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Witnesses: Bills to Amend Lacey Act Would Correct Unintended Consequences of Law, Protect from Over-Criminalization

WASHINGTON, D.C. – Today, the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs held a [legislative hearing](#) on two bills that would amend the Lacey Act, [H.R. 3210](#), the “Retailers and Entertainers Lacey Implementation and Enforcement Fairness Act,” and [H.R. 4171](#), the “Freedom from Over-Criminalization and Unjust Seizures Act of 2012.” The Lacey Act was first enacted in 1900 to protect native flora and fauna by prohibiting the sale or transportation of wild animals or birds killed under violation of state law. Since its enactment, the Lacey Act has since been amended several times including expansions to include foreign laws, fish, and the importation and sale of illegally obtained timber and other plant products.

“Changes to the Lacey Act that were rushed through in 2008 made for imperfect outcomes that put Americans in legal jeopardy. Those amendments must be addressed before another person is unfairly prosecuted. This hearing is a good first step in finding ways to improve the law while still keeping its original intent of animal and plant protection intact,” **said Subcommittee Chairman John Fleming (LA-04).**

The 2008 Amendments to the Lacey Act resulted in an extensive expansion of the law to include all plants and plant products; a first time requirement to submit a declaration document for all imported plant products; and required Americans to comply with not only domestic, state and tribal laws, but also volumes of foreign laws, regulations, resolutions and decrees dealing with Forestry and plants, some of which are not even available in English. As a consequence of these Amendments, thousands of large and small American businesses who previously had little, if any, exposure to the Lacey Act have now become part of the regulated community.

The RELIEF Act (H.R. 3210) would make changes to several of the 2008 Amendments in an effort to protect the individuals, businesses and industries that were unintentionally affected due to their enactment. First, the bill would re-establish the “innocent owner” defense for plant and plant products facing civil forfeiture proceedings. Despite the intentions behind the 2008 Amendment that sought to reaffirm the “innocent owner” defense, the intent of the Amendment failed because products in violation of the Lacey Act are still considered contraband and therefore are illegal to possess, subject to confiscation and penalty of law. Second, the bill includes a grandfather provision exempting any plant imported into the United States prior to enactment of the 2008 Amendment or any finished plant or plant product assembled and processed before that date. Third, it would modify

the plant declaration requirement to apply to only solid wood and items imported only for commerce. Last, it reduces the penalty for first time violators, as it affects plants, as long as the offense was not knowingly committed.

“Helping musicians like Vince Gill and Ricky Skaggs is the primary impetus of our legislation. Not only are musicians and music stores in jeopardy, but other legitimate businesses such as antique dealers and lumber importers. We can help these innocent people without harming the worthy environmental goals of the Lacey Act. We can have healthy forests and legal guitars,” **said Rep. Jim Cooper (TN-05).**

H.R. 4171, known as the FOCUS Act, would repeal certain provisions of the Lacey Act relating to violations of foreign laws and criminal penalties. The bill would remove language requiring compliance with relevant foreign laws, therefore limiting violations to federal, state or tribal laws. It would also eliminate provisions in the Act that allow for criminal prosecutions; reduce the penalties and fines for violation; and delete language that grants federal government authorities certain powers to carry out the law including the right to carry firearms, search and seize, and make an arrest without a warrant.

“Congressman Broun and I introduced companion bills in the House and the Senate because of our shared concern regarding a dangerous law called the Lacey Act. I believe that the Lacey Act is unconstitutional both because of its foreign law component, and because it is so vague that it fails to satisfy basic due process requirements of fair notice. The FOCUS Act fixes what is but one example of the ever-growing problem of overcriminalization that we face in this country: the Lacey Act,” **said Senator Rand Paul (R-KY).**

“Over the years, and most recently through changes in 1981 and 2008, the Lacey Act has become the poster child for how the federal government abuses broad, sweeping criminalization. The Lacey Act is no longer about conservation, but rather subjects American citizens to prosecution based upon foreign laws and regulations that are often ambiguous in nature,” **said Rep. Paul Broun (GA-10).** *“I believe that passage of the FOCUS Act would go a long way toward correcting many of these abuses. Our bill is a commonsense step to protect law abiding businesses and American citizens from foreign laws and over-criminalization.”*

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