

**Testimony of Alexander von Bismarck Executive Director, Environmental  
Investigation Agency**

**Before the U.S. House of Representatives**

**Subcommittee on Water, Power and Oceans**

Oversight Hearing on *“Federal Impediments to Commerce and Innovative Injurious  
Species Management.”*

Longworth House Office Building, Room 1324

*May 17<sup>th</sup>, 2018*

**Introduction**

Mr. Chairman, Ranking Member, and members of the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, thank you for inviting me to appear before the Subcommittee today for the oversight hearing, *“Federal Impediments to Commerce and Innovative Injurious Species Management.”*

I have investigated and studied global crime in natural resources for over 15 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 and the New England Aquarium. I have a master of science 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 30 years to investigate and expose environmental crimes, and advocate for creative and effective solutions. EIA’s analyses of the trade in illegal timber, wildlife, and ozone-depleting substances have been globally recognized. As an example, our investigative work in the late 1980s provided evidence that led to the international ban on ivory trade.

In my testimony, I will correct some misperceptions about the Lacey Act and its implementation, and show how enforcement of the Lacey Act has benefitted American businesses and helped curb environmental crime across the globe, in particular illegal logging.

**International Wildlife Trade**

The Lacey Act is one of our oldest and most effective wildlife conservation laws, it has been around for over 100 years. I think we all agree that the effective implementation of this law is having a positive impact in the United States and indeed around the globe. Numerous criminal trade networks have been stopped and once threatened species are on the road to recovery since the Lacey Act was signed into law.

Illegal poaching and logging of natural resources is a billion-dollar crime, and our investigations have found evidence that it funds terrorism, fuels conflict and undercuts law-abiding U.S. companies. Without the Lacey Act, which is designed to keep illegal wildlife and plant products out of our markets, U.S. citizens would unwittingly be supporting these crimes.

John Cruden, former Assistant Attorney General of the Department of Justice's Environment and Natural Resources Division, dubbed the Lacey Act "the single most important federal wildlife protection law."<sup>1</sup> Indeed, the Lacey Act is a fundamental tool for the U.S. Government's efforts to combat illegal trafficking of wildlife products such as elephant ivory and rhino horn. In the 2008 case *United States v. Tania Siyam*, the accused pleaded guilty to Lacey Act violations for illegally selling and importing raw ivory from Cameroon into the United States, and was subsequently sentenced to five years in prison and fined \$100,000.

The Lacey Act is an essential legal component of Operation Crash, an ongoing multi-year investigation into rhino horn and ivory smuggling led by the U.S. Fish and Wildlife Service and the Department of Justice that has resulted in more than 30 convictions, over \$2.1 million in fines, and approximately \$8 million paid in forfeitures and restitutions. Among those successfully convicted of Lacey Act violations as a result of Operation Crash was Zhifei Lei, a rhino horn trafficking syndicate leader who smuggled 30 rhino horns along with elephant ivory objects together worth over \$4.5 million from the United States to China. In 2014 Lei was sentenced to 70 months in prison and forfeited \$3.5 million in proceeds from his criminal activities.

As one of the world's largest markets for illegal wildlife products, the United States sees more than just ivory and rhino horn smuggled across its borders. The Lacey Act has been used to prosecute companies and individuals illegally trading in protected species of coral, sharks, sea horses, rattlesnakes, leopards, and a multitude of other native and exotic wildlife species.

The Lacey Act not only protects endangered wildlife and vital natural resources from destructive exploitation, it also protects law-abiding American businesses from having to compete with criminals. For instance, in 2012 three men were arrested for running an aquaculture company in Florida that knowingly mislabeled wild-caught turtles as captive bred for international sale. Without the Lacey Act, prosecutors would not have been able to bring criminal charges against the traffickers.<sup>2</sup>

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<sup>1</sup> <https://www.justice.gov/usao/page/file/439556/download>

<sup>2</sup> [http://wildlife.org/wp-content/uploads/2014/11/Policy-Brief\\_LaceyAct\\_FINAL.pdf](http://wildlife.org/wp-content/uploads/2014/11/Policy-Brief_LaceyAct_FINAL.pdf)

## Illegal Logging

Times have changed in the more than 100 years since the Lacey Act first became law, and Congress has kept pace, through thoughtful amendments, to meet the challenges increasingly sophisticated international criminal networks pose to legal trade. Most importantly, past amendments and phase-ins have strengthened the law and its implementation over time, while carefully avoiding the creation of dangerous loopholes that would incentivize more illegal trade.

