

**FEDERAL IMPEDIMENTS TO COMMERCE  
AND INNOVATIVE INJURIOUS SPECIES  
MANAGEMENT**

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**OVERSIGHT HEARING**

BEFORE THE  
SUBCOMMITTEE ON WATER, POWER AND OCEANS  
OF THE  
COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

Thursday, May 17, 2018

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# **OVERSIGHT HEARING ON FEDERAL IMPEDIMENTS TO COMMERCE AND INNOVATIVE INJURIOUS SPECIES MANAGEMENT**

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**Thursday, May 17, 2018  
U.S. House of Representatives  
Subcommittee on Water, Power and Oceans  
Committee on Natural Resources  
Washington, DC**

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The Subcommittee met, pursuant to notice, at 10:10 a.m., in room 1324, Longworth House Office Building, Hon. Doug Lamborn [Chairman of the Subcommittee] presiding.

Present: Representatives Lamborn, LaMalfa, Graves, Hice, Johnson; Huffman, Barragán, Bordallo, and Sablan.

Also present: Representatives Crawford and Westerman.

Mr. LAMBORN. The Subcommittee on Water, Power and Oceans will come to order. The Water, Power and Oceans Subcommittee meets today to hear testimony on an oversight hearing entitled, "Federal Impediments to Commerce and Innovative Injurious Species Management."

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman, Ranking Minority Member, and the Vice Chair. I ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted to the Subcommittee Clerk by 5:00 p.m. today.

Hearing no objection, so ordered.

I ask unanimous consent that the gentleman from Arkansas, Mr. Westerman, and Mr. Crawford, also of Arkansas, be allowed to sit with the Subcommittee and participate in the hearing.

Without objection, so ordered.

We will begin with opening statements, starting with myself for 5 minutes.

## **STATEMENT OF THE HON. DOUG LAMBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO**

Mr. LAMBORN. Today, the Subcommittee on Water, Power and Oceans will meet to discuss the implication of the Lacey Act on U.S. industry. While the Lacey Act is a relatively unknown law to the average American, this law, and specifically the 2008 amendments, can have sweeping impacts to a myriad of domestic industries.

This morning, we will hear from representatives from the aquaculture industry, as well as from a municipal water district on conflicts they have been subject to under the Lacey Act for conducting what most of us would think of as routine and mundane business activities.

I think all of us here today are familiar with one of the more famous Lacey Act cases, Gibson Guitar, where according to

Gibson's CEO, "several dozen armed agents" abruptly raided their Nashville facilities. While the presence of armed Federal agents raiding a manufacturing facility is unsettling enough, these agents further demanded that the security cameras in the factory be turned off during the inspection.

None of us want to aid in the spread of invasive species, and that is not what today's hearing is about. However, it is the duty of Congress to inspect these laws and ensure that they are not unfairly treating our citizens. And, also, we need to examine ways that we may improve upon their implementation.

While the tedious Federal legislative process can sometimes stifle creative approaches, states have stepped up and crafted innovative solutions to address the threat of invasive species in a constructive way that does not impede economic activity. We have seen significant strides made in the Great Lakes region by states coming together to combat Asian carp; we have seen legislative action just up the road in Virginia to remove impediments to possession, sales, and purchases of non-native species; and we have seen Florida use social and economic incentives to combat the spread of lionfish.

The states are the ones that will directly reap the benefits or costs of invasive species management, so maybe it is time we allow them to take the wheel.

Many of us throughout the West, as well as those of us bordering the Gulf of Mexico, have seen the benefits of allowing states to lead the way on species management. While that may not be a silver bullet to conflicts under the Lacey Act, I think it is worthy of discussion.

I want to thank our witnesses for being with us here today. This is the first time this Committee has conducted oversight on the law since 2013. This hearing serves as a good opportunity to examine this law, and to discuss possible updates to ensure that it is working for our states, our environment, and our businesses.

[The prepared statement of Mr. Lamborn follows:]

PREPARED STATEMENT OF THE HON. DOUG LAMBORN, CHAIRMAN, SUBCOMMITTEE ON  
WATER, POWER AND OCEANS

Today, the Subcommittee on Water, Power and Oceans will meet to discuss the implication of the Lacey Act on U.S. industry. While the Lacey Act is a relatively unknown law to the average American, this law—and specifically the 2008 amendments—can have sweeping impacts to a myriad of domestic industries.

This morning we will hear from representatives from the aquaculture industry as well as from a municipal water district on conflicts they have been subject to under the Lacey Act for conducting what most of us would think of as routine and mundane business activities.

I think all of us here today are familiar with one of the more famous Lacey Act cases, Gibson Guitar, where, according to Gibson's CEO, "several dozen armed agents," abruptly raided their Nashville facilities. While the presence of armed Federal agents raiding a manufacturing facility is unsettling enough, these agents further demanded that the security cameras in the factory be turned off during the inspection.

Look, none of us want to aid in the spread of invasive species. That is not what today's hearing is about. However, it is the duty of Congress to inspect these laws and ensure that they are not unfairly treating our citizens and examine ways that we may improve upon their implementation.

While the tedious Federal legislative process can sometimes stifle creative approaches, states have stepped up and crafted innovative solutions to address the threat of invasive species in a constructive way that doesn't impede economic activity. We have seen significant strides made in the Great Lakes region by states coming together to combat Asian carp, we have seen legislative action just up the road

in Virginia to remove impediments to possession, sales and purchases of non-native species, and we have seen Florida use social and economic incentives to combat the spread of lionfish.

The states are the ones that will directly reap the benefits or costs of invasive species management, so maybe it's time we allow them to take the wheel.

Many of us throughout the West—and I can't forget the Gulf of Mexico—have seen the benefits of allowing states to lead the way on species management. While that may not be a silver bullet to conflicts under the Lacey Act, I think it is worthy of discussion.

I want to thank our witnesses for being with us today. This is the first time this Committee has conducted oversight on the law since 2013. This hearing serves as a good opportunity to examine this law and discuss possible updates to ensure its working for our states, our environment, and our businesses.

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Mr. LAMBORN. I now recognize the Ranking Member, Mr. Huffman, for 5 minutes for his statement.

**STATEMENT OF THE HON. JARED HUFFMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. HUFFMAN. Thank you, Mr. Chairman, and good morning. Today's oversight hearing on the Lacey Act, in my view, should focus on strengthening America's premier wildlife protection statute to face the threats of the 21st century, such as wildlife trafficking and the spread of invasive species. But instead, we will be subjected, I fear, to misleading arguments claiming that people will be thrown into jail for minor, unintentional violations of the Lacey Act. So, I want to go ahead and debunk some of these myths.

First, we might hear that aquaculture business owners are living in fear of criminal charges or 6-figure fines if they accidentally transport injurious species after they have taken all reasonable and prudent precautions. However, this protection against that kind of criminal penalty is already built into the law.

If a person didn't know he was violating the law, he is not going to be subject to criminal penalties, period. Criminal penalties only apply to people who knowingly violate the law. If a person, in the exercise of due care, should have known that he was violating the law, then civil penalties may be appropriate. If there is no consequence, however, for failure to comply with the law, the incentives to exercise that due care will evaporate. And that is really what much of this conversation is all about.

Why is this so important? This provision of the Lacey Act helps fight against the spread of invasive species, which costs the United States billions of dollars in damages every year. Any weakening of the Lacey Act that could allow invasives to spread more easily would have significant negative impacts on ecosystems and economies that depend on natural resources.

I am aware that there are difficulties with interstate water transfers because of invasive species, and solutions are needed. But broadly allowing transfers across state lines is not sufficiently protective to limit the spread of invasive species, if there are no efforts to control or eradicate the species.

Zebra mussels and quagga mussels are a good example. They are a highly damaging invasive species. They cause hundreds of millions of dollars annually in damages, they establish easily, and they are nearly impossible to eradicate once they are established.

Another example is Asian carp, introduced through the aquaculture industry. They are a huge threat to native fisheries. The Army Corps of Engineers released a study finding that in order to keep Asian carp and other invasives out of the Great Lakes, it is going to require 25 years and billions of dollars.

We should be encouraging people to be careful, not careless, with these natural resources that fuel our economy.

Next, we are likely to hear that the 2008 amendments to address illegal logging in the Lacey Act have not done anything to curb international illegal logging. This is not true. In 2015, a report from the Union of Concerned Scientists found that imports of illegal wood into the United States have declined by between 32 and 44 percent since those amendments took effect. It has helped level the playing field for American businesses that are playing by the rules.

There are also claims about Gibson Guitar. The Chairman mentioned this in his opening remarks, and the claim that this represents over-criminalization under the Lacey Act. Before we put Gibson forward as a poster child for over-criminalization, let's remember that this is a company that admitted to knowingly importing illegal wood. So, they are not such a good poster child after all.

And I sure wish this concern about over-criminalization applied to the cannabis issue. We have thousands of people in this country filling our prisons and jails for possession of a substance that is legal in a dozen states, and we all know will be legal in all 50 states, it is just a matter of time. But I suppose it takes a corporation facing criminal consequences to evoke sympathy and concerns of over-criminalization for some folks. But, again, not a good poster child.

Mr. Chairman, I wish that we were having a hearing to discuss what we can do to stop the spread of invasive species, protect our natural resources, and combat the global criminal assault on wildlife and ecosystems. But instead, we have no choice but to remind folks in the context of this hearing how important the Lacey Act is. It is important for curbing the growing global illegal wildlife trafficking industry, it is important for stopping the spread of invasive species, it is critically important for holding criminal enterprises who flout Federal law accountable.

In fact, if you want a good poster child for the Lacey Act you should look to Massachusetts and Carlos Rafael, the infamous Codfather, who misreported over 782,000 pounds of fish over the course of his career, he harmed lawful fishermen, he harmed struggling fish populations. And it was ultimately the Lacey Act that brought him to accountability under the law.

[The prepared statement of Mr. Huffman follows:]

PREPARED STATEMENT OF THE HON. JARED HUFFMAN, RANKING MEMBER,  
SUBCOMMITTEE ON WATER, POWER AND OCEANS

Today's oversight hearing on the Lacey Act should focus on strengthening America's premier wildlife protection statute to face the threats of the 21st century, such as wildlife trafficking and the spread of invasive species, but instead, we will be subjected to misleading arguments claiming people will be thrown into jail for minor, unintentional violations of the Lacey Act. So, I want to go ahead and debunk some of these myths.



First, we might hear that aquaculture business owners are living in fear of criminal charges or 6-figure fines if they accidentally transport injurious species even after they have taken all the necessary precautions.

However, this protection is already built into the law. If a person did not know he was violating the law, he will not be subject to criminal penalties, period. Criminal penalties only apply to people who knowingly violate the law. If a person, in the exercise of due care, should have known that he was violating the law, then civil penalties may be appropriate. If there is no consequence for failure to comply with the law, the incentives to exercise that due care will evaporate.

This provision of the Lacey Act also helps to fight against the spread of invasive species, which cost the United States billions in damages every year. Any weakening of the Lacey Act that could allow them to spread more easily would have significant negative impacts on ecosystems and economies that depend on natural resources. I'm aware that there are difficulties with interstate water transfers because of invasive species, and solutions are needed, but broadly allowing transfers across state lines isn't sufficiently cautious to limit their spread if there are no efforts to control or eradicate the species. Invasive aquatic species like Zebra mussels and quagga mussels are highly damaging to aquatic ecosystems, cause hundreds of millions of dollars annually, establish easily, and are nearly impossible to eradicate.

For example, Asian carp, which was introduced through the aquaculture industry, are a huge threat to native fisheries. The U.S. Army Corps of Engineers released a study finding that in order to keep Asian carp and other invasive species out of the Great Lakes, it will require at least 25 years and billions of dollars. We should be encouraging people to be careful—not careless—with the natural resources that fuel our economy.

