

Criminal Lacey Act Offenses: An Overview of Selected Issues

September 2, 2025

Congressional Research Service

<https://crsreports.congress.gov>

R48669



R48669

September 2, 2025

Cassandra J. Barnum
Legislative Attorney

Criminal Lacey Act Offenses: An Overview of Selected Issues

The Lacey Act, 16 U.S.C. §§ 3371–3378, is among the oldest federal wildlife laws. Enacted in 1900 and amended several times since, the Act imposes civil and criminal penalties for wildlife trafficking activity. It generally prohibits transacting in fish, wildlife, or plants that have already been illegally taken (i.e., killed), possessed, transported, or sold. The Act also prohibits false labeling of wildlife.

The substantive trafficking provisions of the Lacey Act prohibit importing, exporting, transporting, selling, receiving, acquiring, or purchasing illegal wildlife. The offense has a two-step structure. The first step is the underlying violation in which wildlife is taken, possessed, transported, or sold in violation of federal, tribal, state, or foreign law. The second step, which completes the Lacey Act violation, is the subsequent import, export, transport, sale, receipt, acquisition, or purchase of that wildlife. This two-step structure creates legal complexity regarding the timing, sequencing, and nature of the underlying violation. Generally, the “first step” illegal act must precede and be transactionally distinct from the “second step” act, and the underlying law must be one specifically related to wildlife. The requirements for the second step differ depending on whether the underlying law is federal, tribal, foreign, or state. Where the underlying law is federal or tribal, the second step need not have any interstate or foreign commerce component. Where the underlying law is state or foreign, the second step must involve the wildlife crossing state lines or being imported/exported in order to establish federal jurisdiction over the offense.

False labeling violations under the Lacey Act involve creating any false record, account, label for, or identification of wildlife that has been or is intended to be imported or exported, or transported in interstate or foreign commerce. Unlike the substantive wildlife trafficking provisions, the false labeling offense applies to all wildlife (not just wildlife that has already been taken, possessed, transported, or sold in violation of an underlying law or regulation, which this report describes as “contraband” or “illegal”).

The Lacey Act imposes either felony (more than one year in prison) or misdemeanor (one year or less in prison) penalties based on variety of factors, including the offender’s mental state, the domestic or international nature of the transaction, the commercial character of the transaction, and the value of the wildlife involved. Generally, where the offender knows the wildlife is illegal, imports and exports are felony offenses punishable by up to five years’ imprisonment and fines of up to \$250,000. Domestic transactions by knowing offenders are felonies where the act is commercial in nature and the value of the wildlife exceeds \$350. Where the offender does not know, but in the exercise of due care should have known, that the wildlife was illegal, the offense is a misdemeanor punishable by up to one year in prison and a fine of up to \$100,000.

Potential consequences of a Lacey Act conviction include prison time, fines, restitution, and both civil and criminal asset forfeiture. The severity of the sentence is determined by a number of factors including commercial purpose, pattern of similar violations, failure to quarantine, risk of infestation or disease transmission, conservation status of the species, and market value of the wildlife. Restitution is available in certain cases on the theory that governments have a property interest in illegally harvested wildlife based on the ability to seize and sell contraband. Civil asset forfeiture is available for illegal wildlife where the government can prove by a preponderance of the evidence that the wildlife was the object of illegal activity under the Lacey Act. Criminal asset forfeiture of equipment used in wildlife trafficking follows from a criminal conviction under the act.

Because Lacey Act criminal liability can be triggered by underlying violations of other federal wildlife laws, one consideration for Congress is that any change to a federal wildlife law will have implications for criminal enforcement under the Lacey Act (and, conversely, any change to the Lacey Act may affect the penalties applicable to certain wildlife trafficking activities prohibited under other laws such as the Endangered Species Act). Congress may also consider certain ways in which the Lacey Act could be clarified in light of opinions from various courts, including elucidation of particular offenses related to guided hunts, clarification of the applicable statute of limitations, and establishment of an explicit penalty applicable to cases in which a knowing offender does not meet the commercial conduct or import/export requirements for felony penalties.

Contents

| | |
|--|----|
| Selected Definitions Under the Lacey Act | 2 |
| Prohibitions | 2 |
| Substantive Trafficking | 2 |
| False Labeling | 6 |
| Penalties..... | 7 |
| Penalty Factors | 9 |
| Mental State | 9 |
| Import/Export or Commercial Conduct Greater Than \$350 | 12 |
| Criminal Consequences..... | 14 |
| Sentencing | 15 |
| Restitution | 16 |
| Asset Forfeiture | 18 |
| Civil Asset Forfeiture of Wildlife and Plants | 18 |
| Criminal Asset Forfeiture of Vehicles and Other Equipment..... | 20 |
| Considerations for Congress..... | 21 |
| Structural Implications for Criminal Enforcement..... | 21 |
| Areas for Potential Clarification | 22 |
| Sale and Purchase of Guiding and Outfitting Services | 22 |
| Statute of Limitations..... | 23 |
| Penalty for Knowing, Domestic, Non-Commercial Offender | 24 |

Tables

| | |
|---|---|
| Table 1. The Lacey Act Two-Step | 3 |
| Table 2. Interstate or Foreign Commerce | 4 |
| Table 3. Felony or Misdemeanor? | 9 |

Contacts

| | |
|-------------------------|----|
| Author Information..... | 24 |
|-------------------------|----|

The Lacey Act, originally enacted in 1900 as the first federal law protecting wildlife, prohibits a wide array of activities related to wildlife, fish, and plants.¹ Representative John Lacey introduced the bill to prohibit the introduction and transport of invasive and injurious species² and to achieve “the most vital” goal of prohibiting interstate commerce in wildlife “killed in violation of local laws.”³ Representative Lacey was concerned with the practice of poachers illegally hunting birds in one state, then smuggling the birds to other states for sale.⁴ This practice was difficult to address at the state level because the state of origin lacked jurisdiction to prosecute the poacher, and states were constitutionally constrained in their capacity to prohibit such sales because the power to regulate interstate commerce rests with the federal government.⁵ The Lacey Act addressed the issue at the federal level by criminalizing the interstate movement of game taken in violation of state law.⁶

Wildlife trafficking is a concern in the United States and many other countries.⁷ Species depredation resulting from this highly profitable criminal enterprise has impacts on ecosystems and economies of countries where the animals are killed, where livelihoods can be tied to wildlife tourism.⁸ Wildlife trafficking also has the potential to spread zoonotic diseases⁹ and has been linked to transnational organized crime¹⁰ and terrorism funding.¹¹

This report addresses the criminal provisions of the current version of the Lacey Act, which prohibits, among other things, the trafficking in interstate and foreign commerce of fish, wildlife, or plants taken, possessed, transported, or sold in violation not only of state law but of federal, foreign, and tribal law as well.¹²

¹ Ch. 553, 31 Stat. 187 (1900) (codified as amended at 16 U.S.C. §§ 3371–3378; 18 U.S.C. § 42).

² H.R. 6634, 56th Cong. (1900). Representative Lacey noted, “If this law had been in force at the time the mistake was made in the introduction of the English sparrow we should have been spared from the pestilential existence of that ‘rat of the air,’ that vermin of the atmosphere.” 33 CONG. REC. 4870, 4871 (1900) (statement of Rep. John Fletcher Lacey). The remnants of these injurious species provisions are found in Title 18 of the *U.S. Code*. See 18 U.S.C. § 42.

³ 33 CONG. REC. 4871 (1900). For a detailed history of the Lacey Act, see Robert S. Anderson, *The Lacey Act: America’s Premier Weapon in the Fight Against Unlawful Wildlife Trafficking*, 16 PUB. LAND L. REV. 27, 50 (1995).

⁴ See 33 CONG. REC. 4858, 4871 (1900) (statement of Rep. John Fletcher Lacey) (“Trappers go [to Georgia] and catch the quail ... in violation of the local law, pack them in barrels or boxes and ship them to other markets in the United States. It is done secretly. The result is that the market houses in other States have been utilized as places in which to dispose of these birds and animals killed in violation of the laws of the State.”); see also *id.* at 4872 (“[T]he facility of commerce in these days of rapid transit enables the violator of the State law to market the product of his crime at a distance, and thus defy the laws of his own Commonwealth.”).

⁵ Anderson, *supra* note 3, at 37–38.

⁶ Ch. 553, § 3, 31 Stat. 187, 188 (1900).

⁷ See, e.g., Eliminate, Neutralize, and Disrupt Wildlife Trafficking Act of 2016, Pub. L. No. 114-231, 130 Stat. 949.

⁸ See CRS Report R48072, *Kenya: Current Issues and U.S. Relations*, by Lauren Ploch Blanchard, at 13 (2025).

⁹ See CRS In Focus IF11494, *Wildlife Trade, COVID-19, and Other Zoonotic Diseases*, by Pervaze A. Sheikh (2021); see also Daya J. Taylor, *Improving Wet Market Regulation to Control the Spread of Disease*, 23 ASIAN-PAC. L. & POL’Y J. 97, 103 (2021) (describing how illegal wildlife trade can result in zoonotic disease because it involves myriad contacts with humans without being subject to sanitary controls).

¹⁰ See Exec. Order 13,773, 82 Fed. Reg. 10691 (Feb. 9, 2017). See also CRS Report R48146, *Biodiversity and Conservation in Tanzania*, by Pervaze A. Sheikh and Nicolas Cook, at 5 (2024).

¹¹ See THE WHITE HOUSE, NATIONAL STRATEGY FOR COMBATING WILDLIFE TRAFFICKING 3 (Feb. 2014), <https://obamawhitehouse.archives.gov/sites/default/files/docs/nationalstrategywildlifetrafficking.pdf> [<https://perma.cc/XY29-KXWP>].

¹² 16 U.S.C. § 3372. The Lacey Act was extended to cover plant species by an amendment in 2008. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651.

Selected Definitions Under the Lacey Act

There are several definitions under the Lacey Act that frame the Act’s criminal provisions. *Taken* is a term of art meaning “captured, killed, or collected and, with respect to a plant, also means harvested, cut, logged, or removed.”¹³ The Act defines *fish or wildlife* as “any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring thereof.”¹⁴ *Plant* is defined as “any wild member of the plant kingdom, including roots, seeds, parts, or products thereof, and including trees from either natural or planted forest stands” but excluding “common cultivars, except trees, and common food crops,” among other exclusions.¹⁵ Although the term *wild* is not defined in Title 16 of the *U.S. Code*, the portion of the Lacey Act related to invasive and injurious species, which was moved to Title 18, defines the term to mean “creatures that, whether or not raised in captivity, normally are found in a wild state.”¹⁶

For ease of reading, this report frequently refers to fish, wildlife, and plants collectively as “wildlife” except where relevant distinctions exist.

Prohibitions

Most of the court decisions related to Lacey Act offenses involve two types of charges: substantive wildlife trafficking and creating false documents related to wildlife (usually to facilitate wildlife trafficking). Other, less frequently litigated provisions of the Lacey Act include the prohibition on sale and ownership of certain species of big cats, which was incorporated into the Lacey Act in the Captive Wildlife Safety Act of 2003¹⁷ and Big Cat Public Safety Act of 2022.¹⁸ With respect to plants, the 2008 Lacey Act amendments added a plant declaration requirement, violation of which is subject to the same criminal penalties as other false labeling offenses under the Act.¹⁹

Substantive Trafficking

The Lacey Act prohibits transactions involving illegal wildlife. Specifically, “it is unlawful for any person to import, export, transport, sell, receive, acquire, or purchase any fish, wildlife, or plant that was taken, possessed, transported, or sold in violation of [an underlying law] or

¹³ 16 U.S.C. § 3371(k).

