



UNDERSTANDING THE LACEY ACT

NIKI LOVEGREN AND ADRIANE BURMESTER

MATT FRANK
DR. JIM BOWYER
DR. JEFF HOWE
DR. STEVE BRATKOVICH
KATHRYN FERNHOLZ

27 NOVEMBER 2013

DOVETAIL PARTNERS INC.

A Trusted Source of Environmental Information



Understanding the Lacey Act

Introduction

In 2008, the Lacey Act was amended by the U.S. Congress so as to greatly expand its role in environmental regulation. The increased influence of the Lacey Act is primarily a result of passage of the Food, Conservation, and Energy Act of 2008 that added provisions pertaining to importation of plant and animal products, including wood products. For firms involved in importation, processing, or sale of products made of wood obtained outside of the U.S. or Canada the changes are profound. This report discusses the Lacey Act, its amendments, and implications for companies involved in the trade and importation of wood and wood products.

History

From the founding of the U.S. to the early 1900s, individual states had responsibility for protection and management of wildlife. This approach rested on a legal theory in English common law called the “state ownership doctrine” under which each state claimed ownership of and the right to regulate, on behalf of its people, all wildlife within its borders. This approach had been upheld in a number of Supreme Court rulings during the period. However, given plummeting populations of migratory birds, including the once-ubiquitous passenger pigeon, and increasing international and interstate trade concerns, existing wildlife laws became recognized as insufficient for national and international environmental protection.¹ Specific threats to wildlife at the time included hunting for commercial markets, interstate shipments of illegally killed game, the introduction of exotic species, and the killing of birds for the feather trade (Anderson 1995).

While problems were recognized, the states continued to maintain control over all wildlife within their borders. However, the federal government began to assert authority in an attempt to regulate international and interstate wildlife trade. By allowing both state and federal governments to independently regulate wildlife protection, enforcement was difficult (Anderson 1995). The result was what economists call the “tragedy of the commons” where a shared resource (migratory birds) was depleted by individual states acting independently and rationally according to their own self-interest (commercial harvest of birds within their borders), despite the understanding that the depletion of the resource went against everyone’s best interest in the long-term.

As a result of these conditions John Lacey, an Iowa Senator, proposed a new federal law in 1900 to better protect wild birds and game by making it a federal offense to poach game in one state and sell it in another. The legislation also contained provisions prohibiting international movement of live wildlife species. As enacted, this law initially served three purposes: to provide protection for wild game species and song and

¹ Other factors included the increase in the acreage (and resulting management issues) of federally owned land and the expanded role of the U.S. in international issues.
<http://www.coloradocollege.edu/dot/Asset/fc919f40-c24a-4287-ab6c-d649e4dca7a6.pdf>

insectivorous wild birds; to prevent the introduction of foreign birds and other animals; and to supplement state laws with the purpose of protecting game and birds (Anderson 1995).

Amendments Prior to 2008

Since 1900, the Lacey Act has been amended six times (Table 1 summarizes amendments prior to 2008). The Act was first amended in 1935, expanding illegal wildlife shipment liability to include individuals and companies. The U.S. Department of Agriculture (USDA) was also given the responsibility for enforcing the act, which included making arrests and executing warrants. In 1949, a provision was made to ensure animals were imported under humane and healthy conditions. In 1969, the act’s reach was expanded to include amphibians, reptiles, mollusks, and crustaceans. A 1981 amendment added fish to the list and granted USDA wildlife agents permission to carry firearms. In addition, it reduced the proof standard from “willfully” to “knowingly” to aid enforcement. This amendment was particularly controversial, as the National Rifle Association stated that increased enforcement would create difficulties for hunters. Despite this opposition, the act continued to expand. In 1988, the definition of the word ‘sale’ was expanded to include purchasing services for the purpose of obtaining illegal wildlife. Wildlife agents were also given the authority to make arrests for federal crimes committed under the act.

Table 1. Amendments to the Lacey Act, 1900-1988

Year	Changes
1900	Initial act established Illegality of shipping parts of wild animals or bird's bodies that were killed in violation of state law. Stated all interstate shipments of wildlife must be clearly labeled. Removed federal restrictions on states' authority to regulate the sale of wildlife within their borders.
1935	Act now applied to any person, firm, corporation, or association that violated the act. Compliance expanded to include federal and foreign laws. Punishment established for incorrect labeling of wildlife shipments and enforcement assigned to USDA wildlife agents who could now make arrests and execute warrants.
1947	Stated animals must be transported in humane conditions.
1969	Act's reach expanded to include amphibians, reptiles, mollusks, and crustaceans. Birds that were part of the Migratory Bird Treaty Act removed from Lacey Act.
1981	Lacey Act and Black Bass Act were combined resulting in the inclusion of fish within the Lacey Act. Migratory birds returned to the Lacey Act. Wildlife agents allowed to carry firearms and to make warrantless arrests for felony violations.
1988	The definition of the word 'sale' is expanded. Wildlife exports with falsified documents, that were intended to be shipped, were now liable under the act. Stated Wildlife agents can now make arrests for crimes unrelated to wildlife.

