

LEGAL TIMBER PROTECTION ACT

SEPTEMBER 24, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1497]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1497) to amend the Lacey Act Amendments of 1981 to extend its protections to plants illegally harvested outside of the United States, 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 “Legal Timber Protection Act”.

SEC. 2. PREVENTION OF ILLEGAL LOGGING PRACTICES.

(a) IN GENERAL.—The Lacey Act Amendments of 1981 are amended—

(1) in section 2 (16 U.S.C. 3371)—

(A) by striking subsection (f) and inserting the following:

“(f) PLANT.—

“(1) IN GENERAL.—The term ‘plant’ means any wild member of the plant kingdom, including roots, seeds, parts, and products thereof.

“(2) EXCLUSIONS.—The term ‘plant’ excludes any common food crop or cultivar that is a species not listed—

“(A) in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249); or

“(B) as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).”;

(B) in subsection (h), by inserting “also” after “plants the term”; and

(C) by striking subsection (j) and inserting the following:

- “(j) TAKE.—The term ‘take’ means—
- “(1) to capture, kill, or collect; and
 - “(2) with respect to a plant, also to harvest, cut, log, or remove.”;
- (2) in section 3 (16 U.S.C. 3372)—
- (A) in subsection (a)—
 - (i) in paragraph (2), by striking subparagraph (B) and inserting the following:
 - “(B) any plant—
 - “(i) taken, transported, possessed, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—
 - “(I) the theft of plants;
 - “(II) the taking of plants from a park, forest reserve, or other officially protected area;
 - “(III) the taking of plants from an officially designated area; or
 - “(IV) the taking of plants without, or contrary to, required authorization;
 - “(ii) taken, transported, or exported without the payment of appropriate royalties, taxes, or stumpage fees required for such plant by any law or regulation of any State or by any foreign law; or
 - “(iii) exported or transshipped in violation of any limitation under any law or regulation of any State or under any foreign law; or”; and
 - (ii) in paragraph (3), by striking subparagraph (B) and inserting the following:
 - “(B) to possess any plant—
 - “(i) taken, transported, possessed, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—
 - “(I) the theft of plants;
 - “(II) the taking of plants from a park, forest reserve, or other officially protected area;
 - “(III) the taking of plants from an officially designated area; or
 - “(IV) the taking of plants without, or contrary to, required authorization;
 - “(ii) taken, transported, or exported without the payment of appropriate royalties, taxes, or stumpage fees required for such plant by any law or regulation of any State or by any foreign law; or
 - “(iii) exported or transshipped in violation of any limitation under any law or regulation of any State or under any foreign law; or”; and
 - (B) by adding at the end the following:
- “(f) PLANT DECLARATIONS.—
- “(1) IN GENERAL.—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 unless the person files upon importation where clearance is requested a declaration that contains—
 - “(A) the scientific name of any plant (including the genus and species of the plant) contained in the importation;
 - “(B) a description of—
 - “(i) the value of the importation; and
 - “(ii) the quantity, including the unit of measure, of the plant; and
 - “(C) the name of the country from which the plant was taken.
 - “(2) DECLARATION RELATING TO PLANT PRODUCTS.—Until the date on which the Secretary promulgates a regulation under paragraph (6), a declaration relating to a plant product shall—
 - “(A) in the case in which the species of plant used to produce the plant product that is the subject of the importation varies, and the species used to produce the plant product is unknown, contain the name of each species of plant that may have been used to produce the plant product; and
 - “(B) in the case in which the species of plant used to produce the plant product that is the subject of the importation is commonly taken from more than 1 country, and the country from which the plant was taken and used to produce the plant product is unknown, contain the name of each country from which the plant may have been taken.
 - “(3) EXCLUSIONS.—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.
 - “(4) REVIEW.—Not later than 2 years after the date of enactment of this subsection, the Secretary shall review the implementation of each requirement de-

scribed in paragraphs (1) and (2) and the effect of the exclusions in paragraph (3).

“(5) REPORT.—

“(A) IN GENERAL.—Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary shall submit to the appropriate committees of Congress a report containing—

“(i) an evaluation of—

“(I) the effectiveness of each type of information required under paragraphs (1) and (2) in assisting enforcement of section 3; and

“(II) the potential to harmonize each requirement described in paragraphs (1) and (2) with other applicable import regulations in existence as of the date of the report;

“(ii) 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 section 3; and

“(iii) an analysis of the effect of the provisions of subsection (a) and (f) on—

“(I) the cost of legal plant imports; and

“(II) the extent and methodology of illegal logging practices and trafficking.

“(B) PUBLIC PARTICIPATION.—In conducting the review under paragraph (3), the Secretary shall provide public notice and an opportunity for comment.