¹⁴ *Id.* § 3371(b).

¹⁵ *Id.* § 3371(g).

¹⁶ 18 U.S.C. § 42(a)(2); *see also* *United States v. Condict*, No. CR-05-004-SPS, 2006 WL 1793235, at *3 (E.D. Okla. June 27, 2006) (holding farm-bred whitetail deer are wild on the grounds that “otherwise wild animals do not cease to be wildlife simply because they or their progeny are no longer found in the wild.”); *United States v. Bernal*, 90 F.3d 465, 467 n.4 (11th Cir. 1996) (rejecting as “wholly meritless” the argument that the Lacey Act “does not apply to animals bred in captivity”).

¹⁷ Pub. L. No. 108-191, 117 Stat. 2871; H.R. REP. NO. 108-269, at 3 (2003).

¹⁸ Pub. L. No. 117-243, 136 Stat. 2336; H.R. REP. NO. 117-428; 16 U.S.C. §§ 3372(e)(1); 3373(d)(4).

¹⁹ Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651; 16 U.S.C. §§ 3372(f), 3373(d)(3). While there are not many reported cases relating to the plant provisions, one high-profile prosecution of hardwood flooring company Lumber Liquidators resulted in a nearly \$14 million total penalty. *See* Plea Agreement, *United States v. Lumber Liquidators, Inc.*, No. 2:15-cr-00126 (E.D. Va. Oct. 22, 2015), Dkt. No. 11; Statement of Facts as to Lumber Liquidators, Inc., *Lumber Liquidators, Inc.*, No. 2:15-cr-00126, Dkt. No. 14.

regulation ... ”²⁰ That underlying law can be federal, state, foreign, or tribal.²¹ Violations of the Lacey Act can be understood as having two distinct steps, where the take, possession, transport, or sale in violation of law is the first (or predicate) step, and the import, export, transport, sale, receipt, acquisition, or purchase is the second step.²² The second step completes the Lacey Act violation, as shown in **Table 1** below. For example, a person who hunted an animal in a foreign country in violation of that country’s laws would not violate the Lacey Act. However, if that person, or another person, were then to import that animal into the United States, the importer could be criminally liable under the Lacey Act.

Table 1. The Lacey Act Two-Step

A trafficking offense involves doing something with wildlife that is already illegal.

| Step One | Step Two |
|--|---|
| Wildlife is ... taken, possessed, transported, or sold ... in violation of an underlying law (federal, tribal, state, foreign). | The defendant ... imports, exports, transports, sells, receives, acquires, or purchases ... wildlife already illegal by virtue of a step-one violation. |

Source: 16 U.S.C. § 3372(a).

Several points about the interplay between the two steps bear emphasizing:

- The offender can,²³ but need not be, the person to commit the underlying violation.²⁴ In the above hypothetical, for example, if the hunter in the foreign country gave the animal to a friend and made that friend aware of the illegal

²⁰ 16 U.S.C. § 3372(a). This report refers to such fish, wildlife, or plant as “contraband” or “illegal.”

²¹ *Id.*

²² See *United States v. Carpenter*, 933 F.2d 748, 750 (9th Cir. 1991) (referencing “the two steps required by the statute”).

²³ For example, in *United States v. Heuer*, the U.S. Court of Appeals for the Ninth Circuit affirmed the Lacey Act conviction of a person who shot an elk without the proper permit in violation of Montana law (the underlying violation) and who subsequently transported the elk (the § 3372 violation). 916 F.2d 1457, 1459 (9th Cir. 1990); see also *United States v. Cameron*, 888 F.2d 1279, 1281 (9th Cir. 1989) (affirming in part the sentence of a defendant who caught halibut in violation of International Pacific Halibut Commission rules (the underlying violation) and who acquired and transported the halibut (the § 3372 violation)).

²⁴ See *United States v. McDougall*, 25 F. Supp. 2d 85, 90 (N.D.N.Y. 1998) (“The government is not required to prove that [the defendant] himself violated the underlying state law or regulation to hold him liable under the Lacey Act’s criminal penalties.”); *United States v. Lee*, 937 F.2d 1388, 1393 (9th Cir. 1991) (“Similarly, it is irrelevant whether the [defendants] would be liable at all under the [underlying] regulation. The Act’s criminal penalty provision does not require that the [defendants] violated the regulation, but only that they took part in importing the salmon when they knew, or should have known, that the salmon had been taken in violation of the regulation.”). In the context of the Racketeer Influenced and Corrupt Organization Act, another criminal statute involving predicate offenses, courts have held that a person need not be convicted or even charged with the underlying offense to be liable for the crime that uses the underlying offense as a predicate offense. See, e.g., *United States v. Hopkins*, 310 F.3d 145, 153 (4th Cir. 2002); *United States v. Crump*, 120 F.3d 462, 466 (4th Cir. 1997); *United States v. Hill*, 971 F.2d 1461, 1464 (10th Cir. 1992).

nature of the hunt, and the friend then imported the animal to the United States, the friend would be guilty of a Lacey Act violation.

- Although violations of the Lacey Act carry potential criminal penalties, the underlying violation need not itself be a criminal offense.²⁵ A violation of a state hunting regulation that resulted only in a civil citation could still constitute a step-one violation.
- The underlying violation must be of a law or regulation that relates to wildlife.²⁶ A law imposing import duties, for example, might cover wildlife imports but would not be sufficiently wildlife-specific to establish an underlying violation for purposes of the Lacey Act; a law imposing an import declaration requirement specifically for wildlife likely would be.
- There need not be any separate adjudication of the underlying violation in order to prove the Lacey Act violation. Because the underlying violation is a fundamental element of the offense, however, prosecutors must prove beyond a reasonable doubt that the underlying violation occurred.

The facts that must be proven to establish a Lacey Act offense differ depending on the law underlying the first-step violation, as shown in **Table 2** below. Where the wildlife at issue has been taken, possessed, transported, or sold in violation of federal or tribal law, the second-step prohibited act completes the offense whether or not the contraband wildlife crosses state lines.²⁷ This is because the federal nature of the underlying offense establishes federal jurisdiction over the total offense. Where the first-step violation is of a state or foreign law, by contrast, that first-step violation does not give rise to a federal case. The federal jurisdiction must arise from the second-step prohibited act occurring in interstate or foreign commerce.²⁸ The interstate movement of the wildlife does not need to actually be commercial in nature, however. Transport across state lines for personal purposes (such as taxidermy or food consumption) satisfies the interstate commerce element.²⁹

Table 2. Interstate or Foreign Commerce

Jurisdictional requirements for step two depend on the nature of the law violated at step one.

| Where Step One . . . | Step Two . . . |
|--------------------------------------|--|
| Violates federal or tribal law . . . | Does not require interstate movement or import/export. |
| Violates state or foreign law . . . | Requires interstate movement or import/export. |

Source: 16 U.S.C. § 3372(a)(1)–(2).

²⁵ See, e.g., *United States v. Lee*, 937 F.2d 1388 (9th Cir. 1991) (Taiwanese regulation with no criminal penalty was a foreign law for purposes of § 3372 violation); *Cameron*, 888 F.2d 1279 (9th Cir. 1989) (upholding criminal Lacey Act conviction based on underlying civil federal Halibut Act violations).

²⁶ See *United States v. Molt*, 599 F.2d 1217 (3d Cir. 1979) (general revenue laws do not qualify as underlying violations for purposes of the Lacey Act because they are not for protecting wildlife); *but see* S. REP. NO. 97-123 (1981) (noting that the holding of *Molt* was too narrow and that laws related to wildlife can be basis for Lacey Act violations even if they are not specifically for the protection of wildlife); *United States v. Lewis*, 240 F.3d 866, 869 (10th Cir. 2001) (hunting laws qualify as underlying violations because they relate to wildlife, even if not for the purpose of protecting wildlife); *United States v. Romano*, 929 F. Supp. 502, 506–507 (D. Mass. 1996) (same).

²⁷ 16 U.S.C. § 3372(a)(1).

²⁸ *Id.* § 3372(a)(2).

²⁹ See, e.g., *United States v. Heuer*, 916 F.2d 1457, 1459 (9th Cir. 1990).

The precise language of the Lacey Act—making it unlawful for any person to take certain actions with respect to wildlife that has been “taken, possessed, transported, or sold” in violation of law—presents some ambiguity regarding the degree to which the two steps must be temporally and transactionally distinct.³⁰ For example, in *United States v. Carpenter*, a defendant hired employees (“lethal birdmen”) to illegally shoot migratory birds to prevent them feeding from his goldfish farm.³¹ The birds were buried on the property.³² The government alleged that the defendant had violated the Lacey Act by “acquiring” birds “taken” in violation of the federal Migratory Bird Treaty Act.³³ The Ninth Circuit³⁴ held that the government’s position “impermissibly collapses the two steps required by the statute into a single step,” noting that “the very act of knowingly taking the bird in violation of laws is, in the government’s view, the act of acquiring the bird.”³⁵ The court held that “the bird must be taken *before* acquiring it violates the Lacey Act.”³⁶ In another example, the government alleged that the defendant illegally imported baby parrots (step two) in violation of a requirement to declare those parrots to customs officials (step one).³⁷ The defendant did not raise—and therefore the court of appeals did not address—whether the structure of the charges adequately established two distinct steps. The conviction was affirmed on other grounds.³⁸

The necessary sequence of the two steps has also arisen in the context of guided hunts. The Lacey Act specifies that providing “guiding, outfitting, or other services” or “a hunting or fishing license or permit” for illegal taking of wildlife constitutes a sale of wildlife in violation of the Act.³⁹ In one case implicating this provision, *United States v. Fejes*, a hunting guide flew paying out-of-state clients to a remote hunting site in Alaska.⁴⁰ There, one of the clients killed a caribou in violation of Alaska law, which prohibits hunting the same day as being airborne.⁴¹ The guide was convicted under the Lacey Act for selling caribou taken in violation of state law and argued on appeal that “the illegal taking of the caribou must have preceded his sale of guide services in order for criminal liability to apply.”⁴² The Ninth Circuit disagreed, holding that the “plain language of the statute indicates that the *provision* of guide services for the illegal taking of wildlife constitutes a sale, not merely making financial arrangements for such services.”⁴³

³⁰ 16 U.S.C. § 3372(a).

³¹ *United States v. Carpenter*, 933 F.2d 748, 750 (9th Cir. 1991).

³² *Id.*

³³ *Id.*

³⁴ References to a particular U.S. Court of Appeals in this report are made using the court’s number or descriptor (e.g., “D.C. Circuit” for “U.S. Court of Appeals for the D.C. Circuit”).

³⁵ *Carpenter*, 933 F.2d 748, 750.

³⁶ *Id.* (emphasis added).

³⁷ *United States v. Santillan*, 243 F.3d 1125 (9th Cir. 2001).

³⁸ *Id.* at 1130.

³⁹ 16 U.S.C. § 3372(c). This provision was added to the Lacey Act in 1988 after the U.S. Court of Appeals for the Ninth Circuit held in *United States v. Stenberg*, 803 F.2d 422 (9th Cir. 1986) that providing guiding services did not constitute a “sale” of wildlife under the Lacey Act. See Lacey Act Amendments, Pub. L. No. 100-653, 102 Stat. 3825 (1988); H.R. REP. NO. 100-732, at 12 (1988); S. REP. NO. 100-563, at 5 (1988), reprinted in 1988 U.S.C.A.N. 5366, 5370. The Lacey Act contains a mirroring provision for “purchase,” discussed further *infra* “Penalties.”

