

Lacey Act Amendments of 2008

January 31, 2010 – ECOngress

Environmental Crimes Section
Environment and Natural Resources Division,
U.S. Department of Justice

The Lacey Act, as amended

(effective May 22, 2008)

The Lacey Act makes it unlawful to:

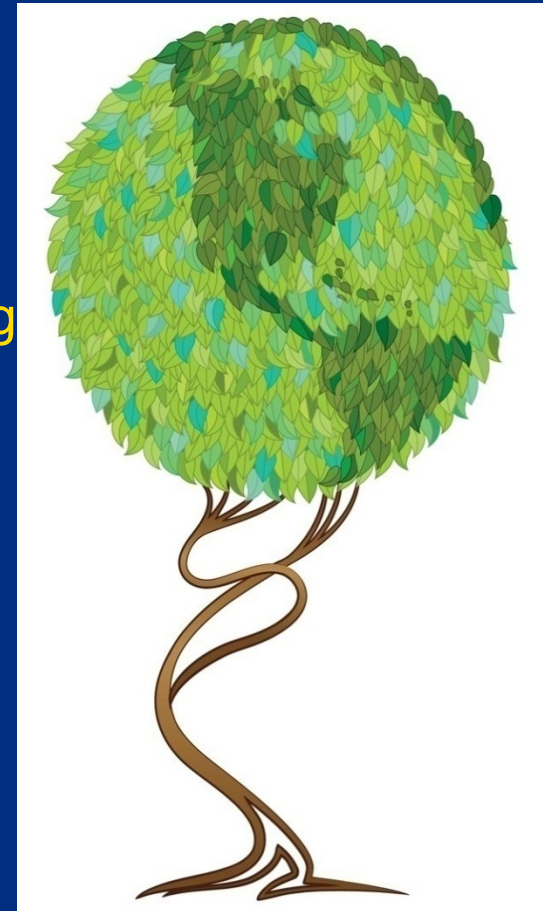
import, export, transport, sell, receive, acquire, or purchase

in interstate or foreign commerce

any plant (with limited exceptions)

taken or traded in violation of the laws of the U.S.,
a U.S. State, or relevant foreign

- The Lacey Act makes it unlawful to make or submit any false record, account or label for, or any false identification of, any plant.
- The Lacey Act now makes it unlawful to import any plant or plant product without a declaration



Definition of “plant”

- “Plant” means:
 - “Any wild member of the plant kingdom, including roots, seeds, parts or products thereof, and
 - Expressly including “trees from either natural or planted forest stands”



Exclusions

- Excluded from Lacey Act coverage
 - Common cultivars* (except trees)
 - Common food crops*
 - Scientific specimens for research and plants to remain planted or be replanted, that are NOT listed on CITES, under the ESA or under any State law that provides for the conservation of species



**FWS and APHIS are working together, with other agencies, to define these terms.*

New Declaration Requirement Relating to Plant Products

- Declaration made at time of importation must contain:
 - **Scientific name** of plant (including genus & species)
 - Value of importation
 - **Quantity** of the plant
 - **Name of the country** in which the plant was harvested
 - For paper and paperboard products with recycled content, the average % recycled content without regard for species or country of harvest
- Declaration requirement does not apply to packaging material used to support, protect or carry another item (unless the packaging material itself is the item being imported)
- Enforcement being phased in:
http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml



Lacey Act Violations and Penalties

- Forfeiture – strict liability
- Misdemeanors punishable by 1 year in prison and a fine of \$ 100,000 (\$200,000 for corporation)
 - In the exercise of due care should have known plant was illegally taken, possessed, transported or sold
 - Or knew, but did not involve import or export or commercial conduct with plant value of more than \$350
 - Applicable only to substantive violations, NOT to declaration requirements
- Felonies punishable by 5 years in prison and a \$250,000 fine (\$500,000 for corporations)
 - Knowing violation– knowledge of facts and illegality, not specific law violated
 - Involves import or export or commercial conduct with plant value of more than \$350



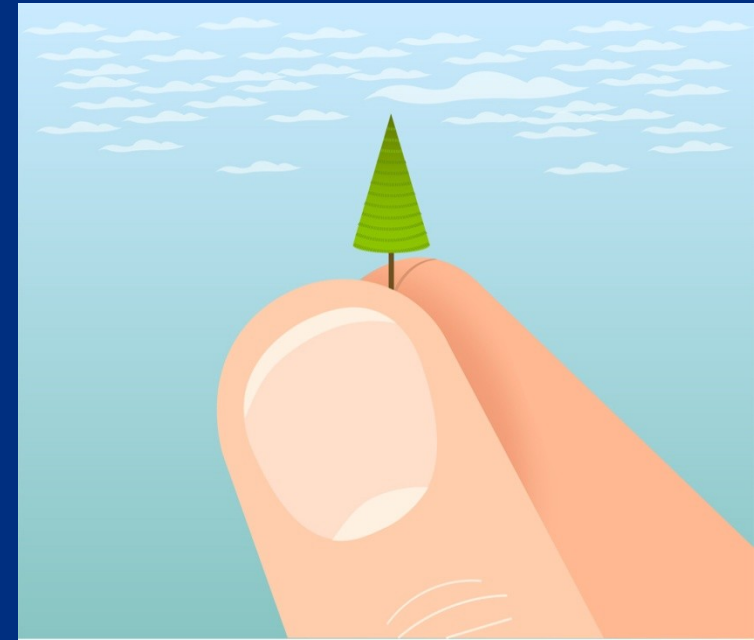
Due Care

- Ninth Circuit Pattern Jury Instructions

- “Due care means that degree of care which a reasonably prudent person would exercise under same or similar circumstances.”

- Legislative History

- “Due care simply requires that a person facing a particular set of circumstances undertakes certain steps which a reasonable man would take to do best to insure that he is not violating the law.”
- Due care “is applied differently to different categories of persons with varying degrees of knowledge and responsibility. For example, zoo curators, as professionals, are expected to apply their knowledge to each purchase of wildlife. If they know that a reptile is Australian and that Australia does not allow export of that reptile without special permits, they would fail to exercise due care unless they check for those permits. On the other hand, the airline company which shipped the reptile might not have the expertise to know that Australia does not normally allow that particular reptile to be exported. However, if an airline is notified of the problem and still transships the reptile, then it would probably fail to pass the due care test.”



The Lacey Act, as amended, will help the U.S. to:

- minimize the U.S. market for illegal plants
- support the efforts of other countries, and its own States, to combat illegal trade in plants
- promote a level playing field for legal dealers

