment to the Constitution of the United States. Mr. Greenly asserts he was prosecuted and punished for his violations of the Lacey Act in *United States v. Greenly*, Crim. No. 06-235 (PAM) (D. Minn.) (CX 120). Mr. Greenly contends this Animal Welfare Act license termination proceeding constitutes a second prosecution for his Lacey Act violations and termination of his Animal Welfare Act license would constitute a second punishment for his Lacey Act violations. (Appeal Pet. at 2-4.)

The Double Jeopardy Clause provides that no person shall “be subject for the same offence to be twice put in jeopardy of life or limb[.]” (U.S. Const. amend. V.) The Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction and against multiple punishments for the same offense.¹¹

¹¹*Monge v. California*, 524 U.S. 721, 727-28 (1998); *United States v. Dixon*, 509 U.S. 688, 696 (1993); *Ohio v. Johnson*, 467 U.S. 493, 499-500 (1984); *Justices of Boston Municipal Court v. Lydon*, 466 U.S. 294, 306-07 (1984); *Oregon v. Kennedy*, 456 U.S. 667, 671 (1982); *Illinois v. Vitale*, 447 U.S. 410, 415-16 (1980); *United States v. Diniz*, 424 U.S. 600, 606 (1976); *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969).

This license termination proceeding is not a second prosecution for Mr. Greenly's Lacey Act violations. This proceeding is an administrative Animal Welfare Act license termination proceeding brought under the Animal Welfare Act and the Regulations to determine whether Mr. Greenly is fit to be licensed under the Animal Welfare Act and is not a "prosecution" within the meaning of the Double Jeopardy Clause.¹² The Animal Welfare Act is a remedial statute and Animal Welfare Act license termination proceedings are not penal.¹³ The Administrator does not seek to punish Mr. Greenly for his actions. Instead, the Administrator seeks termination of Mr. Greenly's Animal Welfare Act license because Mr. Greenly's actions reflect on his fitness to be licensed under the Animal Welfare Act. Therefore, I reject Mr. Greenly's contention that this proceeding constitutes a second

¹²*See United States v. Bizzell*, 921 F.2d 263, 266 (10th Cir. 1990) (stating administrative proceedings where defendants were debarred from Housing and Urban Development programs were not prosecutions within the meaning of the Double Jeopardy Clause).

¹³*In re Jeffrey W. Ash*, __ Agric. Dec. __, slip op. at 11 (Sept. 14, 2012) (concluding the termination of Mr. Ash's Animal Welfare Act license pursuant to 9 C.F.R. §§ 2.11(a)(6) and 2.12 promotes the remedial purposes of the Animal Welfare Act); *In re Carolyn & Julie Arends*, __ Agric. Dec. __, slip op. at 6 (Nov. 15, 2011) (finding the Animal Welfare Act is a remedial statute enacted to insure that animals are provided humane care and treatment); *In re Animals of Montana, Inc.*, 68 Agric. Dec. 92, 106 (2009) (stating 9 C.F.R. §§ 2.11 and 2.12 promote the remedial purpose of the Animal Welfare Act and are rationally related to the purpose of denying Animal Welfare Act licenses to applicants unfit to hold Animal Welfare Act licenses and terminating Animal Welfare Act licenses held by persons unfit to hold Animal Welfare Act licenses).

prosecution for Mr. Greenly's Lacey Act violations in violation of the Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States, and I reject Mr. Greenly's contention that termination of his Animal Welfare Act license would constitute a second punishment for Mr. Greenly's Lacey Act violations in violation of the Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States.

Second, Mr. Greenly contends the Chief ALJ erroneously concluded this proceeding is not time barred. Mr. Greenly asserts this proceeding is time barred by 18 U.S.C. § 3282(a) and 28 U.S.C. § 2462 because these statutes of limitations prohibit commencement of a proceeding more than 5 years after an offense has been committed. Mr. Greenly asserts he committed the Lacey Act offenses in September and October 2005 and the Administrator commenced this proceeding by filing the Order to Show Cause on November 29, 2010. (Appeal Pet. at 4-10.)

