

TESTIMONY OF WILLIAM WOODY, ASSISTANT DIRECTOR, LAW ENFORCEMENT, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON NATURAL RESOURCES, SUBCOMMITTEE ON FISHERIES, WILDLIFE, OCEANS AND INSULAR AFFAIRS, REGARDING H.R. 3105, THE AQUACULTURE RISK REDUCTION ACT; H.R. 3280, THE LACEY ACT CLARIFYING AMENDMENTS ACT OF 2013; H.R. 3324, THE LACEY ACT PAPERWORK REDUCTION ACT; AND H.R. 4032, THE NORTH TEXAS INVASIVE SPECIES BARRIER ACT

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Introduction

Good afternoon Chairman Fleming, Ranking Member Sablan, and Members of the Subcommittee. I am William Woody, Assistant Director for Law Enforcement for the U.S. Fish and Wildlife Service (Service), in the Department of the Interior (Department). I appreciate the opportunity to testify before you today on four bills that would amend the Lacey Act, including H.R. 3105, the Aquaculture Risk Reduction Act; H.R. 3280, the Lacey Act Clarifying Amendments Act of 2013; H.R. 3324, the Lacey Act Paperwork Reduction Act; and H.R. 4032, the North Texas Invasive Species Barrier Act.

Importance of the Lacey Act

The Lacey Act, which was enacted in 1900, is the Nation's first federal wildlife protection law. 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 tribal conservation law, treaty, or regulation. The Lacey Act is one of the most effective laws to protect wildlife and plants available in the United States. Its prohibitions protect animal and plant resources from rapacious exploitation here and around the world, and protect safe commerce and legal producers and market participants while guarding against the movement of species harmful to U.S. interests. Its penalties make prison sentences and significant fines a real possibility for hard-core profiteers; reduce financial incentives for wildlife and plant trafficking; and provide real deterrents for wildlife crime. The Lacey Act supports those businesses that engage in legitimate wildlife and plant trade here and abroad by ensuring a level playing field and helping to secure the continued commercial availability of natural resources needed by U.S. businesses by supporting domestic and foreign conservation laws.

Many people may not be aware that in the United States, illegal commercialization of wildlife is a real and present threat to conservation. Sales of unlawfully acquired U.S. wildlife and plants fuel a market for certain species, putting domestic wildlife and plant populations increasingly at risk. The Lacey Act helps counter the domestic threat. Under the Lacey Act, Service law enforcement agents expose illegal guiding operations (i.e., guided hunting trips) profiteering in state, tribal, and federally protected species and pursue cases involving the illegal large-scale commercial exploitation of wildlife and plant resources in violation of state, tribal, or federal law. The Lacey Act provides a unique mechanism for states and Tribes to address crimes within

their borders by out-of-state or non-tribal guides and hunters as well as the interstate sale or international export of unlawfully acquired U.S. wildlife or plants.

On the international front, the Lacey Act provides an essential tool for combating large-scale exploitation of natural resources in developing nations. The law is used to disrupt the smuggling and interstate commerce in foreign and shared species protected and regulated under federal laws, international treaties such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the conservation laws of other countries. Its provisions give the Department of Justice access to powerful enforcement tools that enable the Department to bring charges against international organized crime rings and criminals who knowingly and deliberately traffic in the world's most imperiled species and in its most important natural resources, such as fisheries and timber. Trafficking in illegally harvested wood, for example, is estimated to generate proceeds of approximately \$10 - \$15 billion annually worldwide, according to a 2012 report by the World Bank. Left unchallenged, illegal logging depresses global prices for timber and timber products by an average of 7 – 16 percent. Losses in the U.S. approximate \$1 billion loss to U.S. industry annually as responsibly operated American businesses are undersold by the cheaper illegal supply.

The existence and enforcement of the Lacey Act's foreign law provisions have made the United States a leader and role model for countries around the world – particularly those that, like the United States, have long been major markets for wildlife and plant resources illegally taken in developing countries that struggle to feed their people, let alone protect their wildlife, plants, and forests. Through these provisions, our Nation holds itself accountable for stopping illegal trade in natural resources involving interests in our country, and recognizes and supports the efforts of other countries to level the playing field for legitimate businesses who manage their natural resources responsibly.

