

**Testimony of Kevin Shea
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**Before the House Committee on Natural Resources
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
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Dear Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify at today's hearing on legislation to amend the Lacey Act. I am Kevin Shea, and I am the Associate Administrator of the USDA's Animal and Plant Health Inspection Service (APHIS).

APHIS has a broad mission that includes protecting U.S. agricultural animal and plant health, administering the Animal Welfare Act, and carrying out wildlife damage management activities. These efforts support the overall mission of USDA: to protect and promote food, agriculture, and natural resources.

APHIS' ROLE IN THE LACEY ACT

The 2008 amendments to the Lacey Act, among other things, require importers of plants and plant products to submit an import declaration detailing key information about the plant contents of the items they are importing. APHIS' responsibilities under the Lacey Act are to develop the declaration form, promulgate regulations and guidance related to the declaration, and to collect and review the completed declarations. The U.S. Fish and Wildlife Service and, in some instances, other enforcement agencies such as the U.S. Forest Service and the Department of Homeland Security, Immigration and Customs Enforcement, are responsible for investigating alleged violations and initiating enforcement actions. The Department of Justice is responsible for judicial enforcement of the Lacey Act.

The Lacey Act makes it unlawful to traffic in fish, wildlife, or plants taken, possessed, transported, or sold in violation of federal, state, foreign, or Native American tribal conservation law, treaty, or regulation. It allows the United States to help states, tribes, and countries worldwide protect their natural resources by discouraging a U.S. market and U.S. demand for illegally obtained sources plants and wildlife. The law is a critical cornerstone for resource protection and conservation law enforcement.

APHIS has worked to implement the declaration requirement in a common-sense manner that is consistent with the statutory requirements, protective of the environment and natural resources, and manageable for the regulated community.

Accordingly, the Agency has:

- Worked with enforcement agencies to phase in enforcement of the declaration requirement in a measured way, gradually adding categories of products that require an

import declaration thereby giving industry time to oversee their supply chains for compliance with the Act, and is consistent with available funding.

- Revised the declaration implementation schedule by phasing in products largely based on their degree of processing and complexity of their composition to make compliance easier while importers come to understand their obligations.
- Required import declarations only for formal consumption entries (i.e. most commercial shipments) and not for informal entries (i.e., personal shipments).
- Created special use designations to make it easier for importers to declare certain wood products, such as the “SPF” common trade name designation that indicates the product is comprised of several types of spruce, pine, fir lumber
- Begun developing a rule to define "common food crop and common cultivar," which is anticipated to make clear that this statutory exemption excludes large numbers of products from the declaration requirement. Our preliminary economic analysis estimates that these exemptions could save industry and the government between \$900,000 and \$2.8 million per year just for the five percent of products that is excluded.
- Solicited feedback from the public, through an Advanced Notice of Proposed Rulemaking, to determine the feasibility of adopting de minimis exclusions from the declaration requirement, which would remove even more shipments from compliance with the declaration requirement.

We have taken great care to listen to our stakeholders, and we have made many changes to the implementation schedule based upon their feedback. For example, the Agency revised the phase-in schedule to temporarily exclude products for which importers indicated it would be difficult, if not technologically impossible, to provide full and accurate information. In response to comments we received through a Federal Register notice, we committed to providing at least six months notice before implementing additional phases under the enforcement schedule. APHIS has not introduced a new phase of the implementation schedule since April 2010.

We have conducted regular outreach, meeting with stakeholders, reaching out to individual importers, and answering questions from the general public. Other examples of our outreach efforts include:

- Maintaining a Lacey Act website with information and guidance on how to comply with the Act.
- Developing a Lacey Act primer to educate importers on APHIS’ role in implementation of the Act, making it publicly available, and distributing it to industry.
- Meeting with businesses and industry at numerous events to discuss the Lacey Act, and what’s necessary for compliance.
- Educating importers about the Act’s requirements and how to properly comply with the import declaration requirement when we observe issues with submitted declarations.
- APHIS Federal partners have conducted outreach to our foreign trading partners, educating them about the 2008 Amendments. Efforts have included meetings with foreign governments, as well as roundtables, seminars, and workshops with private overseas businesses.

