

SCOMM

83:8

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 490 (ITT)

Revision Date: _____

Title: "An Act prohibiting the sale or purchase
of parts of bears."Sponsor: Representative GrussendorfRequestor: International Trade and TourismDepartment Affected: Department of LawBRU: Prosecution, Legal ServicesComponent: Prosecution - AllLegal Services - Operations

COMPONENT SERIAL

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Expenditures/Revenues: (Thousands of Dollars)

85 through 91, and 93

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Pegues, DirectorDivision: Administrative ServicesPhone: 465-3672Date: March 16, 1992Approved by Commissioner: Charles E. Cole, Attorney GeneralAgency: Department of LawDate: March 16, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 490 (ITT)

The Special Committee on International Trade and Tourism substitute for HB 490 amends AS 16.05.920 by adding a new section that would prohibit the sale or purchase of parts of bears. A person who violates this prohibition would be guilty of a class C felony. Although the current version of the bill abandons the concept of prohibiting the import or export of animal parts contained in the original bill, which we felt might have constitutional problems, we recommend that the committee substitute be further revised to clarify and strengthen some of the bill's provisions in accordance with state criminal law standards. Department of Law attorneys are already working with committee staff to draft the needed revisions. We do not believe that this bill will have a fiscal impact for our department, because it seeks to clarify the state's existing authority to exercise authority over the sale of game parts.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 490

Revision Date: _____
Title: "An Act relating to possession of fish,
game, or aquatic plants."
Sponsor: Representative Grussendorf
Requestor: Representative Grussendorf

Department Affected: Department of Law
BRU: Prosecution, Legal Services
Component: Prosecution - All
Legal Services - Operations
COMPONENT SERIAL

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Expenditures/Revenues: (Thousands of Dollars)

85 through 91, and 93

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:	-					
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard L. Peques
Division: Administrative Services
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: March 2, 1992

Date: March 2, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 490

This bill amends AS 16.05.920(a) to provide that a person may not export or import fish, game, or marine aquatic plants unless permitted by AS 16.05 - AS 16.40 or by a regulation adopted under AS 16.05 - AS 16.40. The existing statute already prohibits the taking, possession, transportation and sale or purchase of fish, game, and marine aquatic plant resources, except as permitted by law or regulation. The bill seeks to clarify existing law by reaffirming the state's regulatory control over these resources. However, we believe that the terms export and import, as broadly used here, will invite constitutional challenges as violative of the Commerce Clause of the United States Constitution. A recent criminal case, which is on appeal before the court of appeals, questions the extent of the state's authority to exercise jurisdiction over the sale of game parts from other states. At this point, it might be more helpful to hear the court's answer, before the law is changed.

REPRESENTATIVE
BEN GRUSSENDORF
1221 HALIBUT POINT ROAD
SITKA, ALASKA 99835
(907) 747-8458

RULES COMMITTEE
LEGISLATIVE COUNCIL

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TENAKEE

Alaska State Legislature



WHILE IN JUNEAU
P.O. Box V
JUNEAU, ALASKA 99811
(907) 485-3824
(907) 485-3720

House of Representatives
SPEAKER OF THE HOUSE

MEMORANDUM

To: Rep. Cliff Davidson
Chairman
House Resources Committee

From: Rep. Ben Grussendorf

Date: April 2, 1992

Re: House Bill 490 (Judiciary)
"An Act prohibiting the sale or purchase of parts of bears and
prohibiting the possession of more than one bear gallbladder."

Thank you for scheduling a hearing on House Bill 490, of which I am the prime sponsor. I introduced the bill in response to a growing problem: the illegal traffic in bear parts -- particularly bear paws and gallbladders. The traffic in these parts is big business; in some parts of Asia and the Far East, a good quality bear gallbladder can sell for as much as \$4600 per ounce, bear paw soup for \$100 or more per bowl. I have attached to this memo some recent articles that illustrate the lucrative nature of this activity and the problems it is causing.

Although it has been illegal to sell bear parts in Alaska since the early 1980's, the prohibition has been by Board of Game regulation, the violation of which is only a misdemeanor. Because the profit potential for this type of activity is so high, I believe that offenders are willing to take the risk of a misdemeanor charge as a "cost of doing business." House Bill 490 (Judiciary) makes it a class C felony to traffic in bear parts; the penalty is up to five years in jail and a fine of up to \$100,000. The bill also makes it a class A misdemeanor to knowingly possess more than one bear gallbladder.

The Judiciary version of the bill was drafted after discussions with the Departments of Law, Public Safety, Fish & Game. I support it, and I hope the House Resources Committee will join me.

HOUSE SPECIAL COMMITTEE ON INTERNATIONAL TRADE AND TOURISM

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-2973



DATE: February 26, 1992

TO: Charles Cole, Attorney General
Department of Law

FROM: Representative Tom Moyer, Chairman
House Special Committee on
International Trade and Tourism

RE: HB 490 (Relating to the possession of fish, game, or
aquatic plants)

This memorandum is to formally request an updated legal opinion from the Department of Law on the illegal purchase, sale and possession of game. Assistant Attorney General Sarah McCracken gave advice on this subject in her memorandum dated September 1, 1987 (enclosed).

For your information, HB 490, introduced by Representative Grussendorf, would make it illegal to import or export fish, game or aquatic plants. The bill will have its first hearing in the House Special Committee on International Trade and Tourism on Tuesday, March 3.

Could you comment on the Anchorage case, the State of Alaska vs. Grace Woo Chun, within the context of this legal opinion? I would like to know the current status of this case and any suggestions on the direction that you think HB 490 should take as a result of this case. What would be the probability of legal challenges succeeding as a result of this new law?

I would like to know what other lawsuits, if any, have occurred under Article 7, Section 16.05.920 (Certain acts made unlawful). If nothing has changed drastically from the original opinion, then I would appreciate it if you could state that in a letter to the International Trade and Tourism Committee.

Thank you for your assistance in this matter. If you have questions or comments, please contact me or Alexis Miller of my staff at 465-4930.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

April 9, 1992

SUBJECT: CSHB 490(); Technical amendments

TO: Representative Cliff Davidson
ATTN: Heather Bradner

FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is the draft Committee Substitute that you requested.

The draft CS makes two technical corrections to CSHB 490 (Judiciary).

First, the last sentence of subsection (f) has been eliminated because it is unnecessary. AS 16.05.925 already provides that a violation of AS 16.05.920 is a class A misdemeanor.

Sec. 16.05.925. PENALTY FOR VIOLATIONS. Except as provided in AS 16.05.430, 16.05.722, 16.05.723, 16.05.831, and 16.05.860, a person who violates AS 16.05.920, or a regulation adopted under this chapter or AS 16.20, is guilty of a class A misdemeanor.

Second, section 2 has been added to the bill to provide that AS 16.05.925 does not apply to AS 16.05.920(e), as added by section 1 of the bill.

If I may be of further assistance, please advise.

GU:pl
92-254.plm

Enclosure

7-LS2042M
Utermohle
4/8/92

CS FOR HOUSE BILL NO. 490 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GRUSSENDORF

A BILL

FOR AN ACT ENTITLED

1 "An Act prohibiting the sale or purchase of parts of bears and prohibiting the possession
2 of more than one bear gall bladder."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 16.05.920 is amended by adding new subsections to read:

5 (e) A person may not knowingly sell, purchase, offer to sell or purchase, or possess for
6 sale the meat, hide, teeth, claws, or other parts of a brown or black bear. A person who violates
7 this subsection is guilty of a class C felony; however, the fine that may be imposed for violations
8 of this subsection may not exceed \$100,000. It is an affirmative defense to a prosecution under
9 this subsection that a bear skin or bear trophy was purchased or offered to be purchased from,
10 or sold or offered to be sold by, or possessed for sale by

11 (1) a taxidermist licensed under this chapter, an estate executor, or a bankruptcy
12 referee under the terms of a permit issued by the department; or

13 (2) the state as excess property.

14 (f) A person may not knowingly possess more than one black bear or brown bear gall

1 bladder.

2 * Sec. 2. AS 16.05.925 is amended to read:

3 Sec. 16.05.925. PENALTY FOR VIOLATIONS. Except as provided in AS 16.05.430,
4 16.05.722, 16.05.723, 16.05.831, [AND] 16.05.860, and 16.05.920(e), a person who violates
5 AS 16.05.920, or a regulation adopted under this chapter or AS 16.20, is guilty of a class A
6 misdemeanor.

ATG

MEMORANDUM

State of Alaska

DEPARTMENT OF LAW/CIVIL DIVISION

TO: Hon. Don W. Collinsworth
Commissioner,
Department of Fish and Game

DATE September 1, 1987

FILE NO. 661-87-0332

TELEPHONE NO. 276-3550

THRU:

SUBJECT: Purchase, sale, and
possession of game

FROM: Sarah E. McCracken ^{SEM}
Assistant Attorney General
Natural Resources-Anchorage

RECEIVED

SEP 3 1987

DIVISION OF GAME
HEADQUARTERS

Your memorandum of January 26, 1987, requested our advice on several questions relating to purchase, sale, and possession of game trophies and parts of game. 1/ Specifically you asked:

1. Can nonresidents sell legally taken Alaskan trophies, bear skins, etc. in their home states?
2. Can Alaskans purchase trophies legally taken in other states if the sale is illegal in Alaska?
3. Can residents sell legally taken Alaskan trophies outside Alaska boundaries?
4. Can residents contract with nonresidents or residents to provide trophies so long as the sale is consummated outside of Alaska?
5. Can residents who acquire or possess trophies legally taken outside the state sell those trophies in Alaska?

Our summary answer to your questions is that under Alaska law it is illegal to buy, sell, or barter the skin of any part of a bear, certain unsealed hides, and horns or antlers of any big game animal. 5 AAC 92.200; AS 16.05.920(a). This prohibition applies to trophies and skins whether killed in

1/ We were, regrettably, unable to respond to your request sooner due to a heavy litigation caseload in our section.

Alaska or elsewhere. In addition, under provisions of the Lacy Act, 16 U.S.C. §§ 3371--3378, it is a violation of federal law to import, export, buy, or sell in interstate or foreign commerce any fish or wildlife taken, possessed, transported, or sold in violation of any state law or regulation. The Lacy Act thus prohibits nonresidents and residents from selling or contracting to sell, in interstate commerce, Alaskan hides and trophies because the sale is prohibited by Alaska law.

Your specific questions are addressed in more detail as follows.

1. Can nonresidents sell legally taken Alaskan trophies, bear skins, etc., in their home states?

In general, the answer is "no" if the game is shipped to the home state with the intent to sell; however, we caution that this response requires interpretation of federal law and a more authoritative answer would come from the appropriate federal agency (in this case, the U.S. Fish and Wildlife Service or U.S. Attorney's Office).

As summarized above, Alaska law prohibits purchase, sale, or barter of trophies, bear skins, and other items set out in 5 AAC 92.200. 2/ If a nonresident legally obtains a trophy

2/ 5 AAC 92.200(b) as amended in July, 1987, provides:

(b) Except as provided in AS 16.05.930(e), no person may purchase, sell, or barter the following:

(1) the meat of big game and small game except hares and rabbits; however, caribou may be bartered in units 22--26, but such bartered caribou may not be transported or exported from those units;

(2) a part of a bear, or an unsealed beaver, land otter, lynx, wolf, wolverine, or marten

(Footnote Continued)

or skin in Alaska, he clearly cannot sell it in Alaska because of the prohibition at 5 AAC 92.200(b). If he transports it to his home state (thus placing the item in interstate commerce) with the intent to sell the item there, he may be in violation of both the Lacy Act and any prohibition against selling trophies that may exist in his home state.

16 U.S.C. § 3372 (Lacy Act) provides in pertinent part:

It is unlawful for any person... (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....

(Emphasis added).

The Lacy Act provides both civil and criminal penalty provisions, including punishment as a felony for certain violations. 16 U.S.C. § 3373. In particular, 16 U.S.C. § 3373(d)(2) provides for punishment as a misdemeanor for a person who knowingly engages in conduct prohibited by the Lacy Act:

Any person who knowingly engages in conduct prohibited by any provision of this chapter . . . and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed,

(Footnote Continued)

from units 1--5;

(3) the skull, horn, or antler of a big game animal, including a prepared big game trophy; however this paragraph does not prohibit the purchase, sale, or barter of a naturally shed antler or horn, or an antler that has been permanently removed from any portion of the skull and has not been made into a prepared trophy.

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.

(Emphasis added.)

The criminal penalty provision of 16 U.S.C. 3373(d)(2) requires proof of general intent, i.e., proof of a volitional act. For example, the person must know he is shipping a part of game, but he need not necessarily know what the law requires or prohibits, however:

In addition to proof of a volitional act section 4(d)(2) [16 U.S.C. § 3373(d)(2)] requires proof that the defendant in the exercise of due care should have known that the fish, wildlife or plants were taken, possessed, transported, or sold in violation of any underlying law, treaty or regulation.

Legislative History P.L. 97-79, reprinted in 1981 U.S. Code Cong. & Ad. News 1759. The standard of "due care" is applied "differently to different categories of persons with different degrees of knowledge and responsibility." Legislative History P.L. 97-79, reprinted in 1981 U.S. Code Cong. & Ad. News 1757. For example, a taxidermist who knowingly ships an unsealed beaver hide, not knowing that the hide is illegal, may be liable if with due care he should have known of the sealing requirement; a common carrier not in the taxidermy business, in contrast, might not be liable.

16 U.S.C. § 3373(d)(1) provides for felony punishment of a violator who knowingly imports or exports fish or wildlife in violation of the Lacey Act or who knowingly engages in commercial transactions (purchase or sale) of fish or wildlife with a market value in excess of \$350.00. The "due care" standard also applies to felonies.

Civil penalties, set out at 16 U.S.C. § 3373(a)(1), may be assessed against any person who violates any provision of the

Lacy Act and "in the exercise of due care" should know that the fish or wildlife were taken, possessed, transported or sold in violation of law. A finding of general intent, i.e., "knowingly" or "intentionally," is not required for assessment of a civil penalty; however, the standard of "due care" does apply.

Thus, it is unlawful for a hunter to sell in interstate commerce any wildlife if the sale violates state law, and a person who knowingly acts in violation of the Lacy Act can be charged criminally. A person who lawfully kills a bear in Alaska, and transports it in interstate commerce to his home state with the intent to sell it there, would probably be in violation of the Lacy Act.

An example of the operation of the Lacy Act is provided in United States v. Martinell, 611 F. Supp. 399 (D. Pa. 1985). In that case a hunter went to Maine, where it is illegal to buy or sell bear parts, and took two legal bears with the intent of transporting them to Pennsylvania to sell; it was legal to sell bears in Pennsylvania. The court upheld the Lacy Act indictment against the hunter. The court held that an exception in the Lacy Act, 16 U.S.C. § 3377(c), which exempts transportation through a state of wildlife enroute to another state in which the wildlife may be legally possessed, did not apply. 3/ The exemption only applies where, for example, a person lawfully takes game in Alaska and ships it to State A (where it may be lawfully possessed) but travels through State B (where it is unlawful to possess). The transportation through State B would be exempted from the Lacy Act prohibition.

3/ The Lacy Act exemption, 16 U.S.C. § 3377(c), provides:

The provisions of paragraph (2) of section 3372(a) of this title shall not apply to the interstate shipment or transshipment through...a state of any fish or wildlife or plant legally taken if the shipment is enroute to a state in which the fish or wildlife or plant may be legally possessed.

Also, in United States v. Sylvester, 605 F.2d 474 (9th Cir. 1979), the court upheld the conviction of an Alaska resident for taking a bear in Alaska and shipping it to New Mexico for sale. The court rejected the defendant's argument that the sale was governed by the Uniform Commercial Code under which the situs of the sale of the bear was in New Mexico, where sale of hides was legal. The court concluded that a state may reach beyond its borders to regulate game and fish if those regulations have a sufficient nexus with the protection and preservation of wildlife within the state, and so long as there is an adequate relationship between the regulating state and person whose conduct is regulated.

Under the Lacy Act as interpreted by the above court cases, it is unlawful for a nonresident to sell legally taken Alaskan trophies or bear skins in the nonresident's home state, if the game is transported with the intent to sell. 4/

2. Can Alaskans purchase trophies legally taken in other states if the sale is illegal in Alaska?

We presume your question here is directed at a transaction that occurs in Alaska, in which case the answer is

4/ If a nonresident lawfully takes game in Alaska and transports it to his home state intending to keep the trophy for his own use, but then later decides to sell the trophy in his home state (assuming it is legal to sell trophies in that state), there might not be a Lacy Act criminal violation because the hunter had no intent to sell at the time the game was shipped, i.e., he did not "knowingly" ship the game in interstate commerce to sell it. This memorandum does not, however, purport to be definitive on the issue culpability in Lacy Act offenses. Specific questions dealing with the applicable mental state for Lacy Act violations should be directed to the U.S. Fish and Wildlife Service or the U.S. Attorney's Office.

"no." 5/ 5 AAC 92.200 prohibits purchase, sale, or barter of trophies and provides no exemption for trophies taken lawfully in another state or foreign country. The state's police powers are broad enough to govern purchase and sale in Alaska of game regardless of where the game was taken. See generally Maine v. Taylor, ___ U.S. ___, 106 S.Ct. 2440 (1986) (states have broad police power to protect natural resources; ban on importation of live bait fish serves legitimate governmental purpose and does not violate commerce clause).

3. Can residents sell legally taken Alaskan trophies outside Alaska's boundaries?

The answer here is essentially the same as for Question No. 1 -- "no." See United States v. Sylvester, 605 F.2d 474 (9th Cir. 1979).

4. Can residents contract with nonresidents or residents to provide trophies so long as the sale is consummated outside of Alaska?

Again, the answer is probably "no." Because the sale of trophies is illegal under Alaska regulation, the sale would violate the Lacey Act even though it occurred outside Alaska.

5. Can residents who acquire or possess trophies legally taken outside the state sell those trophies in Alaska?

The answer is no. Alaska law prohibits the sale of trophies, regardless of where the animal was taken. As discussed in response to Question No. 2, the state's police powers are broad enough to govern trade in trophies, regardless of whether the trophies were lawfully acquired outside the state.

5/ If the transaction occurred outside Alaska, in a state where sale of hides or trophies was lawful, we do not believe there would be any violation of law.

Hon. Don W. Collinsworth
Commissioner, Department of Fish & Game
661-87-0332

September 1, 1987
Page 8

In summary, Alaska law prohibits trade in bear skins and other trophies specified in 5 AAC 92.200. Under the Lacy Act, a person can be charged with violation of federal law for selling game in violation of state law, even if the sale occurs outside the state's borders.

If you would like more detail regarding the Lacy Act's application, we suggest you contact the appropriate federal agency (U.S. Fish and Wildlife Service or U.S. Attorney's Office) for clarification. Our office would be glad to assist you if you require additional information regarding state law issues.

cc: Col. Jack Jordan, Dir., F&WP
Norman Cohen, Deputy Comm'r, ADF&G
W. Lewis Pamplin, Dir., Div. Game
Robert Hinman, Deputy Dir., Div. Game
Phil Koehl, Div. Game
Dan Timm, Div. Game
Greg Bos, Div. Game
Larri I. Spengler, AGO JUN

SEM/rlr
01:01
MOA-P/S/P Game



WESTERN LEGISLATIVE CONFERENCE THE COUNCIL OF STATE GOVERNMENTS

121 SECOND ST. 4TH FL. SAN FRANCISCO, CA 94105 PHONE 415-374-8422 FAX 415-374-1127

3 December 1991

Representative David E. Humke
Post Office Box 70656
Reno, Nevada 89570

Dear Representative Humke:

I have been asked to respond to your letter to the WLC Executive Committee concerning the illegal trade in wildlife, fish and products made from them.

The legal hunting of wildlife in the U.S. is primarily regulated at the state level, subject to certain federal laws, such as the Endangered Species Act. The same is true of the sale of wildlife and parts of wildlife. State laws vary widely concerning which species may be legally hunted and to what degree these legally-hunted species may be commercialized. State laws concerning the sale of wildlife range from outright bans to no regulation.

The import and export of wildlife and wildlife products is regulated by the U.S. Fish and Wildlife Service (USFWS). In addition to upholding federal and international law concerning trade in wildlife species, the USFWS enforces individual state laws regarding the sale of wildlife. As indicated above, state laws vary widely concerning the permissible commercialization of wildlife and wildlife parts.

The variation in state laws concerning the sale of wildlife parts can be seen by examining a single species. As your letter noted, the sale of bear gall bladders is an extremely lucrative trade, particularly in Far Eastern markets. Attachment I indicates the wide variety of state laws concerning the sale of black bear parts. This table was compiled by the U.S. Fish and Wildlife Service. As you will note, some states have outright bans on the sale of any parts, while at the other extreme some states have no laws or regulations at all. Variation in state laws concerning the sale of bear parts may encourage the illegal taking of bears in some states and the selling of the illegally acquired parts in other states where such sale is allowed.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain species of animals and plants. Species for which trade is controlled are included in three appendices. Appendix III includes native species that any Party nation identifies to the CITES Secretariat as being subject to regulation within its national jurisdiction for purposes of restricting or preventing exploitation and for which it needs the cooperation of other Parties in controlling trade. Appendix II includes species that although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. It also includes species that must be subject to regulation in order that the trade in other currently or potentially threatened species may be brought under effective control (e.g. because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix I includes species threatened with extinction that are or may be affected by trade.

Trade in Appendix III species, including any readily recognizable part or derivative not exempted, requires the issuance of either an export permit, a re-

WESTERN STATES

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COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS

GUAM



export certificate, or a certificate of origin. An export permit is required if the shipment originates from the nation that added the species to Appendix III. Export to or from other Party nations requires presentation of either "a certificate of origin" or in the case of re-export, "a certificate from the nation of re-export" and both verify that the specimen(s) originated from the non-listing Party nations and/or are being legally re-exported.

Any Party at any time may enter a reservation on any species added to Appendix III, thereby exempting itself from implementing the Convention for that particular species. The limited effects of a reservation in alleviating exporters and importers from documentation requirements were thoroughly discussed in a Federal Register notice of November 17, 1987. In a resultant March 28, 1988 Federal Register notice, the U.S. Fish and Wildlife Service made a procedural change in requesting comments about reservations. As there is no time limit for reserving on a species added to Appendix III, a proposed rule normally is not published; public comments on the issue of whether to enter a reservation are requested with publication of the final rule, and if appropriate, entering a reservation will be reconsidered.

At the request of Canada, the black bear was recently added to Appendix III of CITES. This move may help to protect the black bear to some degree, though it will not eliminate illegal hunting or trade. Some movement has been indicated toward listing the black bear on Appendix II of CITES. However, this more restrictive listing is being fought by countries which would like to continue in the legal sale of bears and bear parts.

I contacted several professional organizations to determine if any had formulated policies calling for uniform state laws and regulations concerning the sale of wildlife and wildlife parts, whether legally or illegally obtained. The organizations contacted are composed of professionals in the wildlife management field, including: The Wildlife Society, The Wildlife Management Institute, The International Association of Fish and Wildlife Agencies, and The Western Association of Fish and Wildlife Agencies. While each of these professional groups acknowledged differences in state laws regarding the sale of wildlife, none had developed model legislation to promote consistent treatment in this area among the states. To my knowledge, the Conference of Western Attorneys General has not addressed this issue nor recommended a legislative solution to be adopted in each of the western states.

The Council of State Governments (CSG) has a program called Suggested State Legislation (SSL), run through the CSG headquarters office in Lexington, Kentucky. For over 50 years, CSG's SSL program has informed state policymakers on a broad range of legislative issues, and its national Committee on Suggested State Legislation has been an archetype of interstate dialogue, one successfully imitated in a variety of ways. The Committee produces an annual volume of draft legislation on topics of major governmental interest.

The SSL Committee members represent all regions of the country and many of the major functional areas of state government. They include legislators, legislative staff and other state governmental officials who contribute their time and efforts to assisting the states in the identification of timely and innovative state legislation. The items in a single volume of Suggested State Legislation represent the culmination of a year-long process in which legislation submitted by state

officials from around the country is received and reviewed by members of the SSL Committee.

During this process, members of the SSL Subcommittee on Scope and Agenda meet on two occasions to screen and recommend legislation for final consideration by the full SSL Committee. At their Annual Meeting, members of the full Committee examine the proposals referred by the Subcommittee on Scope and Agenda and select the items to appear in that year's SSL volume. Although these items are published as suggested legislation, neither The Council of State Governments nor the SSL Committee are in the position of advocating their enactment. Instead, the entries are offered as an aid to state officials interested in drafting legislation in a specific area, and can be looked upon as a guide to areas of broad current interest in the states.

A review by CSG headquarters staff of SSL volumes for the past 15 years failed to reveal any suggested legislation concerning the sale of wildlife and wildlife parts. As such, it is not possible for staff in this office to provide the Economic Development and International Trade (EDIT) Committee with draft model legislation. Such a draft would represent little more than the opinion of an individual staff member, not having undergone the rigorous review process required by the SSL Committee. Members of the EDIT Committee are of course encouraged to submit legislation for consideration by the CSG SSL Committee.

If in the opinion of the EDIT Committee members this issue merits continued focus, the Committee may choose to draft legislation of its own for consideration for adoption in each of the western states. The WLC Ocean Resources (OR) Committee has been working on a Pacific Ocean Resources Compact for the past two years. The Compact is being formed to allow the Pacific states to enter the arena of federal law in the area of oil transportation regulation and oil spill response. The Compact is implemented through legislation which must be passed in each of the compacting states. The implementing legislation has been developed by the OR Committee in a series of meetings throughout the Pacific states over the past two years.

The original idea for the Compact came from Senator Bill Bradbury of Oregon. Senator Bradbury enlisted the assistance of the Oregon Legislative Counsel in drafting the legislation implementing the Compact for consideration by the OR Committee. The use of the Oregon Legislative Counsel has been essential in the process, as the legal issues of maritime law are complex and beyond the knowledge of staff in this office. With the movement of the Conference of Western Attorneys General to Sacramento, this office no longer employs an attorney. Should the Economic Development & International Trade Committee choose to pursue uniform state legislation concerning the sale of wildlife and wildlife parts, the assistance of a legislative counsel from one of the participating states would be essential to the effort. Although development of the Pacific Ocean Resources Compact has been time consuming, the resulting product is one of the best ever produced by a WLC Policy Committee.

As your letter indicates, inconsistent state policies and laws among western states may contribute to the problem of illegal trade in wildlife by making enforcement more difficult. However, the degree to which these inconsistencies in state laws actually contribute to the problem is unclear. As such, drafting uniform legislation will be complex. Individual state interests vary widely. As Appendix I indicates in the case of black bear, some states call for complete bans on the sale

of wildlife parts while others have no regulation at all. State interests are likely to vary on a species-by species basis.

The WLC Policy Committees have traditionally served as forums for the presentation of such diverse interests. If it is a priority of the EDIT Committee members, the Committee may choose to address this complex issue at future meetings. If a consensus can be reached on the proper approach to be taken by state governments in this area, the Committee may choose to draft legislation for introduction in each of the western states, similar to the approach taken by the OR Committee regarding oil transportation regulation and oil spill response.

I hope this information proves helpful as you and the members of the EDIT Committee address this complex issue.

Sincerely,

A handwritten signature in cursive script that reads "William B. Hull".

William B. Hull
Policy Analyst

cc: Representative Tom Moyer, Alaska

ATTACHMENT I

State Laws Concerning Sale of Black Bear Parts

Alabama:	Bears fully protected. Only finished products can be sold. No raw or green parts, regardless of organ, can be sold. No hunting season.
Alaska:	It is illegal to sell any part of a black bear in Alaska. The only exception being a specimen which was abandoned at a taxidermist shop may be sold by the taxidermist first obtaining a permit from the state authorizing the sale.
Arizona:	If bear is legally taken, it is legal to sell the hide/claw/skull. The sale of meat is prohibited. State claims that sale of internal organs is illegal, but USFWS could not confirm this.
Arkansas:	Does have a hunting season in certain areas. Finished products of bear parts can be sold. Raw parts cannot be sold. Bear parts from other states, if written verification showing that bear was properly taken is provided, can be sold.
California:	No sale of any black bear parts or products. It is a felony to do so.
Colorado:	Illegal to sell any edible portions (galls, paws, meat). Legal to sell hides, claws, etc.
Connecticut:	It is legal if the black bear was legally taken and if the state in which it was killed allows the sale.
Delaware:	Wide open - bear live, dead, and parts can be imported for commercial activities into the state.
Florida:	Code 39-12.004(8) states: "... The sale or purchase of any black bear or any part thereof is prohibited."
Georgia:	It is illegal to commercialize in black bears. It is illegal to sell black bears or any of their parts in Georgia, Tennessee, or Kentucky.
Hawaii:	It is illegal to sell all parts.
Idaho:	It is legal to sell any parts of lawfully taken bear.
Illinois:	Legal to sell. Black bear not covered by Wildlife Code.
Indiana:	Legal to sell black bear parts in Indiana.
Iowa:	Not protected anymore. Can sell any part legally obtained.
Kansas:	Legal to sell any legally taken bear or bear parts.

Kentucky:	It is illegal to commercialize in black bears. It is illegal to sell black bears or any of their parts in Georgia, Tennessee, or Kentucky.
Louisiana:	No commercialization of any type of black bear. A proposal to list the Louisiana black bear as a "threatened species" under the Endangered species Act was recently published in the Federal Register.
Maine:	Black bear parts (other than meat) can be sold by individuals with a state license. Black bear meat is illegal.
Maryland:	Maryland Department of Natural Resources laws and regulations, Section 10404. This section prohibits the sale of black bear and its parts.
Massachusetts:	It is illegal to sell black bear parts, except the hide of a black bear legally taken outside of Massachusetts that is properly tagged.
Michigan:	Legal to sell hide; illegal to sell internal organs, teeth, claws, flesh, and bones.
Minnesota:	Basically prohibited - exception can sell hides, claws, and teeth of lawfully taken bears.
Mississippi:	Bears fully protected. Only finished products can be sold and must have proper documentation. No raw or green parts, regardless of origin, can be sold. No hunting season.
Montana:	Legal to sell hide, head, mounts, and claws. All else illegal.
Nebraska:	Legal to sell any bear or bear parts. Cannot possess or sell live bear.
Nevada:	It is legal to sell any parts of lawfully taken bear.
New Hampshire:	It is legal to sell anything, except live or illegally taken bear or parts thereof.
New Jersey:	The state does have a small resident black bear population. However, it is illegal to hunt, take or kill a black bear within the state (N.J.A.C. 7:25-5.6 and N.J.A.C. 23:4-1). The sale of any game animal within New Jersey, whether or not the game animal was lawfully taken and removed from another state, is prohibited by N.J.S.A. 23:4-28.
New Mexico:	If the bear is lawfully taken, it is legal to sell the hide and parts (claws/skull/etc.). Meat may not be sold. Their regulations do not address internal organs. Sale of galls would probably be legal.

- New York: It is legal in the state to sell black bear parts as long as these parts do not contain any flesh of the bear. Parts such as the claws, hide, teeth and gall bladder are legal for sale at this time. However, the state is attempting to have the law changed to make sale of any part or product of the black bear illegal. The section of the NY State Fish and Wildlife law that is applicable is Article 11, Title 9, Sub 17 Par 9 Sub a.
- North Carolina: Illegal to sell black bear parts in the state.
- Ohio: It is legal to sell lawfully acquired hides, teeth, hair, and claws.
- Oklahoma: No part may be sold, even if lawfully taken.
- Oregon: Sale of all parts strictly prohibited.
- Pennsylvania: The state has a large resident black bear population and permits licensed sport hunting. The sale of edible portions of legally taken game animals is prohibited by state law. Black bear gall bladders are considered an edible portion of the bear and their sale is prohibited. However, the hide and claws can apparently be sold.
- Rhode Island: Its is legal. No state law against it.
- South Carolina: Illegal to sell black bear parts in the state.
- South Dakota: The bear is listed as threatened and therefore no bear or parts can be sold. Domestic bears (two generations removed from the wild) can be sold. There are many loopholes in the state laws.
- Tennessee: It is illegal to commercialize in black bears. It is illegal to sell black bears or any of their parts in Georgia, Tennessee, or Kentucky.
- Texas: State endangered species. Totally protected. No part may be sold.
- Utah: Illegal to sell any bear or bear parts.
- Vermont: Sale of black bear parts in the state is essentially unregulated. Title 10, Vermont Statutes Annotate, Section 4783 reads:
- (A) A person shall not buy or well big game or the meat of big game within the state except during the open season and for 20 days thereafter.
- (B) Notwithstanding Subsection (A), a person may buy or well at any time:
- (1) the head, hide, and hoofs of deer or moose legally taken; or

(2) the head, hide, paws, and internal organs of a black bear legally taken.

(C) The meat of big game animals shall not be bought or sold for the purpose of being transported out of the state.

- Virginia: The Virginia Game and Inland Fish Boat Laws and Regulations, Section 29.1-536 state that bear may be bough and sold during the open hunting season only. Under state definitions, the bear is not a fur bearer.
- Washington: Sale of all parts prohibited.
- West Virginia: The hide, head, skull, organs, and feet if legally taken may be sold, according to Laws, DNR, WV, Chapter 20, Section 2-11.
- Wisconsin: Legal to sell hides with head, claws, and feet attached. Illegal to sell near, parts, and whole carcasses. Sellers and buyers need current bear hunting license.
- Wyoming: Legal to sell everything except the meat. Okay to sell galls, hide, claws and mounts.

5 AAC 92.025. PERMIT FOR EXPORTING A RAW SKIN.

(a) No person may ship, mail, or otherwise transport from Alaska the raw skin of a wild fur animal or fur bearer unless the person first obtains an export permit or shipping tag and an export report or postcard available from the department, post offices, or commercial carriers.

(b) A person who ships, mails, or otherwise transports from Alaska the raw skin of a wild fur animal or fur bearer shall attach a fur export permit to the outside of any package containing the raw skin and shall include a statement that each skin was legally taken and possessed. No carrier or post office may accept for shipment from Alaska a raw skin of a wild fur animal or fur bearer unless a fur export permit is attached. Before shipment, the person shipping, mailing, or otherwise transporting the raw skin shall detach the fur export report from the fur export permit, and shall complete it and mail it to the department. (Eff. 7/5/85, Register 95)

Authority: AS 16.05.255
AS 16.05.920

5 AAC 92.027. PERMIT FOR EXPORTING BIG GAME

TROPHIES. (a) No person may export from Alaska a raw, unprocessed, or unmounted big game trophy unless the container in which the trophy is shipped, or the trophy itself, if it is not in a container, has attached to it in a clearly visible manner an export permit or shipping tag provided by the department, stating the name and address of the person who took the trophy, the name and address of the shipper, and the species and parts being shipped.

(b) Upon request from a peace officer of the state, or federal fish and wildlife agent, the person shipping or receiving a raw, unprocessed, or unmounted big game trophy shall allow inspection of the trophy.

(c) The export permit or shipping tag required by (a) of this section must remain attached to the container or trophy until a final destination is reached and the trophy is received for processing or use.

(d) In this section, "big game trophy" means the raw, unprocessed, or unmounted horns, antlers, or cape of any big game animal, or the hide of a black or brown bear. (Eff. 7/5/85, Register 95; am 8/20/89, Register 111)

Authority: AS 16.05.255
AS 16.05.920

5 AAC 92.028. AVICULTURE PERMITS. (a) No person may hold in captivity a bird listed in (d) of this section without a biennial aviculture permit in possession. Each permit holder shall keep each bird held under this permit wingclipped. No bird may be released into the wild.

(c) The sealing periods in (b) of this section may be temporarily reduced by an authorized employee of the department.

(d) A person who takes a species listed in (b) of this section must bring the skin for sealing to an authorized representative of the department and must complete a report on a form provided by the department. (Eff. 7/5/85, Register 95; am 11/1/85, Register 96; am 6/19/86, Register 98; am 8/8/87, Register 103; am 4/24/88, Register 106; am 7/14/88, Register 107; am 8/20/89, Register 111)

Authority: AS 16.05.255
AS 16.05.370
AS 16.05.920

5 AAC 92.175. SEALING OF BEAVER. Repealed 4/24/88.

Article 7. Use of Game

Section	Section
200. Purchase and sale of game	241. (Repealed)
210. Game as animal food or bait	250. Transfer of musk oxen for scientific and educational purposes
220. Salvage of game meat, furs, and hides	260. Taking cub bears and female bears with cubs prohibited
230. Feeding of game	
240. (Repealed)	

5 AAC 92.200. PURCHASE AND SALE OF GAME. (a) Except as provided in (b) of this section, the purchase, sale, or barter of game or any part of game is permitted.

(b) Except as provided in AS 16.05.930(e), no person may purchase, sell, or barter the following:

(1) the meat of big game and small game except hares and rabbits; however, caribou may be bartered in Units 22 — 26, but such bartered caribou may not be transported or exported from those units;

(2) any part of a bear, an unsealed marten taken in Units 1 — 5, 7, and 15 (except as provided in 5 AAC 92.170(a)), or an unsealed beaver, land otter, lynx, wolf, or wolverine;

(3) the skull, horn, or antler of a big game animal, including a prepared big game trophy; however, this paragraph does not prohibit the purchase, sale, or barter of a naturally shed antler, or a horn or an antler that has been permanently removed from any portion of the skull, and has not been made into a prepared trophy.

(c) Notwithstanding (b)(2) and (3) of this section, a licensed taxidermist, estate executor, or bankruptcy referee, may sell a skin or trophy by permit issued under 5 AAC 92.031, and the state will, in its discretion, sell a skin or trophy as excess property. A person may purchase and possess an animal skin or trophy sold under this subsection. How-



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CUMULATIVE SUPPLEMENT

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Sale. It is deemed to be a sale of fish or wildlife in violation of this Act [16 USCS §§ 3371 et seq.] 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 Act [16 USCS §§ 3371 et seq.] 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.

(As amended Nov. 14, 1988, P. L. 100-653, Title I, § 101, 102 Stat. 3825.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Bracketed matter has been inserted in paras. (3)(B) and (4) of subsec. (a) of this section to reflect the probable intent of Congress.

Amendments:

1988, Act Nov. 14, 1988, in subsec. (a), in para. (1), substituted "taken, possessed, transported or sold" for "taken or possessed," deleted para. (4) which read: "(4) 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; or" redesignated former para. (5) as para. (4); and added subsecs. (c) and (d).

CODE OF FEDERAL REGULATIONS

Add:

25 CFR Part 244.

50 CFR Parts 10, 14.

RESEARCH GUIDE

Federal Procedure L. Ed:

Natural and Marine Resources, Fed Proc, L. Ed, §§ 56:1955, 1976, 2276.

INTERPRETIVE NOTES AND DECISIONS

3.5. Applicability to Indians

1. Constitutionality

Ex post facto clause does not bar conviction of defendants for conspiracy to violate Lacey Act (16 USCS §§ 3372(a)(1) and 3373(d)(1)(B)) through violation of Airborne Hunting Act (16 USCS § 742j-1), despite fact that conspiracy began prior to amendments to Lacey Act enhancing penalties for its violation, since conspiracy continued past effective date of amendments; ex post facto bar is not raised through failure of judge to instruct jury regarding dates of alleged acts constituting conspiracy, where evidence established violations of amended Lacey Act during relevant time period. *United States v. Todd* (1984, CA5 Tex) 735 F2d 146, cert den 469 US 1189, 83 L Ed 2d 964, 105 S Ct 957, reh den 470 US 1065, 84 L Ed 2d 841, 105 S Ct 1783.

