

Lacey Act Overview

Congressional Briefing

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Roadmap

- **Overview of the Lacey Act**
- Common Misconceptions
- Proposals to “Reform” the Lacey Act

Basic Trafficking Offenses

- It is a violation of the Act “to import, export, transport, sell, receive, acquire or purchase” any fish or wildlife or plant “taken, possessed, transported, or sold” in violation of any federal, state, foreign, or Native American tribal law, treaty, or regulation. 16 U.S.C. § 3372(a)



Trafficking Offense – Two Step Approach

- Underlying or “predicate” law violation – fish, wildlife, plant or plant product must have been taken, possessed, transported or sold in violation of underlying federal, state, foreign, or Native American tribal law, treaty, or regulation
- US-based trade – fish, wildlife, plant or plant product must have been imported, exported, transported, sold, received, acquired or purchased in the United States
 - 16 U.S.C. § 3372(a)

Penalties/Consequences of a Violation

- Felony – 16 U.S.C. § 3373(d)(1)
- Misdemeanor – 16 U.S.C. § 3373(d)(2)
- Forfeiture – 16 U.S.C. § 3374
- Civil penalties – 16 U.S.C. § 3373(a)

Penalties/Consequences of a Violation

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- Civil penalties – 16 U.S.C. § 3373(a)
- **Key distinction? Mental state**
 - Also value and actions in US

Felony Penalty – Mental State (*Mens Rea*)

- Predicate law violation – defendant had to know that the goods had been taken, possessed, transported or sold in violation of predicate law
- US-based trade – defendant had to knowingly import, export, transport, receive, acquire or purchase the goods
- Penalty – maximum five years in prison and fine
 - Imports or exports (§ 3373(d)(1)(A)); or
 - Conduct that involves sale or purchase when market value of goods more than \$350 (§ 3373(d)(1)(B))

Misdemeanor Penalty – Mental State (*Mens Rea*)

- Predicate law violation – defendant in the exercise of due care, should have known that the goods had been taken, possessed, transported or sold in violation of predicate law
- US-based trade – defendant had to knowingly import, export, transport, receive, acquire or purchase the goods
- Maximum penalty – one year in prison and fine
 - § 3373(d)(2)

Forfeiture – Strict Liability



- All fish, wildlife, or plants imported, transported, sold, received, acquired, or purchased in violation of the Lacey Act are subject to forfeiture
- Vehicles and equipment used to aid in Lacey Act violations may also be subject to forfeiture

Underlying or “Predicate” Law

- Fish, wildlife or plant related
- Regulate the “taking, possession, importation, exportation, or sale of fish or wildlife or plants”
- Need not be criminal
- Must be a valid law at time
- Defendant need not personally have violated underlying law

Other Offenses

- Marking offenses – § 3372(b)
- Guiding and outfitting services and invalid permits – § 3372(c)
- False labeling offenses – § 3372(d)
- Plant declaration requirements – § 3372(f)

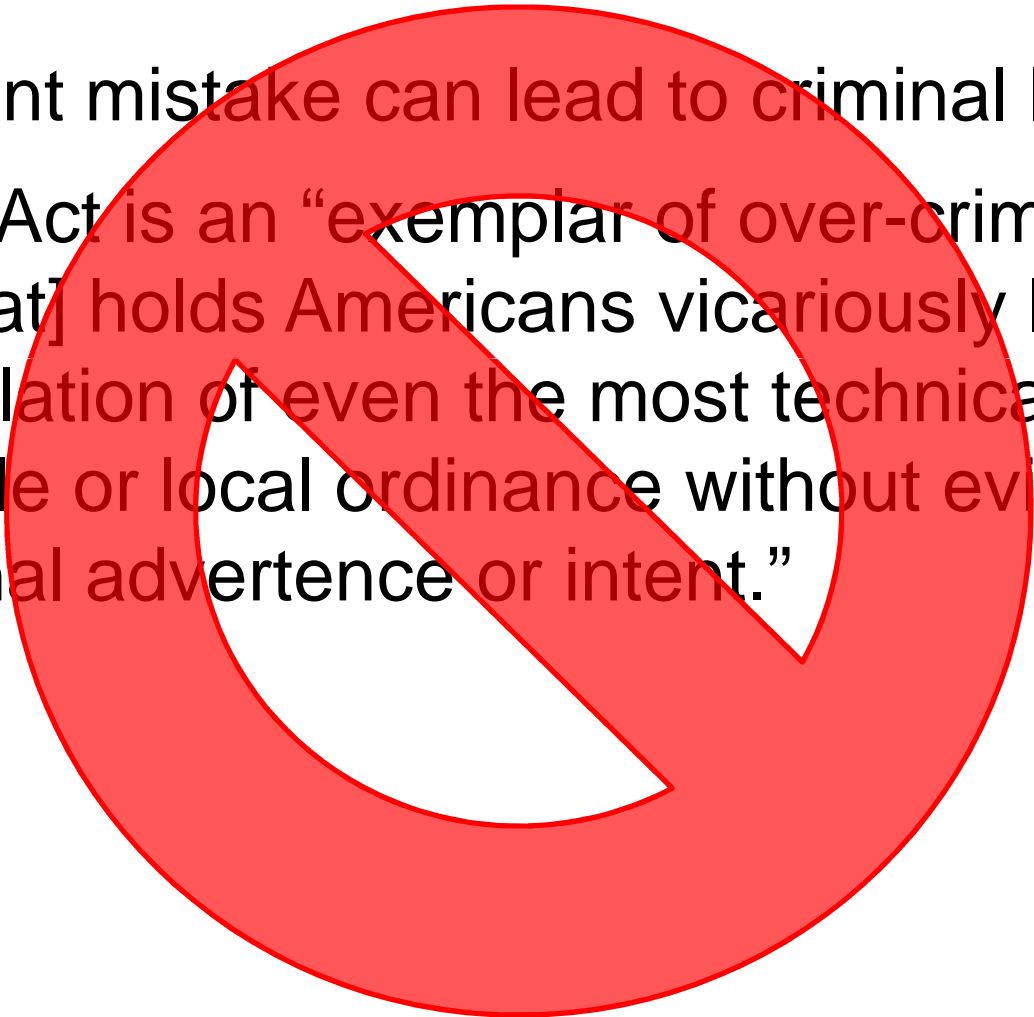
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Misconception – *Mens Rea*