“(6) PROMULGATION OF REGULATIONS.—Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary may promulgate regulations—

“(A) to limit the applicability of any requirement described in paragraph (2) to specific plant products;

“(B) to make any other necessary modification to any requirement described in paragraph (2), as determined by the Secretary based on the review under paragraph (4); and

“(C) to limit the scope of exclusion in paragraph (3) if warranted as a result of the review under paragraph (4).”;

(3) in section 7(a)(1) (16 U.S.C. 3376(a)(1)), by striking “section 4” and inserting “section 3(f), section 4.”;

(4) in section 4 (16 U.S.C. 3373)—

(A) by striking “subsections (b) and (d)” each place it appears and inserting “subsections (b), (d), and (f)”;

(B) by inserting “or section 3(f)” after “section 3(d)” each place it appears; and

(C) in subsection (a)(2), by inserting “or who violates subsection 3(f) other than as provided in paragraph (1)” after “subsection 3(b)”;

(5) by adding at the end of section 5 (16 U.S.C. 3374) the following:

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

(b) TECHNICAL CORRECTION.—

(1) CORRECTION.—Section 102(c) of Public Law 100–653 is amended—

(A) by inserting “of the Lacey Act Amendments of 1981” after “Section 4”;

and

(B) by striking “(other than section 3(b))” and inserting “(other than subsection 3(b))”.

(2) EFFECTIVE DATE.—Paragraph (1) shall be effective immediately upon the effectiveness of section 102(c) of Public Law 100–653.

PURPOSE OF THE BILL

The purpose of H.R. 1497 is to amend the Lacey Act Amendments of 1981 to extend its protections to plants illegally harvested outside of the United States, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

According to the World Bank, widespread failure of forest governance—characterized by illegal logging, associated illegal trade, and corruption—directly undermines any nation’s attempt to achieve sustainable economic growth, societal equity, and environmental conservation. Within developing countries, one billion extremely

poor people depend on forests for part of their livelihoods and as many as 350 million people living in and around forests are heavily dependent on forests for their livelihoods and security. These vulnerable populations are at risk from the illegal logging that removes timber from their forests.¹

Illegal logging also undermines responsible forest enterprises in these countries by distorting timber markets with unfair competition and price undercutting. It also threatens the conservation of forest resources, wildlife, and biodiversity as forests are converted to grasslands, plant species are depleted, and animal species dependent on forest habitat are either killed during the logging efforts or decline once the habitat is destroyed. Finally, illegal logging results in a loss of revenue from taxes and royalties that could be invested in sustainable forest management or economic development. In fact, the World Bank estimates the (global) annual market value of losses from illegal cutting of forests at over \$10 billion U.S.—more than eight times the total official developmental assistance that is spent on sustainable forest management efforts.² In short, the impacts are staggering.

Many regard Indonesia as one of the most dramatic examples of the impacts that result from illegal logging. The rate of deforestation in Indonesia is among the worst globally, and commercial logging, most of which is illegal, is the primary cause of that deforestation. In 1950, forests covered 84 percent of the country, but more recently, it has been estimated that at least 40 percent of the forests have been cleared.³ Currently, illegally cut wood is estimated to comprise 73–88 percent of the total supply coming from Indonesia,⁴ and the country continues to lose about five million acres of forests per year.

According to a recent summary of studies compiled by the Congressional Research Service, the situation in Indonesia is hardly unique. In Cambodia, 90 percent of the logging is estimated to be illegal. In the Philippines, sixteen million hectares of forests that once existed have been reduced to less than 100,000 today, largely due to illegal logging, and in Brazil, 80 percent of the logging in the Brazilian rainforest is considered illegal. These are just a few examples of the impacts that are being felt throughout Southeast Asia and Latin America.⁵

Illegal logging and the importation of wood and wood products that come from illegally harvested logs also unfairly compete with U.S. wood and wood products industries and undercut U.S. prices. According to a recent report published by the American Forest & Paper Association (AF&PA), illegal logging costs the U.S. roughly \$1 billion every year in lost exports and lower domestic prices due to the importation of illegal wood. Specifically, the AF&PA report found that illegally harvested logs can be processed for as much as 50 percent less than legal logs and cheap, illegal timber artificially

¹ World Bank, *Strengthening Forest Law Enforcement and Governance: Addressing a Systemic Constraint to Sustainable Development*. Report No. 36638–GLB, 2006.

² World Bank Report No. 36638–GLB.

³ Forest Watch Indonesia and Global Forest Watch, *The State of the Forest: Indonesia, 2002*.

⁴ Schroeder-Wildberg, E. and A. Carius. *Illegal Logging, conflicts and the business sector in Indonesia, 2003*.

⁵ CRS Report for Congress, *Illegal Logging: Background and Issues*, Order Code RL33932, March 2007.

depresses world timber prices on average between 7–16 percent and U.S. prices from 2–4 percent.⁶

There are several relevant multilateral and international agreements intended to address illegal logging and the illegal timber trade, ranging from voluntary to legally binding multilateral agreements that enable signatory governments to seize illegal products. The recent CRS report summarizes the advantages and disadvantages of these agreements which include wood certification programs, the United Nations Forum on Forests, the International Tropical Timber Organization, several World Bank efforts, and the G8 Illegal Logging Dialogue.⁷ Yet despite these many efforts, the problems of illegal logging continue to persist as described above, driven by the demand for products that are developed from illegally harvested wood and the lack of adequate regulatory mechanisms in both exporting and consumer countries.