"Any foreign law" in 16 USCS § 3372(a)(2)(A) is sufficiently clear so that term does not make Lacey Act (16 USCS §§ 3371 et seq.) unconstitutionally vague where forfeiture proceedings were initiated against salmon imported in violation of Taiwanese Board of Foreign Trade's prohibition of export without permit since importer should at

least have been aware of strong possibility that violation of foreign regulation would trigger forfeiture under 16 USCS § 3374. *United States v. 594,464 Pounds of Salmon* (1989, CA9 Wash) 871 F2d 824, 19 ELR 20648.

2. Construction

Provision of guide services or hunting permit did not constitute sale of wildlife for purposes of Lacey Act (16 USCS § 3372), since criminal laws are to be strictly construed, and ordinary person would understand "sale of wildlife" to mean conveyance to buyer for valuable consideration of wildlife possessed or controlled by seller, and provision of guide services or hunting permit would be viewed by ordinary person as provided buyer opportunity to kill wildlife, but would not be considered actual sale of wildlife. *United States v. Stenberg* (1986, CA9 Mont) 803 F2d 422.

3. Applicability to foreign laws

Violation of International Pacific Halibut Commission regulation limiting day's catch to 20,000 pounds of halibut was proper basis for criminal prosecution under Lacey Act (16 USCS §§ 3371-3378), despite claim that Halibut Act (16 USCS § 773k) provided stringent civil penalties rather

ILLEGALLY TAKEN FISH & WILDLIFE

than criminal penalties for shipment, transportation and sale of halibut, and despite claim that disclaimer provision, 16 USCS § 3378(c)(1) precluded prosecution. *United States v. Cameron* (1989, CA9 Alaska) 888 F2d 1279.

Exportation of salmon from Taiwan to United States may be in violation of Lacey Act Amendments of 1981 (16 USCS §§ 3371 et seq.) where such exportation violates regulations and public announcement of Taiwan Board of Foreign Trade, because "foreign law" as used in 16 USCS § 3372(a)(2)(A) encompasses foreign export restriction like one allegedly breached here, and broad meaning given that term does not make statute unconstitutionally vague. *United States v. 594,464 Pounds of Salmon* (1987, WD Wash) 687 F Supp 525.

3.5. Applicability to Indians

Prohibitions of Lacey Act (16 USCS §§ 3371 et seq.) apply to Indians as well as non-Indians; Indian tribes do not have treaty-reserved right to exclusive jurisdiction over tribal law offenses committed by Indians; for purposes of determining whether Act offenses occurred within Indian country, issue of what constitutes Indian country is properly matter for judge and not jury; trial judge did not err in determining that offenses occurred on Indian country, in light of certified title documents produced by government indicating that titles to land upon which offenses occurred are held by government for benefit of treaty tribes, pursuant to specified acts of Congress. *United States v. Sohapp* (1985, CA9 Wash) 770 F2d 816, cert den 477 US 906, 91 L Ed 2d 568, 106 S Ct 3278.

Federal government had jurisdiction under Lacey Act to prosecute member of Crow Creek Indian tribe for net fishing in violation of tribal law within boundaries of Lower Brule Reservation. *United States v. Big Eagle* (1989, CA8 SD) 881 F2d 539, reh den, en banc (CA8) 1989 US App LEXIS 13872.

Although court must make finding of validity in use of state or federal wildlife laws against tribal members, there is no need for hearing on issue of conservation necessity if tribe itself has enacted similar, valid laws; tribal law creates presumption of validity of similar state or federal law. *United States v. Williams* (1990, CA9 Idaho) 898 F2d 727, 20 ELR 20585.

District Court has subject matter jurisdiction over prosecution of Indian for violation of tribal fishing law under 16 USCS § 3372(a)(1), where Indian netted fish without commercial fishing license, because (1) government may show that Indian was fishing illegally within boundaries of reservation subject to tribal law, (2) Lacey Act (16 USCS §§ 3371 et seq.) does apply to Indians, and (3) tribal law allegedly violated validly restricted rights of Indians to fish in Missouri River. *United States v. Big Eagle* (1988, DC SD) 684 F Supp 241.

4. Relation to other federal laws

Lacey Act (16 USCS §§ 3371-3378) properly regulates halibut fishing in Gulf of Alaska and was proper Act upon which to base defendant's conviction for illegally fishing for and catching halibut in unauthorized fishing area in Alaskan waters, since fishery management plan for groundfish, in effect under Magnusen Fishery Conservation and Management Act of 1976 (16 USCS §§ 1801-1822)

only applied to halibut in that it prohibited incidental taking of halibut while fishing for other groundfish. *United States v. Doubleday* (1986, CA9 Wash) 804 F2d 1091, cert den (US) 95 L Ed 2d 201, 107 S Ct 1628.

Five year "catch all" statute of limitations of 18 USCS § 3282 was applicable to charge of conspiracy to violate Lacey Act, rather than statute of limitations for underlying state offense. *United States v. Thomas* (1989, CA9 Mont) 887 F2d 1341.

Alaskan fishing regulations underlying Lacey Act conviction are not pre-empted by Alaska National Interest and Lands Conservation Act. *United States v. Skinna* (1990, CA9 Alaska) 915 F2d 1250.

Magnuson Act (16 USCS § 1822(e)) does not prohibit United States prosecution of fishermen who took fish in violation of Bahamian law under 16 USCS § 3372, where defendants were fishing in part of Bahamian Exclusive Economic Zone recognized by United States, because, at any rate, "sense of Congress" language of § 1822(e) indicates that section was intended merely to advise executive branch as to what factors Congress finds important in evaluating foreign nation claim to exclusive economic zone. *United States v. Shelhammer* (1988, SD Fla) 681 F Supp 819.

5. Relation to state law

State statute prohibiting importation of live baitfish does not violate commerce clause, since statute serves legitimate local interest by preventing accidental introduction of baitfish parasites or of nonnative fish species that would have unpredictable effects on native fish populations, which purpose could not be adequately served by available nondiscriminatory alternatives, since no adequate inspection procedures are currently available. *Maine v. Taylor* (1986) 477 US 131, 91 L Ed 2d 110, 106 S Ct 2440, on remand (CA1 Me) 802 F2d 441.

Lacey Act Amendments (16 USCS §§ 3371 et seq.) do not exempt state wildlife legislation from scrutiny under commerce clause, nor lower intensity of scrutiny, since there is no unambiguous statement of congressional intent to alter limits of state power otherwise imposed by commerce clause. *Maine v. Taylor* (1986) 477 US 131, 91 L Ed 2d 110, 106 S Ct 2440, on remand (CA1 Me) 802 F2d 441.

Federal Government must establish validity of state regulations underlying federal prosecution under Lacey Act (16 USCS §§ 3371 et seq.). *United States v. Sohapp* (1985, CA9 Wash) 770 F2d 816, cert den 477 US 906, 91 L Ed 2d 568, 106 S Ct 3278.

There is no requirement in proving violation of 16 USCS § 3372 that state law violated be violated in that state, so that sale in North Carolina of rockfish taken in Virginia supplied violations of Virginia statutes and regulations necessary to support conviction under § 3372. *United States v. Gay-Lord* (1986, CA4 NC) 799 F2d 124.

6. What constitutes violation, generally

Conviction under Lacey Act, 16 USCS §§ 3372(a)(2) and 3373(d)(1)(B), of violation of Montana law, which makes it unlawful to knowingly purchase, possess, or transport raptor without certificate, license, or permit issued by state department of fish, wildlife, and parks, was proper where defendant had state permits, which autho-

rized possession and transfer of falcons they described, but knew that origin of purportedly captive-bred birds was misrepresented and that thus, transport of wild falcons made transaction illegal. *United States v Doyle* (1986, CA9 Mont) 786 F2d 1440, 16 ELR 20519, cert den (US) 93 L Ed 2d 576, 107 S Ct 572.

Even if court accepted defendant's argument that defendant did not violate Lacey Act (16 USCS § 3372) when he purchased rockfish in North Carolina because government undercover agents delivered fish to defendant from Virginia, sale by defendant of rockfish taken from interstate lake to company that sold fish in interstate markets was violation of § 3372. *United States v Gay-Lord* (1986, CA4 NC) 799 F2d 124.

Furnishing of guide services for hunting wildlife did not constitute sale of that wildlife within meaning of Lacey Act, and indictment cannot be sustained in case where provider of such services controlled property on which hunt was conducted and obtained additional fee conditioned on successful killing of wildlife. *United States v De Masters* (1989, CA10) 866 F2d 327.

Evidence was sufficient to establish that defendant, Montana hunting guide and outfitter, violated Lacey Act by conspiring to transport elk in interstate commerce in violation of Montana laws requiring hunting license. *United States v Thomas* (1989, CA9 Mont) 887 F2d 1341.

16 USCS § 3377(c) does not operate to bar prosecution under §§ 3372 and 3373 of defendant who allegedly transported and sold 2 black bears in interstate commerce from Maine to Pennsylvania, despite fact that it is legal to possess bear in Pennsylvania, since Government alleges that defendant captured bears in Maine in order to sell them in Pennsylvania thereby violating Maine law.

§ 3373. Penalties and sanctions

(a) **Civil penalties.** (1) Any person who engages in conduct prohibited by any provision of this Act (other than subsections (b) and (d) of section 3 [16 USCS § 3372(b), (d)]) 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 section 3(d) [16 USCS § 3372(d)], 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)-(6) [Unchanged]

(b) [Unchanged]

(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, United States Code. 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.

and Lacey Act. *United States v Martinell* (1985, MD Pa) 611 F Supp 399.

Probable cause exists to bring action under 16 USCS § 3372(a)(2)(A) by United States for forfeiture of 10,875 partially tanned crocodile hides en route from Bolivia to Paris by airplane that made stop in Miami, where Bolivian law bars hunting of crocodiles under 1.50 meters long and 9.175 hides were less than 85 centimeters long. *United States v 3,210 Crusted Sides of Caiman Crocodilus Yacare* (1986, SD Fla) 636 F Supp 1281, 16 ELR 20889.

Government has established probable cause to believe that importation of birds from Peru violated 16 USCS §§ 1538(c)(1) and 3372(a)(2)(A) and is entitled to forfeiture of 2,507 live canary winged parakeets, where evidence indicates that birds are found only in jungle region from which Peru has banned wildlife exportation, that Convention on International Trade in Endangered Species (CITES) permit originally named different species but was irregularly altered on original copy only, and that CITES permit was never signed by shipper or by minister with power to authorize special exportation, because there is no "innocent owner" defense to forfeiture action and even if there was, experienced importer was shown to be at least passively negligent in relying on "warranty" of foreign businessman with no apparent legal training. *United States v 2,507 Live Canary Winged Parakeets* (1988, SD Fla) 689 F Supp 1106, 19 ELR 20101.

7. Indictment

Fact that undercover agents of Fish and Wildlife Service afforded defendant opportunity to kill elk, after defendant had taken limit, by providing him with false late-season permit, did not give defendant authorization and consent to break state law. *United States v Heuer* (1990, CA9 Mont) 916 F2d 1457.

(d) Criminal penalties. (1) [Introductory matter unchanged]

(A) knowingly imports or exports any fish or wildlife or plants in violation of any provision of this Act (other than subsections (b) and (d) of section 3 [16 USCS §§ 3372(b), (d)]), or

(B) violates any provision of this Act (other than subsections (b) and (d) of section 3) [16 USCS §§ 3372(b), (d)] 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,

[Concluding matter unchanged]

(2) Any person who knowingly engages in conduct prohibited by any provision of this Act (other than subsections (b) and (d) of section 3) [16 USCS §§ 3373(b), (d)] 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 section 3(d) [16 USCS § 3373(d)]—

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

(c) [Unchanged]

(As amended Nov. 14, 1988, P. L. 100-653, Title I, §§ 102, 103, 100 Stat. 3825, 3826.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1988, Act Nov. 14, 1988, in subsec. (a)(1) inserted "and any person who knowingly violates section 3(d)," and substituted "(other than subsections (b) and (d) of section 3)" for "(other than section 3(b))"; in subsec. (c), substituted the first sentence for one which read "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."; and, in subsec. (d) in paras (1) and (2) substituted "(other than subsections (b) and (d) of section 3)" for "(other than section 3(b))" wherever it appeared, and added para. (3).

CODE OF FEDERAL REGULATIONS

Add:

7 CFR Parts 1, 380.

50 CFR Parts 10, 14.

This section is no longer cited as authority for:

50 CFR Part 13.

CROSS REFERENCES

As to sentencing guidelines for this section, see the appendix entitled "Sentencing Guidelines for U.S. Courts" at the end of Title 18.

RESEARCH GUIDE

Federal Procedure L. Ed:

Natural and Marine Resources, Fed Proc. L. Ed, §§ 56:1955, 1976-1980, 2276.

INTERPRETIVE NOTES AND DECISIONS

Ex post facto clause does not bar conviction of defendants for conspiracy to violate Lacey Act (16 USCS §§ 3372(a)(1) and 3373(d)(1)(B)) through violation of Airborne Hunting Act (16 USCS § 742j-1), despite fact that conspiracy began prior to amendments to Lacey Act enhancing penalties for its violation, since conspiracy continued past

effective date of amendments; ex post facto bar is not raised through failure of judge to instruct jury regarding dates of alleged acts constituting conspiracy, where evidence established violations of amended Lacey Act during relevant time period. *United States v Todd* (1984, CA5 Tex) 735 F2d 146, cert den 469 US 1189, 83 L Ed 2d 964, 105 S

Ct 957, reh den 470 US 1065, 84 L Ed 2d 841, 105 S Ct 1783.

Sufficient evidence supports convictions of defendants for conspiracy to violate Lacey Act (16 USCS §§ 3372 and 3373) through violation of Airborne Hunting Act (16 USCS § 742-1) where one defendant offered to provide airborne hunt of wildlife while other defendant acted as guide during hunt, and where defendants offered airborne hunts at prices ranging from \$1,000 to \$5,000. *United States v Todd* (1984, CA5 Tex) 735 F2d 146, cert den 469 US 1189, 83 L Ed 2d 964, 105 S Ct 957, reh den 470 US 1065, 84 L Ed 2d 841, 105 S Ct 1783.

Commercial arrangement whereby professional guide offers his services to obtain wildlife illegally is offer to sell wildlife within meaning of Lacey Act Amendments (16 USCS §§ 3372 and 3373). *United States v Todd* (1984, CA5 Tex) 735 F2d 146, cert den 469 US 1189, 83 L Ed 2d 964, 105 S Ct 957, reh den 470 US 1065, 84 L Ed 2d 841, 105 S Ct 1783.

Insufficient evidence exists to support conviction of defendant for substantive violation of Lacey Act (16 USCS § 3373) in connection with commercial arrangement in which defendants offered airborne hunts of wildlife at prices ranging from \$1,000 to \$5,000, since government failed to prove that market value of animals taken exceeded \$350 in that only evidence offered as to actual value was price of \$1200 quoted in offer of hunt by defendant and \$250 amount actually paid for hunt by hunter who killed wildlife. *United States v Todd* (1984, CA5 Tex) 735 F2d 146, cert den 469 US 1189, 83 L Ed 2d 964, 105 S Ct 957, reh den 470 US 1065, 84 L Ed 2d 841, 105 S Ct 1783.

Conviction under Lacey Act, 16 USCS §§ 3372(a)(2) and 3373(d)(1)(B), of violation of Montana law, which makes it unlawful to knowingly purchase, possess, or transport raptor without certificate, license, or permit issued by state department of fish, wildlife, and parks, was proper

§ 3374. Forfeiture

CODE OF FEDERAL REGULATIONS

Add:
7 CFR Part 356.
50 CFR Parts 10, 13, 14.

RESEARCH GUIDE

Federal Procedure L Ed:
Natural and Marine Resources, Fed Proc, L Ed, §§ 56:1955, 1976, 1981, 2276.

INTERPRETIVE NOTES AND DECISIONS

Although forfeiture of aircraft used to aid in criminal violation of Lacey Act is now possible only when felony conviction is obtained and violation involved sale or purchase or transportation of fish, wildlife, or plants, where bear was killed in violation of state law at time act did not require either prior felony conviction or violation involving sale or purchase to incur forfeiture, forfeiture of airplane used to transport such illegally taken bear was proper. *United States v Van Horn* (1988, CA9 Alaska) 836 F2d 1235.

Civil forfeiture action against owner of fishing

§ 3375. Enforcement

(a) [Unchanged]

where defendant had state permits, which authorized possession and transfer of falcons they described, but knew that origin of purportedly captive-bred birds was misrepresented and that thus, transport of wild falcons made transaction illegal. *United States v Doyle* (1986, CA9 Mont) 786 F2d 1440, 16 ELR 20519, cert den (US) 93 L Ed 2d 576, 107 S Ct 572.

Felony provision of Lacey Act (16 USCS § 3373) is not unconstitutionally vague, since Lacey Act clearly notifies individuals that participation in prohibited transactions involving wildlife with market value greater than \$350 subjects them to felony prosecution; jury instruction regarding determination of market value of wildlife, that one method of determining price of wildlife would be price it would bring if sold on open market between willing buyer and seller, did not suggest in any way that price paid by government agent was conclusive, and evidence supported finding that market value of wildlife was greater than \$350 when prices offered and finally settled upon between agent and defendant were well above \$350. *United States v Stenberg* (1986, CA9 Mont) 803 F2d 422.

Instruction regarding mens rea requirement of misdemeanor conspiracy to violate Lacey Act, which required jury to find that "in the exercise of due care those agreeing should have known" elk were taken in violation of Montana hunting laws, was not erroneous. *United States v Thomas* (1989, CA9 Mont) 887 F2d 1341.

16 USCS § 3377(c) does not operate to bar prosecution under §§ 3372 and 3373 of defendant who allegedly transported and sold 2 black bears in interstate commerce from Maine to Pennsylvania, despite fact that it is legal to possess bear in Pennsylvania, since Government alleges that defendant captured bears in Maine in order to sell them in Pennsylvania thereby violating Maine law and Lacey Act. *United States v Martinell* (1985, MD Pa) 611 F Supp 399.

vessel under 16 USCS § 3374(a)(2) will not be dismissed, even though claimant was already convicted for certain fish and game violations under 16 USCS §§ 3372(a) and 3373(d), because forfeiture of boat plus catch of fish and lobster is rationally related to government's investigation and enforcement expenses and damage to wildlife and would not constitute punishment so that double jeopardy should bar forfeiture. *United States v United States Fishing Vessel Maylin* (1989, SD Fla) 725 F Supp 1222.

(b) **Powers.** Any person authorized under subsection (a) to enforce this Act may carry firearms; may, when enforcing this Act, 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; Provided, That an arrest for a felony violation of this Act 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 Act 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 Act. 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 5 of this Act [16 USCS § 3374]; 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), (d) [Unchanged]

(As amended Nov. 14, 1988, P. L. 100-653, Title I, § 104, 102 Stat. 3826.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1988, Act Nov. 14, 1988, in subsec. (b), substituted: "may, when enforcing this Act, 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 Act if he has reasonable grounds to believe that the person to be arrested has committed or is committing such violation."

CODE OF FEDERAL REGULATIONS

Add:
50 CFR Part 10.
This section no longer cited as authority for:
50 CFR Part 14.

RESEARCH GUIDE

Federal Procedure L Ed:
Natural and Marine Resources, Fed Proc, L Ed, §§ 56:1955, 1976, 1982, 1983, 2276.
Law Review Articles:
Thornton, Takings under Endangered Species Act section 9. 4 Nat Resources & Env't 7.

INTERPRETIVE NOTES AND DECISIONS

Lacey Act (16 USCS § 3375(c)) confers concurrent jurisdiction on federal and tribal courts to prosecute Indian fishing offenses; concurrent federal jurisdiction is not extinguished by separate

jurisdictional grant to Court of Indian Offenses afforded by underlying regulations. *United States v Wilson* (1985, ND Cal) 611 F Supp 813, rev'd on other grounds (CA9 Cal) 789 F2d 1354.

16 USCS § 3376

§ 3376. Administration

CODE OF FEDERAL REGULATIONS

Add:

50 CFR Part 10.

This section is no longer cited as authority for:

50 CFR Parts 13, 14.

RESEARCH GUIDE

Federal Procedure L. Ed:

Natural and Marine Resources, Fed Proc, L. Ed, §§ 56:1955, 1976, 2276.

§ 3377. Exceptions

CODE OF FEDERAL REGULATIONS

Add:

50 CFR Parts 10, 14.

RESEARCH GUIDE

Federal Procedure L. Ed:

Natural and Marine Resources, Fed Proc, L. Ed, §§ 56:1955, 1976, 2276.

INTERPRETIVE NOTES AND DECISIONS

Lacey Act (16 USCS §§ 3371-3378) properly regulates halibut fishing in Gulf of Alaska and was proper Act upon which to base defendant's conviction for illegally fishing for and catching halibut in unauthorized fishing area in Alaskan waters, since fishery management plan for groundfish, in effect under Magnusen Fishery Conservation and Management Act of 1976 (16 USCS §§ 1801-1822) only applied to halibut in that it prohibited incidental taking of halibut while fishing for other groundfish. *United States v Doubleday* (1986, CA9 Wash) 804 F2d 1091, cert den (US) 95 L Ed 2d 201, 107 S Ct 1628.

Statutory exception as to interstate shipment through state of fish or wildlife or plant legally taken speaks to cases where shipment only passes through state and is irrelevant where wildlife or

fish is knowingly possessed and sold in interstate commerce in violation of state law and had no application where defendants were implicated in illegal possession and sales of undersized spiny lobster tails in Florida, regardless of source or destiny of tails. *United States v Miranda* (1988, CA11 Fla) 835 F2d 830.

16 USCS § 3377(c) does not operate to bar prosecution under §§ 3372 and 3373 of defendant who allegedly transported and sold 2 black bears in interstate commerce from Maine to Pennsylvania, despite fact that it is legal to possess bear in Pennsylvania, since Government alleges that defendant captured bears in Maine in order to sell them in Pennsylvania thereby violating Maine law and Lacey Act. *United States v Martinell* (1985, MD Pa) 611 F Supp 399.

§ 3378. Miscellaneous provisions

CODE OF FEDERAL REGULATIONS

Add:

25 CFR Part 244.

50 CFR Parts 10, 14, 246.

RESEARCH GUIDE

Federal Procedure L. Ed:

Natural and Marine Resources, Fed Proc, L. Ed, §§ 56:1955, 1976, 2276.

CHAPTER 54. RESOURCE CONSERVATION

§ 3459. Limitation on assistance

The program provided for in this subtitle [16 USCS §§ 3451 et seq.] shall be limited to providing technical and financial assistance to not more than 450 active designated areas.

(As amended Nov. 28, 1990, P. L. 101-624, Title XIV, Subtitle D, § 1452(a), 104 Stat. 3611.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1990. Act Nov. 28, 1990 substituted "450" for "two hundred and twenty-five".

§ 3461. Authorization of appropriations

There are authorized to be appropriated for each of the fiscal years 1991 through 1995 such

CONSERVATION

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16 USCS § 3502

sums as may be necessary to carry out the provisions of this subtitle [16 USCS §§ 3451 et seq.], except that not more than \$15,000,000 may be appropriated for loans for any fiscal year. Funds appropriated pursuant to this subtitle [16 USCS §§ 3451 et seq.] shall remain available until expended.

(As amended Nov. 28, 1990, P. L. 101-624, Title XIV, Subtitle D, § 1452(b), 104 Stat. 3611.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1990. Act Nov. 28, 1990 deleted "for each of the five fiscal years beginning October 1, 1982, and ending September 30, 1987," and inserted "for each of the fiscal years 1991 through 1995".

CHAPTER 55. COASTAL BARRIER RESOURCES

Section

3503. Establishment of Coastal Barrier Resources System

3505. Exceptions to limitations on expenditures

CODE OF FEDERAL REGULATIONS

Add:

13 CFR Part 116.

§ 3501. Congressional statement of findings and purpose

(a) [Introductory matter unchanged]

(1) coastal barriers along the Atlantic and Gulf coasts and along the shore areas of the Great Lakes of the United States and the adjacent wetlands, marshes, estuaries, inlets and nearshore waters provide—

(A), (B) [Unchanged]

(2)-(5) [Unchanged]

(b) The Congress declares that it is the purpose of this Act to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf coasts and along the shore areas of the Great Lakes by restricting future Federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers, by establishing a Coastal Barrier Resources System, and by considering the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved.

(As amended Nov. 23, 1988, P. L. 100-707, Title II, § 204(c)(1), 102 Stat. 4714.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1988. Act Nov. 23, 1988, in subsec. (a)(1), in the introductory matter, and in subsec. (b), inserted "and along the shore areas of the Great Lakes".

Short titles:

Act Nov. 23, 1988, P. L. 100-707, Title II, § 204(a), 102 Stat. 4713, provides: "This section may be cited as the 'Great Lakes Coastal Barrier Act of 1988'".

Act Nov. 16, 1990, P. L. 101-591, § 1, 104 Stat. 2931, provides: This Act may be cited as the 'Coastal Barrier Improvement Act of 1990'. For full classification of this Act, consult USCS Tables volumes.

CODE OF FEDERAL REGULATIONS

Add:

13 CFR Part 116.

44 CFR Part 205.

§ 3502. Definitions

[Introductory matter unchanged]

(1) [Introductory matter unchanged]

(A) [Introductory matter unchanged]

(i) is subject to wave, tidal, and wind energies, and

(ii) protects landward aquatic habitats from direct wave attack; and

(B) [Unchanged]



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16 USCS
Conservation
§§ 1531-5600

Index

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CHAPTER 53. CONTROL OF ILLEGALLY TAKEN FISH AND WILDLIFE

Section

- 3371. Definitions
- 3372. Prohibited acts
 - (a) Offenses other than marking offenses
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- 3373. Penalties and sanctions
 - (a) Civil penalties
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- 3377. Exceptions
 - (a) Activities regulated by plan under Magnuson Fishery Conservation and Management Act
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 - (c) Interstate shipment or transshipment through Indian country of fish, wildlife, or plants for legal purposes
- 3378. Miscellaneous provisions
 - (a) Effect on powers of States
 - (b) Repeals
 - (c) Disclaimers
 - [(d)](g) Travel and transportation expenses
 - [(e)](h) Interior appropriations budget proposal

Auto-Cite®: Any case citation herein can be checked for form, parallel references, later history, and annotation references through the Auto-Cite computer research system.

§ 3371. Definitions

For the purposes of this Act:

(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, United States Code [18 USCS § 1151].

(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) 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.

(g) The term "Secretary" means, except as otherwise provided in the Act, 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) [5 USCS § 903 note]; except that with respect to the provisions of this Act which pertain to the importation or exportation of plants the term means the Secretary of Agriculture.

(h) 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.

(i) The term "taken" means captured, killed, or collected.

(j) 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.

(Nov. 16, 1981, P. L. 97-79, § 2, 95 Stat. 1073.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act" and "the Act", referred to in this section, is Act Nov. 16, 1981, P. L. 97-79, 95 Stat. 1073, which appears generally as 16 USCS §§ 3371 et seq. For full classification of this Act, consult USCS Tables volumes.

Short titles:

Act Nov. 16, 1981, P. L. 97-79, § 1, 95 Stat. 1073, provided: "This Act may be cited as the 'Lacey Act Amendments of 1981'." For full classification of this Act, consult USCS Tables volumes.

CODE OF FEDERAL REGULATIONS

National Oceanic and Atmospheric Administration, civil procedures, 15 CFR Part 904.

United States Fish, Wildlife Service, civil procedures, 50 CFR Part 11.

Seizure and forfeiture procedures, 50 CFR Part 12.

§ 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 or possessed 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, or

(B) any plant taken, possessed, transported, or sold in violation of any law or regulation of any State;

(3) within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18, United States Code [18 USCS § 7])—

(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 taken, possessed, transported, or sold in violation of any law or regulation of any State;

(4) 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; or

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

(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 subsection 7(a) of this Act [16 USCS § 3376(a)(2)].

(Nov. 16, 1981, P. L. 97-79, § 3, 95 Stat. 1074.)

CODE OF FEDERAL REGULATIONS

National Oceanic and Atmospheric Administration, civil procedures, 15 CFR Part 904.

United States Fish, Wildlife Service, civil procedures, 50 CFR Part 11.

Seizure and forfeiture procedures, 50 CFR Part 12.

CROSS REFERENCES

Preservation of game and wild birds; duties and powers of Secretary of the Interior; regulations as to hunting, 16 USCS §§ 701 et seq.

Unlawful transportation or importation of migratory birds, 16 USCS §§ 705, 707.

Arrests, 16 USCS § 706; 18 USCS § 3054.

Search warrants and seizures, 16 USCS § 706; 18 USCS § 3112.

This section is referred to in 16 USCS §§ 3373, 3374, 3376, 3377.

RESEARCH GUIDE

Federal Procedure L Ed:

Criminal Procedure, Fed Proc, L Ed 2d, §§ 22:138, 22:305.

Annotations:

Validity, construction, and application of Endangered Species Act of 1973 (16 USCS §§ 1531-1543). 32 ALR Fed 332.

INTERPRETIVE NOTES AND DECISIONS

1. Constitutionality

2. Construction

3. Applicability to foreign laws

4. Relation to other federal laws

5. Relation to state law

6. What constitutes violation, generally

7. Indictment

1. Constitutionality

Predecessor to 16 USCS § 3372 did not unconstitutionally delegate legislative power to foreign countries; rather, it simply limited exclusion from stream of foreign commerce wildlife unlawfully taken abroad. *United States v Molt* (1979, CA3 Pa) 599 F2d 1217.

16 USCS § 3372(a)(2)(A) is not unconstitutionally vague and does not unconstitutionally delegate to states legislative power reserved to

Congress. *United States v Bryant* (1983, CA6 Tenn) 716 F2d 1091.

2. Construction

Phrase "wildlife" found in predecessor to 16 USCS § 3372 covered harvesting of clams. *United States v Long Cove Seafood, Inc.* (1978, CA2 NY) 582 F2d 159.

"Any law or regulation of any State or foreign country" as used in predecessor to 16 USCS § 3372 was not limited to state criminal sanctions. *United States v Platt* (1972, SD NY) 345 F Supp 1229.

3. Applicability to foreign laws

Predecessor to 16 USCS § 3372 only applied to foreign laws designed to protect wildlife; it did not apply where law was merely revenue statute;

provisions of predecessor statute, which prohibited transportation of wildlife taken in violation of foreign laws, assimilated only foreign laws which involved, or purpose of which were, protection of wildlife; where government failed to prove beyond reasonable doubt that foreign laws allegedly violated by defendants were designed for protection of wildlife, counts of indictment based solely upon such violations would be dismissed. *United States v Molt* (1978, ED Pa) 452 F Supp 1200 *revd*, in part on other grounds (CA3 Pa) 599 F2d 1217.

4. Relation to other federal laws

Provisions of 42 USCS §§ 264, 271 making importation of certain fish and animals misdemeanor did not prevent sentence for felony for same acts which also were violations of predecessor to 16 USCS § 3372. *Steiner v United States* (1956, CA9 Cal) 229 F2d 745.

5. Relation to state law

Rules and regulations of Florida Game and Fresh Water Fish Commission prohibiting transportation of certain freshwater fish outside Florida constituted "law" of Florida within meaning of predecessor to 16 USCS § 3372. *United States v Howard* (1957) 352 US 212, 1 L Ed 2d 261, 77 S Ct 303.

Predecessor to 16 USCS § 3372 prohibited transportation of fish in interstate commerce contrary to law of state from which fish was transported. *United States v Sharpnack* (1958) 355 US 286, 2 L Ed 2d 282, 78 S Ct 291.

Exclusive system of regulation established by federal law for dealing with endangered species, including predecessor to USCS § 3372, did not preempt state laws dealing with importation of wild animals. *Palladio, Inc. v Diamond* (1970, SD NY) 321 F Supp 630, *affd* (CA2 NY) 440 F2d 1319, *cert den* 404 US 983, 30 L Ed 2d 367, 92 S Ct 446.

Predecessor to 16 USCS § 3372 was intended to aid states in enforcement of their game laws by rendering them equally applicable to game imported into state as to game killed within state. *Wells Fargo Express Co. v State* (1906) 79 Ark 349, 96 SW 189.

State act imposing tax on skins of fur-bearing animals and alligators before they were shipped from that state was not in violation of federal laws, including predecessor to 16 USCS § 3372. *Lacoste v Department of Conservation* (1922) 151 La 909, 92 So 381, *affd* 263 US 545, 68 L Ed 437, 44 S Ct 186.

State prohibition of selling of game, taken within or without state was not repugnant to interstate commerce. *State v Heger* (1906) 194 Mo 707, 93 SW 252.

Predecessor to 16 USCS § 3372 empowered any state to prohibit possession of game birds, taken within or without that state, during closed season. *People ex rel. Hill v Hesterberg* (1906) 184 NY 126, 76 NE 1032, *affd* 211 US 31, 53 L Ed 75, 29 S Ct 10.

State law prohibiting possession of game animals during certain periods did not attach to shipment of foreign game while in transit, in possession of common carrier until its arrival at point of destination and delivery there to consignee. *People v Fargo* (1910) 137 App Div 727, 122 NYS 553.

6. What constitutes violation, generally

If undercover agents were authorized by state to kill elk in violation of state statute in order to gather evidence against defendants, such killing was legal and could not serve as predicate for charge under predecessor to 16 USCS § 3372; it was proper to indict hunting guides for violation of predecessor statute in situation in which federal undercover agents were guided by defendants onto Indian reservation and there killed elk in violation of state game laws, so that illegal killing by agents made subsequent interstate transportation by defendants violation of predecessor statute. *United States v Sanford* (1976, CA9 Mont) 547 F2d 1085.

Defendant was properly convicted for violation of regulation of Alaska Administrative Code which prohibits purchase, sale or barter of parts of brown bear; state has power to reach beyond its borders under police power, to regulate game and fish if those regulations have sufficient nexus with protection and preservation of wildlife within state and there is sufficient relationship between regulating state and person whose conduct is regulated; there was sufficient relationship between defendant and Alaska where there was agreement for sale and partial payment made in Alaska. *United States v Sylvester* (1979, CA9 Alaska) 605 F2d 474.

Beginnings of attempt of which preparation was evidence would not amount to actual evasion in violation of predecessor to 16 USCS § 3372 standing alone, since evasion itself was prohibited. *United States v Smith* (1902, DC Pa) 115 F 423.

In view of fact that day 26 ducks were discovered in possession of defendants was not first day of season, their possession did not constitute violation of regulations issued pursuant to predecessor to 16 USCS § 3372, and, possession being legal, burden of proof did not shift to defendants. *United States v Clucas* (1943, DC Va) 50 F Supp 609.

Predecessor to 16 USCS § 3372 prohibited interstate transportation of furs of tigers, leopard

ards, jaguars, ocelots and of other endangered species threatened with extinction listed in regulations, *Fur Information & Fashion Council, Inc. v. E. F. Timme & Son, Inc.* (1973, SD NY) 364 F Supp 16, 180 USPQ 256, affd (CA2 NY) 501 F2d 1048, 183 USPQ 129, cert den 419 US 1022, 42 L Ed 2d 296, 95 S Ct 498, 183 USPQ 641.

Guilty knowledge of state hunting laws was essential element to sustain conviction under predecessor to 16 USCS § 3372, for taking or transporting of wildlife in violation of state law. *United States v. Jonas Bros. of Seattle, Inc.* (1974, DC Alaska) 368 F Supp 783.

Substantial evidence supported determination that commercial operator violated 16 USCS § 3372(a)(1) by intentionally shipping through interstate and foreign commerce imported and endangered species of sea turtle in cartons which were intentionally mislabeled. *Newell v. Baldrige* (1982, WD Wash) 548 F Supp 39.

Predecessor to 16 USCS § 3372 referred to animals and birds whose importation, if living, was prohibited by 18 USCS § 42 and did not prohibit importation of "all dead bodies of any foreign game animals." 23 OAG 213.

7. Indictment

Indictment under predecessor to 16 USCS § 3372 did not have to allege months in which game was killed. *Rupert v. United States* (1910, CA8 Okla) 181 F 87.

Indictment under predecessor to 16 USCS § 3372 alleging that defendant had prepared and intended for shipment by interstate commerce out of state certain packages of dead game was insufficient for failure to allege delivery to carrier. *United States v. Smith* (1902, DC Pa) 115 F 423.

§ 3373. Penalties and sanctions

- (a) **Civil penalties.** (1) Any person who engages in conduct prohibited by any provision of this Act (other than subsection 3(b) [16 USCS § 3372(b)]) 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, 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 3(b) [16 USCS § 3372(b)] 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 Act or to a section of this Act 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, United States Code [5 USCS § 554]. 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.** 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. 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, United States Code [28 USCS § 2112]. 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 Act (other than subsection 3(b) [16 USCS § 3372(b)]), or

(B) violates any provision of this Act (other than subsection 3(b) [16 USCS §§ 3372(b)]) 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 Act (other than subsection 3(b) [16 USCS § 3372(b)]) 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.

(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 Fishery Conservation and Management Act of 1976), 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 Act 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.

(Nov. 16, 1981, P. L. 97-79, § 4, 95 Stat. 1074.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Nov. 16, 1981, P. L. 97-79, 95 Stat. 1073, which appears generally as 16 USCS §§ 3371 et seq. For full classification of this Act, consult USCS Tables volumes.

The "Fishery Conservation and Management Act of 1976", referred to in this section, is Act Apr. 13, 1976, P. L. 94-265, 90 Stat. 331, which was redesignated the Magnuson Fishery Conservation and Management Act by Act Dec. 22, 1980, Title II, Part C, Subpart 2, § 238(a), 94 Stat. 3300. Such Act Apr. 13, 1976, appears generally as 16 USCS §§ 1801 et seq. For full classification of such Act, consult USCS Tables volumes.

CODE OF FEDERAL REGULATIONS

National Oceanic and Atmospheric Administration, civil procedures, 15 CFR Part 904.

United States Fish, Wildlife Service, civil procedures, 50 CFR Part 11.

Seizure and forfeiture procedures, 50 CFR Part 12.

General permit procedures, 50 CFR Part 13.

CROSS REFERENCES

This section is referred to in 16 USCS §§ 3374, 3376.

INTERPRETIVE NOTES AND DECISIONS

Where commercial importer of tropical fish was found in violation of 16 USCS § 3372(a)(1) for shipping in interstate and foreign commerce imported and endangered species of sea turtles in

cartons which had been intentionally mislabeled, civil penalty of \$1,000 for each violation is warranted. *Newell v. Baldrige* (1982, WD Wash) 548 F Supp 39.

§ 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 3 of this Act [16 USCS § 3372] (other than subsection 3(b) [16 USCS § 3372(b)]), 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 4 of this Act [16 USCS § 3373].

(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 Act 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 Act, 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 Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; 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 Act, 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 [USCS Rules of Criminal Procedure, Rule 41].

(c) **Storage cost.** Any person convicted of an offense, or assessed a civil penalty, under section 4 [16 USCS § 3373] 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.

(Nov. 16, 1981, P. L. 97-79, § 5, 95 Stat. 1076.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Nov. 16, 1981, P. L. 97-79, 95 Stat. 1073, which appears generally as 16 USCS §§ 3371 et seq. For full classification of this Act, consult USCS Tables volumes.

"The customs laws", referred to in this section, appear generally as 19 USCS §§ 1 et seq.

