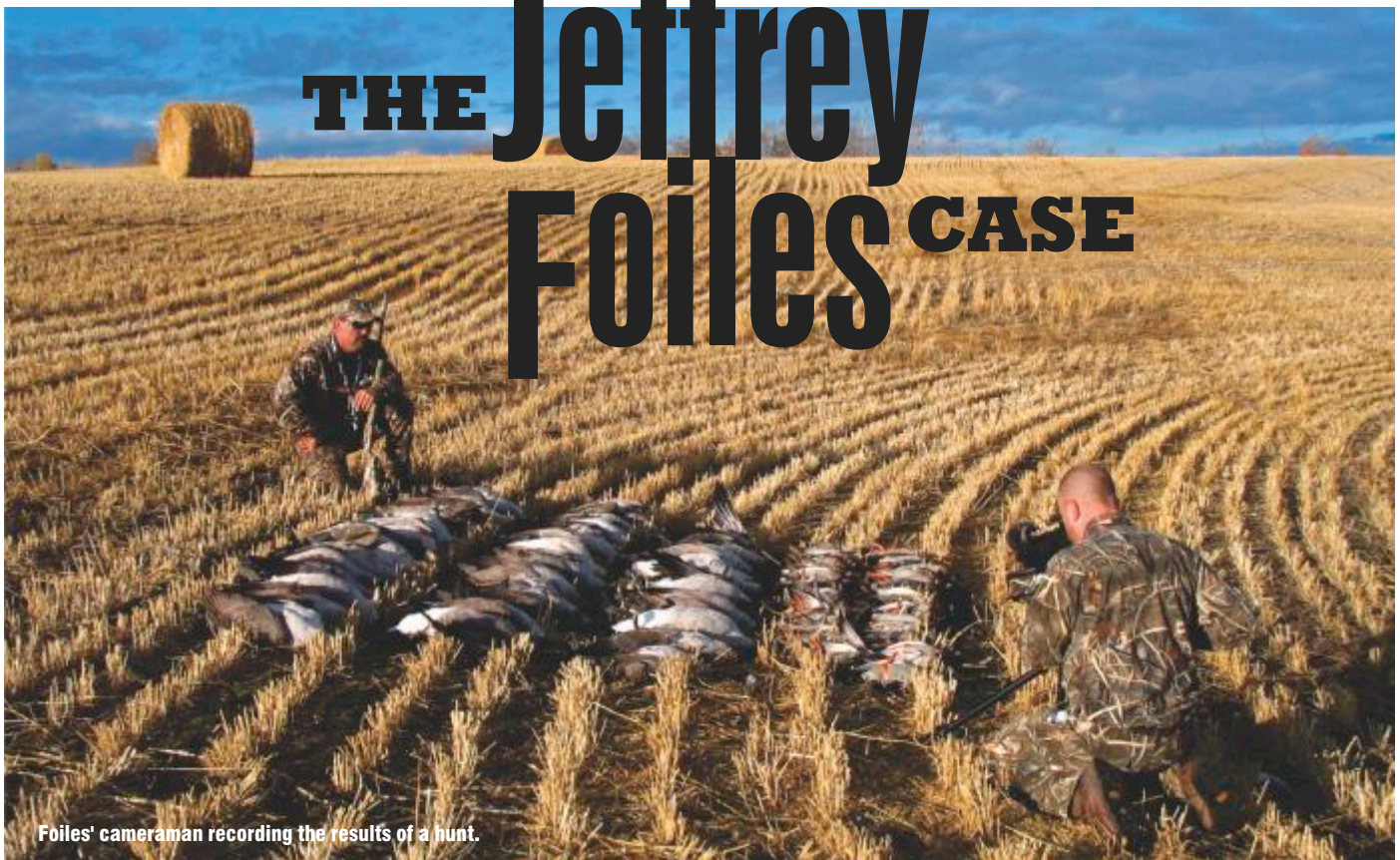


THE Jeffrey FOILES CASE



Foiles' cameraman recording the results of a hunt.

FOILES FOOLED IN CANADA — U.S. COLLABORATION & COVERT CRACK DOWN



Jeffrey Foiles

Fall from grace

Jeffrey “Jeff” Foiles must have once thought he had it all. For more than a decade, everything he touched turned to gold.

What started as a cottage industry — making bird calls during his lunch breaks — grew into a brand for all things fowl hunting...his own hunting club, corporate sponsorships, personal appearances at gun shows, a fan base, autograph sessions...and commercial hunting videos. The boy from Pleasant Hill, Illinois had come a long way.

At some point, he started to see himself as above the law. That was a mistake, as he was soon to come under the watchful eyes of wildlife officers on both sides of the U.S.-Canadian border, including Environment Canada’s Brian Petrar.