In addition, the Lacey Act, through the injurious wildlife provision, allows the Service to protect the nation's interests from the harmful effects of species that are determined to be injurious. The adverse consequences from alien species that become invasive range well into the tens of billions of dollars each year in natural and economic damages in the United States alone. The ongoing efforts to control established populations of invasive species costs the taxpayers substantially more than the cost of measures to prevent of the introduction of invasive species. The Lacey Act's injurious wildlife provisions provide a key legal instrument the United States can use to prohibit importation of such species.

Injurious wildlife are wild mammals, wild birds, amphibians, reptiles, fish, crustaceans, mollusks and their offspring or gametes that are injurious to the interests of human beings, agriculture, horticulture, forestry, wildlife or wildlife resources of the United States. Injurious species pose significant threats to the nation's economy. Once listed as injurious, the listed species may not be transported over state lines or imported into the country without a permit. Permits may be granted only for zoological, educational, medical, and scientific purposes, if the Secretary of the Interior determines that the permit ensures the continued protection of the public interest and health. While the Secretary has the authority to take regulatory action to list species of wild animals as injurious wildlife, the public may also petition the Secretary for such a listing. The

Lacey Act has been amended over time to add species to the injurious wildlife list through Congressional action. One example is the zebra mussel, which was added by Congress to the list of injurious wildlife species in 1990 because of the economic harm it was causing the United States after it was introduced, including the closure of a Great Lakes power plant after the mussels interfered with its operation and damaged its infrastructure.

U.S. Fish and Wildlife Service's Role in Enforcing the Lacey Act and Addressing Invasive Species Threats

The Service is one of the lead federal agencies responsible for enforcing the Lacey Act. The Service also enforces a number of other U.S. laws that protect wildlife, including the Endangered Species Act, the Marine Mammal Protection Act, and the Migratory Bird Treaty Act. The Lacey Act complements and strengthens our ability to enforce these and other statutes. The Lacey Act also strengthens our ability to enforce the provisions of CITES.

The Service's 216 special agents work on some 13,000 investigations each year involving complex, high-impact wildlife crimes. These wildlife crimes have a wide ranging negative effect, including on highly endangered species such as elephants, rhinos, tigers, and sea turtles; timber species from tropical rainforests; wildlife habitat in the United States; and native species like bears, ginseng, turtles, and paddlefish that are poached in violation of state laws. Our agents' efforts to stop wildlife trafficking pit them against transnational organized networks and criminals conducting high-profit, black market trade valued in the billions of dollars. In the United States, our agents are responsible for covering the nearly four million square miles of land that make up this country. They are an extraordinary group of public servants focused on combating illegal taking and trafficking of wildlife and plants, and wildlife and plant products in the United States.

The Service has 136 wildlife inspectors stationed at 38 of the more than 300 U.S. Customs ports of entry throughout the country. In Fiscal Year 2012, Service wildlife inspectors processed approximately 186,000 declared shipments of wildlife and wildlife products worth more than \$4.4 billion, supporting jobs and economic development for businesses large and small. Wildlife inspectors are also our front line defenders in combating illegal trade in wildlife and wildlife products. They utilize the Lacey Act to help stop the import of injurious species that could devastate our native ecosystems and industries if illegally imported or smuggled into the country.

The Service addresses the threats posed by aquatic invasive species through three focus areas: national coordination; prevention; and control and management of invasive species. The Service operates under the authority of the National Invasive Species Act (1996; formerly the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA)).

The Service co-chairs the Aquatic Nuisance Species Task Force (ANSTF), which is composed of 13 federal and 13 ex-officio organizations and was established in 1991 under NANPCA. The ANSTF is the only intergovernmental organization dedicated to preventing and controlling aquatic nuisance species. The ANSTF provides a national infrastructure and forum for collaborative discussion and decision making with a wide variety of organizations on important

issues that can impact prevention, control, and management of invasive species at federal, state, and local levels. The Task Force also tackles species-specific issues, such as its development of Asian carp, zebra and quagga mussel, snakehead, and lionfish management plans.