CODE OF FEDERAL REGULATIONS

National Oceanic and Atmospheric Administration, civil procedures, 15 CFR Part 904.

United States Fish, Wildlife Service, civil procedures, 50 CFR Part 11.

Seizure and forfeiture procedures, 50 CFR Part 12.

CROSS REFERENCES

This section is referred to in 16 USCS §§ 3375, 3376.

§ 3375. Enforcement

(a) **In general.** The provisions of this Act 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 Act.

(b) **Powers.** Any person authorized under subsection (a) to enforce this Act may carry firearms; may make an arrest without a warrant for any felony violation of this Act if he has reasonable grounds to believe that the person to be arrested has committed or is committing such violation: Provided, That an arrest for a felony violation of this Act 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 Act 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 [USCS Rules of Criminal Procedure, Rule 41], or other warrant of civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act. 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 5 of this Act [16 USCS § 3374]; 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, United States Code [28 USCS § 460], shall have jurisdiction over any actions arising under this Act. The venue provisions of title 18 and title 28 of the United States Code shall apply to any actions arising under this Act. The judges of the district courts of the United States and the United States magistrates 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 Act 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 Act 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 Act 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 Act 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.

(Nov. 16, 1981, P. L. 97-79, § 6, 95 Stat. 1077; June 25, 1984, P. L. 98-327, § 4 in part, 98 Stat. 271.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Nov. 16, 1981, P. L. 97-79, 95 Stat. 1073, which appears generally as 16 USCS §§ 3371 et seq. For full classification of this Act, consult USCS Tables volumes.

"The venue provisions of title 18 and title 28 of the United States Code", referred to in this section, appear generally as 18 USCS §§ 3231 et seq. and 28 USCS §§ 1391 et seq.

Amendments:

1984, Act June 25, 1984, in subsec. (d), substituted a comma for "a reward" following "shall pay", inserted "(1) a reward", and inserted ", 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 Act with respect to that fish, wildlife, or plant".

CODE OF FEDERAL REGULATIONS

National Oceanic and Atmospheric Administration, civil procedures, 15 CFR Part 904.

United States Fish, Wildlife Service, civil procedures, 50 CFR Part 11.

Seizure and forfeiture procedures, 50 CFR Part 12.

§ 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 section 4 and section 5 of this Act [16 USCS §§ 3373, 3374].

(2) The Secretaries of the Interior and Commerce shall jointly promulgate specific regulations to implement the provisions of subsection 3(b) of this Act [16 USCS § 3372(b)] 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 Act.

(Nov. 16, 1981, P. L. 97-79, § 7, 95 Stat. 1078.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Nov. 16, 1981, P. L. 97-79, 95 Stat. 1073, which appears generally as 16 USCS §§ 3371 et seq. For full classification of this Act, consult USCS Tables volumes.

CODE OF FEDERAL REGULATIONS

National Oceanic and Atmospheric Administration, civil procedures, 15 CFR Part 904.
United States Fish, Wildlife Service, civil procedures, 50 CFR Part 11.
Seizure and forfeiture procedures, 50 CFR Part 12.
General permit procedures, 50 CFR Part 13.

CROSS REFERENCES

This section is referred to in 16 USCS § 3372.

§ 3377. Exceptions

(a) **Activities regulated by plan under Magnuson Fishery Conservation and Management Act.** The provisions of paragraph (1) of subsection 3(a) of this Act [16 USCS § 3372(a)(1)] shall not apply to any activity regulated by a fishery management plan in effect under the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.).

(b) **Activities regulated by 16 USCS §§ 951 et seq., 971 et seq.; harvesting of highly migratory species taken on high seas.** The provisions of paragraphs (1), (2)(A), and (3)(A) of subsection 3(a) of this Act [16 USCS § 3372(a)(1), (2)(A), (3)(A)] shall not apply to—

(1) any activity regulated by the Tuna Conventions Act of 1950 (16 U.S.C. 951-961) [16 USCS §§ 951 et seq.] or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971-971(h)) [16 USCS §§ 971 et seq.]; or

(2) any activity involving the harvesting of highly migratory species (as defined in paragraph (14) of section 3 of the Fishery Conservation and Management Act of 1976 [16 USCS § 1802(14)]) taken on the high seas (as defined in paragraph (13) of such section 3 [16 USCS § 1802(13)]) 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 subsection 3(a) of this Act [16 USCS § 3372(a)(2)] shall not apply to the interstate shipment or transshipment through Indian country as defined in section 1151 of title 18, United States Code [18 USCS § 1151], 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. (Nov. 16, 1981, P. L. 97-79, § 8, 95 Stat. 1078.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The "Fishery Conservation and Management Act of 1976", referred to in this section, is Act Apr. 13, 1976, P. L. 94-265, 90 Stat. 331, which was redesignated as the Magnuson Fishery Conservation and Management Act by Act Dec. 22, 1980, Title II, Part C, Subpart 2, § 238(a), 94 Stat. 3300. Such Act Apr. 13, 1976, appears generally as 16 USCS §§ 1801 et seq. For full classification of such Act, consult USCS Tables volumes.

CODE OF FEDERAL REGULATIONS

National Oceanic and Atmospheric Administration, civil procedures, 15 CFR Part 904.
United States Fish, Wildlife Service, civil procedures, 50 CFR Part 11.
Seizure and forfeiture procedures, 50 CFR Part 12.

§ 3378. Miscellaneous provisions

(a) **Effect on powers of States.** Nothing in this Act 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 Act.

(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) [16 USCS §§ 851 et seq.].

(2) Section 5 of the Act of May 25, 1900 (16 U.S.C. 667e) [16 USCS § 667e], and sections 43 and 44 of title 18, United States Code (commonly known as provisions of the Lacey Act) [18 USCS §§ 43, 44].

(3) Sections 3054 and 3112 of title 18, United States Code [18 USCS §§ 3054, 3112].

(c) **Disclaimers.** Nothing in this Act 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)] (g) **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 [5 USCS § 5724] for all such special agents appointed after January 1, 1977.

[(e)] (h) Interior appropriations budget proposal. The Secretary shall identify the funds utilized to enforce this Act and any regulations thereto as a specific appropriations item in the Department of the Interior appropriations budget proposal to the Congress.

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

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Nov. 16, 1981, P. L. 97-79, 95 Stat. 1073, which appears generally as 16 USCS §§ 3371 et seq. For full classification of this Act, consult USCS Tables volumes.

Explanatory notes:

The bracketed subsec. designators "(d)" and "(e)" are inserted to maintain logical sequence since this section consists of subsecs. (a)-(c), (g) and (h) of § 9 of Act Nov. 16, 1981, P. L. 97-79, 95 Stat. 1079, 1080. Subsec. (d) of such § 9 amended 18 USCS § 42(c); subsec. (e) amended 16 USCS § 1540(d); and subsec. (f) added 16 USCS § 1540 note.

CODE OF FEDERAL REGULATIONS

National Oceanic and Atmospheric Administration, civil procedures, 15 CFR Part 904.

United States Fish, Wildlife Service, civil procedures, 50 CFR Part 11.
Seizure and forfeiture procedures, 50 CFR Part 12.

CHAPTER 54. RESOURCE CONSERVATION

SOIL AND WATER CONSERVATION

Section

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February 26, 1992

MEMORANDUM

TO: Representative Tom Moyer

FROM: Glenn T. Gray ^{GTG}
Legislative Analyst

RE: Other States' Laws Regarding Sale and Export of Wildlife
Research Request 92.175

This memorandum describes federal laws and laws in other western states that restrict the sale or export of wildlife or wildlife parts. Relevant laws of the United States (U.S.) government, California, Oregon, Washington, Idaho, Wyoming and Montana as well as British Columbia and the Yukon Territory are described below.

Summary

Federal laws restricting the sale or trade of wildlife include the Lacey Act and the Endangered Species Act. The Lacey Act prohibits the export or import of wildlife across state borders if any state laws were violated in the taking or possession of the wildlife. Additionally, an international treaty concerning endangered species requires a special permit to be obtained before exporting certain species including bears.

Four of the six states addressed in this memorandum restrict the sale of wildlife or nonedible wildlife parts.¹ Most of the states permit the sale of certain wildlife parts (e.g., hides, mounts and naturally shed antlers) although some states require that sellers first obtain a permit. Two states, Idaho and Wyoming, do not have specific prohibitions against selling nonedible wildlife parts. California and Washington specifically prohibit the sale of bear parts in their statutes or regulations and although Oregon and Montana statutes do not mention bear parts, their general statutes prohibit the sale of any wildlife parts unless specifically permitted. Many of the wildlife officials with whom we spoke said that current laws regarding sale of wildlife or wildlife parts will likely be reevaluated by their legislatures within the next few years.

¹Also, states generally prohibit the sale of edible portions of wildlife.

According to the wildlife professionals we interviewed, none of the states addressed in this memorandum specifically mention exports in their wildlife statutes.² The federal Lacey Act, however, prohibits the transport across state borders of any wildlife taken or possessed illegally. It is also possible that a state which prohibits sale of wildlife parts prohibited by federal law (e.g., the Lacey Act) might indirectly prohibit the export of wildlife if it is against another state's law.³ Also, state statutes prohibiting the exchange or transport of wildlife parts (in addition to sale prohibitions) may apply to exports.

British Columbia and the Yukon Territory permit the sale of wildlife parts as long as proper permits have been obtained. Special permits are needed to export wildlife or wildlife parts.

U.S. Laws

Dave Purington, assistant regional director of Law Enforcement for the U.S. Fish and Wildlife Service in Anchorage, said that a federal law is broken if game is taken in violation of state law and transported across a state border. The Lacey Act states that it is unlawful

to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce . . . 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 . . . (16 USC Section 3372).

The act does not apply to shipment of wildlife through areas defined as Indian country. Attachment A contains pertinent portions of the Lacey Act.

The Wild Bird Protection Act, currently being considered by Congress, would restrict importation of certain species of wild birds into the U.S. Attachment B contains a summary of the federal act and model state legislation. Also, the federal Endangered Species Act of 1973 prohibits trafficking of endangered or threatened species.

²Exports of wildlife parts in conjunction with a sale would be prohibited in some states.

³For example, regulations in Washington permit the sale of nonedible parts of wildlife unless prohibited by Washington law or federal regulations (WAC 232-12-071).

California

Phil Nelms, patrol captain for the Wildlife Protection Division of the California Department of Fish and Game, said that several laws and regulations address the sale of wildlife and wildlife parts. The general prohibition against the sale and purchase of wildlife was revised in 1990 to make it easier to prosecute offenders (Section 3039 Fish and Game Code).⁴ Four statutory exceptions to this law exist. First, taxidermists may sell unclaimed mounts or mounts for which they have not been paid (Section 3087 Fish and Game Code). Second, breeder's licenses may be issued for raising, importing, or keeping in captivity game birds and mammals (Section 3200 Fish and Game Code). Third, sale of deer hides is permitted (Section 4304 Fish and Game Code). Fourth, commercial trappers are permitted to sell raw furs (Section 4007 Fish and Game Code) and tanned furs may be sold by furriers. Mr. Nelms said that no California state laws prohibit the export of game or game products, as long as they are not sold.

Besides the general prohibition against selling wildlife, several other more specific prohibitions may be found in the statutes. Section 4758 of the Fish and Game Code specifically prohibits the sale of bear parts. "The carcass, or any part thereof" of captive deer, elk or bear may not be sold (Section 3006 Fish and Game Code). Attachment C contains relevant California statutes.

According to Mr. Nelms, prohibitions against selling wildlife products has restricted the sale of "mountain man" or Native handicrafts made from wildlife which is native to California. Federal law and court decisions, however, permit the sale of certain kinds of Native handicrafts using wildlife.

Oregon

According to Bob Posey, a staff biologist for the Oregon Department of Fish and Wildlife, Oregon law prohibits the sale, trade or barter of wildlife. Mr. Posey said that the Fish and Wildlife Commission may make exceptions for certain nonprotected wildlife. For example, the department issues permits for the sale of hides and antlers for elk, antelope and deer and also issues propagation permits for certain species of mammals and birds which allow the sale of these species. Attachment D contains the Oregon statute prohibiting the sale of wildlife (ORS 498.022). State regulations associated with the sale of wildlife or wildlife parts have been requested.

⁴The original legislation made it unlawful to sell or purchase wildlife taken under a hunting license. Because it was difficult to prove how wildlife was obtained, the legislature removed the reference to a hunting license.

Washington

Washington statutes prohibit trafficking wildlife or articles made from an endangered species (RCW 77.16.040). Regulations further define prohibitions concerning the use of wildlife. The taking or commercialization of live wild animals without a permit is prohibited by WAC 232-12-064. Another regulation permits buying or selling of nonedible parts of wildlife unless prohibited by federal law with specific exceptions:

cougar, mountain sheep, mountain goat, velvet antlers of deer or elk or the gall bladder, claws and teeth of bear, except those claws and teeth permanently attached to a full bear skin or mounted bear, unless . . . authorized by a written permit issued by the director (WAC-12-071).

Marvine Rohr, of the Washington Department of Wildlife, said that the department is currently completing an intensive review of its laws and regulations about uses of wildlife. This review will likely result in the introduction of legislation next session that is more restrictive. Attachment E contains some of Washington's wildlife statutes and regulations.

Idaho

John Beecham, assistant chief of wildlife for the Idaho Department of Fish and Game, said that currently Idaho does not prohibit the sale of wildlife parts. Mr. Beecham, however, said that the Fish and Game Commission will likely address this issue in the near future.

Wyoming

Wyoming law prohibits the importation of certain live species (i.e., antelope, bear, deer, elk, moose, mountain goat, mountain lion, bighorn sheep and wolf) and requires a permit for the importation of any other wildlife species (WS 23-3-301). Additionally, the sale or barter of edible portions of wildlife is prohibited (WS 23-3-302). According to Russ Pollard, wildlife law enforcement coordinator for the Game and Fish Commission, the department issues permits for the sale of game birds, and it permits processors to sell abandoned game to cover the cost of production. Attachment F provides the text of the two statutes mentioned above.

Currently, no Wyoming state laws prohibit the sale of nonedible portions of game, such as bear gall bladders, or the export of game parts. Mr. Pollard, however, said that the department plans to support the introduction of a bill to prohibit the sale of bear parts next legislative session.

Montana

Dale Graff, assistant chief of law enforcement for the Department of Fish, Wildlife and Parks, said that only hides and head mounts of lawfully taken game may be sold. State law prohibits the sale, possession or transport of native or nonnative fish and wildlife (including bear parts) unless specifically permitted by statute (87-3-111). Exceptions include the sale of hides or mounts of legally taken wildlife, naturally shed antlers, and the sale of paddlefish roe.⁵ Mr. Graff said that there are no laws prohibiting the export of legally taken wildlife or wildlife parts. Attachment G contains relevant Montana state laws.

British Columbia (B.C.)

Chris Dodd, a wildlife specialist for the B.C. Ministry of Environment, Lands and Parks, said that several laws and regulations govern the sale of wildlife and wildlife parts. Mr. Dodd said that as long as a person legally takes wildlife, they are considered to own it and may sell any nonedible part of the animal.

Export of wildlife or wildlife parts, however, requires a permit. For export within Canada, a hunting license serves as an export permit if the export date occurs within 30 days of the kill date specified on the license. Otherwise, an additional B.C. permit is needed to export to other Canadian provinces or territories. Export of certain types of wildlife, such as bears or bear parts, outside of the country may require a Convention on International Trade in Endangered Species (CITES) permit.⁶ Additionally, items such as bear gall bladders only may be exported by someone with a fur traders license, but anyone can sell such an item to the fur trader within B.C. Appropriate provincial laws and regulations regarding the sale of wildlife will be forwarded to you when we receive them.

Yukon Territory

Wildlife is one of few natural resources currently managed by the Yukon Territorial Government (YTG). Mark Hoffman, director of field services for the Yukon Ministry of Renewable Resources, said that any sale or trade of wildlife or wildlife parts requires a permit. The YTG requires a separate permit to export wildlife or wildlife parts out of the territory. Before wildlife can be imported, the YTG requires an export permit from the jurisdiction exporting

⁵Grizzly bear hides must be registered before selling them (87-3-110).

⁶According to Mr. Dodd, a CITES permit is also needed to export bear parts from the U.S. The provincial government is authorized to issue permits for the export of bear parts from British Columbia.

Representative Moyer
February 26, 1992
Page 6

the wildlife. According to Mr. Hoffman, if that jurisdiction does not have an export permit system, the wildlife may be confiscated. Again, we have requested copies of appropriate regulations and laws.

I hope that this information is helpful. Additional materials requested from wildlife officials of the states mentioned above will be forwarded to you when they arrive.

Attachments

ATTACHMENT A
Federal Lacey Act

Section

- Auto-Cite®:** Any case citation herein can be checked for form, parallel references, later history, and annotation references through the Auto-Cite computer research system.

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(Nov. 16, 1981, P. L.

(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, United States Code [18 USCS § 1151].

(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) 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.

(g) The term "Secretary" means, except as otherwise provided in the Act, 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) [5 USCS § 903 note]; except that with respect to the provisions of this Act which pertain to the importation or exportation of plants the term means the Secretary of Agriculture.

(h) 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.

(i) The term "taken" means captured, killed, or collected.

(j) 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.

(Nov. 16, 1981, P. L. 97-79, § 2, 95 Stat. 1073.)

Library
Reference
Library

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act" and "the Act", referred to in this section, is Act Nov. 16, 1981, P. L. 97-79, 95 Stat. 1073, which appears generally as 16 USCS §§ 3371 et seq. For full classification of this Act, consult USCS Tables volumes.

Short titles:

Act Nov. 16, 1981, P. L. 97-79, § 1, 95 Stat. 1073, provided: "This Act may be cited as the 'Lacey Act Amendments of 1981'." For full classification of this Act, consult USCS Tables volumes.

CODE OF FEDERAL REGULATIONS

National Oceanic and Atmospheric Administration, civil procedures, 15 CFR Part 904.

United States Fish, Wildlife Service, civil procedures, 50 CFR Part 11.

Seizure and forfeiture procedures, 50 CFR Part 12.

§ 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 or possessed 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, or

(B) any plant taken, possessed, transported, or sold in violation of any law or regulation of any State;

(3) within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18, United States Code [18 USCS § 7])—

(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 taken, possessed, transported, or sold in violation of any law or regulation of any State;

(4) 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; or

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

(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 subsection 7(a) of this Act [16 USCS § 3376(a)(2)].

(Nov. 16, 1981, P. L. 97-79, § 3, 95 Stat. 1074.)

CODE OF FEDERAL REGULATIONS

National Oceanic and Atmospheric Administration, civil procedures, 15 CFR Part 904.

United States Fish, Wildlife Service, civil procedures, 50 CFR Part 11.

Seizure and forfeiture procedures, 50 CFR Part 12.

CROSS REFERENCES

Preservation of game and wild birds; duties and powers of Secretary of the Interior; regulations as to hunting, 16 USCS §§ 701 et seq.

Unlawful transportation or importation of migratory birds, 16 USCS §§ 705, 707.

Arrests, 16 USCS § 706; 18 USCS § 3054.

Search warrants and seizures, 16 USCS § 706; 18 USCS § 3112.

This section is referred to in 16 USCS §§ 3373, 3374, 3376, 3377.

RESEARCH GUIDE

Federal Procedure L Ed:

Criminal Procedure, Fed Proc, L Ed 2d, §§ 22:138, 22:305.

Annotations:

Validity, construction, and application of Endangered Species Act of 1973 (16 USCS §§ 1531-1543). 32 ALR Fed 332.

INTERPRETIVE NOTES AND DECISIONS

1. Constitutionality
2. Construction
3. Applicability to foreign laws
4. Relation to other federal laws
5. Relation to state law
6. What constitutes violation, generally
7. Indictment

1. Constitutionality

Predecessor to 16 USCS § 3372 did not unconstitutionally delegate legislative power to foreign countries; rather, it simply limited exclusion from stream of foreign commerce wildlife unlawfully taken abroad. *United States v Molt* (1979, CA3 Pa) 599 F2d 1217.

16 USCS § 3372(a)(2)(A) is not unconstitutionally vague and does not unconstitutionally delegate to states legislative power reserved to

Congress. *United States v Bryant* (1983, CA6 Tenn) 716 F2d 1091.

2. Construction

Phrase "wildlife" found in predecessor to 16 USCS § 3372 covered harvesting of clams. *United States v Long Cove Seafood, Inc.* (1978, CA2 NY) 582 F2d 159.

"Any law or regulation of any State or foreign country" as used in predecessor to 16 USCS § 3372 was not limited to state criminal sanctions. *United States v Plott* (1972, SD NY) 345 F Supp 1229.

3. Applicability to foreign laws

Predecessor to 16 USCS § 3372 only applied to foreign laws designed to protect wildlife; it did not apply where law was merely revenue statute;

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Legislative Reference Library

HISTORY; ANCILLARY LAWS AND DIRECTIVES**References in text:**

"This Act", referred to in this section, is Act Nov. 16, 1981, P. L. 97-79, 95 Stat. 1073, which appears generally as 16 USCS §§ 3371 et seq. For full classification of this Act, consult USCS Tables volumes.

CODE OF FEDERAL REGULATIONS

National Oceanic and Atmospheric Administration, civil procedures, 15 CFR Part 904.

United States Fish, Wildlife Service, civil procedures, 50 CFR Part 11.

Seizure and forfeiture procedures, 50 CFR Part 12.

General permit procedures, 50 CFR Part 13.

CROSS REFERENCES

This section is referred to in 16 USCS § 3372.

§ 3377. Exceptions

(a) **Activities regulated by plan under Magnuson Fishery Conservation and Management Act.** The provisions of paragraph (1) of subsection 3(a) of this Act [16 USCS § 3372(a)(1)] shall not apply to any activity regulated by a fishery management plan in effect under the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.).

(b) **Activities regulated by 16 USCS §§ 951 et seq., 971 et seq.; harvesting of highly migratory species taken on high seas.** The provisions of paragraphs (1), (2)(A), and (3)(A) of subsection 3(a) of this Act [16 USCS § 3372(a)(1), (2)(A), (3)(A)] shall not apply to—

(1) any activity regulated by the Tuna Conventions Act of 1950 (16 U.S.C. 951-961) [16 USCS §§ 951 et seq.] or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971-971(h)) [16 USCS §§ 971 et seq.]; or

(2) any activity involving the harvesting of highly migratory species (as defined in paragraph (14) of section 3 of the Fishery Conservation and Management Act of 1976 [16 USCS § 1802(14)]) taken on the high seas (as defined in paragraph (13) of such section 3 [16 USCS § 1802(13)]) 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 subsection 3(a) of this Act [16 USCS § 3372(a)(2)] shall not apply to the interstate shipment or transshipment through Indian country as defined in section 1151 of title 18, United States Code [18 USCS § 1151], 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. (Nov. 16, 1981, P. L. 97-79, § 8, 95 Stat. 1078.)

CONSERVATION

FISHES

981, P. L. 97-
§§ 3371 et seq.
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ILLEGALLY TAKEN FISH & WILDLIFE

16 USCS § 3378

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The "Fishery Conservation and Management Act of 1976", referred to in this section, is Act Apr. 13, 1976, P. L. 94-265, 90 Stat. 331, which was redesignated as the Magnuson Fishery Conservation and Management Act by Act Dec. 22, 1980, Title II, Part C, Subpart 2, § 238(a), 94 Stat. 3300. Such Act Apr. 13, 1976, appears generally as 16 USCS §§ 1801 et seq. For full classification of such Act, consult USCS Tables volumes.

CODE OF FEDERAL REGULATIONS

National Oceanic and Atmospheric Administration, civil procedures, 15 CFR Part 904.

United States Fish, Wildlife Service, civil procedures, 50 CFR Part 11.

Seizure and forfeiture procedures, 50 CFR Part 12.

§ 3378. Miscellaneous provisions

(a) **Effect on powers of States.** Nothing in this Act 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 Act.

(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) [16 USCS §§ 851 et seq.].

(2) Section 5 of the Act of May 25, 1900 (16 U.S.C. 667e) [16 USCS § 667e], and sections 43 and 44 of title 18, United States Code (commonly known as provisions of the Lacey Act) [18 USCS §§ 43, 44].

(3) Sections 3054 and 3112 of title 18, United States Code [18 USCS §§ 3054, 3112].

(c) **Disclaimers.** Nothing in this Act 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)] (g) **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 [5 USCS § 5724] for all such special agents appointed after January 1, 1977.

ATTACHMENT B
Information About the Wild Bird Protection Act



—GET THE FACTS—
THE WILD BIRD PROTECTION ACT
(H.R. 2540 and S. 1219)

The Wild Bird Protection Act (H.R. 2540/S. 1219) was introduced because the Exotic Bird Conservation Act (H.R. 2541/S. 1218) does not go far enough in protecting wild bird populations and is too complicated to ever administer. One APHIS official, who prepared a comparative study of the two bills, stated that "It is very, very clear that H.R. 2540 would impose less additional burdens on the agencies than would the Working Group bill."

This fact sheet helps explain what the Wild Bird Protection Act does and does not do. Although HR 2540 does impose an immediate ban on commercial imports for the pet trade, it allows imports to continue for use in zoos, research and captive breeding.

You may have heard that H.R. 2540/S. 1219:

- Is supported only by radical animal rights groups.
- Requires all breeders to be licensed.
- Requires all pet and breeding birds to be marked.
- Exempts only canaries, cockatiels and budgerigars.
- Prohibits imports of wild birds by zoos or breeders.
- Prohibits sale of birds owned before the act.
- Will substantially increase smuggling.
- Will expose innocent citizens to many expensive lawsuits.

All of these claims are wrong and most of them can be dispelled simply by reading the actual language of the bill. (Copies are available from Defenders of Wildlife upon request.)

WHO SUPPORTS H.R. 2540/S. 1219?

H.R. 2540/S. 1219 has been endorsed by many national conservation groups, including the African Wildlife Foundation, Sierra Club, RARE Center for Tropical Bird Conservation, Rainforest Action Network, Raptor Rehabilitation and Propagation Project, International Osprey Foundation, Audubon Naturalist Society of the Central Atlantic States, Defenders of Wildlife, Friends of the Earth, Earth Island Institute, International Wildlife Coalition, Environmental Investigation Agency and the International Ecology Society. Many of these groups are the same ones that took the lead in obtaining the ivory ban necessary to save the African elephant. Some of the groups supporting H.R. 2540/S. 1219 have worked for over 10 years on ending the trade in exotic wild birds.

WHO MUST BE LICENSED UNDER H.R. 2540/S. 1219?

Only commercial importers of birds and **ONLY THOSE BREEDERS WHO RECEIVE NON-EXEMPT WILD BIRDS.**

WHICH BIRDS ARE EXEMPT FROM H.R. 2540/S. 1219?

Canaries, cockatiels and budgies are NOT the only species exempted. Any species may be listed by the government for exemption, provided certain findings are made. As under the New York law, we expect that a list of perhaps 14 species will immediately be exempt from any marking or other regulation.

WHAT ARE THE MARKING REQUIREMENTS?

Nothing in H.R. 2540 requires the marking of all birds in this country. Captive-bred birds must be marked only if they are not on the exempt list. Birds owned before the Act must be marked only if and when they are sold. Nothing in H.R. 2540/S. 1219 requires the government to be directly involved in marking birds. On the contrary, we think it would be more realistic for private groups to coordinate the implementation of the marking system.

WHAT IMPORTS WOULD BE ALLOWED UNDER H.R. 2540/S. 1219?

Wild Birds can be imported for captive breeding purposes provided that:

- 1) the species is not readily available in the United States;
- 2) mortality in transport is not excessive; and
- 3) there would be no detrimental effect on wild populations.

H.R. 2540/S. 1219 also allows imports to continue for zoos and research.

WOULD AN IMMEDIATE IMPORT BAN FUEL SMUGGLING?

No facts support this often-repeated speculation. The only evidence which does exist comes from New York, where the chief veterinarian for APHIS has said that smuggling did not increase as a result of an immediate ban, and instead has probably decreased since the New York law was passed. The current system allows legal imports to hide smuggled birds, particularly since enforcement officials have great difficulty in distinguishing among the nearly 200 species imported in recent years. An immediate ban and a marking system for traded birds would work together to cut back on smuggling. The combined effect would help promote captive breeding as the only legal source of exotic pet birds. We should not assume that the average citizen will risk federal prosecution to get a smuggled bird. There is nothing in H.R. 2540/S. 1219 which makes it easier to smuggle birds—in fact the marking and recordkeeping requirements will make it harder for smugglers to operate than under the current system.

WILL CITIZEN SUITS BE A PROBLEM?

Any group which is serious about curtailing smuggling should support a strong citizens suit provision. Because of limited federal enforcement resources, citizen suits are authorized under virtually every major federal environmental law (including the Endangered Species Act, the Clean Air Act and the Clean Water Act). This does NOT mean that innocent citizens will be saddled with defending lots of malicious lawsuits. Federal court rules impose costly sanctions against frivolous lawsuits, so no person or organization will risk bringing suit unless the case involves a clear-cut violation of the act.

WHEN SHOULD THE TRADE STOP?

No one knows for sure how many bird species may be lost to habitat destruction and the pet trade in the immediate future, but the leading group of bird scientists in this country, the American Ornithological Union, has called for an immediate moratorium on the trade. We all know that the hyacinth macaw dropped from about 100,000 birds in the wild 20 years ago to only about 3,000 today. Enrique Bucher, who is studying the blue-fronted amazon in Argentina, predicts that all of the blue-fronts may be wiped out in just two years. Waiting as long as 5 years to end the trade poses an unacceptable risk of extinction for many species.

WHAT IS BEING DONE TO END THE WILD BIRD TRADE NOW?

Because of the practical difficulties of ensuring the humane treatment of birds during transit, over fifty major airlines have adopted policies prohibiting the transportation of wild birds for the pet trade. These airlines were responsible for over 80% of the birds imported to the U.S. in 1989. Two states, New York and New Jersey, have passed laws prohibiting the commercial sale of wild birds. Nationwide, pet stores are being encouraged to adopt policies of only selling captive-bred birds. Currently, two regional chains, Jerry's Perfect Pets and PETSMART, and one international chain, Petland, encourage the sale of only captive-bred birds. An estimated 80% of the birds sold in the U.S. pet stores are captive-bred.

For more information about H.R. 2540/S. 1219, please contact Defenders of Wildlife, 1244 19th St., NW, Washington, DC 20036.

— February 1992

Wild Bird Protection Bill

Section-by-Section Summary

SECTION

1

FINDINGS

The bill is necessary to promote the conservation and welfare of wild birds and to protect domestic agriculture.

SECTION

2

DEFINITIONS

This section explains the terms used throughout the bill.

SECTION

3

PROHIBITIONS

This section creates a general prohibition against selling live wild birds or their eggs within the state or importing live wild birds or their eggs into the state, except as allowed by section 4.

SECTION

4

PERMITTED SALES AND IMPORTATIONS

Three exclusively captive-bred species are exempted from this statute and can be sold without the bands required of all other species of birds. These three exempt species can also be imported into the state. A "grandfather clause" is provided for birds and eggs acquired prior to the effective date of the Act. Captive-raised birds—the offspring of wild breeding stock acquired during a three-year grace period after passage of the Act—bearing prescribed leg bands, may be imported or sold without restriction. Certain government agencies, educational institutions, and accredited zoological institutions may import and/or sell live wild birds, subject to restrictions.

SECTION

5

JURISDICTION

A state government official is given authority to enforce the law, issue permits for the breeding of wild birds, and promulgate regulations for administration and enforcement.

SECTION

6

BIRD BREEDER'S LICENSE

This section provides for the issuance of licenses to bird breeders. Bird breeders can import live wild birds without special permits for three (3) years, in order to establish captive breeding stocks. They cannot sell the imported birds to anyone other than other licensed bird breeders, bona fide educational institutions, government agencies, or accredited zoological institutions.

SECTION

7

IDENTIFICATION OF LIVE WILD BIRDS

This section requires either seamless leg bands or butt-end leg bands on captive-bred live wild birds offered for sale, along with adequate records to trace the origin of the birds and who banded them.

SECTION

8

PENALTIES AND ENFORCEMENT

This section sets the penalty for violations of the law and mandates that birds being offered for sale illegally be turned over to the state.

SECTION

9

CIVIL ACTIONS

Citizens are empowered to bring civil suit on behalf of an animal being held in alleged violation of this act and to compel the state to enforce the Act when necessary.

SECTION

10

SEVERABILITY

This section states that if any provisions of this law are ruled invalid, the remaining portions are still in effect.

SECTION

11

EFFECTIVE DATE

The bill shall become law nine (9) months after enactment.



SECTION**FINDINGS****1**

The legislature finds that millions of wild birds suffer injuries, shock, and death due to the cruel and inhumane capture and transport methods involved in the international pet trade. Many of these birds belong to threatened or endangered species, whose populations are directly threatened by this trade. Imported wild birds carry Exotic Newcastle Disease, which is a serious threat to domestic agriculture. Released exotic birds can become established as agricultural pests. Smuggling, illegal importation, and falsified documentation can only be stopped by curbing the commercial demand for imported wild birds. The bill is therefore necessary to promote the conservation and welfare of wild birds and to protect domestic agriculture.

SECTION**DEFINITIONS****2**

As used in this Act—

- (a) **Bird breeder** means a person licensed pursuant to this Act to sell live wild birds and their eggs, to apply seamless leg bands, and to maintain records of all birds and bands.
- (b) **Butt-end leg band** means an open-ring leg band applicable to the leg of a live wild bird of any age, using pliers or a similar tool.
- (c) **Seamless leg band** means a solid-ring leg band applicable to the leg of a newly hatched live wild bird, incapable of being removed when the bird has reached adult size without destroying the band.
- (d) **Captive-raised** means live wild birds hatched from eggs produced by captive parents and raised in captivity.
- (e) **Department** means the Department of Environmental Conservation (or the equivalent state agency).
- (f) **Import** means to land on, bring into, introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the State for commercial purposes.
- (g) **Live wild bird** means all birds except game birds and domesticated chickens, turkeys, guinea fowl, geese, ducks, pigeons, and peafowl.
- (h) **Person** means an individual, corporation, partnership, association, firm, proprietorship, trust, estate, or other legal entity.
- (i) **Sale or any verb form of "sale"** means any delivery or transfer of title by individuals or commercial establishments, or offering of a live wild bird for any consideration, whether direct or indirect, and includes offering or exposing for sale, display in a commercial establishment, and soliciting for sale or transfer of title

by catalogs, newspapers, magazines, or other advertising matter.

SECTION**PROHIBITIONS****3**

No person may either import live wild birds or their eggs into the State or sell live wild birds or their eggs within the State, except as permitted by section 4.

SECTION**PERMITTED SALES AND IMPORTATIONS****4**

(a) All captive-raised birds of the following three species, and their mutations and varieties, are exempted from the provisions and effect of this Act:

Cockatiel: *Nymphicus hollandiscus*

Budgerigar: *Melopsittacus undulatus*

Common canary: *Serinus canaria*

- (b) Live wild birds or their eggs, which were acquired prior to the effective date of this Act, may be imported and/or sold, provided that the importer or seller furnishes proof, acceptable to the Department, that any such live wild bird or egg was acquired prior to such date. The Department shall accept as proof a written instrument stating that each such wild bird or egg was acquired by the importer or seller prior to the effective date and bearing a form notice that any false statement is made under penalty of perjury. Each such live wild bird or egg acquired prior to the effective date may be sold only pursuant to a permit, which shall be issued by the Department once proof of acquisition prior to the effective date of this Act has been furnished to the Department pursuant to this subsection. The fee for such permit shall be set by the Department, but shall be no less than \$10.00 per bird or egg. Birds or eggs shall be considered to have been "acquired" for purposes of this subsection when consideration for such birds and eggs has been paid and title to such birds or eggs has passed, irrespective of whether the acquiring person has possession or physical control of such birds or eggs.
- (c) Any captive-raised live wild bird bearing the leg band identification required by section 7 may be imported or sold without restriction.
- (d) Live wild birds or their eggs may be sold by bird breeders to other bird breeders, in accordance with section 6(a) of this Act. Live wild birds or their eggs may also be sold to permitted agencies and institutions described in section 4.
- (e) The Department, consistent with the purposes of this Act, and any agency or official of the United States

government acting pursuant to law may import and/or sell live wild birds. All importations or sales by the Department shall be recorded as to species, number, date, price, and name and address of purchaser. A list of these transactions with name of the employee of the Department transacting the sale or importation and the purpose of the sale or importation shall be compiled annually by the Department and made available to the public upon request.

(f) Bona fide educational institutions and zoological institutions accredited by the American Association of Zoological Parks and Aquariums (AAZPA) having a permit issued by the Department, pursuant to the applicable section of state law, may import and/or sell live wild birds to other bona fide educational institutions and AAZPA-accredited institutions and to licensed bird breeders.

SECTION

5

JURISDICTION

(a) The Department shall enforce provisions of this Act and is authorized to issue permits and licenses in accordance with sections 4 and 6 of this Act.

(b) The Department shall make investigations or inspections to determine whether any permittee or licensee under this Act has violated or is violating any provisions of this Act or any regulations issued thereunder, and for such purposes, the Department shall, at all reasonable times, have access to all facilities where live wild birds are held pursuant to permits or licenses issued under this Act. The Department is specifically authorized and directed to make random and unannounced inspections of such facilities at any reasonable time.

(c) Within nine (9) months of the enactment of this Act, the Department shall establish rules and regulations necessary and appropriate for the administration and enforcement of this Act, and is also authorized to establish such other, amended, and further rules and regulations as may be necessary and appropriate for the administration and enforcement of this Act.

SECTION

6

BIRD BREEDER'S LICENSE

(a) A bird breeder's license issued by the Department entitles the holder to take the actions specified in this section.

(1) Until no later than three (3) years after the effective date of this Act, a licensee may import live wild birds or their eggs of any species, whether or not captive-raised. Licensees must meet the provisions of all Federal and International laws and conven-

tions, including the U.S. Endangered Species Act, the Lacey Act, the Convention on International Trade in Endangered Species (CITES), and any other law which regulates said activities. During such three (3) year period, a licensee may sell live wild birds which are not captive-raised, or their eggs, exclusively and solely to other bird breeders licensed pursuant to this section and to AAZPA-accredited or bona fide educational institutions. Captive-raised live wild birds produced during this three (3) year period, and bearing the leg band identification required by section 7, may be sold without restriction.

(b) Application: A person who wishes to be a licensed bird breeder shall submit, on application forms provided by the Department:

- (1) a statement specifically describing the applicant's purpose for applying for such license;
- (2) the number and species, by common and scientific name, of live wild birds to be held for breeding purposes, specifying the number of breeding pairs of each species;
- (3) the address of the facility where live wild birds will be possessed and bred, with a description of the area and facilities to be used for breeding purposes;
- (4) a summary of the experience and technical expertise the applicant has had in the raising and breeding of live wild birds, the species and numbers bred, and their survival and mortality rates; and
- (5) any other information which the Department may deem pertinent or necessary.

(c) Standards for approval or disapproval of license application: The Department may issue a license only after determining that:

- (1) the live wild birds to be held by the licensee will be used only for bona fide breeding in furtherance of the purposes of this Act;
- (2) the facilities described in the application are sufficient and adequate for the purpose of humanely and successfully breeding and raising live wild birds of the species described;
- (3) the applicant, by virtue of his or her background, experience, and knowledge is able to humanely and successfully breed and raise captive wild birds of the species described; and
- (4) the applicant has no prior record of non-compliance with or violation of the provisions of state and federal wildlife and animal-welfare laws and regulations.