Petrar, a wildlife enforcement officer with a 38-year career behind him, has the instinct of a veteran when it comes to sniffing out poachers. When shared intelligence from other sources within the Canadian government made him aware of a U.S. hunter crossing into Canada for several weeks at a time, and bringing a truck filled with video equipment along, Petrar was intrigued.

The length of his stay also raised a red flag. At the time, Alberta had a bag limit of eight ducks per day, and a three-day possession limit of 24 birds (8 per day).

“He’d come for a month to six weeks, with a truck full of hunting gear and video equipment,” says Petrar. “Seeing the video equipment, we thought that was a bit unusual. We were curious as to what he was doing with the videos.”

Wanting to know more about this individual, Petrar contacted Tim Santel, resident agent in charge (Illinois/Missouri) at the United States Fish and Wildlife Service (USFWS).

“We were sharing information all the time,” says Petrar. “That is the key to success in an operation like this one. Other agencies, both federal and provincial, were providing intelligence from their officers in the field to both Environment Canada’s enforcement branch and counterparts in the U.S., and vice versa.” It was the USFWS who told Environment Canada about Foiles’ privately-owned duck hunting operation into which the U.S. would later send a covert special agent to collect information on Foiles’ alleged illegal activities.

“In the end, Foiles pleaded guilty to the offenses that we suspected were being

committed,” says Petrar. “Overbag limits, birds shot and not retrieved, and the hunting methods he was using were not legal.” This was all documented in and shot for the video footage that Foiles filmed to produce commercial videos, under the name *Fallin' Skies*, that he sold at major sporting goods stores and hunting trade shows throughout the United States.

The equation was simple: more kills plus more videos equals more money.

“It was greed,” Petrar concluded in a National Post article, just one of close to a hundred media stories that erupted following the Canadian sentencing.

At that point, Jeff Foiles was riding high. The heavy metal music on his videos, the camouflage gear on his back, and his catch phrase of “Kill 'em,” all contributed to his brazen and macho image, but from his highly profitable peak and seeming dominance of the hunting world, he came crashing down to the floor of a jail cell.

In December 2010, overwhelming evidence was presented to a federal grand jury in the United States who quickly returned a 23-count felony indictment against Foiles, charging him with conspiracy to violate the Lacey Act, as well as making false records as part of his hunting operation.

As a result, Foiles pled guilty in a U.S. federal court in June of 2011 to charges that he violated waterfowl hunting laws at his duck club while filming a series of commercial hunting videos. In September, a federal judge sentenced Foiles to thirteen months in prison in addition to assessing a \$100,000 fine and revocation of hunting privileges.

In October of 2011, Foiles pled guilty to Canadian charges at the Edmonton Alberta Provincial Court. He was assessed a hunting ban and a total of \$14,500 in fines on five counts of violations against Canadian law protecting migratory birds, and one count under the Criminal Code of Canada.

On December 20, 2011, U.S. courts placed Foiles' company, Fallin' Skies Strait Meat Duck Club LLC, on a two-year probation. The company also paid an \$800 special assessment.

The convictions came as a result of collaborative efforts between Environment Canada's enforcement officers and USFWS agents to investigate Foiles over suspicions of bag overlimits, shooting

illegally from a powerboat, and abusing waterfowl. Together, the two agencies gathered evidence through an extensive investigation that lasted close to four years, and included a covert operation that led to the charges in both Canada and the United States.

“Jeffrey Foiles came to my attention many years ago through Environment Canada. The relationship that we have with our Canadian counterparts has been and continues to be excellent,” says Agent Tim Santel of the USFWS about the case. “There should be a lot more birds available for other hunters now that some of these poachers have been caught.”

Foiles' foibles

In the United States, interest in Foiles had been abuzz since 2005.

“You'd hear things,” says Santel. “People would complain about overlimits or shooting other people's limits.” But it wasn't until Environment Canada was investigating Foiles' activity in Canada that suspicions started to solidify about the man, as he traveled for more and more hunts to the Canadian side.

By the end of 2007, both the Canadian and United States governments had collected a mass of information about violations that occurred in Alberta, Saskatchewan, and throughout the United States, and it was time to move the investigation to another level.

For the next phase of the operation, Agent Santel assigned an undercover agent to take advantage of an opportunity to infiltrate the Foiles hunting crew at an outfitter's camp outside of Edmonton, where Foiles was operating in concert with the owner. Without a Canadian work visa, Foiles could not be considered the owner or operator outright, but because of his reputation, his presence attracted U.S. hunters whom he would “accompany” on a hunt but not technically “guide.”

His hunts in Canada would last until the end of October. He would then switch to the U.S. where the hunting season extended into January, which allowed for more illegal activities, including at his hunting club in Illinois.

