



**Statement of Kristina Alexander  
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**Before**

**Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs  
U.S. House of Representatives**

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**on**

**“Why Should U.S. Citizens Have to Comply with Foreign Laws”**

Mr. Chairman and Members of the Subcommittee:

My name is Kristina Alexander. I am a Legislative Attorney with the Congressional Research Service. I am here to introduce the Lacey Act and explain its legislative history regarding the restriction on trade in plants and animals taken in violation of foreign laws.

The Lacey Act was enacted in 1900 addressing imports of injurious species and wildlife trafficking between states. My testimony is limited to the wildlife trafficking provisions of the Lacey Act, which, generally speaking, make it a violation of federal law to buy or sell plants or animals that were taken or traded in violation of state, federal, tribal, or foreign law. More specifically, with regard to foreign law, the Lacey Act makes it unlawful 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 foreign law.<sup>1</sup> In the case of plants, the underlying foreign law must protect or regulate plants.

The Lacey Act of 1900 was intended to prevent hunters from killing wildlife in violation of one state’s laws and escaping prosecution by selling the game in another state. It was unlawful to transport the dead bodies of wild animals or birds from one state to another if the animals or birds were killed in violation of the laws of the “State, Territory, or District in which the same were killed.”<sup>2</sup> Thus, a Lacey Act violation

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<sup>1</sup> 16 U.S.C. § 3372(a)(2). Other prohibited acts are described in 16 U.S.C. §§ 3372(a)(1) – (4). For a fuller analysis of the Lacey Act, see CRS Report R42067, *The Lacey Act: Protecting the Environment by Restricting Trade*, by Kristina Alexander.

<sup>2</sup> Lacey Act, ch. 553, 31 Stat. 187, 188 (1900).

<sup>3</sup> 56 Cong. Rec. 4,873-74 (1900). Mr. Lacey: “It will simply do this: Suppose the closed season in Virginia commences on the 1st of December, and the closed season in Georgia is the 1st of October. Now, it will be lawful to ship animals and birds from

has always been predicated on a violation of another law. In 1900 those predicate acts were limited to the laws of a state, territory, or district. The sponsor of the act, Congressman John F. Lacey, acknowledged that the law would require those who sold game to understand the laws of the jurisdiction from which the game originated in order to avoid violating the Lacey Act.<sup>3</sup>

Initially, the Lacey Act regulated trade of “wild animals and birds,” while the Black Bass Act of 1926 addressed illegal trade in fish.<sup>4</sup> The Black Bass Act shared the same structure as the Lacey Act, making it a federal offense to violate the laws of a State, Territory, or the District of Columbia with respect to fish.

In 1930, Congress passed the Tariff Act of 1930, which prohibited importing wildlife that was taken in violation of foreign law.<sup>5</sup> The Tariff Act of 1930 specifies that unless a certificate is issued, a “mammal or bird, or part or product thereof” may not be imported into the United States if the laws of the country of origin “restrict the taking, killing, possession, or exportation to the United States.”<sup>6</sup> During debate on the Tariff Act in September 1929, the Senate opposed legislation to require compliance with a foreign law. Senator Smoot of Utah questioned whether the provision amounted to undue interference with the enforcement rights of other countries:

The House bill contained a new provision prohibiting the importation of wild mammals or birds unless accompanied by the certification of an American counsel that such articles have not been acquired or exported in violation of the laws of the country from which they come. ... The provision partakes of the nature of an attempt to enforce the laws of foreign countries in respect to matters of their internal policy. While it may not be proper to encourage violation of foreign laws, it would seem to be beyond the proper purpose of a tariff bill to adopt the amendment proposed by the House bill.<sup>7</sup>

A 1929 House Report provides additional insight regarding the ban, centering not around trade obligations, but around the stated purpose of wildlife conservation:

By law and treaty the United States has recognized the desirability of the protection and conservation of wild life. Certain practices of a commercial nature involving violations of laws of other countries, though not of laws of the United States, are entirely contrary to the intent and purpose of this policy of conservation. Many foreign countries have passed and are passing laws for the protection of wild birds and mammals either directly or through prohibition of exportation of such articles. In view of the policy of our Government in these matters, it is believed that we should not countenance disregard of the laws of these countries by permitting the importation of birds or mammals taken or exported in violation of such laws....<sup>8</sup>

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<sup>3</sup> 56 Cong. Rec. 4,873-74 (1900). Mr. Lacey: “It will simply do this: Suppose the closed season in Virginia commences on the 1st of December, and the closed season in Georgia is the 1st of October. Now, it will be lawful to ship animals and birds from Virginia into the District of Columbia and Baltimore longer than it would be from Georgia, because the closed season is different; and the man that receives and handles them must know that he is dealing in something that has not been killed in violation of the State law from which the game comes.”

