

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2178 SCOMM 83: HOUSE SPECIAL COMM. INTL. TRADE & TOURISM, 1991-92 196

Application of The Port Authority of New York and New Jersey (Continued)

Item 9: Q XPORT does not sell any goods, wares or merchandise in the United States.

Q Total revenue from providing export facilitation services by XPORT in the United States was \$427,398 in 1987 and \$674,498 in 1988 and \$513,957 in 1989. (Source of information: internal records of XPORT).

{ We have no information as to the value of goods, wares, merchandise or services sold in the United States by the firms serviced, or to be serviced, by XPORT.

Item 10:

Although the Port Authority currently enjoys immunity from the antitrust laws under the "state action" doctrine and the Local Government Antitrust Act of 1984, the Port Authority wishes to be certified in recognition that XPORT:

- AB 10
- a. requires that exporters using its services to sign exclusive contracts allowing XPORT to be the sole export intermediary for sales to specified markets and to export through the Port of New York.
 - b. signs exclusive distributorships with overseas export intermediaries which require a foreign distributor not to handle competing products.
 - c. signs exclusive arrangements with its clients that require XPORT not to represent directly competing companies.

11 Item 11: XPORT's activities do not involve agreements or exchanges of information among suppliers of the same or similar products or services with respect to domestic prices, production, sale or other competitively sensitive business information.

Application of The Port Authority of New York and New Jersey (Continued)

Item 12: *Handwritten: Actual situation may be different*
 The Port Authority does not intend or reasonably expect that any of the goods or services handled on behalf of XPORT's clients will re-enter the United States, in either original or modified form.

Item 13: At present XPORT represents approximately 70 New York and New Jersey firms who are primarily new-to-export or new-to-market. This number is subject to change.

Item 14: Application Summary:

The Port Authority of New York and New Jersey provides, through XPORT, its export trading company, as an export trading intermediary, export trade facilitation services which include, but are not limited to: consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, trade documentation, freight forwarding, communication and processing of foreign orders, warehousing, foreign exchange and financing.

The Port Authority of New York and New Jersey wishes to be certified in recognition that XPORT:

- a. requires that exporters using its services to sign exclusive contracts allowing XPORT to be the sole export intermediary for sales to specified markets and to export through the Port of New York.
- b. signs exclusive distributorships with overseas export intermediaries which require a foreign distributor not to handle competing products.
- c. signs exclusive arrangements with its clients that require XPORT not to represent companies in the same industry.

Item 15: None

XPORT

PORT AUTHORITY TRADING COMPANY

World Trade & Economic Development Department

XPORT Trading Company
One World Trade Center, 635
New York, New York 10048

Fax: 212-432-0297
212-839-0530

Telex 427346 NYAND N

TO: WTC, Anchorage
ATTENTION: Coralyn Depalatis
FROM: Herbert Dwyer
DATE: February 7, 1990

Number of Pages 9
(Including this one)

As you requested!

1. The Port Authority of New York and New Jersey (hereinafter referred to as the "Port Authority") doing business as "XPORT Port Authority Trading Company" hereby offers on the terms provided herein, to act as Export Marketing Representative for _____ (hereinafter referred to as "you") in connection with sales of your products specified in Schedule A (the "specified products") attached hereto which are made to buyers in any of the geographical areas specified in Schedule A (the "specified areas").

2. In order to increase the likelihood that the compensation to be paid under this Agreement will be sufficient to help defray at least a portion of the expenditures made by the Port Authority in reliance on this Agreement to promote sales of the type described in paragraph 1 hereof, you hereby represent that during the term of this Agreement no person, firm, corporation, association or other entity is or will be authorized by you to act as an export marketing representative in connection with such sales either in place of or in addition to the Port Authority; that the terms of any such sale of the type described in paragraph 1 hereof, including but not limited to the prices, discounts, warranties and delivery terms, shall be at least as favorable as the terms of sale by you of the same type of products to wholesalers or distributors in the continental United States, i.e., all states except Alaska and Hawaii; and that you will notify the Port Authority in writing at least thirty days in advance of any change in the prices or other such sale terms, the result of which would be to make the sale less favorable to a prospective buyer than the terms of sale which you previously authorized the Port Authority to offer to prospective buyers.

3. This Agreement shall be effective as of the date of its execution by the Port Authority and, unless previously

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terminated in accordance with the provisions of this Agreement governing termination, shall continue until

4. The Port Authority shall, through such marketing techniques as it may deem appropriate, endeavor in the specified areas which it may deem appropriate to procure orders for purchase of the specified products (herein referred to as "purchase orders"). The Port Authority makes no representation or guarantee that it will in fact procure such purchase orders, nor shall the Port Authority by virtue of its referring to you a prospective buyer or transmitting to you a purchase order be deemed to guarantee either the credit status of or payment or other performance by such buyer.

5. You shall cooperate with the Port Authority in the effectuation of its obligations under this Agreement.

6. The Port Authority may perform its obligations under this Agreement either through its employees or through its duly authorized agent(s), subsidiary(ies) or assign(s).

7. You shall promptly notify the Port Authority of all inquiries, leads or orders of any nature whatsoever concerning sales of the type described in paragraph 1 from prospective buyers of the specified products or from others (including but not limited to purchasing missions or agencies of the United States Government or any foreign government). Moreover, you shall at no cost to the Port Authority furnish to it for use in promoting the specified products, appropriate samples, catalogs, brochures, technical and pricing data and other marketing aids which you customarily furnish to distributors or sales representatives. In addition, at the request of the Port Authority, you shall furnish to prospective buyers, of your products, at no cost to the Port Authority or the prospective buyer, samples of products requested. As of a date sixty (60) days from the date of execution of this Agreement, all advertisements as well as all samples, catalogs, brochures, technical and pricing data and other marketing aids which promote the sale of the specified products and which are intended for distribution to any of the specified areas, shall identify XPORT

X Port Authority Trading Company, a service of The Port Authority of New York and New Jersey, as your exclusive Export Marketing Representative.

X 8. Any information given to the Port Authority, its employees, agents, subsidiaries or assigns in connection with this Agreement, either before or after execution of this Agreement and whether orally or in writing, is not given in confidence and may be used or disclosed to others for any purpose and at any time without liability of any kind whatsoever. This provision is not intended, however, to grant to the Port Authority rights to use any matter which is the subject of existing or future valid letters patent. Any statement in conflict with this provision whether made as part of or in connection with any information received from you, shall be void and of no effect.