Next, we are going to hear that 2008 amendments to address illegal logging haven't done anything to curb international illegal logging. This couldn't be further from the truth. A 2015 report from the Union of Concerned Scientists found that imports of illegal wood into the United States have declined by between 32 and 44 percent since the 2008 amendments to the Lacey Act took effect. This has helped level the playing field for American businesses that are playing by the rules.

There are also claims that the Gibson Guitar case is an example of "over-criminalization" of the Lacey Act. But Gibson Guitar admitted to knowingly importing illegal wood, and as I've already said, a person is guilty of a felony only if they knew they were dealing with an illegal product.

The Lacey Act is a powerful enforcement tool to fight criminal activity. It should not be weakened. It helps combat the illegal harvest of wildlife and protects Americans from fraudulent labeling and black markets that drive prices down and cost law-abiding businesses millions each year.

For example, Carlos Rafael, a cod fisherman from Massachusetts, flouted Federal law for decades by misreporting the amount of fish his boats caught, and then sold the fish for cash that he often smuggled to Portugal to evade Federal taxes. His crimes likely impacted already struggling fish populations, in turn harming other fishermen. The self-proclaimed 'Cofather' misreported more than 782,000 pounds of fish over the course of his career. After bragging to two undercover IRS agents posing as Russian mobsters, he inadvertently unraveled his reign over the region's fishing industry. Thanks to the Lacey Act, his disreputable acts were punishable by law. He pled guilty to 28 criminal counts, 23 of which were Lacey Act violations. The provisions of the Lacey Act had the strongest force to dethrone the infamous Cofather and alleviate the pain he caused to honest, hard-working commercial fishermen and the cod fishery itself.

Last, the Lacey Act is a key weapon in the fight against widespread and highly profitable illegal wildlife trafficking. Wildlife trafficking is an estimated \$23 billion-a-year industry, making it the fourth most lucrative illicit activity in the world after the drug trade, counterfeiting, and human trafficking. That money is bankrolling terrorists and other criminal groups around the globe, causing wildlife poaching to surge to unprecedented levels and threatening our national security.

We should not be trying to muddy the waters by distorting the intent and effect of one of our strongest conservation laws. Rather, we should be holding a hearing to discuss what we can do to help stop the spread of invasive species, protect our natural resources, and combat the global criminal assault on wildlife and ecosystems.

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Mr. HUFFMAN. With that, I yield back.

Mr. LAMBORN. Thank you. We will now hear from our panel of witnesses. Each witness' written testimony will appear in full in the hearing record. So, I ask that witnesses keep their oral statements to 5 minutes, as outlined in our invitation to you, and under Committee Rule 4(a).

I will also explain how the timing lights work. When you are recognized, press the talk button to activate your microphone. Once you begin your testimony, the Clerk will start the timer, and a green light will appear. After 4 minutes, a yellow light will appear. At that time, you should begin to conclude your statement. At 5 minutes, the red light will come on, and I would ask that you finish your statement at that time.

Our first witness is Mr. Mike Freeze, Vice President of Keo Fish Farm from Keo, Arkansas; our second witness will be Mr. Alexander von Bismarck, Executive Director for the Environmental Investigation Agency from here in Washington, DC; and our third witness will be Mr. Mike Rickman, Deputy Director of Operations and Maintenance for the North Texas Municipal Water District from Wylie, Texas.

Thank you all for traveling to be here with us today.

We will now begin with opening statements from our panel, beginning with Mr. Freeze.

You are now recognized for 5 minutes.

**STATEMENT OF MIKE FREEZE, VICE PRESIDENT, KEO FISH FARM, INC., KEO, ARKANSAS**

Mr. FREEZE. I would like to thank Chairman Lamborn, and my own Congressman Rick Crawford and Bruce Westerman 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. Since 1983, I have been the co-owner of Keo Fish Farm along with my business partner, Martha Melkovitz. Our farm has over 1,000 acres of ponds in which we produce hybrid striped bass and U.S. Fish and Wildlife-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 nonexistent. 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. The U.S. Fish and Wildlife has used this broadened definition to regulate domestically produced aquaculture species, but not other domesticated species, such as turkeys, elk, deer, bison, or quail.

Of particular concern to our industry is the Lacey Act elevates the violation of even misdemeanor state regulations to Federal felonies, simply because a \$350 domesticated product has entered interstate commerce. Penalties for Lacey Act felony violations begin at \$100,000 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 has been 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, and that is the prosecution of farmers for the accidental inclusion of unintended species in the interstate shipment of aquatic species produced in commercial aquaculture for human consumption or for recreational or ornamental purposes.

Prior to 1981, the 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 1981 amendments changed this "willfully" requirement to a "knowingly" requirement. And 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" or "purposely."

Keeping track of Federal, state, tribal, and foreign-regulated animals and plants is extremely difficult for U.S. fish farmers. The laws are amended frequently, and the states, tribes, and foreign governments do so without national public notice.

Hearing my testimony, you may think I would like to see the Lacey Act repealed. But I can assure you this is not the case. Besides being a fish farmer, I consider myself an environmentalist, and the Lacey Act is extremely important for the purposes that it was written for: to prevent the exploitation of our natural resources. If you examined my resume, you will see 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 7-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?

Finally, I am not asking for a free pass on animals that are accidentally included in a shipment of an aquatic species produced in commercial aquaculture for human consumption or for use on recreational or ornamental purposes. State agencies have state regulations that farmers still must abide by, such as the Wisconsin DNR has a prohibition on mosquito fish, but these 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.

Congressman Crawford understands this problem, and has worked throughout multiple Congresses on the Aquaculture Risk Reduction Act, which provides an exemption 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. Thank you.

[The prepared statement of Mr. Freeze follows:]

PREPARED STATEMENT OF MR. THOMAS MICHAEL (MIKE) FREEZE  
KEO FISH FARMS, INC.

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 U.S.C. 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 7-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.

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The following document was submitted as a supplement to Mr. Freeze's testimony. This document is part of the hearing record and are being retained in the Committee's official files:

—"Aquaculture and the Lacey Act," an Agricultural Law Research Project by Elizabeth R. Rumley, The National Agricultural Law Center, March 2010.

QUESTIONS SUBMITTED FOR THE RECORD TO MIKE FREEZE, VICE PRESIDENT,  
KEO FISH FARM

**Questions Submitted by Rep. Hice**

*Question 1. Does the Lacey act unreasonably expect an American citizen who is engaged in importing to know an extensive set of laws and regulations of a foreign nation?*

Answer. The Lacey Act requires a U.S. citizen engaged in the trade of fish or wildlife defined as “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” (U.S.C. 16 § 3371(a)) to be familiar with any law, treaty or regulation of the United States, any Indian tribal law, or any foreign law (U.S.C. 16 § 3372(a)).

This requirement is unreasonable given that U.S. states and territories are constantly amending their regulations. The National Aquaculture Association has recommended to the Federal Interagency Aquatic Nuisance Species Task Force and to the FWS that a Federal agency should publicly post U.S. Federal and state laws to inform the public and importers as a preventative measure and service to benefit the United States. This recommendation was presented with the understanding that commercial import shipments are inspected but overnight courier services are not. As an example of the challenge associated with monitoring state laws, the National Aquaculture Association presented to the Aquatic Nuisance Species Task Force in November 2016 an analysis that importers or distributors of aquarium fish into the United States or across state lines must be familiar with the regulations of 50 states and Puerto Rico which collectively, but not uniformly, prohibited 2,256 species. There are not uniform regulations for each state, as each state recognizes different species as posing a risk to its unique aquatic environments.

*Question 2. What type of reforms do you suggest that would eliminate the risk of criminal liability or imprisonment for those not engaging in purposefully deceitful conduct?*

Answer.

**Domestically cultured aquatic species should be excluded**—The intent of the Act was to support state wildlife and fishery regulations; however, with the growth of U.S. aquaculture and its recognition as an agricultural activity, there has not occurred revisions to the Act to exempt domestically produced aquatic species. As an example, within the Lacey Act wild members of the plant kingdom are regulated and common plant cultivars and food crops are excluded (except planted trees). Within the Lacey Act, “fish and wildlife” is defined as any wild animal including those bred, hatched or born in captivity. The Act should be amended to exempt domestically produced aquatic species while recognizing the Act continues to support state regulations that have an aquaculture focus.

**Extreme penalties should be reduced**—A 1981 amendment to the Act established the punishments of 5-year imprisonment or \$20,000 fine; however, as provided for in 18 U.S.C.A. § 3571(e) misdemeanor penalties can be 1 year in prison and/or \$100,000 fine (\$200,000 for a business) and felony penalties can be up to 5 years in prison and/or a \$250,000 fine (\$500,000 for businesses). The Act should be amended to exclude penalty provisions from the extreme penalties provided in 18 U.S.C.A. § 3571.

**Market value should be increased for farm-raised aquatic species**—Misdemeanor penalties are assessed when the market value is below \$350. Felony penalties are assessed if market value is above \$350. The \$350 value was included in the 1981 amendment to the Act and may only be sensible when applied to the wildlife trade. The market value is far too low when compared against the \$50,000 value of a truck load of bait fish sold interstate. Unless aquaculture species are excluded from the Act, then the Act should be amended to raise the market value that triggers penalties for violations concerning domestically produced aquatic species.

**“Willfully” versus an all-encompassing “knowingly”**—As a result of the 1969 amendments to the Lacey Act, any person that “willfully” violated the law was subject to penalty. However, the 1981 amendments changed this, holding all those who “knowingly” import or “knowingly” engage in certain conduct subject to felony penalties. The higher standard of willfulness required Federal prosecutors to prove that

the defendant not only wanted to cause harm but that he also knew that harm was certain to occur as a result of his actions. However, “knowingly” only requires proof that a person is practically certain his conduct will lead to the violation. For example, a farmer could be found guilty under the “knowingly” standard if he knows that an injurious or listed species is present near the farm, but still sends out a shipment that happens to include a hitchhiking live animal. Even if the farmer is ignorant of and may not be able, for all practical purposes, to exclude the hitchhiker, he may still be convicted because of his knowledge of the nearby population. As a result, the Act should be amended back to the original mens rea<sup>1</sup> requirement of “willfully” or to the more contemporary requirement of “purposely.”

The misdemeanor provision states that “. . . any person who knowingly engages in conduct prohibited by any provision of this chapter . . . 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 . . .” The “knowingly” standard, where a person is practically certain his conduct will lead to a harmful result, is modified to incorporate elements of negligence through the phrase, “in the exercise of due care.” Negligence is a very low standard to prove. As a result, the prosecutor would just have to prove that the producer knew he was shipping fish across state lines and didn’t use due care in preventing injurious or listed species from hitchhiking in the load. The Act should be amended to remove the phrase “in the exercise of due care.”

**Fail to label a package is a crime**—The Act states, “It is unlawful for any person to import, export, or transport in interstate commerce any container or package . . . unless the container or package has been previously marked, labeled, or tagged in accordance with regulations issued pursuant . . .” to the Act. This provision does not require any mens rea at all, and is thus a strict liability offense, where a person’s mental state is irrelevant. Strict liability is very rarely a standard in criminal law, as legislatures prefer to only hold people responsible for actions they intentionally or negligently perform. Instead, “the Act should be amended to read that “It is unlawful for any person to knowingly import, export, or transport in interstate commerce . . .” a package that is not labeled as required by regulations developed pursuant to the Act.

**Warrantless arrest and search-and-seizure**—The 1988 amendments amended the enforcement powers section to allow arrest and search-and-seizure without a warrant. This provision may make sense when an active, ongoing wildlife violation is suspected, but it is onerous to farmers that manage extensive and fixed operations growing aquatic species. The Act should be amended to exempt farmers and farms from warrantless arrest and search-and-seizure.

