

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon.  
v. : Crim. No. 13-  
D.C. AIR & SEAFOOD, INC. : 18 U.S.C. § 371  
Defendant. :

**INFORMATION**

The defendant having waived in open court prosecution by Indictment, the United States Attorney for the District of New Jersey charges:

**BACKGROUND**

1. At all times relevant to this Information unless otherwise indicated:

**The Defendant**

a. Defendant D.C. AIR & SEAFOOD, INC. (hereinafter, defendant "D.C. AIR") was a company formed under the laws of Maine, with its principal place of business in Winter Harbor, Maine. Defendant D.C. AIR was in the business of, among other things, purchasing and selling seafood, including Atlantic Sea Scallops (hereinafter, "scallops"), on a wholesale basis.

## The Co-Conspirators

2. Certain of defendant D.C. AIR's co-conspirators, who are not named as defendants herein, are identified herein as Christopher Byers ("Byers"), Robert Hersey ("Hersey"), Daniel Mahoney ("Mahoney"), Michael Johnson ("Johnson"), James Leighton ("Leighton"), CC1 and CC2:

a. Byers resided in or near Winter Harbor, Maine. Byers was an owner and officer of defendant D.C. AIR and related companies. Byers also owned the Fishing Vessel (hereinafter, "F/V") Undaunted and the F/V EZ Rider.

b. Hersey resided in or near Harpswell, Maine. Hersey possessed a National Oceanic and Atmospheric Administration ("NOAA") Commercial Vessel Operator Permit and was the owner and operator of the F/V Luke & Isabel.

c. Mahoney resided in or near Gloucester, Massachusetts. Mahoney possessed a NOAA Commercial Vessel Operator Permit and was the owner and operator of the F/V Moonraker.

d. Johnson resided in or near Milbridge, Maine. Johnson possessed a NOAA Commercial Vessel Operator Permit and was the operator of the F/V Atlantic Hostage.

e. Leighton resided in or near Milbridge, Maine.

Leighton possessed a NOAA Commercial Vessel Operator Permit and was the operator of the F/V Promise Land.

f. CC1 resided in or near Harrington, Maine. CC1 possessed a NOAA Commercial Vessel Operator Permit and was the operator of the F/V Undaunted.

g. CC2 resided in or near Steuben, Maine. CC2 possessed a NOAA Commercial Vessel Operator Permit and was the operator of the F/V EZ-Rider.

#### **Elephant Trunk Access Area**

3. The Elephant Trunk Access Area (hereinafter, the "ETAA") was a large sea scallop fishing ground off the mid-Atlantic coast southeast of the Delaware Bay, and was part of NOAA's National Marine Fisheries Service ("NMFS") Atlantic Sea Scallop Fishery Management Plan. It covered more than 1,000 square nautical miles and had contained one of the highest densities of scallops in the northeast region. From July 2004 to March 2007, it was closed to fishing as part of an area rotation management program to rebuild the scallop population in that area. When it re-opened on or about March 1, 2007, for approximately two weeks until on or about March 15, 2007, scallops were allocated for fishing by "open access general

category" permit<sup>1</sup> vessels (hereinafter, the "2007 opening period"). Such vessels were permitted to harvest only 400 pounds<sup>2</sup> of scallops per trip (hereinafter, the "400-pound limit").

4. In 2007, the ETAA was opened again to fishing by the general category scallop fleet from on or about July 2, 2007, through on or about July 15, 2007 (hereinafter, the "summer 2007 opening period"). In 2008, the ETAA was opened again to fishing by the general category scallop fleet from on or about March 1, 2008, through on or about March 13, 2008 (hereinafter, the "2008 opening period"). "Open access general category" fishing vessels that harvested scallops in the ETAA during either the summer 2007 opening period or the 2008 opening period were again restricted to the 400-pound limit.

5. The F/V Undaunted, the F/V EZ Rider, the F/V Luke & Isabel, and the F/V Moonraker had each been issued an "open access general category" NOAA Northeast Federal Fishing Permit, which authorized these vessels to harvest a maximum of 400

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1 "Open access general category" is a type of federal permit for small-scale scallop fishing vessels or vessels holding non-scallop fishing permits that harvest scallops incidental to their fishing catch.

2 Scallop weights are determined by volumetric measurements. Harvested scallops are transferred from buckets into muslin bags, each of which is designed to weigh a certain amount when packed with scallops. For instance, a 50 pound bag of scallops when fully packed will usually weigh approximately 50 pounds.

pounds of scallops per trip in the ETAA during the 2007 opening period.

