

OPENING THE BORDERS FOR JUSTICE

Celebrating its 120th year, the Lacey Act continues to bring poachers to justice even after they leave the state where a crime was committed

By Christina Schmidt

Wyoming's second state game warden, D.C. Nowlin, received some news on Dec. 1, 1906, he likely never expected. More than 1,000 miles away, two Wyoming residents, who had for years illegally plundered the elk herds of northwest Wyoming, sat in a jail cell in southern California. Nowlin and

his handful of deputy wardens had long tried to bring these two men to justice for their destructive, poaching exploits. Now, thanks to a federal law that had passed six years earlier, William Binkley and Charles Purdy would return to Wyoming to stand trial for their crimes.



A photograph of two game wardens discussing tusk hunting appeared in the 1907 Annual Report of the State Game Warden. (WGFD photo)

GAME WARDENS DISCUSSING TUSK-HUNTING CASES
AT POCATELLO, IDAHO

First of its kind

For years, Iowa Rep. John F. Lacey wrote and revised legislation to end the trafficking of poached wildlife. His efforts paid off when on April 30, 1900, the lawyer and Union Army veteran spoke on the United States Congressional House floor. He urged his colleagues to vote in favor of his twice-revised bill “Enlarging the Powers of the Department of Agriculture.”

Nicknamed the Bird Bill of 1900 for its intent to end the illegal trade in birds, it is now known as the Lacey Act and is recognized as our country’s first federal wildlife protection law.

The bill had three areas of focus:

- Allow the federal government to prohibit importation of damaging, non-native species.
- Allow the government to reintroduce species for restoration where needed.
- Create, for the first time, a law making it a federal crime to traffic poached wildlife across state lines.

It was this third objective that would have a big impact in Wyoming just a few years after the bill’s enactment, opening the door for runaway elk poachers to be charged in federal court.

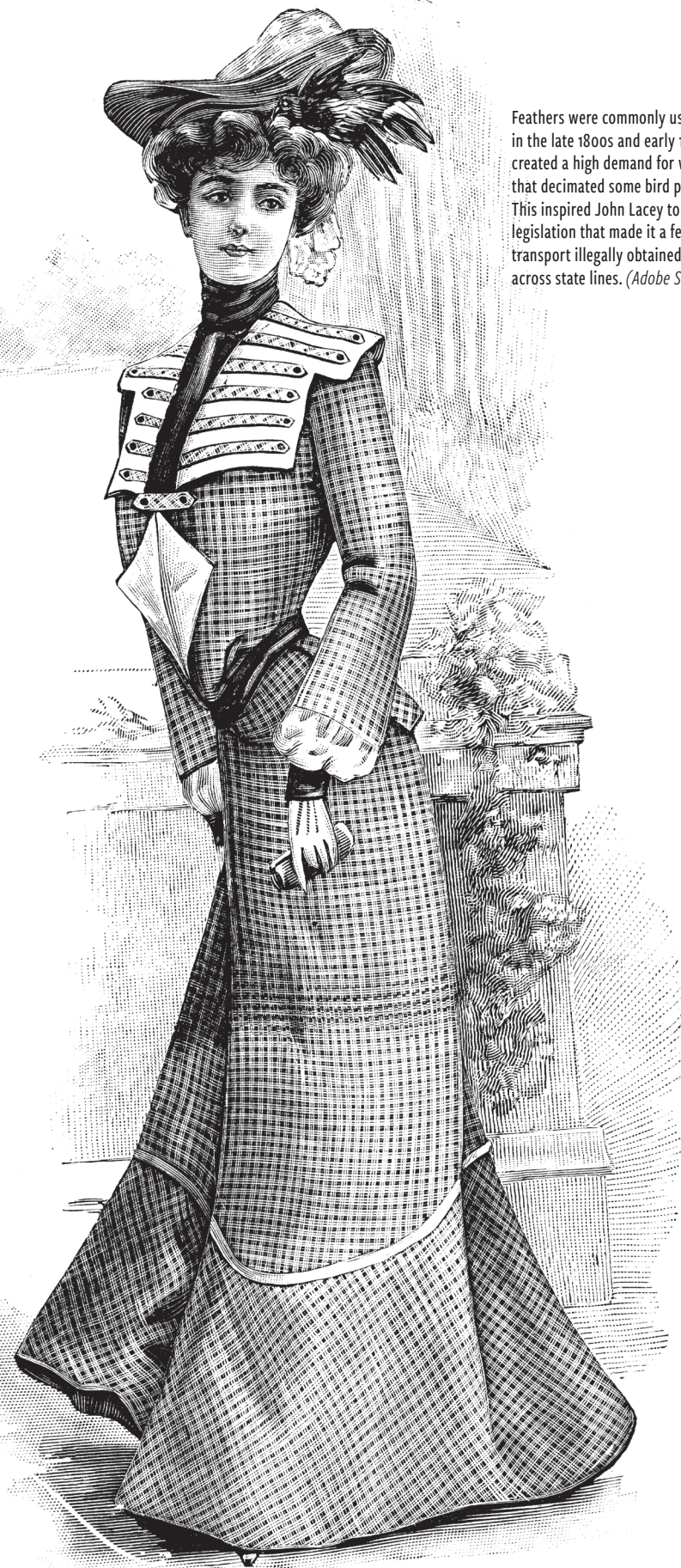
Prior to the Lacey Act, when a poacher committed a crime in one state then crossed into another, local game wardens had no recourse to pursue them because their law enforcement authority ended, as it does today, at the state line.

