

**Written Testimony for Alexander von Bismarck,  
Executive Director, Environmental Investigation Agency  
Before the U.S. House of Representatives Committee on Natural Resources, Subcommittee on  
Water, Wildlife and Fisheries  
Legislative Hearing on H.R. 3119, H.R. 6784, H.R. 6854, and H.R. 7157**

1324 Longworth House Office Building  
Wednesday, February 14, 2024

Chairman Bentz, Ranking Member Huffman, and members of the Natural Resources Subcommittee on Water, Wildlife and Fisheries, thank you for inviting me to appear before the Subcommittee today for this legislative hearing, to focus on important laws that are designed to protect flora and fauna, combat illicit trade and transnational crime.

### **Introduction**

I have investigated and studied global crime in natural resources for over 25 years. As an investigator and the Executive Director of the Environmental Investigation Agency, I have conducted international field investigations on every continent into criminal networks dealing in illegal wood, endangered species and harmful chemicals. Before joining EIA, I researched linkages between economics, ecology and human health with the Harvard School of Public Health. I have a MSc from the London School of Economics in Environment and Development and a BSc from Harvard University in Environmental Science and Public Policy. I am also proud to have served as a U.S. Marine.

The Environmental Investigation Agency, Inc. (EIA), a non-profit 501(c)(3) organization, has worked for nearly 40 years to investigate and expose environmental crimes, and seek tangible and effective solutions. EIA's analyses of the trade in illegal timber, wildlife, and ozone-depleting substances have been globally recognized. Our investigations, starting in the late 1980s, played a leading role in instigating the international ban on ivory trade, and more recently, the timber annex to the U.S.-Peru Trade Promotion Agreement and the 2008 amendments to the U.S. Lacey Act. For more than 15 years, EIA has been a leader of the Lacey Act Coalition, representing industry, labor and environmental groups. In 2018, EIA pinpointed the origin of the biggest unsolved environmental crime in recent history, exposing the source of about 10 billion tons in illegal emissions originating in China.

EIA works with local partners around the globe to document the environmental, economic and social impacts of environmental crimes. Our experience has shown us unequivocally that the most destructive and challenging crimes to fight are those that are inextricably linked to international trade, whether it's trade in endangered species, illegal logging, trade in forest-risk commodities driving illicit deforestation, illegal fishing or illegal emissions – and that any solution therefore requires action and cooperation from both producer and consumer nations involved in that trade. Crimes driven by local demand can, when there is political will, be solved locally, while international crime, driven by international trade, overwhelms the best local efforts to do so alone.

Today I shall focus my remarks on two of the bills up for consideration: H.R. 7157 and H.R. 6784.

## **HR 7157: “Strengthen Wood Products Supply Chains Act”: The U.S. Lacey Act and the 2008 Plant Amendments**

Times have changed in the more than 100 years since the Lacey Act first became law, and Congress has attempted to keep pace with increasingly sophisticated international criminal networks who pose serious threats to the American economy as well as global biodiversity and forests. Amendments to the Lacey Act have generally tried to plug gaps and loopholes that would incentivize more illegal trade. H.R. 7157 appears to go in the opposite direction.

The 2008 plant amendments provide an excellent example of how the Lacey Act has been modernized and strengthened, and how the U.S. industry and manufacturing sectors have benefited from it. The Lacey Act plant amendments were born out of strong evidence that illegal logging and associated trade had harmful impacts not only on the world’s forests, but also on the American timber industry. A 2004 study by Seneca Creek Associates concluded that illegal timber imports were costing American businesses over one billion dollars annually<sup>1</sup>. The 2008 amendments ensure that trees and other plants need to be legally sourced, protecting American producers from having to compete with cheap illegal timber imports. The Lacey Act now works to provide American timber producers a level playing field. That’s why so many American businesses have rallied behind this law, and are in fact seeking even stronger enforcement, rather than the creation of loopholes that would water it down and increase the opportunities for illegal goods to enter our market. You can find videos featuring domestic industry viewpoints during the 10th anniversary of the 2008 Lacey Act amendments: <https://www.laceycoalition.org/videos>

All indications are that the Lacey Act has indeed contributed to reducing illegal logging while strengthening our domestic industries. A 2015 study by the Union of Concerned Scientists found that imports of illegal timber had decreased by over 40 percent since the amendment was passed, and concluded that stronger enforcement could bring even more progress.<sup>2</sup> Another study by Jeffrey Prestemon for the U.S. Fish & Wildlife Service in 2016 looking at timber imports from high risk regions found that implementation of the Lacey Act had reduced overall U.S. timber imports by 24 percent.<sup>3</sup> We have found evidence in our investigations that timber producers around the world are much more aware of the issue and many are changing their practices to be more legal, more transparent, more sustainable due to U.S. enforcement of the Lacey Act.

