

## State of California

### CALIFORNIA DEPT. OF FISH AND WILDLIFE

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## U.S. Dept. of Interior

### FISH AND WILDLIFE SERVICE

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The U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife would like to present you with information pertaining to the sale of wildlife items. Wildlife items that are illegal to sell may come in many forms such as: mounts or parts thereof, carvings, purses, coats, pillows, hats, etc. Sometimes, the wildlife portion of an item is very small, such as an inlaid portion of a larger piece of art.

Anytime you are selling an item, you will want to look it over in its entirety, and ask yourself if it is made of wildlife, or contains parts of wildlife, in any way. If so, it may be subject to a federal or state law prohibiting its sale or possession. It is the seller's responsibility to know and understand the law before offering a wildlife item for sale.

State and federal laws concerning wildlife may not always be the same, so it is imperative to be aware of both laws. Sometimes, it may be legal to sell a wildlife item according to federal law but illegal to sell it according to state law, and vice versa.

### **Some federal laws that apply to the sale of wildlife are:**

#### **16 USC 1538 – Endangered Species Act (ESA)**

Without a permit, or unless deemed exempt under the ESA, it is unlawful to sell or offer for sale in interstate or foreign commerce any endangered or threatened wildlife, including parts or products. Amongst the exemptions, there are two commonly misunderstood terms: "Pre-Act" and "Antiques"

**Pre-Act:** A pre-Act exemption applies to endangered or threatened wildlife held in captivity or in a controlled environment on December 28, 1973, provided such holding or any subsequent holding or use of the specimen was not contrary to the purpose of the Act, and the wildlife was not held in the course of a commercial activity. An affidavit and supporting material documenting pre-Act status must accompany the shipment of listed species. A pre-Act exemption does not apply to endangered or threatened wildlife, including parts or products, sold or offered for sale in interstate or foreign commerce.

**Antique:** An antique exemption applies to endangered or threatened wildlife, including parts or products, which: 1) is not less than 100 years of age; and, 2) has not been repaired or modified with any listed species after December 28, 1973.

**Burden of Proof:** Any person claiming the benefit of any exemption or permit shall

have the burden of proving that the exemption or permit is applicable.

For more information, visit:

- <http://www.fws.gov/international/DIC/species/ase/pdf/as.pdf>
- [http://www.fws.gov/international/DIC/species/afe/pdf/Ivory\\_Fact\\_Sheet.pdf](http://www.fws.gov/international/DIC/species/afe/pdf/Ivory_Fact_Sheet.pdf)
- [http://www.fws.gov/international/DMA\\_DSA/pdf/esa.pdf](http://www.fws.gov/international/DMA_DSA/pdf/esa.pdf)
- <http://www.fws.gov/endangered/>

### **16 USC 703 – Migratory Bird Treaty Act (MBTA)**

Without a permit, it is unlawful to possess, sell or offer for sale any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists or is composed in whole or in part of any such bird. A list of protected migratory birds can be found at 50 CFR 10.13 or <http://www.fws.gov/migratorybirds/RegulationsPolicies/mbta/mbtandx.html>

### **16 USC 1372 – Marine Mammal Protection Act (MMPA)**

Without a permit, or unless deemed exempt under the MMPA (i.e. pre-MMPA specimens taken before December 21, 1972), it is unlawful to sell or offer for sale any marine mammal or marine mammal product. In general, the MMPA prohibits the take, importation, possession, sale, purchase, and export of marine mammals and their products. Under the MMPA, Alaska Natives are exempt from the prohibitions against take of marine mammals, including walrus and walrus ivory. The taking by Alaska Natives must be for the purpose of subsistence or for creating authentic native articles of handicrafts and clothing. Only items that qualify as authentic native handicrafts may be sold in interstate commerce. The authentic handicrafts may be sold by Alaskan Natives to anyone and then resold without a permit. Sale of raw walrus ivory and other non-handicrafted marine mammal parts is prohibited.

For more information, visit:

- [http://www.fws.gov/international/DMA\\_DSA/pdf/MarineMammals.pdf](http://www.fws.gov/international/DMA_DSA/pdf/MarineMammals.pdf)
- <http://www.fakr.noaa.gov/protectedresources/buying.htm>

### **Some state laws that may apply to the sale of wildlife are:**

#### **Fish and Game Code (FGC) § 3039(a) – Unlawful sale of wildlife found in CA (birds or mammals)**

Except as otherwise provided in this section and Sections 3087 and 4303, or any other provision of this code, or regulations adopted pursuant thereto, it is unlawful to sell or purchase any species of bird or mammal or part thereof found in the wild in California.