⁴⁰ 232 F.3d 696 (9th Cir. 2000).

⁴¹ *Id.* at 699 (citing ALASKA ADMIN. CODE tit. 5 § 92-085(8) (2025)).

⁴² *Id.* at 698.

⁴³ *Id.* at 701. *But see* *United States v. Romano*, 929 F. Supp. 502 (D. Mass. 1996) (applying different analysis to *purchase* of guiding services). This case is discussed further *infra* “Penalties.”

False Labeling

In addition to prohibiting the substantive trafficking of contraband wildlife, the Lacey Act also prohibits falsely labeling or otherwise documenting wildlife⁴⁴:

It is unlawful [under the Act] to make or submit any false record, account, or label for, or any false identification of, any ... wildlife, ... which has been, or is intended to be[,] (1) imported, exported, transported, sold, purchased, or received from any foreign country; or (2) transported in interstate or foreign commerce.⁴⁵

The Act does not include any requirement that the false label actually be submitted to any government entity (or anyone at all)⁴⁶ nor any express requirement that the false label be “material”—that is, tending to or being capable of influencing a decisionmaker.⁴⁷ Consequently, a document misidentifying wildlife in a seemingly innocuous way, and transmitted to no one, could still technically constitute a false labeling violation.⁴⁸

Examples of false documents found to violate this provision include export declaration forms using license numbers of legal hunters to conceal illegal hunting activities,⁴⁹ a false representation on a government form that illegal interstate sales of wildlife were actually legal donations,⁵⁰ a label on a package of vipers falsely indicating that the package contained harmless reptiles,⁵¹ forged veterinary inspection certificates falsely claiming that illegally crossbred hybrid sheep were legally permitted species,⁵² and a label on foreign crab meat advertising it as domestic blue crab.⁵³

Unlike the Act’s substantive trafficking provision, which prohibits transacting in wildlife that is already illegal based on the step-one violation, the false labeling prohibition applies to wildlife

⁴⁴ 16 U.S.C. § 3372(d).

⁴⁵ *Id.*

⁴⁶ *United States v. Allemand*, 34 F.3d 923, 926 (10th Cir. 1994); *United States v. Kraft*, 162 Fed. App’x 664, 666 (8th Cir. 2006).

⁴⁷ *Materiality* means having “‘a natural tendency to influence, or [being] capable of influencing, the decision of’ the decisionmaking body to which it was addressed.” *Kungys v. United States*, 485 U.S. 759, 770 (1998) (quoting *Weinstock v. United States*, 231 F.2d 699, 701 (D.C. Cir. 1956)). Regarding materiality in the Lacey Act context, see *United States v. Fountain*, 277 F.3d 714, 717 (5th Cir. 2001) (Lacey Act false labeling prohibition has no materiality requirement); *but see United States v. Kokesh*, No. 3:13CR48, 2013 WL 6001052, at *8–9 (N.D. Fla. Nov. 12, 2013) (reading a materiality requirement into the statute because it criminalizes similar conduct to other fraud statutes with materiality requirements).

⁴⁸ See *Kokesh*, 2013 WL 6001052, at *8–9 (noting potential for application of false labeling offense to “harmless and innocuous falsehoods.”).

⁴⁹ *United States v. Allemand*, 34 F.3d 923 (10th Cir. 1994).

⁵⁰ *United States v. Kraft*, 162 Fed. App’x 664, 666 (8th Cir. 2006).

⁵¹ Press Release, U.S. Dep’t of Just., Reptile Dealer Sentenced to Prison on Lacey Act and Firearms Charges (Feb. 24, 2022), <https://www.justice.gov/archives/opa/pr/reptile-dealer-sentenced-prison-lacey-act-and-firearms-charges-0> [<https://perma.cc/LDZ8-VG7X>]; Government’s Sentencing Memorandum, *United States v. Rance*, No. 7:21-CR-00005 (M.D. Ga. Feb. 15, 2022), Dkt. No. 34.

⁵² Press Release, U.S. Dep’t of Just., Montana Man Pleads Guilty to Federal Wildlife Trafficking Charges as Part of Yearslong Effort to Create Giant Hybrid Sheep for Captive Hunting (Mar. 12, 2024), <https://www.justice.gov/archives/opa/pr/montana-man-pleads-guilty-federal-wildlife-trafficking-charges-part-yearslong-effort-create> [<https://perma.cc/F2BQ-KWDV>]; Findings and Recommendation Concerning Plea, *United States v. Schubarth*, CR-24-06-GF-BMM (D. Mont. Mar. 12, 2024), Dkt. No. 20.

⁵³ Press Release, U.S. Dep’t of Just., Seafood Processor Pleads Guilty to Selling Foreign Crabmeat Falsely Labeled as Blue Crab from USA (Sept. 3, 2020), <https://www.justice.gov/archives/opa/pr/seafood-processor-pleads-guilty-selling-foreign-crabmeat-falsely-labeled-blue-crab-usa> [<https://perma.cc/R9BG-4GV9>]; Criminal Information, *United States v. Styron*, 4:20-CR-00070 (E.D.N.C. July 22, 2020).

that “has been, or is intended to be, imported, exported, transported, sold, purchased, or received from any foreign country, or transported in interstate or foreign commerce.”⁵⁴ In other words, unlike in a substantive trafficking charge, there is no requirement that the wildlife at issue in a false labeling charge be illegal—only that the wildlife has been moved, or is intended to be moved, across a border.

The statute does not specify *whose* intent suffices to establish that element of the offense. This leaves open the possibility that the person who sells the wildlife, for example, may be criminally liable for falsely labeling it even if it is the buyer of the wildlife who intends to transport it in interstate commerce.⁵⁵ Because all Lacey Act criminal offenses must be committed “knowingly,” however, that liability would arise only if the seller were aware of the buyer’s intent. Mental state requirements under the Lacey Act are discussed further below.⁵⁶

Penalties

In 16 U.S.C. § 3373, “Penalties and sanctions,” the Lacey Act imposes both civil and criminal penalties for violations. The criminal penalties are contained in § 3373(d).⁵⁷ As one court has noted, however, notwithstanding the subsection titled “Criminal penalties,” that subsection “does not simply prescribe punishment for conduct described elsewhere in the Act. Instead, the provision effectively sets forth the substantive elements of the Act’s criminal offenses by defining, and attaching criminal consequences to, a subset of the ‘unlawful’ conduct described in 16 U.S.C. § 3372.”⁵⁸ These elements include the nature of the offense and the state of mind of the offender, each of which plays a role in determining the severity of the applicable criminal penalty.

Under § 3373(d), certain violations are punishable by a term of imprisonment up to five years and a fine pursuant to Title 18 (“felony violations”). Other violations are punishable by a term of imprisonment of up to one year and a fine pursuant to Title 18 (“misdemeanor violations”).⁵⁹ Whether a violation is a felony or a misdemeanor turns on several factors, including the offender’s knowledge, whether the transaction is domestic or international, whether the transaction is for commercial purposes, and how much the wildlife is worth.

For purposes of the substantive wildlife trafficking offenses in § 3372(a), these factors make the offense a felony violation:

- The offender *knows* the wildlife has been taken, possessed, transported, or sold in violation of underlying law *and either*:

⁵⁴ 16 U.S.C. § 3372(d) (emphasis added). Lacey Act Amendments, Pub. L. 100–653, tit. I, 102 Stat. 3825 (1988).

⁵⁵ See Final Pretrial Order, *United States v. Goldenberg*, No. 1:13-cr-00123 (D.N.H. Nov. 6, 2013), Dkt. No. 10 (requesting briefing from the government on the question of whether the intent must rest with the seller or whether the buyer’s intent suffices to establish the elements of the offense). The Department of Justice, in discussing this case, has advised prosecutors to proceed cautiously in cases with this or similar fact patterns. See U.S. DEP’T OF JUST., 63 WILDLIFE TRAFFICKING I, CURRENT ISSUES ARISING IN LACEY ACT PROSECUTIONS, No. 3, at 9 (May 2015).

⁵⁶ See 16 U.S.C. § 3373(d).

⁵⁷ Other subsections of 16 U.S.C. § 3373 provide for civil penalties as well as additional potential sanctions related to certain licenses and permits for those convicted of criminal violations under the Act. Those provisions are outside the scope of this report.

⁵⁸ *United States v. Romano*, 137 F.3d 677, 679 (1st Cir. 1998).

⁵⁹ The text of the Lacey Act limits the felony fine amount to \$20,000 (16 U.S.C. § 3373(d)(B)) and the misdemeanor fine amount to \$10,000 (16 U.S.C. § 3373(d)(B)(2)), but the Criminal Fine Improvements Act of 1987, Pub. L. No. 100-185, 101 Stat. 1279; 18 U.S.C. § 3571(b), authorizes a higher fine of up to \$250,000 for a felony (18 U.S.C. 3571(b)(3)) and \$100,000 for a misdemeanor committed by an individual (18 U.S.C. 3571(b)(4)–(6)) or, in the alternative, a fine of up to twice the gross pecuniary gain or loss attributable to the offense (18 U.S.C. § 3571(d)).

- the second-step violation is an import or export,⁶⁰ *or*
- the second-step violation involves sale or purchase, offer of sale or purchase, or intent to sell or purchase (i.e., commercial conduct), *and* the wildlife has a market value greater than \$350.⁶¹

In other words, all felony violations require that the offender know the wildlife is contraband.⁶² Any person who imports or exports wildlife knowing it is contraband is subject to felony penalties. However, if the second-step act is not an import or export, the Lacey Act imposes additional requirements for felony penalties: Namely, the second step must involve a sale or purchase, and the wildlife must be worth over \$350.⁶³

The Lacey Act also provides for a misdemeanor trafficking offense, punishable by up to one year in prison, in the event that the actor *should have known*, in the exercise of due care, that the wildlife at issue is contraband.⁶⁴ Unlike the felony provision, the misdemeanor provision does not articulate any additional requirements as to the nature of the second step.⁶⁵

The law does not explicitly address the case in which the offender knows the wildlife is illegal but the second step does not meet the requirements for felony penalties. Implicitly, though, a court could interpret this conduct as falling within the misdemeanor offense category.⁶⁶

Both the felony and misdemeanor trafficking offenses require that the second step be done knowingly—that is, not by mistake or accident (but not necessarily with knowledge that the act was in violation of the statute).⁶⁷

For the false labeling prohibition in 16 U.S.C. § 3372(d), the offense is a felony when:

- the offense is knowing, *and either*:
 - the offense involves import or export,⁶⁸ *or*
 - the offense involves commercial conduct *and* the wildlife has a market value greater than \$350.⁶⁹

When there is no import or export and no commercial conduct valued above \$350, the offense is a misdemeanor punishable by up to one year in prison and a fine under Title 18.⁷⁰

⁶⁰ 16 U.S.C. § 3373(d)(1)(A).

⁶¹ *Id.* § 3373(d)(1)(B).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* § 3373(d)(2).

⁶⁵ *Id.*

⁶⁶ To suggest that this fact pattern would constitute a crime for a negligent offender but not a knowing one could arguably make for a counterintuitive result. *See* discussion *infra* “Considerations for Congress.”

