



AN ABSTRACT OF THE THESIS OF

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Title: Implications of the 2008 Lacey Act Amendments: Insights from the Wood Products Industry.

Abstract approved:

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Export-oriented illegal logging has been recognized as a major global problem in environmental, social, and economic terms. It has been argued that export-oriented illegal logging does not benefit the community or government that should be benefited by its own natural resources. The emergence of policy initiatives targeting illegal logging could have the potential to increase the competitiveness of legally sourced timber products by removing illegal products from the market of the consuming country.

The US Lacey Act amendments of 2008 set a precedent for the global trade in plants and plant products by putting in place incentives for US wood products importing companies to demand legally sourced and traded wood. This research addresses how the 2008 Lacey Act amendments have impacted the US wood industry, and how those affected by the amendments view the future of environmental policy and global illegal logging as impacted by the amendments.

The majority of respondents in this study agree that steps should be taken to decrease global illegal logging, but some aren't convinced that the Lacey Act amendments will ultimately have the desired effect. According to this research, most US wood importers have made small changes to their operational practices. This study indicates the possibility that though US wood importers feel the responsibility to ensure their companies are compliant with legislation, they are not sure the 2008 Lacey Act amendments will ultimately hinder global illegal logging. Included in this study are also suggestions from US wood importers regarding policy implementation. These suggestions include an increase in communication between the US government and US wood products companies, an increase in future research, and the possibility of focusing the Lacey Act on certain high-risk regions.

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Implications of the 2008 Lacey Act Amendments: Insights from the Wood Products  
Industry

by  
Ashlee Tibbets

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I understand that my thesis will become part of the permanent collection of Oregon State University libraries. My signature below authorizes release of my thesis to any reader upon request.

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Ashlee Tibbets, Author

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# **Implications of the 2008 Lacey Act Amendments: Insights from the Wood Products Industry**

## **CHAPTER 1 – GENERAL INTRODUCTION**

In recent decades, global concern over illegal logging has led to an increase in environmental policy with the goal of reducing or eliminating illegal logging. In March of 2005, the leaders of the world's biggest consumer countries stated that they "recognize the impacts that illegal logging and associated trade and corruption have on environmental degradation, biodiversity loss, and deforestation and hence climate systems. Illegal logging also damages the livelihoods in the poorest countries, causes loss of revenues to governments, distorts markets and sustains conflicts" (EIA 2007). There are many definitions of illegal logging, but the one used in this research is the harvesting of timber in contravention of the laws of the country of harvest or production. Together with the associated international trade in illegally-harvested wood products, illegal logging causes environmental damage, costs governments and communities billions of dollars in lost revenue, and is closely associated with corruption and organized crime. It also undermines the competitiveness of legitimate forest operations in both exporting and importing countries (European Commission 2011).

Illegal logging has been recognized as a major global problem in environmental, social, and economic terms. Export-oriented illegal logging is viewed as especially destructive to local communities. Export-oriented illegal logging is a destructive activity because it

harms the community or government that should be benefited by its own natural resources. Instead of bringing revenue to the local community, the revenue from illegal logging benefits a small group of individuals and corrupt organizations at the expense of the local people and in many cases, human rights (EIA 2010). The World Bank estimates the annual global market value of losses from illegal cutting of forests at over US\$10 billion, and annual losses in government revenues of about US\$5 billion. United States (US) companies lose an estimated one billion dollars annually due to illegally-harvested timber. These losses are calculated by combining estimated economic losses such as damage to the land, lost income from a sustainably managed forest, and the job losses in American timber-dependent communities (World Bank 2006).

The Lacey Act amendments of 2008 were established to set a precedent for the global trade in plants and plant products that supports other countries' natural resources and laws by establishing incentives for US wood importers to demand legally sourced and traded wood (EIA 2009). The emergence of policy initiatives targeting illegal logging are considered to have the potential to increase the competitiveness of legally sourced timber products by removing the illegal products from the marketplace, which are often cheaper than legal products (ITTO 2010). By enforcing a demand-side legal framework that will empower enforcement agencies with new tools and resources, the international trade of wood products could be significantly more fair for companies who already import legally sourced wood and wood products. Over the last decade, the US has been

one of the largest wood products market in the world. It is thought that if US importers demand answers to questions such as “where is this wood coming from” and “how did it get here,” the US can begin the push toward a new era of legally sourced wood (EIA 2007).

The present research will address the history and evolution of the Lacey Act, how the 2008 Lacey Act amendments have been utilized, and how those affected by the amendments view the future of environmental policy and global illegal logging. This study will fill the gap regarding the lack of research on the impact of the 2008 Lacey Act amendments on US wood products importers.

## **Objectives**

This combined questionnaire and interview -based research aims to provide an understanding of how forest products professionals are responding to the 2008 Lacey Act amendments. In this research, forest products professionals include wholesalers, importers, governmental representatives, legal representatives, and select non-US exporters.

In addition to identifying opportunities for outreach to forest industry professionals, this work also aims to unveil potential communication shortcomings between US-based

companies impacted by the Lacey Act amendments. Understanding these shortcomings allows for enhanced communication based on lessons learned during the 2008 implementation of the Lacey Act. The following specific research objectives are made:

- Characterize how forest products representatives in the US view the 2008 Lacey Act amendments
- Identify specific challenges companies are facing with respect to the 2008 Lacey Act amendments
- Characterize how forest products representatives see the present and future implications of the 2008 Lacey Act amendments
  - Determine what was done well in the communication, implementation, and enforcement of the 2008 Lacey Act amendments
  - Determine what could have been done better in the communication, implementation, and enforcement of the 2008 Lacey Act amendments

## **CHAPTER 2 – THEORETICAL BACKGROUND**

Humans have been interacting with the natural world throughout the civilization of mankind. The health of individual ecosystems depends on maintaining sufficient biodiversity. Forests play a critical role by providing habitat and food for a wide range of organisms. Forests also provide humans with a multitude of products such as fuel, structural wood products, and manufactured wood products. Other non-wood forest products include climate mitigation, recreation, and habitat (Hansen & Juslin 2003).

Today, we live in a world where people and nature regularly come into close contact through industrial and agricultural development. Studies on the impact of wildlife disturbance help us understand and manage adverse impacts that occur when humans and

wildlife interact (Bejder et al. 2009). Though it is true that humans impact forests, it is also true that forests impact human life. Forests act as a habitat for wildlife, a primary raw material, and as a mitigation system for carbon sequestration which affects global warming. Forests cover approximately 30% of the Earth's land surface (42 million km<sup>2</sup>), and are capable of sequestering 2.6 billion tons of carbon per year. This figure is equivalent to more than 33% of the carbon emissions resulting from fossil fuel consumption and land use changes (Bonan 2008). The consequences of deforestation and forest degradation are severe and closely related. Deforestation and forest degradation are responsible for at least one-fifth of greenhouse gas emissions, habitat destruction, and biodiversity loss (INECE 2010a).

Consistent and unregulated use of forests has led to a decrease in biodiversity, ecosystem health and carbon sequestration in some forest ecosystems (Wilson 1992). Some of this is the result of illegal logging. Various forms of legislation have been passed in the US to address the issue of adverse human effect on wildlife, including the Endangered Species Act of 1973, the Convention on International Trade in Endangered Species of Wild Fauna and Flora in 1975, and the Lacey Act in 1900. Global legislation specific to illegal logging has been passed in Europe, Asia, Australia, Africa, and the US.

## **Illegal Logging: Informational Limitations**

Seneca Creek (2004) reported major countries/regions that have high reported illegal forest production. The countries include Russia, Indonesia, Brazil, Malaysia, Africa, Japan, and China. However, there is very little supporting data and the percentage of wood considered illegal varies based on different definitions of “illegal” (Seneca Creek Associates and Wood Resources International 2004). Chatham House reported that illegal logging has decreased by between 50% and 75% in the last decade in Cameroon, the Brazilian Amazon, and Indonesia. Chatham House acknowledged the limitations of measures of illegal logging, stating:

Assessing actual levels of illegal activity is very difficult and can be imprecise. Traditionally, attempts to measure quantitatively the level of illegal logging in producer countries and the trade in illegally sourced timber through processing countries and into consumer countries... all [methods] have their problems (Lawson and MacFaul 2010).

Because of the lack of trustworthy information sources, the extent of illegal logging is uncertain. Most studies and policies have been based on a 2004 study by Seneca Creek and Associates for the American Forest and Paper Association which asserted that between 8% and 10% of globally traded timber may come from suspicious sources (Seneca Creek Associates and Wood Resources International 2004). However, the majority of illegally harvested timber is used in the country of harvest and does not enter the international market (CIE 2010 pp. 10).

## **Effects on the Forest Products Industry**

It is estimated that billions of dollars of “high risk” or potentially illegally harvested wood enters the US every year (INECE 2010b; EIA 2007). The Lacey Act is now equipped to prosecute those who know or should know their product is illegally sourced. The International Network for Environmental Compliance and Enforcement (INECE) (2010a) calls the 2008 Lacey Act amendments the most “far-reaching ban on illegal wood imports in the world... The crux is clear: anyone who exports or imports illegally harvested timber or wood products derived from such timber into the US is guilty of a crime” (INECE 2010a). The commerce of plants and plant products (including timber and wood products) that were illegally harvested or traded fall under this category (EIA 2007). With the inclusion of the 2008 amendments, the Lacey Act now:

1. prohibits all trade in plant and plant products that are illegally sourced from any US state or any foreign country
2. requires importers to declare the country of origin and species name of all plants contained in their products
3. establishes penalties for violation of the Lacey Act, including forfeiture of goods and vessels, fines, and jail time

The amendments became law in May 2008. Introduced in the House of Representatives by Congressman Earl Blumenauer of the state of Oregon, the amendments aim to increase transparency and focus law enforcement efforts by requiring importers to declare the species, country of origin, and other information regarding imported wood and wood products (16 USC § 3371 f). It received unanimous support from the House Committee on Natural Resources in 2007, and the Senate unanimously passed the amendments in

December 2007. The phrase “illegally sourced” in the text above is defined by the content of sovereign nations’ own laws. The legislation applies equally to plants taken, harvested, transported, or exported in violation of the laws of any of the 50 US states as well as the product’s country of origin (16 USC § 3372 a). According to the Environmental Investigation Agency (2007), the Lacey Act now has the potential to empower communities around the world to combat illegal logging and trading. It acts as the established precedent for the global trade in plants and plant products, encouraging countries to govern their own natural resources and placing incentives for companies trading in these commodities to do the same.

*What is Illegal?*

There are two premises imbedded in a violation of the Lacey Act. The first component is that a plant must be taken, harvested, possessed, transported, sold, or exported in violation of an underlying law in the country of origin or the US state of origin. Put simply, a violation of the Lacey act includes an underlying violation of a foreign, state, or tribal law (EIA 2010). These laws include:

1. theft of plants;
2. taking plants from an officially protected area;
3. taking plants from other types of officially designated areas that are recognized by a country’s laws and regulations;
4. taking plants without required authorization;
5. failure to pay appropriate royalties, taxes, or fees associated with the plant’s harvest, transport or commerce; or;
6. laws governing export or trans-shipment, such as a log-export ban.

The second component imbedded in a violation of the Lacey Act is that the person or organization must trade this illegally-sourced plant in US interstate or foreign commerce (EIA 2007).

### **Need for Lacey Act**

The causes of illegal logging are complex and are impacted by social, economic, technological, and cultural conditions. Though varied, the causes of illegal logging can include weak law enforcement, poor property rights, high levels of population growth, and poverty. The combination of these drivers create a need for wood-fuel and short-term income that can lead to illegal logging (INECE 2010). Though specific causes of illegal logging can be difficult to determine, the US has undertaken a policy initiative in order to create incentives for the US wood products industry to trade in legal timber.

Passed in 1900, the Lacey Act was the first federal law that regulated commercial animal markets. The original intent of the Lacey Act was to protect the interests of “agriculture, horticulture, forestry, wildlife and the wildlife resources of the US” (FWS 2009). The Lacey Act (originally focused on animals) specifically addressed the trading and movement of caught wildlife. It acted as one of the United States’ primary tools for prohibiting interstate and international trafficking in protected wildlife species (EIA 2009) and acted as the primary legal tool available to protect US ecosystems from

invasive animal species (Fowler et al. 2007). It was the first far-reaching federal wildlife protection law passed in the US, and underwent amendments in the 1930s, 40s, 60s, 80s, and in 2008 (FWS 2009). It was the 2008 amendments that included plant and plant products in an attempt to affect global illegal logging.

As a major importer and consumer of forest products, the US plays a significant role in the trade of illegally harvested wood. One nongovernmental organization involved in combating illegal logging states, “while reliable trade data for illegal goods is scarce, estimates suggest that US consumption of high-risk timber and wood products reaches 10% of the annual import stream – \$3.8 billion in 2006” (EIA 2007). There is also evidence that wood product exports from certain countries to the US contain a significant percentage of illegally harvested wood (INECE 2010b). Table 1 illustrates the wood exports to the US and the percentage of estimated illegal wood exports.

Table 1. Wood Export Revenues and Illegal Exports to the United States

<b>Export Country</b>	<b>2006 Total Wood Exports to the US<sup>1,2</sup></b>	<b>Estimate of global illegal exports (Percent)</b>
Russia	\$168 <sup>α</sup>	20-50*
Brazil	\$1,500 <sup>α</sup>	20-90*
China	\$10,495	32-40
Malaysia	\$1,133	20-35
Indonesia	\$966	70-80
Peru	\$83	30-40

\* indicates this data was collected from Seneca Creek Findings

α indicates this data was collected from FAO Stat

<sup>1</sup>excluding pulp and paper

<sup>2</sup> Million USD

As reported by the INECE (2010a) the Seneca Creek Findings (2004), and FAO Stat (2006), Table 1 clearly shows that of the total wood exported to the US from Russia, Brazil, China, Malaysia, Indonesia, and Peru, a large percent of it is assumed to be illegal. The majority of these wood exports come to the US in the form of manufactured wood products rather than raw lumber or logs (INECE 2010a). This can be problematic because once the wood is no longer in its raw form, it is more difficult to determine the legality of each individual piece.

Globally, there has been continuing progress toward sustainable forest management in recent decades. Enactment of new forest legislation is seen as one of the leading drivers of this trend. The Reducing Emissions from Deforestation and Forest Degradation, or REDD, is an effort to create a financial value for the carbon stored in forests, offering incentives for developing countries to reduce emissions from forested lands and invest in low-carbon paths to sustainable development. REDD+ includes the role of conservation, sustainable management of forests and enhancement of forest carbon stocks (UN-REDD 2009). This concept has been embraced by many countries, and forest-related laws and regulations continue to evolve, for the most part in a direction compatible with sustainable forest management. A general trend toward decentralization and greater recognition of indigenous peoples is not yet matched by a flow of resources to support efforts to achieve sustainable forest management at the decentralized level. Currently, enforcement of forest laws in developing countries is often weak and is exacerbated by

conflicting laws and a lack of enforcement capability. Disputes between government agencies and jurisdiction often remain unsettled, contributing to even weaker policies (ITTO 2010).

Export-oriented illegal logging has been called a destructive activity not only based on environmental concerns, but also economic. It does not benefit the communities or governments who should be reaping the benefits from their natural resources. It is speculated that illegal logging profits a small group of officials who do not own the rights to the logs rather than to people in the local community (EIA 2007).

