Southern Regional Aquaculture Center

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Aquaculture and the Lacey Act

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Aquaculture is the raising of aquatic species for food, recreation, or ornamental purposes. It is a nationwide industry with yearly sales of $1.5 billion, according to the 2007 Census of Agriculture.

Aquaculture is regulated at various levels of government. State and local authorities generally regulate activities and issue permits for zoning, building, and water use. They also oversee waste discharge, production practices, and the species cultured.

States are influenced by their history and ecology. The agencies responsible for certain regulations vary widely from state to state, and so do the resulting regulations. As a result, aquaculturists find a bewildering combination of regulations with little or no consistency between geographic locations.

At the federal level, different agencies are responsible for distinct areas of aquaculture regulation. The Food and Drug Administration (FDA) regulates the safety of the food supply, including aquacultural products. The Environmental Protection Agency (EPA) is responsible for environmental regulations. The United States Department of Agriculture (USDA), the Army Corps of Engineers, the National Oceanic and Atmospheric Administration (NOAA), and the Fish and Wildlife Service (FWS) are also involved. The FWS is responsible for enforcing the Lacey Act.

History and provisions of the Lacey Act

The Lacey Act is a federal statute passed to protect wildlife. It was originally intended to prevent the shipment of unlawfully killed game across state lines, the killing of birds for the feather trade, and the introduction of harmful invasive species. The Act has been amended several times since it was originally passed in 1900, including significant changes in 1981.

The Lacey Act applies to all "wild" animals. It specifically includes fish and amphibians, even if those creatures have been "bred, hatched, or born in captivity." The Act makes it unlawful to "import, export, transport, sell, receive, acquire or purchase" any fish or wildlife "taken, possessed, transported, or sold" in violation of laws or regulations that relate to fish or wildlife. The laws or regulations violated could be state, federal, tribal or foreign.

One way that the Lacey Act may be triggered is by the violation of a federal law or regulation. (A law is passed by Congress, while a regulation is a rule put into place by a federal agency such as the USDA or EPA.) If this happens, the offender can be prosecuted under the Lacey Act even if no interstate shipment (shipment between states) takes place. For example, the Endangered Species Act is a federal law that protects certain species. If someone "transports, sells, receives, acquires, or purchases" a creature that has been "taken, possessed, transported, or sold" in violation of that law, the individual may be prosecuted under either the Endangered Species Act or the Lacey Act, even if the offender does not cross a state line.

The Lacey Act is also triggered when a law involving fish or wildlife is violated by a product that has been part of interstate commerce, whether the law is state or federal.

Each state has lists of protected, prohibited, restricted or approved animal species. The lists are established by the state department of natural resources, fish and game, environmental protection, or agriculture, depending on which agency is given the authority to do so. The species on these lists can vary widely from one state to the next.

As an example, consider Minnesota. As of this writing, it is illegal in that state to transport "prohibited invasive species" on a public road. Penalties for breaking the

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law are a $250 civil penalty or a misdemeanor offense. The penalty for the misdemeanor is up to 90 days in jail and/or a fine of $1,000. As a result, Minnesota companies that transport one of these species to another part of the state may be prosecuted, but only under state law. However, a company based in another state that transports one of these species into Minnesota may be prosecuted under the Lacey Act. This is important, especially considering the difference between state and Lacey Act penalties.

Lacey Act penalties

Lacey Act prosecutions fall into three categories, each with different penalties. Prosecutions can be for "felony" or "misdemeanor" trafficking violations of the Lacey Act, or for "false labeling."

If an individual "knew" or "was generally aware of" the illegal nature of the wildlife and the value of the wildlife was more than $350, he or she may be prosecuted for a felony. If convicted, the maximum penalty is up to 5 years in prison and/or a $250,000 fine. The maximum fine is raised to $500,000 if the offender is an "organization," including a business.

A misdemeanor carries lower penalties. Misdemeanor penalties are up to a year in prison and/or a $100,000 fine ($200,000 for organizations).

Misdemeanor prosecution may occur in two situations. The first is if the defendant takes, possesses, transports or sells wildlife "without exercising due care." "Due care" means "that degree of care which a reasonably prudent person would exercise under the same or similar circumstances." As a result, it is applied differently to people with differing amounts of knowledge and responsibility (Senate Report 97-123). Generally, due care requires the judge to consider whether the defendant applied as much thought, planning and prevention as would a normally reasonable person in the same situation. It's important to remember that the amount of "due care" a person must show changes depending on their knowledge and responsibility level. In other words, a producer transporting products across state lines will probably be held to a higher standard of care than a child transporting his pet goldfish during a cross-country move.

The second way in which a misdemeanor may be prosecuted under the Lacey Act is if the defendant knew about the illegal nature but the value of the wildlife was less than $350. It's important to note, however, that prosecutors may "aggregate," or combine, violations. Combining violations increases the value of the wildlife and may elevate the charge from misdemeanor to felony status.

