



## **Justices to weigh prosecution of fisherman under white-collar law**

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The Supreme Court this week will weigh what some observers say is the government's overzealous prosecution of a Florida fisherman for allegedly tossing three fish overboard.

On Wednesday, the justices will consider commercial fisherman John Yates' appeal of his conviction on destruction of evidence charges.

The main issue of the case, however, is not Yates' fish but whether the government should have prosecuted him under a law typically reserved for white-collar crimes, the Sarbanes-Oxley Act of 2002.

Instead of trying Yates under civil penalty provisions, the government invoked an "anti-shredding" provision of Sarbanes-Oxley.

Many court observers say that part of the law -- which was enacted following the Enron scandal -- was intended for document shredding or other evidence destruction. Even former Rep. Michael Oxley (R-Ohio), who wrote the law, has weighed in with court documents backing Yates.

If the government is successful, said Mark Miller of the conservative nonprofit Pacific Legal Foundation, it would give prosecutors vast discretion to apply Sarbanes-Oxley to low-level civil disputes.

"Here you have what is at most, it would seem to be, an administrative or regulatory issue," said Miller, who filed an amicus brief in the case on behalf of his foundation and several fishing associations. "Sort of inexplicably, the federal government decided to turn a regulatory minor fine into a federal prosecution involving a law for white-collar criminals."

The case dates back to August 2007, when federal and state regulators boarded Yates' boat, the Miss Katie, in the Gulf of Mexico to inspect safety equipment and his recent catch.

They suspected that some of the 3,000 pounds of fish aboard Yates' boat were under the 20-inch minimum for red grouper, a species protected for conservation. After measuring them all, they identified 72 that they said were undersized.

Yates, 62, of Holmes Beach, Fla., argues that the inspectors measured in a haphazard fashion.

The next day, they returned, remeasured and determined that 69 fish were too small.

Three years later, the government charged Yates with violating the anti-shredding provision of Sarbanes-Oxley, which makes it illegal to destroy evidence such as documents, text messages or emails during the course of an investigation. They argued that Yates instructed his crew to toss undersized fish overboard.

The law says a suspect who "knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object" can be prosecuted.

Yates was ultimately convicted by a federal jury and sentenced to 30 days in prison followed by three years of supervised release. The 11th U.S. Circuit Court of Appeals later upheld the conviction.

The key issue in *Yates v. United States* is the definition of "tangible object" in the law. The government contends that it can apply broadly, including to fish.

"The court of appeals correctly concluded that fish are 'tangible object[s],' " the government said in court documents.

Yates asked the Supreme Court to weigh in on several issues, but the justices limited their review to whether he was "deprived of fair notice" that the Sarbanes-Oxley provision applied to his case.

The court's willingness to take up the case appears to be part of a trend among the justices to address instances of potentially over-aggressive prosecution. Last term, they took up a case brought against a woman who tried to poison her husband's mistress. The government prosecuted her under an international treaty on chemical warfare. The court ruled unanimously in *Bond v. United States* that the government had no need to use the treaty when myriad other criminal laws would have sufficed ([Greenwire](#), June 2).

Notably, groups on both sides of the political spectrum have filed friend-of-the-court briefs backing Yates in the case. The U.S. Chamber of Commerce, National Association of Manufacturers, and American Fuel and Petrochemical Manufacturers have weighed in. The government accountability nonprofit Cause of Action has also filed an amicus brief.

Bradley Bondi of Cadwalader Wickersham & Taft, who wrote an amicus brief in the case on behalf of the libertarian Cato Institute, called the government's prosecution of Yates "frightening."

"It raises a serious question about over-criminalization," he said. "You have Mr. Yates, who, at most, could have lost his fishing license briefly ... fined a few thousand dollars."

If the government is successful, he added, Sarbanes-Oxley "could have amazingly broad implications and could be used in an amazingly broad number of ways that no one has conceived."

A decision in *Yates v. United States* is expected by the end of next June.