

1 **UNITED STATES DISTRICT COURT**
2 **SOUTHERN DISTRICT OF FLORIDA**
3 **Case No.**

4 **16 U.S.C. § 3372(a)(2)(A)**
5 **16 U.S.C. § 3373(d)(1)(B)**
6 **18 U.S.C. § 371**
7 **18 U.S.C. § 2**

8 **UNITED STATES OF AMERICA**

9 **v.**

10 **ALLAN WAGNER**
11 **and**
12 **DEAN TRINH,**

13 **Defendants. /_**

14 **INDICTMENT**

15 The Grand Jury charges that:

16 **BACKGROUND**

17 At all times material to this Indictment:

18 1. The Department of Commerce, National Oceanic and Atmospheric Administration,
19 National Marine Fisheries Service (NMFS) was empowered by federal law to issue the federal
20 annual vessel permit required in order to fish commercially in federal waters for Atlantic sharks
21 and also required to sell sharks harvested in federal waters.

22 2. Florida Administrative Code, Section 68B-44.005, “Commercial Harvest of Sharks:
23 Federal Permit Required” provides in relevant part:

24 “(1) No person shall harvest sharks in or from the waters of the state for commercial
25 purposes or sell any shark harvested from such waters unless such person is in possession of a
26 valid federal annual vessel permit for sharks issued pursuant to 50 C.F.R. §635.4 or written
27 authorization of such harvest or sale from the Regional Director of the National Marine Fisheries
28 Service pursuant to 50 C.F.R. §635.32.

 (2) A harvester required to hold the federal annual vessel permit for sharks pursuant to
subsection (1) may only sell to a holder of a valid Atlantic shark dealer permit pursuant to 50
C.F.R. §635.4.”

 3. The federal Lacey Act, among other things, makes it unlawful for any person to
import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce, any

1 fish or wildlife, taken, possessed, transported, or sold in violation of any law or regulation of any
2 State. 16 U.S.C. §3372(a)(2)(A).

3 4. Defendant **ALLAN WAGNER** was a resident of Monroe County, Florida and held
4 a Florida Saltwater Products License. He did not possess a valid federal annual vessel permit for
5 sharks. He was the registered owner of a 1981 40.1' Torres, commercial fishing vessel "ALWAYS
6 LATE," H.I.N. No. TBP000390381, U.S. Coast Guard Documentation No. 641455

7 5. Defendant **DEAN TRINH** was a resident of Milpitas, California, D/B/A
8 AQUATOP USA, LLC, utilizing a business address of 1851 McCarthy Boulevard, Milpitas,
9 California 95035, which, inter alia, advertised the sale of nurse sharks on eBay and Craig's List.

10 **COUNT 1**
11 **Conspiracy**
(18 U.S.C. § 371)

12 1. Paragraphs 1 through 5 of the Background section of this Indictment are incorporated
13 herein by reference as if set forth in their entirety.

14 2. Beginning on an unknown date, but at least as early as on or about August 2, 2009
15 and continuing through on or about August 22, 2012, at Monroe County, in the Southern District
16 of Florida and elsewhere, the defendants,

17 **ALLAN WAGNER**
18 **and**
19 **DEAN TRINH,**

20 did willfully, that is, with the intent to further the object of the conspiracy, and knowingly
21 combine, conspire, confederate, and agree with each other and with others known and unknown to
22 the Grand Jury, to commit certain offenses against the United States, that is: transport, sell,
23 receive, acquire, and purchase any fish and wildlife, that is juvenile nurse sharks (*Ginglymosthoma*
24 *cirratum*), with a fair market value in excess of \$350.00, knowing that said sharks were taken,
25 possessed, transported, sold, and intended to be sold in violation of the laws and regulations of the
26 State of Florida, in violation of Title 16, United States Code, Sections 3372(a)(2)(A), and
27 3373(d)(1) and (2).

28 **Purpose of the Conspiracy**

1 3. The purpose of the conspiracy was for the defendants and their co-conspirators to
2 take, harvest, capture, transport, and sell quantities of juvenile nurse sharks from state waters, for
3 commercial sale and distribution in interstate commerce to their financial gain.

4 **Manner and Means of the Conspiracy**

5 The manner and means by which the defendants sought to accomplish the object and
6 purpose of the conspiracy included, among others, the following:

7 4. The defendants, and other known and unknown co-conspirators, extracted nurse
8 shark pups from lobster traps placed in state waters.

9 5. Thereafter, the defendants, and other known and unknown co-conspirators,
10 negotiated the sale and transfer of the juvenile nurse shark pups by internet email transmissions.

11 6. The defendants and their co-conspirators arranged for the shipment of the juvenile
12 nurse sharks to California by commercial air cargo.

13 **Overt Acts**

14 In furtherance of the conspiracy and to effect the object and purpose thereof, there was
15 committed and caused to be committed by at least one of the co-conspirators herein, within the
16 Southern District of Florida and elsewhere, at least one of the following overt acts, among others:

17 1. On or about August 15, 2011, **ALLAN WAGNER** placed a call to an individual
18 known to the Grand Jury ("Individual 1") to discuss plans for the harvest of juvenile nurse sharks
19 and the need for a containment pen in which to retain harvested sharks.

