# Department of the Interior U.S. Fish & Wildlife Service Office of Law Enforcement

Lacey Act

### Understanding the US Lacey Act

- The Lacey Act essentially allows the federal government to investigate violations of state, foreign, federal or tribal wildlife law with an interstate, international and/or inter-jurisdictional nexus.
- The US Lacey Act provides several strong provisions for the enforcement of wildlife laws

### Brief Background on the Lacey Act

- The US Lacey Act is one of several US statutes that provide civil, criminal and forfeiture penalties for certain acts concerning wildlife.
- Oldest federal wildlife
   protection statute: first enacted in 1900
- Applies to a wide range of wildlife, fish and plants and provides more serious penalties than do most other federal conservation laws

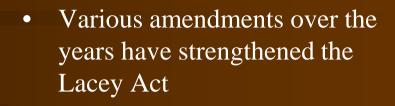


# The Original Lacey Act had 4 Main Purposes:

- 1. Prohibit interstate transport of wildlife killed in violation of state's laws
- 2. Require accurate marking of shipments
- 3. Make wildlife imported into a state, subject to that state's laws
- 4. Prohibit the import of 'injurious' species into the US

#### Lacey Act Amendments....





Most recently, the 2008 Lacey
 Act Amendments include
 trafficking provisions for
 state/federal protected
 plants/trees/lumber



The Lacey Act can also be successfully applied to combat the illegal transport of INVASIVE and INJURIOUS species

### Lacey Act Codified in 2 Places:

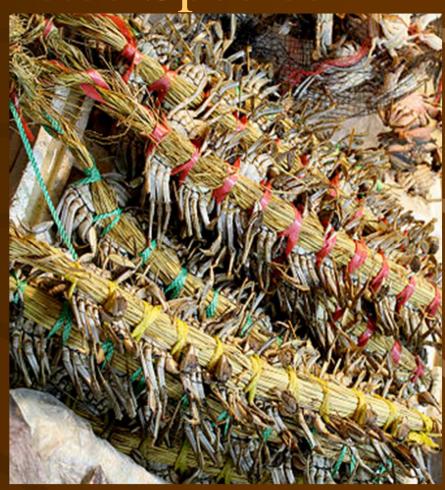
• <u>18 USC 42</u> - Injurious species and humane transport

 16 USC 3371-3378 — Trafficking / False Labeling / Captive Wildlife Safety Act / plant import and forfeiture provisions

# Import/Interstate Transport of INJURIOUS Listed Species

#### 18 USC 42(a)

- Prohibits importation/interstate
   shipment of LIVE fish/wildlife
   which Department of Interior
   declares by regulation to be
   "Injurious" to humans/agriculture/
   horticulture/forestry/wildlife
- NOTE absence of plant species
- Permits available for CERTAIN purposes (research, etc.)



Injurious live Mitten Crabs at Asian Market

# Current Injurious Species List????

- Injurious Species
   Regulations and specific lists of species are found in 50 CFR Part 16
- List is evolving as new species are incorporated periodically through Fed Rule. Most current list of species can be found on the "e-CFR" website;
   http://ecfr.gpoaccess.gov

Subpart B--IMPORTATION OR SHIPMENT OF INJURIOUS <u>WILDLIFE</u>

#### §16.11

Importation of live wild mammals.

#### §16.12

Importation of live wild birds or their eggs.

#### §16.13

Importation of live or dead fish, mollusks, and crustaceans, or their eggs.

#### §16.14

Importation of live amphibians or their eggs.

#### §16.15

Importation of live reptiles or their eggs.

# Injurious Species Import/Transport Considered "Strict Liability"

#### **SAMPLE CHARGE**

"On or about August 1st, 2012, within the District of Arizona, SUBJECT did unlawfully transport from Arizona into Nevada, an injurious wild species, specifically live African Rock Pythons, in violation of Title 18, USC 42(a)(1)."

