

No.

2006R00892 CR12-00002 EJD

HRL

FILED
2012 JAN -4 P 2:40
UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CLEK, U.S. DISTRICT COURT
N.D. CA. 95119
SAN JOSE DIVISION

THE UNITED STATES OF AMERICA

VS.

NANCY BLACK

INDICTMENT

Counts One: 18 U.S.C. § 1519 - Altercation of a Record in a Federal Investigation

Count Two: 18 U.S.C. § 1001(a)(2) - False Statement

Count Three and Four: 16 U.S.C. § 1375(b), 50 C.F.R. §§ 216.3, 216.11(b) - Violation of an MMPA Regulation

A true bill.

Mary Elizabeth Sladek
Foreperson

Filed in open court this 4th day of January

A.D. 2012

P.S. [Signature]
UNITED STATES MAGISTRATE JUDGE

Bail. \$ summons 2/2/12 9:30 AM

MELINDA HAAG (CASBN 132612)
United States Attorney

FILED

2012 JAN -4 P 2:41

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
N.D. CALIF. SAN JOSE

E-FILING

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CR12 00002

EJD

HRL

UNITED STATES OF AMERICA,

Plaintiff,

v.

NANCY BLACK,

Defendant.

No. CR:

VIOLATIONS: 18 U.S.C. § 1001 – False Statement (1 Count); 18 U.S.C. § 1519 – Alteration of a Record (1 Count); Violation of Marine Mammal Protection Act Regulation – 16 U.S.C. § 1375(b), 50 CFR § 216.11(b) (2 Counts) (Class A Misdemeanor); Forfeiture Allegation, 16 U.S.C. §§ 1377(d), 1377(e)(3)(B), 28 U.S.C. § 2461(c)

SAN JOSE VENUE

INDICTMENT

The Grand Jury Charges:

At all times material to this Indictment, and incorporated by reference in all counts:

A. The Defendant

1. NANCY BLACK was a California resident. She operated a whale watching business under the names MONTEREY BAY BOAT CHARTERS, INC. ("MBBC") and MONTEREY BAY WHALE WATCH ("MBWW"). From at least January 2002 through the present, MBBC was a California corporation, and MBWW was a private entity located in Monterey, California.

2. From at least January 2002 through the present, defendant NANCY BLACK ("BLACK") was the president, co-owner, and operator of MBBC and the owner of MBWW.

INDICTMENT

1 MBWW provided commercial whale watching trips in the Monterey Bay National Marine
2 Sanctuary (“Sanctuary”) aboard The Sea Wolf II, a 70-foot commercial passenger vessel, and the
3 Pt. Sur Clipper, a 55-foot commercial passenger vessel. Throughout this period, both vessels
4 were co-owned and operated by defendant BLACK. Defendant BLACK also owned and
5 operated a 22-foot rigid hull inflatable dinghy (“the dinghy”) for research and whale watching in
6 the Sanctuary.

7 **B. The Monterey Bay National Marine Sanctuary**

8 3. In 1992, Congress designated the Sanctuary as one of 13 federally protected National
9 Marine Sanctuaries in the United States and its territories to protect and preserve our Nation’s
10 diverse marine ecosystems and the species that inhabit them. The Sanctuary is located off of
11 California’s central coast and reaches from Marin to Cambria, encompassing 276 miles of
12 shoreline and 5,322 square miles of ocean. The Sanctuary is located entirely within federal
13 waters and is under the jurisdiction of the United States Department of Commerce, National
14 Oceanic and Atmospheric Administration (“NOAA”).

15 **C. The Marine Mammal Protection Act**

16 4. Congress enacted the Marine Mammal Protection Act (“MMPA”), 16 U.S.C. § 1361,
17 *et seq.*, to protect and conserve marine mammals and their habitats as aesthetic, recreational, and
18 economic resources of international significance. 16 U.S.C. § 1361. The MMPA makes it
19 unlawful for any person, vessel, and other conveyance to take any marine mammal in waters
20 under the jurisdiction of the United States. 16 U.S.C. § 1372(a)(2)(A). It is also unlawful to
21 violate a permit or regulation issued pursuant to the MMPA. 16 U.S.C. § 1375(b).

22 5. “Person” is defined to include any private person or entity.

