

**CONTINUATION OF APPLICATION OF SEARCH WARRANT
INTRODUCTION**

1. I, James P. Fuller, am a Special Agent (SA) with the United States Fish and Wildlife Service (USFWS), Office of Law Enforcement (OLE). I am currently assigned to the OLE office in Bay City, Michigan. I have been employed by USFWS in a law enforcement capacity for more than twenty-two years. I am an investigative law enforcement officer of the United States within the meaning of 16 U.S.C. § 3375, and a Federal Law Enforcement Officer within the meaning of Fed. R. Crim. P. 41(a). I am a graduate of the Federal Law Enforcement Training Center having completed the Criminal Investigators School and twenty weeks of USFWS Special Agent training. I have attended numerous other law enforcement-related training programs. I received a Bachelor of Science Degree in Resource Management from the University of Wisconsin, Stevens Point. I have participated in over 250 investigations involving the unlawful taking, possessing, transporting, purchase and/or sale of wildlife. Furthermore, I have applied for, planned, initiated or otherwise been involved in, at least twenty-five investigations that involved the execution of search warrants on the residences or businesses of persons suspected of illegally taking, possessing and trafficking of wildlife.

2. I am submitting this affidavit in support of an application for a search warrant for the following businesses:
 - a. **John Cross Fish Market**, located at 209 Belvedere Avenue, Charlevoix, Michigan 49720.

 - b. **Beaver Island Fresh Fish Market** (previously known as the **Beaver Island Fish Market**), located at 37992 Michigan Avenue, Beaver Island, Michigan 49782.

3. This investigation focuses on the illegal trafficking of fish resources from the Great Lakes. Lake trout populations on the Great Lakes have been dangerously low due to over-harvest and the invasion of sea lampreys that prey upon lake trout. At great expense, many efforts have been undertaken to recover lake trout, including stocking, sea lamprey removal, and strict harvest quotas have been set to limit harvest of lake trout. Illegal fishing for commercial gain could negatively impact recovery efforts. This investigation documents the illegal commercialization of lake trout and other fish species from the Great Lakes.

4. This application establishes probable cause to believe that between 2011 and 2013, **John Cross Fisheries**, a Michigan-licensed wholesale fish dealer, helped launder approximately 49,372 lbs. of lake trout illegally harvested by tribal fishermen. It did so by filing wholesale dealer reports with the State of Michigan that falsely identified the individual from whom the fish were actually purchased, instead attributing the fish to an ostensibly legal source. These activities were in violation of the Lacey Act. Specifically, this application establishes probable cause to believe that:
 - a. **John Cross Fisheries** knowingly made or submitted false records involving the sale or purchase of fish valued at over \$350.00, which had been or were intended to be transported in interstate commerce in violation of 16 U.S.C. §§ 3372(d)(2) and 3373(d)(2).
 - b. Evidence of the above offense will be found at the addresses listed in paragraph 2.
5. I submit this application based upon my review of evidence that has been collected by the USFWS during the course of this investigation. The information outlined below is provided for the limited purpose of establishing probable cause and does not contain all of the details or facts of which I am aware relating to this investigation.

LEGAL OVERVIEW

The Lacey Act (16 U.S.C. §§ 3371-3378)

6. The Lacey Act is the nation's oldest wildlife protection law. The Lacey Act prohibits trafficking in "tainted" or contraband fish and wildlife as well as making false records about fish or wildlife. As to false records, pursuant to 16 U.S.C. § 3372(d), "[i]t is unlawful for any person to make or submit any false record, account, or label for, or any false identification of, any fish, wildlife, or plant which has been, or is intended to be... (2) transported in interstate or foreign commerce." These false statements offenses are Class D felonies punishable by up to five years in prison if the person knowingly commits a violation of this provision involving the sale or purchase of fish that has a market value greater than \$350. 16 U.S.C. § 3373(d)(3)(A)(ii). If the offense involves fish, wildlife or plants with a market value less than \$350.00, the offense is a Class A misdemeanor punishable by up to one year in prison. 16 U.S.C. § 3373(d)(3)(B).

7. The Lacey Act applies to tribal fishermen. *United States v. Sohappy*, 770 F.2d 816, 821 (9th Cir. 1985) (noting that “[t]he Lacey Act . . . should apply to Indian offenders, too, in order to fully effectuate Congress’ goal of protecting wildlife”); *United States v. Big Eagle*, 881 F.2d 539 n.1 (8th Cir. 1989) (noting that “the Lacey Act, by its terms and definitions, applies to Indian people”); *United States v. Stone*, 112 F.3d 971, 973-74 (8th Cir. 1997) (noting that “[f]ederal laws of general applicability ‘are applicable to the Indian unless there exists some treaty right which exempts the Indian from the operation of the particular statutes in question’”) (citations omitted).¹

Tribal Law – Fishing Regulations

8. Members of the Grand Traverse Tribe enjoy treaty rights that allow them to engage in off-reservation fishing on Lake Michigan and Lake Superior.
9. Through the Treaty of 1836, the Ottawa and Chippewa nations conveyed to the United States aboriginal title to much of present-day Michigan, including the western half of Michigan’s Lower Peninsula and the eastern half of its Upper Peninsula. Signatories to the treaty reserved the right to fish within the waters of Lake Michigan, the eastern waters of Lake Superior, and the western waters of Lake Huron. *United States v Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979). The scope of these treaty fishing rights is set forth in a 2000 Consent Decree, which was signed by the political successors to the 1836 Treaty tribes (which include the Grand Traverse Band), the State of Michigan, and the United States.
10. Pursuant to the Consent Decree, the 1836 Treaty tribes formed the Chippewa Ottawa Resource Authority (CORA), which has enacted regulations that apply to off-reservation fishing by all treaty fishermen. CORA Fishing Regulations § II. The Grand Traverse Tribe has no separate regulations that govern tribal fishing. Fishing by

