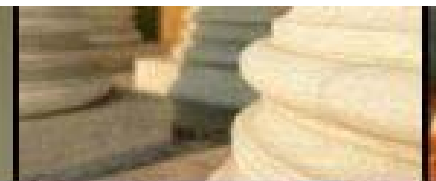


The National Agricultural Law Center



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# Aquaculture and the Lacey Act

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# Roadmap



- **Lacey Act History**
- **Lacey Act Requirements & Penalties**
- **Knowledge Requirement**
- **What if?**

# Roadmap



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# Lacey Act History



- **Oldest national wildlife protection statute.**
- **Enacted in 1900 and intended to combat**
  - Hunting to supply commercial markets
  - Interstate shipment of unlawfully killed game
  - Introduction of harmful exotic species
  - Killing of birds for feather trades
- **Significantly amended in 1981, 1988, and 2008**

# Where does it apply?



- Applies to all “wild” animals, whether alive or dead, including reptiles, amphibians, fish, mollusks, crustaceans, arthropods, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and any part, product, egg, or offspring.
- Since 2008, also applies to a broad range of plants

# Roadmap



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# What is Prohibited?



- **Wildlife Trafficking**
  - Both domestic and international
- **Marking Offenses**
- **False Labeling**

# Trafficking: What is Prohibited?



- “Unlawful to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife already taken (i.e., captured, killed, or collected), possessed, transported, or sold in violation of state, federal, American Indian tribal, or foreign laws, or regulations that are fish or wildlife-related”
- Two part test:
  - Possession/movement of creatures
  - In violation of laws

# Trafficking: State v. Federal Prosecution



- An interstate or foreign commerce nexus is required when the “underlying law” violated is state or foreign, but not when it is federal or tribal law.
- In other words,
  - If you’re shipping **interstate** and **violate state law** you can be **prosecuted under either the federal or the state statute**
  - If you’re shipping **in-state** and **violate state law** you can only be **prosecuted under the state statute**
  - If you’re shipping **in-state** and **violate federal law**, you can only be **prosecuted under the federal statute**

# Felony Provisions for Trafficking



- **To be convicted as a felony:**
  - Defendant must “know” about, or be generally aware of, the illegal nature of the wildlife, but not necessarily the specific law violated

**AND**

- Must involve the sale, purchase, offer, or intent to sell, purchase, or offer wildlife for over \$350

# Felony Penalties for Trafficking



- **Criminal Penalties**

- Up to five years imprisonment
- Up to \$250,000 fine (500,000 for organizations)

- **Civil Penalties**

- Up to \$10,000 civil penalty by Secretary

# Misdemeanor Provisions for Trafficking



- To be convicted as a misdemeanor:
  - The prosecution must show that the defendant, in the exercise of due care, should know the facts constituting the underlying law violation.
    - ✦ Due care is the “degree of care which a reasonably prudent person would exercise under the same or similar circumstances.”

**OR**

- Defendant knew about illegality, but value was less than \$350

# Misdemeanor Penalties for Trafficking



- **Criminal Penalties**

- Up to 1 year in prison
- Up to \$100,000 fine (\$200,000 for organizations)

- **Civil Penalties**

- If defendant knew about illegality but value was less than \$350, may also include \$10,000 civil penalty

# “Marking” Offenses



- Contents of shipments of fish and wildlife traveling in interstate or foreign commerce must be accurately marked and labeled on the shipping containers.
  - In other words, you must mark or label the shipment

# “Marking Offense” Penalties



- **Possible Penalties:**
  - If it involves products worth less than \$350, possible penalty of up to \$250
  - If it involves products worth more than \$350, possible penalty of up to \$10,000.

# “False Labeling” Offenses



- Making or submitting any false record, account, label for, or identification of any wildlife transported or intended to be transported in interstate or foreign commerce may be prosecuted as either a misdemeanor or felony.
  - In other words, you must also mark or label the shipment *correctly*.
  - Must mark each container or package conspicuously on the outside with both the name and address of the shipper and consignee.
  - Also, an accurate and legible list of its contents by species scientific name and the number of each species and whether or not the listed species are venomous must accompany the entire shipment.

# “False Labeling” Penalties

- **Felony: Involves products with a market value GREATER than \$350**
- **Punishment**
  - Up to 5 years and/or \$250,000 (\$500,000 for organizations)
- **Misdemeanor: Involves products with a market value LESS than \$350**
- **Punishment**
  - Up to 1 year and/or \$100,000 (\$200,000 for organizations)

# And More...



- **Each violation is a separate offense**
  - This means that defendants may be sentenced to the maximum penalty for each count of the indictment ... leading to much higher penalties overall.
- **Strict liability forfeiture exists for wildlife contraband**
  - In other words, if you're caught, you can lose the goods as well as all the vehicles and equipment to ship them.
- **Violations can be aggregated, or combined, for charging purposes**
  - In other words, the prosecutor can combine violations into one charge. This might lead to felony charges instead of misdemeanors

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# Felony v. Misdemeanor Knowledge

- For a felony, the prosecution must prove that the defendant acted “knowingly”
  - In other words, does the defendant know/is he aware that the wildlife was illegal.
- For a misdemeanor, the prosecution must prove that the defendant, in the exercise of due care, should have known that illegal wildlife was shipped across state lines
  - In other words, would an ordinarily reasonable person have known that the shipment contained illegal wildlife?

