

RELIEF ACT

JULY 17, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3210]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3210) to amend the Lacey Act Amendments of 1981 to limit the application of that Act with respect to plants and plant products that were imported before the effective date of amendments to that Act enacted in 2008, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Retailers and Entertainers Lacey Implementation and Enforcement Fairness Act” or the “RELIEF Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Amendments to the Lacey Act Amendments of 1981 were enacted as part of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246).

(2) The 2008 amendments were intended to level the playing field for American businesses engaged in the responsible harvest, shipment, manufacture, and trade of plants and plant products whose prices had been undercut by a black market fueled by irresponsible and illegal taking of protected plants around the globe.

(3) The 2008 amendments were overly broad and their enforcement as enacted could criminalize actions of a good-faith owner, purchaser, or retailer of a plant or plant product, subjecting them to penalties that include forfeiture, fines, and imprisonment.

(4) Sanctions for violating the 2008 amendments should be proportional to the act in violation. An individual who is not in the commercial shipping business should not be held to the same standard of compliance under that Act.

(5) Individuals fear that they risk incurring those penalties by merely owning or traveling with a vintage musical instrument, antique furniture, or another wood product.

(6) The Department of the Interior and Department of Justice have stated “people who unknowingly possess a musical instrument or other object containing wood that was illegally taken, possessed, transported or sold in violation of law and who, in the exercise of due care would not have known that it was illegal, do not have criminal exposure.”

(7) It is necessary to clarify the 2008 amendments so that legally harvested new plant products can enter the market place.

(8) Declaration requirements for plant products imported or manufactured prior to May 22, 2008, are unreasonable since the sourcing of plant products was not previously required by law.

(9) Federal law enforcement officials should not engage in overzealous enforcement action under the 2008 amendments.

(10) It is important to ensure that the appropriate agencies have the necessary funding to implement the current phases of the declaration requirement before considering any future phases.

(11) The appropriate agencies have the responsibility of providing a publicly accessible database so that everyone can be notified of the foreign laws of countries as they apply to the importation of plants.

SEC. 3. TREATMENT OF PLANTS AND PLANT PRODUCTS UNDER LACEY ACT AMENDMENTS OF 1981.

(a) **LIMITATION ON APPLICATION OF ACT TO CERTAIN PLANTS AND PLANT PRODUCTS.**—The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.) is amended by redesignating section 9 as section 10, and by inserting after section 8 the following:

“SEC. 9. LIMITATION ON APPLICATION TO CERTAIN PLANTS AND PLANT PRODUCTS.

“This Act does not apply with respect to—

“(1) any plant that was imported into the United States before May 22, 2008;

or

“(2) any finished plant or plant product the assembly and processing of which was completed before May 22, 2008.”

(b) **LIMITATIONS ON APPLICATION OF PLANT DECLARATION REQUIREMENT.**—Section 3(f) of such Act (16 U.S.C. 3372(f)) is amended—

(1) in paragraph (1), by inserting “that is entered for consumption (as that term is defined in part 141.0a of title 19, Code of Federal Regulations, as in effect on the date of enactment of the Retailers and Entertainers Lacey Implementation and Enforcement Fairness Act)” after “plant”; and

(2) in paragraph (3)—

(A) by inserting “(A)” before “Paragraphs (1)”; and

(B) by adding at the end the following:

“(B)(i) In the case of a plant product that is derived from a tree, a declaration under paragraph (1) or (2) is not required to include information referred to in subparagraph (A), (B), or (C) of that paragraph unless the plant product is solid wood.

“(ii) The Administrator of the Animal and Plant Health Inspection Service shall issue regulations that define the term ‘solid wood’ for purposes of this subparagraph.”

(c) **APPLICATION OF CIVIL FORFEITURE LAWS.**—Section 5(d) of such Act (16 U.S.C. 3374(d)) is amended—

(1) by inserting “(1)” before “Civil”;

(2) by inserting “, except as provided in paragraphs (2) and (3) of this subsection” before the period at the end; and

(3) by adding at the end the following:

“(2) Subsection (d)(4) of section 983 of such chapter, and the second sentence of subsection (a)(1)(F) of such section, shall not apply to plants or plant products.

“(3) This section is the sole authority for civil seizure or forfeiture actions alleging, or predicated upon, a violation of section 3.”

SEC. 4. LIMITATION ON APPLICATION OF FOREIGN LAWS.