9. The Port Authority shall transmit to you such purchase orders as it may procure from prospective buyers. You shall have the right to accept or reject such orders. Acceptance shall be effectuated by means of a communication directly from you to the prospective purchaser within such time period as is stipulated by or acceptable to such purchaser. You shall immediately notify the Port Authority of your acceptance of any such order. The Port Authority shall not be a party to any contract resulting from such acceptance.

10. During the term of this Agreement you shall immediately notify the Port Authority of your intent to market during such term any new or modified products substantially the same as those specified in Schedule A. Such notification shall include a brief description of the new or modified product as well as the date(s) of its availability for sale. As of the date of availability for sale of such new or modified product it shall be deemed to be included in Schedule A.

11. You shall, for each sale of the type described in paragraph 1 hereof made during the term of this Agreement or within one year following expiration or termination of this Agreement, within fifteen (15) days of your receipt of full or partial payment by the buyer, pay to the Port Authority a fee of

X * of the Sales, Price, F.A.S. Vessel Port of New York; such fee to be computed by applying the above rate(s) of commission against each such full or partial payment received by you. The Port Authority shall be entitled to the same fee on any sales of the type specified in paragraph 1 hereof, irrespective of whether the Port Authority was instrumental in making such sale or obtaining a purchase order for such goods. As used herein "Sales Price" shall mean the final price agreed upon between you and the purchaser, less the applicable discount(s) and F.A.S. Vessel Port of New York. Sales, if any, expressed in currencies other than United States dollars shall be converted to United States dollars as of the date of issuance of the bill of lading or other document of title. In addition to commissions on sales, you shall within fifteen (15) days of your receipt of the Port Authority's invoice therefor pay to the Port Authority any other costs or expenses which may be specifically reimbursable to the Port Authority under this Agreement.

12. During the term of this Agreement and for one year following its expiration or termination, commencing within sixty (60) days of the execution of this Agreement by the Port Authority and every thirty (30) days thereafter, you shall certify to the Port Authority in writing all sales includible in the computation of the Port Authority's fee hereunder which have been made during the previous 30 or 60 days, as the case may be. Such certification shall include a computation of the fee earned by the Port Authority hereunder on each such sale and shall separately identify for each such sale, the Sales Price, any applicable discounts, a brief description of the product, the date of sale, and the date on which you received any payment from the buyer. In addition, such certification shall separately state for the period covered by it the total of all sales made which originated with purchase orders transmitted by the Port Authority to you, as well as the total of all other sales includible in the computation of the Port Authority's fee hereunder.

13. The Port Authority shall have the right to inspect all records, receipts, accounts, purchase orders, bills of lading, invoices, bills of sale, letters of credit, delivery tickets or any other documents pertaining to any compensation

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payable to it hereunder. Such records, receipts, accounts, purchase orders, bills of lading, invoices, bills of sale, letters of credit, delivery tickets or any other documents shall be maintained by you within the States of New York or New Jersey for a period of two years after expiration or termination of this Agreement.

14. No acceptance of any payment hereunder shall estop the Port Authority from showing at any time that such payment was incorrect or preclude the Port Authority from recovering any money due and owing in excess of that paid.

15. The Port Authority shall use reasonable efforts to assist you in arranging for shipping, insurance, financing and other documentation or arrangements required for export in connection with sales of the type described in paragraph 1 of this Agreement. You shall pack or crate each shipment in a condition appropriate for export handling.

16. You shall indemnify and hold the Port Authority harmless from any and all claims, demands, actions and causes of action whatsoever, arising directly or indirectly from transactions under this Agreement, and for all expenses incurred by it including attorneys' fees, in defending any such claims, demands, actions and causes of action.

17. You shall not assign, transfer, convey, subcontract or sell or otherwise dispose of this Agreement or any part thereof without the prior written consent of the Port Authority. Any attempt by you to do so shall be void as against the Port Authority.

18. Except for those to whom this Agreement may be assigned, transferred, conveyed, subcontracted, sold or otherwise disposed of in accordance with the terms of this Agreement, nothing contained in this Agreement is intended for the benefit of any person or entity other than you and the Port Authority.

19. The validity, performance and all matters relating to the interpretation and effect of this Agreement and any

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amendment thereto shall be governed by the internal substantive law of the State of _____

20. The Port Authority may, at any time, in its sole discretion and with or without cause, terminate this Agreement as to any service not yet rendered, such termination to be effective upon your receipt of written notification.

You shall have the right to terminate this Agreement 1) at any time provided just cause exists therefor, or 2) at the times and subject to the conditions indicated in the following:

- a. If during the period 1985 to 1986 gross sales of your products made under this Agreement do not reach the amount of _____ you may terminate by notifying the Port Authority thereof after 1986 and prior to 1986, such termination to be effective upon the Port Authority's receipt of such notification;
- b. If during the period 1986 to 1987 gross sales of your products made under this Agreement do not reach the amount of _____ you may terminate by notifying the Port Authority thereof after 1987 and prior to 1987, such termination to be effective upon the Port Authority's receipt of such notification;
- c. If during the period 1987 to 1988 gross sales of your products made under this Agreement do not reach the amount of _____ you may terminate by notifying the Port Authority thereof after 1988 and prior to 1989, such termination to be effective upon the Port Authority's receipt of such notification.

In computing the amount of sales for the purpose of this provision dealing with termination, all sales made as of the dates specified herein shall be included, whether or not payment has yet been received. Termination by either party shall be by certified letter addressed to the other at its address set forth herein.

21. Neither party shall be liable for any failure, delay or interruption in carrying out its obligations under this Agreement if such failure, delay or interruption is caused by war, civil unrest, fire, flood, labor strike or other causes beyond its reasonable control.

22. In the event of expiration or termination of this Agreement for any reason, you shall promptly pay to the Port Authority an amount representing all fees and reimbursable expenses to which the Port Authority may be entitled as of the date of such expiration or termination, notwithstanding that delivery of and payment for the products sold, on which such amount or any portion thereof is based, may occur after such expiration or termination.

23. No Commissioner, officer, agent or employee of the Port Authority or any subsidiary of the Port Authority now existing or which may hereafter be created shall be charged personally by you with any liability or held liable to you under any term or provision of this Agreement or because of its execution or attempted execution or because of any breach.

24. The entire agreement between the parties shall consist only of this letter and accompanying Schedule A. No change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable against either of the parties unless it is in writing and signed by the party to be charged therewith or his duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.