Source: Anderson, Robert S. "The Lacey Act: America's Premier Weapon in the Fight Against Unlawful Wildlife Trafficking." Rev. of *The Lacey Act. Public and Land Law Review* 1995.

By 1988 the Lacey Act was the one of the most important wildlife protection laws in the United States. However, the act was still not as effective as originally intended. Many

foreign (e.g. exotic, non-native) species such as zebra mussels and silver carp that were prohibited by the act were already present within the U.S. and continued to spread despite increased regulation (Fowler et al. 2007). Also, the act was still difficult to enforce even though wildlife agents were given greater authority.

2008 Amendment

In 2008, the Lacey Act was amended once again through the Food, Conservation and Energy Act. Specifically, this act expanded the Lacey Act to include plants and trees within the definition of wildlife. Previously, U.S. law only protected indigenous plants listed as endangered species. The 2008 amendment states that all plant products imported into the U.S. must be legal under the laws of each country the product entered during its processing (Alexander 2012). The 2008 amendment made the U.S. the first country to ban the import and sale of illegal timber and plant products (Tanczos 2009).

These changes were made within the context of growing concerns regarding illegal logging's negative impact on natural resources and market opportunities for legitimate products and materials. Several industries and organizations supported the changes. The National Trade Association for U.S. Timber Products, the Environmental Investigation Agency, and Greenpeace all lobbied to pass the amendment. The American logging industry was a supporter, as it was searching for ways to gain fair competition within the international logging industry. Environmental organizations also provided a significant amount of support for the amendment because of the relationship between deforestation due to illegal logging and climate change. However, the 2008 amendment also had opponents. Several member nations of the World Trade Organization (WTO) saw it as a potential non-tariff trade barrier. They claimed it created a trade barrier between the U.S. and countries with minimal environmental regulation (Tanczos 2009).

To properly abide by the Lacey Act plant and animal products must be in compliance with CITES as well as with foreign laws.² CITES divides threatened species into three categories: species threatened with immediate extinction, species facing potential extinction, and species protected by one country that requests the help of CITES. Special documentation is required to trade in CITES species. CITES was part of U.S. law prior to 2008; however, the 2008 Lacey Act amendment resulted in the legal requirement that all countries trading with the U.S. must follow CITES guidelines.

In order to ensure compliance with the 2008 amendment, all plant and timber products must be declared when entering or exiting the U.S. Similar declarations are required for wildlife.³ Each declaration must include the scientific name of every plant type in the product, value of the item, quantity, and country of origin. Declarations can be made electronically or by mail. Electronic forms are collected by customs and border control;

² The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international law that works to ensure international trade does not harm the survival of wildlife and plants (Convention 2006). The U.S. is party to this convention and it is implemented into U.S. law through the Endangered Species Act.

³ See Appendix A for further details regarding Lacey Act compliance procedures.

paper forms are mailed to the Animal and Plant Health Inspection Service (APHIS), a copy of which is inspected by border control.⁴

Alternately importers can complete a *blanket declaration form*, which acts as a summary report of all imported products they anticipate receiving throughout a given month. At the end of each month, importers must file a reconciliation form with APHIS that includes the actual data from each shipment. This type of declaration was created for importers who import large quantities regularly, in order to reduce paperwork and increase efficiency.

An enforcement schedule for the 2008 amendment was created to allow gradual implementation of the updated law. Only products included on the schedule must currently be declared (Table 2). There are also plant and timber products that are exempt from declaration, including personal importations, packaging material, common food crops, scientific specimens, and paper products. Despite not having to file a declaration for these items, they still have the potential to be seized by the U.S. government if the items are not in compliance with other components of the Lacey Act (Sheikh 2012).

Table 2. Lacey Act Enforcement Schedule

Phase-In Schedule of Enforcement of the Declaration Requirement for Goods of, or Containing, Plants or Plant Products*

II April 1, 2009	III October 1, 2009	IV April 1, 2010
HTS Chapters: Ch. 44 Headings (wood & articles of wood) 4401—(Fuel wood) 4403—(Wood in the rough) 4404—(Hoopwood; poles, piles, stakes) 4406—(Railway or tramway sleepers) 4407—(Wood sawn or chipped lengthwise) 4408—(Sheets for veneering) 4409—(Wood continuously shaped) 4417—(Tools, tool handles, broom handles) 4418—(Builders' joinery and carpentry of wood)	HTS Chapters: Ch. 44 Headings (wood & articles of wood) 4402—Wood charcoal 4412—Plywood, veneered panels, except 44129906 and 44129957 4414—Wooden frames 4419—Tableware & kitchenware of wood 4420—Wood marquetry, caskets, statuettes PLUS PHASE II	HTS Chapters: Ch. 44 Headings (wood & articles of wood) 4421—Other articles of wood Ch. 66 Headings (umbrellas, walking sticks, riding crops) 6602—Walking sticks, whips, crops Ch. 82 Headings (tools, implements) 8201—Hand tools Ch. 92 Headings (musical instruments) 9201—Pianos 9202—Other stringed instruments Ch. 93 Headings (arms and ammunition) 9302—Revolvers and pistols 93051020—Parts and accessories for revolvers and pistols Ch. 94 Headings (furniture, etc.) 940169—Seats with wood frames Ch. 95 Headings (toys, games, & sporting equipment) 950420—Articles and accessories for billiards Ch. 97 Headings (works of art) 9703—Sculptures PLUS PHASES II & III