One possible method of reducing export-oriented illegal logging is establishing legislation that encourages US log buyers to require from their suppliers knowledge of where the wood came from and whether or not it was legally harvested and exported. Asking these questions will require a shift in the industry, considering the inconsistency in policy regarding wood products manufacturing policies around the world. Some nations, like Peru and Canada, have strict regulation policy. Others, like Russia, are comparatively unregulated (EIA 2007). By enforcing laws in the US that require log buyers to be aware of the origins and chain of custody of their products, that shift can turn into a new mindset. The Lacey Act is aimed to work as a method to reinforce local laws through this method of requiring proven legal wood products. If a product is harvested illegally in one country and then shipped to the US, that material is considered

illegal in the US, based on the illegality in the country of origin. The intent is to close market access for illegal timber and wood products in order to encourage legally harvested and transported material (Brack 2006).

## **The Lacey Act Evolution**

### *Cause for Concern*

Before the Lacey Act was established in 1900, there were problems in the United States regarding poaching large numbers of game in one state, fraudulently mismarking to avoid detection, and shipping the animal meat to another state to be sold to the public under false pretenses of being a local product (33 Cong. Rec. at 4872). The problem arose to the federal government when the jurisdiction of both states involved did not have the necessary resources or power to bring the poacher to justice once game was removed from its original state. When the game entered the second state, the laws of that state were often unable to prevent the selling of the interstate product. All power to regulate interstate commerce was vested at that time in the federal government. Another issue arose when poachers began hunting in their home state during the state's closed hunting season, and selling the game as if it were brought from another state, whose hunting season was still open. Restrictions on state control over interstate items prevented the state from prohibiting the sale of all game during its closed season (Wisch 2010). This lack of control by the state allowed game sellers to take advantage of the hunting laws. By selling inter-state game under the guise of within-state game, they could double their

profits in a year by selling during the closed hunting season. Theoretically, individual states had the ability to restrict the export of wildlife, but in reality the law was unenforceable due to lack of state power (16 US 519 1896).

### *Original Lacey Act*

As aforementioned, the Lacey Act was originally intended to act as a safeguard to protect from the harmful movement and trafficking of animals. Originally, the 1900 Lacey Act prohibited three general actions. First, it prohibited trade in fish or wildlife taken, possessed, transported, or sold in violation of any law (16 USC § 3372 a1). This trade included the import, export, transport, selling, receiving, acquiring, or purchasing these items in interstate or foreign commerce. Second, the Act prohibited anyone to import, export, or transport any container or package containing any fish or wildlife unless the container had been previously labeled in accordance with the regulations (16 USC § 3372 b). Third, the Act prohibited the falsification of records or labels for any fish, wildlife, or plant that is intended to be imported, exported, sold or transported interstate or internationally (16 USC § 3372 d).

### *History and Development*

The 1900 Lacey Act gave the federal government the right to regulate animal trading. The Lacey Act criminalized the shipment of bodies or body parts of “wild animals or birds” killed in violation of state law (Section 3), required all interstate shipments of wildlife to be clearly marked and labeled (Section 2), and removed federal restrictions on

the state's ability to regulate the sale of wildlife within their borders by subjecting all game animals and birds entering a state to the state's laws (Section 5). The Lacey Act was originally intended to protect wildlife and had nothing to do with plants, wood, or wood products (16 USC § 3371).

First introduced by Iowa Congressman John Lacey to the House of Representatives in 1900, the Lacey Act was established to "enlarge the powers of the Department of Agriculture" (Andersen 1995). Congressman Lacey made a point to declare that the bill was not intended to be a "national game law, which...would be unconstitutional." The bill instead was intended to enhance state laws. The original document contained three primary goals: (1) to authorize the introduction and preservation of game and wild birds, (2) to prevent the "unwise" introduction of foreign birds and animals, and (3) to supplement state laws for the protection of game and birds (H.R. rep. No 473, 56<sup>th</sup> Cong., 1<sup>st</sup> Sess.). The Lacey Act was predominantly a legal document providing protection and enhancement possibilities for birds and wildlife. The Lacey Act authorized the Department of Agriculture to reintroduce game birds and other wild birds where they had become scarce or extinct as well as prohibit the importation of animals designated "injurious" by the Department of Agriculture (H.R. Rep. No. 474). Importing injurious species is still restricted by an original section of the early Lacey Act (16 USC § 3372 a2).

After official instatement in 1900, The Lacey Act underwent six amendments. The first amendment was in 1935. The amendment expanded the law to include federal and foreign laws and raised the maximum penalty of breaking the law to \$1,000 and imprisonment for six months. The changes allowed the Lacey Act to apply to any “person, firm, corporation or association” that violated its provisions. It targeted interstate shipments “by any means whatsoever” rather than only those shipments by common carrier, and included animals or birds “captured, killed, taken, shipped, transported, carried, purchased, sold or possessed” in violation of state law (Section 242, Act of June 15, § 242). In 1947, the Lacey Act was specified a second time in regards to the importation of animals. The provision stated that it was now prohibited to import “wild animals or birds” under “inhumane or unhealthful conditions” (Act of May 24, § 263). The third amendment to the Lacey Act was in 1969. This amendment expanded the Lacey Act’s coverage to include amphibians, reptiles, mollusks, and crustaceans. The maximum penalty was increased to \$10,000 and imprisonment for one year, and civil penalties now applied to those who displayed negligent violations, affecting those who knowingly violated, “or in the exercise of due care” should have known they were violating the law (16 USC § 3374 A2a ).

The fourth amendment to the Lacey Act was in 1981. The pre-amended law stated that the defendant must have been willfully engaging in unlawful actions. The word “willful” was interpreted as requiring proof that a defendant knew of the illegal nature of the

wildlife as well as the illegality of his actions in discordance with the Lacey Act. The amended law removed this evidentiary requirement and instead commissioned criminal penalty for defendants who knowingly committed an act prohibited by the law and knew, or in the exercise of due care should have known, of the illegal nature of the wildlife at issue (16 USC § 3372, 3373 d). The maximum felony penalty was set at \$20,000 and/or five years of imprisonment. Misdemeanor violations were punishable by \$10,000 and/or one year (16 USC § 3373 d). A felony/misdemeanor criminal scheme was created which divided the classification of offenses based on factors such as mental state of the violator, commercial conduct, and the market value of the wildlife involved with the violation (Andersen 1995).

The fifth amendment to the Lacey Act was in 1988. This amendment included plants in the list of protected species as well as wildlife and fish. (16 USC § 3372 d). The Act defines “plants” as any wild member of the plant kingdom, including roots, seeds, trees from either natural or planted forest stands, and any products thereof. Excluded from this definition are “common cultivars” (except trees) and “common food crops.” The definition also excludes scientific specimens of plant genetic material for research and any plants that are to remain planted or are to be replanted (16 USC § 3371 f).

The sixth and most recent amendment to the Act was in 2008. The final amendment prohibited trade into and within US borders of any product made from trees or other

plants that were logged or traded in violation of any law in the country of harvest. Products can include but are not limited to paper, lumber, furniture, or manufactured products (EIA 2009). In regards to wood, the importer must declare the species, country of harvest, and other information related to the product such as transportation information (16 USC § 3372 f). The legislation also allows seizures of illegal wood products, regardless of whether or not the owner knew it was illegal. Lesser penalties may be applied to those who exercised “due care” to avoid illegal wood in their supply chain (16 USC § 3373 a). The amended law bans commerce in illegally sourced plants and their products.

#### *United States*

Since 1900, the Lacey Act has been one of the United States’ primary tools for prohibiting interstate and international trade in protected wildlife and plant species. Enforced by the Fish and Wildlife Service, the Department of Agriculture’s Animal Plant Health Inspection Service (APHIS), and US customs, enforcing officers of the Lacey Act now have the right to carry firearms, make arrests, and make arrests without a warrant “if he has reasonable grounds to believe that the person to be arrested is committing a violation in his presence or view” (16 USC § 3375 b).

## **Compliance**

Lacey compliance is not defined by any one document or “due diligence check-list.” For example, in order for an organization or person that is importing illegal wood or wood products to be fully compliant with the Lacey Act, illegal wood must be eliminated from the supply chain. This can be a difficult feat to accomplish; it can be problematic for an organization to determine from where exactly their goods are imported. However, it is important that companies guard themselves against liability by practicing due diligence. Due diligence can vary depending on individual products, companies, and business model (EIA 2010). Importers must meet specific declaration requirements accompanying every shipment of plants or plant products. Declaration requirements include

- A. The scientific name of the wood or wood product (including the genus and species);
- B. The quantity and measure;
- C. The country of harvest; and
- D. The value of the shipment

The above information does not require the importer to be sure of the legality of the wood, but it does require the importer to collect the information that, depending on what it suggests about the origin of the wood, should prompt further investigation into the legality of the cargo. The Lacey Act is intended to encourage log and timber buyers to ask questions of their suppliers in order to reinforce the idea that the US is no longer interested in buying illegally sourced wood products. Anyone who knowingly violates the declaration requirements is guilty of a felony, punishable by up to five years of

imprisonment and/or a \$250,000 fine for individuals, while businesses may pay up to a \$500,000 fine (INECE 2010b).

*High Profile Case: Gibson Guitar Overview*

In November 2009, a Nashville Tennessee Gibson Guitar facility was raided by US law officials, claiming they were enforcing the Lacey Act and seized an allegedly illegal shipment of ebony from Madagascar. More recently, two Gibson Guitar facilities were raided in August of 2011 (Havighurst 2011). In this case, Gibson Guitar allegedly imported rosewood and ebony from India that was in an “unfinished” state. India’s exporting laws include the parameter that all material of this nature must be considered a “finished” product. However, Gibson Guitar CEO Henry Juskiewicz stated he possesses a letter from the government of India declaring the legality of the wood as a “finished” product (WorldNetDaily.com). Juskiewicz is asserting that Gibson Guitar has “a long history of supporting sustainable and responsible sources of wood and has worked diligently with entities such as the Rainforest Alliance and Greenpeace to secure FSC-certified supplies. The wood seized in August 2011 satisfied FSC standards” (Hoft 2011). The Justice Department has yet to file criminal charges.

This case highlights two important issues: the Justice Department has not yet filed criminal charges against Gibson Guitar after two years, and the common misconception that certification results in compliance with the Lacey Act. The fact that the Justice

Department has yet to file criminal charges could indicate a lack of enforcement or organization. The belief that forest certification is the same as compliance with the Lacey Act was heightened by Juskiewicz making public statements indicating that he used FSC products. It was a hypothesis of this study that the misconception of certification resulting in Lacey compliance would be reflected by respondents in this study.

## **Global Illegal Logging Legislation**

### *European Union*

Other regions have implemented their own environmental legislation with respect to illegally sourced wood products. The European Union (EU) has implemented the Forest Law Enforcement, Governance, and Trade (FLEGT). FLEGT defines itself as a voluntary scheme to ensure that only legally harvested timber is imported into the EU. Under the provisions of FLEGT, the EU will only import wood from other countries agreeing to the FLEGT guidelines (European Commission 2011). The aim of FLEGT is to act as a new and innovative approach to tackle illegal logging and links governance in developing countries with the legal trade instruments offered by the EU's internal markets (DID 2008). The key to FLEGT are the Voluntary Partnership Agreements, or VPAs. The VPAs symbolize agreements between timber-producing countries outside of the EU and timber-importing countries in the EU. Under FLEGT policy, European wood traders are liable for prosecution if found in possession of wood sourced in violation of laws of the

exporting country. VPAs are the mechanism used to put the FLEGT licensing system into effect. It is designed to identify legal products and license them for import into the EU. The EU describes the system as voluntary, yet it has been made clear that the EU will only do business with those developing countries that choose to participate in the program (World Growth 2011).

#### *East Asia, Africa, and North Asia*

Regional Forest Law Enforcement and Governance (FLEG) ministerial processes were initiated in East Asia (2001), Africa (2003), and North Asia (2005). Because of these programs, partnerships have been formed among various producer and consumer governments. It has been argued by the World Bank (2006) that the institution of the FLEG process brought about other tools such as customs collaboration and anti-money laundering laws to combat illegal logging and forest corruption.

#### *Australia*

In March of 2011, the Australian Federal Government proposed legislation to Parliament which will penalize importers of illegal wood and wood products, including pulp, furniture, and raw timber. The Australian Worker's Union reports that new legislation could prevent a collapse of the timber industry in Western Australia (Polkinghorne 2010). This bill prohibits the importation and processing of certain timber products, the importation of illegally logged timber, and the importation of a 'regulated timber product' without Ministerial or timber industry certifier approval (World Growth 2011).

From this language, it can be assumed that Australia will combine forest certification with their illegal logging prohibition bill, but it is still uncertain.

### *South Eastern Europe*

Another step toward decreasing global illegal logging is a project launched by the Regional Environment Center in Southern Europe. Launched in November 2010, the REC was created to respond to illegal logging and other environmental crime in South Eastern European countries and the Ukraine. This project is called the Combat Illegal Logging in South Eastern Europe and Ukraine: Governance, Implementation, and Enforcement. The aim is to identify concrete actions by which key responsible actors can close the gaps in legislation, policy, implementation, and enforcement in order to reduce or eliminate illegal logging in South Eastern Europe and Ukraine ([illegallogging.rec.org](http://illegallogging.rec.org) 2010).

These programs may have differing logistical details, but they all acknowledge the issue of illegal logging and discuss how to protect their countries from importing it. Though each program has individual specifications, each country has their own perspective on how the importers must do everything in their power to ensure the legality of their imported products and eventually affect global illegal logging.

## **United States Environmental Legislation**

### *The Endangered Species Act*

Though there were multiple environmental policies passed in the 1970s, the Endangered Species Act (ESA) was one that had the most influence in later years. The ESA was passed in 1973 and was enacted to protect plants and animals listed by the federal government as “endangered” or “threatened.” It provides a program for the conservation of threatened and endangered plants and animals and the habitats in which they are found. The lead federal agencies for implementing ESA are the US Fish and Wildlife Service and the US National Oceanic and Atmospheric Administration Fisheries Service. Unlike the Lacey Act, the ESA provides a worldwide list of endangered and threatened species, which includes birds, insects, fish, reptiles, mammals, crustaceans, flowers, grasses, and trees. An “endangered” species is one that is in danger of extinction, while a “threatened” species is one that is likely to become endangered (EPA 2010). The ESA stipulates that it is unlawful for anyone to “take” a listed animal or plant, and this includes significantly modifying its habitat (ESA 1973; EPA 2010). The ESA regulates federal agencies, requiring them to ensure that their activities are “not likely to jeopardize” listed species or their habitats. The ESA offers protection to plants by protecting “plants which are now or may become endangered or threatened” (ESA 1973).

*The Convention on International Trade in Endangered Species of Wildlife Fauna and Flora*

Established in 1973 at the International Union for Conservation of Nature, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a voluntary international treaty between governments. The aim of CITES is to ensure that international trade in wild plants and animals does not threaten their survival. Not only does it protect species that are endangered, it protects species that may become threatened with extinction unless trade is closely mitigated (CITES 2005). CITES offers varying degrees of protection to over 33,000 species; 28,000 of them plants. Today, 175 countries have agreed to comply with CITES requirements. When the US agreed to comply with CITES regulation, it marked a new era of growth in the environmental protection protocol (CITES 2005). Though both CITES and the Endangered Species Act work to protect species threatened or endangered, the two policies are not identical. Some species are listed by both the CITES and the ESA, while others are only listed by one of them. There is not always a direct correlation between how a species is listed under CITES regulations and how the same species is listed under the ESA regulations (CITES 2005). By design, CITES focuses on trade at the species level and does not address habitat loss, conservation, or sustainable use. CITES focuses on preventing unsustainable use rather than sustainable management (Hill, 1990).

