
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : CRIMINAL COMPLAINT
 :
 v. : Mag. No. 15-7037
 :
 DANIEL ARCHIBALD : HON. CATHY L. WALDOR

I, Matthew Gilmore, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A

I further state that I am a Special Agent with the National Oceanic and Atmospheric Administration, Office of Law Enforcement, and that this Complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached pages and made a part hereof.



Special Agent Matthew Gilmore
National Oceanic and Atmospheric
Administration, Office of Law
Enforcement

Sworn to before me and subscribed in my presence,
February 4, 2015, at Newark, in the District of New Jersey

HONORABLE CATHY L. WALDOR
UNITED STATES MAGISTRATE JUDGE


Signature of Judicial Officer

ATTACHMENT A

On or about September 24, 2011, in Atlantic County, in the District of New Jersey, and elsewhere, defendant

DANIEL ARCHIBALD

did take marine mammals on the high seas in that he harassed, hunted, and killed, and attempted to harass, hunt, and kill, pilot whales by means of gunfire, in violation of the Marine Mammal Protection Act, Title 16, United States Code, Section 1372(a)(1).

ATTACHMENT B

I, Matthew Gilmore, am a Special Agent with the National Oceanic and Atmospheric Administration, Office of Law Enforcement ("NOAA-OLE"). I have knowledge of the facts set forth below as a result of my participation in this investigation as well as my review of reports from, and discussions with, other law enforcement personnel. Where statements of others are related herein, they are related in substance and in part. All dates and times are approximate. Because this complaint is being submitted for a limited purpose, I have not set forth each and every fact that I know concerning this investigation.

1. At all times relevant to the Complaint:

The Defendant

a. DANIEL ARCHIBALD (hereinafter, "defendant ARCHIBALD") resided in or around Cape May, New Jersey, and was a crewmember of a tuna fishing vessel known as the "CAPT BOB" (hereinafter, the "CAPT BOB" or the "vessel").

NOAA Fisheries Mission

b. NOAA's National Marine Fisheries Service was responsible for the management, conservation, and protection of our nation's living marine resources within the United States Exclusive Economic Zone ("EEZ"). The EEZ on the Atlantic coast of the United States was an area encompassing waters from 3-200 nautical miles from shore.

Marine Mammal Protection Act

c. The Marine Mammal Protection Act of 1972 ("MMPA") prohibited the taking of marine mammals and enacted a moratorium on the import, export, and sale of any marine mammal, along with any marine mammal part or product within the United States. The MMPA defined "take" as "the act of hunting, killing, capture, and/or harassment of any marine mammal; or, the attempt at such." The MMPA defined harassment as "any act of pursuit, torment or annoyance which has the potential to either: a) injure a marine mammal in the wild, or b) disturb a marine mammal by causing disruption of behavioral patterns, which includes, but is not limited to, migration, breathing, nursing, breeding, feeding, or sheltering." The MMPA provided for enforcement of its prohibitions, and for the issuance of regulations

to implement its legislative goals.

The Investigation

2. On or about September 24, 2011, an 11-foot, 740-pound pilot whale (hereinafter, the "pilot whale") beached itself in Allenhurst, New Jersey, and died shortly thereafter. A necropsy uncovered a .30 caliber bullet lodged in the whale's jaw. The bullet wound had caused an extensive infection, which led to starvation over a period of up to one month.

3. Analysts at the U.S. Fish and Wildlife Service Office of Law Enforcement Clark R. Bavin National Fish and Wildlife Forensics Laboratory concluded that the bullet was a 147 grain, .30 caliber, full metal jacket, and that there were three likely cartridges into which the bullet could have been loaded, one of which was a 7.62x54R Russian-made cartridge.

4. As required by regulation, the CAPT BOB in August 2011 was equipped with a Vessel Monitoring System (VMS), which maintained a record of the vessel's location. VMS records show that the CAPT BOB was fishing in waters within 200 miles of the coast of New Jersey and nearby states for much of August 2011 - the approximate time period during which the pilot whale had been shot.

5. On or about May 7, 2014, a NOAA-OLE agent reviewed the publicly accessible Facebook account of defendant ARCHIBALD. The agent saw that on or about August 20, 2011 - 25 days before the pilot whale had washed ashore - defendant ARCHIBALD posted a photograph of a tuna head on a hook with the caption "thanks a lot pilot whales."

6. The agent also saw that, on or about November 18, 2011, defendant ARCHIBALD had posted to Facebook a photo of a case containing what appeared to be many rounds of large caliber rifle ammunition, with the caption "let's make some noise." The ammunition appeared to be consistent with .30 caliber casings.

7. On or about September 7, 2014, NOAA-OLE Special Agents executed a search warrant onboard the CAPT BOB. During that search, agents recovered three firearms, including a Mosin-Nagant, 7.62 x 54Rmm caliber rifle (hereinafter, the "Mosin-Nagant"), and ten 7.62 x 54Rmm caliber cartridges. Mosin-Nagant rifles were standard issue for Russian infantry during World War II and have not been manufactured for several decades.

8. Analysts at the Forensic Science Laboratory of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") test-fired the Mosin-Nagant and determined that it was functioning as expected. They also compared the bullet found in the pilot whale with the test bullets fired from the Mosin-Nagant. It was similar in all general rifling characteristics to the Mosin-Nagant. ATF firearms trace records also revealed that the Mosin-Nagant had been purchased by a person of the same name and address as defendant ARCHIBALD at a New Jersey firearms dealer in April 2011.

9. During the search of the CAPT BOB, NOAA-OLE agents interviewed defendant ARCHIBALD. Defendant ARCHIBALD stated that he had been a member of the vessel's crew for the past five or six years and that the three firearms found onboard the boat, including the Mosin-Nagant, belonged to him. He admitted that he shot at pilot whales with the Mosin-Nagant around the time the pilot whale had been shot -- in or about August 2011. Defendant ARCHIBALD claimed that he had "spray[ed]" bullets at pilot whales in an effort to chase them away and that at times the whales might have been close to the CAPT BOB.