

Public Law 94-359
94th Congress

An Act

To amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act.

July 12, 1976
[S. 229]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(f) (2)(B)(ii) of the Endangered Species Act of 1973 (16 U.S.C. 1533 (f) (2)(B)(ii)) is amended by striking out “subsection (b) (A), (B), and (C)” and inserting in lieu thereof subsection (b) (1)(A).”

Endangered
Species Act of
1973,
amendments.

SEC. 2. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsections:

“(f) (1) As used in this subsection—

Definitions.

“(A) The term ‘pre-Act endangered species part’ means—

“(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

“(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

“(B) The term ‘scrimshaw product’ means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

“(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

Exemption.

“(A) The prohibition on exportation from the United States set forth in section 9(a) (1) (A) of this Act.

“(B) Any prohibition set forth in section 9(a) (1) (E) or (F) of this Act.

16 USC 1538.

“(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

Application.

“(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

“(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

“(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

“(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

Exemption
certification.

"(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

16 USC 1538.

"(A) any prohibition in section 9(a) of this Act which is exempted;

"(B) the pre-Act endangered species parts to which the exemption applies;

"(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate; and

"(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

Regulations.

"(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

"(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

"(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

16 USC 6533.

Pre-Act
endangered
species parts,
sales contract,
validity.

"(6) (A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a)(1)(F).

"(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

"(7) Nothing in this subsection shall be construed to—

"(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 9(a) prior to the date of enactment of this subsection; or

"(B) immunize any person from prosecution for any such act.

"(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation."

SEC. 3. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is further amended—

(1) by striking out "subsection" in the first sentence of subsection (c) thereof and inserting in lieu thereof "section"; and

(2) by striking out the period at the end of the second sentence of subsection (c) thereof and inserting in lieu thereof the following: "; except that such thirty-day period may be waived by

Waiver.

the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit.”

Publication in
Federal Register.
Enforcement.

SEC. 4. Section 11(e)(3) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)(3)) is amended—

(1) by inserting immediately before the words “execute and serve any arrest warrant,” in the second sentence thereof the following: “make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may”; and

(2) by striking out the period at the end thereof and inserting in lieu thereof the following: “, but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe.”

SEC. 5. Paragraph (1) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532(1)) is amended by striking the period and inserting in lieu thereof “: *Provided, however,* That it does not include exhibition of commodities by museums or similar cultural or historical organizations.”

Approved July 12, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-823 accompanying H.R. 10229 (Comm. on Merchant Marine and Fisheries).

SENATE REPORT No. 94-63 (Comm. on Commerce).

CONGRESSIONAL RECORD:

Vol. 121 (1975): Apr. 14, considered and passed Senate.

Vol. 122 (1976): Feb. 17, considered and passed House, amended, in lieu of H.R. 10229.

June 24, Senate agreed to House amendment with amendments.

June 29, House concurred in Senate amendments.