## Previous Research on the Lacey Act and Natural Resources

Unfortunately, literature regarding whether the 2008 Lacey Act amendments will ultimately affect global illegal logging are sparse and binary. Brent McClendon, the executive vice president of the International Wood Products Association, asserts that the Lacey Act may not have the intended effect upon global illegal logging, stating

“...commercial logging is not the primary source of forest destruction (instead, think land clearing for agriculture and ranching). Furthermore, studies have shown time and time again that most illegally harvested wood never enters into international trade” (McClendon 2007).

The Hardwood Review indicated that the Lacey Act may have adverse effects to the US job market, stating

“...while championed as a solution to the price-dampening effects of illegal logging, the Lacey Act has in these past few weeks come to symbolize big government overreach, job-killing regulation, and misplaced priorities... by sweeping up well-intentioned, well-respected companies along with the bad” (Hardwood Review 2011).

However, other sources indicate that the Lacey Act can be the turning point to trigger global action. As stated by the Environmental Investigations Agency, the US has the potential to begin an importing trend of only buying legal wood products.

“As long as the US lacks policies to prohibit illegally sourced wood, our market is an enormous open door for suspicious material, undermining other countries’ attempts to address the problem. Conversely, if the world’s largest wood products market were to signal that it was closing this door, many people believe this action could provide the ‘tipping point’ to bring real change in global logging and tracking practices” (EIA 2007).

A study in *Frontiers in Ecology and the Environment* indicated that the original Lacey Act of 1900 may not be able to make a difference in today’s world. It was found that

while the Lacey Act may have been somewhat effective at preventing transport into the country of the few species listed prior to their introduction, over half of listed species were already present in the US when listed and only one species has been added by petition in the past decade (Fowler et al 2007). This study indicates that the Lacey Act may not have the enforcement capabilities that are necessary for this size of legislation.

This work is important because it will help legislators in future endeavors with their communication process. By providing an understanding of how forest products professionals are responding to the 2008 Lacey Act amendments, this work will unveil potential communication shortcomings between US-based companies impacted by the Lacey Act amendments.

### **CHAPTER 3 – METHODS**

Data for this study were collected through the combined use of an online questionnaire and personal interviews. A questionnaire was used as an exploratory tool in order to discover what topics were relevant to respondents. Semi-structured interviews were then implemented in order to allow the respondent to focus on topics that are particularly important to them while adhering to the protocol. Semi-structured interview data are collected by means of a direct, face-to-face interview or via telephone conversation between the interviewer and respondent. The interviewer asks questions of the respondent and transcribes their responses immediately after the interview, transcribing the exact terminology used by the respondent.

Qualitative research has the ability to answer different questions from those answered with quantitative research. It can also be used as a pairing technique in order to highlight certain aspects of the results found with the quantitative research (Denzin & Lincoln 2008; Strauss & Corbin 1998). Questionnaires can act as a good exploratory technique when little is known about the topic of investigation. Interviews are perhaps the most commonly used method when employing qualitative analysis. Open-ended questions allow respondents to focus on the issues of greatest importance to them, which allows the researcher to identify key themes and important topics to the studied population (Barbour 2008).

This combined questionnaire and personal interview-based research aims to provide an understanding of 1) how forest products representatives in the US view the 2008 Lacey Act amendments, 2) the specific challenges companies are facing with respect to the amendments, and 3) the present and future implications of the amendments. In addition, possible shortcomings between the US government and US companies will be discussed. Understanding these shortcomings allows lawmakers the foresight during future policy change endeavors to make certain changes or adaptations they learned during the latest implementation of the Lacey Act.

## **Study Design**

This study was divided into two stages. Stage I was an exploratory study that was administered via an online questionnaire site. The goal of Stage I was to determine a general consensus of respondent's opinions regarding the Lacey Act amendments. If participants of the questionnaire wished to give more information in a personal interview, they were encouraged to report their name and contact information so they could be contacted at a later date for a follow-up interview. These interviews were added to Stage II, which consisted of in-depth personal interviews.

### *Integration of Exploratory and Qualitative Research Designs*

Research methods, when used independently, have the potential to lead to valid empirical and theoretical generalizations. However, the interpretation of these findings can be an uncertain task. A major source of this uncertainty is that any study employing a single

type of research method leaves untested rival hypotheses that call the validity of the study's findings into question. Research methods, when considered alone, have the potential to create an imperfect study (Brewer & Hunter 2006).

According to Mason (2006), social experience and lived realities are multi-dimensional and our understandings may be inadequate if we view these phenomena only along a single continuum. This highlights the potential of using different research methods in order to provide parallel insights into the experiences and opinions of the population. The use of multiple methods reflects an attempt to secure an in-depth understanding of the phenomenon in question. Objective reality can never be captured, though we can get close if we use multiple methods (Denzin & Lincoln 2008; Brewer & Hunter 2006). There is much to be gained by capitalizing on existing quantitative data to furnish a sampling frame for qualitative work. Mixed method designs which accord equal weight to both method types are rare but rich in information and insight (Barbour 2008).

#### *Stage I: Exploratory Research*

The first stage of this study implemented a questionnaire that was aimed to determine general topics and concerns that respondents have concerning the Lacey Act amendments. Since there is not an abundance of previous research on the topic, it was necessary for the researcher to understand what respondents know about the Lacey Act amendments and identify the limits of their knowledge. Questionnaires are a commonly

used data collection technique when implementing exploratory studies. They allow the researcher to obtain a large sample of the population in question and can allow robust conclusions (Allen et al. 2009).

### *Exploratory Research Questionnaire Development*

For the first stage of this study, the questionnaire was developed to determine the main areas of concern regarding the 2008 Lacey Act amendments. The questionnaire consisted of six major sections: (1) General questions, (2) Knowledge of the Lacey Act, (3) Compliance measures, (4) Opinions, (5) Impacts on company, and (6) General characteristics about the company. The questionnaire is attached in Appendix A. The six major section items were derived based on literature on the 2008 Lacey amendments as well as press releases that addressed certain issues such as compliance measures and opinions.

#### (1) General questions

The first section of the questionnaire focused on general information regarding the company's importing practices and informational sources. The respondent was asked to identify whether their company imports wood products, if they have experience with Lacey compliance practices, and whether they get information on the Lacey Act from an information session, governmental websites, governmental hotlines, internet searches, or from a different method. The motivation behind this section was to gain an understanding

of the respondent's background and the company history pertaining to importing and compliance with the Lacey Act. The second goal of this section was to determine where respondents get information on the Lacey Act.

### (2) Knowledge or familiarity with the Lacey Act

This section highlighted the respondent's familiarity with the Lacey Act. Respondents were asked to rate their familiarity level of general environmental policy and then specific to the Lacey Act amendments. Respondents were also asked to agree or disagree with fact statements. For example, respondents were asked to agree or disagree with the statement: 'enforcers of the Lacey Act have the right to arrest those in violation without a warrant' in order to assess their true knowledge of the enforcement of the Lacey Act. The motivation behind this section was to gain an understanding of the respondent's familiarity with environmental policy and the Lacey amendments.

### (3) Lacey Act compliance

The third section of the questionnaire addressed the company's level of due diligence regarding the Lacey Act. The respondent was asked to indicate whether they understood what it means to be Lacey compliant, and whether they regarded their company to be in compliance. This section also addressed what sorts of changes the company implemented to become compliant with the Lacey Act and how the due diligence system is viewed.

#### (4) Opinions

This section encouraged respondents to share their opinions about illegal logging, the Lacey Act, and how it affects their company as well as the global forest industry. The respondents were asked to what extent they agreed with statements such as “illegal logging is a global issue,” “compliance with the Lacey Act will ultimately aid international wood products trade,” and “my firm is adequately equipped with the tools necessary to adhere to the 2008 Lacey Act Amendments.” After each question, there was a comment box, so the respondents could add their personal views if they felt it necessary. Other questions in this section focused on whether the respondent felt the 2008 amendments were necessary and if the amendments were adequately communicated to the forest products industry.

#### (5) Lacey Act impacts

The fifth section addressed how the respondent felt the Lacey Act amendments have impacted global illegal logging and domestic business. It also addressed how the Lacey Act amendments have impacted their company’s competitiveness in the marketplace. The motivation behind this section was to identify whether the respondent felt the amendments will ultimately hinder global illegal logging while simultaneously aiding the profitability of US companies.

#### (6) General firm characteristics

The final section of the questionnaire asked general questions about the respondent's company. Descriptive information about the company included size as measured by employee count, percentage of imported goods, country from which the imported goods are coming, and the next destination of the imported good (the respondent's manufacturing facilities, outside manufacturing facilities, retail stores, or wholesalers). This section was aimed to unveil possible industrial commonalities. For example, perhaps small companies felt more burdened by the Lacey amendments.

#### *Exploratory Research Pre-testing*

The questionnaire was developed over a two-month time period and underwent two group pre-tests. The first pre-test was administered to the Forest Business Solutions Group at Oregon State University. This group is compiled of forest products marketing academics. This pre-test focused on the overall objectives of the questionnaire and identifying if each question fit a specific objective. The second pre-test was administered to a group of business professionals. This pre-test focused on question placement and ease of use of the internet-based format.

The exploratory questionnaire was administered via an online questionnaire website. Question format varied depending on question type. Some questions asked respondents to decide from a list of options, and some were measured using a 4-point scale indicating

agreement/disagreement with relevant statements. The scales ranged from 1 (strongly disagree) to 4 (strongly agree). Some sections, including the Knowledge section, included an “I don’t know” option. This option was only available in select sections in order to encourage respondents to give their opinion on the issues.

Respondents were identified based on their membership in the Portland Wholesale Lumber Association as well as the North American Wholesale Lumber Association. The questionnaire was sent via email to the membership lists of the respective associations. A total of 513 questionnaires were sent out, and 80 of those emails were no longer active. Thirty-five useable responses were elicited from the exploratory research questionnaire, giving a response rate of 8%. An example of an unusable response was one in which the respondent answered only half of the questions or less.

### *Stage II: Personal Interviews*

From the questionnaire, items were chosen based on relevance to the respondent. These items were then expanded into questions and then formed the qualitative interview protocol. Inherent within qualitative research is the unique ability to make visible the mechanisms which link particular variables and can explain associations by determining the relative influence of individual variables of the population being studied (Barbour, 2008). Qualitative methods enable the researcher to study how and why people act and believe the way they do. Analysis may explain apparent discrepancies in the quantitative

analysis through insight and personal feedback as well as “de-mystify” by providing detailed accounts of experience and description (Barbour, 2008).

### *Interview Protocol Development*

Semi-structured interviews ensure that answers to general topics are gathered from all respondents (Flick 2002). Each interview had six sections, which were expanded or condensed depending on the respondent’s position. For example, all respondents were asked about challenges encountered regarding the Lacey Act, but only those involved with importing wood products were asked whether they felt that those challenges are impacting their importing capabilities. The complete interview protocol used for this study can be found in Appendix B.

A semi-structured interview was chosen for this study due to the exploratory nature of the questions. This type of interview was chosen because of the interviewer’s ability to ask additional questions spurred by the responses provided. A structured interview, however, only allows the interviewer to ask questions found in the interview protocol. According to Flick (2002), a semi-structured interview protocol serves three main functions in an interview: ensures answers to the main topics are gathered from all respondents, serves as a guide to keep both the interviewer and respondent on topic, and keeps the interview moving forward if dialogue between the interviewer and respondent lags or stops. Semi-structured interviews allow analysis of participant’s perceptions, which requires a flexible

data collection instrument (Strauss & Corbin 1998). This type of interview also allows the researcher and participants to engage in a dialogue whereby initial questions are modified in the light of the participant's responses and the investigator is able to probe interesting and important areas which arise. Semi-structured interviews permit the researcher to follow-up on responses and allow the respondent to partially direct the interview. Many times, the respondent will direct the interview by alluding to certain ideas, and the interviewer asks follow-up questions about those ideas. However, semi-structured interviews have disadvantages as well, one being the difficulty of analyzing sheer volume of data generated (Brewer & Hunter, 2006).

The questions in the semi-structured interview were grouped into six categories: (1) general information of the respondent's background and firm type; (2) import information; (3) compliance measures taken by the company; (4) challenges encountered including implementation processes and information gathering; (5) impacts of the Lacey Act amendments; and (6) due diligence process. These items were derived based on the exploratory research questionnaire. Some of the items were mentioned by respondents in free-write text boxes, while other items seemed to elicit strong responses. For example, when asked for their opinion on the due diligence program, some respondents indicated they were extremely happy with it, while others indicated the exact opposite. This varying response suggested that this topic may be one that requires further research.

### (1) General information

While the interview protocols were semi-structured, meaning no set order of questions was followed, all respondents were asked the same three questions at the beginning of the interview. The first question concerned their company's general history and specializations. The second question asked the respondents to identify their personal role within the company, and the third asked whether the respondent is familiar with the Lacey Act amendments. The motives of these questions were two-fold: the first motive was to ease the respondent into the discussion and help them think about how the Lacey Act has affected them. The second motive was to ensure that they are the correct respondent to interview. For example, if they mentioned they had never heard of the Lacey Act, the researcher could ask if there is anyone else in the firm who has more knowledge of the subject.

### (2) Import information

Respondents were asked to identify importing information. For example, if the respondent's company was an importing company, the respondent was asked to identify how long the company has been importing, the type of imported good, and where the good comes from. If the respondent was instead an association member head, they were asked to identify the same issues by summarizing their member companies.

### (3) Compliance measures taken by the company

All respondents were asked whether their company has a due diligence program. The first questions in this section asked about their motivation behind being Lacey compliant, and if they file Lacey declaration forms. The key purpose of these questions was to gain an understanding of the respondent's attitude regarding Lacey compliance issues. The following questions asked more specific questions such as, "how long does it take to file the declaration forms" and "does your company outsource the declaration forms." The motivation behind these questions was to discover what sort of financial commitment was required for practical Lacey compliance.

### (4) Challenges, communication, and information sources

All respondents were asked about challenges they encountered regarding the Lacey Act amendments. This section had three parts: challenges, communication and information. First, the respondents were asked to describe any challenges or problems they faced regarding the Lacey Act amendments. This question was aimed to help the respondent think back and remember the specific issues at the time of implementation. Next, the respondent was asked how they first heard about the Lacey Act amendments. The motivation behind this question was to allow the respondent to pinpoint the communication chain tied to the Lacey Act. The respondent was then asked how they felt about the communication process by the government to inform forest products companies about the amendments. If the attitude was negative, the respondents were then asked if

they had any ideas on how to improve the communication process. The last section focused on the information gathering process. The respondent was asked where they go when they have Lacey questions. The motivation behind this question was to understand the best possible chain of communication that the respondent prefers regarding information sharing.

#### (5) Impact of Lacey amendments

All respondents were asked how the Lacey Act amendments have affected their company. This question allowed the respondent to focus on the main topic that was the most important to their company. Next, the respondents were asked a series of questions that focused on whether the Lacey Act amendments have affected their company's competitiveness in the marketplace. The next questions focused on whether the Lacey Act amendments have affected their customers. For example, the respondents were asked if their willingness to be compliant would be affected if their customers understand the Lacey Act. The last set of questions had a global focus, asking respondents if the amendments to the Lacey Act will affect global forest products trade or global illegal logging. Respondents were also asked if they felt that the desired effect on the global marketplace is a viable outcome. The motivation behind these questions goes back to the original intent of the Lacey Act amendments, which was to decrease global illegal harvesting. This section, for the most part, asks respondents if they feel the Lacey Act amendments are going to affect global illegal logging.