The statute of limitations in 18 U.S.C. § 3282(a) limits the time within which a proceeding may be instituted after an offense, as follows:

§ 3282. Offenses not capital

(a) IN GENERAL.—Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

The purpose of the statute of limitations in 18 U.S.C. § 3282(a) is to limit exposure to criminal prosecution to a certain fixed time following occurrence of acts the legislature has decided to punish by criminal sanctions.¹⁴ This proceeding is an administrative proceeding not a criminal proceeding; therefore, I conclude the time bar in 18 U.S.C. § 3282(a) is not applicable to this proceeding.

The statute of limitations in 28 U.S.C. § 2462 provides, as follows:

§ 2462. Time for commencing proceedings

Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

¹⁴*United States v. Marion*, 404 U.S. 307, 323 (1971); *Toussie v. United States*, 397 U.S. 112, 114 (1970). *See also United States v. Oliva*, 46 F.3d 320, 324 (3d Cir. 1995) (stating the general five-year statute of limitations in 18 U.S.C. § 3282 applies to noncapital criminal offenses).

A “penalty,” as that term is used in 28 U.S.C. § 2462, is a form of punishment imposed by the government for unlawful or proscribed conduct which goes beyond remedying the damage caused to the harmed parties by the respondent’s actions.¹⁵ The Administrator does not seek to punish Mr. Greenly for his actions. Instead, the Administrator seeks termination of Mr. Greenly’s Animal Welfare Act license because Mr. Greenly’s actions reflect on his fitness to be licensed under the Animal Welfare Act. Thus, I conclude the statute of limitations in 28 U.S.C. § 2462 is not applicable to an action by the Secretary of Agriculture to terminate an existing Animal Welfare Act license pursuant to 9 C.F.R. § 2.12, based upon a licensee’s unfitness to continue to be licensed under the Animal Welfare Act. Termination of an Animal Welfare Act license pursuant to 9 C.F.R. § 2.12 is remedial and thus outside the scope of the statute of limitations in 28 U.S.C. § 2462.¹⁶

¹⁵*Coghlan v. NTSB*, 470 F.3d 1300, 1305 (11th Cir. 2006) (per curiam); *Johnson v. SEC*, 87 F.3d 484, 487-88 (D.C. Cir. 1996); *In re Loreon Vigne*, 67 Agric. Dec. 1060, 1068 (2008).

¹⁶*In re Loreon Vigne*, 67 Agric. Dec. 1060, 1068 (2008).

Moreover, even if a 5-year statute of limitations were applicable to this proceeding, this proceeding, at least as it relates to Mr. Greenly's Lacey Act violations, would not be time barred. The Regulations provide that an Animal Welfare Act license may be terminated if the licensee "has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals[.]" (9 C.F.R. §§ 2.11(a)(6), .12.) Thus, the "claim" in this proceeding first accrued on March 14, 2007, when Mr. Greenly was convicted of violating the Lacey Act, not in September and October 2005, when Mr. Greenly asserts he violated the Lacey Act.¹⁷

The Administrator's Response to Petition for Appeal

In addition to the Administrator's response to Mr. Greenly's Appeal Petition, the Administrator raises two issues in Complainant's Response to Petition for Appeal. First, the Administrator contends the Chief ALJ erroneously failed to rule on Complainant's Motion for Summary Judgment (Complainant's Response to Pet. for Appeal at 13-15).

The Rules of Practice require administrative law judges to rule on all motions filed prior to the filing of an appeal of the administrative law judge's decision, as follows:

¹⁷*In re Animals of Montana, Inc.*, 68 Agric. Dec. 92, 109 (2009) (holding conviction triggers the Secretary of Agriculture's ability to terminate an Animal Welfare Act license pursuant to 9 C.F.R. §§ 2.11(a)(6) and 2.12; not the date of the underlying criminal activities).

§ 1.143 Motions and requests.