(a) **PROHIBITED ACTS.**—Section 3(a) of such Act (16 U.S.C. 3372(a)) is amended—

(1) in paragraph (2)(B), in clause (ii) and in clause (iii), by striking “foreign law” and inserting “foreign law that is directed at the protection, conservation, and management of plants”; and

(2) in paragraph (3)(B), in clause (ii) and in clause (iii), by striking “foreign law” and inserting “foreign law that is directed at the protection, conservation, and management of plants”.

(b) CIVIL PENALTIES.—Section 4(a)(1) of such Act (16 U.S.C. 3373(a)(1)) is amended by striking “foreign law” and inserting “foreign law that is directed at the protection, conservation, and management of plants”.

SEC. 5. REVIEW AND REPORT.

Section 3(f) of such Act (16 U.S.C. 3372(f)) is amended—

(1) in paragraph (4), by striking “Not later than two years after the date of enactment of this subsection,” and inserting “Not later than 180 days after the date of enactment of the Retailers and Entertainers Lacey Implementation and Enforcement Fairness Act,”; and

(2) in paragraph (5)—

(A) by striking “Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary” and inserting “Not later than 180 days after the date the Secretary completes the review under paragraph (4), the Director of the United States Fish and Wildlife Service”;

(B) by striking “and” after the semicolon at the end of subparagraph (B);

(C) by striking the period at the end of subparagraph (C) and inserting “; and”; and

(D) by adding at the end the following:

“(D) an evaluation of the feasibility of creating and maintaining a publicly available database of laws of foreign countries from which plants are exported.”.

PURPOSE OF THE BILL

The purpose of H.R. 3210, as ordered reported, is to amend the Lacey Act Amendments of 1981 to limit the application of that Act with respect to plants and plant products that were imported before the effective date of amendments to that Act enacted in 2008.

BACKGROUND AND NEED FOR LEGISLATION

In 1900, Congress enacted legislation to support the efforts of states to protect their resident wildlife. The law, known as the Lacey Act, was designed to prevent hunters from killing game in one state and escaping prosecution by moving it across state lines. It accomplished that goal by criminalizing both the delivery for shipment and the shipment of parts or bodies of “wild animals or birds” killed in violation of a state law. If convicted of violating of what became the first federal law to address wildlife protection nationwide, the maximum fine was \$200 for those receiving “such articles” and \$500 for those who transport them.

In the past 112 years, the Lacey Act has been amended with significant modifications in 1935, 1981 and 2008. In the 1935 amendments, the Act was expanded to include foreign laws which in the case of fish and wildlife meant about 100 foreign statutes. It defined entities covered by the Act to include “person, firm, corporation or association,” targeted interstate shipments “by any means whatsoever,” covered animals or birds “captured, killed, taken, shipped, transported, carried, purchased, sold or possessed” in violation of an underlying law and increased the maximum fine to \$1,000 and up to six months in jail.

In 1981, the Lacey Act was further amended to establish a criminal penalty for those who knowingly committed an act prohibited by the law and knew, or in the exercise of due care should have known, of the illegal nature of the wildlife at issue. It established the principle of “strict liability” which means that the government no longer has to prove that a person knew of the Lacey Act prohibi-

tions and intended to violate them. Federal wildlife agents were also allowed to carry firearms, make warrantless arrests for felony violations and execute search and arrest warrants. The United States became the first nation to ban the importation and sale of illegally obtained timber and other plant products.

While never specifically debated in either the U.S. House of Representatives or the U.S. Senate, significant modifications to the Lacey Act were incorporated within Section 8204 of the 2008 Farm bill. Under the guise of the Lacey Act, it is now unlawful to acquire, import, export, transport, sell, receive, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken in violation of the laws of a state or any foreign law that protects plants. A plant is specifically defined as “any wild member of the plant kingdom, including roots, seeds, parts, or products thereof, and including trees from either natural or planted forest stands.” It is also unlawful for any person to submit falsified documents related to any plant or plant product and to import a covered item without filing an accompanying declaration form that identifies the scientific name of the plant, value of the importation, quantity of the plant and the name of the country from which the plant was harvested.

A fundamental goal of this 2008 law was to stop the importation of illegally harvested trees. The World Bank had estimated that “illegal logging costs governments approximately \$5 billion annually in lost royalties and an additional \$10 billion in lost revenues.” One of the cosponsors of the 2008 amendments, Senator Lamar Alexander of Tennessee, discussed the economic impact of illegal timber imports and stated that, “It is estimated [this practice results in] \$1 billion a year in depressed prices and reduced exports. It depresses prices \$500 million to \$700 million annually. It means the people who play by the rules in the United States are having money taken from them by criminals who don’t play by the rules in other countries.”

