

**Testimony of Barry Rutenberg,  
Chairman of the Board,  
On Behalf of the  
National Association of Home Builders**

**Before the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs  
Of the House Natural Resources Committee**

**Hearing on  
“Commonsense Improvements to the Lacey Act and Subsequent Amendments”**

**May 8, 2012**

**Introduction**

Chairman Fleming, Ranking Member Sablan and members of the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, I am pleased to appear before you today on behalf of the National Association of Home Builders (NAHB) to share our views on the 2008 Amendments to the Lacey Act (16 U.S.C. §§ 3371, *et seq.*). We appreciate the invitation to appear before the Subcommittee on this important matter. My name is Barry Rutenberg, and I am the Chairman of the Board for NAHB and a home builder and remodeler from Gainesville, Florida.

NAHB represents more than 140,000 members involved in the home building, remodeling, multifamily construction, property management, subcontracting and light commercial construction industries. We are affiliated with more than 800 state and local home builder associations throughout the country, and since the association's inception in 1942, NAHB's primary goal has been to ensure that housing is a national priority and that all Americans have access to safe, decent and affordable housing, whether they choose to buy or rent a home.

First, I want to say that NAHB supports the goals of the Lacey Act and the prevention of trade in illegally harvested plant and plant products. Unequivocally, we do not support illegal logging in any place at any time.

Second, NAHB commends Representative Cooper for his earnest and diligent efforts in proposing much needed reforms to the Lacey Act, while at the same time, making efforts to improve and protect the integrity of the law. H.R. 3210, the *Retailers and Entertainers Lacey Implementation and Enforcement Fairness Act* or “RELIEF Act”, recognizes the essential need to hold harmless those who, unknowingly and without any culpability, are found to be in possession of products that run afoul of the Lacey Act. Honest business owners must have the right to seek the return of goods acquired through the exercise of due care, and we thank Representative Cooper for initiating this important discussion.

Notwithstanding, NAHB believes that a more thorough examination of this requirement and other provisions of Lacey is appropriate, and we deeply appreciate the Subcommittee taking a judicious look into these issues.

### **The Lacey Act and Implications on Affordable Housing**

Prompted by a growing concern about interstate profiteering in illegally taken wildlife, Representative John Lacey of Iowa introduced the Lacey Act in 1900, producing America's first federal wildlife protection law. The original law intended to conserve and protect certain species of wildlife in the states. Through a series of amendments over the last century and most recently in 2008, the current Lacey Act has expanded to criminalize trade in protected species of both plants, including wood products, and animals. Today, the Lacey Act generally makes it unlawful for any person to import, export, transport, sell, receive, acquire or purchase fish, wildlife, or plants taken, possessed, transported, or sold in violation of any federal, state, foreign, or Native American tribal law, treaty or regulation.

NAHB is concerned the 2008 Amendments created a number of unintended consequences for downstream users. Creating uncertainty in plant-based products harvested, produced or imported can have a detrimental effect on home builders and their clients. By including an extremely wide and elastic set of foreign laws that could potentially form the basis of a violation, the 2008 Amendments left builders unreasonably ignorant of the bounds their legal responsibilities. This uncertainty is undeniably magnified absent a hold harmless provision for honest business owners.

The ability to operate effectively in the home building industry and to price a home competitively depends on the degree to which the builder's overall costs are certain and predictable. Predictability is of paramount importance as it allows builders to accurately estimate and account for costs in building homes. Further, the more confidence a builder has in pre- and post-construction costs, the more cost-effective the home building process is, as well as the builder's ability to pass those corresponding savings through to homeowners.

The building industry is vitally important in maintaining a healthy economy. A strong housing sector provides a critical component of local economic development. Housing creates jobs, increases the demand for goods and services within a particular community, generates revenues for local governments and provides affordable housing. Residential construction provides significant income and jobs for local workers and generates important local economic activity for residents, local businesses and governments.

Construction activities have positive impacts by creating ongoing beneficial impacts in communities as new home purchasers pay taxes, and buy goods and services in the community. For example, NAHB estimates the first-year economic impacts of building 100 typical single family homes include \$23.1 million in wage and net business income, \$8.9 million in federal, state and local taxes, and 305 jobs.

This impact is of particular concern in the affordable housing sector where relatively small price increases can have an immediate impact on low to moderate income home buyers who are more susceptible to being priced out of the market. As the price of the home increases, those who are on the verge of qualifying for a new home purchase will no longer be able to afford to purchase a new home. A 2012 priced-out analysis done by NAHB illustrates the number of households priced out of the market for a median priced new home due to a \$1,000 price increase. Nationally, this price difference means that when a median new home price increases from \$225,000 to \$226,000, 232,447 households can no longer afford that home.