(d) Application approval/denial procedure:

- (1) Each applicant for a license shall submit a written application to the Department in accordance with the requirements of section 6(b) of this Act and with such

other requirements that the Department may hereafter establish by rulemaking.

(2) The Department shall publish notice in the state register (or other means customary to the jurisdiction) of each application made for a license. Such notice shall specify that interested parties may submit written comments to the Department within thirty (30) days regarding the granting of a license.

(3) The Department may conduct a hearing with respect to any license application at the request of any interested party or at the discretion of the Department, in order to decide whether to issue or deny a license. If a hearing is conducted by the Department, notice must be published in the state register and notice must be mailed to the applicant at least twenty (20) days prior to the hearing.

(4) The Department shall issue or deny the application for a license as soon as possible, but no later than thirty (30) days after the thirty-day period for comments has expired, or, if a hearing is held, no later than thirty (30) days after the hearing.

(5) Notice of the issuance or denial of a permit shall be published in the state register within seven (7) days after the issuance or denial.

(e) Conditions: Each bird breeder's license shall:

(1) be valid for one year and expire on the date stamped on the front of the license and be renewable annually;

(2) require a licensee to apply seamless leg bands to all captive-raised birds produced by the licensee or otherwise identify them in a manner according to section 7 of the Act;

(3) require that the licensee keep and maintain complete records of purchases and sales made pursuant to section 6(a)(1), applications of seamless leg bands, transfers, breeding loans, and hatchings and mortalities of live wild birds held pursuant to such license, and require the licensee to file an annual report with the Department containing this information;

(4) require that all live wild birds possessed pursuant to such license be confined in the facility and premises described on the license, or be on breeding loan to a licensed bird breeder or bona fide bird breeder residing in another state, or accredited zoological institution;

(5) require that the licensee's facilities be open for inspection by the Department at any reasonable time, without advance notice; and

(6) contain such other conditions as the Department deems necessary and proper.

(f) Fee: the fee for a bird breeder's license shall be determined by the Department, but shall be no less than \$50 for the initial license and \$10 annually thereafter. The department can increase these fees as it deems necessary and proper.

SECTION

7

IDENTIFICATION OF LIVE WILD BIRDS

(a) All captive-raised live wild birds subject to this Act shall be marked with a seamless leg band applied by a licensed bird breeder. Numbers of all bands must be supplied to the Department along with a list of which species was banded and who did the banding. Such bands must be obtained from suppliers designated or approved by the Department and must be of a type and style required by the Department. The Department can authorize the use of other approved methods of positive identification.

(b) In the event that a seamless band is removed for valid medical reasons or cannot be applied to a given bird without causing injury, a licensed veterinarian may apply a butt-end leg band inscribed with the veterinarian's identifying number. Butt-end leg bands shall not be applied by any person other than a licensed veterinarian. A veterinarian must keep personal records of such band replacements, must notify the Department within ten (10) days of any band replacement, and must attest in writing to the Department to the need for the use of butt-end bands.

SECTION

8

PENALTIES AND ENFORCEMENT; SUSPENSION AND REVOCATION OF LICENSE; FORFEITURE.

(a) Suspension and revocation of license: If the Department has reason to believe that any person licensed as a bird breeder has violated or is violating any provision of this Act, or any of the rules or regulations promulgated hereunder, the Department may suspend such person's license temporarily, but not for a period to exceed twenty-one (21) days, and after notice and opportunity for a hearing shall suspend such person's license for such additional period as the Department may specify, or revoke such license, if such violation is determined to have occurred. A third violation shall cause the person's license to be suspended for not less than five (5) years.

(b) Civil and criminal penalties: A person who violates any provision of this Act, or any rule or regulation promulgated hereunder, is liable to a civil penalty of five

hundred dollars (\$500) and an additional penalty of two hundred dollars (\$200) for each live wild bird involved in the violation. Liability for civil penalties does not preclude criminal liability for violations of the Act.

In addition, a violation of any provision of this Act, or any rule or regulation promulgated hereunder, is punishable by a fine equal to the greater of either two hundred fifty dollars (\$250) or the retail value of the live wild bird involved in the violation, or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment. Each individual bird implicated in a violation shall be considered a separate offense. Costs incurred by the State for the upkeep of any live wild bird seized as evidence shall be assessed against the violator upon conviction.

(c) Forfeiture: In addition to the penalties specified in subsections (a) and (b) of this section, any person selling or importing birds in violation of section 3 of this Act shall upon conviction be liable to have such birds permanently forfeited.

The Department shall, whenever possible, cooperate with foreign governments in an effort to return forfeited birds to suitable habitats in countries to which the birds are native. In the event that this is not feasible, forfeited birds shall be donated to a non-profit breeding facility, an AAZPA-accredited institution, or a bona fide educational institution with the proviso that should conditions arise in the future to return the birds to the wild, that all reasonable efforts be made in this regard.

SECTION

9

CIVIL ACTIONS

Any person, on behalf of any live wild bird involved, may bring a civil action to obtain injunctive relief against violations of this Act or to compel enforcement by the Department of any provision of this Act.

SECTION

10

SEVERABILITY

This Act is severable. If any provisions or parts are ruled invalid, the remaining provisions or parts will still be valid.

SECTION

11

EFFECTIVE DATE

The bill shall become law nine (9) months after enactment.

NOTES

The HSUS model bill can be enacted as is, or it can be used as a framework for formulating the proper legislation for each municipality or state. There are many ways in which it can be modified to fit your needs. Listed below are some of the sections where you can easily make changes to address special situations.

This bill is designed to eliminate the suffering of wild birds caused by the pet trade. It is not designed to have any effect on the importation of either game birds or domesticated birds.

BREEDERS

Section 6 allows for a three-year importation moratorium for bird breeders to establish captive stocks. You may choose to simplify the bill and make it much stronger by either eliminating this section or reducing the moratorium period.

PROHIBITIONS

The prohibition of both importation into the state and the sale of imported wild birds provides the greatest level of protection. However, there are states in which the prohibition of sales only will provide the only chance of passage of the bill. The level of prohibition is also dependent on the state agency enforcing the bill. If sale only is to be prohibited, some changes will have to be made in sections 2, 3, 4, and 6.

PERMITTED SALES AND IMPORTATIONS

The three exempt species listed in section 4, and all of their mutations and varieties, are entirely captive-raised. They are not imported from the wild, and they are sold in great numbers in pet stores. Enforcement of the bill will be made somewhat more difficult by the inclusion of more exempt species. You will have to decide what is most feasible in your specific state. Representatives of the pet industry and aviculturists will try to exempt as many species as possible, in order to both weaken the law and to make enforcement more difficult. You may choose not to specifically exempt game birds in your state. Even though the bill is designed to prevent the abuse of the pet trade, game bird advocates may oppose the bill without this specific exemption.

PENALTIES AND ENFORCEMENT

You will have to decide if the civil and criminal penalties are too strong or too weak. You may choose to specify a maximum fine or assess a fine equal to the retail value of the live wild bird.



The Humane Society of the United States
2100 L Street, NW
Washington, DC 20037

ATTACHMENT C
California Statutes About the Sale of Wildlife

Amendments:

1990 Amendment: (1) Substituted "pursuant to Section 2150.2" for "to be sufficient to cover the costs of each inspection" in the third sentence; and (2) deleted ", as specified in Section 2020" at the end of the fourth sentence.

§ 3033. Reduced fee licenses for disabled veterans

(a) The department shall, upon application and payment of a fee, issue a reduced fee hunting license, which authorizes the licensee to take any bird or mammal as otherwise authorized pursuant to this code and regulations adopted thereto, to a disabled veteran, as defined in subdivision (b), who has not been convicted of any violation of this code. The license fee under this section shall be two dollars (\$2) for the hunting license year beginning on July 1, 1990, and, for the following years, this license fee may be annually reviewed and adjusted in accordance with Section 713.

(b) "Disabled veteran" means a person having a 70 percent or greater service-connected disability and an honorable discharge from military service. The person shall be eligible upon presentation of proof of an honorable discharge from military service and proof of the disability. Proof of the disability shall be by certification from the United States Department of Veterans' Affairs or by presentation of a license issued pursuant to this section in the preceding license year.

(c) This section shall become operative on July 1, 1990.

Added Stats 1989 ch 317 sec 1, operative July 1, 1990. Amended Stats 1990 ch 216 § 28 (SB 2510), operative July 1, 1990.

Amendments:

1990 Amendment: Routine code maintenance.

§ 3039. Unlawful sale or purchase of bird or mammal

Except as otherwise provided in Sections 3087 and 4303, or any other provision of this code, it is unlawful to sell or purchase any bird or mammal or part thereof.

Amended Stats 1990 ch 747 § 1 (AB 3803).

Amendments:

1990 Amendment: (1) Added "otherwise" after "Except as"; (2) added "or any other provision of this code."; and (3) deleted "taken under a hunting license" at the end.

Collateral References:

Witkin & Epstein, Criminal Law (2d ed) § 1109.

§ 3050. Prerequisites to issuance of license; Exceptions

(a) No hunting license shall be issued to any person unless he or she presents to the person authorized to issue that license any of the following:

(1) Evidence that he or she has held a hunting license issued by this state in a prior year.

(2) A certificate of completion of a course in hunter safety, principles of conservation, and sportsmanship, as provided in this article, with a hunter safety instruction validation stamp affixed thereto.

(3) A certificate of successful completion of a hunter safety course in another state with a California hunter safety instruction validation stamp affixed thereto.

(4) Evidence of completion of a course in hunter safety, principles of

Amendments:

1989 Amendment: Added (1) "or by the department if verified by adequate records to establish successful completion of the prescribed course" at the end of the first sentence; and (2) the second sentence.

§ 3055. Hunter safety instruction validation stamps

Persons who apply for a hunting license and qualify for the license through the issuance of a certificate of completion of a course in hunter safety, principles of conservation, and sportsmanship as provided by this article, shall obtain a hunter safety instruction validation stamp. The hunter safety instruction validation stamp shall be issued by license agents for a base fee of two dollars (\$2), as adjusted under Section 713, in the same manner as resident hunting licenses. The validation stamp shall be affixed to the certificate of completion. A certificate of competence issued by this state prior to January 1, 1990, shall be accepted as equivalent to a certificate of completion issued by this state after January 1, 1990.

Amended Stats 1989 ch 530 sec 4.

Amendments:

1989 Amendment: (1) Amended the first sentence by (a) deleting "resident" after "apply for a"; and (b) substituting "completion of a course" for "competence" after "certificate of"; and (2) substituted the third and fourth sentences for the former third and fourth sentences which read: "However, the compensation provided in Section 1055 shall not be paid to the license agent for the sale of the stamp. The validation stamp shall be affixed to the certificate of competence."

§ 3087. Taxidermist's records

(a) (1) Every person who prepares, stuffs, or mounts the skin of any fish, reptile, bird, or mammal for another person shall make and keep an accurate and detailed record, as prescribed by regulations of the commission, regarding all fish, reptile, bird, or mammal carcasses, skins, or parts thereof which are acquired, possessed, or stored for taxidermy purposes.

(2) The record required by this section shall be made at the time the fish, reptile, bird, or mammal carcasses, skins, or parts thereof are received, and shall include the name and address of each person from and to whom fish, reptile, bird, or mammal carcasses, skins, or parts thereof are received or delivered and the number and species of all fish, reptile, bird, or mammal carcasses, skins, or parts thereof received or delivered. The record shall be open for inspection at all times pursuant to regulations adopted by the commission.

(b) Where a taxidermist has prepared, stuffed, or mounted the skin of any fish, reptile, bird, or mammal for another person and that person does not pay the cost thereof, or take delivery thereof, the taxidermist may sell the skin only if the commission adopts regulations permitting the sale.

The commission may adopt regulations permitting a sale pursuant to Chapter 6 (commencing with Section 3046) of Title 14 of Part 4 of Division 3 of the Civil Code, and may adopt any other regulations governing the sale including, but not limited to, regulations which require a taxidermist to record, and provide to the department, the name and address of any person failing to pay for work performed on a skin, which list species of fish, reptiles, birds, or mammals whose prepared skins may not be sold, and which limit the sales price of prepared skins to the actual cost of preparation.

The commission may adopt regulations permitting a sale of a prepared skin pursuant to this subdivision only if the commission also adopts regulations

which require the posting of a notice of business of the taxidermist in each subdivision and regulations adopted.

Amended Stats 1990 ch 805 § 1 (AB 4010)

Amendments:

1990 Amendment: In addition to generally adopted by the commission" for "by wardens" and (2) deleted "as the commission may regulate" second paragraph in subd (b).

§ 3240.5. Fees for taking birds or mammals

Every person in possession or control of a bird or mammal for the privilege of taking birds or mammals shall collect a fee for any type of entrance fee for taking birds or mammals on a hunting club if birds or mammals are taken on a "commercial hunting club license." This article does not apply to a person who takes birds or mammals for other provisions of this code, or for a fee of more than five dollars (\$50) per entrant and recipient of the fee between July 1 and the following January 1, or use fees which include the privilege of possession or control.

Amended Stats 1990 ch 1706 § 11 (AB 315)

Amendments:

1990 Amendment: (1) Amended the first sentence by deleting "including renting or leasing property" for "such property, except to a licensed commercial taxidermist" and (2) substituting "the" for "such" after "mammals" in the former second paragraph.

Note—Stats 1990 ch 1706 provides:

SECTION 1. The Legislature finds and declares:

(a) The Department of Fish and Game is facing the result of serious revenue shortfalls and the Legislature is considering a number of revenue measures to the costs of the department. The department shall be used to fund and maintain a balanced management program, including special management of the areas to be funded and the realignment of revenues and fees and the program.

(b) That rapid and sustained economic growth in the state's natural and wild areas. That urbanization in resource allocation conflicts between users of wildlife habitat to provide traditional commercial hunting and fishing license revenue has significant.

(c) It is the intent of the Legislature to extend the transactional costs of wildlife protection and through urbanization and development, as the Legislature finds that the deficiency in current revenues designed to provide adequate environmental management by this act shall be available with legislative and statutory authority.

(d) It is further the intent of the Legislature

it if verified by adequate records to establish successful the first sentence; and (2) the second sentence.

se and qualify for the license through completion of a course in hunter safety, manship as provided by this article, shall dation stamp. The hunter safety instruc- by license agents for a base fee of two on 713, in the same manner as resident p shall be affixed to the certificate of ce issued by this state prior to January ent to a certificate of completion issued

by (a) deleting "resident" after "apply for a"; and (b) "ice" after "certificate of"; and (2) substituted the third sentence which read: "However, the compensation agent for the sale of the stamp. The validation is."

stuffs, or mounts the skin of any fish, person shall make and keep an accurate regulations of the commission, regarding masses, skins, or parts thereof which are termy purposes.

on shall be made at the time the fish, skins, or parts thereof are received, and of each person from and to whom fish, skins, or parts thereof are received or of all fish, reptile, bird, or mammal received or delivered. The record shall be in accordance with regulations adopted by the

stuffed, or mounted the skin of any person and that person does not pay for, the taxidermist may sell the skins permitting the sale.

permitting a sale pursuant to Chapter Title 14 of Part 4 of Division 3 of the regulations governing the sale including, require a taxidermist to record, and address of any person failing to pay list species of fish, reptiles, birds, or not be sold, and which limit the sales cost of preparation.

s permitting a sale of a prepared skin
the commission also adopts regulations

which require the posting of a notice or otherwise giving notice at the place of business of the taxidermist informing patrons of the provisions of this subdivision and regulations adopted pursuant thereto.

Amended Stats 1990 ch 805 § 1 (AB 4010).

Amendments:

1990 Amendment: In addition to generally eliminating "such", (1) substituted "pursuant to regulations adopted by the commission" for "by wardens of the department" in the second sentence of subd (a)(2); and (2) deleted "as the commission may require" after "regulations" the second time it appears in the second paragraph in subd (b).

Every person in possession or control of property who imposes or collects a fee for the privilege of taking birds or mammals thereon, or who imposes or collects a fee for any type of entry or use permit which includes the privilege of taking birds or mammals on the property, is maintaining a commercial hunting club if birds or mammals are taken on the property, and shall procure a "commercial hunting club license."

This article does not apply to any hunting club or program licensed under other provisions of this code, or to any person who receives less than fifty dollars (\$50) per entrant and receives less than a total of five hundred dollars (\$500) between July 1 and the following June 30 for permission, entry, access, or use fees which include the privilege of hunting on property in his or her possession or control.

Amended Stats 1990 ch 1706 § 11 (AB 3158).

Amendments:

1990 Amendment: (1) Amended the first sentence by (a) adding "or control" after "in possession"; (b) deleting ", including renting or leasing property," after "or use permit"; (c) substituting "the property," for "such property, except to a licensed commercial hunting club," after "or mammals on"; and (d) substituting "the" for "such" after "mammals are taken on"; and (2) substituted the second paragraph for the former second paragraph.

Note—Stats 1990 ch 1706 provides:

SECTION 1. The Legislature finds and declares all of the following:

(a) The Department of Fish and Game is facing serious budget reductions in the 1990-91 fiscal year as a result of serious revenue shortfalls and the addition of new programs to its areas of responsibility. The Legislature is considering a number of revenue proposals to ensure appropriate funding and fees relative to the costs of the department. The department shall use the funds provided by these proposals to reestablish personnel positions in the program areas supported by these new revenue proposals. The revenues shall be used to fund and maintain a balanced wildlife management program in order that a balanced management program, including sport hunting, shall be maintained. The department shall inform the Legislature of the areas to be funded and shall, in the 1991-92 Governor's Budget show an appropriate realignment of revenues and fees and the programs they support.

(b) That rapid and sustained economic growth within the state has resulted in urbanization of many of the state's natural and wild areas. That urbanization has depleted fish and wildlife resources and has resulted in resource allocation conflicts between users of the state's natural resources and those who depend on wildlife habitat to provide traditional commercial and recreation activities. The increased legal mandates for greater resource protection and disclosure of environmental impacts has occurred at the same time that hunting and fishing license revenue has significantly declined.

(c) It is the intent of the Legislature to extend the current user-based funding system by allocating the transactional costs of wildlife protection and management to those who would consume those resources through urbanization and development, as well as to those traditional sport and commercial users. The Legislature finds that the deficiency in current department revenues must be offset by additional user fees designed to provide adequate environmental review and management of the state's wildlife. Funds generated by this act shall be available without restriction to those purposes, consistent with existing budgetary and statutory authority.

(d) It is further the intent of the Legislature to reduce transactional costs and increase administrative

Beginning in 1992,

italics indicate changes or additions. *** indicate omissions.

GENERAL PROVISIONS

§ 3007

who shall thereafter issue a health certificate. The certificate shall be attached to the cage or enclosure of the examined cat.

(b) When it is shown that the holder of a permit issued pursuant to Section 2150, or a license issued pursuant to subdivision (c) of Section 3202, authorizing the possession or confinement of a cat, has been convicted of a violation of Section 3005.92, such permit or license may be revoked.

Added Stats 1978 ch 1153 § 3.

Cross References:

Maximum penalty for violations: F & G C § 12002.

§ 3005.93. Availability of information on cat possession

The department shall make available upon request information on the possession of a cat, other than a house cat, and information on regulations and standards applicable to permit holders.

Added Stats 1978 ch 1153 § 4.

§ 3005.94. Appointment of advisory committee

The director may appoint a committee to advise him on the care of cats, other than house cats.

Added Stats 1978 ch 1153 § 5.

§ 3006. Killing of captive deer, elk, or bear; Disposition of carcass

Except as authorized under a domesticated game breeder's license, any deer, elk, or bear kept in captivity may be killed only with the approval of the department, and under such regulations as the commission may prescribe. The carcass, or any part thereof, of any such mammal may not be sold, and shall be disposed of in such manner as the department may direct.

Enacted 1957.

Historical Derivation: Former F & G C § 459, as added by Stats 1933 ch 305 p 878, amended by Stats 1945 ch 461 § 1 p 960.

Cross References:

Domesticated game breeders license: §§ 3200 et seq.

§ 3007. Necessity of license or permit

Every person who takes any bird or mammal shall procure a license or permit therefor.

Enacted 1957. Amended Stats 1959 ch 1633 § 1; Stats 1971 ch 1470 § 4.

Amendments:

1959 Amendment: Substituted "nonprotected" for "predatory" after "other than a".

1971 Amendment: Deleted ", other than a nonprotected bird or mammal." after "mammal".

§ 3038

BIRDS AND MAMMALS

the taking of birds and mammals. If the permit covers a period during which birds or mammals may only be taken or shipped with appropriate tags, the department may issue such tags with the permit or shall endorse the permit to authorize such taking and shipping without such tags.

Such a permit shall be valid only during the period of time such person is in the medical facility and so disabled. Certification by the commanding officer of the military medical facility shall be sufficient proof of this period of time and extent of disability.

Added Stats 1961 ch 372 § 1. Amended Stats 1971 ch 1470 § 7.

Amendments:

1971 Amendment: Deleted "game" before "birds and mammals" in the first sentence of the first paragraph.

Collateral References:

Cal Jur 3d Fish and Game § 35.

Disability ratings, preservation of: 38 USCS § 110.

§ 3039. Sale or purchase of game taken under hunting license prohibited

Except as provided in Sections 3087 and 4303, it is unlawful to sell or purchase any bird or mammal or part thereof taken under a hunting license.

Added Stats 1961 ch 688 § 1. Amended Stats 1977 ch 1208 § 6.

Amendments:

1977 Amendment: Substituted the section for the former section which read: "It is unlawful to sell or purchase any bird or mammal taken under a hunting license."

Cross References:

Fines and penalties for violation of code: F & G C §§ 12000 et seq.

Collateral References:

Cal Jur 3d Fish and Game § 30.

Am Jur 2d Fish and Game § 50.

SUGGESTED FORM

Allegation Charging Sale or Purchase of Birds or Mammals Taken Under Hunting License

The District Attorney of the County of _____, State of California, hereby accuses _____ of a misdemeanor, that is: A violation of Section 3039 of the Fish and Game Code of the State of California, in that on or about _____ [date], in the County of _____ State of California, _____ [he or she] did unlawfully _____ [sell or purchase] a _____ [specify type of bird or mammal] that was taken under a hunting license.

§ 3040. [No section of this number]

§§ 3041, 3042. [Sections repealed 1977.]

Added Stats 1963 ch 2093 §§ 1, 2. Repealed Stats 1977 ch 63 §§ 1, 2. The repealed sections related to transportation permits.

§ 3080

BIRDS AND MAMMALS

carcasses or parts thereof contrary to regulations issued pursuant to the Migratory Bird Treaty Act.

Enacted 1957. Amended Stats 1969 ch 1285 § 2, operative July 1, 1970.

Amendments:

1969 Amendment: Deleted "nor to pheasants legally taken to which there is attached a valid license tag" at the end of the second paragraph.

Historical Derivation:

(a) Former F & G C § 453, as amended by Stats 1937 ch 320 § 1 p 699, Stats 1941 ch 378 § 1 p 1661.

(b) Former Pen C § 626a, as added by Stats 1919 ch 308 § 1 p 500, amended by Stats 1929 ch 421 § 1 p 742.

Cross References:

Unlawful possession of game after close of season: F & G C § 2001.

Collateral References:

Cal Jur 3d Fish and Game § 30.

Migratory Bird Treaty Act: 16 USCS §§ 703-708, 709a-711.

§ 3081. Possession of meat

It is unlawful to possess deer, elk, bear, or antelope meat except as follows:

(a) During the open season where taken and for 15 days following the last day when those mammals may be legally taken in the area where taken.

(b) At any time if marked pursuant to regulations established by the commission. The commission shall make the regulations, and may fix a fee for marking the meat.

Enacted 1957. Amended Stats 1959 ch 251 § 1; Stats 1985 ch 1463 § 12; Stats 1986 ch 1368 § 9.

Amendments:

1959 Amendment: Added "bear," after "elk," in the introductory clause.

1985 Amendment: (1) Generally eliminated "such"; (2) deleted "not to exceed one dollar (\$1) per carcass" at the end of subd (b); and (3) added the last two paragraphs.

1986 Amendment: Deleted the former second and third paragraphs which read: "This section shall become inoperative on July 1, 1987, and, as of January 1, 1988, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1988, deletes or extends the dates on which it becomes inoperative and is repealed."

"If that date upon which this section becomes inoperative is not deleted or extended, then, on and after July 1, 1987, pursuant to Section 9611 of the Government Code, Section 3081 of the Fish and Game Code, as amended by Section 1 of Chapter 251 of the Statutes of 1959, shall have the same force and effect as if this temporary provision had not been enacted."

Historical Derivation:

(a) Former §§ 4761, 4762, as added by Stats 1957 ch 1916 § 2.

(b) Former F & G C § 1275.5, as added by Stats 1937 ch 441 § 1 p 1390, amended by Stats 1939 ch 178 § 1 p 1429.

Cross References:

Fines and penalties for viola

Collateral References:

Cal Jur 3d Fish and Game

Pertinent administrative rule

Am Jur 2d Fish and Game

One who possesses deer or elk meat provided in this section, is presumed unlawful intent. *Dunn v Municipality of Eureka Judicial Dist.* (1963) 220 C. Cal Rptr 251.

By mere possession of deer and violation of this section, possessor is commit public offense within contemplation of C § 1524, subd 3, providing that same may be issued when property sought.

Allegation Charging Taking of Deer. The District Attorney of the County of _____ of a misdemeanor, that of the State of California, in that State of California, _____ [he bear or antelope] meat at a time not of open season.

§ 3082. [Section repealed]

Enacted 1957. Repealed Stats 1969 related to the period when possession

Historical Derivation: Former F & G C § 1303.

§ 3083. Issuances of permits

Upon application the department may cold storage plant or full payment therefor.

Enacted 1957. Amended Stats 1959

Amendments:

1959 Amendment: Substituted cold storage plants and for mammals are stored beyond an amount to be determined upon the payment to the department pursuant to Section 3085, department out of any money

GENERAL PROVISIONS

§ 3083

Cross References:

Fines and penalties for violation of code: F & G C §§ 12000 et seq.

Collateral References:

Cal Jur 3d Fish and Game §§ 30, 58, 61.

Pertinent administrative rules and regulations: 14 Cal Code Reg § 375.

Am Jur 2d Fish and Game § 50.

NOTES OF DECISIONS

One who possesses deer or elk meat, except as provided in this section, is presumed to do so with unlawful intent. *Dunn v Municipal Court for Eureka Judicial Dist.* (1963) 220 CA2d 858, 34 Cal Rptr 251.

By mere possession of deer and elk meat in violation of this section, possessor is using meat to commit public offense within contemplation of Pen C § 1524, subd 3, providing that search warrant may be issued when property sought is in posses-

sion of any person with intent to use it to commit public offense. *Dunn v Municipal Court for Eureka Judicial Dist.* (1963) 220 CA2d 858, 34 Cal Rptr 251.

Deer and elk meat in possession of defendant in violation of this section is contraband, and though meat was seized under illegal search warrant, defendant is not entitled to have meat returned. *Dunn v Municipal Court for Eureka Judicial Dist.* (1963) 220 CA2d 858, 34 Cal Rptr 251.

SUGGESTED FORM

Allegation Charging Taking of Deer Meat

The District Attorney of the County of _____, State of California, hereby accuses _____ of a misdemeanor, that is: A violation of Section 3081 of the Fish and Game Code of the State of California, in that on or about _____ [date], in the County of _____, State of California, _____ [he or she] did unlawfully possess _____ [deer or elk or bear or antelope] meat at a time not during the open season or 15 days following the last day of open season.

§ 3082. [Section repealed 1970.]

Enacted 1957. Repealed Stats 1969 ch 1285 § 3, operative July 1, 1970. The repealed section related to the period when possession of pheasants was legal.

Historical Derivation: Former F & G C § 1201.10, as added by Stats 1949 ch 712 § 10 p 1303.

§ 3083. Issuances of permits to cold storage and locker plants

Upon application the department may deliver game meat permits to any cold storage plant or frozen food locker plant without receiving full payment therefor.

Enacted 1957. Amended Stats 1959 ch 253 § 1, effective May 4, 1959.

Amendments:

1959 Amendment: Substituted the section for the former section which read: "All cold storage plants and frozen food locker plants in which game birds or mammals are stored beyond the open season, under a permit, shall be bonded in an amount to be determined by the department. The bond shall be conditioned upon the payment to the department of the amounts required to be remitted to it pursuant to Section 3085. The premium for such bond shall be paid by the department out of any money available for the support of the department."

§ 3083

BIRDS AND MAMMALS

Historical Derivation: Former F & G C § 453.5, as added by Stats 1943 ch 346 § 1 p 1343.

SUGGESTED FORM

Petition for Writ of Mandate To Compel State Department of Fish and Game To Issue Permit Relating to Cold Storage

[Title of Court and Cause]

1. Petitioner resides at _____ [address], City of _____, County of _____, State of California.

2. Respondent is the Department of Fish and Game of the State of California and as such is the duly constituted authority to administer the provisions of the Fish and Game Code of the State of California relating to permits to a _____ [cold storage plant or frozen food locker plant].

3. On _____ [date], petitioner filed an application with respondent for a _____ [cold storage plant or frozen food locker plant] permit.

4. At all times mentioned in this petition, petitioner was fully qualified to be issued the above permit in the State of California, inasmuch as petitioner _____ [state all qualifications outlined in the Fish and Game Code and pertinent regulations].

5. By reason thereof, petitioner is entitled to be issued the above permit in the State of California, and the refusal of respondent to so issue the permit constitutes an arbitrary and wrongful violation of its duties, in that petitioner has fully complied with all requirements for issuance of the permit and is, therefore, entitled under the provisions of the Fish and Game Code of the State of California to be issued the above permit.

6. Petitioner has performed all conditions precedent to the filing of this petition by _____ [insert all conditions precedent, including the exhaustion of administrative remedies].

7. Petitioner has made demand of respondent that petitioner be issued the above-mentioned permit, but the demand of petitioner has been refused and respondent does now refuse to issue a permit to petitioner.

8. At all times mentioned in this complaint, respondent has been able to issue a permit to petitioner, but notwithstanding this ability and in spite of the demand by petitioner that petitioner be issued a permit, respondent continues to refuse to so issue a permit.

9. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law, other than the relief sought in this petition, in that this is the only proceeding in which petitioner may obtain the rights demanded in this petition.

Wherefore, petitioner requests that:

1. This court issue an alternative writ of mandate commanding respondent to issue the above-mentioned permit to petitioner, or show cause before this court at a time specified by an order of the court why it has not done so and why a peremptory writ of mandate should not issue;

2. On the return of the alternative writ of mandate and the hearing of this petition, this court issue its peremptory writ of mandate commanding the respondent to do the things requested above; and

3. This court award petitioner costs of this proceeding and any further relief that to the court seems just and proper.

[Signature]

[Verification]

§ 3084. Designation of persons to issue storage permits

The department shall designate and authorize a person or persons in each plant to issue permits for the storage beyond the open season

where such game birds or fees to be paid in connection with the birds or mammals. materials as may be required to be supplied by the department. Enacted 1957. Amended Stats 1957.

Amendments:

1959 Amendments: Deleted

Historical Derivation: Former F

§ 3085. Fees

Cold storage plants and of all legal fees received from mammals deposited with remit one-half of such fees at such time or times as

Enacted 1957. Amended Stats 1957.

Amendments:

1959 Amendment: (1) Substitution before "frozen food locker"

Historical Derivation: Former F

§ 3086. Cold storage record

Cold storage plants and keep a complete detailed record in such plants. A record shall be kept at the time it is received. The record shall be open to the department.

Enacted 1957. Amended Stats 1957.

Amendments:

1959 Amendment: Amended "Bonded cold"; and (2) d

Historical Derivation: Former F

Collateral References:

Cal Jur 3d Fish and Game Pertinent administrative rules

§ 3087. Taxidermist's record

(a)(1) Every person who fish, reptile, bird, or mammal an accurate and detailed

§ 3200

BIRDS AND MAMMALS

- § 3213. Sale of carcasses by retail meat dealer to customer; Inspection; Tagging
- § 3214. Confinement of game in escape-proof cages; Recapture of escaped animals
- § 3215. [No section of this number]
- § 3216. Method of slaughter; Exceptions
- § 3217. Shooting as evidence that game was not domesticated
- § 3218. Revocation of license
- § 3219. Importation and sale of reindeer

Cross References:

Transportation and tagging of dead domesticated game birds and mammals: § 2400.

Collateral References:

Cal Digest of Official Reports 3d Series, Fish and Game §§ 1-7.

§ 3200. Breeder's license

Any person engaged in raising or importing, or who keeps in captivity, in this state domesticated game birds or domesticated game mammals which normally exist in the wild in this state shall procure a domesticated game breeder's license if the birds or mammals are kept more than 30 days after acquisition. No such license is, however, required of any of the following:

- (a) Licensed pheasant clubs, except to the extent provided in Section 3283.
- (b) Licensed domesticated migratory game bird shooting areas as defined in Article 4 (commencing with Section 3300) of Chapter 2 of Part 1 of Division 4.
- (c) Keepers of hotels, restaurants, boardinghouses, or clubs serving the meat of such birds or mammals for actual consumption on the premises.
- (d) Retail meat dealers selling such meat to customers for actual consumption.
- (e) Public zoological gardens possessing such birds or mammals for exhibition purposes or for the purpose of disposing of such birds or mammals by sale, exchange or donation to other public zoological gardens.

For the purposes of this article only, the term "domesticated game mammals" shall include domesticated mountain lions.

Enacted 1957. Amended Stats 1963 ch 296 § 1; Stats 1970 ch 1312 § 2; Stats 1971 ch 1592 § 2.

Amendments:

1963 Amendment: Added (1) "domesticated game" before "mammals which normally" in the introductory paragraph; and (2) subd (d).

1970 Amendment: (1) Added subd (b); and (2) redesignated former subds (b)-(d) to be subds (c)-(e).

1971 Amendment: Added the last paragraph.

Historical Derivation:

- (a) Former F & G C § 1380, as amended by Stats 1943 ch 870 § 2 p 2685.

- (b) Former Pen C § 631d, as added ch 774 § 1 p 1620.

Collateral References:

Cal Jur 3d Fish and Game §§ 30

Am Jur 2d Fish and Game §§ 4

Annotations:

Applicability, to domesticated season and the like. 74 ALR2

Petition for Writ of Mandate To Breeder's License

[Title of Court and Cause]

1. Petitioner resides at _____ [address] California.
2. Respondent is the Department of the duly constituted authority to administer the State of California relating to breeder's license.
3. On _____ [date], petitioner imported and kept in captivity in this state domesticated game birds or mammals which normally exist in the wild in this state.
4. At all times mentioned in this petition, petitioner has been in possession of a breeder's license in the State of California, as outlined in the Fish and Game Code.
5. By reason thereof, petitioner is entitled to the issuance of a breeder's license in the State of California, and the refusal of respondent to issue a license is a wrongful violation of its duties, in the issuance of the license and is, therefore, a violation of the Code of the State of California to be enjoined.
6. Petitioner has performed all conditions precedent, including _____ [insert all conditions precedent, including _____].
7. Petitioner has made demand of respondent for a license, but the demand of petitioner has been refused by respondent to issue a license to petitioner.
8. At all times mentioned in this petition, petitioner has been in possession of a breeder's license in the State of California, and notwithstanding this refusal, petitioner be issued a license, respondent is enjoined from refusing to issue a license to petitioner.
9. Petitioner has no plain, speedy and adequate remedy at law, and more than the relief sought in this petition may obtain the rights demanded in this petition.

Wherefore, petitioner requests that:

1. This court issue an alternative writ of mandamus to petitioner, or order of the court why it has not done so;
2. On the return of the alternative writ, issue its peremptory writ of mandamus to respondent to issue a license to petitioner above; and

§ 3200

BIRDS AND MAMMALS

3. This court award petitioner costs of this proceeding and any further relief that to the court seems just and proper.

[Signature]

[Verification]

§ 3201. License for sale of carcasses

No person shall sell the carcass of any domesticated game bird or mammal without first obtaining a domesticated game breeder's license from the department. The department may issue such a license upon terms and conditions as the commission may prescribe, and the commission may at any time revoke such a license for sufficient cause.

Enacted 1957. Amended Stats 1985 ch 234 § 1.

Amendments:

1985 Amendment: Deleted (1) "such" after "license upon"; and (2) "in accordance with Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code" at the end of the section.

Historical Derivation:

(a) Former F & G C § 1390.

(b) Former Pen C § 631d, as added by Stats 1913 ch 570 § 1 p 981, amended by Stats 1917 ch 774 § 1 p 1620.

Cross References:

Fines and penalties for violation of code: §§ 12000 et seq.

Collateral References:

Am Jur 2d Fish and Game § 50.

SUGGESTED FORM

Allegation Charging Sale of Carcass

The District Attorney of the County of _____, State of California, hereby accuses _____ of a misdemeanor, that is: A violation of Section 3201 of the Fish and Game Code of the State of California, in that on or about _____ [date], in the County of _____, State of California, _____ [he or she] did unlawfully sell the carcass of a _____, a domesticated _____ [game bird or mammal], without a valid domesticated game breeder's license.

§ 3202. Classes of breeder's licenses

There are three classes of domesticated game breeder's licenses, designated "class 1," "class 2," and "class 3."

(a) A class 1 domesticated game breeder's license authorizes the licensee to engage in all domesticated game breeding activities, except those involving mountain lions, and except that not more than one hundred seventy-five (175) Chinese ringneck or Mongolian ringneck pheasants, or both, or hybrids thereof, may be sold under a class 1 license.

(b) A class 2 domesticated game breeder's license is required in order to sell more than one hundred seventy-five (175) Chinese ringneck or

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[Signature]

esticated game bird or
l game breeder's license
ue such a license upon
ay prescribe, and the
nse for sufficient cause.

"; and (2) "in accordance
rt 1, Division 3, Title 2 of

p 981, amended by Stats 1917

of California, hereby accuses
of the Fish and Game Code
in the County of _____
the carcass of a _____, a
d domesticated game breed-

re breeder's licenses,

license authorizes the
eding activities, except
it not more than one
Mongolian ringneck
sold under a class 1

is required in order
) Chinese ringneck or

Mongolian ringneck pheasants, or both, or hybrids thereof, and entitles the licensee to all the rights and privileges of a class 1 license. (c) A class 3 domesticated game breeder's license authorizes the licensee to engage in all domesticated game breeding activities involving only mountain lions. A class 3 license applicant or licensee shall be subject to the provisions of Sections 3005.9, 3005.91, and 3005.92.

Enacted 1957. Amended Stats 1978 ch 1153 § 6; Stats 1981 ch 491 § 2.

Amendments:

1978 Amendment: (1) Amended the first paragraph by substituting (a) "three" for "two"; and (b) "class 2, and 'class 3'" for "and 'Class 2'"; (2) added ", except those involving mountain lions, and" after "breeding activities" in subd (a); and (3) added subd (c).

1981 Amendment: Amended the last sentence of subd (c) by (1) adding "license applicant or"; and (2) substituting "Sections 3005.9, 3005.91, and 3005.92" for "Sections 3005.91 and 3005.92".

Historical Derivation: Former F & G C § 1380.1, as added by Stats 1955 ch 1851 § 12 p 3443.