(a) *General.* The Judge shall rule upon all motions and requests filed or made prior to the filing of an appeal of the Judge's decision pursuant to § 1.145, except motions directly relating to the appeal. Thereafter, the Judicial Officer will rule on any motions and requests, as well as the motions directly relating to the appeal.

7 C.F.R. § 1.143(a). I find nothing in the record indicating that the Chief ALJ ruled on Complainant's Motion for Summary Judgment. Nonetheless, I decline to remand this proceeding to the Chief ALJ for a ruling on Complainant's Motion for Summary Judgment. Instead, I find the Chief ALJ's issuance of the Chief ALJ's August 22, 2012, Decision and Order and failure to rule on Complainant's Motion for Summary Judgment operate as an implicit denial of Complainant's Motion for Summary Judgment.¹⁸

¹⁸ See *Esso Standard Oil Co. v. Lopez-Freytes*, 522 F.3d 136, 144 (1st Cir. 2008) (stating general principles of administrative law provide that an agency's failure to act on a pending matter is treated as a denial of the relief sought); *Hernandez v. Reno*, 238 F.3d 50, 55 (1st Cir. 2001) (treating the Board of Immigration Appeal's failure to act on the petitioner's motion to reopen for more than 3 years as a denial of that motion); *United States v. Stefan*, 784 F.2d 1093, 1100 (11th Cir. 1986) (concluding the United States District Court for the Southern District of Florida's failure to rule on appellant's motion for mistrial constitutes an implicit denial of the motion), *cert. denied*, 479 U.S. 1009 (1986); *Dabone v. Karn*, 763 F.2d 593, 597 n.2 (3d Cir. 1985) (stating the Board of Immigration Appeal's failure to act within a reasonable time period on a motion to reopen constitutes effective denial of that motion); *Toronto-Dominion Bank v. Central Nat'l Bank & Trust Co.*, 753 F.2d 66, 68 (8th Cir. 1985) (stating failure to rule on a motion to intervene can be interpreted as an implicit denial of that motion).

Second, the Administrator asserts the Chief ALJ unnecessarily intertwined his Order in the instant proceeding with the ultimate disposition of *In re Lee Marvin Greenly*, AWA Docket No. 11-0072, in a manner that the Administrator finds confusing (Complainant's Response to Pet. for Appeal at 15).

The Chief ALJ terminated Mr. Greenly's Animal Welfare Act license contingent upon the ultimate disposition of *In re Lee Marvin Greenly*, AWA Docket No. 11-0072, as follows:

Order

1. Should the revocation of Respondent's Animal Welfare Act license No. 41-C-0122 in Docket No. 11-0072 be vacated for any reason, said license is terminated by this action.
2. The Respondent is disqualified for a period of 2 years from becoming licensed under the Animal Welfare Act or otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly through any corporate or other device or person.

Chief ALJ's Decision and Order at 8-9. I agree with the Administrator that termination of Mr. Greenly's Animal Welfare Act license contingent upon the ultimate disposition of *In re Lee Marvin Greenly*, AWA Docket No. 11-0072, is unnecessary; therefore, I issue an Order that is not contingent upon the ultimate disposition of *In re Lee Marvin Greenly*, AWA Docket No. 11-0072.

Based upon the record before me, I enter the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. Mr. Greenly is an individual residing in the State of Minnesota.
2. Mr. Greenly holds Animal Welfare Act license number 41-C-0122 (CX 2).
3. Mr. Greenly exhibits wild and exotic animals to the public at various locations and operates a photographic educational game farm on property he owns on the Kettle River near Sandstone, Minnesota (Tr. 382-83). On various occasions, Mr. Greenly provides animals for photographic opportunities at other locations on nearby private or public land that he does not own (Tr. 439-40).
4. On November 27, 2006, the United States and Mr. Greenly entered into a Plea Agreement and Sentencing Stipulations whereby Mr. Greenly pleaded guilty to an Information charging him with conspiracy to violate the Lacey Act and violating the Lacey Act, as follows:

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 06-235 (PAM)

UNITED STATES OF AMERICA,))	
Plaintiff,))	
v.))	
)	PLEA AGREEMENT
)	AND SENTENCE
LEE MARVIN GREENLY,))	STIPULATIONS
Defendant.))	