The 2008 plants amendment provides an excellent example of how the Lacey Act has been modernized and strengthened, and how U.S. industry and manufacturing sectors have seen the benefits of it. The Lacey Act Plant Amendment was 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 1 billion dollars annually<sup>3</sup>. The 2008 amendment ensures 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 provides everyone a level playing field. That's why so many American businesses have rallied behind this law, and are in fact demanding even stronger enforcement today, rather than the creation of loopholes that would water it down and increase the chances for illegal goods to enter our market.

Next week the 2008 amendment will be 10 years old, and there is reason to celebrate, as there is evidence today 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.<sup>4</sup> A more recent 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.<sup>5</sup>

### Facts on the Gibson case

Critics of the Lacey Act have cited the example of Gibson guitars, alleging unfair government overreach. In fact, the case is a prime example of how the Lacey Act should and does work. In the criminal enforcement agreement Gibson stated clearly that it “accepts and acknowledges responsibility”<sup>6</sup> for knowingly and illegally importing rare ebony from Madagascar. The emphasis here is on “knowingly”. Gibson admitted that it continued to order Malagasy ebony

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<sup>3</sup> [http://www.unece.lsu.edu/responsible\\_trade/documents/2003-2006/rt03\\_036.pdf](http://www.unece.lsu.edu/responsible_trade/documents/2003-2006/rt03_036.pdf)

<sup>4</sup> [https://www.ucsusa.org/global-warming/stop-deforestation/lacey-acts-effectiveness-reducing-illegal-wood-imports#.Wvt\\_o0yZORY](https://www.ucsusa.org/global-warming/stop-deforestation/lacey-acts-effectiveness-reducing-illegal-wood-imports#.Wvt_o0yZORY)

<sup>5</sup> Daowei Zang, Yin Ling and Jeffrey P. Prestemon: From Deficit to Surplus: An Econometric Analysis of US Trade Balance in Fores Products, For.Sci 63(2):209-217, copyright Society of American Foresters

<sup>6</sup> <https://www.justice.gov/opa/pr/gibson-guitar-corp-agrees-resolve-investigation-lacey-act-violations>

despite the fact that one of its employees knew about the relevant laws and had informed the company's management. The wood was subsequently forfeited, Gibson paid respective fines and entered into an enforcement agreement that included a compliance plan, which served as a useful guidance for responsible American companies who wanted to ensure they are sourcing legal wood.

The enforcement action also had a decisive impact on enforcement against illegal ebony in other important markets, and helped bring illegal chainsaws in one of the most threatened protected areas in Madagascar to a halt.

### **Lumber Liquidators**

In 2015, Lumber Liquidators pleaded guilty to importing solid oak flooring from Chinese manufacturers made from illegally harvested timber from the Russian Far East. The company admitted to both criminal felony and misdemeanor, and 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 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.

### **Facts on the McNab Case**

Another frequently cited example of how the Lacey Act allegedly punishes companies unjustly is the case *United States v. McNab*. Nothing could be further from the truth. In fact, law enforcement in this case put an end to a large scale, sophisticated international criminal scheme involving more than 40 shipments of illegal lobster tails from Honduras, comprising more than 1 million pounds of lobster at a retail value of over \$17 million.<sup>7</sup> Four defendants were found guilty of knowingly violating the law, including charges of: conspiracy, smuggling, money laundering, Lacey Act violations, and false labeling.<sup>8</sup>

The notion that the perpetrators in this case were wrongfully sentenced due to a misinterpretation of a foreign law can only be viewed as either regrettably misinformed, or deliberately misconstruing the facts.

### **Other common misperceptions about the Lacey Act**

We believe that the introduction of H.R. 3041, the Aquaculture Risk Reduction Act, is based on misperceptions regarding the Lacey Act that we wish to correct.

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<sup>7</sup> Press Release, NOAA, *McNab to Continue Serving Federal Prison Sentence for Lobster Smuggling* (Mar. 22, 2004), available at <http://www.publicaffairs.noaa.gov/releases2004/mar04/noaa04-r119.html>.

<sup>8</sup> *United States v. McNab*, 331 F.3d 1228, 1234 n.10 (11th Cir. 2003).

