

Statement by Mark Rey
Former Undersecretary of Agriculture for Natural Resources and the Environment
on behalf of Climate Advisors
submitted to the
US House of Representatives
Committee on Natural Resources
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
On the topic of
The Lacey Act
May 8, 2012

Thank you Mr. Chairman and members of the Subcommittee for allowing me to present my views on the implementation of the Lacey Act, and on HR 3210, the Retailers and Entertainers Lacey Implementation and Enforcement Fairness Act (RELIEF Act), and HR 4171, the Freedom From Criminalization and Unjust Seizure Act (FOCUS Act).

I am testifying today on behalf of Climate Advisors, a consulting firm that provides scientific, technical, and policy advice to government and non-government organizations. I am also an adjunct faculty member of the Michigan State University School of Agriculture and Natural Resources. Prior to this position, I served under President George W. Bush for nearly 8 years at the US Department of Agriculture as the Undersecretary of Agriculture for Natural Resources and the Environment. In this capacity, I oversaw the work of the US Forest Service and participated in the development of the 2008 Lacey Act Amendments.

I commend the Subcommittee for convening this hearing. The implementation of new statutory programs is seldom flawless, and Congressional oversight of agency implementation decisions is crucial.

I would like to submit for the record a statement from former Deputy Secretary of the Interior Lynn Scarlett concerning the ecological and economic impacts of illegal logging, as well as the efforts of the George W. Bush Administration to remedy this situation, including the bipartisan enactment of the 2008 Lacey Act Amendments. After briefly recounting some of the positive effects of these amendments, I will focus the balance of my remarks on HR 3210 and HR 4171.

Impacts of the 2008 Amendments to Date

Passage of the bipartisan 2008 Amendments and the limited enforcement actions undertaken so far have produced dramatic and positive results. According to a report by Chatham House, the Lacey Act has helped reduce illegal logging by at least 22 percent globally, with reductions as high as 50-70% in some key countries. That is the equivalent of at least a one billion ton reduction in greenhouse gas emissions from deforestation, achieved without the implementation of any new taxes. Chatham House estimated the cost of the greenhouse gas reductions achieved through the reduction in illegal logging ranges between seven cents and \$2.48 per metric ton, providing one of the most affordable examples of reduced greenhouse gas emissions.

There is some evidence that, as companies seek assurances that their timber supply is legal, they are either keeping operations in the United States or moving them back here. Indeed, the Lacey Act may be a factor in the dramatic reversal of the U.S. trade deficit in forest products with China, which went from a \$20.6 billion deficit in 2006 to a \$600 million surplus in 2010. We should look at this success as a model to build upon.

There is also significant anecdotal evidence that forest products importers are taking new steps to ensure their wood comes from legal sources. In the guitar industry alone, Taylor and Martin guitar companies have both said they have worked to bring their operations into Lacey Act compliance, and wood importers, large and small, in all the industries that use forest products have made huge strides in ensuring the compliance of their operations.

The Lacey Act has also had significant international impact. Inspired in part by the 2008 Lacey Act Amendments, the European Union passed a similar regulation in 2010, and Australia and several other countries are considering similar legislation. Earlier this year, the United Nations recognized the Lacey Act with a silver medal as one of the world's three most effective forest conservation policies. The law has also been recognized by political leaders of forest nations, which are grateful for the support it provides them in their efforts to reduce illegal logging. According to the World Bank, illegal logging costs forest nations \$10 billion a year in lost assets and revenues from permits and other sources.

HR 3210 Would Unnecessarily Weaken Implementation of the 2008 Amendments

The RELIEF Act's advocates have primarily framed the legislation as a "narrow fix" that primarily affects the music industry. They have focused much of their arguments on the idea that individual musicians could be targeted for Lacey Act enforcement for crossing international boundaries, even if they are just carrying instruments with illegal wood that was purchased before the Lacey Act amendments were passed in 2008. The Fish and Wildlife Service and the Justice Department have repeatedly clarified that individuals are not targets for enforcement: "Individual consumers and musicians are not the focus of any U.S. Fish and Wildlife Service law enforcement investigations pertaining to the Lacey Act, and have no need for concern about confiscation of their instruments by the U.S. Fish and Wildlife Service," FWS wrote in a recent statement.

