

**H.R. 3119, H.R. 6784, H.R. 6854,
AND H.R. 7157**

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON WATER, WILDLIFE AND
FISHERIES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

Wednesday, February 14, 2024

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LEGISLATIVE HEARING ON H.R. 3119, TO PROVIDE FOR THE ISSUANCE OF A MANATEE SEMIPOSTAL STAMP; H.R. 6784, TO AMEND THE ENDANGERED SPECIES ACT OF 1973 TO PROVIDE FOR PROTECTIVE REGULATIONS WHEN A SPECIES IS LISTED AS AN ENDANGERED SPECIES, “ESA FLEXIBILITY ACT”; H.R. 6854, TO DIRECT THE SECRETARY OF THE INTERIOR TO ESTABLISH 2 GRANT PROGRAMS TO SUSTAIN POPULATIONS OF SPECIES OF MIGRATORY WATERFOWL THROUGH THE DEPLOYMENT OF TOOLS AND PRACTICES THAT COMPLEMENT HABITAT CONSERVATION, “HABITAT ENHANCEMENT NOW ACT”; AND H.R. 7157, TO AMEND THE LACEY ACT AMENDMENTS OF 1981 TO ENSURE FAIR ENFORCEMENT OF SUCH ACT, “STRENGTHEN WOOD PRODUCT SUPPLY CHAINS ACT”

**Wednesday, February 14, 2024
U.S. House of Representatives
Subcommittee on Water, Wildlife and Fisheries
Committee on Natural Resources
Washington, DC**

The Subcommittee met, pursuant to notice, at 10 a.m. in Room 1324, Longworth House Office Building, Hon. Cliff Bentz [Chairman of the Subcommittee] presiding.

Present: Representatives Bentz, Graves, LaMalfa, Carl, Luna, Duarte, Hageman; Huffman, Peltola, Hoyle, Dingell, Porter, and Grijalva.

Also present: Representatives Fischbach, Stauber; and Soto.

Mr. BENTZ. The Subcommittee on Water, Wildlife and Fisheries will come to order.

Good morning, everyone. I want to welcome Members, witnesses, and our guests in the audience to today’s hearing.

Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Member. I therefore ask unanimous consent that all other Members’ opening

statements be made part of the hearing record if they are submitted in accordance with the Committee Rule 3(o).

Without objection, so ordered.

I also ask unanimous consent that the Representatives from Minnesota, Mr. Stauber and Mrs. Fischbach, be allowed to participate in today's hearing.

Without objection, so ordered.

We are here today to consider four legislative measures: H.R. 3119, To provide for the issuance of a Manatee Semipostal Stamp, sponsored by Representative Soto of Florida; H.R. 6784, the ESA Flexibility Act, sponsored by Representative Stauber of Minnesota; H.R. 6854, the Habitat Enhancement Now Act, sponsored by Representative Fischbach of Minnesota; and H.R. 7157, the Strengthen Wood Product Supply Chains Act, sponsored by Representative Duarte of California.

I now recognize myself for a 5-minute opening statement.

**STATEMENT OF THE HON. CLIFF BENTZ, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF OREGON**

Mr. BENTZ. I want to thank the witnesses again for being here today and our Members for their interest in the issues we will be discussing today.

The Water, Wildlife and Fisheries Subcommittee will consider four legislative proposals that provide the U.S. Fish and Wildlife Service greater resources and regulatory flexibility to carry out its mission to conserve at-risk species while at the same time providing some degree of regulatory certainty to affected parties.

These bills build on sound science, stakeholder collaboration, and a shared desire for economic prosperity and species conservation working together. Over the 118th Congress, Republicans on this Committee have worked to address the regulatory over-reach of the Biden administration, including the U.S. Fish and Wildlife Service administration of the Endangered Species Act. Today, we offer a different approach by examining how the Act itself could be improved to give the Service more flexibility when promulgating ESA listings.

H.R. 6784, offered by Congressman Stauber, would accomplish this by allowing the Service to propose 4(d) rules for endangered species, an authority they already have for threatened species. The 4(d) process under the ESA has untapped potential to provide regulatory flexibility for affected stakeholders, but also to address the specific threats impacting the listed species.

Take the northern long-eared bat. This species is listed as endangered due to an incurable fungal disease known as white-nose syndrome, which is not caused by human activity. As we will hear today during witness testimony, when the bat was listed as threatened it was governed by a 4(d) rule that was workable for affected stakeholders, particularly industries dependent upon forestry, but it also protected vital habitat for the bat. However, when the species was uplisted to endangered last year, the 4(d) rule was voided, and stakeholders were forced to go through an arduous and expensive process to create habitat conservation plans for the bat in order to conduct exactly the same activities. Mr. Stauber's bill would have prevented this unnecessary process by

allowing the Service to continue to use a 4(d) rule to regulate activities in the bat's range.

H.R. 6854, a bipartisan bill offered by Congresswoman Fischbach, would create two new grant programs designed to enhance the breeding habitat for waterfowl. These programs would recognize the important role private landowners play in the future health of waterfowl populations, especially in creating and maintaining suitable habitat. I would like to complement the work already done to improve waterfowl habitat and population by groups such as Delta Waterfowl, who is represented in today's panel.

H.R. 7157, a bipartisan bill offered by Congressman Duarte, would amend the Lacey Act to foster greater accountability, transparency, and certainty for businesses who are subject to that Act's regulations creating and applying timelines on agencies' actions. These include when agencies must notify importers that their merchandise has been detained, when merchandise can be transferred to a facility not under the control of the Federal Government for additional testing, and when enforcing agencies must decide to either seize or release detained merchandise.

These timelines are not designed to inhibit enforcing agencies from doing their work, but instead are designed to ensure that merchandise cannot be detained indefinitely without a legitimate reason. Doing so will help to foster a cooperative relationship between the enforcing agency and the importer.

Lastly, H.R. 3119, offered by Congressman Soto, highlights a species of great interest to many on this Committee: the manatee. This bill authorizes the Postal Service to offer a manatee semipostal stamp, with all proceeds of sale going toward conservation of the manatee and its habitat. This bill builds on the success of other stamps designed to benefit at-risk species, as well as decades of conservation undertaken by the Federal Government, states, and private entities to conserve and enhance the health of manatee populations.

I am looking forward to hearing from the Members that have sponsored each of these bills and hearing from our witnesses joining us today. Their perspective on real-world impacts and benefits of these pieces of legislation is valued as we advance policies that provide the necessary regulatory certainty to vital industries that ensure that our laws are responsive to the needs of today.

With that, I recognize Ranking Member Huffman for 5 minutes.

STATEMENT OF THE HON. JARED HUFFMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HUFFMAN. Thank you, Mr. Chairman. We are meeting today to discuss four bills. Two of them are extremely problematic.

The first, H.R. 6784, the euphemistically-named ESA Flexibility Act, would undermine a core component of the Endangered Species Act, that being that species closest to extinction are supposed to receive the highest level of protection under the law. Currently, endangered species get a set level of protection, and threatened species can have a more tailored approach.

What Republicans are hoping to do with this legislation is abolish protected status effectively in its entirety, erasing the

distinction between threatened and endangered species by making those protections optional and accelerating the demise of numerous species, regardless of their conservation status.

Folks, we are in a biodiversity crisis. One million species globally are threatened with extinction. Bills like this are not what we need to address that crisis. They are not what threatened and endangered species need to avoid extinction and, hopefully, eventually recover. This may be what industry wants, but I can guarantee it is the exact opposite of what is required for species survival and recovery.

The Endangered Species Act is based on science. It is our most important law for stopping extinction and helping endangered species recover. This bill throws the science out the window in service of giving polluting industries what they want, which is basically less inconvenience, less responsibility, less burdens, and, frankly, come what may for a species that may be teetering on the brink of extinction.

In a time when we should be increasing protections for wildlife, we should be coming up with new and creative approaches to protecting species. And instead, all we seem to get from my friends across the aisle are bills that do the opposite. It is just bill after bill in this Committee to undermine species protection and further what I call an extinction agenda.

This bill would create a patchwork of protections and enforcement by allowing states to craft their own protective regulations, and it ignores the fact that because of strained budgets we often don't even get species listed until it is very late in the game and they are very close to extinction. So, you may think of this as flexibility, but I think any reasonable view of this is that it simply puts those species at a greater risk of extinction. It is not a bill that anyone who claims to value endangered species recovery should be proud of.

And it completely undermines the work of the Endangered Species Act working group. I have attended these meetings, and I have heard the stated commitment to bipartisan good faith review of the Endangered Species Act. I have heard some positive rhetoric in those conversations, but many of the working group members are co-sponsoring this legislation, which is at odds with those stated commitments.

This legislation is a waste of time. It absolutely is irreconcilable with both the spirit and the goals of the Endangered Species Act. So, I just have to wonder whether my friends across the aisle are serious about these statements that they care about endangered species, that they want to strengthen and improve the Endangered Species Act in the face of a biodiversity crisis.

I can think of lots of legislation that could help wildlife and threaten an endangered species. Congresswoman Dingell's Recovering America's Wildlife Act, for example, would do a lot for wildlife in this country, but the Republican Majority won't let it move through Committee, despite bipartisan support for this bill. And what we get instead across the aisle is just bill after bill that attacks the Endangered Species Act and undermines wildlife protection.

Now, we turn to H.R. 7157, the Strengthen Wood Product Supply Chains Act, a valentine to those involved in illegal logging and wildlife trafficking.

Look, we know criminal activity happens with wildlife and trafficking and deforestation in the Amazon. Around the world, illegal logging is prevalent. It contributes to all sorts of environmental problems to the climate crisis and to the biodiversity crisis. And we know terrorist groups are involved in a lot of this trafficking. So, I just have to wonder why my friends across the aisle are proposing legislation that makes it easier for bad actors to do these things, and to make it harder for American companies who are playing by the rules and trying to be careful to compete against the bad actors.

My colleagues across the aisle talk a big game about crime and law and order. I wish they would walk the walk when it comes to this kind of illegal trafficking instead of proposing legislation like this.

Finally, we are going to hear two Democratic bills that I support. I am out of time. I am pleased that they were included in today's agenda, and I look forward to hearing from our witnesses.

I yield back.

Mr. BENTZ. I will now introduce our first panelist.

As is typical with legislative hearings, the bills' sponsors are recognized for 5 minutes each to discuss their bills.

With us today is Congressman John Duarte, who is recognized for 5 minutes to discuss H.R. 7157.

**STATEMENT OF THE HON. JOHN DUARTE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. DUARTE. H.R. 7157, my Strengthen Wood Product Supply Chains Act is simply a bill that asks for some rational process by which foreign, exotic woods are regulated as they come into the United States.

Currently, the Lacey Act empowers the U.S. Department of Agriculture's APHIS, Animal Plant Health Inspection Services; the U.S. Customs and Border Patrol; and the U.S. Fish and Wildlife Service, each a regulatory authority on imported woods.

Some of this is purported to be trafficking, illegal loggings, terrorist groups, competition, and jobs. These are simply mahogany, woods that come in and supply jobs here in the United States for furniture makers, musical instrument makers, sometimes motor homes, sometimes home building and home furnishings that get lost in a regulatory limbo at the port that can take months or sometimes have to have shipments abandoned because drayage inspection costs mount while the purchasers can no longer fulfill their commitment, can no longer get the materials they need to create American jobs to produce the goods.

What this bill does, it simply puts a timeline out that requires if a shipment of wood hits American ports and is going to be subject to a potential enforcement action, that the importer be given notice within 5 days that there is a potential enforcement action against that shipment. After 10 days, the importer then has the option to move that wood from a common drayage port, where it may be unprotected both from the elements as well as from theft

or shrinkage, to a site of their choosing where they can bond it, secure it, and have it kept in a merchantable, marketable, safe state.

And then, if no action is made, if they don't prosecute for an illegal act or a concern of endangered species or invasive species, which are all legitimate concerns, the importer has a right to sue for performance after 30 days to get their wood either through part of a formal prosecution with specific charges and remedies, or released to them so they can supply their manufacturing processes.

So, this is only a procedural fix that causes three, yes, three, separate regulatory agencies that exotic wood importers need to deal with to work on a timeline that matches the business needs to enforce or not enforce any laws they want to enforce, or to release the product so that it can go into commerce before it is damaged or depleted while being held in a government port.

I support this Act. I don't think it is that complicated. I don't think it is going to lead to trafficking, or terrorism, or illegal logging. If the wood comes in and has any ties to any of those problems, if it has an invasive species in it, if it is something that could be released into the environment, I know the Lacey Act originally had to do with plant materials, such as mistletoe, Himalayan blackberry, things that have become invasive species in the United States, that needed to be controlled at the border. Kiln-dried lumber does not pose those types of threats.

This is simply a protectionist racket, and it seems to be a tool for bureaucrats to gum up commerce. And we are trying to simply put timelines on this, and make a predictable, rational process for either getting problems surfaced and dealt with or getting the merchandise to the customer.

I will yield back, Mr. Chairman. Thank you.

Mr. BENTZ. I thank Congressman Duarte for his testimony. I now recognize Congressman Pete Stauber for 5 minutes to discuss H.R. 6784.

STATEMENT OF THE HON. PETE STAUBER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. STAUBER. Thank you, Chairman Bentz, and I want to thank you and Ranking Member Huffman, who, by the way, is my Tennis Caucus co-Chair, for convening this hearing today to consider my legislation, the ESA Flexibility Act.

Last year marked the 50th anniversary of the Endangered Species Act. While it has been a noble effort to protect threatened and endangered species from extinction, it is clear today that the ESA is broken.

Management of a species under the ESA was only ever supposed to be temporary. The ESA was intended to protect and rehabilitate species populations. And once a species is recovered, the intention is to have it delisted. But we all know that never happens, or almost never happens. Once a species is listed under the ESA, it basically stays on the list forever. Only between 2 to 3 percent of species ever listed under the ESA have made it off the list.

And Mr. Chair, it was noted today that we should celebrate the good management practices under the ESA. The Ranking Member is going to have an opportunity to vote on my delisting of the gray

wolf, because the science has said the gray wolf is recovered. So, I am looking forward to him supporting my delisting of the gray wolf.

Today, the ESA has become a one-size-fits-all approach to species management. As we know, all species are not created equal, all habitats are not created equal, and all external threats are not created equal. That is why we need reforms that allow the right-sized, proper management of species listed under the ESA. My legislation is an important first step in doing just that.

Currently, section 4(d) of the ESA provides the U.S. Fish and Wildlife Service and the National Marine Fisheries Service the authority to promulgate flexible, species-specific rules for threatened species. These species-specific rules allow for better right-sized species management while having the smallest possible impact to communities near that species. These aren't rules that can be enacted at the snap of a finger. These section 4(d) rules still require the relevant agencies to undergo a formal rulemaking process, a process that follows the science and considers stakeholder input. Through this process we develop species-specific plans that make sense.

My legislation builds upon the section 4(d) rules and gives the agencies authority to follow the same process for species that are listed as endangered under the ESA. This legislation simply provides our wildlife managers with a flexibility to enact more targeted protections when it makes sense. When the science tells us stricter protections are necessary, the agencies will continue to have the choice to enact those stricter protections.

Again, I want to reiterate these 4(d) rules cannot be enacted on a whim. They must go through the regulatory process considering the science and notice and comment. And contrary to what my colleagues on the opposite side of the aisle may claim, this policy isn't only being pushed by Republicans or industry. The underlying policy is supported by a broad swath of outside groups, including those typically aligned with extremist movements.

I want to draw attention to a set of recommendations included in the September 21 report published by the University of California Irvine School of Law. Much of this report argues that we must take steps to tailor protections for species listed under the ESA. According to the report, experts consulted in developing the recommendations, and I quote, "agreed that the services should not try to refine formal categories or imperilment. Instead, the agencies should recognize that there is a gradation of extinction risks within the existing threatened and endangered categories, and makes ESA decisions after considering where species lies on that gradation."

We need more tools to properly manage listed species, not less. The one-size-fits-all approach is broken, and I ask unanimous consent to enter into the hearing record this report from the University of California Irvine School of Law.

And, again, I want to thank Chairman Bentz for holding this hearing today, as well as his support as an original co-sponsor of my legislation.

Before I yield back, I would like to ask unanimous consent to enter into the record the UC Irvine report along with several statements and letters of support for my legislation, including from the

Forest Resource Association, the National Association of Home Builders, the Associated Builders and Contractors, and the National Endangered Species Act Reform Coalition.

Mr. BENTZ. Without objection.

[The information follows:]



The Six Priority Recommendations for Improving Conservation under the Federal Endangered Species Act

UCI Law
Center for Land, Environment
and Natural Resources (CLEANR)



September 2021

The full document is available for viewing at:

<https://docs.house.gov/meetings/II/II13/20240214/116787/HHRG-118-II13-20240214-SD013.pdf>

Statement for the Record
The Forest Resources Association (FRA)
Statement on the ESA Flexibility Act of 2023

The ESA Flexibility Act is a commonsense fix to the Endangered Species Act (ESA), providing authority to the U.S. Fish and Wildlife Service (USFWS) to allow forest management practices to continue when they are not the reason a species is being listed as endangered under the ESA. An example is the listing of the northern long-eared bat and the soon-to-be-listed tricolored bat and little brown bat as endangered, whose populations are significantly declining, primarily due to white-nose syndrome. Well-managed forests maintain and create environments required for the survival and recovery of these bats, and listing these species as endangered may restrict active forest management. The ESA Flexibility Act would provide a tool the USFWS can use to allow the agency to avoid unnecessarily harming rural forest-based economies when species are listed as endangered under the ESA.

Tim O'Hara
 FRA Vice President,
 Government Affairs

The Forest Resources Association (FRA) is the only national association to represent all sectors of the wood supply chain, with more than 350 member companies from the forest products industry. FRA promotes the interests of its members in the economic, efficient, and sustainable use of forest resources to produce products used by Americans every day. Our members include forest landowners, logging businesses, log haulers, consuming mills, associated businesses, and state forestry associations. FRA members are represented in 49 states and 377 congressional districts, and our membership provides for the livelihoods of nearly 926,000 families and contributes more than \$325 billion annually to the U.S. economy.

National Association of Home Builders
Washington, DC

February 13, 2024

Hon. Cliff Bentz, Chairman
 Hon. Jared Huffman, Ranking Member
 House Natural Resources Committee
 Subcommittee on Water, Wildlife and Fisheries
 1324 Longworth House Office Building
 Washington, DC 20515

Dear Chairman Bentz and Ranking Member Huffman:

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I am writing to convey our support for H.R. 6784, the ESA Flexibility Act, which allows the Secretary of the Interior to extend fit-for-purpose Section 4(d) rules to endangered species.

Home builders seeking to build housing in an area occupied by threatened or endangered species, or designated as critical habitat, face a blunt regulatory tool known as the “take” prohibition. This broad instrument places sweeping restrictions on actions that may affect the species, does not promote proactive species conservation efforts for private parties, and fosters an untenable regulatory environment.

As the United States confronts a severe shortage in housing supply, NAHB believes that it is fundamental to strike the appropriate balance between threatened and endangered species conservation, and housing production. Fit-for-purpose 4(d) rules help strike that balance. This tool has been successfully applied to threatened species like the Northern Long-Eared Bat, the Pacific Coast Salmon, California Gnatcatcher, and others. As a result, two objectives are accomplished: home builders

have a clear and predictable regulatory process, and the protected species benefits from industry complying with appropriate conservation measures.

Extending 4(d) rules to endangered species adds another conservation tool, which will ensure that endangered species remain protected, and provide private property owners with the clarity and certainty necessary under the ESA. For these reasons, NAHB encourages the Subcommittee to report out the ESA Flexibility Act favorably.

Thank you for considering our views.

Sincerely,

LAKE A. COULSON,
Senior Vice President & Chief Lobbyist

**Associated Builders and Contractors
Washington, DC**

February 13, 2024

Hon. Cliff Bentz, Chairman
Hon. Jared Huffman, Ranking Member
House Natural Resources Committee
Subcommittee on Water, Wildlife and Fisheries
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Bentz, Ranking Member Huffman and Members of the Committee on Natural Resources Subcommittee on Water, Wildlife and Fisheries:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 68 chapters representing more than 23,000 members, I write today to thank you for holding a legislative hearing on H.R. 6784, the ESA Flexibility Act.

ABC supports the ESA Flexibility Act, reintroduced by Reps. Pete Stauber, R-Minn., and Dan Newhouse, R-Wash., in the 118th Congress. Further, ABC is thankful for the subcommittee's continuation of the Western Caucus' examination of how the ESA is implemented by federal agencies and its practical impacts on the American people, how litigation is driving ESA decision-making and how success is defined under the ESA.

ABC supports the Endangered Species Act's purpose of protecting species threatened with extinction and recognizes the need for science-based, data-driven actions that conserve those species and the habitats on which they depend. ABC knows that much-needed reforms to modernize the ESA and make ESA consultations more efficient and effective will be required as the Biden administration looks to implement over \$1 trillion in federal spending for critical infrastructure, energy and technology projects throughout the country.

The ESA Flexibility Act gives the U.S. Department of the Interior and U.S. Fish and Wildlife Service additional leeway when dealing with species listed as endangered under the ESA. While these agencies are already granted flexibility with species deemed "threatened," this bill would allow for fit-for-purpose protections of "endangered" species while reducing undue regulatory burdens on development. The ESA Flexibility Act will allow for better management of species listed as endangered under the Endangered Species Act, such as the ABC-supported delisting of the northern long-eared bat.

ABC encourages the consideration of the ESA Flexibility Act and further efforts to improve and modernize the ESA to better serve our nation's communities and endangered species. ABC members stand ready for the opportunity to build and maintain America's infrastructure to the benefit of the communities that it will serve and appreciates your consideration of our concerns.

Sincerely,

KRISTEN SWEARINGEN,
Vice President, Legislative & Political Affairs

Statement for the Record
National Endangered Species Act Reform Coalition
(NESARC)
House Natural Resources Committee
Water, Wildlife and Fisheries Subcommittee
Legislative Hearing—February 14, 2024

Species-specific rules issued under section 4(d) of the Endangered Species Act currently allow for the targeted and customized application of the Act's prohibitions to promote the conservation of threatened species. By extending the use of 4(d) rules to cover endangered species, the Secretaries would have increased flexibility to apply the appropriate protections to address threats to the status of these species. NESARC supports expanding the use of this important tool for more precise protection of our nation's fish, wildlife, and plant populations.

Mr. BENTZ. I now recognize Congressman Soto for 5 minutes to discuss H.R. 3119.

**STATEMENT OF THE HON. DARREN SOTO, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF FLORIDA**

Mr. SOTO. Thank you, Chairman Bentz, for putting our bill on the agenda today, the Manatee Semipostal Stamp. I also want to thank Ranking Member Huffman for his support, as well. H.R. 3119 is a bipartisan bill between myself and Representative González-Colón and Wasserman Schultz.

The Florida manatee is an iconic species, one that not only are we very proud about in Florida, but across the nation. And it has been a large mammal that has faced certain threats over the years, being endangered and then threatened. We had a tough couple of years, Mr. Chairman, with an unusual mortality event 2 years ago, where we lost a lot of manatee. But I am so proud of the work of Democrats and Republicans coming together, both on the Federal level and on the state level, to really help restore the seagrass and Indian River lagoon and in other areas that are absolutely critical to the survival of the manatee.

Also, the manatee is a large mammal. Its health is not only important in itself, but it is also indicative of a healthy ecosystem. This is a huge area for recreational fishing, for tourism, for many folks who go to our beaches, and so doing this work helps both economically and environmentally to save this incredible species.

The good news is, after we filed this bill, the U.S. Postal Service actually announced a manatee stamp, saving us the cost of having to put together a design. But the funding does not go to helping manatees, so the bill is still necessary to fulfill the bipartisan intent of the sponsors to help with conservation for the manatee habitat.

So, I appreciate the time today to be able to discuss our important bill for Florida.

Mr. BENTZ. I thank Congressman Soto for his testimony. I now recognize Congresswoman Michelle Fischbach for 5 minutes to discuss H.R. 6854.

STATEMENT OF THE HON. MICHELLE FISCHBACH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mrs. FISCHBACH. Thank you, Mr. Chair, and I thank the Chair and the Ranking Member for the opportunity to speak here today. And thank you to Dr. Rohwer for being here and speaking in support of the bill, the Habitat Enhancement Now, or the HEN Act.

Mr. Chair, the duck populations are declining across the country. In a recent study, the U.S. Fish and Wildlife Service surveyed an area over the course of a year and found that habitat conditions for waterfowl have declined over a large portion of that area. They found that the total duck population declined, with mallard populations 18 percent below 2022 estimates and 23 percent below long-term averages. This is a huge concern for people across the country, including in my district in Minnesota, where migratory birds are an important part of our ecosystem and where waterfowl hunting is a part of tradition and a part of our culture.

True sportsmen and hunters are conservationists who understand the importance of maintaining healthy waterfowl population levels. We know there is a link between population numbers and habitat condition, and conservation groups like Delta Waterfowl here have been working to restore this habitat. They have been installing hen houses across the country, which has been found to be the most cost-effective way to increase mallard production. I am grateful for everything that they have accomplished, and I want to build on their work by incentivizing voluntary stakeholders to play a role in revitalizing these populations, and that is why I introduced the HEN Act.

