



9 of 29 DOCUMENTS

NEW YORK CONSOLIDATED LAW SERVICE

Copyright © 2017 Matthew Bender, Inc.
a member of the LexisNexis (TM) Group
All rights reserved

*** Current through 2016 released chapters 1-519 ***

Environmental Conservation Law

Article 11 Fish and Wildlife

Title 5 Fish and Wildlife Management Practices Cooperative Program; Prohibitions; Taking of Fish, Wildlife, Shellfish and Crustacea for Scientific or Propagation Purposes; Destructive Wildlife; Rabies Control; Guides; Endangered Species

Go to the New York Code Archive Directory

NY CLS ECL § 11-0535-a (2016)

§ 11-0535-a. Illegal ivory articles and rhinoceros horns

1. As used in this section:

- a.** "Distribute" means a transfer or change in possession with an accompanying change in legal ownership.
- b.** "Ivory article" means any item containing worked or raw ivory from any species of elephant or mammoth.
- c.** "Raw ivory" means any elephant or mammoth tusk, and any piece thereof, the surface of which, polished, or unpolished, is unaltered or minimally carved.
- d.** "Worked ivory" means any elephant or mammoth tusk, and any piece thereof, which is not raw ivory.

2. Except as otherwise provided in subdivision three of this section, no person shall sell, offer for sale, purchase, trade, barter or distribute an ivory article or rhinoceros horn.

3. Unless such activity is prohibited by federal law, rule or regulation, the commissioner may issue licenses or permits for the sale, offering for sale, purchase, trading, bartering or distribution of ivory articles or rhinoceros horns, provided that:

a. the ivory article or rhinoceros horn is part of a bona fide antique and is less than twenty percent by volume of such antique, and the antique status of such antique is established by the owner or seller thereof with historical documentation evidencing provenance and showing the antique to be not less than one hundred years old;

b. the distribution or change of possession of the ivory article or rhinoceros horn is for bona fide educational or scientific purposes, or to a museum chartered by the board of regents pursuant to the education law or to a museum

authorized by a special charter from the legislature of this state; or

c. the distribution of the ivory article or rhinoceros horn is to a legal beneficiary of a trust or to an heir or distributee of an estate; or

d. the ivory article or rhinoceros horn is part of a musical instrument, including, without limitation, string and wind instruments and pianos, and the owner or seller provides historical documentation as the department may require, demonstrating provenance and showing the item was manufactured no later than nineteen hundred seventy-five.

HISTORY:

L 2014, ch 326, § 1, eff Aug 12, 2014; amd, L 2014, ch 327, § 1, eff Aug 12, 2014.

NOTES:

Editor's Notes

Laws 2014, ch 326, §§ 4 and 7, eff Aug 12, 2014, provides:

§ 4. Within 30 days of the effective date of this act, the department of environmental conservation shall maintain on its website information regarding the prohibition on the sale and purchase of ivory articles and rhinoceros horns in the state.

§ 7. This act shall take effect immediately; provided, however, any person who has been issued a license or permit allowing the sale of elephant ivory articles or rhinoceros horns prior to the effective date of this act may sell such articles listed on such license or permit until such license or permit has expired.

Laws 2014, ch 327, § 2, eff Aug 12, 2014, provides as follows:

§ 2. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2014, amending the environmental conservation law relating to prohibiting the purchase and sale of ivory articles and rhinoceros horns and increasing the penalties for the illegal sale of such articles, as proposed in legislative bills numbers S. 7890 and A. 10143, takes effect.

Amendment Notes:

2014. chapter 327, § 1 amended: Sub 3, par b by adding the matter in italics.



10 of 29 DOCUMENTS

NEW YORK CONSOLIDATED LAW SERVICE
Copyright © 2017 Matthew Bender, Inc.
a member of the LexisNexis (TM) Group
All rights reserved

*** Current through 2016 released chapters 1-519 ***

Environmental Conservation Law
Article 71 Enforcement
Title 9 Enforcement of Articles 11 and 13--The Fish and Wildlife Law

Go to the New York Code Archive Directory

NY CLS ECL § 71-0924 (2016)

§ 71-0924. Illegal commercialization of fish, shellfish, crustaceans, and wildlife

Notwithstanding any other provision of this chapter, when a violation involves the sale, trade or barter of fish, shellfish, crustaceans, wildlife, or parts thereof, the sale, trade or barter of which is prohibited by the fish and wildlife law, the following additional penalties shall be imposed:

1. where the value of fish, shellfish, crustaceans, wildlife, or parts thereof, is two hundred fifty dollars or less, the offense shall be a violation punishable by a fine of five hundred dollars and/or not more than fifteen days of imprisonment;

2. where the value of fish, shellfish, crustaceans, wildlife, or parts thereof, is more than two hundred fifty dollars but does not exceed one thousand five hundred dollars, the offense shall be a misdemeanor punishable by a fine of five thousand dollars and/or not more than one year of imprisonment; <1>

3. where the value of fish, shellfish, crustaceans, wildlife, or parts thereof, exceeds one thousand five hundred dollars, the offense shall constitute a class E felony under the provisions of the penal law <1>; and

4. where the value of ivory articles, as defined in section 11-0535-a of this chapter, exceeds twenty-five thousand dollars, the offense shall constitute a class D felony under the provisions of the penal law.

<1>5. For the purposes of this section the value of fish, shellfish, crustaceans and wildlife shall be the fair market value of or actual price paid for such resource, whichever is greater. For purposes of this section, "sale" shall include the acts of selling, trading or bartering and all related acts, such as the act of offering for sale, trade or barter, and shall also include the illegal possession of fish, shellfish, wildlife or crustacea with intent to sell. It shall be presumptive evidence of possession with intent to sell when such fish, shellfish, wildlife or crustacea is possessed in quantities exceeding the allowable recreational quantities, or is possessed in a retail or wholesale outlet commonly used for the buying or selling of such fish, shellfish, wildlife or crustacea, provided, however, that nothing in this subdivision

shall preclude the admission of other evidence which may serve to independently prove a defendant's intent to sell.

HISTORY:

Add, L 1988, ch 69, § 2, eff Nov 1, 1988; amd, L 1996, ch 417, § 7, eff Sept 1, 1996 (see 1996 note below); L 2014, ch 326, § 2, eff Aug 12, 2014.

NOTES:

Editor's Notes:

Laws 1988, ch 69, § 1, eff Nov 1, 1988, provides as follows:

Section 1. The legislature finds that it is essential to protect the state's fish, shellfish, crustacea, wildlife and game for the purposes of the state's ecological well-being, recreation and commerce. Current penalties against the illegal commercialization of these resources do not serve as deterrents against the exploitation of the fish, shellfish, crustacea, wildlife or game.

The legislature further finds that there is great incentive to violate the state's laws and for the illegal taking and overtaking of these natural resources because of the high market value they represent and the potential profit in their sale.

Therefore, it is the purpose of this act to increase the fines and penalties for the illegal taking of fish, shellfish, crustacea, wildlife and game and to scale such fines and penalties according to the relative market value of the fish, shellfish, crustacea, wildlife and game.

Laws 1996, ch 417, § 8, eff Sept 1, 1996, provides as follows:

§ 8. This act shall take effect on the first day of September next succeeding the date on which it shall have become a law; provided, however, that any rules and regulations necessary for the implementation of the provisions of this act are authorized to be promulgated, amended and/or repealed on or before such effective date.

Laws 2014, ch 326, §§ 4 and 7, eff Aug 11, 2014, provide:

§ 4. Within 30 days of the effective date of this act, the department of environmental conservation shall maintain on its website information regarding the prohibition on the sale and purchase of ivory articles and rhinoceros horns in the state.

§ 7. This act shall take effect immediately; provided, however, any person who has been issued a license or permit allowing the sale of elephant ivory articles or rhinoceros horns prior to the effective date of this act may sell such articles listed on such license or permit until such license or permit has expired.

Amendment Notes

The 2014 amendment by ch 326, § 2 added 4; redesignated former 4 as 5; and made related changes.

NOTES TO DECISIONS

Indictment counts were properly dismissed as duplicitous where they alleged illegal commercialization of fish, shellfish, crustaceans, and wildlife under CLS ECL § 71-0924(3), based on separate violations of CLS ECL § 11-1319 and its regulations. *People v Cacic*, 251 A.D.2d 678, 675 N.Y.S.2d 110, 1998 N.Y. App. Div. LEXIS 7953 (N.Y. App. Div. 2d Dep't), app. denied, 92 N.Y.2d 923, 680 N.Y.S.2d 464, 703 N.E.2d 276, 1998 N.Y. LEXIS 3770 (N.Y. 1998).