¹ In the District of Minnesota, U.S. District Judge John R. Tunheim granted a motion to dismiss a Lacey Act case arising from fish trafficking in Indian country. *United States v. Brown, et al.*, Nos. 13-CR-68; 13-CR-70; 13-CR-72 (D. Minn. 2013). U.S. District Judge Richard H. Kyle, another Judge in the District of Minnesota, denied a similar motion to dismiss in *United States v. Bellefy, et al.*, 13-cr-71A (D. Minn. 2013). The U.S. Solicitor General has authorized an affirmative appeal of Judge Tunheim’s dismissal of the indictment in the *Brown* case. That appeal is now pending in the Court of Appeals for the Eighth Circuit. Oral argument was held on October 9, 2014. *United States v. Brown, et al.*, Nos. 13-3800, 13-3801, 13-3802, 13-3803.

tribal members is governed by the CORA regulations. Grand Traverse Band Code, Title 8.

11. Under the CORA regulations:
 - a. All tribal trap net fishermen who, pursuant to the Consent Decree, have converted their operations to trap net fishing at the expense of the State of Michigan or any supplemental conversion program, are prohibited from retaining lake trout. By way of background, pursuant to the 2000 Consent Decree, the 1836 tribes, with funding from the State of Michigan, paid eligible tribal fishermen upwards of \$200,000 each to convert their fishing operations from gillnet to trap net fishing. See Consent Decree, Sec. X. This was done as part of a coordinated effort to reduce the overall use of gillnets, which generally are regarded as more indiscriminate and environmentally destructive. As part of their agreement with the state, tribal fishermen who were paid to convert their fishing gear from gillnets to trap nets could no longer harvest or retain lake trout. Consent Decree, Sec. VII(E)(2).
 - b. All lake trout caught by trap net conversion fishermen shall be returned to the water whether dead or alive. CORA Fishing Regulations § XI(b)(2).
 - c. Commercial fishermen must file catch reports that document their fishing activities. Each commercial fisherman must file with his tribe an accurate report of his harvest for each calendar month, not later than the tenth (10th) day of the following month. CORA Fishing Regulations § XXII(a). These reports must provide information for each day of fishing activity, including the type of gear used and the total weight of each species landed. CORA Fishing Regulations § XXII(a)(2). Catch report data is used by the state and tribes to assist in managing the fishery.

State Law – Wholesale Dealer Requirements

12. Entities that operate as wholesale fish dealers within the State of Michigan are regulated under state law, which provides in relevant part:
 - a. Wholesale fish dealers must be licensed by the state.

“Every person who deals in fish by operating a wholesale fish market or fish house, or who solicits the purchase of or buys fish

for wholesale distribution, shall secure a license from the department.” Mich. Comp. Laws § 324.47333(1).

- b. Wholesale fish dealers are subject to specific recordkeeping requirements.

“Each wholesale dealer must keep a separate record of the purchase of fish on a form as required by the department. The record shall at all times be open to inspection by the department. Mich. Comp. Laws § 324.47333(3).

- 13. With respect to purchase records, the Michigan Department of Natural Resources (MDNR) requires state-licensed wholesale fish dealers to record transactions on the following form:



Michigan Department Of Natural Resources
Law Enforcement

**WHOLESALE FISH DEALER'S
PURCHASE RECORD**

This information is required by Federal Court Order File No. M26-73 and Act 451, P.A. of 1994, as amended. Failure to follow the provisions of the Order or Act is a misdemeanor and may result in fines and/or imprisonment.

DNR must receive the Purchase Records by the 10TH of each month, immediately following the date of fish acquisition by dealer.

This due date also applies even if there are no transactions to report.

Refer to Requirements and Instructions on the reverse side.

Purchaser's Name		Seller's Name	
Address		Address	
City, State, ZIP		City, State, ZIP	
Wholesale Dealer License Number		Seller's License Number	
Date dealer acquires fish		Waters where fish were caught	

Please use a separate line below for each species, grade, condition, and type of fish.

*CONDITION: 0=Roe 1=Dressed 2=Round 3=Filets **TYPE: 4=Fresh 5=Frozen 6=Smoked 7=Raw Roe 8=Processed Roe

Actual Pounds	Species Name and Grade	Cond.*	Type**	Price	Amount
TOTAL					

Purchaser's Signature	Seller's Signature
Printed Name	Printed Name

DISTRIBUTION: • White=DNR • Canary=Dealer • Pink=Seller

PR 9165 (Rev. 06/09/2005)

- a. As seen from the form, one piece of information that must be included is the name of the individual or company who sold the fish to the wholesaler. This information in part allows the state to determine whether the wholesaler purchased fish from a legal source.
- b. Instructions that accompany this form indicate that wholesale dealers must submit monthly reports to MDNR's Law Enforcement Division. Monthly reports, which may be submitted either electronically or in hard copy, must include a separate entry for each purchase.