25. In order to effectuate the policy of the Port Authority, you shall comply with all provisions of any treaty to which the United States is a party or of any federal, state, municipal, local and departmental laws, ordinances, rules, regulations and orders, if such provisions would affect sales transactions hereunder and those engaged therein if this Agreement were between you and a private corporation, except where stricter requirements may be contained in this Agreement.

26. If any provision of this Agreement shall be such as to destroy its mutuality or to render it invalid or illegal, then if it shall not appear to have been so material that without it this Agreement would not have been made by the parties, it shall not be deemed to form part hereof but the balance of this Agreement shall remain in full force and effect.

If the foregoing meets with your approval, please indicate your acceptance by signing this copy and one of the enclosed copies of this letter in the lower left hand corner and returning them to the Port Authority addressed to the attention of the Director of the World Trade Department.

Sincerely,

Stephen Berger
Executive Director

ACCEPTED:

By: _____

Title: _____

Date: _____

Pacific Northwest Export Assistance Center

Abstract



A Proposal by
Senator Emilio Cantu



November 1, 1990

Introduction

This study was undertaken to provide the needed catalysts for getting our small manufacturers involved in the international economy. Washington state should provide an optimum level of comprehensive export assistance so our small manufacturers can enter and compete in global markets.

This extensive examination of U.S. and foreign export services shows the Port of New York and New Jersey X-PORT program provides the most successful model for replication in Washington state.

Several national publications have reviewed X-PORT very favorably since its creation. Publications such as *Nations' Business*, *Business America*, and *U.S. News and World Report* have all written about X-PORT and its innovative approach to economic development.

X-PORT received the U.S. Department of Commerce's "E" Award for Excellence. Presented by President Ronald Reagan on May 19, 1986, the award was in recognition

of "outstanding contributions to the increase of U.S. trade abroad."

In September 1990, X-PORT accepted the Innovations in State and Local Government Award administered by Harvard University for the Ford Foundation.

David Osborne states, "The best of the state export programs appears to be the New York/New Jersey Port Authority's export trading company . . . Exporting is so difficult that small and medium sized firms need more than advice; they need comprehensive services over a period of time."

The Pacific Northwest Export Assistance Center (PNEAC), proposed in this report, is the adaptation of the X-PORT model to our region.

Washington's Changing Economy

Washington's economy is in a period of rapid transition. The state's industrial competitiveness and high living standards are no longer measured solely within a national context. Rather, an ability to compete in global markets will determine the future prosperity of Washington state's business community.

One of Washington's largest industries, forest products, is an excellent example of our changing world. The spotted owl ruling threatens to reduce timber related employment. The Employment Security Department forecasts the loss of 21,330 direct and indirect forest related jobs in Washington state. 30% of these workers are ineligible for unemployment insurance benefits. This fact

promises to make the economic impact on the state more significant than in a more typical scenario of industrial layoffs. The multiplier effect of lost sales and incomes will have a particularly severe shock on local economies around the state.

Timber communities, and the state in general, would benefit from the development of a globally competitive value-added wood products industry. Small aggressive manufacturing firms could create family supporting jobs in timber communities. Unemployed forest workers could remain in their communities without suffering severe economic hardships. To help this industry expand, the PNEAC assigns two professional trade experts to work with small value-added wood products companies in expanding their exports. Similarly, the PNEAC assigns one marketing specialist to each of the following Department of Trade and Economic Development (DTED) targeted industries: computer and peripherals, food processing, and biomedics.

For a complete copy of the report, contact:
Mr. Forrest Bathurst
Associate Analyst
Washington State Senate
Economic Development & Labor Committee
410 John A. Cherberg Building; MS: QW11
Olympia, Washington 98504
(206) 786-7429

This proposal is an effort to help the small manufacturing community address prominent needs as stated in recent government sponsored studies. The PNEAC channels tax dollars back into a focused, efficient, innovative, and accountable program that helps small manufacturers enter foreign markets with minimal commercial and political risk.

Trends in International Trade

If manufacturing employment continues to decrease in the U.S., many of our key industries will not be able to provide high paying jobs to future generations. As a result, we may find we are increasingly dependent on the growth of smaller globally competitive manufacturing firms for our economic health.

International trade has grown dramatically during the last twenty years. Washington state's foreign trade has increased from \$12.5 billion in 1978 to an excess of \$60 billion in 1989.

With this growth, trade has become an even more integral part of the state's economy. Today, one in every six Washington workers depends on exports for their livelihood.

Despite this increase in trade, Washington state's exports nosedive when transportation equipment and forest products are taken out of the trade figures. Trade with Japan falls by 58%, the United Kingdom by 84%, South Korea by 60%, West Germany by 75%, and so on. This shows, in part, how dependent Washington state is on transportation equipment and forest products for international trade.

Due to the end of the cold war, commercial strategy is quickly becoming the major topic of political debate. Nations are focusing on expanding their capacity to compete in global consumer and industrial markets. International economic competition is becoming increasingly fierce. Countries are fighting for industrial supremacy, technology, control of markets,

and monetary strength. Nations that are successful in building trade capacity and implementing well designed strategic plans for opening foreign markets will be the winners of future global economic battles. The United States, like any nation today, will improve or surrender its standard of living based on its ability to penetrate foreign markets with value added goods.

Washington State's Role in Export Promotion

Washington state cannot control the international environment, nor can it manage our nation's foreign policy. However, Washington state can strive to provide small manufacturing firms with comprehensive, efficient, accountable, and professional trade services. Most of our international competitors provide comprehensive trade services, they are successful, and we can learn from them. We should study our competition, as our

competitors examine us. The state has a responsibility to its citizens to carefully select and experiment with elements of national and international trade promotion models that benefit our small business community.

This feasibility study has designed an innovative export program for Washington's small manufacturing businesses. It replicates elements of tested national and international models while being tailored to the specific needs of our region.

The program's goals are two-fold. First, the PNEAC helps diversify our economy and reduce risk associated with our heavy reliance on the transportation equipment and forest products industries for export products. Second, it helps small manufacturers compete in growing foreign markets with minimal commercial and political risks. It improves our state's standard of living and helps create secure family supporting jobs for future generations.

Is There a Need For a Comprehensive Public Export Promotion Program?

In approaching the challenges and opportunities presented by international trade, it was very important that the needs of our small manufacturers were identified. It was also necessary to analyze the ability of existing trade programs to provide coordinated, comprehensive, effective, and accountable services.

