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LAW ENFORCEMENT SESSION

APPLICATION OF THE LACEY AND BLACK BASS ACTS

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I have been asked to discuss the application of the Lacey Act and the Black Bass Act. Before proceeding further I should like to point out that these Acts, although quite different in many respects, have a common beginning and a common purpose. Both were born of national experience, plus national necessity which brought about national action. Their purpose is also the same and that is "to enable the States by their local laws to exercise a power over the preservation of wildlife, which without such legislation they could not exert."

In effect both Acts make use of the potent interstate commerce clause and in a sense extends the States jurisdiction over its property beyond the State's own boundaries.

The Lacey Act is a multi-purpose law and concerns itself with two main objectives: the encouragement of the desirable and the repression of the undesirable. That is to say the Lacey Act was designed to safeguard and improve the status of game birds and other wild birds; to suppress the killing of game as a business, popularly known as market hunting; to make more difficult the slaughtering of various birds, game and nongame, for their plumage; and finally, to regulate the introduction into the country of all exotic species of birds and animals, and rigidly to exclude all such birds and animals known to be dangerous or undesirable.

At the time the Lacey Act was passed (May 25, 1900) it blanketed, so to speak, all of the then outstanding ideas for the halting of the squandering of American wildlife, plus the exclusion of exotic forms of wildlife dangerous to the existing American "balance".

In addition to safeguarding the entire nation from the introduction of dangerous and potentially dangerous birds and animals the Lacey Act was of great benefit to the individual States by putting the market hunter in a very practical hole. The market hunter's name and address had to go on his shipment together with a description of the contents. The transportation companies were now equally liable with the shipper and were joined by the consignee. In other words, the Act provided an opportunity to put a crimp in the illegal transportation of game going, coming, and in between. The game shipper could only start his shipments legally when the local law at the starting point did not forbid its killing. Then he was confronted with a second hazard. As soon as his shipment got within the jurisdiction of its destination it was just as subject to the laws of that jurisdiction as though it had originated therein, and if those laws forbade sale or possession it was liable to confiscation emphasized with a fine.

In 1935 the Act was further amended to meet changing conditions, recognize new methods of transportation, provide police powers not contained in the original Act, increase to one thousand dollars the amount of fine which might be assessed and provide for jail sentences when deemed necessary.

The Act as amended in 1935 was a good law for its intent, purpose and implementation were clear, concise and completely understandable.

Unfortunately, from the standpoint of enforcement, forces over which we had no control inadvertently brought about changes in the Lacey Act in 1948 which made it less comprehensive and less meaningful. It occurred in this way.

It has long been recognized that many of our laws are inconsistent, redundant, archaic and obsolete. In addition they appear in the statutes-at-large in chronological order of passage without respect for subject groupings. Thus when you wish to refer to a particular law in the statutes-at-large it oftentimes involves a detailed search.

In the House Committee on the Judiciary there is a subcommittee on the Revision of the Laws. The latter is charged with the responsibility of weeding out obsolete laws, striking out inconsistencies in the laws, clarifying others, gathering related laws from the statutes-at-large and grouping them as permanent laws into the United States Code under appropriate titles. Under certain titles the committee is authorized to make substantive revisions which are acted upon by Congress and the laws so changed become the law in force.

When the Lacey Act was incorporated into Title 18 of the U. S. Code in 1948 the codifiers left Section 42 which pertains to the introduction of undesirable species intact. They reduced the maximum fine from \$1,000 to \$500 and the jail sentence from one year to six months. In addition they omitted certain words in Section 43 which pertains to interstate transportation, as being unnecessary and superfluous. Unfortunately, the language changes inadvertently appeared to change the substantive context of the Act.

Initially the subject section of the Lacey Act was directed at rail and water shipments that were made by common carrier; however, the advent of the automobile and the airplane has introduced other means, more frequently used, for the conveyance of illegally taken game from one State to another. In recognition of the preceding the Act was amended in 1935 and its provisions were made applicable to shipments "by any means whatever." The latter phrase was deleted in the 1948 version and as a result raised a question as to whether the Act applied to an individual who takes game unlawfully in one State and personally transports the contraband in his own vehicle to another State.