The HEN Act sets up two competitive grant programs for state, local, and tribal governments, as well as non-profits and individuals. Each authorizes \$1.5 million per year for 5 years, and recognizes the importance of providing landowners the resources and incentives to protect migratory birds' habitats and wetlands.

The Hen House Grant Program is for the purpose of placing, building, and maintaining hen houses. This program will be carried out in the Prairie Pothole Region of the country, which includes western Minnesota. The Breeding Habitat Grant Program will be targeted in California to develop waterfowl habitats like brood ponds and nesting cover in order to enhance migratory waterfowl breeding. These programs will be offset by moving funds from the department operations with the Department of the Interior's Office of the Secretary.

I would like to thank all of the great partners that I have had in introducing this legislation, including Mr. Thompson and Mr. LaMalfa. I would also like to thank the numerous conservation groups who have come out in support of this legislation.

And, Mr. Chair, I would like to enter into the record a letter of support from a number of these conservation groups outlining the importance of this bill.

Mr. BENTZ. Without objection.

[The information follows:]

February 9, 2024

Re: Cosponsor Request: Habitat Enhancement Now Act (HEN Act)

Dear Congressional Sportsmen's Caucus Member:

The undersigned organizations which represent millions of hunters, anglers, wildlife professionals, and outdoor enthusiasts are writing to express our support for the Habitat Enhancement Now Act (HEN Act) (H.R. 6854). Introduced by Representatives Michelle Fischbach, Mike Thompson, and Doug LaMalfa, this legislation would provide funding for the enhancement of duck production through the installation and maintenance of hen houses and the retention of nesting and brood habitat.

Decades of research have proven that hen house nesting structures cost-effectively increase mallard nest success by protecting hens and their eggs from predators. On the prairies, mallards consistently use hen houses at high rates and experience up to 12 times greater nest success over mallards that nest in nearby upland grass cover.

The HEN Act will authorize \$1.5 million in competitive grant funding each year for 5 years. This relatively small investment would result in the construction, installation, and maintenance of nearly 20,000 hen houses resulting in the production of tens of thousands of additional mallards throughout the country.

Breeding duck populations in California face ever-increasing pressure from wetland habitat loss. The HEN Act will authorize an additional \$1.5 million annually for 5 years to incentivize willing landowners to establish nesting cover and create essential brood habitat on their property in California.

In whole this investment will enhance duck production and the fall flight for all four flyways.

For these reasons, we strongly support the Habitat Enhancement Now Act (HEN Act) (H.R. 6854). Please contact Sean Murphy in Representative Fischbach's office or Eric Hoffman in Representative Thompson's office to be added as a co-sponsor.

Thank you for your leadership and continued service on behalf of America's outdoor heritage.

Sincerely,

| | |
|--------------------------------------|---|
| Backcountry Hunters & Anglers | North American Grouse Partnership |
| Boone and Crockett Club | Safari Club International |
| California Waterfowl Association | Theodore Roosevelt Conservation Partnership |
| Congressional Sportsmen's Foundation | Whitetails Unlimited |
| Conservation Force | Wild Sheep Foundation |
| Delta Waterfowl | Wildlife Forever |
| Houston Safari Club | |

Mrs. FISCHBACH. Thank you, Mr. Chair. And as I said, conservation and hunting are key pieces of American and Minnesotan history, and I am committed to doing what I can to support sportsmen and women. This bill is a common-sense way to bolster duck populations for generations of future outdoor enthusiasts.

And I want to thank my colleagues for allowing me to join the Committee today. Thank you, Mr. Chair, and I yield back.

Mr. BENTZ. Thank you, Congresswoman Fischbach. And I thank all the Members for their testimony. I will now introduce our second panel.

Mr. Stephen Guertin, Deputy Director for Program Management and Policy with the U.S. Fish and Wildlife Service in Washington, DC, welcome back; Dr. Frank Rohwer, President and Chief Scientist of Delta Waterfowl Foundation in Bismarck, North Dakota; Mr. Jordan McIlvain, Vice President of the Alan McIlvain Company in Marcus Hook, Pennsylvania; Mr. Alexander von Bismarck, Executive Director of the Environmental Investigation Agency in Washington, DC; and Mr. Ray Higgins, Executive Vice President of the Minnesota Timber Producers Association in Duluth, Minnesota.

With that, I remind the witnesses that under Committee Rules, they must limit their oral statements to 5 minutes, but their entire statement will appear in the hearing record.

To begin your testimony, please press the "on" button on the microphone.

We use timing lights. When you begin, the light will turn green. When you have 1 minute remaining, the light will turn yellow. And at the end of the 5 minutes, the light will turn red, and I will ask you to complete your statement.

I will also allow all witnesses to testify before Member questioning.

I now recognize Mr. Guertin for 5 minutes.

**STATEMENT OF STEVE GUERTIN, DEPUTY DIRECTOR FOR
PROGRAM MANAGEMENT AND POLICY, U.S. FISH AND
WILDLIFE SERVICE, WASHINGTON, DC**

Mr. GUERTIN. Good morning Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee. I am Steve Guertin, Deputy Director for the U.S. Fish and Wildlife Service, and I appreciate the opportunity to testify before you today on four bills before the Subcommittee.

H.R. 3119 would require the U.S. Postal Service to issue a semipostal stamp to support ongoing manatee conservation efforts. The Service has been working closely with the Florida Fish and Wildlife Commission, Puerto Rico Department of Environment and Natural Resources, and other partners to conserve manatee habitat and address threats to manatee populations. This legislation would provide supplemental funding for those efforts. We support the goals of H.R. 3119, with a few modifications to ensure this legislation is in line with recommendations from the Government Accountability Office on issuing semipostal stamps.

H.R. 6784 would amend the Endangered Species Act to change how species listed under the Act are protected. The Service opposes the proposed changes to the Endangered Species Act which would undermine our ability to protect the species at greatest risk of extinction.

Congress passed the Endangered Species Act in response to extinctions and declines in an alarming number of fish, wildlife, and plant species. Under the Act, endangered species are afforded the highest level of protections because they are in danger of extinction throughout all or a significant portion of their range. In contrast, threatened species are those species that are likely to become endangered in the foreseeable future.

Under the ESA, we have additional flexibility to issue a 4(d) rule to exempt from the ESAs take prohibitions activities that are likely to have minimal impact on the species' overall survival. That flexibility is appropriate for a species that is imperiled, but not at imminent risk of extinction. The legislation would dilute protections for endangered species by authorizing the Secretary to issue 4(d) rules not only for threatened species, but also endangered.

It would also effectively result in no distinction between endangered and threatened species regarding the prohibited actions under section 9. Either category of listed species could receive full or partial protections.

Further complicating recovery efforts, the legislation would also lead to a patchwork of different regulatory protections, which would create confusion for the public and undermine our ability to support recovery.

We oppose this legislation and its proposed changes to the treatment of endangered species.

H.R. 6854 would establish two new grant programs to sustain populations of migratory waterfowl. We support the goals of this legislation, but would welcome the opportunity to work with the Subcommittee on this legislation and discuss similar work being done under the North American Wetlands Conservation Act, Partners for Fish and Wildlife Program, and state and tribal wildlife grant programs.

Last, H.R. 7157 would amend the Lacey Act to significantly modify how the Service and other Federal agencies process shipments coming into the country. We oppose this legislation, and believe it would interfere with our ability to facilitate legal and timely movement of commerce, combat the illegal wildlife trade, and prevent the introduction and spread of injurious species to the country. The deadlines under the legislation will be challenging to meet, and could result in shipments being unnecessarily detained or seized while inspectors obtain the information they need to evaluate the shipment.

Additionally, we are concerned that several of the provisions requiring the Service to share information with importers would impede or undermine investigations unless we don't have the authority to move detained shipments to private bonded facilities, and are concerned that movement of these shipments would run the risk of introducing and dispersing undetected invasive species which can cause great harm to ecosystems and the economy.

Thank you for the opportunity to testify today. We appreciate your interest in our conservation work, the Endangered Species Act, and Lacey Act implementation, and we would be pleased to answer any questions the Committee has. Thank you.

[The prepared statement of Mr. Guertin follows:]

PREPARED STATEMENT OF STEPHEN GUERTIN, DEPUTY DIRECTOR FOR POLICY, U.S.
FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR
ON H.R. 3119, H.R. 6784, H.R. 6854, AND H.R. 7157

Introduction

Good morning, Chairman Bentz, Ranking Member Huffman, and Members of the Subcommittee. I am Stephen Guertin, Deputy Director for Policy for the U.S. Fish and Wildlife Service (Service) within the Department of the Interior (Department). I appreciate the opportunity to testify before you today on four bills related to funding for manatee conservation, the Endangered Species Act (ESA), waterfowl conservation, and Lacey Act implementation.

The mission of the Service is working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The Service's efforts to achieve this mission span a wide variety of programs, including those established to conserve marine mammals, recover ESA-listed species, conserve migratory birds, protect against the spread of injurious species, and regulate wildlife trade. A number of these programs are relevant to the legislation before the Subcommittee today.

Manatee Conservation

The Service oversees the protection of the West Indian manatee under both the ESA and the Marine Mammal Protection Act. The Service works with federal, state, and private sector partners to protect manatees by performing project consultations under Section 7 of the ESA, assessing population status and trends, preparing and publishing stock assessments, and facilitating the development and implementation of conservation plans. The West Indian manatee is a charismatic marine mammal comprised of two subspecies, the Antillean manatee and the Florida manatee. The West Indian manatee can be found in coastal and riverine areas of North America, Central America, and South America and some islands in the Caribbean basin. They prefer habitats with plenty of submerged aquatic vegetation, a source of freshwater, and protection from severe wave action. While the manatee has no natural predators, they face threats from collisions with watercraft, entrapments in water control structures, entanglement or ingestion of fishing gear or marine debris, pollution, and loss of habitat.

Endangered Species Act

The Service and National Marine Fisheries Service (NMFS) share primary responsibility for implementation of the ESA. In enacting the ESA 50 years ago, Congress set a public policy for helping recover endangered and threatened species, with the added benefit of proactive conservation to help prevent additional species from needing to be listed. Protections provided under the ESA can also help address the loss of biodiversity and contribute to preventing species extinctions. Almost every species that has been protected by the ESA is still with us today, and hundreds are on the path to recovery. The original impetus of the ESA was the extinction and decline of an alarming number of fish, wildlife, and plant species, and the recognition that these species are of ecological, economic, educational, recreational, cultural, esthetic, and scientific value to the nation and its people. The range of threats to biodiversity and conservation of species have only increased since the law's passage. Those species listed as endangered are at the highest level of risk and require greatest protection. The protections afforded endangered species should not be weakened or diminished.

Waterfowl Conservation

Migratory bird populations and their habitats are facing increasing challenges, including development, drought, extreme temperatures, and wildfires. To address this, the Service is working across our programs to conserve waterfowl populations and improve waterfowl habitat. Grants are being provided to states and Tribes for wildlife restoration, key national wildlife refuges are actively managed for waterfowl populations, and the Service's Partners for Fish and Wildlife Program works with willing private landowners in all 50 states and territories to support habitat restoration and enhancement projects that benefit waterfowl and other species. Notably, the Service administers the North American Wetlands Conservation Act (NAWCA), which has provided more than \$2.1 billion in grants for over 3,300 projects in the United States, Canada, and Mexico since 1991. Last year alone, NAWCA leveraged more than \$74.1 million in partner funds with a \$39.4 million investment to conserve, restore or enhance more than 106,600 acres of wetlands and associated upland habitats for waterfowl.

Lacey Act Implementation

In implementing the Lacey Act, the Service is responsible for prohibiting the importation of any fish, wildlife, or plants taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States, any Tribal law, or foreign law. We collaborate closely with other federal agencies, including NMFS, the Animal and Plant Health Inspection Service (APHIS), and Customs and Border Patrol (CBP). The Service's Fish and Aquatic Conservation (FAC) program evaluates and lists injurious wildlife under the Lacey Act. The Service also co-chairs the Aquatic Nuisance Species Task Force, which coordinates interagency, national initiatives to prevent the introduction of invasive and injurious species into our nation's ecosystems. The Service's Office of Law Enforcement (OLE) enforces the Lacey Act at the border. Every day at ports of entry, OLE inspects imports and exports and monitors wildlife trade for suspected Lacey Act violations. Ensuring injurious and invasive species do not enter the United States is critical to protecting the health of native species, ecosystems, and humans. As the lead U.S. law enforcement agency on wildlife trafficking, the Service's OLE depends on its ability to thoroughly vet imports and exports to ensure compliance with the law.

The Service appreciates the Subcommittee's interest in our mission. We offer the following comments on the four bills under consideration today and look forward to discussing our views with the Subcommittee.

H.R. 3119, To provide for the issuance of a Manatee Semipostal Stamp

H.R. 3119 would require the issuance of a semipostal stamp with the image of a manatee for purposes of conserving the species and its habitat in the United States. The legislation would direct funding from sales of the stamp to the Service for a period of at least two years to implement West Indian manatee conservation projects in Florida and Puerto Rico.

In addition to the work described above, the Service is engaged in ongoing monitoring and response to Unusual Mortality Events (UMEs). In March 2021, a UME was declared along the Atlantic coast of Florida. The UME, which began in December 2020 and is still ongoing, is characterized by chronic malnutrition associated with the loss of foraging habitat in the Indian River Lagoon. Early data indicate over 1,515 manatee deaths were recorded in the UME area between December 1, 2020, and January 5, 2024. There were 205 manatee rescues in the same area during that time. The Service implemented a Joint Incident Command with the Florida Fish and Wildlife Conservation Commission (FWC) in November 2021 to enhance and supplement existing efforts and partnerships and coordinate other response activities intended to support the UME investigation. Investigations into the UME are ongoing, and efforts are underway to develop projects that will improve water clarity, reduce algal blooms, and decrease the chance of future UMEs.

Given the importance of long-term warm-water availability to the Florida manatee, the Service and FWC have been working cooperatively with partners and in 2020 finalized a Warm Water Habitat Action Plan. This key plan provides the framework for the development of regional warm-water networks as some industrial sources transition offline in the years to come. Currently, over 60 percent of Florida manatees overwinter at industrial warm water sites.

In Puerto Rico, the Service consistently collaborates with the Puerto Rico Department of Natural and Environmental Resources (PRDNER) and other partners to manage the Antillean manatee population in Puerto Rico. Priorities include working to minimizing threats, in particular from watercraft collisions which have recently increased.

In addition, the Service oversees the John H. Prescott Marine Mammal Rescue Assistance Grant Program, which provides funding to support the recovery, treatment, rehabilitation, and release of stranded marine mammals, as well as scientific research. To date, the Service has awarded more than \$4 million in funding to conservation organizations and state agencies to support manatee conservation through the Prescott program. For the last two funding cycles, the Prescott Grant priorities for the Florida manatee have been UME-focused. The Caribbean Manatee Conservation Center, the only authorized manatee rehabilitation facility in Puerto Rico, has also received Prescott Grant funding to support their efforts for the Antillean manatee population in Puerto Rico. The PRDNER also received funding from the most recent funding cycle.

Over 20 manatee rescue and rehabilitation partners are federally authorized by the Service to respond to manatees in distress and/or provide care and treatment, including one in Puerto Rico. This program, known as the Manatee Rescue and Rehabilitation Partnership, operates on a team approach, and in 2023, collaborated

to rescue 147 manatees. Several new facility partners have been authorized to help with the increasing number of rescued manatees.

The Service supports the goals of H.R. 3119. Funding generated from sales of a manatee semipostal stamp could provide additional resources for manatee conservation. The Service would welcome the opportunity to work with the sponsor to ensure that the legislation is consistent with recommendations in the U.S. Government Accountability Office (GAO) 2005 evaluation of semipostal stamps.¹ These recommendations include annual reporting by the Postal Service and relevant federal agencies; involvement of partners to sustain semipostal stamp support; clear communication about how proceeds will be used; and efficient delivery and implementation of proceeds. The Service defers to the U.S. Postal Service on the operational and financial implications of H.R. 3119.

H.R. 6784, ESA Flexibility Act

H.R. 6784 would amend Sections 4(d) and 9(a) of the ESA to change how species listed as endangered under the ESA are protected. H.R. 6784 provides that the Secretary can either issue a 4(d) rule to protect an endangered species or allow it to be protected by Section 9(a) of the ESA. The Service opposes H.R. 6784.

For a species listed as threatened under the ESA, in some cases it is most appropriate to apply the full prohibitions afforded to endangered species under section 9 of the ESA (which outlines prohibited acts), along with a standard set of exceptions for the Service, NMFS, and state agencies to benefit threatened species. In other cases, the 4(d) rule may be tailored to provide additional exceptions and the Service may incentivize known beneficial actions for the species or remove prohibitions on forms of take that are considered inconsequential to the conservation of the species.

However, the ESA consistently affords the highest level of protections to species of wildlife and plants that are listed as endangered. Under Section 9, it is unlawful to import or export, ‘take’ (such as kill, wound, harm, capture, or harass), engage in commerce, or violate any regulation promulgated by the Secretary related to an endangered species of fish or wildlife.

The differences between how threatened and endangered species are treated under the ESA are rooted in the difference in how close they are to being in danger of extinction. Under the ESA, the term “endangered species” means a “species which is in danger of extinction throughout all or a significant portion of its range” whereas a “threatened species” means “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The ESA follows the science-based and commonsense approach of providing the most comprehensive protection for the species most significantly and urgently at risk of extinction.

H.R. 6784 would authorize the Service to provide less protection to endangered species through a 4(d) rule. This is an unnecessary weakening of the ESA. It would effectively result in no distinction between endangered and threatened species regarding the prohibited actions under Section 9, in that either category of listed species could receive full or partial protections. Further, the ESA provides the flexibility to permit activities that would normally be prohibited under section 9 of the ESA. The Service and NMFS have the authority to issue permits for activities that may result in take associated with scientific purposes, for enhancing propagation or survival of wildlife or plants, or for incidental taking of endangered wildlife.

In addition, while species-specific 4(d) rules have a critical role to play in protections for threatened species, they require additional staffing and resources not required when applying the full suite of Section 9 prohibitions. The Administration recently published a proposed rule revising the Service’s implementing regulations under Section 4(d), which would reinstate the “blanket” 4(d) rule option while continuing to allow for species-specific 4(d) rules for threatened species. The blanket rule option was previously in place between the 1970s and September 2019. Where appropriate, blanket 4(d) rule protections help prevent further declines in the species’ status, and can also address situations where there is a heightened risk of population loss or an unknown cause of species declines. In addition, blanket rules require fewer resources and personnel hours to develop. These same considerations would apply to any species-specific 4(d) rules promulgated related to endangered species under H.R. 6784.

H.R. 6784 also provides that any species-specific 4(d) rule issued by the Secretary for a threatened or endangered species would not be operable in a state that has a Section 6 cooperative agreement unless the state adopts the regulation. Absent state adoption of the regulation, the statutory Section 9 prohibitions would apply

¹ U.S. Government Accountability Office, *Factors Affecting Fund-Raising Stamp Sales Suggest Lessons Learned*, September 2005, <https://www.gao.gov/assets/gao-05-953.pdf>.

for endangered species. Creating a nationwide patchwork of different regulatory protections for endangered species would be confusing and inefficient for the regulated community and would undermine the Secretary's ability to achieve the conservation purposes of the ESA.

Existing ESA protections are critical to stabilization, improvement, and recovery of endangered species. These are the species at greatest and most urgent risk of extinction, and once a species is extinct, it is gone forever. Maintaining these protections is important to retaining the strength and success of the ESA and carrying out its foundational purpose of preventing extinction and recovering listed species.

H.R. 6854, Habitat Enhancement Now Act

H.R. 6854 would establish two grant programs in the Department to sustain populations of migratory waterfowl through the protection, restoration, and management of habitat. The first grant program would award funding to place, build, and maintain hen houses in the prairie pothole region to improve nesting success rates. The second grant program would award funding to eligible entities in California to establish cover, create new brooding ponds, and carry out conservation activities on private lands. Each program would receive \$1.5 million annually from Fiscal Year (FY) 2024 through FY 2028 out of amounts otherwise appropriated to the Office of the Secretary of the Interior.

Waterfowl species are not only important for ecosystem function and biodiversity, but they are also drivers of wildlife-related recreation and bring significant economic benefits to local communities across the country. During the 2022–2023 hunting season, almost one million people participated in approximately 20 million waterfowl hunting trips, targeting desired species such as mallards, green-winged teals, wood ducks, and others. In addition to hunters, the Service estimates that 96.3 million people participate in bird watching each year. Together, these groups were part of \$394 billion in economic benefits to local communities from equipment, travel, licenses, and fees associated with outdoor recreation in 2022. Waterfowl enthusiasts are also important partners for conservation. Through sales of the Migratory Bird Hunting and Conservation Stamp, or Duck Stamp, the Service has conserved nearly six million acres of habitat through the National Wildlife Refuge System. In addition, the sales of guns, ammunition, and other outdoor equipment has provided more than \$14 billion to a variety of conservation activities through the Pittman-Robertson Wildlife Restoration Act.

The Service supports the goals of H.R. 6854 to improve habitat for migratory waterfowl and increase the resources available for conservation. However, the Service believes that the provisions of H.R. 6854 are largely duplicative of existing efforts through NAWCA, the Partners for Fish and Wildlife Program, and the State and Tribal Wildlife Grant Programs. NAWCA actively supports millions of dollars in grants to a large number of projects for the protection, restoration, and enhancement of wetlands and uplands habitat for associated migratory birds. Similarly, the Partners for Fish and Wildlife Program, which originated in the prairie pothole region, works closely with a wide range of partners to support habitat restoration and enhancement with waterfowl in mind. Additionally, the State and Tribal Wildlife Grant Programs support a range of wildlife and habitat conservation activities, including for waterfowl. These existing conservation partnerships have been successful in advancing on the ground projects that benefit waterfowl, habitat, hunters, and bird watchers.

One area of difference is that hen houses are not explicitly permitted to receive NAWCA grants, which focus on long-term conservation actions that benefit a wide variety of species. The Service notes that hen houses require frequent maintenance and are used primarily by mallards. The Service believes focusing on more permanent projects that support a broad range of waterfowl and associated species should be a greater priority for conservation. However, we would welcome the opportunity to discuss the eligibility of hen houses under existing sources of funding with the sponsor and the Subcommittee.

Additionally, the Service is concerned that the funding amounts authorized for these programs would be insufficient. Many of the NAWCA Standard Grants are over \$1.5 million for one project. Under H.R. 6854, the Service would either be limited in the number of projects that could be supported or would need to provide smaller grant amounts to reach a larger number of applicants. Finally, ensuring that funding under H.R. 6854 is additive, rather than drawing from existing programs, would maximize the impact of this legislation. We would welcome the opportunity to work with the sponsor and the Subcommittee on this legislation.

H.R. 7157, Strengthen Wood Product Supply Chains Act

H.R. 7157 would amend the Lacey Act Amendments of 1981 (Lacey Act) to restructure how the Service, NMFS, and APHIS enforce Title 16 of the U.S. Code by imposing new procedures for the inspection and detention of fish, wildlife, or plants imported into the United States. Under H.R. 7157, the relevant Secretary of jurisdiction, depending on the species involved, has up to five days to inspect a shipment and either issue a detailed notice of detention to the importer or release the shipment. H.R. 7157 would require the Secretary to allow shipments to be transported to private bonded facilities within 10 days of being detained. It would also require the Secretary to release or seize detained imports within 30 days of detention. Additionally, H.R. 7157 would require the Secretary to provide importers with the results of any tests conducted on detained imports, as well as sufficient information so as to allow the importer to replicate those tests. Under H.R. 7157 if a shipment is seized, the importer can request an administrative review and the Secretary would have 30 days to release the shipment or affirm the seizure. Finally, H.R. 7157 provides importers with the option to seek relief from the courts if the Secretary affirms a seizure or fails to meet the deadline to make such a determination. The Service opposes H.R. 7157.

The Service's wildlife inspectors are at the front lines at our ports of entry and are responsible for enforcing our wildlife laws, including the Lacey Act. They track shipments, review permits, identify species, and request testing and analysis as needed. The Service has a responsibility to facilitate the legal wildlife trade and ensure the efficient and timely movement of commerce. We also have a responsibility to prevent the introduction and spread of injurious species into the U.S. and to combat the illegal wildlife trade. The Service is concerned that many of the provisions in H.R. 7157 would impede our ability to accomplish both sides of our mission, to facilitate legal commerce and protect our natural resources.

