

Written Testimony of Mike Freeze to the House Agriculture Committee on Friday, March 30, 2012

My name is Mike Freeze and I have been an Arkansas fish farmer, since 1983. I am co-owner of Keo Fish Farm along with my business partner, Mrs. Martha Melkovitz. Our farm has 1,300 acres of ponds in which we produce hybrid striped bass and sterile triploid grass carp for live sales nationally and internationally.

I would like to thank Chairman Lucas, my own Congressman Rick Crawford and the remaining members of the House Committee on Agriculture for allowing me to address you about national issues that impact aquaculture in the United States.

For aquaculture facilities that ship live product nationally, our number one regulatory issue 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 thereof. When the Lacey Act was written, aquaculture was practically non-existent, yet today our domesticated fish are regulated as if they were taken from the wild. Of particular concern, is that the Lacey Act elevates the violation of even misdemeanor state regulations to federal felonies simply because over \$350 of domesticated product has entered interstate commerce. Penalties for a Lacey Act felony violation begin at \$100,000 and four months incarceration in a federal penitentiary. Thus, what may be a misdemeanor state violation in both of the two states involved, is immediately elevated to a federal felony offense, simply because state boundaries were crossed. 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.

The U.S. Fish and Wildlife Service is one of the agencies that enforce the Lacey Act and their enforcement division has historically applied this act to the international and interstate movement of private aquacultural products. In part this is because the U.S. Fish and Wildlife Service does not recognize the private ownership of aquacultural products. In March of 1990, a USFWS enforcement memorandum placed a low priority on using the Lacey Act against aquacultural producers except in instances where disease transmission or non-indigenous fish species were involved. Unfortunately, this memorandum has long since been forgotten. I am enclosing a copy of a report by the National Agricultural Law Center entitled "Aquaculture and the Lacey Act" in which author, Elizabeth Rumley states: "The Act should be amended to exempt domestically produced aquatic species".

Next I would like to inform you about aquaculture's reliance upon the services provided by USDA/APHIS Wildlife Services and Veterinary Services. Wildlife Service's assistance with wildlife depredation at aquaculture facilities is essential because such wildlife are often protected by federal regulations. In the case of avian depredation, piscivorous birds are protected by the Migratory Bird Treaty Act and Wildlife Services verification as to the intensity and degree of avian depredation at a particular aquaculture facility is a requirement for the U.S. Fish & Wildlife Service to issue a Bird Depredation Permit to that facility. It will be impossible for the private sector to address these depredation issues without Wildlife Services' direct involvement.

Veterinary Services aquatic animal disease inspection and control programs are vital to protecting American aquaculture. Veterinary Services' international programs and their interactions with OIE member nations ensure that our aquacultural products are regulated in a scientific manner. Without Veterinary Services essential animal health inspections and certifications, America's aquaculturists will not be able to market their live aquatic animals nationally and internationally. The negative economic impacts from such a loss of business may actually cause many aquacultural businesses to fail. Once again, it will be impossible for the private sector to address such health certification issues that are codified into national and international law as requiring a Veterinary Services' health certificate.

Fish farmers have worked for many years with USDA and Congress to secure line item aquaculture funding for both of these agencies as only these two agencies can provide the essential services listed above. We understand that in this time of budgetary constraints that tough decisions have to be made, but our industry should only have to take their proportional share of any funding decreases. In the case of Wildlife Services, the entire aquaculture line item of \$1,063,000 in the FY 2013 President's Budget was deleted at the request of APHIS, without any stakeholder input.

As you probably know, imported seafood contributes significantly to our national trade deficit, and reducing USDA support to our industry will only cause this imbalance to increase. Currently, 84% of U.S. seafood is imported and the U.S. seafood trade deficit has doubled since 1989, reaching \$10 billion in 2010. Therefore, I am respectfully asking your assistance in restoring aquaculture's line item funding for these two agencies back to historic levels.