- Crucial Element <u>LIVE</u> wildlife
- "unlawfully" here means without permit.
- Note absence of additional mental state such as *knowingly* or *willfully*

# PENALTIES Involving Lacey Act Injurious Species Import/Transport Offenses

#### Class B Misdemeanor:

\$5,000 - \$10,000 FINE &/or Imprisonment up to 6 months

**Forfeiture** – of wildlife only



# Lacey Act Trafficking Title 16 USC 3371 - 3378

- 3372. Prohibited Acts
- (a) Offenses other than marking offenses
   It is unlawful for any person----(Person may be a corporation)
  - (1) To import, export, transport, sell, receive, acquire, or purchase ANY fish/wildlife/plant taken, possessed, transported, or sold in violation of ANY law, treaty, or regulation of the United States or in violation of any Indian tribal law;

(or)

- (2) To <u>import, export, transport, sell, receive, acquire, or purchase</u> in interstate or foreign commerce---
  - (A) ANY fish or wildlife <u>taken</u>, <u>possessed</u>, <u>transported</u>, <u>or sold</u> in violation of any law or regulation of any State or in violation of any foreign law;

### Example Trafficking Violation

- Elements 3372(a)(2)(A)
- The Wildlife was was taken, possessed, transported or sold (not necessarily by the defendant) in violation of a state or foreign law
- The Defendant KNEW or in the course of due care should have known that the wildlife was taken, possessed, transported or sold in SOME illegal manner;
- The defendant then KNOWINGLY accomplished, or attempted to accomplish the <u>import</u>, <u>export</u>, <u>transport</u>, <u>sale</u>, <u>receipt</u>, <u>acquistion or purchase</u>

• SUBJECT Illegally TAKES live Gila Monster in Arizona

 Subject Knew Illegal to take Gilas from the wild in Arizona

• Subject returns to TX with Gila Monster for purpose of future sale

# Understanding the Lacey Act "Two-Step"

ALL Lacey Act violations entail an <u>UNDERLYING</u>
 violation of state, foreign, federal or tribal law (this happens first, but not necessarily by defendant)

• The fish or wildlife was taken,
possessed,
transported or sold
in violation of
some valid, wildlife
related law;

#### • *AND THEN*.....

• A separate, consummating act that occurs at a different time (this is what defendant does with the "tainted" wildife)

• Subject Knowingly imported, exported, transported, sold, received, acquired or purchased the fish or wildlife

### Misdemeanor Trafficking Penalties - Section 3373(d)(2)

• Any Person who KNOWINGLY violates 3372, (ie *Has KNOWLEDGE that he/she is transporting invasive pythons*)

#### **AND**

• In the exercise of due care should have known that the fish, wildlife or plants were taken, possessed, transported or sold in violation of some law, is a Class A Misdemeanor.

# PENALTIES Involving Lacey Act Wildlife Trafficking

#### Class A Misdemeanor:

\$100,000 FINE &/or Imprisonment up to 1 year

\$200,000 FINE for Corporations and up to 5 years Probation

**Forfeiture** – Wildlife only

**Civil** – Up to \$10,000 Fine



### Felony Trafficking Penalties

• 3373(d)(1) - Any person who

(A) <u>KNOWINGLY</u> imports/exports any fish, wildlife or plant...in violation of any provision of this chapter, (*ie – African rock pythons transported to/from Canada*)

#### OR

(B) Violates 3372 by <u>KNOWINGLY</u> engaging in conduct that involves the sale or purchase of, the offer to sell or purchase or intent to sell or purchase fish, wildlife or plants <u>with a market value in excess of \$350</u>

#### **AND**

• <u>KNOWING</u> that the fish or wildlife or plants were taken, possessed, transported or sold in violation of any underlying law, is a Class D Felon.

DIFERENCE BETWEEN MISDEMEANOR AND FELONY OFFENCES IS BASED ON DEFENDANT'S MENTAL STATE, WILDLIFE MARKET VALUE AND WHETHER OR NOT COMMERCAIL CONDUCT WAS INVOLVED.