The definition of detained merchandise in H.R. 7157 conflates inspection with detention of shipments. The Service does not need to detain shipments in order to inspect them. Detention of shipments is used by Service inspectors when additional information is needed to process a shipment. Additionally, H.R. 7157 would place strict deadlines on the Service that would be challenging to meet. The bill's 5-day deadline to release or issue a detention notice for a shipment and the subsequent 30-day deadline to release or seize a shipment are insufficient. There are instances where an importer's application is incomplete and needs to be revised or additional information is needed. In other instances, the Service may need to obtain information from a foreign government, or may be processing molecular sampling, eDNA, and other specific analyses that take time. Under the deadlines of H.R. 7157, this information may not be finalized in time, which could result in the unnecessary detention or seizure of shipments. The 30-day seizure deadline also conflicts with the current 60-day deadline for notification of a seizure that is required under the Civil Asset Forfeiture Reform Act of 2000 (CAFRA). H.R. 7157 also establishes a process that conflicts with the existing processes available for importers to petition the Secretary to reclaim seized property under CAFRA, and it is not clear whether the bill intends to supersede the requirements and processes under CAFRA.

The Service is also concerned that several of the provisions in H.R. 7157 would impede or undermine investigations. H.R. 7157 would require the Service to notify an importer of the detention of a shipment, the reason for the detention, and a description of any tests being conducted. In an ongoing investigation, much of this would be considered sensitive information, and providing it to a possible subject of the investigation would compromise the Service's law enforcement efforts. Additionally, H.R. 7157 would require the Service to provide the results of any tests conducted on detained shipments as well as sufficient information so that the tests could be replicated. There is no precedent for requiring federal law enforcement agencies to provide lab results to importers outside of legal proceedings and doing so could risk providing evidence to bad actors ahead of a criminal investigation. Further, H.R. 7157 does not distinguish separate processes for civil and criminal matters. As such, under H.R. 7157, an entity could potentially file a civil claim for the release of a shipment while a criminal investigation is ongoing.

Finally, the Service lacks the authority to move detained shipments to bonded facilities and has concerns about this provision. Only CBP can authorize transfers of imports under their facilities to other bonded facilities. While the Service understands that the cost associated with demurrage and detention at ports can strain importers, allowing shipments to be relocated to locations outside of the control of the U.S. is contrary to the intent behind the Lacey Act and runs the risk of introducing and dispersing undetected invasive or injurious organisms into our ecosystems absent proper clearance at ports of entry. Additionally, allowing ship-

ments to move to a different location, pre-seizure would create an added layer of complexity in enforcement.

The Service would welcome the opportunity to discuss the intent of the legislation with the sponsor and the Subcommittee to better understand how the Service and our partner agencies can better work with importers to ensure the successful and safe movement of goods.

Conclusion

The Service appreciates the Subcommittee's interest in funding for manatee conservation, the ESA, waterfowl conservation, and Lacey Act implementation. We welcome the opportunity to work with the sponsors and Subcommittee on the four bills under consideration today.

Mr. BENTZ. Thank you, Mr. Guertin. I now recognize Dr. Rohwer for 5 minutes.

STATEMENT OF FRANK ROHWER, PRESIDENT AND CHIEF SCIENTIST, DELTA WATERFOWL FOUNDATION, BISMARCK, NORTH DAKOTA

Dr. ROHWER. Thank you, Chairman Bentz, Ranking Member Huffman, and members of the Committee for allowing me to be here and testify. My name is Frank Rohwer. I am President and Chief Scientist for Delta Waterfowl. And I can assure you, Delta is 100 percent behind this HEN Act.

As you know, the HEN Act proposes to provide grant funding to create hen houses, to install hen houses throughout the Prairie Pothole Region, and also to protect brood water, particularly in California.

I have been a waterfowl biologist for 50 years now, and I can assure you that waterfowl populations are driven by what happens on the breeding grounds. So, producing ducks is really important if you care about duck populations. We know from tons of research that populations of ducks are not driven by hunting. They are not driven by the two migrations or winter mortality. It is all about what happens on the breeding grounds, so that is why I am excited about this bill.

For 40 years, we have known that breeding grounds are declining. We are losing wetlands. And with the intensification of agriculture, we get greater habitat fragmentation, a changed predator community. And it is tough for ducks to survive. The vast majority of eggs laid in the Prairie Pothole Region are eaten by predators. So, if we want to improve duck populations we have to work on the breeding grounds, and we really need to focus on improving hatch rates.

For 40 years, that is the research I have been doing, trying to figure out how do we help ducks escape the predators that now occur on the prairies. And one of the cool things is in the 1990s we discovered these crazy hen houses. They are just tube structures. You put them on a post in a wetland. Most of these wetlands are privately owned. And they really work, and they work for two reasons. First, mallards love them, and jump in these things and lay eggs.

And the second really impressive thing is that the eggs actually hatch. I have seen nest success go from below 2 percent for mallards that nest on the ground in the prairies to nesting in hen

houses, and that is a phenomenal increase. We typically see a ten-fold increase in hatch rates when mallards nest in hen houses. So, that is super beneficial to mallards. It is by far, as Congressman Fischbach mentioned, the most cost-effective way to increase mallard numbers.

So, that is half of it. That is the hen house stuff in the prairies. The other half is focused on California. And California is a crazy place. Twenty-five percent of North American waterfowl, all the waterfowl in North America, winter in California, primarily in the Central Valley. If you have been there, you look at it and you say that is insane. This is an area of really intense agriculture. And you would think, naturally, that, OK, those mallards come from Saskatchewan, Alberta, Alaska. That is not at all the case. Seventy percent of the mallards in California are locally produced.

But they are having a really tough time. Populations have declined in the prairies. Populations have really declined in California. And we know that the limiting factor in California is brood water. So, this bill that focuses on an incentive program for private landowners is really valuable.

And what is really cool is California waterfowl and the California Rice Commission, they have both done a bunch of work to show that private landowners are readily willing to adopt these programs that improve brood water. If you don't have water in June and July, ducklings just can't survive. So, I think the HEN Act is really cool because it does two things that are really cost-effective ways to help duck populations.

And I agree completely with Congressman Fischbach that duck hunting is a way of life throughout California and Minnesota down to Louisiana. So, I am excited about this.

I thank the sponsors of this bill, and at this point I will yield. Thank you.

[The prepared statement of Dr. Rohwer follows:]

PREPARED STATEMENT OF DR. FRANK ROHWER, PRESIDENT AND CHIEF SCIENTIST,
DELTA WATERFOWL

ON H.R. 6854

Chairman Bentz, Ranking Member Huffman, and members of the subcommittee, thank you for the opportunity today to provide testimony on H.R. 6854, the HEN Act. My name is Dr. Frank Rohwer and I am the President and Chief Scientist at Delta Waterfowl. I am here today to express Delta's strong support for the HEN ACT and to thank Congresswoman Fischbach, Congressman LaMalfa, and Congressman Thompson for their leadership on this critical piece of legislation. As you know, the HEN Act would provide funding for the enhancement of duck production through the installation and maintenance of hen houses and the retention of nesting and brood habitat.

Delta Waterfowl

Founded in 1911, Delta Waterfowl is The Duck Hunters Organization, a leading conservation group founded at the famed Delta Marsh in Manitoba. Its U.S. headquarters is in Bismarck, North Dakota. Historically, Delta's work was intensely focused on researching the key issues facing ducks, geese and their habitat. Today, we continue to conduct high quality scientific research while also working to produce ducks through intensive management programs and conservation of breeding duck habitat. We also work to ensure the future of waterfowl hunting through a variety of hunter recruitment and retention activities.

I have had the opportunity to combine my true loves—duck hunting, duck science and duck management—throughout my professional career. As a kid, I was exposed to the wonders of the Chesapeake Bay, and the large flights of ducks that wintered

there. I had the opportunity to follow the ducks west to Kansas in pursuit of my undergraduate degree. At that same time, I was exposed to the Prairie Pothole Region and the great Manitoba marshes. Surrounded by brilliant men and women answering some of the most pressing questions facing ducks and their habitat, I began to learn about what drives duck populations on the prairies. And while I have served in academic settings across the United States, my desire to be with the ducks always brought me back to the prairies—for a long stint as Delta's Scientific Director and finally in my capacity as President and Chief Scientist, a position I have held for the past twelve years.

Fig 1. A Delta research technician conducting a nest check on a Hen House in southwestern Manitoba.

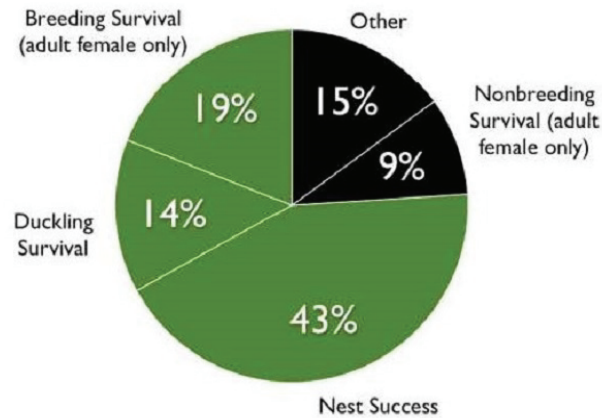


Recipe for Success

This journey revealed some very simple, fundamental concepts that drive duck production on the prairies. Breeding ducks need an abundance of small, shallow wetlands—the potholes you have heard about—to attract them to the best available landscapes and serve as nurseries for their broods. If landscapes have abundant wetlands, and frankly we have far fewer today than we had even twenty years ago, the job of waterfowl managers is to ensure that duck eggs hatch and ducklings fledge. All other factors that influence duck populations including hunting harvest, predation during the nonbreeding season, and diseases, all pale in comparison to the impact and importance of the very brief three to four month breeding season.

In fact, research by Dr. Hoekman documented that this small fraction of the annual cycle of a mallard is where 90% of the events occur that ultimately determine the size of the mallard fall flight that migrate down the flyways. It is settling on those small prairie ponds, hatching nests, raising broods and females surviving the breeding season that are the big drivers in duck populations.

Fig. 2. Hoekman et al. illustrates the vital rates that impact growth of mallard populations.



Ducks in Need

The challenge is that we as people have made substantial changes to the prairies which have diminished the reproductive potential of ducks. We have drained wetlands and we have plowed up the vast tall, mixed, and short grass prairies which historically provided the nesting cover for females and their eggs. And one more subtle and less described change is the extirpation of large predators and thus creating an ecological niche for smaller more generalist predators. Of course, this fueled agricultural growth in the U.S. and Canada, creating food security and substantial economic activity, but it did come at a cost to ducks.

The prairie landscape we are managing today is largely a highly fragmented one; with a fraction of the nesting cover and as acknowledged earlier, far fewer wetlands. Additionally, the characteristics of this landscape make for highly efficient foraging for today's predator community. It is this confluence of habitat and predator community change that has resulted in far lower nest success than witnessed one hundred years ago. Hoekman noted that nest success was the single greatest contributor to the annual change in mallard populations, so this decline in nest success comes with real consequences in duck populations. In fact, areas where I have worked throughout my career in southwestern Manitoba, have mallard nest success chronically below 10% and we have witnessed nest success under 1%, far below what is needed to support strong populations of ducks.

Fig. 3. Figure from Beauchamp et. al showing declining nest success.

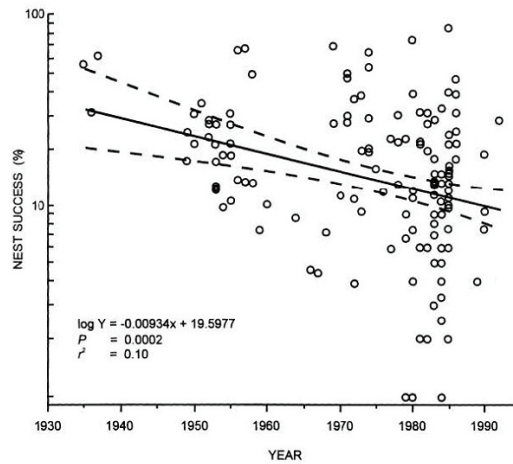


Fig. 2. Decline in nest success of 5 upland-nesting species of ducks (pooled) at 67 study sites in Prairie Pothole Region during 1935-92 ($n = 143$). Predicted nest success (—) and confidence intervals (---) are shown for the regression.

Hen Houses

It was in light of the historic decline in nest success and the observations of generations of Delta students working on the breeding grounds, that it became abundantly clear that many landscapes needed extra tools to ensure duck production occurred. In the early 1990s Delta began testing what is today known as the Hen House. Members of the Committee have likely seen or heard of the success of the wood duck box to aid in the restoration of the wood duck population, and Hen Houses are a very similar concept. Originally used in Europe, these nest tunnels, placed in prairie marshes offer a female mallard a place to safely nest away from predators.

Delta has published numerous studies on the efficacy of Hen Houses back to the early 1990s and my written testimony will provide a number of independent peer reviewed research papers which document the usage and nest success of Hen Houses across a variety of areas of the breeding grounds. Overall, nest success averages over 60% in Hen Houses in comparison with the nest success values in the uplands of frequently under 5%. This is 12 times increase in nest success—a very significant net gain in ducks produced.

Delta targets Hen Houses to those landscapes where wetland and mallard breeding densities are high and where nest success is modeled to be low, such as highly fragmented landscapes or the prairie parklands of Canada. This strategy allows for us to generate the most significant biological return in ducks produced but also do so in the most cost-effective manner. At authorized funding levels provided in the Hen Act, Delta or other contractors could install over 19,730 Hen Houses and produce over 440,000 mallards over the 10-year life span of the nest structures.

**Fig. 4. Map of the Four North American Flyways-
note linkage amongst all four flyways to the Prairie
Pothole Region.**



Pacific Flyway

Moving west, mallards are facing similar challenges in the Central Valley of California. Loss of historic wetlands has been extensive there as well. Yet, the extensive rice farming in the region has provided both breeding and wintering waterfowl with surrogate wetland habitat, a truly symbiotic relationship between the region's rice producers and waterfowl.

The landscapes in the Central Valley though continue to evolve. Factors such as drought, which leads to less rice production, and the increasing amount of land converted from seasonal crops, like rice and other grains, to orchards has reduced the amount of available breeding habitat. This change has resulted in decreased reproductive potential of local breeding ducks in California like mallards, gadwall, cinnamon teal and others. As a result, additional tools are needed to provide breeding ducks places to nest and rear their broods.

The best available science in California shows that breeding ducks need more brood habitat—small brood ponds and the seasonal flooding of these ponds and the establishment of nesting cover. Work by our partners like the California Waterfowl Association and the California Rice Commission has shown that there is strong demand from willing landowners for incentivized approaches for them to work on their lands and within their agricultural operations to provide this much needed habitat.

As a lifelong waterfowl scientist, as a dedicated conservationist, and as a duck hunter, I am confident that the tools provided by the HEN Act represent a new, incremental way to help enhance duck production in a complementary way to the many sources of support for habitat conservation, restoration, and creation. It will take this full complement of approaches and a wide array of partners to ensure the large fall flights of ducks we all desire.

We greatly appreciate the leadership of Representative Fischbach, Representative LaMalfa and Representative Thompson for the introduction of the HEN Act and we appreciate the Committees due consideration and approval of this needed legislation.

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Mr. BENTZ. Thank you. I now recognize Mr. McIlvain for 5 minutes.

STATEMENT OF JORDAN MCILVAIN, VICE PRESIDENT, ALAN MCILVAIN COMPANY, MARCUS HOOK, PENNSYLVANIA

Mr. MCILVAIN. Good morning, and happy Valentine's Day, Chairman Westerman, Ranking Member Grijalva, Chairman Bentz, Ranking Member Huffman, and distinguished members of the Subcommittee on Water, Wildlife and Fisheries. My name is Jordan McIlvain, and I am the Vice President of the Alan McIlvain Company of Marcus Hook, Pennsylvania, a family-owned-and-operated hardwood lumber supplier which represents 87 U.S. jobs. Founded in 1798, I am now part of the seventh generation of McIlvains to supply U.S. customers with both domestic and imported hardwoods. Thank you for the opportunity to submit testimony today on Representatives Duarte and Costa's bill, H.R. 7157, the Strengthen Wood Product Supply Chains Act.

The wood products industry is a critical economic driver in many of the states represented on the Subcommittee today, including Alabama, Alaska, Arkansas, California, Florida, Louisiana, Michigan, Oregon, Virginia, and, of course, my home state of Pennsylvania, not to mention many others.

First, I would like to share my deep personal and professional commitment to the Lacey Act. Long before the Act was expanded to cover wood products in the 2008 farm bill, we put processes in place to ensure we source only legal wood products from reputable wood suppliers, whether that is from West Virginia or West Africa. We tailor our due diligence to the individual species, product, and country to mitigate the risk of any illegal material entering our supply chain. As someone who fully supports the intent of the Lacey Act, I believe I can bring an on-the-ground perspective to the discussion of H.R. 7157.

The bill would make Lacey Act compliance more clear for American companies who still allow for the prosecution of bad actors. Over and over again my industry colleagues tell me that, even after all the staff time and resources they invest in supply chain management, they have shipments that are held, in some cases almost indefinitely, due to possible Lacey Act violations. Once detained, information about why a shipment is being held is rarely communicated, much less how long officials expect it to be detained or what information could assist in resolution.

As an importer, I want to help Federal agencies catch criminals. However, the vast majority of holds are resolved after minor paperwork issues are addressed and the shipment is released into commerce. In these cases of delays, demurrage can seem punitive, starting at \$500 and going up to \$1,000. In some cases, demurrage becomes so prohibitively expensive that the importer relinquishes their rights to the product and allows it to be destroyed, never knowing what they allegedly did wrong.

More than that, an essential part of a strong due diligence program is knowing your risks so you can mitigate them. We need information about concerns or issues that enforcement agencies have so that we can ensure that, if there is an issue in our supply chain, it is corrected.

For my part, I have had to deal with the headache of trying to get shipments released for paperwork issues. Both instances required hours of calling different Federal agencies and e-mailing general e-mail addresses that did not belong to a specific person, and then waiting for a response, one of which ended up costing me \$6,000 in demurrage, which was about 20 percent of the total cost of the container.

Partially to blame may be the fact that, under the Lacey Act, not one but three agencies are responsible for administering the Act: the U.S. Fish and Wildlife Service, the USDA Animal and Plant Health Inspection Service, and U.S. Customs and Border Protection.

Representatives Duarte and Costa, whose wood product industry in California has experienced many of these effects, have thoughtfully drafted H.R. 7157 to address many of these issues and provide more clarity and certainty. If Federal agencies suspect a shipment is subject to a Lacey Act violation, H.R. 7157 would simply require officials to issue a notice of detention in a timely manner, allow the importer to store the shipment under bond in a CBP-approved warehouse to avoid demurrage charges while ensuring that it remains available for inspection insofar as Fish and Wildlife Service determines that this will not impact enforcement of the Lacey Act, and provide clear timelines for resolution of the issue.

This bill would not repeal or remove the Lacey Act, nor would it prevent criminals from being prosecuted. I fully support all agencies involved in Lacey Act enforcement having the ability to catch criminals. But as a small, family-owned business, I need to know what agency to speak with if I have questions, what might be wrong with my shipment, and how to appeal any decisions I feel may be based on erroneous information. That is why I support Representatives Duarte and Costa's bill.

For seven generations, my family has depended on forests and communities across America and around the world. I go to work every day to ensure that I can pass this off to the eighth generation if they so choose, which means I support sustainable usage of timber. H.R. 7157 will help me immeasurably.

I want to thank Representatives Duarte and Costa for supporting a small, family-owned business who is just trying to do the right thing.

Thank you for this opportunity to share my views, and I look forward to any questions you may have.

[The prepared statement of Mr. McIlvain follows:]

PREPARED STATEMENT OF JORDAN MCILVAIN, VICE PRESIDENT,
ALAN MCILVAIN COMPANY

ON H.R. 7157

Chairman Westerman, Ranking Member Grijalva, Chairman Bentz, Ranking Member Huffman and distinguished Members of the Subcommittee on Water, Wildlife and Fisheries—

As the Vice President of the Alan McIlvain Company of Marcus Hook, Pennsylvania, which represents 87 U.S. jobs, thank you for the opportunity to submit testimony today on policies to simultaneously enhance forest protections and the wood product importation process, namely through Reps. Duarte (R-CA-13) and Costas' (D-CA-21) bipartisan H.R. 7157 To Amend the Lacey Act Amendments of 1981 to Ensure Fair Enforcement.

I currently serve as the Vice President of Alan McIlvain Company, a seventh generation, family-owned and operated hardwood lumber supplier in Marcus Hook, Pennsylvania. Founded in 1798, we supply U.S. lumber yards, furniture manufacturers, stair builders, architectural millwork houses, small woodworking shops, and musical instrument manufacturers with everything from rough lumber to custom moldings. Our customers also include those entrusted to undertake federal woodworking projects at the U.S. Capitol, White House, and federal agencies.

Businesses like Alan McIlvain Company, and the availability and affordability of our lumber, directly impact other important facets of the chain, including home building and remodeling, recreational vehicle manufacturing, boat building, and instrument making.

Finished U.S.-manufactured wood products are typically a combination of different wood species, sourced domestically and globally. A reality our company, and friendly industry competitors often face is that some types of necessary species cannot be grown in the U.S. For example, Meranti plywood is historically the input of choice for recreational vehicles (RVs) due to its workability and lighter weight, and it can only be grown in southeast Asia. Such imported plywood is later combined with domestic species for a finished, U.S.-manufactured RV.

Our industry is a critical national economic driver, including in many of the states represented by the Subcommittee, including Alabama, Arkansas, California, Florida, Louisiana, Michigan, Oregon and Virginia, and my home state of Pennsylvania. We share a common commitment to supporting robust U.S. environmental and forest management policy and related compliance, which strengthens the health of our domestic and international forests and also the overall integrity of U.S. wood product supply chains.

Like others in the industry, the Alan McIlvain Company maintains a robust environmental code of ethics and protocol with respect to our sourcing. We give preference to suppliers providing information on good silviculture and logging practices and operating within the forestry laws of the respective country. Labels or certificates warranting sustainability are not acceptable to us unless they have the approval of the Forestry Department/Ministry of source countries. Further, we give preference to purchases from countries demonstrating commitment to Objective 2000 and implementation of "Guidelines for the Management of Natural Tropical Forests," established by the International Tropical Timber Organization. Finally, we value wood as a renewable material and are constantly seeking beneficial ways to reduce wood waste and to utilize residues.

Outside of running a small business, I proactively strive to share Alan McIlvain Company's "lessons learned" and "best practices" with competitors and partners, to propel our overall industry forward in a positive direction. I currently serve as

president of the International Wood Products Association, where my family has been involved for generations. I have also served for two terms on the board of the National Hardwood Lumber Association and as the President of the Penn York Lumbermen's Club in the past. Also, Alan McIlvain Company is a member of the Indiana Hardwood Lumbermen's Association, the Hardwood Manufacturers Association, the Appalachian Hardwood Manufacturers, the Keystone Kiln Drying Association, and the Appalachian Lumbermen's Club.

I cannot underscore enough my deep personal and professional appreciation for the Lacey Act. Originally enacted in 1900, the Lacey Act is designed to combat the illegal trafficking of wildlife, fish, and plants. It was amended in 2008 to extend protections to plant and plant products, making it unlawful to import illegally harvested woods and requiring a declaration upon arrival in the United States.

Companies like ours welcomed the 2008 expansion of the Lacey Act. At that time, due to our shared concern for the environment with our customers, our industry had already put into place processes and procedures to make certain we buy only legally sourced woods. We have tailored our due diligence to the individual species, product, and country; and have developed tracking and verification strategies to mitigate the risk that illegally sourced material could enter our supply chain. We historically have worked with specialized service providers, like third-party customs brokers, who are knowledgeable about our products and trading partners.

In an effort to strive for continuous improvement, today, our industry routinely participates in the International Wood Products Association (IWPA)'s renowned "Wood Trade Compliance Training." This training program, commonly referred to as IWPA's "Lacey Act Training," was established using grant funding from the U.S. Agency for International Development (USAID) and the World Resources Institute (WRI), and was created with input from a wide variety of non-industry stakeholders from government officials to environmental groups to ensure that companies that import and use products covered by the Lacey Act are able to gather the information and resources they need to do things the right way. The training has been so successful that the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS), of which has jurisdiction over the Lacey Act's Declaration Requirement, provided IWPA with a grant to provide our no-cost training to industries that will be covered by the upcoming Phase Seven of the ongoing phase-in of new products. Before this year, IWPA's training had already helped hundreds of companies. It is our hope that we reach thousands of individuals as a result of this grant.

Some attribute the Lacey Act to be the only tool available to combat deforestation abroad. Certainly, my industry is uniquely positioned to both comply with the Lacey Act and advocate for the health of global forests. However, I would be remiss if I did not mention that, according to the UN's Food and Agriculture Organization's 2021 Global Remote Sensing Survey, more than 90 percent of global deforestation is driven by conversion of forest land to non-forestry uses, not by logging.¹

While the Lacey Act has proven to be an effective statute in combating illegal deforestation, there is room for clarifying and improving transparency to ensure the statute works as Congress originally intended. Such positive modifications could be made through Reps. Duarte (R-CA-13) and Costas' (D-CA-21) bipartisan H.R. 7157, which would make Lacey Act compliance more clear and allow our industry to receive more information from the federal government on concerning shipments so that we can better partner with them to help eliminate potential bad actors in the supply chain.

