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# A Federal Ban on Fur Farming Across the United States: Long Overdue Legislation

Christine Sun

## I. INTRODUCTION

The term “fur farm” is an extremely misleading one; generally when people use the word “farm,” a friendly scene comes to mind, where the animals graze all day in the sun and sleep in cozy red barns. Unfortunately, for the animals on fur “farms,” life is anything but happy. For the foxes, mink, and many other animals imprisoned there, these facilities are more like industrialized torture facilities. The general public, who are generally only aware of the horrendous practice of trapping animals in the wild with large steel traps for the fur trade, mistakenly assume that raising animals on a fur farm is the more pleasant and preferable alternative. Many people mistakenly believe that animals raised for their fur on a “farm” are treated more humanely than those trapped in the wild. Sadly, it is probably because of this common misconception that not many people have attempted to stop the millions of animals from being subjected to these harsh “farm” conditions every day.

A recent study conducted for the International Association of Fish & Wildlife Agencies indicated that most respondents objected to trapping animals to make fur products and voiced a preference for furs from fur farms.<sup>1</sup> Such survey results are pleasing to the fur industry, which for years has worked to popularize products from what it calls “ranch-raised” animals; the fur industry takes advantage of poll results such as these and uses them as an excuse to continue

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<sup>1</sup> The International Association of Fish and Wildlife Agencies (IAFWA) is an organization of public agencies charged with the protection and management of North America’s fish and wildlife resources. All 50 States are members. Best Management Practice (BMP) is a method to improve an activity by developing recommendations based on sound scientific information while maintaining practicability.

their trade. Fur trade propagandists work hard to sell the idea that animals on fur farms live “the good life.” But nothing could be further from the truth.

Approximately eighty-five percent of the fur industry's skins come from animals on fur factory farms. These dismal, filthy places where thousands of animals are usually kept in wire cages for their entire lives.<sup>2</sup> Typical of most commercial farms such as the factory farms where animals are raised for food, the methods used on fur factory farms are designed to maximize profits, no matter the cost to the animals' welfare?. Animals on fur farms suffer so much it seems inconceivable that they could be worse off in the wild. The wild isn't "wild" to the animals that live there, it is their home, and the fact that they could possibly suffer there is no reason to ensure that they suffer in captivity.

On fur farms, animals such as foxes, mink, and ferrets spend their entire lives stacked on top of one another in barren cages with nothing beneath their feet but wire mesh.<sup>3</sup> Those in the topmost cages are marginally more fortunate, as they do not have feces and water falling into their food from the animals imprisoned above.<sup>4</sup> Also, in many cases, multiple animals are forced to share a single tiny cage, disabling them from any movement at all.<sup>5</sup> These animals are granted no protection from the wind, rain, or snow, save a roof on an open shed. Furthermore, the lack of proper care given to these animals and their exposure to so much filth make fur farms extremely vulnerable? to disease.

Often, fur farms pack the animals into unbearably small cages, thus, preventing them from taking more than a few steps in any direction. Thus they are prevented from doing anything that is natural and important to them, such as running, swimming, making nests, and finding

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<sup>2</sup> International Fur Trade Federation, “Farmed Fur,” 2009. Not proper cite.

<sup>3</sup> Fur Farms, <http://www.peta.org/issues/animals-used-for-clothing/fur-farms.aspx>

<sup>4</sup> Id.

<sup>5</sup> Id.

mates, causing many of the animals to go insane. The anguish and frustration of life in a cage leads many animals to self-mutilate, by biting at their skin, tail, and feet, frantically pacing and circling endlessly, and even cannibalizing their cage-mates. Studies have proven that as many as 85 percent of the animals raised on fur farms develop behavioral abnormalities such as rocking, head-bobbing, and self-mutilation due to boredom, anxiety, and the inability to meet their instinctual needs.<sup>6</sup> Fur farms inflict such terrible psychological trauma on animals that in one study of vixen, half of the kit loss that occurred prior to weaning was attributed to infanticidal behaviors, primarily, mothers eating their young.<sup>7</sup> These are all behaviors that rarely occur in wild populations.

