Public Law 97-79
97th Congress

An Act

To provide for the control of illegally taken fish and wildlife.

Nov. 16, 1981
[S. 736]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Lacey Act Amendments of 1981".

Lacey Act Amendments of 1981.
16 USC 3371 note.

SEC. 2. DEFINITIONS.

16 USC 3371.

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.

(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); 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.

5 USC app.

(h) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands,

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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.

16 USC 3372.

SEC. 3. 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)—

(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 USC 3373.

SEC. 4. 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)) 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) 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. The administrative law judge may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Subpenas.

(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. 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)), or

(B) violates any provision of this Act (other than subsection 3(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)) 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.

16 USC 1801 note.

16 USC 3374.

SEC. 5. 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 (other than subsection 3(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.

(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.

(c) STORAGE COST.—Any person convicted of an offense, or assessed a civil penalty, under section 4 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.

SEC. 6. ENFORCEMENT. 16 USC 3375.

(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 subpena, 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

Warrant.

Inspection.

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; 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) DISTRICT COURT JURISDICTION.—The several district courts of the United States, including the courts enumerated in section 460 of title 28, United States Code, 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.—Beginning in fiscal year 1983, the Secretary or the Secretary of the Treasury shall pay a reward from sums received as penalties, fines, or forfeitures of property for any violation of this Act or any regulation issued hereunder 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. 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.

16 USC 3376.

SEC. 7. 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.

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

16 USC 3377.

SEC. 8. EXCEPTIONS.

(a) The provisions of paragraph (1) of subsection 3(a) of this Act 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) The provisions of paragraphs (1), (2)(A), and (3)(A) of subsection 3(a) of this Act shall not apply to—

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

16 USC 971-971h.

(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) taken on the high seas (as defined in paragraph (13) of such section 3) if such species are taken in violation of the laws of a foreign nation and the United States does not recognize the jurisdiction of the foreign nation over such species.

16 USC 1802.

(c) The provisions of paragraph (2) of subsection 3(a) of this Act shall not apply to the interstate shipment or transshipment through Indian country as defined in section 1151 of title 18, United States Code, 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.

SEC. 9. MISCELLANEOUS PROVISIONS.

16 USC 3378.

(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).

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

(3) Sections 3054 and 3112 of title 18, United States Code.

(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) HUMANE SHIPMENT.—Subsection 42(c) of title 18, United States Code, is amended by striking "Secretary of the Treasury" and inserting in lieu thereof "Secretary of the Interior within one hundred and eighty days of the enactment of the Lacey Act Amendments of 1981".

(e) REWARD.—Subsection 11(d) of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended to read as follows:

"(d) REWARD.—The Secretary or the Secretary of the Treasury shall pay a reward from sums received as penalties, fines, or forfeitures of property for any violation of this Act or any regulation issued hereunder 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. 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.".

Effective date. 16 USC 1540 note. 16 USC 3378.

(f) The amendment specified in subsection 9(e) of this Act shall take effect beginning in fiscal year 1983.

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

(h) 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.

Approved November 16, 1981.

LEGISLATIVE HISTORY—S. 736 (H.R. 1638):

HOUSE REPORT No. 97-276 accompanying H.R. 1638 (Comm. on Merchant Marine and Fisheries).
SENATE REPORT No. 97-123 (Comm. on Environment and Public Works).
CONGRESSIONAL RECORD, Vol. 127 (1981):
July 24, considered and passed Senate.
Nov. 4, considered and passed House, in lieu of H.R. 1638.