The 2008 amendments also tried to reaffirm the “innocent owner” defense that was established in the Civil Asset Forfeiture Reform Act of 2000 (CAFRA). This effort, which was supported by the proponents of the bill, was ultimately unsuccessful because products potentially in violation of the Lacey Act are still considered “contraband” or otherwise “illegal to possess” by the Department of Justice. Therefore, these items, which now include wood products, are treated the same way as illegal drugs, stolen pieces of art or bald eagle feathers. CAFRA makes it clear that “no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.”

The 2008 amendments also did not overturn the 2005 decision of the Ninth Circuit Court of the United States v. 144,774 Pounds of Blue King Crab case. In that case, the court found that “King crab taken in violation of Russian fishing regulations is subject to forfeiture under the Lacey Act.” The court went on to say that “although the language of CAFRA is ambiguous with regard to the definition of contraband, we need not resolve this issue because if the crab at issue here was imported, received, or acquired in violation of the Lacey Act, it constitutes ‘property that is illegal to possess.’”

With the expanded Lacey Act definition to include all plant and plant products, thousands of American businesses who had little exposure to the Lacey Act have now become part of the regulated community. This would include musical instrument makers, furniture manufacturers, flooring companies, toy manufacturers, the auto industry, boat builders, and textile manufacturers. These companies must now comply with not only all federal, state and tribal laws but thousands of foreign laws, regulations, resolutions, decrees and “other such legally binding provisions that foreign governments may promulgate.” This is despite the fact that there is no database of these laws and no one in the federal government who can conclusively state how many “foreign laws” were triggered by the 2008 amendments.

During the public hearing on H.R. 3210, the Deputy Assistant Secretary for Fish and Wildlife and Parks within the Department of the Interior was asked how many foreign laws were triggered by the 2008 amendments. Her response was that “I don’t have that number. We don’t know the exact number of laws that are triggered.” In addition, she was asked if there was a clearinghouse or Web site with this information where one can go to a single Web site. Her response was “I don’t believe—there is not a government-sponsored clearinghouse or list, and there is not a government translation of all of the foreign laws, and as far as I am aware, there is not a comprehensive one-stop-spot provided outside of the government for those laws.”

Furthermore, according to the Congressional Research Service, “the 2008 Amendments allow enforcement of foreign laws that are not directly related to conservation or U.S. jobs, such as failure to pay foreign stumpage fees, or shipping wood in violation of a country’s export restrictions.”

The Animal and Plant Health Inspection Service (APHIS) has, because of the complexity of obtaining and filing the necessary information, been careful in implementing the new declaration requirement of the 2008 amendments. APHIS has issued regulations covering 24 of what may end up being 24,000 categories of products listed on the Harmonized Tariff Schedule Codes that will be covered by the Lacey Act. Even with this limited number, APHIS is receiving 40,000 declaration forms each month and it has calculated that it is costing the regulated community some \$56 million to comply with this requirement. When fully implemented, the agency believes it could receive up to 1 million documents a month at an estimated cost in excess of \$500 billion annually.

As part of the 2008 amendments, APHIS was directed to submit a report to the Congress by November 22, 2010, on the effectiveness of the declaration document and to provide any suggested improvements to the Act. Regrettably, this report is now nearly two years overdue, and the Committee urges the agency to transmit its findings to Congress at its earliest convenience.

In an effort to correct some unintended aspects of the 2008 amendments that are hurting U.S. businesses and costing jobs, H.R. 3210, the Retailers and Entertainers Lacey Implementation and Enforcement Fairness (RELIEF) Act was introduced by Congressman Jim Cooper (D-TN) and Congresswoman Marsha Blackburn (R-TN). The major provisions of this bill, as introduced, are to reestablish an “innocent owner” defense under the Civil Asset

Forfeiture Reform Act; limit the declaration requirement to solid wood items and direct the Administrator of APHIS to define the term “solid wood”; reduce the penalties for first time violations of the Lacey Act; direct the U.S. Fish and Wildlife Service to evaluate the feasibility of creating and maintaining a public database of all foreign laws; require the issuance of regulations on the creation of a product certification process; require the Federal Trade Commission to complete a report on the competitiveness in the domestic market for raw materials used in the manufacture of musical instruments; and exempt from the Lacey Act any plant imported into the United States prior to May 22, 2008, or plant product assembled and processed before that date.