INVESTIGATION

14. Beginning in August 2012, the USFWS led an extensive undercover operation that investigated the illegal trafficking and false reporting of fish harvested from Lake Superior, northern Lake Michigan and western Lake Huron. This investigation was in response to: (a) reports from numerous sources that lake trout, lake sturgeon and walleye were being illegally harvested in large numbers; and (b) five undercover purchases of contraband lake trout and lake sturgeon by USFWS SA Chris Aldrich, in the Baraga, Michigan area in late 2011 and early 2012.
15. As part of this operation, the USFWS established a covert business – named the Upper Peninsula North Fish Company (UPNFC) – that held itself out as a business engaged in the purchase and sale of fish. The UPNFC's facility was located on US Highway 41 in L'Anse, Michigan, within the boundaries of the Keweenaw Bay Indian Community (KBIC) reservation, in a building that had a history of being used as a fish buying business.
 - a. UPNFC primarily bought and sold fish wholesale. However, the storefront also included an area within the building where they sold fish on a retail basis to customers.
 - b. USFWS SAs Matt Martin and Chris Aldrich operated the facility in an undercover capacity beginning in approximately August 2012. The UPNFC fish processing facility was equipped with audio and video recording equipment in order to document transactions occurring there.
 - c. Undercover officers acting as employees of UPNFC made over 550 purchases of fish at this location. With respect to these

purchases, approximately 400 purchases involved fish that were illegal in some manner.

16. Although the UPNFC fish processing facility was closed in November 2013, undercover officers acting as employees of UPNFC continued to make some purchases of fish for the UPNFC until approximately September 2014.
17. It was during the course of this undercover operation that agents came into contact with the individuals and businesses that are the subject of this application.

BACKGROUND INFORMATION ON TARGETS AND SEARCH LOCATIONS

John Cross Fisheries & John Cross Fish Market

18. On August 19, 2014, I conducted an internet search of **John Cross Fisheries**, on the website for Michigan's Department of Licensing and Regulatory Affairs. The website indicates that the business is located at 209 Belvedere Avenue, Charlevoix, Michigan 49720. The business was incorporated in July of 1982 and is an active corporation. The website lists John Cross, Jr. as the resident agent of the corporation.
19. On August 19, 2014, I also conducted a business search of **John Cross Fisheries** on the commercial investigative research website www.TLOxp.com. This website lists John Cross, Jr. as the President of the company.
20. The photograph below shows the John Cross Fish Market at 209 Belvedere Avenue, Charlevoix, Michigan 49720.



21. TLO records indicate that June and John Cross, Jr. own the parcel of property on which **John Cross Fish Market** is located. This parcel is not located within Indian country (on any Indian reservation or subject to any tribal trust interest).
22. According to a feature article in the July 2012 issue of *Traverse, Northern Michigan's Magazine*, the **John Cross Fish Market** is owned by **John Cross Fisheries**, a family business run by John Cross, Jr., and his wife June Cross.
<http://mynorth.com/2012/07/northern-michigan-fishing-an-inside-look-at-john-cross-fishermanies>. The family business has operated in Charlevoix since 1945. The business both processes Great Lakes fish (according to the article, up to 10,000 pounds per day) and operates a retail outlet.
23. According to MDNR Conservation Officer (CO) Steve Huff, who has visited the market on multiple occasions over the past several years, **John Cross Fish Market** is also now run by John "Jack" Cross III, who is the son of John Cross, Jr.
24. On August 14, 2014, SA Aldrich contacted the MDNR and requested wholesale licensing information for **John Cross Fisheries**. According to the MDNR, since 1997 **John Cross Fisheries** has held a valid Michigan wholesale fish dealer's license which is issued annually in its name. The license authorizes **John Cross Fisheries** to buy, sell and distribute, on a wholesale basis, fish in accordance with state laws and regulations.

Beaver Island Fish Market

25. At all times material, the **Beaver Island Fish Market** was operated by George “Skip” Duhamel. On July 9, 2014, Duhamel passed away. Prior to his death and at all times material:
- a. Tribal enrollment records show that Duhamel was a member of the Grand Traverse Band. Bureau of Indian Affairs (BIA) fishing identification cards show that he held a commercial fishing license issued to him by the Grand Traverse Band.
 - b. Duhamel’s tribal fishing license authorized him to fish using trap net gear. Pursuant to the 2000 Consent Decree, the State of Michigan paid Duhamel approximately \$200,000 to convert his fishing operation from gillnet to trap net fishing. Pursuant to the CORA regulations, Duhamel could no longer harvest or retain lake trout.
 - c. Duhamel owned and operated a 50’ fishing vessel that he used to conduct trap net fishing activities.
 - d. Duhamel engaged in several fish-related activities. He worked as a commercial fisherman on board his fishing vessel. He sold the fish he harvested, both to regional wholesalers and to the public on a retail basis at the **Beaver Island Fish Market**. He also purchased fish products from others that he sold retail at the market.
26. **Beaver Island Fish Market**, is located at 37992 Michigan Avenue, Beaver Island, Michigan 49782. The photograph below shows the Market.



27. On August 25, 2014, SA Aldrich reviewed tax records maintained by Charlevoix County Michigan for the property located at 37992 Michigan Avenue, Beaver Island, Michigan. Those records indicate that the property is owned by the Grand Traverse Band of Ottawa and Chippewa Indians. Although owned by the Grand Traverse Band, the property is not located within Indian country.
28. A review of business records revealed the following information:
 - a. On August 25, 2014, I conducted an internet search of the website for Michigan's Department of Licensing and Regulatory Affairs for records related to either the Beaver Island Fish Market or Duhamel, which produced no responsive records.
 - b. On August 25, 2014, I also conducted a business search for the **Beaver Island Fish Market** on the commercial investigative research website www.TLOxp.com, which revealed no records for the business.
 - c. On August 25, 2014, I contacted the MDNR and was informed that neither **the Beaver Island Fish Market** nor Duhamel were licensed as a wholesale fish dealer in Michigan.