* Declaration requirements were effective as of December 15, 2008. All declarations submitted must be accurate; false statements may be referred for enforcement. Failure to submit a declaration will not be prosecuted, and customs clearance will not be denied for lack of a declaration until after the phase-in date above.

Source: United States. United States Department of Agriculture. Animal and Plant Health Inspection Service. *Implementation Schedule*. 2008. Print.

⁴ Although the Lacey Act applies to individuals and organizations, individuals do not have to file a declaration. However, to travel with a wood product an individual must get an import/export permit and enter and exit countries through authorized ports (Shelley 2012).

The Chatham House (based in the UK) estimates that rates of illegal wood harvesting declined by over 25 percent between 2000 and 2011 in large part due to policies such as the Lacey Act (Clarke 2012). Since 2008, the private sector has shown increasing interest in working to end illegal logging (Lawson et al. 2013).

Compliance and Enforcement Challenges

The recent expansions of the Lacey Act have resulted in new challenges related to compliance, namely issues that arise with the required declarations. When signing a declaration an importer must agree that the information presented is true and that the product is in compliance with the Lacey Act. The process does not provide for an innocent owner provision (e.g., exemption or protection) and there is no document that can ensure immunity to an importer. In effect, importers are the only liable party and, therefore, must be aware of every step of the sourcing process and supply chain when bringing a product into the U.S. Importers are also responsible for knowing and complying with all international wildlife laws in the country(s) of origin. Under due care, an importer must give the importing process the amount of attention that a reasonable person would in the same circumstance (Alexander 2012).

As yet, there is not much case law associated with the current act, and since 2008 there have been very few due care convictions (Saltzman 2010).⁵ Because of the lack of case law, there is little precedent for law enforcement or importers to follow. As a result of these issues in the U.S., the European Union has opted to use a more defined “due diligence” approach, which specifically outlines measures companies must take to ensure wood products are legally sourced (Saltzman 2010). Table 3 summarizes the similarities and differences between due care and due diligence strategies.

Table 3. Description of Due Care and Due Diligence

	Due Care (U.S.)	Due Diligence (EU)
Relevant Parties	Importers	Operators only, those who first place timber products within the EU
Information Requirements	Quantity, species name, country of origin, value	Description, country of harvest, quantity, name of supplier
Risk Assessment Process	Subjective, no guidelines, must give the amount of attention a reasonable person in the same circumstance would use (i.e., based on case law)	Risk assessment of operation to determine the likelihood of illegal timber; if there is high risk more questions are asked of the supply chain