Catfish farming and processing is a significant part of the American aquaculture industry. The last several years have been challenging for catfish producers and processors. Similar to other sectors of the livestock industry, catfish producers are faced with extraordinarily high feed and energy prices. These higher input costs are impacting the industry and reducing its ability to meet demand. According to USDA statistics, catfish processing and overall fish inventory are down 35 and 25 percent respectively, from the previous year's reporting. While there are multiple insurance products and federal programs to protect crops and livestock from market fluctuations, the catfish industry lacks a tool to reduce the risk of volatility caused by rising input costs or depressed market values.

I would urge the Committee to consider instructing the USDA Risk Management Agency (RMA) to include catfish and other food fish within both the Livestock Gross Margin (LGM) and Livestock Risk Protection (LRP) insurance programs. These insurance programs allow farmers and ranchers to purchase insurance policies to protect against price and input cost volatility. Catfish and other food fish farmers would benefit from access to these existing insurance products, allowing them to purchase a product to protect against unexpected increases in feed costs or drops in market pricing.

In addition, "The Food, Conservation and Energy Act of 2008" included instructions for the USDA to establish a voluntary fee based inspection and grading program for catfish. The USDA catfish inspection rule remains a top priority for the catfish industry and the American public. The Committee's past and continued support on this issue is greatly appreciated. According to Import Refusal data and also FDA Import Alerts, certain drugs and chemicals have been found in catfish imported from China, Thailand

and Vietnam and have resulted in the following import refusals for fiscal year 2010:

<u>Country</u>	<u>Refusals for Fiscal Year 2010</u>
<u>China</u>	<u>22</u>
<u>Thailand</u>	<u>4</u>
<u>Vietnam</u>	<u>30</u>

USDA has undertaken a thorough process for the implementation of this new responsibility, including extensive public comment. The comment period closed on June 24, 2011, and of the 280 comments posted on the USDA's Food Safety and Inspection Service (FSIS) official comment site, 84 percent, or 234 postings, urged the agency to include all imported and domestic catfish in new regulations currently under consideration by FSIS. The proposed rule offers two options for the definition of catfish and seeks public comment. One option is to define "catfish" as including all species in the order Siluriformes, with the three families typically consumed as food, including Ictaluridae, Pangasius and Clariidae. A broad definition of catfish is imperative to effective inspection of catfish and catfish-like products. Should USDA make the unwise decision of including the more narrow definition of catfish, more than 95% of all catfish-like imports will remain uninspected upon entry into the U.S. market. This is not a trade issue, this is a food safety issue and the American public deserves the implementation of this rule at the earliest possible date, using the broad definition, which includes the three taxonomic families of fish that are typically consumed as food.

Additionally, the aquaculture industry has serious concerns about FDA's proposed rule that would significantly change regulations regarding unapproved drugs found in imported food. The FDA released a proposed regulation on January 25th that would provide a simplified approval process for persons requesting the import of food items containing residues of animal drugs that are unapproved in the US. The industry agrees with the FDA's advisory committee, the Veterinary Medicine Advisory Committee, that any drugs used to treat animals that Americans will consume should be based on food safety protections currently employed by FDA to regulate drugs used by U.S. farmers. I believe that U.S. consumers should be confident that the foods they eat are safe. There is great concern that this proposed rule signals a move by the Administration towards allowing drugs to be used by foreign producers that are prohibited in the United States. I would strongly urge the Committee to oppose this move by the Administration.

Finally, one issue that impacts all farmers is the closing of county FSA offices across the United States according to criteria established in the 2008 Farm Bill. While the closing of most of these offices is justified, occasionally a county office with a moderate to heavy work load meets the closing criteria, while an adjacent office with a lighter work load does not. Recent incentives for FSA employees to retire just prior to the determination of which FSA county offices met the closing criteria has exacerbated this issue. Therefore, I would respectfully ask that the committee consider enacting emergency legislation that would allow each State FSA Committee to exchange the closing of one county office for another county office as long as the total number of offices closed within that state remains the same.