#### (6) Due diligence process

The last section of the interview was focused on the due diligence process. The respondent was first asked if their company had a due diligence process in place, and whether they added or changed it when the Lacey Act amendments became law. The motivation behind this question was to understand how seriously the respondent took the amendments. The respondent was also asked their opinion regarding the overall idea of due diligence and its wording in the amendments. This question aimed to determine whether the respondent felt that the law is enforceable in its current form.

#### *Interview Pre-Testing*

Like the exploratory questionnaire, the semi-structured interview protocol underwent pre-tests. The first was administered to the Forest Business Solutions Group at Oregon State University. This group is comprised of forest products marketing academics and the focus was on question content and environmental policy issues. The second pre-test was administered to a group of business professionals who were selected based on background in data collection. The second pre-test focused on word choice and question placement. The pre-tests were conducted following the same procedures described for the actual interviews, with a focus on improving the interview protocol and procedures. Minimal changes were required based on received feedback.

## **Data Collection and Analysis**

### *Sample Selection*

There were four respondents who identified themselves in the exploratory research questionnaire as interested in a follow-up interview were contacted for an interview. Another seventeen interviews were identified based on recommendations by key individuals in the forest products industry and the environmental policy industry. The use of snowball sampling was used in order to identify new respondents based on recommendations of previous respondents, and is based on the premise that members of a rare population know one another (Lohr 1999). The main disadvantage of snowball sampling is that it does not produce a random sample. This challenge can be minimized due to the fact that the population targeted in this study is relatively small (Patton 1990). Snowball sampling saves on time, money, and provides a means to generate ideas, questions, thoughts, and reactions from key individuals concerning the topic. A total of nineteen interviews were conducted. Table 2 shows a detailed description of each respondent's company. For this study, nineteen interviews were adequate based on responses and the size of respondent pool. The respondents began unknowingly repeating what was already mentioned, indicating that the research had reached the core of the study, or the saturation.

This research focused on reaching a wide audience affected by the 2008 amendments to the Lacey Act. The primary characteristic used to identify respondents was a demonstration of knowledge and experience in the international forest products industry, whether that was expressed through importing, exporting, or as an international coalition member.

Table 2. Respondent company characteristics

<b>Position description</b>	<b>Count</b>	<b>Total</b>
<b>Association leader</b>		3
Wood products leader	1	
Legal representative	1	
International liaison	1	
<b>Governmental representative</b>		2
Foreign (non US) government	1	
Domestic (US) government	1	
<b>US Importer</b>		10
Importer	6*	
Import management	4*	
<b>Exporter</b>		2
Firm in China	1	
Firm in Canada	1	
<b>Transportation management</b>	2	2
<b>Total</b>		19

\* Two of the respondents were interviewed together in a group interview

A total of nineteen individuals were interviewed, 15 in individual interviews and 4 in group interviews. Of those interviewed, titles included industry consultants, legal consultants, transportation managers, account managers, Chief Executive Officers, executive directors, directors of product sourcing, sales managers, import managers, marketing and business developers, and internal/external regulatory certification specialists.

The respondents were identified via snowball sampling, as well as multiple association directories. Association representatives from the North American Wholesale Lumber Association, the International Wood Pallet Association, as well as the Portland Lumber Inspection Bureau helped identify possible respondents in the forest products industry. Other associations helped identify experts in the field of international forest policy and government. These associations included the International Wood Products Association and the Hardwood Federation. All of the aforementioned associations were instrumental in identifying key players who would be acceptable respondents.

#### *Data Collection*

The interviews ranged from one hour to two hours in length. All interviews, whether they be face-to-face or via telephone, were digitally audio-recorded. Audio recording interviews allowed the researcher to accurately retain the interview information as well as the tone and attitude expressed by the respondent while still remaining immersed in the

conversation (Yin 1994). Audio recordings were captured for all nineteen interviews. These interviews were transcribed verbatim, and then used for data analysis. In total, the transcribed interviews filled 83 pages of text (Calibri font, size 11). After each interview, the researcher would transcribe the interview and identify areas that could be expanded upon, and those expanded areas were incorporated into later interviews.

### *Data Analysis*

Smith (2008) suggests multiple readings of the transcripts, while using the margin to annotate what is interesting or significant about the respondents answer. This type of close reading is known as free textual analysis. From the free textual analysis, emergent themes are listed on a separate piece of paper, and researcher looks for connections between them. The next stage involves more analytical or theoretical wording, as the researcher tries to makes sense of the connections between the emerging themes. Some themes will cluster together, and some may emerge as super ordinate concepts.

The transcriptions were used to identify themes consistent among the interviews. The researcher then created an exhaustive list of themes that were identified within each interview and connected them with specific quotes from all respondents who mentioned the theme. The results were then combined into subcategories, and those subcategories were combined into broad categories. Quotes presented in the results section are representative of quotes from at least three interviews unless otherwise noted.

## **Bias and Validity**

### *Bias*

Researchers seek to minimize sources of error to obtain an accurate, unbiased observation of reality. Since the researcher can potentially influence the data and analysis, a variety of methods is used to try to reduce the influence of the researcher. These include impersonal administration of standardized questions so the researcher cannot influence how the questions are asked (Smith 2008). However, attempting to eliminate the influence of the researcher would make it difficult to retain the benefits of qualitative research, such as disclosure of subjective experience in an interview. Rather than trying to eliminate the influence of the researcher by rigidly controlling the research process, qualitative researchers seek to maximize the benefits of actively engaging with the participants in the study. This means allowing the participants to influence the topic and data (for example, by using open ended questions) (Yin 1994).

According to Smith (2008), two procedures can reduce researcher bias; triangulation and participant feedback. Triangulation refers to the practice of calculating location from three different reference points. Triangulation is viewed as a way verifying the accounts of one person or group using the accounts of others. In this study, themes were created if they were mentioned by at least three respondents, unless they were categorized as 'unique themes,' which were classified as themes that were not repeated by other respondents, but deemed important by the researcher.

Participant feedback, also known as respondent validation, is obtained by asking participants to comment on the analysis. This is a valuable way of engaging participants in the research and ensuring that their views are not misrepresented. To utilize participant feedback, during interviews, the researcher would ask respondents to summarize their thoughts in order to clarify their opinions. Yin (1994) gave another method to reduce researcher bias, which is to avoid leading questions that elicit certain responses from the respondent. This method was taken into account in this study by utilizing pre-test groups prior to any data collection, be it the exploratory questionnaire or the qualitative open-ended interviews.

Researcher bias is also a risk in data analysis. To prevent bias, a systematic method for coding and grouping should be used. It should be clear to the reader how conclusions were drawn in each case (Smith 2008, Yin 1994). In this study, themes were carefully extracted. Multiple readings of the transcripts ensure the cohesiveness of data analysis.

### *Validity*

Validity is analogous to accuracy. According to Ungar and Gillian (2002), validity consists of the integrity, accountability, and value of a research project achieved through accountability both to the participants and to those who will be affected by the outcome. The aim of most exploratory research is to identify the current status of a situation.. Error is eliminated as far as possible through standardization of the administration and analysis of measures. But whereas quantitative researchers tend to focus on generalizable laws, qualitative researchers are often interested in the effects of the context and the individual differences. The complexity of the respondent's views can possibly be suppressed when they can only check a box on a questionnaire.

Validity is defined as the degree to which the finding is interpreted in the correct way (Kirk and Miller 1986). To maximize the quality of this research design, the two applicable aspects of validity according to Yin (1994) were addressed: (1) construct validity and (2) external validity. Reliability with regards to qualitative research was maximized by using triangulization.

### (1) Construct Validity

Given that measurement errors provide potential threats to the validity of research findings, it is important to take all precautions to hedge these errors (Bagozzi et al. 1991). Construct validity, which is the extent to which an operationalization measures the concept it is supposed to measure (Cook and Campbell 1979), can reduce the possibility of these measurement errors. To achieve construct validity in this study, data triangulation was employed in addition to chains of evidence to illustrate the logical links between initial objectives and conclusions formed by the researcher. Finally, findings from this study were provided to respondents who requested to see the results, thus ensuring the accuracy of results.

### (2) External validity

External validity examines whether or not relationships can be generalized across different persons, settings, and times (Cook and Campbell 1976). Random sampling is not only unnecessary in theoretical research but it may actually interfere with achieving quality results. Random sampling is likely to reduce validity, especially if the population in question is relatively small (Calder et al. 1982). External validity must be built into the research design, in order to allow for repetition. The more cases that reveal similar results to the first, the more researchers are able to state that the study's findings are generalizable to a larger population (Yin 1994). The purpose of this research, however, is to capture the general attitudes and practical applications of a current market topic, and

therefore replication of exact results is not possible since they are a reflection of the current market. These attitudes are expected to change over time.

### *Reliability*

Reliability is analogous to consistency and is the degree to which the findings are independent of accidental circumstances of the research. In other words, if a study is reliable, the measurement procedures yield the same answer however and whenever it is carried out (Kirk and Miller 1986; Yin 1994). The use of a database containing all case study data is one method to ensure transparency of methods (Yin 1994). In this study, the research methodology was well documented and the study protocol described the methodology and analysis methods used. Data for each respondent were organized in identical order and format to ease readability and comparability. By doing this, readers will have all the documents and methods required to replicate this study, though the results are expected to change based on time elapsed and the nature of changing legislation.

Credibility is the main issue in qualitative research, and that has to do with the extent to which the research findings and interpretation can be seen as true, correct, or dependable. As mentioned, triangulation was utilized to enhance credibility. Themes were only extracted if they were mentioned by three or more respondents, unless otherwise noted as “unique” themes.

## CHAPTER 4 – RESULTS

In order to guarantee the anonymity of the respondents, all respondents will be referred to by their respondent title (for example, the nine US importers will not be differentiated, and quotes from any importer will be labeled “US importer”). Table 2 summarizes the emergent themes and subthemes that were expressed throughout the interviews. Unless otherwise noted, all themes were mentioned by at least three respondents.

Table 3: Emergent themes and subthemes

<b>Themes</b>	<b>Subthemes</b>
Implementation challenges	Lack of adequate government communication Lacey and certification
Vagueness of the due diligence process	Positive aspects Negative aspects
Industry implications	Influence in a relationship-driven industry Operational changes Information sources Due diligence Marketability of Lacey compliance: competitiveness
Global implications	Other illegal logging/importing legislation Effect on global illegal logging Direction: focus on high-risk countries
Future implications	Problem of US context Suggestions for change

## Implementation Challenges

### *Lack of Adequate Government Communication*

Similar to any newly implemented legislation, those affected by the legislation do not always share the same opinions regarding the new law. When the 2008 Lacey Act amendments were initiated, there were some who supported the legislation, and there were some who showed resistance. This support and resistance will be discussed in the following section.

A large portion of the respondents felt the communication from the US government regarding the 2008 Lacey Act amendments added to industry confusion. Almost all respondents were unaware of the final destination of information they give regarding their imports. Many indicated that since they are not clear where the information goes, they feel less inclined to spend adequate time on it.

Back when it was first getting passed, we got a lot of questions around what the declaration meant. *Association leader*

It's mostly on the transportation aspect for us because we require that the shipper give us the Latin name of the species and they make a declaration that it's not illegally harvested and we just file that with Customs. I don't know if anyone ever looks at it from there, I don't know what happens to the data. *US importer*

You file the document, and no one really knows what happens with the data. *US importer*

Almost all respondents indicated that they received information from resources other than the government regarding the 2008 amendments of the Lacey Act, implying that the communication between the US government and US companies may have been subpar.

It really wasn't communicated very well. We talked with the Customs Bureau, and that's where we heard a little bit, but it wasn't very well communicated. We pay attention and know it's the right thing to do, so we do it. We've figured out most of it on our own and listened to people when we need it. I don't believe it was very well communicated. *US importer*

We belong to certain trade groups and I think some of them through Oregon State on the West Coast here set up seminars and that's how I heard about it. Our trade reps. I think we've got International Tree Commission (ITC) things to fill out before, but we got something from the government to fill out that told us about the upcoming act also. *US importer*

We had a whole presentation on Lacey Act and what that meant for exporters, and it's part of one of our programs next year is informing the public about the Lacey Act. Basically they're asking for an explanation of Lacey. What is it, how do we become more educated on it, and what do we do? *Association leader*

#### *Lack of Adequate Information Necessary to File Documentation*

Some respondents felt that it is difficult for the majority of people in the forest products industry to gather the information needed in order to identify every single type of material in their finished product.

And people are saying it's going to be almost impossible to site the genus and the species of the composite material because they come from so many different sources. And there are others that say that it's not that hard. You know what kind of wood is coming in. I think most of the concern is around the species and genus category. *Association leader*

Another informational shortcoming is the distinction between legality at harvest versus legality at production stages. For example, legality at harvest means that the trees were cut and transported in compliance with that nation's laws. Legality at production means the material was manufactured and transported in compliance with that nation's laws. Some respondents were unclear as to whether the 2008 amendments are being applied correctly according to the original intent of the legislation.

It's supposed to be really specific to the harvest. The other country's laws about harvesting. So once it's logged, if it's a production issue, I haven't seen a discussion yet on whether or not the trees were legally harvested where that wood came from. And that really went back to the original discussions of Lacey. *Governmental representative: industry consultant*

We call it Lacey, but the act itself is so old, the name of the bill was The Combat Illegal Logging Act, that's the official name of Biden's bill. So it's supposed to be specific to the logging and harvesting of those trees. *Association leader*

### *Lacey and Certification*

Though the 2008 Lacey amendments are separate from certification schemes such as the Forest Stewardship Council and the Sustainable Forestry Initiative, many respondents compared the Lacey Act amendments to the certification schemes. Some respondents felt that comparatively, the Lacey Act is unenforceable.

The fact that the finished product does not have to comply with the Lacey Act which is really unfair and counterproductive. Unless you enforce some sort of FSC certification, the enforcement will be almost impossible. *Exporter to the US*

So again it's just filling out a form, and if there's an issue, someone will say "I didn't know" or "How can you prove that the wood comes from a

certain forest?" There's no requirement for chain of custody, like FSC which is very different. *Exporter to the US*

I think the FSC and SFI designation and green designations will carry a lot more weight. I don't know. I just don't think it's something that will resonate with anybody. Mostly for us we're all about FSC and Rainforest Alliance designation. We're members of those, and that's important to some customers definitely because it's specified into some government jobs. But I would think that covers most of the bases for the Lacey Act anyway. It's almost the same thing, it's so close. *US importer*

Some respondents feel that the Lacey Act amendments will cause problems because it is too expensive.

It [third party certification] works for FSC but it's expensive and it's a lot of work. Everybody needs to be certified and everybody along the chain of custody needs to be certified. So it works for certain products where people are willing to pay a little bit more, but all the forest and all the wood products being imported into the US, it'd be difficult to enforce. It would have an impact on what can be imported in the US and I'm not sure if it could work. *Transportation manager*

We're talking about \$25-50 for that piece of paper, that one Lacey paper, every time you file it. If you look at the US government numbers, they created a document in 2010, APHIS did, which costs the US government alone \$56 million. This is not a cheap program. *Association leader*

Still other respondents felt that the 2008 amendments are too generic compared to other US certification schemes, and therefore carry no weight.

I would be surprised if Lacey got stuck on labels like FSC or PEFC or SFI. I think because it's so generic, it doesn't have the same value as international certifications, which you've either got it or you don't. In the states, anybody who has a piece of wood can say it's Lacey compliant, and if they say anything else they could go to jail. But not everybody can say that they're PEFC or SFI or FSC. *Exporter to the US*

Some respondents are under the impression that compliance with a US certification system implies compliance with the 2008 Lacey Act amendments.