Just as life on a fur farm is cruel, death there is equally so. After suffering through years of confinement, animals are then killed and skinned for their pelts. Also in an effort to maximize profits, killing methods are typically cheap, crude, and performed in such a way so as not to damage the animal's fur.<sup>8</sup> Unlike what fur farmers try to make the general population to believe, there is no such thing as humane "euthanasia" on a fur farm. On U.S. fur farms, one of the most frequently used methods of killing animals is genital electrocution, a method which was deemed "unacceptable" by the American Veterinary Medical Association in its "2000 Report of the AVMA Panel on Euthanasia."<sup>9</sup> In order to perform the electrocution, the farmer puts a metal clamp in an animal's mouth, a metal rod in the anus, and then sends a high-voltage current surging through the body.<sup>10</sup> Sometimes the power surge forces the rod out of the anus, so the

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<sup>6</sup> Georgia J. Mason *et al.*, "Frustrations of Fur-Farmed Mink," *Nature* 410 (2001): 35–36.

<sup>7</sup> *Id.*

<sup>8</sup> Fur Farms, <http://www.friendsofanimals.org/programs/fur/fur-farms.html>

<sup>9</sup> 2000 Report of the AVMA Panel on Euthanasia, found at [www.njfishandwildlife.com/.../cbbmp\\_euthanasia\\_avma.pdf](http://www.njfishandwildlife.com/.../cbbmp_euthanasia_avma.pdf); American Veterinary Medical Association, "AVMA Guidelines on Euthanasia," Jun. 2007. (last visited??]

<sup>10</sup> *Id.*

procedure must be repeated to kill the animal.<sup>11</sup> Other commonly employed techniques include homemade gas chambers, lethal injection, and neck breaking.<sup>12</sup>

More than 36 million animals die on fur farms around the world each year.<sup>13</sup> Thirty-one million, making up approximately 90%, of these animals are mink. Foxes account for another 4.5 million, while chinchillas, sable, ferret, coypus, and raccoon dogs account for most of the remaining half-million animals.<sup>14</sup> Due to the recent drop in pelt prices for mink and fox, some of the United States fur farms have attempted to diversify by raising bobcat, coyote, raccoon, and beavers, along with coypus and rabbits, keeping them all in equally poor and depraved conditions.

Mink is by far the most important furbearer raised on farms, although other species such as fox and chinchilla are also raised commercially. The United States is the fourth-largest mink pelt producer in the world. Pelts derived from U.S. farm mink production currently account for eight percent of world supply.<sup>15</sup> In 2002, [ 11 years ago—the data is too old] U.S. production totaled approximately 2.6 million pelts, valued at \$79.6 million.<sup>16</sup> Some people, unaware of the actual conditions and practices on fur farms, assume that breeding animals for fur is just like any other form of farming, and that it poses no special welfare problems; but there are plenty of reasons for thinking otherwise. This article calls for further action to ban the practice of fur farming in the United States, with a focus on mink and fox to illustrate the need for such a ban. Mink and fox are the most common animals raised for fur, and provide a clear and distinct picture of the horrors that come with raising animals to slaughter, simply for their fur. Just

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<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Fur Farms, <http://www.peta.org/issues/animals-used-for-clothing/fur-farms.aspx>

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

because animals are raised for their fur in confined and controlled settings doesn't reduce their intense pain and suffering. In fact, it may increase their suffering, so it is essential that animal advocates fight myths propagated by fur-farm proponents.

Part II of this paper will briefly introduce some of the fur farming laws in other countries such as England, Scotland, and Wales. As the world becomes more educated on the practice of fur farming and realizes the harm that this industry causes, more countries are beginning to ban the practice altogether. This section will also note the reasons and thoughts behind such bans. Part III will then introduce the various statutes and regulations that currently exist in the United States, with an emphasis on their lack of effectiveness. Part IV will examine in detail both the ethical and environmental rationales of banning fur farming altogether in this country, while Part V will support a federal law banning fur farming across the United States and also provide rebuttals to potential objections to the position of banning such farms.

This paper concludes with a summary of the opposing arguments and the importance of finding a uniform solution. It will highlight the multiple arguments in support of a broad ban on fur farming in the United States. Ultimately, this paper proposes that fur farming is causing unnecessary stress to both animals and our environment, and that a federal ban should be enacted banning the practice of fur farming.