⁶⁷ 16 U.S.C. § 3373(d)(1)–(3); *Dixon v. United States*, 548 U.S. 1, 5 (2006) (stating that “knowingly” means that the actor is aware of the facts constituting the offense and not necessarily that the law prohibits the activity at issue).

⁶⁸ 16 U.S.C. § 3373(d)(3)(A)(i).

⁶⁹ *Id.* § 3373(d)(3)(A)(ii).

⁷⁰ *Id.* § 3373(d)(3)(B).

Table 3. Felony or Misdemeanor?

Penalties turn on mental state, commercial conduct, and international trade.

| Offense | Applicable Factors | Offense Category | Code Provision |
|-------------------------|---|------------------|-------------------------------------|
| Substantive Trafficking | Should have known of underlying illegality | Misdemeanor | 16 U.S.C. § 3373(d)(2) ^a |
| | Knew of underlying illegality + Import/export | Felony | 16 U.S.C. § 3373(d)(1)(A) |
| | Knew of underlying illegality + Commercial conduct ≥\$350 | Felony | 16 U.S.C. § 3373(d)(1)(B) |
| False Labeling | Interstate transport (actual or intended) | Misdemeanor | 16 U.S.C. § 3373(d)(3)(B) |
| | Import/export (actual or intended) | Felony | 16 U.S.C. § 3373(d)(3)(A)(i) |
| | Commercial conduct ≥\$350 (actual or intended) | Felony | 16 U.S.C. § 3373(d)(3)(A)(ii) |

Source: 16 U.S.C. §§ 3372, 3373.**Note:**

- a. This provision presumably also applies to cases where offenders know the wildlife is illegal but there is no import/export or conduct involving purchase or sale of wildlife worth more than \$350. See *infra* “Penalty for Knowing, Domestic, Non-Commercial Offender.”

Penalty Factors

Each component of the felony/misdemeanor determination has been the subject of litigation in Lacey Act cases. The following subsections provide further detail on the different factors giving rise to criminal offenses and the level of penalties imposed.

Mental State

In criminal law, offenses are often defined in terms of the guilty act (*actus reus*) and the guilty mind (*mens rea*).⁷¹ With respect to *mens rea*, federal criminal statutes generally distinguish between crimes committed “knowingly,” that is, with volition rather than by accident, and crimes committed “willfully,” that is, with the intent to violate the law.⁷² The Lacey Act trafficking provision, as a consequence of its two-step structure, combines elements of each. The Act imposes criminal penalties on “knowing” activities that constitute the second step of the offense (import/export, transport, sale, etc.).⁷³ This means that there is no “specific intent” requirement—that is, offenders need not be aware that they are violating the Lacey Act for criminal liability to attach.⁷⁴ In order for felony penalties to apply, however, the offender must have actual knowledge

⁷¹ See CRS Report R48177, *Components of Federal Criminal Law*, coordinated by Peter G. Berris, at 32 (2024).

⁷² *Id.* at 33–34; see also *Dixon*, 548 U.S. at 5.

⁷³ 16 U.S.C. § 3373(d)(1), (2).

⁷⁴ See *United States v. Santillan*, 243 F.3d 1125, 1129 (9th Cir. 2001) (in the Lacey Act context, “the defendant must be proved to have known that he was importing or exporting fish or wildlife.”). See also *United States v. Thomas*, 887 F.2d 1341, 1346 (9th Cir. 1989) (reviewing legislative history describing 16 U.S.C. § 3373(d)(2) as a “general intent (continued...)”).

that the wildlife is already “tainted with illegality” by a first-step violation of some underlying law.⁷⁵

A felony offender need not know the exact law the first-step take, possession, transport, or sale violated but rather just that the act was illegal in some way.⁷⁶ Take, for example, a hypothetical American dealer in rare birds who purchases a parrot from a person in South America who explains that he captured the bird from the wild. The American dealer may not know the details of the law prohibiting the capture of a specific species of parrot but knows as a general matter that it is illegal in the country of origin to capture wild birds for the pet trade. The dealer would be considered to know the bird to have been illegally taken for purposes of the Lacey Act, and the dealer’s step-two import of the illegal bird would be a felony.⁷⁷

The *mens rea* requirements in § 3373(d) are less stringent for establishing a misdemeanor wildlife trafficking violation than a felony one.⁷⁸ As with a felony violation, the government must prove that the defendant engaged knowingly in one of the second-step activities covered by § 3372(a).⁷⁹ Unlike with a felony violation, however, to obtain a misdemeanor conviction the government need not also demonstrate that the defendant had actual knowledge that the wildlife had been taken, possessed, transported, or sold in violation of underlying law.⁸⁰ Rather, the government need only prove that the defendant “should know” of the underlying violation “in the exercise of due care.”⁸¹ The statute does not define “due care,” but a 1981 Senate report accompanying amendments to the Lacey Act described it as “that degree of care which a reasonably prudent person would exercise under the same or similar circumstances.”⁸² According to the report, the standard of due care is “applied differently to different categories of person with varying degrees of knowledge and responsibility.”⁸³ The report describes the due care language as intended to augment the “should know” standard in order to prevent misdemeanor criminal penalties from applying to “individuals who do not know and who could not be expected to know the illegal

statute” that does “not require the Government to prove that the defendant knew his activity was unlawful.” (quoting S. REP. NO. 97-123, at 12 (1981)).

⁷⁵ *Santillan*, 243 F.3d at 1129 (“Careful examination of the text of the Lacey Act criminal provision shows that the felony provision requires two levels of knowledge.”); see also *United States v. Saunders*, 828 F.3d 198, 207 (4th Cir. 2016) (“The Lacey Act also contains a scienter requirement (two of them, in fact)....”).

⁷⁶ *Santillan*, 243 F.3d at 1129 (“It suffices that he knows, not only that he is importing or exporting the animals, but also that the animals are tainted by a violation of some law associated with their taking, possession, transportation or sale.”); see also *United States v. Todd*, 735 F.2d 146 (5th Cir. 1984).

⁷⁷ The import would still need to be done knowingly. For example, if the dealer intended to keep the bird in a vacation home in Brazil, but the bird snuck into the dealer’s luggage for the trip back to the United States, that would not qualify as an offense.

⁷⁸ See *United States v. LeVeque*, 283 F.3d 1098, 1106 (9th Cir. 2002) (contrasting misdemeanor and felony provisions).

⁷⁹ 16 U.S.C. § 3373(d)(2); accord *Santillan*, 243 F.3d at 1129–30 (“Thus the misdemeanant must have actual knowledge that he is importing or exporting the animals....”).

⁸⁰ 16 U.S.C. § 3373(d)(2); *LeVeque*, 283 F.3d at 1106.

⁸¹ 16 U.S.C. § 3373(d)(2); accord *Santillan*, 243 F.3d at 1129–30 (“Thus the misdemeanant ... need not know that [the plants, wildlife, or fish] were taken or possessed illegally, so long as in the exercise of due care he should know.”).

⁸² S. REP. NO. 97-123, at 10–11 (1981). See also NINTH CIRCUIT JURY INSTRUCTIONS COMMITTEE, MANUAL OF MODEL CRIMINAL JURY INSTRUCTIONS FOR THE DISTRICT COURTS OF THE NINTH CIRCUIT 591 (2002 ed. Mar. 2025) (for purposes of Lacey Act, “[d]ue care means that degree of care that a reasonably prudent person would exercise under the same or similar circumstances.”).

⁸³ *Id.*

nature of the fish, wildlife or plants ... [and who] innocently obtained an illegal specimen and knowingly transported it in interstate commerce.”⁸⁴

In the hypothetical example of the exotic bird dealer, for example, assume the South American poacher did not explicitly tell the dealer that the poacher had captured the bird from the wild. Nonetheless, the dealer, as a consequence of his profession, has arguably assumed a responsibility to perform basic due diligence with respect to the legality of the birds he purchases. He should therefore know, in the exercise of due care, when such a bird is likely to have been illegally captured from the wild. Even if the poacher did not tell him as much, the dealer could still be guilty of a misdemeanor for importing the illegal bird.⁸⁵

In another twist on the example, assume once again that the poacher told the dealer that the bird was captured from the wild. The dealer knowingly imported an illegal bird into the United States (and thus knows that the bird is tainted with the illegality of both the capture from the wild in the country of origin and the import into the United States in violation of the Lacey Act). If the dealer resells the bird after importing it, that sale would be another Lacey Act felony for the dealer, because he knows that the bird is contraband.⁸⁶ The buyer of the bird, however, might not be aware of the fact that the bird was captured illegally in the country of origin or imported illegally after that. In that scenario, the buyer could be guilty of a misdemeanor if the government could prove that the buyer should have known, in the exercise of due care, that the bird was taken illegally in the country of origin, imported illegally thereafter, or both. If the government could not prove that the exercise of due care would have revealed that the bird was illegal—for example, if the dealer claimed to have legally bred the bird in the United States and the buyer had

⁸⁴ *Id.* The degree of due diligence required under this provision has been of particular interest to stakeholders in the context of illegally harvested foreign timber and its subsequent incorporation into finished products. *See, e.g.*, AMERICAN NATIONAL STANDARDS INSTITUTE, AMERICAN NATIONAL STANDARD FOR DUE DILIGENCE IN PROCURING/SOURCING LEGAL TIMBER (July 21, 2023), <https://www.decorativehardwoods.org/sites/default/files/2024-01/ANS%20LTDD%202.0%202023%20-%20American%20National%20Standard%20for%20Due%20Diligence%20in%20Procuring%20Sourcing%20Legal%20Timber.pdf> [<https://perma.cc/Y6T6-C2HW>]. *See also* Strengthen Wood Supply Chain Chains Act of 2025, H.R. 2239, 119th Cong. (2025) (imposing procedural requirements for detention of imported merchandise under the Lacey Act); EAGLE Act, H.R. 3524, 117th Cong. § 611(e)(2)(G) (2021) (authorizing financial support to eligible countries for “programs that would exclude from the United States illegally harvested timber or products made from illegally harvested timber, in accordance with and consistent with the objectives of the Lacey Act Amendments of 1981”).

⁸⁵ At least one court has held that the misdemeanor offense in 16 U.S.C. § 3373(d)(2) is a lesser-included offense of the felony Lacey Act violation. *See United States v. Hansen-Sturm*, 44 F.3d 793, 794 (9th Cir. 1995) (“Whatever the merits of the abstract argument, it is established in the criminal law of this country that a negligent state of mind does qualify as a lesser element of an intentional state of mind.”); *see also* FED. R. CRIM. P. 31(c)(1) (“A defendant may be found guilty of ... an offense necessarily included in the offense charged”); *Keeble v. United States*, 412 U.S. 205, 208 (1973) (“Although the lesser included offense doctrine developed at common law to assist the prosecution in cases where the evidence failed to establish some element of the offense originally charged, it is now beyond dispute that the defendant is entitled to an instruction on a lesser included offense if the evidence would permit a jury rationally to find him guilty of the lesser offense and acquit him of the greater.”). This means that when the government fails to prove beyond a reasonable doubt that the defendant knew that the trafficked wildlife was contraband, the jury can nonetheless convict the defendant of the misdemeanor offense (even if not charged), assuming the evidence establishes that the defendant should have known in the exercise of due care that the wildlife was contraband. A lesser-included offense jury instruction is not always appropriate. For example, in a case where “the evidence established without contradiction that [the defendant] actually knew that importation of the baby parrots was against federal law, and expected them to be confiscated if he was caught,” the court found there was “no room for the possibility that he did not know that the birds were possessed against the law, but would have known had he exercised reasonable care.” *United States v. Santillan*, 243 F.3d 1125, 1130–31 (9th Cir. 2001).

