

**TESTIMONY OF STEPHEN GUERTIN, DEPUTY DIRECTOR,
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BEFORE THE U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON NATURAL
RESOURCES, SUBCOMMITTEE ON FISHERIES, WILDLIFE, OCEANS AND
INSULAR AFFAIRS, REGARDING THE 2008 LACEY ACT AMENDMENTS**

May 16, 2013

Good morning Chairman Fleming, Ranking Member Sablan, and Members of the Subcommittee. I am Stephen Guertin, Deputy Director 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 to provide an update on implementation of the 2008 plant amendments to the Lacey Act. Simply put, the plant amendments bring plants under the same standards as all wildlife species that have been protected by the Lacey Act for the last hundred years.

The Service is one of the lead federal agencies for enforcing the Lacey Act (16 U.S.C. §§ 3371–3378), a long-standing law that prohibits trafficking in illegally taken fish, wildlife, and plants. The Service also enforces many 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 the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), an international treaty signed by 178 countries, including the United States, to prevent species from becoming endangered or extinct because of unregulated international trade.

The Service's 216 special agents work on some 13,000 investigations each year involving complex, high-impact wildlife crimes. These wildlife crimes include highly endangered species such as elephants, rhinos, tigers, and sea turtles; rainforests in the tropics; 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 smuggling pit them against transnational organized networks and criminals conducting high-profit, black market trade valued in the billions of dollars. 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, plants and wildlife and plant products in the United States.

We have 136 wildlife inspectors stationed at 38 of the more than 400 U.S. Customs ports of entry throughout the country. Last year they processed approximately 187,000 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 also employs 393 Federal Wildlife Officers who serve as the uniformed police force and conservation officers for the 561 National Wildlife Refuges and 38 Wetland Management Districts in the United States and territories, comprising approximately 150 million acres of the National Wildlife Refuge System (NWRS). They also regularly conduct enforcement operations off of NWRS lands enforcing the provisions of the Migratory Bird Treaty Act. These officers perform the full range of law enforcement duties, including patrols, surveillance, investigations, apprehensions, participation in raids, detentions, seizures and arrests, and interaction with the judicial system. In addition to the Service, each of the land managing agencies within the Department including the National Park Service, Bureau of Land Management, Bureau of Reclamation and the Bureau of Indian Affairs enforce the Lacey Act across hundreds of millions of acres of public and tribal lands.

These agents and officers depend on the Lacey Act to do their work. The Lacey Act is the single most effective law 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. 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. Notably, the Lacey Act also 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. The Lacey Act shows 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.

Historical Background

The Lacey Act was the Nation's first federal wildlife protection law. Its passage in 1900 was prompted by growing concern about interstate profiteering in illegally taken game species and the impact of that trafficking on states and their wildlife resources.

The original law made it illegal to transport from one state or territory to another wild animals or birds killed in violation of state or territorial law. According to the House Committee Report from the 56th Congress, its "most important purpose" was "to supplement the state laws for the protection of game and birds." It also banned the importation of injurious wildlife that threatened crop production and horticulture in this country. In its original version, the Lacey Act focused on helping states protect their resident wildlife.

Congress expanded the Lacey Act through amendments several times during the law's first century. One of the most significant of these amendments occurred in 1935, when Congress extended the Lacey Act's prohibitions on interstate commerce to include wildlife and birds taken in violation of federal or foreign law.

Amendments enacted in 1981 expanded the scope of the statute to: include certain unlawfully harvested fish; increase penalties for trafficking; strengthen tools for enforcement; apply

prohibitions on interstate and international trafficking to any type of wild animal; and extend protection to certain wild plants. The 1981 amendments also added tribal laws and U.S. treaties to the list of underlying laws upheld; incorporated strict liability forfeiture provisions consistent with other resource laws; and established criminal felony liability for those buying or selling protected specimens of fish or wildlife that they knew had been taken and transported in violation of an underlying law.

2008 Plant Amendments

The most recent amendments to the Lacey Act were passed by Congress and signed into law on June 18, 2008, as part of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246). 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 statute specifies that the underlying laws that trigger a plant trafficking violation include laws and regulations that:

- protect the plant;
- regulate the (i) theft of plants, (ii) taking of plants from a park, forest reserve, or other officially protected area, (iii) taking of plants from an officially designated area, or (iv) the taking of plants without, or contrary to, required authorization;
- require the payment of royalties, taxes or stumpage fees for the taking, possession, transportation or sale of any plant; and
- govern the export or transshipment of 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 jobs from unfair and illegal logging practices.

The Lacey Act plant amendments were supported by more than 50 trade associations, non-profits, and unions, representing the entire range of stakeholders, as well as members of both parties in Congress. This broad support was driven by concerns that illegal logging has a negative impact on biodiversity, indigenous peoples, the global climate, and on 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.

