

AO 91 (Rev. 08/09) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

United States of America
v.
JAMES CHEUNG, d/b/a I & C FISH RANCH

Case No. 12-2600-Dube'

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of April 24 and 29, 2012 in the county of Miami-Dade in the Southern District of Florida, the defendant(s) violated:

Code Section
16 U.S.C. 3372(a)(2)(A) and 3373
(d)(1)(B)

Offense Description
knowing sale in interstate commerce of any wildlife with a market value in excess of \$350 and possessed, transported, or sold in violation of any law or regulation of any State, knowing that the wildlife was taken, possessed, transported, or sold in violation of any underlying law or regulation.

This criminal complaint is based on these facts:

See attached.

Continued on the attached sheet.

Complainant's signature (handwritten signature)

Fernando Gattorno, Special Agent, USFWS
Printed name and title

Sworn to before me and signed in my presence.

Date: 05/01/2012

Judge's signature (handwritten signature)

City and state: Miami, Florida

Robert L. Dube, U.S. Magistrate Judge
Printed name and title

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AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

I, Fernando Gattorno, being first duly sworn, depose and state as follows:

1. I am a Special Agent ("SA") of the United States Fish and Wildlife Service ("FWS" or "Service"), Office of Law Enforcement, and am therefore an "investigative or law enforcement officer" of the United States within the meaning of Title 16, United States Code, Section 3375. Since August 2011, when I joined FWS, I have conducted and assisted in numerous criminal and civil investigations, including many that involved the trafficking of wildlife and plants in interstate and foreign commerce for commercial purposes. Prior to my employment as a Special Agent, I served as a Senior Investigator for the United States Department of Agriculture Investigative and Enforcement Services for six (6) years.

2. This affidavit is made in support of an application for a complaint authorizing the arrest of an individual named JAMES CHEUNG.

3. Because this affidavit is submitted for the limited purpose of demonstrating probable cause to arrest CHEUNG, I have not set forth every fact known to me regarding this investigation. Rather, the purpose of this affidavit is to demonstrate probable cause for a criminal complaint. The information contained in this affidavit is based upon my personal knowledge and investigation, my review of various documents and records, and information supplied to me by other law enforcement officials.

People and Vehicles

4. CHEUNG engages in turtle aquaculture, doing business as the I & C FISH RANCH. His principal place of business is 10600 Hines Road, Moore Haven, FL 33471.

5. A licensed exporter of wildlife, CHEUNG possesses U.S. Fish and Wildlife Federal Fish and Wildlife Permit number LE005224-0. This permit authorizes CHEUNG to

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import and export wildlife and wildlife products in compliance with federal law and regulation.

6. CHEUNG owns a white 2006 Isuzu truck, bearing VIN JALB4B1676702490 and license plate number 350IGA. The truck has a refrigerated box cooler.

Legal Background

7. The Lacey Act, Title 16, United States Code, Section 3372(a)(2)(A) makes it unlawful for any person to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce, any wildlife taken, possessed, transported, or sold in violation of any state law or regulation or in violation of any foreign law.

8. Wildlife biologists recognize the South Eastern United States as a "Turtle Priority Area" for conservation due to its rich turtle biodiversity, but the turtle population of the region is susceptible to decline due to commercial over-exploitation of turtles for consumption, high nest mortality, and delayed maturity.

9. Approximately two (2) years ago, the State of Florida implemented a permitting system in response to the commercial overharvesting of turtle populations in the State. The purpose of the system was to foster the development of closed loop breeding systems at turtle aquaculture facilities but to prevent overharvesting of wild turtle populations. Pursuant to Florida Administrative Code ("F.A.C.") Section 68A-25.002(6)(A)(2)(g), the permitting system allows owners, managers, agents, or directors of certified aquaculture facilities to harvest freshwater turtles as brood stock subject to the conditions of their permits. In aquaculture, a brood stock is a group of sexually mature individuals of a cultured species that is kept separate for breeding purposes. Failure to follow the permit conditions is a violation of Florida regulation. See F.A.C. 68A-9.002(1).

10. The State of Florida issued Turtle Aquaculture Brood Stock Collection Permit

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number TABSC 11-005 to CHEUNG. Valid until April 30, 2012, the Permit authorizes a list of specific authorized collectors to harvest a maximum of 539 Florida soft shell turtles (*Apalone ferox*) and twenty-nine (29) Eastern snapping turtles (*Chelydra serpentine*) for CHEUNG during the pendency of the permit. CHEUNG's permit requires him to "maintain the turtles collected under this permit at the Permittee's aquaculture facility for the duration of the permit."