In previous testimonies in 2012 and 2014 supporting the Aquaculture Risk Reduction Act, it was stated as the biggest concern by the President of the National Aquaculture Association

“that the Lacey Act elevates the violation of even misdemeanor state regulations to federal felonies simply because \$350 of domesticated product has entered interstate commerce,” implying that accidental inclusion of certain species in aquaculture shipments would then lead to hundreds of thousands of dollars in penalties and even “mandatory incarceration.”

We are pleased to clarify today that nothing could be further from the truth. We would like to further correct some of the mis-information that apparently has led to the belief this amendment would be necessary.

1. Although illegal goods may be seized and forfeited under the Lacey Act, criminal penalties are imposed only if a person knew or, in the exercise of due care should have known, that the goods he or she traded were illegal. We understand Congressman Crawford’s point that someone shouldn’t go to jail under the Lacey Act for a simple accident. As a matter of fact, that is already the law and has been for a very long time. Someone who commits an “accidental infraction” is not guilty of a crime under the Lacey Act. We therefore need to correct the notion that state regulation misdemeanors would be elevated to “federal felonies” through the Lacey Act.

2. Since fisheries were included in the Lacey Act, we have not been made aware of a case where accidental inclusion of illegal fish species would have resulted in prosecution, let alone jail time under the Lacey Act. The reason for that is that the Lacey Act already provides the necessary protections against such accidental infractions that were committed in the exercise of due care.

We also wish to draw attention to the fact that U.S. government agencies have for many years emphasized, that unwitting individuals who accidentally come in contact with small amounts of potentially illegal merchandise, are not the target of enforcement. Our enforcement agencies don’t waste their energy and resources on the “small fish.” The intent is to shut down large illegal networks that are threatening our natural resources base and are harming our economy. As the U.S. Fish and Wildlife Service clarified in 2011:

“Under the Lacey Act, we focus on law enforcement where it counts: Principally, on those who knowingly transact in larger volumes of illegal products”.<sup>9</sup>

In fact, our enforcement agencies are already over-stretched and in urgent need of more resources and staff to catch the “big fish”, in order to protect American businesses and consumers.

## **Conclusion**

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<sup>9</sup> <https://www.fws.gov/news/blog/index.cfm/2011/9/22/Where-We-Stand-The-Lacey-Act-and-our-Law-Enforcement-Work>

In conclusion then, it appears that the proposed bill is not necessary because the protection it aims to provide is already included in the existing Lacey Act. In turn, however, an exemption such as proposed could do real harm by creating legal loopholes for illegal merchandise to enter the market. While providing no additional protection to law-abiding American enterprises, the only ones who would be benefitting from such an explicit exemption would be criminals who knowingly violate the law and can then use it to “accidentally” bring illegal merchandise into circulation.

Creating an exemption here would also set a dangerous precedent by opening the door to potential other, future proposals, including exemptions regarding the international illegal trade. Why would an international supplier or trader not claim to be subject to the same exemptions that U.S. producers enjoy? Once applied to aquaculture, why not apply it to other wildlife and timber sectors? We at EIA have been investigating the illegal wildlife trade for decades, and we have seen first-hand how quickly criminal networks can adapt in order to exploit legal loopholes.

Such explicit exemptions would only increase the risk and the demand for illegal aquatic species and incentivize questionable businesses to trade in illegal fish “by accident”. These exemptions would benefit those willing to trade in other illegal wildlife products as well. For example, the International Trade Center, a joint agency of the World Trade Organization and the United Nations, published a paper in 2012 on the trade in Southeast Asian python skins suggesting that smugglers knowingly mix illegal python skins into legal skins shipments to confuse customs officials.<sup>10</sup>

With the implementation of the Lacey Act and its evolution over time, the U.S. has set an example to 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.

Allowing illegal goods to enter our market is bad for business, forces legitimate suppliers into unfair competition and may threaten long term supply.

We understand the concerns of the National Aquaculture Association. However, as we have shown today, and contrary to what its name proposes, the “Aquaculture Risk Reduction Act” threatens to increase the risk of illegal trade and may end up hurting the very law-abiding American fish farmers it aims to protect.

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<sup>10</sup><http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/The%20Trade%20in%20Southeast%20Asian%20Python%20Skins%20for%20web.pdf>