One of the first enforcement actions under the 2008 plant amendments initially caused an outcry of government overreach. The U.S. case against Gibson Guitars for importing illegal wood in 2009 was based partially on my fieldwork. I had gone undercover with the biggest timber baron in Madagascar, Roger Thunam, and had been offered illegal ebony out of the Masoala National Park. He also told me that his number one client was Gibson Guitars in the United States. Gibson ultimately acknowledged that it continued to order Malagasy ebony despite knowing about the relevant laws that made it illegal to export

---

<sup>1</sup> [http://www.unece.lsu.edu/responsible\\_trade/documents/2003-2006/rt03\\_036.pdf](http://www.unece.lsu.edu/responsible_trade/documents/2003-2006/rt03_036.pdf)

<sup>2</sup> [https://www.ucusa.org/global-warming/stop-deforestation/lacey-acts-effectiveness-reducing-illegal-wood-imports#.Wvt\\_o0yZORY](https://www.ucusa.org/global-warming/stop-deforestation/lacey-acts-effectiveness-reducing-illegal-wood-imports#.Wvt_o0yZORY)

<sup>3</sup> Daowei Zang, Yin Ling and Jeffrey P. Prestemon: From Deficit to Surplus: An Econometric Analysis of US Trade Balance in Forest Products, *For.Sci* 63(2):209-217, copyright Society of American Foresters

The wood was subsequently forfeited, Gibson paid respective fines and entered into an enforcement agreement that included a compliance plan which served as useful guidance for responsible American companies who wanted to ensure they are sourcing legal wood going forward<sup>4</sup>. The enforcement action also had a decisive impact on enforcement against illegal ebony in other important markets, and helped bring illegal chainsaws to a halt in one of the most threatened protected areas in Madagascar.

In 2015, Lumber Liquidators pleaded guilty to one felony count of importing goods through false statements and four misdemeanor violations of the Lacey Act<sup>5</sup>. The case involved importing solid oak flooring from Chinese manufacturers made from illegally harvested timber from the Russian Far East. This product can just as well be made by American mills out of wood from family owned forests in the U.S. The company agreed to pay 13.2 million dollars in forfeitures and fines. The plea agreement included a detailed compliance plan to ensure that all future imports would be legally sourced. Through its reckless business model, the company contributed to destroying valuable forests and harming people and wildlife in the Russian Far East, including the last remaining wild populations of the Siberian tiger. Enforcement in this case was an instrumental move to level the playing field and to protect honest American businesses from unfair competition through unacceptable practices.

In 2012, EIA first exposed systemic timber laundering from Peru in a seminal report – *The Laundering Machine*<sup>6</sup>. Further to this work, we helped to expose a consistent flow of timber shipments coming from the heart of the Peruvian Amazon and eventually to the United States aboard a vessel called the Yacu Kallpa, in which the wood was frequently found to be over 90 percent illegally sourced. As a result of joint investigative work between Peruvian authorities, Interpol, and the World Customs Organization, and with policy and enforcement actions taken in the US, this shipping route was eventually shutdown entirely. A US buyer of timber from the Yacu Kallpa, Global Plywood and Lumber Trading LLC, pleaded guilty to importing illegal timber from Peru in violation of the US Lacey Act. HSI, CBP and DOJ, proved that at least 92% of the Global Plywood timber in the shipment had been illegally logged, and the corporation admitted that it failed to exercise due care when it imported illegally-sourced timber from the Peruvian Amazon into the United States.

In recent years, the Lacey Act has increasingly helped US law enforcement detect and prosecute financial and other related crimes which are inextricably linked to the illegal wood trade. In October 2023, a Florida couple pleaded guilty to smuggling and violations of the Lacey Act by illegally importing plywood from China into the US<sup>7</sup>. Using different front companies, the couple sought to evade duties which cost the United States roughly 42 million dollars. The couple had incorporated seven companies in the United States – naming relatives or friends as corporate officers and agents – and these shell companies imported and illegally financed hundreds of shipments of plywood products into the United States, valued between 25 and 65 million dollars. They currently face the potential of large fines, jail time and forfeitures. China is the world's largest importer and processor of illegal timber, with the United

---

<sup>4</sup> <https://www.justice.gov/opa/pr/gibson-guitar-corp-agrees-resolve-investigation-lacey-act-violations>

<sup>5</sup> <https://www.justice.gov/opa/pr/lumber-liquidators-inc-sentenced-illegal-importation-hardwood-and-related-environmental>

<sup>6</sup> <https://us.eia.org/report/the-laundering-machine/>

<sup>7</sup> <https://www.justice.gov/opa/pr/florida-couple-pleads-guilty-scheme-evade-42-million-duties-illegally-importing-and-selling>

States being its number one destination, importing billions of dollars worth of Chinese wood products every year – an impossible and extremely unfair competition for law-abiding American producers.