Factual History

11. According to export records associated with CHEUNG's export license, CHEUNG exported over 39,301 live turtles at a declared value of \$167,672 between January 1, 2006 and approximately April, 2011.

12. On January 10, 2012, an undercover law enforcement agent ("U/C") contacted CHEUNG at his residence and turtle farm. At that time, he observed CHEUNG loading turtles into the white refrigerated Isuzu truck with tag 350IGA. The U/C asked CHEUNG to add the U/C to CHEUNG's list of authorized turtle collectors. It was not the first time that the U/C had approached CHEUNG with this request. CHEUNG responded that he was not buying turtles at that time. CHEUNG suggested that the U/C call him at the end of the month.

13. On February 21, 2012, the U/C contacted CHEUNG at his turtle farm. CHEUNG deferred adding the U/C to his authorized turtle collector list but asked the U/C what else he did for work besides catching turtles. The U/C responded that he mows grass, performs landscaping, and does handyman work.

14. CHEUNG then stated that he was in need of a handyman. He showed the U/C some minor repairs that were necessary in his bathroom. He asked the U/C whether he would be able to perform the repairs. The U/C told CHEUNG that he most likely could and that he would

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return another day to give him an estimate. Before the U/C left, CHEUNG told the U/C that he would try to add him to his collector's list in March.

15. On February 24, 2012, the U/C arrived at CHEUNG's turtle farm/residence to perform the repairs to CHEUNG's bathroom, which consisted of replacing rotten subflooring inside the bathroom and underneath the toilet. During the several hours that it took to perform these repairs, CHEUNG asked the U/C where he learned to catch turtles and what his methods of turtle collection were. The U/C asked CHEUNG how many pounds of turtles he would be willing to purchase, and CHEUNG said, "As much as you can get."

16. On March 12, 2012, the U/C returned to CHEUNG's turtle farm/residence to perform a repair on CHEUNG's screen door and door jam. There, he observed CHEUNG preparing turtles for shipment in his barn by placing each turtle into a burlap sack, weighing the bundle, and then placing the sack containing a turtle inside a waxed cardboard box. CHEUNG then stacked the cardboard boxes on top of each other, each one containing one turtle in a burlap sack. Before the U/C left CHEUNG's turtle farm, CHEUNG told the U/C that he would add him to his turtle collector's list next week.

17. On March 20, 2012, the U/C returned to CHEUNG's turtle farm/residence to complete handyman work the U/C had started the week before. CHEUNG asked the U/C whether his equipment was ready to catch turtles immediately. CHEUNG then stated that his turtles were laying eggs. He took the U/C to a shed behind his house. Inside the shed, CHEUNG showed the U/C hundreds of turtle eggs inside clear plastic containers covered by thick blankets. The U/C asked CHEUNG whether selling eggs was profitable. CHEUNG responded that it depended on the market, but that he had been collecting turtle eggs from his brood stock for about fifteen (15) years. The U/C asked CHEUNG whether he lets his turtle

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eggs hatch so that he could introduce the hatchlings to his brood stock. CHEUNG responded that that method takes too much time, so he just sells the eggs. CHEUNG further stated that selling eggs is more profitable than selling turtles for meat because he has to buy the turtles from fisherman in order to sell them for meat.

18. On March 23, 2012, the U/C received a phone call from CHEUNG. CHEUNG told the U/C that the U/C had been added to his list of approved turtle collectors.

19. That afternoon, the U/C returned to CHEUNG's residence and turtle farm. CHEUNG gave the U/C a permit allowing the U/C to collect turtles for CHEUNG. Twice, CHEUNG told the U/C to make sure that he notified CHEUNG if law enforcement stopped the U/C and checked the U/C's turtles. The U/C noted that the permit allowed him to catch only soft shelled turtles and no more than fifty (50) per day. The U/C commented on that restriction and asked CHEUNG what species of turtles he would purchase. CHEUNG responded that he would purchase any species caught by the U/C, that he would pay \$5.00 for each red belly turtle, and \$1.00 for each red ear slider.

20. On March 24 through 25, 2012, the U/C caught twelve (12) soft shell turtles from the wild. The U/C implanted eleven (11) of these twelve (12) turtles with tiny electronic devices bearing unique identifying numbers.