A lot of people mix up Lacey and CITES. Lacey doesn't address that at all; I've had to differentiate between those two a lot. And the same with FSC. Lacey specifically doesn't mention any certification because that would have been a whole other mess. *Governmental representative: industry consultant*

We look for red flags, but we haven't ever seen any. The only way legality comes up is if you're dealing with FSC. We are FSC certified, and I think FSC covers a much broader basis than Lacey. We figure if we're FSC compliant, we're pretty much ok with Lacey. *US importer*

## **Due Diligence Process**

### *Positive Aspects of the Due Diligence Process*

Some of the respondents felt that the wording of the 2008 amendments acts as a strengthening force to the legislation. These respondents felt that since unique companies are able to allocate different amounts of resources to their due diligence programs, the legislation had to be written in such a way to accommodate all US companies.

It's good the way it was written, because some companies would have the ability to know a lot more; maybe they're larger with staff on the ground in different countries, so their ability to know more does probably put them at a different level than a small company that doesn't have any staff on the ground, or hasn't ever worked with companies on a global level. So their knowledge of things will be at a different level. Due diligence is based a lot on what you should be expected to know, and there is different levels of that. *Association leader*

You have to show at least an attempt at due diligence within your ability to conduct it. So I think that's why they left it vague, so that it's not unnecessarily onerous on the small company, but they still have to prove

that they made some phone calls and gotten some documentation and things like that. *US importer*

It's almost right down the middle between positive and negative. The positive is it lets companies do the right thing, and figure out processes and procedures that fit them so that's certainly a good thing. The downfall is it leaves too big of a hole on how people enforce and follow the act and the procedures. There's equally as much good and bad to the vagueness. *Transportation manager*

### *Negative Aspects of the Due Diligence Process*

Though some respondents displayed a positive attitude toward the due diligence legislation, the majority of respondents felt that the vagueness of the due diligence program hinders US businesses. Some felt that there will be enforcement problems based upon the vagueness of the legislation, and some felt that the vagueness of the legislation could lead to a lack of enforcement and confusion for importers.

I think this is what makes the law weaker is that it is so vague. We don't have to actually do anything; we just have to sign the paper saying the wood is from that country. That's all we really have to do, and that's so easy. *Exporter to the US*

It does cause some insecurity for the importer, because you don't know if you've done enough. From a legal point of view, it would be nice if there were a black and white definition, or a checklist of here's what you've got to do, but that creates other problems. So there's always a little bit of insecurity, asking "have we done enough?" *US importer*

Some respondents saw cause for concern because they feel that they can never be sure they are safe based on the due diligence program.

The Lacey Act is so vague, that how do you defend yourself? There's no way to organize yourself and no amount of money you could ever spend

with attorneys or whatever to protect yourself. To me, it misses the mark just a bit. *US importer*

## **Industry Implications**

### *Influence in a Relationship-Driven Industry*

All of the respondents indicated that they believe the forest products industry is one based largely on established relationships. In some cases, these relationships have been tested regarding compliance with the 2008 Lacey Act amendments. The respondents mentioned three main methods of establishing and sustaining that relationship; travel, trust, and technology.

The majority of respondents mentioned the importance of the relationship aspect of the forest products industry without the researcher's prompting. Some of the respondents feel that in order to establish this relationship, a physical meeting must occur.

That's the work, developing that relationship and that rapport. It's what takes the time, and it gives the best payoff. It takes flying over to these countries and meeting with them and understanding what they're producing and what they're capabilities are. Getting an understanding of their fiber base, and their machining capabilities and production capabilities, and then coming back to market that in the US. *US importer*

For the most part, it takes going over there and establishing some sort of relationship with them and seeing if you can work with them and work with their management team. *US importer*

Import based on personal relationships as well as company loyalty. The town they were born in is the town they live in until they die. They work for the sawmill until the day they die. If that person happens to leave the

company, then we'll continue to buy from them at their next company. *US importer*

Most of the respondents indicated that the biggest contributor to those relationships is trust. Most respondents said they would continue working with the same person no matter what company they worked for. However, one respondent indicated that trust is not a factor when it comes to overseas business.

We deal with other middlemen [so] we don't always directly get back to the ultimate source. So in our line of work, that's one of the challenges. *US importer*

\* This opinion was only mentioned once, and was not repeated in this study

Two respondents indicated that the increase in technology has made the communication aspect of these relationships much easier.

Now of course with computers it's a lot easier to find these suppliers. There's these websites to look for perspective suppliers. In the end, that's the risk/aversion business. You know, it's a risky business. *US importer*

Pre internet, and digital photos and all that stuff, we used to go there personally a lot. Three or four times a year, you'd jump in a plane and go overseas and see your suppliers. Particularly with this economy, where profits have been cut, it's hard to justify at \$10,000 trip to Ghana for example, when you've got people there who have email and Skype and everything else. You can talk to them just like you and I are talking. Plus a lot of the things we buy are the same spec, just over and over again, so it's not like we're making a ton of changes all the time. Our specifications are well known to our producers and suppliers and our staff, so it's pretty easy to repeat business. *US importer*

### *Operational Changes*

The range of changes that have taken place in direct response to the Lacey Act amendments of 2008 varies greatly between respondents. Some respondents have made operational changes such as adding administration to deal with Lacey compliance. Some respondents have not made many changes at all.

The majority of respondents indicated that their company has made slight operational changes in response to the Lacey Act amendments in 2008.

Some might call it bureaucracy or busy work, but it's not really that onerous or a problem. Other than being an added step, it's a good thing that we should be asking to make sure that we're doing our part and being responsible. So it kind of forces you to think about it, and I think there's some good in that. *Association leader*

We only have to fill out a form to Customs here in the US, and all we have to do is state the species and where it comes from. *US importer*

It's one more document to be taken care of. But we've figured out pretty quick that we're not buying any illegally harvested material. *US importer*

...the Lacey Act was just sort of another layer of administrative formwork that we have to fill out. But we were doing it already anyway because we're members of green groups that force us to comply with that sort of thing anyway. We're audited every year, so the Lacey Act didn't make a big difference for us. *US importer*

We have staff here that did it initially, but actually as we got smaller and had to lay people off, we outsourced that to our customs broker. *US importer*

Some respondents have addressed Lacey compliance with a more creative approach. One respondent indicated that their company has continued cutting the same volume of wood in the same countries, but keeps any wood from Russia out of the US.

We buy the wood only from Chinese producers, but themselves they get the wood from Russia. So what we changed for the wood that we're exporting to the US, we track to make sure that we ship to the US only wood that we're sure that only comes from China. Anything that we're not sure, or that comes from Russia, will go to customers to other parts of the world *Association leader*

One respondent indicated that they require all supporting companies to sign a contract ensuring compliance with the 2008 Lacey Act amendments, stating that this contract defers responsibility to the vendor.

This code of conduct goes out to all our vendors, everybody we do business with. It has everything from the Lacey act to slave labor. You name it. Things we don't accept or allow and we won't do business with anyone who does these practices. They have to sign it and agree with it. *US importer*

Some respondents indicated that they outsource the compliance issue to the mills or shipping agents that feed their material supply.

We end up pushing that workload on to our suppliers and our shippers. We tell them to provide this document to confirm to the Lacey Act, we tell them the information we need, and then we make our shipping agents (people that handle our transportation) make sure it's filed properly with Customs. So it's just in bulk documentation that's going in with all the other Customs paperwork that's filed when a container arrives in port, before it clears Customs. *US importer*

Basically what we do is our mills, anybody that we buy from, they are filling out the Lacey form. As part of our agreement with them, they create the Lacey, it comes to me, and we look over it for compliance to make

sure it's done correctly. We've created a template that they use basically.  
*Transportation manager*

A small percentage of the respondents in this study indicated that they have not made large changes in response to the 2008 amendments. These companies felt that they were compliant prior to when the legislation took effect.

We've been a trade partner with the US for such a long period of time from known sources of fiber within [my country], that it hasn't really affected us. *Exporter to the US*

It really didn't change anything. Prior to Lacey, when you made entry on say a container from Brazil, you still had to provide the origin anyway. You always did. You had to identify the scientific name and the trade name, and you had to designate the harmonized tariff code under which to enter it. For us, it didn't really change anything. It just changed where and how we presented that information. *Association leader*

The only difficulty that it presented for us was setting up everything on scientific name, by species, which they are basically dealing with right now these last comments conducted by the Department of Commerce. Other than the requirement to report in metric, we haven't really seen a lot of change. *Governmental representative: Industry consultant*

A couple of years ago our customs broker brought it to our attention and said that there's this new Lacey Act that you need to follow and they informed me and it's pretty simple. But that's pretty much all we do, fill that out and send it to her before the shipment arrives in the US. Other than that, I really am not too informed about it. I just know what information that I need to submit in order to follow the regulations. *US importer*

I think reputable companies will not pursue illegally sourced lumber... They don't want to lose our business due to something that would be silly like that. I just have not encountered it as a problem in our business. *US importer*

So now we have that information, we put it in writing and we'll fill out the documentation. We're just really rubberstamping the thing, honestly. *US importer*

Though this sentiment was not shared by the majority of respondents, two indicated that their companies have not made operational changes because they felt it would be presumptuous of them to ask their suppliers to be Lacey compliant.

I don't storm in there and demand them to show me their permits and show me this and show me that, I think that's a little bit presumptuous on my part or anyone's part to go into someone else's' business and tell them to show me that you're alright with your permits and that.. *US importer*

It's always the other guy. It's never somebody who we're dealing with because they're supposedly on the up and up because they have to comply with regulations. *US importer*

### *Information Sources*

When asked where they got their information regarding the Lacey Act, responses varied greatly. Most respondents indicated they tended to go to the wood products associations to which they belong.

We're members of IWPA [International Wood Products Association], and IWPA has a pretty good lobbying presence in DC. A lot of the notifications that we got initially were from IWPA. And then subsequent communications on it came from our customs broker. Pretty well advertised, I'd say. *US importer*

I think that the government was relying too much on the associations that they'd worked with in the beginning to get the information out to their members. *Association leader*

The heads of these associations indicated that when they get questions regarding the Lacey amendments of 2008, they try to direct people to the government websites or other helpful resources.

We always refer them to the APHIS website and encourage them to sign up for the email alerts that they send out. We include in any information that we send, changes that we know are coming down. *Governmental representative: industry consultant*

If we couldn't answer the questions, we could easily refer them to people who could help them understand the declaration more. The USDA has a great website, APHIS has a great website. They explain step-by-step guidelines of what they need to do to comply with the law. Usually we just direct them there. *Association leader*

We do work with some people and have run articles from people that this is what they do, and we refer people to them. We don't have a due diligence policy. It's a coalition, and we represent a lot of companies. It's a different situation. More than anything else, our members come to us, asking "we need to figure out how to do this," and we'll say, "Here's about two or three people you need to talk to." *Association leader*

### *Due Diligence Adaption*

Respondents indicated that though the amendments were initiated in 2008, in many cases, the due diligence programs in most companies are still in the process of being established today, three years later.

In some cases, this process is still happening today. Internal documentation was required. Getting people who worked for them in Asia or getting people who would fly over from the US. They knew they needed some documentation from the mills that the wood was legal, so they started to put those things in place. Over the last 3 years, it's slowly gotten to all products as the Lacey requires. So now we have created a simple letter that says our products are Lacey compliant. It's on our

letterhead, and that if you need further documentation, contact the person provided. *US importer*

A lot of companies looked at their purchasing policy really closely. If they had a process in place, they probably had to go through and formalize it more on the steps they take. Just so they have that sort of thing in their back pocket, in case Uncle Sam asks. *Governmental representative: industry consultant*

The majority of respondents felt that the personal relationships established early in their careers can act as a type of due diligence program.

Myself, minimum twice a year to each country. Usually more often. We have to do it for business anyway, so this is just sort of another way to make sure people are doing what they need to do. *US importer*

I don't know what black market suppliers are out there. Personally we just don't deal with those kinds of people. *US importer*

One respondent indicated that a type of due diligence program was already in place, and that is to deal with only reputable companies.

As far as the Lacey Act goes, it's just filling out documentation and registering with Customs. Our due diligence is that we only want to deal with reputable companies. The guys doing illegal logging and what not are usually the bottom tier of the producing chain.... We're dealing with folks that are more established and typically they have plantation fiber to operate. At the scale we're on, the companies we deal with have to be sustainable. Once you get to a certain size, they really have to have some sort of sustainable fiber access. The illegally harvested wood just isn't sustainable. Does it happen and does it somehow get into the channels? Yes. But at the bigger players, it's quite unlikely. It's down at that lower level. The bigger players have good supply channels, often major plantations. *US importer*

*Marketability of Lacey Compliance: Competitiveness*

The majority of respondents felt that compliance with the 2008 Lacey Act amendments does not increase their competitiveness in the marketplace.

It hasn't had an effect because I think most people are aware of the consequences so most of our competitors are also doing it so I can't imagine somebody out there who is actually not Lacey compliant doing business in the US. It'd be suicide. *US importer*

Everybody has to be Lacey compliant. It's just raised their costs. Certainly you're not going to be able to pass those costs on. I think they feel that they lost some competitiveness because the domestic industry doesn't have the same paperwork burdens that importers do now. That, some would say, is one of the reasons that the domestic industry wanted this was to try to raise costs on imports. We're ok with it as long as it's truly ending illegal logging. But it's certainly increasing costs, it's no doubt an incredibly expensive program. *Association leader*

Being Lacey compliant really hasn't affected my company. I am not aware of it at all. *US importer*

In addition to not increasing their competitiveness, the majority of respondents felt that Lacey compliance is not something they can market to their customers.

We don't advertise the fact that we're Lacey compliant. That's something that we've not heard anything about that. I mean, you get people who want to know if you're going green or recycling. *US importer*

When I mention Lacey Act, nobody knows what it is. Most people remember the old act when it was for importation of animals, but I don't think it's caught on. I don't think it will. *US importer*

Because everyone's on the same footing and everyone has to provide the same information. It's not a marketing thing, because if I told my customers that hey we're Lacey compliant, my customers say, "Well you damn well better be." *US importer*

Lacey compliance doesn't mean a hill of beans to the Average Joe. *US importer*

It [Lacey compliance] doesn't have any marketing value because it's a non-differentiator. *US importer*

## **Global Implications**

### *Other Illegal Logging/Importing Legislation*

The majority of respondents indicated that they are closely watching the European Union's progression toward legislation aimed at reducing the amount of illegally sourced material.

We will encourage the EU to use Lacey as a template, but they're not going to. They're referring to it, but their Environmental NGO groups over there are far more influential. They've got a good Green party. The NGOs are far more influential than in the US. I think we'll see a tougher requirement ultimately implemented in the EU than we do with Lacey.  
*Governmental representative: Industry consultant*

Not only is this legislation process affecting the importing countries, but the producing countries are beginning to take notice.

The governments of the countries that they're concerned about are getting a lot more involved, seeing a lot more chain of custody and certification in tropical countries, tropical hardwood species at risk and stuff. Regulation of palm plantations. I think it's having a big effect and I think the industries and governments in those countries that should be concerned about it are concerned about it because they realize that you've now got the two biggest markets (The US and the EU) both with legislation that will require them to eliminate the shipping to those markets of illegally harvested timber. I've seen them reacting all over the world.  
*Transportation manager*

### *Global Illegal Logging*

The respondents were split when asked whether they thought the 2008 amendments of the Lacey Act would reduce illegal logging. Some respondents felt that the Lacey Act cannot affect illegal harvesting because the main driver of illegal harvesting is land conversion rather than product trade into the US.

