

AO 91 (Rev. 5/85) Criminal Complaint

# United States District Court

SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

v.

DAVID W. DREIFORT

CRIMINAL COMPLAINT

CASE NUMBER: 08-3081-SNOW

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about July 26, 2008 in Monroe county, in the Southern District of Florida defendant(s) did, (Track Statutory Language of Offense)

conspire with one or more persons to knowingly place artificial structures and materials in the Florida Keys National Marine Sanctuary, and without authorization did place one or more structures in violation of Sanctuary regulations in furtherance of the object of the conspiracy; and did on or about the same time and place, knowingly and intentionally harvest spiny lobster out of season from artificial habitat contrary to the laws and regulations of the State of Florida contained in F.A.C. Chapter 60B; all

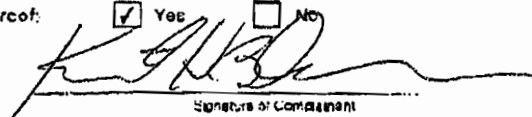
in violation of Title 16; 18 United States Code, Section(s); 3372(a)(2)(A); 371 and 2

I further state that I am a(n) Special Agent, NOAA OLE and that this complaint is based on the following facts.  
Official Title

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part hereof:

Yes  No

  
Signature of Complainant

Sworn to before me and subscribed in my presence.

August 6, 2008  
Date

in the Southern District of Florida

Lurana S. Snow, U.S. Magistrate Judge  
Name & Title of Judicial Officer

  
Signature of Judicial Officer

**AFFIDAVIT IN SUPPORT OF ARREST WARRANT**

I, Kenneth H. Blackburn, being first duly sworn, depose and state as follows:

1. I am a Special Agent ("SA") of the United States Department of Commerce/National Oceanic and Atmospheric Administration ("NOAA") Fisheries, Office of Law Enforcement, assigned to the NOAA South East Region Office for Law Enforcement located in Marathon, Florida. I have had extensive training in, and have conducted numerous investigations into violations of Federal wildlife related criminal laws including the Lacey Act, Title 16, United States Code, Section 3372, et seq., and the conspiracy statute, Title 18, United States Code, Section 371.
2. I am making this affidavit in support of an application for an arrest warrant for DAVID W. DREIFORT, a resident of 22944 Lookdown Lane, Cudjoe Key, FL 33042.
3. The information in this affidavit is based on my personal observations, my review of copies of certain business documents obtained through the investigation, information provided to me by other investigating officers from the NOAA-OLE and FWS, and information derived from both cooperating and suspect individuals.
4. Pursuant to the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuary Act, Title 15, CFR §922.163(a)(3) prohibits any alteration of, or construction on, the seabed of the Florida Keys National Marine Sanctuary (FKNMS). Altering the seabed of the FKNMS, or constructing, placing, or abandoning any structure, material, or other matter on the seabed is prohibited.
5. Florida Administrative Code, Section 68B-24.006, "Gear: Traps, Buoys, Identification Requirements, Prohibited Devices" provides in part "(10) No person shall

harvest any spiny lobster from artificial habitat. The harvest and possession in the water of spiny lobster in excess of the recreational bag limit is hereby prohibited within 10 yards of artificial habitat.” The definitions section of the chapter states: “Artificial habitat” means any material placed in the waters of the state that is reasonably suited to providing cover and habitat for spiny lobster. Such material may be constructed of, but is not limited to, wood, metal, fiberglass, concrete, or plastic, or any combination thereof, and may be fabricated for this specific purpose or for some other purpose....”

6. Florida Administrative Code, Section 68B-24.005 allows the commercial harvest of spiny lobster in state waters only from August 6 of each year through March 31 of the following year. No person may harvest, attempt to harvest, or have in his possession, regardless of where taken, any spiny lobster during the closed season, subject to regulations related to the mini-sport lobstering season not applicable herein.

7. On July 22, 2008, at approximately 7:30 pm, I and FWS SA David Pharro inventoried the contents of a large chest freezer at a residence in the lower Keys. In the freezer chest were 41 large Zip lock bags filled with lobster tails. Each bag was labeled in permanent marker stating the weight as 16 pounds. Although the value of lobster tails varies with market conditions, the approximately 650 pounds in the freezer could be expected, based on my experience, to command \$15 - \$20 per pound upon sale to a fish house. The Florida Fish and Wildlife Conservation Commission, Salt Water Products License Division records indicate that DREIFORT is a commercial lobster fisherman with dive and trap endorsement, and that he may sell his catch during the legitimate season, to such establishments. Based on my experience and conversations with other

knowledgeable law enforcement officers, such fish houses in the Florida Keys and adjacent counties typically sell part or all of their frozen lobster product in interstate and foreign commerce. This stock of out-of-season lobster tails would represent almost 430 times the legal bag limit for a mini-season recreational diver. The contents of the freezer were photographed but left in place.