....

PLEA AGREEMENT

1. Charges. The defendant agrees to plead guilty to: (a) Count 1 charging the defendant with conspiracy to violate the Lacey Act, 16, United States Code, Sections 3372(a)(1), 3372(c)(1)(A), and 3373(d)(1)(B), all in violation of 18 U.S.C. § 371; (b) Count 2 charging the defendant with a Lacey Act violation, 16, United States Code, Sections 3372(a)(1), 3372(c)(1)(A), and 3373(d)(1)(B). At time of sentencing, the Government will move for dismissal of Count 3.

2. Factual Basis. Count 1: From on or before September 2004, through in or about October 2005, in the State and District of Minnesota and elsewhere, the defendant, **LEE MARVIN GREENLY**, did knowingly and willfully combine, conspire, confederate, and agree with other persons, both known and unknown to the grand jury, to engage in conduct that involved the offer for sale and sale of wildlife with a market value in excess of \$350, that is multiple black bears, and did knowingly sell, transport, receive and acquire said wildlife, knowing that said wildlife was taken, possessed and transported in violation of and in a manner unlawful under the laws and regulations of the United States, specifically, Title 16, United States Code, Section 668dd(c), and Title 50, Code of Federal Regulations Part 32, all in violation of Title 16, United States Code, Sections 3372(a)(1), 3372(c)(1)(A), and 3373(d)(1)(B), and Title 18, United States Code, Section 371.

MANNER AND MEANS OF THE CONSPIRACY

a. It was part of this conspiracy that the defendant, LEE MARVIN GREENLY, was a licensed commercial bear guide in the State of Minnesota and as such held himself out to the public as a professional that charged individual hunters a fee for his assistance in hunting and killing black bears. It is known that GREENLY charged each individual hunter approximately \$750.00 per guided hunt.

b. It was further part of this conspiracy that GREENLY guided multiple hunters per year in an attempt to kill black bears. GREENLY knowingly guided a portion of his commercial hunting clients onto the Sandstone National Wildlife Refuge where it is unlawful to hunt black bears.

c. It was further part of this conspiracy that GREENLY used the assistance of his employees in the course of his unlawful commercial bear guiding operation.

OVERT ACTS

In furtherance of the conspiracy:

- a. On or before August 27, 2004, through in or about October 2005, GREENLY and his employees unlawfully established and maintained or directed the maintenance of multiple bear baiting stations and hunting stands within the boundaries of the Sandstone National Wildlife Refuge.
- b. On at least two (2) different occasions during October 2004, GREENLY or his employees guided an individual paying client onto the Sandstone National Wildlife Refuge to hunt black bears. The client did not kill a bear but rather unlawfully killed a coyote during the hunt. The animal was later transported from the Sandstone National Wildlife Refuge to the residence of GREENLY. The commercial hunting client paid GREENLY approximately \$800.00 for the guided hunt.
- c. On or around August 29, 2005, through September 8, 2005, GREENLY or his employees guided two individual paying clients onto the Sandstone National Wildlife Refuge to hunt black bears. One of the clients killed two black bears during the hunt. The harvested bears were later transported from the Sandstone National Wildlife Refuge to the residence of GREENLY. The commercial hunting clients each paid GREENLY approximately \$750.00 for the guided hunts.

All in violation of Title 18, United States Code, Section 371.

Count 2: From on or about August 29, 2005, through on or about September 8, 2005, in the State and District of Minnesota and elsewhere, the defendant, **LEE MARVIN GREENLY**, did knowingly engage in conduct that involved the offer for sale and sale of wildlife with a market value in excess of \$350, that is two (2) black bears, and did knowingly sell, transport, receive and acquire said wildlife, knowing that said wildlife was taken, possessed and transported in violation of and in a manner unlawful under the laws and regulations of the United States, specifically, Title 16, United States Code, Section 668dd(c), and Title 50, Code of Federal Regulations, Part 32, all in violation of Title 16, United States Code, Sections 3372(a)(1), 3372(c)(1)(A), and 3373(d)(1)(B).

