

retary of the Interior or the Secretary of Commerce, as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970 (84 Stat. 2090); except that with respect to the provisions of this chapter which pertain to the importation or exportation of plants, the term also means the Secretary of Agriculture.

(i) The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Mariana Islands, American Samoa, and any other territory, commonwealth, or possession of the United States.

(j) TAKEN AND TAKING.—

(1) TAKEN.—The term “taken” means captured, killed, or collected and, with respect to a plant, also means harvested, cut, logged, or removed.

(2) TAKING.—The term “taking” means the act by which fish, wildlife, or plants are taken.

(k) The term “transport” means to move, convey, carry, or ship by any means, or to deliver or receive for the purpose of movement, conveyance, carriage, or shipment.

(Pub. L. 97-79, §2, Nov. 16, 1981, 95 Stat. 1073; Pub. L. 108-191, §2, Dec. 19, 2003, 117 Stat. 2871; Pub. L. 110-234, title VIII, §8204(a), May 22, 2008, 122 Stat. 1291; Pub. L. 110-246, §4(a), title VIII, §8204(a), June 18, 2008, 122 Stat. 1664, 2052.)

REFERENCES IN TEXT

This chapter, referred to in the provision preceding par. (a), and in par. (h), was in the original “this Act” and “the Act”, meaning Pub. L. 97-79, Nov. 16, 1981, 95 Stat. 1073, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Endangered Species Act of 1973, referred to in subsec. (f)(3)(B), is Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

Reorganization Plan No. 4 of 1970 (84 Stat. 2090), referred to in par. (h), is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (f). Pub. L. 110-246, §8204(a)(1), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “The terms ‘plant’ and ‘plants’ mean any wild member of the plant kingdom, including roots, seeds, and other parts thereof (but excluding common food crops and cultivars) which is indigenous to any State and which is either (A) listed on an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, or (B) listed pursuant to any State law that provides for the conservation of species threatened with extinction.”

Subsec. (h). Pub. L. 110-246, §8204(a)(2), substituted “plants, the term also means” for “plants the term means”.

Subsec. (j). Pub. L. 110-246, §8204(a)(3), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: “The term ‘taken’ means captured, killed, or collected.”

2003—Subsecs. (g) to (k). Pub. L. 108-191 added subsec. (g) and redesignated former subsecs. (g) to (j) as (h) to (k), respectively.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108-191, §1, Dec. 19, 2003, 117 Stat. 2871, provided that: “This Act [amending this section and section 3372 of this title and enacting provisions set out as a note under section 3372 of this title] may be cited as the ‘Captive Wildlife Safety Act.’”

SHORT TITLE

Pub. L. 97-79, §1, Nov. 16, 1981, 95 Stat. 1073, provided: “That this Act [enacting this chapter, amending section 1540 of this title and section 42 of Title 18, Crimes and Criminal Procedure, repealing sections 667e and 851 to 856 of this title and sections 43, 44, 3054, and 3112 of Title 18, and enacting provisions set out as a note under section 1540 of this title] may be cited as the ‘Lacey Act Amendments of 1981.’”

§ 3372. Prohibited acts

(a) Offenses other than marking offenses

It is unlawful for any person—

(1) to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law;

(2) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce—

(A) any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law;

(B) any plant—

(i) taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—

(I) the theft of plants;

(II) the taking of plants from a park, forest reserve, or other officially protected area;

(III) the taking of plants from an officially designated area; or

(IV) the taking of plants without, or contrary to, required authorization;

(ii) taken, possessed, transported, or sold 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

(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants; or

(C) any prohibited wildlife species (subject to subsection (e));

(3) within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18)—

(A) to possess any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in

violation of any foreign law or Indian tribal law, or

(B) to possess any plant—

(i) taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—

(I) the theft of plants;

(II) the taking of plants from a park, forest reserve, or other officially protected area;

(III) the taking of plants from an officially designated area; or

(IV) the taking of plants without, or contrary to, required authorization;

(ii) taken, possessed, transported, or sold 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

(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants; or

(4) to attempt to commit any act described in paragraphs (1) through (3).

(b) Marking offenses

It is unlawful for any person to import, export, or transport in interstate commerce any container or package containing any fish or wildlife unless the container or package has previously been plainly marked, labeled, or tagged in accordance with the regulations issued pursuant to paragraph (2) of section 3376(a) of this title.

(c) Sale and purchase of guiding and outfitting services and invalid licenses and permits

(1) Sale

It is deemed to be a sale of fish or wildlife in violation of this chapter for a person for money or other consideration to offer or provide—

(A) guiding, outfitting, or other services; or

(B) a hunting or fishing license or permit;

for the illegal taking, acquiring, receiving, transporting, or possessing of fish or wildlife.

