



**STATEMENT OF ERIK O. AUTOR, ESQ.**

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**To The**

**HOUSE COMMITTEE ON NATURAL RESOURCES, SUBCOMMITTEE ON  
FISHERIES, WILDLIFE, OCEANS AND INSULAR AFFAIRS**

**LEGISLATIVE HEARING ON H.R. 3280, LACEY ACT CLARIFYING AMENDMENTS  
ACT; AND H.R. 3324, LACEY ACT PAPERWORK REDUCTION ACT**

**February 27, 2013**

Mr. Chairman, Members of the Subcommittee, thank you for inviting me to testify on pending legislation to reform the Lacey Act Amendments Act of 2008. This is my second appearance before the subcommittee on this issue. I am testifying today on behalf of an informal industry coalition that includes retailers, home builders, music merchants and craftsmen, boat builders, furniture manufacturers, and other American companies and industries that buy, sell, and use wood and other forest products.

At last year's hearing, I listed four sensible, targeted, and modest changes Congress needs to make to improve and facilitate Lacey Act enforcement and compliance:

1. Preclude retroactive application of the Amendments prior to their May 22, 2008 effective date;
2. Conform the Amendments to other laws regulating imports by replacing the filing of a declaration upon "importation" of each shipment with a "declaration on demand," and provide the Secretary of Agriculture more flexibility in promulgating regulations on filing plant declarations;

3. Specify that the Amendments apply only to foreign laws directed at the protection, conservation, or management of plants or the ecosystems of which they are a part, and provide for a publicly-available database of those laws; and
4. Clarify that strict liability for seizure of contraband under the civil asset forfeiture statute does not apply to plants under the Amendments, and provide a legal means to return seized goods to those who can demonstrate to a federal judge that they exercised proper due care in compliance with the law.

To avoid simply repeating my earlier statement, I have appended a copy to the written version of my testimony, and will focus my comments today on several other issues Members need to consider regarding proposed reforms to the Lacey Act Amendments.

First, the coalition strongly supports the two bills under discussion in this hearing – the Lacey Act Clarifying Amendments Act (H.R. 3280) and the Lacey Act Paperwork Reduction Act (H.R. 3324) – which effectively address the first two reforms I listed earlier – retroactivity and declaration on demand. However, the coalition still strongly supports all four proposed reforms and urges Congress to address all of them together as part of a single legislative package or in tandem as separate bills.

Second, many of those now opposed to the Lacey Act Clarifying Amendments Act, were signatories to the three consensus statements of importers, non-governmental organizations, and domestic producers on Lacey Act clarifications issued in 2009, 2010, and 2011 that originally proposed the retroactivity language contained in that bill. Those consensus statements, which I ask to be entered into the record, also proposed a number of other reforms to the Lacey Act. While opponents have urged these changes be done administratively, that has not occurred or cannot be done without legislative changes.

Third, I want to dispel the false notion that the two bills or any of the other proposed changes to the Lacey Act Amendments will “gut” the law. Coalition members and the industries they represent support expansion of the Lacey Act to the regulation of imported plants and plant products. Our commitment is demonstrated by the innovative forest stewardship programs pioneered by companies in the industries we represent, even well before passage of the Lacey Act Amendments. Accordingly, I want to emphasize that we would not support any legislation that we genuinely believed would undermine the law and our ongoing efforts to promote proper forest stewardship in our industries. To the contrary, we believe that the proposed reforms will maintain the integrity and objectives of the law while facilitating more effective and efficient compliance and enforcement.

In particular, the reforms proposed in the Lacey Act Paperwork Reduction Act (H.R. 3324) will address fundamental problems with the current declaration system, identified in the May 2013 report to Congress by the USDA Animal and Plant Health Inspection

Service (APHIS) that have revealed its failure as an effective enforcement tool.<sup>1</sup> Specifically, enforcement and compliance are needlessly complicated, expensive, and inefficient due, in part, to the volume of information being submitted, particularly through paper declarations.<sup>2</sup> This problem compromises the quality and utility of the information collected, making targeted enforcement difficult or impossible. Requiring APHIS to collect more information from importers would only make matters worse. Instead, H.R. 3324 would ameliorate these problems and make the system consistent with other import-regulating law, by creating a simpler and more efficient declaration-on-demand system.

