

June 18, 2014

The Honorable John Fleming
Chairman
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Fleming:

As a broad coalition of domestic manufacturers, retailers, distributors, and end users of wood products who support the underlying goals of the Lacey Act, the undersigned organizations would like to express our strong support for H.R. 3280, the Lacey Act Clarifying Amendments Act of 2013, and H.R. 3324, the Lacey Act Paperwork Reduction Act. These two bills represent common sense reforms that will reduce the Lacey Act's unintended burden on businesses acting in good faith while ensuring enforcement resources can be focused on those who seek to profit from the trade of illegally harvested wood.

Swift enactment of the Lacey Act Clarifying Amendments Act of 2013 will provide much needed certainty to businesses that buy and sell wood and wood products by clarifying that the restrictions imposed by the Lacey Act Amendments of 2008 do not apply to plants and plant products harvested, finished, or processed before May 22, 2008. This is necessary to ensure that individuals and businesses who own covered products are not unwittingly and retroactively turned into criminals.

H.R. 3280 will provide legal certainty to many American businesses, including artisans, who have long maintained catalogues of rare woods to meet their customers' needs. To be clear, we do not expect this bill to impact the vast majority of wood bought and sold in the U.S., as today manufacturers, retailers, and distributors typically employ "just-in-time" inventory management. However, there are exceptions to this in the specialty and artisan trade, and this bill represents common sense relief for those affected individuals and businesses.

The reforms proposed in the Lacey Act Paperwork Reduction Act 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). This report revealed the declaration as a failed enforcement tool. Enforcement and compliance are needlessly complicated, expensive, and inefficient due, in part, to the volume of information being submitted. This problem compromises the quality and utility of the information collected, making targeted enforcement difficult or impossible. H.R. 3324 would address these problems and make the system consistent with other import-regulating law by creating a simpler and more efficient declaration-on-demand system under which importers would maintain information required on the declaration and produce the documentation at the request of federal enforcement agencies. A similar concept was included in the 2008 amendments to the Consumer Product Safety Act.

In addition to passage of these two bills, we urge the Subcommittee to move forward with legislation to provide an "innocent owner" protection. Under the Lacey Act Amendments of

2008, all material determined to be covered under the law is categorized as contraband, allowing for its seizure by law enforcement without sufficient legal recourse for the owner. An “innocent owner” protection would clarify that strict liability for seizure of contraband under the civil asset forfeiture statute does not apply to plants covered under the Lacey Act Amendments (as we believe was intended by Congress in adopting the 2008 Amendments), and provide a means to return seized goods to those who can demonstrate to a federal judge they exercised proper due care in compliance with the law. This would encourage companies to exercise due care in their supply chains – exactly the actions we want to promote.

Finally, we encourage the Subcommittee to advance legislation that would specify that the Lacey Act Amendments of 2008 only apply to foreign laws directed at the protection, conservation, or management of plants or ecosystems. The scope of foreign laws that can be swept into the language of the 2008 Amendments is susceptible to very broad interpretation and application. There is an extremely wide and elastic set of foreign laws that could potentially form the basis of a Lacey Act violation, with little guidance to the regulated community as to their legal obligations. Legislation to address this problem should also require the Administration to produce a database of applicable foreign laws, so businesses can meaningfully perform due diligence on their supply chains regarding those specific laws.

One rationale cited by some for opposing efforts to fix the flaws of the 2008 Lacey Act Amendments has been that the Lacey Act must be maintained in its current form because in their view illegal logging leads to deforestation and, through the ability of forests to serve as a carbon sink, climate change. We reiterate our opposition to illegal logging. However, the Lacey Act has a small impact on deforestation. The leading cause of global deforestation is the permanent and legal conversion of forest land to agricultural uses, which accounts for an estimated 55-80 percent of deforestation globally.¹ While we agree that the health of forests around the world is critically important, sustainable forest management is necessary to ensure that forests thrive for the benefit of all future generations.

The members of the Lacey Act Coalition look forward to further opportunities to share our support for H.R. 3280 and H.R. 3324 and explore strategies to mitigate the unintended consequences of the 2008 Lacey Act Amendments through additional legislation. We will continue to promote efforts to improve the law to prevent illegal logging while allowing for the importation of legally harvested wood products.

Sincerely,

American Association of Exporters and Importers
American Home Furnishings Alliance
Express Association of America
International Wood Products Association
National Association of Home Builders
National Association of Music Merchants
National Marine Manufacturers Association
National Retail Federation

¹ Duncan Brack, Rob Bailey “Ending Global Deforestation: Policy Options for Consumer Countries.” Forest Trends. September 2013. http://www.forest-trends.org/documents/files/doc_4091.pdf