Over the past decade, the world has lost an area of forest the size of Virginia every year.<sup>8</sup> Forest loss and degradation are among the biggest contributors to climate change and biodiversity loss and one of the root causes of zoonotic disease spillover events such as those related to Ebola and coronaviruses.<sup>9</sup> Forests contribute to the livelihoods and food security of well over a billion people around the world,<sup>10</sup> and their loss is linked to land invasions and violence against Indigenous peoples, local communities, and environmental defenders<sup>11</sup> while feeding corruption and organized crime and undermining rule of law.<sup>12</sup> With the implementation of the Lacey Act and its evolution over time, the U.S. has set an example for the rest of the world that illegal wildlife and timber products are not acceptable. It is imperative that the spirit and rationale of this law be upheld and its effectiveness not be undermined.

Illegal logging is the most profitable natural resource crime on the planet and the third most profitable transnational crime behind counterfeiting and drug trafficking.<sup>13</sup> The Lacey Act needs more resources and attention devoted to effective implementation and enforcement<sup>14</sup>, not greater impediments to conducting the necessary investigations and compliance oversight. H.R. 7157 would serve to increase unfair competition for law-abiding American businesses and undermine the work of U.S. law enforcement officers, who are trying to stop this transnational crime, by:

- compelling them to share evidence gathered in the early stages of an investigation - potentially with a suspected illegal operator - within 5 days;
- Allowing merchandise that is the subject of investigation to be returned to the importer just 10 days after it has been detained, and moved from a government to a private facility where anything can happen to it;
- Limiting the timeframe to conduct a proper investigation to determine the appropriate action to take in regard to a shipment of concern.

In addition, the “merchandise” definition makes it clear that these new proposed rules and exceptions would extend well beyond wood products to all wildlife, fish and plant products, allowing for all these forms of illegal items to enter the US market with greater ease.

---

<sup>8</sup> Roughly 42,000 square miles per year, based on annual deforestation estimates published by the UN Food and Agriculture Organization for 2010 – 2020. This does not include vast areas of clear-cut logging in boreal and temperate forests or selective logging in tropical rainforests.

<sup>9</sup> For recent analysis of the climate mitigation potential of tropical forests, see: Griscom et al. [National mitigation potential from natural climate solutions in the tropics](#). *Phil. Trans. Of the Royal Society B: Biological Sciences* (2020); for recent analysis on the role of forest and wildlife protection in preventing pandemics of zoonotic origin, see: Dobson et al. [Ecology and economics for pandemic prevention](#). *Science* (July 24, 2020); and Tollefson, Jeff. [Why deforestation and extinctions make pandemics more likely](#). *Nature* (August 7, 2020).

<sup>10</sup> Independent Evaluation Group of the World Bank Group, 2013. [Managing Forest Resources for Sustainable Development: An Evaluation of World Bank Group Experience](#).

<sup>11</sup> See [Human Rights Watch letter to the OECD](#), January 27, 2021, for an overview of the situation in Brazil.

<sup>12</sup> See, for example: Emanuele Ottolenghi, *The Dispatch*, March 19, 2021. [Good Climate Policy Should Fight Corruption and Organized Crime: They are key drivers of deforestation and environmental degradation](#).

<sup>13</sup> <https://www.cbp.gov/trade/programs-administration/natural-resources-protection/illegal-logging>

<sup>14</sup> In January 2023, US lawmakers called on the administration to stop illegal wood imports that harm the U.S. forest products industry and in a [letter to Secretary of Agriculture Vilsack](#), highlighted the importance of cracking down on illegal wood trade, urging more decisive action on foreign imports that devalue U.S. timber.

The Lacey Act, as amended, makes it a crime to traffic in plants or plant products when, in the exercise of due care, the person should know that the plant or plant product was taken, possessed, transported or sold illegally. “Due care” is a long-standing legal principle that means the degree of care at which a reasonably prudent person would take under the same or similar circumstances. While the Lacey Act does not define nor mandate any requirements to constitute due care, practical guidance has come from some of the early case history detailed above, such as the compliance plan in the Lumber Liquidators case.