#### **FGC § 3039(c) – Unlawful sale of antlers (deer and elk parts)**

Shed antlers, or antlers taken from domestically reared animals that have been manufactured into products or handicraft items, or that have been cut into blocks or units which are to be handcrafted or manufactured into those articles may be purchased or sold at any time. However, complete antlers, whole heads with antlers, antlers that are mounted for display, or antlers in velvet may not be sold or purchased at any time, except as authorized by Section 3087.

For further details on FGC 3039, visit:

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fgc&group=03001-04000&file=3031-3040>

### **FGC §4700- Unlawful to possess fully protected mammals**

(a) (1) “Except as provided in Section 2081.7 or 2835, fully protected mammals or parts thereof may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected mammal, and no permits or licenses heretofore issued shall have any force or effect for that purpose...”

(b) The following are fully protected mammals:

- (1) Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*).
- (2) Bighorn sheep (*Ovis canadensis*), except Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*) as provided by subdivision (b) of Section 4902.
- (3) Northern elephant seal (*Mirounga angustirostris*).
- (4) Guadalupe fur seal (*Arctocephalus townsendi*).
- (5) Ring-tailed cat (genus *Bassariscus*).
- (6) Pacific right whale (*Eubalaena sieboldi*).
- (7) Salt-marsh harvest mouse (*Reithrodontomys raviventris*).
- (8) Southern sea otter (*Enhydra lutris nereis*).
- (9) Wolverine (*Gulo luscus*).

The direct link to FGC §4700 is:

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fgc&group=04001-05000&file=4700>

### **FGC §4758 – Unlawful to sell bear parts**

(a) Subject to the provisions of this code permitting the sale of domestically raised game mammals, it is unlawful to sell or purchase, or possess for sale, the meat, skin, hide, teeth, claws, or other parts of any bear in this state.

(b) The possession of more than one bear gall bladder is prima facie evidence that the bear gall bladders are possessed for sale.

(c) Nothing in this section prohibits a sale authorized pursuant to Section 3087.

The direct link to FGC §4758 is:

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fgc&group=04001-05000&file=4750-4763>

### **FGC §4800 – Mountain Lions, Fully Protected Mammals of CA**

(a) The mountain lion (genus *Puma*) is a specially protected mammal under the laws of this state.

(b) (1) It is unlawful to take, injure, possess, transport, import, or sell any mountain lion or any

part or product thereof, except as specifically provided in this chapter or in Chapter 2 (commencing with Section 2116) of Division 3.

- (2) This chapter does not prohibit the sale or possession of any mountain lion or any part or product thereof, when the owner can demonstrate that the mountain lion, or part or product thereof, was in the person's possession on June 6, 1990.

The direct link to FGC §4800 is:

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fgc&group=04001-05000&file=4800-4809>

### **FGC §5000 – Unlawful sale or possession of Desert tortoise (Gopherus)**

5000. It is unlawful to sell, purchase, harm, take, possess, or transport any tortoise (Gopherus) or parts thereof, or to shoot any projectile at a tortoise (Gopherus). This section does not apply to the taking of any tortoise when authorized by the department.

The direct link to FGC §5000 is:

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fgc&group=04001-05000&file=5000-5002>

### **Penal Code (PC) 653o – Unlawful sale of wildlife, specified**

(a) It is unlawful to import into this state 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 any polar bear, leopard, ocelot, tiger, cheetah, jaguar, sable antelope, wolf (*Canis lupus*), zebra, whale, cobra, python, sea turtle, colobus monkey, kangaroo, vicuna, sea otter, free-roaming feral horse, dolphin or porpoise (*Delphinidae*), Spanish lynx, or elephant.

(b) (1) Commencing January 1, 2015, it shall be unlawful to import into this state 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 any crocodile or alligator.

(2) This subdivision shall not be construed to authorize the importation or sale of any alligator or crocodilian species, or any products thereof, that are listed as endangered under the federal Endangered Species Act, or to allow the importation or sale of any alligator or crocodilian species, or any products thereof, in violation of any federal law or any international treaty to which the United States is a party.

For complete info on PC§653o, see link:

<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=4704102996+1+0+0&WAIAction=retrieve>

The above laws and regulations are not to be considered as the *only* laws set in place, they are however, the most common. If there is any uncertainty regarding the legality of wildlife purchases, sales, and/or possession, you should contact your local USFWS or DFG office.