Presently, there is no formal delineation of duties across the **three agencies** responsible for administering the Lacey Act—the U.S. Fish and Wildlife Service (USFWS), USDA Animal & Plant Health Inspection Service (APHIS), and U.S. Customs and Border Protection (CPB). As a result of slow communications across the three, many shipments (despite our due diligence and robust recordkeeping) routinely have shipments held upon arrival at our ports, in some cases almost indefinitely, due to "possible" Lacey Act violations.

Once detained or "held" at our ports, information about why a shipment is being held is rarely communicated, and even more frustrating, there is little to no communication about how long officials expect it to be detained. Importers are rarely given any steps that could be taken to help clear up the issue (typically minor paperwork-related issues), if any, and expedite release. Often detentions end with the shipment eventually being released into commerce, not prosecution. In some instances, the importer relinquishes their rights to the product and allows it to be destroyed, never knowing what they did wrong.

¹ FAO 2020 Remote Sensing Survey: <https://www.fao.org/forest-resources-assessment/remote-sensing/fra-2020-remote-sensing-survey>

All the while, port storage fees, known as demurrage, accrue to the tune of \$500 to \$1,000 per container per day while imports undergo holds. I know of one shipment that has been detained for over two years and the U.S. importer, who conducted lengthy due diligence and is seeking to share additional information about the steps his company took to ensure responsible sourcing, has no idea what he can do to address any of the federal agents' concerns. This is not an isolated case—many members of industry have faced these delays ranging from days to weeks to months. This is not limited to a specific port of entry, nor is it limited to a specific product or even country of origin. Such inconsistency and unknowns regarding our wood imports has real implications on supply chains around the world, which are already under stressors caused by the global COVID-19 pandemic and unrest.

I personally have had to work through two shipment holds associated with benign paperwork-related issues. Both instances required hours of calls from both me and my freight forwarder to try and find out why the shipment was on hold and who we needed to contact in order to resolve the issue. I could only send emails to different federal agencies and the shipping line—only to be left waiting for a response. In both instances, there was ultimately no issue found. One shipment was held due to a person in one of the government offices assuming a document needed to be translated. When we finally got someone else in their office on the phone, they realized that was not the case and released the container, but the demurrage ended up costing \$5,635 (20% of the cost of the container). These are dollars that could have otherwise been spent on investments in our business and workforce.

Further, most holds and detentions end not with prosecution, but with the shipment eventually being released without issue. In a minority of cases, the importer relinquishes their rights to the product, allowing it to be destroyed. Yet, what both scenarios have in common is that importers are never informed of the federal government's concerns.

An essential part of a strong due diligence program, an underlying goal of the Lacey Act is knowing our risks so we can mitigate them. U.S. wood importers need information about concerns U.S. federal agencies have about our shipments, so that we can address them. If there is an issue in our supply chain, it is in our best interest to fix it. And, if there is no issue, more information would enable us to help the federal government clarify any paperwork questions they may have.

Thanks to the hard work of Reps. Duarte and Costa, whose wood product industry in California has experienced many of these importation issues. All is not lost. They have thoughtfully drafted H.R. 7157, which would provide straightforward timelines and transparency improvements to the Lacey Act compliance process, while not weakening its enforcement in the slightest.

If federal agencies suspect a shipment is subject of a Lacey Act violation, H.R. 7157 would simply direct officials to issue a Notice of Detention in a timely manner, allow the importer to store the shipment under bond to avoid demurrage charges while ensuring that it remains available for inspection, and provide a clear timeline for resolution of the issue.

The bill would require the Notice of Detention to include the date on which the shipment was detained for inspection, the anticipated length of the detention, a description of the tests or inquiries the officials will conduct, and a description of what information could be supplied to accelerate disposition of the detention.

To be clear, this bill is in no way asking for the repeal or removal of the Lacey Act, and we strongly condemn illegal harvest of timber. We simply ask that legitimate American businesses are allowed to continue supplying businesses and consumers with the best product possible in a timely manner, and to understand why their products might be held.

By providing additional clarity and certainty to the covered community, H.R. 7157 would streamline entry for compliant shipments and allow federal officials to focus limited staff and enforcement resources to find and prosecute the bad actors bent on evading the requirements of the Lacey Act. Doing so would ensure global forest health remains strong and the integrity of the wood product supply chain is protected.

For seven generations, my family has relied on forests to support ourselves and the community around us who depend on us for jobs. I go to work every day to ensure that I can pass our business along to an eighth generation, which means I support the sustainable usage of timber. H.R. 7157 would enable me to better do just that. I want to once again thank Representatives Duarte and Costa for supporting a small family-owned business who is just trying to do the right thing.

Thank you, again, for this opportunity to share my views. I look forward to answering any questions you may have.

QUESTIONS SUBMITTED FOR THE RECORD TO MR. JORDAN MCILVAIN, VICE
PRESIDENT, ALAN MCILVAIN COMPANY

Questions Submitted by Representative Bentz

Question 1. Mr. McIlvain, in the hearing there was ample discussion about combatting illegal activity in administering the Lacey Act. You talk about the work that the International Wood Products Association has done to expand and promote compliance training.

1a) Based on your experience, how has your industry led efforts to encourage compliance with the Lacey Act to be good stewards?

Answer. The International Wood Products Association (IWPA) serves as the trade association for the international wood products industry in the U.S. and North America. During the last ten years, our association has been proactive in voluntarily developing a robust Wood Trade Compliance Training and Due Diligence Tools Course to help ensure that companies involved in the importation of wood products can successfully create and maintain a Lacey Act compliance program.

IWPA's Wood Trade Compliance Training was actually established via grant funding from the U.S. Agency for International Development (USAID) and the World Resources Institute (WRI), and was created with input from a wide variety of non-industry stakeholders from government officials to environmental groups to ensure that companies that import and use products covered by the Lacey Act are able to gather the information and resources they need to do things the right way. The training has been so successful that the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS), of which has jurisdiction over the Lacey Act's Declaration Requirement, provided IWPA with a grant in late 2023 to provide the training to industries that will be covered by the upcoming Phase Seven of the ongoing phase-in of new products.

Because the Lacey Act is not prescriptive, historically many wood products suppliers did not know where to even start, so IWPA's compliance training has been tremendously helpful to companies like mine. As the Lacey Act's declaration requirement is expanded to additional products and industries, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service has identified expanding access to IWPA's compliance training as an ideal way to educate those industries about Lacey Act compliance.

Question 2. Mr. McIlvain, the Lacey Act has been in law for more than one hundred years and is currently administered by three different Federal agencies. Critics of H.R. 7157, or similar reform efforts, will say that the Lacey Act is sacrosanct and that any potential reforms to it would merely undermine this important legislation.

2a) Is it fair to say that as the country has grown and trade has increased over the last century, reforms are vital to ensure that agencies are both coordinating among themselves and communicating with the regulated industry?

Answer. Both as a taxpayer and as the leader of a small business, I am always hopeful that the government offices and agencies are open to discussion about ways government can work more efficiently, so that it can better serve their "customers" and the American public better. The Lacey Act itself has been amended six times, and many other landmark laws protecting natural resources and health have also seen amendments. An amendment simply acknowledges that change is required to keep pace with progress.

The current structure of Lacey poses a specific issue, with ongoing delays and the inability for U.S. business importing wood products covered by the Lacey Act to identify who they should be communicating with to resolve any delays. The reforms included in H.R. 7157 would in no way undermine enforcement of the Lacey Act. They would simply require notification and timely processing of covered shipments and provide much-needed clarity to US business.

Question 3. Mr. von Bismarck stated in his written testimony that "illegal logging is the most profitable natural resource crime."

3a) How do illegal logging practices impact small businesses like yours? Can you talk more about the interest that companies like yours have in preventing illegal practices and serving as good stewards?

Answer. As I mentioned in my opening statement, I support the Lacey Act and its purpose of rooting out trade in illegally sourced plant products. Unscrupulous

suppliers who market wood products derived from illegal logging are able to undercut businesses like mine that source our products responsibly. Those who log illegally also have no interest in sustainable forest management practices that preserve forests for generations to come.

Our environment cannot withstand the impacts of illegal logging, nor do our customers have any interest in related products. Therefore, it is in the best interest of companies like mine to stop it. For my company, in addition to utilizing IWPA's Wood Trade Compliance Training, we use suppliers providing information on good silviculture and logging practices and operating within the forestry laws of the respective country. Labels or certificates warranting sustainability are not acceptable to us unless they have the approval of the Forestry Department/Ministry of source countries. Further, we give preference to purchases from countries demonstrating commitment to Objective 2000 and implementation of "Guidelines for the Management of Natural Tropical Forests," established by the International Tropical Timber Organization.

Those who log illegally undercut these and similar efforts by my competitors and do a disservice to the industry as a whole. H.R. 7157 would support businesses like mine that are working diligently to source from suppliers around the world who are doing things the right way.

Question 4. One provision of the legislation discussed in our hearing was the requirement that, within ten days, importers whose shipments are subject to detention would be allowed to transport that merchandise to a different location.

4a) Could you expand on how this process would work, what types of facilities shipments could be transferred to, and how this would assist small businesses like yours in working through this process?

Answer. H.R. 7157 would simply require the U.S. Fish and Wildlife Service to allow the importer to transfer the merchandise to a bonded warehouse for storage if "the Secretary determines that such transportation will not frustrate the intent of [the Lacey Act]." This means that if such a transfer would negatively impact an investigation of wrongdoing, the Secretary could simply not allow it. I do not want to stop criminals from being caught, but I also support law abiding businesses being able to comply with government regulation in a way that is not financially ruinous.

Far from allowing criminals to tamper with contraband material, transfer of merchandise is a common practice that is currently used for merchandise detained under the Uyghur Forced Labor Protection Act which ensures importers are able to minimize the cost of demurrage while maintaining it in a location and condition that the relevant federal agencies are able to control it.

Bonded warehouses must first be approved by U.S. Customs and Border Protection for their ability to control merchandise covered by a bond. The material is controlled by the operators of the warehouse with strictly controlled access. Only once the merchandise is cleared for entry by CBP is it released to the importer. This means that an importer would not have access to the material while it is in bond, ensuring that if enforcement agencies need additional access they can have it, and also ensuring problematic material cannot enter the stream of commerce until officially cleared by the government. Bonded warehouses are governed by CBP regulations and are a well-established part of importing.¹

The only appreciable difference is that the importer has significantly reduced fees by moving to a bonded warehouse.

Questions Submitted by Representative Graves

Question 1. Mr. McIlvain, businesses like yours rely on the Lacey Act to ensure sustainable, legally harvested wood products abroad, and also rely on healthy forest management practices here in the United States. Not only does this lead to economic activity associated with your business and your customers, but it also results in the environmental benefit of emissions reductions.

1a) Can you expand on some of those aligned incentives of both economic activity and emissions reduction that are associated with forestry?

Answer. Sustainable forest management is critical to maintaining the value of the world's forest and keep them from being cut down and converted to another use. It is only when we value wood products appropriately for their beauty, functionality,

¹ <https://www.ecfr.gov/current/title-19/chapter-I/part-19>

and absolutely for their ability to store carbon for generations, that many communities decide it is in their long-term interest to preserve their forests.

Carbon capture is an enormous benefit provided by our industry. The utilization of wood products, which are 50% carbon by dry weight, ensures that carbon is captured and stored. This carbon does not enter the atmosphere for the lifetime of the product or structure, or even longer if the wood is reclaimed or reused. According to the U.S. Department of Agriculture, forest management in the U.S. alone offsets 15 percent of U.S. fossil fuel emissions.²

In addition to long term environmental benefits, sustainable management of forests can lead to job creation and direct and indirect economic growth both in the U.S. and globally as well. A recent study by Agribusiness Consulting found that the U.S. hardwood products industry was responsible for more than 1.8 million U.S. jobs.³ Globally, 33 billion people⁴ are employed by the forestry industry, making it a key economic driver at home and abroad for continued prosperity. More than the economic impact, ensuring continued employment in the forestry sector ensures that forests continue to have value and are not clear cut and the land used in other ways.

As I shared in my opening statement, my hope is that someday I will be able to pass the Alan McIlvain Company to my children. If there is not an economic incentive for trade in wood products to continue, I worry that there will be fewer and fewer working forests for them to source from.

Mr. BENTZ. Thank you, Mr. McIlvain. I now recognize Mr. von Bismarck for 5 minutes.

STATEMENT OF ALEXANDER VON BISMARCK, EXECUTIVE DIRECTOR, ENVIRONMENTAL INVESTIGATION AGENCY, WASHINGTON, DC

Mr. VON BISMARCK. Good morning, Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee. My name is Alexander von Bismarck. I am the Executive Director of the Environmental Investigation Agency, and in that capacity have investigated international natural resource crimes such as illegal logging and trade in endangered species for over 25 years. I am grateful for the chance to comment on H.R. 7157 and H.R. 6784 to some extent.

In 2006, I was personally undercover with a cocaine trafficker in Honduras, who was also the owner of a timber trading company that was slated to provide new doors to the Capitol building made of illegally-logged mahogany. Evidence like this, combined with a study commissioned by the forest sector in the United States that showed they were losing \$1 billion in profits a year due to being undercut by cheap, stolen wood from overseas led to the amendments to the Lacey Act in 2008, making it illegal to import illegally-logged wood for the first time, which H.R. 7157 seeks to amend further.

Successful enforcement of Lacey was estimated in 2015 to have reduced illegal wood imports by 40 percent. The impact was driven by some key cases that involved our evidence that I was involved in, and I would like to give some of the specifics because I don't think that they would have been successful if the proposed changes that are in this bill would have been in place.

² <https://www.climatehubs.usda.gov/hubs/northern-forests/topic/forest-management-carbon-sequestration-mitigation-and-climate>

³ <https://hardwoodfederation.com/resources/Documents/EIS%20States/US.pdf>

⁴ <https://ilostat.ilo.org/forest-sector-employs-33-million-around-the-world-according-to-new-global-estimates/#:~:text=our%20current%20partnerships.,Forest%20sector%20employs%2033%20million%20around%20the,according%20to%20new%20global%20estimates>

One case involved oak flooring being imported from the Russian Far East. I was again personally in the field in the town of Suifenhe, on the border of Russia and China, being wined and dined by the boss bringing in Russian wood, together with the head of police and the local military of Suifenhe in a show of the corruption that was behind this trade. The wood was being poached in the habitat of the last Siberian tigers, and ultimately found its way to U.S. consumers as a product, oak flooring, that by all logic should be made in American sawmills out of American oak.

Lumber liquidators ultimately pleaded guilty to the imports and agreed to a compliance plan to ensure that all future imports would be legally sourced. This was a signal to big box stores around the country that I believe leveled the playing field in practice for American foresters trying to play by the rules.

Another case involved the single biggest smuggling route of illegal wood from the Amazon to the United States. The wood was logged in Peru, and every few months a giant boat was loaded to the brim with wood that turned out to be almost entirely illegally logged. And every few months this boat went to Houston, back and forth all year. This was happening in the context of community leaders being gunned down in broad daylight for opposing illegal logging in Peru.

The wood was detained in the United States and proven by U.S. authorities to be over 90 percent illegal, based on testing done and information requested from the importers while the shipment was under government control. This was again wood that was competing with American wood for products like moulding and dowels in that case.

The ability of enforcement personnel to inspect shipments, to test what is in them, and gather more information while in control of the shipment is crucial in these cases. In the Chinese case, for example, the smugglers misdeclared the species of oak to throw off investigators. By allowing wood after 10 days to go out of government control, if that is the intent of the bill, you would be giving great comfort to smugglers who could, for example, substitute wood while it is under their control to cover up the crime.

I understand this comes from reasonable intentions of limiting costs to companies during import, but with these measures you would lose the benefits of a more level playing field that all of us, including the timber companies represented here, have worked so hard to achieve.

Another grave concern with this bill is that it appears to apply to all products, such as ivory and rhino horn. If that is the intention, Mr. Chairman, I would have to give you a litany of other examples of hardened, violent criminal smuggling networks that would celebrate the passage of H.R. 7157.

This connects to our concern regarding H.R. 6784. My organization began by investigating ivory and rhino horn trade around the world, and this gave us great appreciation for the Endangered Species Act in the United States for seeing how the rest of the world does not have this legislation, how it is struggling to protect its species and its wilderness. Its success, the ESA's success at keeping species around, seems to us very much dependent on the fact that you are lacking in protections rather than leaving them

open to be influenced by special interests in each case and in each state.

It is, of course, very important to analyze the actual causes of decline, which could be poaching, habitat loss, or disease. But once it reaches the state of endangered, you need to remove all stresses that you can from that species. If a species is threatened by disease, for example, it may be particularly critical to protect its habitat. I believe the importance of broad guaranteed protection for endangered species was understood in the drafting of the Act 50 years ago. This was on purpose. This was not an oversight. They are the reason it has been successful.

Finally, the provision potentially allows states to tailor their enforcement, raising concern also for the import of trade of products such as ivory and rhino horn, which is dependent on consistent and coordinated national enforcement.

For these reasons, we would urge you to oppose H.R. 6784. Thank you, Mr. Chairman.

[The prepared statement of Mr. von Bismarck follows:]

PREPARED STATEMENT OF ALEXANDER VON BISMARCK, EXECUTIVE DIRECTOR,
ENVIRONMENTAL INVESTIGATION AGENCY

ON H.R. 6784 AND H.R. 7157

Chairman Bentz, Ranking Member Huffman, and members of the Natural Resources Subcommittee on Water, Wildlife and Fisheries, thank you for inviting me to appear before the Subcommittee today for this legislative hearing, to focus on important laws that are designed to protect flora and fauna, combat illicit trade and transnational crime.

Introduction

I have investigated and studied global crime in natural resources for over 25 years. As an investigator and the Executive Director of the Environmental Investigation Agency, I have conducted international field investigations on every continent into criminal networks dealing in illegal wood, endangered species and harmful chemicals. Before joining EIA, I researched linkages between economics, ecology and human health with the Harvard School of Public Health. I have a MSc from the London School of Economics in Environment and Development and a BSc from Harvard University in Environmental Science and Public Policy. I am also proud to have served as a U.S. Marine.

The Environmental Investigation Agency, Inc. (EIA), a non-profit 501(c)(3) organization, has worked for nearly 40 years to investigate and expose environmental crimes, and seek tangible and effective solutions. EIA's analyses of the trade in illegal timber, wildlife, and ozone-depleting substances have been globally recognized. Our investigations, starting in the late 1980s, played a leading role in instigating the international ban on ivory trade, and more recently, the timber annex to the U.S.-Peru Trade Promotion Agreement and the 2008 amendments to the U.S. Lacey Act. For more than 15 years, EIA has been a leader of the Lacey Act Coalition, representing industry, labor and environmental groups. In 2018, EIA pinpointed the origin of the biggest unsolved environmental crime in recent history, exposing the source of about 10 billion tons in illegal emissions originating in China.

EIA works with local partners around the globe to document the environmental, economic and social impacts of environmental crimes. Our experience has shown us unequivocally that the most destructive and challenging crimes to fight are those that are inextricably linked to international trade, whether it's trade in endangered species, illegal logging, trade in forest-risk commodities driving illicit deforestation, illegal fishing or illegal emissions—and that any solution therefore requires action and cooperation from both producer and consumer nations involved in that trade. Crimes driven by local demand can, when there is political will, be solved locally, while international crime, driven by international trade, overwhelms the best local efforts to do so alone.

Today I shall focus my remarks on two of the bills up for consideration: H.R. 7157 and H.R. 6784.

H.R. 7157: “Strengthen Wood Products Supply Chains Act”: The U.S. Lacey Act and the 2008 Plant Amendments

Times have changed in the more than 100 years since the Lacey Act first became law, and Congress has attempted to keep pace with increasingly sophisticated international criminal networks who pose serious threats to the American economy as well as global biodiversity and forests. Amendments to the Lacey Act have generally tried to plug gaps and loopholes that would incentivize more illegal trade. H.R. 7157 appears to go in the opposite direction.

The 2008 plant amendments provide an excellent example of how the Lacey Act has been modernized and strengthened, and how the U.S. industry and manufacturing sectors have benefited from it. The Lacey Act plant amendments were born out of strong evidence that illegal logging and associated trade had harmful impacts not only on the world’s forests, but also on the American timber industry. A 2004 study by Seneca Creek Associates concluded that illegal timber imports were costing American businesses over one billion dollars annually.¹ The 2008 amendments ensure that trees and other plants need to be legally sourced, protecting American producers from having to compete with cheap illegal timber imports. The Lacey Act now works to provide American timber producers a level playing field. That’s why so many American businesses have rallied behind this law, and are in fact seeking even stronger enforcement, rather than the creation of loopholes that would water it down and increase the opportunities for illegal goods to enter our market. You can find videos featuring domestic industry viewpoints during the 10th anniversary of the 2008 Lacey Act amendments: <https://www.laceycoalition.org/videos>

All indications are that the Lacey Act has indeed contributed to reducing illegal logging while strengthening our domestic industries. A 2015 study by the Union of Concerned Scientists found that imports of illegal timber had decreased by over 40 percent since the amendment was passed, and concluded that stronger enforcement could bring even more progress.² Another study by Jeffrey Prestemon for the U.S. Fish & Wildlife Service in 2016 looking at timber imports from high risk regions found that implementation of the Lacey Act had reduced overall U.S. timber imports by 24 percent.³ We have found evidence in our investigations that timber producers around the world are much more aware of the issue and many are changing their practices to be more legal, more transparent, more sustainable due to U.S. enforcement of the Lacey Act.

One of the first enforcement actions under the 2008 plant amendments initially caused an outcry of government overreach. The U.S. case against Gibson Guitars for importing illegal wood in 2009 was based partially on my fieldwork. I had gone undercover with the biggest timber baron in Madagascar, Roger Thunam, and had been offered illegal ebony out of the Masoala National Park. He also told me that his number one client was Gibson Guitars in the United States. Gibson ultimately acknowledged that it continued to order Malagasy ebony despite knowing about the relevant laws that made it illegal to export.

The wood was subsequently forfeited, Gibson paid respective fines and entered into an enforcement agreement that included a compliance plan which served as useful guidance for responsible American companies who wanted to ensure they are sourcing legal wood going forward.⁴ The enforcement action also had a decisive impact on enforcement against illegal ebony in other important markets, and helped bring illegal chainsaws to a halt in one of the most threatened protected areas in Madagascar.

In 2015, Lumber Liquidators pleaded guilty to one felony count of importing goods through false statements and four misdemeanor violations of the Lacey Act.⁵ The case involved importing solid oak flooring from Chinese manufacturers made from illegally harvested timber from the Russian Far East. This product can just as well be made by American mills out of wood from family owned forests in the U.S. The company agreed to pay 13.2 million dollars in forfeitures and fines. The plea agreement included a detailed compliance plan to ensure that all future imports would be legally sourced. Through its reckless business model, the company contributed to

¹ http://www.unece.lsu.edu/responsible_trade/documents/2003-2006/rt03_036.pdf

² https://www.ucsusa.org/global-warming/stop-deforestation/lacey-acts-effectiveness-reducing-illegal-wood-imports#.Wvt_o0yZORY

³ Daowei Zang, Yin Ling and Jeffrey P. Prestemon: From Deficit to Surplus: An Econometric Analysis of US Trade Balance in Forest Products, *For.Sci* 63(2):209–217, copyright Society of American Foresters

⁴ <https://www.justice.gov/opa/pr/gibson-guitar-corp-agrees-resolve-investigation-lacey-act-violations>

⁵ <https://www.justice.gov/opa/pr/lumber-liquidators-inc-sentenced-illegal-importation-hardwood-and-related-environmental>

destroying valuable forests and harming people and wildlife in the Russian Far East, including the last remaining wild populations of the Siberian tiger. Enforcement in this case was an instrumental move to level the playing field and to protect honest American businesses from unfair competition through unacceptable practices.

In 2012, EIA first exposed systemic timber laundering from Peru in a seminal report—*The Laundering Machine*.⁶ Further to this work, we helped to expose a consistent flow of timber shipments coming from the heart of the Peruvian Amazon and eventually to the United States aboard a vessel called the Yacu Kallpa, in which the wood was frequently found to be over 90 percent illegally sourced. As a result of joint investigative work between Peruvian authorities, Interpol, and the World Customs Organization, and with policy and enforcement actions taken in the US, this shipping route was eventually shutdown entirely. A US buyer of timber from the Yacu Kallpa, Global Plywood and Lumber Trading LLC, pleaded guilty to importing illegal timber from Peru in violation of the US Lacey Act. HSI, CBP and DOJ, proved that at least 92% of the Global Plywood timber in the shipment had been illegally logged, and the corporation admitted that it failed to exercise due care when it imported illegally-sourced timber from the Peruvian Amazon into the United States.

