

# Environmental Groups' Letters of Support for National Consensus Lacey Due Care Standard



November 17, 2010

David Williams & Christina Nicholson  
Williams-Sonoma, Inc.  
151 Union Street  
San Francisco, CA 94111

Dear David and Christina,

As a leader in FSC-certified outdoor furniture made with tropical woods, we thought your company might be interested in learning about a program designed to reduce potential risk and uncertainty associated with importing tropical woods subject to the Lacey Act and to add value to your FSC-certified product procurement. Introductory information is attached on the National Defense to Lacey Strict Criminal Liability.

As you will see, FSC, Rainforest Alliance, Forest Ethics, Knoll, National Wood Flooring Association, Home Depot and other leaders are involved in developing the Standard criteria used for the National Consensus Lacey Due Care. If you are interested in learning more about this program, please contact the Capital Markets Partnership at 202-338-3131, [mts@sustainableproducts.com](mailto:mts@sustainableproducts.com).

Thank you for your leadership in demonstrating that garden furniture products can simultaneously meet customers' demands for style and quality while supporting sustainable forest management practices.

All the best,

Stacy Brown  
National Wildlife Federation  
Montpelier, VT 05602



November 11, 2010

**Mike Italiano**  
Chief Executive Officer  
Capital Markets Partnership  
1511 Wisconsin Avenue, NW  
Washington, DC 20007

Re: Support for National Consensus Lacey Due Care Defense to Strict Criminal Liability

Dear Mike,

The Rainforest Alliance supports your efforts to develop the Standard and has agreed to participate in its development and approval.

We concur that the current vague and case by case strict liability and negligence standards of due care can present great uncertainty and risk for the market including for FSC Certificate holders.

Your efforts in leading the similar national consensus due care Superfund Innocent Landowner Defense that was quickly embraced by the market, mandated by the capital markets, and ratified by EPA in rulemaking, provides an important and positive precedent.

We are hopeful this type of effort can be replicated in the forest products sector. Forest degradation and deforestation, all too often fostered by illegal logging, together represent one of the primary contributors to the negative consequences of climate change the world is currently confronting. The Standard proposes to take actions which are consistent with efforts in Europe and most importantly based on successful precedent that you have implemented in other similar situations, can potentially effect a market-based solution that has the potential to increase Lacey compliance, decrease litigation, and perhaps even increase market pressure to stop illegal logging throughout the global supply chain.

Very truly yours,

**Richard Z. Donovan**  
Rainforest Alliance Senior Vice President & Vice President of Forestry Division  
65 Millet Street, Suite 201, Richmond, Vermont 05477

cc: Howard Morse, Cooley LLP  
Don Finkell, Anderson  
Lou Newett, Knoll  
Aaron Sanger, Forest Ethics

# FOREST ETHICS

February 10, 2011

Mike Italiano, CEO  
Capital Markets Partnership  
1511 Wisconsin Avenue  
Washington, DC 20007

Dear Mike,

I write to support the Capital Markets Partnership in limiting the developing Lacey Due Care Standard to credible forest certification systems only. Use of industry dominated systems that are not credible, such as the 'Sustainable Forestry Initiative' (SFI), would compromise the integrity of the developing standard, which I understand to be motivated by the desire to reduce risk of Lacey Act criminal liability.

'Due care' appears to be a key factor in determining liability under the Lacey Act. Because of problems such as ineffectual standards and deficient audit practices, and absent chain-of-custody requirements for its most common type of certification (the 'fiber sourcing label'), use of SFI should not be considered evidence of 'due care'. By contrast, according to the 'due diligence' study for the recently approved National Consensus Sustainable Manufacturing Underwriting Standard, the use of Forest Stewardship Council (FSC) certification does appear to decrease risk for the kinds of problems that the Lacey Act is designed to prevent. Therefore, use of FSC would be good evidence of 'due care' for determining liability under the Lacey Act.

Best wishes for expeditious and successful completion of the Lacey Due Care Defense Standard.

Sincerely,



Aaron Sanger, MS, JD  
Director, U.S. Campaigns  
ForestEthics

San Francisco • Bellingham • Vancouver • Toronto  
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**FOREST STEWARDSHIP COUNCIL  
UNITED STATES**

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Mike Italiano, CEO  
Capital Markets Partnership  
1511 Wisconsin Avenue, NW  
Washington, DC 20007

Dear Mike,

The Forest Stewardship Council-US is deeply committed to doing everything in our means to keep illegally logged timber out of U.S. supply chains. Legal compliance is a fundamental element of compliance within our standards, as stated in Principle 1 of the *FSC Principles & Criteria*. Legal sourcing is also critical to keeping the forest products marketplace fair and level, as well as minimizing deforestation and forest degradation, both of which contribute overwhelmingly to increases in atmospheric carbon and the resultant climate change.

The recent Lacey Act amendments present an important opportunity to use longstanding FSC leadership standards and market support to limit the adverse effects of illegal logging and deforestation while increasing FSC market penetration and the value of forest and forest product certification to all FSC certificate holders.

We recognize that there is substantial confusion and uncertainty over what constitutes Lacey compliance or “due care”, and a great deal is at stake - from the vitality of the forest environment, global climate patterns, the value of globally recognized brands, and substantial criminal liability.

We support and appreciate your efforts to set up a national consensus committee to develop a Lacey Due Care Defense Standard and look forward to receiving the draft standard outline.

Sincerely,

Corey Brinkema  
President