

U.S. v. 144,774 Pounds of Blue King Crab. (2004).

Background:

Two Russian vessels, operating for the American company Deep Sea Fisheries Inc., caught the above amount ('more or less') of Blue King Crab within the Russian Exclusive Economic Zone ('EEZ'). The two vessels, the M/V Deep Sea Harvester and the M/V Lucky Star, then transferred the catch at sea to a Russian transport ship (the M/V Vlada) which then travelled directly to Vancouver, BC and finally to Blaine, Washington State, where the imported catch was detained by US Customs.

Prosecution:

Following an investigation that revealed the M/V Vlada had broken Russian law by "fail[ing] to maintain its vessel monitoring system, which provides information about the location of the vessel and the amount of catch on board, in continuous operation during the time the vessel was in use." If, as Russian authorities reported, the M/V Vlada had taken on the crab while in the EEZ, the vessel was legally required to report the loading and transport of the crab through this monitoring system.

Determining that the crab was harvested and transported illegally according to Russian law, the US government then forced Deep Sea Fisheries, Inc. to forfeit the crab under the terms of the Lacey Act.

Appeal:

Deep Sea Fisheries, Inc. appealed this forfeiture under the 'innocent owner defense,'¹ arguing that there was a "lack of knowledge" that the crab was caught and transported in violation of Russian law. The company also argued that as the crab itself was "not inherently illegal to possess," it was not truly "contraband."

However, the court struck the appeal down, arguing against Deep Sea's assertion that the crab was not "contraband," and stating that:

"Under the Lacey Act, it is unlawful for a person to 'import, ... sell, receive [or] acquire ... any fish or wildlife taken, possessed, transported, or sold in violation of ... any foreign law.' As a result, it is clear that the crab was received in violation of [the Lacey Act], the crab is 'property that is illegal to possess.'"

Further, the court struck down the 'innocent owner defense' because the means by which the crab was 'received and acquired' were significant enough to be labeled as contraband (see footnote). Also, "it is illegal to possess not because crab is inherently unlawful, but because this particular shipment of crab allegedly was received and acquired in a way that rendered it illegal under the Lacey Act."

¹ The innocent owner defense states that property cannot be subjected to civil forfeiture when the owner "did not know and was reasonably without cause to believe that the property was subject to forfeiture." However, it then states "notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that is illegal to possess." See Civil Asset Forfeiture Reform Act (CAFRA) of 2000 for more information on this issue.