**24.24 Lacey Act—Defendant Should Have Known That Fish, Wildlife, or**

**Plants Were Illegally Taken (16 U.S.C. §§ 3372, 3373(d)(2))**

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] [transported] [sold] [received] [acquired] [purchased]] [[fish] [wildlife] [plants]]; and

Second, the defendant in the exercise of due care should have known that the [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 act 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.

Due care means that degree of care that a reasonably prudent person would exercise under the same or similar circumstances.

**Comment**

This instruction is for use in any case involving a violation of 16 U.S.C. § 3373(d)(2), a misdemeanor. *See United States v. Hansen–Sturm*, 44 F.3d 793, 794 (9th Cir. 1995) (describing violation as a lesser included offense of felony provisions of Lacey Act). 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)(A), *see* Instruction 24.22. For violations of §3373(d)(1)(B), *see* Instruction 24.23. 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 elements of 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 elements:

First, the defendant knowingly [[imported] [exported] [transported] [sold] [received] [acquired] [purchased]] [[fish] [wildlife]] in interstate or foreign commerce; and

Second, the defendant in the exercise of due care should have known 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 elements:

First, the defendant knowingly [imported] [exported] [transported] [sold] [received] [acquired] [purchased] plants in interstate or foreign commerce; and

Second, the defendant in the exercise of due care should have known that the plants had been [taken] [possessed] [transported] [sold] in violation of or in a manner unlawful under 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 elements:

First, while within the special maritime and territorial jurisdiction of the United States, the defendant knowingly possessed [fish] [wildlife] which 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]; and

Second, with the exercise of due care the defendant should have known 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] [tribal law].

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

First, while within the special maritime and territorial jurisdiction of the United States, the defendant knowingly possessed plants which had been [taken] [possessed] [transported] [sold] in violation of or in a manner unlawful under 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; and

Second, with the exercise of due care the defendant should have known that the plants had been [taken] [possessed] [transported] [sold] in violation of or in a manner unlawful under 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 a discussion of due care, *see* *United States v. Thomas*, 887 F.2d 1341, 1346 (9th Cir. 1989).