The PNEAC provides the types of services most often requested by small businesses. Its comprehensive export services are easily accessible in one location. Its clients do not have to find and coordinate several different trade programs at once. The PNEAC provides comprehensive services so small manufacturers can focus on their primary mission, producing quality value-added products that meet the needs of foreign markets.

Studies show the small business commu-

nity frequently requests certain kinds of help. These include: international financial counseling, selecting foreign distributors, writing international business plans, completing export documentation, setting up export networks, and introductions to incoming foreign buyers.

The PNEAC is one export program that provides all of these services. It helps clients select appropriate public and private export services and leads them through the maze of trading requirements. It helps determine the types of trading services most beneficial to a firm. The PNEAC helps select the most effective delivery programs and export networks.

This proposal balances the need for comprehensive and targeted services with fiscal restraint. The program charges commissions and fees for its services. It recovers its operating costs through fees and increased tax receipts tied to new business income and payroll.

Perhaps most important, the PNEAC is a catalyst to unite the various existing trade related services into a

cohesive unit. The PNEAC enables them to act cooperatively and efficiently in the overseas promotion of Washington's goods and services.

This proposal responds directly to the recommendations in the Final Report of the Governor's Conference on Small Business. As recommended by small business participants, there is a need for a comprehensive and targeted international trade promotion program.

The Final Report of the Governor's Conference on Small Business

The final report on the Governor's conference on small business lists export and import challenges as the third major issue out of sixty discussed. These issues highlight current obstacles faced by small businesses in responding successfully to trading opportunities. There was broad and intense discussion of these issues. The goal of the participants was to develop five recommendations,

that if addressed by the state, would improve the ability of small businesses to meet the challenges of international trade.

The PNEAC addresses each of these major issues:

- 1) Improving access for small businesses to trade information and services. Participants wanted an aggressive, consistent, proactive system directed at small business. Small businesses are asking the state to improve the availability of contacts, information, and services.
- 2) Improving the marketing of the state's products and services abroad. Specifically, small businesses are asking the state to enhance the allocation of resources devoted to export promotion. Small businesses need better coordination of trade shows and missions between departments, and they ask for new, targeted, trade promotion activities.
- 3) Recognize the state is part of a global economy. The state must internationalize its education

and language curriculum.

- 4) The commercial banking system does not adequately serve the special needs of small business exporters. Small businesses recommend the state's constitution be amended to allow for loaning the state's credit. This would enable a state export finance authority to support small business export sales.

- 5) The state must improve its product quality and competitiveness for small business by providing better access to technological and financial services, access to foreign standards information, product certification procedures, and the like.

Pacific Northwest Export Assistance Center (PNEAC)

Administration

The Small Business Export Finance Assistance Center of Washington State

(SBEFAC) manages the PNEAC as a separate demonstration project. The PNEAC's sunset review does not affect the SBEFAC's current export finance operations.

The SBEFAC is chosen to manage the PNEAC pilot project due to superior operating, product-market, and management fit. Our research indicates the SBEFAC has the best potential of offering these services skillfully and cost effectively.

Counseling & Services

Counseling and services include:

- 1) Helping clients get debt or equity financing, in constructing competent business proposals, and assessing federal guarantee and insurance programs that underwrite exporting risk.
- 2) Helping clients in evaluating their international marketplace by selecting and testing foreign markets, and developing tailored export marketing materials.
- 3) Aiding firms in finding foreign

customers by conducting foreign market research and testing distribution systems. It helps select and negotiate with foreign agents, distributors, and retailers. The PNEAC helps promote products by attending trade shows abroad.

- 4) Advising companies on their products, guarantees, and after sales service requirements necessary to compete effectively in a foreign market.

- 5) Designing a competitive strategy for a firm's products in targeted markets, and providing professional advice on methods of reducing commercial and political risks.

- 6) Securing for clients specific help as needed, outside the PNEAC's expertise, by referrals to other public or private organizations.

Clients

The PNEAC has a focused mission. The project helps 40 small to medium sized manufacturing firms relatively new to exporting. 90 percent of each annual cadre of

clients must have gross annual revenues below \$5 million at the time of their initial contract. No new PNEAC client may have gross annual revenues over \$25 million at the time of their initial contract.

The PNEAC will phase in its full client load over a three year period. The project will select 13 new clients each year during the first two years of operation, and 14 new clients in the third year. In this manner, there are spaces available for new clients each year.

The PNEAC relies on ADO's, Ports, and the Departments of Trade and Economic Development and Agriculture to provide lists of potential PNEAC clients.

Marketing Contract

The PNEAC signs a three year marketing contract with clients. Contracts are not renewable unless there are compelling reasons to do so. No contract can be renewed beyond an additional two years. Contracts have mutual performance clauses, that if not met, are grounds for releasing each

party from its provisions.

The PNEAC will release any client from its contract if the client requests a transfer and produces a valid contract from a private export management firm.

Grants

The PNEAC offers an annual \$2,500.00 education grant to each client. This grant is to enable employees to attend courses and seminars related to international trade and market development. As suggested in the Final Report of the Governor's Conference on Small Business, the state must internationalize education. It is undeniably in the public's best interest to have a growing number of small businesses in Washington state that are skilled in global trade. These grants encourage small business people to develop their foreign marketing skills by studying trade in a continuing formal setting.

The PNEAC offers grants for each client to attend one foreign trade show per year. The PNEAC provides an \$85 per day allowance for the duration

of the fair. This includes one day for setting up and dismantling, and two days for travel. The PNEAC provides 50% of the cost for space rental, designing, erecting, and dismantling an exhibit. It pays for half of one round trip economy air fare. Clients are responsible for all shipping costs of products to and from the trade fair.

Trade shows and missions are excellent ways to make contacts in foreign markets. Our study indicates that trade shows and missions are the single most important part of a small business export promotion strategy. This is one of the most frequently requested services by small businesses. Foreign trade shows provide an opportunity for small businesses to experience a foreign market firsthand, see their competition, display their products, meet potential distributors, and build sales. The PNEAC will work closely with the Washington State International Trade Fair Association in selecting and arranging for clients to participate in trade shows.

Budget

The suggested biennial appropriation for the SBEFAC is \$3,029,266.00. This enables the SBEFAC to continue offering its export finance services while providing the PNEAC's comprehensive export assistance program.

The phase in of PNEAC clients over a three year period requires an appropriation of \$1,744,121.00 for the first biennium of operation (\$668,318.00 for year 1; \$1,075,803.00 for year 2), and the full biennial appropriation of \$3,029,266.60 for the third and fourth years of operation.