When you look at reports as to what's causing forest destruction, it's land conversion to agriculture and ranching, fuel wood, etc. It's not trade. So if we're putting up additional barriers to trade, then are we just adding more forest destruction, which would make us our own worst enemies?  
*Association leader*

However, some respondents felt that the inclusion of wood products in the Lacey Act will help decrease the harvest of illegal timber.

I believe the LA will decrease global illegal logging. *US importer*

I think the inclusion of plant species to stop poaching trees is a really good move. *Governmental representative: industry consultant*

The majority of respondents indicated that it is too soon to tell whether or not the amendments to the Lacey Act will positively affect the harvest and sourcing of illegal material.

It [the Lacey Act] shouldn't hurt illegal logging, I mean, it shouldn't make it worse. But I'm not sure. I think there's still so much information that we can't find out or don't know about when we're importing unless we go to the next step and hire people and have them travel around the world to see the harvest and see where the fiber is coming from ... I think if you put that kind of process in place, it'd just be onerous. So it's a catch twenty-two. I don't think Lacey will hurt illegal logging, but I'm not sure I can see where it will truly positively impact it, either. *US importer*

*US Context*

One of the main concerns respondents had with the 2008 legislation is they felt that it views the problem of global illegal timber harvesting from a typical North American perspective. This perspective could lead to an eventual domination by the US over timber producing countries.

The fact is that you're dealing with third world countries here, India, Madagascar, and West Africa. These places don't run like we do here. It's not precise; people make mistakes. For someone to make a mistake on a document is fairly routine, but now some guy in Tennessee is going to jail? *US importer*

I like to think optimistically, it's going to stop the production, but the fine line that we're walking here is, how do you tell someone from Myanmar what to do with their wood? *Exporter to the US*

We don't have challenges of drug cartels going into forests like they do in Mexico and clear-cutting logs under armed gunman protection. It just doesn't exist. But those are challenges that are out in the world, and the only thing you can do as a consumer, or as a supplier which we are, you just don't support it. *US importer*

Another common theme throughout the interview process the idea of the US acting as the first theoretical domino in the eventual global system-rewiring in order to create a zero-pull demand for illegally sourced wood products. Some respondents felt that the US will be one of the first in a huge supply chain upheaval.

I do know we see other countries following suit. Over in Europe, they're passing their own legislation, and also Australia. So it's definitely a domino effect. *Association leader*

However, other respondents felt that there will be no domino effect.

The resource will just go to another country. It's going to go to wherever the money is, wherever the barriers aren't policed. There's a tremendous amount of wood flowing from every corner of the globe to China and India and places like that. I can tell you with absolute, 1000% certain that they could care less whether it's legal or illegal. *US importer*

#### *Possibility of Focusing Lacey Act on High-Risk Regions*

The majority of respondents indicated that the amendments to the Lacey Act should be enforced in only certain countries, those that are deemed "high-risk."

That's what we'd all like to see. It's just so much money, energy, and time to go out to uphold these regulations. It's the same thing with certification; certain wood baskets are problematic as opposed to certified wood that is already legal and sustainable. *US importer*

While most respondents felt that it would be better to place a greater emphasis on Lacey in high-risk countries, they also indicated that such a differentiation could cause more issues.

...it would be extremely difficult for the government to implement something that covered all the bases that's non-discriminatory and yet allowed trade to continue. *Governmental representative: industry consultant*

## **Implications for the Future**

### *Suggestions for Change*

The majority of respondents referred to consumer power as the ultimate method of controlling global illegal logging.

The real push is when you force at the retail level. If you're Home Depot or Ikea or a big supplier to the US consumer, if you have restrictions at that point and press the chain of custody into a paper trail, that's really

ultimately the effect. That'll restrict the illegal trade and it would really make the difference, I think. *Exporter to the US*

...the only thing you can do as a consumer, or as a supplier which we are, you just don't support it [illegal logging]. *Association leader*

They [small businesses] can still get kind of beat up by the people that they do sell to because they don't generally have the ability to get down to the retail level, somehow it has to get there and it usually has to get there through some big guy that cares a whole bunch about whether or not the product they're selling is legal. *Association leader*

### *Lacey Act in the Future*

When asked for a future projection of the Lacey Act in 10 years, responses varied. Some respondents focused on the economical aspect, some focused on the market direction, and some had more of an environmentalist attitude.

As far as enforcement goes, the US isn't going to be the 800 pound gorilla on the globe anymore. We've only got 300 million people in the US; there are a billion just in China and a billion in India. They'll far out-consume us. So our little bit of wood consumption here is going to be surpassed quickly by the emerging markets in Asia. We'll have less of an impact in the future on this sort of thing. *US importer*

We're staring eventually at massive inflation and devaluation of the dollar which is already underway. We're going to be exporting a lot of wood and coal and everything else, because we'll be the cheap currency relative to other nations. Flip that the other way around, and for the past 15 years the shoe has been on the other foot. So we were sucking in a lot of product from everywhere. Economics have a funny way of getting over things like the Lacey Act. *US importer*

I'm fully convinced that this is just the way the market is moving. So much of it comes down to voters and consumers demand to know the products they buy ha[ve] as minimal of an impact on the environment as possible. There's no question that that's not a fad. People, especially the younger generation, the future consumers, they care very much about

where the wood comes from. *Governmental representative: industry consultant*

What's going to happen to those forest-dependent communities, what's going to happen to the future of the forest? We need forests sustainably managed, and there has to be a supply. These are generational businesses that have been working very hard and diligently to assure that. But when you hear people talk about bans and boycotts and additional costs etcetera, you're driving people to abandon those forests and those people. That's our concern. So this darn well better stop illegal logging, because otherwise it could lead to forest destruction. *Association leader*

One respondent mentioned the fact that even though the 2008 amendments to the Lacey Act may not have immediately stopped global illegal logging, it may act as a starting point.

People are asking and it's making a difference. It's no longer considered a "do whatever you want and no one will find out" sort of an industry. *Association leader*

Now we're trying to find consensus where we can and strengthen the regulatory side where the implement belongs. I think there are some good things I'm hoping we can do to make it more efficient and less onerous. *US importer*

From these results, it is clear that the respondents are mostly concerned with the communication aspect between themselves and the US government, which leads to the respondent's attitudes toward due diligence and its affect on global illegal logging. Since there is a varying degree of compliance, it is important to note that companies are choosing to comply with the Lacey Act amendments differently. Respondents gave their opinions as to how the amendments will be utilized in the future and they made their suggestions for change.



## **Chapter 5 - Discussion and Conclusion**

There are several key findings from this study that warrant further discussion including the importance of communication between the US government and US companies. The second discussion point has to do with respondent's opinions regarding the due diligence process and how this process will ultimately affect global illegal logging. The third discussion point is a practical application of amendments, and the last is how respondents feel the Lacey Act will be implemented in the future.

### **Communication**

One of the key findings of this study relates to the subpar communication that led to confusion regarding the 2008 Lacey amendments. At the time of this study, the amendments had been in place for three years, and even after that amount of time, almost all industry respondents had at least one misconception regarding the new legislation. For example, some thought that compliance with forest certification schemes (i.e. Forest Stewardship Council or Sustainable Forestry Initiative) meant they were Lacey compliant, while others believed that since no due diligence requirement was established, their companies are not required to examine their own business practices. Since compliance with the law is ultimately the company's burden, complete understanding of the legislation is crucial in order for companies to stay in business.

It is the opinion of this researcher that this lack of adequate communication regarding the legislation was aided by two things: the heavy reliance on associations in order to communicate the legislation, and the fact that the forest products industry is segmented, making general mass communication difficult. Multiple respondents had indicated that they received information on the Lacey amendments from only the associations to which they belong. A small group of respondents indicated that they received information from the government itself, but this fact was not one shared by the majority.

The opinion that the government relied too heavily on the wood products associations was a surprising revelation. This opinion was not expected and helped shed light on the communication process between the US government and forest products businesses. The implication regarding communication is that it was viewed as subpar by the majority of industry respondents in this study. This finding is very important because it identifies a specific and solvable problem in the field.

Though the US forest products industry has undergone significant consolidation in the past decade, the industry is still segmented (Hansen & Juslin 2011). Any researcher with experience would agree to the fact that the chore of contacting all forest products businesses is not an easy task. This finding adds another layer of complexity to this problem. Given that the forest products industry is so segmented, the task of

communicating to all levels of the value chain is one that apparently even the US government has found daunting.

Many respondents indicated that because they are under compliance of a specific certification system, they are automatically compliant with the Lacey Act amendments. Legally this is not true. It is important to note, however, that many respondents are not aware that their assumptions are incorrect. These assumptions can lead to future legal issues, and it is important that it is communicated to the forest products companies that national certification schemes do not imply compliance with the Lacey amendments. However, if a change was made to include forest certification to the Lacey Act amendments, this could imply opportunities for certifiers in the future.

Some suggestions for communicational change given by respondents include a more proactive approach between producing and importing countries. This proactive approach would include actions such as regular visits to the producing country, personal relationships with buyers, and a shift in focus from documentation to general knowledge of shipments. Other suggestions included the shift in burden from the importing country to the exporting country. If this suggestion were put to use, it would be the exporting country's job to ensure the legality of the wood products that are being exported.

## **Due Diligence Process and its Effect on Global Illegal Logging**

The second key finding of this study relates to respondent's opinions regarding the due diligence process and its effects on global illegal logging. The majority of respondents feel that though the motivation behind the Lacey Act amendments are good, the standards set forth by the amendments are difficult to maintain. The difficulties were exacerbated by a lack of understanding of how the amendments will ultimately aid US businesses, which is affected by (1) a lack of understanding pertaining to the due diligence process, and (2) how the amendments will ultimately decrease global illegal logging.

(1) The lack of understanding regarding due diligence relates directly to the previous finding regarding communication between the US government and US businesses. Due diligence is not clearly defined in the Lacey Act amendments, and therefore many respondents aren't aware of how to implement their own due diligence program. Other than the lack of adequate communication, this subpar understanding of the due diligence program can be tied to confusion surrounding how the use of due diligence programs will ultimately aid US companies. Some respondents indicated that they have made drastic changes in their operations, but the majority of respondents indicated that they have made only small changes or no changes at all in response to the due diligence program established by the Lacey amendments. The majority of respondents do not feel that a due diligence program will aid their company in the long run, other than providing them the ability to prove that they are in compliance with the new legislation.

This perceived lack of need to engage in adequate due diligence practices could be tied to the lack of understanding as to how the due diligence program could help the company in the future. This finding was expected and matched the sentiments of the exploratory study. This finding suggests that it is imperative for legislators and enforcement agencies to understand the importance of explaining to everyone involved not only the new legislation, but also the motivation behind it. According to this study, the respondents may have been more open to the new due diligence legislation if they felt its purpose was adequately communicated to them. Future research in this area could focus on the relationship between opinions on due diligence and the adequate communication of the motivation behind that due diligence program.

(2) The second portion of this finding relates to the concept that many respondents did not feel that the 2008 Lacey amendments will ultimately hinder global illegal logging. Again, this finding is related to the communication aspect between the US government and US companies. In this study, this topic actually spurred more additional questions than answers.

If we're putting up additional barriers to trade, then are we just adding more forest destruction, which would make us our own worst enemies?  
*Association leader*

Is [the Lacey amendments] because they want to make a difference? Was there even any prior research? *US importer*

... [The Lacey amendments] shouldn't hurt illegal logging, but I'm not sure. *US importer*

Many respondents felt that it is possible that the amendments will make a small contribution to slow the flow of illegal material, and that it is encouraging businesses to ask questions of their suppliers. However, the majority of respondents felt that the illegal material will get sold, regardless of whether it ultimately ends up in the United States.

This general feeling that adherence to the 2008 Lacey Act amendments will not ultimately affect global illegal logging can again be tied to the previous finding regarding communication between the US government and US companies. However, this specific sentiment is so specialized that it was necessary to separate from the others. The fact is the majority of respondents either did not understand the overall intent of the Lacey amendments, or they did not agree that adherence to the amendments would ultimately affect global illegal logging. This expressed opinion is one that should shed a great amount of light onto the legislative processes and highlight the importance of showing citizens not only the motivation behind new legislation, but also exhaustive research and sources that will help citizens understand why they should make the changes in order to adhere to new legislation. It is possible that with more explanation and research, the respondents in this study would have been more accepting.

## **A Practical Application of Utilizing Lacey Act Amendments**

The third key finding of this study relates to the practical application of the 2008 Lacey amendments. This section will follow the logical progression of adapting a new policy in a company; implementation, operational changes, and attitudes toward the changes.

The majority of respondents did not express many implementation problems when altering their companies in order to establish a due diligence program. The majority implied that their initial response toward the movement to stop global illegal logging was a positive one, many stating that the only change they saw at the beginning was a bit more paperwork. However, as the legislation progressed and the front-page publicity of the Lacey amendments began appearing, most of the respondents became worried. It was the publicity of the Gibson Guitar case that shocked the majority of the respondents in this study. The general consensus was one of disbelief and anger toward legislators. It was this publicity that spurred many respondents to research the amendments more thoroughly. The fact that it took time for the legislation to make an impression on US companies is not surprising, though it is important to note that the majority of respondents in this study indicated that the publicity and public outrage toward the Gibson Guitar case spurred them to ask questions and research the amendments. Future research in this area could focus on the possible use of publicity to communicate legislative changes and how the actions of other companies affects willingness to exercise due diligence.

As aforementioned, the amount of operational changes within the respondent's companies varied, but the majority of respondents indicated they had made small or no changes to their operations due to the 2008 amendment. Some respondents admitted to 'rubberstamping' the whole process in order to keep their business afloat. Others felt that their relationship with their material buyers is enough due diligence for their company. Some respondents indicated that they had made small operational changes including adding additional staff to process paperwork or renaming certain wood species in their software (for example, using the term 'Southern Yellow Pine' rather than the list of scientific names that make up that group of wood). A few respondents indicated that when the amendments came into effect, they fastidiously overviewed their buying practices and concluded that they are compliant with the Lacey Act amendments, or made small changes to become so.

Only a small percentage of respondents indicated they are making large changes to their operational procedures, whether or not those changes let them self-classify as Lacey compliant. This finding illustrates that even with a new legislation, US businesses have a difficult time completely revamping their operations. They make small changes over time in order to comply with changing legislation. This finding greatly influences future research, because additional research could be done regarding how companies change their operational procedures in order to comply with changing legislation.

The attitudes greatly varied when respondents commented on the operational changes they instituted due to the Lacey amendments. The majority of respondents highlighted the fact that the forest products industry is a relationship-based industry on both national and international scales. Because of this relationship focus, most respondents indicated that their relationship with their buyers was enough due diligence for their company. Some respondents indicated that the small operational changes have taken a heavy toll on their business. For example, one respondent indicated that they had to hire office staff to process Lacey Act-related paperwork.

When asked about their overall opinion of the 2008 Lacey amendments, about half of the respondents were less obliged to make large operational changes due to the lack of clarity of the legislation.

If the goal is to stop cutting ebony and stop using it in any products, then make that the goal. I'm sure they'll always be illegal sourcing of ebony somewhere. I'm not sure what they're trying to do, I guess. It's awfully vague and it leaves importers like us, especially small ones, just sort of like, "wow. I'm going to go to jail because someone made a cut/paste error." *US importer*

This general fear of getting in trouble for small clerical issues is one that is widespread throughout this study's respondents. Many respondents in the industrial sector felt that their company would get in trouble for something they are unaware of, for example, a typographical error. This fear could have been propagated by means of a subpar

communication level between the US government and companies, or a lack of research on the company's part.