United States v. Greenly (Plea Agreement and Sentencing Stipulations at 1-3), Crim. No. 06-235 (PAM) (D. Minn. Nov. 27, 2006) (CX 120 at 1-3) (emphasis in original).

5. On March 5, 2007, judgment was imposed on Mr. Greenly, and on March 14, 2007, Senior United States District Judge Paul A. Magnuson, United States District Court for the District of Minnesota, issued an order of judgment which states that Mr. Greenly pleaded guilty to Count 1 - Conspiracy to Violate the Lacey Act-Bear Guiding (16 U.S.C. § 3372(a)(1), 3372(c)(1)(A), and 3373(d)(1)(B) and 18 U.S.C. § 371) and to Count 2 - Violation of the Lacey Act-Bear Guiding (16 U.S.C. §§ 3372(a)(1), 3372(c)(1)(A), and 3373(d)(1)(B)). *United States v. Greenly* (Judgment in a Criminal Case), Crim. No. 06-235 (PAM) (D. Minn. Mar. 14, 2007); (CX 120 at 11-15).

6. Mr. Greenly made false statements and provided false records to the Minnesota Department of Natural Resources representing that he had guided Troy Gentry on a commercial hunt “in a no-quota zone” where Mr. Gentry had killed a bear from the wild population, when, in fact, the bear was a tame captive-reared bear that Mr. Gentry killed while the bear was enclosed in a pen on Mr. Greenly’s property (CX 32-CX 33, CX 35, CX 121).

7. The Administrator instituted this Animal Welfare Act license termination proceeding by filing the Order to Show Cause on November 29, 2010, less than 5 years after Mr. Greenly was found to have conspired to violate and to have violated the Lacey Act.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Mr. Greenly, having been found guilty of conspiring to violate the Lacey Act and violating the Lacey Act (16 U.S.C. §§ 3372(a)(1), 3372(c)(1)(A), and 3373(d)(1)(B) and 18 U.S.C. § 371) by the United States District Court for the District of Minnesota, is unfit to hold an Animal Welfare Act license and allowing Mr. Greenly to hold an Animal Welfare Act license would be contrary to the purposes of the Animal Welfare Act.
3. Mr. Greenly, having made false statements and having provided false records to the Minnesota Department of Natural Resources, is unfit to hold an Animal Welfare Act license and allowing Mr. Greenly to hold an Animal Welfare Act license would be contrary to the purposes of the Animal Welfare Act.
4. This Animal Welfare Act license termination proceeding does not constitute a second prosecution for Mr. Greenly's conspiring to violate the Lacey Act or for Mr. Greenly's violations of the Lacey Act, in violation of the Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States.
5. The termination of Mr. Greenly's Animal Welfare Act license does not constitute a second punishment for Mr. Greenly's conspiring to violate the Lacey Act or for Mr. Greenly's violations of the Lacey Act, in violation of the Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States.

6. This Animal Welfare Act license termination proceeding is not time barred by 18 U.S.C. § 3282(a).

7. This Animal Welfare Act license termination proceeding is not time barred by 28 U.S.C. § 2462.

For the foregoing reasons, the following Order is issued.

ORDER

1. Animal Welfare Act license number 41-C-0122 is terminated.

2. Mr. Greenly, his agents and assigns, and any business entity for which Mr. Greenly is an officer, agent, or representative or otherwise holds a substantial business interest, are disqualified for 2 years from becoming licensed under the Animal Welfare Act or otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly through any corporate or other device or person.

This Order shall become effective on the 60th day after service of this Order on Mr. Greenly.

Done at Washington, DC

July 2, 2013

William G. Jenson
Judicial Officer