(2) Purchase

It is deemed to be a purchase of fish or wildlife in violation of this chapter for a person to obtain for money or other consideration—

(A) guiding, outfitting, or other services; or

(B) a hunting or fishing license or permit;

for the illegal taking, acquiring, receiving, transporting, or possessing of fish or wildlife.

(d) False labeling offenses

It is unlawful for any person to make or submit any false record, account, or label for, or any false identification of, any fish, wildlife, or plant which has been, or is intended to be—

(1) imported, exported, transported, sold, purchased, or received from any foreign country; or

(2) transported in interstate or foreign commerce.

(e) Nonapplicability of prohibited wildlife species offense

(1) In general

Subsection (a)(2)(C) does not apply to importation, exportation, transportation, sale, receipt, acquisition, or purchase of an animal of a prohibited wildlife species, by a person that, under regulations prescribed under paragraph (3), is described in paragraph (2) with respect to that species.

(2) Persons described

A person is described in this paragraph, if the person—

(A) is licensed or registered, and inspected, by the Animal and Plant Health Inspection Service or any other Federal agency with respect to that species;

(B) is a State college, university, or agency, State-licensed wildlife rehabilitator, or State-licensed veterinarian;

(C) is an accredited wildlife sanctuary that cares for prohibited wildlife species and—

(i) is a corporation that is exempt from taxation under section 501(a) of title 26 and described in sections 501(c)(3) and 170(b)(1)(A)(vi) of such title;

(ii) does not commercially trade in animals listed in section 3371(g) of this title, including offspring, parts, and byproducts of such animals;

(iii) does not propagate animals listed in section 3371(g) of this title; and

(iv) does not allow direct contact between the public and animals; or

(D) has custody of the animal solely for the purpose of expeditiously transporting the animal to a person described in this paragraph with respect to the species.

(3) Regulations

Not later than 180 days after December 19, 2003, the Secretary, in cooperation with the Director of the Animal and Plant Health Inspection Service, shall promulgate regulations describing the persons described in paragraph (2).

(4) State authority

Nothing in this subsection preempts or supersedes the authority of a State to regulate wildlife species within that State.

(5) Authorization of appropriations

There is authorized to be appropriated to carry out subsection (a)(2)(C) \$3,000,000 for each of fiscal years 2004 through 2008.

(f) Plant declarations

(1) Import declaration

Effective 180 days from the date of enactment of this subsection, and except as provided in paragraph (3), it shall be unlawful for any person to import any plant unless the person files upon importation a declaration that contains—

(A) the scientific name of any plant (including the genus and species of the plant) contained in the importation;

(B) a description of—

(i) the value of the importation; and

(ii) the quantity, including the unit of measure, of the plant; and

(C) the name of the country from which the plant was taken.

(2) Declaration relating to plant products

Until the date on which the Secretary promulgates a regulation under paragraph (6), a declaration relating to a plant product shall—

(A) in the case in which the species of plant used to produce the plant product that is the subject of the importation varies, and the species used to produce the plant product is unknown, contain the name of each species of plant that may have been used to produce the plant product;

(B) in the case in which the species of plant used to produce the plant product that is the subject of the importation is commonly taken from more than one country, and the country from which the plant was taken and used to produce the plant product is unknown, contain the name of each country from which the plant may have been taken; and

(C) in the case in which a paper or paper-board plant product includes recycled plant product, contain the average percent recycled content without regard for the species or country of origin of the recycled plant product, in addition to the information for the non-recycled plant content otherwise required by this subsection.

(3) Exclusions

Paragraphs (1) and (2) shall not apply to plants used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported.

(4) Review

Not later than two years after the date of enactment of this subsection, the Secretary shall review the implementation of each requirement imposed by paragraphs (1) and (2) and the effect of the exclusion provided by paragraph (3). In conducting the review, the Secretary shall provide public notice and an opportunity for comment.

(5) Report

Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary shall submit to the appropriate committees of Congress a report containing—

(A) an evaluation of—

(i) the effectiveness of each type of information required under paragraphs (1) and (2) in assisting enforcement of this section; and

(ii) the potential to harmonize each requirement imposed by paragraphs (1) and (2) with other applicable import regulations in existence as of the date of the report;

(B) recommendations for such legislation as the Secretary determines to be appropriate to assist in the identification of plants that are imported into the United States in violation of this section; and

(C) an analysis of the effect of subsection (a) and this subsection on—

(i) the cost of legal plant imports; and

(ii) the extent and methodology of illegal logging practices and trafficking.

(6) Promulgation of regulations

Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary may promulgate regulations—

(A) to limit the applicability of any requirement imposed by paragraph (2) to specific plant products;

(B) to make any other necessary modification to any requirement imposed by paragraph (2), as determined by the Secretary based on the review; and

(C) to limit the scope of the exclusion provided by paragraph (3), if the limitations in scope are warranted as a result of the review.

