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Title 16 - CONSERVATION

CHAPTER 53 - CONTROL OF ILLEGALLY TAKEN FISH AND WILDLIFE

From the U.S. Government Publishing Office, www.gpo.gov**CHAPTER 53—CONTROL OF ILLEGALLY TAKEN FISH AND WILDLIFE**

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§3371. Definitions

For the purposes of this chapter:

(a) The term "fish or wildlife" means any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring thereof.

(b) The term "import" means to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(c) The term "Indian tribal law" means any regulation of, or other rule of conduct enforceable by, any Indian tribe, band, or group but only to the extent that the regulation or rule applies within Indian country as defined in section 1151 of title 18.

(d) The terms "law," "treaty," "regulation," and "Indian tribal law" mean laws, treaties, regulations or Indian tribal laws which regulate the taking, possession, importation, exportation, transportation, or sale of fish or wildlife or plants.

(e) The term "person" includes any individual, partnership, association, corporation, trust, or any officer, employee, agent, department, or instrumentality of the Federal Government or of any State or political subdivision thereof, or any other entity subject to the jurisdiction of the United States.

(f) PLANT.—

(1) IN GENERAL.—The terms "plant" and "plants" mean any wild member of the plant kingdom, including roots, seeds, parts, or products thereof, and including trees from either natural or planted forest stands.

(2) EXCLUSIONS.—The terms "plant" and "plants" exclude—

(A) common cultivars, except trees, and common food crops (including roots, seeds, parts, or products thereof);

(B) a scientific specimen of plant genetic material (including roots, seeds, germplasm, parts, or products thereof) that is to be used only for laboratory or field research; and

(C) any plant that is to remain planted or to be planted or replanted.

(3) EXCEPTIONS TO APPLICATION OF EXCLUSIONS.—The exclusions made by subparagraphs (B) and (C) of paragraph (2) do not apply if the plant is listed—

(A) in an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);

(B) as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or

(C) pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

(g) **PROHIBITED WILDLIFE SPECIES.**—The term "prohibited wildlife species" means any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of such species.

(h) The term "Secretary" means, except as otherwise provided in this chapter, the Secretary 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 paperboard 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 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).

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

subpena 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.)

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).

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 inspection 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.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2) and (b), 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.

Rule 41 of the Federal Rules of Criminal Procedure, referred to in subsec. (b), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

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. (d). Pub. L. 110–246, §8204(d), added subsec. (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.

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection 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.

§3375. Enforcement

(a) In general

The provisions of this chapter and any regulations issued pursuant thereto shall be enforced by the Secretary, the Secretary of Transportation, or the Secretary of the Treasury. Such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency or Indian tribe for purposes of enforcing this chapter.

(b) Powers

Any person authorized under subsection (a) to enforce this chapter may carry firearms; may, when enforcing this chapter, make an arrest without a warrant, in accordance with any guidelines which may be issued by the Attorney General, for any offense under the laws of the United States committed in the person's presence, or for the commission of any felony under the laws of the United States, if the person has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; may search and seize, with or without a warrant, in accordance with any guidelines which may be issued by the Attorney General; ¹ *Provided*, That an arrest for a felony violation of this chapter that is not committed in the presence or view of any such person and that involves only the transportation, acquisition, receipt, purchase, or sale of fish or wildlife or plants taken or possessed in violation of any law or regulation of any State shall require a warrant; may make an arrest without a warrant for a misdemeanor violation of this chapter if he has reasonable grounds to believe that the person to be arrested is committing a violation in his presence or view; and may execute and serve any subpoena, arrest warrant, search warrant issued in accordance with rule 41 of the Federal Rules of Criminal Procedure, or other warrant of civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this chapter. Any person so authorized, in coordination with the Secretary of the Treasury, may detain for inspection and inspect any vessel, vehicle, aircraft, or other conveyance or any package, crate, or other container, including its contents, upon the arrival of such conveyance or container in the United States or the

customs waters of the United States from any point outside the United States or such customs waters, or, if such conveyance or container is being used for exportation purposes, prior to departure from the United States or the customs waters of the United States. Such person may also inspect and demand the production of any documents and permits required by the country of natal origin, birth, or reexport of the fish or wildlife. Any fish, wildlife, plant, property, or item seized shall be held by any person authorized by the Secretary pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, plants, property, or item pursuant to section 3374 of this title; except that the Secretary may, in lieu of holding such fish, wildlife, plant, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(c) Jurisdiction of district courts

The several district courts of the United States, including the courts enumerated in section 460 of title 28, shall have jurisdiction over any actions arising under this chapter. The venue provisions of title 18 and title 28 shall apply to any actions arising under this chapter. The judges of the district courts of the United States and the United States magistrate judges may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and any regulations issued thereunder.