⁸⁶ As discussed further below, in a domestic sale there is an additional requirement that the bird be worth more than \$350 for felony penalties to apply. *See infra* “Import/Export or Commercial Conduct Greater Than \$350.”

no experience with parrots and no reason to suspect the dealer of lying—there would be no Lacey Act violation.⁸⁷

Import/Export or Commercial Conduct Greater Than \$350

In addition to knowledge, Lacey Act felonies must also involve either (1) import or export of wildlife⁸⁸ or (2) sale or purchase of wildlife valued at more than \$350.⁸⁹ For example, if a hunter poaches a bobcat in one state and transports it to his home state to mount on his wall, even where the hunter knows he killed the bobcat illegally, it is not a felony violation because it does not involve the wildlife being imported, exported, or sold. Specifically with respect to the commercial conduct factor, the Lacey Act applies the higher penalty where the actor “knowingly engag[es] in conduct that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants with a market value in excess of \$350.”⁹⁰

Conduct Involving Purchase or Sale

Felony penalties attach based on the offender’s knowledge and depending on the nature of the second step of a Lacey Act offense. Courts have recognized that the commercial conduct requirement for a felony cannot be satisfied by the step-one offense.⁹¹ That is, where the second-step act is neither sale nor purchase (nor offer thereof), the fact that the wildlife may have been subject to purchase or sale in the course of the underlying violation does not give rise to a felony. For example, in *United States v. Kraft*, the defendants made agreements to sell and purchase endangered species in interstate commerce, and the species were subsequently transported across state lines. The government charged the defendants with felony Lacey Act offenses on the theory that the illegal sale was the step-one violation, and the transportation of the wildlife was the second-step violation.⁹² The court dismissed the charges, finding that “the Government did not allege activity from which a jury could infer commercial intent in a *subsequent* transaction. The Government only alleges the transport, the overlying violation, is related to the prior sale of the wildlife, the underlying violation.”⁹³

The interaction between the commercial conduct element, the knowledge requirement, and the sequencing of the two steps in a trafficking offense can become particularly thorny in the hunting and guiding context. For example, in *United States v. Romano*, the defendant was a hunter who made annual trips from his home in Massachusetts to Alaska to participate in guided hunting expeditions.⁹⁴ He falsely represented to the State of Alaska that he was a state resident in order to obtain a less expensive hunting license, killed big game, and shipped the animals out of Alaska to

⁸⁷ See *United States v. Lee*, 937 F.2d 1388, 1396 (9th Cir. 1991) (“Thus, the Act itself protects the reasonably naive from unwarranted criminal penalties.”).

⁸⁸ 16 U.S.C. § 3373(d)(1)(A).

⁸⁹ *Id.* § 3373(d)(1)(B).

⁹⁰ *Id.*

⁹¹ See *United States v. Fejes*, 232 F.3d 696, 702 n.6 (9th Cir. 2000) (noting with respect to 16 U.S.C. § 3373(d)(1)(B) that “[t]ransportation of wildlife could never be the sole overlying conduct for a felony under this provision.”). See also *United States v. Kraft*, No. CRIM03-315, 2005 WL 578313, at *1 (D. Minn. Mar. 11, 2005), *aff’d*, 162 F. App’x 664 (8th Cir. 2006) (“Under § 3373(d)(1)(B), only a subset of the conduct prohibited by § 3372(a)(1) gives rise to felony liability.”).

⁹² *Kraft*, 2005 WL 578313, at *1.

⁹³ *Id.* at *2.

⁹⁴ *United States v. Romano*, 137 F.3d 677, 678 (1st Cir. 1998).

be mounted.⁹⁵ The government charged him with felony Lacey Act violations for “knowingly engaging in conduct that involves the sale or purchase ... of wildlife ... by transporting, receiving, acquiring, and purchasing [wildlife] in interstate commerce” and doing so “knowing said wildlife had been taken, possessed, and transported in violation” of Alaska law, which prohibits hunting without the proper license.⁹⁶ In this construction, the defendant’s purchase of guiding services was the second-step violation, which happened before the first-step illegal taking.⁹⁷ The government justified this charging theory based on the “prospective” nature of the hunting and guiding provision in 16 U.S.C. § 3372(c)(2), which specifies that the purchase of guiding services for the illegal taking of wildlife constitutes a second-step “purchase of wildlife” in violation of the law.⁹⁸

The First Circuit rejected the government’s argument, reasoning that because a felony under § 3373(d)(1) requires knowledge that the animals at issue “were taken” in violation of an underlying law, the government’s felony charging theory was a temporal impossibility: “a hunter who purchases guiding or outfitting services to assist him in a prospective unlawful taking of wildlife can neither know nor have reason to know at the time of his purchase that the wildlife ... ‘were taken’ ... in violation of state law.”⁹⁹ The court held that Romano could not have been guilty of engaging in conduct involving the purchase or sale with the requisite knowledge that the wildlife was illegal, because “Congress’ use of the word ‘were’ implies that, at the time of the purchase, the underlying taking, possession, or act of transport cannot still be in prospect; it must have already occurred.”¹⁰⁰ In rejecting the government’s theory of prosecution, the court noted that “we think it important to inform Congress that, should it wish to criminalize the type of conduct at issue in this case—the purchase of lawfully-sold services with the intent to use those services to take wildlife unlawfully—it must amend the statute.”¹⁰¹

The government in *Romano* could have charged the second-step violation as the interstate transport of the wildlife the defendant had killed in violation of Alaska law. Because the transport was for mounting only, however, it was not “conduct that involves the sale or purchase” of wildlife, as required for a felony under § 3373(d)(1)(B). A charge where the second step was the transport of the mounts would have been a misdemeanor only.¹⁰²

However, cases in which the second-step violation is transport can still qualify as felonies under § 3373(d)(1)(B) if the government can prove that the second-step transport is “conduct that involves ... intent to sell or purchase” wildlife.¹⁰³ Such proof can be circumstantial. For example, in *United States v. Senchenko*, the defendant was charged with a felony Lacey Act trafficking offense for trapping black bears in violation of federal regulations (step one) and then

⁹⁵ *Id.*

⁹⁶ *Id.* at 679.

⁹⁷ This type of charge facially violates the holding in *United States v. Carpenter*, 933 F.2d 748, 750 (9th Cir. 1991), that “the [wildlife] must be taken *before* acquiring it violates the Lacey Act.” (emphasis added).

⁹⁸ *Romano*, 137 F.3d at 681.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 683. Recall that in *United States v. Fejes*, 232 F.3d 696 (9th Cir. 2000), the Ninth Circuit took a different approach to a case in which the *seller* of guiding services was prosecuted for Lacey Act felonies. *See also* *United States v. Major*, No. 4:24-CR-00200-BLW, 2025 WL 1556371, at *2 (D. Idaho June 2, 2025) (denying motion to dismiss Lacey Act charges where defendant “provided guiding services, which resulted in the illegal ‘take’ of mountain lions, which were then transported out of state.”).

¹⁰² *See also* *Fejes*, 232 F.3d at 702 (“Transportation of wildlife could never be the sole overlying conduct for a felony under this provision.”).

¹⁰³ 16 U.S.C. § 3373(d)(1)(B) (emphasis added).

transporting marketable parts of those bears, including pelts, claws, fat, and gall bladders (step two).¹⁰⁴ In addition to proving the facts of the defendant's illegal hunting and subsequent transport, to establish a felony violation the government had to prove that the defendant engaged in conduct involving sale or purchase. While the government had no direct evidence of Senchenko selling the bear parts, the Ninth Circuit found that Senchenko's possession of four snares and equipment to make additional snares, as well as his selective harvesting of commercially valuable parts, "was sufficient to link Senchenko to snaring on a commercial scale," establishing commercial conduct for purposes of the felony penalty provision in 16 U.S.C. § 3373(d)(1)(B).¹⁰⁵

Market Value

"Market value" is not defined in the Lacey Act but has been held to mean the price that a seller is willing to accept and a buyer is willing to pay on the open market in an arm's length transaction.¹⁰⁶ In a case where the violation involves a purchase or sale of a guided hunt under 16 U.S.C. § 3372(c), the market value of the wildlife "is best represented by the amount a hunter is willing to pay for the opportunity to participate in the hunt."¹⁰⁷

The \$350 threshold can be met by aggregating the value of multiple wildlife items involved in the same scheme. In *Senchenko*, for example, the defendant argued that the Lacey Act required the government to prove a single act of transportation of bear parts worth greater than \$350 to prove up a felony violation. The Ninth Circuit rejected this argument, holding that "Senchenko's conduct of setting snares, harvesting trapped bears and taking the parts to his house comprises a series of acts forming 'a single continuing scheme,'" such that aggregating the value of the various bear parts in his possession to reach the \$350 threshold was proper.¹⁰⁸ The government elicited testimony from a wildlife officer with experience investigating the unlawful sale of bear parts to establish the market value of the gall bladders, claws, and hides in eastern Washington.¹⁰⁹ The case thus stands for two propositions with respect to market value: (1) The government can allege Lacey Act felonies by aggregating the market value of various wildlife in an ongoing scheme to reach the \$350 threshold, and (2) even in the absence of proof of an actual sale, expert testimony can establish market value based on general market conditions.¹¹⁰

Criminal Consequences

Lacey Act convictions can result in a variety of consequences, including prison time, fines, restitution payments, and asset forfeiture.

¹⁰⁴ *United States v. Senchenko*, 133 F.3d 1153, 1157 (9th Cir. 1998). Specifically, the alleged underlying violation was using snares to trap black bears in violation of 36 C.F.R. § 261.8(a) (2024), which prohibits hunting or trapping in the National Forest System in violation of state law. Washington state law permitted bear hunting only by firearm, bow and arrow, or falconry. WASH. ADMIN. CODE § 232-12-047 (1998), now WASH. ADMIN. CODE 220-414-020 (2025).

¹⁰⁵ *Id.* at 1156.

¹⁰⁶ *United States v. Hughes*, 795 F.3d 800, 804 (8th Cir. 2015).

¹⁰⁷ *United States v. Atkinson*, 966 F.2d 1270, 1273 (9th Cir. 1992), *as amended*, (July 22, 1992); *see also* *United States v. Todd*, 735 F.2d 146, 152 (5th Cir. 1984) ("A commercial arrangement whereby a professional guide offers his services to obtain wildlife illegally is an offer to sell wildlife. The best indication of the value of the game 'sold' in this manner is the price of the hunt." (citing S. REP. NO. 97-123, at 12 (1981))).

¹⁰⁸ *Senchenko*, 133 F.3d at 1157 (quoting *United States v. Tutino*, 883 F.2d 1125, 1141 (2d Cir. 1989)).

¹⁰⁹ *Id.*

¹¹⁰ *See also* *United States v. Willis*, 829 F. Supp. 2d 540 (E.D. Tex. 2011) *aff'd*, 562 Fed. Appx. 249 (5th Cir. 2014) (allowing aggregation of value of three similar fish taken over the course of a scheme to reach the \$350 threshold).