§ 3203. License fees

The department shall issue a class 1 domesticated game breeder's license upon the payment of a base fee of eight dollars (\$8), as adjusted under Section 713, a class 2 domesticated game breeder's license upon the payment of a base fee of forty dollars (\$40), as adjusted under Section 713, and a class 3 domesticated game breeder's license upon the payment of a fee set by the commission to help cover the costs of administration.

Enacted 1957. Amended Stats 1978 ch 1153 § 7; Stats 1985 ch 1463 § 13; Stats 1986 ch 1368 § 10.

Amendments:

1978 Amendment: (1) Deleted "and" after "five dollars (\$5)"; and (2) added ", and a class 3 domesticated game breeder's license upon the payment of a fee set by the commission to help cover the costs of administration".

1985 Amendment: (1) Amended the first paragraph by (a) substituting "eight dollars (\$8)" for "five dollars (\$5)"; (b) deleting "and" after "(\$8)"; (c) substituting "forty dollars (\$40)" for "twenty-five dollars (\$25)"; and (d) adding "and a class 3 domesticated game breeder's license upon the payment of a fee set by the commission to help cover the costs of administration" at the end; and (2) added the second paragraph.

1986 Amendment: (1) Added, both times they appear, (a) "base"; and (b) ", as adjusted under Section 713,"; and (2) deleted the former second paragraph which read: "This section shall remain in effect only until January 1, 1987, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1987, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1987, pursuant to Section 9611 of the Government Code, Section 3203 of the Fish and Game Code, as amended by Section 7 of Chapter 1153 of the Statutes of 1978, shall have the same force and effect as if this temporary provision had not been enacted."

Historical Derivation:

(a) Former F & G C § 1381, as amended by Stats 1943 ch 870 § 3 p 2685, Stats 1955 ch 1851 § 13 p 3443.

CA 1987

FUR-BEARING MAMMALS

§ 4008

and after July 1, 1987, pursuant to Section 9611 of the Government Code, Section 4006 of the Fish and Game Code, as amended by Section 3 of Chapter 1534 of the Statutes of 1982, shall have the same force and effect as if this temporary provision had not been enacted."

1988 Amendment: Amended the second paragraph by adding (1) "California residents" at the end of the first sentence; and (2) the second sentence.

Historical Derivation:

(a) Former F & G C § 1316.

(b) Stats 1917 ch 517 § 6 p 653, as amended by Stats 1919 ch 244 § 3 p 389.

Collateral References:

Cal Jur 3d Fish and Game §§ 30, 35.

Am Jur 2d Fish and Game § 45.

§ 4007. Rights conferred under trapping license

A trapping license authorizes the person to whom it is issued to take, during the open season, fur-bearing mammals and nongame mammals for a term of one year from July 1st, or if issued after the beginning of such term, for the remainder thereof and to sell the raw fur of any such animal.

Enacted 1957. Amended Stats 1974 ch 939 § 4; Stats 1979 ch 701 § 3.

Amendments:

1974 Amendment: Added "and nongame mammals".

1979 Amendment: (1) Deleted "for profit" after "nongame mammals"; and (2) added "and to sell the raw fur of any such animal".

Historical Derivation:

(a) Former F & G C § 1317.

(b) Stats 1917 ch 517 § 8 p 654.

Collateral References:

Cal Jur 3d Fish and Game § 30.

§ 4008. Annual statement of licensee

No trapping license shall be issued to any applicant within one year following the expiration of any trapping license previously issued to such applicant unless he has submitted to the department a sworn statement showing the number of each kind of fur-bearing mammals and nongame mammals taken under the previous license and the names and addresses of the persons to whom they were shipped or sold.

Enacted 1957. Amended Stats 1968 ch 76 § 1; Stats 1974 ch 939 § 5.

Historical Derivation:

(a) Former F & G C § 1318.

(b) Stats 1917 ch 517 § 9 p 653.

Amendments:

1968 Amendment: (1) Substituted "No trapping license shall be issued to any applicant within one year following the expiration of any trapping license

§ 4301

BIRDS AND MAMMALS

NOTES OF DECISIONS

It was misdemeanor, under former Pen C § 626, to sell, or offer to sell, meat of any deer, without reference to whether deer had been killed within or without state. Ex parte Maier (1894) 103 C 476, 37 P 402.

It is within state's police power, in providing for protection of wild game of state, to prohibit sale of meat of any wild game within state; and police regulation making it offense to buy and sell deer meat within state, which is cut from entire carcass

brought from without state, is not violation of United States Constitution as attempt to regulate commerce. Ex parte Maier (1894) 103 C 476, 37 P 402.

Person taking or killing game takes or kills subject to limitations of any reasonable regulation by State, and his right of property therein is qualified thereby. Re Phoedovius (1918) 177 C 238, 170 P 412.

§ 4302. Retention of deer head; Production upon demand

Any person taking any deer shall retain in his possession during the open season thereon, and for 15 days thereafter, that portion of the head which in adult males normally bears the antlers, and shall produce the designated portion of the head upon the demand of any officer authorized to enforce the provisions of this code.

Enacted 1957. Amended Stats 1970 ch 111 § 1.

Amendments:

1970 Amendment: (1) Substituted "15" for "10"; (2) deleted "the skin and" after "days thereafter,"; and (3) deleted "skin and" after "shall produce the".

Historical Derivation:

(a) Former F & G C § 1288.

(b) Former Pen C § 626d, as added by Stats 1895 ch 202 § 5 p 256.

(c) Former Pen C § 626e, as added by Stats 1901 ch 274 § 6 p 820, amended by Stats 1915 ch 166 § 1 p 338, Stats 1917 ch 54 § 1 p 58, Stats 1925 ch 363 § 1 p 667, Stats 1931 ch 733 § 1 p 1523.

Collateral References:

Cal Jur 3d Fish and Game § 26.

§ 4303. Sale, purchase or use of deer skin; Donation to veterans' organizations

The skin or hide of any deer lawfully taken may be sold, purchased, tanned, or manufactured into articles for sale.

Skins or hides of deer lawfully taken may be donated at any time to veterans' organizations or veterans' service committees for use by veterans for rehabilitation purposes.

Enacted 1957. Amended Stats 1970 ch 111 § 2.

Amendments:

1970 Amendment: (1) Deleted "and possessed for the period specified in Section 4302," after "lawfully taken" in the first sentence; (2) substituted "Skin" for "Notwithstanding the provisions of Section 4302, skins" at the beginning of the second paragraph; and (3) deleted the former second sentence of the second paragraph which read: "The donor shall obtain a receipt which shall be retained during the period specified in Section 4302."

Historical Derivation: Former amended by Stats 1955 ch 13.

Cross References:

"Veteran": Mil & Vet C

Collateral References:

Cal Jur 3d Veterans § 50
Am Jur 2d Fish and Ga

§ 4304. Capture or d Neglect of game mam

No person shall at a or remove from the shall any person at a game mammal or ga of the flesh thereof waste. The provision mals taken under t code.

Enacted 1957. Amended S

Amendments:

1965 Amendment: (1) added the last sente

Historical Derivation: For

Cross References:

Fines and penalties fo

Allegation Charging Dest

The District Attorney of a misdemeanor, that is: A of California, in that on California, _____ [he detach or remove from th

[Division 4, Bi

- § 4330. Unlawful ta
- § 4331. Design and
- § 4332. Procurement
- § 4333. Term of val

§ 4756

BIRDS AND MAMMALS

affected except during the period when archery deer seasons or regular deer seasons are open.

Added Stats 1957 ch 1916 § 2. Amended Stats 1971 ch 513 § 1.

Amendments:

1971 Amendment: Deleted the former last two paragraphs which read: "In the course of breaking, training or practicing dogs, such dogs may be permitted to pursue bears during the period August 1st to September 30th if the area concerned is not open to archery deer hunting or regular deer hunting.

"It is unlawful for any person breaking, training, or practicing such dogs to carry, or have under his immediate control, any firearm or bow and arrow of any kind except during the open season on bear."

Cross References:

Exemption of hunting dogs, previously vaccinated for rabies, from rabies vaccination requirements of local ordinances: § 3008.

Fines and penalties for violation of code: §§ 12000 et seq.

Collateral References:

Attorney General's Opinions:

41 Ops Atty Gen 79 (validity of county ordinance controlling, regulating, and limiting use of dogs for purpose of hunting).

SUGGESTED FORM

Allegation Charging Use of Dog to Hunt Bear

The District Attorney of the County of _____, State of California, accuses _____ of a misdemeanor, that is: A violation of Section 4756 of the Fish and Game Code of the State of California, in that on or about _____ [date], in the County of _____, State of California, _____ [he or she] did unlawfully use dogs to _____ [hunt or pursue or molest] bears.

§ 4757. Retention of head and skin; Production upon demand

Any person taking any bear must retain in his possession during the open season thereon, and for 15 days thereafter, the skin and portion of the head bearing the ears, and must produce the skin and portion of the head upon the demand of any officer authorized to enforce the provisions of this code.

Added Stats 1957 ch 1916 § 2.

§ 4758. Sale or purchase of bear meat or other parts

(a) Subject to the provisions of this code permitting the sale of domestically raised game mammals, it is unlawful to sell or purchase, or possess for sale, the meat, skin, hide, teeth, claws, or other parts of any bear in this state.

(b) The possession of more than one bear gall bladder is prima facie evidence that the bear gall bladders are possessed for sale.

(c) Nothing in this section prohibits a sale authorized pursuant to Section 3087.

Added Stats 1957 ch 1916 § 2. Amended Stats 1977 ch 1208 § 11; Stats 1988 ch 556 sec 2.

Legislative Reference Library

Amendments:

1977 Amendment: Substituted "the meat, skin, hide, teeth, claws, or other parts of any bear" for "any bear meat".

1988 Amendment: (1) Designated the former section to be subd (a); (2) added ", or possess for sale," in subd (a); and (3) added subds (b) and (c).

Cross References:

Fines and penalties for violation of code: §§ 12000 et seq.

Collateral References:

Am Jur 2d Fish and Game § 50.

SUGGESTED FORM**Allegation Charging Sale of Bear Meat**

The District Attorney of the County of _____, State of California, accuses _____ of a misdemeanor, that is: A violation of Section 4758 of the Fish and Game Code of the State of California, in that on or about _____ [date], in the County of _____, State of California, _____ [he or she] did unlawfully _____ [sell or purchase or possess for sale] the _____ [meat or skin or hide or teeth or claws or other parts] of a bear.

§ 4759. Taking and possessing bear skin or other parts; Donation to veterans' organizations; Receipt

The skin, hide, teeth, claws, or other parts of any bear lawfully taken and possessed for the period provided in Section 4757 may be tanned or utilized for personal use only. Notwithstanding the provisions of Section 4757, the skin, hide, teeth, claws, or other parts of any bear lawfully taken may be donated any time to veterans' organizations or veterans' service committees for use by veterans for rehabilitation purpose. The donor shall obtain a receipt which shall be retained during the period stipulated by Section 4757.

Added Stats 1957 ch 1916 § 2. Amended Stats 1972 ch 60 § 1; Stats 1977 ch 1208 § 12.

Amendments:

1972 Amendment: Substituted (1) "tanned for personal use only" for "sold, purchased, tanned, or manufactured into articles for sale" in the first sentence; and (2) "provision" for "provisions" in the second sentence.

1977 Amendment: Substituted (1) the first sentence for the former first sentence which read: "The skin or hide of any bear lawfully taken and possessed for the period provided in Section 4757, may be tanned for personal use only."; (2) "provisions of Section 4757, the skin, hide, teeth, claws, or other parts of any" for "provision of Section 4757, skins or hides of" in the second sentence; and (3) "retained" for "attached to the ears of the bear from which the skin was taken for retention" before "during" in the third sentence.

Collateral References:

Cal Jur 3d Veterans § 50.

§ 4760. Application of provisions to bear taken outside State

The provisions of this chapter relating to the possession of bear apply to bear taken outside this State and transported into this State.

Added Stats 1957 ch 1916 § 2.

ATTACHMENT D
Oregon Statute About the Sale of Wildlife

GENERAL PROTECTIVE PROVISIONS

498.002 Wildlife as state property; angling, hunting or trapping in violation of wildlife law or rules prohibited. Wildlife is the property of the state. No person shall angle for, hunt, trap or possess, or assist another in angling for, hunting, trapping or possessing any wildlife in violation of the wildlife laws or of any rule promulgated pursuant thereto. [1973 c.723 §73]

498.005 [Amended by 1971 c.658 §26; repealed by 1973 c.723 §130]

498.006 Chasing or harassing wildlife prohibited. Except as the commission by rule may provide otherwise, no person shall chase, harass, molest, worry or disturb any wildlife except while engaged in lawfully angling for, hunting or trapping such wildlife. [1973 c.723 §74]

498.010 [Repealed by 1957 c.249 §1]

498.012 Taking wildlife damaging land, livestock or agricultural or forest crops.

(1) Nothing in the wildlife laws is intended to prevent any person from taking any wildlife that is damaging land that the person owns or lawfully occupies or is damaging livestock or agricultural or forest crops on such land. However, no person shall take, pursuant to this subsection, at a time or under circumstances when such taking is prohibited by the commission, any game mammal or game bird, fur-bearing mammal or nongame wildlife species, unless the person first obtains a permit for such taking from the commission. As used in this subsection "nongame wildlife" has the meaning for that term prescribed in ORS 496.375.

(2)(a) Nothing in subsection (1) of this section requires a permit for the taking of cougar, bobcat, red fox or bear pursuant to that subsection. However, any person who takes a cougar, bobcat, red fox or bear must have in possession written authority therefor from the landowner or lawful occupant of the land that complies with subsection (4) of this section.

(b) Nothing in subsection (1) of this section requires the commission to issue a permit for the taking of any wildlife species for which a U. S. Fish and Wildlife Service permit is required pursuant to the Migratory Bird Treaty Act (16 U.S.C. §§703 to 711), as amended.

(3) Any person who takes, pursuant to subsection (1) of this section, any cougar, bobcat, red fox, bear, game mammal, game bird, fur-bearing mammal or wildlife species whose survival the commission determines is endangered shall immediately report the taking to a person authorized to enforce the wildlife laws, and shall dispose of the wildlife in such manner as the commission directs.

(4) The written authority from the landowner or lawful occupant of the land required by subsection (2) of this section for the taking of cougar, bobcat, red fox or bear must set forth all of the following:

(a) The date of issuance of the authorization;

(b) The name, address, telephone number and signature of the person granting the authorization;

(c) The name, address and telephone number of the person to whom the authorization is granted;

(d) The wildlife damage control activities to be conducted, whether for bear, cougar, red fox or bobcat; and

(e) The expiration date of the authorization, which shall be not later than one year from the date of issuance of the authorization. [1973 c.723 §75; 1977 c.136 §2; 1979 c.399 §3; 1985 c.332 §1; 1985 c.489 §1a]

498.015 [Amended by 1959 c.529 §1; repealed by 1973 c.723 §130]

498.016 Taking crippled or helpless wildlife. Nothing in the wildlife laws is intended to prohibit any person from killing any crippled or helpless wildlife when the killing is done for a humane purpose. Any person so killing any wildlife shall immediately report such killing to a person authorized to enforce the wildlife laws, and shall dispose of the wildlife in such manner as the commission directs. [1973 c.723 §76]

498.020 [Amended by 1959 c.529 §2; repealed by 1973 c.723 §130]

498.022 Purchase, sale or exchange of wildlife prohibited. Except as the commission by rule may provide otherwise, no person shall purchase, sell or exchange, or offer to purchase, sell or exchange any wildlife, or any part thereof. [1973 c.723 §77]

498.025 [Amended by 1961 c.276 §1; renumbered 498.820]

498.026 Transaction in threatened or endangered wildlife species prohibited. (1) Except as provided in subsection (2) of this section, no person shall take, import, export, transport, purchase or sell, or attempt to take, import, export, transport, purchase or sell, any threatened species or endangered species, or the skin, hides or other parts thereof, or any article made in whole or in part from the skin, hide or other parts of any threatened species or endangered species.

(2) Nothing in subsection (1) of this section is intended to prevent the taking, importation, transportation or sale of any threatened species or endangered species in such manner as may be authorized in ORS 496.172, 497.218 to 497.238, 497.298 or 497.308.

ATTACHMENT E
Washington Statutes and Regulations About the Sale of Wildlife

the committee does not perform this duty within the time frame necessary to achieve proper and timely distribution of the stamps to license dealers, the director shall initiate the art work selection for that year. The committee shall create collector art prints and related artwork, utilizing the same design as provided to the department. The administration, sale, distribution, and other matters relating to the prints and sales of stamps with prints and related artwork shall be the responsibility of the migratory waterfowl art committee.

The total amount brought in from the sale of prints and related artwork shall be deposited in the state wildlife fund. The costs of producing and marketing of prints and related artwork, including administrative expenses mutually agreed upon by the committee and the director, shall be paid out of the total amount brought in from sales of those same items. Net funds derived from the sale of prints and related artwork shall be used by the director to contract with one or more appropriate individuals or nonprofit organizations for the development of waterfowl propagation projects within Washington which specifically provide waterfowl for the Pacific flyway. The department shall not contract with any individual or organization that obtains compensation for allowing waterfowl hunting except if the individual or organization does not permit hunting for compensation on the subject property.

The migratory waterfowl art committee shall have an annual audit of its finances conducted by the state auditor and shall furnish a copy of the audit to the commission and to the natural resources committees of the house and senate. [1987 c 506 § 55; 1985 c 243 § 6.]

Sunset Act application: See note following chapter digest.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.12.700 Hunting of post-mature trophy-quality animals—Washington trophy hunt. (1) The commission in consultation with the director may authorize hunting of post-mature male trophy-quality animals from herds in areas not normally open to general public hunting. The director shall establish procedures for the hunt, which shall be called the Washington trophy hunt. The procedures may provide for an organization to contract with the department to sponsor the hunt. The procedures shall require that any permits or tags required for the hunt be sold at auction to raise funds for the department and the organization for wildlife conservation purposes. Representatives of the department may participate in the hunt upon the request of the commission to insure that the animals to be killed are properly identified.

(2) A wildlife conservation organization may request the commission to authorize a special hunt for post-mature trophy-quality male animals upon petition.

(3) In addition to any permit fee established under subsection (1) of this section, participants in the hunt shall obtain any required license, permit, or tag. [1987 c 506 § 56.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Chapter 77.16

PROHIBITED ACTS AND PENALTIES

Sections	
77.16.010	Hunting and fishing contests—Field trials for dogs—Permit—Rules.
77.16.020	Violations—Closed season, waters, areas—Bag limits—Special licenses, tags, stamps, or punchcards.
77.16.040	Trafficking in wildlife or articles made from endangered species prohibited—Exception—Common and contract carriers.
77.16.050	Spotlighting big game—Prima facie evidence.
77.16.060	Using nets, unauthorized devices—Returning game fish—Use of landing nets.
77.16.070	Hunting while intoxicated.
77.16.080	Laying out poison, etc., endangering wildlife—Exception.
77.16.090	Waste of wildlife.
77.16.095	Mutilation of wildlife, hampering identification.
77.16.100	Use of dogs—Public nuisance, when.
77.16.110	Weapons, traps, and dogs on game reserves.
77.16.120	Taking of protected wildlife—Destruction of nests or eggs.
77.16.130	Resisting or obstructing officers.
77.16.150	Releasing wildlife—Planting aquatic plants, seeds.
77.16.160	Damaging or interfering with fish ladders, guards, screens, etc.
77.16.170	Interfering with another person's traps—Identification of traps—Disclosure of identities.
77.16.180	Damaging signs.
77.16.190	Unlawful posting of land.
77.16.210	Fishways to be provided and maintained.
77.16.220	Diversion of water—Screen, bypass required.
77.16.250	Loaded firearms in vehicles.
77.16.260	Shooting firearm from public highway.
77.16.290	Law enforcement officers, exemption.
77.16.310	Unlawful purchase or possession of license, permit, tag, stamp, or punchcard.
77.16.320	Albino animals—Penalties for taking, dealing.
77.16.330	Hunting migratory waterfowl without stamp.
77.16.340	Obstructing the taking of fish or wildlife—Penalty—Defenses.
77.16.350	Obstructing the taking of fish or wildlife—Civil action.
77.16.610	Wildlife check stations—Violations.

77.16.010 Hunting and fishing contests—Field trials for dogs—Permit—Rules. It is unlawful to promote, conduct, hold, or sponsor a contest for the hunting or fishing of wildlife or a competitive field trial involving live wildlife for hunting dogs without first obtaining a hunting or fishing contest permit. Contests and field trials shall be held in accordance with established rules. [1987 c 506 § 58; 1980 c 78 § 69; 1955 c 36 § 77.16.010. Prior: 1947 c 275 § 39; Rem. Supp. 1947 § 5992-49.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Contests and field trials: RCW 77.12.500.

77.16.020 Violations—Closed season, waters, areas—Bag limits—Special licenses, tags, stamps, or punchcards. (1) It is unlawful to hunt, fish, possess, or control a species of game bird, game animal, or game fish during the closed season for that species except as provided in RCW 77.12.105.

(2) It is unlawful to kill, take, catch, possess, or control these species in excess of the number fixed as the bag limit for each species.

(3) It is unlawful to hunt within a game reserve or to fish for game fish within closed waters.

(4) It is unlawful to hunt wild birds or wild animals within a closed area except as authorized by rule of the commission.

(5) It is unlawful to hunt or fish for wildlife, practice taxidermy for profit, deal in raw furs for profit, act as a fishing guide, or operate a game farm, stock game fish, or collect wildlife for research or display, without having in possession the license, permit, tag, stamp, or punch-card required by chapter 77.32 RCW or rule of the department. The activities described in this subsection shall be conducted in accordance with rules adopted pursuant to this title. [1987 c 506 § 59; 1983 c 3 § 196; 1981 c 310 § 3; 1980 c 78 § 70; 1977 c 44 § 1; 1955 c 36 § 77.16.020. Prior: 1947 c 275 § 41; Rem. Supp. 1947 § 5992-50.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—**Legislative intent**—1981 c 310: See notes following RCW 77.12.170.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.16.040 Trafficking in wildlife or articles made from endangered species prohibited—Exception—Common and contract carriers. Except as authorized by law or rule, it is unlawful to bring into this state, offer for sale, sell, possess, exchange, buy, transport, or ship wildlife or articles made from an endangered species. It is unlawful for a common or contract carrier knowingly to ship or receive for shipment wildlife or articles made from an endangered species. [1987 c 506 § 60; 1980 c 78 § 72; 1971 ex.s. c 166 § 4; 1961 c 75 § 1; 1955 c 36 § 77.16.040. Prior: 1947 c 275 § 43; Rem. Supp. 1947 § 5992-52.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.16.050 Spot lighting big game—Prima facie evidence. It is unlawful to hunt big game with a spotlight or other artificial light. It is prima facie evidence of a violation of this section to be found with a spotlight or other artificial light and with a firearm, bow and arrow, or crossbow, after sunset, in a place where big game may reasonably be expected. [1980 c 78 § 73; 1955 c 36 § 77.16.050. Prior: 1947 c 275 § 44; Rem. Supp. 1947 § 5992-53.]

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.16.060 Using nets, unauthorized devices—Returning game fish—Use of landing nets. It is unlawful to lay, set, or use a net or other device capable of taking game fish in the waters of this state except as authorized by the commission or director of fisheries. Game fish taken incidental to a lawful season established by the

director of fisheries shall be returned immediately to the water.

A landing net may be used to land fish otherwise legally hooked. [1987 c 506 § 61; 1980 c 78 § 74; 1955 c 36 § 77.16.060. Prior: 1947 c 275 § 45; Rem. Supp. 1947 § 5992-54.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.16.070 Hunting while intoxicated. It is unlawful to hunt while under the influence of intoxicating liquor or drugs. [1980 c 78 § 75; 1955 c 36 § 77.16.070. Prior: 1947 c 275 § 45a; Rem. Supp. 1947 § 5992-55.]

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.16.080 Laying out poison, etc., endangering wildlife—Exception. It is unlawful to lay, set, or use a drug, explosive, poison, or other deleterious substance that may endanger, injure, or kill wildlife except as authorized by law or rules adopted pursuant to this title. [1987 c 506 § 62; 1980 c 78 § 76; 1955 c 36 § 77.16.080. Prior: 1947 c 275 § 46; Rem. Supp. 1947 § 5992-56.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.16.090 Waste of wildlife. It is unlawful for a person who kills or possesses game animals, game birds, or game fish to allow them to needlessly go to waste. [1980 c 78 § 77; 1955 c 36 § 77.16.090. Prior: 1947 c 275 § 47; Rem. Supp. 1947 § 5992-57.]

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.16.095 Mutilation of wildlife, hampering identification. It is unlawful to mutilate wildlife so that the size, species, or sex cannot be determined visually in the field or while being transported. The director may prescribe specific criteria for field identification to satisfy this section. [1987 c 506 § 63; 1980 c 78 § 78.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.16.100 Use of dogs—Public nuisance, when. It is unlawful for the owner or a person harboring a dog to directly or negligently permit the dog to pursue or injure deer or elk or to accompany a person who is hunting deer or elk.

During the closed season for a species of game animal or game bird, a dog found pursuing that species, molesting its young, or destroying the nest of a game bird may be declared a public nuisance. [1980 c 78 § 79; 1977 ex.s. c 275 § 1; 1955 c 36 § 77.16.100. Prior: 1947 c 275 § 48; Rem. Supp. 1947 § 5992-58.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.110 Weapons, traps, and dogs on game reserves. It is unlawful to carry firearms, other hunting weapons, or traps or to allow directly or negligently a dog upon a game reserve, except on public highways or as authorized by rule of the director. [1987 c 506 § 64; 1980 c 78 § 80; 1955 c 36 § 77.16.110. Prior: 1947 c 275 § 50; Rem. Supp. 1947 § 5992-59.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.120 Taking of protected wildlife—Destruction of nests or eggs. Except as authorized by rule of the commission, it is unlawful to hunt, fish for, possess, or control protected wildlife, or endangered species or to destroy or possess the nests or eggs of game birds or protected wildlife. [1980 c 78 § 81; 1955 c 36 § 77.16.120. Prior: 1947 c 275 § 51; Rem. Supp. 1947 § 5992-60.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.130 Resisting or obstructing officers. It is unlawful to resist or obstruct wildlife agents or ex officio wildlife agents in the discharge of their duties while enforcing the law or rules adopted pursuant to this title. [1987 c 506 § 65; 1980 c 78 § 82; 1955 c 36 § 77.16.130. Prior: 1947 c 275 § 52; Rem. Supp. 1947 § 5992-61.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.150 Releasing wildlife—Planting aquatic plants, seeds. Except as authorized by the director, consistent with criteria established by the commission, it is unlawful to release wildlife or to plant aquatic plants or their seeds within the state. [1987 c 506 § 66; 1980 c 78 § 83; 1955 c 36 § 77.16.150. Prior: 1951 c 126 § 1; 1947 c 275 § 54; Rem. Supp. 1947 § 5992-63.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.160 Damaging or interfering with fish ladders, guards, screens, etc. It is unlawful to damage or interfere with a fish ladder, guard, screen, stop, protective device, bypass, or trap operated by the department. [1980 c 78 § 84; 1955 c 36 § 77.16.160. Prior: 1947 c 275 § 55; Rem. Supp. 1947 § 5992-64.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.170 Interfering with another person's traps—Identification of traps—Disclosure of identities. It is unlawful to take a wild animal from another

person's trap without permission, or to spring, pull up, damage, possess, or destroy the trap; however, it is not unlawful for a property owner, lessee, or tenant to remove a trap placed on the owner's, lessee's, or tenant's property by a trapper.

Trappers shall attach to the chain of their traps or devices a legible metal tag with either the department of wildlife identification number of the trapper or the name and address of the trapper in English letters not less than one-eighth inch in height.

When an individual presents a trapper identification number to the department of wildlife and requests identification of the trapper, the department of wildlife shall provide the individual with the name and address of the trapper. Prior to disclosure of the trapper's name and address, the department of wildlife shall obtain the name and address of the requesting individual in writing and after disclosing the trapper's name and address to the requesting individual, the requesting individual's name and address shall be disclosed in writing to the trapper whose name and address was disclosed. [1988 c 36 § 51; 1987 c 372 § 1; 1980 c 78 § 85; 1955 c 36 § 77.16.170. Prior: 1947 c 275 § 56; Rem. Supp. 1947 § 5992-65.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.180 Damaging signs. It is unlawful to remove, possess, or damage printed matter or signs placed by authority of the director. [1987 c 506 § 67; 1980 c 78 § 86; 1955 c 36 § 77.16.180. Prior: 1947 c 275 § 57; Rem. Supp. 1947 § 5992-66.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.190 Unlawful posting of land. It is unlawful for a person to wilfully post signs or warn against or otherwise prevent hunting or fishing on any land not owned or leased by that person. [1980 c 78 § 87; 1955 c 36 § 77.16.190. Prior: 1947 c 275 § 58; Rem. Supp. 1947 § 5992-67.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.210 Fishways to be provided and maintained. Persons or government agencies managing, controlling, or owning a dam or other obstruction across a river or stream shall construct, maintain, and repair durable fishways and fish protective devices that allow the free passage of game fish around the obstruction. The fishways and fish protective devices shall be provided with sufficient water to insure the free passage of fish. [1980 c 78 § 88; 1955 c 36 § 77.16.210. Prior: 1947 c 275 § 60; Rem. Supp. 1947 § 5992-69.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.220 Diversion of water—Screen, bypass required. It is unlawful to divert water from a lake, river,

WAC 232-12-064 Live wildlife. Taking from the wild, importation, possession, holding in captivity.

(1) It is unlawful to take live wild animals, wild birds, or game fish from the wild without a permit provided for by rule of the commission.

(2) It is unlawful to import into the state or to hold live wildlife which were taken, held, possessed or transported contrary to federal or state law, local ordinance or commission rule. Live wild animals, wild birds or game fish shall not be brought into the state without first presenting veterinarian or fish pathologist certification to the department that the wildlife is disease free and that the area from which acquired has no history of wildlife disease which may pose a risk to wildlife in this state. Proof of lawful importation must be produced for inspection on request of a department employee.

(3) It is unlawful to possess or hold in captivity live wild animals, wild birds, or game fish unless lawfully acquired. Proof of lawful acquisition must be produced for inspection on request of a department employee. Such proof shall contain: (1) Species; (2) age and sex of animal; (3) origin of animal; (4) name of receiving party; (5) source-name and address; (6) invoice/statement date; and (7) documentation of prior transfers.

(4) Wildlife held in captivity which becomes diseased must immediately be placed under the professional care of a licensed veterinarian or certified fish pathologist, and such incident reported immediately to the department by the owner. If diseased wildlife present a threat to the wildlife of the state, the director may order such actions as necessary, including quarantine or destruction of stock, sterilization of enclosures and facilities, cessation of activities and disposal of the wildlife in a manner satisfactory to the department.

(5) Live wild animals, wild birds or game fish held in captivity or their progeny or parts thereof may not be sold or otherwise commercialized on except as provided by rule of the commission.

(6) No wildlife shall be released from captivity except as provided in WAC 232-12-271, except that it is lawful to return to the waters from which caught, game fish caught and subsequently kept alive on stringers, in live wells or other containers while fishing. The release of fish into any waters of the state, including private, natural or man-made ponds requires a fish planting permit.

(7) All live wildlife possessed or held in captivity, and the area where held, must be open to inspection by department personnel at reasonable times. [Statutory Authority: RCW 77.16.040, 85-09-008 (Order 243), § 232-12-064, filed 4/5/85; 84-09-052 (Order 224), § 232-12-064, filed 4/16/84; Statutory Authority: RCW 77.12.040, 82-04-034 (Order 177), § 232-12-064, filed 1/28/82; 81-12-029 (Order 165), § 232-12-064, filed 6/1/81. Formerly WAC 232-12-173.]

RCW 77.16.040 Trafficking in wildlife or articles made from endangered species prohibited—Exception—Common and contract carriers. Except as authorized by law or rule, it is unlawful to bring into this state, offer for sale, sell, possess, exchange, buy, transport, or ship wildlife or articles made from an endangered species. It is unlawful for a common or contract carrier knowingly to ship or receive for shipment wildlife or articles made from an endangered species. [1987 c 506 § 60; 1980 c 78 § 72; 1971 ex.s. c 166 § 4; 1961 c 75 § 1; 1955 c 36 § 77.16.040. Prior 1947 c 275 § 43; Rem. Supp. 1947 § 5992-52.]

WAC 232-12-071 Buying or selling game unlawful. Unless prohibited by federal regulations, nonedible parts of wild animals, game birds or game fish lawfully taken may be offered for sale, sold, purchased or traded, EXCEPT.

It is unlawful to offer for sale, sell, purchase or trade cougar, mountain sheep, mountain goat, velvet antlers of deer or elk or the gall bladder, claws and teeth of bear, except those claws and teeth permanently attached to a full bear skin or mounted bear, unless the offer for sale, sale, purchase or trade is authorized by a written permit issued by the director. [Statutory Authority: RCW 77.12-040, 82-04-034 (Order 177), § 232-12-071, filed 1/28/82; 81-2-029 (Order 165), § 232-12-071, filed 6/1/81. Formerly WAC 332-12-171.]

ATTACHMENT F
Wyoming Statutes About the Sale of Wildlife

1977 § 23-3-204

corn in his possession while
mission.

sh unless authorized by the

11th degree misdemeanor.

1945, ch. 150, § 1; C.S. 1945,

23-106; Laws 1973, ch. 249,

**fish across stream or
chief fish warden pro-
ways.**

be erected or placed, any net,
ver, creek, pond, or lake so as
or through the water except
he chief fish warden.

be erected and maintained
ures across any stream of the
the uninterrupted passage of

h degree misdemeanor. (Laws
57, § 23-116; Laws 1973, ch.

**to take or destroy fish
prohibited.**

oming by using any poison or
explosive, or any similar
er.

tance to pass into any public

to fish, or wildlife; or
channels, or condition of any

t degree misdemeanor. (Laws
1931, § 49-201; C.S. 1945,
h. 249, § 1; Rev. W.S. 1957,

WY § 23-3-205

GENERAL REGULATORY PROVISIONS

§ 23-3-302

§ 23-3-205. Shipment of fish; game tags; when required.

(a) No person shall ship or transport or receive for shipment or transporta-
tion any game fish either within or without the state except as provided in
subsection (b).

(b) Any person lawfully taking any game fish in this state may ship not to
exceed one (1) limit in a single container no oftener than once a week if a
Wyoming interstate game tag is affixed to the container. No interstate game
tag is required for the transportation of one (1) limit of fish in the possession
of a properly licensed fisherman.

(c) Violation of this section constitutes an 11th degree misdemeanor.
(Laws 1939, ch. 65, § 82; C.S. 1945, § 47-521; W.S. 1957, § 23-114; Laws
1969, ch. 141, § 2; 1973, ch. 249, § 1; Rev. W.S. 1957, § 23.1-74.)

ARTICLE 3. WILDLIFE PROVISIONS

**§ 23-3-301. Importation and sale of wildlife prohibited;
exceptions.**

(a) No person shall import into Wyoming from any source any living
antelope, bear, deer, elk, moose, mountain goat, mountain lion, bighorn sheep,
wolf, nor any living wildlife except as otherwise permitted by this act.

(b) No person shall sell any living antelope, bear, deer, elk, moose,
mountain goat, mountain lion, bighorn sheep, wolf or falcon except as
permitted by the commission. (Laws 1973, ch. 249, § 1; W.S. 1957, § 23.1-75.)

Meaning of "this act". — For the definition
of "this act," referred to at the end of subsec-
tion (a), see § 23-1-102(a)(xiii).

**§ 23-3-302. Sale, disposition or acquisition of edible portion
of game animals, game birds or game fish.**

No person shall sell, barter, or dispose of for pecuniary consideration or
advantage, or obtain by sale or barter any edible portion of any game animal,
game bird or game fish in this state except as permitted by this act. (Laws
1939, ch. 65, § 74; C.S. 1945, § 47-510; Laws 1949, ch. 89, § 1; W.S. 1957,
§ 23-92; Laws 1967, ch. 8, § 1; 1973, ch. 249, § 1; Rev. W.S. 1957, § 23.1-76.)

Cross references. — As to sale of game
birds on licensed game bird farm, see
§§ 23-5-101 through 23-5-110.

Meaning of "this act". — For the definition
of "this act," referred to in this section, see
§ 23-1-102(a)(xiii).

ATTACHMENT G
Montana Statutes About the Sale of Wildlife

40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969; amd. Sec. 1, Ch. 162, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-307(2); amd. Sec. 6, Ch. 277, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning inserted phrase regarding attempt and after

"kill" inserted "take, hunt, shoot, or capture".
Amendment effective July 1, 1991.

87-3-104. Unlawful to hunt or fish during closed season. It is unlawful and a misdemeanor for any person during the closed season on any species of game animal, game bird, or fish to attempt to take, shoot, kill, or capture or to take, hunt, shoot, kill, or capture any such game animal or such game bird or to fish for or catch any fish.

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R.C.M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 100, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969; amd. Sec. 1, Ch. 162, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-307(3); amd. Sec. 7, Ch. 277, L. 1991.

Compiler's Comments

1991 Amendment: Near middle, after "fish", inserted "to attempt to take, shoot, kill, or capture or"; and made minor changes in style. Amendment effective July 1, 1991.

Fixing of seasons, 87-1-304.
Unlawful to take except during prescribed period, 87-2-103.
Violation of closed season on game birds, 87-3-402.

Cross-References

Tagging or declaration requirements for meat stored in rental lockers, 50-50-401.

87-3-105. Unlawful to import for introduction or to introduce or transplant wildlife. Except as provided in 87-5-703, it is unlawful for any person to import for introduction or to transplant or introduce any wildlife into the state of Montana unless done in accordance with the provisions of Title 87, chapter 5, part 7.

History: En. Sec. 3694.3, R.C.M. 1935 by Sec. 1, Ch. 100, L. 1949; amd. Sec. 1, Ch. 153, L. 1951; amd. Sec. 2, Ch. 113, L. 1975; amd. Sec. 37, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-344(2); amd. Sec. 1, Ch. 624, L. 1985.

Cross-References

Importation, introduction, and transplantation of wildlife, Title 87, ch. 5, part 7.

87-3-106. Hunting and fishing prohibited in fire-danger areas. (1) When the fire danger becomes so extreme that the governor, upon the advice and recommendation of the department of state lands, closes an area to trespass because of fire danger, that area is automatically closed to hunting or fishing and remains closed so long as the fire closure remains in effect.

(2) A board of county commissioners may initiate a request for a closure by submitting the request to the department. However, the department may adopt reasonable rules specifying the fire prevention and suppression measures that must have been taken by the board before a request may be submitted and considered.

History: En. Sec. 1, Ch. 57, L. 1969; amd. Sec. 31, Ch. 511, L. 1973; amd. Sec. 1, Ch. 178, L. 1975; R.C.M. 1947, 26-345; amd. Sec. 1, Ch. 529, L. 1981.

Cross-References

Fixing of seasons, 87-1-304.

87-3-107. Use of snare lawful under certain conditions. (1) It shall be lawful to use a snare trap for the purpose of snaring any animal or bird under the following conditions:

(a) Each snare trap must be tagged with a numbered metal device identifying the owner's name, address, and telephone number.

(b) It is unlawful to set snare traps on private property without the landowner's consent.

(c) Snare traps shall be set in a manner and at a time so as not to unduly endanger livestock.

(d) A person who injures livestock in snare traps is liable for damages to the owner of the livestock.

(2) A person convicted of violating the provisions of this section is guilty of a misdemeanor.

