

Testimony of

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Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
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Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you today to discuss the 2008 amendments to the Lacey Act. My name is Michael Watson, and I am the Executive Director for Plant Health Programs within the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). Upon passage of amendments to the Lacey Act as part of the 2008 Farm Bill, administration of the newly created plant import declaration requirement was given to USDA and delegated to APHIS by the Secretary of Agriculture.

Under the 2008 amendments, it is unlawful to import, export, sell, receive, acquire or purchase in interstate or foreign commerce any plant that was taken in violation of a federal, state, tribal or foreign conservation law. The amendments equipped the United States with tools for addressing timber trafficking and discouraging illegal logging. These amendments responded to widespread concerns about the environmental and economic impacts of illegal logging and were supported by the Bush Administration as part of its Presidential Initiative against Illegal Logging. Both Republicans and Democrats supported the amendments as a way to protect American jobs from unfair and illegal logging practices. This broad support was driven by a recognition that illegal logging has a negative impact on communities, biodiversity, indigenous peoples, the global climate, and U.S. businesses that operate by the rules. In particular, the law received strong support from the U.S. forest products industry. The 2008 amendments help ensure that all businesses, including foreign companies that send their goods into this country, are operating on a level playing field.

In implementing the 2008 amendments, APHIS has made it a priority to minimize the requirements for business and industry. The Agency has conducted outreach and has repeatedly solicited public comments to determine how to implement the declaration requirement in a way that meets the objectives of the Act and is manageable for the regulated community.

Since the last phase of plant products for which an import declaration is required was introduced in April 2010, APHIS has been working with an interagency group to streamline the administration of the 2008 Amendments. We completed the common food crop and common cultivar rule, providing clarity to industry and stakeholders about the large number of plants and plant products that are excluded from the Act – covering an estimated 500,000 imports per month. After having solicited public input, we have begun drafting a rule to craft a de minimis exception for imports with minimal amounts of plant material.

Another important step is our continued development of an electronic filing system, which will allow importers, many of whom still file on paper declarations, to file online directly with APHIS. For those who already file electronically through U.S. Customs and Border Protection (CBP) and who use a customs broker, filing directly with APHIS could significantly reduce the amount of money they spend filing their declarations. The Lacey Act Web Governance System (LAWGS) recently completed a two-week pilot test. Early informal feedback from importers indicates the system has reduced the time it takes to file declarations because importers can save pre-filled templates. This has proven to be particularly helpful for those importers that regularly bring the same types of items into the country. We hope to expand the system out to all users later this year, utilizing additional support Congress directed for APHIS in the FY 2014 Omnibus appropriation.

While APHIS has not yet announced additional phases as part of the implementation process, we have had some interdepartmental discussions about the types of additional products that could be included in the next phase of enforcement. APHIS continues to commit to provide a minimum of six months' notice before further phases are implemented.

The Agency intends to continue to implement the 2008 amendments in such a way as to meet its goals of protecting plant resources from exploitation here and around the world, and protecting safe commerce and legal producers and market participants while balancing the legitimate needs of industry with the requirements of the Act. For this to be a successful effort, APHIS will continue its commitment to listening to the public, business and industry, taking into account their concerns, while still addressing the goals of the Act.

With respect to the two pieces of legislation on the 2008 Amendments under consideration today, APHIS defers to the U.S. Fish and Wildlife Service's position on these bills. As a general matter, the Administration supports the 2008 Amendments and believes that we can address the issues at hand administratively instead of through legislation. In addition we offer the following comments in response to the Committee's request:

H.R. 3280, Lacey Act Clarifying Amendments Act of 2013

This legislation would exclude from the Act any plants imported prior to the date of enactment of the 2008 Amendments, as well as any finished plant or plant product assembled and processed before that date.

We have frequently heard from the public on their concerns with items imported or manufactured prior to the date of enactment of the 2008 Amendments. Working with our interagency partners, we have been responsive to these needs, and have taken steps administratively to address these concerns. Chief among those, APHIS has created a special-use designation for importers of goods manufactured prior to the effective date of the 2008 amendments. If importers of such items manufactured prior to May 22, 2008, are unable, through the exercise of due care, to determine the genus or species of the plant materials contained in that item, the importer can use the special-use designation "PreAmendment" on the declaration form. Additionally, APHIS is working with other Federal agencies to explore administrative solutions that could address concerns about enforcement actions with respect to wood harvested and imported prior to enactment of the 2008 Amendments.

H.R. 3324, Lacey Act Paperwork Reduction Act

This legislation would change the manner in which importers file the plant import declaration. It would transfer administration of the declaration to the U.S. Fish and Wildlife Service (FWS) and allow importers

to provide the declaration to the U.S. government only upon request, instead of the current law, which requires them to send it to the government at the time of importation.

In the letter inviting APHIS to testify, we were asked to comment on the potential administrative savings of the legislation. While APHIS has not done a full cost-benefit analysis of the 2008 Amendments, we did conduct an economic analysis associated with the development of the rule to define “common food crop” and “common cultivar.” It found that importers that use customs brokers to assist with the filing of plant import declarations electronically are charged, on average, \$10-\$30 per declaration by those brokers. Under this proposal, importers would notably reduce the number of declarations filed through customs brokers, which could be a potential savings. However, as noted previously, APHIS is currently developing an electronic filing system, which would allow importers to file the import declaration directly with APHIS electronically, significantly reducing their costs. In addition, it should be noted that importers would still be required to keep accurate records following guidance currently in place, and therefore the legislation would not significantly reduce paperwork for importers; it simply eliminates the final step of filing declarations, which are an important tool for the U.S. Government to achieve the goals of the Lacey Act.

The letter of invitation also asked whether we could make these changes administratively. APHIS has been working continuously with its partner agencies to address concerns with the implementation of the Lacey Act. We believe such administrative actions would better address concerns about pre-2008 imports of plant products for responsible businesses and the declaration requirements while still maintaining the original intent and purpose of the amendments to protect local communities, biodiversity, indigenous peoples, the global climate, and U.S. businesses that operate by the rules. APHIS would not be able to administratively eliminate the filing requirement.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions that you or the members of this Subcommittee may have.