29. As more fully discussed below, since Duhamel's death in July 2014, the **Beaver Island Fish Market** has been operated by Dominique Halpin (Halpin).

**PROBABLE CAUSE TO BELIEVE
VIOLATIONS OF LACEY ACT OCCURRED**

Initial Investigative Facts

30. During the course of the larger investigation discussed above, SA Aldrich received information from the MDNR that Duhamel was suspected of harvesting and selling lake trout harvested with trap net gear, from waters surrounding Beaver Island. In response and in an undercover capacity, on June 20, 2013, SA Aldrich traveled to Beaver Island and contacted Duhamel at the **Beaver Island Fish Market**.
31. At this meeting with Duhamel, which was recorded, SA Aldrich introduced himself as the owner of the UPNFC and told Duhamel that he purchased fish from fishermen and sold them in Chicago.
- a. Duhamel said he owned and operated a 50 foot trap net boat which was located across the road from his fish shop. Duhamel said that he ferried the fish he harvested to Charlevoix, Michigan, where he sold them to **John Cross Fish Market**. He said he sold 120,000 pounds of fish in 2012.
 - b. Duhamel indicated he would like to make a deal with UPNFC where he would sell SA Aldrich fish if Aldrich could bring back seafood from Chicago that Duhamel could sell at **Beaver Island Fish Market**. SA Aldrich gave Duhamel his UPNFC business card and Duhamel gave the agent his cell number and said he would be in contact.
32. Later that same day on June 20, 2013, SA Aldrich again made contact with Duhamel, and at Duhamel's invitation, met him and his girlfriend at a bar on Beaver Island (this conversation was recorded). During the conversation:
- a. Duhamel invited SA Aldrich to come out on his boat the following morning. Duhamel again mentioned he would like to set up a deal with UPNFC where he would sell UPNFC fish if Aldrich would bring back seafood from Chicago that Duhamel could sell at the **Beaver Island Fish Market**. Duhamel said the people in Chicago

would be impressed with his fish since they were caught with trap nets and would be very fresh when they arrived in Chicago.

- b. Duhamel said he normally caught just whitefish and lake trout. He had been fishing trap nets around Beaver Island for thirteen years. He mentioned that later in the summer he normally caught a lot of lake trout, sometimes as much as 20 boxes (approximately 2000 pounds) in one net.
33. On June 21, 2013, SA Aldrich went fishing with Duhamel on his boat on Lake Michigan (conversations while on the boat were recorded).
- a. Before leaving dock, Duhamel introduced SA Aldrich to his helper and called him Dominique, later identified as Dominique Halpin.
 - i. Tribal enrollment records show that Halpin is a member of the Grand Traverse Band. BIA fishing identification cards show that he holds a commercial gill net fishing license issued to him by the Grand Traverse Band. As such he was not subject to the restrictions imposed upon trap net fishermen, but also was not authorized to fish using trap nets. His license allows him to retain and sell lake trout only if harvested with gillnets.
 - ii. Although Halpin possesses a commercial fishing license from the tribe, he does not own either a boat or gillnets by which to harvest fish pursuant to this license. Rather, Halpin had worked exclusively on Duhamel's trap net fishing boat for the previous three years.
 - b. While SA Aldrich was on the boat, Duhamel fished with trap net gear as required by his license. SA Aldrich did not observe any gill net fishing equipment on the boat. After the first several nets, Duhamel had caught a small amount of lake trout and whitefish. He commented that the fish were not where his nets were located yet, but they would be soon. He mentioned getting a lot of trout from his nets during the previous year. He added they have been there for the past thirteen years, implying that he had been catching and keeping lake trout since the time he signed his agreement to become a trap net conversion fisherman in 2000.
 - c. At one point, SA Aldrich observed Halpin take out binoculars and watch a boat in the distance to make sure it was not a law enforcement patrol boat. With Halpin present, Duhamel stated,

“[t]hese lake trout, we’re not supposed to have on the boat but we always bring them.” SA Aldrich asked Duhamel if law enforcement messed with him and he replied, “Not normally. It’s a long way out here to mess with us. They never caught me yet.”

- d. Once Duhamel was done fishing for the day, the boat returned to where Duhamel docked his boat on Beaver Island. As Duhamel and Halpin offloaded the catch, SA Aldrich noticed that there were approximately 50 pounds of lake trout onboard the boat that Duhamel had caught and brought back to Duhamel’s fish shop. As a trap net conversion fisherman, Duhamel was not allowed by law to retain these lake trout. Because the fish were harvested with trap nets as opposed to gill nets, Halpin also was not allowed to retain these lake trout.
34. On June 25, 2013, Duhamel called SA Aldrich and indicated he wanted to sell fish to Aldrich (this call was not recorded). Duhamel said he wanted to set another trap net but wanted to wait until after the joint CORA patrol was finished and all of the law enforcement personnel left the Beaver Island area. He said he did not want to get caught with any lake trout. Duhamel stated he would catch and sell lake trout and whitefish and that the fishing should start getting good soon. He said he sometimes caught 1,500 pounds of fish in one net.
 35. On July 11, 2013, Duhamel sent SA Aldrich a text message indicating he was out on the water fishing. After he returned to shore, SA Aldrich could pick up the fish at the Beaver Island Ferry dock in Charlevoix, Michigan. Duhamel later called SA Aldrich to discuss this purchase (this conversation was not recorded). During this conversation, Duhamel provided SA Aldrich with the following information:
 - a. Duhamel said that he was selling SA Aldrich 515 pounds of lake trout and 913 pounds of whitefish.
 - b. Duhamel provided SA Aldrich with instructions on how he wanted UPNFC to report this purchase on UPNFC’s wholesale report to the state (like other wholesale dealers, the UPNFC undercover operation submitted monthly wholesale reports to the state). Duhamel asked SA Aldrich to report that the fish were purchased from Halpin, not himself, since Halpin had a gillnet license. Duhamel said to do this because he was a conversion trap net fisherman who could not keep any lake trout. Duhamel also asked SA Aldrich to write a check for the fish and make it payable to