The final Lacey Act offense is false labeling. False labeling of wildlife products transported in interstate commerce is a crime no matter what the intent. If the products have a market value of less than $350, false labeling is a misdemeanor with a penalty of 1 year in prison and a $100,000 fine. If the value is greater than $350, the offender may be charged with a felony and given up to 5 years in prison and fined up to $250,000.

Offenders may be, and often are, charged with both trafficking and false labeling violations.

Federal enforcement of the Lacey Act

The Lacey Act may be enforced in two possible situations. The first occurs when a federal law is violated, even if no interstate commerce takes place. This situation is described in the Endangered Species Act example given earlier. The second occurs when a state law concerning fish or wildlife is violated by a product that has been part of interstate commerce. This is described in the Minnesota example, also given earlier.

As an example of the possible impact of the Lacey Act on aquaculture, consider the following example. Suppose that a certain fish species can be legally possessed in Wisconsin but is on the "prohibited list" in Minnesota. A single fish (or even a single fish egg) of that species is inadvertently loaded onto a transport truck in Wisconsin with 2,000 pounds of another species that is legal to possess in both states. The 2,000-pound load of fish is to be delivered to a buyer in Minnesota. Once it crosses the state line, officials with the Minnesota Department of Natural Resources stop the truck, search it, and find the prohibited fish. Both the Wisconsin seller and the Minnesota buyer may be prosecuted under the Lacey Act. What would have been a maximum penalty of 90 days and/or $1,000 from the state of Minnesota has now turned into a potential year in federal prison and up to $100,000 in fines. Additionally, the seller may be charged with false labeling (for failing to include the prohibited fish in the list of the shipment's contents). The false labeling offense may add up to another 5 years and/or $250,000 to the sentence.

Minimizing risk

The risks associated with the Lacey Act can, of course, be minimized by shipping products only in-state. However, this is not a reasonable or feasible option for many aquacultural producers. Producers involved in interstate shipment should double-check and document every step taken to ensure that regulated species are not transported. At some point, your freedom and livelihood might depend on convincing a judge or jury that you exercised due care in trying to prevent it. Aquacultural producers can access the Injurious Species List, as authorized by the

Lacey Act examples

Consider three producers. Producer A's business is located in Arkansas, B's is in Alabama, and C's is in Wisconsin, as shown on the map. They all ship products to and receive products from other states. The interstate commerce triggers Lacey Act enforcement.

Situation:	Producer A sells an unlabeled load of diploid black carp to Producer B. Diploid black carp may be possessed in Arkansas. However, it is on the federal invasive species list, so it may not be transported across state lines.	***Possible charges:***	A: Trafficking B: Trafficking
Situation:	Producer A sells a load of catfish to Producer B, but it is labeled "whitefish."	***Possible charges:***	A: False Labeling B: None
Situation:	Producer A sells a load labeled "catfish" to Producer B, and a diploid black carp is included in the shipment.	***Possible charges:***	A: False Labeling & Trafficking B: Trafficking
Situation:	Producer A sells a load labeled "catfish" to a trucker in Arkansas. A diploid black carp is included in the shipment. The trucker drives the shipment to Alabama and sells it to Producer B.	***Possible charges:***	A: False Labeling B: Trafficking Trucker: Trafficking
Situation:	Producer A sells a load correctly labeled "fishfish" to Producer C. Possession of "fishfish" is legal is Arkansas and Wisconsin, but illegal in Illinois, where the trucker is pulled over.	***Possible charges:***	No Lacey Act violation, as long as the load was correctly labeled. Trafficking provisions do not apply to interstate shipment if the shipment is traveling to a state where the fish or wildlife may be legally possessed.

Lacey Act, at *www.fws.gov/fisheries/ans/ANSInjurious.cfm*. The National Agricultural Library is assembling a nationwide compilation of information describing species regulated by the states. Find it at *www.invasivespeciesinfo.gov/laws/statelaws.shtml*. The compilation is a work in progress, so aquacultural producers should still check with the Aquaculture Coordinator in both the destination state and their home state for regulated species information. Visit *www.nasac.net* for Coordinator contact information. Additional information on state regulations may also be found at the North Central Regional Aquaculture Center's website (*http://www.ncrac.org/info/stateimportregs*).

For more information on many legal aspects involved in aquaculture operations, please visit the National Agricultural Law Center's "Aquaculture" reading room, located at *www.nationalaglawcenter.org/readingrooms/aquaculture*.

Resources

The Lacey Act is available online:
18 U.S.C. §§ 41-48
http://www.law.cornell.edu/uscode/html/uscode18/usc_sup_01_18_10_l_20_3.htm
16 U.S.C. §§ 3371-3378
http://www.law.cornell.edu/uscode/html/uscode16/usc_sup_01_16_10_53.html

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