

## The Lacey Act and Fishery Enforcement: Congressional Staffer Caught in the Snare

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President William McKinley, on May 25, 1900, signed into law legislation that has become known as the Lacey Act. Designed to combat interstate trafficking in illegally taken game, the Lacey Act became the first significant federal legislation to address the illegal taking and movement of fish and wildlife between and among the states and continues to be an oft-used enforcement tool today, but with wider application.

Under the general mandate of the Lacey Act as currently written, it is unlawful for any person to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish, wildlife, or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States, any Indian tribal law, or any foreign law (16 U.S.C. § 3372). The sweep of the statute is broad because its enforcement can be based on any source of law that restricts the taking and possession of almost any type of wildlife that moves in interstate and foreign commerce.

In a plea agreement approved on Aug. 12, 2011 in federal District Court in Anchorage, Alaska, the strictures of the Lacey Act snared Arne Fuglvog, who at the time was serving on the staff of Sen. Lisa Murkowski of Alaska and who previously had been an active commercial fisherman in Alaska. The charges in the plea agreement applied to the harvest of a valuable fish (sablefish) in 2005. Fuglvog conceded that he had harvested more than 30,000 pounds of sablefish, worth about \$100,000, in excess of his individual fishing quota allowed for a particular fishing area. He also admitted that he then falsified the required landing reports as to where he caught the fish. He then sold the fish in interstate commerce. Although not specifically mentioned in the plea agreement, the predicate federal statute on which the Lacey Act violations were based was the Magnuson-Stevens Fishery Conservation and Management Act (the "Magnuson-Stevens Act"), 16 U.S.C. § 1801 et seq., and regulations implementing a federal plan for the conservation of sablefish stocks located within the U.S. 200-mile exclusive economic zone (50 C.F.R. Part 679).

Fuglvog's acceptance of the charges against him and a 10-month prison sentence for a misdemeanor, plus fines totaling over \$150,000, were a shock to the national commercial fishing community. Fuglvog has served on the Pacific Fishery Management Council and was considered by the Obama administration to head the National Marine Fisheries Service. His job for Sen. Murkowski included advising her on fishery policy. The base nature of the violation—knowingly exceeding a fishing quota and then lying about it—was inconsistent with his previous reputation and record of public service. The essence of the plea agreement, i.e. that Fuglvog falsely reported in which individual statistical area he caught sablefish on "several occasions between 2001 and 2006"—is a serious violation. This high profile prosecution, coupled with the severity of the criminal penalties assessed, sends a strong message to everyone else in the fishing industry.

Fuglvog's appearance in federal court on Aug. 12 also brought to light a sealed plea addendum, which as described was a cooperation deal that might reduce his sentence. It is not known who the targets of this on-going investigation might be, but the Lacey Act would apply to anyone who purchased fish from Fuglvog and knew he had lied as to where he caught the sablefish.

The choice of the Lacey Act as the prosecution vehicle in his case has raised questions. If the U.S. government had proceeded under the Magnuson-Stevens Act, Fuglvog's acts of fishing beyond his quota in a particular area and filing false reports would constitute prohibited acts under the Magnuson-Stevens Act (16 U.S.C. § 1857). For each separate violation, civil penalties of up to \$140,000 could have been assessed for those prohibited acts. However, criminal penalties are less severe than those under the Lacey Act. For example, the maximum prison term for a criminal violation of the Magnuson-Stevens Act is six months, unless the violation involves use of a weapon or threat of harm to an observer or enforcement officer, in which case imprisonment of up to 10 years is possible (16 U.S.C. § 1859).

Because the plea agreement was the result of negotiation between prosecutors and the accused, it cannot be known exactly what all the factors were that led to use of the Lacey Act. However, the longer prison term was certainly one reason that is apparent. Secondly, the statute of limitations of five years may have cut off earlier violations and reduced Fuglvog's civil penalty exposure just to 2006. Finally, it appears that the U.S. government was primarily interested in obtaining jail time as opposed to large monetary penalties, as a strong signal to other potential violators.

In other cases throughout the United States, the Lacey Act has become a commonly used tool to deal with all sorts of

violations involving commercial fisheries, both to seek criminal convictions as well as seize fish products that were caught, sold, or labeled illegally. Recently, the U.S. government seized a significant amount of king crab from Russia in Seattle, alleging that the crab was harvested in excess of the applicable Russian quota (The Seattle Times, Feb. 28, 2011). Forfeiture of the product as contraband was sought in the complaint filed in federal District Court. The purchaser of the crab, a seafood company based in New York City which took title when it arrived in the U.S., was reported to have no knowledge that it was illegally harvested in Russia. Nonetheless, its product was being seized for forfeiture. In such cases, the New York purchaser cannot claim to be an “innocent owner” who should keep the product he purchased. Under a recent ruling by the U.S. Ninth Circuit Court of Appeals, the illegally caught crab is considered contraband and is not subject to the innocent owner defense (*U.S. v. 144,774 Pounds of Blue King Crab*, 410 F.3d 1131 (9th Cir. 2005)).

Other recent Lacey Act cases include a Quincy, Mass. man who was convicted by a jury of falsely labeling frozen fish filets from China and two companies that were sentenced in Florida for falsely labeling chum salmon fillets as well as relabeling less marketable shrimp from Southeast Asia as being raised in Panama, Ecuador, and Honduras.

The penalties for violating the Lacey Act include both felony and misdemeanor prison terms of up to five years, and fines as high as \$250,000 for an individual (and \$500,000 for a business organization) under the alternative fine statute, 18 U.S.C. § 3571, plus forfeiture of any illegal fish products. Civil penalties are lower, up to \$10,000 per incident. The Lacey Act is a powerful enforcement tool for the federal government and a strong deterrent to unlawful behavior with respect to commercial fisheries business activities.

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