In recent years, the Lacey Act has increasingly helped US law enforcement detect and prosecute financial and other related crimes which are inextricably linked to the illegal wood trade. In October 2023, a Florida couple pleaded guilty to smuggling and violations of the Lacey Act by illegally importing plywood from China into the US.⁷ Using different front companies, the couple sought to evade duties which cost the United States roughly 42 million dollars. The couple had incorporated seven companies in the United States—naming relatives or friends as corporate officers and agents—and these shell companies imported and illegally financed hundreds of shipments of plywood products into the United States, valued between 25 and 65 million dollars. They currently face the potential of large fines, jail time and forfeitures. China is the world's largest importer and processor of illegal timber, with the United States being its number one destination, importing billions of dollars worth of Chinese wood products every year—an impossible and extremely unfair competition for law-abiding American producers.

Over the past decade, the world has lost an area of forest the size of Virginia every year.⁸ Forest loss and degradation are among the biggest contributors to climate change and biodiversity loss and one of the root causes of zoonotic disease spillover events such as those related to Ebola and coronaviruses.⁹ Forests contribute to the livelihoods and food security of well over a billion people around the world,¹⁰ and their loss is linked to land invasions and violence against Indigenous peoples, local communities, and environmental defenders¹¹ while feeding corruption and organized crime and undermining rule of law.¹² With the implementation of the Lacey Act and its evolution over time, the U.S. has set an example for the rest of the world that illegal wildlife and timber products are not acceptable. It is imperative that the spirit and rationale of this law be upheld and its effectiveness not be undermined.

Illegal logging is the most profitable natural resource crime on the planet and the third most profitable transnational crime behind counterfeiting and drug trafficking.¹³ The Lacey Act needs more resources and attention devoted to effective

⁶ <https://us.eia.org/report/the-laundering-machine/>

⁷ <https://www.justice.gov/opa/pr/florida-couple-pleads-guilty-scheme-evade-42-million-duties-illegally-importing-and-selling>

⁸ Roughly 42,000 square miles per year, based on annual deforestation estimates published by the UN Food and Agriculture Organization for 2010-2020. This does not include vast areas of clear-cut logging in boreal and temperate forests or selective logging in tropical rainforests.

⁹ For recent analysis of the climate mitigation potential of tropical forests, see: Griscom et al. National mitigation potential from natural climate solutions in the tropics. *Phil. Trans. Of the Royal Society B: Biological Sciences* (2020); for recent analysis on the role of forest and wildlife protection in preventing pandemics of zoonotic origin, see: Dobson et al. *Ecology and economics for pandemic prevention*. *Science* (July 24, 2020); and Tollefson, Jeff. Why deforestation and extinctions make pandemics more likely. *Nature* (August 7, 2020).

¹⁰ Independent Evaluation Group of the World Bank Group, 2013. *Managing Forest Resources for Sustainable Development: An Evaluation of World Bank Group Experience*.

¹¹ See Human Rights Watch letter to the OECD, January 27, 2021, for an overview of the situation in Brazil.

¹² See, for example: Emanuele Ottolenghi, *The Dispatch*, March 19, 2021. Good Climate Policy Should Fight Corruption and Organized Crime: They are key drivers of deforestation and environmental degradation.

¹³ <https://www.cbp.gov/trade/programs-administration/natural-resources-protection/illegal-logging>

implementation and enforcement,¹⁴ not greater impediments to conducting the necessary investigations and compliance oversight. H.R. 7157 would serve to increase unfair competition for law-abiding American businesses and undermine the work of U.S. law enforcement officers, who are trying to stop this transnational crime, by:

- compelling them to share evidence gathered in the early stages of an investigation—potentially with a suspected illegal operator—within 5 days;
- Allowing merchandise that is the subject of investigation to be returned to the importer just 10 days after it has been detained, and moved from a government to a private facility where anything can happen to it;
- Limiting the timeframe to conduct a proper investigation to determine the appropriate action to take in regard to a shipment of concern.

In addition, the “merchandise” definition makes it clear that these new proposed rules and exceptions would extend well beyond wood products to all wildlife, fish and plant products, allowing for all these forms of illegal items to enter the US market with greater ease.

The Lacey Act, as amended, makes it a crime to traffic in plants or plant products when, in the exercise of due care, the person should know that the plant or plant product was taken, possessed, transported or sold illegally. “Due care” is a long-standing legal principle that means the degree of care at which a reasonably prudent person would take under the same or similar circumstances. While the Lacey Act does not define nor mandate any requirements to constitute due care, practical guidance has come from some of the early case history detailed above, such as the compliance plan in the Lumber Liquidators case.

As a CBP official put it, “While “trafficking plants” may sound harmless, illegal logging is not a victimless crime. The illegal timber trade is soaked with blood, financing violent conflict, and providing a cover for other crimes, such as drug trafficking, money laundering, illegal mining, wildlife trafficking, and forced labor. Ignoring the effects of illegal logging and timber trafficking could result in life-threatening consequences, causing great misfortune to economies, wildlife, and humans.”¹⁵

I believe the question is whether we actually want to deter illegal wood coming into the country or not. In an extraordinary show of unity of purpose, the US timber sector, conservationists and human rights advocates have agreed they do. In my two decades of collecting evidence of illegal logging and observing the resulting enforcement action, it is clear to me that the above steps would seriously undercut this shared goal. The ability of enforcement personnel to detain and test are critical to the majority of the successful cases brought. Clearly there are costs involved during those steps to both the government and the importers in question, but they pale in comparison to the economic costs that will be incurred if they are not done, i.e. if the sector gives up the current effective deterrent against importing cheap stolen wood from overseas.

We urge you to oppose H.R. 7157 as the changes proposed will allow those that knowingly import illegal wood to sleep well at night because it would serve to deter and dampen the current level of enforcement. It would be a loud signal to start up the operations of cheap stolen wood imports from overseas that have been shut down over the last decade due to the deterrent of the Lacey Act. Improving enforcement mechanisms for all involved is a laudable goal, but it needs to be done with full input from those bringing the cases, and I would be surprised if that was the case for H.R. 7157.

H.R. 6784—The ESA Flexibility Act

We are in the midst of a biodiversity crisis where scientists predict we could lose one million species, many in the coming decades, with serious consequences for food production, water purification, and overall ecosystem functions. Now would be a great time to strengthen the Endangered Species Act, one of the best tools we have for securing our future through protection of biodiversity. It is not a good time to weaken it.

H.R. 6784 attacks the foundation of the Endangered Species Act by throwing the Act’s automatic, full-strength protections for species newly listed as endangered into uncertainty, allowing the U.S. Fish and Wildlife Service or NOAA Fisheries to issue

¹⁴ In January 2023, US lawmakers called on the administration to stop illegal wood imports that harm the U.S. forest products industry and in a letter to Secretary of Agriculture Vilsack, highlighted the importance of cracking down on illegal wood trade, urging more decisive action on foreign imports that devalue U.S. timber.

¹⁵ <https://www.cbp.gov/frontline/cbp-stops-illegal-logging>

weaker, species-specific rules specifying prohibited activities. While Congress gave the Services flexibility under section 4(d) to issue such rules for *threatened* species, the Act and its legislative history are unambiguously clear that *endangered* species are to always receive the full suite of protections given their more vulnerable status. These guaranteed protections are there for a reason.

By eliminating the mandate that endangered species receive full, automatic protections, H.R. 6784 would render the more protective "endangered" status virtually meaningless, undercutting the very cornerstone of the Endangered Species Act and ultimately placing hundreds of species at greater risk of extinction.

H.R. 6784 would also expose the Services' listing program to increased political pressure from special interests, which is already a persistent problem. As we have seen with many existing 4(d) rules for threatened species, industry groups routinely seek exemptions from the take prohibition for their particular industries, undermining the scientific integrity of the listing process and ultimately resulting in species receiving less protection than needed.

Further, the Fish and Wildlife Service's listing program already lacks the necessary funding and resources to complete even the most basic duties under the Act, facing a backlog of more than 300 species awaiting consideration for protection. If the agency is allowed to develop individual rules for endangered species, an administration under pressure by special interests could use this discretion to further burden an already overwhelmed program, ultimately resulting in increased extinction risk for animals and plants across the country.

For foreign species, whether import or interstate or foreign sales are banned would be discretionary for endangered species. As the group that contributed to the first ban on ivory trade in the 80's by investigating its links to arms smuggling in Africa, we would be extremely concerned that endangered species products from elephants, rhinos or tigers that, while subject to international commercial trade bans, but could be freely traded commercially from state to state in our country because of a lack of ESA protections. How can we combat wildlife trafficking under such a system?

Ultimately, eliminating needed, automatic protections for endangered species and allowing those protections to be discretionary is a recipe for ensuring the Endangered Species Act does not recover species. Without immediate and automatic application of Section 9 as drafted, the core protections afforded both our domestic species as well as foreign species will be left to discretion and budgetary constraints. The Act will not meet its goal of recovering species if its core protections are eliminated. For these reasons, we urge you to oppose H.R. 6784.

Mr. BENTZ. Thank you, Mr. von Bismarck, and I now recognize Representative Stauber to introduce Mr. Higgins.

Mr. STAUBER. Thank you very much, Mr. Chair. I would like to introduce Ray Higgins, Executive Vice President of the Minnesota Timber Producers Association and a resident of Minnesota's 8th Congressional District.

The Minnesota Timber Producers Association was founded in 1937 and represents the interests of loggers, truckers, small sawmills, and others involved in the forest products supply chain across Minnesota.

Prior to entering the forestry industry, Ray served as a local sports broadcaster in Duluth, Minnesota. In addition to his professional life, Ray is very active in the community in Duluth. He has been involved in youth hockey and baseball, serving as coach for many years. Ray has also played an active role in building awareness and raising funds to find a cure for ALS throughout northern Minnesota.

I want to thank Ray for his friendship over the past 30 years, and for his willingness to travel to Washington to testify today. I look forward to your testimony.

Mr. Chair, I yield back.

Mr. BENTZ. Mr. Higgins, you are recognized for 5 minutes.

**STATEMENT OF RAY HIGGINS, EXECUTIVE VICE PRESIDENT,
MINNESOTA TIMBER PRODUCERS ASSOCIATION, DULUTH,
MINNESOTA**

Mr. HIGGINS. Thank you, Chair Bentz, Ranking Member Huffman, and members of the Subcommittee. Thank you, Congressman Stauber, for that introduction. My name is Ray Higgins, Executive Vice President of the Minnesota Timber Producers Association. As Congressman Stauber said, we were founded in 1937, representing loggers, truckers, small sawmills, and other businesses in our state's forest products industry. Thank you for the opportunity to testify in support of H.R. 6784, the ESA Flexibility Act.

In Minnesota, the forest products industry employs 68,000 men and women, injecting more than \$17 million into our economy, both direct and induced. It is the fifth-largest manufacturing industry in our state.

The northern long-eared bat is a species found in 38 states and here in the District of Columbia, including Minnesota as one of those 38 states. Just over 10 years ago, a fungal disease called white-nose syndrome developed that killed bats in huge numbers. As a result, in 2015, the U.S. Fish and Wildlife Service listed the northern long-eared bat as threatened.

That could have been devastating to the forest products industry in our state. Bats roost in trees. Restrictions from the U.S. Fish and Wildlife Service could have significantly impacted those 68,000 Minnesotans who work in our industry. However, the Fish and Wildlife Service realized the northern long-eared bat decline was not a habitat issue, it was a disease issue. White-nose syndrome was going to spread throughout bat populations, no matter what. The Service rightly utilized the Endangered Species Act's 4(d) rule to mitigate the impacts to forest management in our state.

Now, fast forward 8 years later. Northern long-eared bat populations continue to decline, and an endangered listing became necessary. But the Fish and Wildlife Service didn't have the 4(d) rule to utilize. The state of Minnesota then joined with the states of Wisconsin and Michigan to develop a Habitat Conservation Plan. It was a roughly 8-year process at great expense in terms of time and money to our state government and those in Michigan and Wisconsin. In the end, the Habitat Conservation Plan was approved by the U.S. Fish and Wildlife Service, and it contained nearly identical provisions to the 4(d) rule. So, when the northern long-eared bat was listed as endangered last year, we were able to continue our important work in Minnesota's healthy forests.

The ESA Flexibility Act would streamline this process. It would allow the Fish and Wildlife Service to tailor protections under endangered listings in the same way it already does for threatened listings, saving state governments across the country considerable time and resources.

In Minnesota, we love bats. The reason? We have a lot of mosquitoes, and bats eat mosquitoes. In fact, a single bat can eat up to 1,200 mosquitoes in 1 hour. So, we need bats in Minnesota.

We also love our forests, and I am proud to say they are incredibly well managed. The U.S. Forest Service says we have more forest land in Minnesota, more trees, more big trees that are

greater than 19 inches in diameter then we had 60 years ago. We grow three times as much wood as we harvest each year in Minnesota. We are a national leader in forest certification, meaning our forests will be sustainable and healthy for generations to come for all the recreational activities that Minnesotans love: hiking, camping, hunting, berry picking, bird watching, snowmobiling, and more.

And this also means our forests will be sustainable and healthy for bats for generations to come. As I said, trees are great habitat for bats. Strong forest management practices create diverse habitat over time and across the landscape for a wide variety of wildlife species, including bats.

Unfortunately, white-nose syndrome is affecting other bat species, and difficult listing decisions are being considered right now. The ESA Flexibility Act would give the U.S. Fish and Wildlife Service another tool in its toolbox, help the Service achieve its goals of protecting species, and it would streamline the process for state governments across the country, and I urge your support.

I thank Representative Stauber for bringing forward this bill, and also Chair Bentz and Ranking Member Huffman, as well as members of the Subcommittee for the opportunity to testify, and I will be happy to stand for any questions you might have. Thank you.

[The prepared statement of Mr. Higgins follows:]

PREPARED STATEMENT OF RAY HIGGINS, EXECUTIVE VICE PRESIDENT, MINNESOTA
TIMBER PRODUCERS ASSOCIATION
ON H.R. 6784

Chair Bentz, Ranking Member Huffman, and members of the subcommittee, thank you for the opportunity to testify in support of H.R. 6784, the ESA Flexibility Act.

My name is Ray Higgins, executive vice president of the Minnesota Timber Producers Association, a trade organization founded in 1937 representing loggers, truckers, small sawmills, and other businesses in our state's forest products industry.

Over the past ten years we've seen the importance of allowing the US Fish & Wildlife Service the flexibility to incorporate the 4(d) rules in its "endangered" listings in addition to the "threatened" designation. Had this flexibility been available, states like Minnesota, and federal agencies like the US Fish and Wildlife Service and the USDA Forest Service could have saved considerable time and taxpayer money while dealing with the decline of the northern long-eared bat (NLEB).

The US Fish & Wildlife Service began considering listing the northern long-eared bat in 2014, finalizing a "threatened" listing in 2015. However, it also utilized the 4(d) rule under the Endangered Species Act to mitigate the impacts of the threatened designation to forest management.

During the summertime, northern long-eared bats—like many bat species—roost in trees. In the interest of preserving the bat's habitat, the USFWS could have limited our ability to manage forests by precluding the harvesting of trees. However, the USFWS recognized that the bat's decline wasn't due to habitat issues, but to a fungal disease called white-nose syndrome that spreads among bat populations while hibernating, mostly in caves and mines during winter months.

The 4(d) rule in the Endangered Species Act allows the USFWS to tailor protections to those needed to prevent further decline of listed species and facilitate their recovery. Recognizing that summer habitat wasn't at issue, the USFWS rightly utilized the 4(d) rule. Rather than halting all tree harvesting across the bat's range, which is much of our state—not to mention 37 other states—the USFWS exempted "take" due to forest management practices. The USFWS did limit harvesting within 150 feet of known, occupied, maternity roost trees, as well as within a quarter-mile of known hibernation sites during the roosting months of June and July, provisions that did not materially harm forest management activities in Minnesota.

These steps taken by the USFWS were effective. In Minnesota, I'm not aware of a single northern long-eared bat that was "taken" during timber harvesting activities. Unfortunately, the decline of the species was and is due to white-nose syndrome—not habitat—and an endangered listing was inevitable.

Immediately after the threatened listing was finalized by the USFWS in 2015, and with the expected endangered listing looming, the Minnesota Department of Natural Resources, the state agency tasked with overseeing forest management in our state, began preparing to apply for a Habitat Conservation Plan. The Minnesota DNR knew USFWS didn't have the ability to utilize a 4(d) rule with an endangered listing. Partnering with Departments of Natural Resources from Wisconsin and Michigan, the process of drafting and gaining approval of the HCP—which contained provisions nearly identical to those in the 4(d) rule—was finally completed eight years later, in 2023, as the endangered listing of the northern long-eared bat was going into effect.

The ESA Flexibility Act would give the US Fish and Wildlife Service the same ability to tailor protections under endangered listings as it has for threatened listings, saving state governments across the country millions of dollars in staff time and other resources. The ESA Flexibility Act would also greatly streamline and expedite the development of Habitat Conservation Plans, saving resources of our federal government. Of course, the USFWS would not be obligated to allow 4(d) rule flexibility in every instance, but it would have an additional tool in its toolbox to tailor protections, as it did with its threatened listing of the northern long-eared bat.

Unfortunately, other bat species are being negatively affected by white-nose syndrome. The tricolored bat is currently under consideration for an endangered listing, while populations of the big brown bat and little brown bat have also declined. Allowing the USFWS to utilize the 4(d) rule will give the agency more flexibility as it considers these important listing decisions. This flexibility will be paramount as additional bat species, whose range covers the vast majority of North America, continue declining due to white-nose syndrome.

In Minnesota, our forests are healthy. According to data from the US Forest Service, we have more trees than we had 60 years ago, more "big" trees (19-inches in diameter and greater), and more forestland—meaning more bat habitat. By any measure, Minnesota has outstanding habitat for thousands of wildlife species, including the northern long-eared bat when it's ready to make a comeback, as well as the other bat species under consideration. The protections implemented by the US Fish & Wildlife Service, aided by the 4(d) rule and then the HCP, have been effective in preserving bat habitat. Forest management helps create habitat over time and across the landscape, allowing species with diverse habitat needs to flourish. An inflexible Endangered Species Act will not only do nothing to stem the decline of species suffering from wildlife diseases, it will discourage private landowners and non-federal agencies from working with the USFWS to determine the range and abundance of listed or candidate species.

In Minnesota, we harvest roughly one percent of our forestland each year, and we grow three times as much wood as we harvest. All this while employing roughly 68,000 people in our forest products industry, paying approximately \$2 billion in wages, while injecting more than \$17 billion dollars into our state's economy. We are actively managing our forests. In Minnesota, we like to say, "Jobs grow on trees, and we grow a lot of trees." We are proof that effective forest management can improve forest health, grow our economy, and protect wildlife species that rely on the forest. The ESA Flexibility Act will aid in continuing to achieve those goals, and I urge your approval.

I thank Representative Stauber for bringing forward this bill, and also Chair Bentz, Ranking Member Huffman, and members of the subcommittee for the opportunity to share my thoughts on this important topic.

Mr. BENTZ. I thank the witnesses for their testimony, and I will now recognize Members for 5 minutes each for questions.

Mr. Carl, you are recognized for 5 minutes.

Mr. CARL. Thank you, Mr. Chairman.

Mr. Higgins, I appreciate you being here with us today. The need for modernization of the Endangered Species Act, ESA, is critical, and it is clear that this legislation requires reform to better serve

both species and rural America. The ESA Flexibility Act is a step in the right direction.

Just a point of reference. We have 225 different endangered species in the state of Alabama, so we can write a book on this issue, if we ever want to talk about that.

Currently, the ESA has limitations that puts a burden on landholders. This legislation would strike a balance between protecting the endangered species, which we should, and allowing for responsible land use and management.

As someone deeply involved in the timber industry, you understand that there is a fine line between conservation efforts and economy activity. The timber industry relies on sustainable practices that can be at odds with rigid regulations of the current ESA. Congressman Stauber's bill would provide the necessary flexibility for timber productions to continue their operations while ensuring the protection of the endangered species.

This common-sense approach not only benefits species conservation, but also the economy of the rural communities like mine in Alabama and like yours in Minnesota. By finding this balance, we can promote responsible timber harvesting practice that supports both industry and the environment. Mr. Higgins, can you talk to me more about how critical it is to find a balance between protecting endangered species and supporting economy activities like timber production?

Mr. HIGGINS. Thank you, Congressman. In Minnesota, our members are loggers in rural parts of our state. And the reason why everyone lives in Minnesota is for some sort of natural resource enjoyment or work, whether it is our beautiful Lake Superior, the 10,000-plus other lakes we have, and the beautiful forests that we have. So, they recreate in those forests, but they also work in those forests.

And there is a balance. Any time you are talking about environmental permitting or, in this case, endangered species, there is a balance that needs to be struck in order to allow the species to survive, allow the great natural resources that we enjoy in our state to continue to thrive, but also for people to live and work.

So, in this case, the ESA Flexibility Act would allow us, in the Federal Government, to find a little bit more of that balance in order to achieve both of our goals of being able to live and work and be prosperous, but also to enjoy all the parts of the natural resources that our state has been blessed with.

Mr. CARL. Thank you very much.

Mr., is it Guertin? I have always butchered your name.

Mr. GUERTIN. It is Guertin, sir.

Mr. CARL. I am close. I am getting closer. That is a good thing. Can you answer a question for me?

These 225 endangered species, is there any way you can tell me when there has been any type of research or a count to find out if they should come off of this list or not?

Mr. GUERTIN. Sure, Congressman. If they are a listed species, we have a statutory requirement to every 5 years do a relook at them, a 5-year status review. So, we work closely on a day-to-day and operational level, though, in and out with state and tribal wildlife management agencies, as well, to keep a running tab on where

they are. But we are required to re-evaluate their status every 5 years.

Mr. CARL. And I appreciate that. Where can I get that, the last 5 years on these particular species?

Mr. GUERTIN. We would be glad to follow up with your staff after this hearing and get you that information.

Mr. CARL. Please do. Thank you very much.

Mr. GUERTIN. Yes, sir.

Mr. CARL. That has been a big question of mine. Thank you.

I return my time. Thank you, sir.

Mr. BENTZ. Thank you. I recognize Ranking Member Huffman for 5 minutes.

Mr. HUFFMAN. Thank you, Mr. Chairman. I would like to start with Mr. von Bismarck.

I appreciate your testimony. Your job just sounds fascinating and really interesting, and you have done some fantastic work.

The Lacey Act, obviously, is instrumental in stopping some of the largest flows of illegally-logged timber from the Amazon into the United States. Correct?

Mr. VON BISMARCK. Correct.

Mr. HUFFMAN. Correct, yes. I want to ask you about Peru, specifically, and how Federal agencies address the illegal timber coming into the United States from Peru. I know my colleague from California in his opening said it was just mahogany. But should we be sanguine about the fact that it was just mahogany? What do we know from that investigation?

Mr. VON BISMARCK. Well, it was probably the leading signal that went to Peru to actually improve the situation there. And illegal logging in Peru destabilizes the entire country. It was at the center of the violence and political instability last year. And this really is the best mechanism of U.S. enforcement over the last 10 years of wood coming from Peru into the United States has been the leading force pushing in the other direction.

For example, setting up an independent entity for the first time in Peru to oversee illegal logging, which very much improved the situation, which protected American consumers from being unwitting participants in extraordinary violence, such as the assassination of Edwin Chota that I mentioned in my testimony, and of course also being protected, if you are in the wood products industry in any way, from being undercut by this wood that is artificially cheap because it is stolen.

Mr. HUFFMAN. Yes. And by no means am I trying to malign Mr. McIlvain, I am sure he is doing a great job following the rules, and we all want to see red tape cut and things move as quickly and efficiently as possible. But I am concerned about the unintended consequences of a sweeping bill like this. And I want to just zero in on the allowance of materials to be transported and stored at an off-site, non-government-run location, or requiring Federal agencies to provide justifications and test protocols and results during an investigation.

I mean, these seem like things that would undermine law enforcement in cases where we need to identify and crack down on illegal trafficking. Am I missing something, Mr. von Bismarck?

Mr. VON BISMARCK. No, I believe that is the case. I think it is very reasonable to look at ways to improve enforcement of the Lacey Act, to streamline it, and indeed to strengthen it. I think that should very much include all the agencies that are working on enforcement, which I can't believe was the case here, based on the content of this bill, because my understanding of the way these cases unfold is that that critical moment of investigators having the actual wood and being able to ask questions of the importer, there are all kinds of information that is not with the shipment that is not in the normal import process. The cases that I described were entirely based on that moment. So, to remove that would remove the ability to ask those questions effectively and to test whether the wood is what it says it is.

Mr. HUFFMAN. And in terms of things that could speed up the process without compromising Lacey Act enforcement, there are no additional resources for Lacey Act implementation in this legislation. Correct?

Mr. VON BISMARCK. Well, there certainly need to be many more, and I really appreciated Mr. McIlvain's point of some of the resources that are being spent to help companies take the appropriate due care to avoid illegal wood—

Mr. HUFFMAN. But this bill does not provide additional funding or resources in order to speed things along in those situations.

Mr. VON BISMARCK. That is correct.