Sentencing

Judges impose sentences for violations of federal criminal laws by reference to a number of sources. Statutes establishing criminal offenses may set a range of—or a ceiling for—potential prison sentences and fines. The U.S. Sentencing Commission’s *2024 Guidelines Manual Annotated (Manual)* provides a non-binding framework for identifying a sentencing range for prison time and fine amount based on factors specific to various types of offenses.¹¹¹ Additionally, 18 U.S.C. § 3553 requires judges to consider a number of factors in determining the ultimate sentence, including the nature and circumstances of the offense and the history and characteristics of the defendant, among others.¹¹²

The Lacey Act authorizes up to five years of imprisonment for a felony and one year of imprisonment for a misdemeanor, as well as fines calculated pursuant to 18 U.S.C. § 3571.¹¹³ Sentencing of Lacey Act offenses falls under § 2Q2.1 of the *Manual*.¹¹⁴ The baseline recommended sentencing range under that section is between zero and six months.¹¹⁵ That range increases, however, based on the applicability of several factors that potentially exacerbate a wildlife trafficking offense: commercial purpose,¹¹⁶ pattern of similar violations,¹¹⁷ failure to quarantine,¹¹⁸ risk of infestation or disease transmission,¹¹⁹ conservation status of the species,¹²⁰ and market value of the wildlife.¹²¹

Of these factors, the one with the greatest potential to drive up the recommended sentencing range is the market value of the wildlife.¹²² Market value in the sentencing context is distinct from market value in the context of determining whether the offense rises to the level of a felony. Unlike the Lacey Act itself, the *Manual* specifies that market value is based on the fair-market retail price of the wildlife or any reasonable estimate of such value if it is difficult to ascertain.¹²³

Difficulty ascertaining fair-market retail value can arise when there is no legal market for the species at issue. Where the fair-market retail value is difficult to ascertain, the *Manual* instructs courts to look to “any reliable information, such as the reasonable replacement or restitution cost

¹¹¹ See U.S. SENT’G GUIDELINES MANUAL § 2Q2.1 (U.S. SENT’G COMM’N 2024). See also CRS Report R41697, *How the Federal Sentencing Guidelines Work: An Abridged Overview*, by Charles Doyle (2015).

¹¹² 18 U.S.C. § 3553(a).

¹¹³ 16 U.S.C. § 3373.

¹¹⁴ U.S. SENT’G GUIDELINES MANUAL § 2Q2.1 (U.S. SENT’G COMM’N 2024) (“Offenses Involving Fish, Wildlife, and Plants”).

¹¹⁵ See *id.* § 2Q2.1(a).

¹¹⁶ *Id.* § 2Q2.1(b)(1)(A).

¹¹⁷ *Id.* § 2Q2.1(b)(1)(B).

¹¹⁸ *Id.* § 2Q2.1(b)(2)(A).

¹¹⁹ *Id.* § 2Q2.1(b)(2)(B).

¹²⁰ *Id.* § 2Q2.1(b)(3)(B).

¹²¹ *Id.* § 2Q2.1(b)(3)(A). This value may be calculated based on a broader range of conduct than just what is charged in the indictment. Under U.S. SENT’G GUIDELINES MANUAL § 1B1.3 (U.S. SENT’G COMM’N 2024), courts may consider “relevant conduct,” including uncharged similar conduct by the same defendant or conduct of others jointly involved in criminal activity.

¹²² This is because the *Manual* instructs judges to increase the applicable recommended range by reference to a table elsewhere in the *Manual* that correlates the recommended sentencing range with the amount of money involved in the offense. See U.S. SENT’G GUIDELINES MANUAL § 2B1.1 (U.S. SENT’G COMM’N 2024).

¹²³ *Id.* § 2Q2.1 n.4. See *United States v. Rodebaugh*, 798 F.3d 1281 (10th Cir. 2015) (a court must make a factual finding that the fair-market retail price is difficult to ascertain before making a reasonable estimate).

or the acquisition and preservation (e.g., taxidermy) cost.”¹²⁴ In such cases, the market value could be determined based on the price actually paid for the goods¹²⁵ or the amount the defendant claimed the wildlife to be worth.¹²⁶ Still, courts have held that such “smugglers prices,” which are often lower than the prices for which those goods can be resold, do not necessarily reflect fair-market retail value. As one court explained, “The price the crook received may be a floor at sentencing, but it is not a ceiling.”¹²⁷

Restitution

Restitution is a criminal remedy intended to make crime victims whole.¹²⁸ The Lacey Act does not specifically provide for restitution. Nonetheless, victims of Lacey Act offenses—typically states, the federal government, or foreign nations—may be able to seek restitution by other statutory means in cases that include additional charges under Title 18 of the *U.S. Code*.

One federal statute, the Mandatory Victim Restitution Act (MVRA), applies only when the defendant is charged with offenses under Title 18 of the *U.S. Code*.¹²⁹ Another statute, the Victim and Witness Protection Act (VWPA), applies to offenses under Titles 18, 21, and 49 of the *U.S. Code*.¹³⁰ Stand-alone Lacey Act offenses charged solely under Title 16 of the *U.S. Code* would not fall under either the MVRA or the VWPA. When a Lacey Act case involves a conspiracy charge under 18 U.S.C. § 371, however, restitution pursuant to those provisions may be available.¹³¹ Even in the absence of Title 18 charges, restitution may nonetheless also be available as a condition of probation or supervised release¹³² or pursuant to a plea agreement.¹³³

The MVRA and VWPA make restitution available to a *victim*, defined by each statute as “a person directly and proximately harmed as a result of the commission of an offense.”¹³⁴ The MVRA makes restitution mandatory in the case of an offense against property under Title 18

¹²⁴ U.S. SENT’G GUIDELINES MANUAL § 2Q2.1 n.4 (U.S. SENT’G COMM’N 2024). *See also* United States v. Bertucci, 794 F.3d 925, 928 (8th Cir. 2015) (endorsing use of a Fish and Wildlife Service “valuation table” for replacement cost of eagles as more reliable than an estimated valuation by a government expert).

¹²⁵ United States v. Borden, 10 F.3d 1058, 1063 (4th Cir. 1993) (the market value of oysters is based on the gross price for which defendant sold them rather than net profit).

¹²⁶ United States v. Clark, 986 F.2d 65, 70 (4th Cir. 1993) (valuing a Siberian tiger rug at the price the defendant claimed to an undercover officer he was trying to sell it for).

¹²⁷ United States v. Eyoun, 84 F.3d 1004, 1008 (7th Cir. 1996). *See also* United States v. Dove, 247 F.3d 152, 159 (4th Cir. 2001) (resorting to the resale price of bear gall bladders).

¹²⁸ *See* CRS Report RL34138, *Restitution in Federal Criminal Cases*, by Charles Doyle (2019).

¹²⁹ Mandatory Victim Restitution Act of 1996, Pub. L. No. 104-132, tit. II, 110 Stat. 1214, 1227 (codified as amended at 18 U.S.C. § 3663A-3664).

¹³⁰ Victim and Witness Protection Act of 1982, Pub. L. No. 97-291, 96 Stat. 1248 (1982) (codified as amended at 18 U.S.C. § 3663-3664).

¹³¹ *See* United States v. Cummings, 189 F. Supp. 2d 67, 73 (S.D.N.Y. 2002). Courts are divided regarding whether the inclusion of 18 U.S.C. § 2—the aiding and abetting statute—in a Lacey Act indictment suffices to make MVRA or VWPA restitution available. *Compare* United States v. Snider, 957 F.2d 703, 706 (9th Cir. 1991) (18 U.S.C. § 2 is not an “offense” for purposes of Title 18 restitution); United States v. Elias, 269 F.3d 1003 (9th Cir. 2001), *as modified* (Dec. 21, 2001), *supplemented*, 27 Fed. Appx. 750 (9th Cir. 2001) (same), *with* United States v. West Indies Transport Inc., 127 F.3d 299, 315 (3d Cir. 1997) (restitution for a non-Title 18 offense was appropriate because the defendant was also charged with aiding and abetting), *and* United States v. Ross, No. 11-30101-MAM, 2012 WL 4848876, at *2 (D.S.D. Oct. 10, 2012) (aiding and abetting offenses sufficed to permit a restitution order under the VWPA).

¹³² *See* 18 U.S.C. §§ 3563 (probation), 3583 (supervised release).

¹³³ *Id.* § 3663(a)(3).

¹³⁴ *Id.* §§ 3663(a)(2), 3663A(a)(2).

when an identifiable victim has suffered physical injury or pecuniary loss.¹³⁵ A “purely regulatory” interest does not suffice to establish pecuniary loss. For example, hunting without a license would not constitute a pecuniary loss to the state because the license, while it does cost money, fundamentally serves to regulate hunting activity.¹³⁶ That said, the federal government, state governments, and foreign governments have all been found to qualify as victims in Lacey Act cases on the theory that those governments have a property interest in the wildlife at issue.¹³⁷

An illustrative example is *United States v. Bengis*.¹³⁸ In that case, the defendants pled guilty to both violating the Lacey Act and conspiring to violate the Lacey Act in relation to their over-quota harvest of rock lobsters off the coast of South Africa and subsequent import of those lobsters into the United States.¹³⁹ In determining whether South Africa was eligible for restitution, the lower court reasoned that South Africa’s interest in the lobsters was purely regulatory and that, as such, there was no property interest triggering MVRA applicability.¹⁴⁰ The lower court further reasoned that South Africa could not be a “victim” for purposes of the VWPA because the government’s theory of loss related to the trade in illegal lobster rather than the overfishing itself and that, therefore, the purported loss was not “caused by the offense of conviction.”¹⁴¹

The Second Circuit reversed.¹⁴² On the MVRA, the court concluded that South Africa did have a property right in the illegally harvested lobsters and that the crime therefore was an offense against property.¹⁴³ The court observed that rock lobsters can be lawfully harvested with restrictions under the South African regulatory scheme and that South African law further authorizes the government to seize, sell, and retain the proceeds from illegally harvested lobsters.¹⁴⁴ In other words, “the moment a fisherman pulls an illegally harvested lobster out of the sea, a property right to seize that lobster is vested in the government of South Africa.”¹⁴⁵ The court reasoned that, as such, South Africa suffers “an economic loss ... each time an illegally harvested lobster goes unseized.”¹⁴⁶

As a practical matter, in many cases the trafficked wildlife cannot be physically returned to the victims—for example, because it was sold to a good faith buyer, cannot be traced with precision, lacks commercial value because of food safety concerns, or was killed. As such, courts must calculate a monetary restitution amount to account for the value of the lost wildlife. As with the \$350 felony threshold and the market value calculation for sentencing, this amount can be pinned to the market value of the wildlife. Where such value is impossible to determine, courts can use

¹³⁵ *Id.* § 3663A(c)(1)(A)(ii), (B).

¹³⁶ *See Cleveland v. United States*, 531 U.S. 12, 22 (2000).

¹³⁷ *See, e.g., United States v. Newsome*, 322 F.3d 328 (4th Cir. 2003) (restitution to United States for black cherry trees taken from a national forest); *United States v. Bruce*, 437 F. App’x 357 (6th Cir. 2011) (restitution to Tennessee and Alabama for illegally harvested mussels); *United States v. Oceanpro Indus., Ltd.*, 674 F.3d 323, 332 (4th Cir. 2012) (restitution to Virginia and Maryland for illegally taken striped bass).

¹³⁸ 631 F.3d 33 (2d Cir. 2011).

¹³⁹ *Id.* at 35.

¹⁴⁰ *Id.* at 37.

¹⁴¹ *Id.* at 38.

¹⁴² *Id.* at 35.

¹⁴³ *Id.* at 39–42.

