## **24.22 Lacey Act—Import or Export of Illegally Taken Fish, Wildlife,**

**or Plants (16 U.S.C. §§ 3372, 3373(d)(1)(A))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with violating Sections 3372 and 3373 of Title 16 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly [[imported] [exported]] [[fish] [wildlife] [plants]]; and

Second, the defendant knew that the [[imported] [exported]] [[fish] [wildlife] [plants]] had been [taken] [possessed] [transported] [sold] in violation of or in a manner unlawful under [United States law] [United States regulations] [United States treaties] [tribal law].

A defendant acts knowingly if [he] [she] is aware of the conduct and does not act through ignorance, mistake or accident. You may consider evidence of the defendant’s words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

**Comment**

This instruction is for use in any case involving a violation of 16 U.S.C. § 3373(d)(1)(A) for the illegal importing or exporting of fish, wildlife, or plants. Under that section of the Lacey Act, criminal liability is premised on a finding of a violation of one of the subsections of 16 U.S.C. § 3372. For violations of § 3373(d)(1)(B), *see* Instruction 24.23. For violations of § 3373(d)(2), *see* Instruction 24.24. For violations of § 3373(d)(3), *see* Instruction 24.25.

When a violation of 16 U.S.C. § 3372(a)(1) (U.S. Laws, Treaties) is alleged, use this instruction without change. For offenses under subsections (a)(2) and (a)(3) of § 3372, the instruction should be modified as shown below.

For an alleged violation of 16 U.S.C. § 3372(a)(2)(A) (fish or wildlife taken in violation of state or foreign law), substitute the following element:

Second, the defendant knew that the [fish] [wildlife] had been [taken] [possessed] [transported] [sold] in violation of or in a manner unlawful under any [state law] [state regulation] [foreign law] [foreign regulation].

For an alleged violation of 16 U.S.C. § 3372(a)(2)(B) (plants taken in violation of state or foreign law), substitute the following element:

Second, the defendant knew that the plants had been [taken] [possessed] [transported] [sold] in violation of any [state law] [state regulation] [foreign law] [foreign regulation] that [protects plants] [[regulates [the theft of plants] [the taking of plants from a park, forest reserve, or other officially protected area] [the taking of plants without, or contrary to, required authorization]] [without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any state or any foreign law or regulation] [in violation of any limitation under any law or regulation of any state, or under any foreign law or regulation, governing the export or transshipment of plants].

For an alleged violation of 16 U.S.C. § 3372(a)(3)(A) (fish or wildlife in special U.S. jurisdiction), substitute the following element:

Second, the defendant possessed [fish] [wildlife] within the Special Maritime and Territorial Jurisdiction of the United States;

and add a new third element:

Third, the defendant knew the [fish] [wildlife] had been [taken] [possessed] [transported] [sold] in violation of or in a manner unlawful under any [state law] [state regulation] [foreign law] [foreign regulation] [tribal law].

For an alleged violation of 16 U.S.C. § 3372(a)(3)(B) (plants in special U.S. jurisdiction), substitute the following element:

Second, the defendant possessed plants within the Special Maritime and Territorial Jurisdiction of the United States;

and add a third element:

Third, the defendant knew the plants had been [taken] [possessed] [transported] [sold] in violation of any [state law] [state regulation] [foreign law] [foreign regulation] that [protects plants] [[regulates [the theft of plants] [the taking of plants from a park, forest reserve, or other officially protected area] [the taking of plants without, or contrary to, required authorization]] [without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any state or any foreign law or regulation] [in violation of any limitation under any law or regulation of any state, or under any foreign law or regulation, governing the export or transshipment of plants].

When a violation of 16 U.S.C. § 3372(a)(2) is involved, consult 18 U.S.C. § 10 for a definition of interstate commerce or foreign commerce.

When a violation of 16 U.S.C. § 3372(a)(3) is involved, consult 18 U.S.C. § 7 for a definition of special maritime and territorial jurisdiction of the United States.

The requirement that the defendant knew that the wildlife was possessed in violation of “a particular law” is not an element of the offense. *See, e.g., United States v. Santillan*, 243 F.3d 1125, 1129 (9th Cir. 2001) (concluding that Lacey Act does not require knowledge of specific law violated by the possession or other predicate act, so long as defendant knows that possession was unlawful).

“[A]ny foreign law” in the Lacey Act includes foreign regulations, even those based upon foreign laws invalidated by the foreign government after the time of the offense. *See United States v. Lee*, 937 F.2d 1388, 1391-93 (9th Cir. 1991).