“Game wardens of the various states have long desired some legislation of this kind by which they can stop the nefarious traffic in birds and game killed in defiance of their state laws,” Lacey said to the Congressional House.

But state-rights advocates were concerned about federal overreach. Indiana Rep. J.M. Robinson questioned Lacey on this point, suggesting a new federal law would conflict with state jurisdiction.

“The authority of the National Government begins where the State authority ends,” Lacey responded, giving the example of animals killed illegally in Indiana then shipped out of state.

“When they are thus transported. ... the local game wardens, endeavoring to protect the birds of your State, find themselves powerless. ... Then the national law comes in ... and in



Feathers were commonly used in fashion in the late 1800s and early 1900s. This created a high demand for wild feathers that decimated some bird populations. This inspired John Lacey to write legislation that made it a federal crime to transport illegally obtained animal parts across state lines. (Adobe Stock Photo)



William Binkley (left) and Charles Purdy await their hearing outside a Fort Yellowstone post guardhouse. The men were charged for taking an elk illegally within the borders of Yellowstone National Park. (Original photo from Fort Yellowstone, records of U.S. Army Continental Commands, National Archives, Washington, D.C.)

this manner the State law is supplemented.”

Lacey’s crusade for wildlife came from a personal place. A lifelong bird lover, he was shocked at the destruction of bird populations by the fashion craze for feathers. Many species were close to extinction, and traffickers evaded the law by stealing birds in one state and making their profit in another.

“It is a pitiful thing to contemplate the slaughter of such a multitude of these beauties for the gratification of human vanity,” he said, noting that a single sale of bird parts in London two years earlier represented 500,000 dead birds. “By taking this course we will set an example to other countries and the good work of bird and game protection in America may serve as a model ... I hope to see it pass without a dissenting vote.”

In the end there were 27 dissenting votes, but 142 congressmen, including Indiana’s Robinson, voted “yea.” The bill then passed the Senate, and U.S. President William McKinley signed it into law on May 25, 1900.

The Lacey Act has undergone several revisions and expansions over the 120 years since its creation. Lacey went on to craft more conservation laws, including the influential Antiquities Act of 1906 which gives the president power to designate national monuments. President Theodore Roosevelt signed it into law on June 8, 1906. Four months later he selected Devil’s Tower in Wyoming as the first national monument.

Lacey served in Congress until 1907 and died in 1913.

Not long after

What was likely the first, and certainly the most publicized, Lacey Act prosecution in Wyoming was that of Binkley and Purdy in 1907. For several years, Nowlin lamented in his annual report his inability to bring them to justice.

“In the Jackson Hole section we have to

contend with a gang of half a dozen ‘tusk hunters,’ or men who kill elk for their tusks [teeth] and heads, whenever they deem it safe to do so. Some of them have suffered the full penalty of the law, but seem to persist in their lawlessness and this necessitates a constant patrol by wardens,” he wrote in 1905.

The gang he referred to consisted of at least four Jackson residents, Binkley, Purdy, Charles Isabel and Oscar Adams, a group that operated in northern Jackson Hole and within Yellowstone National Park.

As Nowlin went on to note in his report, “Every reputable citizen of that section deprecates this sort of vandalism, and many of them render active assistance in preventing it, or punishing the offenders, and I feel confident that we can eventually rid the country of this tusk hunting class.”