Duhamel. He wanted the check and invoice in an envelope dropped off at Island Airways, which is located at the Charlevoix Airport. Duhamel would then pick up the check and invoice from the airline company on Beaver Island.

- c. That same day, as requested by Duhamel, SA Aldrich wrote Duhamel a check for \$1,834.50 in payment for the fish. SA Aldrich placed the invoice and check in an envelope, wrote Duhamel's name on it, and dropped it off at Island Airways.
36. Between July 11, 2013, and October 11, 2013, UPNFC purchased lake trout from Duhamel on fifteen different occasions. The total amount of trout purchased was approximately 34,431 pounds. With each purchase, the fish were picked up in Charlevoix by SA Aldrich or another covert officer/agent.
 37. On July 23, 2013, SA Aldrich met with Duhamel at his fish shop on Beaver Island (this conversation was digitally recorded). Duhamel took him for a ride in his truck, during which time SA Aldrich asked him if Halpin had been fishing long. Duhamel replied, "He has been fishing with me now for three years, four years maybe." SA Aldrich asked Duhamel if Halpin had his own boat before fishing with him. Duhamel indicated that Halpin does not own a fishing boat. SA Aldrich asked Duhamel how he wanted UPNFC to report the fish on its monthly MDNR wholesale report. Duhamel replied, "You can put them in Dominique's name. He has a gillnet license." Before SA Aldrich left, he witnessed Duhamel pay Halpin \$900 for his work that week.
 38. Although Duhamel passed away in July 2014, the **Beaver Island Fish Market** remains open and operational.
 - a. On September 4, 2014, SAs Aldrich and Martin visited the **Beaver Island Fish Market**, working in an undercover capacity as agents of UPNFC. During that visit they spoke with Halpin (a recorded conversation). Based upon that conversation, the agents learned that:
 - i. Halpin continues to operate the market with the consent of the Grand Traverse Band tribe, which owns the property and renamed the market the **Beaver Island Fresh Fish Market** (adding the word "Fresh" to its name).

- ii. Halpin is now fishing for lake trout using Duhamel's fishing vessel and the trap net conversion license initially used by Duhamel. He is doing so with the permission of the Grand Traverse Band tribe, until he can pay for Duhamel's boat and gear. He now is working with another Grand Traverse Band tribal member, Larry Koon, who is licensed by the tribe to fish for trout using gillnet gear.
 - iii. Halpin proposed to agents that he sell UPNFC trout that he harvested using trap net gear. Because he is not authorized to retain trout fished with such gear, he indicated that UPNFC should report the fish as having been harvested by Koon, as he is authorized to fish for lake trout using gillnets.
- b. Since this initial meeting, UPNFC has purchased trout twice from Halpin.
- i. On September 10, 2014, UPNFC purchased 1,040 lbs. of trout from Halpin, for \$1,322.50. This fish was sold in interstate commerce. On the date of the purchase, Halpin text messaged SA Aldrich telling him to either falsely report the fish as having been harvested by Koon, or in the alternative, simply report the fish purchased as whitefish.
 - ii. On September 19, 2014, UPNFC purchased 2,750 lbs. of trout from Halpin, for \$3,450. This fish was sold in interstate commerce. On September 17, 2014, Halpin text messaged SA Aldrich telling him to falsely report the fish purchased as whitefish. Halpin added that he couldn't have any trout in his name.

**John Cross Fisheries &
John Cross Fish Market**

39. In response to Duhamel's claim that he sold fish to **John Cross Fish Market** (paragraph 29(a) of this application), SA Aldrich obtained from the MDNR, all wholesale fish dealer's purchase records with respect to fish **John Cross Fisheries** purchased from Duhamel and Halpin between 2010 and 2013. These records, which were submitted to MDNR by **John Cross Fisheries**, consist of a single hard copy report for each day fish were purchased from either Duhamel or Halpin.