The Service is committed to maintaining and strengthening our working relationship with the states on aquatic nuisance species. The Service supports the funding and implementation of species control and management plans and 43 State/Interstate Aquatic Nuisance Species (ANS) Management Plans that address state priorities. These State/Interstate ANS Management Plan grant programs allow for cost-sharing between the Service and states and tribal entities.

Preventing new introductions is the single most cost-effective strategy to protect the Nation's economy, and its wildlife and their habitats, from the threat of invasive species. Leadership by the Service in this arena helps avoid economic costs to Americans that would otherwise increase as new introductions occur. The Service has several pathway management programs that support efforts to prevent introductions, such as public awareness campaigns, risk assessment and risk mitigation tools, and working with industry on voluntary efforts to identify and prevent species introduction into the country or between states.

H.R. 3105, Aquaculture Risk Reduction Act

H.R. 3105, the Aquaculture Risk Reduction Act would amend the Lacey Act to exclude from the meaning of the term "fish or wildlife" any animal accidentally included in a shipment of an aquatic species produced in commercial aquaculture for human consumption or for use for recreational or ornamental purposes.

The Service opposes this legislation. By exempting certain "accidentally included" specimens from Lacey Act coverage, H.R. 3105 creates an unacceptable loophole in the U.S. safety net to preclude illegal harvest of and trade in protected species. This legislation would hamper one of our primary tools to address criminal acts of trafficking of protected species. For example, highly valuable and rare species could be hidden in such shipments with the claim that they were "accidentally included" and therefore not subject to Lacey Act prohibitions.

We would note that the bill amends Title 16 of the Lacey Act and therefore would have no impact on the enforcement of the injurious wildlife provisions under Title 18 of the Act.

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

The most recent amendments to the Lacey Act were passed by Congress and signed into law in 2008, as part of the Food, Conservation, and Energy Act of 2008. They expanded the definition of plants covered by the Act, and similarly expanded and clarified the predicate violations that could trigger the Lacey Act. 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. They

provided a new definition of the term “plant,” making it clear that (with some limited exceptions) the prohibitions apply to plant products as well as whole plants.

The amendments were supported by the Bush Administration as part of its Presidential Initiative against Illegal Logging. The initiative responded to widespread concerns about the environmental and economic impacts of illegal logging. Both Republicans and Democrats supported the amendments as a way to protect American jobs from unfair and illegal logging practices. The plant amendments were also supported by more than 50 trade associations, non-profits, and unions. This broad support was driven by 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. They also help protect the remaining habitat of highly endangered wildlife such as elephants, tigers and orangutans.

H.R. 3280, the Lacey Act Clarifying Amendments Act of 2013, would amend the Lacey Act to prohibit the Act from applying to: (1) any plant that was imported into the United States before May 22, 2008; or (2) any finished plant product the assembly and processing of which was completed before May 22, 2008. The Service and our partner agencies appreciate the concerns that H.R. 3280 attempts to address. We have been examining this issue to consider steps that the enforcing agencies could take to address these particular concerns – i.e., with respect to plant products imported into the United States prior to the Lacey Act amendments of 2008, and to plant products manufactured prior to the amendments. Agencies responsible for implementing and enforcing the Lacey Act are considering whether it may be possible to develop an enforcement forbearance policy that we believe would better address the pre-2008 imports of plant products for responsible businesses. It would also create exemptions for importers acting with clear knowledge of illegality, but not for domestic producers who perhaps were only negligent or learned later of the illegality. The bill is overly broad and premature; we think it better to allow the agencies to determine whether an enforcement forbearance policy can be developed. In the meantime, there have been no referrals for prosecution of any such situation and it would be the intent of the USFWS not to make any such referral until a policy is complete.

The Service believes that such a policy might better accomplish the intent of H.R. 3280, rather than amending the Lacey Act as H.R. 3280 would do. Prior to the 2008 amendments, the Lacey Act already applied to plants taken, possessed, transported, or sold in violation of U.S. law, treaty, or regulation, or in violation of any Indian tribal law, and H.R. 3280 as currently proposed would not only exempt plant products that were not covered under the requirements of the Lacey Act prior to the 2008 amendments, but also plant products that, while they may have been imported or manufactured prior to the amendments, were already covered under the Act. As proposed, this amendment would also provide cover for businesses that knowingly violated foreign laws. For example, if an entity knowingly imported plant products that it knew to be illegally harvested prior to 2008, an unintended consequence of H.R. 3280 would be to grant amnesty to these willful criminals who intentionally skirted the laws of our trading partners and undercut responsible U.S. businesses.