Mr. HUFFMAN. Mr. Guertin, I want to now come to the ESA Flexibility Act, as it is called. Mr. Higgins talked about an HCP in Minnesota, and I guess I am confused because this seems like a situation where the ESA flexibility that is already built into the law actually worked. And I am delighted that Mr. Higgins and his industry and others in Minnesota got their Habitat Conservation Plan. That provides a 50-year protection against take enforcement, doesn't it, Mr. Guertin?

Mr. GUERTIN. Yes, Congressman, 50 years of certainty once this HCP has been approved.

Mr. HUFFMAN. Yes. I mean, if somehow they had not gotten that certainty, if somehow there had been litigation or other things, or the bureaucracy had prevented them from getting the HCP, I could sort of imagine coming the legislative route and trying to make changes. But we have a situation here where the flexibility in the ESA should be celebrated, not undermined with legislation.

With that, I yield back.

Mr. BENTZ. The Chair recognizes Mr. Duarte for 5 minutes.

Mr. DUARTE. Thank you, Mr. Chairman.

Thank you, Mr. McIlvain for being here today, good to see you. I ran a multi-generational family business in my past life, anyways.

[Laughter.]

Mr. DUARTE. So, I appreciate the ins and outs. Wood imports under the Lacey Act now, you have three agencies. You have Fish and Wildlife concerned with invasive species issues; you have an Animal Plant Health Inspection Service, also concerned with biological diseases that may come in on the woods. Has there ever been a problem with either Fish and Wildlife or Animal Plant

Health Inspection Service, to your knowledge, of an exotic wood import? Or a foreign timber import, it sounds like.

Mr. MCILVAIN. As far as there being a problem with the associations looking at the material coming in?

Mr. DUARTE. No, I mean actual eggs of an insect, or somebody propagating natural tree species and making a—

Mr. MCILVAIN. Oh, thus far, no. We have never had anything like that in material. Typically, it is kiln-dried material that we are bringing in, so any of that would have been killed in the kiln drying process.

Mr. DUARTE. That is what I would imagine. So, what we are mainly worried about is foreign sourcing issues that Customs and Border Patrol would have.

Mr. MCILVAIN. Yes.

Mr. DUARTE. And it sounds like, Mr. Bismarck, and I will get to you, is all over the world doing these investigations, finding out where it is coming from.

Have you ever been advised of, hey, be aware of Russian oak forests because we have some bad actors up there threatening the Siberian lion or tiger?

Mr. MCILVAIN. Yes, with the Lacey Act and with the International Wood Products Association talking to other members and seeing reports that come out about bad actors, it is excellent information for us to avoid those areas, avoid those bad actors. So, we have definitely seen a benefit from having those reports come out to make sure that it is another tool we have to do the right thing and find the better source.

Mr. DUARTE. So, a legitimate player like yourself is going to look at alerts and, hey, don't buy these things from Peru, don't buy these things from Russia.

Mr. MCILVAIN. Absolutely.

Mr. DUARTE. Take advantage of Mr. von Bismarck's good work.

Mr. MCILVAIN. Very good work.

Mr. DUARTE. Are there other players in your industry that you compete with that could use more guidance than what has been given?

Mr. MCILVAIN. Yes. I mean, unfortunately, in any industry, in any area, any city there are bad actors. And having the tools for those to combat that is very important. All the while there is the balance of stopping bad behavior, while at the same time allowing good actors and those following the laws and the rules to do the right thing.

Mr. DUARTE. So, we are simply asking this Act, and I am not thinking of rhino horns or elephant tusks, so if there is amendment needed to make sure that we are not talking animal products, that the Strengthen Wood Product Supply Chains Act means wood products, I would be happy to amend it further down in the body of the text, not just the title, if that wasn't clear enough.

Mr. MCILVAIN. Well, yes, the nature of this bill, the way I see it, is making things more efficient, more timely for sustainably harvested lumber to come through quickly and efficiently without—

Mr. DUARTE. So, what this bill does, it simply says notify the importer, your company, within 5 days if there is a problem with a shipment, if it is suspected and it is going to be investigated. And

then 10 days after that, if the investigation or the assessment—I am sure at that time accessions can be taken, photographs, DNA, whatever you do. If after that, they are going to leave it in drayage for another indefinite period. How long has it gone for you?

Mr. MCILVAIN. Me, personally? About 30 days or so, a month, has probably been the longest. I have heard that customers or other companies have had it much longer than that.

Mr. DUARTE. How long have you heard?

Mr. MCILVAIN. Up to 2 years.

Mr. DUARTE. In drayage?

Mr. MCILVAIN. Yes, sir.

Mr. DUARTE. In a port, being charged fees on the container?

Mr. MCILVAIN. And demurrage are the fees that really cost them.

Mr. DUARTE. Demurrage, yes. That adds up.

Mr. MCILVAIN. Yes.

Mr. DUARTE. And then, at some point—

Mr. MCILVAIN. That goes from \$500 to \$1,000 a day per container, which adds up if you have multiple containers in a shipment and they are all held.

Mr. DUARTE. How much a day?

Mr. MCILVAIN. Around \$500, and then it scales up to around \$1,000 per day per container.

Mr. DUARTE. Mr. von Bismarck, please tell me, why isn't this workable? You are doing the work in foreign countries. You know where the problems are. You know how to warn folks like Mr. McIlvain or the Customs agents. This isn't endangered species or an invasive species issue, or a threat to agriculture or the ecosystem in America. This is simply bad actors in foreign countries shipping us stuff that we don't want to have here. Why don't these time frames work for these purposes?

Mr. VON BISMARCK. It appears that there is a significant change in terms of the 10-day piece, particularly. It seems, from the language, if the distinction is to be out of government control, that would be a particular red flag for possibilities, if one is a bad actor, to change paperwork, to actually substitute the actual shipment with different wood. You said it was one type of wood, you know it is another.

Mr. DUARTE. But you can take accessions, you can take samples, you can take photos, you can document and hold evidence as to what was actually there.

Mr. VON BISMARCK. You mean enforcement personnel can?

Mr. DUARTE. Yes.

Mr. VON BISMARCK. But my understanding of the timeline is if 10 days is tough, I mean, you can take some samples. But if you then have to give up all those pallets, you might have the Yacu Kallpa coming from Peru as enormous volumes of wood.

Mr. DUARTE. But again, if you are wrong, it is \$500, \$1,000 a day.

Mr. BENTZ. The gentleman's time has expired.

Mr. DUARTE. Well, thank you both. I appreciate your presence here today.

Mr. BENTZ. The Chair recognizes Congressman Grijalva for 5 minutes.

Mr. GRIJALVA. No—

Mr. BENTZ. The Chair recognizes Congresswoman Dingell for 5 minutes.

Mrs. DINGELL. Thank you, Mr. Chair.

We are in the midst of an unprecedented biodiversity crisis. Scientists have warned that 1 million species are at risk of extinction, more now than in any other period of human history. In the United States, 34 percent of plants and 40 percent of animals are at risk of extinction, and 41 percent of our ecosystems are at risk of range-wide collapse.

However, not all hope is lost. The Endangered Species Act, or ESA, is a critical tool for preventing extinction and putting imperiled species on the road to recovery. The ESA has been our most successful tool to protect America's vulnerable wildlife. The ESA continues preventing the extinction of 99 percent of the species it covers, including America's beloved animals like the bald eagle, grizzly bear, and Florida manatee.

Last November, we celebrated 50 years of the Endangered Species Act, and today I fear that some people want to undermine these protections. Legislation like H.R. 6784, the ESA Flexibility Act, would drastically change the nature of the ESA by allowing the Services to treat any endangered species as threatened. This would drastically change the core and original intent of the ESA.

It has always been maintained that when a species is threatened, they are given some protection with some flexibility. However, when a species is on the brink of extinction, they are labeled endangered and given the strongest protections. I do know this because not only do I co-Chair the ESA Congressional Caucus, I was married to the man that wrote the bill and talked about it more than you could believe any individual could talk about this subject, because he was passionate.

And these proposed changes could result in inconsistent regulations in enforcement, with states having the option to tailor regulations when they have a cooperative agreement with the Services. It allows for even more exemptions.

Mr. Guertin, I have several questions for you. Based on the testimony given today, it seems this bill was introduced to allow logging in forests that are crucial habitats for the now-endangered northern long-eared bats. Doesn't the Lake State Forest Management Bat Habitat Conservation Plan approved by the FWS already permit timber harvest exceptions to Michigan, Minnesota, and Wisconsin?

Mr. GUERTIN. Yes it does, Congresswoman.

Mrs. DINGELL. Thank you. And Mr. Guertin, if this bill were to be enacted, would there be any changes to the northern long-eared bats listing or changes to the current Habitat Conservation Plan?

Mr. GUERTIN. We would have to continue to evaluate the species itself, Congresswoman, because, as you know, the threat here isn't necessarily the logging. It is the white-nose syndrome which is wiping out most of these populations. But at this point we would have no plans to re-evaluate.

But to come back to your earlier point, the HCP is there, and it is a very powerful tool to give certainty to industry.

Mrs. DINGELL. Thank you. Based on the testimony today, it seems this bill is completely unnecessary. Habitat Conservation

Plans already provide the flexibility when it comes to the conservation of our most vulnerable species.

I do want to hit on one more point regarding section 9 of the ESA. Mr. Guertin, the ESA Flexibility Act makes the section 9 prohibitions in the Endangered Species Act optional for any listed species. How might this disincentivize important conservation agreements such as the Candidate Conservation Agreements with assurances or Habitat Conservation Plans that help conserve and recover endangered species?

Mr. GUERTIN. Congresswoman, we believe that the Endangered Species Act in its original intent does provide the Services a lot of flexibility to work with project proponents to allow economic development to proceed. These are inherent in section 10, the HCPs we develop, our section 7 work to clear Federal projects with a nexus to endangered species. It also includes a 4(d) rule for the threatened species.

Our primary concern with the envisioned legislation is it abolishes that bright red line between the needs of an endangered species and imminent need of extinction protection, and a threatened species, where the imminency is not there.

Mrs. DINGELL. Thank you.

A critical part of species conservation is taking steps to proactively address declines before they occur. This requires us to take action to ensure state and local governments have the tools they need to address conservation early and incentivize these important efforts. That is what the Recovery of America's Wildlife Act would do. I am hoping to reintroduce it soon.

For 50 years, the ESA has protected and brought back many of our beloved species from the brink of extinction, and has a 99 percent success rate. I believe we need to continue to protect this Act.

Thank you, Mr. Chairman, and I yield back.

Mr. BENTZ. Thank you. The Chair recognizes Congressman Graves for 5 minutes.

Mr. GRAVES. Thank you, Mr. Chairman.

Mr. Guertin, thank you for being here today, and thanks for your many years of service to U.S. Fish. Today, we will refer to you as a sacrificial lamb, I believe. Thanks for being here.

I assume you have traveled to other countries before.

Mr. GUERTIN. Yes, Congressman.

Mr. GRAVES. Could you just give me a ballpark? I mean, 10, 20?

Mr. GUERTIN. Several dozen, sir.

Mr. GRAVES. OK. Several dozen other countries. Have you ever flown into a country, been told at the airport that you have to wait there, you have to pay for your own hotel room at the airport while they wait for days and days to actually allow you in the country? Has that ever happened to you before?

Mr. GUERTIN. No, Congressman.

Mr. GRAVES. Yes, that has never happened to me before, either.

I guess I am scratching my head a little bit with this Lacey Act objection, so I want to be very clear in regard to the objectives of the Lacey Act. I couldn't be more supportive. In regard to what Mr. Duarte has done or what he is proposing to do in his legislation, he is simply trying to provide certainty or due process.

I mean, you heard Mr. McIlvain describe the incredible financial burden that is placed in a scenario where you are guilty until proven innocent. That is not what our country does. That is not what you have experienced traveling around the world. And it is not really a due process that America should be proud of. He is trying to clean up that process and trying to provide better certainty.

And I guess I am really having a hard time understanding your objection.

Mr. GUERTIN. Thank you for that, Congressman. So, the United States supports a global economy. There are some \$9 billion a day coming through ports and airfields and other entry points in the United States.

Customs and Border Patrol is the first line there with their 70,000 employees. They screen all of these shipments, trucks, planes, and you name it coming in.

APHIS, the Animal Plant Health Inspection Service, is the second line of defense. They then take a look at things that have been flagged for them, whether it includes live animals—

Mr. GRAVES. So, let me interrupt you, because I have a few other questions that I want to ask. So, basically, it is that the U.S. Government doesn't have an efficient enough process. We are charging additional taxes on importers to cover the inefficiency is what it sounds like.

Let me switch to the ESA bill. I understand you have been directed to say no to this one, as well. I am looking at the text of the bill. This is less than two pages of changes, and I want to read the first two paragraphs. In regard to threatened species it explicitly says the Secretary shall issue regulations as the Secretary deems necessary and advisable to provide for the conservation of such species. Under endangered species it says the Secretary may issue such regulations as the Secretary deems necessary and advisable to provide for the conservation of species.

I guess I am kind of scratching my head trying to understand what it is exactly that you are objecting to whenever you are the one that gets to determine if and when you write regulations.

Mr. GUERTIN. Congressman, we believe that the original intent of the Endangered Species Act clearly laid out a red line between the needs of an endangered species with imminent facing of extinction and a threatened species. This legislation would eliminate that, and would have much more permissive language in it.

Mr. GRAVES. No, no, no. That is misleading because this explicitly says, and I will say it again, "shall issue regulations as the Secretary deems necessary and advisable to provide for the conservation of species." One says "shall" for threatened, the other one says "may" for endangered. In both cases, the full discretion is provided to the Secretary.

So, it sounds to me like what is going on is that the U.S. Fish doesn't want to have to do a tailored conservation plan for a species, and instead is going to take a lazier approach where you just do a blanket for every species, which I think is inappropriate. And I am really having trouble understanding objections to this legislation.

Let's see, Dr. Rohwer, when you improve the health of waterfowl populations, I am from Louisiana, so a little bit down toward the southern end of the flyway, much of the investment under this legislation would actually benefit, I think, the northern portions. But would this be something that would ultimately benefit Louisiana?

Dr. ROHWER. Yes, sir. We have done a bunch of marking studies of mallards coming out of nesting structures, and they are put up all over the Prairie Pothole Region. And, frankly, they have benefited hunters from Minnesota and North Dakota right down to the Mississippi Delta, south of Venice. So, the Atchafalaya Delta has been in recovery.

So, I think everybody benefits from this thing. The center of mallard wintering ranges in Arkansas, but a lot of mallards still make it to Louisiana, to freshwater marshes.

Mr. GRAVES. Thank you.

Dr. ROHWER. Yes.

Mr. GRAVES. I had another question, I will do it for the record, I am out of time.

I yield back, Mr. Chairman. Thank you.

Mr. BENTZ. The Chair recognizes Congressman Grijalva for 5 minutes.

Mr. GRIJALVA. Thank you very much, Mr. Chairman.

Mr. von Bismarck, a simple question: Are wildlife trafficking and the illegal timber trade connected with other geopolitical and national security concerns that we have as a nation, like drug trafficking, human rights abuses, political corruption?

Mr. VON BISMARCK. Very much so, Congressman. I gave one example in my testimony, an early investigation that involved a cocaine trafficker in Honduras.

Really, the logging scene throughout Central America and South America has significant overlap with drug production. I landed in some of the landing strips that were there for purpose of moving drugs, and often it is the same actors. When we go in to find the beginning of illegal logging, we are often in very lawless territory that is entirely controlled by drug cartels. So, timber trafficking can be a source of finance of convenience and also a cover for moving actual drugs.

Mr. GRIJALVA. And Mr. von Bismarck, wildlife trafficking and illegal logging facilitate instability in a country. It is a question.

Mr. VON BISMARCK. Absolutely. I gave the example just last year in Peru, where illegal logging was one of the central issues that drove the destabilization and the violence in Peru. You have examples around the world of also terrorism, separatist movements, rebels, southern Philippines over the years, Myanmar terror pockets in the continent of Africa, where both wildlife trade and timber is a source of funds for those activities.

Mr. GRIJALVA. You hear repeatedly in this Congress and in this Committee of the dire dangers being presented at the southern border of this nation with fentanyl, human trafficking, organized crime, cartels, and yet there seems to be a more dismissive attitude when it comes to the issues that we are talking about right now in both those illegal activities prohibited by ESA and Lacey Act of illegal logging and wildlife trafficking, which are tied implicitly

with the other issues that seem to rise above this issue over and over again.

Should there be a distinction made, as we are making politically on this issue?

Mr. VON BISMARCK. Well, I mean, I can understand. You have a piece of wood, and we all like wood, and we use it, and it is not a packet of cocaine. But what we have been struggling with is that some wood is just as bad on the other end in terms of the violence it causes, the destruction it causes, we are talking, in this case, of really removing the economic future of many peoples that are dependent on the forest, as well.

So, I think the value of laws like this, like the amended Lacey Act, is that it helps you distinguish between the good wood and the bad wood, so that we can have a sustainable and functioning economy based on wood.

Mr. GRIJALVA. Thank you.

Mr. Guertin, good to see you again. Give us an example, following up on that response, where the Lacey Act itself, the Fish and Wildlife Service, and its partners bring one of these international crime rings to justice. And would the amendments in this legislation make that work more difficult or not?

Mr. GUERTIN. Thank you for your question.

We have worked with the Justice Department recently on Operation Apex. There was a criminal gang using frozen shark carcasses, and they hid shark fins in them, which are illegal, and cocaine, and other contraband, a pretty large scale.

And note a lot of this conversation has focused on finished wood products, but the borders are presented with a lot of unfinished wood product, raw lumber and timber. And we will note for the Committee, of interest last year we deployed a new mobile tree lab along the border with Mexico and the United States, and we were able to analyze these raw shipments coming in very quickly in a matter of minutes and make a determination on them. So, an area of streamlining there for people to be aware of.

But thank you for the question.

Mr. GRIJALVA. Thank you.

I yield back, Mr. Chairman.

Mr. BENTZ. The Chair recognizes Congresswoman Hageman for 5 minutes.

Ms. HAGEMAN. Thank you, Mr. Chairman, and thanks to each of our witnesses for testifying in Congress today.

I also want to thank Mr. Stauber for introducing the ESA Flexibility Act. I am a proud co-sponsor of this legislation, as it allows for greater flexibility while also protecting development and recreational activities when there is no correlation between those activities and the health of a particular species.

Too often, unscientific decisions are made in connection with the Endangered Species Act. The obvious case of the long-eared bat was mentioned earlier in Mr. Higgins' testimony, but the reality is that we could go on and on about examples of unscientific decisions being used to hold projects and activities hostage by the ESA regulations.

We have also heard from our witnesses today on how providing greater flexibility will benefit project managers, taxpayers,

recreationalists, the environment, and the species themselves. Mr. Higgins, in the past we have heard the U.S. Fish and Wildlife Service assert that 4(d) rules are costly for various reasons, and those reasons always seem to be changing. Can you speak to how you anticipate increased flexibility will save time, money, and resources?

Mr. HIGGINS. Thank you for the question, Congresswoman.

As you know, in Minnesota and, as I stated earlier, the states of Wisconsin and Michigan joined the Minnesota Department of Natural Resources in pursuing this Habitat Conservation Plan. It was an 8-year process.

The Fish and Wildlife Service had already rightly determined, through the process of listing the bat as threatened, that habitat was not a problem.

Ms. HAGEMAN. Right.

Mr. HIGGINS. So, when it came time to make an endangered listing, they didn't have that tool in their toolbox. Everyone agrees that habitat in this case was not a problem. It saves the time and money and the 8-year process that the states had to go through.

And I appreciate the reluctance of the Fish and Wildlife Service. They are talking about costs and their process, but that work had already been done. It had already been determined. And if there is more cost to the Feds, they are shifting it to the states. So, cost is cost.

And I also wanted to point out that Mr. von Bismarck, I believe he said something to the effect of we need to remove all the potential stresses when a species is uplisted from threatened to endangered, and he is right. But we all agree that habitat is not a stress on the northern long-eared bat. There is plenty of habitat in Minnesota.

So, yes, that is the way I kind of see it.

Ms. HAGEMAN. Could you also speak as to why you think increased flexibility is better for the listed species itself?

Mr. HIGGINS. Well, I did not speak to that, but it is better for the species itself just because anything that streamlines the process, we can get on with the work of creating habitat and making sure habitat is strong.

There was a study done, Congressman Stauber mentioned a study from University of California at Irvine earlier. There was a similar study done at the University of California Berkeley 3 or 4 years ago, and the study found that it was related to the fires in the Sierra Nevada mountains, the Sierra Nevada forests out in California and the California spotted owl, and because there had been less management in those forests, there had been a lot of canopy lost. So, the study found that there were worse declines in tree canopy in the protected areas than in the non-protected areas where logging and forest management had been performed.

So, it just streamlines the process. We can get on with the work of making sure habitat is good for these species.

Ms. HAGEMAN. OK. Director Guertin, in your testimony you said, "Species listed as endangered are at the highest level of risk and require the greatest protection." Because you seem to acknowledge in your testimony that you have concerns about eliminating some

of the differences between endangered and threatened species, I would like to ask you.

Do you see the irony in your opposition to this flexibility on the ground that you believe it destabilizes the differences between endangered and threatened species, while at the same time you are promulgating a blanket rule that tries to eliminate those same regulatory differences?

Mr. GUERTIN. Congresswoman, a lot of the questions here today center on our belief that we think there is a clear distinction between the level of protection needed for an endangered species because, by definition, they are on track toward extinction in the immediate future. And then we have the needs of threatened species, we have more time to work with them. There are a lot more inherent flexibilities in the Endangered Species Act for them.

We, at a threatened level, can tailor some of the solutions out there, working with partners, give them a lot more flexibility. But we can use a lot of the tools of the ESA for an endangered species, as well, including section 10, section 7 to promote responsible economic projects to move forward. And we do that every day.

Ms. HAGEMAN. And the ESA Flexibility Act would provide for that flexibility, as well. Isn't that correct?

Mr. GUERTIN. We argue the intent of the legislation, Congresswoman. It comes back to what we believe, the original intent of the legislation has a bright red line there. And we are arguing this legislation, in our mind, would do away with that line.

Ms. HAGEMAN. Thank you, and I yield back.

Mr. BENTZ. The Chair recognizes Congressman Stauber for 5 minutes.

Mr. STAUBER. Thank you very much.

Mr. Higgins, prior to the uplisting of the northern long-eared bat, would you say we saw proper management of the species in Minnesota?

Mr. HIGGINS. Yes.

Mr. STAUBER. Did forestry activity, or any human activity for that matter, have a negative impact on the species population leading to its uplisting?

Mr. HIGGINS. It did not. And, in fact, in all the work we have done in the forests during that time, I am not aware of a single bat that was taken during harvesting operations in our state.

Mr. STAUBER. And I will just remind the panel that a Congressional Review Act on the uplisting of the northern long-eared bat, it passed the House and it passed the Senate, and the Biden administration vetoed it.

So, would you agree that the 4(d) rules that were applied to the species when it was listed as threatened did not have a negative impact on the species population ultimately leading to the uplisting of the species?

Mr. HIGGINS. It did not. In fact, as we have pointed out several times, the stress on the bat is not a habitat issue. It is a disease issue. So, it did not have an effect.

Mr. STAUBER. And Mr. Higgins, do you agree with the sentiment, and do you believe my legislation would help address that concern for regulations related to endangered species?

Mr. HIGGINS. It would, definitely.

Mr. STAUBER. Thank you.

Deputy Director Guertin, it is great to see you again. In your written testimony, you note the Fish and Wildlife Service's opposition to my legislation in part due to the increased costs and staff hours associated with promulgating 4(d) rules. Is this correct?

Mr. GUERTIN. Congressman, all of these processes we go through require staffing and FTEs for them. Certainly, writing a 4(d) rule is a complex undertaking, and it is something we build into our budget each year. Last year, the Administration requested about a \$10 million increase for additional personnel to do this additional work.

Mr. STAUBER. But in your testimony, you said the opposition to my legislation in part is due to the increased costs. Correct?

Mr. GUERTIN. That is what the legislation says. Yes, sir.

Mr. STAUBER. So, Mr. Guertin, typically do communities face monetary or economic costs when complying with the Endangered Species Act?

Mr. GUERTIN. We work with communities and with industry to develop and implement flexibilities under the Endangered Species Act, whether it is section 4, section 10, section 7.

We also can provide funding to them, for example, writing these Habitat Conservation Plans. Our Cooperative Endangered Species Conservation Fund provides grants to states and counties to write these plans, and also to implement them on the ground.

Mr. STAUBER. Why should my constituents bear the cost when it is Fish and Wildlife Service putting forward these regulations?

Mr. GUERTIN. Sir, these regulations are to implement national-level law, the Endangered Species Act, which was enacted to protect imperiled species out there on the land. We do the best we can with all project proponents and with our state partners to support these projects and provide a lot of technical assistance, in-kind contributions.

Mr. STAUBER. So, just with my last minute and a half, the northern long-eared bat, the white-nose syndrome did not come from any forest harvesting or the lack of conservation. The science tells us that. So, we followed the science, and we followed the science. The House voted to follow the science. The Senate voted to follow the science. And the Biden administration over-ruled that congressional action. Do you support that?