“As a result of our partnership with Environment Canada, we agreed to send two of our officers from the U.S. to hunt with Foiles in Alberta for a couple of days. Shortly after arriving, Foiles

In September, a federal judge sentenced Foiles to thirteen months in prison in addition to assessing a \$100,000 fine and revocation of hunting privileges.

invited our officers to hunt with him, and violations were soon documented,” explains Santel.

A crucial component of the operation rested on the freedom of the agents to commit violations of their own in order to gain acceptance into Foiles' gang and maintain their cover. Under Canada's *Migratory Birds Convention Act of 1994*, wildlife officers and persons acting under their direction may be authorized to commit acts or omissions that would otherwise constitute offenses under the act.

“When our officers went out to Canada to hunt with Jeff, they had to participate in contraventions of conservation legislation to maintain their covert identity,” explains Santel. In return, during the long hours spent in the blind with Foiles, they were made privy to information that they could only have gotten by going undercover.

“When you go undercover, you're living a lie,” Santel says about his covert agents. “There were issues, and a high level of stress, because Jeff had received information from a source in the U.S. that he was possibly being investigated by us. In those circumstances, you don't know what he knows.”

One of the covert undercover special agents, whose name has been withheld for the purposes of this article, explains that in order to go undercover, “You have to know how to deal with the personality and persona of the target and how you were going to get his trust...how to be able to assess a guy and what he's expecting and morph into that – something he likes. If you have a guy who's self-confident and boisterous, you'd work more toward that. The other key is to gather and document evidence in a proper yet discreet manner.”

The two covert agents went undercover from August 2007 to May 2008. “To keep an ongoing relationship, I'd drive down to Jeff's place in Illinois and

meet with him on an as-needed basis.” says the agent. “Today, people are mobile. Not like years ago, when people would hunt in their home state. In today’s world, everyone is mobile: they can pick up and fly, go where they want – you gotta go where they do.”

It was the special agent’s decision to move from covert to overt phase. “When you think you have enough evidence to obtain the level of probable cause, that’s when you expose the case.”

Crack down

On the day of the “take down,” agents executed search warrants on business and personal property associated with Foiles. Others canvassed the area where Foiles’ business was located and conducted interviews. A considerable volume of evidence was seized, including hundreds of raw, unedited videotapes from hunts that were proven to be intended for inclusion in the Fallin’ Skies series. “We took all the time that was necessary to go through the videos, interviews, and go through boxes of records,” Santel adds.

“We talked to as many people as we could fairly quickly so that they didn’t

have the time to make up stories,” says Santel. Interviews were also conducted with current and past employees, associates, and hunters.

To watch the approximately 200 hours of collected footage, USFWS agents and Environment Canada officers worked as two-man teams to scrutinize the seized videos. The videos revealed violations of Canadian and U.S. laws.

“The videos confirmed the allegations that were being made that they were killing overlimits of waterfowl in the United States. Although only 15 incidents were listed in the plea agreement, the videos showed that Foiles’ hunting parties routinely shot more than their limit of birds while in the U.S.” says Santel. “Also, through the videos, we were able to provide a date and location to our Canadian partners of when and where violations took place in their country.”

Going through the videos was “Time consuming, but a necessity,” says Santel. “It was such an important case not only to the U.S. but to Canada as well, and we wanted to be sure the evidence was strong. The days and weeks spent watching and listening to the duck and goose

calling really paid off in the end.”

But it was no picnic. “At times, it was very disturbing to watch these hunts,” he says. “I’ve hunted all my life and I’ve seen situations where an animal doesn’t die instantly, but the ethical hunter would retrieve the suffering animal. Most ethical hunters would be offended to see some of the carnage we saw on the actual unedited videos.”

In the end, “It seemed it was all about getting enough footage to make videos that would promote products and make money,” says Santel. “For Foiles, and his crew, respecting the bag limits appeared less important than getting the right footage for the video series.”

“It wasn’t a hunt with a bunch of buddies going out and enjoying the day. He treated it like a job where he clocked in the hours,” says Santel.

“In 20 years of doing this, I’d never met a guy like him where so much emphasis was placed on getting a large pile of birds for the camera. There was more killing going on than actual hunting.”

The video footage was central to the prosecution in the United States and was entered as evidence. The prosecutorial approach in Canada differed, as Foiles

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and his lawyer agreed to an Agreed Statement of Facts, in which Foiles admitted guilt.

Mr. Honker & Mrs. Mallard

The seized Fallin' Skies videos included footage of Canadian hunts in Alberta, Saskatchewan, and from both provinces together. As part of the production of these videos, Foiles set up decoys, blinds, and equipment for the people participating in the hunt, informed the hunters of how the hunt would proceed so his camera crew could record the events, then called in the birds and told the hunters when to shoot.