The effect, however, of enactment of the RELIEF Act would be far more sweeping, and would be likely to have much greater impact outside the music industry. The key provisions are:

- *Removes the declaration requirement for "non-solid wood."* This exempts the pulp, paper, and composites industry from the key requirement of the Lacey Act – that they know where their wood is coming from. Pulp and paper alone constitute more than half of the dollar value of forest products imports into the United States.
- *Weakens penalties for non-compliance.* The bill would remove most of the deterrent effect of the penalties by lowering them to traffic ticket levels of \$250 for "first offenses." Given limited enforcement resources, the Lacey Act was

constructed to work primarily through deterrence, rather than through widespread issuance of small fines.

- *Eliminates possibility of confiscation.* The bill wouldn't make illegally logged goods subject to confiscation, as is normal with other stolen goods – removing another significant deterrent to illegal logging.

A broad coalition has assembled to oppose the RELIEF Act, including major environmental groups, unions, and almost the entire U.S. forest products industry. Groups opposing the legislation include: Blue Green Alliance, American Forest & Paper Association, Environmental Investigation Agency, Hardwood Federation, Greenpeace, National Wood Flooring Association, League of Conservation Voters, National Alliance of Forest Owners, Natural Resources Defense Council, Sierra Club, The Field Museum, American Hardwood Lumber Association, United States Green Building Council, United Steelworkers, Wildlife Conservation Society, World Wildlife Fund, Union of Concerned Scientists, the American Hardwood Export Council, and many others.

HR 4171 Would Return American Wood Producers to an Unfair Trade Regime

The 2008 Lacey Act Amendments are designed to reinforce and support the laws of other countries concerning the management and trade of plants and plant products. A Lacey Act violation is triggered by laws concerning the way plants and plant products are taken, possessed, transported, imported, or exported. Bans and restrictions on exports of raw materials are common in tropical countries and are directly linked to forest management and protection efforts. In countries where corruption is common or where there is weak governance, these laws are an important tool in controlling large exports of illegally logged timber.

In addition to supporting improved global forest governance, a longstanding pillar of US trade policy, another important objective underlying the Lacey Act Amendments was to level the playing field for legitimate American producers of forest products. We believe that the Lacey Act is meeting that objective, and that the elimination of the violation of foreign laws as a basis for prosecution will threaten the enormous benefits of the Lacey Act.

The implementation of the 2008 Amendments has not been flawless. The 2008 Amendments required a report from the Administration on implementation issues to be delivered to Congress in 2010. That report is still unavailable. A broad coalition of importers, manufacturers, retailers, labor unions, and environmental organizations has been meeting and developing consensus recommendations to the federal agencies involved in Lacey Act implementation. Unfortunately, the agencies have been slow to act on two sets of consensus recommendations submitted thus far.

One of the top areas for improvement would be the establishment of an electronic database at the Animal Plant Health Inspection Service (APHIS) with the associated capacity to more easily and quickly process importer declarations. Creating this resource will enable APHIS to clear legal shipments (which constitute the overwhelming majority

of imports), while focusing on the small number of shipments that merit further investigation. This will help legitimate importers to do business at the speed they require in order to compete. The key to addressing this gap is providing sufficient funding to APHIS of approximately \$5.5 million to develop the database. Also needed are sufficient resources for Fish and Wildlife Service and Department of State implementation (including providing technical assistance to the industry for implementation). We recommend a total of \$13.5 million for these purposes. Although the federal budget is tight, the Lacey Act is producing results on a larger scale than most other international conservation programs, and should be prioritized for funding within existing budget constraints.

I commend the Subcommittee for this important Congressional oversight effort, and hope that the Subcommittee's attention spurs agency action. Such action needs to respond to, and remedy, the legitimate implementation concerns that have been raised to date. It is my judgment that these concerns can be resolved administratively.