Mr. GUERTIN. Congressman, I am an employee of the Federal Government. My position is that of the Administration, the Biden administration.

Mr. STAUBER. So, you support it?

Mr. GUERTIN. Yes, sir.

Mr. STAUBER. OK. And that is the biggest reason my constituents have a problem with this. You are costing our loggers and truckers money. It has nothing to do with their harvesting. It has nothing to do with it. And the science tells it. So, you are agreeing with the Administration that doesn't follow the science. I find that very concerning.

My ESA Flexibility Act, there is nothing in it that says you "shall". It says you "may". It gives you and your agency another tool. Wouldn't you want that additional tool?

Mr. GUERTIN. Congressman, we believe we already have a lot of flexibility with the Endangered Species Act under section 10.

Mr. STAUBER. OK. Would this give you more? Would this give you an additional? Why would you not want that flexibility?

Mr. GUERTIN. Sir, when reading the legislation, I believe it would just blow up that red line, the distinction between a threatened and an endangered species.

Mr. STAUBER. But there is nothing forcing you to, it is "may," you may look at that. I think that gives you flexibility. I think you should trust yourself. I think the agency should trust the science and trust yourself.

Mr. Chair, I yield back.

Mr. BENTZ. The Chair recognizes Congresswoman Hoyle for 5 minutes.

Ms. HOYLE. Thank you, Mr. Chair.

My colleague, Mr. Duarte, has put forward H.R. 7157, the Strengthen Wood Product Supply Chains Act, which claims to improve the Lacey Act for importers by instituting very ambitious enforcement timelines for Fish and Wildlife services. I believe that he has done so in good faith to solve issues he sees as a problem.

However, my concern is that it is too broadly written, covering all enforcement activities under the Lacey Act. While the title of the bill indicates this is targeted towards timber, the bill itself changes enforcement for illegal wildlife and injurious species in addition to timber imports.

Since 83 percent of my district is forest land and 71 percent is timber land, I would like to focus today on the impact on timber. Deputy Director Guertin shared that H.R. 7157 would make it harder for the Fish and Wildlife Service to do its job enforcing the Lacey Act, and this is concerning because proper enforcement of the Lacey Act is critical for the flow of legal commerce and to protect our country's natural resources. Lots of people worked a very long time to set up the rules that we have to protect our forests, our old growth, and to be able to provide jobs in the timber industry.

This reduces demand, the Lacey Act, for illegally logged materials which are harvested in ways that are incredibly harmful to the natural environment. And illegal timber harvests promote deforestation and threaten biodiversity in some of the world's most special ecosystems.

Also, allowing illegally logged materials into our country would be bad for our domestic timber producers, who are following the rules and abiding by our environmental laws. I believe this bill would create an unfair playing field for our U.S. timber producers, many of whom are in my district. So, my question is for Mr. von Bismarck.

Can you explain how banning illegally-logged timber in the United States helps U.S. timber producers compete both in domestic and export markets?

Mr. VON BISMARCK. Absolutely. Thank you for the question, Congresswoman.

It was really a study by the industry itself that identified that, due to the import of illegal timber, they were losing \$1 billion a

year, half of which was due to depressed prices in the United States and half due to reduced opportunities for export overseas.

In terms of the impact of the Lacey Act to address that, the United States is a huge market. And we have just seen, I can speak from personal experience, which I tried to do in the testimony, of how the individual enforcement actions send a signal around the world. The enforcement against ebony, for example, from Madagascar here in the United States caused China to shut down its shipments of ebony from Madagascar, and really brought a national park and World Heritage Site back from the brink, for example.

Ms. HOYLE. Thank you very much. I appreciate that.

I yield the remainder of my time.

Mr. BENTZ. Thank you.

Congressman LaMalfa, you are recognized for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman. I want to direct this on H.R. 6854, the Habitat Enhancement Now Act, to Mr. Rohwer, if I said that correctly. Sorry, I wasn't in the room.

The Deputy Director claims that the funding totals would be insufficient to meaningfully assist waterfowl. Dr. Rohwer, can you talk about how the population would be increased by 400,000 with a \$3 million program that we have gleaned from the two programs in the bill? How effective would that be?

Dr. ROHWER. I will just speak to the hen house portion of the bill. \$1.5 million over 5 years produces nearly 20 thousand hen houses. And that creates each year around 45,000 extra ducks. And over a 10-year life span, we put hen houses out, and we pay for the original installation and the maintenance, so that basically means 10 years of 45,000 extra ducks, plus or minus. So, you are talking about 450,000 extra mallards. I think that is terribly cost effective. Absolutely nothing else comes close to that.

I applaud the work that—

Mr. LAMALFA. For a \$1.5 million outlay on the hen program?

Dr. ROHWER. Right.

Mr. LAMALFA. OK. Because it is listed here there is \$3 million total, with the two programs in the bill. Can you speak on the other half of it?

Dr. ROHWER. And the other half goes to protection of nesting habitat and brood water in California.

Mr. LAMALFA. Yes.

Dr. ROHWER. Frankly, the science is not as clear there. But we know that brood water is the limitation to duck production in California. And most of the ducks, mallards shot in California are raised in California. So, I think it would be a tremendous help. It would be a great addition to all the other funds that we are using to help improve habitat.

Mr. LAMALFA. All right. We need a lot of help on the habitat in the far north there, where the water has been basically taken away.

Dr. ROHWER. Yes.

Mr. LAMALFA. Let me shift gears to Mr. Stauber's bill, H.R. 6784, to Mr. Guertin on that one.

I would like to just understand better the thinking on more specifically when we are talking about this white-nose syndrome

with bats, where there is no effect on that caused by human activity, human interaction at all. So, we cannot allow the flexibility to be applied either, well enough on threatened or as well as to endangered is what the bill is seeking to do when it is entirely something happening in nature, Mr. Guertin, not human activity.

I have seen that a lot in our Sierra forests, too, where they had an effect on, whether it is a salamander or something else that really hasn't been caused by people, yet you still have very difficult ESA requirements on how people will move or harvest or whatever it is.

But, specifically, maybe more to this white-nose syndrome, why would you oppose the ability to not have to go through such a great regulatory rigmarole on a threatened species or endangered species for activities that have nothing to do with the threatening of that species?

Mr. GUERTIN. Thank you for your question, Congressman. Yes, we agree that the primary threat to the species is the white-nose syndrome, among other factors out there. It is a determining factor that caused us to uplist it to an endangered status.

That said, though, we have deployed a lot of flexibility on the ground with that endangered finding, including processing over 25,000 section 7 consultation requests over the last year, 90 percent of them, or 23,000, went to green immediately after we ran them through our determination key, and those projects moved forward. We are working on the remaining 10 percent right now.

We have also deployed a tri-state habitat conservation plan up there.

Mr. LAMALFA. You are talking conservation plans. We are talking about activity that might have to do with resource utilization, whether it might be important in my area, timber, or maybe some level of mining, or just rebuilding infrastructure. Those things have very difficult times getting permits, as well, not just doing green programs.

Mr. GUERTIN. Well, these permits we are approving projects are for infrastructure. They are for roads, they are for bridges, they are for timber operations, they are for supporting very similar projects that were underway before the uplisting from a threatened status to an endangered status.

Mr. LAMALFA. OK. Well, I think you feel like you have flexibility there, but the people dealing with it do not. So, can we listen to them harder about what flexibility really looks like on the ground in doing so? Because they find roadblock after roadblock for something that they are having no negative effect or cause of.

Mr. GUERTIN. Congressman, absolutely. After this hearing, we plan to reach out to my fellow panel members here and other constituents up there. We clearly need to sit down with them and hear about more of their concerns, follow up, share with them some of the tools we can bring to bear, and help them—

Mr. LAMALFA. Will you be willing to change your tools?

Mr. BENTZ. Congressman, your time is out.

Mr. LAMALFA. I have to yield back. But that is what they need. You need to hear them on how the tools need to be changed to actually work where there is no negative effect.

I yield back.

Mr. BENTZ. Thank you. Mr. Guertin, the issue is, you mentioned the word, let me find it here, "imminence". The imminent extinction, I think, is what you are trying to drive at. And you were talking about the bright line between the threatened status on the one hand and endangered on the other.

I think a lot of the folks up here have been asking you what you do differently when you cross over that bright line. And I think what is bothering people is it doesn't sound like very much when it comes to the situation with the bat.

So, I am going to ask you this. The Department has determined that there is an imminent threat to the bat, and thus the uplisting occurred and a lot of additional work for the HCP. So, tell me, how much better off is the bat as a result of the HCP, as compared to the previous circumstance? Because it was an imminent threat. So, whatever you decided you wanted to do had to do something good for the bat. So, tell us.

Mr. GUERTIN. Congressman, we understand that uplisting the species from threatened to endangered was driven by the biology. And we understand and acknowledge our partners in the timber industry had all along acted in good faith and done everything we had asked them to do under the 4(d) rule—

Mr. BENTZ. I haven't heard, wait, wait, wait. You are drifting. You are avoiding my question. My question is how much better off is the bat under the HCP?

Mr. GUERTIN. Oh, sure. I was going to get to that, sir.

Mr. BENTZ. Please get to it.

Mr. GUERTIN. Right now we are continuing to see a very sobering trend for the bat introduced—

Mr. BENTZ. OK, stop, stop. I am asking you a very specific question. You have an imminent problem, and that is why the uplisting occurred. And as a result, we lost the opportunity to use the 4(d) and we had to go to the HCP. So, I am asking you, is the bat the better for it? That is your goal. That is your job. The bat has to be the better for it.

Mr. GUERTIN. It is still in a dangerous, perilous situation, sir. It hasn't improved that much over the past year. Over the next couple of years we have to—

Mr. BENTZ. OK, now we are getting to it. The question that we all should be asking ourselves is that which you are doing in your agency helping the bat, or are you just going through the steps?

And the reason I am asking you these questions is because it seems to me that Mr. Graves and others have been saying, look, you have the tools available. You will uplist, and then under this bill you would have available, if you wish, the 4(d). But you don't have to, because on your own words you have already made that determination that, because you have uplisted, there is a much more challenging situation for the bat. Correct?

Mr. GUERTIN. Yes, Congressman. Yes, Mr. Chairman.

Mr. BENTZ. Yes. So, what I am asking you is, if you had that additional flexibility, and I think you have been asked this question two or three times previously, why is it that you would not take into account the imminent demise or extinction of the bat in determining whether or not to use the 4(d) if you had that flexibility?

You have been asked that before, but I need to hear the answer again.

Mr. GUERTIN. Mr. Chairman, we believe we have the flexibilities when we deploy the section 10 HCP process and when we deploy the section 7 consultation process, as well.

Our concern with the legislation is that it would set the precedent of diminishing that red line for other species, and it would have too many shells in there. So, to us that is the bright red line.

That said, this hearing has been very illuminating for me, personally. I am sure it has been for the Committee members about the concerns our witnesses have discussed here with us very candidly, and we owe them some follow-up on it.

Mr. BENTZ. So, before I leave this point, because I think it is the one of greatest interest to me, and that is what is actually happening as a result of this red line you are talking about?

You are imposing upon yourself a higher level of exertion, a higher level of expenditure, a higher level of regulation. What are you doing to yourself that you are fearsome you would lose if we tacked onto it the flexibility afforded by the 4(d) rule?

Are you saying that you don't trust yourself? Is that what we are hearing?

Mr. GUERTIN. No, we trust the science, though, Mr. Chairman. And we believe—

Mr. BENTZ. And the science would change as a result of you having the flexibility?

Mr. GUERTIN. The current management structure that we have on the ground now with these HCPs and the section 7 process is providing some benefit to the bat. It is making sure that our industry partners aren't in jeopardy as this situation unfolds.

In the science and applications role, we are doing everything we can to determine what is causing the white-nose syndrome, if there is any remedy we can deploy from a biological or scientific way.

Mr. BENTZ. OK, but you are not answering my question. What I asked was, do you not trust yourself? And the answer is, I think you do trust yourself, it is just that, from a perceptive standpoint or an optics standpoint, it is easier if you have that bright line and you are not plagued with the possibility of using other solutions.

But I appreciate all of the panel's participation today, and we are now to the point where I read this.

I thank the witnesses for their testimony and the Members for their questions.

The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to these in writing. Under Committee Rule 3, members of the Committee must submit questions to the Subcommittee Clerk by 5 p.m. Eastern Time on Tuesday, February 20. The hearing record will be held open for 10 business days for these responses.

Without objection, the Subcommittee stands adjourned.

[Whereupon, at 12:05 p.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Statement for the Record

**National Marine Fisheries Service
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
on H.R. 6784 and H.R. 7157**

The National Oceanic and Atmospheric Administration (NOAA) is responsible for the stewardship of the nation's living marine resources and their habitat. Backed by sound science and an ecosystem-based approach to management, NOAA Fisheries provides vital services for the nation, including management and sustainment of our fisheries, ensuring safe sources of seafood, and the recovery and conservation of protected species and healthy ecosystems. The resilience of our marine ecosystems and coastal communities depends on healthy marine species, including protected species such as whales, sea turtles, salmon, and corals.

The Endangered Species Act

Under the Endangered Species Act (ESA), NOAA Fisheries works to recover marine and anadromous species in their natural environment while preserving robust economic and recreational opportunities. There are more than 160 endangered and threatened marine and anadromous species under NOAA's jurisdiction. Our work includes: listing species under the ESA, monitoring species status, designating critical habitat, implementing actions to recover endangered and threatened species, consulting with other federal agencies, developing ESA policies, guidance, and regulations, and working with partners to conserve and recover listed species. NOAA Fisheries shares the responsibility of implementing the ESA with the U.S. Fish and Wildlife Service (hereafter referred to as the Services).

Recognizing that the value of our natural heritage is incalculable, Congress enacted the ESA nearly unanimously in 1973, in acknowledgement of the broad public support for the prevention of species extinction. The ESA is the nation's foremost conservation law for protecting wildlife and plants in danger of extinction. It plays a critical, science-based role in preventing the extinction of imperiled species, promoting their recovery, and conserving their habitats. It is extraordinarily effective at preventing species from going extinct. It has inspired voluntary action to conserve at-risk species and their habitat before they reach the point where they would qualify to be listed as threatened or endangered. Since it was signed into law, more than 99 percent of the species listed have been saved from extinction.

NOAA Fisheries opposes H.R. 6784 and outlines several concerns with this legislation below.

H.R. 6784—The ESA Flexibility Act

The ESA protects endangered and threatened species. The Services list species as endangered or threatened under the ESA based solely on the best scientific and commercial data available. An endangered species is a species that is in danger of extinction throughout all or a significant portion of its range. A threatened species is a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Section 9 of the ESA lists seven specific prohibited actions with respect to endangered species, which include prohibitions on import, export, interstate and foreign commerce, and take of endangered species of fish and wildlife. Section 9 also includes prohibitions for endangered plants. The Section 9 prohibitions for endangered species do not automatically apply to threatened species. Section 4(d) of the ESA provides that whenever a species is listed as threatened, the Secretary shall issue regulations she deems necessary and advisable to provide for the conservation of such species. In addition, the Secretary may extend by regulation the Section 9 prohibitions to threatened species under 4(d).

H.R. 6784 would modify the statutory ESA protections for endangered species. The prohibitions in section 9(a) automatically apply to endangered species at the time of listing. H.R. 6784 provides that the Secretary can either issue a 4(d) rule to protect an endangered species or allow it to be protected automatically by Section 9(a) of the ESA.

The ESA recognizes the different status of threatened and endangered species and provides greater flexibility in the conservation and management of threatened species under Section 4(d) as described above. In providing authority for the Services to intervene to protect species before they reach endangered status, the ESA allows for more flexible regulation and protections to prevent their further decline and increase the likelihood of recovery. NOAA Fisheries has utilized section 4(d) to provide a flexible, targeted approach to the management and conservation of threatened species. Such an approach is appropriate for threatened species that are less imperiled than endangered species and not yet on the brink of extinction.

In contrast, endangered species are in danger of extinction now. Because of their imperiled status, it is critical that these species receive the full suite of ESA Section 9 protections to ensure these species do not go extinct and instead can begin to recover. H.R. 6784 would authorize weakening the protections for endangered species and blur the ESA's distinction between threatened and endangered species. H.R. 6784 would also place a burden on NOAA Fisheries' limited resources. While section 4(d) allows NOAA Fisheries to tailor regulations for threatened species, promulgating those rules is resource intensive and requires additional staff, resources, and time. Those additional resources are not required when the full suite of protections in Section 9 that are critical to protecting endangered species are applied to those species. The diversion of resources to promulgate regulations under 4(d) for endangered species will shift our efforts away from the important work of stabilizing and recovering endangered species and could have significant negative consequences for their conservation. In addition, H.R. 6784 would allow for novel disputes to arise regarding whether the discretionary ability to prepare species-specific 4(d) rules for endangered species had been appropriately exercised. This may also divert the work of limited staff resources, even where the agency did not promulgate a species-specific rule for an endangered species.

Finally, the ESA already provides flexibility to allow certain activities that affect endangered species that are otherwise prohibited under section 9 of the ESA. Under Section 10 of the ESA, the Services may issue permits for take that results from scientific research, activities that enhance propagation or survival of wildlife or plants, or that result in incidental take of the endangered species. In addition, the Services may issue incidental take statements under Section 7 that provide an exception to the prohibitions on take of endangered species.

The Lacey Act

First enacted in 1900, and amended in 1981 and 2008 in order to strengthen and expand the scope of protections, the Lacey Act has a long history as a critical tool for the conservation of the nation's fish, wildlife, and plants, and combating international trafficking in wild fauna and flora, including marine fishery products. Among other provisions of the Lacey Act, 16 USC 3372 includes prohibitions relative to the trafficking of illegally-harvested and falsely-labeled fish, wildlife, and plants imported into the United States. Unlike other natural resource protection statutes, the Lacey Act provides criminal as well as civil penalties for violations of the prohibitions on trafficking and false labeling as well as detention, search and inspection and authority tailored to detecting such illegal trade. These provisions make the Lacey Act the most important tool we have for addressing fish and wildlife trafficking violations, including those involving critically endangered species and transnational organized crime.

Under the authorities granted by the Lacey Act, NOAA Fisheries Office of Law Enforcement (NOAA OLE) works with our federal partners to combat wildlife trafficking and the illegal international trade in marine fishery products. Perhaps most importantly, the authorities provided in the Lacey Act allow NOAA OLE to interdict and investigate the import of illegally-harvested, improperly documented, and fraudulently labeled seafood products that introduce unfair competition and threaten the livelihoods of American fisherman, processors, and producers, or otherwise engaged in lawful and sustainable fishing activities and trade.

As one of the world's largest importers of seafood, the United States plays a critical role in promoting sustainable fisheries worldwide, including through robust enforcement of the Lacey Act. NOAA OLE leads USG efforts to combat illegal, unreported, and unregulated fishing, and ensure illicit, unsustainably harvested seafood products do not enter U.S. commerce. The Lacey Act also serves as a powerful deterrent to prevent illicit seafood products from entering U.S. markets.

In light of the foregoing, we offer the following comments on H.R. 7157:

H.R. 7157—The Strengthen Wood Product Supply Chains Act

Expansion of import regulations to nearly all species of wild fauna and flora

Despite the title: Strengthen Wood Products Supply Chains Act, the provisions of H.R. 7157, as written, would apply more broadly, imposing the same requirements on enforcement of the Lacey Act with respect to all imports on wildlife products, seafood, and marine fishery products, vastly expanding existing requirements for these commonly imported commodities.

Increased burden on USG regulatory agencies

The proposed provisions of H.R. 7157 impose an additional burden on NOAA Office of Law Enforcement (OLE) and U.S. Fish & Wildlife Service (USFWS). OLE is to provide the ‘importer’ with a Notice of Detention, comprising of the facts and reasons surrounding the detention, a description of all tests to be performed, an explanation of specific purpose(s) for the tests, and a description of what information could be provided by the importer in order to accelerate disposition of the detention. These new requirements would not only impose a significant and unnecessary additional administrative burden on the government but would also pose significant challenges, as in many cases, some of the aforementioned information is not yet known at the time of import, including who the true ‘importer’ actually is, as corporations commonly use intermediaries, associates, freight forwarders, and customs brokers to facilitate these types of imports. The provisions in the proposed bill would also present an unreasonable and unnecessary burden on the already overextended personnel of the agencies engaged in enforcement at the border, including NOAA OLE, USFWS OLE and U.S. Customs and Border Protection. For example, NOAA OLE, despite being charged with our federal partners to ensure the legality, safety, proper identification and accurate labeling of imported seafood, currently employs only 72 Special Agents and 84 Enforcement Officers nationally.

H.R. 7157 imposes the following requirements: (A) that, within 5 days, a Detention Notice be issued to the ‘importer’ with all the detailed information described in the foregoing, or (B) “*release to such importer [of] the detained merchandise.*” In situations where the Detention Notice cannot be issued, including where required information is still unknown, the only option provided to the government is the immediate release of the merchandise to the importer. This requirement undermines the government’s ability to detect and determine the nature and extent of a violation. It also imposes an unnecessary, immediate, and significant risk of releasing potentially illicit imports of fishery products, or worse, potentially mislabeled, contaminated, or harmful products, into U.S. commerce. Finally, this requirement presents the risk of release of narcotics or other illicit goods which may be concealed or co-mingled in imported fish and fish products, as illustrated in a recent seizure of cocaine discovered in a fish shipment destined for the United States.

In addition, H.R. 7157 provides that after 10 days, regardless of the circumstances of the detention, the USG must allow the importer to transport the detained merchandise to “*a location that is not under the control of the United States,*” meaning an unsecured, non-customs bonded location, including a storage area, yard, or property under the control of the importer themselves. This provision of mandating the release to an importer of an uncleared, uninspected, and potentially illegal or dangerous consignment, considering the import had been detained with reasonable suspicion by the government of illegal activity or an identified need for further inquiry, presents an unnecessary, immediate, and significant national security risk, for all the aforementioned reasons.

Potential Conflict with Existing Seizure and Forfeiture Procedures

The seizure, appeal and review processes set out in (c)(5)-(7) present potential timing and procedural conflicts and redundancies with existing procedures relating to seizure and administrative forfeiture set out in the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) and NOAA’s civil procedure regulations at 15 CFR Part 904 implementing the agency’s obligations under CAFRA. In particular, those rules provide that forfeiture proceedings must be initiated within 60 days of a seizure by a federal agency, or the seized property must be returned. An interested party has 35 days to file a claim to the seized property. If a claim is filed, the case is referred promptly to the U.S. Department of Justice for institution of judicial proceedings. NOAA’s rules also authorize bonded release as well as the sale of perishable product and subsequent seizure and forfeiture of the proceeds.

The proposed measures in H.R. 7157, as written and expansively applied to nearly all fauna and flora, would significantly impact NOAA Fisheries OLE's ability to temporarily detain imports and sample (test) imported fishery products from high-risk countries, including the People's Republic of China (PRC) for genetic identification, potential contaminants, disease or human health risk vectors, or other forensic testing as needed to ensure both the legality and safety of imported commodities for the American consumer. NOAA stands ready to work with the Committee.

Conclusion

NOAA is proud to continue to lead the world in conducting ocean science, serving the nation's coastal communities and industries, and ensuring responsible stewardship of our ocean and coastal resources. We value the opportunity to continue working with this Subcommittee on these important issues. Thank you and your staff for your work to support NOAA's mission.

Submissions for the Record by Rep. Huffman

Seneca Creek Associates, LLC

Wood Resources International, LLC

**“Illegal” Logging and Global Wood Markets:
The Competitive Impacts on the U.S. Wood Products Industry**

Prepared for:

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<https://docs.house.gov/meetings/II/II13/20240214/116787/HHRG-118-II13-20240214-SD003.pdf>

The Lacey Act's Effectiveness in Reducing Illegal Wood Imports

Executive Summary

In May 2008, amendments were passed to the U.S. Lacey Act (Lacey)—which originally covered wildlife imports—that made it illegal to import into the United States timber and wood products produced illegally in a foreign country. This was the first such legislation anywhere in the world. What impact has it had?

This study analyzed trade data, information on levels of illegal logging in countries of production, and data on individual shipments to estimate how the United States' illegal wood imports have changed since 2008. It also examined data on possible confounding factors to try to determine the extent to which the changes can be attributed to Lacey. The study sought to measure a range of possible means by which imports of illegal wood may have been reduced since the Lacey amendments took effect, including increased domestic or low-risk country wood sourcing, greater discrimination in purchasing in higher-risk source countries, and changes in levels of illegal logging or illegal wood flows (specific products from specific countries or regions) in source countries.

We found that imports of illegal wood into the United States have declined by between 32 and 44 percent since the Lacey amendments took effect. Although



Suifenhe, a Chinese border town and port of entry for Russian timber—much of it illegally sourced. The Lacey Act amendments have played a large role in reducing imports of illegal wood from high-risk source countries including China.