It is estimated that the European Union, for example, imports three billion British pounds' worth of illegally logged wood each year from the Amazon Basin, the Baltic, the Congo, East Africa, Indonesia, and Russia.⁸ China is a major importer of timber from Gabon, Cameroon, Equatorial Guinea, and Mozambique—all of which export illegally harvested timber. Much of that timber is manufactured into products that are exported to the U.S.

The United States is the world's largest wood products consumer and one of the top importers of tropical hardwoods, primarily from Latin American and Southeast Asia. For example, the U.S. imports approximately one-third of its tropical plywood and tropical furniture, as well as a significant amount of paper, from Indonesia. Imports come directly from Indonesia and via other countries such as China.⁹ We are also the largest importer of Peruvian bigleaf mahogany, estimated by some to be as much as 80 percent illegally logged.¹⁰

According to the Department of Justice, however, there is no legal mechanism that currently exists in U.S. law to preclude the importation of wood and wood products known to be illegally harvested in other countries.

The illegal timber trade is not the only trade involving illegally harvested plants that are entering the United States, however. Federal agencies regularly receive information regarding the illegal export of plants such as yuccas, agaves, and ocotillos from Mexico, and devils claw from southern Africa. In such cases, plants that are protected in foreign countries are being illegally collected and then imported into the United States. These countries pass on the information regarding illegal shipments seeking assistance to stop the illegal trade. Like illegal timber, unfortunately, there are no enforcement mechanisms under current law to stop these shipments unless the species are listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora or the Endangered Species Act.

⁶American Forest & Paper Association, "Illegal" Logging and Global Wood Markets, November 2004.

⁷CRS Report, Order Code RL33932.

⁸World Wildlife Fund, *Failing Forests: Europe's Illegal Timber Trade*, November 2005.

⁹Hewitt, J., "The USA's Direct and Indirect Imports of Products Based on Wood from Indonesia's Forests: A Statistical Assessment and an Introduction to the Supply Chain in the USA." World Wildlife Fund report, 2003.

¹⁰Natural Resources Defense Council, *Trade in Bigleaf Mahogany: The Need for Strict Implementation of CITES*, September 2006.

THE LACEY ACT OF 1981

The Lacey Act was first enacted in 1900. Amendments in 1981 repealed the Black Bass Act and sections 43 and 44 of the Lacey Act of 1900 (18 U.S.C. 43–44), replacing them with a single comprehensive statute. The law has been amended several times since then.

Under the Lacey Act, it is unlawful for any person to—(1) import, export, sell, acquire, or purchase any fish, wildlife or plants taken, possessed, transported, or sold in violation of U.S. law or regulation or in violation of any Indian tribal law; or (2) import, export, sell, receive, acquire, or purchase in interstate or foreign commerce any fish or wildlife, taken, possessed, transported, or sold in violation of State or foreign law or any plant taken, possessed, transported or sold in violation of any State law. There are misdemeanor felony criminal and civil penalties for violations of the Act, and strict liability is established for forfeiture of illegal fish, wildlife or plants.

The law applies to all fish and wildlife and their parts or products, but is much more narrow in its protection of plants. The Lacey Act currently only applies to species of plants that are native to the United States and that are specifically protected either under State law or the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and it currently does not apply to plants that are protected under foreign laws.

Because the Lacey Act does not extend to plants that are taken, transported, or sold in violation of foreign laws, the U.S. government is not able to use the criminal and civil penalties of the Act to preclude the importation of wood and wood products or other plants and plant products harvested in violation of the laws of foreign governments or to seize such illegally harvested plants and products when they enter the United States. According to Justice Department enforcement officials, changes to the Lacey Act that would extend its coverage to plants taken in violation of foreign laws would allow law enforcement officers to initiate actions similar to those they now use for fish and wildlife products taken in violation of foreign laws.

H.R. 1497 would make such changes to the Lacey Act. Specifically the bill would amend the prohibited acts section of the law to make it unlawful to import any plant taken in violation of foreign laws related to the harvest, taking and protection of plants or any product made from such a plant.

COMMITTEE ACTION

H.R. 1497 was introduced by Congressman Blumenauer (D-OR) on March 13, 2007 and has 43 co-sponsors. The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife and Oceans. H.R. 1497 was the subject of a Subcommittee hearing on October 16, 2007. A witness for the Department of Justice testified that the Administration supported amending the Lacey Act to provide enforcement agencies with adequate and clearly defined legal tools to address illegal logging and trafficking of foreign timber. The Administration also identified some concerns with specific provisions in the bill, many of them technical in nature.