Fourth, I want to underscore that while coalition members are committed to ending illegal logging and harvesting of plants, laws and regulations addressing those problems should be balanced and not place unreasonable and unnecessary restrictions and costs on legitimate commerce. On this point, we have genuine concerns that the Lacey Act Amendments as currently written, are acting as a non-tariff trade barrier to burden or disrupt legal and legitimate commerce in forest products.

For example, several Members of Congress who oppose any effort to reform the Lacey Act Amendments, tout the fact that this law has succeeded in shifting the U.S. balance of trade from deficit to surplus in forest products, thereby promoting domestic timber production and protecting American jobs.

This statement reveals a disturbing underlying motive and significant problem. Congress passed the Lacey Act to fight criminal activity, not to shift the balance of trade and raise prices by restricting imports in favor of U.S. production.<sup>3</sup> The fact that it is acknowledged that the Lacey Act is having such effect, raises questions regarding U.S. legal obligations under the rules of the World Trade Organization, imposes unreasonable and unnecessary costs on thousands of U.S. businesses that depend on forest products, inappropriately puts Congress in the role of picking winners and losers among American industries, and threatens tens of thousands of American jobs in industries that depend on forest products. We believe the reforms embodied in the two pending bills and the additional ones we proposed will largely correct this situation.

Finally, I want to correct certain mischaracterizations about the 2012 settlement between Gibson Guitar and the Department of Justice regarding the seizure of wood

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<sup>1</sup> U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS), Report to Congress With Respect to Implementation of the 2008 Amendments to the Lacey Act (May 2013).

<sup>2</sup> The volume of paper declarations currently filed is 5,000 per month. APHIS acknowledges that the current system requiring the filing of a declaration upon importation inadvertently discourages the filing of electronic declarations in favor of less efficient, but cheaper paper declarations. The agency simply cannot review paper declarations due to their sheer volume and the huge investment in manpower and resources necessary to process them. Id. at pp. 11-14.

<sup>3</sup> It is worth noting that Commerce Department trade data show the value of U.S. forest products imports was \$37 billion in 2012, with half of all imports coming from Canada, a country with one of the best forest stewardship records in the world. Therefore, it is clear that the vast majority of imported products containing wood and plant material is legal, and any impact of the Lacey Act on prices should be nominal.

from Madagascar and India. Opponents of Lacey Act reform point to this settlement to support their argument that the Lacey Act is working as intended and should not be changed. But their description of the agreement distorts the real story.

In the settlement, Gibson acknowledged that it failed to exercise proper due diligence to confirm the legality of the Madagascar wood, paid a \$300,000 penalty, and forfeited the wood. However, in the case of the Indian wood, DOJ admitted that “certain questions and inconsistencies now exist regarding the tariff classification,” the rationale upon which the wood was seized, thereby essentially acknowledging that its enforcement action was flawed. DOJ returned the wood to Gibson and said it could resume business in India.

DOJ’s admission underscores why the Lacey Act needs to be reformed. As discussed in my earlier testimony, the Lacey Act Amendments were written in a way that could trigger enforcement and penalties from violations of an almost unlimited and largely unknowable set of criminal and civil foreign laws, regulations, and ordinances at the national, sub-national, and local level. Consequently, the public has little guidance or notification as to their legal responsibilities under this law and can face potentially severe legal and economic consequences for a violation despite best efforts to comply. Unless corrected, this situation will continue to raise the risk of seriously flawed and over-zealous enforcement actions by DOJ like the seizure of the Indian wood in the Gibson case.

A recent Washington Post op-ed on a different criminal law issue succinctly summed up the current problems with the Lacey Act Amendments:

“The law is supposed to solve problems, not create them. Laws should provide as much clarity as possible, not expand the realms of ambiguity and subjectivity. Laws ought to bring about the practical results their promoters claim they’ll achieve.”<sup>4</sup>

Congressional passage of the bills before this subcommittee will help correct this problem while improving and facilitating both government enforcement and private-sector compliance, and providing an effective tool to end commerce in illegally-harvested plants.

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<sup>4</sup> E.J. Dionne, Jr., “A Loophole for Killers” The Washington Post (Feb. 20, 2014), p. A17.