## II. FUR FARMING LAWS ABROAD

In general, Europe has been more actively involved than the United States in legislative control of intensive farming. Austria, Scotland, and Wales have passed legislation prohibiting raising mink and other animals solely or primarily for their fur.<sup>17</sup> In Scotland, the Fur Farming (Prohibition) (Scotland) Act of 2002 was passed, prohibiting “[a]ny person [from keeping]

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<sup>17</sup> Industry and Trade Summary: Fur Skins, Rose M. Steller, USITC Publication 3666, January 2005.

animals solely or primarily (a) for slaughter (whether by that person or another) for the value of their fur, or (b) for breeding progeny for such slaughter.” Given the increasing recognition of animal welfare, the Minister for the Environment and Rural Development Ross Finnie noted that “the responses to the consultation exercise on this Bill held in March 2000 suggested that the measures proposed will be widely welcomed,” when proposals to ban fur farming were first introduced to the public.<sup>18</sup> In 2005, Austria followed the trend and fur farming became prohibited entirely under the Austrian Animal Welfare Act.<sup>19</sup> Furthermore, Denmark and Norway have declared that fur mills are ethically unacceptable.<sup>20</sup>

In recent years, several member states in the European Union have enacted legislation to regulate and/or prohibit fur farming. Countries including England, Scotland, and Wales, have recently outlawed fur farms completely. In as early as 1989, the British Farm Animal Welfare Council described mink and fox as “essentially wild animals” and expressed its disapproval of their farming stating that “the systems employed in the farming of mink and fox do not satisfy some of the most basic criteria for protecting the welfare of farm animals.”<sup>21</sup> In November 2000 the British Government officially recognized this and banned fur farming in England and Wales. The Fur Farming (Prohibition) Act 2000<sup>22</sup> was introduced to ban fur farming on public morality grounds. It was designed to "prohibit the keeping of animals solely or primarily for slaughter for the value of their fur; to provide for the making of payments in respect to the related closure of certain businesses; and for connected purposes."<sup>23</sup> Fortunately, England was not alone in taking

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<sup>18</sup> Bill to Ban Fur Farming, The Scottish Government, <http://www.scotland.gov.uk/News/Releases/2001/10/366>, last accessed 12/10/12

<sup>19</sup> European Commission, Scientific Committee on Animal Health and Animal Welfare, “The Welfare of Animals Kept for Fur Production,” (European Commission, 13 Dec. 2001).

<sup>20</sup> Id.

<sup>21</sup> Report on the Priorities in Animal Welfare Research and Development, <http://www.fawc.org.uk/reports.htm>

<sup>22</sup> Fur Farming (Prohibition) Act 2000, found at [www.legislation.gov.uk/ukpga/2000/33/contents](http://www.legislation.gov.uk/ukpga/2000/33/contents).

<sup>23</sup> Id.

these progressive measures. Shortly after, Scotland and Northern Ireland introduced their own legislation, effectively banning fur farms throughout the UK.<sup>24</sup>

The Fur Farming (Prohibition) Bill makes clear the trend toward animal welfare and the ethical treatment of animals. During debates about fur farms in the United Kingdom in December 2000, Elliot Morley, the Parliamentary Secretary to the (then) Ministry of Agriculture, Fisheries, and Food, stated:

Fur farming is not consistent with the proper value and respect for animal life. This is a moral issue that goes beyond welfare considerations. In the 21st century, animals should not be killed just for the business of stripping their skins off their backs ... In a modern society there should be room for Government to make ethical decisions and it is right and proper for the Government to have introduced this ban.<sup>25</sup>

Elliot Morley then gave the following account of the Government's position:

Morality is important when it comes to the treatment of animals. I shall repeat our view on the morality of fur farming. Fur farming is not consistent with a proper value and respect for animal life. Animal life should not be destroyed in the absence of a sufficient justification in terms of public benefit. Nor should animals be bred for such destruction in the absence of sufficient justification. That is the essence of our argument for applying morality to a Bill of this kind, and for justifying it under article 30 of EU regulations.<sup>26</sup>

Prior to the ban, there had been 11 fur farms in the UK producing about 100,000 pelts annually.<sup>27</sup>

All of the fur farms forced to close under the Act were properly compensated. The Act specified that “[t]he appropriate authority may (and, in the case of the Secretary of State, shall) by order make a scheme for the making of payments by that authority to persons in respect of income and non-income losses incurred by them as a result of ceasing, by reason of the enactment or coming into force of section 1, to carry on their businesses so far as they consist of activities prohibited

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<sup>24</sup> Industry and Trade Summary: Fur Skins, Rose M. Steller, USITC Publication 3666, January 2005.