8. Later on July 22, your affiant, while acting in a covert capacity, had a conversation with Robert Hammer and another individual in Key West. Hammer explained that he was there awaiting a paid charter fishing trip to the Dry Tortugas the next day. He explained he had previously been in the area working for DAVID DREIFORT, illegally harvesting lobster out of season. He also admitted that he and DREIFORT had harvested approximately 1000 pounds of lobster tails out of season, and had stored the lobster meat underneath DREIFORT's house in freezers. He also explained that their intentions were to sell the catch which had been harvested from illegal lobster habitat, specifically mentioning that DREIFORT had placed habitat in the waters around the Keys. Hammer stated that DREIFORT was the largest lobster poacher in the keys and had made millions of dollars harvesting lobster illegally, and that he had "thousands" of lobster habitats that he had placed in the water over the last 20 years. Hammer stated that he had been staying at his fiends "Dave's" (DREIFORT's) 2.5 million dollar house, and that the house had been paid off by selling illegally harvested lobster

9. On July 28, 2008, your affiant tracked DREIFORT, using GPS technology, from approximately 5:30 pm through 10:30 pm. DREIFORT, in company with another

individual, was observed leaving the Big Coppitt Key area in his center console Wahoo fishing vessel, leaving his white truck and boat trailer at the Big Coppitt boat ramp. Your affiant tracked DREIFORT by GPS throughout FKNMS and the waters of the Great White Heron National Wildlife Refuge. During this time the GPS coordinates of the sites where the vessel stopped were noted. DREIFORT was tracked from the waters of the FKNMS and Great White Heron Wildlife Refuge, to his residence on Cudjoe Key where NOAA SA O'Malley observed the vessel, with Dreifort and the second individual still on board, docking at the residence. Your affiant, then tracked DREIFORT from his residence to another residence in the lower Keys.

10. A covert surveillance camera previously placed at that site by federal agents was triggered and recorded the events when DREIFORT entered the location. He can be seen placing nine (9) bags of lobster tails into the freezer and then departing. Subsequent inventory of the freezer confirmed that 9 bags of lobster tails had been added to the forty-one bags found on the prior visit. As noted above, the approximately 140 pounds placed in the freezer by DREIFORT, alone would be worth approximately \$2,500 upon sale to a fish house.

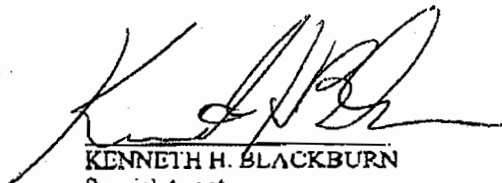
11. On July 29, 2008 your affiant conducted on-site inspection of the GPS locations captured from DREIFORT's trip the prior day. At the eight GPS locations, all within the FKNMS, agents found and photographed artificial lobster habitat sites; some of these sites had lobster carapaces around them, having been recently wrung, consistent with someone retaining only the tails.

12. Upon information and belief, on or about July 28, 2008, at Monroe County,

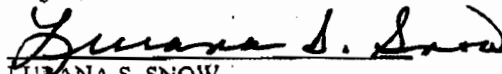
within the Southern District of Florida and elsewhere, the defendant DAVID DREIFORT, did knowingly and intentionally harvest spiny lobster out of season, with a market value in excess of \$350.00, from artificial habitat contrary to the laws and regulations of the State of Florida, all in violation of Title 16, United States Code, Sections 3372 (a)(2)(A) and Title 18, United States Code, Section 2.

13. Upon information and belief, from an unknown date, but at least as early as April 1, 2008 and continuing through on or about August 5, 2008, at Monroe County, within the Southern District of Florida and elsewhere, the defendant DAVID DREIFORT, did conspire with one or more persons to violate the laws of the United States, that is 15 C.F.R. §922.163(a)(3), by knowingly and intentionally placing artificial structures and materials on the seabed of the FKNMS, without authorization and in furtherance of the conspiracy placed such structures within the FKNMS, all in violation of Title 18, United States Code, Section 371.

FURTHER AFFIANT SAYETH NAUGHT

  
KENNETH H. BLACKBURN  
Special Agent  
U.S. Dept. of Commerce  
NOAA Fisheries

Signed and sworn to before me  
in chambers, this 10 day of  
August, 2008.

  
LURANA S. SNOW  
UNITED STATES MAGISTRATE JUDGE