We are also considering how to proceed with input received in response to the June 2011 Advanced Notice of Proposed Rulemaking that requested public comments on ways to improve

and streamline the administration of the declaration requirement. In particular, the Agency is looking at developing a de minimis exclusion from the declaration requirement based upon the amount of plant material in a product, which would further streamline the declaration process.

In summary, we will continue to implement the 2008 amendments through a careful balancing of the requirements of the Act and the legitimate concerns of the regulated community.

H.R. 3210, the Retailers and Entertainers Lacey Implementation and Enforcement Fairness Act

H.R. 3210 contains a number of specific provisions that affect the import declaration as well as the enforcement provisions of the Lacey Act. With respect to the enforcement provisions, we agree with our colleagues at the U.S. Fish and Wildlife Service, that these provisions significantly weaken the Lacey Act's ability to protect animal and plant resources from dangerous exploitation. We defer to their testimony and expertise on this matter. There are, however, several items APHIS would like to highlight that deserve attention.

The RELIEF Act would add a new section to the Lacey Act that makes multiple changes to limit the applicability of the 2008 amendments. Among these, it would specify that the Act does not apply to any plant that was imported before May 22, 2008 (the date of enactment of the 2008 amendments) or to any finished plant or plant product that was assembled and processed before that date.

APHIS created special-use designations that importers can use on the declaration form to indicate that a product was made prior to the 2008 amendments, exempting them from having to fully declare all required information.

However, goods manufactured and imported into the United States after the date of enactment are subject to the substantive prohibitions of the Act. We understand that some members of the artisanal musical instrument industry may have stores of wood obtained before May 2008 for which they may no longer have records specifying the information required on the Lacey Act declaration. Some of these industry members have expressed concerns about their ability to comply with the declaration requirement if any of their products are exported and then reimported. However, the proposed exemption of all plants and plant products of pre-amendment origin goes far beyond this declaration issue. In any event, APHIS is only requiring the filing of a declaration for products that enter into the country for formal consumption; musicians or other individuals who travel with their instruments need not file a Lacey Act declaration upon entry into the United States.

The legislation would also provide that the declaration requirement applies only in cases where the product is entered into the country for formal consumption. This is consistent with how APHIS has implemented the Act, and has had broad support from stakeholders. This ensures that individuals carrying personal baggage and effects do not need to file an import declaration. The bill would require APHIS and other involved Federal Agencies to fully fund implementation and administration of the import declaration from existing funds. The Fiscal Year 2012 appropriation provided the first-ever funding for this purpose: \$775,000. The President's FY

2013 budget requests \$1.5 million for Lacey Act activities and would allow us to begin planning an initial implementation of a web-based procedure to help eliminate the need for paper-based declarations. It is, however, not clear that this level of funding would enable the Agency to carry out all activities contemplated by these amendments.

In particular, the bill's requirement to create a standard certification process for legal imports by individual manufacturers, importers, and retailers could prove expensive and difficult to implement and administer. The sheer number of individual products, individual importers, and individual retailers would make any sort of permitting or certification system massive in scope. Beyond just the administration and processing of certifications, the provision would require substantial resources to ensure accreditation and compliance. It would be difficult to verify the legality of the hundreds of thousands of plant products coming into the country each month. With the size and scope of plants and plant products covered under the Act, the Agency would not be able to adequately certify these types of products within the FY 2013 Budget.

H.R. 4171, the Freedom from Over-Criminalization and Unjust Seizures Act

This bill would make a number of changes to the Lacey Act's longstanding enforcement provisions that raise concerns, including the elimination of criminal penalties, removal of all references to foreign laws, and other changes. Because it applies fully to fish and wildlife as well as to plants, and relates to the enforcement of the Act, it is not appropriate for APHIS to comment and we defer to our Fish and Wildlife Service and National Oceanic and Atmospheric Administration colleagues.

Mr. Chairman, thank you for the opportunity to testify today. We look forward to working with you and your staff to provide technical assistance as you continue to examine this important issue. I would be happy to answer any questions that you or the members of the Subcommittee may have.