In addition, the Environmental Investigation Agency, the American Forest & Paper Association, and the Hardwood Federation all testified in favor of the legislation with some suggested changes.

A representative of the International Wood Products Association (IWPA) opposed the bill, citing concerns with the broad reach of the definition of “any foreign law,” the documentation requirements, and the strict forfeiture requirements of the Lacey Act.

On November 7, 2007, the Subcommittee on Fisheries, Wildlife and Oceans was discharged from further consideration of H.R. 1497, and the Committee on Natural Resources considered the bill. Chairman Rahall offered an amendment in the nature of a substitute that made the following changes to address many of the concerns that had been raised about the bill as introduced. First, it narrowed the scope of the bill to clarify that it applies to the violation of laws or regulations related to the protection of plants from harvesting, cutting, logging, removal and shipment without legal authority, and not to the violation of “any” foreign or State law. Second, it made clear that the penalties related to plant declarations requirements would be similar to those applicable for fish and wildlife declarations. It also excluded packing materials used to ship goods, like paper and pallets, from the declaration requirements and made other minor technical changes suggested by the Administration.

Finally, the amendment included language that reaffirmed the application of the civil forfeiture provisions of Chapter 46 of Title 18 to the forfeiture provisions of the Lacey Act. According to the Justice Department, these provisions already apply to all forfeiture laws unless a law is explicitly exempted—which the Lacey Act is not.

The amendment in the nature of a substitute was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 cites this Act as the “Legal Timber Protection Act”.

Section 2. Prevention of illegal logging practices

Section 2 of the bill makes several changes to the Lacey Act Amendments of 1981.

First, it amends the definition of plant in Section 2 of the Act (16 U.S.C. 3371) to include all plants and plant products, including those that are protected under foreign laws. It maintains, however, the exemption in current law for common food crops and cultivars unless they are listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora or under the Endangered Species Act. The Committee notes that none of the amendments to the term “plant” are intended to diminish the authority of the Secretaries to enforce the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora or the Endangered Species Act.

The bill also expands the definition of “take” with respect to plants to include “harvest, cut, log, or remove.” It further amends

the definition of Secretary to include the Secretaries of Commerce and Interior with respect to the plant provisions.

Next, it amends Section 3 of the Act (16 U.S.C. 3372), the Prohibited Acts section, to make it unlawful for any person to import, export, transport, sell, receive, acquire or purchase in interstate or foreign commerce any plant taken, transported, possessed or sold in violation of State or foreign laws enacted to protect plants from harvest, shipment, or export without legal authority. It also makes it unlawful to possess plants within the maritime and territorial jurisdiction of the United States that were taken, transported, possessed, or sold in violation of such State or foreign laws. These provisions are intended to identify the particular violations that are prohibited acts with respect to plants and to differentiate them from the violations in the Act that apply to fish and wildlife.

Specifically, paragraph (i) covers laws that regulate the theft of plants, the taking of plants from national parks and “other officially designated areas,” and the taking of plants in violation of a required authorization. The reference to “other officially designated areas” is intended to include laws relating to the taking of plants from specific geographic features such as stream beds as well as any specific locations or areas other than national parks or nature reserves. Paragraph (ii) covers laws that require appropriate royalties, stumpage fees, or export taxes and is intended to address reported concerns regarding under-reporting of exports or cutting for the purposes of avoiding payments. Paragraph (iii) covers laws limiting the export of plants, e.g. log export bans or quotas, or the “transshipment” of plants, which can be utilized to mask the origin of the plant during transportation through an intermediate port.

It also adds a new subsection (f) to Section 3, making it unlawful for any person to import a plant without filing an accompanying declaration that identifies the scientific name of the plant, the value and quantity of the plant being imported, and the name of the country from which the plant was taken. Where the species and country of origin cannot be specified because the shipment contains products with multiple possible species and/or countries of origin, the declaration may list the possibilities. These declaration requirements become effective 180 days after enactment.

The bill excludes from the declaration requirement wood and paper packing materials used exclusively to support, protect, or carry another item. This exclusion does not apply if the packing materials are the actual item being imported.

The Secretary is directed to review within two years of enactment, with public participation, the declaration requirements and exclusions. Within 180 days of completion of the review, the Secretary must report to Congress with an evaluation of the effectiveness of the information collected, any recommendations for further legislation, and an analysis of the effect of the bill on the cost of legal imports and on illegal logging.

Also within 180 days of the completion of the review, the Secretary may issue regulations to limit or modify the use of the provision for declarations involving multiple species and countries of origin and to adjust the exclusion for packing materials.

Amendments to Section 4 of the Act (16 U.S.C. 3373) make clear that the penalties related to violations of plant declarations re-

quirements would be similar to those applicable for fish and wildlife declarations.