<sup>25</sup> Elliot Morley, Oral Answers to Questions; Fur Farming (Prohibition) Bill, Hansard col. 40 (May 15, 2000) (available at <http://www.publications.parliament.uk/pa/cm199900/cmhansrd/vo000515/debindx/00515-x.htm>).

<sup>26</sup> Id.

<sup>27</sup> Campaigners hail fur ban bill, *BBC News Online*. 22 November 2000, found at [http://news.bbc.co.uk/2/hi/uk\\_news/politics/1034562.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/1034562.stm)

by that section.”<sup>28</sup> The “scheme shall, in particular, specify— (a)the description or descriptions of income losses and the description or descriptions of non-income losses in respect of which payments are to be made, and (b)the description or descriptions of businesses in respect of which payments are to be made.”<sup>29</sup>

Unfortunately, the U.S. government seems not to agree with this assessment. In fact, no federal laws regulate how the animals on the nearly 400 fur farms in operation in the U.S. are to be housed, cared for, or killed.<sup>30</sup> No federal humane slaughter law protects animals on fur factory farms, and killing methods are gruesome; the fur industry refuses to condemn even blatantly cruel killing methods.

As demonstrated, there has been a growing awareness that there must be legal constraints on the uses to which animals can be put, which the United States should begin to recognize on a federal level. There are now a wide range of measures regulating, or prohibiting, use in almost every aspect of human activity that affects animals, including the use of animals in commercial trade, in farming, in research, in entertainment, and even as domestic companions.<sup>31</sup> Far from being ethically regressive [public disapproval], there is an overwhelming acceptance that these developments are conducive to a civilized society, so much so that even the complete prohibition of certain traditional practices (such as cockfighting and bull baiting) in Britain was attended by no little controversy.<sup>32</sup>

The United Kingdom, joined by Austria, are the two pioneer countries that first passed legislation to fully prohibit the breeding of animals for fur production. Austria has banned fur

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<sup>28</sup> Fur Farming (Prohibition) Act 2000, found at <http://www.legislation.gov.uk/ukpga/2000/33/section/5>

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> See e.g. Kevin Dolan, *Laboratory Animal Law* (Blackwell Sci. 2001) (providing an overview of the legal obligations to animals used in research)

<sup>32</sup> Id.

farming in six of the nine Austrian federal states and in the remaining three there are such strict welfare regulations, particularly in relation to the availability of water for swimming, that fur farming is no longer economically viable.<sup>33</sup> The Netherlands decided to ban fox farming in 1995, and all fox fur production ceased by April 1, 2008.<sup>34</sup> Production of fox and chinchilla fur was banned in the Netherlands in 1995 and 1997, respectively.<sup>35</sup> The Senate? voted in favor of a ban on mink fur farming. The ban will come into force in 2024, which means that by that date, there is no more fur farming in the Netherlands. According to a press release on December 12, 2012, “[w]ith 6 million minks per year, the Netherlands is Europe’s third-largest producer of mink pelts, after Denmark and China China is not in Europe?. The political discussion about a ban on mink fur farming started in 1999. A proposal to ban it by 2018 was accepted by the House of Representatives?, but did not get a majority in the Senate. The main argument against the ban was the financial problems it would cause the farmers. Therefore, the original law proposal was changed to go into force in 2024, and provides a financial compensation of the demolition costs of 28 million euro for the farmers.”<sup>36</sup>

Although it is the world’s largest fur producer, Denmark recognized the inherent welfare problems associated with raising foxes in captivity and consequently prohibited fox farming in 2009.<sup>37</sup> The Danish ban does, however, include a phase-out period for fox producers. In 2005, the Swedish Agricultural Minister announced that stringent new welfare standards for keeping

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<sup>33</sup> Animal Law: what VGT has achieved in Austria!, Association against Animal Factories, found at [http://www.vgt.at/publikationen/texte/artikel/20071211AustrianLaw/index\\_en.php](http://www.vgt.at/publikationen/texte/artikel/20071211AustrianLaw/index_en.php)

<sup>34</sup> The Netherlands ban on fox and chinchilla fur and fur-related products, International Trade Administration, found at <http://web.ita.doc.gov/otexa/hotiss.nsf/68b2d3c855f32245852574160059deff/dfddc752720c994585257a0800635e7f?OpenDocument>

<sup>35</sup> Id.