It is our contention that the Lacey Act covers such situations but it must be admitted that in its present form the Act is not clear on that point. In defense of our contention it is oftentimes necessary to enter into a prolonged and acrimonious debate with the United States Attorney on the point. Should he be convinced we are right, he in turn may have to convince the Judge.

Oftentimes that is not easy, for the courts when dealing with criminal cases are compelled to adhere strictly to the language of the law.

Most prosecutors will point to the original purpose of Section 43 which was to prohibit the interstate transportation of illegally taken birds and animals period. They will contend, and rightfully so, that Congress in amending the law gave no indication of changing the intent. But nevertheless an area of doubt has been created which will continue to plague us until it is removed.

Very briefly summed up the present language of the law with respect to interstate shipments provides that action can be taken against the person who (1) delivers for shipment and/or (2) *knowingly* receives for shipment wild animals or birds taken or possessed contrary to the law of the State within which it was so delivered or received for shipment; (3) makes a false record or account thereof; (4) ships, transports or carries any *package* containing wild animals or birds not plainly marked, labeled or tagged with the names and addresses of the shipper and consignee and an accurate statement showing the contents by number and kind, or transports any *package* containing *furs, hides or skins* of animals that does not bear the names and addresses of shipper and consignee.

We believe you will be pleased to know that a bill is to be introduced in the next session of Congress which, if passed, will extend the Government's jurisdiction over the introduction of dangerous exotic species not now covered in the Act and will restore language to Section 43 of the Act so there will be no question as to the Lacey Act's original aims, intent and purpose.

APPLICATION OF THE BLACK BASS ACT

Since earliest times in the United States black bass have been regarded as one of the finest of game fishes. Shortly after the turn of the century, sport fishermen became alarmed at the inroads on black bass populations made by commercial fishermen who were taking the fish in considerable quantity for sale as food fish in the market places throughout the country.

Prior to the passage of the Black Bass Act of May 20, 1926, several States in an effort to protect their sport fisheries resources had enacted laws prohibiting the taking of black bass for sale, barter, exchange or any other commercial purpose. Such State laws were operative only within State boundaries, however.

In recognition of the problem and to afford protection to black bass uniformly throughout the country, Congress passed the Black Bass Act. At the time the act was passed it was aimed at preventing black bass from being caught, killed and later sold for food. Traffic in live fish for commercial purposes was not then a problem, thus the transportation of live fish and eggs was specifically exempted from the provisions of the Act.

In 1952 the provisions of the Act were amended to include all species of fish, with the continued exception of steelhead trout legally taken in the Columbia River between the States of Washington and Oregon and live fish and their eggs.

Through the years the Act has been effective in virtually eliminating commercial traffic in black bass and, except in one or two problem areas, other game fish as well. However, Section 9 of the Act which permitted the interstate transportation of live fish proved to be an unfortunate loophole in the law brought about by changing conditions which Congress could not anticipate at the time the Act was passed in 1926.

In the late 1930's a great many farmers throughout the country built farm ponds so as to assure a reasonably permanent water supply for their stock. Shortly thereafter it was found that such farm ponds could serve a dual purpose. Certain warm-water fishes could be propagated in the ponds providing sport as well as food without interfering in any way with the ponds' primary purpose. The popularity of farm pond fishing soon led to the development of "fee" ponds wherein the pond owner charged for the privilege of fishing thereon.

Since World War II there has been an ever-increasing interest in the construction of both farm and "fee" ponds. As the ponds increased so did the demand for live fish, especially adult fish, with which to stock such ponds.

This demand has resulted in the development of a new industry whose stock in trade consists of unlawfully taken State property illegally transported across State lines.

State and Federal conservation authorities have amassed information indicating a widespread, lucrative, and ever-increasing interstate traffic in unlawfully taken live game fish. A suspect in one such transaction admitted under oath that he had taken \$27,000 worth of adult black bass from the waters of one State and sold them to "fee" pond operators in an adjoining State. In another instance a fish dealer offered to furnish 10,000 State-owned black bass at a price of \$2.00 to \$2.50 per fish ranging in size from $\frac{3}{4}$ to $2\frac{1}{2}$ pounds.

