

**BEFORE THE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON FISHERIES, WILDLIFE, OCEANS AND INSULAR AFFAIRS
OF THE U.S. HOUSE OF REPRESENTATIVES**

**“Reforming the Lacey Act”
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For the U.S. Chamber of Commerce’s Institute for Legal Reform
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Good afternoon, Chairman Fleming, Ranking Member Sablan, and members and staff of the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs. I am Reed D. Rubinstein, a partner in the Washington, D.C. office of Dinsmore & Shohl, LLP. For twenty-five years, I have practiced environmental and administrative law, defending individuals and companies in federal civil and criminal enforcement matters. I also have served as the U.S. Chamber of Commerce’s Senior Counsel for Environment, Technology and Regulatory Affairs, and as an adjunct professor of environmental law at the Western New England School of Law.

I am testifying today on behalf of the U.S. Chamber’s Institute for Legal Reform (“ILR”) in support of Lacey Act reform. ILR promotes civil justice reform through legislative, political, judicial and educational activities at the national, state and local levels. The U.S. Chamber is the world’s largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region.

I. SUMMARY

ILR strongly supports the Lacey Act’s important fish, wildlife and plant conservation goals.¹ However, the statute is deeply flawed. To begin with, the Act is an exemplar for the vice of over-criminalization. It lacks a meaningful *mens rea* (wrongful intent) requirement, instead imposing vicarious criminal and civil liability on American citizens for violations of a vast, uncharted universe of foreign laws, regulations, decrees and ordinances.² As enforced, American musical instrument makers, fishermen, and florists are deemed to “know” all potentially applicable foreign requirements and then required to guess, at the risk of their liberty and property, how these requirements will be interpreted by both foreign and U.S. regulators. This offends basic principles of due process, equity and prudence.³

¹18 U.S.C. §§42 – 43; 16 U.S.C. §3371 et seq.

²That these foreign “laws” lack a direct nexus to fish, wildlife or plant conservation, or provide only for civil fines, or even are ruled invalid and retroactively repealed by the government that enacted them in the first instance, is of no moment. *See generally United States v. McNab*, 324 F.3d 1266, 1268 (11th Cir.) cert. denied 540 U.S. 1177 (2004); *United States v. Lee*, 937 F.2d 1388, 1393 (9th Cir.) cert. denied 502 U.S. 1076 (1992).

³*See generally City of Chicago v. Morales*, 527 U.S. 41 (1999); *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

Also, Congress enacted 16 U.S.C. § 3374(d) to protect innocent owners' rights under the Civil Asset Forfeiture Reform Act ("CAFRA")⁴ to recover property seized by the government under Lacey. Congress did this to account for the practical compliance difficulties created by its 2008 expansion of Lacey liability to plants and plant products, and to cure a 2005 Ninth Circuit ruling striking CAFRA's innocent owner affirmative defense because it deemed all property seized by the government under Lacey to be "contraband."⁵ However, the government continues to apply the punitive Ninth Circuit rule. Punishing objectively blameless persons who act with due care has not been proven to materially enhance the Act's protection of endangered fish, wildlife or plant populations, and is inconsistent with basic U.S. legal norms.

ILR believes that Congress should reform the Lacey Act to cure these serious flaws. Therefore, it applauds Rep. Cooper, for introducing H.R. 3210 (the "RELIEF Act"), and Rep. Broun, for introducing H.R. 4171 (the "FOCUS Act"). These bills demonstrate that there is bipartisan support both for a Congressional "hard look" at the statute and for implementation of the common-sense reforms needed to remedy the Act's unintended consequences.

As a general matter, ILR believes the "hard look" at Lacey should include whether the Act: (1) includes an adequate *mens rea* requirement; (2) appropriately defines both the *actus reus* (guilty act) and the *mens rea* of the offense in specific and unambiguous terms; (3) provides a clear statement of whether the mens rea requirement applies to all the elements of the offense or, if not, which *mens rea* terms apply to which elements of the offense; and (4) sets proper limits on the delegated criminal lawmaking authority of regulators.⁶ At a minimum, ILR believes that Congress should cabin the foreign laws that are Lacey jeopardy "triggers" to provide Americans with fair notice of prohibited conduct and to prevent arbitrary and discriminatory enforcement and prosecution. Also, Congress should solve the contraband issue by explicitly providing that innocent owners, as defined by CAFRA,⁷ may recover property seized by the government under Lacey.