21. On March 26, 2012, the U/C returned to CHEUNG's residence and property to sell him the twelve (12) turtles. CHEUNG weighed twelve turtles, which amounted to a total weight of eighty-seven (87) pounds, and dropped the twelve (12) turtles into a large, blue plastic bin located in his barn. CHEUNG stated that he will not use these turtles as part of his brood stock but instead will sell them within the week. CHEUNG stated that the turtles could only survive in the plastic bins for a week, so that he was going to have to ship them before they died.

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22. On April 9, 2012, the U/C sold three (3) wild-caught turtles weighing a total of approximately thirty-nine (39) pounds to CHEUNG at his aquaculture facility. Prior to selling them to CHEUNG, the U/C implanted each turtle with a tiny electronic device bearing a unique identifying number.

23. On April 21, 2012, CHEUNG emailed a required notice of export to U.S. Fish and Wildlife inspectors at Miami International Airport ("MIA"). The Notice indicated that CHEUNG planned to export a shipment of live turtles through MIA to China.

24. On April 23, 2012, the U/C went to CHEUNG's aquaculture facility to sell him approximately eighteen electronically tagged soft-shelled turtles weighing a total of approximately 144 lbs. CHEUNG purchased all 144 lbs. of the electronically tagged turtles from the U/C. The U/C observed CHEUNG's white 2006 Isuzu truck with license plate 350IGA and the refrigerated box cooler on the property and its engine was running.

25. On April 24, 2012, CHEUNG arrived at a U.S. Fish and Wildlife inspection office at MIA to present paperwork for an export of turtles. CHEUNG stated that a particular air cargo carrier was the carrier of his export shipment. Federal and state wildlife enforcement officers went to the carrier's cargo area and located CHEUNG's shipment of turtles for export. The law enforcement officials scanned each of the turtles in the export shipment and did not detect the presence of any electronic tags. While in the air carrier's cargo area, the law enforcement officials discovered another shipment of turtles which CHEUNG had also delivered to the air carrier that morning. Bearing air waybill number 005 3806 4106, this shipment was comprised of eight (8) boxes marked as "LIVE ANIMALS" and was slated for delivery to Los Angeles International Airport ("LAX"). The officials scanned the turtles in this interstate shipment and

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discovered five electronically tagged turtles weighing a total of approximately thirty-six (36) lbs.

The electronic tag numbers matched the numbers implanted by the U/C on April 23, 2012.

26. On April 25, 2012, law enforcement officials observed an individual receive eight (8) boxes marked "LIVE ANIMALS" under airway bill 005 3806 4106 at the same air carrier's cargo area at LAX. The individual drove the boxes to a business, where employees unloaded the boxes and carried them into the establishment.

27. On April 25, 26, and 28, 2012, the U/C arrived at CHEUNG's turtle farm/residence to sell him a more soft-shelled turtles implanted with electronic tags. On April 28, 2012, CHEUNG stated that he was shipping turtles again the following morning.

28. On April 29, 2012, three shipments of CHEUNG's turtles departed Ft. Lauderdale International Airport ("FLL"). Two of the shipments were slated for LAX and one was slated for delivery at San Francisco International Airport ("SFO"). At SFO, California Fish and Game Commission officials inspected the shipment of turtles and discovered seventeen (17) electronically tagged turtles weighing a total of approximately 120 lbs. Their electronic tag numbers matched the numbers of electronic tags implanted by the U/C.

29. The market value of live soft shell turtles in California is believed to be between \$5.00 and \$8.00 per pound.

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30. Based upon my training and experience, and as further supported by the facts in this affidavit, I respectfully submit that there is probable cause to believe that JAMES CHEUNG, did knowingly sell in interstate commerce any wildlife possessed, transported, or sold in violation of any law or regulation of any State, knowing that the wildlife was taken, possessed, transported, or sold in violation of any underlying law or regulation, in violation of Title 16, United States Code, Sections 3372(a)(2)(A) and 3373(d)(1)(B).

I declare under penalty of perjury that the information in this affidavit is true and correct.


FERNANDO GATTORNO, SPECIAL AGENT
U.S. FISH AND WILDLIFE SERVICE

SUBSCRIBED and SWORN to
before me this 1 day of May 2012 in Miami, Florida.


ROBERT L. DUBE
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF FLORIDA