Amendments to Section 5 (16 U.S.C. 3374) add a new subsection (d) to reaffirm, as has been the case since 2000, that the civil forfeiture provisions of the Act are governed by the provisions of chapter 46 of title 18, United States Code. This reference is technical and is intended to aid the reader of title 16 who may not be familiar with the civil forfeiture procedures in title 18. It is not intended to make any substantive change in the law that governs civil forfeiture actions under the Lacey Act. Nor does the Committee intend for it to call into question existing legal precedent as it relates to the application of the Lacey Act in criminal, civil or forfeiture proceedings. Since 1981, when substantive amendments were adopted, the Act has provided for forfeiture of fish, wildlife, and plants on a strict liability basis when violations of the Lacey Act are found.¹¹

The bill amends the rulemaking authority in section 7 of the Act (16 U.S.C. 3376) to allow the Secretary to issue regulations to establish the process for submission of declarations. The responsibility and cost of compilation and review of these declarations is a matter exclusively assigned to the Secretary.

Finally, the bill makes a technical correction to Public Law 100-653, executing an amendment to the Act that was made in that law, but that could not execute as written, because the words that the amendment struck did not appear in the statute. Without this technical correction, an amendment in H.R. 1497 to the same provision would not execute.

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.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) 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)(3)(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.

2. 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

¹¹ See Senate Report No. 97-123.

contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

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 is to amend the Lacey Act Amendments of 1981 to extend its protections to plants illegally harvested outside the United States and for other purposes (16 U.S.C. 3371 et seq.).

4. Congressional Budget Office Cost Estimate. 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. 1497—Legal Timber Protection Act

Summary: H.R. 1497 would expand the Lacey Act to protect certain plant species, including trees. Currently, the Lacey Act generally prohibits interstate and international trafficking in protected wildlife. Violators of prohibitions imposed by this bill would be subject to criminal and civil penalties. CBO estimates that implementing the bill would cost the federal government \$40 million over the 2008–2012 period, assuming appropriation of the necessary amounts. Enacting the bill could increase revenue collections from penalties, but we estimate that any such increases would be small and largely offset by direct spending of those collections.

The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no direct costs on state, local, or tribal governments.

H.R. 1497 contains private-sector mandates, as defined in UMRA, on importers of timber and timber products. CBO cannot determine whether the aggregate cost of the mandates in the bill would exceed the annual threshold established in UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1497 is shown in the following table. The costs of this legislation fall within budget functions 350 (agriculture) and 750 (administration of justice).

	By fiscal year in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	5	10	10	10	10
Estimated Outlays	3	7	10	10	10

Basis of estimate: H.R. 1497 would make it illegal to harvest, import, export, transport, sell, receive, or possess timber and other plants (including products made from them) that were taken or transported in violation of any state or foreign law. The Animal and Plant Health Inspection Service (APHIS) and U.S. Customs and Border Protection (CBP) would enforce the prohibitions.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1497 would cost about \$40 million over the 2008–2012 period. That amount includes \$10 million over the first two years for up-front costs to promulgate regulations, de-

velop a legal and technical database and hire, equip, and train CBP and APHIS staff. We estimate that the remaining \$30 million would be spent over the following three years to conduct inspections and investigations to enforce the legislation. This estimate is based on the cost of other enforcement activities conducted under the Lacey Act and on information provided by the affected agencies.

Enacting H.R. 1497 could increase revenues from civil and criminal fines. Based on information obtained from APHIS about the relatively small number of violations likely to occur, CBO estimates that any such increase would be less than \$500,000 annually. Moreover, such changes would be fully offset by increases in direct spending, primarily for enforcement expenses.

Estimated impact on state, local, and tribal governments: H.R. 1497 contains no intergovernmental mandates as defined in UMRA and would impose no direct costs on state, local, or tribal governments.

Estimated impact on the private sector: H.R. 1497 contains private-sector mandates as defined in UMRA. It would prohibit importing timber taken in violation of foreign laws specified in the bill and prohibit importing products made from such timber. According to testimony by the Department of Justice, importing such timber currently does not violate U.S. laws. In addition, the bill would require importers to report additional information when importing timber or timber products.

CBO expects that the administrative costs incurred by importers would be relatively small. However, because of uncertainty about the U.S. markets for imports of timber obtained in violation of foreign laws or products made from such timber, CBO cannot estimate the loss in net income to importers of those commodities. Consequently, CBO cannot determine whether the aggregate cost of all the mandates in the bill would exceed the annual threshold (\$131 million in 2007, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Deborah Reis; Impact on State, Local, and Tribal Governments: Melissa Merrill; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 1497 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

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. 2. DEFINITIONS.

For purposes of this Act:

(a) * * *

* * * * *

[(f) The terms “plant” and “plants” mean any wild member of the plant kingdom, including roots, seeds, and other parts thereof (but excluding common food crops and cultivars) which is indigenous to any State and which is either (A) listed on an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, or (B) listed pursuant to any State law that provides for the conservation of species threatened with extinction.]