II. DISCUSSION

A. Lacey Act Background

Passed by Congress in 1900, the Lacey Act was the first federal wildlife protection law. In its initial iteration, the Act supported state game animal and bird protection efforts by prohibiting the interstate shipment of wildlife killed in violation of state or territorial law,

⁴18 U.S.C. §§ 981, 983(d)(1).

⁵ See Testimony of Craig Foster, *Legal Timber Protection Act: Hearing on H.R. 1497 Before the Subcomm. on Fisheries, Wildlife and Oceans of the H. Comm. on Natural Resources*, 110th Cong. at 55 (2007)(discussing compliance barriers and explaining that "it is necessary to understand that long supply chain and the fact that there are many people along that supply chain...I cannot audit the entire supply chain...Criminal behavior is criminal behavior. All I can do is work with the best of my knowledge"); *United States v. 144,774 Pounds of Blue King Crab*, 410 F.3d 1131 (9th Cir. 2005).

⁶See generally Walsh & Joslyn, WITHOUT INTENT: HOW CONGRESS IS ERODING THE INTENT REQUIREMENT IN FEDERAL LAW 26 – 31 (2010) available at <http://www.nacdl.org/withoutintent/> (accessed May 3, 2012).

⁷ 18 U.S.C. §§ 983(d)(2) - (3).

requiring wildlife to be clearly marked when shipped in interstate commerce, banning the importation of certain animals (including English sparrows) that could harm U.S. crop production and authorizing the federal government to preserve and restore game bird populations.⁸ Amendments in 1935 prohibited interstate commerce in wildlife captured or killed in violation of any federal or foreign law. Amendments in 1945 banned the importation of wildlife under “inhumane or unhealthful” conditions.⁹ Amendments in 1981 diluted the *mens rea* requirement from “willfully” to “knowingly.”¹⁰ And, amendments in 2008 criminalized the import, export, transport, sale, receipt, acquisition or purchase of any plant or plant product taken, possessed, transported or sold in violation of any domestic or foreign law.¹¹

B. Lacey Act Structure

The Lacey Act uniquely subjects American citizens to domestic jeopardy for the violation of a foreign sovereign’s enactments.¹² 16 U.S.C. § 3373 imposes strict civil and criminal liability for conduct “in violation of, or in a manner unlawful under, any underlying law” that is “prohibited” by the Act, subject only to a “due care” defense. Section 3372(a)(2) prohibits any person to “import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce” any fish or wildlife “taken, possessed, transported or sold in violation of...any foreign law,” and plants “taken, possessed, transported or sold in violation of...any foreign law” including laws governing the payment of appropriate royalties, taxes or stumpage fees and “the export or transshipment” thereof. Section § 3371(d) defines “law” to mean “laws, treaties, regulations or Indian tribal laws which regulate the taking, possession, importation, exportation, transportation, or sale of fish or wildlife or plants.”

⁸ U.S. Fish & Wildlife Service, “*Nation Marks Lacey Act Centennial, 100 Years of Federal Wildlife Law Enforcement*,” available at <http://www.fws.gov/pacific/news/2000/2000-98.htm> (accessed May 2, 2012).

⁹ *Id.*

¹⁰ See Lacey Act Amendments of 1981, Pub. L. 97-79.

¹¹ 16 U.S.C. § 3372(a)(2).

¹² *United States v. McNab*, 324 F.3d 1266, 1274 (Fay, J. dissenting) (“the Lacey Act, by its very terms, is dependent upon the laws of a foreign sovereign”), cert. denied 540 U.S. 1177 (2004). As the Deputy Assistant Attorney General for Environment and Natural Resources Division of the U.S. Department of Justice testified in 2007:

One unique feature of the Lacey Act is that it allows the incorporation of foreign law as an underlying law or predicate offense that “triggers” a Lacey Act violation...The law or regulation must be of general applicability, but may be a local, provincial, or national law. The defendant need not be the one who violated the foreign law...However, the defendant must know or, in the exercise of due care, should know, about its [violation].

See TESTIMONY OF EILEEN SOBECK BEFORE THE SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS, COMMITTEE ON NATURAL RESOURCES, U.S. HOUSE OF REPRESENTATIVES CONCERNING H.R. 1497 at 4 (Oct. 16, 2007) available at <http://naturalresources.house.gov/uploadedfiles/sobecktestimony10.16.07.pdf> (accessed May 2, 2012).