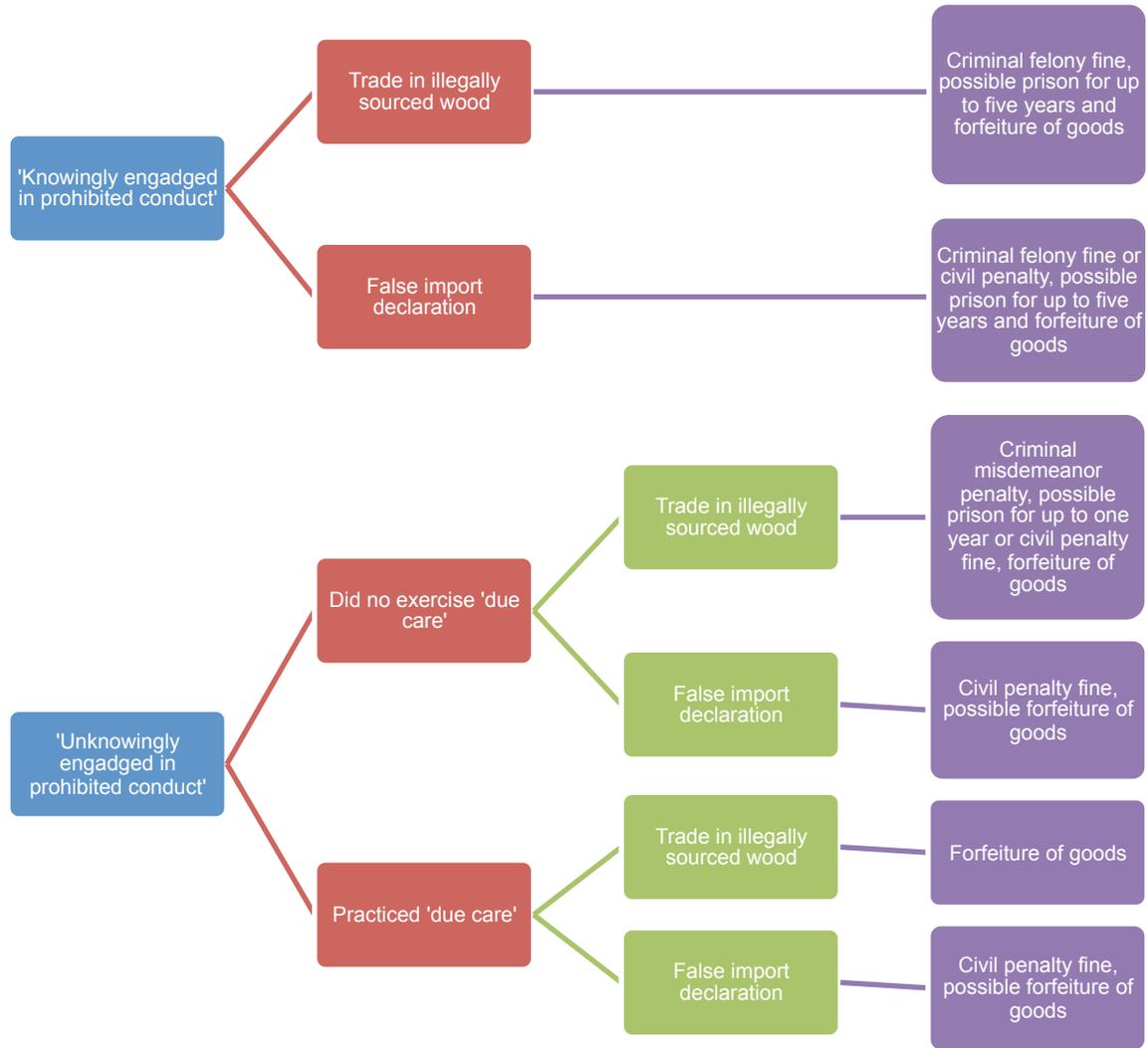
Source: European Commission. "EU Timber Regulation Summary." *Environment*. European Commission, 2013. Web.

⁵ For a listing of Lacey Act related cases, see: <http://www.animallaw.info/cases/topiccases/catola.htm>

Penalties

Suspected violation of the Lacey Act can result in charges ranging from civil to felony crimes (Figure 1).

Figure 1. Lacey Act Penalties Chart (EIA 2013)



Source: EIA. "U.S. Lacey Act and CITES." U.S. Lacey Act and CITES. Environmental Investigation Agency, 2013. Web. 08 July 2013.

A *civil* violation applies to importers that unknowingly engage in prohibited conduct through false import declarations but do exercise due care. A *misdemeanor* violation applies to importers who buy, sell or transport a product without due care but have no knowledge that the product is illegal. A *felony* violation applies to importers that knowingly commit an action in violation of the Lacey Act. In addition to these charges, the government can also require an individual or organization to forfeit products. The government is tasked with proving violators guilty. The government gathers information from foreign governments, non-governmental organizations (NGOs), private citizens, industry members, border agents, and through anonymous tips and data analysis.

Gibson Guitar Case

The first legal case resulting from the 2008 amendment was against Gibson Guitar Corporation. In 2012, Gibson entered into a criminal enforcement agreement with the U.S. government. This agreement deferred criminal prosecution, and Gibson agreed to: a) establish a compliance program to strengthen controls and procedures, b) pay a penalty amount of \$300,000 and c) pay a community service payment of \$50,000 to the National Fish and Wildlife Foundation (U.S. Department of Justice 2012). The appendix includes publicly available information about the company's compliance program.

Companies and the Lacey Act

One way for companies to ensure Lacey Act compliance is to adopt a compliance system that establishes the process and procedures of due care. There are many things companies can do to perform due care (see sidebar). It is also important that due care efforts are recorded and fully documented in order to prove that due care was practiced.

A potential component of such a compliance system is use of forest product chain-of-custody certification programs, such as the Forest Stewardship Council (FSC) and programs endorsed by the Programme for the

Musicians and the Lacey Act

Despite getting the correct permits and practicing due care, individuals can still have their products seized by the government under the Lacey Act. This has proven to be a problem among musicians. Antique instruments that contain exotic tone woods are considered high quality instruments, but it is generally impossible to trace the origins of the original materials to ensure compliance with the Lacey Act (Pryce, 2012). These issues can make it risky for musicians to travel with their instruments. Due to the potential impacts of this problem, the U.S. government has clarified that musical instruments imported for performance reasons do not need to be declared (Lacey Act Amendment 2012).

Due Care Activities

- Question suppliers and collect as much information about sources as possible.
- Visit suppliers to verify sourcing.
- Engage independent auditors to inspect suppliers and/or review supplier provided information.
- Avoid suppliers and/or countries of origin with known corruption, illegal logging and/or insufficient environmental regulation and enforcement.