(3) The commission may adopt rules to enforce this section.

History: En. Sec. 1, Ch. 23, L. 1933; re-en. Sec. 3725.1, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1974; amd. Sec. 1, Ch. 149, L. 1977; R.C.M. 1947, 26-504.

Cross-References

Penalty for failure to acquire landowner permission, 45-6-201, 87-1-102.

Metal tags required on traps, 87-3-504.

87-3-108. Restrictions on use of reproduced sounds. It is unlawful to use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically amplified imitations of bird or animal calls or sounds to assist in the hunting, taking, killing, or capturing of wildlife, except predatory animals and those birds not protected by state or federal law.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 5, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(1)(b).

87-3-109. Attempting to take simulated wildlife decoy — penalty. (1) It is unlawful for a person to discharge a firearm or other hunting implement at a simulated wildlife decoy in violation of any state statute or commission rule regulating the hunting or taking of the wildlife being simulated when the decoy is being used by a certified peace officer.

(2) Upon conviction, the penalty for attempting to take a simulated wildlife decoy is the same as prescribed for unlawful taking of the actual wildlife being simulated.

History: En. Sec. 1, Ch. 309, L. 1991.

Compiler's Comments

Effective Date: Section 3, Ch. 309, L. 1991, provided: "[This act] is effective July 1, 1991."

87-3-110. Registration for sale of certain grizzly bears. (1) A person in possession of a lawfully killed grizzly bear or a hide, head, or mount thereof

may sell it if it has been registered with the department in the manner and upon forms provided by the department. The registration form must specifically describe the grizzly bear or the hide, head, or mount thereof and must accompany it upon any sale.

(2) Bears or parts thereof may be registered as follows:

(a) Before January 1, 1986, any lawfully killed grizzly bear or part thereof may be registered.

(b) On or after January 1, 1986, bears lawfully killed in Montana may be registered within 10 days after the date of kill, and bears lawfully killed outside Montana may be registered within 3 months after the date of kill upon presentation of proof of lawful kill.

(3) Registration under this section does not legalize any prior illegal act, such as the unlawful killing or theft of a grizzly bear or part thereof.

History: En. Sec. 5, Ch. 540, L. 1985.

Cross-References

Disposition of seized grizzly bears, 87-1-511.

Waste of fish or game, 87-3-102.

Possession of game by merchants, hotelkeepers, or restaurant keepers, 87-4-702.

87-3-111. (Temporary) Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties. (1) It is unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110;

(c) the possession, transportation, sale, or purchase of naturally shed antlers; or

(d) the donation and sale of paddlefish roe as caviar under the provisions of 87-4-601.

(3) Any person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 87-1-102. (Terminates June 30, 1993—sec. 5, Ch. 409, L. 1989.)

87-3-111. (Effective July 1, 1993) Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties. (1) It is unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section shall not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110; or

(c) the possession, transportation, sale, or purchase of naturally shed antlers.

(3) Any person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 87-1-102.

History: En. Sec. 63, Ch. 173, L. 1917; amd. Sec. 1, Ch. 142, L. 1919; re-en. Sec. 3742, R.C.M. 1921; amd. Sec. 23, Ch. 77, L. 1923; amd. Sec. 28, Ch. 59, L. 1927; re-en. Sec. 3742, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1939; amd. Sec. 2, Ch. 22, L. 1941; amd. Sec. 24, Ch. 224, L. 1947; amd. Sec. 1, Ch. 146, L. 1955; R.C.M. 1947, 26-806; amd. Sec. 1, Ch. 92, L. 1981; amd. Sec. 2, Ch. 540, L. 1985; amd. Sec. 2, Ch. 409, L. 1989; amd. Sec. 8, Ch. 277, L. 1991; amd. Sec. 3, Ch. 329, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 277 inserted (2)(c) regarding naturally shed antlers; and made minor change in style. Amendment effective July 1, 1991.

Chapter 329 in (3), at beginning, deleted exception clause and at end substituted "in 87-1-102" for "by law"; deleted (4) establishing a penalty for trafficking in body parts of unlawfully taken species; and made minor

change in style. Amendment effective July 1, 1991.

Cross-References

Restrictions on possession of wild animals, Title 50, ch. 23, part 1.

Disposition of seized grizzly bears, 87-1-511.

Unlawful to sell spawn, 87-4-601.

87-3-112. Possession of unlawfully killed animals and of unlawful fishing implements. (1) The possession of dead bodies or any part thereof of any of the game fish, game or nongame birds, or game or fur-bearing animals defined by the fish and game laws of the state of Montana is prima facie evidence that the person or persons in whose possession the same are found have killed, caught, or taken the same. The possession of a fishing rod and line, spear, gig, or barbed fork on the banks or shores of a stream or lake is prima facie evidence that the person or persons in whose possession the same are found were using the same to fish.

(2) It is unlawful to possess, have, hold, purchase, keep in storage, or possess for any other purpose any game fish, game bird, nongame bird, game animal, fur-bearing animal, or parts thereof which were unlawfully killed, captured, or taken. No person may unlawfully use any fishing rod and line, fishing lines, spear, gig, or barbed fork.

History: En. Sec. 43, Ch. 173, L. 1917; re-en. Sec. 3725, R.C.M. 1921; amd. Sec. 26, Ch. 192, L. 1925; amd. Sec. 21, Ch. 59, L. 1927; amd. Sec. 1, Ch. 41, L. 1931; re-en. Sec. 3725, R.C.M. 1935; amd. Sec. 18, Ch. 224, L. 1947; amd. Sec. 40, Ch. 9, L. 1977; R.C.M. 1947, 26-503.

Cross-References

Unlawful to possess net or seine, 87-3-205.

87-3-113. Removal of illegally taken animals or parts of animals from state. It is unlawful for any person or persons to possess or to ship or take out of the state any illegally taken game or nongame birds, fish, game

animals, fur-bearing animals, the skins of fur-bearing animals, or any parts thereof, whether taken within or coming from without the state.

History: En. Sec. 51, Ch. 173, L. 1917; re-en. Sec. 3730, R.C.M. 1921; amd. Sec. 19, Ch. 77, L. 1923; amd. Sec. 22, Ch. 59, L. 1927; re-en. Sec. 3730, R.C.M. 1935; amd. Sec. 19, Ch. 224, L. 1947; amd. Sec. 1, Ch. 38, L. 1963; amd. Sec. 42, Ch. 9, L. 1977; R.C.M. 1947, 26-701.

87-3-114. Labeling of packages. All shippers of fish, game or nongame birds, game animals, fur-bearing animals, the skins of fur-bearing animals or predatory animals, or parts thereof are required to label all packages offered for shipment by parcel post, common carrier, or otherwise. The label shall be securely attached to the address of the package and shall plainly indicate the names and addresses of the consignor and consignee and the complete contents of the package.

History: En. Sec. 54, Ch. 173, L. 1917; re-en. Sec. 3733, R.C.M. 1921; amd. Sec. 22, Ch. 77, L. 1923; amd. Sec. 28, Ch. 192, L. 1925; amd. Sec. 25, Ch. 59, L. 1927; re-en. Sec. 3733, R.C.M. 1935; amd. Sec. 20, Ch. 224, L. 1947; amd. Sec. 43, Ch. 9, L. 1977; R.C.M. 1947, 26-704.

87-3-115. Violation by carriers. No person or the agent or employee of any common carrier, association, stage, express, railway, or transportation company may transport or receive for transportation or carriage or sell or offer for sale any of the game animals, game or nongame birds, fish, fur-bearing animals, the skins of fur-bearing animals, or parts thereof, except as specifically provided for by 87-3-114. All game or nongame birds, fish, game animals, fur-bearing animals, or parts thereof had in possession or which have been shipped or are being transported in violation of any of the provisions of 87-3-113 through 87-3-115 shall be seized, confiscated, and disposed of as provided by law.

History: En. Sec. 55, Ch. 173, L. 1917; re-en. Sec. 3734, R.C.M. 1921; amd. Sec. 26, Ch. 59, L. 1927; re-en. Sec. 3734, R.C.M. 1935; amd. Sec. 21, Ch. 224, L. 1947; amd. Sec. 44, Ch. 9, L. 1977; R.C.M. 1947, 26-705.

87-3-116 reserved.

87-3-117. Definitions of lawfully taken wildlife and unlawfully taken wildlife. As used in 87-3-118 and this section, the following definitions apply:

(1) "Lawfully taken wildlife" means wildlife, as defined in 87-5-102, that is taken or possessed by hunting, fishing, or trapping in conformance with this title and the regulations adopted by the commission and the department under authority of this title.

(2) "Unlawfully taken wildlife" means wildlife that is not lawfully taken wildlife.

History: En. Sec. 1, Ch. 329, L. 1991.

Compiler's Comments

Effective Date: Section 6, Ch. 329, L. 1991, provided: "[This act] is effective July 1, 1991."

87-3-118. Sale or possession of unlawfully taken wildlife — penalty. (1) A person commits the offense of sale of unlawfully taken wildlife if he purposely or knowingly sells, barter, purchases, or exchanges for anything

of value or if he offers to sell, barter, purchase, or exchange for anything of value, unlawfully taken wildlife.

(2) A person commits the offense of possession of unlawfully taken wildlife having a value of more than \$1,000 if he purposely or knowingly has actual or constructive possession of or transports or causes to be transported unlawfully taken wildlife having a value of more than \$1,000. The value of the unlawfully taken wildlife must be determined from the schedule of restitution values set out in 87-1-111.

(3) A person who violates this section is guilty of a felony and upon conviction shall be fined not more than \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permits and license privileges for a minimum of 3 years or up to a maximum of a lifetime revocation from the date of conviction.

History: En. Sec. 2, Ch. 329, L. 1991.

Compiler's Comments

Effective Date: Section 6, Ch. 329, L. 1991, provided: "[This act] is effective July 1, 1991."

87-3-119 and 87-3-120 reserved.

87-3-121. Conditions for award of prizes. (1) It shall be unlawful for any person, firm, corporation, association, or club to offer or give any prize, gift, or anything of value in connection with or as a bag limit prize for the taking, capturing, killing, or in any manner acquiring any game, fowl, fur-bearing animals, or any bird or animal now or that shall be hereafter protected in any way by the fish and game laws of the state of Montana.

(2) The commission shall adopt rules to regulate contests by a person, firm, corporation, association, or club that intends to offer or give a prize, gift, or anything of value in connection with or as a prize for the taking, capturing, killing, or in any manner acquiring fish that are protected under Title 87. The commission's rules must be based on the commission's duty under Title 87 to protect, preserve, and propagate fish in the state.

(3) This section shall not be construed to prohibit the award of prizes for any one game bird or fur-bearing animal on the basis of size, quality, or rarity.

History: En. Sec. 1, Ch. 82, L. 1935; re-en. Sec. 3744.1, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1974; R.C.M. 1947, 26-809; amd. Sec. 1, Ch. 346, L. 1987.

Cross-References

Fixing of bag and possession limits,
87-1-304.

Contests based on size of game unlawful
87-3-307.

87-3-122. Repealed. Sec. 1, Ch. 206, L. 1991.

History: En. Sec. 11, Ch. 238, L. 1921; re-en. Sec. 3691, R.C.M. 1921; amd. Sec. 11, Ch. 59, L. 1927; amd. Sec. 3, Ch. 161, L. 1931; re-en. Sec. 3691, R.C.M. 1935; amd. Sec. 2, Ch. 148, L. 1963; amd. Sec. 1, Ch. 48, L. 1965; amd. Sec. 1, Ch. 26, L. 1967; amd. Sec. 1, Ch. 369, L. 1971; amd. Sec. 1, Ch. 369, L. 1975; amd. Sec. 6, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-215(1), (2), (4).

87-3-123. Use of silencers or mufflers on firearms forbidden. No person may take into a field or forest or have in his possession while out

87-3-105. Unlawful to import for introduction or to introduce or transplant wildlife.

Compiler's Comments

1985 Amendment: Substituted present language (see 1985 Session Law) for: "It is unlawful for any person to transplant or introduce any fish or fish eggs into any body of water in the state, and it is unlawful for any person to transplant or introduce any species of game birds, game or fur-bearing animals, or nongame wildlife into the state of Montana without first having obtained authorization from the department".

87-3-106. Hunting and fishing prohibited in fire-danger areas.

Compiler's Comments

1981 Amendment: Changed "the department of natural resources and conservation" to "the department of state lands".

87-3-107. Use of snare lawful under certain conditions.

Administrative Rules

ARM 12.6.1001 Snare traps.

Collateral References

35 Am. Jur. 2d Fish and Game §47.

87-3-108. Restrictions on use of reproduced sounds.

Collateral References

35 Am. Jur. 2d Fish and Game §47.

87-3-111. Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties.

Compiler's Comments

1989 Amendment: Inserted (2)(c) providing that section does not apply to donation and sale of paddlefish roe as caviar under 87-4-601. Amendment effective July 1, 1989, and terminates June 30, 1993.

1985 Amendment: In (2)(b) at end added exception clause relating to grizzly bears and made minor changes in phraseology.

1981 Amendment: Divided section into three subsections; added (4) providing a felony penalty; and made minor changes in phraseology.

Case Notes

Application of Federal Lacey Act to Outfitting and Guiding — Statute of Limitations on Charges of Conspiracy: While a prosecution under the federal Lacey Act, 16 U.S.C. 3371, et seq., which prohibits transportation or acquisition in interstate commerce of wildlife in violation of state laws, may not properly be had for the substantive acts of selling guiding services and hunting permits, a prosecution can be maintained for conspiracies to violate the Act while providing outfitting and guiding services, such as arranging for out-of-state hunters to use elk licenses and permits belonging to other hunters, knowing that any elk taken would be transported out of state. The Act applied when evidence was sufficient to establish the involvement of defendant, a hunting guide and outfitter, in a conspiracy to transport elk in interstate commerce in violation of Montana law. Further, the 5-year "catch-all" statute of limitations set out in 18 U.S.C. 3282 applied to charges of conspiring to violate the Act. *U.S. v. Thomas*, 887 F2d 1341 (9th Cir. 1989), distinguishing *U.S. v. Stenberg*, 803 F2d 422 (9th Cir. 1986).

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Provision of Guiding Service Not an Offer to Sell Wildlife Prohibited by Federal Law: The alleged provision of guiding services to an unlicensed hunter does not constitute an illegal sale or offer to sell wildlife under the federal Lacey Act (16 U.S.C. 3372, 3373). *U.S. v. Stenberg*, 803 F2d 422 (9th Cir. 1986).

Felony Offense Versus Misdemeanor Offense — Jury Instruction: Hankins was convicted of trafficking in the unlawfully obtained body parts of a protected species in violation of this section. On appeal, Hankins argued that the court's jury instructions failed to distinguish between the felony and the misdemeanor offenses under this section. When read together, however, the jury instructions clearly drew a distinction between the felony offense charged and the lesser included misdemeanor offense. *St. v. Hankins*, 209 M 365, 680 P2d 958, 41 St. Rep. 762 (1984).

Trafficking — Jury Instruction: It is not reversible error to give a jury instruction defining "trafficking" that is taken directly from this section. *St. v. Hankins*, 209 M 365, 680 P2d 958, 41 St. Rep. 762 (1984).

Collateral References

35 Am. Jur. 2d Fish and Game §§49, 50.

Validity and construction of statute prohibiting sale within state of skin or body of specified wild animals or of the animal itself. 44 ALR 3d 1008.

Owner's or keeper's liability for personal injury or death inflicted by wild animal. 21 ALR 3d 603.

87-3-112. Possession of unlawfully killed animals and of unlawful fishing implements.

Case Notes

Unlawful Possession: Section 87-1-506 has reference only to what the Legislature denounced as unlawful possession under this section and for which the accused could be prosecuted for unlawful possession. *Shipman v. Todd*, 131 M 365, 310 P2d 300 (1957).

Private Ownership of Wildlife: Under section 26-401, R.C.M. 1947 (now repealed), prohibiting the killing of beaver except as therein provided, and under 87-3-112, making possession of certain wild animals or parts thereof prima facie evidence that the possessor killed the same, private ownership of beaver pelts was not a matter of common right but could be acquired only by compliance with the restrictions, and then such ownership was qualified. *Rosenfeld v. Jakways*, 67 M 558, 216 P 776 (1923).

Collateral References

Fish key 15; Game key 7, 9.

36A C.J.S. Fish §43; 38 C.J.S. Game §§10, 18.

35 Am. Jur. 2d Fish and Game §50.

Right to kill game in defense of person or property. 93 ALR 2d 1366.

Constitutionality of statutes making one fact presumptive or prima facie evidence of another. 162 ALR 495; 86 ALR 179; 51 ALR 1139.

Construction and application of statute making possession of carcass of game, fish, or bird or parts thereof, a criminal offense. 125 ALR 1200.

87-3-113. Removal of illegally taken animals or parts of animals from state.

Case Notes

Application of Federal Lacey Act to Outfitting and Guiding — Statute of Limitations on Charges of Conspiracy: While a prosecution under the federal Lacey Act, 16 U.S.C. 3371, et seq., which prohibits transportation or acquisition in interstate commerce of wildlife in violation of state laws, may not

Sale of black-bear gallbladders leads to murder

By BILL ORDINE

RIGHT SIDE: NEWSPAPER

In a place where homicide is exceptionally common, the circumstances in the murder of Haeng Gu Lee in New York City were decidedly uncommon.

Lee was stabbed five times and his throat was slashed in his Brooklyn apartment in October. But it wasn't the manner in which Lee died that made his death unusual, but rather the suspected motive.

Police say the 39-year-old Korean businessman was probably killed for his large cache of black-bear gallbladders.

Some Asians prize bear gallbladders for their medicinal use and as a reputed aphrodisiac. As a result, the demand for bear gallbladders has recently driven the price for the organs to astronomical levels. Though the sale of edible game parts from animals taken in the wild is outlawed in Pennsylvania, the sale of animal organs is legal in New York and Lee had been a supplier in the local Korean community, as well as nationally, for years.

The several dozen bear gallbladders taken from Lee's apartment were worth \$400 to \$600 each on the domestic market, according to law enforcement estimates. Sold in a powdered form in pharmacies in Asia, they could be worth 30 times as much.

"This is obviously a unique and challenging case," said New York Detective Thomas Dade who is investigating the slaying. "We're dealing with a subject that's pretty foreign to us, but we do know that the use of bear gallbladders is surprisingly popular and there's a lot of money involved."

That some of Lee's inventory came from Pennsylvania black bears is a strong possibility. Pennsylvania has the second-largest bear population in the Northeast United States next to Maine, and the Poconos have become a favorite haunt for suppliers to New York City's Asian market.

In January, an 18-month investigation by the Pennsylvania Game Commission bore fruit as officers cited seven people, all of Asian extraction, for either illegally buying or possessing animal parts.

The commission's investigation of illegal trafficking in wildlife parts began in the fall of 1990 when potential buyers began frequenting the check stations

Some Asians prize bear gallbladders for their medicinal use and as a reputed aphrodisiac. As a result, the demand for bear gallbladders has recently driven the price for the organs to astronomical levels.

where hunters register the bears they have killed during the state's three-day hunting season.

Commission authorities chased the buyers from the check stations, but that did not deter the traffickers, who merely set up shop a mile or so down the road.

According to James Beard, an assistant director with the commission's bureau of law enforcement, the antics of the traffickers bordered on the comic.

"We have videotape of these people all wanting to have their picture taken with a dead bear, holding its head up or holding the paws. They all wanted a turn," Beard said. "They use the pictures as a selling point ... that the gallbladder they're selling comes from this particular bear."

In January, authorities filed charges against the seven people — including a man and woman from Elkins Park, Pa., — after searches of a motel-restaurant in Paradise Township, Pa., a grocery store near Stroudsburg, Pa., and two private homes yielded contraband including bear gallbladders.

The resulting citations were for summary offenses that carry fines and no jail terms. So far, two people have pleaded guilty and have been fined a total of \$30,836; four cases are pending, and a warrant has been issued for a New Jersey man who cannot be located.

Judy Mills, an investigator for the World Wildlife Fund, finds the penalties relatively meager and certainly not much of a deterrent. In her own 18-month inquiry into the illicit bear-parts market throughout Asia, Mills discovered that a bear gallbladder, freeze-dried and powdered, could be sold overseas for more than \$200 a gram. That works out to a yield of \$15,000 to \$25,000 for a single gallbladder.

"The populations of the Asian black and brown bears have been decimated," Mills said. "In Korea, the handful of bears left are a national monument,

and it is illegal to sell anything from an Asian bear. But those countries still permit the importation of North American bears. With prices like that, you can imagine the pressure that will be put on the bear population here."

The chemical produced by bear gallbladders is ursodeoxycholic acid (UDCA), and bear gallbladders have been used as a popular ingredient in Oriental medicine for 3,000 years to relieve human liver and gallbladder disorders. The Japanese have been able to synthesize UDCA, but traditionalists still crave the real thing.

To meet the demand for UDCA, the Chinese have begun to "farm" bears, keeping them penned in tight, restrictive cages and surgically inserting a tube directly into the animal's gallbladder to "milk" the valuable chemical.

So far, though, the most expedient way for Asian users to obtain bear gallbladders is to import them from North America, where three-quarters of the world's approximately one million bears still prowl.

Last week, bear experts from around the world met at a conference of the International Bear Association in Missoula, Mont. At the conference, Mills and her husband, Chris Servheen, a biologist, presented a paper detailing the findings of their investigations.

"Imagine this," Mills said. "There are about one million bears in the world, and there are one billion potential users of bear galls."

The IBA governing body went on to recommend to the Convention on International Trade and Endangered Species of Flora and Fauna (CITES), a conservation group that spawns treaties between governments, that it place the North American black bear on a list that would require origination documentation for imported bear parts. CITES meets this month in Kyoto, Japan.

Proponents of placing the North American black

bear in such a category say that it would help slow the killing of Asian bears — whose gallbladders are almost indistinguishable from those of their North American cousins — because merchants can easily pass off Asian bear gallbladders as those of North American bears. The listing, proponents say, would at least discourage poaching in this country.

Still, the recommendation is not universally embraced, even among conservationists. For instance, Pennsylvania Game Commission bear expert Gary Alt is skeptical that the special listing would help much.

Alt said he believed the listing "just adds a layer of bureaucracy and much more paperwork to the task of managing wildlife, and it may invite a lot of litigation because there is no evidence that the North American bear population has been reduced. I don't think this helps the animals or the people — unless you happen to be an attorney."

"I've asked the question, 'How many game protectors are finding bears in the forest with the gallbladders removed and their paws cut off?' (Bear paws are an Asian soup delicacy.) It's just not happening very much, and although it's an individual atrocity when it happens, statistically, it's not even measurable."

Commission law enforcement officials agree that there has been little, if any, evidence of outright poaching in the state for the purpose of supplying the Asian market with bear parts. But they are concerned that the arrests in January may have been just the opening shot of an assault on Pennsylvania's bear population.

"Poaching — taking bears out of season, killing them in their dens, setting out bait — has been our concern," said David Overcash, a wildlife conservation officer in Monroe County.

"Locals hear about how much money is involved, and you don't know how that will make a difference. If the prices I've seen are right, you could kill 10 bears, hop a plane (to Asia) and make a quick quarter-of-a-million dollars."

Said Beard, "Considering the demand out there for the gallbladders, people are going to (use) every means possible to get bear."

Including, apparently, the murder of Haeng Gu Lee.

HB490

Ketchikan Daily News
March 19, 1992

In brief

Poached bears reported

Fish and Wildlife Trooper Jim Pagel has been investigating the killing of five black bears that were shot and wasted at the head of Carroll Inlet. The bears were killed sometime in late September 1991. The poacher took very little from the animals, according to a press release from the Alaska State Troopers. The bears' bodies were found and reported by a hunter, Pagel said.

Pagel estimated that the bears were dead for four days when they were discovered. The bears' coats were in prime shape, Pagel said. One of them was a large, trophy size bear, he said.

The five bears were shot by a poacher using a high powered rifle, the release said. Pagel said the poacher used a small skiff or canoe to get up the river at the head of the inlet.

The Alaska Fish and Wildlife Safeguard Program is offering a reward of up to \$1,000 for information that leads to the arrest of whoever is responsible for killing the bears.

Pagel declined to specify for the record what was taken from the bears so as not to compromise the investigation.

Bears

Continued from page B1

Big bucks bait bear poachers

Gallbladder demand greases black market

By JOE HUNT

TIMES WRITER

Poachers in the Lower 48 and black market entrepreneurs in Alaska are prospecting a potential gold mine in illegal animal parts, wildlife law enforcers said.

The unwanted gallbladder from brown and black bears, left to decay in the Alaska bush, is valuable in Asian countries for its medicinal properties.

"It's almost getting to the point where it's valued as much as cocaine," said Dave Perrington, U.S. Fish and Wildlife Service enforcement officer.

The highest quality gallbladders have been known to sell for as much as \$4,600 an ounce in Korea, roughly 13 times the going price for gold.

Gallbladders more commonly sell for \$200-\$1,000 each on the Asian market, according to wildlife protection officers specializing in the animal parts trade.

In addition, bear paw soup, served at the best restaurants in Seoul, is considered a rare cultural delicacy sold for \$100 or more a bowl.

It has been illegal to sell bear parts in Alaska since the mid-1980s. But the state's abundance of animals and wide-open, year-round hunting season creates an opportunity waiting to be exploited, they said.

"There are indications people are approaching hunters to keep the gallbladders (for sale or trade)," said Chuck Parker, special agent with the U.S. Fish and Wildlife Service.

"There's too much money to be made for people not to be dealing in this stuff. It's a big problem, but how big a problem we don't know," he said.

National Park Service rangers said they are aware of the potential in Alaska. "To our knowledge the problem in the parks is to a large degree theoretical," said ranger Steve Shackleton. "It's one of the nightmares we don't want to see occur up here."

Last month, a shipment of 173 black bear gallbladders from Canada, worth up to \$1,000 each on the Asian market, were seized at Anchorage International Airport. The package, from a dealer in

See Bears, page B5

Quebec, was addressed to two Anchorage men. The case is under investigation and no charges have been filed.

Another Anchorage man, caught smuggling 58 grizzly and black bear gall bladders through the Yukon Territory, pleaded guilty in March 1990 to illegally exporting bear parts from Canada. Joy Ahn admitted to a Whitehorse court he planned to sell the gallbladders to friends and Oriental grocery stores in Alaska, the prosecutor told the court. Ahn was fined \$6,000 and sentenced to one day in jail.

In both cases the gallbladders were legally obtained in Canadian provinces which allow the sale of animal parts. Violations occur when the gallbladders are transported without the proper permits, imported without notifying customs or possessed with intent to resell them in Alaska, enforcement officials say.

Demand far outweighs supply, creating a market so lucrative that an underground network has developed connecting bear hunting regions of the U.S. with the population centers of Korea.

Poachers supplying the black market were responsible for devastating the bear population of Great Smokey Mountains National Park in North Carolina before federal agents infiltrated the network and ended the raids on the park. Two-thirds of the park's 500 black bears were killed over three years, their paws and gallbladders removed.

Poaching for parts placed California black bears in such trouble that hunting was banned for several years. A crackdown resulted in tougher laws making it a felony to sell bear parts in California and one seizure of more than 70 gallbladders from a hunting guide. The black bear population there is slowly recovering.

Bill Cook helped lead the multi-agency force that cracked the black market ring responsible for killing two-thirds of the black bears in the Great Smokey Mountains National Park. The National Park Service investigator now teaches at the Federal Law Enforcement Training Center in Glynco, Ga., and has taught about the bear trade in Alaska.

"Yes. Absolutely. There's a potential for a large problem there," he said.

"I do know there are people out there — like in Glennallen — selling gallbladders and who have gallbladders drying on the side of their cabins," he said. "Oh yeah. It's happening up there."

Alaska has year-round legal hunting for black bear in many parts of the state and a high oriental population to support a market for the sale of gallbladders, he said. The bear parts do not have to be smuggled out.

The off-white gallbladder, used by the bear to create enzymes for digestion, resembles a baseball-sized balloon filled with water when fresh. Once it dries, it turns dark brown and shrinks to a teardrop shape the size of a fig. The bile inside hardens into reddish-colored crystals.

The bitter tasting gall is either cut into thin wafers to be eaten or ground into pepper-like granules to be sprinkled over food.



Times photo by DOUGLAS VAN R

Chuck Parker, special agent with the U.S. Fish and Wildlife Service, displays a bear's dried gallbladder, which sells for \$4,600 an ounce in Korea — 13 times the going price for gold.

Its healing properties are widely believed in Korea and other Asian countries, said Choonga "Chuck" Kim, a leader in the Anchorage Korean community. The bear gallbladder has been an important medicine in Asia for thousands of years, he said.

The "Illustrated Natural Drugs Encyclopedia," published in Korea, says a bear gallbladder has many medicinal uses. It helps reduce fever from infectious diseases, aids digestion, soothes stomach aches, cures hepatitis, dysentery and jaundice, and should be used for people in a coma, though the book does not explain why.

Kim tasted bear gallbladder years ago when buying and selling animal parts was still legal in Alaska. He tried it out of curiosity mostly, he said. Dipping the wafers in sugar could not mask its taste. "It was awfully, awfully bitter. I could not tell what it did for me," he said.

Bear gallbladder is very rare in Korea, he said. Combine its rarity with its reputation as a powerful natural medicine and it is easy to see how it fetches top dollar. "It is valuable because they believe in it," he said.

Adult children often seek galls

there is a legitimate use for them does not make good sense to Kim. He said he would like to see the gallbladders made available as long as the bears were taken by legitimate means.

Oriental stores are no longer allowed to sell bear parts in any form. Pills and natural medicines produced in Asia containing minute amounts of animal parts are as illegal as selling the galls outright.

Jun Ro, a grocer at Seoul Oriental Food Store in Anchorage, said people occasionally ask for the medicines. It is usually requested by children wanting to buy it for their parents, he said.

Investigator Cook said his research of the Asian traditions has shown the gallbladder is prized for its powers to increase stamina. It is not an aphrodisiac as is often rumored, he said.

Western medicine has shown bear gallbladders to have some potential for dissolving gall stones in humans, he said. But Cook cautioned that it would be a mistake to mix western medicine with traditional Oriental beliefs.

"If I wanted to increase my stamina, in western medicinal thought I would take multiple vitamins," he said. "In eastern culture, I would ingest certain anatomical parts of animals that exhibited great stamina — like the black bear."

The high price of the black market trade gives the black bear the same potential for exploitation as the black rhino of

for their aging parents afflicted with a terminal illness, Kim said.

Bear gallbladders are still being used as medicine in Anchorage, Kim said. He said he does not know where they are coming from, but there are legitimate ways to get them in

Alaska. Gallbladder users either go hunting for their bear or they can ask his friends to save the organ for their use. There is no law against giving the gallbladder away.

A state law which encourages the waste of gallbladders

Africa, Cook said. Poachers seeking the rhino's prized horn for Oriental medicines have made it an endangered species.

Craig McClure inspects packages at Anchorage International Airport for the U.S. Fish and Wildlife Service to guard against illegal import and export of animals and their parts. He has confiscated bear gallbladders and medicines made with black rhino and sees the correlation.

"It's the same concern we have over black bears," he said. "What happens when the market gets so viable people start to shoot black bears just because they can get X number of dollars for the gallbladders."

Hunting guides in Alaska used to be solicited by Asian dealers before the sale of animal parts was banned. Joe Klutch, president of the Alaska Professional Hunters Association, said his assistant guides used to keep gallbladders as a way to make extra money during the guiding season. They could get between \$75 and \$300 for gallbladders, he said.

The remoteness of Alaska helps reduce the profitability of poaching. The most efficient way to acquire gallbladders would be through the guides, officials said.

All that has ended, Klutch said. "I haven't even heard anyone discuss it in the last two or three years. It's just nothing anybody in the industry would want to risk."

Demand for body parts may be wiping out black bears

ASSOCIATED PRESS

VANCOUVER, British Columbia — Conservationists believe poachers capitalizing on a growing trade in bear parts are wiping out British Columbia's black bears and that provincial law helps them do it.

Driven by enormous profits for bear parts, which are in demand as remedies in Asian medicine, at least 100 poachers are slaughtering more than 3,500 bears a year, a British Columbia game warden said.

Another 4,000 are killed by sportsmen with permits and licensed trappers and hunters. And an unknown number of bears are taken by Indians, who are allowed to kill as many as they want.

"Black bears in B.C. are

Analysis

under attack (and) at this rate they will all be gone in a few years," said game warden Garry Grigg of Surrey, a federal wildlife-trafficking expert.

Grigg said the provincial population estimate of 120,000 black bears is "outdated and a travesty." He said he believes the population is much smaller, but there is no way of knowing because the government's only figures are compiled by desk-bound biologists.

British Columbia is providing ammunition for the slaughter with its lax laws and inadequate enforcement, Grigg says.

"Poachers know the chances

of being detected are next to nil and if they're caught the fines are so damned small ... there's no deterrent," he said in a recent interview.

Unlike Alberta and California, where the sale of bear parts is banned, British Columbia allows their trade and export.

"You've got from fur trappers to sportsmen doing it (poaching) on a Sunday afternoon," Grigg said.

The parts often are sold at herbal stores in Vancouver's Chinatown that buy gall bladders, gonads and claws, but Grigg said the trade has expanded beyond that.

A bear gall bladder that weighs less than a quarter ounce sells in British Columbia for about \$350, but in South Korea

will fetch about \$18,000.

The bear parts are ground up and used in traditional cure-all medicines to combat a range of ailments, from bone fractures to hemorrhoids.

British Columbia conservation officer Andy Ackerman agreed there has been an alarming increase in the illegal slaughter in the last four years.

"I've even seen three cubs up a tree and the mother lying at the base with her paws cut off and her belly slit open for her bladder," Ackerman said.

Poachers are drawn from across North America because British Columbia is one of the few places in North America where it still is legal to sell and export bear parts.

Lax enforcement of game

laws by the province's overworked 128 conservation officers is a major problem, Grigg said.

"The only way to detect poaching is to go in (the woods) in a covert situation," he said. "The province ... doesn't have money for that."

Poachers can be fined up to \$10,000, but catching them red-handed is a daunting task in the wilderness, Ackerman said.

"It's like trying to find a needle in a haystack," he said. "If the poaching was to go unchecked there's a great danger of the bears being wiped out."

The poachers, armed with rifles and video cameras, use dogs equipped with radio collars to run down the bear. Then the

poachers shoot the bear.

As one poacher cuts out the prized parts — the gall bladder, paws and genitals — another films the procedure and dates it. Within days and with the help of provincial middlemen, the fur and the parts are either in South Korea, Japan, China or Hong Kong.

Grigg says the video is used to verify that the parts were from a fresh British Columbia kill.

Ackerman says there has been an obvious decline in the black bear and grizzly population in recent years.

"The market is fueled by a tremendous demand ... Even hunters and trappers are concerned."

Arch. Times 8/29/91

HB 490

the visiting Soviets.

the Fairbanks campus.

9-24-91

Officers seize 173 bear bladders worth \$175,000

The Associated Press

Bear gall bladders valued up to \$175,000 have been seized at Anchorage International Airport by Fish and Wildlife Protection officers.

The 173 gall bladders were being shipped to Anchorage by a Canadian animal parts dealer, the state Department of Public Safety said in a release. They were seized at the airport Sunday.

The shipment was addressed to Charles Choi, 37, and Bong Kim, 45,

both of Anchorage. The department wouldn't say if the men had been arrested, but said that potential charges against the men include smuggling and violations of the Endangered Species Act.

An investigation is continuing by Fish and Wildlife Protection, the U.S. Customs Service and the U.S. Fish and Wildlife Service.

It is believed the bladders were from Canadian black bears and were to be shipped on to Asia. The public safety

department estimated that the street value of the parts in Asia could be as high as \$175,000.

Joe Campbell, a Fish and Wildlife Protection trooper, said Tuesday that the bladders and other animal parts are used in traditional Asian folk medicines to treat a variety of ailments, including heart disease, arthritis and blood disorders.

Campbell wouldn't say how Fish and Wildlife Protection learned of the shipment.

are restricted to bringing in no more than \$400 of such prepared medicine per person (J. Lee, pers. comm., December 1990; S. Song, pers. comm., December 1990).

South Korea's last wild bears were declared Natural Monument 329 in 1982, which gave them official protection from hunting taking, possession, and trade (Law for the Protection of Cultural Properties, No. 3644, 31 December 1982). Operating a bear farm in South Korea requires a license. Selling whole live bears for their galls is allowed under certain circumstances (see "Hunting" and "The Bear Market" in this chapter).

The new Animal Protection Act passed in May 1991 apparently does not cover bears (*The Korea Times*, 18 July 1991).

Law Enforcement

The law protecting South Korea's last wild bears is enforced and, whether for reasons of scarcity, legality, or practicality, certain aspects of the bear trade have disappeared. "Into the late 1960s it was quite possible, during a stroll along the back alleyways of Seoul, to see a man standing behind the carcass of a bear — fur and all — convincing a rapt audience of men that they would live longer lives if they consumed bear flesh," expatriate Gertrude Ferrar wrote in an early edition of *Insight Guides Korea* (date unknown).

Hunting

Though designation as a "natural monument" protects South Korea's bears from sport hunting, poaching still occurs on occasion. In May 1983, the year after the species became protected under national law, a 10-year-old female bear was found on Mt. Sorak near death from a gunshot wound (*Korea Herald*, 5 June 1983). A Korean man was later arrested for illegal hunting under cultural property protection and firearms control laws (*Korea Herald*, 7 June 1983) and sentenced to two years in prison

(*Korea Herald*, 21 August 1983). After the bear died, the Cultural Properties Maintenance Bureau sold its gallbladder at public auction for nearly \$64,000 (at the 1991 exchange rate) to the operator of an herbal medicine clinic (*Korea Herald*, 11 June 1983). In another round of public bidding, 51 kilos of the bear's meat were sold for more than \$2,000 (*Korea Herald*, 11 June 1983). Two people offered to buy the bear's hide for more than \$1 million (*Korea Herald*, 25 May 1983), but the Ministry of Culture opted to mount the hide and display it at a zoo. These prices illustrate some Koreans' pronounced preference for their native bears and how price escalates with scarcity.

Bears as Medicine

In Korean, bear gallbladder is called *ungdam*. From what we have seen, Koreans are perhaps the most dedicated of all Asians to the use of bear gallbladder as medicine — more so than the Chinese, who originated the practice. Some Koreans are willing to pay more for bear gall and go to greater lengths to get it than people of any other nationality. When possible, many prefer to see the gallbladder taken from the bear's body to ensure authenticity, and they are known to have had bears killed before them or on videotape for this purpose (Mills 1991; U.S. Fish & Wildlife Service agents, pers. comm., 1990–1991).

This dedication to the use of bear gall probably is due to a number of factors. Chinese medicine began to influence Korean medicine as early as 57 b.c. (Pang 1984). *Hanyak*, the Korean term for traditional medicines such as bear gallbladder, literally means medicine (*yak*) from China's Han Dynasty, which dated from 204 b.c. to 260 a.d. (Pang 1984). Korea's isolationist policies, which won it the name "The Hermit Kingdom," kept Western medicine out of the country until 1884 (Pang 1984). By the 1950s, the majority of Koreans probably still received their health care from practitioners of *hanbang*, the traditional Korean medicine that took root

from Chinese medicine (Pang 1984). In the throes of industrialization and modernization in the 1990s, Koreans remain devoted to ancient traditions such as ancestor worship, filial piety, tonic foods, and herbal medicine (N. Han, pers. comm., May 1991). The latter is illustrated by the thousands of *hanbang* clinics and the countless herb dealers dispensing *hanyak* medicines in South Korea. Superimposed on this national loyalty to tradition is an increased interest in health tonics fueled by newfound affluence (*Chung-Ang Il Bo* [newspaper], 16 July 1991) and a widely held belief in bear gall as a powerful cure for almost anything (*Korea Herald*, 17 July 1991). The head of a traditional medicine clinic was quoted as saying bear gall purges all toxins from the human body, helps serious liver ailment, and is a highly effective treatment for diabetes, high blood pressure, palsy, fever, and hemorrhoids (*Taeju Daily Mail*, 12 April 1991).