Lacey Act civil liability and criminal penalties attach when “in the exercise of due care” a defendant “should know” that the fish, wildlife or plants were taken in violation of the underlying law.¹³ The Act does not define “due care.” The legislative history states that “[d]ue care simply requires that a person facing a particular set of circumstances undertakes certain steps which a reasonable man would take to do his best to insure that he is not violating the law.”¹⁴ No clarifying regulations have been issued by any enforcing federal agency.¹⁵ However, in 2010, the United States Department of Agriculture Animal and Plant Health Inspection Service identified “Tools to Demonstrate Due Care” in a PowerPoint presentation.¹⁶ These included “asking questions,” “compliance plans,” “industry standards,” “records of efforts,” and, helpfully, “changes in above in response to practical experiences.”¹⁷

C. The Lacey Act’s Flaws Lead To Absurd And Unjust Results

The Lacey Act’s broad liability scheme charges Americans to know and “properly” interpret the statutory and regulatory minutiae of fishery, wildlife and forest management, tax, customs, logging, commercial and real property “law” in places like Indonesia, Vietnam, Peru and China.¹⁸ It then requires our citizens to “verify” that foreign actors in a supply chain that

¹³ See 16 U.S.C. § 3373.

¹⁴ Lacey Act Amendments of 1981, S. Rep. No. 97–123, 97th Cong., 1st Sess. 10–12 (1981); 1981 U.S.C.C.A.N. 1758–59. The Committee explained:

[D]ue care means that degree of care which a reasonably prudent person would exercise under the same or similar circumstances. As a result, it is applied differently to different categories of persons with varying degrees of knowledge and responsibility. For example, zoo curator's [sic], as professionals, are expected to apply their knowledge to each purchase of wildlife. If they know that a reptile is Australian and that Australia does not allow export of that reptile without special permits, they would fail to exercise due care unless they checked for those permits. On the other hand, the airline company which shipped the reptile might not have the expertise to know that Australia does not normally allow that particular reptile to be exported. However, if an airline is notified of the problem and still transships the reptile, then it would probably fail to pass the due care test.

Id.

¹⁵ Tanczos, *A New Crime: Possession of Wood – Remediating the Due Care Double Standard of the Revised Lacey Act*, 42 RUTGERS L. J. 549, 567 (2011).

¹⁶ U.S. DEP’T OF AGRIC., LACEY ACT PRIMER 20 (April 2010) available at http://www.aphis.usda.gov/plant_health/lacey_act/downloads/LaceyActPrimer.pdf (accessed May 3, 2012).

¹⁷ *Id.* As one environmental group has correctly noted, “‘Lacey compliance’ is not defined by any one document, checkbox, due diligence system or due care check-list, and do not expect the U.S. government to provide that.” EIA, *Setting the Story Straight - The U.S. Lacey Act: Separating Myth from Reality 2* (2010) available at <http://www.eia-global.org/PDF/Report--Mythbusters--forest--Jan10.pdf> (accessed May 3, 2012).

¹⁸ According to the government, “It is the responsibility of the importer to be aware of **any** foreign laws that may pertain to their merchandise prior to its importation into the United

may span countries rife with legal inefficiency, imprecision and corruption appropriately “comply” with all of these laws.¹⁹ Finally, the statute’s non-existent limits on regulatory discretion empower U.S. regulators to “Monday Morning Quarterback” good faith interpretative and verification efforts, and then to raid and prosecute anyone whom the government decides has failed to measure up. This leads to absurd results.

For example, on August 24, 2011, Gibson Guitar factories in Nashville and Memphis were raided by armed agents from the Department of Homeland Security and the U.S. Fish & Wildlife Service.²⁰ The company was not accused of importing banned wood.²¹ Rather, the raid apparently occurred because Gibson ran afoul of a technical Indian regulation governing the export of finished wood products, which was designed to protect Indian woodworkers from foreign competition.²² To make matters worse, although the Indian government certified that the

States.” See ANIMAL & PLANT HEALTH INSPECTION SERV., U.S. DEP’T OF AGRIC., LACEY ACT AMENDMENTS: COMPLETE LIST OF QUESTIONS AND ANSWERS 2 (Feb. 16, 2012) *available at* http://www.aphis.usda.gov/plant_health/lacey_act/downloads/faq.pdf (accessed May 3, 2012)(emphasis added).