¹⁴⁴ *Id.* at 39.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* The court further noted that because South Africa was deprived of its right to seize the poached lobsters, it was “directly harmed” and thereby qualified as a “victim” under the law. *See id.* at 40–41.

replacement cost, which in turn can be calculated based on expert testimony about the price of a captive breeding operation.¹⁴⁷

Negotiated resolutions to Lacey Act cases in which the federal government is a victim can involve restitution payments to the National Fish and Wildlife Foundation, a congressionally established nonprofit organization that funds conservation efforts throughout the United States and territories.¹⁴⁸

Asset Forfeiture

In addition to criminal fines, imprisonment, and restitution, violations of the wildlife trafficking provisions may result in asset forfeiture.¹⁴⁹ Asset forfeiture is a statutory regime that comes in two basic forms.¹⁵⁰ The first is civil asset forfeiture, which enables the government to file lawsuits against certain property that is derived from or used in various crimes but does not require a criminal conviction as a predicate.¹⁵¹ The second is criminal asset forfeiture, where certain property connected to an underlying crime forfeits to the government as a consequence of a criminal conviction.¹⁵² The Lacey Act authorizes both types of asset forfeiture under 16 U.S.C. § 3374(a), varying based on the categories of property connected to violations of the wildlife trafficking provisions.¹⁵³

Civil Asset Forfeiture of Wildlife and Plants

The Lacey Act authorizes civil asset forfeiture for “[a]ll fish or wildlife or plants bred, possessed, imported, exported, transported, sold, received, acquired, or purchased” in violation of the wildlife trafficking provisions (other than labeling offenses) or any regulations issued pursuant to them.¹⁵⁴ To obtain civil asset forfeiture, the government has the burden of proving that the property at issue fits this description by a preponderance of the evidence.¹⁵⁵ For example, the government may show that it is more likely than not that the seized property is a particular plant that was imported after being taken in violation of a country’s laws and, thus, imported in

¹⁴⁷ *United States v. Hugs*, 507 F. App’x 738 (9th Cir. 2013).

¹⁴⁸ For one example, see Press Release, U.S. Dep’t of Just., District of Columbia Seafood Company, Owner and Employee Plead Guilty to Federal Trafficking Charges (Feb. 12, 2009), <https://www.justice.gov/archives/opa/pr/district-columbia-seafood-company-owner-and-employee-plead-guilty-federal-trafficking-charges> [<https://perma.cc/3A8Y-MFQX>]; *United States v. Cannon Seafood, Inc.*, No. 1:09-cr-00023 (D.D.C. May 8, 2009).

¹⁴⁹ 16 U.S.C. § 3374.

¹⁵⁰ For an overview of asset forfeiture, see generally CRS Report 97-139, *Crime and Forfeiture*, by Charles Doyle (2023).

¹⁵¹ *Id.*

¹⁵² *Id.*; see also 18 U.S.C. § 982.

¹⁵³ 16 U.S.C. § 3374(a); see also *United States v. Rafael*, 282 F. Supp. 3d 407, 408 (D. Mass. 2017) (summarizing the forfeiture provision). For the Department of Justice’s perspective on the relative benefits to prosecutors of civil and criminal asset forfeiture in wildlife cases, see Molly T. Cusson et al., *Hey, All You Cool Cats and Kittens: Consider Forfeiture in Your Endangered Species Act Cases*, 72 DOJ J. FED. L. & PRAC. 49, 61–62 (2024).

¹⁵⁴ 16 U.S.C. § 3374(a). Federal prosecutors may potentially pursue *criminal* asset forfeiture under 16 U.S.C. § 3374(a)(1) by virtue of another federal criminal statute. See 28 U.S.C. § 2461(c) (“If a person is charged in a criminal case with a violation of an Act of Congress for which the civil or criminal forfeiture of property is authorized, the Government may include notice of the forfeiture in the indictment or information pursuant to the Federal Rules of Criminal Procedure. If the defendant is convicted of the offense giving rise to the forfeiture, the court shall order the forfeiture of the property as part of the sentence in the criminal case pursuant to ... the Federal Rules of Criminal Procedure and section 3554 of title 18, United States Code.”).

¹⁵⁵ *Id.* § 3374(d); 18 U.S.C. § 983(c)(1).

violation of the wildlife trafficking provisions.¹⁵⁶ In practice, the government has used this provision to seek the forfeiture of, among other things, “144,774 pounds of cooked, frozen blue king crab” allegedly obtained in violation of Russian fishing and resource protection laws¹⁵⁷; 2,507 live canary winged parakeets allegedly imported in violation of Peruvian law¹⁵⁸; and the horns and hide of an Afghan Urial sheep imported in violation of the laws of Pakistan.¹⁵⁹

One potentially complex question under the Lacey Act involves the civil forfeiture of property in the possession of innocent owners who had no knowledge of the underlying violations.¹⁶⁰ By reference to another statute, § 3374(a) directs that “[a]n innocent owner’s interest in property shall not be forfeited under any civil forfeiture statute.”¹⁶¹ The relevant statutory definition of *innocent owner* varies based on whether the property interest was “in existence at the time the illegal conduct giving rise to forfeiture took place.”¹⁶² A property interest in existence at the time of the illegal conduct might include, for example, ownership of a vehicle used in a crime.¹⁶³

Given that the civil forfeiture provision in the Lacey Act focuses specifically on the wildlife comprising the heart of the underlying violation—as opposed to other types of property that may be connected to the offense more broadly—it seems likely that most property interests will not be in existence before an underlying violation involving that same wildlife.¹⁶⁴ Thus, the definition of

¹⁵⁶ See *In re 650 Fifth Ave. & Related Properties*, 830 F.3d 66, 86 (2d Cir. 2016) (“In civil forfeiture proceedings, the Government bears the burden of showing by a preponderance of the evidence that the property at issue is subject to forfeiture.... To carry this burden it must show that the property is more likely than not forfeitable.”); *United States v. 2121 Celeste Rd. SW*, 189 F. Supp. 3d 1208, 1254–55 (D.N.M. 2016) (similar).

¹⁵⁷ E.g., *United States v. 144,774 pounds of Blue King Crab*, 410 F.3d 1131, 1132 (9th Cir. 2005).

¹⁵⁸ E.g., *United States v. 2,507 Live Canary Winged Parakeets (Brotogeris Versicolorus)*, 689 F. Supp. 1106, 1113 (S.D. Fla. 1988).

¹⁵⁹ E.g., *United States v. One Afghan Urial Ovis Orientalis Blanfordi Fully Mounted Sheep*, 964 F.2d 474, 475 (5th Cir. 1992).

¹⁶⁰ See generally CRS Report 97-139, *Crime and Forfeiture*, by Charles Doyle, at 10 (2023).

¹⁶¹ 16 U.S.C. § 3374(d); 18 U.S.C. § 983(d). Before 2000, at least some federal courts had concluded that there was no innocent owner defense for a forfeiture action brought pursuant to § 3372(a)(1). See, e.g., *United States v. Fully Mounted Sheep*, 964 F.2d at 476 (“The legislative history establishes that the forfeiture statute provides for strict liability, thereby eliminating any ‘innocent owner’ defense to forfeiture of wildlife imported or acquired in violation of any foreign law.”); *United States v. Proceeds from Sale of Approximately 15,538 Panulirus Argus Lobster Tails*, 834 F. Supp. 385, 390 (S.D. Fla. 1993) (“The Lacey Act, under which the government seeks forfeiture here, does not provide for an innocent owner defense.”). In 2000, Congress enacted the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), Pub. L. No. 106-185, 114 Stat. 202, which “sets forth the procedures used in all civil forfeitures under federal law unless the particular forfeiture statute is specifically exempted” by CAFRA. *Blue King Crab*, 410 F.3d at 1134. CAFRA includes an innocent owner defense, and within several years of enactment at least one federal appellate court applied that provision to a forfeiture action under § 3374(a). *Id.* Any potential uncertainty about whether CAFRA’s innocent owner defense applies to § 3374(a) forfeitures was resolved when Congress amended § 3374 in 2008 to expressly state that civil forfeitures are subject to CAFRA’s provisions. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651 (codified as amended in relevant part at 16 U.S.C. § 3374(d)) (“Civil forfeitures under this section shall be governed by the provisions of chapter 46 of Title 18.”); see also Lynn A. Long, *The Lacey Act and Civil Forfeiture: Can the Government Sell Forfeited Wildlife and Plants?*, 31 GEO. ENVTL. L. REV. 65, 69 (2018) (“By overlaying the Lacey Act’s forfeiture provision with CAFRA, the government’s burden of proof for a civil forfeiture became a preponderance of the evidence, and any civil forfeiture had to provide for CAFRA’s innocent owner defense.”).

¹⁶² 18 U.S.C. § 983(d)(2)(A).

¹⁶³ See, e.g., *United States v. A 2000 Jeep Grand Cherokee*, VIN. No. 1J4GW48N7YC303169, License No. 70-J870, No. 07-CV-4114-DEO, 2009 WL 1586016, at *4 (N.D. Iowa June 4, 2009) (concluding that the definition of *innocent owner* governing property interests in existence at the time of the underlying illegal activity included the owner of a jeep whose son used it without her knowledge for cocaine trafficking).

¹⁶⁴ For example, in a case involving the importation of crab in violation of the Lacey Act, a federal appellate court interpreted the innocent owner defense under the statutory definition for property interests not in existence at the time of the underlying violation. See *Blue King Crab*, 410 F.3d at 1132.

innocent owner that appears most relevant to the Lacey Act context is the one governing property interests “acquired after the conduct giving rise to the forfeiture has taken place.”¹⁶⁵ In that context, innocent owner means:

[A] person who, at the time that person acquired the interest in the property—(i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and (ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.¹⁶⁶

The person contesting forfeiture has the burden of proving that he or she is an innocent owner by a preponderance of the evidence.¹⁶⁷ The forfeiture statute forecloses an innocent owner defense for “contraband or other property that it is illegal to possess.”¹⁶⁸

In *United States v. 144,774 pounds of Blue King Crab*, the Ninth Circuit rejected an innocent owner defense from an entity that imported crab in alleged violation of Russian laws.¹⁶⁹ The court held that the innocent owner defense was inapplicable “because, if the government can establish that the crab was taken, possessed, transported, or sold in a way that rendered it illegal under Russian law, the crab is ‘property that it is illegal to possess’ for the purposes of 18 U.S.C. § 983(d)(4).” The court clarified that the possession was illegal “not because crab is inherently unlawful, but because this particular shipment of crab allegedly was received and acquired in a way that rendered it illegal under the Lacey Act, 16 U.S.C. § 3372(a).”¹⁷⁰ It is unclear what wildlife could be subject to the innocent owner defense under this reasoning if the government is able to show an underlying Lacey Act violation involving that wildlife.

Criminal Asset Forfeiture of Vehicles and Other Equipment

A second subsection of 16 U.S.C. § 3374—specifically § 3374(a)(2)—allows for criminal asset forfeiture of “vessels, vehicles, aircraft, and other equipment” if:

- the vehicles or equipment were “used to aid in the importing, exporting, transporting, selling, receiving, acquiring, or purchasing of fish or wildlife or plants” in a criminal violation of a wildlife trafficking offense;
- a felony conviction was obtained;
- the violation involved “the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants”; and
- the owner of the vehicle or equipment was “at the time of the alleged illegal act a consenting party or privy thereto or in the exercise of due care should have known that such vessel, vehicle, aircraft, or equipment would be used in a criminal violation” of the wildlife trafficking provisions.¹⁷¹

¹⁶⁵ 18 U.S.C. § 983(d)(3)(A).