**Union of
Concerned Scientists**

The full document is available for viewing at:

<https://docs.house.gov/meetings/II/II13/20240214/116787/HHRG-118-II13-20240214-SD004.pdf>



The impacts of the Lacey Act Amendment of 2008 on U.S. hardwood lumber and hardwood plywood imports

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ABSTRACT

The Lacey Act of 1900 was amended on May 22, 2008, to prohibit the import of illegally sourced plant materials and products manufactured from them into the United States and its territories, and to similarly ban their interstate transport. Trade theory suggests that the effect of the new law would be to reduce the flow of illegally sourced fiber into the United States, increasing prices. Monthly U.S. import data on tropical lumber (January 1989–June 2013) and hardwood plywood (January 1996–June 2013) quantity and unit value were used to estimate alternative statistical models that quantify the impact of the 2008 Lacey Act Amendment on import prices and import quantities of products from potential source countries. Results show that the Amendment's quantity effects are generally negative and double in magnitude in percentage terms than the price effects, consistent with expectations of the effects of a backwards shift in foreign supply against an elastic import demand. Models indicate that there have been double-digit percentage increases in prices and decreases in quantities of tropical lumber imports from Bolivia, Brazil, Indonesia, Malaysia, and Peru. Similarly large changes in hardwood plywood import prices and quantities from Brazil, Indonesia, and Malaysia have occurred, while smaller, and in some cases statistically insignificant, changes have been observed for hardwood plywood imports from China, Ecuador, and Taiwan.

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1. Introduction

The Lacey Act is a U.S. wildlife protection and anti-trafficking statute that makes it a crime to import onto U.S. territory or to transport across any state line within the U.S. or its territories any plant or animal species or derivative product made with such plants or animals that were obtained illegally. The original Lacey Act of 1900 was focused especially on the trafficking of illegally acquired wildlife, while later amendments expanded its concern to include plants. The Lacey Act Amendment of May 22, 2008¹ includes for the first time any tree species illegally obtained in the country of origin. Any product containing illegally obtained tree material (e.g., wood, paper, pulp) is now banned for import and interstate trade. Importers must also, as of December 15, 2008, file Plant and Plant Product Declaration form 505 that lists any and all tree species being imported. Although the date when this form was required upon importation varied from product to product, the Amendment stipulates that importers must adhere to the requirements regarding legal sourcing immediately.

The Lacey Act Amendment of 2008 (LAA) was enacted most proximately as a way of reducing aggregate demand for illegally obtained timber products globally. Although the United States consumes a

relatively small share of wood exported by countries suspected of having high rates of illegal logging (Seneca Creek Associates, 2004; Li et al., 2008), having such material entering global markets serves to depress world wood product prices, indirectly and negatively affecting U.S. producers. Moreover, with the LAA's "due care" requirement, the U.S. has sought to set an example of what importing countries could do to help discourage illegal logging, with the hope of leading others to carry out similar policies and programs. Indeed, in 2010, the European Union enacted EU Regulation No 995/2010 (EU Timber Regulation or EUTR), which similarly bans the import of illegally sourced fiber and requires importers of such products into EU member countries to carry out "due diligence" in the tracking of imported timber products.

Measures such as the LAA and EUTR are part of a larger set of policies and programs designed to discourage illegal fiber production worldwide. The U.S., for example, operates bilateral technical assistance programs that work with the forest sector in many suspected source countries. Sometimes these efforts are coupled with free trade arrangements—for example, the U.S. Peru Trade Promotion Agreement of 2006 (Office of the United States Trade Representative, 2007). The European Union has similarly targeted programs of institution building, including the centerpiece Forest Law Enforcement, Governance and Trade (FLEGT) program. Several other countries also work actively on a bilateral basis to address illegal fiber sourcing through trade measures and institution building, as well. The Asia-Pacific Economic Cooperation economic forum established in 2011 an Expert Group on Illegal Logging and Associated Trade to seek out potential solutions.

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¹ The Lacey Act was amended in the Food, Conservation, and Energy Act of 2008 (P.L. 110-234, 122 Stat. 923).

The full document is available for viewing at:

<https://docs.house.gov/meetings/II/II13/20240214/116787/HHRG-118-II13-20240214-SD005.pdf>

Mongabay Series: Indigenous Peoples and Conservation, Latin America
Safety of Peru's land defenders in question after killing of Indigenous leader in the Amazon

Mongabay News, December 7, 2023 by Geraldine Santos, Gloria Alvitres

<https://news.mongabay.com/2023/12/safety-of-perus-land-defenders-in-question-after-killing-of-indigenous-leader-in-the-amazon>

Quinto Inuma was killed on November 29 while traveling to the Santa Rosillo de Yanayacu community in Peru's Amazon following a meeting of environmental defenders.

For years, the Indigenous Kichwa leader had been receiving threats for his work trying to stop invasions, land trafficking, drug trafficking and illegal logging in his community, forcing him to rely on protection measures from the Ministry of Justice.

After Inuma's death, a group of 128 Indigenous communities released a statement appealing for justice and holding the Peruvian state responsible for its inaction and ineffectiveness in protecting the lives of human rights defenders in Indigenous territories. Several other Indigenous leaders who receive threats have requested protection measures from the state but have not gotten a response.

According to an official in the Ministry of Justice, providing the Kichwa leader with protection measures was very complex because he lived in a high-risk area. The only thing that could be done, they said, is to provide permanent police protection, which wasn't possible for the local police.

Kichwa leader Quinto Inuma Alvarado, president the Santa Rosillo de Yanayacu community, was murdered last Wednesday, November 29, in the San Martin region of the Peruvian Amazon. The crime took place around 5 p.m. when the activist was traveling with several relatives on the Yanayacu River. When his boat hit a tree and got stuck, a group of masked men ambushed him, shooting him several times.

Days before, in the city of Pucallpa, in the region of Ucayali, Inuma informed other environmental defenders and activists of what was happening in his community: invasions, land trafficking, drug trafficking and illegal logging. It wasn't the first time that he'd spoken out. But no one in attendance knew it would be the last time he would.

"They murdered him for defending the community from loggers," his nephew Victor Inuma told Mongabay Latam. "My uncle had been demanding police intervention since the pandemic. No one listened to him . . . We ask that this be investigated. We're unprotected without him now."



Quinto Inuma carried out patrols in the forest with other members of the Santa Rosillo de Yanayacu community.

Community vice president Meister Inuma Pérez and Inuma's niece Axceldina Tapullima were also on the boat during the ambush. Inuma Pérez had to hide in the forest to avoid being killed and Tapullima was shot in the leg.

Seven other Indigenous leaders have requested protection from the Ministry of Justice because of similar threats, according to Marisol Garcia, the Kichwa leader of the Chazuta community. None of them have gotten a response. "I myself don't have protection. Every time we complain, they say they aren't serious cases," she said. "We know that those protection measures don't help but we ask for them anyway so there's a record when we're murdered."

Years of threats

"We're really shocked by what happened and it's a big loss for our people," said Marisol Garcia Apagueño, also president of the Federation of Kechua Chazuta Amazonas Indigenous Peoples (FEPIKECHA). "On several occasions, we've spoken out about the problems in Santa Rosillo de Yanayacu. We've spoken with many authorities. Years ago, a commission even met with the Ministry of Justice and Human Rights, an institution that monitors the cases of threatened defenders."

A day after the crime, a special team of prosecutors and police visited the community to collect information from witnesses and seek out the person responsible. The police are currently in charge of protecting the Inuma family, according to Angel Gonzalez, director of Human Rights Policies and Management of the Ministry of Justice (MINJUSDH). The case is being handled by regional prosecutor Miguel Maquera Ticona from an office of the attorney general that specializes in human rights and interculturality.

"The law doesn't mention reparations for family members of murdered defenders, but we're going to do everything we can to support them throughout the judicial process," Gonzalez said. "We're also going to send a detailed report to the public ministry and judicial officials."

This wasn't the first attack against Quinto Inuma. In July 2021, a plane had to evacuate the Kichwa leader from his community after drug traffickers beat him up. The incident took place days after the prosecutor's office visited the community to verify the presence of illegal coca plantations.

Quinto Inuma and his family were gone for two months, staying in the city of Tarapoto, 12 hours away by river, where the Ministry of Justice had arranged for their stay. The Indigenous leader questioned his temporary transfer out of the community because the other residents there, who were also threatened by drug traffickers, had to stay behind. Eventually, he decided to return to Santa Rosillo de Yanayacu.

"Imagine what would happen to everyone else if we just left all of those who defended the Amazon and withdrew our complaints out of fear. The ones left would be at the mercy of the loggers and drug traffickers. That's why it isn't as easy for me to just leave," Quinto Inuma told Mongabay Latam two years ago.



Members of the Santa Rosillo de Yanayacu community constantly spoke out about the advance of logging and drug trafficking.

After Inuma's death, the Coordinator for the Development and Defense of the Indigenous Peoples of the San Martin Region (CODEPISAM)—which brings together 128 Indigenous Kichwa and Awajun communities from eight local federations—released a statement appealing for justice.

“We condemn the death of Quinto Inuma Alvarado, our Kichwa brother, a defender of his community's territory. We hold the Peruvian state responsible for its inaction and ineffectiveness in protecting the lives of human rights defenders in Indigenous territories.”

The statement referred to the inaction of the state in the face of the threats and crimes. “After many months of advocacy, the early warning alert was activated within the framework of the Protocol for the Protection of Human Rights Defenders of the Ministry of Justice, which didn't carry out some of the measures adopted in the resolution, such as a visit of the Minister [of Justice and Human Rights] to the community and support for titling of the communal territory since 2020.”

It also said that Inuma “went to the Specialized Environmental Prosecutor's Office (FEMA) and the Anti-Drug Prosecutor's Office begging for prosecutor proceedings that were postponed more than a dozen times.”

The day after Inuma's death, several important officials arrived to the community to support the investigation, including Vice Minister of Human Rights and Access to Justice Luigino Pilotto; Vice Minister of Strategic Development of Natural Resources Mariela Cánepa; and Vice Minister of Interculturality José Rivadeneyra. Also joining the delegation were the Vice Minister of Internal Order Miguel Nuñez; the General Commander of the National Police of Peru Jorge Angulo; head of the Dirincri Homicide Investigation Division Victor Revoredo; and organized crime prosecutor Jorge Chávez Cotrina.

Protections, but only on paper

On several occasions, Inuma spoke with Mongabay Latam hoping to publicize the threats he and his family were receiving. At first, he asked not to be cited in Mongabay's reporting, but as the threats got worse, he decided to go public with his comments. In March 2021, Inuma also explained the dangers of his situation to the Inter-American Commission on Human Rights.

That same year, as a protective measure, the Ministry of Justice applied its Protocol for Human Rights Defenders. His brother Manuel Inuma was also listed in the program but “didn't receive any security,” according to the Indigenous leader. On more than one occasion Inuma told Mongabay Latam that the protective measures weren't clear to him and that in San Martin his safety still didn't feel guaranteed.

“The mechanism was impossible to put into practice,” said Cristina del Rosario Gavancho, an attorney with the Institute of Legal Defense (IDL). “The police always said that they didn't have the budget. They declined to go to Santa Rosillo de Yanayacu. In those last months, the Ministry of Interior, in charge of providing protection, stopped responding to his requests.”

Days before Inuma's death, Indigenous leaders from Huallaga, another community in the Amazon, met with the Ministry of Justice and Human Rights and discussed the security situation in San Martin. “On Monday the 27th, representatives of the Kichwa people met with the Human Rights Directorate of the Ministry of Justice, which is in charge of the Defenders Protocol, and discussed the lack of attention to the dangers being faced by leaders in San Martin,” Gavancho said.

She said the situation in Santa Rosillo de Yanayacu is serious because there isn't a government presence in the area or police station. To file a complaint, Quinto Inuma had to travel 12 hours to Tarapoto, where there's a police station in charge of security in the area. The trip became increasingly more dangerous because drug traffickers and loggers allegedly hid in the forest to observe him and plan an attack.

“They told us they were doing what they could with the little staff and budget they have,” Gavancho said. “They also said there wasn't support from the Ministry of Interior to carry out the operations and patrols or for the police to be present in threatened communities.”

Gonzalez, an official in the Ministry of Justice, said that “although Inuma did have a directorial resolution providing him with protection measures within the framework of the Protocol, in practice the situation for the Kichwa leader was very complex because he lived in a high-risk area.”

The official said that in these cases, the only thing that can be done is providing permanent police protection, something that wasn't possible for the police of Huimbayoc, the district where Santa Rosillo de Yanayacu is located.

On November 30, the Ministry of Culture, the Ministry of the Environment, the Ministry of Interior and the Ministry of Justice released a statement on social media lamenting the death of Quinto Inuma and said they would begin an investigation. The Ministry of Culture and Ministry of Interior didn't respond to Mongabay Latam's request for comment.

Inuma isn't the only Indigenous leader who was in danger. "There are other cases of defenders in San Martin that filed early alert request months ago and don't have the document or the response from the Ministry of Justice," Gavanchos said.

The fight for a land title

In June 2015, the Santa Rosillo de Yanayacu community was recognized by the regional San Martin government as a Kichwa community located in the district of Huimbayoc. However, the community said the titling process hasn't moved forward. Such a title would in theory give the community a buffer against land invaders operating in and nearby the community's ancestral lands. A year ago, then-director of Land Titling and Rural Cadastre of the Regional Directorate of Agriculture William Rios Trigoso told Mongabay Latam that there were problems carrying out georeferencing and territorial demarcation because of the conflicts between Indigenous residents and outsiders.

The former official said there are two groups in the community: the Indigenous Kichwa requesting titling for their territory and the outsiders demanding legal recognition of individual properties.

"The group of outsiders who live within the community disagree with the titling of the land as a whole," Victor Inuma, the nephew of the murdered activist, said. "We know they were the ones who hired the hitmen."

Mongabay was not able to independently confirm this allegation.

Quinto Inuma and leader of the Santa Rosillo de Yanayacu community had managed to win financing for a project by the Socio-Environmental Fund of Peru that would improve monitoring systems in the forest. "The Apu project was proposing the installation of internet, the use of GPS and new tools the Kichwa could use to alert and report loggers as they cut down trees. It had already managed to get environmental monitoring training. He'd been involved in monitoring women leaders in the community and was happy with his progress when he returned home," said president of the Socio-Environmental Forum of Peru Lilyan Delgadillo.

Delgadillo said the last communication she had with Inuma was on November 27, two days before his death. On his trip back, he was accompanied by one of the leaders that participated in the meeting, Axceldina Tapullima, who was shot during the ambush. "The lives of women defender in Santa Rosillo de Yanayacu are also in danger," she said.

The dangers faced by Indigenous leaders defending their territories is on the rise. Global Witness reported that at least 177 environmental and land defenders were killed last year around the world, with the majority of killings taking place in Latin America, and that Indigenous people suffer from constant violence. Fifteen environmental defenders were killed in Peru between 2020 and 2023 while fighting for their land, according to the National Human Rights Coordinator of Peru.

February 13, 2024

Hon. Bruce Westerman, Chairman
Hon. Raul Grijalva, Ranking Member
Natural Resources Committee
U.S. House of Representatives
Washington, DC 20515

Re: Opposition to H.R. 6784, the “ESA Flexibility Act,” and H.R. 7157, the
“Strengthen Wood Product Supply Chain Act”

Dear Chairman Westerman, Ranking Member Grijalva:

On behalf of our organizations and our millions of members and supporters, we write to express our strong opposition to H.R. 6784, the ESA Flexibility Act, and H.R. 7157, the Strengthen Wood Product Supply Chain Act.

If passed, H.R. 6784 would eviscerate the very foundation of the Endangered Species Act and cause unprecedented harm to our nation’s most imperiled animals and plants. This extreme bill would make the Act’s automatic, full-strength protections for species newly listed as endangered voluntary, allowing the U.S. Fish and Wildlife Service or NOAA Fisheries to issue weaker, species-specific rules specifying prohibited activities. While Congress gave the Services flexibility under section 4(d) to issue such rules for *threatened* species, the Act and its legislative history are unambiguously clear that *endangered* species are to always receive the full suite of protections given their more vulnerable status.¹ By eliminating the mandate that endangered species receive full, automatic protections, H.R. 6784 would render the more protective “endangered” status virtually meaningless, undercutting the very cornerstone of the Endangered Species Act and ultimately placing hundreds of species at greater risk of extinction.

For example, under H.R. 6784 the Service could allow the oil and gas industry to continue building well pads, access roads, and other destructive fossil fuel infrastructure, even if those activities are driving species like the dunes sagebrush lizard and Texas kangaroo rat extinct.

H.R. 6784 would also expose the Services’ listing program to increased political pressure from special interests, which is already a persistent problem. As we have seen with many existing 4(d) rules for threatened species, industry groups routinely seek exemptions from the take prohibition for their particular industries, undermining the scientific integrity of the listing process and ultimately resulting in species receiving less protection than needed. Further, the Fish and Wildlife Service’s listing program already lacks the necessary funding and resources to complete even the most basic duties under the Act, facing a backlog of more than 300 species awaiting consideration for protection. If the agency is allowed to develop individual rules for endangered species, a hostile administration could use this discretion to further burden this already overwhelmed program, ultimately resulting in increased extinction risk for animals and plants across the country. For these reasons, we urge you to oppose H.R. 6784.

We also oppose H.R. 7157, the Strengthen Wood Product Supply Chain Act, which would impose unreasonably burdensome requirements on customs officials when they detain plant or wildlife products, including wood products, that are suspected to have been imported in violation of the Lacey Act. Customs officials are often one of the first lines of defense in preventing illegal timber and other shipments from entering the United States. If passed, the bill would create unrealistic time frames for officials to inspect items seized at the border, weakening enforcement and

¹ See H.R. Rep. 93-412 (1973).

allowing potentially harmful products into the country. For these reasons, we urge you to oppose this bill.

Sincerely,

| | |
|---|--|
| Center for Biological Diversity | Kentucky Heartwood |
| American Bird Conservancy | Klamath Forest Alliance |
| Animal Legal Defense Fund | Los Angeles Audubon Society |
| Animal Welfare Institute | Northern California Council, Fly Fishers International |
| Cascadia Wildlands | NRDC (Natural Resources Defense Council) |
| Christian Council of Delmarva | Oceanic Preservation Society |
| Defenders of Wildlife | Project Coyote |
| Earthjustice | Resource Renewal Institute |
| Endangered Habitats League | Save the Manatee Club |
| Endangered Species Coalition | Sierra Club |
| Environmental Investigation Agency | The #RelistWolves Campaign |
| Environmental Protection Information Center-EPIC | The Conservation Angler |
| Friends of the Earth | The Humane Society of the United States |
| Friends of Wisconsin Wolf and Wildlife | The Urban Wildlands Group |
| Great Lakes Wildlife Alliance | Washington Wildlife First |
| Heartwood | Western Watersheds Project |
| Humane Society Legislative Fund | WildEarth Guardians |
| International Marine Mammal Project of Earth Island Institute | |



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**Congress of the United States
Washington, DC 20515**

February 13, 2024

Hon. Bruce Westerman, Chairman
Hon. Raul Grijalva, Ranking Member
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Westerman and Ranking Member Grijalva:

I write today to express my serious concerns with H.R. 7157, the “Strengthen Wood Product Supply Chains Act.” In the name of making things better for the wood products industry, this bill would actually do the opposite. It threatens to significantly undermine Lacey Act enforcement efforts targeting the illegal trade in timber, wood products, and wildlife.

Leading up to the enactment of the Lacey Act plant amendments in 2008, I worked closely with fellow legislators on both sides of the aisle and a strong coalition of industry, labor, and environmental groups to ensure the United States took action to help bring an end to the egregious practice of illegal logging, the third largest transnational crime. Our goal was to protect some of the world’s most biodiverse and vulnerable forests and to offer a more level playing field to U.S. companies that play by the rules. Illegal logging harms lives and livelihoods, both at home where it costs the U.S. forest products industry more than \$1 billion every year, and around the world where it is associated with serious human rights violations including the degradation of Indigenous communities. When effectively implemented, the Lacey Act amendments protect the environment, reward honest businesses, and prevent rampant corruption.

In the years since its passage, we have seen the law have a positive impact. I am encouraged that many industry stakeholders are developing due care strategies to ensure illegal timber does not enter their supply chains. Yet the steady caseload of illegal wood products entering the United States demonstrates the very real need for more effective enforcement against those companies that turn a blind eye to illegal sourcing and others who knowingly trade in it. Now is the time to strengthen the Lacey Act amendments, not undermine them.

However, H.R. 7157 would hamper the federal agencies tasked with combatting the import of illegally sourced wood products. It would limit the time allotted to agencies to conduct a proper investigation into suspect imports of wood products, allow companies to remove suspect timber and wildlife products from government control while an active investigation is ongoing, and require federal officials to disclose the justification and evidence for a detained shipment within an unreasonably short time period. Taken together, these new restrictions will impede effective enforcement of the Lacey Act.

As written, H.R. 7157 opens the door to smugglers and illegal loggers, much to the detriment of honest U.S. industry actors, forests, wildlife and local peoples. I urge you to reconsider your support for this legislation and address your concerns without compromising robust enforcement.

Sincerely,

EARL BLUMENAUER,
Member of Congress

Submissions for the Record by Rep. Hoyle

HARDWOOD FEDERATION
Washington, DC

February 16, 2024

Hon. Cliff Bentz, Chairman
Hon. Jared Huffman, Ranking Member
House Natural Resources Committee
Subcommittee on Water, Wildlife and Fisheries
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Bentz and Ranking Member Huffman:

On behalf of the Hardwood Federation, the united voice of hardwood lumber manufacturers based in Washington, DC, please review the below industry perspectives related to H.R. 7157, the Strengthen Wood Product Supply Chain Act, the subject of your panel's hearing conducted on February 14, 2024. This bill, which would attempt to amend the Lacey Act—a statute that garners the full support of our industry, as currently written—outlines provisions that would undermine statutory protections necessary to prevent the importation of illegally harvested wood and wood products into the United States; products that compete unfairly with domestic producers and manufacturers.

By way of background, the Hardwood Federation has been a long-time proponent of international efforts to suppress illegal logging and trade. The Federation played an active and instrumental role in a coalition of forest products industry, environmental and labor groups to advocate for passage of the 2008 amendments. Illegally sourced fiber is a serious detriment to the U.S. industry's sustainability, the global environment, and the international economy. The flow of illegally sourced wood into the domestic market has real world impacts, including the decimation of fragile ecosystems, and places high quality domestic manufacturing jobs at risk. Prior to implementation of key Lacey Act protections, the American Forest & Paper Association commissioned a study in 2004 that estimated that illegal logging cost the U.S. forest products industry approximately \$1 billion annually in lost export opportunities and depressed U.S. wood prices. In 2016, eight years after implementation, a study by the U.S. Fish and Wildlife Service, found that overall timber imports to the U.S. market declined by 24 percent as a result of Lacey Act implementation. In 2015, the Union of Concerned Scientists released a study showing that the import of illegally sourced wood products declined by 40 percent since enactment of the 2008 Amendments, demonstrating the strength of the statute as currently written.

Release and Seizure Requirements

Unfortunately, H.R. 7157 would codify arbitrary and compressed deadlines for the disposition of claims related to the detention of potentially illegally sourced wood, thereby facilitating the entry of illegal materials into the U.S. that compete unfairly with the domestic marketplace. It would constrain inspectors' ability to conduct a thorough due diligence assessment, thereby preventing an effective and well-informed decision to dispatch or discard product, as required by the existing law. For example, a key provision of the bill outlines narrow "release or seizure" requirements and imposes a 30-day time limit on what would be a final disposition to a Notice of Detention, which is the bill's proposed trigger for the inspection process. This provision would force the release of detained products regardless of their respective stage in the testing and inspection process, undermining due diligence.

Transportation of Detained Merchandise

The provision outlining the "transportation of detained merchandise" poses more risks to the efficacy of the Lacey Act. This section lays the groundwork for an option to transfer goods to a venue beyond the jurisdiction of enforcement officers after just 10 days following a formal Notice of Detention. Although the bill appears to carve out a loophole for USDA to affirm that such action would not undermine the intent of the Act, the carve-out could nevertheless impede the ability to conduct compliance assessments by storing materials in locations not easily available inspecting agencies. This provision outlines an arbitrary time frame that would

hinder the full review and testing required to reach an informed decision about the final disposition of the product.

Strained Federal Resources

H.R. 7157 raises concerns not only with the substance of the bill as currently written, but also by what it does not address. Unfortunately, the bill fails to authorize additional resources that are necessary to the detention and inspection process. This creates more fiscal constraints within enforcement agencies that would further hinder stringent due diligence and strict enforcement of the existing Lacey Act law.

Although we appreciate efforts to amend the Lacey Act or any other federal initiative in a manner that promotes certainty in the regulatory process, H.R. 7157 would establish timelines that would undercut the ability to conduct the due diligence necessary to prevent the import of illegally sourced wood products into the domestic market. Such an outcome would place U.S. producers and manufacturers at a severe competitive disadvantage.

Thank you very much for the opportunity to comment on this important issue. We look forward to working on issues that have a major impact on the health of the hardwood sector.

Sincerely,

DANA LEE COLE,
Executive Director