When asked about bear gall, a Korean-American friend's mother, who lives in Seoul, said matter-of-factly that "bear galls are imported from China and the U.S." (K. Kwak, pers. comm., July 1990). In fact, Koreans are rather infamous in China, Thailand, and the U.S. for their penchant for bears and bear gall. Koreans have been arrested in all three countries in connection with the illicit sale of bears and/or their parts. Koreans continue to be caught leaving China with bear galls hidden under their clothing (see China chapter). In July 1991, Thai law enforcement officials raided a farm outside Bangkok that catered to Korean tourists. Along with the establishment's Korean manager and a number of Korean tourists dining on bear meat, they found several living bears, several freshly killed bears, and records of sales of bear gallbladders and bear banquets (see Thailand chapter). In the U.S., one of the latest in a series of law enforcement cases involving Koreans buying bear galls occurred in April 1991, when 173 bear gallbladders addressed to two Koreans living in Alaska were seized at Anchorage International Airport (*Anchorage Daily News*, 24 April 1991). The galls were believed to be bound for

Asia. Chinese medicine merchants in Hong Kong and Malaysia describe Koreans as among their best customers. Between December 1990 and February 1991, more than 100 bears were killed at a Japanese bear farm. All of their gallbladders reportedly were shipped to Korea (Anon., pers. comm., June 1991).

Between 1985 and 1989, South Korea officially imported 25 kilograms of bear gall (TRAFFIC Japan memo to K. Johnson, dated 5 August 1991). In 1990, official statistics show another 7.8 kilos were imported (Science and Technology Office, U.S. Embassy, Seoul). Between 1980 and 1983 alone, South Korea imported 330 live bears (Milliken 1985). The next year, 1984, CITES signatories reported exporting another 52 live bears to South Korea (CITES Annual Report data). Because South Korea is not a CITES party and therefore under no obligation to report its trade in bears and bear parts, these data represent an incomplete and conservative picture of total South Korean bear imports.

Bears as Food

While bear paw dishes are considered Chinese food, they are nonetheless served in South Korea at Chinese restaurants (see "The Bear Market" in this chapter). Like the Chinese, Koreans regard bear meat as a "tonic" food for strengthening the human body. This belief is best illustrated by the 30 bears smuggled out of Thailand to South Korea to fortify Korean athletes for the 1988 Olympic Games (see Thailand chapter).

Bears as Pets

To our knowledge, bears are not popular pets in South Korea.

Bears as Food

Some Taiwan diners reportedly favor restaurants serving bear's paw (*Asiaweek*, 16 February 1990). The front paws are preferred (Wang 1989). A game-shop survey now in progress further documents a demand for bear paws (H. Chen, pers. comm., June 1991) that has survived enactment of Taiwan's Wildlife Conservation Law.

Bears as Pets

It has become "chic" in Taiwan to keep wild animals as pets, according to a report in the *Free China Journal* (28 July 1991). There currently are 140 bears registered with the Taiwan government as pets, of which about 120 are sun bears imported from Southeast Asia (H. Chen, pers. comm., June 1991). No one has yet censused unregistered bears (Y. Chang, pers. comm., June 1991). Despite the Wildlife Conservation Law, pet shops continue to sell bears. Sun bears usually sell for just under \$2,000, while Asiatic black bears can sell for more than \$5,500 (H. Chen, pers. comm., June 1991).

We went on a walk with two sun bears bought recently by the owner of a small leather-goods shop in downtown Taipei. It is not uncommon for business owners to place bears outside their establishments to attract customers (Wang 1989). Both of the leather-shop bears were purchased illegally as cubs from Taipei pet stores for between \$1,800 and \$2,600. Both bears had been declawed. The male bear is two years old and spends his days on a three-foot chain atop a ledge outside of the shop. The female is one year old and lives in a three- by four-foot cage inside the shop. Now that the bears are nearly full grown, the owner finds them difficult to care for. He would like to sell them to recoup their purchase price. He is angry that the Wildlife Conservation Law makes it illegal for him to do so.

Some owners of unwanted pet bears sell them to game shops and tell the government

that they died of some illness, according to Chen. He also has heard reliable reports of weary pet owners releasing their sun bears into Taiwan forests. He has even had hunters tell him tales of taking sun bears in the wild on Taiwan.

To date, there are no reports of Taiwanese farming bears for their bile. However, Chen had interviewed a man in Kaohsiung who keeps more than 20 bears in captivity and refuses to talk about his purpose for keeping so many bears.

THE BEAR MARKET

We checked for bear galls along and around Taipei's Di Hua Street, which is famous for its scores of Chinese apothecaries. Medicine shops from other parts of the island send representatives here to buy bear galls for their stock. Approximately 10 shop owners refused to talk because, they said, other foreigners had come around in the past investigating the trade in rhino horn for international conservation groups. In all, 34 medicine shops with personnel willing to talk were checked (Table 9). Some shopkeepers were more forthcoming than others. Thirty of 34 said they sold bear gallbladder. Among the four shopkeepers who said they did not have bear gall, one claimed the practice ran counter to the owners' Buddhist beliefs, one said he did not wish to break the new conservation law, and another said his shop had just opened so he hadn't yet had time to stock bear gall. The fourth simply told us he did not sell it and refused to say more.

In one shop, we saw a tray full of 25 to 30 whole galls, allegedly all taken from Asiatic black bears in Southeast Asia. In another shop, whole galls came sealed by the dozen in plastic bags. Some shops displayed partial galls, their sacks broken open where shopkeepers had been scooping out crystalline bile salts to sell by the gram. Most displayed glass jars filled with opaque brownish-gold, brownish-red, or brownish-green bile salts. Dealers claimed that loose

bile crystals are preferred by Taiwan users and are more expensive. Gallbladders and jars of bile salts were not hidden in a safe place as were those in South Korea, nor were they displayed prominently as in Hong Kong. Most often, they were in a discreet location, usually behind the counter or behind jars of other more common ingredients such as pearls or gazelle horns.

Prices ranged from \$8 to \$30 per gram, making a whole gallbladder of average weight worth \$800 to \$3,000. The broad range in pricing probably was due to several reasons, including the fact that some of the shops were wholesale outlets. The perceived quality of the bile was another variable. Country of origin, color, and bear species were all mentioned as pricing factors, though some sellers said only the color was important.

Many shop owners expressed a preference for Chinese bears. Taiwan bears were also favored. However, other dealers claimed bears from India produced the best medicinal bile. One man read from a medical text that specifically recommended the gallbladders of bears from China's Jilin, Heilongjiang, and Yunnan provinces. Many shopkeepers said the gallbladder of Southeast Asian bears was of lesser quality. One wholesaler said he preferred bear galls from Southeast Asia because he believed all those from China were now from captive-bred bears. A buyer for another shop stated that the best bear galls come from colder climates. He mentioned both northern China and Alaska specifically. He said galls from the lower 48 states were too small — an opinion expressed by others as well. But those from Alaska are large and, therefore, very desirable. This buyer said he bought most of his galls from a Hong Kong broker, but said people from Wisconsin once came to his shop selling gallbladders from American bears. He repeatedly asked if we had galls to sell. Another shopkeeper said that, while gallbladders from the lower 48 states were not as good as those from Alaska, he felt assured they were authentic because bear hunting is legal in the United States. Yet another said that bear gall

is so scarce that one cannot be particular about what country it comes from.

Color variations, in order of preference, are golden-brown, reddish-brown, greenish-brown, and black. There was unanimous agreement that golden bile was the best. What was referred to as *soo* gallbladder, gold-colored bile salts from Chinese bears, was most highly valued, while the nearly black bile salts of the Malayan sun bear were said to be least coveted. One merchant told us that color is what gives farmed bile away as inferior. This man also said that color is determined by the season when a bear is killed and the method by which it dies.

Some shopkeepers said Asiatic black bears yielded the most effective gall followed by brown bears. At least one shopkeeper said it was the other way around. One explained that polar bears eat too much fish, therefore their bile salts take on an unpleasant taste. Another said Himalayan black bears yield the best bile. Most agreed that Malayan sun bears were less desirable. One man declared that the gallbladders of all bear species have the same efficacy, as long as they are hung to dry rather than drying flat.

Two merchants mentioned that some unscrupulous sellers will inject gallbladders fresh from a bear with either pig bile or soil so that they become heavier and, therefore, more valuable after drying. Shopkeepers mentioned the problem of fake galls, but claimed they could tell the real thing from a fake based either on experience or by various tests. When placed in water, a sample of real bear bile will spiral to the bottom of the glass, one apothecary said. Another swore by dropping a bit in dusty water. If it is the real thing, he said, the dust will disappear. Yet another shop spokesman recommended dropping the bile in water. If it rises straight as it dissolves, then it is from a bear. The bile of any other animal will dissolve at the bottom of the glass, according to this source. Several shop owners claimed that taste was another factor in positively identifying real bear bile. Some insisted we try a taste test ourselves and placed a tiny bit on our tongues. The bile dissolved slowly in

Table 9.

Sampling of Bear Gall Prices in Taiwan Shops (June 1991).

Shop #/Location	Bear Gall		Stated Origin	Comments
	Sold	Price		
1 / Taipei	No	N/A	N/A	Bear gall too expensive and Buddhist owners believe it's wrong to kill bears for medicine.
2 / Taipei	Yes	\$20/gram	Not specified	1 partial jar of golden crystals and 1 full jar of reddish-brown crystals seen.
3 / Taipei	Yes	\$25/gram	Not specified	Shopkeeper reluctant to talk. Said only that his bear gall was smuggled into Taiwan.
4 / Taipei	No	N/A	N/A	Shop owners said they did not wish to break the law.
5 / Taipei	Yes	\$25/gram	Not specified	1 whole gallbladder seen.
6 / Taipei	Yes	Not given	Not specified	Shopkeeper reluctant to talk.
7 / Taipei	No	N/A	N/A	None.
8 / Taipei	Yes	Not given	Not specified	Shopkeeper reluctant to talk.
9 / Taipei	Yes	\$28/gram	Not specified	2 whole gallbladders seen. Shopkeeper said Chinese galls are best. Usually sells as part of mixture.
10 / Taipei	Yes	\$20/gram	Not specified	Shop owner said brown galls are best, followed by black bears. Malayan sun bear galls are "not so good."
11 / Taipei	Yes	\$30/gram	Not specified	Owner said Himalayan black bear gallbladders are the best.
12 / Taipei	Yes	\$13/gram	China	Most of his stock smuggled by individuals in lots of 10-20. Sells mainly for baby birth rite and in mixture.
13 / Taipei	Yes	\$20/gram	Not specified	Owner sells about 10 bear galls annually. Some customers buy 2-3 at a time, but most in mixture.

Table 9 (continued).

Shop #/Location	Bear Gall		Stated Origin	Comments
	Sold	Price		
14 / Taipei	Yes	\$10-20/gram	Not specified	Price depends on color. Golden more expensive. Darker color is cheaper.
15 / Taipei	No	N/A	N/A	Owner had no bear gall in stock as store had just opened.
16 / Taipei	Yes	\$20/gram	Hong Kong	Owner sells more than 100 per year. 3 whole galls seen, plus crystals. Asiatic black bear galls from Yunan Province on Main land best. He sells mainly for child's birth rite.
17 / Taipei	Yes	\$21/gram	Not specified	Owner said his stock smuggled into Taiwan.
18 / Taipei	Yes		Not specified	Employee said shop sells only whole galls, but owner refused to elaborate.
19 / Taipei	Yes	\$8/gram	Hong Kong, USA	Shop sells 1-2 kilogram of bear bile crystals annually. The best galls are from Alaska or northern China. Store's buyer asked if we were selling. Once bought from a Wisconsin seller.
20 / Taipei	Yes	\$12-13/gram	India, Southeast Asia	Three galls were shown. Priced according to country of origin. Indian are of higher quality. This was a wholesale shop only. Owner said some customers buy 10 galls at a time.
21 / Taipei	Yes	\$15-30/gram	China	Shop sometimes sells 150 grams per year. Jar of crystals shown. Supply smuggled by overseas Chinese or boss buys in Mainland China.
22 / Taipei	Yes	\$3-22/gram	Borneo, Southeast Asia, China	Jar of crystals shown. Taiwanese prefer bile salts without the gall bladder sack. Galls from Borneo of lesser quality.

Table 9 (continued).

Shop #/Location	Bear Gall Sold	Price	Stated Origin	Comments
23 / Taipei	Yes	\$18/gram	India	Jar of crystals shown plus 2 whole galls. Shop sells as many as 5 galls per day and up to 100 per year.
24 / Taipei	Yes	\$16-19/gram	Cambodia, Thailand, Malaysia	3 whole galls and numerous empty gallbladder sacks shown plus 2 jars of crystals. Smuggled by overseas Chinese who come to university in Taiwan. Shop sells many galls to Japanese and some to South Koreans. Demand is increasing.
25 / Taipei	Yes	\$9-13/gram	India, Burma	Shop buys 3-4 kilograms of bear gallbladder several times per year. Japanese sometimes buy 20 kilograms at a time. Package of 12 galls shown.
26 / Taipei	Yes	\$18/gram	Burma, Thailand, China	Owner complained of irregular supply. Many galls available in spring.
27 / Taipei	Yes	\$15-16/gram	"Tropics"	Supplies are scarce. Bear gall usually sold in mixture.

our mouths with a fizzing sensation. The taste was overwhelmingly bitter, and the acrid after-taste remained until we ate.

Many shops said they usually sold bear gall mixed with pearl, cow gallstones, musk, and amber. Reportedly, this is a powerful — and expensive — tonic for the liver, heart, lungs, stomach, and kidneys and is good for the skin as well. Sometimes rhino horn, gazelle horn, oxidized mercury (which is highly toxic when ingested), coral, dried palm, ginseng, dried insects, stalactites, and even gold are added for an even more powerful and expensive tonic.

All shops mentioned the use of pure bear bile in a birth rite for newborns. In fact,

some shops said most of their gall sales were intended for this purpose. At birth, a fraction of a gram of bear bile is placed on an infant's tongue to "cleanse the blood" of poison passed by the mother to the child in the womb. Shopkeepers in Taipei medicine shops repeatedly stated that bear bile "kills germs" and "cleanses the blood."

People at three different shops mentioned that Japanese buy a lot of their bear gall. One apothecary said she had sold 20 whole galls to Japanese in the first five months of 1991. Another shop owner said Japanese sometimes buy bear gallbladders and cow gallstones 20 kilograms at a time.

Table 9 (continued).

Shop #/Location	Bear Gall		Stated Origin	Comments
	Sold	Price		
28 / Taipei	Yes	\$18/gram	"All over the world," including Alaska	Jar of crystals shown. Owner believes galls from USA are authentic because hunting bears is legal.
29 / Taipei	Yes	\$16-20/gram	Worldwide	Shop once sold 100 kilograms of bear gall in a year's time.
30 / Taipei	Yes	\$18-25/gram	Southeast Asia	Whole galls are less per gram than crystals. A tray of 25-30 whole galls shown, all said to be from Asiatic black bears in Southeast Asia.
31 / Taipei	Yes	\$25/gram	China	Owners reluctant to talk. Said they sold 1-2 galls per year.
32 / Taipei	Yes	Not given	Thailand, India, China	Asiatic black bears yield the best medicine. Polar bears eat too much fish. Owner reluctant to talk.
33 / Taipei	Yes	\$8-9/gram	Not specified	Owner very nervous about talking. He said he kept his galls away from the premises.
34 / Taipei	Yes	\$25/gram	Not specified	Bear gall usually sold with other ingredients.

One shopkeeper claimed his bear galls are shipped in legally from India. Most others, however, admitted theirs were smuggled in. One man said his stock was smuggled from China by "individuals" who carried 10 to 20 pieces per trip. Another shop also said it depends on overseas Chinese to smuggle in supplies, except when the boss goes to Mainland China himself and smuggles galls home. Another shop said it simply waits for strangers to come peddling bear galls. Two shop owners said they buy from a distributor in Hong Kong, and one showed an invoice from a Hong Kong export company to prove he paid \$12 per gram retail for the gallbladders he sells for \$20 per gram. A woman

shopkeeper stated that she sometimes buys from overseas Chinese who come to Taiwan from Southeast Asia to attend college and bring 10 or 20 galls back with them to Taiwan after every visit home. Another shop owner said he bought his stock from a Taiwanese broker who buys bear galls from around the world, including Alaska.

Some shops said they sold ten or fewer bear gallbladders each year, while others claimed to sell five to ten a day at times. One owner said he sells more than 100 galls per year. A buyer for another shop said he goes through one or two kilograms of bile crystals annually. Another owner said he buys three or four kilograms of

bear gall several times a year to meet the demand. Yet another said once he sold 100 kilograms of bear galls in a year's time.

We asked five expensive Cantonese restaurants in Taipei whether they served bear paw. All said they no longer serve bear entrees, citing the law, a shortage of bears in the wild, or cruelty to animals as reasons. However, we are not convinced bear paw is not served in Taiwan restaurants and believe the matter deserves further investigation.

After shopping for bear parts, we asked Tang Hsiao-yu, chief of the Council of Agriculture Conservation Division, about the open sale of bear gallbladder in Taipei. He acted very surprised. "Not in Taipei," he said. "When?" He then referred us to the city government, as each city in Taiwan is responsible for enforcing the national Wildlife Conservation Law. The central government only wrote the law, he said. It has no hand in enforcing it.

At the Taipei City Government Department of Reconstruction, a five-department municipal team is charged with enforcing the Wildlife Conservation Law within Taipei city limits. This team is made up of members

with expertise in city government, police work, education, zoos, and animal welfare. Their main job is to inspect pet shops to see if any illegal trade is being conducted. In addition, they are attempting to get owners of protected animals and their parts to voluntarily register their holdings. Since January 1991, 5,316 captive animals from 81 protected species have been added to the government's pet records, including one Asiatic black bear and six sun bears. The enforcement team is not looking at bear gall and other protected species' parts sold in Chinese medicine shops due to lack of staff resources and the problems associated with positively identifying these parts as authentic. Their priorities at this time are registration of live animals in captivity and an accounting of all ivory and rhino horn in the possession of Taipei citizens. Afterward, as of an as-yet-unspecified date, citizens caught with unregistered protected wildlife will be prosecuted (Y. Chang, pers. comm., June 1991). Chang Yuan, a member of the Taipei municipal team, said that stopping the sale of bear gallbladders is not part of enforcement efforts at this time.



By MATTHEW PINKNEY
GOVERNMENT schools face a shutdown after a meeting of Victoria's two main teacher unions yesterday.

For the first time, unions representing more than 40,000 teachers have agreed to co-ordinate a series of half-day strikes which will affect more than 500,000 students in 2000 schools.

According to the heads of the Victorian Secondary Teachers Association and the Federated Teachers Union of Victoria, teachers will hold a strike a week throughout the fourth term.

Teachers are demanding the government reverse Budget decisions that will lead to the breaking of industrial agreements signed last year.

The co-ordinated strikes — which will begin on October 7 — are the first to be held since the 1990 disintegration of the Teachers Federation of Victoria and the emergence of separate secondary and primary teacher unions.

The half-day stoppages are in addition to two 24-hour strikes on September 12 and October 31.

According to the president of the VSTA, Mr Brian Henderson, the industrial campaign will see "unprecedented disruption" of the school system.

News of the strikes came as the Education Minister, Mr Pullen, admitted he had made a mistake in signing industrial agreements with teacher unions.

In an open letter to teachers, Mr Pullen said staffing and conditions agreements had to be broken because of the worsening economy.

"With hindsight it may have been a mistake to approve the agreements," Mr Pullen wrote.

● Continued Page 2

US guns for Vic hunter

THIS Victorian big game hunter is wanted by US police for killing this protected Alaskan Grizzly brown bear.

The killing has disgusted environmental groups and outraged Alaskan wildlife authorities.

Mr Peter Stapley admits

he shot the 181kg, 2.2 metre tall female bear in 1986 in the northern mountain area of Alaska — the last US refuge for the species.

The offence carries prison terms and stiff fines and Mr Stapley has been advised by his lawyer not

to return to the US. Mr Stapley, 46, a deer farmer from Timboon in south-west Victoria, also faces charges over the 1984 illegal killing of a caribou, a moose, a dall sheep and a deer.

● Full report, Pages 6 and 7

DON'T MISS KEVIN BARTLETT

— In Monday's Herald-Sun

CAPTURED NATIONS FREED

— Page 2



\$130,000 DREAM HOME

DETAILS PAGE 7



FOOTY FINALS SUPERFORM



LA TOYA JACKSON

BARING MORE THAN HER SOUL

GAME IS UP



● The shooter and his trophy . . . Victorian big game hunter Peter Stapley with the antlers of a moose.

DEATH came fast for an Alaskan grizzly bear feeding on salmon it had caught in a stream.

It was gunned down from 50 metres and skinned on the spot.

The bear's hide, including its head and paws, was stored for treatment by a taxidermist.

The rest of the 181kg carcass was left, like a stripped down car, for animal scavengers.

A Victorian big game hunter, Mr Peter Stapley, 46, is wanted over the bear's killing. He is also wanted for the illegal killings of a caribou, moose, dall sheep and black-tailed deer in 1984.

The killings contravened US state wildlife regulations.

Mr Stapley is charged with taking a grizzly bear without a licence, illegal possession of big game and being an alien hunter without a licensed guide.

Jail sentence

Each carries a one-year jail term and \$US5000 fine.

If Mr Stapley took the animals out of Alaska he violated federal law and could be charged with illegal interstate transportation of big game.

That carries a \$US250,000 fine and up to five years' jail.

"To our knowledge, he took everything back to Australia," said Mr Joe Campbell, of the Alaska Fish and Wildlife Protection Division.

Alaskan authorities have an outstanding warrant for Mr Stapley's arrest, with bail set at \$US25,000. But unless Mr Stapley returns to the US, he will not have to answer the charges.

Under US law, foreigners can be extradited from another state but not another country.

At his deer farm at Timboon in the state's south west, Mr Stapley confirmed he had killed the animals, but said he didn't know he was breaking any laws.

The Alaska Fish and Wildlife Protection Division uncovered Mr Stapley's hunting activities in 1987. Officers were searching

By CAROLYN FORD
in Los Angeles

the home of an unlicensed guide, Mr Jim Baum — with whom Mr Stapley had hunted — when they found photographs of Mr Stapley with his wildlife trophies.

After a year-long investigation, authorities had enough evidence to lay charges, but Mr Stapley had returned to Australia, and Timboon.

Mr Stapley said he thought Jim Baum was a licensed guide, and paid him \$US5500 to take him bear hunting.

He said Mr Baum told him all the paperwork and payments necessary for a foreigner to hunt had been taken care of.

"I paid for a hunt with a registered guide, but the guide turned out to be unlicensed . . . I wanted a cheap hunt not an illegal one that would get me in the strife I'm in," he said.

"I'm one of six or seven (Australians and New Zealanders) who have been illegally guided by this character. I am very bitter about the whole thing.

"I was led up the garden path, it's dirtied my name."

Alaskan wildlife officials were dismissive of Mr Stapley's explanation, saying he was not a novice to hunting in the area.

Mr Stapley has been offered a suspended prison sentence if he pleads guilty to the three state charges and pays related fines; makes a contribution to the Alaskan Wildlife Fund and returns all Alaskan wildlife trophies (antlers, horns and the Grizzly's head) at his expense.

Mr Stapley said he did not have the bear skin.

He said it was taken to a taxidermist in Anchorage, Alaska, to be tanned for a floor rug and that, he said, was the last he saw of it, despite paying \$US2200 for the treatment.

"I would go back if I could get a fair hearing," he said.

FOR BEAR HUNTER

I will not go back unless they can give me some assurance I can clear my name fairly.

Bears and deer are the most popular targets of poachers in the US. Bears are hunted for their skins and gallbladders.

In Asia, bear gallbladders are considered cure-alls and sell for as much as \$US18,300 each.

But bear claws — for necklaces — and meat and paws are also in big demand. Paws are used in special occasion soup in Asia, although it is gaining popularity in America too.

The grizzly brown bear is an endangered species in all states of America except Alaska. To stop them becoming endangered, Alaskan authorities allow only a certain number to be harvested each year. The system is policed by purchase of hunting licences and bear tags.

Wittingly or not, Mr Stapley avoided paying the Alaskan Government \$US2600 in fees plus \$US4000 to \$US10,000 for a reputable, licensed hunting guide when he killed five animals without a licence or tags.

It is theft of a resource, Mr Campbell said. These funds go to wildlife management.

Throwing rubbish

There are those things a person has to do that are in the best interest of the resource. ... Mr Stapley takes away that resource from all people, Mr Campbell said.

Mr Campbell, the Alaskan representative of the National Wildlife Federation, said Mr Stapley had hunted illegally. He was a tourist throwing his trash in your back yard. ... The parks would not be able to support the bears and the caribou.

... a lot of Australian people, especially fishermen, ... and backpackers ... much hunters.



● RIGHT: The victim and the gun ... a dead black-tailed deer. BELOW: A dall sheep, shot by Peter Stapley.

● ABOVE: The aftermath of an illegal shoot, say US wildlife authorities ... Peter Stapley posed for this picture after killing this caribou in 1984.



It's on the house

YOU can win a house on the house in the Herald-Sun and Triple M House on Every Street contest.

We are giving away a fully furnished Pioneer home and land package worth \$130,000.

You can view the dream home today at the Pioneer Estate Lot 21, Resende Place, Warribee between noon and 5.30pm.

The winner will also get \$20,000 worth of furniture, fittings, appliances and extras including a spa and landscaped garden.

The furniture, from Designed Interiors, includes beds, lamps, dining table, chairs, and a sheet and down set.

The State Electricity Commission will provide \$3000 worth of energy-efficient appliances including a dishwasher, refrigerator and washing machine.

The Warribee home comes with carpets, window furnishings, a landscaped garden, a Philips home entertainment system worth \$3000 and a \$8000 spa pool from The Endless Swimming Spa Company.

The house has three bedrooms, a lounge/dining room, family room, modern kitchen and bathroom and a carport.

Every day you have the chance to win cash. The Dire Straits On Every

Street CDs and tickets to the band's November concert by listening to Triple M.

The CD, ticket and cash winners are announced on Triple M between 6am and 7pm.

If you live outside Triple M's broadcast area, the Herald-Sun has a daily prize and goes into the house draw.

Today's daily winner is Ms Fiona Lane of Burwick. Fiona wins a CD, tickets to a Dire Straits concert, \$105, and chance to win the house.

The house winner will be drawn on September 27. For details see the coupon on Page 17.

Challenges delay Tas bribe report

THE RELEASE of a report on Tasmania's 1989 political bribery affair has been delayed by a court challenge by two of the key witnesses at an inquiry.

For the past two weeks, three judges have heard an application from Opposition leader Robin Gray and the managing director of Launceston-based media group ENT Ltd, David McQuestin, to stop publication of the report by Royal Commissioner William Carter, QC, on the grounds of actual or apprehended bias against them by the commissioner.

The report was to have been handed to the government by September 30, but the deadline was extended to October 31 after the Tasmanian Full Court yesterday failed to complete its hearing.

Counsel for Mr Gray and Mr McQuestin have claimed Mr Carter was hostile to both men in his inquiry and ignored witnesses supportive of their clients.

But counsel for the Attorney-General and the royal commission, Mr Douglas Graham, QC, said yesterday when Mr Carter began the inquiry he may have had the attitude 'to trust nobody' and this would have extended through his investigation.

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America's Illegal Wildlife Trade

A SHAMEFUL HARVEST

BY JEFF GREEN. Photographs by JOSH AZEL

For a trophy or a big payoff, America's wildlife is under illegal
hunts, guides, and black marketeers do their busi-
ness. These photos mark this gruesome, growing problem.



Trapped in Ohio and illegally trucked to South Carolina, these red foxes were purchased by a game farm for use as hunting quarry. Wildlife

agents picked up the trail and arrested the violators, who were fined. Rabies and tapeworm tests required that the foxes be destroyed.

The story on the following pages is a grim one, that of massive and illegal slaughter of our country's wildlife for profit at home and abroad. Though the scale is enormous, the story is little known. We present it here on behalf of all threatened wildlife.

—THE EDITOR

SOFT, DARK CLOUDS float over Montana's frozen eastern plains. On this Thanksgiving weekend, in the spare ranch town of Wibaux, the main industry for a number of people is illegal hunting, and they are waiting for their payoff. At dawn Montana's lone undercover state wildlife agent and I sit in his pickup, waiting too.

The agent, call him "Roy," is a big, patient man with a sly wit. His beat covers 147,000 square miles and often takes him out of state—Montana's wildlife has a far-flung market.

"Montana," he says, "is one of the last states with astounding numbers of wildlife. It's made for poachers."

Two voices rise from the metal suitcase between us: wildlife agents on loan from another state, bodywired. We see them emerge from the worn, brick Palace Hotel a block away. Behind them is Neal Atkinson, an outfitter from Florida, who has allegedly taken 23 people on illegal hunts in Montana this fall alone. He thinks the agents are genuine clients.

Roy picks up his radio mike. "They're leaving. Let's take 'em down." Fourteen Montana game wardens hear this. The scene unfolds on empty Main Street: Atkinson scraping ice off his windshield; Atkinson suddenly surrounded by vehicles; he and his partners, stunned men in dirty jeans and down vests, frisked and handcuffed; someone leaving to wake up the justice of the peace.

This is not the first time Atkinson has been caught; he's already been convicted in Alaska. Two other states and two Canadian provinces have investigated him for illegal hunting. His meticulous records, seized by wardens in the shoddy hotel room, outline three years of unlicensed hunting. Deer carcasses and photographs were found in the hotel and nearby in homes and an old prairie school.

On this brilliant, cold day, Atkinson—a lean 47-year-old—is led to jail. He will be facing 23 federal counts, but he knows from

experience that wildlife-crime sentences tend to be lenient and probation requirements are difficult to enforce. Casually, he asks the warden about other good hunting areas.

Atkinson is a player in a lucrative American industry—poaching. Officials say the trade in illegal wildlife has become a booming tax-free business. No one really knows the bottom line; United States Fish and Wildlife Service (FWS) officials estimate that the illegal profits from U.S. animals are 200 million dollars a year and growing. The trade attracts organized crime, agents say, because the return is high, the risk of getting caught is low, and, until recently, the penalties have been minimal.

"There's big money out there," says Terry Grosz, the Rocky Mountain region FWS special agent in charge. "The people involved are everybody—rich, poor, outfitters, taxidermists."

Increasingly, wildlife officers rely on undercover operations like the one in Wibaux to penetrate networks of poachers and buyers. "As we get more sophisticated, so does the poacher," says Alaska senior FWS agent Al Crane. "There's more illegal activity than ever."

Despite a 94 percent conviction rate for those caught, poachers feed global demand for American wildlife. They decapitate walrus for ivory tusks, net thousands of night-roosting robins for Cajun gumbo, and shoot anhingas nesting in the Everglades and raptors for their decorative feathers. In Alaska they track and shoot wolves from airplanes. They catch sturgeon and rare paddlefish and sell their eggs for caviar.

Unscrupulous outfitters purchase illegally trapped mountain lions and endangered jaguars for hunters willing to pay substantial trophy fees. Poachers shoot protected polar bears for collections, or to sell the skins, or for the \$3,000 a South Korean will pay for the gallbladder. The illegal trade supplies an Asian market with elk antlers and tails, bear parts, seal penises, even herring spawn attached to kelp, stealing the habitat too.

For the biggest trophies, collectors sometimes cross into national parks and shoot elk, deer, mountain goats, grizzlies, and bighorn sheep for the record book, wall mounts, pictures in albums, and quick profits.

Poaching has long been a tradition in the rural United States: spotlighting deer at night, a coffee can over the gun barrel to muffle the shot; using dead animals as bait for cougars

AND GAME WARDENS GOES ALL WILD



Pursued by a posse of game wardens and undercover agents, outfitter Neal Atkinson, at right, brought client Bobby Bagley to Montana in 1989. "This was the first time I went hunting out West," says Bagley, "and I thought I was going to have the best time of my life. But it didn't turn out like that." Accused of killing two deer—one over his limit—and bringing them home to Florida, first-time offender Bagley pleaded guilty and was given three years' probation and a \$2,000 fine. "I didn't have the money to fight the federal courts, so I had to swallow it and go on with my life." For two weeks of illegal work, Atkinson was found guilty of 21 federal wildlife violations, but he remains free on appeal. "They railroad people," says Atkinson about wildlife officials. But in court, prosecutor Kris McLean argued that "Neal is a greedy, flagrant violator."

and bears; shooting a duck or two in the farm pond for dinner. But over the past decade the stakes have soared. Word has passed among hunters that a black bear gallbladder is worth \$30 to \$100, a bobcat pelt \$200, or a bighorn sheep head \$3,000 (by the time these reach the consumer, the value will have increased substantially). Poaching has become big business.

"It's a terrible waste," says Daryl Gadbrow, outdoor editor for the *Missoulian* in Montana. "As sportsmen, we hunters pay to support game management for herds to expand, not for poachers to exploit. Every year there are more hunters and fewer places to hunt. Poachers are stealing from me directly."

The demand is outstripping the supply. In less than ten years the average age of legally killed bears in southern Appalachia has

dropped by half. So few bighorn sheep are left in certain prime habitats that they must be transplanted to prevent inbreeding. The bobcat—one of the few spotted cats still legally sold—has been trapped off-season and without permit for breeding purposes. The fur, highly prized for coats, accounts for 60,000 animals killed in the United States each year.

Nationwide, the illegal kill of animals equals or exceeds the legal kill, wildlife officials say. Only a fraction of the violators are caught.

Some hunters groups question the extent of illegal trade, charging that FWS undercover operations are public-relations ploys. "Protecting wildlife no longer is enforcement's principal mission," says a Wildlife Legislative Fund of America report. "Making arrests is."

"I used to think that only a small percentage of hunters broke wildlife laws," says Montana Assistant U. S. Attorney Kris McLean, whose Helena office is filled with confiscated trophies. "But after five years as a federal prosecutor I know that's not so. An unethical trophy hunter wants that trophy, and he thinks he'll never get caught. In Montana we have 17,000 nonresident hunters a year; we'd need 30 more federal officers to enforce the Lacey Act."

That act, the strongest law used against illegal trade, was passed in 1900 in large part to save the buffalo from extinction by poaching in Yellowstone National Park. Amended over the decades, the act makes it a federal crime to transport illegally taken wildlife across state lines.

In February 1991, a year after his Montana arrest, outfitter Neal Atkinson was sentenced for perhaps the most Lacey Act violations in history—21 felonies. He was ordered to pay \$21,000 restitution to Montana and serve 37 months in prison. Upon release he will be banned from hunting, fishing, guiding, and trapping, worldwide, for three years. He has appealed the conviction.

"**W**E HAVE A WAR GOING ON," says Fish and Wildlife Service agent Dave Hall. "And as long as enormous profits are attached to wildlife, wildlife loses."

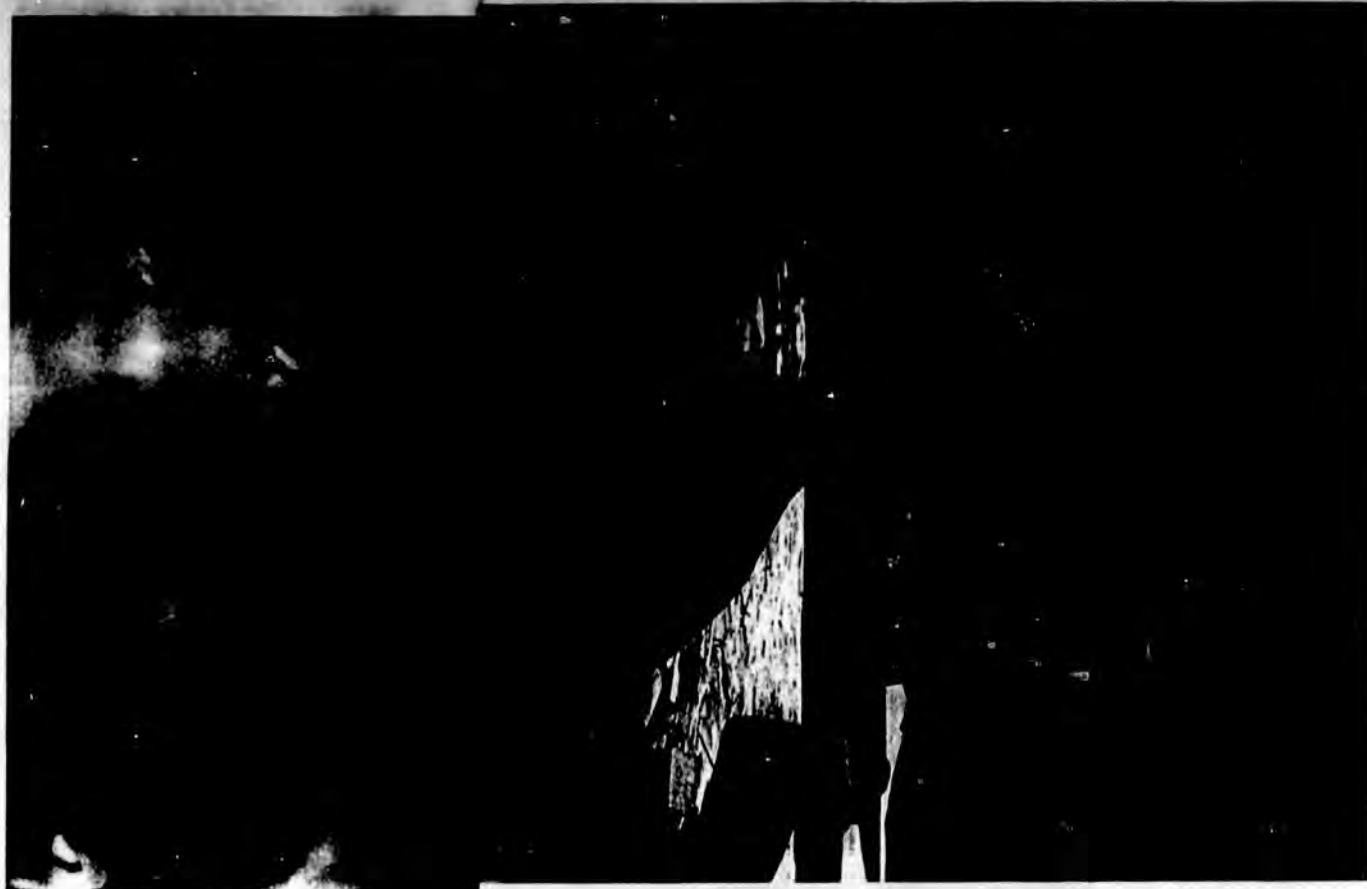
In New York City's Chinatown, when I ask the manager of an apothecary shop if she sells bear galls, she wants to know where I'm from. "Montana," I say. Can I get her bear galls? she asks. Send them COD, then she'll tell me how much she'll pay. We're discussing a felony, a gallbladder shipment from Montana, but the chance of getting caught is slim. To give me an idea of size, she unlocks a cabinet and draws out a clear plastic corsage box. Inside are two shellac-shiny galls, big and round as softballs.