20 2. On or about August 22, 2011, at Marathon, Florida, **ALLAN WAGNER** placed a
21 call to Individual 1, advising that **WAGNER** was holding fifteen sharks for sale, and specifying
22 details of the sharks' appearance and price.

23 3. On or about August 23, 2011, **DEAN TRINH** conducted an email exchange with
24 Individual 1 at a business located in Monroe County, during which **TRINH** sought to purchase
25 live sharks and advised he wanted to buy them despite being warned that the business could
26 acquire undersized nurse shark pups for sale, but lacked the necessary permits.

1 4. On or about August 25, 2011, **DEAN TRINH** conducted an email exchange with
2 Individual 1 at a business located in Monroe County, during which **TRINH** confirmed his order to
3 purchase live sharks and provided shipping and payment details.

4 5. On or about August 25, 2011, at Marathon, Florida, **ALLAN WAGNER** sold
5 approximately 20 live nurse shark pups for a total of \$250.00, to Individual 1, which sharks were
6 intended for resale in interstate commerce.

7 6. On or about August 25, 2011, **DEAN TRINH** conducted an email exchange with
8 Individual 1 at a business located in Monroe County, during which **TRINH** confirmed the
9 purchase and receipt, via Southwest Airlines, of 10 live nurse shark pups for approximately
10 \$355.00.

11 7. On or about August 27, 2011, at the direction of **DEAN TRINH**, payment was
12 made to Individual 1 for the 10 nurse shark pups from a PayPal account in the name of a family
13 member of **TRINH**.

14 8. On or about September 1, 2011, **DEAN TRINH** remitted through a PayPal
15 transaction approximately \$342.40 to Individual 1, at a Monroe County business, in payment for a
16 shipment of 10 live nurse shark pups which originated in Monroe County, and were shipped to
17 **TRINH** in Milpitas, CA on a Southwest Airlines cargo plane from Fort Lauderdale International
18 Airport.

19 9. On or about August 16, 2012, at Monroe County, **ALLAN WAGNER**, during a
20 telephone conversation, advised Individual 1 that nurse shark pups were available for pick-up and
21 sale, in a pen at the marina where **WAGNER** moored his commercial fishing vessel.

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

23 **COUNTS 2 - 6**

24 **Sale or Purchase**

25 **(16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(1)(B))**

26 1. Paragraphs 1 through 5 of the Background section of this Indictment are hereby
27 incorporated by reference as if set forth in their entirety.

28 2. On or about the dates listed below with respect to each Count, in the Southern
District of Florida, the defendant,

1 **ALLAN WAGNER,**

2 did knowingly engage in conduct that involved the sale and purchase of, and intent to sell and
3 purchase, fish with a market value in excess of \$350.00, that is, nurse sharks (*Ginglymosthoma*
4 *cirratum*) in the number specified with respect to each Count, and did knowingly sell, receive, and
5 acquire said fish in interstate commerce, knowing that said fish were taken, possessed, transported,
6 and sold in violation of and in a manner unlawful under the laws and regulations of the State of
7 Florida, specifically, Florida Administrative Code, Sections 68B-44.005:

8

Count	Approximate Date	Number of Sharks
2	08-02-2009	6
3	08-15-2009	11
4	08-20-2009	17
5	10-10-2009	20
6	10-13-2009	20

13

14
15 In violation of Title 16, United States Code, Sections 3372(a)(2)(A) and 3373(d)(1)(B), and
16 Title 18, United States Code, Section 2.

17 **CRIMINAL FORFEITURE**

18 Upon conviction of the violations alleged in Counts 1 through 6 of this Indictment, the
19 defendant **ALLAN WAGNER** shall forfeit to the United States all vessels, vehicles, and other
20 equipment used to aid in the importing, exporting, transporting, selling, receiving, acquiring, or
21 purchasing of fish or wildlife, specifically including the following:

22 a. One 1981 40.1' Torres, commercial fishing vessel "ALWAYS LATE," H.I.N. No.
23 TBP000390381, U.S. Coast Guard Documentation No. 641455, including all equipment,
24 accessories, engines, tackle, and appurtenances.

25 Pursuant to Title 28, United States Code, Section 2461, Title 16, United States Code, Section
26 3374(a)(2), and the procedures outlined at Title 21, United States Code, Section 853, if the
27 property described above as being subject to forfeiture, as a result of any acts or omissions of the
28 defendant **ALLAN WAGNER**,

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

All pursuant to Title 28, United States Code, Section 2461, Title 16, United States Code, Section 3374(a)(2), and Title 21, United States Code, Section 853.

A TRUE BILL

FOREPERSON

WIFREDO A. FERRER
UNITED STATES ATTORNEY

Thomas A. Watts-FitzGerald
Assistant United States Attorney