

HR4122- Big Cats and Public Safety Protection Act : Proposed Changes to the Current Lacey Act

EXPLANATION – **Matter in red is new**; matter in “~~omitted material~~” is material to be omitted.

TITLE 16 - CONSERVATION

CHAPTER 53 - CONTROL OF ILLEGALLY TAKEN FISH AND WILDLIFE

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16 USC Sec. 3371

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Sec. 3371. Definitions

For the purposes of this chapter:

(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.

(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) Plant. -

(1) In general. - The terms "plant" and "plants" mean any wild member of the plant kingdom, including roots, seeds, parts, or products thereof, and including trees from either natural or planted forest stands.

(2) Exclusions. - The terms "plant" and "plants" exclude -

(A) common cultivars, except trees, and common food crops (including roots, seeds, parts, or products thereof);

(B) a scientific specimen of plant genetic material (including roots, seeds, germplasm, parts, or products thereof) that is to be used only for laboratory or field research; and

(C) any plant that is to remain planted or to be planted or replanted.

(3) Exceptions to application of exclusions. - The exclusions made by subparagraphs (B) and (C) of paragraph (2) do not apply if the plant is listed -

(A) in an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);

(B) as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or

(C) pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

(g) Prohibited Wildlife Species. - The term "prohibited wildlife species" means any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of such species.

(h) The term "Secretary" means, except as otherwise provided in this chapter, 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 chapter which pertain to the importation or exportation of plants, the term also means the Secretary of Agriculture.

(i) 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.

(j) Taken and Taking. -

(1) Taken. - The term "taken" means captured, killed, or collected and, with respect to a plant, also means harvested, cut, logged, or removed.

(2) Taking. - The term "taking" means the act by which fish, wildlife, or plants are taken.

(k) 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.

(I) Breed- The term 'breed' means to facilitate the reproduction of a prohibited wildlife species for commercial use.'

## Sec. 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, possessed, transported, or sold 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—

(i) taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—

(I) the theft of plants;

(II) the taking of plants from a park, forest reserve, or other officially protected area;

(III) the taking of plants from an officially designated area;

or

(IV) the taking of plants without, or contrary to, required authorization;

(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any foreign law; or

(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants; or

~~(C) any prohibited wildlife species (subject to subsection (e) of this section);~~

(3) within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18)—

(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—

(i) taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—

(I) the theft of plants;

(II) the taking of plants from a park, forest reserve, or other officially protected area;

(III) the taking of plants from an officially designated area;

or

(IV) the taking of plants without, or contrary to, required authorization;

(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any foreign law; or

(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants; ~~or~~

(4) subject to subsection (e), to import, export, transport, sell, receive, acquire, purchase, breed, possess, or own any prohibited wildlife species; or

(5) ~~(4)~~ to attempt to commit any act described in paragraphs (1) through ~~(3)~~ (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 section [3376 \(a\)](#) of this title.

**(c) Sale and purchase of guiding and outfitting services and invalid licenses and permits**

**(1) Sale**

It is deemed to be a sale of fish or wildlife in violation of this chapter 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 chapter 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.

**(e) Nonapplicability of prohibited wildlife species offense**

**(1) In general**

Subsection (a)(2) ~~(4) (C)~~ of this section does not apply to ~~importation, exportation, transportation, sale, receipt, acquisition, or purchase of an animal of a prohibited wildlife species, by a person that, under regulations prescribed under paragraph (3), is described in paragraph (2) with respect to that species.~~

~~(A) importation, exportation, transportation, sale, receipt, acquisition, breeding, possession, ownership, or purchase of an animal of a prohibited wildlife species, by a person that, under regulations prescribed under paragraph (3), is described in subparagraph (A), (B), (C), or (D) paragraph (2) with respect to that species; and~~

~~(B) transportation, possession, or ownership of an animal of a prohibited wildlife species, by a person that, under regulations prescribed under paragraph (3), is described in subparagraph (E) of paragraph (2) with respect to that animal.'; and~~

## (2) Persons described

A person is described in this paragraph, if the person—

~~(A) is licensed or registered, and inspected, by the Animal and Plant Health Inspection Service or any other Federal agency with respect to that species; is a zoo accredited by the Association of Zoos and Aquariums;~~

~~(B) is a State college, university, or agency, State-licensed wildlife rehabilitator, or State-licensed veterinarian;~~

~~(C) is an accredited wildlife sanctuary that cares for prohibited wildlife species and—~~

~~(i) is a corporation that is exempt from taxation under section [501\(a\)](#) of title [26](#) and described in sections 501(c)(3) and 170(b)(1)(A)(vi) of such title;~~

~~(ii) does not commercially trade in animals listed in section [3371\(g\)](#) of this title, including offspring, parts, and byproducts of such animals;~~

~~(iii) does not propagate animals listed in section [3371\(g\)](#) of this title; and~~

~~(iv) does not allow direct contact between the public and animals; or and~~

~~(v) does not allow the transport and display of animals off-site;~~

~~(D) has custody of the animal solely for the purpose of expeditiously transporting the animal to a person described in this paragraph with respect to the species; or~~

~~(E) is in possession of one or more animals of the prohibited wildlife species, that--~~

~~(i) were born before the date of enactment of this subparagraph; and~~

~~(ii) are registered with the Animal and Plant Health Inspection Service within 6 months after the date of promulgation of regulations implementing this subparagraph by the Secretary of the Interior and the Secretary of Agriculture.~~

**(3) Regulations**

~~Not later than 180 days after December 19, 2003, the Secretary, in cooperation with the Director of the Animal and Plant Health Inspection Service, shall promulgate regulations describing the persons described in paragraph (2).~~

Not later than 6 months after the date of enactment of this Act the Secretary of the Interior, acting through the United States Fish and Wildlife Service, and the Secretary of Agriculture, acting through the Animal and Plant Health Inspection Service, shall promulgate regulations implementing the amendments made by this section.