¹⁹ Indonesia, for example, has over nine hundred laws, regulations, and decrees that govern timber exploitation, transportation, and trade. Saltzman, *Establishing a “Due Care” Standard Under the Lacey Act Amendments of 2008*, 109 MICH. L. REV. FIRST IMPRESSIONS 1, 6 (2010). Further complicating the matter is the problem of corrupt foreign governments and regulatory “agencies.”

Consider, for example, the case of Bigleaf mahogany imports from Peru...Peruvian officials have...supplied false documentation for these products...Not only was timber being illegally harvested in Peru, but illegal timber was also being moved into Peru from neighboring countries to be laundered...Such “deeply entrenched patronage systems” are most often linked to political networks...Clearly, it is wrong to require U.S. importers to comply with a myriad of foreign laws when the governments enacting these laws not only fail to adhere to them, but seem to be at the very root of the problem.

See 42 RUTGERS L. J. at 572 (citations omitted); see also Henry Juskiewicz, *Repeal the Lacey Act? Hell No, Make It Stronger!* The Huffington Post Green Blog (Nov. 2, 2011) *available at* http://www.huffingtonpost.com/henry-juskiewicz/gibson-guitars-lacey-act_b_1071770.html (accessed May 5, 2012) (“The U.S. should also use the power of the marketplace to encourage sustainable harvesting practices **in countries whose forestry systems are rife with graft and corruption**”)(emphasis added).

²⁰According to Juskiewicz “They...come in with weapons, they seized a half-million dollars worth of property, they shut our factory down, and they have not charged us with anything”, quoted on Reason TV, *available at* http://www.liveleak.com/view?i=cd2_1330024001 (accessed May 5, 2012).

²¹ See Affidavit of Special Agent John M. Rayfield in support of Search Warrant 11-MJ-1067 A, B, C, D at ¶¶ 15-18 (Aug. 18, 2011) *available at* <http://www.scribd.com/srcohiba/d/63869457-US-Government-s-Affidavit-in-Support-of-Search-Warrant-at-Gibson-Guitar-Factory> (accessed May 4, 2012).

²² Juskiewicz, *supra* at note 19.

wood was properly and legally exported, the regulators substituted their own opinion to create a Lacey Act violation.²³ To this day, the government refuses either to return the company's goods or to allow Gibson its day in court to contest the seizure.

In another notorious case, on the basis of an “anonymous facsimile” Americans were convicted and sent to prison for importing lobster tails from Honduras in plastic bags, rather than in boxes as “required” by a Honduran “regulation.” Also, a “significant number [of the lobsters] had a tail length that was less than the 5.5 inches required” by the Hondurans for export.²⁴ Although the Honduran government averred that the “laws” supposedly violated by the defendants were either invalid at the time of the lobster shipment or had been retroactively repealed, the Eleventh Circuit upheld the criminal convictions and ruled: “Although Lacey Act offenses are predicated upon violations of [foreign] law, the statute nowhere states that a viable or prosecutable [foreign] law violation is necessary to support federal charges... Thus, the subsequent invalidation of the underlying foreign laws does not make the defendants any less culpable for their actions.”²⁵

III. KEY LACEY ACT CONCERNS

A. The “Over-criminalization” Problem

The Lacey Act is an exemplar for the vice of over-criminalization. “Over-criminalization” is seen in Congressional enactments that expand criminal liability to individuals who hardly seem blameworthy, including strict liability offenses that dispense with culpable mental states; vicarious liability for the acts of others without some evidence of personal advertence; grossly disproportionate penalties that bear no relation to the wrongfulness of the underlying crime, the harmfulness of its commission, or the blameworthiness of the criminal; and the broad delegation of criminal enforcement authority to bureaucratic regulators.²⁶ Such enactments corrode individual civil liberties.

The Lacey Act does all of these things. It holds Americans vicariously liable for the violation of even the most technical foreign law, rule or local ordinance without evidence of personal advertence or intent. It penalizes without relation to the harm done by the “violator” to fish, wildlife or plant populations. It criminalizes obscure foreign requirements, including civil customs, transportation, and packaging rules and even local tax or royalty ordinances, and then delegates unlimited prosecutorial power to federal regulators. Perversely, the Lacey Act unleashes the coercive power of the federal government not against the corrupt and lawless foreign individuals, companies and governments that allow, encourage or conduct poaching, clear-cutting and environmental degradation, but rather against Americans who are innocent of wrong-doing, by any common measure.