6. The F/V Undaunted and the F/V EZ Rider had each been issued an "open access general category" NOAA Northeast Federal Fishing Permit, which authorized these vessels to harvest a maximum of 400 pounds of scallops per trip in the ETAA during the summer 2007 opening period.

7. The F/V Undaunted, the F/V EZ Rider, the F/V Luke & Isabel, the F/V Atlantic Hostage, and the F/V Promise Land had each been issued an "open access general category" NOAA Northeast Federal Fishing Permit, which authorized these vessels to harvest a maximum of 400 pounds of scallops per trip in the ETAA during the 2008 opening period.

8. Defendant D.C. AIR possessed a NOAA Northeast Federal Dealer Permit in 2007 and 2008, which authorized the company to purchase scallops, among other marine species, from federally permitted vessels for those years.

9. NOAA regulations required that the owner or operator of any vessel issued a federal permit for scallops, or other listed species, submit an accurate fishing log report, on a form supplied by NOAA called a Fishing Vessel Trip Report, detailing the fishing activity for each vessel trip taken, regardless of the species fished for or taken and regardless of the area fished. Fishing Vessel Trip Reports were used by NOAA to manage

the Atlantic Sea Scallop Fishery. NOAA regulations also required that the hard copy of the Fishing Vessel Trip Report be submitted to the NMFS by the 15<sup>th</sup> of the month following the month from which the trip landed. The Fishing Vessel Trip Report was also required to be signed, under penalties of perjury, and dated.

### The Conspiracy

10. From in or about February 2007 through in or about March 2008, in Atlantic County in the District of New Jersey, and elsewhere, the defendant,

D.C. AIR & SEAFOOD, INC.,

did knowingly and intentionally conspire and agree with others to commit an offense against the United States by:

a. knowingly making and submitting, and causing to be made and submitted, a false record, account, and label for, and false identification, that is a Fishing Vessel Trip Report, of fish or wildlife, that is Atlantic Sea Scallops, having a market value greater than \$350, that had been and was intended to be transported in interstate commerce, and that involved the sale and purchase, the offer of sale and purchase, and the intent to sell and purchase fish or wildlife, contrary to Title 16, United States Code, Sections 3372(d) and 3373(d)(3)(A)(ii); and

b. knowingly altering, destroying, mutilating, concealing, covering up, falsifying, and making false entries in a record, that is a Fishing Vessel Trip Report, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter, and in relation to and contemplation of such a matter, within the jurisdiction of the National Oceanic and Atmospheric Administration, an agency of the United States, contrary to Title 18, United States Code, Section 1519.

### Object of Conspiracy

11. It was the object of the conspiracy for defendant D.C. AIR, Byers, Hersey, Mahoney, Johnson, Leighton, CC1, CC2, and others, to falsify Fishing Vessel Trip Reports for submission to NOAA for the purpose of both concealing the harvesting of scallops over the 400-pound limit in the ETAA, as well as to impede, obstruct and influence the proper administration of a matter within the jurisdiction of NOAA.

### Manner and Means of the Conspiracy

12. It was a part of the conspiracy that Hersey, Mahoney, Johnson, Leighton, CC1 and CC2, who were operating the F/V Luke & Isabel, the F/V Moonraker, the F/V Atlantic Hostage, the F/V Promise Land, the F/V Undaunted, and the F/V EZ Rider, respectively, harvested, on numerous occasions, more than the 400-pound limit in the ETAA during the 2007 opening period, the summer 2007 opening period, and the 2008 opening period.

13. It was further a part of the conspiracy that Hersey, Mahoney, Johnson, Leighton, CC1 and CC2, falsified Fishing Vessel Trip Reports for submission to NOAA to reflect that only the 400-pound limit or less had been harvested on certain trips from the F/V Luke & Isabel, the F/V Moonraker, the F/V Atlantic Hostage, the F/V Promise Land, the F/V Undaunted, and the F/V EZ Rider, respectively, in the ETAA during the 2007 opening period,

the summer 2007 opening period, and the 2008 opening period, when in fact more than the 400-pound limit had been harvested on those trips.