During Full Committee consideration of the bill, the Committee adopted an amendment offered by Congressman John Fleming (R-LA) that modified one provision of the legislation, added a new provision on foreign law application and deleted four sections of the underlying bill.

Specifically, the reported bill would restore the “innocent owner” defense by declaring that in all civil asset forfeiture cases under the Lacey Act, the suspected products are not immediately deemed contraband or illegal to possess. The burden will remain with the claimant, and the language has no effect on criminal investigations or efforts to bring felony charges against a defendant who is accused of trafficking in illegal wood under the Lacey Act. It simply allows an individual to have his day in court to prove he acted with “due care,” which is defined as “that degree of care at which a reasonable prudent person could exercise under the same or similar circumstances.”

Second, H.R. 3210 as reported simply states that the Lacey Act would not apply to any plant imported and any finished plant or plant products that were assembled and processed prior to May 22, 2008—the effective date of the 2008 amendments. Despite the fact that over four years have passed, there has been no attempt to clarify this issue through the regulatory process. As a result, there remains a significant risk to individuals and companies who may have products, like guitars made with exotic woods, seized by the federal government. This provision, which is broadly supported, will statutorily solve this issue.

Third, the measure would restrict the application of a “foreign law” to those “directed at the protection, conservation and management of plants.” This is a simple clarification of an existing practice. The Fish and Wildlife Service has stated that “the Service has traditionally pursued investigations under the wildlife trafficking provisions of the Lacey Act only in circumstances where the underlying law (whether foreign, federal, state or tribal) on which Lacey Act charges are predicated is directly related to the protection, conservation and management of fish or wildlife. The agency takes the same approach in implementing its enforcement responsibilities with respect to plants protected under foreign law.”

Fourth, despite the questionable value of the documents, the RELIEF Act does not call for the elimination of declarations but does limit their application to “solid wood” products. During Subcommittee consideration of H.R. 3210, opponents of the legislation repeatedly stated that this would result in a “tiny” number of additional documents being filed. Like much of the criticism of this bill,

those comments are unfounded. In fact, APHIS has submitted a document to the Committee indicating that the number of documents as a result of the legislation would grow from 40,000 a month to 330,000 declarations per month. While the agency was unable to quantify the financial impact of these increased documents, it is difficult to objectively argue that an eight-fold increase in the number of filed documents is a “tiny” amount.

In addition, the comments of the Customs and Border Protection (CBP) agency on the importance of the declaration documents are telling. In a document provided to the Committee, the following conclusion appears:

As stated previously, CBP supports the overall goal of combating illegal logging; as such, it is exceptionally onerous to require information from the trade that may be beyond their ability to collect, when such data collection seems to provide no useful purpose. For the stated purpose of suppression of illegal foreign logging, an importers’ detailed knowledge of the genus/species of wood products have no logical nexus. If wood products are illegally harvested, then genus/species is wholly immaterial.

Finally, the federal government would be required to evaluate the feasibility of creating and maintaining a publicly available database of the laws of foreign countries relating to plant and plant products. If we are going to send an American citizen to prison for violating a law enacted by one of the 193 nations recognized by the United Nations, then at least there should be some public document containing a list of those foreign laws that he should not violate.

Despite unfounded rhetoric from the opponents of these modest changes, there is nothing in H.R. 3210, as amended, which in any way overturns, weakens or eviscerates the Lacey Act. This legislation does not affect any ongoing Lacey Act investigations and will not stop or hamper any efforts by the law enforcement community to arrest and prosecute those individuals or companies who engage in the trafficking of illegal harvested trees or products made from illegal wood. It will encourage sound business practices, save thousands of American jobs and most importantly, allow the federal government to focus on shutting down the crime syndicates that are the heart of illegal logging worldwide. The RELIEF Act is a modest effort to correct some unintended consequences of the changes made to the Lacey Act in 2008.

It is for this reason that the bill is supported by the American Association of Exporters and Importers, American Home Furnishings Alliance, Express Association of America, The Hosiery Association, International Wood Products Association, National Home Builders, the National Association of Manufacturers, the National Association of Music Merchants, National Songwriters Association, National Lumber and Building Materials, National Marine Manufacturers Association, National Retail Federation, Recreational Vehicle Industry Association, U.S. Chamber of Commerce, and Window and Door Manufacturers Association. These organizations represent small and large businesses employing millions of Americans that provide trillions of dollars in goods and services to the U.S. annual Gross National Product.

