


FILED

JUN 26 2019

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION

PETER A. MOORE, JR., CLERK  
US DISTRICT COURT, EDNC  
BY  DEP CLK

NO. 2:19-CR-12-1FL  
NO. 2:19-CR-12-2FL

UNITED STATES OF AMERICA )  
)  
v. ) CRIMINAL INFORMATION  
) Fed. R. Crim. P. 7  
CAPT. NEILL'S SEAFOOD, INC. )  
PHILLIP R. CARAWAN )  
)

THE UNITED STATES ATTORNEY CHARGES:

COUNT ONE

1. The Lacey Act Amendments of 1981, Title 16, United States Code, Sections 3371 et seq. (the "Lacey Act"), make it unlawful for a person to knowingly make or submit any false record, account, or label for, or any false identification of, any fish or wildlife that has been or is intended to be imported, transported, purchased, or received from any foreign country, or transported in interstate or foreign commerce. 16 U.S.C. §§ 3372(d), 3373(d)(3).

2. The Food, Drug and Cosmetics Act ("FDCA"), Title 21, United States Code, Section 331(a), prohibits the introduction or delivery for introduction into interstate commerce of any food that is misbranded. 21 U.S.C. § 331(a). The FDCA prohibits the receipt in interstate commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise. 21 U.S.C. § 331(c). A food shall be deemed to be "misbranded" if its labeling is false or misleading in any particular way. 21 U.S.C. § 343(a)(1).

3. The Tariff Act, Title 19, United States Code, Section 1304(a) requires every article of foreign origin (or its container, as provided in subsection (b)) imported into the United States to be marked in a conspicuous place, as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. 19 U.S.C. § 1304(a) and 19 C.F.R. § 134.

4. The Atlantic Blue Crab is so named because of its sapphire-tinted claws. Prized by humans for their sweet, tender meat, these wide-ranging, ten-legged crustaceans are among the most heavily harvested creatures on the planet. Their scientific name, *Callinectes sapidus sapidus*, means "savory beautiful swimmer." Blue crabs are found in brackish coastal lagoons and estuaries from Nova Scotia, through the Gulf of Mexico, and as far south as Uruguay. In the United States, the blue crab fishery is seasonal. They are available for harvest during warm-water months, typically March through November.

5. CAPT. NEILL'S SEAFOOD, INC. ("CAPT. NEILL'S" or "the COMPANY"), was a North Carolina corporation in the business of purchasing, processing, packaging, transporting, and selling, seafood and seafood products, including crab meat from domestically harvested Atlantic blue crab (*Callinectes sapidus sapidus*) ("domestic blue crab"), and products made from Atlantic blue crab. The COMPANY marketed itself as a "North Carolina based company producing fresh domestic crabmeat for almost 30 years."

6. As part of its business, CAPT. NEILL'S purchased live domestic blue crab. CAPT NEILL'S employed workers to steam, pick, and process the meat from the domestic blue crab. The picked crab meat was then sorted and packed as "jumbo lump," "lump," "backfin," or "special," depending on the size. If supply of picked crab meat exceeded customer demand, CAPT. NEILL'S froze and stored picked crab meat at an off-site facility, and sold that crab meat when customer demand exceeded the supply of domestic blue crab available to CAPT. NEILL'S.

7. As part of its business, CAPT. NEILL's also purchased crab meat from species other than blue crab, including crab indigenous to, and exported from, South America (*Callinectes sapidus acutidens*) and Asia (*Portunus pelagicus*).

8. As part of its business, CAPT. NEILL'S sold crab meat to wholesale member stores, grocery store chains, and retail establishments.

9. PHILLIP R. CARAWAN ("CARAWAN") was the owner and operator of CAPT. NEILL'S, and acted as the President and Chief Executive Officer of the corporation. CARAWAN was responsible for overseeing the daily operations of the COMPANY. CARAWAN managed and directed employees of the COMPANY with respect to the processing, packaging, and labeling of crab meat.