40. A review of these wholesale fish dealer's purchase records indicates the following:
 - a. In 2010, **John Cross Fisheries** reported purchasing 7,092 lbs. of trout from Duhamel and nothing from Halpin.
 - b. In 2011, **John Cross Fisheries** reported purchasing 15,279 lbs. of trout from Duhamel (24 separate purchases) and 3,169 lbs. of trout from Halpin (9 separate purchases).
 - c. In 2012, **John Cross Fisheries** reported purchasing 199 lbs. of trout from Duhamel (7 separate purchases) and 14,549 lbs. of trout from Halpin (12 separate purchases).
 - d. In 2013, **John Cross Fisheries** reported purchasing 224 lbs. of trout from Duhamel (4 separate purchases) and 31,654 lbs. of trout from Halpin (23 separate purchases).
41. Despite reporting to the state indicating that it purchased fish from Halpin, **John Cross Fisheries** knew that the lake trout it was purchasing in fact came from Duhamel. During a meeting with SA Aldrich on June 20, 2013 (which is recorded), Duhamel described his relationship with **John Cross Fisheries**. Duhamel said he normally sent his fish over on the ferry where they were picked up by a man named Clifford at the ferry dock, who then took them to **John Cross Fish Market**. He further stated that **John Cross Fisheries** would then write a check to Duhamel (not Halpin). Clifford would then take this check to the bank, sign Duhamel's name, receive cash from the bank, and then send the money back to Duhamel by airplane.
42. Given the purchase data set forth in paragraph 38, between 2011 and 2013, there is probable cause to believe that **John Cross Fisheries** falsely reported purchasing lake trout from Halpin on approximately 44 separate occasions. The total poundage of fish falsely reported was approximately 49,372 lbs.
43. MDNR 2nd Lieutenant ("Lt.") Terry Short has told SA Aldrich that **John Cross Fisheries** frequently sells fish to wholesalers in different states. Lt. Short is in charge of the MDNR Commercial Fish Enforcement Unit. He has extensive experience and knowledge of the commercial fishing industry in Michigan.

**PROBABLE CAUSE THAT EVIDENCE OF LACEY ACT VIOLATIONS
WILL BE FOUND AT THE PREMISES TO BE SEARCHED**

John Cross Fish Market

44. Probable cause exists to believe **John Cross Fisheries** possesses evidence of the Lacey Act violations set forth above. Documentation associated with falsely reported lake trout include the following:
- a. Invoices.
 - b. Checks. According to Duhamel, **John Cross Fisheries** paid him by check when purchasing his trout.
 - c. Wholesale Dealer Reports. As previously discussed, under Michigan law, each wholesale dealer must prepare and keep records documenting its purchase of fish. These records must be available for inspection by MDNR. Michigan implements this requirement by requiring wholesalers to prepare and maintain wholesale fish dealer purchase records. A review of records provided by MDNR show that **John Cross Fisheries** prepares and submits such records.
 - d. Resale records. As the application makes clear, **John Cross Fisheries** buys and sells fish on a wholesale basis. Given this, records likely exist that show to whom the company sold its fish.
45. These and other relevant records likely will be found at **John Cross Fish Market**.
- a. SA Aldrich has spoken to MDNR CO Huff about **John Cross Fish Market**. He states that over the past 14 years, he has visited the market on approximately 15-20 occasions where he asked for and reviewed records. He indicates that there is an office on the second floor of the building which contains a desk, computer, a multi-drawer file cabinet and boxes.
 - b. During these visits, **John Cross Fisheries** produced wholesale fish records for his inspection that were located on the premises. In response to his request to review records, CO Huff observed employees remove responsive records from the office's desk, boxes and the multi-drawer file cabinet that were then provided to him for inspection.
 - c. There is reason to believe that some of these records are electronic. CO Huff indicated that some of the information provided to him during visits was looked up on the computer

located in the second floor office. Additionally, CO Huff has been told by John Cross, Jr. and John Cross III, that they use the computer located on the second floor to maintain records.

Beaver Island Fresh Fish Market

46. Probable cause exists to believe that evidence of Lacey Act violations will be found at the **Beaver Island Fresh Fish Market**. During this investigation USFWS SAs established that between 2011 and 2013, **John Cross Fisheries** falsely reported trout purchased from Duhamel on 44 separate occasions. Among other potential records, the harvest and sale of this fish would have generated the following records:
 - a. Catch reports. Under CORA regulations, Duhamel would have prepared catch reports documenting the fish he harvested.
 - b. Invoices and checks issued by **John Cross Fish Market**.
 - c. Checks and other payroll documentation showing payment to Halpin by Duhamel.
47. These and other relevant records likely will be found at the **Beaver Island Fresh Fish Market**. Although Duhamel passed away in July 2014, the **Beaver Island Fresh Fish Market** remains open and operational.
48. Based upon several visits to **Beaver Island Fresh Fish Market**, agents are familiar with the layout of the inside of the market. The building contains three rooms, two in the front and a back room.
 - a. One of the front rooms includes a counter and display case where fish is sold to customers on a retail basis. SAs Aldrich and Martin did not observe any file cabinets or computers. They did observe paperwork behind the counter including several stacks of paper and a couple of binders. During their visit on September 4, 2014, SA Martin specifically observed CORA catch reports and a wholesale purchase record documenting the sale of fish to a wholesale dealer in Ludington, Michigan. There is an adjoining room off of the retail area that contains a refrigerator and sinks.
 - b. The back room is where fish is processed, and contains both a walk-in cooler and an industrial-sized ice maker.