**State or foreign law violations versus Federal law violations**—Currently, a Federal agency can, unilaterally, take action under the Lacey Act when state or foreign wildlife laws are violated. The law should be amended to require the Federal agencies to recognize the primacy of the state or foreign country wildlife regulations and to complete a consistency determination prior to initiating legal action.

**States increasingly regulate non-native species**—Aquaculturists can be placed in extreme jeopardy when state-listed native and non-native species might be accidentally moved or possessed due to species similarity of appearance and the open access by species to aquaculture facilities (e.g., pond and shellfish production systems). The Act should be amended to exempt domestic producers of aquatic species from prosecution related to the unintentional shipment of state-listed native or non-native species. As noted earlier, the 50 states and Puerto Rico collectively prohibit 2,256 aquarium species.

<sup>1</sup>The Model Penal Code was written by the American Law Institute in 1962 to standardize the definition of crimes across all states. Many states have adopted parts of it, including the “mens rea” or mental state provisions. The Code has five mens rea categories. They have very specific legal definitions and are summarized here for clarity. The categories are:

- Purposely—the actor wants to cause the harm and he knows that the harm is virtually certain to occur as a result of his conduct.
- Knowingly—the actor is practically certain that his conduct will lead to the result.
- Recklessly—the actor is aware that the attendant circumstances exist, but nevertheless engages in the conduct that a “law abiding person” would have refrained from.
- Negligently—the actor is unaware of the attendant circumstances and the consequences of his conduct, but a “reasonable” person would have been aware.
- Strict liability—the actor engaged in conduct where his mental state was irrelevant.

**Disease responsibilities reside in USDA-APHIS**—The U.S. Department of Agriculture, Animal and Plant Health Inspection Service, is charged with regulating all livestock diseases, including aquatic animal species. The recent report by the Government Accountability Office, Live Animal Imports (2010), noted that the Animal and Plant Health Inspection Service is expanding its mission to beyond a focus on agricultural animals (including aquaculture species) to address zoonotic and wildlife diseases. The Act should be amended to direct USDA-APHIS to assume responsibility for Lacey Act derived regulations relative to salmonid eggs, fry, fingerlings and live or dead whole fish.

Defenders of Wildlife. 2007. Broken Screens: The regulation of live animal imports in the United States ([http://www.defenders.org/resources/publications/programs\\_and\\_policy/international\\_conservation/broken\\_screens/broken\\_screens\\_report.pdf](http://www.defenders.org/resources/publications/programs_and_policy/international_conservation/broken_screens/broken_screens_report.pdf) accessed May 23, 2018).

Rumley, E.R. 2010. Aquaculture and the Lacey Act. University of Arkansas, The National Agricultural Law Center ([http://nationalaglawcenter.org/wp-content/uploads/assets/articles/Rumley\\_lacey.pdf](http://nationalaglawcenter.org/wp-content/uploads/assets/articles/Rumley_lacey.pdf) accessed May 23, 2018).

U.S. Department of Agriculture. 2008. Amendments to the Lacey Act from H.R. 2419, Sec. 8204. ([http://www.aphis.usda.gov/plant\\_health/lacey\\_act/downloads/background\\_redlinedLaceyamndmnt\\_forests\\_may08.pdf](http://www.aphis.usda.gov/plant_health/lacey_act/downloads/background_redlinedLaceyamndmnt_forests_may08.pdf) accessed May 23, 2018).

U.S. Fish and Wildlife Service. Undated. Lacey Act Amendments of 1981. (<http://www.fws.gov/laws/lawsdigest/LACEY.HTML> accessed May 23, 2018).

U.S. Fish and Wildlife Service. undated. Lacey Act. (<https://www.fws.gov/le/pdf/Lacey.pdf> accessed May 23, 2018).

U.S. Government Accountability Office. 2010. Live Animal Imports: Agencies need better collaboration to reduce the risk of animal-related diseases. (<http://www.gao.gov/products/GAO-11-9> accessed May 23, 2018).

Wisch, R.F. 2003. Lacey Act Overview. Michigan State University, College of Law, Animal Legal and Historical Center (<http://www.animallaw.info/articles/ovuslaceyact.htm> accessed May 23, 2018).

*Question 3. I understand that a “blanket declaration” program was created to allow importers to make declarations on a month’s worth of shipments, but that as of 2017 less than 100 participants were still in the program.*

- a. Was this test program a success?*
- b. Did it improved the ability to protect wildlife, fish, and plants?*
- c. Did the test show an improvement or hindrance to trade?*

Answer. Neither I nor anyone in the aquaculture industry that I know are familiar with or have been informed by the FWS about a blanket declaration program. I wonder if such a program is available relative to authorities granted to inspect wildlife and wildlife product imports or exports under the Endangered Species Act (ESA), Convention on International Trade in Endangered Species of Wild Fauna or Flora (CITES) or the Lacey Act. FWS inspectors must have Form 3-177 or any of the several Form 3-200 variants in-hand, when inspecting incoming or out-going shipments to confirm the contents match information provided by the importer or exporter. Please see <https://www.fws.gov/Le/declaration-form-3-177.html>. Wildlife and wildlife products import/exports are restricted to 18 ports of entry, ports where an importer/exporter has submitted an application for entry/exit of a shipment, customs ports or special ports. Please see <https://www.fws.gov/le/ports-contact-information.html>.

#### **Question Submitted by Rep. Crawford**

*Question 1. Aquaculture is often falsely credited for the introduction of invasive species. One often stated example is that Asian carp were introduced by U.S. aquaculture. Is this true?*

Answer. No. The four species of the taxonomic family Cyprinidae generally recognized as Asian carp (grass, black, silver and bighead) were imported by the U.S. Fish and Wildlife Service (FWS) and farmers with assistance from the FWS, in the 1960s, 1970s or 1980s in response to the Clean Water Act’s directive to utilize biological control methods as opposed to chemical control methods. Asian carp were seen as potential tools to mitigate the use of chemicals to control nuisance native or introduced aquatic plants (grass carp), increase the treatment capacity for municipal sewage treatment plants (silver and bighead carp), control nuisance freshwater



snails that are vectors for fish parasites (black carp), and for consumption as a human food (primarily the bighead carp and grass carp). Numerous state and Federal agencies, such as the Arkansas Game and Fish Commission, the Illinois Natural History Survey, the EPA and many others funded and conducted this research. The initial escapes of the grass, silver and bighead carps occurred via these public agencies. The source(s) of the initial escape of black carp is unknown.

Conover, G., R. Simmonds and M. Whalen (ed). 2007. Management and control plan for bighead, black, grass, and silver carps in the United States. Asian Carp Working Group, Aquatic Nuisance Species Task Force, Washington, DC.

Kelly, A.M., C.R. Engle, M.L. Armstrong, M. Freeze and A.J. Mitchell. 2011. History of introductions and governmental involvement in promoting the use of grass, silver, and bighead carps in D.C. Chapman and M.H. Hoff, editors. Invasive Carps in North America. American Fisheries Society, Symposium 74, Bethesda, Maryland.

Mitchell, A.J. and A.M. Kelly. 2006. The public sector role in the establishment of grass carp in the United States. *Fisheries* 31(3):113–121.

Nico, L.G., J.D. Williams and H.L. Jelks. 2005. Black carp: Biological synopsis and risk assessment of an introduced fish. American Fisheries Society, Special Publication 32, Bethesda Maryland.

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Mr. LAMBORN. Thank you for your testimony.

Mr. von Bismarck, you are now recognized for 5 minutes.

**STATEMENT OF ALEXANDER VON BISMARCK, EXECUTIVE DIRECTOR, ENVIRONMENTAL INVESTIGATION AGENCY, WASHINGTON, DC**

Mr. VON BISMARCK. Mr. Chairman, Ranking Member, and members of the Subcommittee, thank you for inviting me today. My name is Alexander von Bismarck. I have investigated and studied global crime and natural resources for over 20 years. As Executive Director of the Environmental Investigation Agency, I have conducted field investigations on every continent into criminal networks dealing in illegal wildlife and timber. I am also proud to have served as a U.S. Marine.

I am grateful for the chance to correct some misperceptions about the Lacey Act and show how enforcement of it, in fact, has benefited law-abiding American businesses and helped curb environmental crime across the globe.

The Lacey Act is one of our oldest and most effective wildlife conservation laws. It has been around for over 100 years. We figured out back then that unless you tackle the trade and demand, you will lose the fight against poaching and the incursion of invasive species. In today's global economy, illegal poaching and logging are multi-billion-dollar crimes. Our investigations have found that they fund terrorism, fuel conflict, and undercut law-abiding U.S. companies. Without the Lacey Act, designed to keep illegal wildlife and plant products out of our markets, U.S. citizens and U.S. businesses are forced into supporting these crimes, and to being dependent on them.

A recent prosecution involving flooring made in China from illegal Russian wood stolen from endangered Siberian tiger habitat illustrates this case. The importer, Lumber Liquidators, was making about \$1 billion in revenue a year off a business model that was looking for the cheapest and often illegal raw material around the world. They were fined \$13 million and asked to revamp their sourcing. This and other cases today give family operated sawmills

and foresters and other manufacturers in the United States a chance to compete in the global marketplace, going forward.

I was undercover in Russia and China collecting evidence related to this case, and I can tell you that no American businessman or woman wants to be put in the position of having to do business with the mafia that is running the wood trade there. This case was possible because of an amendment in 2008 that is an example of how the Lacey Act has been modernized and strengthened, and how U.S. industry has seen the benefits.

The Lacey Act plant amendment was born out of strong evidence that illegal logging and associated trade had harmful impacts, not only on the world's forests, but also on the American timber industry. Illegal timber imports were costing American businesses over \$1 billion annually. By ensuring that trees and other plants need to be legally sourced, the Lacey Act provides a level playing field, which is why so many American businesses have rallied behind it.

Next week, the 2008 amendment will be 10 years old, and there is reason to celebrate. A 2015 study found that imports of illegal timber had decreased by over 40 percent since the amendment was passed. I have personally seen the impacts while undercover in factories and with traders around the world that companies are beginning to reward products that are made with legal material coming from the United States, increasingly.

Critics of the Lacey Act have cited the example of Gibson Guitar alleging unfair government over-reach and citing infractions involving Indian rosewood. In fact, and I was personally undercover with the timber boss involved, the centerpiece of the case was that the company admitted knowingly importing illegal rare ebony wood from Madagascar national parks, and that it continued to do so, even as management knew of the relevant laws. An e-mail showed that the company chose—chose—to knowingly import ebony stolen from national parks when its American competitor said no. The illegal wood was forfeited, and Gibson entered into an enforcement agreement that included a compliance plan.

The only one arguing that that is over-reach or an unfair result are those uninformed of the facts of the case, or those benefiting directly from illegal wood trade.

We believe that the introduction of this bill, H.R. 3041, is based on misperceptions regarding the Lacey Act that we wish to correct. In previous testimonies, the biggest concern stated by the National Aquaculture Association was “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,” implying that accidental inclusion of certain species in aquaculture shipments would lead to hundreds of thousands of dollars in penalties.

It is a relief to report to you that this simply is not true. Although illegal goods may be seized under the Lacey Act, criminal penalties are imposed only if a person knew, or in the exercise of due care should have known, that the goods that he or she traded were illegal.

Our enforcement agencies are over-stretched and in urgent need of more tools, more resources to catch the big fish to protect American businesses and consumers. The last thing they need is

exemptions thrown their way that will benefit foreign fish farmers who are skirting the rules.