COMMITTEE ACTION

H.R. 3210 was introduced on October 14, 2011, by Congressman Jim Cooper (D-TN). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs. On May 8, 2012, the Subcommittee held a hearing on the bill. On June 7, 2012, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs was discharged by unanimous consent. Congressman John Fleming (R-LA) offered amendment designated .001; the amendment was adopted by voice vote. Congressman Edward Markey (D-MA) offered an amendment to the bill; the amendment was not adopted by a rollcall vote of 19 to 24, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: June 7, 2012

Recorded Vote #: 7

Meeting on / Amendment: **H.R. 3210** – An amendment offered by Mr. Markey.001 was NOT AGREED TO by a roll call vote of 19 yeas and 24 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA Chairman		X		<i>Mr. Heinrich, NM</i>	X		
<i>Mr. Markey, MA Ranking</i>	X			Mr. Benishek, MI	X		
Mr. Young, AK		X		<i>Mr. Lujan, NM</i>	X		
<i>Mr. Kildee, MI</i>	X			Mr. Rivera, FL		X	
Mr. Duncan of TN		X		<i>Ms. Sutton, OH</i>	X		
<i>Mr. Defazio, OR</i>	X			Mr. Duncan of SC		X	
Mr. Gohmert, TX		X		<i>Ms. Tsongas, MA</i>	X		
<i>Mr. Faleomavaega, AS</i>				Mr. Tipton, CO		X	
Mr. Bishop, UT		X		<i>Mr. Pierluisi, PR</i>	X		
<i>Mr. Pallone, NJ</i>	X			Mr. Gosar, AZ		X	
Mr. Lamborn, CO		X		<i>Mr. Garamendi, CA</i>	X		
<i>Mrs. Napolitano, CA</i>	X			Mr. Labrador, ID		X	
Mr. Wittman, VA		X		<i>Ms. Hanabusa, HI</i>	X		
<i>Mr. Hult, NJ</i>	X			Ms. Noem, SD		X	
Mr. Broun, GA		X		<i>Mr. Tonko, NY</i>	X		
<i>Mr. Grijalva, AZ</i>	X			Mr. Southerland, FL		X	
Mr. Fleming, LA		X		Mr. Flores, TX		X	
<i>Ms. Bordallo, GU</i>	X			Mr. Harris, MD		X	
Mr. Coffman, CO		X		Mr. Landry, LA		X	
<i>Mr. Costa, CA</i>	X			Mr. Runyan, NJ		X	
Mr. McClintock, CA		X		Mr. Johnson, OH		X	
<i>Mr. Boren, OK</i>	X			Mr. Amodei, NV		X	
Mr. Thompson, PA							
<i>Mr. Sablan, CNMI</i>							
Mr. Denham, CA							
				TOTALS	19	24	

Congressman John Garamendi offered amendment designated .002 to the bill; the amendment was not adopted by a rollcall vote of 18 to 25, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: June 7, 2012

Recorded Vote #: 8

Meeting on / Amendment: **H.R. 3210** – An amendment offered by Mr. Garamendi.002 was NOT AGREED TO by a roll call vote of 18 yeas and 25 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA Chairman		X		<i>Mr. Heinrich, NM</i>	X		
<i>Mr. Markey, MA Ranking</i>	X			Mr. Benishek, MI		X	
Mr. Young, AK		X		<i>Mr. Lujan, NM</i>	X		
<i>Mr. Kildee, MI</i>	X			Mr. Rivera, FL		X	
Mr. Duncan of TN		X		<i>Ms. Sutton, OH</i>	X		
<i>Mr. Defazio, OR</i>	X			Mr. Duncan of SC		X	
Mr. Gohmert, TX		X		<i>Ms. Tsongas, MA</i>	X		
<i>Mr. Faleomavaega, AS</i>				Mr. Tipton, CO		X	
Mr. Bishop, UT		X		<i>Mr. Pierluisi, PR</i>	X		
<i>Mr. Pallone, NJ</i>	X			Mr. Gosar, AZ		X	
Mr. Lamborn, CO		X		<i>Mr. Garamendi, CA</i>	X		
<i>Mrs. Napolitano, CA</i>	X			Mr. Labrador, ID		X	
Mr. Wittman, VA		X		<i>Ms. Hanabusa, HI</i>	X		
<i>Mr. Holt, NJ</i>	X			Ms. Noem, SD		X	
Mr. Broun, GA		X		<i>Mr. Tonko, NY</i>	X		
<i>Mr. Grijalva, AZ</i>	X			Mr. Southerland, FL		X	
Mr. Fleming, LA		X		Mr. Flores, TX		X	
<i>Ms. Bordallo, GU</i>	X			Mr. Harris, MD		X	
Mr. Coffman, CO		X		Mr. Landry, LA		X	
<i>Mr. Costa, CA</i>	X			Mr. Runyan, NJ		X	
Mr. McClintock, CA		X		Mr. Johnson, OH		X	
<i>Mr. Boren, OK</i>	X			Mr. Amodei, NV		X	
Mr. Thompson, PA							
<i>Mr. Sablan, CNMI</i>							
Mr. Denham, CA							
				TOTALS	18	25	

The bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by a rollcall vote of 25 to 19, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: June 7, 2012

Recorded Vote #: 9

Meeting on / Amendment: **H.R. 3210** – Adopted and favorably reported to the House of Representatives, as amended, by a roll call vote of 25 yeas and 19 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA Chairman	X			<i>Mr. Heinrich, NM</i>		X	
<i>Mr. Markey, MA Ranking</i>		X		Mr. Benishek, MI		X	
Mr. Young, AK	X			<i>Mr. Lujan, NM</i>		X	
<i>Mr. Kildee, MI</i>		X		Mr. Rivera, FL	X		
Mr. Duncan of TN	X			<i>Ms. Sutton, OH</i>		X	
<i>Mr. Defazio, OR</i>		X		Mr. Duncan of SC	X		
Mr. Gohmert, TX	X			<i>Ms. Tsongas, MA</i>		X	
<i>Mr. Faleomavaega, AS</i>		X		Mr. Tipton, CO	X		
Mr. Bishop, UT	X			<i>Mr. Pierluisi, PR</i>		X	
<i>Mr. Pallone, NJ</i>		X		Mr. Gosar, AZ	X		
Mr. Lamborn, CO	X			<i>Mr. Garamendi, CA</i>		X	
<i>Mrs. Napolitano, CA</i>		X		Mr. Labrador, ID	X		
Mr. Wittman, VA	X			<i>Ms. Hanabusa, HI</i>		X	
<i>Mr. Holt, NJ</i>		X		Ms. Noem, SD	X		
Mr. Broun, GA	X			<i>Mr. Tonko, NY</i>		X	
<i>Mr. Grijalva, AZ</i>		X		Mr. Southerland, FL	X		
Mr. Fleming, LA	X			Mr. Flores, TX	X		
<i>Ms. Bordallo, GU</i>		X		Mr. Harris, MD	X		
Mr. Coffman, CO	X			Mr. Landry, LA	X		
<i>Mr. Costa, CA</i>		X		Mr. Runyan, NJ	X		
Mr. McClintock, CA	X			Mr. Johnson, OH	X		
<i>Mr. Boren, OK</i>				Mr. Amodei, NV	X		
Mr. Thompson, PA							
<i>Mr. Sablan, CNMI</i>							
Mr. Denham, CA	X						
				TOTALS	25	19	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 3210—RELIEF Act

CBO estimates that implementing H.R. 3210 would have no significant impact on the federal budget. Enacting the legislation could reduce revenues from civil penalties collected under the Lacey Act (a law that prohibits trade in wildlife, fish, and plants that have been illegally taken, possessed, transported, or sold); thus, pay-as-you-go procedures apply. However, CBO estimates that any such reduction would be minimal. Enacting the bill would not affect direct spending.

H.R. 3210 would amend the Lacey Act to make it legal to possess certain plants that were imported and certain plant products that were produced prior to May 22, 2008. The bill also would exempt individuals from having to declare certain imported plant and tree products. Finally, the bill would require the U.S. Fish and Wildlife Service (USFWS) to evaluate certain enforcement procedures under the Lacey Act and report its findings to the Congress.

Based on information provided by the USFWS, CBO estimates that implementing the bill would have no significant impact on the agency's workload because it would not significantly change the way the agency enforces the Lacey Act. In addition, because the agency focuses its enforcement efforts on commercial trafficking and illegal logging, CBO estimates that reducing the number of plant products that are illegal to possess under the Lacey Act would have a minimal effect on the amount of civil penalties collected under the act.

H.R. 3210 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974,

this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that implementing H.R. 3210 would have no significant impact on the federal budget. Enacting the legislation could reduce revenues from civil penalties collected under the Lacey Act (a law that prohibits trade in wildlife, fish, and plants that have been illegally taken, possessed, transported, or sold); thus, pay-as-you-go procedures apply. However, CBO estimates that any such reduction would be minimal. Enacting the bill would not affect direct spending.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill, as ordered reported, is to amend the Lacey Act Amendments of 1981 to limit the application of that Act with respect to plants and plant products that were imported before the effective date of amendments to that Act enacted in 2008.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

LACEY ACT AMENDMENTS OF 1981

* * * * *

SEC. 3. PROHIBITED ACTS.