**SEIZURE AND SEARCH OF COMPUTERS AND OTHER
ELECTRONIC MEDIA**

49. The following definitions apply to this request for a search warrant and all related documents:
- a. “Computer,” as used herein, is defined pursuant to 18 U.S.C. § 1030(e)(1), as “an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device.”
 - b. “Computer hardware,” as used herein, consists of all equipment which can receive, capture, collect, analyze, create, display, convert, store, conceal, or transmit electronic, magnetic, or similar computer impulses or data. Computer hardware includes any data-processing devices (including, but not limited to, central processing units, internal and peripheral storage devices such as fixed disks, external hard drives, floppy disk drives and diskettes, and other memory storage devices); peripheral input/output devices (including, but not limited to, keyboards, printers, video display monitors, and related communications devices such as modems, routers, cables and connections), as well as any devices, mechanisms, or parts that can be used to restrict access to computer hardware (including, but not limited to, physical keys and locks).
 - c. “Computer software,” as used herein, is digital information which can be interpreted by a computer and any of its related components to direct the way they work. Computer software is stored in electronic, magnetic, or other digital form. It commonly includes programs to run operating systems, applications, and utilities.
 - d. “Computer-related documentation,” as used herein, consists of written, recorded, printed, or electronically stored material which explains or illustrates how to configure or use computer hardware, computer software, or other related items.
 - e. “Computer passwords and data security devices,” as used herein, consist of information or items designed to restrict access to or hide computer software, documentation, or data. Data security devices may consist of hardware, software, or other programming code. A password (a string of alpha-numeric characters) usually operates a sort of digital key to “unlock” particular data security devices. Data security hardware may include encryption devices, chips, and

circuit boards. Data security software or digital code may include programming code that creates “test” keys or “hot” keys, which perform certain pre-set security functions when touched. Data security software or code may also encrypt, compress, hide, or “booby-trap” protected data to make it inaccessible or unusable, as well as reverse the progress to restore it.

50. Based on my knowledge, training, and experience, businesses maintain records and documents, including but not limited to, records of purchases, sales, inventory, shipping, financial, customer and supplier contact information, and correspondence. Businesses regularly use computers in the course of operations. Business records are frequently maintained in both hard copy and electronic or digital format, which are easily portable between various locations.
51. I further know that computer systems including software, data, documentation, passwords and hardware may be important to a criminal investigation of a business engaged in fraudulent and illegal activity in several ways: first, the described items themselves may be instruments or fruits of a crime; second, the described computer-related items may contain evidence of a crime in that they may have been used to collect, store and transmit information, in the form of electronic data, about a crime including but not limited to the electronic storage of purchase, sales, inventory and shipping records and the electronic transmission of correspondence; and, third, the described computer related items may contain evidence of proceeds of a crime. Rule 41 of the Federal Rules of Criminal Procedure permits the government to search and seize computer software, data and documentation, passwords and hardware which are instruments, fruits or evidence of a crime against the United States.
52. Based upon my training and experience, as well as information related to me by qualified experts involved in the forensic examination of computers, I know that computer data can be stored on a variety of systems and storage devices including hard drives, disks, cartridges, magnetic tapes and memory chips. Authority is requested to search any computer hardware or computer-related equipment capable of creating and/or storing information in electronic or magnetic form. Computer-related equipment includes, but is not limited to, central processing unit(s), and/or peripheral equipment used to facilitate the creation, transmission, encoding or storage of information. Agents seek the authority to search for any or all information and/or data stored in the form of magnetic or electronic encoding on computer media, or on media capable of being read by a computer, or with the

aid of computer-related equipment. This media includes, but is not limited to, floppy disk(s), fixed hard disk(s), removable hard disk cartridge(s), tape(s), laser disk(s), videocassette(s), CD-ROM(s), zip disk(s), smart card(s), memory stick(s), memory calculator(s), PDA(s), USB flash drive(s) and/or other media that is capable of storing magnetic coding.

53. Based on my experience and consultation with other agents who have been involved in the search of computers and retrieval of data from computer systems and related peripherals, and computer media, there are several reasons why a complete search and seizure of information from computers often requires seizure of all electronic storage devices, as well as all related peripherals, to permit a thorough search later by qualified computer forensic agents or experts in a laboratory or other controlled environment.
54. Conducting a search of even a personal or basic desktop computer system, documenting the search, and making evidentiary and discovery copies is a lengthy process. Therefore, during the search of the premises, it is not always possible to search computer equipment and storage devices for data for a number of reasons, including the following:
 - a. Searching computer systems is a highly technical process, which requires specific expertise and specialized equipment. There are many types of computer hardware and software in use today, making it impossible to bring to the search site all of the necessary technical manuals and specialized equipment necessary to conduct a thorough search. In addition, it may also be necessary to consult with computer personnel who have specific expertise in the type of computer, software application or operating system that is being searched. Searching computer systems requires the use of precise, scientific procedures which are designed to maintain the integrity of the evidence and to recover "hidden," erased, compressed, encrypted or password-protected data. Computer hardware and storage devices may contain "booby traps" that destroy or alter data if certain procedures are not scrupulously followed. Since computer data is particularly vulnerable to inadvertent or intentional modification or destruction, a controlled environment, such as a law enforcement laboratory, is often essential to conducting a complete and accurate analysis of the equipment and storage devices from which the data will be extracted.