Commissions & Fees

The PNEAC charges clients for its services. The President of the SBEFAC, in consultation with its Board of Directors, sets fee and commission rates. Fees and commissions are charged only after a sale is completed and the client is paid. Commissions and fees are deposited in the state's general fund.

The PNEAC minimizes its cost of operation to the taxpayers of Washington

state. Like the New York/New Jersey Port Authority program X-PORT, the PNEAC is expected to recover approximately 30% of its annual operating budget through commissions and fees by its sunset review in 1997. The remaining portion of its total cost is recovered through increased tax revenue tied to new business payroll and revenues.

Accountability

The PNEAC inherits the SBEFAC's detailed accounting system. The SBEFAC system provides detailed statistics on its economic development benefits to the State of Washington.

The PNEAC reports annually to the Governor and the proper Legislative oversight committees. The PNEAC provides evaluation criteria that are: 1). pre-established, 2). specific, 3). pertinent, 4). objective and verifiable, 5). goal oriented, and 6). quantitative and qualitative in nature.

As a precondition for participating in the PNEAC project, potential clients must agree to complete annual qualitative surveys. These surveys mea-

sure the project's general performance in helping clients penetrate foreign markets.

The SBEFAC will work with the Department of Revenue and the Employment Security Department in tracking the export performance of each PNEAC client over their contract period. The Department of Revenue and the Employment Security Department will prepare an annual quantitative report on the costs and benefits of operating the PNEAC. All information coming from PNEAC clients is confidential and will not be used in a way that identifies any specific firm.

Annual quantitative reports from the Departments of Revenue and Employment Security will provide an objective review of the pilot project's performance. The reports will provide PNEAC management with information needed to keep the program focused and accountable. The Department of Employment Security will periodically publish articles on the pilot project in their magazine Labor Management Review.

Both qualitative and quantitative evaluation procedures will collect data over the PNEAC's trial period. This is the basis on which the Legislature can impartially extend or sunset the project.

Sunset Review

A sunset review is scheduled for the sixth year of the PNEAC's operation. Consistent with the New York/New Jersey X-PORT program, the PNEAC is evaluated partly on its progress toward recovering its annual operating budget.

However, the major emphasis for PNEAC evaluation is its ability to show both quantitative and qualitative increases in export volumes of contracted clients.

As mentioned before, the PNEAC is separate from the SBEFAC. As such, the SBEFAC's export financing mission is not affected if the Legislature discontinues the PNEAC.

Relationship with Private Export Services

The PNEAC does not compete with private

sector export management or freight forwarding companies. The Department of Revenue estimates there are 9,940 manufacturing firms in targeted two digit SIC codes with annual revenues below \$5 million. Of these, only 12% (1,275 firms) are now exporting. 8,665 firms do not export. This bolsters the argument there is a sufficient number of small manufacturers in Washington state for both private and public export services.

These figures indicate the PNEAC targets manufacturing firms that are unattractive to private export services due to low volume or inexperience in foreign markets. Private sector export service firms are not willing to incur high market development costs associated with assisting a large number of small firms.

The PNEAC's goal is to transform a portion of these non-exporting small manufacturers into attractive potential customers for private sector export management firms. We believe the program will do so, just as X-PORT is doing today.

Whenever possible, the PNEAC will arrange for the private sector to provide export services for its clients. The project does not compete with private sector providers. It helps them by being a clearinghouse for their services. It forms a genuine public/private partnership for increasing Washington state exports.

The PNEAC opens new export markets for small to medium sized firms that cannot assume the high risks of going global without the help of experts. It targets our state's small manufacturers. It increases the pool of potential clients for private export managers. It creates jobs, helping labor unions and the general public. It increases incomes, helping retailers and service industries. The PNEAC improves the overall economic health of Washington state by numerous secondary effects tied to increasing the sale of our products in growing foreign markets.

Cost Recovery of the PNEAC Project

The citizens of Washington unques-

tionably demand fiscal responsibility from state government. A new era of financial accountability lies ahead for state government as it is forced to operate more efficiently with finite resources.

Fiscal responsibility requires that the costs and benefits of public services are carefully analyzed before new programs are implemented. Government services should be designed so tax rates do not need to be raised incrementally to pay for them. New economic development programs, whenever possible, should be created only if they are capable of recovering their costs within a reasonable time period.

The PNEAC pilot project is fiscally responsible and self-supporting. The program recovers its cost of operation through the collection of fees, commissions, and indirect revenues tied to new business receipts and payroll. It does not require increasing tax rates to pay for the program. Taken independently, the PNEAC pilot project begins recovering its cost of operation immediately and is completely self-sup-

porting within a reasonable period of time.

In many cases, American businesses look favorably on projects having a two to five year time frame for reaching a break even point (BEP). A BEP is the level of activity at which total revenues and total expenses are equal. In comparison to U.S. practices, many of our major foreign competitors undertake projects with BEP's as far out as 15 years. In addition to having much longer time frames, direct government subsidies and counter trade guarantees are provided by foreign governments to further encourage their firms to undertake risky international projects.

There are many reasons for short term American planning horizons, and all are beyond the scope of this study. However, the inability of American business and government to plan for the long term is frequently cited as a reason U.S. firms are not competitive in global markets. A primary objective in designing the PNEAC pilot project was to guarantee the program

reached a BEP consistent with the planning practices of our major international competitors.

The PNEAC pilot project is forecasted to reach its BEP within eight to twelve years. This estimate is thought to be quite conservative by some international trade experts reviewing the proposal. The methodology used in this analysis also tends to understate the potential of the project to recover its costs. In fact, some suggest the BEP may be reached as early as four to six years. Regardless of whether the point is eight or twelve years, this time range is consistent with the strategic international planning practices of our major foreign competitors.

As with all forecasting, these projections will undoubtedly be influenced by changing economic conditions and imperfect assumptions. However, it is hoped this type of analysis will become more commonly used by state government in analyzing the impact new and existing programs have on the state's general fund. Also, it is hoped those

interested in this project will critically review this methodology and come forward with new information for analysis if necessary.

Committee Minutes 5/8/91 on HB249

CHAIR MOYER ANNOUNCED THAT THE COMMITTEE WOULD NEXT HEAR HB 249 AND ASKED REPRESENTATIVE ROBIN TAYLOR TO TESTIFY.