Home builders are generally small business entrepreneurs. 82 percent of home builders build fewer than 25 homes a year, and 60 percent of NAHB's members build fewer than ten homes a year. Many of these small-volume builders and subcontractors do not have the capital to withstand the artificial price increases and price volatility of trade restrictions. Increases in building material costs mean that small builders may be disproportionately affected by more expensive lumber, leading to fewer homes constructed and sold to downstream purchasers.

Furthermore, U.S. trade laws give little consideration to the interests of consumers and downstream industries. This bias has limited the ability of American consumers to receive products and services of the highest quality at the lowest cost, and of U.S. businesses to provide jobs and increase production. It also encourages other countries to adopt similar protectionist policies that limit the choices of their citizens and opportunities for U.S. exporters.

The people who ultimately pay the cost of trade restrictions are consumers—the homebuyers, renters and people remodeling their homes. Consumers are rarely organized, and that makes them an easy target to fund subsidies for special interests.

### **Lacey Act Recommendations**

For these reasons, NAHB is specifically concerned about the provisions in Lacey related to civil forfeiture law, in addition to the seemingly limitless jurisdictional boundaries that could potentially form the basis of a Lacey Act violation.

Modern day civil forfeiture law, the Civil Asset Forfeiture Reform Act, was indeed contemplated by Congress as a part of the Lacey Act through the 2008 amendments. Recognizing the need to hold harmless those who exercised due care in the acquisition of wood and plant products, Congress sought to exempt honest business owners, and instead, provide the U.S. government more targeted tools to go after egregious, knowing violators.

The U.S. Department of Justice, however, has virtually eliminated this important defense for honest business owners through a broad interpretation of the law. By deeming Lacey-violative wood and plant products “contraband”, innocent companies are left without legal standing to challenge a government taking in court. Coupled with a requirement that the U.S. government enforce an almost limitless set of foreign laws, builders, and ultimately consumers, are left at great risk.

The result is that the entire supply chain dealing with imported wood products—including builders and consumers—are held personally liable to certify that the timber product did not come from plant material that was taken, transported, possessed or sold in violation of any foreign law. The way the law is currently structured leaves wide open the entire chain of custody of a timber product, including builders who have no way of knowing the origin of a particular piece of lumber, a component of a cabinet, closet door or crown molding, to the details of an enforcement action.

Considering all of the components that may go into the construction of a house, such as a set of kitchen cabinets, it quickly becomes clear how daunting it would be to identify and track down the source for each component of that final product. The sheer number of different sources of wood that could be included in the finished home makes it nearly impossible for a builder or remodeler to know with certainty where and under what circumstances the individual components were sourced.

Further, because our builders generally buy their products through U.S. suppliers or importers, and all products that enter the United States must pass through U.S. Customs, the products have already gone through the required foreign paperwork, documents and permits to allow them to enter the United States at the outset. For the U.S. government to later determine the products, or a component of a product, violate the Lacey Act after its entry into the United States is unfair and illogical. There is no reasonable expectation that the supply chain should know when or if a violation had occurred, much less the underlying laws that had been violated. Holding a remodeler, for example, responsible for knowing, much less understanding, the laws of a particular country where his or her wood cabinet was sourced is simply irrational.

With this in mind, it is of the utmost importance that honest business owners, including home builders, have the right to seek the return of goods acquired through the exercise of due care. Amending the Lacey Act to include reaffirmation of civil forfeiture law provides an important liability protection for the business community and ultimately the consumer.

To preserve the integrity of the Lacey Act and help advance its policy objectives, NAHB also recommends that the law should be revised to be more focused and transparent about which foreign laws may give rise to a violation. By narrowing the scope of foreign laws covered by the Lacey Act, such as those laws that promote the protection or conservation of threatened or endangered plants or plant products, builders would be provided with greater certainty about the law, their obligations, and subsequently, be able to more accurately estimate and account for costs in building homes.

## **Conclusion**

NAHB commends the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs for examining the Lacey Act today. At a time when the economy remains stagnant, it is wise to

reconsider laws, such as the Lacey Act, and their impact on American businesses. The century-old law and its subsequent amendments are certainly ripe for meaningful reform.

NAHB also expresses deep appreciation to Representative Cooper, who's RELIEF Act represents a positive step towards bringing the intent of Lacey in line with the practical effects of its implementation. We remain hopeful that with some clarifying language on the chain of liability and scope issues, NAHB can fully support H.R. 3210 as it moves forward in the legislative process.