

Testimony of Jeff Baxter

House Natural Resources Committee

Mr. Chairman and the members of the Committee, my name is Jeffrey Baxter, also known as Skunk Baxter. I have been a professional musician since the mid-1960s, most notably as a guitarist for Steely Dan and the Doobie Brothers. Among others, I have performed with Elton John, The Stray Cats and The Beach Boys, as a studio musician for over 40 years have backed artists as varied as Barbara Streisand, Gene Simmons and Dolly Parton, and have been a devoted player of iconic, American-crafted instruments whether in stadium concerts before thousands of people, in the recording studio or alone in my living room. I have also built, repaired and customized guitars for over 50 years and have a great deal of practical knowledge as to the special relationship between wood and musical instruments.

What brings me here today are the how the unintended consequences of a very good law have impacted our nation's music industry and could harm our cultural heritage. I applaud the Committee for holding this hearing today, and I want to give a special thanks to Representatives Jim Cooper and Marsha Blackburn, who have been leaders in advocating a pragmatic and bipartisan solution to the problem. They represent a state that is the cradle of American music from the country capital of Music Row in Nashville to the blues of Memphis' Beale Street. They've shown an understanding of issues facing American musicians, and we all appreciate it. I believe their bill, HR 3210, is a good starting point toward making what I believe are necessary changes in an important federal law.

In 2008, the Congress passed and the President signed amendments to strengthen the conservation aims of one of our seminal environmental statutes, the Lacey Act. While most of the American public has never heard of the Act, it has been a cornerstone of conservation and stewardship policy for more than century.

Originally passed to ensure that exotic bird species weren't wiped out in the pursuit of feathers for hats, the Lacey Act has been expanded to take in other species -- most notably woods and other plants. Make no mistake about it, this was a good change. The 2008 amendment was a groundbreaking way to put a stop to the illegal, clear-cut forestry that has decimated the world's vital tropical rain forests. By many metrics, the law and others like it have worked to slow deforestation and to help establish more sustainable forestry in countries that had a lack of control.

But what has not worked so well is Lacey's unintended effect on the American music community. This includes everyone from members of the New York Philharmonic to the small retailer that rents violins and guitars to the local elementary school band. Music Trades magazine estimates that the American music industry employs approximately 65,000 people (including retail and manufacturing) and in 2011 generated approximately \$6.6 billion in revenue for the American economy. Based on some surveys, there are approximately 9 to 10 million guitar players in the US alone.

Guitars, violins, piano keys, clarinets, and many other common instruments are made using tropical hardwoods. Ebony and rosewood, two of the most common woods used in the manufacture of musical instruments, are not naturally available in North America. Musicians value these woods because of their durability and the sound they help create. As such they are known as "tonal woods" and, quite frankly, there isn't a substitute for them in our business.

Yet under the current language of the Lacey Act, questionable wood and wood products are treated as contraband, in the same way that cocaine and marijuana are. But unlike cocaine, wood is not inherently illegal; there are perfectly legal reasons to possess wood, and there are none for cocaine. This strict liability treatment of musical instruments and other wood products can generate serious liability for their owners, even those with no knowledge or reason to know of the product's questionable past. Put simply, once a government agency seizes wood and plant products it claims were illegally harvested, their owners face forfeiture of the products irrespective of the steps they took before acquiring the product to determine its history and legality.

Once an instrument is seized as "contraband," the musician or retailer has no legal recourse to regain the product on the basis of his compliance efforts. There is no way for honest owners to demonstrate that they exercised due care. I agree that, people who knowingly violate the law should be punished. But people who follow the rules, exercise good judgment, and buy from reputable sources should not be put in a Kafka-esque situation where no proof is needed and no appeal is heard. I strongly recommend that the Act be amended to allow consumers the opportunity to challenge seizures and forfeitures under the Lacey Act. This change will only provide consumers with an opportunity to prove to an impartial judge that they exercised due care. If the judge agrees, the consumer will be permitted to retain the products; if not, the products will be subject to forfeiture. This amendment will have no effect on the civil penalty or criminal forfeiture and penalty provisions contained in the Lacey Act.

A second change that should be made is to exclude products that were made before May 22, 2008, when the Lacey Act amendments were enacted. I don't think Congress intended to make antique mahogany desks or vintage guitars illegal contraband when the recent amendments were passed, but that is what happened. Many people are worried that because they cannot clearly demonstrate the ultimate sourcing of their products, they could lose their valued instruments or wood inventory in the event the law is retroactively applied. By providing clear legal title to items that were legal up to the date of enactment you can provide a great deal of certainty to musicians everywhere, many of whom have played the same instrument for years and treasure them as an integral part of the creative process

Finally, I have heard from luthiers – the people who make guitars – that the Lacey Act is incredibly vague in what might be a violation. Currently, people who use foreign sourced wood to make products must not take possession of any wood that could have violated *any* foreign law.

It doesn't matter whether the law exists to deal with protecting the environment or not and it doesn't matter whether any foreign country believes that its own law was violated. If the wood was harvested, processed, finished, or shipped using any method that the U.S. Government alleges violated any foreign law then that wood, and the products made from it, become contraband.

Digesting the encyclopedia containing every agricultural, labor, export, transportation, taxation, or certification statute that might deal with a plant or animal in every country in order to legally import materials in conformity with Lacey is just too heavy a burden for any business. Conservation efforts are best when they are focused and when limited resources can be used to make the most impact.

I believe we can make two positive changes. One would be to narrow the scope of laws to those that deal directly with the environment and conservation. This would uphold the Lacey Act's conservation purpose, while giving businesses a realistic metric with which to comply. Another method would be to establish a voluntary pre-certification program that would allow businesses to work with the US Department of Agriculture to ensure that their products or raw material are fully in compliance with the law prior to importing them into the US. This voluntary pre-certification would give industry clarity, while cutting down on the enormous paperwork the government has to process. It would also strengthen the true aims and spirit of the Lacey Act by identifying and correcting potential violations BEFORE, rather than AFTER, any environmental harm is done.

I would posit that these are just some of the ideas that Congress should consider. As musicians, we need these exotic forests to be sustainably managed and we want to see the Lacey Act succeed. For too long the world let tropical forests be decimated without protecting them as vital resources. The best way to ensure forest survival though, is to make it more valuable for a poor farmer to protect the forest than to clear it for grazing land. One of the ways to do that is for musicians to continue to be able to buy legal and well-crafted guitars and other instruments. We cannot play our part if we inadvertently make instruments, and their inputs, into contraband.

I am not here to advocate overturning, eviscerating, or weakening the Lacey Act. Rather, I think it could be made more effective and focused, while ensuring that law-abiding American musicians and American businesses can continue to create music and create jobs without fear of accidentally violating Lacey. American musicians and the music they create are national treasures, respected the world over. American music is a vital component of American Soft Power and plays a very important and positive role in the way the US is perceived by the global community. The Lacey Act is a good piece of legislation, but let's work to make it better.