Though many respondents felt apprehensive when trying to implement operational changes, another large group of respondents, though admitting no more commitment to make large operational changes, felt that the amendments are too easy to bypass for manufacturers and therefore won't make a difference in the long run.

When a company in China will export, they will fill any type of paper and say that it comes from here and say that it's legally harvested and it's very hard to track that and it's very easy for them to falsify the paperwork.  
*Exporter to the US*

These respondents felt that operational changes may not be necessary because of the loopholes in the legal system. It is important to note the disparity between respondents who are less inclined to make operational changes because of fear compared to respondents who are less inclined to make operational changes because they believe that other companies are not compliant, and therefore more profitable. The motivations behind their unwillingness to establish a due diligence program differs greatly between these two groups of respondents. Since the motivations differ, there cannot only be one solution. There should be two distinct solutions for these groups; one solution to put at ease those companies who feel apprehensive about implementing changes, and one solution aimed at explaining that everyone must follow the legislation, no matter what.

However, since many respondents did not understand what a due diligence program should be, they did not know that one of the goals of the due diligence program is to help identify false documentation.

This disparity is important for legislators to understand because it illustrates two very different motivations behind companies feeling less inclined to follow new legislation. Again, the solution can go back to an improvement in the communication process. If the companies fully understood that the amendments will be equally enforced to the greatest extent of the law for everyone in the value chain, they may be more inclined to adhere to the law.

### **The Lacey Act in the Future**

The final finding of this study relates to the future implications for the forest products industry regarding the Lacey amendments. The marketability of Lacey compliance seems to be an issue that cannot be agreed upon. Another main problem respondents had with the Lacey amendments is that it appears to be attempting to control the global economy with the use of North American techniques. A suggested solution to this problem is to use the amendments as a tool to focus on 'high-risk' countries.

Some respondents feel that Lacey compliance will increase their overall profitability, but the majority of respondents feel that compliance with the Lacey amendments will not benefit their companies, or the industry as a whole.

When I mention Lacey Act, nobody knows what it is. Most people remember the old act when it was for importation of animals, but I don't think it's caught on. I don't think it will. *US importer*

The majority of respondents indicated that they will not be using their Lacey compliance as an advertising focus for their company. This finding is not surprising. Though the original intent of the legislation was to increase sales for domestic producers by leveling the global marketplace, this intent was to be satisfied by removing cheaper products from the market rather than giving companies an advertising ploy. Future research in this area could include an in-depth look into if and how companies are publicizing the fact that they are Lacey compliant.

As aforementioned, one of the main concerns respondents had with the Lacey amendments is that they feel it gives North Americans the authority to control the operations in other countries. This opinion was consistently agreed upon within this study. It is possible that respondents feel this way because the original intent was not adequately communicated to them. It is also possible that the respondents would respond more positively to a program that encouraged more international cooperation rather than control of the trade system. This finding is important because if legislators attempt to

alter the Lacey amendments or enforcement techniques, they would want to alter them in a way that would help them to be more accepted by the industry.

A less common but still adamant opinion uncovered in this study is that the current outcomes of the Lacey amendments do not fit its original intent. The original intent of the amendments was to increase sales for domestic producers by leveling the global marketplace and decrease global illegal logging by slowing the trade of illegal material that comes to the US. However, some respondents felt that the majority of illegally logged material is not sent to the US; some argue that it is burned to make room for short-term cash crops such as soybeans or cattle fields. In this light, the amendments may only make a small difference in the bigger picture of global illegal logging practices. This finding is important because it indicates that respondents in this study feel that more research is necessary before enacting a piece of legislation. The motivation behind global illegal logging would provide much needed answers to questions that are attempted to be answered by the Lacey amendments.

Many respondents indicated that an alteration of the use of the Lacey amendments may be more acceptable. The suggestions for alterations varied, but the majority of respondents mentioned that the creation of a “high-risk” country list would be an adequate modification. This list would provide a general guideline of what countries US buyers need to be wary of regarding the legality of materials. However, the problem with

the idea of this concept is that it would act as a blacklist that may cause international issues. Another problem with the concept of a country list is that illegal logging happens everywhere, even in the US.

## **Chapter 6 – Limitations and Future Research**

### **Limitations**

Because the amendments were somewhat recent during the time of this research, there was not an abundant amount of literature on the 2008 Lacey Act amendments. The majority of literature was biased and written to sway legislators, and this literature was searched and reported using the most unbiased methods possible.

Some may discount the findings of this study as subjective or selective because they rely on the opinions of only a select group of stakeholders. The primary limitation of this study is the response bias. Though the responses were greatly varied and some attitudes of the respondents were clearly polar opposites, it is possible that the respondents in this study do not adequately reflect the correct distribution of the forest products industry as a whole. The individuals in this study were non-randomly selected using snowball sampling. It is possible that this method of collecting data leads to a skew in the data, since the referrals might be to other like-minded people. However, if the environmental

policy industry is truly headed toward a future with the Lacey Act, this study may prove insight into the future inner workings of the industry.

One limitation of this study is that the views of the respondents only reflect the opinion of a small sample population. This topic can have serious consequences for companies if they aren't following the law. It is possible that respondents held back some information regarding their compliance practices in order to protect their companies. Respondent bias is a common issue with interview-based research, but was minimized using aforementioned techniques such as triangulation and ensuring different types of validity. Another limitation of this study is that only one person collected and analyzed the data.

### **Future Research**

This report was written to be distributed to the respondents who expressed interest in receiving a copy. Many participants requested additional information regarding compliance with the Lacey Act amendments. Additional work must be done to help communicate new compliance measures with US companies.

There is a great amount of future research suggested by these findings whether in regards to the relationship between wood products businesses and forest products associations or investigating the segmented forest products industry in the United States and attempting to establish a more reliable communication network opportunity. Research investigating

the root causes of global illegal logging would be beneficial to legislators in order to ensure future legislation has the intended effect. Other future research might include investigating the relationship between forest products associations and the government in the US and comparing that to findings in other countries. It would be interesting to understand how other countries' governments are using associations to their advantage with regards to communication.

In addition to all the aforementioned future research ideas, other research in the future could utilize methods used in this study to gain a more diversified view of those affected by the 2008 amendments to the Lacey Act. Additional research in could focus on the prior studies done by the US government and how those studies were communicated to US businesses. There is great potential for continuing education in this area, as there are many business owners and managers who do not understand how to protect their companies. Future research could also look further into the motivation behind companies to adhere to legislation based on their opinions on that legislation.

It is important to note that the respondents in this study had suggestions for change, and perhaps some of the ideas mentioned would be worth investigating. This topic also has great potential for future research that investigates suggestions for change to the Lacey amendments. Some respondents indicated that they would have benefitted from more informational sessions as well as an increase in pamphlets that describe the 2008 Lacey

Act amendments in layman's terms. Since the lack of adequate communication from the US government seemed to be the most predominantly mentioned, an increase in communication would make a positive difference for US companies.

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## APPENDICES

### Appendix A: Exploratory Questionnaire

#### General Questions

1-4 Scale. 1: Strongly disagree, 2: Somewhat Disagree, 3: Somewhat Agree, 4: Strongly Agree

Please indicate the extent to which you agree or disagree to each of the following statements.

My firm imports wood products.

My firm has experience with Lacey Act documentation.

I import wood products

I have experience with Lacey Act documentation.

Please indicate where your firm gets information regarding the Lacey Act

Information session

APHIS website

Internet Search Engine

US Customs hotline

APHIS hotline

Other: Please specify \_\_\_\_\_

#### Knowledge

1-4 Scale. 1: Strongly disagree, 2: Somewhat Disagree, 3: Somewhat Agree, 4: Strongly Agree, 5: IDK

Please indicate the extent to which you agree or disagree to each of the following statements.

The enforcers of the Lacey Act have a right to arrest those in violation of the Lacey Act without a warrant.

I consider myself well-versed in environmental policy issues.

I keep up to date with new environmental policies.

I consider myself well-versed with Lacey Act literature.

Please indicate the government bodies that enforce the Lacey Act

The Fish and Wildlife Service (FWS)

The Department of Agriculture's Animal Plant and Health Inspection Service  
(APHIS)

US Customs

US Homeland Security

The Environmental Investigation Agency (EIA)

The Environmental Protection Agency (EPA)

### **Compliance**

1-4 Scale. 1: Strongly disagree, 2: Somewhat Disagree, 3: Somewhat Agree, 4: Strongly Agree, 5: IDK

Please indicate the extent to which you agree or disagree to each of the following statements.

I understand what it means to be Lacey compliant.

I consider my firm Lacey compliant.

My firm's practices have changed due to Lacey Act compliance.

My firm would have been considered "Lacey Compliant" even before the amendments in 2008 became law.

1-4 Scale. 1: Strongly disagree, 2: Somewhat Disagree, 3: Somewhat Agree, 4: Strongly Agree, 5: IDK

The following are important in my firm's due diligence program:

Doing business with middlemen who are known to be honest

Knowing the country of origin of the imported products

Visiting my suppliers in the products country of origin

Knowing the ownership of harvest of my imported products

Knowing how many middlemen my imported products have been through to get to me.

My firm works internationally with

Any exporter who is willing to do business with us

Exporters who are reputable in their field

Exporters who are known for their honesty

### Opinions

1-4 Scale. 1: Strongly disagree, 2: Somewhat Disagree, 3: Somewhat Agree, 4: Strongly Agree

Please indicate the extent to which you agree or disagree to each of the following statements.

I believe that...

Illegal logging is a global issue.

Steps should be taken to stop illegal logging.

Compliance with the Lacey Act will hinder international illegal logging.

Compliance with the Lacey Act will ultimately aid international wood products trade.

Compliance with the Lacey Act has increased efforts of importers to practice positive documentation practices.

Compliance with the Lacey Act will be beneficial for the United States.

Compliance with the Lacey Act will have a positive impact on the end consumer.

The 2008 Lacey Act Amendments were necessary.

The 2008 Lacey Act Amendments were adequately communicated to companies importing wood products.

My firm is adequately equipped with the tools necessary to adhere to the 2008 Lacey Act Amendments.

My firm is able to utilize resources given by Lacey Act enforcers in order to be Lacey compliant.

It is possible for every firm that imports forest products to be Lacey Act compliant.

Every firm that imports forest products should be compliant with the Lacey Act.

### Lacey Act Impacts

1-4 Scale. 1: Strongly disagree, 2: Somewhat Disagree, 3: Somewhat Agree, 4: Strongly Agree

Please indicate the extent to which you agree or disagree to each of the following statements.

I believe that the Lacey Act has *positively* impacted

Global Illegal Logging

Domestic (US) business

Domestic (US) ability to import

My efforts in the Lacey Act have impacted my competitiveness in the marketplace.

- Yes, it has greatly decreased competitiveness
- Yes, it has slightly decreased competitiveness
- Yes, it has slightly increased competitiveness
- Yes, it has greatly increased competitiveness
- No, it has not impacted my competitiveness

**General Information about the firm**

Please indicate the number of employees in your firm.

- Less than 10, 11-25, 26-50, 51-75, 76-100, More than 100

Please indicate the percent of total purchases that come from imports

- Less than 10%, 11-25%, 26-50%, 51-75%, 76-100%

Please indicate the country(s) from which you import

- Drop-down list of all 214 countries

Please indicate where you are sending imported material.

- Your own manufacturing facilities
- Outside manufacturing facilities
- Retail stores
- Other wholesaler
- End customer

## Appendix B: Personal Interviews

### Lacey Act Effects on Forest Products Industry Semi-Structured Interview

#### **General**

Please give a general overview of your company.

What is your personal role in the company?

Are you familiar with the Lacey Act? Are you your company's Lacey Act expert?

#### **Import Information**

What sort of wood products do you import? (Raw materials, semi-finished products, finished products)

Where do your imported goods come from?

How long have you been importing wood products?

#### **Compliance**

What was your motivation behind filing Lacey declaration forms?

Does your company hire someone outside your company to complete the form?

How often do you complete form?

How long have you been filing Lacey declaration forms?

#### **Challenges, Communication, and Information**

##### *Challenges*

Can you describe specific challenges or problems you encountered when filing Lacey declaration forms?

What would you do to improve the form or declaration process?

##### *Communication*

How did you first hear about the Lacey Act?

Do you believe that the Lacey Act amendments of 2008 were adequately communicated to you?

Do you have any suggestions as to how the communication process could have been improved?

##### *Information*

If you had questions with the Lacey Act declaration form, who do you go to?

**Effects of 2008 Lacey Act amendments**

Explain how the 2008 amendments have affected your company.

How has the Lacey act affected your company's competitiveness?

Has being Lacey compliant caused your company to be more conscious of practices?  
(Buying habits, personal relationship with log buyers, knowledge of material source)

Do you think compliance with the Lacey Act will ultimately aid your company?

Does it impact your willingness to be compliant if your customers understand Lacey compliance?

Do you think compliance with the Lacey Act will ultimately affect global illegal logging?

Have you seen a change in importing trends since 2008 that were directly related to the Lacey Act?

**Due Diligence**

Does your company have a due diligence program in place?

Why did/didn't you implement this program?

How do you feel about the concept of "due diligence?"

Were the 2008 amendments explained to you so that you understood the consequences of not following a due diligence program?

## Appendix C: Amendments to the Lacey Act from H.R. 2419, Sec 8204

*Amendments are in purple text and appear in the following subsections:*

*3371(f), (h), and (j);*

*3372(a) and (f);*

*3373(a) and (d);*

*3374(a) and (d);*

*3376(a) and (c)*

### The Lacey Act Chapter 53 of Title 16, United States Code

#### § 3371. Definitions

For the purposes of this chapter:

(a) The term “fish or wildlife” means any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring thereof.

(b) The term “import” means to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(c) The term “Indian tribal law” means any regulation of, or other rule of conduct enforceable by, any Indian tribe, band, or group but only to the extent that the regulation or rule applies within Indian country as defined in section 1151 of title 18.

(d) The terms “law,” “treaty,” “regulation,” and “Indian tribal law” mean laws, treaties, regulations or Indian tribal laws which regulate the taking, possession, importation, exportation, transportation, or sale of fish or wildlife or plants.

(e) The term “person” includes any individual, partnership, association, corporation, trust, or any officer, employee, agent, department, or instrumentality of the Federal Government or of any State or political subdivision thereof, or any other entity subject to the jurisdiction of the United States.

~~(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 terms “plant” and “plants” mean any wild member of the plant kingdom, including roots, seeds, parts, and products thereof, and including trees from either natural or planted forest stands.

(2) EXCLUSIONS.—The terms “plant” and “plants” exclude—

(A) common cultivars, except trees, and common food crops (including roots, seeds, parts, or products thereof);

(B) a scientific specimen of plant genetic material (including roots, seeds, germplasm, parts, or products thereof) that is to be used only for laboratory or field research; and

(C) any plant that is to remain planted or to be planted or replanted.

(3) EXCEPTIONS TO APPLICATION OF EXCLUSIONS.—The exclusions made by subparagraphs (B) and (C) of

paragraph (2) do not apply if the plant is listed—

(A) in an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

(27 UST 1087; TIAS 8249);

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

or

(C) pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

(g) Prohibited Wildlife Species.— The term “prohibited wildlife species” means any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of such species.

(h) The term “Secretary” means, except as otherwise provided in this chapter, 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 chapter which pertain to the importation or exportation of ~~plants the term means plants, the term also means~~ the Secretary of Agriculture.

(i) The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Mariana Islands, American Samoa, and any other territory, commonwealth, or possession of the United States.