10. For periods of time, beginning on an unknown date, but at least as early as January 1, 2012, and continuing through June 16, 2015, CAPT. NEILL'S was unable to satisfy customer demand for domestically harvested blue crab; nor did CAPT. NEILL'S have frozen domestically harvested blue crab to satisfy customer demand. CARAWAN caused CAPT. NEILL'S to purchase foreign crab meat from

South America and Asia. CARAWAN then directed CAPT. NEILL'S employees to repack foreign crab meat into containers labeled "Product of USA," which CAPT. NEILL'S then sold to customers as jumbo domestically harvested blue crab. CARAWAN knew that the crab meat CAPT. NEILL'S sold during that time period was labeled and represented as domestically harvested crab meat when, in truth and in fact, it was or contained foreign crab meat. CARAWAN and CAPT. NEILL'S did not inform their customers of the meat's true origin.

7. On or about the times stated below, and in the amounts stated below, at the direction of CARAWAN, CAPT. NEILL'S purchased and repackaged foreign jumbo crab meat from South America and Asia. The foreign jumbo crab meat was repacked into containers labeled "Product of USA," which CAPT. NEILL'S then sold. The relevant sales are set forth below:

<b>Dates</b>	<b>Lbs. of Foreign Jumbo Crab Meat Purchased and Repacked</b>	<b>Average Wholesale Price</b>	<b>Total</b>
Jan. 1, 2012 – Dec. 31, 2012	22,896	\$21.00	\$480,816.00
Jan. 1, 2013 – Dec. 31, 2013	51,278	\$22.00	\$1,128,116.00
Jan. 1, 2014 – Dec. 31, 2014	62,843	\$23.00	\$1,445,389.00
Jan. 1, 2015 – Dec. 31, 2015	42,855	\$24.00	\$1,028,520.00
<b>Total Sales</b>			<b>\$4,082,841.00</b>

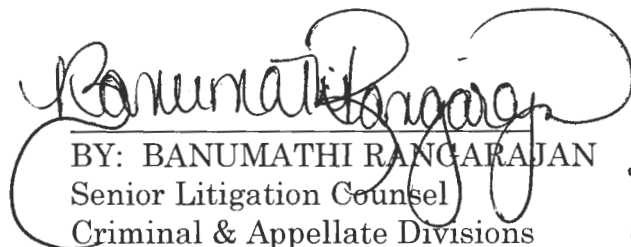
11. During the relevant timeframe, the retail market value of the mislabeled jumbo crab meat was \$4,082,841.

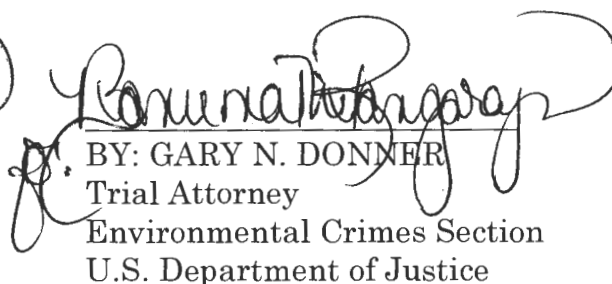
OFFENSE CONDUCT

Beginning in or about January 1, 2012, and continuing up through and including December 31, 2015, in the Eastern District of North Carolina and elsewhere, CAPT. NEILL'S SEAFOOD, INC., acting through its employees and agents, and PHILLIP R. CARAWAN, did knowingly make and submit, and cause to be made and submitted, a false record, account, label for, and false identification of fish and wildlife, namely crab meat, with a market value greater than \$350, that had been imported, transported, purchased, and received from a foreign country, in that CARAWAN directed CAPT. NEILL'S employees to repackage and falsely label approximately 200,536 pounds of imported crab meat as product of the United States, such crab meat being intended for sale and transportation in interstate commerce to the Commonwealth of Virginia, and did aid and abet other persons in so doing.

All in violation of Title 16, United States Code, Sections 3372(d) and 3373(d)(3)(A), and Title 18, United States Code, Section 2.

G. NORMAN ACKER, III  
Attorney for the United States  
Acting Under Authority Conferred  
by 28 U.S.C. § 515

  
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