# Tools to Demonstrate Due Care



- **Asking questions**
- **Compliance plans**
- **Industry standards**
- **Records of efforts**
- **Changes to above in response to practical experiences**

# Examples of Common-Sense Red Flags for Purchasers



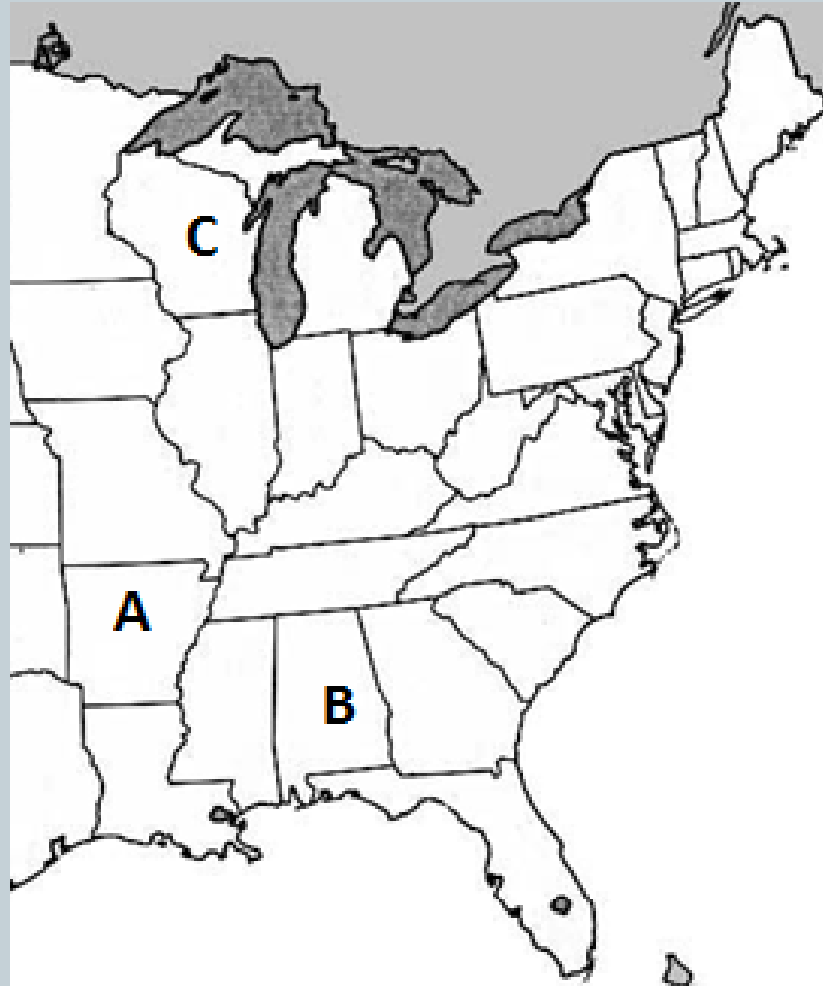
- Goods significantly below going market rate
- Cash only/lower price for goods without paperwork
- Paperwork facially invalid or otherwise suspect
- Unusual sales methods or practices
- Inability of suppliers to provide rational answers to routine questions

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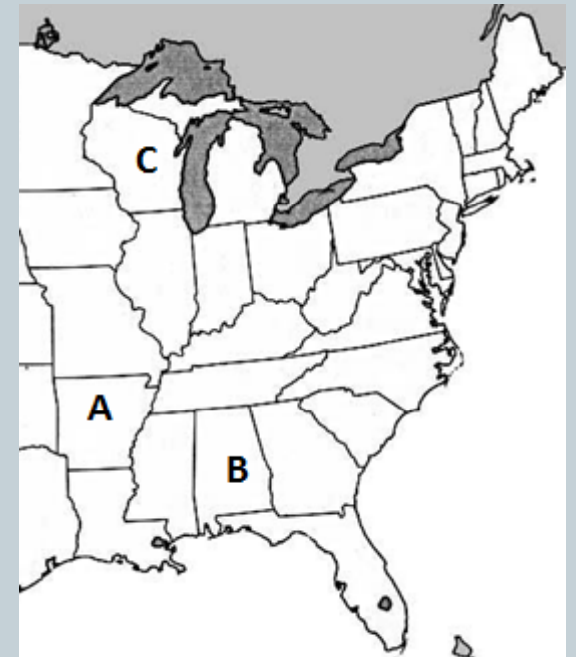
# What if.....



# What if.....



- A sells an unlabeled load of catfish to B.
- Charges against A:
  - ✦ Marking offense
- Charges against B:
  - ✦ Marking offense





# What if.....



- A sells a load of catfish to B, but it is labeled “whitefish”
  - Charges against A:
    - ✦ False Labeling
  - Charges against B:
    - ✦ None



# What if.....



- A sells a load labeled “catfish” to B, and a black carp is included in the shipment.
- Charges against A:
  - ✦ False Labeling
  - ✦ Trafficking
- Charges against B:
  - ✦ Trafficking



# What if.....



- A sells a load labeled “catfish” to Trucker in AR. A black carp is included in the shipment. Trucker drives the shipment to AL, and sells it to B.
  - Charges against A:
    - ✦ False Labeling
  - Charges against B:
    - ✦ Trafficking
  - Charges against Trucker
    - ✦ Trafficking



# What if.....

- A sells a load labeled “fishfish” to C. Possession of fishfish is legal in AR and WI, but illegal in IL, where Trucker is pulled over.
  - No Lacey Act violation, as long as it was correctly labeled.
  - Trafficking provisions don’t apply to interstate shipment if the shipment is en route to a state in which the fish or wildlife or plant may be legally possessed.



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