In conclusion, the proposed bill is not necessary because the protection it aims to provide is already included in the Lacey Act. With the Lacey Act, the United States has set an example to the rest of the world that criminal wildlife and timber trade is not acceptable. It is imperative that the spirit of this law be upheld and its effectiveness not be undermined. Thank you.

[The prepared statement of Mr. von Bismarck follows:]

PREPARED STATEMENT OF ALEXANDER VON BISMARCK, EXECUTIVE DIRECTOR,  
ENVIRONMENTAL INVESTIGATION AGENCY

#### INTRODUCTION

Mr. Chairman, Ranking Member, and members of the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, thank you for inviting me to appear before the Subcommittee today for the oversight hearing, "Federal Impediments to Commerce and Innovative Injurious Species Management."

I have investigated and studied global crime in natural resources for over 15 years. As an investigator and the Executive Director of the Environmental Investigation Agency, I have conducted international field investigations on every continent into criminal networks dealing in illegal wood, endangered species and harmful chemicals. Before joining EIA, I researched linkages between economics, ecology and human health with the Harvard School of Public Health and the New England Aquarium. I have a master of science from the London School of Economics in Environment and Development and a BSc from Harvard University in Environmental Science and Public Policy. I am also proud to have served as a U.S. Marine.

The Environmental Investigation Agency, Inc. (EIA), a non-profit 501(c)(3) organization, has worked for nearly 30 years to investigate and expose environmental crimes, and advocate for creative and effective solutions. EIA's analyses of the trade in illegal timber, wildlife, and ozone-depleting substances have been globally recognized. As an example, our investigative work in the late 1980s provided evidence that led to the international ban on ivory trade.

In my testimony, I will correct some misperceptions about the Lacey Act and its implementation, and show how enforcement of the Lacey Act has benefited American businesses and helped curb environmental crime across the globe, in particular illegal logging.

#### INTERNATIONAL WILDLIFE TRADE

The Lacey Act is one of our oldest and most effective wildlife conservation laws, it has been around for over 100 years. I think we all agree that the effective implementation of this law is having a positive impact in the United States and indeed around the globe. Numerous criminal trade networks have been stopped and once threatened species are on the road to recovery since the Lacey Act was signed into law.

Illegal poaching and logging of natural resources is a billion-dollar crime, and our investigations have found evidence that it funds terrorism, fuels conflict and undercuts law-abiding U.S. companies. Without the Lacey Act, which is designed to keep illegal wildlife and plant products out of our markets, U.S. citizens would unwittingly be supporting these crimes.

John Cruden, former Assistant Attorney General of the Department of Justice's Environment and Natural Resources Division, dubbed the Lacey Act "the single most important Federal wildlife protection law."<sup>1</sup> Indeed, the Lacey Act is a fundamental tool for the U.S. Government's efforts to combat illegal trafficking of wildlife products such as elephant ivory and rhino horn. In the 2008 case *United States v. Tania Siyam*, the accused pleaded guilty to Lacey Act violations for illegally selling and importing raw ivory from Cameroon into the United States, and was subsequently sentenced to 5 years in prison and fined \$100,000.

The Lacey Act is an essential legal component of Operation Crash, an ongoing multi-year investigation into rhino horn and ivory smuggling led by the U.S. Fish and Wildlife Service and the Department of Justice that has resulted in more than

<sup>1</sup> <https://www.justice.gov/usao/page/file/439556/download>.

30 convictions, over \$2.1 million in fines, and approximately \$8 million paid in forfeitures and restitutions. Among those successfully convicted of Lacey Act violations as a result of Operation Crash was Zhifei Lei, a rhino horn trafficking syndicate leader who smuggled 30 rhino horns along with elephant ivory objects together worth over \$4.5 million from the United States to China. In 2014 Lei was sentenced to 70 months in prison and forfeited \$3.5 million in proceeds from his criminal activities.

As one of the world's largest markets for illegal wildlife products, the United States sees more than just ivory and rhino horn smuggled across its borders. The Lacey Act has been used to prosecute companies and individuals illegally trading in protected species of coral, sharks, sea horses, rattlesnakes, leopards, and a multitude of other native and exotic wildlife species.

The Lacey Act not only protects endangered wildlife and vital natural resources from destructive exploitation, it also protects law-abiding American businesses from having to compete with criminals. For instance, in 2012 three men were arrested for running an aquaculture company in Florida that knowingly mislabeled wild-caught turtles as captive bred for international sale. Without the Lacey Act, prosecutors would not have been able to bring criminal charges against the traffickers.<sup>2</sup>

#### ILLEGAL LOGGING

Times have changed in the more than 100 years since the Lacey Act first became law, and Congress has kept apace, through thoughtful amendments, to meet the challenges increasingly sophisticated international criminal networks pose to legal trade. Most importantly, past amendments and phase-ins have strengthened the law and its implementation over time, while carefully avoiding the creation of dangerous loopholes that would incentivize more illegal trade.

The 2008 plants amendment provides an excellent example of how the Lacey Act has been modernized and strengthened, and how U.S. industry and manufacturing sectors have seen the benefits of it. The Lacey Act Plant Amendment was born out of strong evidence that illegal logging and associated trade had harmful impacts not only on the world's forests, but also on the American timber industry. A 2004 study by Seneca Creek Associates concluded that illegal timber imports were costing American businesses over \$1 billion annually.<sup>3</sup> The 2008 amendment ensures that trees and other plants need to be legally sourced, protecting American producers from having to compete with cheap illegal timber imports. The Lacey Act provides everyone a level playing field. That's why so many American businesses have rallied behind this law, and are in fact demanding even stronger enforcement today, rather than the creation of loopholes that would water it down and increase the chances for illegal goods to enter our market.

Next week, the 2008 amendment will be 10 years old, and there is reason to celebrate, as there is evidence today that the Lacey Act has indeed contributed to reducing illegal logging while strengthening our domestic industries. A 2015 study by the Union of Concerned Scientists found that imports of illegal timber had decreased by over 40 percent since the amendment was passed, and concluded that stronger enforcement could bring even more progress.<sup>4</sup> A more recent study by Jeffrey Prestemon for the U.S. Fish & Wildlife Service in 2016 looking at timber imports from high risk regions found that implementation of the Lacey Act had reduced overall U.S. timber imports by 24 percent.<sup>5</sup>

#### FACTS ON THE GIBSON CASE

Critics of the Lacey Act have cited the example of Gibson Guitar, alleging unfair government over-reach. In fact, the case is a prime example of how the Lacey Act should and does work. In the criminal enforcement agreement Gibson stated clearly that it "accepts and acknowledges responsibility"<sup>6</sup> for knowingly and illegally importing rare ebony from Madagascar. The emphasis here is on "knowingly." Gibson admitted that it continued to order Malagasy ebony despite the fact that one of its employees knew about the relevant laws and had informed the company's management. The wood was subsequently forfeited, Gibson paid respective fines and en-

<sup>2</sup> [http://wildlife.org/wp-content/uploads/2014/11/Policy-Brief\\_LaceyAct\\_FINAL.pdf](http://wildlife.org/wp-content/uploads/2014/11/Policy-Brief_LaceyAct_FINAL.pdf).

<sup>3</sup> [http://www.unece.lsu.edu/responsible\\_trade/documents/2003-2006/rt03\\_036.pdf](http://www.unece.lsu.edu/responsible_trade/documents/2003-2006/rt03_036.pdf).

<sup>4</sup> [https://www.ucsusa.org/global-warming/stop-deforestation/lacey-acts-effectiveness-reducing-illegal-wood-imports#.Wvt\\_o0yZORY](https://www.ucsusa.org/global-warming/stop-deforestation/lacey-acts-effectiveness-reducing-illegal-wood-imports#.Wvt_o0yZORY).

<sup>5</sup> Daowei Zang, Yin Ling and Jeffrey P. Prestemon: From Deficit to Surplus: An Econometric Analysis of U.S. Trade Balance in Forest Products, *For. Sci* 63(2):209–217, copyright Society of American Foresters.

<sup>6</sup> <https://www.justice.gov/opa/pr/gibson-guitar-corp-agrees-resolve-investigation-lacey-act-violations>.

tered into and enforcement agreement that included a compliance plan, which served as a useful guidance for responsible American companies who wanted to ensure they are sourcing legal wood.

The enforcement action also had a decisive impact on enforcement against illegal ebony in other important markets, and helped bring illegal chainsaws in one of the most threatened protected areas in Madagascar to a halt.

#### LUMBER LIQUIDATORS

In 2015, Lumber Liquidators pleaded guilty to importing solid oak flooring from Chinese manufacturers made from illegally harvested timber from the Russian Far East. The company admitted to both criminal felony and misdemeanor, and agreed to pay \$13.2 million in forfeitures and fines. The plea agreement included a detailed compliance plan to ensure that all future imports would be legally sourced. Through its reckless business model, the company contributed to destroying valuable forests and harming people and wildlife in the Russian Far East, including the last remaining wild populations of the Siberian tiger. Enforcement in this case was an instrumental move to level the playing field and to protect honest American businesses from unfair competition through unacceptable practices.

#### FACTS ON THE McNAB CASE

Another frequently cited example of how the Lacey Act allegedly punishes companies unjustly is the case *United States v. McNab*. Nothing could be further from the truth. In fact, law enforcement in this case put an end to a large scale, sophisticated international criminal scheme involving more than 40 shipments of illegal lobster tails from Honduras, comprising more than 1 million pounds of lobster at a retail value of over \$17 million.<sup>7</sup> Four defendants were found guilty of knowingly violating the law, including charges of: conspiracy, smuggling, money laundering, Lacey Act violations, and false labeling.<sup>8</sup>

The notion that the perpetrators in this case were wrongfully sentenced due to a misinterpretation of a foreign law can only be viewed as either regrettably misinformed, or deliberately misconstruing the facts.

#### OTHER COMMON MISPERCEPTIONS ABOUT THE LACEY ACT

We believe that the introduction of H.R. 3041, the Aquaculture Risk Reduction Act, is based on misperceptions regarding the Lacey Act that we wish to correct.

In previous testimonies in 2012 and 2014 supporting the Aquaculture Risk Reduction Act, it was stated the biggest concern by the President of the National Aquaculture Association was “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,” implying that accidental inclusion of certain species in aquaculture shipments would then lead to hundreds of thousands of dollars in penalties and even “mandatory incarceration.”

We are pleased to clarify today that nothing could be further from the truth. We would like to further correct some of the mis-information that apparently has led to the belief this amendment would be necessary.

1. Although illegal goods may be seized and forfeited under the Lacey Act, criminal penalties are imposed only if a person knew or, in the exercise of due care should have known, that the goods he or she traded were illegal. We understand Congressman Crawford’s point that someone shouldn’t go to jail under the Lacey Act for a simple accident. As a matter of fact, that is already the law and has been for a very long time. Someone who commits an “accidental infraction” is not guilty of a crime under the Lacey Act. We therefore need to correct the notion that state regulation misdemeanors would be elevated to “Federal felonies” through the Lacey Act.
2. Since fisheries were included in the Lacey Act, we have not been made aware of a case where accidental inclusion of illegal fish species would have resulted in prosecution, let alone jail time under the Lacey Act. The reason for that is that the Lacey Act already provides the necessary protections against such accidental infractions that were committed in the exercise of due care.

<sup>7</sup>Press Release, NOAA, *McNab to Continue Serving Federal Prison Sentence for Lobster Smuggling* (Mar. 22, 2004), available at <http://www.publicaffairs.noaa.gov/releases2004/mar04/noaa04-r119.html>.

<sup>8</sup>*United States v. McNab*, 331 F.3d 1228, 1234 n.10 (11th Cir. 2003).

