

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.)

Editorial Notes

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 L. 110-234 were repealed by section 4(a) of Pub.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 received 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).

Statutory Notes and Related Subsidiaries

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,

knowing 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, shall be fined not more than \$20,000, or imprisoned for not more than five years, or both. 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 the defendant may have taken or been in possession of the said fish or wildlife or plants.

(2) Any person who knowingly 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 shall be

fined not more than \$10,000, or imprisoned for not more than one year, or both. 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 the defendant may have taken or been in possession of the said fish or wildlife or plants.

(3) Any person who knowingly violates subsection (d) or (f) of section 3372 of this title—

(A) shall be fined under title 18 or imprisoned for not more than 5 years, or both, if the offense involves—

(i) the importation or exportation of fish or wildlife or plants; or

(ii) the sale or purchase, offer of sale or purchase, or commission of an act with intent to sell or purchase fish or wildlife or plants with a market value greater than \$350; and

(B) shall be fined under title 18 or imprisoned for not more than 1 year, or both, if the offense does not involve conduct described in subparagraph (A).

(e) Permit sanctions

The Secretary may also suspend, modify, or cancel any Federal hunting or fishing license, permit, or stamp, or any license or permit authorizing a person to import or export fish or wildlife or plants (other than a permit or license issued pursuant to the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.], or to operate a quarantine station or rescue center for imported wildlife or plants, issued to any person who is convicted of a criminal violation of any provision of this chapter or any regulation issued hereunder. The Secretary shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any licenses, permits, stamps, or other agreements pursuant to this section.

(Pub. L. 97-79, §4, Nov. 16, 1981, 95 Stat. 1074; Pub. L. 100-653, title I, §§102, 103, Nov. 14, 1988, 102 Stat. 3825, 3826; Pub. L. 110-234, title VII, §8204(c), (f), May 22, 2008, 122 Stat. 1294; Pub. L. 110-246, §4(a), title VIII, §8204(c), (f), June 18, 2008, 122 Stat. 1664, 2055, 2056.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (3), (d)(1), (2), and (e), 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 Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (e), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

CODIFICATION

“Magnuson-Stevens Fishery Conservation and Management Act” substituted for “Fishery Conservation and Management Act of 1976” in subsec. (e), on authority of Pub. L. 96-561, title II, §238(b), Dec. 22, 1980, 94

Stat. 3300, which provided that all references to the Fishery Conservation and Management Act of 1976 be redesignated as references to the Magnuson Fishery Conservation and Management Act and Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, which provided that all references to the Magnuson Fishery Conservation and Management Act be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.

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)(1). Pub. L. 110-246, §8204(f), made technical corrections to directory language of Pub. L. 100-653, §102(c). See 1988 Amendment note below.

Pub. L. 110-246, §8204(c)(1), (2), substituted “subsections (b), (d), and (f) of section 3372” for “subsections (b) and (d) of section 3372” and “subsection (d) or (f) of section 3372” for “section 3372(d)”.

Subsec. (a)(2). Pub. L. 110-246, §8204(c)(3), substituted “subsection (b) or (f) of section 3372 of this title, except as provided in paragraph (1),” for “subsection 3372(b)”.

Subsec. (d)(1), (2). Pub. L. 110-246, §8204(f), made technical corrections to directory language of Pub. L. 100-653, §102(c). See 1988 Amendment note below.

Pub. L. 110-246, §8204(c)(1), substituted “subsections (b), (d), and (f) of section 3372” for “subsections (b) and (d) of section 3372” in pars. (1)(A), (B), and (2).

Subsec. (d)(3). Pub. L. 110-246, §8204(c)(2), substituted “subsection (d) or (f) of section 3372” for “section 3372(d)” in introductory provisions.

1988—Subsec. (a)(1). Pub. L. 100-653, §102(c), as amended by Pub. L. 110-246, §8204(f), substituted “(other than subsections (b) and (d) of section 3372 of this title)” for “(other than subsection 3372(b) of this title)”.

Pub. L. 100-653, §102(a), inserted “and any person who knowingly violates section 3372(d) of this title,” after “any underlying law, treaty, or regulation.”

Subsec. (c). Pub. L. 100-653, §103, amended first sentence generally. Prior to amendment, first sentence read as follows: “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 notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary.”

Subsec. (d)(1), (2). Pub. L. 100-653, §102(c), as amended by Pub. L. 110-246, §8204(f), substituted “(other than subsections (b) and (d) of section 3372 of this title)” for “(other than subsection 3372(b) of this title)” in pars. (1)(A), (B), and (2).

Subsec. (d)(3). Pub. L. 100-653, §102(b), added par. (3).

Statutory Notes and Related Subsidiaries

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, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110-234, title VIII, §8204(f), May 22, 2008, 122 Stat. 1294, and Pub. L. 110-246, §4(a), title VIII, §8204(f), June 18, 2008, 122 Stat. 1664, 2056, provided that the amendment made by section 8204(f) is effective Nov. 14, 1988, and as if included in the enactment of section 102(c) of Pub. L. 100-653.

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry in-

spection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 3374. Forfeiture

(a) In general

(1) All fish or wildlife or plants imported, exported, transported, sold, received, acquired, or purchased contrary to the provisions of section 3372 of this title (other than section 3372(b) of this title), or any regulation issued pursuant thereto, shall be subject to forfeiture to the United States notwithstanding any culpability requirements for civil penalty assessment or criminal prosecution included in section 3373 of this title.

(2) All vessels, vehicles, aircraft, and other equipment used to aid in the importing, exporting, transporting, selling, receiving, acquiring, or purchasing of fish or wildlife or plants in a criminal violation of this chapter for which a felony conviction is obtained shall be subject to forfeiture to the United States if (A) the owner of such vessel, vehicle, aircraft, or equipment was at the time of the alleged illegal act a consenting party or privy thereto or in the exercise of due care should have known that such vessel, vehicle, aircraft, or equipment would be used in a criminal violation of this chapter, and (B) the violation involved the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants.

(b) Application of customs laws

All provisions of law relating to the seizure, forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter, except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department may, for the purposes of this chapter, also be exercised or performed by the Secretary or by such persons as he may designate: *Provided*, That any warrant for search or seizure shall be issued in accordance with rule 41 of the Federal Rules of Criminal Procedure.

(c) Storage cost

Any person convicted of an offense, or assessed a civil penalty, under section 3373 of this title shall be liable for the costs incurred in the storage, care, and maintenance of any fish or wildlife or plant seized in connection with the violation concerned.

(d) Civil forfeitures

Civil forfeitures under this section shall be governed by the provisions of chapter 46 of title 18.

(Pub. L. 97-79, §5, Nov. 16, 1981, 95 Stat. 1076; Pub. L. 110-234, title VIII, §8204(d), May 22, 2008, 122 Stat. 1294; Pub. L. 110-246, §4(a), title VIII, §8204(d), June 18, 2008, 122 Stat. 1664, 2056.)