

National Aquaculture Association Policy on The Lacey Act

Background

The Lacey Act was passed in 1900 to prohibit the international and interstate trafficking of illegally obtained wildlife and fish or parts thereof. A violation of the Lacey Act may constitute a federal felony offense and under federal sentencing guidelines, the penalties for even minor infractions can be quite severe.

Interstate transportation of wildlife, fish, or parts thereof that violates a state law in the receiving state or the state shipped from, is a Lacey Act violation. Thus, what may be a misdemeanor state violation in both of the two states involved, is immediately elevated to a federal felony offense, simply because state boundaries were crossed.

The U.S. Fish and Wildlife Service is one of the agencies that enforce the Lacey Act and their Enforcement Division has historically applied this act to the international and interstate movement of private aquacultural products. In part this is because the U.S. Fish and Wildlife Service does not recognize the private ownership of aquacultural products.

It has been proposed that aquatic animal diseases be considered for listing as injurious species under the Lacey Act. Such listing, coupled with increasingly sensitive testing methods, could place aquaculture producers and shippers of aquaculture products under increased risk of Lacey Act prosecution for inadvertent or unintentional possession or shipment of unavoidable or unviable “evidence” of disease organisms.

Policy

The NAA:

1. Supports legislation to exempt commercial aquacultural products from the Lacey Act while continuing to protect fish and wildlife produced by public or private entities to restock species for recreational use or for the recovery of state or federally listed species. The United States Code, Title 16 Conservation, Chapter 53 Control of Illegally Taken Fish and Wildlife, Section 3371 Definitions, should be amended to read as shown below:
 - (a) Fish and Wildlife.—
 - (1) IN GENERAL.—The terms “fish” and “wildlife” means any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate.

(cont.)

- (2) EXCLUSION.—The term “fish” excludes—
(A) all aquatic animals, alive or dead, while under the control of persons engaged in aquaculture production and distribution of such aquatic animals.
- (3) EXCEPTIONS TO APPLICATION OF THE EXCLUSION.—The exclusion made by subparagraph (A) of paragraph (2) does not apply if the fish is listed—
(A) in an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
(B) as an endangered or threatened species under the Endangered Species Act of 1973;
or
(C) pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

Until such an exemption occurs, the NAA:

1. Supports reducing the extreme penalties that are assessed with a Lacey Act violation; increasing the market value from \$350.00 to \$50,000.00 to trigger the felony provisions of the Lacey Act; changing the current language in the Lacey Act from “knowingly” to “willingly” or “purposely”; and exempting farmers and farms from warrantless arrest and search and seizure.
2. Supports the U.S. Fish and Wildlife Service acknowledgment that aquaculture products, legitimately reared in private culture, are PRIVATE property, not public. We further support efforts that recognize aquacultured products as private property in federal and state laws and regulations.
3. Supports efforts by the U.S. Fish and Wildlife Service and the USDA to compile and disseminate annually a list of all state and federal regulations that pertain to aquaculture.
4. Opposes the listing of aquatic animal diseases as injurious species under the Lacey Act. The NAA supports the National Aquatic Animal Health Plan and the Commercial Aquaculture Health Program Standards in regard to federal, state and production activities regulating or managing aquatic animal diseases.
5. Supports amendment of the Lacey Act so that federal penalties assessed for violation of regulations involving privately owned aquatic animals do not exceed the maximum penalty for the violation for the state in which the violation occurred.