NUMBER 060

ROBIN TAYLOR, PRIME SPONSOR OF HB 249, BRIEFLY EXPLAINED THE INTENT OF THE LEGISLATION. HOUSE BILL 249 ESTABLISHES A SMALL BUSINESS EXPORT TRADING CONSORTIUM IN THE WORLD TRADE CENTER ALASKA OF THE UNIVERSITY OF ALASKA ANCHORAGE. THE CONSORTIUM IS INTENDED TO ASSIST SMALL BUSINESSES ENTER THE COMPLEX WORLD OF INTERNATIONAL TRADE.

NUMBER 144

DR. JOHN CHOON KIM, EXECUTIVE DIRECTOR, UNIVERSITY OF ALASKA WORLD TRADE CENTER, TESTIFIED IN FAVOR OF HB 249. HE SAID THAT ALASKA'S EXPORTS HAD DRAMATICALLY INCREASED IN THE PAST FOUR TO FIVE YEARS. THE INTERNATIONAL TRADE ADMINISTRATION IN THE US DEPARTMENT OF COMMERCE, THE OFFICE OF INTERNATIONAL TRADE, THE ALASKA CENTER FOR INTERNATIONAL BUSINESS AND THE WORLD TRADE CENTER HAVE PLAYED KEY ROLES IN INCREASING ALASKA'S EXPORT ACTIVITIES.

THE WORLD TRADE CENTER ALASKA (WTCA) HAS ITS HEADQUARTERS IN THE NEW YORK WORLD TRADE CENTER WHICH HAS A VAST INTERNATIONAL TRADE NETWORK TO PROVIDE INFORMATION FOR SELLERS AND BUYERS. ALASKA CENTER FOR INTERNATIONAL BUSINESS (ACIB) HAS A WELL-KNOWN INSTRUCTIONAL PROGRAM ON CONDUCTING BUSINESS INTERNATIONALLY. LAST MONTH ALONE, THE ACIB TRAINED MORE THAN 350 PEOPLE AND LAST YEAR, 2,500 PEOPLE FROM AROUND THE STATE. THE ACIB ALSO CONDUCTS WORKSHOPS AND SEMINARS AROUND THE STATE. IN TERMS OF RESEARCH, THE ACIB MAINLY FOCUSES ON MARKET ANALYSIS OF THE PRODUCTS TO BE SOLD IN FOREIGN MARKETS. THE ACIB ALSO HAS ONE OF THE BEST DATA BASES AMONG THE UNIVERSITIES IN THE NATION.

DR. KIM PASSED OUT A SAMPLE OF THE TYPE OF INFORMATION ACCESSIBLE THROUGH THE ACIB'S DATA BASE. DR. KIM FELT THERE COULDN'T BE A MAJOR RISE IN EXPORTS UNLESS A LOT OF EFFORT IS EXERTED TOWARD ADDING VALUE TO COMMODITIES BEFORE THEY ARE EXPORTED. IN ORDER TO ACHIEVE VALUE-ADDED EXPORTS, ALASKA NEEDS TO INCREASE INVOLVEMENT OF SMALL AND MEDIUM-SIZED BUSINESSES. DR. KIM STRESSED THAT VALUE-ADDED PRODUCTS INCREASE JOBS AND PROFIT-MARGINS. TIMBER, FISHERIES, AND OTHER PRODUCTS ALASKA CURRENTLY SELLS, OFFER THE BEST MARKETS FOR ADDING VALUE TO ALASKAN PRODUCTS.

DR. KIM REITERATED THAT EXPORTS ARE THE KEY TO DIVERSIFYING ALASKA'S ECONOMY AND EXPANDING ITS ECONOMIC BASE. DR. KIM CITED LACK OF NECESSARY INFORMATION AND TRAINING AS ONE OF THE MAJOR REASONS WHY SMALL BUSINESSES AREN'T SUCCESSFUL IN ALASKA. SMALL BUSINESSES CAN'T AFFORD TO HIRE CONSULTANTS

TO CONDUCT INTENSE MARKET ANALYSES AND TRAIN THEIR EMPLOYEES. DR. KIM SUGGESTED THAT WELL-TRAINED SPECIALISTS BE PLACED IN DIFFERENT REGIONS AROUND ALASKA TO CONDUCT ON-SIGHT TRAINING OF ALL ASPECTS OF PRODUCING, DEVELOPING AND SELLING VARIOUS PRODUCTS.

CHAIR MOYER ASKED DR. KIM ABOUT THE WTC'S CURRENT ABILITIES.

DR. KIM SPOKE AGAIN OF THE WTC'S EXTENSIVE DATABASE. DR. KIM BROUGHT SOME SAMPLES FOR THE COMMITTEE. EVENTUALLY, THE WTC WOULD CONNECT ALL OF THE REGIONS MENTIONED BY A COMPUTER NETWORK WHICH WOULD ALLOW EACH REGION DIRECT ACCESS TO THE CENTER'S INFORMATION. THE WTC WOULD ALSO INVITE MARKETING, FINANCIAL AND INTERNATIONAL TRADE EXPERTS FOR EXTENDED ON-SIGHT SEMINARS.

NUMBER 372

REP. HUDSON ASKED DR. KIM IF THE WTC WORKED CLOSELY WITH ASMI TO MAINTAIN MARKET SHARE OF FISH EXPORTS. DR. KIM RESPONDED THAT HE MET LAST YEAR WITH THE ASMI TO SHOW THEM THE INFORMATION THAT WTC CAN ACCESS. THE ASMI FOUND THE WTC'S INFORMATION VALUABLE AND THE TWO BODIES ARE CURRENTLY WORKING TOGETHER ON SEVERAL PROJECTS. REP. HUDSON EXPRESSED AN INTEREST IN SEEING MORE HANDS-ON HELP AND ASSESSING OF EXPORT BUSINESS POTENTIALS IN THE STATE. HE SUGGESTED THAT A PROFESSIONAL TEAM BE FORMED TO ADVISE SMALL BUSINESSES ON THEIR POTENTIAL IN THE INTERNATIONAL MARKET. DR. KIM AGREED THAT SMALL BUSINESS IS A HIGH RISK AREA AND MOST BUSINESSES CAN'T AFFORD INTENSIVE MARKET ANALYSIS AND ON-SIGHT TRAINING. DR. KIM HOPED THE PROPOSED SMALL BUSINESS EXPORT TRADING CONSORTIUM WOULD PROVIDE THE NECESSARY SERVICES.

CHAIR MOYER THANKED DR. KIM AND ASKED BILL NOLL TO TESTIFY NEXT.