We also wish to draw attention to the fact that U.S. Government agencies have for many years emphasized, that unwitting individuals who accidentally come in contact with small amounts of potentially illegal merchandise, are not the target of enforcement. Our enforcement agencies don't waste their energy and resources on the "small fish." The intent is to shut down large illegal networks that are threatening our natural resources base and are harming our economy. As the U.S. Fish and Wildlife Service clarified in 2011: "Under the Lacey Act, we focus on law enforcement where it counts: Principally, on those who knowingly transact in larger volumes of illegal products."<sup>9</sup>

In fact, our enforcement agencies are already over-stretched and in urgent need of more resources and staff to catch the "big fish", in order to protect American businesses and consumers.

#### CONCLUSION

In conclusion then, it appears that the proposed bill is not necessary because the protection it aims to provide is already included in the existing Lacey Act. In turn, however, an exemption such as proposed could do real harm by creating legal loopholes for illegal merchandise to enter the market. While providing no additional protection to law-abiding American enterprises, the only ones who would be benefiting from such an explicit exemption would be criminals who knowingly violate the law and can then use it to "accidentally" bring illegal merchandise into circulation.

Creating an exemption here would also set a dangerous precedent by opening the door to potential other, future proposals, including exemptions regarding the international illegal trade. Why would an international supplier or trader not claim to be subject to the same exemptions that U.S. producers enjoy? Once applied to aquaculture, why not apply it to other wildlife and timber sectors? We at EIA have been investigating the illegal wildlife trade for decades, and we have seen firsthand how quickly criminal networks can adapt in order to exploit legal loopholes.

Such explicit exemptions would only increase the risk and the demand for illegal aquatic species and incentivize questionable businesses to trade in illegal fish "by accident." These exemptions would benefit those willing to trade in other illegal wildlife products as well. For example, the International Trade Center, a joint agency of the World Trade Organization and the United Nations, published a paper in 2012 on the trade in Southeast Asian python skins suggesting that smugglers knowingly mix illegal python skins into legal skins shipments to confuse customs officials.<sup>10</sup>

With the implementation of the Lacey Act and its evolution over time, the United States has set an example to the rest of the world that illegal wildlife and timber products are not acceptable. It is imperative that the spirit and rationale of this law be upheld and its effectiveness not be undermined.

Allowing illegal goods to enter our market is bad for business, forces legitimate suppliers into unfair competition and may threaten long-term supply.

We understand the concerns of the National Aquaculture Association. However, as we have shown today, and contrary to what its name proposes, the "Aquaculture Risk Reduction Act" threatens to increase the risk of illegal trade and may end up hurting the very law-abiding American fish farmers it aims to protect.

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Mr. LAMBORN. Thank you.

Mr. Rickman, you are now recognized for 5 minutes.

#### **STATEMENT OF MIKE RICKMAN, DEPUTY DIRECTOR, OPERATIONS AND MAINTENANCE, NORTH TEXAS MUNICIPAL WATER DISTRICT, WYLIE, TEXAS**

Mr. RICKMAN. Chairman Lamborn, Ranking Member, and members of the Subcommittee, my name is Mike Rickman. I am the Deputy Director of the North Texas Municipal Water District. My testimony is to update you on the experiences of my agency with the Lacey Act that we have been dealing with for about 10 years.

<sup>9</sup> <https://www.fws.gov/news/blog/index.cfm/2011/9/22/Where-We-Stand-The-Lacey-Act-and-our-Law-Enforcement-Work>.

<sup>10</sup> <http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/The%20Trade%20in%20Southeast%20Asian%20Python%20Skins%20for%20web.pdf>.

Congressman Gohmert's H.R. 1807 represents an important step in the process of allowing the Lacey Act and water supply to co-exist. I believe that the solution my agency was forced to implement to restore our water supply will not be possible with other looming cross-border water transfer issues.

Most water supply agencies do not have surplus raw water sources permitted, constructed, or operational. You cannot get them permitted without having purpose and need, so you cannot have redundant supplies.

I do not believe that it was the intention of Congress to use the Lacey Act to shut off public water supplies when it was involved in a cross-border transfer. Nor do I believe that it was Congress' intention to force citizens to pay hundreds of millions of dollars—potentially, even billions of dollars—to construct closed conveyance systems or treatment protocols that, despite the fact that the invasive mussels can travel in different pathways to spread, it goes beyond the public water transfers. I don't think it is good public policy to shut down cross-border transfers between states should an invasive species be listed.

Look at the Sabine River Authority's water supply. There is a Sabine River Authority of Texas, a Sabine River Authority of Louisiana—coming out of the same river, but if it is across state lines coming out of the same body of water, it could still have an impact because of the Lacey Act. That just does not make good sense, when you are going to provide water for cooling large, petrochemical plants that are on the Gulf Coast. It would create economic chaos for the region.

The Colorado River Aquaduct is another one that is responsible for providing millions of people with drinking water and irrigating a significant portion of our food supply. If quagga mussels that are already present in the waters are listed as an invasive, should the people of Southern California have to pay billions to create a closed conveyance system or treatment to manage the mussels, similar to what our agency had to do?

Rather than building on and expanding the requirements that my agency was forced to implement, there is a better way, and it is already in place. I am referring to the Federal, state, and local cooperative efforts that have already been well established and growing every day that includes mandatory boat inspections and the decontamination of boats found to have invasive mussels attached to them.

My own state's program is led by the Texas Department of Wildlife, Texas Parks and Wildlife, and it is funded by the state of Texas and numerous water supply agencies. We participate. This is the Protect the Lakes You Love program, and it is currently being operated at a number of Texas lakes and waterways, especially where invasives have been discovered. It combines public education with mandatory inspections, decontamination of boats, especially that move from body to body. It has not stopped invasives, but it has reduced the relentless march across the state.

Another example is the Western States Governors' Conference, which is, most notably, with the Department of the Interior, to control invasive mussels out of both the Columbia River and its

watershed. To date, those efforts have focused mainly on inspection and decontamination.

The Lacey Act is not well suited to stop invasives in the millions or even billions that have been established in the water bodies in different ways. And unless boat traffic is minimized between the lakes, it is going to be very difficult to control the invasives in those situations. Most invasives that we have seen have been transferred by boat.

It is not the kind of threat that is addressed by shutting down long-established public water supplies, but instead through cooperation among Federal, state, and local partners in establishing and operating inspection and decontamination programs. I am not stating a concept here, but instead I am referring to a current reality that is in operation in the state of Texas and throughout much of the rest of the country.

Bringing the Lacey Act into the 21st century with regard to cross-border water transfers must blend a public necessity of water transfers with the strengthening of an invasive control program.

I would just conclude by saying public water supply is something that is for the public health and safety. We are talking hospitals, we are talking what you consume, we are also talking firefighting. You cannot let that be challenged by and threatened by something that we cannot control. Thank you.

[The prepared statement of Mr. Rickman follows:]

PREPARED STATEMENT OF MIKE RICKMAN, DEPUTY DIRECTOR, NORTH TEXAS  
MUNICIPAL WATER DISTRICT

Chairman Lamborn, Ranking Member Huffman, members of the Subcommittee, I am Mike Rickman, Deputy Director of the North Texas Municipal Water District headquartered in Wylie, Texas. I appreciate the opportunity to testify today concerning the experiences of my agency with regard to the Lacey Act and its impact on innovative management of injurious species management.

The North Texas Municipal Water District supplies drinking water to 1.6 million people in north Texas. Our service area includes all or parts of nine (9) counties in north Texas including Collin, Dallas, Denton, Fannin, Hopkins, Hunt, Kaufman, Rains, and Rockwall counties. To meet the needs of a rapidly growing population, we rely on a number of water supply resources, including reservoirs, and one of the largest artificial wetlands in the Nation.

I want to thank Mr. Gohmert for introducing H.R. 1807, the "Public Water Supply Invasive Species Compliance Act of 2017" and for the opportunities provided by this Committee to review this important legislation. H.R. 1807 provides an exemption of certain water transfers from the Lacey Act and the Lacey Act amendments of 1981 for water transfers between and among the states of Louisiana, Arkansas, and Texas as long as all prohibited species in the water transferred are located in both of the public water supplies of these three states. There is also an exception for water transferred in a closed conveyance system directly to treatment facilities where all prohibited species contained in the water transferred will be removed.

H.R. 1807 provides an important path forward and helps to bring the Lacey Act into the 21st century in terms of how it addresses interstate water supply transfers. I believe that it could be expanded to address additional states that are potentially facing the problem that my agency encountered. To help explain the need for this process, I wish to briefly review how my agency found itself on the front line of the Lacey Act/Federal Invasive Species Management issue. If this is understood then the reason we are here today becomes easier to appreciate. Lake Texoma is a Corps of Engineers reservoir that straddles the state boundary lines between Oklahoma and Texas. In 1989, my District was granted an easement from the Corps of Engineers to locate a pump station in Lake Texoma to help the North Texas Municipal Water District satisfy part of our water supply needs. The District spent over \$100 million constructing a pumping facility on the Texas side of Lake Texoma that became operational in 1989, and unbeknownst to us, a surveyor's error made



in the late 1990s by the Red River Boundary Compact Commission, incorrectly but effectively moved two-thirds of our pump station into Oklahoma.

In late 2009, zebra mussels, a listed invasive species under the Lacey Act, were discovered in Lake Texoma. In early 2010, the U.S. Fish and Wildlife Services, after conducting a Google Maps search of the lake, noticed that our Texoma pump station was now located partially in Oklahoma and called our attention to the fact that this was an issue under the jurisdiction of the Lacey Act. The Red River Boundary Compact had already been in existence for nearly 10 years having been approved by the legislatures of Texas and Oklahoma, U.S. Congress and signed into law by the President. Although the portion of our pump station now incorrectly located in Oklahoma involves less than 1 acre of land, correcting the mistake requires action by both State Legislatures in Oklahoma and Texas, and potentially U.S. congressional consent. This will likely require a number of years to accomplish.

The policy response of the U.S. Fish and Wildlife Service to our predicament was that regardless of the fact that the location of the pump station was the result of a surveyor's mistake, the Lacey Act had to be enforced and that required the District not resume pumping water from Lake Texoma. We complied with this request.

The sudden loss of 28 percent of our water supply for nearly 1.6 million people and in the midst of a severe drought created an instant water crisis for my District. When the U.S. Fish and Wildlife Service told us that it had no flexibility over how it enforced the Lacey Act, we turned to Congress and to this Committee to see if you could help us restore the Lake Texoma portion of our water supply. This was accomplished first through P.L. 113-237 that became law in December 2012 and allowed us to transport zebra mussels from the Oklahoma portion of Lake Texoma into Texas if specific conditions were met. In June 2014, P.L. 114-117 broadened our exemption to include all injurious species that were present or that might be discovered in the future and listed as invasive under the Lacey Act. This was important to my agency because it helped to ensure our future water supply regardless of the invasive species that might be discovered in our cross-border water transfers.

The two specific conditions were first that both legislative exceptions applied only to Lake Texoma and second we were required to construct a 46 mile long barrier pipeline at a cost of \$310 million which carried all Lake Texoma water directly to our water treatment plant in Wylie, Texas. All zebra mussels and any other invasive species although transported across a state line were removed before the treated water was released directly into our distribution system. Under the authority of the two Lacey Act exemptions provided by the Congress, the District resumed pumping from Lake Texoma in June 2014, almost 5 years after we were deprived of this water source.

Given the sudden loss of 28 percent of the water supply that my agency provides to nearly 1.6 million customers, all in the midst of a severe drought, we had no choice but to agree to construct a closed conveyance for our interstate water transfer and to remove all invasive species via treatment. But the actions that restored our water supply are not possible or make little sense for many other water agencies that may face a similar situation.

