

THE NEW LACEY ACT

by Robert Thomas

The author, at the time of writing, was in charge of enforcement for the U.S. Fish & Wildlife Service office in Madison, Wisconsin. He since has retired and lives in Brinnon, Washington. He is a longtime member of NANFA. The article was cleared for publication by USF&WS.

On November 16, 1981, the Lacey Act Amendments of 1981 were signed into law by President Reagan. These amendments added fish to the wildlife covered under the Act and strengthened penalties for violations of the Act, with the most severe penalties provided for commercial violators.

What does this Act prohibit and how does it affect the fish hobby?

First, it prohibits anyone from importing, exporting, transporting, selling, receiving, acquiring, or purchasing any fish or wildlife that was taken or possessed in violation of any law, treaty, or regulation of the United States or Indian tribal law. This means you would be in violation if you acquired fish that were taken in violation of any Federal law--the Endangered Species Act, National Park Service or National Forest Service regulations, etc.

Second, the Act makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish or wildlife that was taken, possessed, transported, or sold in violation of any state or foreign law or regulation. The state or foreign law referred to must regulate the taking, possessing, sale, export, import, etc. of the wildlife involved--it can't, for instance, be a revenue law violation.

This part of the Act prohibits interstate transportation of fish into a state that prohibits their entry--something the old Black Bass Act didn't do. The Act's provisions do not apply to a legally taken shipment passing in transit through a state where prohibited, if the destination of the shipment is a state where the shipment legally can be possessed. Basically, the rule is this--if fish are legally possessed and exported from one state to another state where they legally can be imported and possessed, then you'll have no problem with the Lacey Act.

To illustrate this part of the Act, if your friend takes fish illegally in another state and ships them to you, you are in violation. Each state has different laws and there are many ways to take fish in violation of state laws. For example, you currently can ship Fundulus dispar from Indiana, but the same fish cannot be shipped from Wisconsin unless they were held under authority of a state endangered species permit.

Presently, there is no repository for the many state and Indian-tribal laws that relate to fish. The best source of information on specific state regulations on fish is the state department of natural resources.

The third prohibition of the Act makes it unlawful to possess any fish or wildlife taken, possessed, transported, or sold in violation of state, foreign, or Indian tribal law.

A fourth prohibition makes it unlawful to make or submit a false record, account, label, or identification of wildlife imported, exported, transported, bought, sold, or received in interstate or foreign commerce.

A fifth violation is attempting to commit any of the above violations.

Last, the Act prohibits shipping fish or wildlife in interstate or foreign commerce unless the container or package has been plainly marked, labelled or tagged according to regulations. The Secretaries of Interior and Commerce currently are promulgating regulations which will specify the type of marking required on packages containing live fish.* A wildlife declaration must be submitted to the U.S. Fish & Wildlife Service or the U.S. Customs Service when fish are imported or exported. The declaration must include, among other information, the number, common and scientific name, and country of origin of all fish in the shipment.

There are various penalties for violating the Lacey Act according to the type of violation, value of the shipment involved, and the degree of knowledge and intent of the violator.

There are two criminal penalties. The felony criminal penalty of \$20,000 fine and/or five years' imprisonment applies to imports or exports and to violations involving sale or purchase activity where the market value of the fish exceeds \$350. The felony penalty also requires knowledge by the violator that he or she was committing a violation of the Act or any underlying law, treaty, or regulation. The misdemeanor criminal penalty is a maximum \$10,000 fine and/or one year's imprisonment where the violator, in the exercise of due care, should have known he or she was violating.

There is a maximum civil penalty of \$10,000 where there is evidence that the violator should have known the fish or wildlife was taken, possessed, transported, or sold in violation of an underlying law.

If the violation involves only the transport, receipt, or acquisition of wildlife with a market value of less than \$350, the civil penalty cannot exceed the maximum penalty for

violating the underlying law or \$10,000, whichever is less.

For marking violations, there is a maximum strict-liability civil penalty of \$250. This means that the Government does not have to show knowledge or intent in the violation.

All wildlife unlawfully imported, exported, transported, sold, received, acquired, or bought are subject to forfeiture to the United States notwithstanding culpability requirements. This means you would lose the illegal fish in a shipment despite your claim of lack of knowledge and intent to break the law.

In conclusion, the Lacey Act is directed toward commercial traffic in wildlife and would only apply to fish hobbyists who break an underlying law to obtain or ship fish. /AC's underlining./

There are other Federal laws that impact on the fish hobbyist that I should mention. The injurious wildlife list of the Lacey Act prohibits importing Clariidae (walking catfish) without a permit or live salmonids without a disease-free certificate.

Fish listed on Federal or state endangered-species lists can be taken only by permit. Fish that are listed on Appendix II of the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) must have an export permit from the country of origin to be imported. Appendix I species also require an import permit from the U.S. Fish & Wildlife Service prior to importation.

Postal regulations restrict the mailing of live material so you should check with postal authorities before mailing fish.

If you have questions on any of the regulations discussed, contact your nearest U.S. Fish & Wildlife Service office or drop me a line.

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*Editor's Note--There appears to be a gap between rule and reality in several respects.

During 1983, NANFA made two attempts, once through Congressional inquiry, to ascertain whether there was any USF&WS policy requiring labelling details. The Lacey Act and some pursuant regulations say that USF&WS is indeed charged with coming up with rules, as Bob writes. The answers received to our inquiries, however, indicated no requirements. Further, we asked whether the agency was working on any regulations, since NANFA wanted to be included in commenting on them. The answer was no. We will again contact USF&WS on this matter. The requirement that species be listed on the box, for instance, might lead to theft by post office workers who were aquarists, or by anyone else en route to or from a post office who happened to notice what was in the box. The label LIVE FISH, however, may be advantageous to shippers and receivers, since it might lead to some special treatment. That label is recommended, whether or not required.

Also, we have talked with aquarists who are involved in international shipments. None of them ever concerned themselves about, nor had any problems with, the lack of a wildlife declaration on exports or imports. Perhaps the requirement is applied only to commercial shipments. Then again, maybe officialdom could surprise with a confiscation someday.