(a) OFFENSES OTHER THAN MARKING OFFENSES.—It is unlawful for any person—

(1) * * *

(2) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce—

(A) * * *

(B) any plant—

(i) * * *

(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any ~~foreign law~~ *foreign law that*

is directed at the protection, conservation, and management of plants; or

(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any **foreign law** *foreign law that is directed at the protection, conservation, and management of plants*, governing the export or transshipment of plants; or

* * * * *

(3) within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18, United States Code)—

(A) * * *

(B) to possess any plant—

(i) * * *

(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any **foreign law** *foreign law that is directed at the protection, conservation, and management of plants; or*

(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any **foreign law** *foreign law that is directed at the protection, conservation, and management of plants*, governing the export or transshipment of plants; or

* * * * *

(f) PLANT DECLARATIONS.—

(1) IMPORT DECLARATION.—Effective 180 days from the date of enactment of this subsection, and except as provided in paragraph (3), it shall be unlawful for any person to import any plant *that is entered for consumption (as that term is defined in part 141.0a of title 19, Code of Federal Regulations, as in effect on the date of enactment of the Retailers and Entertainers Lacey Implementation and Enforcement Fairness Act)* unless the person files upon importation a declaration that contains—

(A) * * *

* * * * *

(3) EXCLUSIONS.—(A) Paragraphs (1) and (2) shall not apply to plants used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported.

(B)(i) *In the case of a plant product that is derived from a tree, a declaration under paragraph (1) or (2) is not required to include information referred to in subparagraph (A), (B), or (C) of that paragraph unless the plant product is solid wood.*

(ii) *The Administrator of the Animal and Plant Health Inspection Service shall issue regulations that define the term “solid wood” for purposes of this subparagraph.*

(4) REVIEW.—**[Not later than two years after the date of enactment of this subsection,]** *Not later than 180 days after the*

date of enactment of the Retailers and Entertainers Lacey Implementation and Enforcement Fairness Act, the Secretary shall review the implementation of each requirement imposed by paragraphs (1) and (2) and the effect of the exclusion provided by paragraph (3). In conducting the review, the Secretary shall provide public notice and an opportunity for comment.

(5) REPORT.—[Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary] *Not later than 180 days after the date the Secretary completes the review under paragraph (4), the Director of the United States Fish and Wildlife Service* shall submit to the appropriate committees of Congress a report containing—

(A) * * *

(B) recommendations for such legislation as the Secretary determines to be appropriate to assist in the identification of plants that are imported into the United States in violation of this section; [and]

(C) an analysis of the effect of subsection (a) and this subsection on—

(i) * * *

(ii) the extent and methodology of illegal logging practices and trafficking[.]; and

(D) *an evaluation of the feasibility of creating and maintaining a publicly available database of laws of foreign countries from which plants are exported.*

* * * * *

SEC. 4. PENALTIES AND SANCTIONS.

(a) CIVIL PENALTIES.—

(1) Any person who engages in conduct prohibited by any provision of this Act (other than subsections (b), (d), and (f) of section 3) and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty, or regulation, and any person who knowingly violates subsection (d) or (f) of section 3, may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation: *Provided*, That when the violation involves fish or wildlife or plants with a market value of less than \$350, and involves only the transportation, acquisition, or receipt of fish or wildlife or plants taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any [foreign law] *foreign law that is directed at the protection, conservation, and management of plants*, or any law or regulation of any State, the penalty assessed shall not exceed the maximum provided for violation of said law, treaty, or regulation, or \$10,000, whichever is less.

* * * * *

SEC. 5. FORFEITURE.

(a) * * *

* * * * *

(d) CIVIL FORFEITURES.—(1) Civil forfeitures under this section shall be governed by the provisions of chapter 46 of title 18, United

States Code, *except as provided in paragraphs (2) and (3) of this subsection.*

(2) Subsection (d)(4) of section 983 of such chapter, and the second sentence of subsection (a)(1)(F) of such section, shall not apply to plants or plant products.

(3) This section is the sole authority for civil seizure or forfeiture actions alleging, or predicated upon, a violation of section 3.