²³ Apparently, Gibson was advised by the U.S. government that if it finished its guitar fingerboards using Indian labor rather than Tennessee craftsman, the Lacey Act issue would not exist. Juskiewicz, *supra* at note 19.

²⁴ *McNab*, 324 F.3d at 1268.

²⁵ *Id.* at 1270 (citations omitted).

²⁶ See Luna, *The Overcriminalization Phenomenon*, 54 American Univ. L. Rev. 703, 715 (2005).

The U.S. Supreme Court has repeatedly held that a criminal law is unconstitutionally vague and invalid if it fails to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits, or if it authorizes or encourages arbitrary and discriminatory enforcement.²⁷ The Court has not considered whether Lacey’s “foreign laws” references pass constitutional muster. However, at best it is very difficult to justify the legal fiction that the owner of a small business in Topeka, Kansas who imports wooden-handled brooms from China has fair notice of and understands the conduct prohibited by all applicable national, provincial and local Chinese civil and criminal laws, regulations, ordinances and requirements.²⁸ Also, the Gibson Guitar case starkly illustrates the statute’s inherently subjective, arbitrary and discriminatory enforcement regime.²⁹ Although the Indian government certified that the wood there in question was properly and legally exported, the U.S. Fish and Wildlife Service substituted its own opinion and dispatched armed agents to raid the company.³⁰ The fact that U.S. regulators can do such a thing certainly suggests that the Act may be tainted by a due process infirmity.

B. The “Contraband” Problem

In 2008, Congress amended Lacey by adding 16 U.S.C. § 3374(d). This section states that Lacey Act forfeitures of fish, wildlife or plants are subject to the Civil Asset Forfeiture Reform Act (“CAFRA”).³¹ Among other things, CAFRA states that an innocent owner’s interest

²⁷ *Morales*, 527 U.S. at 56 (citation omitted). As the Court held long ago:

That the terms of a penal statute...must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.

Connally v. General Constr. Co., 269 U.S. 385, 391 (1925).

²⁸ The Ninth Circuit has held that the term “foreign law” enables an ordinary person to understand the prohibited conduct in a given case. *Lee*, 937 F.2d at 1395. Yet, the court did not explain how, exactly, American fishermen were supposed to identify or understand applicable Taiwanese regulations.

²⁹ “A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” *Grayned*, 408 U.S. at 108 (citations omitted). The Gibson case, in which U.S. regulators rejected the Indian government’s interpretation of Indian law, and the *McNab* decision, in which a U.S. court rejected the Honduran government’s interpretation of Honduran law, demonstrate that Lacey Act enforcement is “ad hoc and subjective” because U.S. regulators apparently are free to interpret and apply foreign law as they see fit. *See generally Morales*, 527 U.S. at 41 (striking down an ordinance providing absolute discretion to police officers to determine prohibited “loitering”).

³⁰ Juszkievicz, *supra* at note 19.

³¹ 18 U.S.C. § 981 et seq. In 2000, Congress enacted CAFRA and created the “innocent owner” affirmative defense to cure the government’s “abuses of fundamental fairness” and to

in property shall not be forfeited under any civil forfeiture statute.³² Congress enacted § 3374(d) to account for the practical compliance difficulties caused by Lacey liability expansion to plant products,³³ and to cure a Ninth Circuit ruling in the case of *United States v. 144,774 Pounds of Blue King Crab* that essentially holds that all fish, wildlife or plants seized under the Lacey Act are “contraband,” nullifying the innocent owner defense in all such cases.³⁴

Notwithstanding § 3374(d)’s enactment, the government apparently still denies innocent owners the benefit of CAFRA’s protection. This is puzzling, because to do this the government must hold, contrary both to controlling authorities and to the legislative history, that § 3374(d) is superfluous.³⁵ Furthermore, punishing objectively blameless persons who act with due care does not materially advance the statute’s goal of fish, wildlife and plant conservation, and offends basic U.S. legal norms. In circumstances where an importer reasonably cannot have knowledge of illegality, the government’s approach seems to directly counter what Congress intended to do via § 3374(d) and CAFRA itself.³⁶

ensure that property owners obtain adequate due process in civil forfeiture cases. *See generally* Moores, *Reforming The Civil Asset Forfeiture Reform Act*, 51 ARIZ. L. REV. 777, 782 – 83 (2009)(citations omitted).