Endorsement of Forest Certification (PEFC), including the Sustainable Forestry Initiative (SFI).⁶ Forest certification programs can help address concerns about legality; *however, they are not sufficient in and of themselves for demonstrating compliance with the Lacey Act requirements.*

2013 Developments

In reaction to the changes that resulted from the 2008 amendment, there are currently several proposed new amendments. The Retailers and Entertainers Lacey Implementation and Enforcement Fairness (RELIEF) Act would allow for products owned prior to 2008 to be exempt from the Lacey Act. The RELIEF Act changes would also forbid the seizure of products that were unknowingly illegal and require the government to create an illegal wood products database (Pryce 2012). Another proposed amendment, the Freedom from Over Criminalization and Unjust Seizures (FOCUS) Act would end the foreign law aspect of the 2008 amendment entirely and would take much of the Lacey Act's power away (Pryce 2012). Both of these proposed amendments are aimed at reducing the impact of the Lacey Act. However, despite the current level of controversy there are also proposed changes that would expand the powers of the Act.

The Invasive Fish and Wildlife Prevention (IFWP) Act of 2013 is targeted at fixing the original issues with the act. Its goal is to prevent the introduction of invasive species. This proposed change would give greater authority and capacity to the U.S. Fish and Wildlife Service (FWS). The IFWP Act would require new wildlife species be screened prior to entering the country in order to determine the effects the new species would have on the environment. In addition, the FWS would be given greater authority to respond to emergency situations regarding invasive species (Meyers 2013).

In May of 2013 the U.S. House of Representatives Committee on Natural Resources, Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs held an oversight meeting regarding the effectiveness of the 2008 amendments. During this meeting, APHIS reported the logistical difficulties associated with the amendments. As a result of these issues, APHIS is currently concentrating on public complaints in an attempt to make compliance and enforcement as practical as possible.

The Bottom Line

The Lacey Act has been expanding since its enactment in 1900. Over time, it has become one of the most effective laws for protecting wildlife within the U.S. and around the world. As a result of the 2008 amendment, the act has broadened the definition of wildlife to include plants, including trees. It is clear that forest products companies must commit to greater due care when sourcing imported materials. This recent increase in regulation may add a significant near-term burden for importers, but it also has the potential to provide benefits for the environment for future generations.

⁶ The Sustainable Forestry Initiative (SFI) and American Tree Farm System (ATFS) are North American forest certification programs endorsed by the PEFC. Forests certified to the SFI Standard exist solely in the U.S. and Canada; however, the SFI program has specific requirements for program participants that buy fiber from outside North America, including requirements for a process to assess the risk of acquiring material from illegal logging and for addressing any identified significant risks.

Sources

Alexander, Kristina. *The Lacey Act: Protecting the Environment by Restricting Trade*. Rep. no. R42067. Congressional Research Service, 12 Apr. 2012.
www.fas.org/sgp/crs/misc/R42067.pdf.

Anderson, Robert S. "The Lacey Act: America's Premier Weapon in the Fight Against Unlawful Wildlife Trafficking." *Public and Land Law Review*, 1995.
www.animallaw.info/articles/arus16publlr27.htm.

Clarke, Caitlin and Adam Grant. "Gibson Guitar Logging Bust Demonstrates Lacey Act's Effectiveness." WRIInsights. August 10, 2012.
<http://insights.wri.org/news/2012/08/gibson-guitar-logging-bust-demonstrates-lacey-acts-effectiveness>

Environmental Investigation Agency. "U.S. Lacey Act and CITES." *U.S. Lacey Act and CITES*. July 8, 2013. <http://eia-global.org/campaigns/forests-campaign/u.s.-lacey-act/lacey-and-cites>.

Fowler, Andrea J., David M. Lodge, and Jennifer F. Hsia. "Failure of the Lacey Act to protect US ecosystems against animal invasions." *Frontiers in Ecology and the Environment* 5.7 (2007): 353-59. *Frontiers in Ecology and the Environment*. Ecological Society of America, 2007. www.caf.wvu.edu/~rwhitmor/InvasiveSpecies/LaceyAct.pdf.

Lawson, Sam, and Larry MacFaul. *Illegal Logging and Related Trade*. Rep. Chatham House, July 2010.
[http://www.chathamhouse.org/sites/default/files/public/Research/Energy, Environment and Development/0710pr_illegallogging.pdf](http://www.chathamhouse.org/sites/default/files/public/Research/Energy,_Environment_and_Development/0710pr_illegallogging.pdf).

Logging and the Law. Rep. The Union of Concerned Scientists, Apr. 2012. June 2013.
http://www.ucsusa.org/fassets/fdocuments/fglobal_warming/fillegal-logging-and-lacey-act.pdf.

Meyers, Jeff. "Gillibrand Bill Designed to Prevent the Spread of Invasives." Press-Republican. July 20, 2013.
http://pressrepublican.com/0100_news/x2040129911/Gillibrand-bill-designed-to-prevent-the-spread-of-invasives.