(d) Rewards and certain incidental expenses

Beginning in fiscal year 1983, the Secretary or the Secretary of the Treasury shall pay, from sums received as penalties, fines, or forfeitures of property for any violation of this chapter or any regulation issued hereunder (1) a reward to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this chapter or any regulation issued hereunder, and (2) the reasonable and necessary costs incurred by any person in providing temporary care for any fish, wildlife, or plant pending the disposition of any civil or criminal proceeding alleging a violation of this chapter with respect to that fish, wildlife, or plant. The amount of the reward, if any, is to be designated by the Secretary or the Secretary of the Treasury, as appropriate. Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of his official duties is ineligible for payment under this subsection.

(Pub. L. 97–79, §6, Nov. 16, 1981, 95 Stat. 1077; Pub. L. 98–327, §4, June 25, 1984, 98 Stat. 271; Pub. L. 100–653, title I, §104, Nov. 14, 1988, 102 Stat. 3826; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

REFERENCES IN TEXT

This chapter, referred to in text, 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.

Rule 41 of the Federal Rules of Criminal Procedure, referred to in subsec. (b), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–653 substituted "may, when enforcing this chapter, make an arrest without a warrant, in accordance with any guidelines which may be issued by the Attorney General, for any offense under the laws of the United States committed in the person's presence, or for the commission of any felony under the laws of the United States, if the person has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; may search and seize, with or without a warrant, in accordance with any guidelines which may be issued by the Attorney General;" for "may make an arrest without a warrant for any felony violation of this chapter if he has reasonable grounds to believe that the person to be arrested has committed or is committing such violation:".

1984—Subsec. (d). Pub. L. 98–327, in first sentence, substituted a comma for "a reward" after "shall pay", inserted "(1) a reward" before "to any person", and added cl. (2).

CHANGE OF NAME

"United States magistrate judges" substituted for "United States magistrates" in subsec. (c) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial

Procedure.

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection 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.

¹ So in original. The semicolon probably should be a colon.

§3376. Administration

(a) Regulations

(1) The Secretary, after consultation with the Secretary of the Treasury, is authorized to issue such regulations, except as provided in paragraph (2), as may be necessary to carry out the provisions of sections 3372(f), 3373, and 3374 of this title.

(2) The Secretaries of the Interior and Commerce shall jointly promulgate specific regulations to implement the provisions of section 3372(b) of this title for the marking and labeling of containers or packages containing fish or wildlife. These regulations shall be in accordance with existing commercial practices.

(b) Contract authority

Beginning in fiscal year 1983, to the extent and in the amounts provided in advance in appropriations Acts, the Secretary may enter into such contracts, leases, cooperative agreements, or other transactions with any Federal or State agency, Indian tribe, public or private institution, or other person, as may be necessary to carry out the purposes of this chapter.

(c) Clarification of exclusions from definition of plant

The Secretary of Agriculture and the Secretary of the Interior, after consultation with the appropriate agencies, shall jointly promulgate regulations to define the terms used in section 3371(f)(2)(A) of this title for the purposes of enforcement under this chapter.

(Pub. L. 97–79, §7, Nov. 16, 1981, 95 Stat. 1078; Pub. L. 110–234, title VIII, §8204(e), May 22, 2008, 122 Stat. 1294; Pub. L. 110–246, §4(a), title VIII, §8204(e), June 18, 2008, 122 Stat. 1664, 2056.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (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.

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)(1). Pub. L. 110–246, §8204(e)(1), substituted "sections 3372(f), 3373, and 3374" for "section 3373 and section 3374".

Subsec. (c). Pub. L. 110–246, §8204(e)(2), added subsec. (c).

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.

TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection 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.

