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RE: Federal and State Penalties for Illegal Stocking of Fish (MASGP 08-007-02)

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Dear Philip,

Below is the summary of research regarding the question you posed to the National Sea Grant Law Center regarding federal and state penalties for illegal stocking of fish. The following information is intended as advisory research only and does not constitute legal representation of the American Fisheries Society, Wisconsin Sea Grant, or its constituents. It represents our interpretations of the relevant laws and cases.

To assist with the development of the AFS resolution, the Law Center searched on-line legal databases for state statutes that regulate fish stocking. Almost all states have some law or regulation that requires an individual to obtain a permit before releasing fish into state waters. Many state invasive species laws, for instance, prohibit the release of non-native species except pursuant to a state-issued permit. Many states also have similar laws covering native wildlife. A representative sampling of those laws is detailed below. I was only able to find concrete information on a few prosecutions.

First, a note about federal penalties in stocking cases. In general, states have the primary responsibility for regulating species introductions. The Lacey Act of 1900 supplements state and federal wildlife conservation statutes by regulating interstate and international shipment of wildlife. The act makes it a federal offense to possess or take fish or wildlife in violation of state laws or regulations.¹ "In order to violate the Lacey Act a person must do something to wildlife that has already been 'taken or

¹ 16 U.S.C. § 3372(a).

possessed' in violation of law."² Violators of the Lacey Act face a maximum punishment of a \$20,000 fine and/or 5 years in prison for each offense.³ This is in addition to any penalties properly assessed under state law.

California

In California it is unlawful to place live fish, whether taken from inside or outside the state, in state waters without first securing the permission of the Department of Fish and Game.⁴ Violations of this provision are punishable by a \$1,000 fine and six months in the county jail.⁵ However, if a person violates this provision through the use of an aquatic nuisance species the violation is punishable by not less than six months or more than a year in prison, a \$50,000 fine, or both and revocation of all licenses and permits.⁶ In addition, "any person or persons engaging in the introduction of triploid grass carp into any area, or in the transfer of triploid grass carp from one site to another, without a permit from the department" may be fined up to \$5,000 and sentenced to up to a year in prison, or both.⁷

Colorado

In October 2005, Dwight Babcock pleaded guilty in federal court to seven criminal counts of knowingly selling, transporting, and stocking wildlife illegally in New Mexico and Utah.⁸ Babcock was transporting and stocking fish from a hatchery that had tested positive for whirling disease in 1997, 1998, 1999, and 2002. In Colorado, hatcheries that stock fish must be certified as whirling disease-free. Since his hatchery did not have the proper certification, Babcock transported fish for stocking purposes in violation of Colorado law. He had also released fish in New Mexico and Utah in violation of those states' laws. The charges against Babcock were brought in federal court under the Lacey Act. Babcock was fined \$4,800 and placed on probation for three years. He was ordered to pay restitution in the amount of \$15,000 to the New Mexico Game and Fish Department and \$10,000 to Colorado State University. He was also banned from transporting wildlife in New Mexico for life. While the fine seems low for multiple violations, the restitution costs reflect the serious threat posed by the spread of diseased fish.

Indiana

Indiana prohibits the stocking of fish into waters containing state owned fish, waters of the state, and boundary waters of the state except pursuant to a permit issued by the Department of Natural Resources.⁹ Violations are considered Class C Misdemeanors punishable by 60 days in jail and a \$500 fine.¹⁰

² *U.S. v. Carpenter*, 933 F.2d 748 (9th Cir. 1991).

³ 16 U.S.C. 3373(d).

⁴ CAL. FISH & GAME CODE §6 400.

⁵ *Id.* § 12002.

⁶ *Id.* § 12023.

⁷ *Id.* § 6455 (e).

⁸ Information about this case was drawn from the court docket and *Fish from Private Hatchery Infected with Whirling Disease Stocked in Colorado Waters*, U.S. STATE NEWS (Oct. 6, 2005).

⁹ IND. CODE ANN. § 14-22-27-1.

¹⁰ *Id.* § 35-50-3-4.

Maine

In Maine it is illegal to “introduce, import or transport any live fish or gametes into the State or receive or have in that person’s possession fish or gametes so introduced, imported or transported without a valid permit.”¹¹ Violations are Class E crimes punishable by a fine of not less than \$1,000 or more than \$10,000.