"For the Asian gentleman who has everything," says attorney McLean, "present a bear gall in a nice case. A grizzly gall is even better, more potent as an aphrodisiac." Galls, ingested a tiny bit at a time with liquor, are also believed to cure a host of ailments from blood

Author CONSTANCE J. POTEN is based in Missoula, Montana, and writes fiction as well as features. This is her first GEOGRAPHIC article. Cuban-born JOSÉ AZEL has contributed to several articles, including the August 1991 report on Cuba.

toxins to backaches to eye problems. The latest price paid to a hunter for prized Alaska grizzly gall, about five ounces, is \$1,300. A New York State wildlife investigator who lived undercover with professional poachers during Operation Berkshire in New England says, "Of all animals, deer and bears are poached the most, bears often just for the gall. I've seen 2,000 galls at one time in Chinatown."

Bear meat and bear-paw soup, special-occasion foods in Asia, are gaining popularity as exotic foods in America. "People have romantic ideas about wild meat," says FWS special agent Doug Goessman. "They see the mountain man. Or Robin Hood. They don't see the poacher." The claws, head, teeth—all parts of a bear are sold like a stripped-down car. For the Asian market thousands of bears



BOTH BY ERIC LANE BARR. AGENTS' IDENTITIES INTENTIONALLY OBLURRED

Peeping proprietor (and state undercover officer) "Terry Atkins" checks on business from the back room of the Buck Rub, a taxidermy store in Jeffersonville, Indiana. Wide-eyed deer forms furnished a realistic backdrop as Terry and partner "Jeff Clark" (manning the video surveillance monitor upstairs) conducted their investigation of local poachers. From 1988 to 1991 they gathered evidence to indict 28 people on more than 150 wildlife violations. Says Jeff, "We make arrests that uniformed officers can't."

Dead ducks—29 of them—put Raoul Chaisson almost ten times over his limit in Louisiana. Pleading guilty, he was fined \$425 and sentenced to two years' probation and ten days of community service. Chaisson said he stopped shooting only because he ran out of shells.



DAVE HALL, U. S. FISH AND WILDLIFE SERVICE



"William Heuer gets his trophy no matter what the cost," says Montana undercover agent "Roy." The cost for illegally taking this bull elk from a no-hunting area in Montana and attempting to transport it out of state: three years' probation, 200 hours of community service, and \$1,300 in fines.

For two rare gyrfalcons Lothar Ciesielski paid a government informant \$11,000 and allegedly smuggled the birds to West Germany; he remains at large. To maintain the illegal supply of falcons, Ciesielski offered the informant an 80-acre ranch and a six-figure salary.



BLAIR / FISH AND WILDLIFE SERVICE

Once the hunter, Australian Peter Stapley is now the hunted. He allegedly shot this Alaskan brown bear in 1986, breaking three state wildlife regulations, and then disappeared. Today Stapley remains a wanted man. Apprehending poachers is one of many responsibilities shouldered by state and federal wildlife agencies that are strapped for money and manpower. According to a recent government report on the U. S. Fish and Wildlife Service, some 3,600 endangered or threatened species are receiving little or no federal protection.

are poached in Washington State; game wardens are finding bears stuffed in Dumpsters, paws and galls gone. The importation of 35 frozen black bears by South Korean businessmen made the *Korea Herald* because the galls were selling for as much as \$18,300 each. Working undercover, agents documented the loss of 366 bears from the Great Smoky Mountain region over a three-year period.

Since the sale of bear parts is legal in some states, merchandise from poached bears is very difficult to track. "Until we have standardized laws throughout the United States and Canada," says Washington State wildlife enforcement officer Ron Peregrin, "trade in illegal bear parts will flourish."

Bear-claw necklaces are de rigueur at mountain men rendezvous and, set in silver

and turquoise, are big-ticket jewelry pieces. I try on a necklace with 20 claws at a fair on the Crow Indian Reservation in Montana. It is frighteningly beautiful. Legal? Who knows? In a shop next to Glacier National Park, a possibly illegal claw from a grizzly (on the FWS threatened list) is tucked away among the items.

In Alaska a wealthy hunter will pay \$10,000 to hunt an illegally guaranteed brown bear, often illegally baited with dead caribou. Until an undercover operation interrupted his business, legendary Alaska guide Ron Hayes used airplanes to herd trophy animals toward the gun barrels of hunters. In 1988 Hayes was arrested and pleaded guilty to federal charges. He served 13 months in prison, paid a \$100,000 fine, and forfeited three planes.

THE BLACK MARKET FLOATS across the country like a scum, silently emptying rivers and seas of fish and shellfish by the millions. A Texas fish study showed that illegal netters are the largest harvesters of redfish, killing more than 40 percent of a species whose population has already collapsed from overfishing.

"If they weren't dealing in fish, it would be crack," says Bob Marshall, outdoor editor for the New Orleans *Times-Picayune*. "These are thieves, career criminals. The fish business is a haven because of lack of enforcement. The National Marine Fisheries Service guards federal waters from Puerto Rico to Brownsville, Texas, with only six resident agents."

New York City's Jamaica Bay, a three-by-seven-mile reach with countless marshy islets,

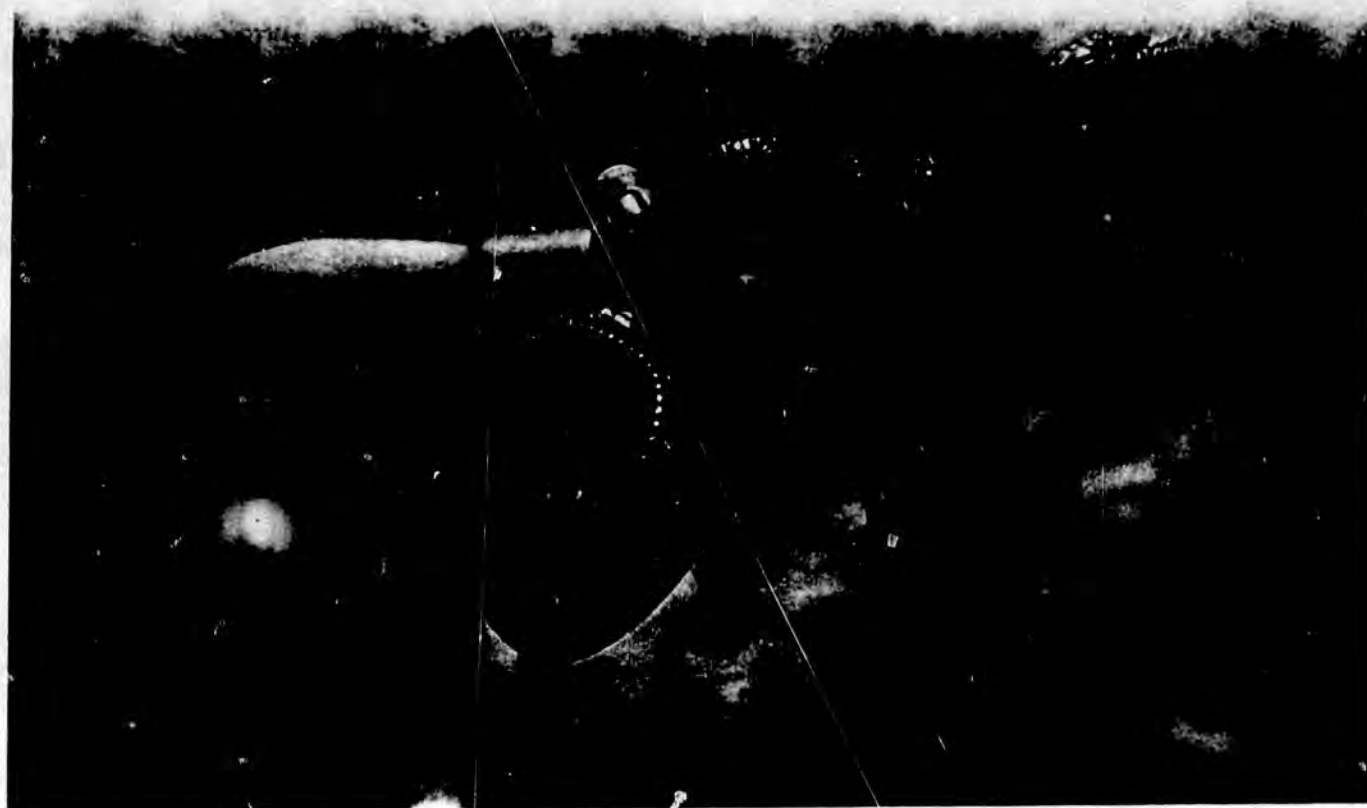
is so polluted that commercial shell fishing has been outlawed since 1914. When it rains, raw sewage may flush into the bay. The city's archaic system can't handle any overload. Shell fish here are covered with malodorous muck.

Two days before Christmas, shellfish prices are up, so New York conservation officer Dave Baker, two partners, and I take a boat to check out the bay. The sun is a yellow stain over Manhattan, the chill damp and deep. "A couple of nights ago we arrested two guys digging shellfish right off the dump," says Baker, pointing to a brown bulge of land. "They got a dismissal from the Brooklyn Criminal Court." Why? He shrugs, "Digging clams is nothing compared with rape. It's a misdemeanor. The diggers' defense was that everybody knows you shouldn't eat raw clams."



In his grab-and-go business a reptile poacher makes fast cash for a few hours' work. He squirts gasoline into the branches of a Florida banyan tree and lets the fumes flush out his prey—threatened eastern indigo snakes, prized as pets. This indigo sold for \$120, fueling the black-market bonanza in a wide variety of reptiles. "If poachers can sell it," says photographer José Azel, "they'll poach it."

Contaminated clams may cause hepatitis A and gastroenteritis, but once shellfish make it to market, tracing their origins is hopeless. We throttle toward a distant blue boat Baker recognizes, a boat that's been caught with illegal shellfish before. The fishermen are after crabs today. When they see our boat, they raise the dredges and start dumping the contents.



Baker orders them to dump all the crabs, worth \$50 a bushel, and fines the men \$500.

In the Midwest one Great Lakes investigation exposed dealers in four states selling tons of illegal trout and salmon marked as whitefish—some contaminated with PCBs—depleting those populations and spreading toxins to consumers. The volume of illicit fish was so huge it brought more than \$150,000 in penalties. So widespread is the illegal fishing trade that in Chicago alone a 1982 raid on five fish wholesalers resulted in all dealers being charged. In 1986 another operation laid open a lucrative network selling illegal sport and game fish in Illinois.

For the spoon-billed paddlefish, swimming America's rivers for 68 million years, depletion of the species became a concern in the

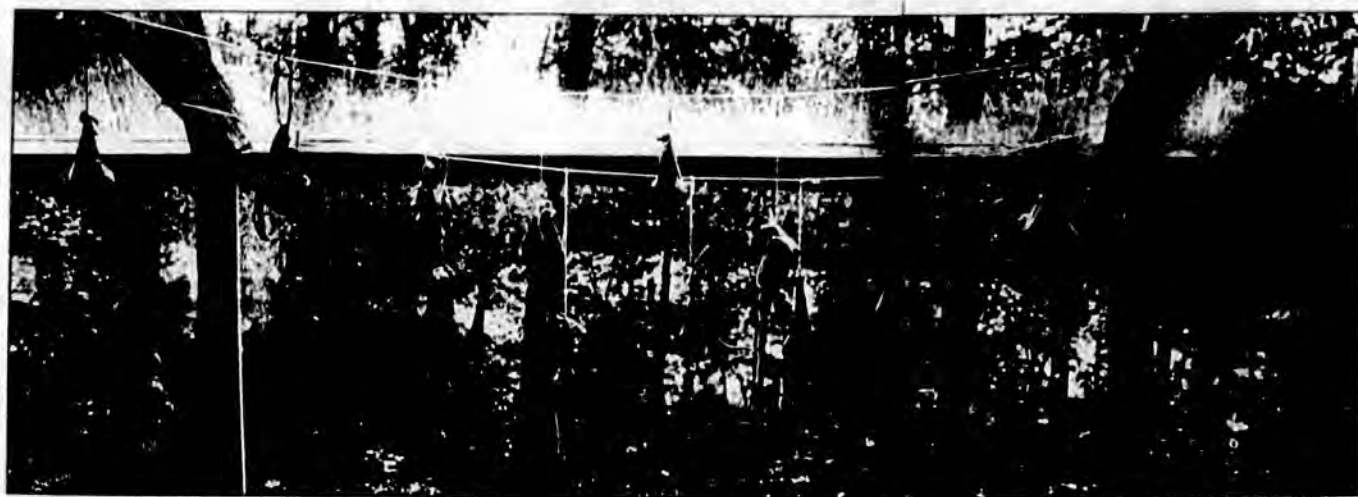
1980s. When Iranian students took U. S. hostages in 1979, the beluga sturgeon caviar source was abruptly cut off. U. S. commercial caviar producers taught Tennessee fishermen how to prepare caviar from paddlefish eggs. Suddenly the profits from this "black gold" went beyond fantasy. For this rare, ponderous fish that can produce ten pounds of caviar—worth as much as \$500 a pound on the retail market—it amounted to a death sentence.

In 1985 low water in Missouri's Table Rock Lake exposed 15 dead paddlefish, their stomachs split open, their heads and tails tied together, and the carcasses weighted down with rocks. So many similar instances occurred that in 1987, at the Turn It Loose Bar near Missouri's Harry S. Truman Reservoir, two undercover agents joined paddlefish poachers in

the shadowy business of contraband caviar.

They found that at least 4,000 paddlefish were killed that year. One poacher boasted of clearing \$86,000 in five nights. When the agents emerged in 1988, 23 people faced 200 state and federal charges. At the top of the list was a prominent politician. But the market for paddlefish roe continues to grow.

IN THE COLUMBIA RIVER, the great fishery of the Pacific Northwest where fishing-rights issues simmer constantly, the roe and meat of salmon, sturgeon, and steelhead trout are worth enough money to fuel large-scale poaching. Native Americans claim treaties protect their freedom to fish in their original territory. Court decisions over the decades have reaffirmed the treaties, and



BILL COOE, NATIONAL PARK SERVICE (ABOVE AND BELOW)

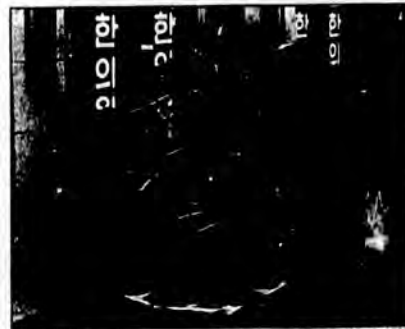


DAYE HALL



Spoils from the slaughter, animal parts are prescribed by doctors practicing traditional Asian medicine. To treat indigestion, fever, hemorrhoids, and a litany of other ailments, doctors recommend gallbladder from a bear. After the fist-size galls are hung out to dry (left), they are diced, mixed with wine or liquor, and ingested. For sustenance and strength, doctors suggest tea steeped with sliced elk antlers, available at Asian medicine shops in the U. S., on the streets of Seoul, South Korea (below), and elsewhere in Asia.

In a less therapeutic vein, bear paws (below, middle) are boiled to make bear-paw soup, another Oriental specialty. In Alaska, where native peoples may legally kill walrus and sell handicrafts fashioned from the animals' tusks, raw ivory (far left) can still be obtained by nonnatives—illegally and for a price. Valued at 200 million dollars, the annual U. S. illegal wildlife trade represents a hefty slice of the 1.5-billion-dollar worldwide market.



ALAN BARKER

non-Indian impact on fisheries—commercial take, dams, and pollution—has further reduced the catch.

"Ten years ago I worked for the biggest mover of steelhead from the Northwest to New York City's Fulton Fish Market," boasts a Seattle-area veteran illegal fish broker. Apprehended and convicted, he now acts as an informant. "I shipped 20,000 pounds a day. Had 14 aliases going at once. You don't need an ID to get a license. I had the Indians protecting me, erasing and reusing fish tickets to hide the real numbers of fish I was buying."

"In the past ten years Washington's natural spawning runs are down 75 percent," he says, pointing to a chart. "I'd say the illegal take is responsible for a third to a half of that."

The spawning of sturgeon has been so drastically reduced in the Columbia River's Bonneville Pool that biologists are gravely concerned about the future of the fish. Washington wildlife officer Ron Peregrin agrees. "It is illegal to catch fish longer than six feet there, because that's the size when they begin to spawn. Now the spawners are disappearing. The direct implication is the illegal harvest, particularly of the roe."

Tonight a full spring moon, bright as a stadium light, shines down the broad Columbia. With the informant as their front man, agents posing as fish buyers drive to the river to buy into the illegal trade. Each night Indians bring in boatloads of illicit sturgeon—outsized or shorter than four feet. They throw back only those too small to have a commercial value.

In the beam of a flashlight the agents measure their truckload of purchased fish. Two out of 18 are legal size. Still alive—sturgeon can take four days to die—one stands out. She is eight feet long (two feet over the legal limit), 390 pounds, and more than 60 years old. She will be sold to an illegal fish broker in Tacoma, a sacrifice agents must make for a solid case. Seattle FWS agent Dick Lichtenberg studies the fish sadly.

"That fish was here before the Grand Coulee Dam," he tells me. "She survived the hooks and nets, didn't succumb to the logging, the industrial waste—and then some dirtbag nets her and throws her out of the water illegally."

The meat will be taken by airfreight to the East Coast, the roe to Europe. The market is

substantial. Washington State wildlife agents continue to broker hundreds of pounds of illegal fish, building a case that promises to tighten fishing regulations and strengthen fish populations in the Northwest.

PROFIT IS ONLY ONE of the motives behind the illegal traffic in big-game animals in the United States. Another is the obsession by some to possess, at any cost, these symbols of power and freedom.

Bill Day, a Texas banker, wanted a trophy so badly he paid \$20,000 for record-book white-tailed deer antlers, which he then proceeded to have mounted on the skull of a Mexican deer.

"Day had his picture in *Outdoor Life* for getting the biggest Mexican nontypical



whitetail ever," says Joel Scrafford, a senior FWS agent for Montana and Wyoming. "He got to portray himself as the big guru to whitetail hunters." The real story came out when Canadian officials recognized the antlers: They had been stolen from a Canadian taxidermy shop. Day was sentenced to five years' probation and a \$20,000 fine.

During the fall hunt Pennsylvanian William Heuer's elk and deer don't make the record books. He pressures his Montana guide for an under-the-table hunt. He illegally buys a resident's license but doesn't know the salesman is Montana's undercover agent, "Roy."

"I consider myself a sportsman, whether anyone else does or not," Heuer tells Roy, who is taping it all with a hidden recorder. At dark, in a no-hunting area on the edge of Yellowstone, Heuer sets his gun on the hood of Roy's truck and aims at a huge bull elk. He has instructed the guide to fill a plastic bag with blood and let it drip from the legal area to the illegal kill. The shot rings out.

Months later, Roy's tape blasts the sound of the shot through the quiet of a federal courtroom. Members of the jury flinch. They look at Heuer. The tan, trim, steel-haired man in a pin-striped suit sits impassively. The recorder is switched off.

The jury doesn't know that Heuer has prior convictions in two other states. But their decision is quick: guilty of one Lacey Act violation. His federal sentence is three years' probation, \$13,300 in fines, and 200 hours of community service.

Founded by Theodore Roosevelt to recognize exceptional hunting skills with fair-chase criteria, the prestigious Boone and Crockett Club publishes a record book of trophy animals. "Trophy hunting does not appreciably affect wildlife populations," executive director Lawrence Means says. "Nearly 1,900 record-book trophies were entered in the past two and a half years alone, which suggests big game populations are doing well."

But so are hunters, getting into places

In the hands of serologist Wayne Ferguson, a frozen bobcat is still a valuable one. At the new National Fish and Wildlife Forensics Laboratory in Oregon, its blood and tissue samples will augment a comprehensive data base designed to help investigators answer such questions as: Does the blood on a poacher's pants come from a bear—or a protected bobcat?



Set for the night shift, Buckshot—a decoy for Delaware's Fish and Wildlife Division—will stand rigid in a poacher's spotlight, just like a real

deer. When poachers shoot, they get arrested. Says Capt. Rick Burritt, "Buckshot never complains about the pay or the working conditions."

nobody could reach before. "Teddy Roosevelt and the Boone and Crockett Club," Roy says, "would not condone the illegal use of aircraft, laser night scopes, one-million-candlepower spotlights to transfix deer, two-way radios, silencers, poison, or all-terrain vehicles. We're losing a lot of quality wildlife."

"Seventy percent of my caseload involves trophy poaching," FWS agent Scrafford says. "They're killing off the biggest, the best of the gene pool for future generations."

Not so, declares Warren Parker, former president of the Safari Club International, the largest hunting organization in the world. "Trophy hunting doesn't affect animal populations. It actually works for the good. It takes the old animals out of a herd."

Until 1990 the Safari Club's most coveted award was presented for taking the top 27 game animals of North America. Public criticism persuaded the board to drop the award because the list included three protected species—the walrus, polar bear, and jaguar. It is illegal to import or hunt them in the United States. Parker, a top-27 winner, was convicted of a misdemeanor in 1985 for illegally transporting the skin of an endangered Mexican jaguar.

TROPHY-SIZE ANIMALS have become so rare in the wild that "people are hitting the parks hard now," says agent Scrafford. In his zeal to acquire a Roosevelt elk trophy, a former Safari Club chapter president contacted an outfitter about hunts in Washington's Olympic National Park. "He wanted to skip the hunt," the outfitter, an FWS undercover agent, tells me, "and just have the elk delivered to the Seattle airport."

In competition for record-book animals, hunters will pay guides huge prices for trophies. "That creates unethical business relationships between the guides and those hunters whose skills and ethics are not developed," says FWS agent John Cooper. "It puts tremendous pressure on guides to produce."

Alaska state trooper Sgt. Joe D'Amico says, "Last year we cited 6,000 hunting and fishing violations, and we have only 66 field officers in all Alaska. That indicates the magnitude of the poaching problem."

For one of the most prized trophy targets, North America's wild sheep, hunters are willing to pay more than \$100,000 at auction for

the year's last legal Montana permit. "You don't see bighorn sheep over eight years old any more," says agent Scrafford. "For 30 minutes of work, I can get at least \$3,000 for a bighorn trophy. People invest in record-book trophies like art collectors collecting Remington bronzes. Hold one for five years, and it can be worth \$50,000. People poach on speculation now."

One of the most valuable live animals today is the elk, for the antlers alone. American elk antlers (especially illegal ones taken from national parks where the forage has no chemicals) are number one with South Koreans. "Apothecaries sell them in Seoul," says Montana antler dealer Don Schaufler. "They slice them paper thin, boil ginseng and herbs with them, then squeeze the blood out of the horn. It's like a tonic—they believe it wards off flu and colds."

Elk produce new antlers each year, worth \$140 a pound in the blood-filled velvet stage. The resulting boom in elk ranching has encouraged illegal trapping of wild elk to stock the ranches. At up to \$16,000 a head for a legally purchased animal, high prices make the temptation to trap wild elk palpable.

In a landmark case Leo Smith, the manager of the Chama Land and Cattle Company, faces a lawsuit from New Mexico for stealing state property. Smith, a small volcano of a man, a cigar perpetually clamped between his teeth, is charged with 99 felonies, including larceny, racketeering, and embezzlement. The company is accused of stealing and transporting out of state 250,000 dollars' worth of migratory wild elk.

States are rethinking the wisdom of game ranching. (Washington has already outlawed it.) In the West dozens of game ranches have sprung up in the past decade. Wyoming law bans private ownership of game animals and can prohibit importation of exotic species. The state is being challenged by one heir of the Campbell Soup fortune, who has been denied permits for a large game ranch. But as the debate continues in other states, the market for game ranches grows.

Meanwhile, Valerius Geist, professor of environmental science and biology at the University of Calgary in Alberta, predicts that game ranching will have lethal results. By November 1990 a major outbreak of bovine tuberculosis had spread through Canadian game farms, traced, says Geist, to elk brought



American-style caviar—eggs from the rare freshwater paddlefish—was seized in 1989 in Missouri, where commercial taking of paddlefish is illegal but seductively lucrative: The roe from a large female may retail for as much as \$5,000. Sentencing three defendants in this case, a federal judge said, "We can no longer tolerate the destruction of our nation's natural resources for the short-term profit of a few."



BOTH BY LARRY RECK. U. S. FISH AND WILDLIFE SERVICE

in from Montana. The highly contagious disease is fatal to animals and is debilitating and difficult to treat in humans.

The disease spread faster than anyone anticipated. By February 1991 nearly a hundred Montana and Canadian game farms were placed under quarantine, and several herds were destroyed. By April, 11 people tested positive, and the disease had spread to cattle and pigs. "The tragedy," says Geist, "is that Canadians have lost the advantage of TB-free status for their cattle, meaning the loss of potential markets. The cost is estimated to go into the hundreds of millions of dollars."

FOUR MAJOR FLYWAYS funnel migratory waterfowl from Arctic regions to Mexico and South America, and from beginning to end illegal killings are withering populations. In a Corpus Christi, Texas, shopping center, surrounded by duck decoys, packed boxes, and framed artwork, a federal agent and I sift through stacks of court records. The papers document a three-year undercover investigation on the Gulf Coast of Texas that brought charges against 210 people for 1,300 violations. The store we are in sold wildlife art but was really the front for the Texas Takedown, the biggest waterfowl



The end of the game for outfitter-turned-outlaw Bobby Coombs came in 1989 when he was arrested and handcuffed in Raton, New Mexico (bottom). To gather evidence on Coombs's interstate hunting scam, undercover agent "Hank" signed up for a bear hunt. Coombs led Hank to Colorado and, without a valid license, used garb to attract a bear, which dogs treed and Hank shot (above). Then Coombs trucked the carcass across the state line to New Mexico—a federal offense. For this crime and two others, Coombs pleaded guilty, served eight months in prison, and is now out on parole. "Bobby's not really a troublemaker," says case agent Tim Barraclough. "He just took the lazy way out."

So do other hunters, from thrill-seeking weekend poachers to professionals who shoot animals from aircraft while monitoring police radios to stay a step ahead of the law. Says federal agent and hunter John Cooper, "The American public won't settle for having its wildlife only in zoos."



MARK L. TAYLOR, THE ALBUQUERQUE TRIBUNE (LEFT AND ABOVE)



PAT DAYLON, THE ALBUQUERQUE TRIBUNE

undercover operation in history. On December 13, 1988, a hundred FWS agents—half the entire force—served papers on the violators.

"The hunters and their guides did everything illegally," says the agent, who asks to remain anonymous. "Shot too early and too late in the day, used lead shot and electronic callers, shot over bait, left crippled birds to die, and herded birds with airboats. It's been going on like this for years."

Bored with waterfowl, the hunters blasted kingfishers, killdeer, ibis, and red-tailed hawks, illegally killing 2,800 birds. When 88 geese fell in one volley, one of the guides complained, "It could have been better." He happened to be one of the justices of the peace who handle wildlife cases.

Operations do not end for wildlife agents until they've been through court, and in this case the worst was still to come. So many charges stacked up against the LaBove Shooting Resort and its owner that she entered a plea bargain, offering to pay fines of \$275,000, serve five years' probation, and forfeit two trucks and an airboat. The U.S. district judge's sentence: \$1,975 in fines, three years' probation, and forfeit of the vehicles.

"There was laughing in the court," recalls the agent. "These people were indicted on felonies, pleaded to misdemeanors, and still got lighter sentences. The message is that it's OK to defy the law."

The extinction of the Labrador duck in the 1880s and the near extinction of a dozen other species of waterfowl compelled the United States and Canada to sign the Migratory Bird Treaty Act of 1918. The enactment of kill limits and the ban on commercial market hunting helped remnant populations of birds begin a slow recovery. Today waterfowl populations have collapsed again, down 60 percent from the 1940s, and continued loss of habitat and chemical poisons have drastically reduced the chances for revival.

But tradition lingers. For generations many in the small community of Tangier Island in the Chesapeake Bay have supplemented their income with duck hunting. Tangier native Donald Thorne's grandfather was a market hunter, and until he was jailed for poaching, Thorne was a guide for wealthy hunters who ignored the limits. He also sold birds illegally.

"I've been doing these things since I was 15," says Thorne, 36. "I've sold to every man around here. When that gets in your blood,

it's just like an alcoholic. You can't get it out."

Federal wildlife agent Dave Hall is videotaping Thorne as he says this, to show to schools and hunting groups. When Hall realized that poaching was a social problem, he launched a crusade he calls *Poachers to Preachers*. "The poacher is a folk hero in his community," says Hall. "The answer is to get the violators to help change the attitudes of their neighbors."

Royley Folse, one of Hall's converts, served six months in a Louisiana federal prison for a one-day killing spree that netted over 600 protected yellow-crowned night-herons, locally called *gros-becs*, a prized food. A charismatic, compact man in his early 40s, Folse and his wife, Theresa, sit with Hall and me in the prison lobby before his release.

"Where I live, you were very important if you came out with a bunch of ducks or gros-becs," Folse says. "How many ducks did we kill? Until we got tired or ran out of shells."

BESIDES MIGRATORY WATERFOWL, nearly all birds except starlings, house sparrows, upland game birds, and feral pigeons are protected by U.S. law. An international fascination with Native American artifacts fashioned from feathers has focused a demand on eagles, hawks, owls, scissor-tailed flycatchers, anhingas, flickers, even bluebirds and magpies. A golden eagle tail may go for \$260; kestrel and flicker hatpins, \$10; a scissortail fan, \$700.

"We have an annual million-dollar black market in eagle feathers in the West right now," says FWS agent Scrafford. "Most of them go to Japan, Germany, Britain, and Eastern Europe, to history buffs and cowboy-and-Indian clubs."

It is illegal for anyone to buy or sell eagles or their parts in the U.S., and only Native Americans are allowed to possess the feathers. The National Eagle Repository in Ashland, Oregon, stores frozen carcasses sent in from wildlife agencies around the country. The repository supplies about 800 requests a year from tribes for eagle carcasses and feathers. Yet a large underground trade moves on and off reservations throughout the country. A Montana trading-post owner tells me, "Indians offer me eagle feathers at least three times a week, five dollars each. They are desperately poor people."

Seattle agents attached radio transmitters to

Getting to the bottom of the illegal bald eagle trade, federal agent Larry Keeney worked undercover in Washington State as a taxidermist. He hid radio transmitters inside mounted eagles and sold them to a suspected smuggler, who stashed the birds inside a legally mounted black bear. Before it could be shipped to collectors in Japan, Keeney swooped in for the seizure, here reenacted.



BOOTH BY ERIC LAMB BARRIS

two illegal stuffed eagles in a taxidermist's shop. One transmitter surfaced later, inside a mounted elk being shipped to Japan. "We opened the elk up, and there were five eagles inside," says West Coast FWS special agent Dave McMullen.

Alive, raptors are worth thousands of dollars. During a four-year undercover operation federal agents and an informant, Jeff McPartlin, penetrated a black market of endangered peregrine falcons, gyrfalcons, goshawks, and Harris' hawks that stretched from the Alaskan Arctic to Saudi Arabia.

"In 16 months two Canadian smugglers netted \$750,000 on North American birds," says McPartlin. "They stole a hundred birds in one season alone. They also smuggled eggs by taping them to their bodies, outfitted briefcases with incubators, and recycled ID bands to get birds through customs. The treatment of the birds was atrocious." The bands are used to identify captive-raised birds, which are legal to export.

Although more than 50 people have been convicted in Operation Falcon, the key figures of a worldwide smuggling network are still at large: members of the Ciesielski family of Cologne, Germany, who supply raptors to wealthy Japanese, European, and Arabian falconers. "Lothar Ciesielski paid me \$7,000 cash for one white gyrfalcon," says McPartlin. "He resold it immediately for \$135,000. They call these birds feathered cocaine."

COLLECTORS OF REPTILES are a specialized lot, like falconers, and competition for rare specimens provides a keen market for contraband. Ten years ago FWS agents set up a storefront operation in Atlanta, Georgia. They discovered hundreds of thousands of U.S. reptiles were being stolen from the wild every year. It's illegal to ship snakes through the mail, but 100,000 are mailed each year. About 60 percent of them die. Destinations include Japan, Belgium, Czechoslovakia, and Britain.

"Human commercial activity," says Dez Crawford, founder of the Reptile Defense Fund, "has put the populations of at least four dozen indigenous American snakes and amphibians on the threatened list. The pet trade is no longer the primary culprit in species decline," she adds. "Fashion fads are now number one." The U.S. demand for Indian python boots like John Travolta's in *Urban*

Cowboy and reticulated python jackets like Paul Hogan's in *"Crocodile" Dundee II* have endangered both species.

It's against the law to pour gasoline down holes to flush denning snakes, but that's the most popular way to collect them for Texas rattlesnake roundups. The method has side effects: Gas poisons water and kills den-sharing turtles, tortoises, and burrowing owls. Purging the land of these necessary predators upsets the balance of nature. Crawford says the depletion of western diamondback rattlers by rattlesnake roundups costs farmers 25 million dollars a year in crop losses to rats, mice, and rabbits, not counting the price of pesticides to replace the snakes.

WORLDS AWAY, in Alaska's Bering Sea, walrus and their tusks have become the focus of a frantic, escalating trade. "What poachers did to the elephant is a blueprint for what could happen to the walrus," says Dave Cline of the National Audubon Society.

The Marine Mammal Protection Act of 1972 makes it illegal for non-Native Americans to hunt or sell walrus, seals, sea otters, sealions, or polar bears. So, many white dealers use Alaska native people to disguise unlawful ivory trade. Other outlaws claim skins and ivory were taken before 1972. Alaska FWS agent Wally Soroka says that the tonnage of old inventory never seems to diminish, but it's hard to prove when ivory was obtained.

In remote outposts like Nome, Alaska, the illegal ivory trade is blatantly casual. "I buy raw ivory," a Nome merchant tells me. "Sell it back to native carvers. Been doing that for years, and they haven't caught me yet." By law native carvings must be traditional, but he shows me a carved ivory nut and hollowed out bolt. "It's for a cocaine stash," he laughs.

To kill walrus for ivory, some natives drive motorboats out to ice floes, shoot the animals with semiautomatic weapons, and cut off the heads of those they can retrieve, although "wanton waste" is illegal in Alaska, as in most states. Half the animals sink, washing to shore in the spring. In 1988 approximately a thousand walrus bodies washed up on St. Lawrence Island; nearly all were found headless.

"It wasn't until you guys came up here with a monetary system that this started happening," Darryl Trigg, vice president of the Nome Eskimo Community, tells me.



On a hunting holiday four men from Florida and Alabama arrived in Montana in 1989 and left carnage behind. They allegedly shot 27 antelope and 3 deer, far more than their legal limits, and removed only the choice animal parts—the hindquarters and backstraps—leaving the rest to rot (left).

Although these species are not endangered, such wanton waste infuriates Montana undercover agent "Roy," who denounces "the total lack of concern for wildlife."

Roy, who collected the evidence (above) and posed as an outfitter (below), is a former vice-squad officer. "When I worked prostitution, gambling, or narcotics, the crime got committed and I made the arrest. But when investigating wildlife violations, I get more involved, because it's not immediately obvious who is a legal hunter and who isn't." In this case, he got a close look. "They were fairly well-to-do businessmen," he says. "Their airport departure, though, wasn't business as usual (next page)."



AGENT'S IDENTITY INTENTIONALLY OBLISCURED

"People can't get by without selling ivory."

Few of the walrus killed are used for meat or waterproof clothing any more. A large head with tusks brings \$1,000; five buy a new snowmobile. "Young men jump on a plane to Anchorage to get \$200 worth of drugs for \$5,000 worth of ivory," says Trigg. Though raw ivory is illegal to sell, it changes hands like currency, buying gas, groceries, drugs, liquor, even airfare. "Some people have turned subsistence into an unrestricted slaughter," says FWS special agent Gary Mowad.

You can find ivory in practically every store in Alaska, and often sealskin, baleen, and walrus penis bones, called *osiki*. In a gift shop of the Hotel Captain Cook in Anchorage, next to a \$2,000 walrus trophy head is an *osiki*, for sale for \$135, in a locked case. What are they used for? "Conversation pieces," says the salesman. "That's it."

The unlawful killing of marine mammals is difficult to track, but agents say the take is widespread. Valuable skins of sea otters are surfacing around the world through a quiet, lucrative black market. Some buyers pay huge amounts for live sea otters for their aquariums. Agent Soroka recently seized 13 polar bear skins from one individual in Anchorage who was selling them for as much as \$4,000 each.

To protect its wildlife, the nation has fewer than 200 federal agents and about 7,000 state officers—about half the Chicago police force. "Knock one bad guy down and ten step forward," says FWS agent Terry Grosz. "I think Custer had better odds."

THERE ARE SUCCESS STORIES. Creatures have survived illegal pillage and made strong comebacks when enough human resources were directed at a single species. Poaching threatened the survival of the American alligator two decades ago, but continuous law-enforcement operations and closely monitored harvest and trade controls brought it back. Hunters—who almost poached themselves out of a market—were making only \$2.50 a linear foot in an illicit skin trade controlled by buyers. Now, legally, they make more than \$60 a foot for the skin, and one skin averages seven to eight feet.

The black market hasn't stopped completely, but, says FWS agent Dave Hall, "alligators are plentiful again. People can look back and see how harmful and unproductive poaching really was."



Agents say people are responding; poaching hot lines in every state have become major sources of information. If the drain on wildlife is to be reversed, it is this kind of grass-roots intervention that will be the most effective.

States are working to strengthen penalties and standardize laws to prevent the smuggling of animal products. Artists like Bill Pease on Montana's Crow Indian Reservation are making bear claws, teeth, elk antlers, and skulls from plastic resin. A Japanese pharmaceutical firm is working on a synthetic substitute for bear galls.

A hope for the future is the National Fish and Wildlife Forensics Laboratory, which is dedicated to suppressing world wildlife crime. In its storeroom—like seizure rooms in every fish and game office throughout the country—the shelves are piled high with thousands of seized animal products, many from endangered species. In Ashland, Oregon, top scientists in many fields, including chemical analysis, serology, and morphological studies like feather

National Geographic EXPLORER will rebroadcast its four-part series "Wildlife Wars U.S.A." during November, on Sunday nights at 9 p.m. E.T. on TBS SuperStation.

Arrested at a Montana airport in 1989, this poacher and three partners pleaded guilty last June to shooting more than the legal limit of antelope. As wildlife agents and prosecutors scramble to bring violators to justice, most poachers go undetected, leaving America's wildlife on the run and under the gun.

identification, have come together to work for what they call "a new lab in a new frontier."

By this autumn, evidence analysis will be able to trace a tanned, dyed, and glued leather purse back to the animal; identify cut and frozen meat; trace a bloodstain to a specific deer. The lab's mission is to strengthen legal cases; in the past the difficulty of proving the origins of animal products has stymied cases against poachers.

"We have a time limit. It makes us anxious," says Miami FWS agent Dean Freeman. "When we're talking about wildlife, we're talking about something our children might not see." Poachers take away more than the animals; they take away a freedom for lawful hunters and undermine an already precarious natural balance. They take beauty and leave only waste. □

National Geographic, September 1991



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