Until very recently, once live fish illegally taken within the borders of a State were transported beyond the State's boundaries the State was powerless to protect or recover its property. In recognition of the situation the Department of the Interior sponsored a bill in Congress to amend the Black Bass Act so as to fill the loophole in the law which permitted those trafficking in illegally taken live fish to operate with impunity.

The law as amended was approved by the President on August 25, 1959, with the result that the Federal Government can now aid the States with this problem.

Section 9 as amended now reads as follows: "Nothing in this Act shall be construed to prevent the shipment in interstate commerce of any fish or eggs for breeding or stocking purposes if they were caught, taken, sold, purchased, possessed, or transported in accordance with the law of the State, District of Columbia, or Territory in which they were caught, taken, sold, purchased, possessed, or transported." In summary, the Black Bass Act makes it unlawful for any person to deliver or knowingly receive for transportation, or knowingly

to transport by *any means whatsoever* from any State, District of Columbia, or other fish if such fish have been taken contrary to the laws of the State in through any other State or to or through any foreign country, any black bass which they originated.

Packages or containers in which fish are transported or delivered must be clearly and conspicuously marked on the outside with the name *fish* and in addition bear an accurate statement of the number and kinds of each such fish contained therein and the names and addresses of the shipper and the consignee.

Under Section 4, all fish entering a State for use, consumption, sale, or storage therein shall be subject to the operation and effect of the laws of such State.

The term fish as used in the law is limited to aquatic, gill-breathing, vertebrate animals, bearing paired fins. Thus it does not apply to such marine creatures as lobsters, shrimp, oysters, clams and the like.

In conclusion, I feel that the Federal Government could do a much better job of aiding the States in the protection of their fisheries resources if there was greater uniformity among the States with respect to fisheries laws. States which permit the sale of certain game fishes within their borders are providing an ever-enlarging market for the sale of fish looted from adjoining States which prohibit such sale. Since fish do not lend themselves to quick identification as to their place of origin it is extremely difficult to prove that certain fish which are native to local waters came from another State. Thus the enforcement problem is compounded materially at the outset. We realize, of course, that many of the fisheries enforcement problems which exist would not necessarily be resolved by uniform fisheries laws between the States, but do believe a move in that direction could in many instances be of benefit to all concerned.

Bird Reservation Trespass and Lacey Acts As Amended Title 18 U. S. Code

§ 41. Hunting, Fishing, Trapping: Disturbance or Injure on Wildlife Refuges

Whoever, except in compliance with rules and regulations promulgated by authority of law, hunts, traps, captures, willfully disturbs or kills any bird, fish, or wild animal of any kind whatever, or takes or destroys the eggs or nest of any such bird or fish, on any lands or waters which are set apart or reserved as sanctuaries, refuges or breeding grounds for such birds, fish, or animals under any law of the United States or willfully injures, molests, or destroys any property of the United States on any such lands or waters, shall be fined not more than \$500 or imprisoned not more than six months, or both. (As amended June 25, 1948—formerly Section 145.)

§ 42. Importation of Injurious Animals and Birds: Permits: Specimens for Museums

(a) The importation into the United States or any Territory or district thereof, of the mongoose, the so-called "flying foxes" or fruit bats, the English sparrow, the starling, and such other birds and animals as the Secretary of the Interior may declare to be injurious to the interests of agriculture or horticulture, is prohibited; and all such birds and animals shall, upon arrival at any port of the United States, be destroyed or returned at the expense of the owner. Nothing in this subsection shall restrict the importation of natural-history specimens for museums or scientific collections, or of certain cage birds, such as domesticated canaries, parrots, or such other birds as the Secretary of the Interior may designate. The Secretary of the Treasury may make regulations for carrying into effect the provisions of this section.

(b) Whoever violates this section shall be fined not more than \$500 or imprisoned not more than six months, or both.

(c) The Secretary of the Treasury shall prescribe such requirements and issue such permits as he may deem necessary for the transportation of wild animals and birds under humane and healthful conditions, and it shall be unlawful for any person, including any importer, knowingly to cause or permit any wild animal or bird to be transported to the United States, or any Territory or district thereof, under inhumane or unhealthful conditions or in violation of such requirements. In any criminal prosecution for violation of this subsection

and in any administrative proceeding for the suspension of the issuance of further permits . . .

