



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Office of Law Enforcement



CHIEFS DIRECTIVE

CD-B68

Date:

DEC 20 2019

SUBJECT: Enforcement Guidance in Relation to California Penal Code Section 653o(b) and the Application of the Section 6(f) of the Endangered Species Act 16 U.S.C. 1535(f)

BACKGROUND:

A number of questions have been raised concerning California Penal code section 653o(b) as it relates to activities with skins, parts, and products made from threatened alligators and crocodiles. That law states in part, beginning January 1, 2020, it shall be unlawful to import into the State of California for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of a crocodile or alligator.

The Supremacy Clause of the Constitution, Art. VI, cl. 2, preempts (invalidates) state laws that conflict with or are contrary to federal law. The Endangered Species Act (ESA) has a preemption provision found in 16 U.S.C. 1535(f) that pertains to species listed as threatened or endangered under the ESA. It provides in part:

"Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively . . . prohibit what is authorized pursuant to an exemption or permit provided for in this Act or in any regulation which implements this Act. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife."

In other words, if the provisions of the ESA, or endangered and threatened species regulations (50 CFR part 17), or endangered-species or threatened-species permits (50 CFR part 17) authorize import, export, foreign commerce activities, or interstate commerce activities with an endangered species or threatened species, any conflicting State law is void (the Federal law and its authorizations preempt any conflicting State prohibitions).

Additionally, the Lacey Act makes it unlawful for any person 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, 16 U.S.C. 3372(a)(2)(A), or to attempt to commit any such act, 16 U.S.C. 3372(a)(4). As described above,

to the extent the State law is preempted, it is void, and therefore a violation of that State law would not serve as a predicate State-law violation for a possible Lacey Act violation.

Certain alligator and crocodile species are currently listed as threatened species under the ESA. These species include American alligator (*Alligator mississippiensis*), which is regulated under 50 CFR § 17.42(a), as well as Nile crocodile (*Crocodylus niloticus*) and Saltwater crocodile (*Crocodylus porosus*) originating in Australia (also referred to as Australian saltwater crocodile), which are regulated under 50 CFR § 17.42(c).

With regard to skins, parts, and products of the above-mentioned threatened species, the ESA regulations for these threatened species at 50 CFR § 17.42(a) and (c) authorize import, export, foreign commerce activities, and interstate commerce activities, provided the conditions in these applicable regulations are met for the activity. Pursuant to the preemption provisions of section 6(f) of the ESA, when Section 653o(b) goes into effect, it will be void to the extent that it effectively prohibits the import, export, foreign commerce activities, or interstate commerce activities with these species that are authorized by these species-specific threatened species rules.

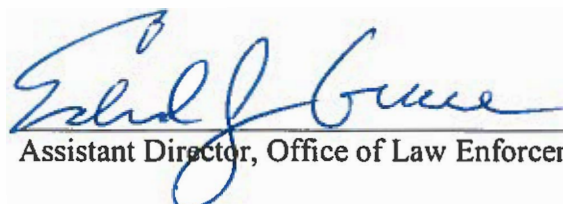
GUIDANCE:

1. The Office of Law Enforcement (OLE) will continue to take enforcement action on existing Federal law without relying on conflicting State law.
2. When Section 653o(b) goes into effect, OLE will not rely on it as a predicate offense for Lacey Act charges to the extent that import, export, foreign commerce activities, or interstate commerce activities with these species are authorized by 50 CFR § 17.42(a) or (c).
3. The OLE will refer State violations that do not violate Federal law to the appropriate State agency.

Example:

The American Alligator (*Alligator mississippiensis*) is covered by a species-specific rule found in 50 CFR 17.42(a) and its authorizations of import, export, foreign commerce activities, or interstate commerce activities preempt (void) any conflicting prohibitions covered by California Penal code section 653o(b). For example, 50 CFR §17.42(a)(3)-(4) authorizes import or export of American alligator specimens provided the import or export is in accordance with 50 CFR part 23 (CITES requirements) and subject to recordkeeping requirements and general wildlife import and export requirements (50 CFR part 14). A shipment moving into or through California for the purpose of import or export that is in compliance with the provisions of 50 CFR §17.42(a) would not violate Section 653o(b), which would be preempted for the shipment. Therefore, the shipment would also not violate the Lacey Act because a violation of Section 653o(b) would not apply.

Questions should be directed to the Special Agent in Charge, Investigations Unit.


Assistant Director, Office of Law Enforcement