NewPage. "The Lacey Act and the Paper Industry." NewPage Cooperation, 2009.
www.newpagecorp.com/files/The_Lacey_Act.pdf.

Office of Public Affairs. The United States Department of Justice. *Gibson Guitar Corp. Agrees to Resolve Investigation into Lacey Act Violations*. Justice.gov. August 6, 2012.
<http://www.justice.gov/opa/pr/2012/August/12-enrd-976.html>.

Pryce, Meredith. "Reason to Fret: How the Lacey Act Left the Music Industry Singing the Blues." *Rutgers Law Review*. Volume 65, Fall 2012, Issue 1.

<http://www.rutgerslawreview.com/wp-content/uploads/archive/vol65/issue1/Pryce.pdf>.

Saltzman, Rachel. "Establishing a 'Due Care' Standard Under the Lacey Act Amendments of 2008." *Michigan Law Review First Impressions*. Aug. 2010.

<http://www.michiganlawreview.org/articles/establishing-a-due-care-standard-under-the-lacey-act-amendments-of-2008>.

Sheikh, Pervaze A. *The Lacey Act: Compliance Issues Related to Importing Plants and Plant Products*. Rep. no. R42119. Congressional Research Service. July 24, 2012.

www.fas.org/sgp/crs/misc/R42119.pdf.

Shelley, Wesley Ryan. "Setting the Tone: The Lacey Act's Attempt to Combat the International Trade of Illegally Obtained Plant and Wildlife and its Effect on Musical Instrument Manufacturing." *Lewis and Clark Law School*. October 5, 2012.

law.lclark.edu/live/files/11621-422shelley.pdf.

Sustainable Forest Products. "General Characteristics of the Two Major Systems for Forest Certification." *Sustainable Forest Products*. World Recourses Institute. 2013.

www.sustainableforestprods.org/node/90.

Tanczos, Francis G. "A New Crime: Possession of Wood – Remediating the Due Care Double Standard of the Revised Lacey Act." *Rutgers Law Journal* 42.549. 2009.

lawjournal.rutgers.edu/sites/lawjournal.rutgers.edu/files/issues/v42/2/10TanczosVol.42.2.pdf.

Testimony of Stephen Guertin, Deputy Director, U.S. Fish and Wildlife Service, Department of the Interior, Before the U.S. House of Representatives, Committee on Natural Resources, Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, Regarding the 2008 Lacey Act Amendments. May 16, 2013.

democrats.naturalresources.house.gov/sites/democrats.naturalresources.house.gov/files/2013-05-16_FWOIA_guertintestimony.pdf.

U.S. Department of Agriculture, Animal and Plant Health Inspection Service. *Convention on International Trade in Endangered Species of Wild Fauna and Flora*. CITES. 2006.

<http://www.cites.org/eng/disc/text.php>.

United States Department of Agriculture, Animal and Plant Health Inspection Service. *APHIS' Lacey Act Blanket Declaration Pilot Program*.

www.aphis.usda.gov/plant_health/lacey_act/downloads/Instructions.pdf.

United States Department of Agriculture, Animal and Plant Health Inspection Service.
Implementation of Revised Lacey Act Provisions. Federal Register, Vol. 73, No. 196.
October 8, 2008.

http://www.aphis.usda.gov/plant_health/lacey_act/downloads/FederalRegisterNoticeLaceyActImplementationPlan.pdf.

United States Department of Agriculture, Animal and Plant Health Inspection Service.
Lacey Act Amendment: Complete List of Questions and Answers. February 16, 2012.

http://www.aphis.usda.gov/plant_health/lacey_act/downloads/faq.pdf.

Appendix A: Lacey Act Compliance Program

The compliance program established via the Department of Justice agreement with Gibson Guitar Corporation is publicly available and is quoted in its entirety below. The remainder of the document from the Department of Justice that resulted from the agreement can be found at the U.S. Fish and Wildlife Service website, available here:

<http://www.fws.gov/home/feature/2012/USvGibsonGuitarAgreement.pdf>

Lacey Act Compliance Program

1 Compliance Objectives

As an industry leader, Gibson is committed to helping to conserve, protect and restore threatened forest habitats and safeguarding the future of natural resources critical to making musical instruments. A large part of this commitment is the support and use of legally harvest and exported sustainable wood sources. Compliance with relevant laws including the Lacey Act (16 U.S.C. §§ 3371 et seq.), amendments, or regulatory interpretations of the Lacey Act, is a critical component of a transparent, legal, and sustainable supply chain. The objective of this compliance program is to support legal wood sourcing through the implementation of a structured Lacey Act compliance program, which will expand upon the sustainability goals of Gibson's existing Responsible Wood Purchasing Policy. This document sets forth Gibson's policies, procedures and processes with regard to Lacey Act compliance ("Lacey Act Compliance Program").