¹⁶⁶ *Id.* § 983(d)(3)(A).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* § 983(d)(4).

¹⁶⁹ *Id.*

¹⁷⁰ *Blue King Crab*, 410 F.3d at 1136.

¹⁷¹ 16 U.S.C. § 3374; *see also* *United States v. Rafael*, 282 F. Supp. 3d 407, 409 (D. Mass. 2017) (describing when forfeiture is “statutorily mandated” under § 3374(a)(2)).

The government has used § 3374(a)(2) to seek forfeiture of, for example, a fleet of fishing vessels¹⁷² and an aircraft used in commercial caribou hunts in violation of Alaska law.¹⁷³

Although § 3374(a) does not authorize the seizure of proceeds of Lacey Act offenses, it does authorize the forfeiture of money when an item subject to forfeiture is no longer available (perhaps by virtue of having been destroyed or sold). One such example was the seizure of \$33,200 in place of a truck used in the illegal trafficking of juvenile American eels.¹⁷⁴

Considerations for Congress

The Lacey Act is a powerful tool for criminal enforcement of wildlife laws, and Congress has amended it multiple times to expand its scope. Further expansions—or contractions—would have broad implications for wildlife enforcement. The Act has also presented courts with difficult interpretive questions that may be relevant for congressional consideration.

Structural Implications for Criminal Enforcement

The Lacey Act broadly criminalizes transacting in wildlife that has been taken, possessed, transported, or sold in violation of a wide range of underlying offenses. This may result in federal criminal charges arising based on underlying violations of laws Congress did not pass, including state, foreign, or tribal laws. This structure arose to address a particular fact pattern in which poachers would hunt illegally in one state, then cross state lines with the poached wildlife, placing them out of reach of law enforcement in the state where the take occurred.¹⁷⁵ They would then be free to sell the poached wildlife, because states typically have only limited jurisdiction to directly regulate interstate commerce (such as would allow them to prohibit the sale of wildlife taken illegally in another state).¹⁷⁶ The federal government, by contrast, lacks jurisdiction to regulate purely intrastate hunting violations.¹⁷⁷ The structure of the Lacey Act resolves this tension by using the federal interstate commerce power to give practical effect to state (or foreign or tribal) wildlife conservation efforts otherwise frustrated by jurisdictional limitations. This structure means that wildlife laws at every jurisdictional level are fundamentally interrelated.

With respect to underlying violations of federal law, for example, the Lacey Act might have the effect of elevating penalties from misdemeanors to felonies. For example, the Endangered Species Act (ESA) prohibits both the taking and the interstate sale of certain vulnerable species.¹⁷⁸ Knowing violations of those provisions are subject to a maximum penalty of one year in prison under the ESA,¹⁷⁹ but an offender may face enhanced penalties under the Lacey Act.

¹⁷² *E.g.*, *United States v. Rafael*, 282 F. Supp. 3d 407, 408 (D. Mass. 2017).

¹⁷³ *See, e.g.*, Brief for the United States at 15, Appellee, *United States v. Fejes*, NO. 99-30144, 1999 WL 33617619 (9th Cir. Dec. 7, 1999) (“The jury also found that an aircraft owned by Fejes was subject to criminal forfeiture due to its use in aiding the commission of the felony violations under the Lacey Act.”).

¹⁷⁴ Press Release, U.S. Dep’t of Just., Maine Men Sentenced for Illegally Trafficking American Eels (May 3, 2018), <https://www.justice.gov/opa/pr/maine-men-sentenced-illegally-trafficking-american-eels> [<https://perma.cc/7K2G-MMKG>].

¹⁷⁵ *See* Anderson, *supra* footnote 3, at 37–38.

¹⁷⁶ *Id.*

¹⁷⁷ Under Article I, Section 8, of the Constitution, Congress has the power to regulate interstate commerce and not purely intrastate activity that does not substantially affect interstate commerce. *See United States v. Lopez*, 514 U.S. 549, 558–59 (1995).

¹⁷⁸ Pub. L. No. 93-205, 87 Stat. 884 (1973); 16 U.S.C. § 1538(a)(1)(B), (F).

¹⁷⁹ 16 U.S.C. § 1540(b)(1).

Consider a poacher who kills an endangered Florida panther in the Everglades and sells the pelt to a buyer in Georgia for \$400. Each act would be subject to a one-year penalty under the ESA, but the sale alone would be subject to a five-year penalty if charged under the Lacey Act. Similarly, violations of state hunting regulations that might be accompanied only by a civil penalty could become federal felonies if the wildlife is exported or sold across state lines.

Congress has the option to narrow or widen the scope of the Lacey Act's criminalization of underlying laws. For example, to the extent Congress sought to limit the Act's capacity to impose criminal penalties on the basis of underlying civil state or foreign law violations, Congress could make such cases punishable only by civil penalties or specify certain laws or categories of laws violation of which would not satisfy step one. In the event Congress sought to retain a broad criminal penalty but limit its applicability to the most culpable offenders, Congress could increase the \$350 felony threshold to make felony penalties available only for high-dollar-value trafficking ventures. Conversely, if Congress sought to widen the Act's applicability, it could remove the dollar value threshold altogether or clarify that violations of *any* law (not just laws related specifically to wildlife) would satisfy the step-one requirements for the trafficking offense.

Any such changes to the Lacey Act would affect the potential penalties applicable to a wide array of underlying laws. Conversely, any change to federal, state, foreign, or tribal wildlife laws would necessarily have implications for Lacey Act criminal enforcement, suggesting that prosecutors with a keen eye for changes in state and foreign laws may be able to bring Lacey Act prosecutions not within Congress's contemplation when the law was enacted or amended.

Areas for Potential Clarification

Several legal questions that have arisen in Lacey Act prosecutions could be amenable to congressional clarification, although courts have and will continue to resolve interpretive questions as they arise.

Sale and Purchase of Guiding and Outfitting Services

The guided hunt provisions at 16 U.S.C. § 3372(c) were added to the statute in 1981 and specify that sale and purchase of guiding and outfitting services to illegally take wildlife constitute sale and purchase of wildlife for purposes of the trafficking prohibitions in § 3372(a). As noted above, these provisions have created tension between the holding of the Ninth Circuit in *United States v. Fejes*—that a seller of guiding services concludes a “sale of wildlife” at the time the hunt concludes, such that the step-one illegal take temporally precedes the step-two illegal sale—and the holding of the First Circuit in *United States v. Romano* that the purchase of guiding services cannot constitute a step-two offense because there is no way for the purchaser to know in advance of the hunt that the wildlife “was taken” in violation of an underlying law.¹⁸⁰ The court in *Romano* remarked that “this is the first reported case where the government has prosecuted a hunter for purchasing lawful services to aid him in the prospective unlawful taking of wildlife” and noted its belief that “there is a strong institutional interest in informing the government that its construction of the Act is seriously flawed.”¹⁸¹ The court continued, “So, too, do we think it important to inform Congress that, should it wish to criminalize the type of conduct at issue in this case—the purchase of lawfully-sold services with the intent to use those services to take wildlife unlawfully—it must amend the statute.”¹⁸²

¹⁸⁰ *United States v. Romano*, 137 F.3d 677, 682–83 (1st Cir. 1998).

¹⁸¹ *Id.* at 683.

¹⁸² *Id.*

Congress has the option to clarify the “purchase” prong of § 3372(c) to make clear that the purchase of illegally taken wildlife should be considered complete only once the guided hunt has concluded in order to bring the facts of *Romano* and *Fejes* into harmony and give equal effect to both subsections of § 3372(c). Alternatively, Congress could create a separate criminal offense for purchasing guiding services with the intent to take wildlife illegally.

Statute of Limitations

The *Romano* case also raised the question of how to calculate the statute of limitations under the Lacey Act.¹⁸³ Unless otherwise specified, federal crimes including the Lacey Act are subject to a five-year statute of limitations, meaning the government has five years to commence a prosecution once the offense is complete.¹⁸⁴ The two-step structure of the Lacey Act trafficking offense, however, presents an interpretive question: What happens in the event the second step occurs more than five years after the first? In *Romano*, the defendant was prosecuted for shooting a bear in violation of Alaska law and transporting it across state lines.¹⁸⁵ The initial hunt occurred in 1989, and the initial interstate transport occurred days later. However, the defendant then transported the bear across state lines a second time in 1992. The government indicted the defendant in 1995, more than five years after the step-one illegal take.¹⁸⁶ The trial court found that the prosecution was time-barred because the Lacey Act offense was complete the first time the defendant transported the bear across state lines in 1989.¹⁸⁷ To hold otherwise, the court said, “would result in indefinite exposure to criminal liability and render the statute of limitations virtually meaningless.”¹⁸⁸

No other court has addressed the question, but the issue may be relevant for any congressional consideration of the extent to which Congress may seek to prevent continuing commerce in wildlife that has been illegally taken, possessed, transported, or sold. If the law is as the district court in *Romano* held, then any illegal wildlife effectively ceases to be contraband five years after the second-step act is complete. This could enable patient wildlife traffickers. For example, a wildlife trafficker could import ivory from a poached elephant, hold it for five years, and then sell it without fear of prosecution under the Lacey Act (though such conduct might still be punishable under other laws). Should Congress wish to criminalize transacting in illegal wildlife in an ongoing capacity under the Lacey Act, it could clarify that the statute of limitations runs from the time step two is complete, irrespective of whether step one occurred more than five years prior and irrespective of any intervening trafficking events. This clarification would likely have the effect of interdicting more trafficked wildlife, though the knowledge requirements under the Act would still require that the person engaging in the second-step prohibited act be aware of (or should be aware of in the exercise of due care) the underlying illegality for criminal penalties to attach—precluding, for example, a case in which a person is indicted for selling inherited furniture made from illegal hardwood a decade earlier without the seller’s knowledge.

¹⁸³ See *United States v. Romano*, 929 F. Supp. 502, 510 (D. Mass. 1996).

¹⁸⁴ 18 U.S.C. § 3282.

¹⁸⁵ *Romano*, 929 F. Supp. at 510.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

Penalty for Knowing, Domestic, Non-Commercial Offender

As noted above, the penalty provisions for substantive wildlife trafficking under the Lacey Act at 16 U.S.C. § 3373(d)(1) do not address the fact pattern in which a person knows that wildlife is illegal but does not import or export the wildlife or engage in conduct involving purchase or sale of wildlife valued above \$350.¹⁸⁹ This creates a potential scenario in which a knowing offender could escape criminal liability under circumstances in which a negligent offender, under § 3373(d)(2), would not. By comparison, the false labeling penalty provisions in § 3373(d)(3) have a different structure in which the felony penalty applies in cases of import/export or commercial conduct over \$350, and the misdemeanor penalty applies “if the offense does not involve” such conduct.¹⁹⁰

To remedy the potential inconsistency in the trafficking provisions, Congress could consider amending § 3373(d)(1) to mirror the structure of § 3373(d)(3) or adding a separate provision to § 3373(d) to clarify that such an actor is criminally liable. Congress has the option to subject this offense to the one-year misdemeanor penalty, the five-year felony penalty, or something in between.

Author Information

Cassandra J. Barnum
Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS’s institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

¹⁸⁹ See 16 U.S.C. § 3373(d); *see also supra* “Penalties.”

¹⁹⁰ 16 U.S.C. § 3373(d)(3)(A)–(B).