- Innocent mistake can lead to criminal liability
- Lacey Act is an “exemplar of over-criminalization . . . [that] holds Americans vicariously liable for the violation of even the most technical foreign law, rule or local ordinance without evidence of personal advertence or intent.”

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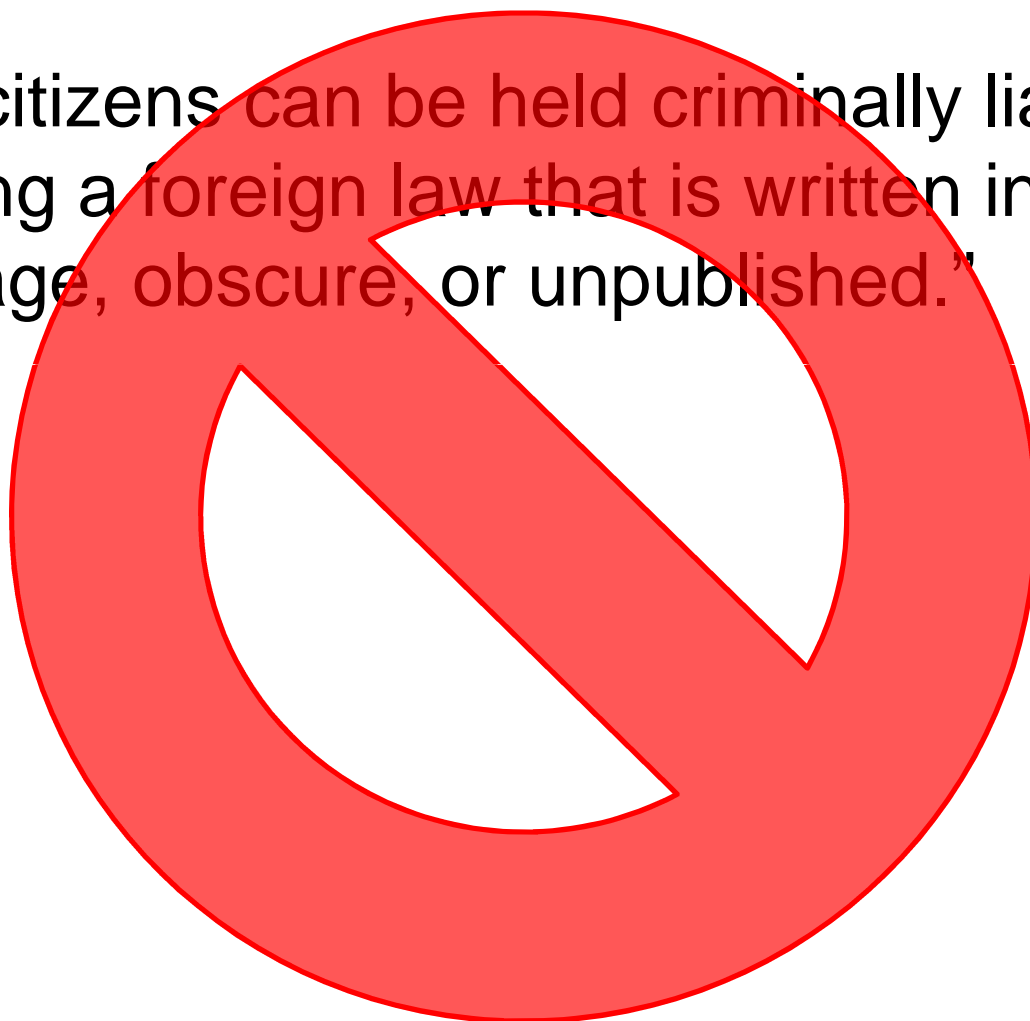
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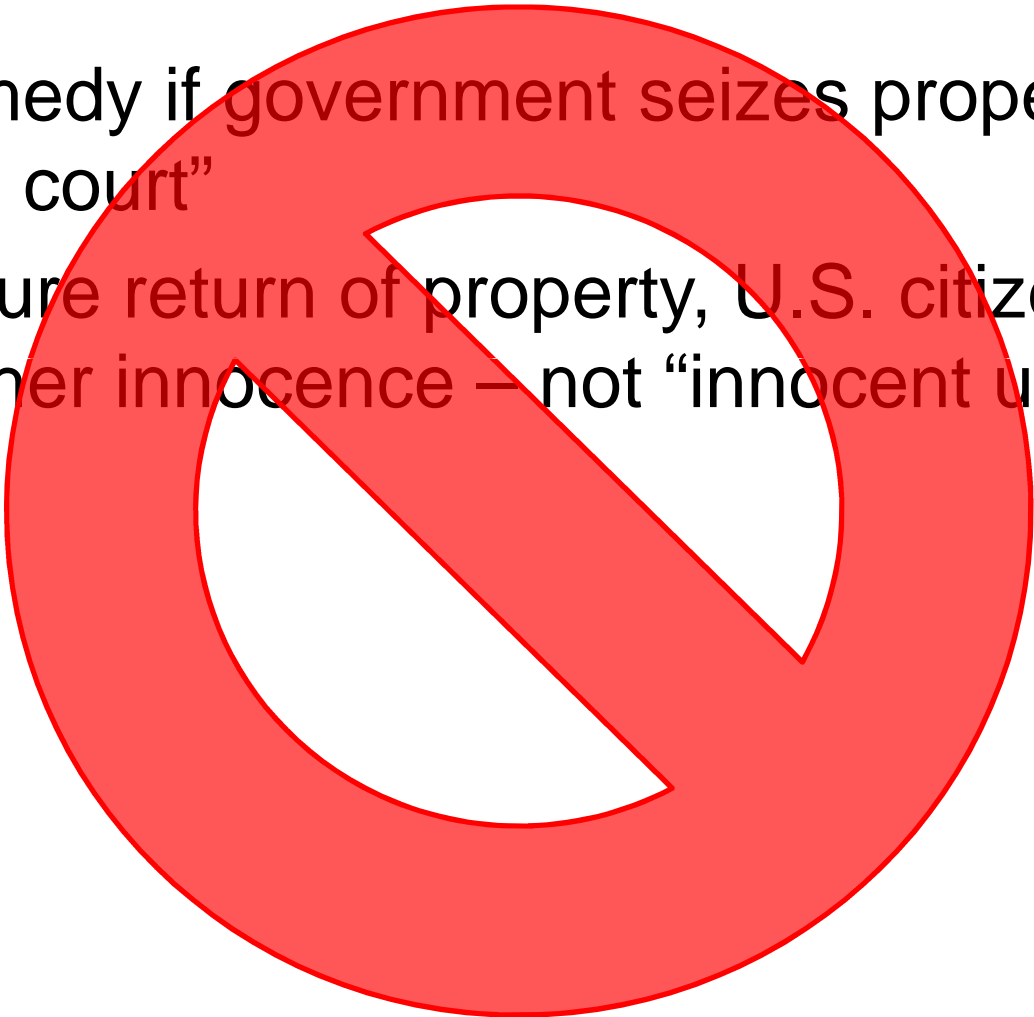
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- No remedy if government seizes property – no “day in court”
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Proposals to “Reform” Lacey Act

- Increase *mens rea* from “knowingly” to “willfully”
- Correct “unduly broad incorporation of foreign law,” perhaps by defining foreign law “triggers” or creating a database
- Clarify “due care” so Americans know what conduct is prohibited
- Apply “innocent owner” defense for Lacey Act forfeiture
- Exempt pre-2008 materials
- Making declarations “on demand”

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