

Testimony of Mr. Thomas Michael (Mike) Freeze, Keo Fish Farms, Inc., to the House Subcommittee on Water, Power and Oceans on Thursday, May 17, 2018, concerning Federal Impediments to Commerce and Innovative Injurious Species Management

I would like to thank Chairman Lamborn, my own Congressman Rick Crawford and the remaining members of the House Subcommittee on Water, Power and Oceans for allowing me to address you concerning Federal Impediments to Commerce and Innovative Injurious Species.

My name is Mike Freeze and I am a fish farmer. I sit or have sat on numerous aquaculture and government advisory boards and since 1983 I have been the co-owner of Keo Fish Farm along with my business partner, Mrs. Martha Melkovitz. Our farm has over 1,000 acres of ponds in which we produce hybrid striped bass and USFWS' certified sterile triploid grass carp for live sales nationally and internationally.

For aquaculture facilities that ship live product nationally, our number one federal regulatory issue and impediment to interstate commerce is the Lacey Act. Written in 1900 and amended numerous times, including in the 2008 Farm Bill, the Lacey Act prohibits the international and interstate trafficking of illegally obtained wildlife and fish or parts as designated by federal, state, tribal or foreign governments. When the Lacey Act was written, it was specifically designed to regulate only "wild animals" and aquaculture was practically non-existent. The 1981 amendments to the Lacey Act included a provision that broadened its application to all "wild" animals, including those having been "bred, hatched, or born in captivity" (16 USC 3371(a)). The USFWS has used this broadened definition to regulate domestically produced aquaculture species but not other domesticated species such as turkeys, elk, deer, bison or quail. USDA, however, has defined wild members of the plant kingdom and excluded common cultivars and food crops (except planted trees). Hence, today our domesticated fish are regulated as if they were taken from the wild.

Of particular concern to our industry, is that the Lacey Act elevates the violation of even misdemeanor state regulations to federal felonies simply because \$350 of domesticated product has entered interstate commerce. Penalties for a Lacey Act felony violation begin at \$100,000 (\$200,000 for organizations) and mandatory incarceration. This scenario is analogous to a \$50 speeding ticket being elevated to a \$100,000 speeding ticket simply because you are driving on an interstate highway instead of a state highway. In a report by the National Agricultural Law Center entitled "Aquaculture and the Lacey Act" author, Elizabeth Rumley states: "The Lacey Act should be amended to exempt domestically produced aquatic species" and I could not agree more. This report by Ms. Rumley is provided for your examination.

But today I want to speak specifically about one of the aquaculture industry's most egregious concerns with the Lacey Act: the prosecution of farmers for the accidental inclusion of an unintended species in the interstate shipment of aquatic species produced in commercial aquaculture for human consumption or for recreational or ornamental purposes. Prior to 1969, any accidental violation of the Lacey Act could not be prosecuted as the Lacey Act contained language stating that any person that "willfully" violated the law was subject to penalty. Unfortunately, the 1969 amendments changed the "willfully" requirement to a "knowingly" requirement. Though I am not an attorney, I have been advised that it is much easier to prove "knowingly" in a court of law than "willfully".

Keeping track of federal, state, tribal, and foreign regulated animals and plants is extremely difficult for U.S. fish farmers. These laws are amended frequently and the states, tribes and foreign governments do so without national public notice. For example, Wisconsin has prohibited the importation of mosquito fish (*Gambusia sp.*) into their state, even though this species cannot survive their harsh winters, and was previously allowed into their state for many years. While minnow farmers try very hard to exclude native mosquito fish from their production ponds, federally protected migratory birds sometimes contaminate their ponds by transferring eggs or fry into these ponds. Just a few mosquito fish accidentally included in a shipment of several thousand pounds of fathead minnows shipped to Wisconsin would be a Lacey Act violation because the underlying Wisconsin state regulation prohibiting mosquito fish was violated during interstate commerce.

Hearing my testimony, you may think that I would like to see the Lacey Act repealed but I can assure you that is not the case. Besides being a fish farmer, I consider myself an environmentalist, and the Lacey Act is extremely important for the purpose that it was written for: to prevent the exploitation of our natural resources. If you examined my resume, you would have seen that I have a Master's Degree in Fisheries and Wildlife Management, was a former employee of the Arkansas Game and Fish Commission and was appointed by Governor Mike Huckabee to a seven year term as an Arkansas Game and Fish Commissioner. It is just hard for me to understand why the Lacey Act is being used to regulate domestic livestock (fish) born on a farm, raised on a farm and slaughtered on a farm? Until farm raised fish are actually stocked into state or federal waters, why are they considered "wild fish"?

Aquaculture is defined as the farming of aquatic organisms such as fish, crustaceans, mollusks and aquatic plants under controlled conditions with some form of intervention in the rearing process to enhance production, such as regular stocking, feeding, protection from predators, etc. Or put in simplistic terms: aquaculture is underwater farming. Total U.S. aquaculture production is currently estimated by NOAA to exceed \$1 billion, while the U.S. seafood trade

deficit exceeds \$10.4 billion annually. In Alabama, Arkansas, Louisiana and Mississippi alone over 250,000 acres are devoted to commercial aquaculture production.

Finally, I am not asking for a “free pass” on animals accidentally included in a shipment of an aquatic species produced in commercial aquaculture for human consumption or for use for recreational or ornamental purposes. State agencies have state regulations that farmers still must abide by, such as the Wisconsin DNR prohibition on mosquito fish, but the state regulations are normally misdemeanors, not felonies. Instead, we are asking for protection from Lacey Act felony prosecution for the accidental inclusion of an animal in a shipment of an aquatic species produced in commercial aquaculture for human consumption or for use in recreational or ornamental purposes. Protection, I might add, that we had until 1969.

Congressman Crawford understands this problem and has worked throughout multiple Congresses on the Aquaculture Risk Reduction Act, which provides an exception to the Lacey Act for the aquaculture industry when animals are accidentally transported across state lines. Please consider legislation, like the Aquaculture Risk Reduction Act when looking at ways to reduce the burdens of the Lacey Act.