(f) *PLANT*.—

(1) *IN GENERAL*.—*The term “plant” means any wild member of the plant kingdom, including roots, seeds, parts, and products thereof.*

(2) *EXCLUSIONS*.—*The term “plant” excludes any common food crop or cultivar that is a species not listed—*

(A) in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249); or

(B) as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

* * * * *

(h) The term “Secretary” means, except as otherwise provided in the Act, the Secretary of the Interior or the Secretary of Commerce, as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970 (84 Stat. 2090); except that with respect to the provisions of this Act which pertain to the importation or exportation of plants the term *also* means the Secretary of Agriculture.

* * * * *

[(j) The term “taken” means captured, killed, or collected.]

(j) *TAKE*.—*The term “take” means—*

(1) to capture, kill, or collect; and

(2) with respect to a plant, also to harvest, cut, log, or remove.

* * * * *

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 taken, possessed, transported, or sold in violation of any law or regulation of any State; or]

(B) *any plant—*

(i) *taken, transported, possessed, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—*

(I) *the theft of plants;*

(II) *the taking of plants from a park, forest reserve, or other officially protected area;*

(III) *the taking of plants from an officially designated area; or*

(IV) *the taking of plants without, or contrary to, required authorization;*

(ii) *taken, transported, or exported without the payment of appropriate royalties, taxes, or stumpage fees required for such plant by any law or regulation of any State or by any foreign law; or*

(iii) *exported or transshipped in violation of any limitation under any law or regulation of any State or under any foreign law; 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 taken, possessed, transported, or sold in violation of any law or regulation of any State; or*]

(B) *to possess any plant—*

(i) *taken, transported, possessed, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—*

(I) *the theft of plants;*

(II) *the taking of plants from a park, forest reserve, or other officially protected area;*

(III) *the taking of plants from an officially designated area; or*

(IV) *the taking of plants without, or contrary to, required authorization;*

(ii) *taken, transported, or exported without the payment of appropriate royalties, taxes, or stumpage fees required for such plant by any law or regulation of any State or by any foreign law; or*

(iii) *exported or transshipped in violation of any limitation under any law or regulation of any State or under any foreign law; or*

* * * * *

(f) *PLANT DECLARATIONS.—*

(1) *IN GENERAL.—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 unless the person files upon importation where clearance is requested a declaration that contains—*

(A) *the scientific name of any plant (including the genus and species of the plant) contained in the importation;*

(B) *a description of—*

- (i) the value of the importation; and
- (ii) the quantity, including the unit of measure, of the plant; and
- (C) the name of the country from which the plant was taken.

(2) *DECLARATION RELATING TO PLANT PRODUCTS.*—Until the date on which the Secretary promulgates a regulation under paragraph (6), a declaration relating to a plant product shall—

(A) in the case in which the species of plant used to produce the plant product that is the subject of the importation varies, and the species used to produce the plant product is unknown, contain the name of each species of plant that may have been used to produce the plant product; and

(B) in the case in which the species of plant used to produce the plant product that is the subject of the importation is commonly taken from more than 1 country, and the country from which the plant was taken and used to produce the plant product is unknown, contain the name of each country from which the plant may have been taken.

(3) *EXCLUSIONS.*—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.

(4) *REVIEW.*—Not later than 2 years after the date of enactment of this subsection, the Secretary shall review the implementation of each requirement described in paragraphs (1) and (2) and the effect of the exclusions in paragraph (3).

(5) *REPORT.*—

(A) *IN GENERAL.*—Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary shall submit to the appropriate committees of Congress a report containing—

(i) an evaluation of—

(I) the effectiveness of each type of information required under paragraphs (1) and (2) in assisting enforcement of section 3; and

(II) the potential to harmonize each requirement described in paragraphs (1) and (2) with other applicable import regulations in existence as of the date of the report;

(ii) 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 section 3; and

(iii) an analysis of the effect of the provisions of subsection (a) and (f) on—

(I) the cost of legal plant imports; and

(II) the extent and methodology of illegal logging practices and trafficking.

(B) *PUBLIC PARTICIPATION.*—In conducting the review under paragraph (3), the Secretary shall provide public notice and an opportunity for comment.

(6) *PROMULGATION OF REGULATIONS.*—Not later than 180 days after the date on which the Secretary completes the review

under paragraph (4), the Secretary may promulgate regulations—

(A) to limit the applicability of any requirement described in paragraph (2) to specific plant products;

(B) to make any other necessary modification to any requirement described in paragraph (2), as determined by the Secretary based on the review under paragraph (4); and

(C) to limit the scope of exclusion in paragraph (3) if warranted as a result of the review under paragraph (4).

SEC. 4. PENALTIES AND SANCTIONS.

(a) CIVIL PENALTIES.—

(1) Any person who engages in conduct prohibited by any provision of this Act [(other than subsection 3(b))] *(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, 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, 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, and any person who knowingly violates section 3(d) or section 3(f), or \$10,000, whichever is less.