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

(j) Taken and Taking.—

(1) Taken.—The term “taken” means captured, killed, or collected and, with respect to a plant, also means harvested, cut, logged, or removed.

(2) Taking.—The term “taking” means the act by which fish, wildlife, or plants are taken.

(k) The term “transport” means to move, convey, carry, or ship by any means, or to deliver or receive for the purpose of movement, conveyance, carriage, or shipment.

### **§ 3372. Prohibited acts**

(a) Offenses other than marking offenses

It is unlawful for any person—

(1) to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law;

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

(A) any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law;

~~(B) any plant taken, possessed, transported, or sold in violation of any law or regulation of any State; or~~

(B) any plant—

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

(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants; or

(C) any prohibited wildlife species (subject to subsection (e) of this section);

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

(A) to possess any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law or Indian tribal law, or

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

(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants; or

(4) to attempt to commit any act described in paragraphs (1) through (3).

(b) Marking offenses

It is unlawful for any person to import, export, or transport in interstate commerce any container or package containing any fish or wildlife unless the container or package has previously been plainly marked, labeled, or tagged in accordance with the regulations issued pursuant to paragraph (2) of section 3376 (a) of this title.

(c) Sale and purchase of guiding and outfitting services and invalid licenses and permits

(1) Sale

It is deemed to be a sale of fish or wildlife in violation of this chapter for a person for money or other consideration to offer or provide—

(A) guiding, outfitting, or other services; or

(B) a hunting or fishing license or permit;

for the illegal taking, acquiring, receiving, transporting, or possessing of fish or wildlife.

(2) Purchase

It is deemed to be a purchase of fish or wildlife in violation of this chapter for a person to obtain for money or other consideration—

(A) guiding, outfitting, or other services; or

(B) a hunting or fishing license or permit;

for the illegal taking, acquiring, receiving, transporting, or possessing of fish or wildlife.

(d) False labeling offenses

It is unlawful for any person to make or submit any false record, account, or label for, or any false identification of, any fish, wildlife, or plant which has been, or is intended to be—

(1) imported, exported, transported, sold, purchased, or received from any foreign country; or

(2) transported in interstate or foreign commerce.

(e) Nonapplicability of prohibited wildlife species offense

(1) In general

Subsection (a)(2)(C) of this section does not apply to importation, exportation, transportation, sale, receipt, acquisition, or purchase of an animal of a prohibited wildlife species, by a person that, under regulations prescribed under paragraph (3), is described in paragraph (2) with respect to that species.

(2) Persons described

A person is described in this paragraph, if the person—

(A) is licensed or registered, and inspected, by the Animal and Plant Health Inspection Service or any other Federal agency with respect to that species;

(B) is a State college, university, or agency, State-licensed wildlife rehabilitator, or State-licensed veterinarian;

(C) is an accredited wildlife sanctuary that cares for prohibited wildlife species and—

(i) is a corporation that is exempt from taxation under section 501 (a) of title 26 and described in sections 501(c)(3) and 170(b)(1)(A)(vi) of such title;

(ii) does not commercially trade in animals listed in section 3371 (g) of this title, including offspring, parts, and byproducts of such animals;

(iii) does not propagate animals listed in section 3371 (g) of this title; and

(iv) does not allow direct contact between the public and animals; or

(D) has custody of the animal solely for the purpose of expeditiously transporting the animal to a person described in this paragraph with respect to the species.

(3) Regulations

Not later than 180 days after December 19, 2003, the Secretary, in cooperation with the Director of the Animal and Plant Health Inspection Service, shall promulgate regulations describing the persons described in paragraph (2).

(4) State authority

Nothing in this subsection preempts or supersedes the authority of a State to regulate wildlife species within that State.

(5) Authorization of appropriations

There is authorized to be appropriated to carry out subsection (a)(2)(C) of this section \$3,000,000 for each of fiscal years 2004 through 2008.

(f) PLANT DECLARATIONS.—

(1) IMPORT DECLARATION.—Effective 180 days from the date of enactment of this subsection, and except as provided in paragraph (3), it shall be unlawful for any person to import any plant unless the person files upon importation 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;

(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 one 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; and

(C) in the case in which a paper or paperboard plant product includes recycled plant product, contain the average percent recycled content without regard for the species or country of origin of the recycled plant product, in addition to the information for the non-recycled plant content otherwise required by this subsection.

(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 two years after the date of enactment of this subsection, the Secretary shall review the implementation of each requirement imposed by paragraphs (1) and (2) and the effect of the exclusion provided by paragraph (3). In conducting the review, the Secretary shall provide public notice and an opportunity for comment.

(5) REPORT.—Not later than 180 days after the date on which the Secretary completes the review under paragraph (4),

the Secretary shall submit to the appropriate committees of Congress a report containing—

(A) an evaluation of—

(i) the effectiveness of each type of information required under paragraphs (1) through (2) in assisting enforcement of this section; and

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

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

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

(i) the cost of legal plant imports; and

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

(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 imposed by paragraph (2) to specific plant products;

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

(C) to limit the scope of the exclusion provided by paragraph (3), if the limitations in scope are warranted as a result of the review.

### **§ 3373. Penalties and sanctions**

#### **(a) Civil penalties**

(1) Any person who engages in conduct prohibited by any provision of this chapter (other than ~~subsections (b) and (d)~~ subsections (b), (d), and (f) of section 3372 of this title) and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty, or regulation, and any person who knowingly violates ~~section 3372 (d)~~ subsection (d) or (f) of section 3372 of this title, 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, or \$10,000, whichever is less.

(2) Any person who violates section 3372 (b) subsection (b) or (f) of section 3372, except as provided in paragraph (1), of this title may be assessed a civil penalty by the Secretary of not more than \$250.

(3) For purposes of paragraphs (1) and (2), any reference to a provision of this chapter or to a section of this chapter shall be treated as including any regulation issued to carry out any such provision or section.

(4) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation. 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 a person may have taken or been in possession of the said fish or wildlife or plants.

(5) Any civil penalty assessed under this subsection may be remitted or mitigated by the Secretary.

(6) In determining the amount of any penalty assessed pursuant to paragraphs (1) and (2), the Secretary shall take into account the nature, circumstances, extent, and gravity of

the prohibited act committed, and with respect to the violator, the degree of culpability, ability to pay, and such other matters as justice may require.

(b) Hearings

Hearings held during proceedings for the assessment of civil penalties shall be conducted in accordance with section 554 of title 5. The administrative law judge may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Review of civil penalty

Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate District Court of the United States by filing a complaint in such court within 30 days after the date of such order and by simultaneously serving a copy of the complaint by certified mail on the Secretary, the Attorney General, and the appropriate United States attorney. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty de novo.

(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 chapter (other than ~~subsections (b) and (d)~~ subsections (b), (d), and (f) of section 3372 of this title), or

(B) violates any provision of this chapter (other than ~~subsections (b) and (d)~~ subsections (b), (d), and (f) of section 3372 of this title) 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 chapter (other than ~~subsections (b) and (d)~~ subsections (b), (d), and (f) of section 3372 of this title) 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 3372 (d)~~ subsection (d) or (f) of section 3372 of this title—

(A) shall be fined under title 18 or imprisoned for not more than 5 years, or both, if the offense involves—

- (i) the importation or exportation of fish or wildlife or plants; or
- (ii) the sale or purchase, offer of sale or purchase, or commission of an act with intent to sell or purchase fish or wildlife or plants with a market value greater than \$350; and

(B) shall be fined under title 18 or imprisoned for not more than 1 year, or both, if the offense does not involve conduct described in subparagraph (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 Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), 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 chapter 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.

**§ 3374. Forfeiture**

(a) In general

(1) All fish or wildlife or plants imported, exported, transported, sold, received, acquired, or purchased contrary to the provisions of section 3372 of this title (other than section 3372 (b) of this title), or any regulation issued pursuant thereto, shall be subject to forfeiture to the United States notwithstanding any culpability requirements for civil penalty assessment or criminal prosecution included in section 3373 of this title.

(2) All vessels, vehicles, aircraft, and other equipment used to aid in the importing, exporting, transporting, selling, receiving, acquiring, or purchasing of fish or wildlife or plants in a criminal violation of this chapter for which a felony conviction is obtained shall be subject to forfeiture to the United States if

(A) the owner of such vessel, vehicle, aircraft, or equipment was at the time of the alleged illegal act a consenting party or privy thereto or in the exercise of due care should have known that such vessel, vehicle, aircraft, or equipment would be used in a criminal violation of this chapter, and

(B) the violation involved the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants.

(b) Application of customs laws

All provisions of law relating to the seizure, forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred,

or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter, except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department may, for the purposes of this chapter, also be exercised or performed by the Secretary or by such persons as he may designate: Provided, That any warrant for search or seizure shall be issued in accordance with rule 41 of the Federal Rules of Criminal Procedure.

(c) Storage cost

Any person convicted of an offense, or assessed a civil penalty, under section 3373 of this title shall be liable for the costs incurred in the storage, care, and maintenance of any fish or wildlife or plant seized in connection with the violation concerned.

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

**§ 3375. Enforcement**

(a) In general

The provisions of this chapter and any regulations issued pursuant thereto shall be enforced by the Secretary, the Secretary of Transportation, or the Secretary of the Treasury. Such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency or Indian tribe for purposes of enforcing this chapter.

(b) Powers

Any person authorized under subsection (a) of this section to enforce this chapter may carry firearms; may, when enforcing this chapter, make an arrest without a warrant, in accordance with any guidelines which may be issued by the Attorney General, for any offense under the laws of the United States committed in the person's presence, or for the commission of any felony under the laws of the United States, if the person has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; may search and seize, with or without a warrant, in accordance with any guidelines which may be issued by the Attorney General; [1] Provided, That an arrest for a felony violation of this chapter that is not committed in the presence or view of any such person and that involves only the transportation, acquisition, receipt, purchase, or sale of fish or wildlife or plants taken or possessed in violation of any law or regulation of any State shall require a warrant; may make an arrest without a warrant for a misdemeanor violation of this chapter if he has reasonable grounds to believe that the person to be arrested is committing a violation in his presence or view; and may execute and serve any subpoena, arrest warrant, search warrant issued in accordance with rule 41 of the Federal Rules of Criminal Procedure, or other warrant of civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this chapter. Any person so authorized, in coordination with the Secretary of the Treasury, may detain for inspection and inspect any vessel, vehicle, aircraft, or other conveyance or any package, crate, or other container, including its contents, upon the arrival of such conveyance or container in the United States or the customs waters of the United States from any point outside the United States or such customs waters, or, if such conveyance or container is being used for exportation purposes, prior to departure from the United States or the customs waters of the United States. Such person may also inspect and demand the production of any documents and permits required by the country of natal origin, birth, or reexport of the fish or wildlife. Any fish, wildlife, plant, property, or item seized shall be held by any person authorized by the Secretary pending disposition of civil or criminal

proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, plants, property, or item pursuant to section 3374 of this title; except that the Secretary may, in lieu of holding such fish, wildlife, plant, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(c) Jurisdiction of district courts

The several district courts of the United States, including the courts enumerated in section 460 of title 28, shall have jurisdiction over any actions arising under this chapter. The venue provisions of title 18 and title 28 shall apply to any actions arising under this chapter. The judges of the district courts of the United States and the United States magistrate judges may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and any regulations issued thereunder.

(d) Rewards and incidental expenses

Beginning in fiscal year 1983, the Secretary or the Secretary of the Treasury shall pay, from sums received as penalties, fines, or forfeitures of property for any violation of this chapter or any regulation issued hereunder

(1) a reward to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this chapter or any regulation issued hereunder. The amount of the reward, if any, is to be designated by the Secretary or the Secretary of the Treasury, as appropriate. Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of his official duties is ineligible for payment under this subsection, and

(2) the reasonable and necessary costs incurred by any person in providing temporary care for any fish, wildlife, or plant pending the disposition of any civil or criminal proceeding alleging a violation of this chapter with respect to that fish, wildlife, or plant.

**§ 3376. 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 3373 and section~~ sections 3372(f), 3373, and 3374 of this title.

(2) The Secretaries of the Interior and Commerce shall jointly promulgate specific regulations to implement the provisions of section 3372 (b) of this title for the marking and labeling of containers or packages containing fish or wildlife. These regulations shall be in accordance with existing commercial practices.

(b) Contract authority

Beginning in fiscal year 1983, to the extent and in the amounts provided in advance in appropriations Act, the Secretary may enter into such contracts, leases, cooperative agreements, or other transactions with any Federal or State agency, Indian tribe, public or private institution, or other person, as may be necessary to carry out the purposes of this chapter.

(c) CLARIFICATION OF EXCLUSIONS FROM DEFINITION OF PLANT.—The Secretary of Agriculture and the Secretary of the Interior, after consultation with the appropriate agencies, shall jointly promulgate regulations to define the terms used in section 2(f)(2)(A) for the purposes of enforcement under this Act.

### § 3377. Exceptions

(a) Activities regulated by plan under Magnuson-Stevens Fishery Conservation and Management Act

The provisions of paragraph (1) of section 3372 (a) of this title shall not apply to any activity regulated by a fishery management plan in effect under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(b) Activities regulated by Tuna Convention Acts; harvesting of highly migratory species taken on high seas The provisions of paragraphs (1), (2)(A), and (3)(A) of section 3372 (a) of this title shall not apply to—

- (1) any activity regulated by the Tuna Conventions Act of 1950 (16 U.S.C. 951–961) or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971–971 (h)); or
- (2) any activity involving the harvesting of highly migratory species (as defined in paragraph (14) of section 3 of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1802 (14)]) taken on the high seas (as defined in paragraph (13) of such section 3) if such species are taken in violation of the laws of a foreign nation and the United States does not recognize the jurisdiction of the foreign nation over such species.

(c) Interstate shipment or transshipment through Indian country of fish, wildlife, or plants for legal purposes. The provisions of paragraph (2) of section 3372 (a) of this title shall not apply to the interstate shipment or transshipment through Indian country as defined in section 1151 of title 18 or a State of any fish or wildlife or plant legally taken if the shipment is en route to a State in which the fish or wildlife or plant may be legally possessed.

### § 3378. Miscellaneous provisions

(a) Effect on powers of States

Nothing in this chapter shall be construed to prevent the several States or Indian tribes from making or enforcing laws or regulations not inconsistent with the provisions of this chapter.

(b) Repeals

The following provisions of law are repealed:

- (1) The Act of May 20, 1926 (commonly known as the Black Bass Act; 16 U.S.C. 851–856).
- (2) Section 667e of this title and sections 43 and 44 of title 18 (commonly known as provisions of the Lacey Act).
- (3) Sections 3054 and 3112 of title 18.

(c) Disclaimers

Nothing in this chapter shall be construed as—

- (1) repealing, superseding, or modifying any provision of Federal law other than those specified in subsection (b) of this section;
- (2) repealing, superseding, or modifying any right, privilege, or immunity granted, reserved, or established pursuant to treaty, statute, or executive order pertaining to any Indian tribe, band, or community; or
- (3) enlarging or diminishing the authority of any State or Indian tribe to regulate the activities of persons within Indian reservations.

(d) Travel and transportation expenses

The Secretary of the Interior is authorized to pay from agency appropriations the travel expense of newly appointed special agents of the United States Fish and Wildlife Service and the transportation expense of household goods and personal effects from place of residence at time of selection to first duty station to the extent authorized by section 5724 of title 5 for all such special agents appointed after January 1, 1977.

(e) Interior appropriations budget proposal

The Secretary shall identify the funds utilized to enforce this chapter and any regulations thereto as a specific appropriations item in the Department of the Interior appropriations budget proposal to the Congress.