Some videotape of the hunts shows Foiles retrieving and counting birds during the hunt. The other hunters, while responsible for their own limits, seem to rely on Foiles for the counts and to determine when the hunt was finished.

In one video, shot in September of 2007 near Bentley, Alberta, Foiles was on a goose hunt that was filmed by his two cameramen. Foiles is seen in his blind when he spots a wounded goose near his decoys and greets him with, "Hi, Mr. Honker." Two minutes later, one of the cameramen moves in closer to Foiles, who is in his layout blind. A fallen Canada goose can be seen moving from behind a decoy. Foiles makes no attempt to retrieve the wounded goose until twenty-four minutes later, when a dog fetches the wounded goose and carts it back to Foiles. Foiles holds the still-living wounded goose up to the camera and rubs the goose's head against his own cheek, then breaks the bird's neck.

There are multiple reasons underlying the requirement for hunters to immediately retrieve and kill wounded birds, some intended to accomplish the following:

- 1) Reduce or prevent occurrences of wounded birds who are crippled from walking away and escaping into cover;
- 2) Ensure that hunters retrieve their birds and keep an accurate count to remain within bag limits; and
- 3) Ensure that birds are handled humanely and are not allowed to suffer.

The legislation required that Foiles immediately make all reasonable efforts



USFWS Law enforcement agent Timothy Santel (left) worked closely with Environment Canada officer Brian Petrar enforcement to build the case against Foiles.

to retrieve wounded birds and once retrieved, to immediately kill the birds and include them in the daily bag limit. He didn't.

Prolonging the suffering of wounded waterfowl is a continuing theme the following month when, on October 17, 2007 near Westeros, Alberta, more video shows Foiles hunting from a blind. In the footage, the cameraman points out to Foiles that a wounded duck is walking away. Foiles gets up and retrieves the bird, holding the bird up to the camera, calling it "Mrs. Mallard." He then grabs the duck's neck, manipulates the head so the bird is looking at him, and says, "Look at me when I'm talking to you." He continues to wag its neck back and forth. He slaps the bird's head a couple of times, then, playing to the camera, Foiles opens the wounded duck's mouth several times and makes "quacking" sounds. He finally moves off camera and kills the duck.

Dr. Karen Matchin, DVM and specialist in avian pain, reviewed the video footage related to this incident. Her assessment is included in an Agreed Statement of Facts that was presented to the Provincial Court of Alberta. Dr. Matchin advised that the duck is conscious and aware of Mr. Foiles, which causes stress, extreme fear, and distress to the animal. She goes on to explain:

"The duck did not attempt to escape Mr. Foiles, indicating that the bird is experiencing stress-induced tonic immobility. Tonic immobility is a complex behavioural reaction to a painful and/or fear-inducing (restraint) stimulus, which prevents the bird from escaping. This response is characterized by suppression of the righting reflex without evidence of loss of central processing, and it may last

from a few seconds to several hours. Procedures that increase fear prolong the immobility reaction.

The duck would have perceived pain related to gunshot injury and related tissue damage. Birds perceive pain similarly to mammals and humans. Birds have neurologic components to respond to painful stimuli and

endogenous antinociceptive (antipain) mechanisms to modulate pain. Gunshot wounds create significant tissue damage, producing pain. Continual manipulation of the duck and injured body parts exacerbated pain and suffering in these cases. The duck suffers for approximately one minute more than necessary. Jeffery Foiles causes unnecessary pain and suffering by inducing fear and manipulating injuries exacerbating existing pain, and knowingly prolongs the life of the female mallard."

More video footage from the fall of 2007 shot near Pigeon Lake, Alberta, shows Mr. Foiles shooting at migratory birds from a moving power boat. It is an offense to hunt migratory birds from a moving powerboat.

Finally, footage also shows Foiles and some men overshooting bag limits on October 15, 2007. Mr. Foiles, four hunters, and two cameramen are present on a hunt at a field near Edmonton, Alberta. It is later determined that the cameramen did not hold valid game bird hunting permits and therefore could not claim a portion of the take. Foiles is chuckling later on in the footage as he says, "It's not a good deal when you go back to camp and tell them you only got 42."

Abandoned by some of his key sponsors and with his reputation in tatters, Foiles is currently behind bars at the U.S. federal penitentiary in Marion, Illinois. He is projected to be released on October 28, 2012.

Meanwhile, his company website continues to sell a proprietary line of waterfowl calls. Their latest product offering is a bird call that is available in prison jumpsuit orange, adorned by a yellow band with black writing (similar to police tape). The product's name? Crime Scene.

By Sylvie Hill and Denis Labossiere, Environment Canada