§3377. Exceptions

(a) Activities regulated by plan under Magnuson-Stevens Fishery Conservation and Management Act

The provisions of paragraph (1) of section 3372(a) of this title shall not apply to any activity regulated by a fishery management plan in effect under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(b) Activities regulated by Tuna Convention Acts; harvesting of highly migratory species taken on high seas

The provisions of paragraphs (1), (2)(A), and (3)(A) of section 3372(a) of this title shall not apply to—

(1) any activity regulated by the Tuna Conventions Act of 1950 (16 U.S.C. 951–961) or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971–971(h) ¹); or

(2) any activity involving the harvesting of highly migratory species (as defined in paragraph (14) of section 3 ² of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1802(14)]) taken on the high seas (as defined in paragraph (13) of such section 3) if such species are taken in violation of the laws of a foreign nation and the United States does not recognize the jurisdiction of the foreign nation over such species.

(c) Interstate shipment or transshipment through Indian country of fish, wildlife, or plants for legal purposes

The provisions of paragraph (2) of section 3372(a) of this title shall not apply to the interstate shipment or transshipment through Indian country as defined in section 1151 of title 18 or a State of any fish or wildlife or plant legally taken if the shipment is en route to a State in which the fish or wildlife or plant may be legally possessed.

(Pub. L. 97–79, §8, Nov. 16, 1981, 95 Stat. 1078.)

REFERENCES IN TEXT

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (a), 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.

The Tuna Conventions Act of 1950, referred to in subsec. (b)(1), is act Sept. 7, 1950, ch. 907, 64 Stat. 777, as amended, which is classified generally to chapter 16 (§951 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 951 of this title and Tables.

The Atlantic Tunas Convention Act of 1975, referred to in subsec. (b)(1), is Pub. L. 94–70, Aug. 5, 1975, 89 Stat. 385, as amended, which is classified generally to chapter 16A (§971 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 971 of this title and Tables.

Section 3 of the Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (b) (2), was subsequently amended, and pars. (13) and (14) of section 3 no longer define the terms "high seas" and "highly migratory species". However, such terms are defined elsewhere in that section.

CODIFICATION

"Magnuson-Stevens Fishery Conservation and Management Act" substituted for "Fishery Conservation and Management Act of 1976" in subsecs. (a) and (b)(2), 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.

¹ *So in original. Probably was meant to be "971–971h".*

² *See References in Text note below.*

§3378. Miscellaneous provisions

(a) Effect on powers of States

Nothing in this chapter shall be construed to prevent the several States or Indian tribes from making or enforcing laws or regulations not inconsistent with the provisions of this chapter.

(b) Repeals

The following provisions of law are repealed:

- (1) The Act of May 20, 1926 (commonly known as the Black Bass Act; 16 U.S.C. 851–856).
- (2) Section 667e of this title and sections 43 and 44 of title 18 (commonly known as provisions of the Lacey Act).
- (3) Sections 3054 and 3112 of title 18.

(c) Disclaimers

Nothing in this chapter shall be construed as—

- (1) repealing, superseding, or modifying any provision of Federal law other than those specified in subsection (b);
- (2) repealing, superseding, or modifying any right, privilege, or immunity granted, reserved, or established pursuant to treaty, statute, or executive order pertaining to any Indian tribe, band, or community; or
- (3) enlarging or diminishing the authority of any State or Indian tribe to regulate the activities of persons within Indian reservations.

(d) Travel and transportation expenses

The Secretary of the Interior is authorized to pay from agency appropriations the travel expense of newly appointed special agents of the United States Fish and Wildlife Service and the transportation expense of household goods and personal effects from place of residence at time of selection to first duty station to the extent authorized by section 5724 of title 5 for all such special agents appointed after January 1, 1977.

(e) Interior appropriations budget proposal

The Secretary shall identify the funds utilized to enforce this chapter and any regulations thereto as a specific appropriations item in the Department of the Interior appropriations budget proposal to the Congress.

(Pub. L. 97–79, §9(a)–(c), (g), (h), Nov. 16, 1981, 95 Stat. 1079, 1080.)

REFERENCES IN TEXT

The Black Bass Act, referred to in subsec. (b)(1), is act May 20, 1926, ch. 346, 44 Stat. 576, as amended, which was classified generally to chapter 13 (§851 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Subsecs. (d) and (e) of this section were in the original subsecs. (g) and (h), respectively, of section 9 of Pub. L. 97–79 and were redesignated for purposes of codification.