For example, the Sabine River Authority of Texas is currently in the process of constructing a new pump station in the Sabine River that forms the eastern boundary between Louisiana and Texas. Because the river is relatively narrow, the intake of the pump will by necessity be located just a few yards from the Louisiana State line. Zebra mussels have not been discovered at this location. But with hundreds and even thousands of possible candidate species to consider, disruption of water transfers involving the Sabine River may only be an invasive species listing away. In 2015, the U.S. Fish and Wildlife Service adopted a policy of "categorical exclusion" for identifying and listing new invasive species under the Lacey Act. This gives the U.S. Fish and Wildlife Service the tools to list an invasive species in as little as 1 year.

An invasive species discovered on the Louisiana side of the Sabine River and listed under the Lacey Act could also be expected to be present on the Texas side as well since the waters of the two states intermingle. Under such a scenario how could the Sabine River Authority of Texas continue to operate its pumping facility that currently serves the water supply needs of water agencies as well as providing cooling water for large industrial plants along the Texas Gulf Coast? Would this water transfer simply be shut down in deference to the Lacey Act like it was for my agency? And if so, what would be the economic impact upon the entire region?

The potential for future water transfers between Oklahoma and Texas is another area of concern. One of the impacted agencies is the Tarrant Regional Water District that supplies water for Fort Worth, Arlington, and scores of other cities and districts. The state of Texas authorization for the Tarrant Regional Water District

stipulates that it provide wholesale raw water to its customer cities and districts but may not treat this water. This precludes it from making use of the arrangement that allows my agency to move water across the Oklahoma-Texas border. The presence of zebra mussels in Oklahoma triggers the Lacey Act and lacking the legal authority to treat water means that the Tarrant Regional Water District is unable to explore the potential for satisfying a part of the future water supply needs of its customers.

The Colorado River supplies water for both agricultural and municipal uses including the Imperial Irrigation District, the Coachella Valley Water District, and the Metropolitan Water District of Southern California. This includes helping to meet the water supply needs of more than 20 million people as well as the food supply for our Nation and much of the world. Quagga mussels were detected in the Colorado River a number of years ago. Unlike zebra mussels, quaggas are not listed by the U.S. Fish and Wildlife Service as an invasive species although this omission is subject to change. The suspension of Colorado River water transfers to California would create a mega-crisis for both food production and for water supply. Moreover the imposition of the closed system/water treatment that my agency was forced to adopt would cost many billions of dollars and would hit millions of water customers directly in their wallets while also raising the price of the wide variety of foods that are grown using irrigation made possible by the Colorado River. Given these implications it is hard to believe that such a scenario would be allowed should quagga mussels be listed as an invasive species.

Millions of people in communities across the Arid West rely on interstate water transfer from Corps of Engineers, Bureau of Reclamation, and other water supply projects for their municipal, domestic, and industrial water supplies. It is critical that such public water supplies be protected from disruption under the Lacey Act, especially in these ever-increasing seasons of drought.

The Lacey Act was passed more than 100 years ago. There is no indication in the Act, its 1981 amendment or its legislative history, that Congress intended to prohibit vital interstate water supply transfers between states. Interstate water transfers are critical to the health and well-being of the public and to the economic viability of entire regions. Congress must therefore make it clear that the existence of an invasive species in a water body of one state will not leave citizens in neighboring states high and dry.

Any changes or amendments in the Lacey Act must recognize the realities of decreasing western water supplies. Water supply projects transferring water from one state to another for municipal, domestic and industrial use should be expressly exempt from any prohibition on the movement of invasive species across state lines.

The title of this hearing is "Federal Impediments to Commerce and Innovative Injurious Species Management." I hope that my testimony has helped to illustrate how commerce was impacted by Federal invasive species policies in the case of my agency. The North Texas Municipal Water District serves one of the fastest growing areas in the Nation. In fact two of the top five fastest growing cities in the Nation are included in our service area. The very economic underpinning of ours or of any other region requires an affordable and an assured drinking water supply. This assurance was suddenly removed from my District in 2009–2010 when we lost 28 percent of our water supply in the midst of a multi-year severe drought. The affordability assurance was removed when we were obliged to spend nearly a third of a billion dollars paid by our customers to build the infrastructure that ensured our cross border water supply was being delivered through a closed system with additional many millions of dollars being spent on water treatment and maintenance of this conveyance system.

We don't want anyone to have to travel the same road with the Lacey Act that we were forced to use in order to restore an important part of their water supply. That is again why we are so grateful to this Committee for the two Lacey Act related bills that have been signed into law in 2012 and 2014 and for H.R. 1807 which was reported out of this Committee late last summer. Public water supply must be considered an essential public good that must be protected and sustained including an accommodation with the Lacey Act.

One thing being missed in all of the back and forth with regard to "closed conveyances" and "treatment to remove all invasive mussels" is the fact that the Federal Government, in partnership with the states and a number of local governments including water agencies is making great strides limiting the spread of zebra and quagga mussels. This takes hard work and cooperation and communication at every level of government. The challenge is to ensure that these successful efforts and the lessons that have been learned are incorporated into a new 21st century Lacey Act where both water supply and control of invasive species is fully addressed. Until this is accomplished, bills like H.R. 1807 represent an important means to protect

water supply transfers among and between selected states. As mentioned earlier in my testimony, I believe that the number of protected water transfers should be extended to other states that may be facing similar problems, all while the Federal Government and local and state stakeholders work toward a more comprehensive solution via an updated Lacey Act.

Here are three examples of the invasive mussel control efforts that are making a difference in their spread through states and regions:

*Texas Parks and Wildlife Department's "Don't Move A Mussel" Program*

This effort was established in 2012 by the Texas Parks and Wildlife Department and is funded both by the state of Texas and by numerous water agencies. It combines a public education program with required inspections of watercraft, especially those being transferred from lake to lake and it also legally requires that certain listed invasive species be removed before further boat movement. This program has not completely stopped the spread of zebra mussels in Texas but it has arguably slowed it since the mussels were first discovered in 2009. We are optimistic that with increased boat inspections and continued public education that the "Don't Move A Mussel" program will be even more effective in the future.

Texas State law also requires that any water agency that will transfer water supplies containing invasive species under certain circumstances must notify the Texas Parks and Wildlife Department on an annual basis regarding such transfers. We believe that there is great merit in this Committee making such public notification a part of the national updating of the Lacey Act as long as any provisions under consideration reflect the different scenarios for how, why, and when water is transported in the Arid West. What works for water agencies in one state might be unworkable for colleague agency in another state. Regardless of the challenges involved, notification at the state and Federal level could play an important role in coordinating an invasive species response at all levels of government.

*Western Governors' Association / Federal Government*

The Western Governors' Association has launched in partnership with the Federal Government, primarily the Department of the Interior [DOI], a program to keep invasive mussels out of the Columbia River and the Columbia River watershed. This features coordination and communication between the DOI and numerous state agencies with a particular emphasis on boat inspections including regulation of ballast dumping of ships in the Columbia River. This program has so far helped to prevent the appearance of quagga mussels in the Columbia River Basin. The bipartisan Senate draft of the Water Resources Development Act released late last week includes important new provisions to strengthen invasive mussel interdiction in the Columbia River.

*California Mussel Control Efforts*

Two examples of successful efforts to control the spread and presence of quagga mussels include activities by the Metropolitan Water District of Southern California [MET] and the Coachella Valley Water District [CVWD]. As previously discussed quagga mussels were discovered in the Colorado River a number of years ago. While quaggas are not yet listed as an invasive species by the U.S. Fish and Wildlife Service their presence hampers the operation of water agencies including the surface water supply of MET and the groundwater supply of the CVWD.

MET has an aggressive program that is budgeted at more than \$5 million a year and includes 24/7 scrapping of adult quagga mussels off of intake structures by divers and also the chlorinating of sections of the Colorado Aqueduct that severely restrict the ability of the mussels to progress into adulthood including the creation of a hard shell. CVWD has discovered that increasing the velocity of water flow at the intake structure greatly reduces the ability of the mussel to progress to adulthood and almost impossible to attach itself to any structure. Both MET and the CVWD also conduct an active and continuous surveillance program whose goal is to detect and monitor for the presence of mussels.

It is also good news that research, particularly the effort being led by the Bureau of Reclamation, is giving water agencies new operational tools to control and prevent the movement of mussels through water supply transfers. The most recent report and update from the Bureau of Reclamation was released less than 2 months ago and these new tools will be adopted by water agencies in their management of waters where invasive species have been detected.

The Lacey Act should not be used as a one-size-fits-all response that cancels out the public good and necessity of water supply/water transfers in order to interdict at a single point the transfer of an invasive species. This costs the public huge amounts of money for infrastructure and O&M expenses, all to stop a single point

of the introduction of the species and despite the fact that they are making their way across state lines by many other means, most especially boat transfers between bodies of water. My testimony has also sought to identify areas where it is economically impossible for the local ratepayers to assume the cost of the kind of "solution" like the one used by my water agency and also other instances, most especially California, where interruption of the water supply would have severe consequences for both water users and also for the food production made possible through irrigation. Finally, the time of this Committee could be constantly taken up by the needs of water agencies that have fallen afoul of the Lacey Act and are seeking the kind of legislative exemptions granted twice by this Committee and the Congress for my agency. What worked for us is not a substitute for a sensible national update of the Lacey Act that addresses this issue on a wider scale.

The "solution" to all of this is already a working reality in numerous states including the specific examples I have identified in my testimony. That involves an active program of public education, boat inspections, and decontamination efforts that have been shown to greatly slow the spread of invasive mussels and in some cases to actually prevent their becoming established in a whole region. Such an effort cannot depend upon pulling the plug on water supply that contains an invasive species but instead must rely upon the reality of a well-thought out and coordinated response among the Federal Government, the states, and local entities like water agencies. Cooperation and information sharing embodied in an update of the Lacey Act is in my respectful opinion a better use of the time of the Congress and this Committee rather than trying to address what I believe will be a growing list of local water agencies who have run afoul of the Lacey Act and are seeking the restoration of their water supply.

Thank you. I would be happy to answer any questions that you may have.

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Mr. LAMBORN. OK, thank you, and thank all three of you for being here today and for your testimony. We will now have 5 minutes of questions by each member of the panel. I will begin with myself, and then we will alternate with the Majority and the Minority for each questioner.

Mr. Rickman, in your testimony you talked about categorical exclusions by the U.S. Fish and Wildlife Service. Do you think that the use of that to list an invasive species and circumvent the need for an environmental impact statement, do you think that that was the original intent behind categorical exclusions?

Mr. RICKMAN. I don't know exactly what the original intent was, but it is very troublesome for utilities such as ours if you can list something within 1 year without going through a process and finding out what the impacts of that exclusion will allow.

Mr. LAMBORN. By not doing an environmental impact statement, what impact does that have on operations of your water supply operation?

Mr. RICKMAN. As an example, we lost 28 percent of our supply overnight back in 2009, and we lost it for 5 years, didn't have enough water to go around, simply because zebra mussels were found in that source.

Mr. LAMBORN. And with the Colorado River, if you include the Lower Colorado and Upper Colorado, I think there are 10 or 12 states, at least 8 states that would be impacted. In a worst-case scenario, what would a precipitous action like that by the U.S. Fish and Wildlife Service do to the water supply of those 8 or 12 states?

Mr. RICKMAN. It would have huge impacts, because the Colorado River provides an enormous amount of water to the western states. And based on our experience, there is not an option when they find an invasive that is going across state lines, and it is in violation

of the Lacey Act. They threatened us with fines and jail time if we were to continue to pump. So, there is not an option.

Mr. LAMBORN. Mr. Freeze, talking about your aquaculture operation in Arkansas, when the 1969 amendments changed the standard for prosecutors from having to prove willful violation to just a knowing or should have known violation, what does that do to industry with that kind of loosening of the standards?