23 6. “Take” is defined as to harass, hunt, capture, or kill or to attempt to harass, hunt,
24 capture, or kill any marine mammal. 16 U.S.C. § 1362(13). The MMPA regulations further
25 define “take” to include, without limitation, any of the following:

- 26 ● The collection of dead animals or parts thereof;
- 27 ● the restraint or detention of a marine mammal, no matter how temporary;
- 28 ● tagging a marine mammal;

- 1 ● the negligent or intentional operation of an aircraft or vessel, or the doing of any
2 other negligent or intentional act which results in disturbing or molesting a marine
3 mammal; and
- 3 ● feeding or attempting to feed a marine mammal in the wild.

4 50 C.F.R. § 216.3.

5 7. "Feeding" is defined as offering, giving, or attempting to give food or non-food items
6 to marine mammals in the wild and includes operating a vessel from which feeding is conducted
7 or supported. 50 C.F.R. § 216.3.

8 8. "Harrassment" means any act of pursuit, torment, or annoyance which -

- 9 ● has the potential to injure a marine mammal or marine mammal stock in the wild (16
10 U.S.C. § 1362(18)(A)(i); and
- 11 ● has the potential to disturb a marine mammal or marine mammal stock in the wild by
12 causing disruption of behavioral patterns, including, but not limited to, migration,
13 breathing, nursing, breeding, feeding, or sheltering (16 U.S.C. § 1362(18)(A)(ii)).

13 9. "Marine mammal" includes species, and any part of such species, of the order Cetacea,
14 which includes:

- 15 ● "Killer whales" (*Orcinus orca*)
- 16 ● "Gray whales" (*Eschrichtius robustus*)
- 17 ● "Humpback whales" (*Megaptera novaeangliae*)

18 16 U.S.C. § 1362(6).

19 10. Humpback whales have been listed as an endangered species under the Endangered
20 Species Act since 1970. 50 C.F.R. §§ 224.101(b), 17.11(h).

21 **D. NOAA Guidelines For Viewing Marine Mammals**

22 11. NOAA Guidelines for viewing marine mammals recommend, in part, that vessels:

- 23 ● Remain at least 100 yards away from whales;
- 24 ● Ensure that actions do not cause a change in marine mammals' behavior;
- 25 ● Never attempt to herd, chase, or separate groups of marine mammals or mothers from
26 their young;
- 27 ● Do not encircle or trap whales between vessel and shore, or between vessels; always
28 leave them an escape route;
- If approached closely by marine mammals while motoring, reduce speed and shift to
 neutral. Do not reengage props until the animals are observed at the surface, clear of
 the vessel;

- Do not crowd other whale watching vessels. When encountering other whale watchers, wait from a distance, then approach cautiously after they have left the area.

E. Charged Counts

COUNT ONE: (18 U.S.C. § 1519 - Alteration of a Record in a Federal Investigation)

12. On or about and between October 12, 2005 and October 24, 2005, both dates being approximate and inclusive, within the Northern District of California, and elsewhere, the defendant,

NANCY BLACK,

did knowingly alter and caused the alteration of a record and tangible object (to wit: a video recording of October 12, 2005 whale watching activity) with the intent to impede, obstruct, and influence the investigation and proper administration of any matter (to wit: the investigation of the potential take of an endangered humpback whale in the Monterey Bay Marine Sanctuary) and in relation to and in contemplation of such matter, within the jurisdiction of any department and agency of the United States (to wit: the National Oceanographic and Atmospheric Administration).

All in violation of Title 18, United States Code, Sections 1519 and 2.

COUNT TWO: (18 U.S.C. § 1001(a)(2) - False Statement)

13. On or about October 24, 2005, in the Northern District of California, the defendant,

NANCY BLACK,

did knowingly and willfully make a material false statement to the National Oceanographic and Atmospheric Administration (to wit: that the video recording that the defendant provided was the original recording, when that recording had in fact been altered) in a matter (to wit: the investigation of the potential take of an endangered humpback whale in the Monterey Bay National Marine Sanctuary) before the National Oceanographic and Atmospheric Administration, an executive branch agency of the Department of Commerce.

All in violation of Title 18, United States Code, Section 1001(a)(2).

1 **COUNT THREE:** (16 U.S.C. § 1375(b), 50 C.F.R. §§ 216.3, 216.11(b) – Violation of an
2 MMPA Regulation)

3 14. On or about April 25, 2004, in the Northern District of California, the defendant,

4 NANCY BLACK,

5 did knowingly and unlawfully violate a regulation of the Marine Mammal Protection Act by
6 feeding and attempting to feed a marine mammal (to wit: killer whale) in the Monterey Bay
7 National Marine Sanctuary.