# PENALTIES Involving Lacey Act Trafficking

### Class D Felony:

\$250,000 FINE &

Imprisonment up to 5 years



\$500,000 FINE for Corporations

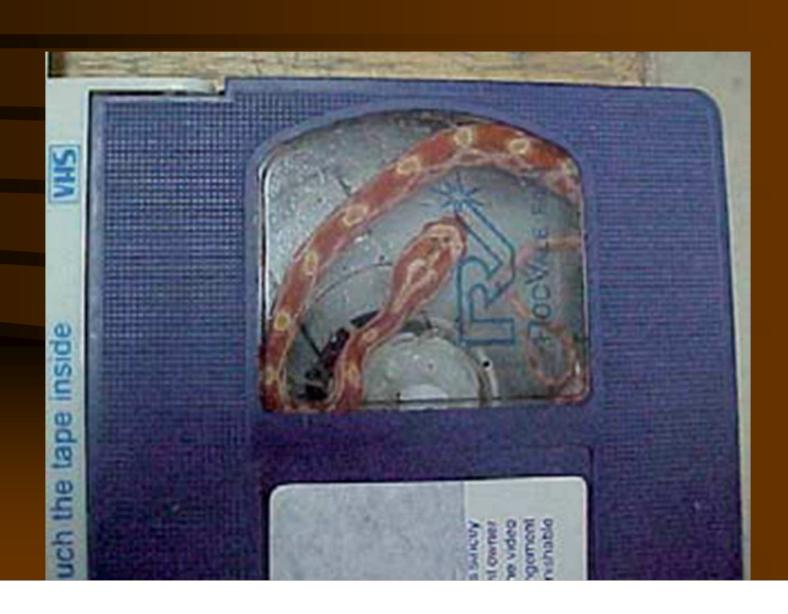
**Forfeiture** - of wildlife (administrative)

- of vessels/vehicle/equipment used in a felony offense

## Some Important Definitions 16 USC 3371

- 3371(a) "Fish or 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, whether or not bred, hatched, or born in captivity, and includes any part, product, egg or offspring thereof."
  - So, pretty inclusive of all wildlife, irrespective of national origin...
- 3371(d) "Law, treaty, regulation and Indian tribal law means laws, treaties, regulations which regulate the taking, possession, importation, exportation, transportation, or sale of fish, wildlife or plants."
  - So, underlying violation or "triggering" law for Lacey Act trafficking MUST be based on wildlife/plant protection/conservation.

### Lacey Act False Labeling



#### LACEY ACT FALSE LABELING

## Elements: 16 USC Section 3372(d)

- It is unlawful for any person to make or submit <u>ANY false record, account</u>, or label for, or any false identification of, any fish, wildlife or plant which has been, or is intended to be:
  - (1) Imported, exported, transported, sold, purchased, or received from any foreign country,

#### <u>OR</u>

(2) Transported in interstate or foreign commerce

#### **Example:**

AZ reptile Falsely Labeled/ Consigned as "Tools"



Shipped Fed-Ex to NYC Lacey False
Labeling
(Sold in

Excess of \$350 = Felony)

### Providing False Information...

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- Lacey Act False Labeling
   Provisions can be successfully applied where fraudulent documents and/or false reporting has occurred in relation to transported wildlife.
- False Labeling charges may be applied in addition to, or even in lieu of other Lacey Act charges.

## PENALTIES Involving Lacey Act False Labeling Offenses

#### Class A Misdemeanor:

\$100,000 FINE &/or Imprisonment up to 1 year

\$200,000 FINE for Corporations and up to 5 years Probation

**Forfeiture** – Wildlife only

**Civil** – Up to \$10,000 Fine



# PENALTIES Involving Lacey Act False Labeling Offenses

### Class D Felony:

\$250,000 FINE

Imprisonment up to 5 years

\$500,000 FINE for Corporations

**Forfeiture** - of wildlife (administrative)

- of vessels/vehicle/equipment used in a felony offense