Mr. FREEZE. Well, it had a huge impact, because it means that you could be prosecuted for accidentally getting a listed species in a shipment not because it was on your farm. And I will use an example of the zebra mussel or quagga mussels.

Our farms are inspected for aquatic nuisance species every year. And we have never had zebra mussels on our farm. Yet, zebra mussels are found in the Arkansas River 5 miles from our farm, and if a zebra mussel was found in a shipment that I send—maybe it was left over in a truck from a previous transport—I could be charged, because I should have known there could have been a zebra mussel on there, because they are located within 5, 10 miles of my farm. It is a very low standard, to me, for prosecution.

Mr. LAMBORN. Is there a difference between criminal prosecution and civil penalties, or civil prosecution?

Mr. FREEZE. Well, you have heard several people here say that that does not occur. I can assure you it does, and I can provide examples where all it takes is over \$350 to be involved in the shipment. There is not a shipment of fish that is shipped just about anywhere that is not over the \$350. And in all the cases I am aware of, the felony provisions are what are invoked.

Mr. LAMBORN. Even if it is not a felony, even if it stays in the civil realm, what are the fines in that category, in that realm?

Mr. FREEZE. Well, I really don't know, because I think it almost always goes to the felony. If they prosecute you in the Lacey Act, you are going to be looking at felonies. They may plea bargain down, and that is usually what U.S. Fish and Wildlife does. They start off with very high fines, and then they plea bargain down to where finally your attorney says, "Look, you need to take this." This is why they have a 99 percent conviction rate.

Mr. LAMBORN. I guess what I was wondering is even if it is not jail time someone is looking at, but a hefty fine, that could still have an inhibiting effect on business operations.

Mr. FREEZE. Well, what really gets you is your attorney. In one of the most recent cases, although they dropped the fine from \$1.5 million against the fish farmer, they plea-bargained to \$600,000, then \$60,000, then finally \$6,000. So, their attorney told them take the \$6,000 fine, but they had over \$100,000 in attorney fees. This was a small farm, and it almost bankrupted them.

Mr. LAMBORN. All right, thank you.

Mr. Huffman, you are now recognized for 5 minutes.

Mr. HUFFMAN. Thank you, Mr. Chairman.

Mr. Freeze, you have made your case for creating a new exemption for domestically produced aquaculture species under the Lacey Act, and you have suggested that the Lacey Act is a threat, basically, to your ability to conduct business. Have you faced criminal prosecution?

Mr. FREEZE. No, I have been threatened with Lacey Act violations. Any time you violate a state violation, when you cross state lines, no matter how minor, then the Lacey Act can be invoked. And it basically just depends whether they want to charge you under the state statute or they want to get the U.S. Fish and Wildlife involved and charge you under the Federal statute.

Mr. HUFFMAN. Yes, but you have never actually experienced that yourself?

Mr. FREEZE. No, sir.

Mr. HUFFMAN. How about civil penalties? Have you experienced any civil penalties under the Lacey Act?

Mr. FREEZE. I cross every T and dot every I, and live in fear that some day I will be charged.

Mr. HUFFMAN. Mr. von Bismarck, let me turn to you. The question was just asked about the amount of civil penalties. The witness was unable to answer it. Are these massive, onerous civil penalties, or can you enlighten us on that?

Mr. VON BISMARCK. Certainly they haven't been in practice. I mean even the criminal ones, if you look at the Lumber Liquidators case, \$13 million for a company that was making \$1 billion in revenue based on a business model that was specifically seeking out illegal wood. I think again and again—if you look at the Gibson case, the actual fines were, I think, around \$300,000. And there you have the specific willful importation of illegal wood from national parks that was undermining all of their domestic competitors. It was having injurious consequences to U.S. industry, never mind the extraordinary biodiversity of Madagascar. And a few hundred thousand dollars for a company like that is actually, from our point of view, far too low.

But the benefit is that everybody sees it happening, other companies are beginning to take action.

Mr. HUFFMAN. Right. And Mr. Freeze earlier expressed his fear that he could be criminally prosecuted for an accident. Can you enlighten us as to whether that is, in fact, the way the Lacey Act works?

Mr. VON BISMARCK. Well, I don't think it is up for debate. It is just a matter of the way the law is written that you cannot be criminally prosecuted unless it was an accident. If you didn't know and you shouldn't have known. That is it. That is the——

Mr. HUFFMAN. Right. I am hearing sort of the different standards between civil and criminal liability conflated in this conversation. I am also waiting to hear of some specific examples, where someone who has exercised due care has gotten into trouble under the Lacey Act. You would think, if there were examples of that, we would hear them today. What I have heard is abstract concern, hearsay upon hearsay.

Are you aware of any case anywhere in the United States of, let's say, a domestic aquaculture producer being prosecuted under the Lacey Act for moving aquaculture products within the states?

Mr. VON BISMARCK. I am not.

Mr. HUFFMAN. I think, Mr. Chairman, we are talking about a solution in search of a problem here. And we could probably go on on that, but I think the point is made.

With the time I have remaining, Mr. von Bismarck, can you explain how environmental crimes are a threat to our national security, and how the Lacey Act is used to hold criminals accountable?

Mr. VON BISMARCK. It is an enormous problem. Natural resource trade and the stealing of natural resources often underpins instability around the world, underpins insurgencies. One example is a now-declassified study by the Department of Defense that found significant illegal trade of trees in the northeast of Afghanistan moving through Taliban-controlled areas to Pakistan, being sold as jihadi wood in the Gulf states.

I was personally undercover with a cocaine dealer in Miami who was bringing in mahogany, in addition to cocaine, and in fact was supplying the company that was manufacturing the Capitol doors for here, in order to have them be bulletproof. Luckily, the Capitol Architect canceled that order because of potential attention from the Lacey Act. This natural resource theft is a national security issue.

Mr. HUFFMAN. All right. Thank you for your work to enforce the Lacey Act and other environmental laws. With that, Mr. Chairman, I yield back.

Mr. LAMBORN. Thank you. Representative LaMalfa is recognized.

Mr. LAMALFA. Thank you, Mr. Chairman.

For Mr. von Bismarck, the growing production and sale of marijuana still remains illegal at the Federal level. So, what I am wondering is, with this illegal cultivation of what is a non-native and invasive plant species, marijuana, how does it impact the ability to enforce the Lacey Act and on those folks that have that duty and responsibility to do so?

Mr. VON BISMARCK. I am not sure I understand the question. I apologize for that. It is certainly not my area of expertise, the trade of marijuana in the United States. If you could clarify, I would be grateful.

Mr. LAMALFA. The illegal production of marijuana, which is a non-native and invasive species, how much extra work does that make for those that are charged with enforcing the Lacey Act?

Mr. VON BISMARCK. I don't know, Congressman. I apologize.

Mr. LAMALFA. Do you think the law has adequate enforcement and accountability in that area? With all the illegal growers we see all over, especially in the western states, but who knows how far—in areas in some of the counties I represent and the neighboring counties, rampant production, rampant environmental damage, and threat to its neighbors.

So, do you think this law has adequate enforcement in that area of illegal marijuana cultivation, whether it is Federal lands or bootlegging going on in private lands?

Mr. VON BISMARCK. I honestly don't know. I have not come into contact with that trade or the use of the law to address that trade.

Mr. LAMALFA. How do Federal agencies prioritize their enforcement of this, whether it is on plants, forests, wildlife, or fish? What receives the first level of attention, and why?

Mr. VON BISMARCK. Clearly, you would want to ask the enforcement agencies. From my experience in bringing evidence to the government and observing what cases they took, it has been a rational focus on what are the biggest cases that have the most

injurious consequences to industry in the United States—say of import of stolen wood or import of rhino horn that is coming from organized crime in South Africa. So, it seems to be an assessment of the seriousness of the crime and the impact on U.S. businesses.

Mr. LAMALFA. How is the progress of halting illegal logging within the United States itself going?

Mr. VON BISMARCK. It has actually, interestingly, had positive impacts there already. One of the cases involved trees coming from a national park on the West Coast used for the guitar industry. And only because the Lacey Act was amended was that theft from a U.S. national park able to be prosecuted.

Mr. LAMALFA. Thank you. For Mr. Rickman, please expound a little bit on the effects of this should-have-known aspect of the way the law is being enforced.

How does that really play out, day to day, in the real world? This should-have-known provision.

Mr. RICKMAN. The should-have-known, in our district, we had no clue on zebra mussels being in Lake Texoma, simply because the scientists, when zebras were first introduced into the Great Lakes, said they will not survive in the warmer waters in the southern states. So, no one in our area was looking, anticipating anything with regard to zebra mussels. And if you look at the map now from where zebra mussels and quagga mussels are, they are all over the United States. So, they adapted and they are very prolific, everywhere they go.

So, it is something we didn't anticipate, simply because of the scientific community.

Mr. LAMALFA. The bill introduced by Mr. Gohmert, the Public Water Species Compliance Act, how do you see that as being helpful with this dilemma?

Mr. RICKMAN. In our case, it would because our pump station was across the state line in Oklahoma—the Lacey Act was in place—it literally stopped us from being able to pump for almost 5 years. And if this bill were in place, we would have an option that we could continue to use that water for public—

Mr. LAMALFA. Merely because of an arbitrariness of a state line is the problem.

Mr. RICKMAN. Yes. That is correct.

Mr. LAMALFA. All right. I thank you for that, and I think we have indeed shown that there is a problem seeking a solution here. And I am glad Mr. Gohmert has paid attention to this and is bringing it forward.

With that, Mr. Chairman, I will yield back.

Mr. LAMBORN. Thank you. Delegate Sablan is recognized for 5 minutes.

Mr. SABLAN. Thank you, Mr. Chairman, for holding this hearing. I do remember in 2013, when I sat where Mr. Huffman is right now, and we have had hearings that brought up the Gibson Guitar issues and all of those things.

Mr. von Bismarck, thank you very much for the work you do. I am not exactly sure what you do, but I am sure it was at times dangerous, so thank you very much.

Let me ask you, Mr. von Bismarck. The statistic is alarming. A football field of forest is lost every 2 seconds. In 2012, the World



Bank released a report estimating that illegal logging accounts for 50 to 90 percent of the volume of forestry activities in key producer tropical countries and 10 to 30 percent of all wood traded globally. This tragedy is occurring even in formally protected forests.

So, how are the 2008 Lacey Act amendments essential in reducing global trade in illegal timber? And have they set an example for other countries? You have alluded to that earlier, but you could expand on it if you want.

Mr. VON BISMARCK. The amendments of the 2008 Lacey Act have been the beginning of a global sea change in, for the first time, saying no to trade in stolen wood. And that was a problem that was condemning all the world's forests to being stolen and then to being used up by the global economy. And the United States took the stand before anybody else, and said we should not be importing wood that was stolen somewhere else. That resulted in Europe following suit, then Australia and Japan. Mexico passed its law through its second chamber just a few weeks ago. It is beginning to become the law of the land.

And it is so important that the United States, who started this wave, stay strong on it. Everybody is still looking to the U.S. law to see that it works.

Luckily, everything that has happened so far has been positive in that regard. The impact on U.S. industry, the impact, in fact, on any company around the world that wants to play by the rules has been extraordinarily positive.

I have seen it myself, talking to companies, sometimes undercover, sometimes not, who are starting to buy legal wood, starting to buy wood from United States, family owned forests, instead of getting it from a shady dealer who they know is getting cheap wood from a UNESCO World Heritage Site in Madagascar.

Mr. SABLON. All right. I understand also that illegal Russian oak has been mislabeled as U.S. oak for smuggling purposes, since they are largely indistinguishable. Does this happen across borders, frequently? How does the Lacey Act foreign laws provision help curb this for unsuspecting U.S. consumers?

