STATE OF NEW YORK

1486

2019-2020 Regular Sessions

IN SENATE

January 15, 2019

Introduced by Sens. HOYLMAN, BAILEY, BOYLE, KAVANAGH, KRUEGER, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to prohibiting the sale, trade or bartering or possession with intent to sell, trade or barter of certain wild animals or wild animal products and the penalties imposed therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 11-0536 of the environmental conservation law, as amended by chapter 338 of the laws of 2009, is amended to read as follows:

1. Except as provided in subdivision three hereof, no part of the skin or body, whether raw or manufactured, of the following species of wild animals or the animal itself may be sold**, traded, bartered,** or offered for sale**, or possessed with intent to sell, trade or barter** by any individual, firm, corporation, association or partnership within the state of New York:--Leopard (Panthera pardus), Snow Leopard (Uuncia), Clouded Leopard (Neofelis nebulosa), Tiger (Panthera tigres), Asiatic Lion (Panthera leo persica), Cheetah (Acinoyx jubatus), Alligators, Caiman or Crocodile of the Order Crocodylia (except as provided in subdivision two of this section), tortoises of the genus Gopherus, marine turtles of the family Cheloniidae and the family Dermochelidae, Vicuna (Vicugna vicugna), Wolf (Canis lupus), Red Wolf (Canis niger), or Tasmanian Forester Kangaroo (Macropus giganteus tasmaniensis) or Polar Bear (Thalarctos maritimus), Mountain Lion, sometimes called Cougar (Felis Concolar), Jaguar (Panthera onca), Ocelot (Felis pardalis), or Margay (Felis wiedii), [~~Sumatran Rhinoceros (Dicerorhinus sumatrensis), or Black Rhinoceros (Dicero bicornis)~~] **Rhinoceros (Rhinocerotidae) or Giraffe (Giraffa camelopardalis)**.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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§ 2. Section 71-0924 of the environmental conservation law, as amended by chapter 326 of the laws of 2014, is amended to read as follows:

§ 71-0924. Illegal commercialization of fish, shellfish, crustaceans, and wildlife.

1. Notwithstanding any other provision of this chapter, when a violation involves the sale, trade or barter of fish, shellfish, crustaceans, wildlife, or parts thereof, the sale, trade or barter of which is prohibited by the fish and wildlife law, the following additional penalties shall be imposed:

[~~1.~~] **a.** where the value of fish, shellfish, crustaceans, wildlife, or parts thereof, is two hundred fifty dollars or less, the offense shall be a violation punishable by a fine of five hundred dollars and/or not more than fifteen days of imprisonment;

[~~2.~~] **b.** where the value of fish, shellfish, crustaceans, wildlife, or parts thereof, is more than two hundred fifty dollars but does not exceed one thousand five hundred dollars, the offense shall be a misdemeanor punishable by a fine of five thousand dollars and/or not more than one year of imprisonment;

[~~3.~~] **c.** where the value of fish, shellfish, crustaceans, wildlife, or parts thereof, exceeds one thousand five hundred dollars, the offense shall constitute a class E felony under the provisions of the penal law; [~~and~~]

[~~4.~~] **d.** where the value of ivory articles, as defined in section 11-0535-a of this chapter, exceeds twenty-five thousand dollars, the offense shall constitute a class D felony under the provisions of the penal law**; and**

e. with respect to a violation of the provisions of section 11-0536 of this chapter, in addition to any other fines or penalties, where the value of wildlife, or parts thereof, exceeds twenty-five thousand dollars, the offense shall constitute a class D felony under the provisions of the penal law, and shall be punishable by a fine of the greater of: (i) twenty thousand dollars; or (ii) up to twice the fair market value of the wildlife, or parts thereof.

[~~5.~~] **2.** For the purposes of this section the value of fish, shellfish, crustaceans and wildlife shall be the fair market value of or actual price paid for such resource, whichever is greater. For purposes of this section, "sale" shall include the acts of selling, trading or bartering and all related acts, such as the act of offering for sale, trade or barter, and shall also include the illegal possession of fish, shellfish, wildlife or crustacea with intent to sell. It shall be presumptive evidence of possession with intent to sell when such fish, shellfish, wildlife or crustacea is possessed in quantities exceeding the allowable recreational quantities, or is possessed in a retail or wholesale outlet commonly used for the buying or selling of such fish, shellfish, wildlife or crustacea, provided, however, that nothing in this subdivision shall preclude the admission of other evidence which may serve to independently prove a defendant's intent to sell.

§ 3. Subdivisions 1, 2 and 3 of section 71-0927 of the environmental conservation law, subdivisions 1 and 2 as amended and subdivision 3 as added by chapter 284 of the laws of 2004, are amended to read as follows:

1. Anyone convicted of violating the prohibition against harvesting, taking, possessing or transporting shellfish under facts and circumstances meeting the criteria for imposition of sanctions pursuant to **paragraph c of** subdivision [~~3~~] **1** of section 71-0924; or anyone convicted two or more times within five years of violating the prohibition against

harvesting, taking, possessing or transporting shellfish under facts and circumstances meeting the criteria for imposition of sanctions pursuant to **paragraph b of** subdivision [~~3~~] **1** of section 71-0924, or of violating subdivision 1 or 2, paragraph e or f of subdivision 3, subdivision 6, 8, 9, 10, 11, or 13 of section 13-0309, section 13-0317, subdivision 2 of section 13-0323, section 13-0325, [~~subdivision 3 or 5 of~~] section 13-0327, or section 13-0344 of this chapter shall have his license to take and land shellfish revoked and shall not be relicensed for a minimum of five years thereafter, in addition to any other sanction imposed pursuant to this article.

2. Anyone convicted of unlawfully harvesting, taking, possessing or transporting any marine fish, shellfish or crustacea under facts and circumstances meeting the criteria for imposition of sanctions pursuant to **paragraph c of** subdivision [~~3~~] **1** of section 71-0924; or anyone convicted two or more times within five years of unlawfully harvesting, taking, possessing or transporting any marine fish, shellfish or crustacea under facts and circumstances meeting the criteria for imposition of sanctions pursuant to **paragraph b of** subdivision [~~3~~] **1** of section 71-0924, or of violating subdivision 1, paragraph c of subdivision 2, subdivision 5, 6, 7 or 9 of section 13-0329, or section 13-0344 of this chapter shall have his license to take and land lobsters revoked and shall not be relicensed for a minimum of five years thereafter, in addition to any other sanction imposed pursuant to this article.

3. Any person convicted of violating the prohibition against harvesting, taking, possessing or transporting any marine food fish under facts and circumstances meeting the criteria for imposition of sanctions pursuant to **paragraph c of** subdivision [~~3~~] **1** of section 71-0924; or any person convicted two or more times within five years of violating the prohibition against harvesting, taking, possessing or transporting any marine food fish under facts and circumstances meeting the criteria for imposition of sanctions pursuant to **paragraph b of** subdivision [~~3~~] **1** of section 71-0924, or of violating section 13-0344 of this chapter, shall have his license to take and land marine food fish revoked and shall not be licensed for a minimum of five years thereafter, in addition to any other sanctions imposed pursuant to this article.

§ 4. This act shall take effect immediately. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.