As a CBP official put it, “While “trafficking plants” may sound harmless, illegal logging is not a victimless crime. The illegal timber trade is soaked with blood, financing violent conflict, and providing a cover for other crimes, such as drug trafficking, money laundering, illegal mining, wildlife trafficking, and forced labor. Ignoring the effects of illegal logging and timber trafficking could result in life-threatening consequences, causing great misfortune to economies, wildlife, and humans.”<sup>15</sup>

I believe the question is whether we actually want to deter illegal wood coming into the country or not. In an extraordinary show of unity of purpose, the US timber sector, conservationists and human rights advocates have agreed they do. In my two decades of collecting evidence of illegal logging and observing the resulting enforcement action, it is clear to me that the above steps would seriously undercut this shared goal. The ability of enforcement personnel to detain and test are critical to the majority of the successful cases brought. Clearly there are costs involved during those steps to both the government and the importers in question, but they pale in comparison to the economic costs that will be incurred if they are not done, i.e. if the sector gives up the current effective deterrent against importing cheap stolen wood from overseas.

We urge you to oppose H.R. 7157 as the changes proposed will allow those that knowingly import illegal wood to sleep well at night because it would serve to deter and dampen the current level of enforcement. It would be a loud signal to start up the operations of cheap stolen wood imports from overseas that have been shut down over the last decade due to the deterrent of the Lacey Act. Improving enforcement mechanisms for all involved is a laudable goal, but it needs to be done with full input from those bringing the cases, and I would be surprised if that was the case for H.R. 7157.

### **H.R. 6784 - The ESA Flexibility Act**

We are in the midst of a biodiversity crisis where scientists predict we could lose one million species, many in the coming decades, with serious consequences for food production, water purification, and overall ecosystem functions. Now would be a great time to strengthen the Endangered Species Act, one of the best tools we have for securing our future through protection of biodiversity. It is not a good time to weaken it.

H.R. 6784 attacks the foundation of the Endangered Species Act by throwing the Act’s automatic, full-strength protections for species newly listed as endangered into uncertainty, allowing the U.S. Fish and Wildlife Service or NOAA Fisheries to issue weaker, species-specific rules specifying prohibited activities. While Congress gave the Services flexibility under section 4(d) to issue such rules for *threatened* species, the Act and its legislative history are unambiguously clear that *endangered* species are

---

<sup>15</sup> <https://www.cbp.gov/frontline/cbp-stops-illegal-logging>

to always receive the full suite of protections given their more vulnerable status. These guaranteed protections are there for a reason.

By eliminating the mandate that endangered species receive full, automatic protections, H.R. 6784 would render the more protective “endangered” status virtually meaningless, undercutting the very cornerstone of the Endangered Species Act and ultimately placing hundreds of species at greater risk of extinction.

H.R. 6784 would also expose the Services’ listing program to increased political pressure from special interests, which is already a persistent problem. As we have seen with many existing 4(d) rules for threatened species, industry groups routinely seek exemptions from the take prohibition for their particular industries, undermining the scientific integrity of the listing process and ultimately resulting in species receiving less protection than needed.

Further, the Fish and Wildlife Service’s listing program already lacks the necessary funding and resources to complete even the most basic duties under the Act, facing a backlog of more than 300 species awaiting consideration for protection. If the agency is allowed to develop individual rules for endangered species, an administration under pressure by special interests could use this discretion to further burden an already overwhelmed program, ultimately resulting in increased extinction risk for animals and plants across the country.

For foreign species, whether import or interstate or foreign sales are banned would be discretionary for endangered species. As the group that contributed to the first ban on ivory trade in the 80’s by investigating its links to arms smuggling in Africa, we would be extremely concerned that endangered species products from elephants, rhinos or tigers that, while subject to international commercial trade bans, but could be freely traded commercially from state to state in our country because of a lack of ESA protections. How can we combat wildlife trafficking under such a system?

Ultimately, eliminating needed, automatic protections for endangered species and allowing those protections to be discretionary is a recipe for ensuring the Endangered Species Act does not recover species. Without immediate and automatic application of Section 9 as drafted, the core protections afforded both our domestic species as well as foreign species will be left to discretion and budgetary constraints. The Act will not meet its goal of recovering species if its core protections are eliminated. For these reasons, we urge you to oppose H.R. 6784.