(1) the condition of any vessel or conveyance, or the enclosures in which wild animals or birds are confined therein, upon its arrival in the United States, or any Territory or district thereof, shall constitute relevant evidence in determining whether the provisions of this subsection have been violated; and

(2) the presence in such vessel or conveyance at such time of a substantial ratio of dead, crippled, diseased, or starving wild animals or birds shall be deemed prima facie evidence of the violation of the provisions of this subsection. (As amended June 25, 1948 and May 24, 1949—formerly Section 241 Lacey Act.)

Sections 242, 243, 244 and 202 of the Lacey Act were amended June 25, 1948 to read as follows:

§ 43. *Transportation or Importation in Violation of State, National, or Foreign Laws*

Whoever delivers or knowingly receives for shipment, transportation, or carriage in interstate or foreign commerce, any wild animal or bird, or the dead body or part thereof, or the egg of any such bird imported from any foreign country, or captured, killed, taken, purchased, sold, or possessed contrary to any Act of Congress, or the law of any State, Territory, Possession, or foreign country, or subdivision thereof; or

Whoever transports, brings, or conveys from any foreign country into the United States any wild animal or bird, or the dead body or part thereof, or the egg of any such bird captured, killed, taken, shipped, transported, or carried contrary to the law of such foreign country or subdivision thereof; or

Whoever knowingly purchases or receives any wild animal or bird, or the dead body or part thereof, or the egg of any such bird imported from any foreign country or shipped, transported, carried, brought, or conveyed in violation of this section; or

Whoever, having purchased or received any wild animal or bird, or the dead body or part thereof, or the egg of any such bird imported from any foreign country or shipped, transported, or carried in interstate commerce, makes any false record or account thereof; or

Whoever imports from or exports to Mexico any game mammal, dead or alive, or parts or products thereof, except under permit or authorization of the Secretary of the Interior, in accordance with regulations issued by him and approved by the President—

Shall be fined not more than \$500 or imprisoned not more than six months, or both; and the wild animals or birds, or the dead bodies or parts thereof, or the eggs of such birds, shall be forfeited.

§ 44. *Marking Packages or Containers*

Whoever ships, transports, carries, brings or conveys in interstate or foreign commerce any package containing wild animals or birds, or the dead bodies or parts thereof, without plainly marking, labeling, or tagging such package with the names and addresses of the shipper and consignee and with an accurate statement showing the contents by number and kind; or

Whoever ships, transports, carries, brings or conveys in interstate commerce, any package containing migratory birds included in any convention to which the United States is a party, without marking, labeling, or tagging such package as prescribed in such convention, or Act of Congress, or regulation thereunder; or

Whoever ships, transports, carries, brings or conveys in interstate commerce any package containing furs, hides, or skins of wild animals without plainly marking, labeling, or tagging such package with the names and addresses of the shipper and consignee—

Shall be fined not more than \$500 or imprisoned not more than six months, or both; and the shipment forfeited.

§ 3054. *Officer's Powers Involving Animals and Birds*

Any employee authorized by the Secretary of the Interior to enforce Sections 43 and 44 of this title, and any officer of the customs, may arrest any person violating said sections in his presence or view, and may execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of said sections.

§ 3112. *Search Warrants for Seizure of Animals, Birds or Eggs*

An employee authorized by the Secretary of the Interior to enforce Sections 43 and 44 of this title, and any officer of the customs, shall have authority to execute any warrant to search for and seize any property used or possessed in violation of said sections and property so seized shall be held by him or by the United States marshal pending disposition thereof by the court.

(Special attention is directed to the limitations of Sections 43, 44, 3054 and 3112.)

An Act

To Regulate the Interstate Transportation of Black Bass and Other Fish, and for Other Purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to regulate the interstate transportation of black bass, and for other purposes," approved May 20, 1926, as amended, is hereby further amended to read as follows:

"That when used in this Act the word 'person' includes company, partnership, corporation, association, and common carrier.