**(4) State authority**

Nothing in this subsection preempts or supersedes the authority of a State to regulate wildlife species within that State.

**(5) Authorization of appropriations**

There is authorized to be appropriated to carry out subsection (a)(2)(C) of this section \$3,000,000 for each of fiscal years 2004 through 2008.

**(f) Plant declarations**

**(1) Import declaration**

Effective 180 days from the date of enactment of this subsection, and except as provided in paragraph (3), it shall be unlawful for any person to import any plant unless the person files upon importation a declaration that contains—

(A) the scientific name of any plant (including the genus and species of the plant) contained in the importation;

(B) a description of—

(i) the value of the importation; and

(ii) the quantity, including the unit of measure, of the plant; and

(C) the name of the country from which the plant was taken.

**(2) Declaration relating to plant products**

Until the date on which the Secretary promulgates a regulation under paragraph (6), a declaration relating to a plant product shall—

(A) in the case in which the species of plant used to produce the plant product that is the subject of the importation varies, and the species used to produce the plant product is unknown, contain the name of each species of plant that may have been used to produce the plant product;

(B) in the case in which the species of plant used to produce the plant product that is the subject of the importation is commonly taken from more than one country, and the country from which the plant was taken and used to produce the plant product is unknown, contain the name of each country from which the plant may have been taken; and

(C) in the case in which a paper or paperboard plant product includes recycled plant product, contain the average percent recycled content without regard for the species or country of origin of the recycled plant product, in addition to the information for the non-recycled plant content otherwise required by this subsection.

**(3) Exclusions**

Paragraphs (1) and (2) shall not apply to plants used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported.

**(4) Review**

Not later than two years after the date of enactment of this subsection, the Secretary shall review the implementation of each requirement imposed by paragraphs (1) and (2) and the effect of the exclusion provided by paragraph (3). In conducting the review, the Secretary shall provide public notice and an opportunity for comment.

**(5) Report**

Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary shall submit to the appropriate committees of Congress a report containing—

(A) an evaluation of—

- (i) the effectiveness of each type of information required under paragraphs (1) and (2) in assisting enforcement of this section; and
- (ii) the potential to harmonize each requirement imposed by paragraphs (1) and (2) with other applicable import regulations in existence as of the date of the report;

(B) recommendations for such legislation as the Secretary determines to be appropriate to assist in the identification of plants that are imported into the United States in violation of this section; and

(C) an analysis of the effect of subsection (a) and this subsection on—

- (i) the cost of legal plant imports; and
- (ii) the extent and methodology of illegal logging practices and trafficking.

**(6) Promulgation of regulations**

Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary may promulgate regulations—

(A) to limit the applicability of any requirement imposed by paragraph (2) to specific plant products;

(B) to make any other necessary modification to any requirement imposed by paragraph (2), as determined by the Secretary based on the review; and

(C) to limit the scope of the exclusion provided by paragraph (3), if the limitations in scope are warranted as a result of the review.

## **16 USC § 3373 - Penalties and sanctions**

### **(a) Civil penalties**

(1) Any person who engages in conduct prohibited by any provision of this chapter (other than subsections (a)(4), (b), (d), and (f) of section [3372](#) of this title) 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 ~~subsection (d)~~ **subsection (a)(4)**, (d), or (f) of section [3372](#) of this title, 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 (b) or (f) of section [3372](#) of this title, except as provided in paragraph (1), 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 chapter or to a section of this chapter 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](#). 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 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](#). 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 chapter (other than subsections (b), (d), and (f) of section [3372](#) of this title), or

(B) violates any provision of this chapter (other than subsections (b), (d), and (f) of section [3372](#) of this title) 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, or

**(C) knowingly violates paragraph (4) of section 3(a),**

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 chapter (other than subsections (b), (d), and (f) of section [3372](#) of this title) 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, **or in the exercise of due care should know that the conduct violates paragraph (4) of section 3(a)**, 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 subsection (d) or (f) of section [3372](#) of this title—

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

**(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 Magnuson-Stevens Fishery Conservation and Management Act [[16 U.S.C. 1801](#) et seq.]), 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 chapter 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 § 3374 - Forfeiture**

**(a) In general**

(1) All fish or wildlife or plants imported, exported, transported, sold, received, acquired, **bred, possessed, owned** or purchased contrary to the provisions of section [3372](#) of this title (other than section [3372 \(b\)](#) of this title), 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 [3373](#) of this title.

(2) All vessels, vehicles, aircraft, and other equipment used to aid in the importing, exporting, transporting, selling, receiving, acquiring, **breeding, possessing, owning or involved the breeding, possession, or ownership of a prohibited wildlife species** or purchasing of fish or wildlife or plants in a criminal violation of this chapter 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 chapter, 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 chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter, 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 chapter, 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 [3373](#) of this title 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.

**(d) Civil forfeitures**

Civil forfeitures under this section shall be governed by the provisions of chapter [46](#) of title [18](#).

Prepared by [www.REXANO.org](http://www.REXANO.org)

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