NUMBER 465

BILL NOLL, DEPUTY COMMISSIONER, OFFICE OF INTERNATIONAL TRADE, AGREED WITH DR. KIM THAT ALASKA WAS WITNESSING AN IMPRESSIVE GROWTH IN INTERNATIONAL TRADE ACTIVITIES THROUGHOUT EVERY SECTOR OF THE ALASKAN ECONOMY. MR. NOLL SAID A GROUP CALLED THE EXPORT TRADING CONSORTIUM PREDICTED THAT BY THE YEAR 2000, THERE SHOULD BE AROUND \$10 BILLION IN EXPORTS IN THE STATE OF ALASKA. THE OFFICE OF INTERNATIONAL TRADE SEES ITS MISSION POSSIBILITIES AND RESPONSIBILITIES EXPANDING AS EXPORT ACTIVITY RISES DRAMATICALLY. MR. NOLL DID NOT FULLY ENDORSE FORMING AN EXPORT CONSORTIUM AS DEFINED IN HB 249 WITHOUT FIRST HAVING PUBLIC HEARINGS IN KEY SECTORS OF THE STATE TO FIND OUT WHERE THE ASSISTANCE IS NEEDED.

NUMBER 542

DAN SLABY, MAT-SU ECONOMIC DEVELOPMENT CORPORATION, TESTIFIED IN SUPPORT OF HB 249. MR. SLABY POINTED OUT THAT HB 249 WOULD ENABLE THE WTC TO PROVIDE HANDS ON HELP TO SMALL BUSINESSES. SMALL BUSINESSES DO NOT HAVE THE SUFFICIENT RESOURCES TO RESEARCH THE INTERNATIONAL MARKET OPPORTUNITIES AND TO CONDUCT PRODUCT DEVELOPMENT STUDIES. MR. SLABY ALSO SUPPORTED FINANCIAL ASSISTANCE TO SMALL BUSINESSES ENTERING INTO THE EXPORT MARKET AND LINKING LOCAL BUSINESSES WITH EXPORT MARKET OPPORTUNITIES IN A COMPUTERIZED DATABASE. MR. SLABY SAID THE MAT-SU ECONOMIC

...WANT TO DISCUSS HB 249 AND HE WOULD FORWARD THE COMMENTS OF THE BOARD.

NUMBER 513

RONALD VELTKAMP, ASSISTANT DISTRICT DIRECTOR FOR BUSINESS DEVELOPMENT, SMALL BUSINESS ADMINISTRATION (SBA), TESTIFIED IN FAVOR OF HB 249. MR. VELTKAMP BRIEFLY EXPLAINED THE SERVICES THAT SBA OFFERS AND FELT THE PROPOSED EXPORT TRADING CONSORTIUM WOULD FIT INTO THE GOALS OF SBA ESPECIALLY REGARDING TRAINING AND COUNSELING. MR. VELTKAMP ALSO STATED THAT HIS TRAINING IN INTERNATIONAL TRADE WAS LIMITED AND HE NEEDS A PLACE WHERE HE CAN SEND CLIENTS REQUESTING INFORMATION ON EXPORTS. AN EXPORT TRADING CONSORTIUM WOULD SERVE THIS PURPOSE BY PROVIDING KNOWLEDGEABLE AND QUALIFIED ASSISTANCE TO POTENTIAL EXPORTERS.

NUMBER 626

MIKE TAGLEVENO, EXECUTIVE DIRECTOR FOR THE KENAI BOROUGH ECONOMIC DEVELOPMENT DISTRICT, SUPPORTED HB 249, BUT WAS CONCERNED ABOUT ADDING ANOTHER LEVEL OF BUREAUCRACY.

TAPE 17, SIDE B
NUMBER 038

JIM KOHLER, DIRECTOR, JUNEAU ECONOMIC DEVELOPMENT COUNCIL AND SOUTHEAST CONFERENCE, TESTIFIED IN FAVOR OF HB 249. HE EXPLAINED THAT LAST YEAR, THE JEDC AND THE SOUTHEAST CONFERENCE SIGNED A COOPERATIVE AGREEMENT TO CREATE AN ONGOING EXPORT TRADING CONSORTIUM WITHIN SOUTHEAST ALASKA. THE PROPOSED LEGISLATION WOULD COORDINATE BUSINESSES STATEWIDE INSTEAD OF JUST REGIONALLY. MR. KOHLER FOUND IT CRITICAL THAT THE EXPORT CONSORTIUM WORK IN CONJUNCTION WITH EXISTING BUSINESSES. MR. KOHLER SAID THE CURRENT SYSTEM WAS FRAGMENTED AND THE VARIOUS GROUPS AND RESOURCES NEED TO BE BETTER COORDINATED. THE EXPORT TRADING CONSORTIUM WOULD NEED TO CONCENTRATE ON BUSINESSES THAT ARE ALREADY TRYING TO EXPORT RATHER THAN DREAMING UP NEW MARKETS FOR BUSINESSES.

NUMBER 183

REP. HUDSON ASKED MR. KOHLER IF THE PROPOSED LEGISLATION WOULD ACHIEVE WHAT MR. KOHLER HAD IN MIND.

MR. KOHLER ANSWERED THAT THE LEGISLATION WOULD ACHIEVE STATEWIDE WHAT THE JEDC AND SOUTHEAST CONFERENCE WERE TRYING TO ACHIEVE REGIONALLY. THE LEGISLATION WOULD ALSO PROVIDE THE FUNDING THAT HIS GROUPS WERE LACKING.

NUMBER 212

CHAIR MOYER ASKED WHY THE LEGISLATION PROHIBITED COUNSELING FOR THE IMPORTATION OF FOREIGN GOODS. HE FELT THIS WOULD SOMEHOW LIMIT THE CONSORTIUM. HE CITED TRADE WITH THE SOVIET UNION WHICH OFTEN IS CONDUCTED THROUGH BARTER AGREEMENTS.

NUMBER 240

JOE AMBROSE, LEGISLATIVE AIDE TO REP. TAYLOR, ANSWERED THAT HE DIDN'T KNOW IF THERE WAS A SPECIFIC LEGAL REASON FOR THE PROVISION. HE FELT THE COMMITTEE COULD DISCUSS THE

LEGISLATION IN GREATER DETAIL OVER THE INTERIM.

