



NATURAL RESOURCES DEFENSE COUNCIL

WRITTEN TESTIMONY
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NATURAL RESOURCES DEFENSE COUNCIL

for

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS

HEARING ON H.R. 1497 – THE LEGAL TIMBER PROTECTION ACT

October 29, 2007

I am pleased to submit this statement for the record regarding H.R. 1497, the Legal Timber Protection Act on behalf of the Natural Resources Defense Council and our more than one million members and activists. We strongly support this bill and its simple goal to make it illegal to import and trade in illegal timber.

As the Subcommittee has heard, the trade in illegal timber supports a worldwide network of criminal activities that devastates forests and wildlife, contributes to global warming, and causes more than a billion dollars in yearly losses to U.S. industry. NRDC can provide additional information, from our direct experiences in Peru, on the impacts of this illegal trade.

This statement, however, focuses on the forfeiture provisions of the bill, and clarifies some of the misleading information presented by the bill's opponents. This bill would authorize the forfeiture of timber and timber products when U.S. authorities can prove that these items were taken illegally. This is consistent with decades of U.S. precedent for other stolen or illegal goods, including natural resource products such as wildlife and plants.

ILLEGAL PROPERTY HAS BEEN SUBJECT TO FORFEITURE UNDER LONGSTANDING U.S. LAW

Whether the subject is protected parrots, illegally imported salmon, pilfered Inca artifacts, or stolen art, U.S. law has consistently provided for *in rem* forfeiture, regardless of the knowledge of the person in possession of the items. To do otherwise, as opponents of this bill recommend, would allow illegal goods to continue in commerce even after the government had proven that they were illegal. This is a brazen proposition. It would be a radical departure from existing law and longstanding practice.

Contrary to the claims of this bill's opponents, the Lacey Act has consistently and repeatedly been interpreted to provide for forfeiture of illegal wildlife regardless of the knowledge of the importer. In a case involving the imports of parakeets from Peru, the court held that "the legislative history of the applicable amendments of the Lacey Act *unequivocally* establishes that the defense of 'innocent owner' is not available in forfeiture actions of wildlife brought pursuant to this Act." *U.S. v. 2,507 Live Canary Winged Parakeets*, 689 F. Supp. 1106 (S.D. Fla., 1988) (emphasis added). In an even earlier decision, the Ninth Circuit Court of Appeals upheld forfeiture of Indonesian parrots that were imported through Singapore, although the importer did not know that the original export from Indonesia was illegal. The court held that "[t]he conservation *purpose of the statute could be undermined significantly* by permitting such importers to avoid the application of the statute by trading through intermediary countries." 685 F.2d at 1134 (emphasis added).

This is no less true for timber: allowing anyone to maintain possession and profit from illegal property, as opponents of the bill recommend, **creates a perverse incentive for foreign timber mafia** to pass off their merchandise through unsuspecting intermediaries.

Indeed, the Civil Asset Forfeiture Reform Act (CAFRA), which opponents of H.R. 1497 hold up as their model, makes it clear that "no person may assert an ownership interest under [CAFRA] in contraband or other property that it is illegal to possess." 18 USC §983(d)(4). This simply restates the traditional U.S. rule that a purchaser of stolen or otherwise illegal property—even a good faith purchaser—does not get good title to the property. The courts have consistently applied this rule to wildlife trade, both before and after CAFRA. *Deep Sea Fisheries, Inc. v. 144,774 Pounds of Blue King Crab*, 410 F.3d 1131 (9th Cir. 2005). (Rejecting an importer's ownership claim to 600,000 pounds of salmon exported from Taiwan without the necessary permits and finding that, by violating the Lacey Act, the salmon constitutes "contraband or other property that it is illegal to possess.")

The Lacey Act's forfeiture provisions are also consistent with the treatment of other kinds of illegally obtained property under U.S. law. For example, imported cultural artifacts are subject to forfeiture regardless of the knowledge or culpability of the importer. *See* David N. Chang, *Stealing Beauty: Stopping the Madness of Illicit Art Importation*, 28 *Hous. J. Int'l L.* 829, 857 (2006). The Convention on Cultural Property Implementation Act (CPIA) empowers U.S. officials to seize illegally imported foreign cultural property and restrict its importation. Under the CPIA even a "good faith purchaser"—while immune from criminal prosecution—must still give up the pieces, usually to be turned over to the country of origin. Some foreign jurisdictions, like Switzerland, previously allowed good faith purchasers to keep stolen goods, but "U.S. courts have generally rejected application of the Swiss rule. *See, e.g.,* *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 917 F.2d 278 (7th Cir. 1990)(rejecting defendant's claim to have acquired good title to stolen Byzantine mosaics and applying Indiana's rule that a thief cannot transfer good title even to a good-faith purchaser)." *Patty Gerstenblith & Bonnie Czegledi, International Cultural Property*, 40 *Int'l Lawyer* 441, 445 n.25 (2006). *See also U.S. v. An Antique Platter of Gold*, 184 F.3d 131 (2d Cir. 1999) (Holding that there is no "innocent owner" defense to forfeiture of an item of "classic contraband, an item imported into the United States in violation of law.")

Opponents of this bill do not present a single example of illegally sourced property that is not subject to forfeiture under U.S. law. Yet they say that timber should be treated differently—that the chain-of-custody of timber is too hard to trace. This claim simply does not stand up to decades of experience with stolen cultural artifacts, World War II era paintings or wildlife. Timber is far more massive than any of these items; in many cases, timber-bearing trucks can be seen from satellite imagery. And timber has a single, identifiable geographic source: a tree. If any item in commercial trade could be traced, it is timber. The fact that the chain-of-custody of timber generally can not be traced today points precisely to the need for this legislation.

It is the nature of an illegal trade network that the origins of its products are hard to trace, and this makes it harder for honest people to do business. It is the job of governments to create incentives to bring such trade into the open.

H.R. 1497, with the amendments introduced by Congressman Blumenauer, will create these necessary incentives. That is why we proudly join a broad coalition of industry, labor and environmental groups to support this bill, and we thank the Subcommittee again for the opportunity to submit these comments.