"Section 2. It shall be unlawful for any person to deliver or knowingly receive for transportation, or knowingly to transport, by any means whatsoever, from any State, Territory, or the District of Columbia, to or through any other State, Territory, or the District of Columbia, to or through any foreign country, any black bass or other *fish, if (1) such transportation is contrary to the law of the State, Territory, or the District of Columbia from which such black bass or other fish is or is to be transported, or is contrary to other applicable law, or (2) such black bass or other fish has been either caught, killed, taken, sold, purchased, possessed, or transported, at any time, contrary to the law of the State, Territory, or the District of Columbia in which it was caught, killed, taken, sold, purchased, or possessed, or from which it was transported or contrary to other applicable law; and no person shall knowingly purchase or receive any such black bass or other fish which has been transported in violation of the provisions of this Act; nor shall any person receiving any shipment of black bass or other fish transported in interstate commerce make any false record or render a false account of the contents of such shipment.

"Section 3. Any package or container containing such fish transported or delivered for transportation in interstate commerce, except any shipment covered by Section 9, shall be clearly and conspicuously marked on the outside thereof with the name 'Fish', an accurate statement of the number of each species of such fish contained therein, and the names and addresses of the shipper and consignee.

"Section 4. All such black bass or other fish transported into any State, Territory, or the District of Columbia for use, consumption, sale, or storage therein shall upon arrival in such State, Territory, or the District of Columbia be subject to the operation and effect of the laws of such State, Territory, or the District of Columbia to the same extent and in the same manner as though such fish had been produced in such State, Territory, or the District of Columbia, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

"Section 5. The Secretary of the Interior is authorized (1) to make such expenditures, including expenditures for personal services at the seat of government and elsewhere, and for cooperation with local, State, and Federal author-

* The term "fish" is limited to aquatic, gill breathing, vertebrate animals bearing paired fins.

ities, including the issuance of publications, and necessary investigations, as may be necessary to execute the functions imposed upon him by this Act and as may be provided for by Congress from time to time; and (2) to make such regulations as he deems necessary to carry out the purposes of this Act. Any person violating any such regulation shall be deemed guilty of a violation of this Act.

"Section 6. (a) Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of this Act (1) shall have power, without warrant, to arrest any person committing in the presence of such employee a violation of this Act or any regulation made in pursuance of this Act, and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; (2) shall have power to execute any warrants or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this Act or regulations made in pursuance thereof; and (3) shall have authority with a search warrant issued by an officer or court of competent jurisdiction, to make search in accordance with the terms of such warrant. Any judge of a court established under the laws of the United States, or any United States commissioner may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

"(b) All fish delivered for transportation or which have been transported, purchased, received, or which are being transported, in violation of this Act, or any regulations made pursuant thereto, shall, when found by such employee or by any marshal or deputy marshal, be summarily seized by him and placed in the custody of such persons as the Secretary of the Interior shall by regulations prescribe, and shall, as a part of the penalty and in addition to any fine or imprisonment imposed under Section 7 of this Act, be forfeited by such court to the United States upon conviction of the offender under this Act, or upon judgment of the court that the same were transported, delivered, purchased, or received in violation of this Act or regulations made pursuant thereto.

"Section 7. In addition to any forfeiture herein provided, any person who shall violate any of the provisions of this Act shall, upon conviction thereof, be punished by a fine of not exceeding \$200, or imprisonment for a term of not more than three months, or by both such fine and imprisonment, in the discretion of the court.

"Section 8. Nothing in this Act shall be construed to prevent the several States and Territories from making or enforcing laws or regulations not inconsistent with the provisions of this Act, or from making or enforcing laws or regulations which shall give further protection to black bass and other fish.

"Section 9. Nothing in this Act shall be construed to prevent the shipment in interstate commerce of any fish or eggs for breeding or stocking purposes if they were caught, taken, sold, purchased, possessed, or transported in accordance with the law of the State, the District of Columbia, or Territory in which they were caught, taken, sold, purchased, possessed, or transported.

"Section 10. The provisions of this Act as relating to fish shall not apply to steelhead trout (*salmo gairdnerii*) legally taken in the Columbia River between the States of Washington and Oregon."

(As amended July 30, 1947, 61 Stat. 517, July 16, 1952, 66 Stat. 736, August 25, 1959, 73 Stat. 430 (16 U.S.C. 851-856).)