His observation was prescient. Within a year, Isabel and Adams were gone from the Jackson area, and Binkley and Purdy were in prison, thanks to Jackson Hole residents who



A photo of elk poached by tusk hunters appeared in the 1904 annual State Game Warden Report. The image was captured in October 1904 on the Buffalo Fork of the Snake River. (WGFD photo)

forced their exit and unknowingly set the stage for federal charges against them.

Authors Kenneth and Lenore Diem wrote a book about Jackson Hole history, “A Community of Scalawags, Renegades, Discharged Soldiers and Predestined Stinkers?” In that book, there was a detailed account that in late October 1906 a vigilante group of Jackson residents decided tusk hunters were no longer welcome in the community.

Three representatives from the group visited Binkley at his home, including William Seeböhm, who later became a Jackson game warden, and gave Binkley an ultimatum to leave. Jackson Hole resident and the “Father of the Elk” Stephen Nelson Leek later wrote, “So persuasive and final was this warning delivered that the tusk hunters only required half the allotted time [to get out of town].”

But the men did not leave empty-handed. On Oct. 28, Binkley’s wife Eva, Adams and two other men were seen traveling west over Teton Pass into Idaho with two wagons loaded with elk heads, antlers and household items. These items would reappear a month later in California, shipped from the rail station in St. Anthony, Idaho, on Nov. 2.

Purdy and Binkley were arrested for violating the Lacey Act when a Los Angeles game warden, searching a local taxidermist shop, uncovered dozens of elk heads, antlers, one antelope scalp and four bear hides that the

killing and shipping game from Wyoming in violation of state and federal laws. They pleaded guilty to one of the three counts against them, and received the maximum \$200 fine. Purdy was unable to pay his fine and remained in jail. Binkley paid his fine but was then re-arrested and he and Purdy were additionally charged with killing one elk within Yellowstone National Park in August 1906, a felony. They were transferred to the Fort Yellowstone Guardhouse in August 1907.

At their September trial for the poaching in Yellowstone, they were found guilty and sentenced to three months in prison and fined \$933 each. They remained in jail at Fort Yellowstone until Binkley escaped from a work detail Oct. 28. He was never recaptured, but was suspected of later stagecoach robberies in the area.

Purdy was brought from Fort Yellowstone to provide testimony against Isabel and Adams in federal court in Cheyenne in November 1907. They were indicted, however, they were never apprehended and charges against them were eventually dropped.

Purdy was released from jail in January 1908. He returned to the Jackson area where he lived in a cabin at Loon Lake, northwest of Jackson Lake, and made a living trapping. He reportedly carried out a quiet life and, over the years, earned back some respectability in the eyes of the law and local residents. He

pair had shipped to taxidermist A.G. Booth. Booth later testified that Binkley also brought 249 pairs of elk teeth to California, sewn into his children’s clothing to elude detection, but the teeth were never found.

The pair was tried in federal court in Pocatello, Idaho, in April 1907 for unlawfully



While serving his sentence at Fort Yellowstone post guardhouse, Charles Purdy was taken to U.S. District court in Cheyenne to testify against Oscar Adams and Charles Isabel, who were eventually indicted for illegally taking elk within Yellowstone National Park boundaries. A grand jury issued warrants for Adams and Isabel but were never apprehended. (Yellowstone Heritage and Research Center Archives)



William Binkley was identified as a ring leader for poaching crimes in the Jackson area. The gang was likely responsible for killing of hundreds bull elk in the area. (Photo by Yellowstone Heritage and Research Center Archives)

died in 1936.

“These men destroyed more elk and caused us more trouble and expense than all other offenders combined,” Nowlin wrote at the end of 1907. “Without the aid of the Law Department at Washington, we would have been powerless to deal with these men after they had escaped from Wyoming with their booty. By taking up these cases, the Federal Government has shown this class of game destroyers that escape from the state where their depredations were committed does not mean immunity, but in reality is painfully like ‘jumping from the frying-pan into the fire.’”

Still used today

Ending the tusk hunting operation in Jackson Hole involved the cooperation of multiple state game wardens and federal prosecutors, spanned three states and took months to work through federal courts. Today’s Lacey Act cases are often as complex.

“When we discover evidence of a wildlife crime that could potentially involve Lacey Act charges, we work with our partners at the U.S. Fish and Wildlife Service who will approach the U.S. Attorney’s Office to make

sure all of our goals line up,” according to an officer familiar with Lacey Act investigations. “It really takes a lot of work and is a full-time effort when we get into these types of cases, so a lot of thought and discussion goes into it.”