(2) Any person who violates subsection 3(b) or who violates subsection 3(f) *other than as provided in paragraph (1)* may be assessed a civil penalty by the Secretary of not more than \$250.

* * * * *

(d) CRIMINAL PENALTIES.—

(1) Any person who—

(A) knowingly imports or exports any fish or wildlife or plants in violation of any provision of this Act [(other than subsection 3(b))] *(other than subsections (b), (d), and (f) of section 3)*, or

(B) violates any provision of this Act [(other than subsection 3(b))] *(other than subsections (b), (d), and (f) of section 3)* by knowingly engaging in conduct that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants with a market value in excess of \$350,

knowing 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, shall be fined not more than \$20,000, or imprisoned for not more than five years, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.

(2) Any person who knowingly engages in conduct prohibited by any provision of this Act ~~[(other than subsection 3(b))]~~ *(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 shall be fined not more than \$10,000, or imprisoned for not more than one year, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.

(3) Any person who knowingly violates section 3(d) *or section 3(f)*—

(A) * * *

* * * *

(e) PERMIT SANCTIONS.—The Secretary may also suspend, modify, or cancel any Federal hunting or fishing license, permit, or stamp, or any license or permit authorizing a person to import or export fish or wildlife or plants (other than a permit or license issued pursuant to the Fishery Conservation and Management Act of 1976), or to operate a quarantine station or rescue center for imported wildlife or plants, issued to any person who is convicted of a criminal violation of any provision of this Act or any regulation issued hereunder. The Secretary shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any licenses, permits, stamps, or other agreements pursuant to this section.

SEC. 5. FORFEITURE.

(a) * * *

* * * *

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

* * * *

SEC. 7. ADMINISTRATION.

(a) REGULATIONS.—

(1) The Secretary, after consultation with the Secretary of the Treasury, is authorized to issue such regulations, except as provided in paragraph (2), as may be necessary to carry out the provisions of ~~[section 4]~~ *section 3(f), section 4, and section 5 of this Act.*

* * * *

SECTION 102 OF PUBLIC 100-653

SEC. 102. PENALTY.

(a) * * *

* * * *

(c) CONFORMING AMENDMENTS.—Section 4 of the *Lacey Act Amendments of 1981* is amended in subsections (a)(1), (d)(1)(A), (d)(1)(B), and (d)(2) by striking “[(other than section 3(b))] (*other than subsection 3(b)*)” each place those words appear and inserting in lieu thereof “(other than subsections (b) and (d) of section 3)”.

COMMITTEE CORRESPONDENCE

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

September 24, 2008

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The Honorable Collin C. Peterson
 Chairman
 Committee on Agriculture
 1301 Longworth H.O.B.
 Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter indicating the Committee on Agriculture's jurisdictional interests in H.R. 1497, the "Legal Timber Protection Act."

I acknowledge your jurisdictional interests in the bill, and note that the Committee on Natural Resources and the Committee on Agriculture have had a history of working cooperatively on environmental matters. I appreciate your willingness to forego a sequential referral of the legislation and understand that this action will in no way waive your Committee's jurisdictional interests in the subject matter of the legislation or serve as a precedent for future referrals.

A copy of our respective letters regarding this bill will be inserted into the Committee Report on H.R. 1497.

Thank you for your courtesy in this matter and I look forward to continued cooperation between our respective Committees as we deal with environmental issues in the future.

With warm regards, I am

Sincerely,



NICK J. RAHALL, II
 Chairman
 Committee on Natural Resources

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September 24, 2008

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MINORITY STAFF DIRECTOR

The Honorable Nick J. Rahall II
Chairman
Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman,

I am writing you regarding H.R. 1497, the "Legal Timber Protection Act", which contains provisions that fall within the jurisdiction of the Committee on Agriculture.

I appreciate your willingness to acknowledge the jurisdictional interest of the Committee on Agriculture in H.R. 1497, and agree to forego a sequential referral of the bill with the understanding that this action will not in any way waive any future jurisdictional interests or prerogatives on this bill, or any other similar legislation, and will not be considered as establishing a precedent for consideration of matters of jurisdictional interest to the Agriculture Committee in the future.

Thank you very much for your courtesy in this matter and I look forward to continued cooperation between the Committee on Natural Resources and the Committee on Agriculture in the future.

Sincerely,



Collin C. Peterson
Chairman

ADDITIONAL VIEWS

While the House Natural Resources Committee favorably reported this legislation to the House of Representatives by voice vote, I wanted to express my views on several important features of this measure. I am first of all deeply disappointed that the Department of Justice has consistently refused to even try to enforce existing laws to stop the illegal importation of logs or other wood products. In fact, during our Subcommittee hearing on H. R. 1497, the Department testified that: "We believe that existing U. S. laws do not adequately address this problem." In my questions for the record, I asked the Department why they have not utilized the National Stolen Property Act of 1948, the Cultural Property Act of 1983 and existing money-laundering statutes which are designed to stop illegal logging. It is my hope that before this legislation becomes law, we will hear a credible explanation as to why these laws were inadequate.