In January 2005, Paul Zombik of Massachusetts was sentenced to six months incarceration and two years supervised release for three felony violations of the Lacey Act.¹² In addition to other violations, Zombik pleaded guilty to one count of knowingly selling large mouth bass to David Fitz of Cumberland, Maine for use in stocking a private pond in violation of the terms of Fitz’ validly issued stocking permit. Although Fitz was permitted to take bass from Maine waters for stocking purposes, Maine prohibits the purchase and sale of live large mouth bass that have not been legally imported. Zombik did not have a valid permit to import large mouth bass into Maine. Fitz pled guilty to one misdemeanor Lacey Act violation and was sentenced to pay fines totaling \$2,000.00 and ordered to pay restitution in the amount of \$1,500.00 to the Maine Department of Inland Fisheries and Wildlife and \$5,000.00 to the Maine Warden Service Resource Protection Unit.

In February 2007, Nicholas Palmer pleaded guilty to illegally stocking bass in three different ponds on his private property. He was fined \$1,000 and his fishing license was revoked for five years.¹³ Police discovered the illegally stocked ponds during a marijuana investigation. Surprisingly, despite the presence of 52 marijuana plants, Palmer was fined only \$250 on the drug charge.¹⁴ Maine, at least, seems to be taking illegal fish stocking seriously.

Tennessee

It is unlawful to release any class of wildlife in Tennessee except in accordance with the rules and regulations promulgated by the Tennessee Wildlife Resource Commission.¹⁵ All persons desiring to stock wildlife, including fish, in Tennessee must first obtain a permit from the Tennessee Wildlife Resource Agency.¹⁶ Depending on the type of activity involved and the species released, penalties can range from Class C misdemeanors (30 days imprisonment and/or \$50 fine) to Class A misdemeanors (11 months imprisonment and/or \$2,500).¹⁷

Wyoming

Wyoming prohibits the “release of any fish or fish eggs in any public waters of Wyoming without the consent and under the supervision of the [Department of Fish and Game].”¹⁸ Any person who has been

¹¹ MAINE REV. STAT. ANN. tit. 12 § 12509.

¹² Information about this case was drawn from The Federal Wildlife Officer, Volume 19, No. 1 (Winter 2004/2005) available at <http://www.fwoa.org/news/fwoanws38d.html>.

¹³ Otisfield Man Fined, License Revoked for Illegally Stocking Fish, U.S. STATE NEWS (Feb. 8, 2007).

¹⁴ In Maine: Fish-stocking penalty bigger than fine for pot, posted Feb. 9, 2007, available at <http://grinfish.blogspot.com/2007/02/in-maine-fish-stocking-penalty-bigger.html>.

¹⁵ TENN. CODE. ANN. § 40-4-412.

¹⁶ *Id.* § 70-2-212(a).

¹⁷ *Id.* § 40-35-111(e).

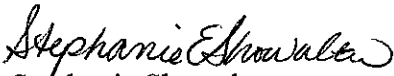
¹⁸ WYO. STAT. ANN. § 23-4-101.

convicted of or pleaded guilty to any offense under this act may be fined up to \$10,000 and/or sentenced to one year in prison when the offense is a high misdemeanor and fined up to \$1,000.00 and/or sentenced to six months when the offense is a low misdemeanor.¹⁹

In April 2008, Shannon Skeleton, owner of Colorado Fisheries, pleaded guilty to one count of unlawful transportation of illegally possessed wildlife in violation of the Lacey Act after stocking ponds at a Wyoming Ranch with rusty crayfish.²⁰ Rusty crayfish are not native to Wyoming. Skeleton was fined \$40,000 and ordered to pay \$60,000 in restitution to the Wyoming Game and Fish Department. The Department has already spent more than \$34,000 to eradicate the crayfish from the three ponds and a creek on the property. Skelton was further required to complete 90 days of house arrest and placed on 3 years of unsupervised probation.

I hope you find this information useful. Please let me know if you have any follow-up questions or need additional information. Thank you for utilizing the research services of the National Sea Grant Law Center.

Sincerely,



Stephanie Showalter

Director

¹⁹ *Id.* § 23-6-202.

²⁰ Information about this case was drawn from court documents and Rena Delbridge, *Firm Gets Fine for Illegal Stocking*, www.trib.com.