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. Specifically, the term “plant” was defined as “any wild member of a plant kingdom,

including roots, seeds, parts, or products thereof, and including trees from either natural or planted forest stands.” The inclusion of “products” parallels wildlife provisions in the Lacey Act, which cover not only live fish and wildlife, but also products made from them.

The amendments also added a declaration requirement for plant products. 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.

The U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS), operating within available funding, has implemented and enforced the amendments with respect to the declaration process. As in the past, the Fish and Wildlife Service remains responsible for conducting criminal investigations of Lacey Act violations, including those authorized by the plant amendments. 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 and collecting and maintaining the resulting plant import data.

Importance of the Lacey Act

Today 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. 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 plants and wildlife. The law is a critical cornerstone for resource protection and conservation law enforcement.

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. Such sales fuel the market for certain species, putting domestic wildlife and plant populations increasingly at risk. Illegal commercialization of wildlife is a real and present threat to conservation.

On the international front, the Lacey Act provides an essential tool for combating large-scale exploitation of natural resources in developing nations and the subsequent smuggling and interstate commerce in foreign and shared species protected and regulated under federal laws, international treaties such as CITES, and the conservation laws of other countries. Its provisions give the Justice Department access to powerful enforcement tools which 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 billion to \$15 billion annually worldwide, according to a 2012 report by the World Bank.

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.

Implementation of the 2008 Plant Amendments

In terms of implementing the 2008 plant amendments, the declaration requirement is being enforced in phases so as to minimize any potential undue effects on trade in legal wood products. The Service is currently working with APHIS to finalize a rule to define the terms “common cultivar” and “common food crop”, which are excluded from Lacey Act plant requirements. Providing clear definitions of these terms will facilitate continued legal trade in these plant species. The Service is also working with other interagency group members to explore other possible policies to address plant products manufactured prior to 2008.

APHIS makes Lacey Act plant import declarations available to the Service, Customs and Border Protection, and the Department of Justice, upon written request, should they be needed for investigations. APHIS has provided almost 3,000 declarations pursuant to the 2008 plant amendments to the Service, Customs and Border Protection, and the Department of Justice in support of the enforcement agencies' investigations.

Service special agents are currently pursuing three investigations of potential violations of the 2008 plant amendments. A recent case involving the Gibson Guitar Company ended last July with a criminal enforcement agreement. In the agreement, the firm accepted responsibility for continuing to purchase rare wood from Madagascar after Madagascar had banned the sale and export of such wood. Gibson agreed to over \$600,000 in penalties including the forfeiture of wood imported after implementation of the ban.

The Service has not conducted a comprehensive review of the effect of the 2008 plant amendments; however, we strongly support this law, which, in 2011, has been cited by United Nations Agencies and the World Future Council as one of the world's top three forest conservation laws in 2011. Congress can improve the 2008 plant amendments by making sure that the agencies tasked to enforce them have the resources to do so. The Service cannot fully allocate the resources needed to pursue the transnational organized crime we know to exist in this arena without pulling resources from other enforcement responsibilities. The number of Service law enforcement officers has remained essentially the same since 1978. Due to sequestration, the Service was not able to hire a new class of 24 law enforcement officers in

fiscal year 2013. In contrast, illegal trade has grown in sophistication, the global economy for wildlife products has expanded, and new law enforcement mandates have been enacted.

Congress can also strengthen the Service's position to address transnational wildlife and timber trafficking by supporting our plans, as identified in the President's fiscal year 2014 Budget, to station senior special agent international attachés in key regions overseas (including Africa, Asia, and South America) and by working with the Service to make needed adjustments in laws so that it can be fully utilized in the investigation and prosecution of international criminal syndicates. The Service budget request for fiscal year 2014 provides \$68.3 million for the law enforcement program to investigate wildlife crimes and enforce the laws that govern the Nation's wildlife trade. Wildlife trafficking is increasingly a transnational crime involving illicit activities in two or more countries and often two or more global regions. Cooperation between nations is essential to combat this crime. Investigations of transnational crime are inherently difficult, and they become even more so without organizational structures to facilitate this cooperation. This request of \$6.1 million above the 2012 appropriation also includes funding to foster these needed partnerships to address technical challenges in the science of wildlife forensics.

The 2008 Lacey Act plant amendments were a significant environmental accomplishment. We urge Congress to support continued implementation of this law and to ensure that the United States remains a leader in the global effort to save forests and protect the planet and its people.

Conclusion

I would like to thank the Subcommittee for your continued support for the conservation and protection of fish, wildlife, and plants throughout the world. Thank you for the opportunity to present testimony on the 2008 plant amendments to the Lacey Act. I would be pleased to answer any questions that you may have.