2 Legal Background

The Lacey Act is the oldest wildlife protection statute in the United States. Initially enacted to protect animal species, the Lacey Act was amended, effective May 22, 2008, to include plant species. A major rationale for the inclusion of plant species in the Lacey Act was to prevent trade in illegally harvested lumber and wood products made from illegally harvested lumber.

2.1 General Prohibitions Under the Lacey Act

The Lacey Act makes it unlawful to:

- Trade in any plant that is taken, possessed, transported, or sold in violation of the laws of the United States, a State, Indian Tribe, or any foreign law that protects plants;
- Falsify or submit falsified documents, accounts or records of any plant covered by the Lacey Act;
- Import plants and plant products (with some exemptions) without an import declaration.

As it concerns Gibson, the definition of plant contained in the Lacey Act includes wood used for the purposes of manufacturing guitars or guitar parts. The full text of the Lacey Act can be found at attachment A. In addition, a useful reference guide can be found at http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml.

2.2 Lacey Act Penalties

Violations of the Lacey Act carry serious penalties for companies and individuals. In addition to civil fines and forfeiture of goods, criminal penalties may also attach to individuals or companies found to have knowingly and, in some cases with lack of due care, violated the Lacey Act.

A misdemeanor violation of the Lacey Act, punishable by 1 year in prison and a fine of \$100,000 (\$200,000 for companies), may be found if, in the exercise of due care, the individual or the company should have known the wood it purchased was illegally taken, possessed, transported or sold. Felony culpability, punishable by 5 years in prison and a \$250,000 (\$500,000 for companies), may lie for knowing violations of the Lacey Act.

2.3 Due Care Standard

To exercise due care, one must use the degree of care which a reasonably prudent person would exercise under the same or similar circumstances. The exercise of due care will minimize the risk of purchasing plant products that were harvested or traded illegally. A Lacey Act violation may also occur if an individual or company fails to exercise due care in evaluating its supply chain.

The obligation to exercise due care accordingly requires that certain reasonable steps be undertaken to ensure that the Lacey Act is not being violated and wood is not being purchased in violation of the relevant laws in the place of origin. As such, Gibson seeks to enhance its current due care standards when purchasing wood products. As a part of this effort all purchasing staff at each division are trained annually (see Section 3 .5) to follow this legal compliance plan and shall adhere to the following steps prior to purchasing any wood product:

- Step 1: Communicate with suppliers about Gibson's policies to determine any challenges the supplier may have in implementing the policies and work with the supplier to solve the issue.
- Step 2: Ask Questions to find as much information as possible regarding the supplier and where wood based products are originating, using "Gibson's Legal Compliance Procurement Checklist" (example questions from which are attached hereto at attachment A) to determine whether the product meets Gibson's minimum requirements for known/legal wood products.
- Step 3: Do not rely solely on the checklist to identify risky sources but conduct independent research and exercise care before making a purchase. This may include internet research, consultation with U.S. or foreign-based experts or authorities, arranging an on site supplier/forest visit, if possible, or speaking with local authorities

and/or experts on documentation required for legal export and the validity of such documentation received from the supplier. (see Sections 3.2 and 3.3)

- Step 4: Request sample documentation prior to wood purchase to reasonably ensure that all forms provide sufficient information to comply with the Lacey Act requirements and to assist in verifying the validity of the documentation as described in Step 3.
- Step 5: Make a determination based on a review of all of the information collected.
- Step 6: Maintain records documenting all efforts to ensure legality
- Step 7: In the event uncertainty exists regarding satisfaction of the above criteria or the ultimate determination of legal compliance, Gibson' policy is that Gibson should not pursue the purchase.

3 Gibson Policies and Procedures

Gibson is committed to exercising due care in determining whether prospective wood sources are legal prior to purchase. Gibson's due care standard is outlined in Section 2.3 and supplemented by Gibson's policies and procedures. Gibson will not knowingly purchase wood that has been illegally harvested or exported from its country of origin. If Gibson discovers that an importer/supplier has engaged in illegal activities, it will cease business dealings with the violating entity and, where appropriate, notify the relevant enforcement agency.

3.1 Procurement of Wood

Gibson's objective is to procure wood products sourced from forests where legal harvest and chain of custody can be verified and from recycled sources. Gibson encourages all of its suppliers to work with a third-party certification group, such as the Forest Stewardship Council (FSC), to validate the legality and sustainability of their harvesting practices. Gibson requires that wood suppliers who claim their product is "certified" maintain valid FSC or equivalent certification and that the certification number (CoC # in the case of FSC) be listed on each invoice. These third-party certified claims will be verified on an annual basis by Gibson during its Supply Chain Audit (see section 3.4). Gibson also requires that all shipments of wood that it receives, whether from the original wood supplier or an importer, include copies of all relevant import forms and declarations (including required Lacey Act Plant declarations) and export documentation, including from the country of origin and/or harvest. All Gibson importers and suppliers will also be required to furnish to Gibson copies of any applicable export or business licenses that they maintain to be updated on at least an annual basis.