* * * * *

SEC. 9. LIMITATION ON APPLICATION TO CERTAIN PLANTS AND PLANT PRODUCTS.

This Act does not apply with respect to—

(1) any plant that was imported into the United States before May 22, 2008; or

(2) any finished plant or plant product the assembly and processing of which was completed before May 22, 2008.

SEC. [9.] 10. MISCELLANEOUS PROVISIONS.

(a) * * *

* * * * *

DISSENTING VIEWS

The Lacey Act is our nation's oldest federal law protecting wildlife and has a long history of bipartisan support. The Lacey Act is considered America's premier conservation statute because it protects a broader array of wildlife and plants than any other law. The Act includes provisions that ban the importation or sale of any species obtained in violation of state, tribal, or foreign law. It also prevents 'injurious' species from being imported or sold in the U.S. Injurious species are mammals, birds, amphibians, reptiles, fish, crustaceans, mollusks, plants and their offspring that are harmful to the interests of human beings, agriculture, horticulture, forestry, wildlife or wildlife resources of the United States.

The Lacey Act is critical to our nation's economy because it prevents "black market" products from undercutting U.S. industries. For example, the Lacey Act 2008 amendments are designed to decrease the amount of illegally-harvested wood on the global market. In 2006, our trade deficit to China for forest products was \$20.6 billion. In 2010, we achieved a \$600 million surplus. Experts attribute much of this increase to the 2008 amendments. Further, illegal logging activities are inextricably linked to organized, illegal trafficking of narcotics, weapons, and people and the 2008 Lacey Act amendments are a strong deterrent to criminals.

H.R. 3210, the so-called RELIEF Act, seeks to roll back the 2008 Lacey Act amendments by limiting the universe of foreign laws that could trigger a violation of Lacey, thus inviting organized crime to gravitate toward illegal logging. H.R. 3210 would also exempt all products not classified as "solid wood" from import declaration requirements, removing an important protection for our domestic pulp and paper industry, and would allow people and companies to retain illegally harvested, imported, or stolen wood or other plant products. Finally, H.R. 3210 would "grandfather" any plant products assembled or imported before the 2008 amendments, creating a massive loophole that criminals will exploit.

Contrary to the claim that the music industry supports H.R. 3210 because musicians are afraid of having their instruments confiscated, a host of high-profile musicians signed a pledge supporting the Lacey Act as it is currently written and opposing any attempt to weaken it. This includes Willie Nelson, David Crosby, Bonnie Raitt, Mick Jagger, the Dave Matthews Band, and Sting, among others. Additionally, a coalition of over thirty conservation groups, including the League of Conservation Voters, the National Wildlife Federation, and the Nature Conservancy wrote members of Congress urging them not to pass H.R. 3210.

Further, the U.S. forest products industry sent a letter to Congress on June 6th opposing H.R. 3210. The letter stated that the industry produces approximately \$175 billion in products annually, employs nearly 900,000 men and women in good paying jobs, and

is among the top 10 manufacturing sector employers in 47 states. Additionally, an industry study prior to passage of the 2008 Lacey Act amendments estimated that illegal logging cost the U.S. forest products industry some \$1 billion annually in lost export opportunities and depressed U.S. wood prices.

Even after being amended in committee to remove the reduction in civil penalties contemplated in the original bill, H.R. 3210 is bad for the environment, bad for national security, and bad for U.S. jobs. Ranking Member Markey offered an amendment to prohibit H.R. 3210 from applying to plant products from any country identified by the State department as having significant trade in illegal drug materials, poor records on human trafficking, or that qualified as state sponsors of terrorism. This amendment had bipartisan support, but was defeated. Similarly, Representative Garamendi offered an amendment to bar H.R. 3210 from taking effect if the Secretary of the Interior, in consultation with the Governors of timber producing states, certified that the law would have a negative effect on the U.S. timber industry; the Majority also defeated that amendment.

While H.R. 3210 passed out of committee, there was bipartisan opposition, and not a single Democratic member voted for its passage. Without appropriate safeguards for our domestic industries or our public safety, H.R. 3210 does much more harm than good. The 2008 Lacey Act amendments are working to conserve plant species and reduce illegal logging worldwide and to give our timber producers a level playing field. For these reasons, we oppose H.R. 3210 as reported.

EDWARD J. MARKEY.
 RAÚL M. GRIJALVA.
 PETER A. DEFazio.
 GRACE F. NAPOLITANO.
 PAUL TONKO.
 RUSH D. HOLT.
 JOHN GARAMENDI.