In addition, we believe that some of the goals of H.R. 3280 have already been addressed. For example, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) has issued guidance on special use designations that importers may use with respect to products for which identification of the genus, species, and country of harvest may be difficult, including products containing composite, recycled, or reused plant materials. APHIS has also created a special use designation to be used on declarations for plant products manufactured prior to May 22, 2008, if the importer is unable through the exercise of due care to determine the genus, species, or country of harvest.

H.R. 3324, Lacey Act Paperwork Reduction Act

The Lacey Act plant amendments also added a declaration requirement for plant products imported into the United States. This mandate is similar to the requirement for the declaration of wildlife imports and exports established by the Endangered Species Act, which also applies to all wildlife and wildlife products, whether protected under a specific conservation law or not.

APHIS, operating within available funding, has implemented and enforced the 2008 amendments to the Lacey Act with respect to the declaration requirement for plant imports. While APHIS has long had a role in implementing CITES requirements for plant trade, the agency was assigned new responsibilities with respect to developing and implementing a declaration system for plant imports, and collecting and maintaining the resulting plant import data.

H.R. 3324, the Lacey Act Paperwork Reduction Act, would amend the Lacey Act to require any person, upon importation of any plant, to possess and have available for inspection by the U.S. Fish and Wildlife Service a declaration that contains: (1) the scientific name of any plant (including the genus and species of the plant) contained in the importation; and (2) a description of the declared value of the plant or the merchandise containing the plant, the quantity of the plant, and the name of the country from which the plant was taken. This legislation would also revise the rulemaking procedure applicable to such importation to authorize the Secretary of the Interior, acting through the Service, and in consultation with APHIS, to issue such regulations as may be necessary to carry out this Act.

The Service has a number of concerns with H.R. 3324 and opposes the legislation. H.R. 3324 would undermine the intent of the Lacey Act by eliminating the documentation filing requirements that the 2008 amendments specifically sought to impose to address timber trafficking and discourage illegal logging, both of which harm U.S. businesses and the U.S.-based wood products industry. The existing plant declaration requirement is a proven method to ensure professional accountability and establish the importer's knowledge in an enforceable manner while minimizing the burden on responsible, law-abiding businesses. H.R. 3324 would also render the enforcement of violations nearly impossible because importers could develop myriad ways to record and maintain their records which would greatly impede any review if records were sought and obtained by the Service. Additionally, removing the requirement of filing plant declarations with APHIS would eliminate the ability of the agencies responsible for implementing the Lacey Act provisions to collect data on U.S. imports of plant products and to

use these data in their enforcement efforts and to make conservation-based decisions regarding plant species that warrant increased protection. Furthermore, the legislation would create an enforcement scenario that benefits law breakers by providing advanced notice of intent to investigate their actions, and provides minimal paperwork reduction benefit to law-abiding businesses, who would maintain the same record keeping responsibilities regardless of whether declarations are filed with the government pro-actively or upon request.

Therefore, H.R. 3324 would remove the two benefits that were sought and achieved when the plant declaration requirements were created: (1) the efficient enforcement and information-gathering that benefits and improves our ability to regulate the international trade in wood products; and (2) the continued leveling of the playing field for U.S. businesses, who estimate over \$1 billion in domestic losses resulting from illegal timber. In addition, APHIS, in consultation with an interagency group including the Service, has worked diligently to automate and streamline the plant declaration process and has made significant progress. H.R. 3324 would nullify the time, effort, and tax dollar expenditures that implementing agencies have made to date and substantially undermine the original intent and purpose of the declaration requirement. Moreover, it would do so for no discernible benefit to industry. If a company must have the declaration but is simply not required to file it but rather to produce it upon request, the company still must invest the time and resources into obtaining and recording the necessary information. The physical act of filing thereafter is then a relatively minimal effort. The lack of filing would significantly undermine enforcement and other benefits without a concomitant offsetting benefit to importers.