3.2 Verification of Foreign Law and Foreign Certifications/Licenses

When working with a new supplier or new country of origin, or during the annual Supply Chain Audit for existing suppliers and sources, Gibson will make a reasonable inquiry into the foreign laws governing the protection and export of wood from the country of origin where Gibson wood purchases originate. Gibson will make such inquiry directly of applicable foreign government agencies or, if appropriate, of practitioners of law in such

countries. Gibson will also work with third-party certifiers, non-profit organizations or NGOs dedicated to sustainable sourcing practices to supplement its inquiry into foreign law.

3.3 Using Watch Lists and Other Resources to Determine Risk

When working with a new supplier or new country of origin, or during the annual Supply Chain Audit for existing suppliers and sources, Gibson will research available information on illegal logging practices to perform a risk assessment at the species level, considering source location, using the following key resources to determine or clarify risk:

- CITES (Convention on International Trade in Endangered Species) listed tree species
- IUCN (International Union for the Conservation of Nature) Red List of Threatened Plants;
- National endangered or threatened species lists (typically listed in government legislation, natural heritage databases, etc.) - available through government agencies or conservation-oriented NGOs; and,
- UNEP-WCMC (World Conservation Monitoring Centre) tree species database (http://www.unep-wcmc.org/trees/trade/ara_ang.htm).

Gibson will refer to the sources above to identify countries and regions that are substantially impacted by illegal logging. In addition to consulting the above sources, Gibson will use reasonable efforts to research any available industry or governmental guidance related to the appropriate measures for verifying the legality of wood originating from countries designated as high risk by any reliable third-party certifier, governmental agency or NGO. At annual training sessions (see Section 3.5) the results of Gibson's risk assessment will be relayed to Gibson employees involved in purchasing. In addition, any purchases from countries or regions designated as high risk will require a heightened level of diligence.

For instance, in addition to complying with all other Gibson policies and procedures, wood can only be purchased from a country source identified as high risk if (a) the product is certified against a chain of custody or traceability standard, (b) the supplier certificate is valid and the scope includes the product supplied, (c) the product has been traced by Gibson along an unbroken and verified chain of custody from the purchaser back to the source entirely by obtaining supplier certification codes on documentation for that product down to forest level, and (d) the harvest and export of the species is not restricted or prohibited in the source country.

3.4 Supply Chain Audit

On an annual basis Gibson will conduct an audit of its wood purchasing practices that evaluates all documents, certifications, licenses, and other records associated with its wood purchases to ensure compliance with Gibson's Lacey Act Compliance Program. During this audit, Gibson will evaluate the adherence to existing laws governing the

protection and export of wood from all countries where Gibson wood purchases originate. At this time, Gibson will also make inquiries of foreign government agencies, third-party certifiers, non-profit organizations, or NGOs as to changes in foreign forestry or export laws. To the extent practical, the Supply Chain Audit will include audits of each division's application of the Compliance Program. The Supply Chain Audit will identify any material weaknesses in Gibson's Lacey Act Compliance Program and establish appropriate corrective action, to include amending the compliance program as necessary to reflect changes in the laws.

3.5 Training

On an annual basis, following the Supply Chain Audit, Gibson will conduct Lacey Act compliance training seminars with employees and managers responsible for wood purchases to reinforce the importance of complying with Gibson's Lacey Act Compliance Program and to provide updates on applicable law, high risk countries, and identified weaknesses in compliance.

A training record will be created for each training session. As necessary, Gibson will also conduct training sessions for wood suppliers to educate them on Gibson legality requirements and to provide them with links to existing resources.

3.6 Retention of Records

All records associated with Gibson's Lacey Act Compliance Program will be retained for at least 5 years.

3.7 Disciplinary Action for Non-Compliance

Any Gibson employee that is found to have violated any of the procedures contained in Gibson's Lacey Act Compliance Program will be subject to discipline and possible termination.

Gibson will maintain records related to any such disciplinary action in the personnel files of any impacted employee.

4 Conclusion

Gibson is committed to a successful implementation of its Lacey Act Compliance Program and the broader goals of sustainable and lawful sourcing that the program seeks to promote. Gibson will endeavor to share its methods and results of its compliance efforts with others in the musical instrument manufacturing industry in an effort to be a leader in this area.

This report was prepared by
DOVETAIL PARTNERS, INC.

Dovetail Partners is a 501(c)(3) nonprofit organization that provides authoritative information about the impacts and trade-offs of environmental decisions, including consumption choices, land use, and policy alternatives.

**FOR MORE INFORMATION OR TO REQUEST
ADDITIONAL COPIES OF THIS REPORT, CONTACT US AT:**

INFO@DOVETAILINC.ORG

WWW.DOVETAILINC.ORG

612-333-0430

© 2013 Dovetail Partners, Inc.



DOVETAIL PARTNERS, INC.

528 Hennepin Ave, Suite 703

Minneapolis, MN 55403

Phone: 612-333-0430

Fax: 612-333-0432

www.dovetailinc.org