Mr. VON BISMARCK. The U.S. Lacey Act, and its amendments in 2008, for the first time, is sending the signal that it is actually important to say where your wood is from. And that is the beginning to solving this problem. Unfortunately, again and again, importers pretend that the wood is something that should have low risk—say oak from Germany—when actually it is procured from an organized crime syndicate north of Vladivostok. And that was the case in the Lumber Liquidators case.

And, specifically, this law, for the first time anywhere in the world, requires imports of manufactured products to say where is the wood actually from, where was the raw material actually taken. You need to declare that. And it was the basis of lying on those declarations that that crime was able to be uncovered.

Mr. SABLON. Just in the short remaining seconds, can you explain a little bit more about how did we get lumber imported to be used as probably the doors for the halls and the offices here in Congress?

Mr. VON BISMARCK. Well, it was a surprise to me also, being undercover with this individual. We were in Honduras, looking at

illegal logging in the national parks, and tracking the wood out of Honduras. Unfortunately, that trail took me to Miami, and then right to the doors of the Capitol building that were being replaced, post-9/11, to have high security. And mahogany is a very dense, dense wood.

Unfortunately, this mahogany was stolen out of a national park—again, a UNESCO World Heritage Site with the most extraordinary biodiversity you could possibly imagine, and traded by a cocaine dealer right to the doors of, the feet of the Capitol.

Mr. SABLAN. Thank you. My time is up.

Mr. Chairman, thank you very much.

Mr. LAMBORN. Thank you.

Representative Crawford.

Mr. CRAWFORD. Thank you, Mr. Chairman.

Mr. von Bismarck, you are the Executive Director of the Environmental Investigation Agency, correct?

Mr. VON BISMARCK. Yes.

Mr. CRAWFORD. Is that an arm of the Federal Government, or is that private entity?

Mr. VON BISMARCK. It is a private non-profit.

Mr. CRAWFORD. Got you. So, you don't work for the Federal Government?

Mr. VON BISMARCK. That is correct.

Mr. CRAWFORD. OK. I just wanted to clarify that. Sometimes people can get confused with the name of an organization and maybe associate them with some organization that actually has some adjudicative authority. In this case you don't have any adjudicative authority?

Mr. VON BISMARCK. No, we simply collect evidence and pass those on to the appropriate authorities.

Mr. CRAWFORD. Excellent. Changing the subject here, how many times has the Lacey Act been amended, that you are aware of?

Mr. VON BISMARCK. Sorry, I am not exactly sure. I know of a key amendment in the 1980s and then a more recent key amendment in 2008. But I don't have the total at hand.

Mr. CRAWFORD. About 100 years old, correct?

Mr. VON BISMARCK. That is correct.

Mr. CRAWFORD. Right. So, it is safe to say it is not perfect, that over 100 years we have found opportunities to make it better and work more efficiently for the folks it purports to protect?

Mr. VON BISMARCK. Absolutely. And I do think that if the concern is aquaculture in the United States, I would think that increasing enforcement of the Lacey Act, and making changes to have a more active enforcement might be the most effective way to support aquaculture in the United States.

Mr. CRAWFORD. Yes. You mentioned you have been undercover in numerous locations in a variety of different industries. Have you ever been undercover on an aquaculture farm?

Mr. VON BISMARCK. I have been undercover in some of the transport, the supply chains of seafood.

Mr. CRAWFORD. In the supply chain. In the United States, or overseas?

Mr. VON BISMARCK. Overseas.

Mr. CRAWFORD. OK. I would say, given the fact that you have exposed yourself here as an undercover agent, you probably wouldn't have the opportunity to go undercover in a U.S. aquaculture operation, but you could save yourself the trouble by talking to Mr. Freeze to your right, and let him enlighten you on some of the issues regarding the Lacey Act and how that is, in fact, quite onerous to aquaculture producers.

Nobody is suggesting that we do away with the Lacey Act with regard to the aquaculture industry. What we are suggesting is there may be some better ways to manage it, make it more efficient for those aquaculture producers.

Do you view aquaculturists as a national security threat to the United States?

Mr. VON BISMARCK. No, I would view the import of illegally farmed fish and illegally wild-taken fish that competes with U.S. aquaculture as often being indeed a national security threat.

Mr. CRAWFORD. So, an aquaculturist who, let's say for example, is raising striped bass and takes a shipment of striped bass across the state line, inadvertently maybe, and certainly unbeknownst to them, certainly I wouldn't think would be specific and willful disregard of the Lacey Act. You don't think that that necessarily rises to the level of prosecution, in your opinion?

Mr. VON BISMARCK. No, but I would hope that their competitor that brings in illegal fish from overseas would.

Mr. CRAWFORD. Sure. So, what we are basically trying to do is make sure that we don't introduce species from outside of the United States that create a problem for us with regard to transporting aquaculture-produced products from, say, Arkansas to Mississippi or Arkansas to Louisiana or Arkansas to wherever else that it might need to be transported.

Mr. VON BISMARCK. Yes, but I would imagine that Mr. Freeze would also be interested in making sure that his domestic competition is not willfully breaking laws.

Mr. CRAWFORD. I am very certain that Mr. Freeze is committed to that, as well. I have worked with him on many occasions on that, so I know that firsthand.

I want to switch gears just a little bit and go back to something that my colleague, Mr. LaMalfa, mentioned. You talk about invasive species being problematic here in the United States. And as he pointed out, marijuana is an invasive species. It is a non-native invasive species. I would think somebody in your position would have some background on, and a position on how a non-native invasive species such as marijuana might be treated with regard to transport from state to state.

You said that you don't really have any expertise in that, although you also said that you have been undercover with cartels. I would think that you would probably have some expertise in that, but you can't comment on the non-native species of marijuana?

Mr. VON BISMARCK. I don't think I am the right witness to comment on that. Certainly, I think enforcement is important across the board, but I have not seen the use of the Lacey Act in this area, and that is the basis for my comment.

Mr. CRAWFORD. All right, thank you.

In the last 20 seconds I have, Mr. Freeze, obviously you support H.R. 3041. Do you have any real-world examples where it was evident that the Lacey Act in its current form did not provide enough protection for accidental aquaculture shipments?

Mr. FREEZE. Mr. Crawford, one of the examples, and this goes back to Congressman Huffman, has to do with Dave and Tim Gollen in Wisconsin. They are the people that were faced with the \$1.5 million fine, initially. They forgot to get a free import permit from the Department of Ag. in Wisconsin. No other fish farmer got an import permit that year because the Department of Ag. kept changing the dates as to when these permits expired. They self-reported themselves to the Department of Ag. that they had brought disease-inspected fish in from Arkansas, bait fish, but they brought them in after their import permit had expired. The Department of Ag. told them that wasn't a problem.

Then, about 3 weeks later, they get a subpoena from the U.S. Fish and Wildlife. It took them 80 hours to gather up all the documents the U.S. Fish and Wildlife wanted. The U.S. Fish and Wildlife called them in and charged them with violating the Lacey Act, a felony provision. Initially, these two brothers were told, "Your fine is \$1.5 million, you are both going to the Federal penitentiary for 5 years."

Of course, they got attorneys. Then they plea bargained it down to \$600,000. Then they plea bargained it down to \$60,000. Then finally they got it down to \$6,000. And as I stated earlier, by this time they had \$100,000 in attorney fees.

They did agree to allow the U.S. Fish and Wildlife, for the next 2 years, to inspect their fish coming into the state for diseases. They paid over \$80,000 to U.S. Fish and Wildlife to do this inspection, even though all of these fish had already been inspected by a USDA facility.

Mr. LAMBORN. Mr. Freeze, the time has expired, so we need to wrap up.

The Chair now recognizes Delegate Bordallo for 5 minutes.

Ms. BORDALLO. Thank you very much, Mr. Chairman. Mr. Chairman, the Lacey Act makes it illegal to import any animal or plant product into the United States if it was taken, transported, or sold illegally in the country of origin.

This is, in my opinion, one of the most effective Federal laws we have to ensure that access to the American market—a privilege, not a right—does not drive the global black market trade in illegal wildlife, plant, or seafood products. Under the Lacey Act, Congress protects fair and honest global commerce. And those playing by the rules are never expected to compete against corruption, fraud, or other crimes.

Last week, Mr. Chairman and members of the panel, I was proud to introduce H.R. 5697. It is called the Wildlife Conservation and Anti-Trafficking Act. And I am very proud to say that our colleague, Congressman Don Young of Alaska, is the co-sponsor. Our bipartisan legislation would strengthen Federal enforcement against poachers, traffickers, and the trade in illegal wildlife and seafood products.

Our bill would engage whistleblowers in the fight to bring down global trafficking rings by creating a financial incentive to report

wildlife poaching. And this will lead to more action, successful action, enforcement, criminal convictions, and restitution paid to the U.S. Government, all at no cost to the American taxpayers.

Our bill would direct Federal agencies to finally implement authorities provided under current law to reward whistleblowers for crimes against wildlife trafficking, poaching, and black market imports.

So, I have a question to ask you, Mr. von Bismarck. Do you agree that incentivizing whistleblowers will help to address the global poaching crisis?

And the second part of the question is, do you believe Federal agencies and law enforcement can do more under existing Lacey Act authorities to prevent wildlife trafficking and/or transshipment of black market products into the United States?

A two-part question.

Mr. VON BISMARCK. Thank you, Congresswoman. Absolutely, whistleblowers have been critical in bringing the cases that have been brought to date. Most of our work is not us actually investigating, but it is working with, really, intrepid people on the ground around the world, sometimes in the United States, that are outraged by the crimes that they are witnessing, and at great personal peril and cost giving information to those that they trust will actually do something with it.

The Lacey Act, as it stands, does that for many for the first time, meaning that if they take the risks they are to bringing the evidence forward, that something will actually happen, that the big company at the end of the chain that is providing all the money will actually be held to account.

But additional steps to reward and protect those whistleblowers are absolutely needed, because they are still often sort of hanging out in the wind. And, unfortunately, every month people are getting assassinated that we are working with around the world to protect natural resources.

Ms. BORDALLO. Thank you. Thank you very much. And I don't know if you have read the bill yet, but it was introduced last week. I wish you would. I am working very closely with Mr. Young, and he is very knowledgeable person, the Dean of Congress right now. So, I certainly hope that you look at it to see some of the improvements.

I thank the Committee here, and the panelists that have come in. Thank you, Mr. Chairman, and I yield back.

Mr. LAMBORN. Thank you. And that is not a giraffe skin that you are wearing, is it?

Ms. BORDALLO. Pardon?

Mr. LAMBORN. I am just joking.

Mr. HUFFMAN. He likes your—

Mr. LAMBORN. I like your giraffe-skin-style jacket.

Ms. BORDALLO. Thank you very much. Well, it is not an animal print or anything.

[Laughter.]

Mr. LAMBORN. No, we know that. I am just being silly.

I want to thank the witnesses for being here, thank you for your testimony. It was very helpful. Thank you for the distance that you traveled to be here.

Members of the Subcommittee may have additional questions for you that they would like to give you in writing. If you receive those, we would ask that you respond to those in writing. Under Committee Rule 3(o), members of the Committee must submit questions to the Clerk within 3 business days following this hearing. And the hearing record will be kept open for 10 days for responses.

If there is no further business, the Subcommittee stands adjourned.

[Whereupon, at 11:03 a.m., the Subcommittee was adjourned.]

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE  
COMMITTEE'S OFFICIAL FILES]

**Rep. Grijalva Submission**

—Letter addressed to Chairman Bishop and Ranking Member Grijalva opposing H.R. 3041 from National Wildlife Federation dated May 21, 2018.