H.R. 4032, North Texas Invasive Species Barrier Act

Invasive species are among the primary factors that have led to the decline of native fish and wildlife populations in the United States, and are among the most significant natural resource management challenges facing the Service. Invasive species are harmful to natural resources because they disrupt natural communities and ecological processes. Next to loss of habitat, invasive species are considered the greatest threat to native biodiversity. Managing these invasive animals and plants is both challenging and expensive. In the Fiscal Year 2014 enacted budget, the Service is funding over \$25 million for management of invasive species. Americans directly spend billions of dollars annually to manage invasive species and the restoration of the habitats they have invaded.

Two of the most notorious invasive species are the zebra mussel (*Dreissena polymorpha*), listed as injurious wildlife by Congressional action, and the related quagga mussel (*Dreissena rostriformis bugensis*). Both are nonnative, invasive freshwater mollusks that negatively affect the natural environment, human infrastructure, and the economy. They spread rapidly, covering all available surfaces; and they remove large amounts of organic material from the water column, thus outcompeting and smothering native mussel species, including species federally listed as threatened or endangered. They clog municipal and industrial water system infrastructure, causing an estimated \$30 million in damage each year to water delivery systems in the Great Lakes. These species attach to boats, or, in their larval stage, are carried in water by boats and other equipment used in fresh water, and are then transported from one hydrologic system to

another. In early 2007, quagga mussels were discovered in the Lake Mead National Recreation Area. They have since been found in Arizona, California, other parts of Nevada, and all 242 miles of the Colorado River Aqueduct. In January 2008, the first populations of zebra mussels were found in the San Justo Reservoir in California and Lake Pueblo in Colorado. If zebra and quagga mussels invade the Columbia River Basin, it is estimated that the total resulting damages related to fish and wildlife, irrigation, other water supply, property, recreation, hydropower, and other uses could be hundreds of millions of dollars per year.

H.R. 4032, the North Texas Invasive Species Barrier Act, would exempt any water transfer by the North Texas Municipal Water District and the Greater Texoma Utility Authority from Lacey Act provisions. The Service opposes this legislation. The injurious wildlife provisions of the Lacey Act are intended to help the United States prevent the increasing costs caused by invasive species, recently estimated at over \$100 billion annually nationwide. Prevention is far less expensive than control, management, and containment once an invasive species has been introduced, establishes itself, and begins to spread. The threat of zebra mussels and other potentially injurious species to hydrologic systems receiving water from Lake Texoma has dramatic implications for a variety of industries and interests. The Service, as the federal agency primarily responsible for the conservation of the nation's fish and wildlife resources, has serious concerns about the impacts of zebra mussels and other invasive species on the aquatic ecosystems associated with Lake Lavon and the rivers, streams, and lakes receiving its water. Zebra mussels can and have completely altered the food chain in aquatic systems, eliminating food sources and, subsequently, sport fish species from these systems. Zebra and quagga mussels can infest water supply and power generation facilities, as well as boats and boating infrastructure. The extensive costs associated with managing their damaging impacts are often passed along to tax payers.

Like previous legislative attempts, this effort seeks to allow individual groups or industries legislative exemptions from the interstate prohibitions of injurious wildlife, thereby undermining the effectiveness of the Lacey Act as a tool for invasive species management. The Service believes any precedent to set site-specific exemptions may not only be costly to the local fish and wildlife resources, economy, and human health and safety priorities, but also nationally as this would open the door for additional exemptions in the future.

Conclusion

The Lacey Act is a critical cornerstone for resource protection and conservation law enforcement. It demonstrates that our Nation's commitment to wildlife and plant conservation goes beyond words to encompass action. This law equips law enforcement officers with the tools they need to conduct investigations and bring criminals to justice, while leveling the playing field for businesses that follow the rules. The Service relies on the Lacey Act to protect animal and plant resources from exploitation, as well as to prevent the spread of injurious wildlife.

Thank you for the opportunity to present testimony on these four bills that would amend the Lacey Act. I would be pleased to answer any questions that you may have.