H.R. 1497 includes language applying the General Rules for Civil Forfeiture Proceedings known as the Civil Asset Forfeiture Reform Act of 2000 (CAFRA). Inclusion of this language in this bill clearly reaffirms that Congressional intent is for CAFRA to apply to Lacey Act forfeiture procedures. Adding this language to H.R. 1497 reinforces Congress' intent to provide "innocent owner" forfeiture liability protection within the Lacey Act.

"Innocent owner" provides to claimants in forfeiture proceedings an opportunity to mount—as an affirmative defense—their assertion that disputed shipments were acquired lawfully, through the exercise of "due care". Otherwise, as in the current Lacey Act, claimants are held to a "strict liability" standard, where mere possession of disputed goods constitutes grounds for forfeiture. Without access to an "innocent owner" defense, importers and supply chain members are vulnerable to seizure and civil forfeiture without the opportunity to demonstrate "due care" in their acquisition of disputed shipments. Owing to prosecutorial abuse in forfeiture cases, the Congress in 2000 enacted the Civil Asset Forfeiture Reform Act, making clear that "innocent owner" is available to all claimants, except in cases involving possession of contraband or goods which are inherently illegal to possess.

Under Lacey, the entire supply chain handling imported plant material is held responsible for illegal acts of which they would have no reasonable expectation to know the violation much less know the underlying laws that exist in all foreign countries. Amending the Lacey Act to include reaffirmation of CAFRA provides important forfeiture liability protection for "innocent owners."

Despite enactment of CAFRA in 2000, presumably superseding the strict liability provisions of the Lacey Act, there is an unmistakable trend toward diminution of the innocent owner provisions. Recent case law had effectively exempted Lacey Act forfeitures

from the “innocent owner” defense, through an expansive interpretation of contraband and goods which it is inherently illegal to possess. In *U.S. v. 144,774 Pounds of Blue King Crab*, crab was taken in violation of Russian vessel tracking laws, about which the U.S. importer had no knowledge. The importer argued that blue king crab did not constitute “property that it is illegal to possess”, and that he was therefore entitled to utilize the “innocent owner” defense under forfeiture law.

The federal Court of Appeals disagreed, stating: “we hold that Deep Sea may not raise an innocent-owner defense here because, if the government can establish (under the Lacey Act) that the crab was taken, possessed, transported, or sold in a way that rendered it illegal under Russian law, the crab is ‘property that it is illegal to possess’ for the purposes of 18 U.S.C. Section 983(d)(4). This interpretation effectively expanded to all Lacey Act violations the bar to availability of the “innocent owner” defense, even when an importer can demonstrate that he is without knowledge of a foreign violation, and had exercised “due care” to assure the legality of a given shipment.

Importantly, Customs also has brought Lacey Act forfeiture actions against importers who believed they had legitimate exception permits to export illegal animals or animal products. The specificity of language in H.R. 1497 and specific reference to CAFRA subsequent to the Blue Crab case are intended to clearly show that it is Congress’ intent to provide “innocent owner” in forfeiture proceedings under the Lacey Act.

It is also important to note that Lacey Act does not define the term “foreign law.” In the absence of such definition, the courts have interpreted the phrase “any foreign law” extremely broadly in the content of fish and wildlife taken in contravention of any foreign law. See e.g. *United States v. McNab*, 331 F.3d 1228, 1235–39 (11th Cir. 2003) (interpreting “any foreign law” to include non-statutory provisions such as foreign regulations, resolutions, or decrees); *United States v. One Afghan Urial Ovis Orientalis Blanfordi Fully Mounted Sheep*, 964 F.2d 474, 477–78 (5th Cir. 1992) and *United States v. Lee*, 937 F.2d 1388, 1390–92 (9th Cir. 1991).

In an effort to provide more specific guidance to U.S. importers, and to constrain the broad interpretations that Federal courts have placed on the term “any foreign law,” the language in H.R. 1497 defines equally both “State” and “foreign law” in 16 U.S.C. Section 3372 to include only those laws which relate to policy objectives of the Lacey Act, those intended specifically to promote the protection or conservation of threatened or endangered plants.

Finally, it is my hope that prior to bringing this legislation to the House of Representatives, we will have an additional opportunity to meet with the various representatives of the Executive Branch who will be charged with the responsibility of investigating, enforcing and collecting the various data regarding the importation of illegal logs and other wood products. Since there has been considerable realigning of responsibilities, including the reassignment of agricultural inspectors, since the creation of the Department of Homeland Security, it is essential that we ensure that the correct federal agencies have the authority and resources to effectively accomplish the goals of this legislation. In addition, we need to en-

sure that the measure correctly defines the term “plant”. We can all agree that illegal logging should be stopped.

HENRY E. BROWN, JR.