(Pub. L. 97-79, §3, Nov. 16, 1981, 95 Stat. 1074; Pub. L. 100-653, title I, §101, Nov. 14, 1988, 102 Stat. 3825; Pub. L. 108-191, §3(a), Dec. 19, 2003, 117 Stat. 2871; Pub. L. 110-234, title VIII, §8204(b), May 22, 2008, 122 Stat. 1292; Pub. L. 110-246, §4(a), title VIII, §8204(b), June 18, 2008, 122 Stat. 1664, 2053.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this Act”, meaning Pub. L. 97-79, Nov. 16, 1981, 95 Stat. 1073, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3371 of this title and Tables.

The date of enactment of this subsection, referred to in subsec. (f)(1), (4), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (a)(2)(B). Pub. L. 110-246, §8204(b)(1)(A), added subpar. (B) and struck out former subpar. (B) which read as follows: “any plant taken, possessed, transported, or sold in violation of any law or regulation of any State; or”.

Subsec. (a)(3)(B). Pub. L. 110-246, §8204(b)(1)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: “to possess any plant taken, possessed, transported, or sold in violation of any law or regulation of any State; or”.

Subsec. (f). Pub. L. 110-246, §8204(b)(2), added subsec. (f).

2003—Subsec. (a)(2)(C). Pub. L. 108-191, §3(a)(1)(A), added subpar. (C).

Subsec. (a)(3)(B). Pub. L. 108-191, §3(a)(1)(B), inserted “or” after semicolon at end.

Subsec. (a)(4). Pub. L. 108-191, §3(a)(1)(C), substituted “paragraphs (1) through (3)” for “paragraphs (1) through (4)”.

Subsec. (e). Pub. L. 108-191, §3(a)(2), added subsec. (e). 1988—Subsec. (a)(1). Pub. L. 100-653, §101(1), substituted “taken, possessed, transported, or sold” for “taken or possessed”.

Subsec. (a)(4), (5). Pub. L. 100-653, §101(2), redesignated par. (5) as (4) and struck out former par. (4), which made it unlawful for any person having imported, exported, transported, sold, purchased, or re-

ceived any fish or wildlife or plant imported from any foreign country or transported in interstate or foreign commerce, to make or submit any false record, account, label, or identification thereof.

Subsecs. (c), (d), Pub. L. 100-653, §101(3), added subsecs. (c) and (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-191, §3(b), Dec. 19, 2003, 117 Stat. 2872, provided that: "Section 3(a)(2)(C) of the Lacey Act Amendments of 1981 [16 U.S.C. 3372(a)(2)(C)] (as added by subsection (a)(1)(A)(iii)) shall apply beginning on the effective date of regulations promulgated under section 3(e)(3) of that Act [16 U.S.C. 3372(e)(3)] (as added by subsection (a)(2)) [Sept. 17, 2007, see 72 F.R. 45938]."

§ 3373. Penalties and sanctions

(a) Civil penalties

(1) Any person who engages in conduct prohibited by any provision of this chapter (other than subsections (b), (d), and (f) of section 3372 of this title) and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty, or regulation, and any person who knowingly violates subsection (d) or (f) of section 3372 of this title, may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation: *Provided*, That when the violation involves fish or wildlife or plants with a market value of less than \$350, and involves only the transportation, acquisition, or receipt of fish or wildlife or plants taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty assessed shall not exceed the maximum provided for violation of said law, treaty, or regulation, or \$10,000, whichever is less.

(2) Any person who violates subsection (b) or (f) of section 3372 of this title, except as provided in paragraph (1), may be assessed a civil penalty by the Secretary of not more than \$250.

(3) For purposes of paragraphs (1) and (2), any reference to a provision of this chapter or to a section of this chapter shall be treated as including any regulation issued to carry out any such provision or section.

(4) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which a person may have taken or been in possession of the said fish or wildlife or plants.

(5) Any civil penalty assessed under this subsection may be remitted or mitigated by the Secretary.

(6) In determining the amount of any penalty assessed pursuant to paragraphs (1) and (2), the

Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited act committed, and with respect to the violator, the degree of culpability, ability to pay, and such other matters as justice may require.

(b) Hearings

Hearings held during proceedings for the assessment of civil penalties shall be conducted in accordance with section 554 of title 5. The administrative law judge may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Review of civil penalty

Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate District Court of the United States by filing a complaint in such court within 30 days after the date of such order and by simultaneously serving a copy of the complaint by certified mail on the Secretary, the Attorney General, and the appropriate United States attorney. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty de novo.

(d) Criminal penalties

(1) Any person who—

(A) knowingly imports or exports any fish or wildlife or plants in violation of any provision of this chapter (other than subsections (b), (d), and (f) of section 3372 of this title), or

(B) violates any provision of this chapter (other than subsections (b), (d), and (f) of section 3372 of this title) by knowingly engaging in conduct that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants with a market value in excess of \$350,