14. It was further a part of the conspiracy that defendant D.C. AIR and Byers received, in or near Atlantic City, New Jersey, for the purpose of purchase and re-sale to wholesale seafood dealers, during the 2007 opening period, the summer 2007 opening period, and the 2008 opening period, scallops harvested over the 400-pound limit by Hersey, Mahoney, Johnson, Leighton, CC1, and CC2, as referenced in Paragraph 12.

15. It was further a part of the conspiracy defendant D.C. AIR and Byers sold scallops harvested over the 400-pound limit by Hersey, Mahoney, Johnson, Leighton, CC1 and CC2, as referenced in Paragraph 12, to wholesale seafood dealers located outside the State of New Jersey for approximately \$6.00 per pound.

16. It was further a part of the conspiracy that defendant D.C. AIR and Byers maintained records at defendant D.C. AIR's place of business, which were not submitted to NOAA, that reflected actual amounts of scallops harvested over the 400-pound limit by Hersey, Mahoney, Johnson, Leighton, CC1 and CC2, as referenced in Paragraph 12.

17. It was further a part of the conspiracy that defendant D.C. AIR, Byers, Johnson, Leighton, CC1, CC2, and others,

constructed hidden compartments in vessels for the purpose of concealing the harvesting of scallops over the 400-pound limit in the ETAA during the 2008 opening period.

18. It was further a part of the conspiracy that defendant D.C. AIR, Byers, Hersey, Mahoney, Johnson, Leighton, CC1, CC2, and others, for the purpose of concealing scallops harvested over the 400 pound-limit, as referenced in Paragraph 12, offloaded scallops from vessels into two trucks, used by Byers and defendant D.C. AIR, to transport the scallops, for the purpose of limiting the amount of scallops in each truck to 400 pounds or less.

19. It was further a part of the conspiracy that defendant D.C. AIR, Byers, Johnson, CC1 and CC2, falsely denied harvesting more than the 400-pound limit during the 2008 opening period when questioned by law enforcement, for the purpose of concealing scallops harvested over the 400-pound limit.

#### Overt Acts

20. In furtherance of the conspiracy and to effect the objectives thereof, defendant D.C. AIR, Byers, Hersey, Mahoney, Johnson, Leighton, CC1 and CC2, and others known and unknown, committed and caused to be committed, the following overt acts, among others, within the District of New Jersey, and elsewhere:

21. In connection with the harvesting of scallops during the 2007 opening period, in the ETAA, from the F/V Luke &

Isabel, the F/V Moonraker, the F/V Undaunted, and the F/V EZ Rider, Fishing Vessel Trip Reports were prepared bearing the names of Hersey, Mahoney, CC1 and CC2, respectively. For certain trips, the Fishing Vessel Trip Reports reflected that only the 400-pound limit or less had been harvested on an individual trip when in fact more than the 400-pound limit had been harvested on those trips, as follows:

Approximate Pounds of Scallops Harvested by Vessels	Pounds of Scallops Reported to NOAA
26,573	15,140

22. In connection with the harvesting of scallops during the summer 2007 opening period, in the ETAA from the F/V Undaunted and the F/V EZ Rider, Fishing Vessel Trip Reports were prepared bearing the names of CC1 and CC2, respectively. For certain trips, the Fishing Vessel Trip Reports reflected that only the 400-pound limit or less had been harvested on an individual trip when in fact more than the 400-pound limit had been harvested on those trips, as follows:

Approximate Pounds of Scallops Harvested by Vessels	Pounds of Scallops Reported to NOAA
16,721	6,800

23. In connection with the harvesting of scallops during the 2008 opening period, in the ETAA from the F/V Luke & Isabel, the F/V Atlantic Hostage, the F/V Promise Land, the F/V Undaunted, and the F/V EZ Rider, Fishing Vessel Trip Reports were prepared bearing the names of Hersey, Johnson, Leighton, CC1, and CC2, respectively. For certain trips, Fishing Vessel Trip Reports reflected that only the 400-pound limit or less had been harvested on an individual trip when in fact more than the 400-pound limit had been harvested, as follows:

Approximate Pounds of Scallops Harvested by Vessels	Pounds of Scallops Reported to NOAA
36,372	13,930

In violation of Title 18, United States Code, Section 371.

  
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 PAUL J. FISHMAN  
 UNITED STATES ATTORNEY

CASE NUMBER:

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District of New Jersey**

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**INFORMATION FOR**

**18 U.S.C. § 371**

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**PAUL J. FISHMAN**

*U.S. ATTORNEY*

*NEWARK, NEW JERSEY*

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