<sup>4</sup> Black Bass Act, ch. 346, 44 Stat. 576 (1926).

<sup>5</sup> Tariff Act of 1930, ch. 497, 46 Stat. 590, 741 (codified as amended at 19 U.S.C. § 1527).

<sup>6</sup> 46 Stat. 741; 19 U.S.C. § 1527.

<sup>7</sup> 71 Cong. Rec. 3,628 (Sept. 14, 1929).

<sup>8</sup> H. Rep. 71-7 at 181 (May 9, 1929).

While a Senate amendment removing the foreign law provision from the House bill was approved, six months later, a foreign law provision substantially similar to that in the House bill was included in the bill that became the Tariff Act of 1930.<sup>9</sup>

In 1935, the Lacey Act was amended to add violations of foreign laws as predicate acts. At that time, it became a federal crime to capture, kill, take, ship, transport, carry, purchase, sell, or possess wild animals or birds “contrary to the law of any State, Territory, or the District of Columbia, or foreign country or State, Province, or other subdivision thereof” in which the game was captured, killed, taken, delivered, or knowingly received for shipment, transportation, or carriage, or from which it was shipped, transported, or carried.<sup>10</sup> The legislative record surrounding the 1935 amendment provides little explanation regarding the foreign laws amendment. The only germane published remarks were in a House Report: “It is proposed also to extend the operation of the Lacey Act to foreign commerce in game and other wildlife.”<sup>11</sup>

Subsequent amendments to the Lacey Act expanded the law’s reach. In 1948, federal law was added to the list of predicate acts.<sup>12</sup> Amendments of 1969 extended the act’s coverage to wild mammals, wild birds, amphibians, reptiles, mollusks, or crustaceans “or the dead body or parts thereof.”<sup>13</sup>

Also in 1969, the Black Bass Act was amended to include foreign law violations among its predicate acts.<sup>14</sup> The legislative history for this amendment is more substantial than for the 1935 change to the Lacey Act, possibly because the 1969 change was part of a larger bill to ban importing species at risk of becoming endangered. A House Report by the Committee of Merchant Marine and Fisheries describes the Black Bass Act amendment as enabling the United States to “assist in reducing commercial traffic in black bass or other fish illegally taken in a foreign country.”<sup>15</sup> The Senate Committee on Commerce described the international purpose:

By prohibiting the sale in the United States of wildlife protected by a foreign government, the demand for poached wildlife from that country will be sharply reduced. In addition, however, such a law is also designed to promote reciprocity. If we assist a foreign country in enforcing its conservation laws by closing our market to wildlife taken illegally in that country, they may in turn help to enforce conservation laws of the United States by prohibiting the sale within their borders of wildlife taken illegally within the United States.<sup>16</sup>

Congressional hearings for the 1969 amendments addressed the foreign law issue regarding endangered species import bans, as well as the extension of the Lacey Act to other species. Witnesses indicated that it was difficult to know of or comply with laws of foreign countries when importing species. For example, the Director of the National Zoological Park stated:

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<sup>9</sup> 72 Cong. Rec. 5521 (March 18, 1930).

<sup>10</sup> Act of June 15, 1935, P.L. 74-148, § 201, 49 Stat. 378, 380.

<sup>11</sup> H. Rep. No. 74-886 (May 13, 1935).

<sup>12</sup> Act of June 25, 1948, P.L. 80-772, § 42, 62 Stat. 683, 687.

<sup>13</sup> Act of Dec. 5, 1969, P.L. 91-135, § 7, 83 Stat. 275, 281.