8 All in violation of the Marine Mammal Protection Act, Title 16, United States Code,
9 Section 1375(b) and Title 50, Code of Federal Regulations, Sections 216.3 and 216.11(b).

10
11 **COUNT FOUR:** (16 U.S.C. § 1375(b), 50 C.F.R. §§ 216.3, 216.11(b) – Violation of an MMPA
12 Regulation)

13 15. On or about April 11, 2005, in the Northern District of California, the defendant,

14 NANCY BLACK,

15 did knowingly and unlawfully violate a regulation of the Marine Mammal Protection Act by
16 feeding and attempting to feed a marine mammal (to wit: killer whale) in the Monterey Bay
17 National Marine Sanctuary.

18 All in violation of the Marine Mammal Protection Act, Title 16, United States Code,
19 Section 1375(b) and Title 50, Code of Federal Regulations, Sections 216.3 and 216.11(b).

20 **FORFEITURE ALLEGATION:** (16 U.S.C. §§ 1377(d), 1377(e)(3)(B), 28 U.S.C. § 2461(c) –
21 Forfeiture)

22 16. The allegations in Counts Three and Four hereby realleged and incorporated by
23 reference for the purpose of alleging forfeiture.

24 17. Upon a conviction of any of the offenses alleged in Counts One through Seven, or
25 Count Twelve, above, the defendant,

26 NANCY BLACK,
27
28

1 shall forfeit to the United States any vessel and other item used in connection with and as a result
2 of a violation of Title 16, United States Code, Section 1375(b), including but not limited to:

3 (a) 22' rigid hull inflatable dinghy and her gear, tackle, engines, and trailer.
4
5

6 DATED: January 4, 2011

A TRUE BILL.

7
8
9 *Mary Elizabeth Sladek*
10 FOREPERSON

11 MELINDA HAAG
12 United States Attorney

13 *Jeff Nedrow*
14 JEFF NEDROW
15 Chief, San Jose Branch Office

16
17
18 IGNACIA S. MORENO
19 Assistant Attorney General, Environmental
20 and Natural Resources Division

21 *Christopher L. Hale*
22 Christopher L. Hale
23 Department of Justice Trial Attorney
24
25
26
27
28

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED

SEE ATTACHMENT

- Petty
- Minor
- Misdemeanor
- Felony

PENALTY:

SEE ATTACHMENT

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)
NOAA

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCP 20, 21 or 40. Show District

this is a re prosecution of charges previously dismissed which were dismissed on motion of:

U.S. Att'y Defense

this prosecution relates to a pending case involving this same defendant

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW DOCKET NO.

MAGISTRATE CASE NO.

Name and Office of Person Furnishing Information on THIS FORM

MELINDA HAAG

U.S. Att'y Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned)

CHRISTOPHER HALE

Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA

FILED

DEFENDANT - U.S.

2012 JAN -4 P 2:41

NANCY BLACK

DISTRICT COURT NUMBER
CLERK, U.S. DISTRICT COURT
N.D. CALIFORNIA

CR 12 00002 EJD

IS NOT IN CUSTODY

- 1) Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges
- 2) Is a Fugitive
- 3) Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) On this charge
 - 5) On another conviction
 - 6) Awaiting trial on other charges } Fed'l State
- If answer to (6) is "Yes", show name of institution

Has detainer been filed? Yes No

If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

Month/Day/Year

DATE TRANSFERRED TO U.S. CUSTODY

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT Bail Amount: _____

If Summons, complete following:

Arraignment Initial Appearance

**Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment*

Defendant Address:

Nancy Black
c/o Mark R. Vermeulen
Law Office of Mark R. Vermeulen
755 Florida St. #4

Date/Time: 2012
FEBRUARY 2, 2011, 9:30AM

Before Judge: MAGISTRATE JUDGE PAUL S. GREWAL

Comments: _____

U.S.
v.
NANCY BLACK

Counts One: 18 U.S.C. § 1519 - Altercation of a Record in a Federal Investigation

Penalties:

Maximum prison sentence	20 years
Fine	\$250,000
Supervised release term	3 years
Special assessment	\$100

Count Two: 18 U.S.C. § 1001(a)(2) - False Statement

Penalties:

Maximum prison sentence	5 years
Fine	\$250,000
Supervised release term	3 years
Special assessment	\$100

Count Three and Four: 16 U.S.C. § 1375(b), 50 C.F.R. §§ 216.3, 216.11(b) - Violation of an MMPA Regulation

Penalties:

Maximum prison sentence	1 years
Fine	\$100,000
Supervised release term	1 years
Mandatory special assessment	\$100