³² 18 U.S.C. § 983(d)(1). Sections 983(d)(2) and (3) set the criteria for proof of innocence.

³³ As the House Report on H.R. 1497 (subsequently enacted as § 8204 of the Food, Conservation and Energy Act of 2008, Pub. L. 110-246) states:

Under Lacey, the entire supply chain handling imported plant material is held responsible for illegal acts of which they would have no reasonable expectation to know the violation much less know the underlying laws that exist in all foreign countries. Amending the Lacey Act to include reaffirmation of CAFRA provides important forfeiture liability protection for “innocent owners”....Recent case law had effectively exempted Lacey Act forfeitures from the “innocent owner” defense... [so] the specificity of language in H.R. 1497 and specific reference to CAFRA subsequent to the [*Blue King Crab*] case are intended to clearly show that it is Congress’ intent to provide “innocent owner” [sic] in forfeiture proceedings under the Lacey Act.

HOUSE REP. 110-882, at 20-21; *see also* 42 RUTGERS L. REV. at 576 – 78 (discussing the “missing” innocent owner exception under Lacey)(citations omitted).

³⁴ 18 U.S.C. § 983(d)(4) states “Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.” The Ninth Circuit ruled that all property seized under Lacey was by definition “illegal to possess” and therefore ruled that the innocent owner affirmative defense to forfeiture should be stricken. *Blue King Crab*, 410 F.3d at 1135 - 36.

³⁵ The government’s position contradicts the basic canon of statutory interpretation that Congress does not enact superfluous provisions. *See, e.g., Bailey v. United States*, 516 U.S. 137, 146 (1995)(citations omitted).

³⁶ 42 RUTGERS L. REV. at 578 (citations omitted); 51 ARIZ. L. REV. 782 – 83 (citations omitted).

IV. POTENTIAL SOLUTIONS: THE FOCUS AND RELIEF ACTS

The Lacey Act's fish, wildlife and plant conservation goals are worthy and deserve strong Congressional support. Nevertheless, the Act's minimal *mens rea* threshold and its overly broad reliance on "foreign law" to create domestic jeopardy require a Congressional remedy. At a minimum, Congress should cabin the foreign laws that serve as jeopardy "triggers" to provide Americans with fair notice of prohibited conduct. U.S. courts, agencies and citizens all would benefit from clear "rules of the road" to prevent arbitrary and discriminatory enforcement and prosecution, and companies like Gibson ought to be able to rely on the Indian government's interpretation of Indian law as a defense to Lacey liability.³⁷ Additionally, the "contraband" issue must be addressed to better align the Act with both the practical realities of the marketplace and with basic Anglo-American legal norms.

Both the FOCUS Act and the RELIEF Act should play an important role in the Lacey Act reform process. The FOCUS Act (H.R. 4171) addresses the Act's over-criminalization and due process problems by striking both the Act's foreign law references and its criminal sanctions.³⁸ It retains the "due care" standard for civil liability and potential forfeiture, which seems adequate, appropriate and beneficial in this limited context.³⁹ It also limits the reach of the Act's forfeiture provision to the prohibited fish, wildlife and plants only. The RELIEF Act (H.R. 3210), in turn, provides useful language for finally resolving the "contraband" issue so that innocent owners are entitled to CAFRA's protection.⁴⁰ This is what Congress intended to do when it enacted 16 U.S.C. § 3374(d) in 2008. It is time now to finish the job.

V. CONCLUSION

We thank you for your attention to this important matter and look forward to working with you.

³⁷ See Juszkievicz, *supra* at note 19. Congress also should consider re-examining whether, and to what extent, the Act's broad criminal and civil sanctions and its minimal *mens rea* requirements actually advance its conservation goals. As Gibson CEO Juszkievicz points out, limited government enforcement dollars may be better devoted to fighting illegal logging and poaching by bad actors, and not to fights with American companies that try hard to comply with the law. Thus, he quite reasonably suggests creation of a compliance system that would allow businesses to know before they buy wood and other plant products whether or not they are in compliance with the Act. *Id.*

³⁸ H.R. 4171, §§ 2(a), (b).

³⁹ *Id.* § 2(c). The goal, of course, is for Congress to improve the Act and make its scope and application more clear without imposing limited, artificially rigid and commercially inadequate enforcement or interpretative checklists on the regulated community.

⁴⁰ H.R. 3210 § 3(a).