<sup>14</sup> Act of Dec. 5, 1969, P.L. 91-135, § 7, 83 Stat. 275, 281.

<sup>15</sup> H. Rep. 90-1102, at 10 (Feb. 21, 1966).

<sup>16</sup> S. Rep. 91-526, at 12 (Nov. 6, 1969).

Often we don't know which countries animals came from or what borders they have crossed. Let us say that before buying an animal I want to be sure that it was captured and exported legally from its country of origin. There is no way I can do this.

First, it would require a large staff of lawyers and translators to assemble and analyze the enormous mass of national, State, provincial and local and tribal wildlife protection laws for more than a hundred nations.

Next, one would have to collect the regulations, then somehow discover what procedures are followed.....<sup>17</sup>

Almost a year later, the Assistant Director of the Zoo testified that "experience has shown that enforcement of this provision of the Lacey Act is next to impossible."<sup>18</sup> Similarly, a report by the Senate Commerce Committee includes a letter from the Deputy Assistant Secretary of the Interior stating that the proposed endangered species provision, which would require the Department of the Interior to assemble a list of at risk species, would "make enforcement easier, because it is now very difficult to tell whether a particular mammal or bird or part thereof was taken illegally in a foreign country."<sup>19</sup>

However, there is no discussion in the legislative history of the 1969 amendments by a Member of Congress on any compliance difficulties in making it a violation of U.S. law to violate a foreign law.

A trade protocol similar to the Lacey Act requirements went into effect in 1975, when the Convention on International Trade of Endangered Species of Wild Fauna and Flora, known as CITES, entered into force.<sup>20</sup> While CITES, through its enabling act, the Endangered Species Act, does not explicitly require compliance with foreign law, it does require U.S. importers to have a valid export certificate for certain listed species to demonstrate compliance with foreign law. CITES, in contrast to the Lacey Act, identifies the species for which an export permit is required.

In 1981, the Lacey Act and the Black Bass Act were combined, keeping the name the Lacey Act. Also in 1981, the Lacey Act was amended to add tribal laws as predicate acts,<sup>21</sup> and to cover some plants.<sup>22</sup> In 2008, the plant provisions were expanded to the current language.<sup>23</sup> Accordingly, in terms of plant provisions of the Lacey Act, foreign law violations have always been included as predicate acts.

Mister Chairman, that concludes my prepared statement. I would be happy to answer any questions that you or other Members of the Subcommittee might have, and I look forward to working with all Members and staff of the Subcommittee on this issue in the future.

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<sup>17</sup> House Committee on Merchant Marine and Fisheries, Subcommittee on Fisheries and Wildlife Conservation, *Fish and Wildlife Legislation, Part 1*, hearing on H.R. 6138, H.R. 8693, H.R. 11618, H.R. 3327, and H.R. 10923, 90<sup>th</sup> Cong., 1<sup>st</sup> sess., Oct. 4, 1967, Testimony of Dr. Theodore H. Reed, Director, National Zoological Park.

<sup>18</sup> Senate Committee on Commerce, Subcommittee on Merchant Marine and Fisheries, *Endangered Species*, hearing on S. 2984 and H.R. 11618, 90<sup>th</sup> Cong., 2<sup>nd</sup> Sess., July 24, 1968, Testimony of Mr. John Perry, Assistant Director, National Zoological Park.

<sup>19</sup> S. Rep. 90-1668, at 15 (Oct. 10, 1968). Letter of Clarence F. Pautzke, Deputy Assistant Secretary of the Interior.

<sup>20</sup> 16 U.S.C. § 1538(c). The United States ratified the treaty in 1974.

<sup>21</sup> Lacey Act Amendments of 1981, P.L. 97-79, § 3, 95 Stat. 1073, 1074.

<sup>22</sup> Lacey Act Amendments of 1981, P.L. 97-79, § 3, 95 Stat. 1073.

<sup>23</sup> Food, Conservation, and Energy Act of 2008, P.L. 110-246, § 8204(b), 122 Stat. 1651, 2053-55. See, 16 U.S.C. § 3371(f) (definition of plant); 16 U.S.C. § 3372 (prohibited activities related to plants); 16 U.S.C. § 3372(f) (plant declarations).