MR. KOHLER DIDN'T SEE ANY PROBLEM WITH ALLOWING FOR THE IMPORTATION OF FOREIGN GOODS ALTHOUGH OFTEN IT IS EASIER TO ALLOW A CONSORTIUM TO FOCUS ON ONE ASPECT OF INTERNATIONAL TRADE.

DR. KIM FELT THAT BARTER TRADE COULD GENERATE INTEREST IN FOREIGN MARKETS. HE ALSO FELT THE CONSORTIUM SHOULD REMAIN FLEXIBLE TO NEW IDEAS AND TRENDS.

MR. KOHLER SUGGESTED THAT THE CONSORTIUM WOULD HAVE TO REEXAMINE ANTI-TRUST LAWS SO AS NOT TO RUN INTO PROBLEMS LATER.

NUMBER 326

CHAIR MOYER SAID CONSORTIUM COULD COLLECT FEES FOR ITS SERVICES. HE FELT THERE WOULD NEED TO BE IDEAS ON HOW THE CONSORTIUM COULD EVENTUALLY BECOME SELF-SUPPORTING WITHOUT STATE FUNDING.

MR. AMBROSE AGREED AND SAID THE IDEA WAS FOR THE CONSORTIUM TO EVENTUALLY BECOME SELF-SUPPORTING.

CHAIR MOYER ASKED IF THE EXECUTIVE DIRECTOR WOULD REPORT TO DR. KIM.

DR. KIM SAID THE EXECUTIVE DIRECTOR AND PERSONNEL WOULD BE SCATTERED THROUGHOUT THE STATE TO ASSIST SMALL BUSINESSES.

NUMBER 388

CHAIR MOYER ASKED MR. AMBROSE IF THE DCED WOULD BE INVOLVED IN THE CONSORTIUM.

MR. AMBROSE SAID THAT MANY OF THE DEPARTMENTS FELT THE CONSORTIUM WAS A GOOD IDEA, BUT WASN'T ABLE TO GET MORE INVOLVED. DR. JOHN CHOON KIM, WITH THE WORLD TRADE CENTER, WAS THE ONLY PERSON WHO WAS WILLING TO WORK WITH MR. AMBROSE ON DEVELOPING THE IDEA.

DR. KIM SAID VARIOUS AGENCY REPRESENTATIVES WOULD BE ON THE CONSORTIUM'S OVERSIGHT COMMITTEE. THE OVERSIGHT COMMITTEE WOULD MAKE IMPORTANT DECISIONS ON THE DIRECTION OF THE CONSORTIUM.

CHAIR MOYER SAID IF THE MEMBERS WERE INTERESTED, THE COMMITTEE COULD WORK DURING THE INTERIM ON DEVELOPING THE SMALL BUSINESS EXPORT TRADING CONSORTIUM.

CHAIR MOYER ADJOURNED THE MEETING AT 6:25 P.M.

HB 249

Journal & Committee Action

Page 2 of 2

Current Status: (H) ITT

	Date	Page	Action
1	04/02/91	648	(H) READ THE FIRST TIME - REFERRAL(S)
2	04/02/91	648	(H) ITT, L&C, FINANCE
3	05/08/91		(H) ITT AT 5:00 PM CAPITOL ROOM 17
4	05/08/91		(H) MINUTE(ITT)

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						
---------	--	--	--	--	--	--

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, Director
Division: Administrative Services

Phone: 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 GrussendorfRequestor: Representative GrussendorfDepartment Affected: Department of LawBRU: Prosecution, Legal ServicesComponent: Prosecution - AllLegal Services - OperationsCOMPONENT 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:						
-------------------------	--	--	--	--	--	--

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 ServicesPhone: 465-3672Date: March 2, 1992Approved by Commissioner: Charles E. Cole, Attorney GeneralAgency: Department of LawDate: 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

DISTRICT 3
ELFIN COVE
PELICAN
PORT ALEXANDER
SITKA
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

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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

ALASKA

ARIZONA

CALIFORNIA

COLORADO

HAWAII

IDAHO

MONTANA

NEVADA

NEW MEXICO

OREGON

UTAH

WASHINGTON

WYOMING

PACIFIC ISLANDS

AMERICAN SAMOA

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.

- 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

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

ATTACHMENT I

State Laws Concerning Sale of Black Bear Parts

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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.
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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.
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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.
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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.
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- 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

- 200. Purchase and sale of game
- 210. Game as animal food or bait
- 220. Salvage of game meat, furs, and hides
- 230. Feeding of game
- 240. (Repealed)

Section

- 241. (Repealed)
- 250. Transfer of musk oxen for scientific and educational purposes
- 260. Taking cub bears and female bears with cubs prohibited

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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By The Publisher's Editorial Staff

16 USCS
Conservation
§§ 1531-5600

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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

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. Sohappi* (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. Sohappi* (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

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CHAPTER 53. CONTROL OF ILLEGALLY TAKEN FISH AND WILDLIFE

Section

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- 3372. Prohibited acts
 - (a) Offenses other than marking offenses
 - (b) Marking offenses
- 3373. Penalties and sanctions
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 - (c) Interstate shipment or transshipment through Indian country of fish, wildlife, or plants for legal purposes
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 - (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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Alaska State Legislature

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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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(a) The term "fish or wildlife" means any animal, dead, including without limitation, fish, mollusk, crustacean, invertebrate, vertebrate, whether or not bred, raised, or captured in part, product, egg, or offspring.

(b) The term "import" means placing subject to the jurisdiction of the customs authorities by landing, bringing, or introducing into the country, in whatever manner, form, or condition, without regard to whether it originates from another country, territory, possession, or person, having the meaning of the customs laws.

(c) The term "Indian tribe" means any Indian tribe, band, or group of Indians, the conduct enforceable by, to the extent that the regulation in section 1151 of title 18.

(d) The terms "law," "laws, treaties, regulation possession, importation wildlife or plants.

(e) The term "person" corporation, trust, or any other entity, or the mentality of the Federation thereof, or any other States.

(f) The terms "plant" kingdom, including rice, common food crops and which is either (A) listed in the Convention on International Trade in Endangered Species, or (B) pursuant to any State law threatened with extinction.

(g) The term "Secretary" means the Secretary of the Interior. The responsibilities are vested in the Secretary of the Interior, Plan Numbered 4 of 19, with respect to the production or exportation of plants.

(h) The term "State" Columbia, the Comm Northern Mariana Is commonwealth, or pos

(i) The term "taken" r

(j) The term "transportation" means, or to deliver by any means of carriage, or shipment.

(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;

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.)