§ 1538. Prohibited acts

(a) Generally

(1) Except as provided in sections 1535 (g)(2) and 1539 of this title, with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;
(B) take any such species within the United States or the territorial sea of the United States;
(C) take any such species upon the high seas;
(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);
(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;
(F) sell or offer for sale in interstate or foreign commerce any such species; or
(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

(2) Except as provided in sections 1535 (g)(2) and 1539 of this title, with respect to any endangered species of plants listed pursuant to section 1533 of this title, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;
(B) remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law;
(C) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;
(D) sell or offer for sale in interstate or foreign commerce any such species; or
(E) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

(b) Species held in captivity or controlled environment

(1) The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on

(A) December 28, 1973, or
(B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 1533 of this title: Provided, That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from

(i) December 28, 1973, or
(ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 1533 of this title, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.
(A) The provisions of subsection (a)(1) of this section shall not apply to—
   (i) any raptor legally held in captivity or in a controlled environment on November 10, 1978; or
   (ii) any progeny of any raptor described in clause (i);
until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able
to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this
paragraph, and shall maintain and submit to the Secretary, on request, such inventories,
documentation, and records as the Secretary may by regulation require as being reasonably
appropriate to carry out the purposes of this paragraph. Such requirements shall not
unnecessarily duplicate the requirements of other rules and regulations promulgated by the
Secretary.

(c) Violation of Convention

(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any
trade in any specimens contrary to the provisions of the Convention, or to possess any specimens
traded contrary to the provisions of the Convention, including the definitions of terms in article
I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—
   (A) such fish or wildlife is not an endangered species listed pursuant to section 1533 of this
title but is listed in Appendix II to the Convention,
   (B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the
Convention and all other applicable requirements of the Convention have been satisfied,
   (C) the applicable requirements of subsections (d), (e), and (f) of this section have been
satisfied, and
   (D) such importation is not made in the course of a commercial activity,
be presumed to be an importation not in violation of any provision of this chapter or any regulation
issued pursuant to this chapter.

(d) Imports and exports

(1) In general

It is unlawful for any person, without first having obtained permission from the Secretary, to engage
in business—
   (A) as an importer or exporter of fish or wildlife (other than shellfish and fishery products
which
      (i) are not listed pursuant to section 1533 of this title as endangered species or threatened
species, and
      (ii) are imported for purposes of human or animal consumption or taken in waters under
the jurisdiction of the United States or on the high seas for recreational purposes) or
plants; or
   (B) as an importer or exporter of any amount of raw or worked African elephant ivory.

(2) Requirements

Any person required to obtain permission under paragraph (1) of this subsection shall—
   (A) keep such records as will fully and correctly disclose each importation or exportation of
fish, wildlife, plants, or African elephant ivory made by him and the subsequent disposition
made by him with respect to such fish, wildlife, plants, or ivory;
   (B) at all reasonable times upon notice by a duly authorized representative of the Secretary,
afford such representative access to his place of business, an opportunity to examine his
inventory of imported fish, wildlife, plants, or African elephant ivory and the records required
to be kept under subparagraph (A) of this paragraph, and to copy such records; and
(C) file such reports as the Secretary may require.

(3) Regulations

The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the
purposes of this subsection.

(4) Restriction on consideration of value or amount of African elephant ivory imported or
exported

In granting permission under this subsection for importation or exportation of African elephant
ivory, the Secretary shall not vary the requirements for obtaining such permission on the basis of
the value or amount of ivory imported or exported under such permission.

(e) Reports

It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery
products which
(1) are not listed pursuant to section 1533 of this title as endangered or threatened species, and
(2) are imported for purposes of human or animal consumption or taken in waters under the
jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to
file any declaration or report as the Secretary deems necessary to facilitate enforcement of this
chapter or to meet the obligations of the Convention.

(f) Designation of ports

(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or
export from the United States any fish or wildlife (other than shellfish and fishery products which
(A) are not listed pursuant to section 1533 of this title as endangered species or threatened
species, and
(B) are imported for purposes of human or animal consumption or taken in waters under the
jurisdiction of the United States or on the high seas for recreational purposes) or plants, except
at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating
enforcement of this chapter and reducing the costs thereof, the Secretary of the Interior,
with approval of the Secretary of the Treasury and after notice and opportunity for public
hearing, may, by regulation, designate ports and change such designations. The Secretary of
the Interior, under such terms and conditions as he may prescribe, may permit the importation
or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife
or plants, or for other reasons, if, in his discretion, he deems it appropriate and consistent with
the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 668cc–4
(d) 1 of this title, shall, if such designation is in effect on December 27, 1973, be deemed to be
a port designated by the Secretary under paragraph (1) of this subsection until such time as the
Secretary otherwise provides.

(g) Violations

It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit
another to commit, or cause to be committed, any offense defined in this section.

Footnotes
1 See References in Text note below.

References in Text


Amendments

1988—Subsec. (a)(2)(B). Pub. L. 100–478, § 1006, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “remove and reduce to possession any such species from areas under Federal jurisdiction;”.

Subsec. (d). Pub. L. 100–478, § 2301, amended subsec. (d) generally, revising and restating as pars. (1) to (4) provisions of former pars. (1) to (3).

Subsec. (d)(1)(A). Pub. L. 100–653 inserted “or plants” after “purposes”.

1982—Subsec. (a)(2)(B) to (E). Pub. L. 97–304, § 9(b)(1), added subpar. (B) and redesignated former subpars. (B), (C), and (D) as (C), (D), and (E), respectively.

Subsec. (b)(1). Pub. L. 97–304, § 9(b)(2), substituted “The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 1533 of this title: Provided, That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 1533 of this title, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection” for “The provisions of this section shall not apply to any fish or wildlife held in captivity or in a controlled environment on December 28, 1973, if the purposes of such holding are not contrary to the purposes of this chapter; except that this subsection shall not apply in the case of any fish or wildlife held in the course of a commercial activity. With respect to any act prohibited by this section which occurs after a period of 180 days from December 28, 1973, there shall be a rebuttable presumption that the fish or wildlife involved in such act was not held in captivity or in a controlled environment on December 28, 1973”.

Subsec. (b)(2)(A). Pub. L. 97–304, § 9(b)(3), substituted “The provisions of subsection (a)(1) of this section shall not apply to” for “This section shall not apply to” in provisions preceding cl. (i).

1978—Subsec. (b). Pub. L. 95–632 designated existing provision as par. (1) and added par. (2).

Human Activities Within Proximity of Whales

Pub. L. 103–238, § 17, Apr. 30, 1994, 108 Stat. 559, provided that:

“(a) Lawful Approaches.—In waters of the United States surrounding the State of Hawaii, it is lawful for a person subject to the jurisdiction of the United States to approach, by any means other than an aircraft, no closer than 100 yards to a humpback whale, regardless of whether the approach is made in waters designated under section 222.31 of title 50, Code of Federal Regulations, as cow/calf waters.

“(b) Termination of Legal Effect of Certain Regulations.—Subsection (b) of section 222.31 of title 50, Code of Federal Regulations, shall cease to be in force and effect.”

Territorial Sea of United States

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.