Most wildlife crimes in Wyoming are misdemeanors, while many Lacey Act violations are prosecuted as felonies, substantially increasing potential penalties for offenders.

“To meet a state wildlife Lacey Act violation, four elements of the law have to be met,” explained a U.S. Fish and Wildlife Service special agent who works Lacey Act cases. “A state wildlife law has to have been broken, the perpetrator had to knowingly and willfully violate the law, money was exchanged and the poached animal was transported across state lines.”

One of the largest Lacey Act cases in recent years is Operation 10-Sleep. The case involved members of the Richard Carter family who for years illegally transferred their landowner elk and antelope licenses to hunters from around the country for \$7,500 each. The case was made when an Oregon hunter, unaware of the illegality of the operation until he arrived on the Carter’s property, contacted Oregon law enforcement officers about his experience upon his return home. The resulting

investigation lasted more than two years, involved more than 60 state and federal wildlife officers, required interviews of more than 65 suspects in 13 states and consumed 3,500 hours put in by law enforcement officers. The effort resulted in one of the largest wildlife cases ever prosecuted in Wyoming. In 2012, most of the offenders pleaded guilty in federal court and more than \$300,000 in fines and restitution was assessed.

Charges also were brought against a Colorado company for violating of one of the Lacey Act’s other provisions — illegal importation of an invasive species. The company performed aquatic habitat work and fisheries management on a private ranch and unbeknownst to the ranch, illegally released the invasive rusty crayfish into ponds on the property from 2002-05 to serve as fish forage.

“Rusty crayfish have the potential to do a lot of damage,” said Game and Fish Casper Fisheries Supervisor Matt Hahn. “They can completely displace native crayfish species, they tend to alter habitat conditions by removing aquatic vegetation which influences macroinvertebrate production and they are a very poor forage for fish. They are aggressive and fight; they don’t flee.”

The company owner pleaded guilty in U.S. District Court in 2008 and was assessed \$100,000 in fines and restitution. Game and Fish immediately treated the ponds, but in 2012 rusty crayfish were found in the creek adjacent to the ponds, a tributary of the North Platte River. More treatment efforts were initiated, and monitoring efforts since then have not revealed additional crayfish.

“It is a very frustrating situation,” Hahn said. “There is a good reason why we have laws against people doing this.”

Even when Lacey Act charges are not pursued in a particular case, there can be federal cooperation in completing an investigation that takes place outside of Wyoming. Federal officers may provide valuable assistance in interviewing witnesses, serving search warrants, collecting evidence and otherwise building the case, even if it is eventually prosecuted through Wyoming rather than federal courts.

“We provide assistance with the thought that at the end, we’re going to review the case and decide if it is more appropriate to go through state or federal court,” said a special agent familiar with Lacey Act investigations. “We have federal priorities, but we assist state wildlife agencies when we can. In essence, we



The National Wildlife Property Repository northeast of Denver, Colorado, stores wildlife items forfeited or abandoned to the U.S. Fish and Wildlife Service. Many of these items go to the repository as a result of Lacey Act violations. (Photo by U.S. Fish and Wildlife Service)

regulate interstate and international wildlife commerce and focus our efforts on the more egregious crimes involving black market trade or purchase and sale of unlawfully taken wildlife.”

This cooperation is what Lacey envisioned as he repeatedly fought to get his bill passed 120 years ago. He recognized the need for the federal government to reinforce state authorities in their pursuit of poachers who profit from their theft of a state’s wildlife resource.

“As far as wildlife goes, Wyoming is a destination state. We have a wildlife resource no one else has,” said a Game and Fish wildlife officer. “But when people break our laws and then go home to another state with their illegally taken wildlife, we don’t have the authority to pursue prosecution and bring those individuals to justice, including bringing back to Wyoming the wildlife that was taken by illegal means. It takes federal assistance and partnerships to do that and there is a lot of work done by many people to make that happen. The volume of work federal agents and prosecutors handle is unbelievable so for them to choose to take on these cases, it is humbling. All of these people have decided Wyoming’s wildlife is a priority and when they decide to pursue it, it is a good day for our wildlife.”

— Christina Schmidt is the Game and Fish public information specialist in the Sheridan region. She is a regular contributor to Wyoming Wildlife.



Bear pelts are among the many wildlife parts stored at the National Wildlife Property Repository in Colorado. Items at the repository are stored and disposed of in accordance with the law. Many of the items are donated to educational facilities, nonprofit organizations and conservation agencies to aid in teaching about endangered species and other wildlife. (Photo by U.S. Fish and Wildlife Service)