- b. The volume of data stored on many computer systems and storage devices will typically be so large that it will be highly impractical to search for data during the execution of the physical search of the premises. A single megabyte of storage space is the equivalent of 500 double-spaced pages of text. A single gigabyte of storage space, or 1,000 megabytes, is the equivalent of 500,000 double-spaced pages of text. Storage devices capable of storing 500 gigabytes of data are now commonplace in desktop computers. Computer storage devices (like hard disks, diskettes, tapes, laser disks and others) can also store the equivalent of thousands of pages of information. Especially when the user wants to conceal criminal evidence, he or she often stores it in random order with deceptive file names. This requires searching authorities to examine all the stored data to determine whether it is included in the warrant. This sorting process can take days or weeks, depending on the volume of data stored, and it would be generally impossible to accomplish this kind of data search on site.
 - c. Computer users can attempt to conceal data within computer equipment and storage devices through a number of methods, including the use of innocuous or misleading file names and extensions. For example, files with the extension ".jpg" often are image files; however, a user can easily change the extension to ".txt" to conceal the image and make it appear that the file contains text. Computer users can also attempt to conceal data by using encryption, which means that a password or device such as a "keycard" is necessary to decrypt the data into readable form. In addition, computer users can conceal data within another seemingly unrelated and innocuous file in a process called "steganography." For example, by using steganography, a computer user can conceal text in an image file which cannot be viewed when the image file is opened. Therefore, a substantial amount of time is necessary to extract and sort through data that is concealed or encrypted to determine whether it is evidence, contraband, or instrumentalities of a crime.
55. Computer files or remnants of such files can be recovered months or even years after they have been downloaded onto a hard drive, deleted, or viewed via the internet. Electronic files downloaded to a hard drive can be stored for years at little to no cost. Even when such files have been deleted, they can be recovered months or years later using readily-available forensic tools. When a person "deletes" a file on a home computer, the data contained in the file does not actually disappear; rather, that data remains on the hard drive until it is

overwritten by new data. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space - that is, in space on the hard drive that is not allocated to an active file or that is unused after a file has been allocated to a set block of storage space - for long periods of time before they are overwritten. In addition, a computer's operating system may also keep a record of deleted data in a "swap" or "recovery" file. Similarly, files that have been viewed via the Internet are automatically downloaded into a temporary Internet directory or cache. The browser typically maintains a fixed amount of hard drive space devoted to these files, and the files are only overwritten as they are replaced with more recently viewed Internet pages. Thus, the ability to retrieve residue of an electronic file from a hard drive depends less on when the file was downloaded or viewed than on a particular user's operating system, storage capacity, and computer habits.

56. In the seizure of computer hardware for examination, it may also be necessary to seize certain other items including documentation of programs, passwords, notes, or even specialized hardware. Therefore, this warrant seeks permission to seize not only the digital storage media and to search it for evidence of commercial fraud and proceeds thereof, but also requests permission to seize all hardware, software, and computer security devices necessary to access and examine the computer storage media.
57. The search procedure of electronic data contained in computer hardware, computer software, and/or memory storage devices may include the following techniques:
 - a. Examination of all of the data contained in such computer hardware, computer software, and/or memory storage devices to view the data and determine whether that data falls within the items to be seized as set forth herein;
 - b. Searching for and attempting to recover any deleted, hidden, or encrypted data to determine whether that data falls within the list of items to be seized as set forth herein (any data that is encrypted and unreadable will not be returned unless law enforcement personnel have determined that the data is not (1) an instrumentality of the offenses, (2) a fruit of the criminal activity, (3) contraband, (4) otherwise unlawfully possessed, or (5) evidence of the offenses specified above);

- c. Surveying various file directories and the individual files they contain;
 - i. Opening files in order to determine their contents;
 - ii. Scanning storage areas;
 - iii. Performing key word searches through all electronic storage areas to determine whether occurrences of language contained in such storage areas exist that are likely to appear in the evidence described in Attachment B; and/or
 - d. Performing any other data analysis technique that may be necessary to locate and retrieve the evidence described in Attachment B.
 - e. Recognizing that **John Cross Fish Market** operates as a functioning business and that a seizure and removal of the computer related items may impact the ability to continue to operate and engage in legitimate business activities, the agents who execute the search will take an incremental approach to minimize the inconvenience to the business and to minimize the need to seize equipment and data. An agent trained in computer forensics will be present for the execution of the search warrant and will personally supervise the seizing and subsequent processing of any computer equipment. The agent will utilize the following incremental approach, which will be explained to all of the agents on the search team before the search is executed.
58. A computer forensic examiner will attempt to create an electronic “image” of all computers that are likely to store the computer files described in the warrant. Generally speaking, imaging is the taking of a complete electronic picture of the computer's data, including all hidden sectors and deleted files. Imaging a computer permits the agents to obtain an exact copy of the computer's stored data without actually seizing the computer hardware. The computer forensic examiner or another technical expert will then conduct an off-site search for the information described in Attachments B of the warrant from the image copy at a later date.
59. If “imaging” proves impractical, or even impossible for technical reasons, if the occupants of the premises are unwilling to cooperate with the agent(s) regarding the operation of an on-site computer system(s), and/or if it appears that there is/are data security devices

involved, or the computer system(s) utilizes unusual or proprietary equipment, then agents will seize those components of the computer system that the computer forensic examiner believes must be seized to permit agents to locate the computer files described in the warrant at an off-site location. In that event, we will complete the computer media search warrant return form attached to this search warrant application as Attachment C. If officials of **John Cross Fish Market**, so request, the computer forensic examiner will, to the extent practicable, attempt to provide copies of any files that may be necessary or important to the continuing function of the business. If components of any computer system are seized for purpose of off-site examination, the Government will make available for pick-up within a reasonable amount of time all computer systems found not to contain any contraband or material to be seized pursuant to the warrant and all hardware and software, which is no longer needed for examination purposes.²

CONCLUSION

60. Based upon the above facts, there is probable cause to believe that:
- a. **John Cross Fisheries** knowingly made or submitted false records involving the sale or purchase of fish valued at over \$350.00, which had been or were intended to be transported in interstate commerce in violation of 16 U.S.C. §§ 3372(d)(2) and 3373(d)(2).
 - b. Evidence of the above offenses will be found at the addresses identified in paragraph 2 of this application.

² The agent requesting this search warrant will also provide a Digital Media Search Warrant Return, which is included as Attachment C.