<sup>36</sup> The Netherlands Decides to Ban Mink Fur Farming, Born Free Press Releases, found at <http://www.bornfreeusa.org/press.php?p=3524&more=1>; Born Free USA is a nationally recognized leader in animal welfare and wildlife conservation. Through litigation, legislation and public education, Born Free USA leads vital campaigns in support of animal welfare; Senators back fur farming ban, Dutch News, found at [www.dutchnews.nl/news/archives/2012/12/senators\\_back\\_fur\\_farming\\_ban.php](http://www.dutchnews.nl/news/archives/2012/12/senators_back_fur_farming_ban.php)

<sup>37</sup> Id.

mink would be introduced into its? Animal Welfare Act.<sup>38</sup> Sweden had effectively ended fox farming in 1995 through an amendment to its Animal Protection Ordinance?, which required that foxes be kept in such a way that they can engage in natural behaviors, such as digging. This legislative change rendered fox farming economically unviable, hence a large majority of Swedish fox farms were closed by 2000.<sup>39</sup>

While it is true that a large amount of fur in the United States is imported, banning domestic fur farming would achieve the goal of significantly impede? the progress of the industry. As more and more countries are issuing bans on fur farming, there will be less fur to trade around the world. Originally, the EU had been the producer of 63% of global mink and 70% of fox.<sup>40</sup> Now, as bans continue to spread?, they leave the U.S. and Asia to produce the majority of fur. Issuing a federal ban in the United States would eliminate one of the two remaining big producers. Unfortunately for the millions of farmed animals and for U.S. society, currently, no such ban appears to be on the horizon in the United States.

### III. CURRENT FUR FARMING LAWS IN THE UNITED STATES

The number of mink farms in the United States declined from 438 in 1998 to 318 in 2002, in other words, by 27 percent.<sup>41</sup> According to the latest NASS report, US mink farms produced 2.82 million pelts in 2010, down 2% from 2.86 million the year before, and at the same level as 2008. The largest crop this century was the 2.87 million pelts harvested in 2006.

Between 2001 and 2010, annual output averaged 2.71 million. The 3 million mark was last

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<sup>38</sup> The Animal Welfare Act, The Animal Welfare Ordinance, Government Offices of Sweden, found at <http://www.government.se/sb/d/10158/a/90310>

<sup>39</sup> Committee on Agriculture and Rural Development. Archive.niassembly.gov.uk., found at <http://archive.niassembly.gov.uk/agriculture/reports/report03-01rD.htm>, retrieved on 2012-05-10.

<sup>40</sup> US Mink: State of the Industry – 2011. Furcommission.com. Retrieved on May 10, 2010.

<sup>41</sup> USDA, National Agricultural Statistics Service (NASS), Mink, various issues. Not proper cite

achieved back in 1991. The biggest crop ever was in 1989, at 4.60 million pelts, but given that today's farmed mink are considerably larger than just two decades ago, in terms of pelt area produced, US mink farmers are about as productive as they have ever been two decades ago?.

The number of mink farms that also raised fox in 2002 totaled 20,?? down by 13 percent from 1998.<sup>42</sup> In 2002, Utah had 80 farms followed by Wisconsin with 69 farms and Minnesota with 33.<sup>43</sup> Numbers don't add up!The size of these operations can vary significantly, from a few dozen breeding pairs to thousands of animals. The average U.S. mink farm consists of 800 females and 160 males.<sup>44</sup> Most U.S. mink farms or ranches are usually small, family- owned businesses.

In the United States, mink standards are administered by the FCUSA and fox by the U.S. Fox Shippers Council.<sup>45</sup> According to the Fur Commission USA (FCUSA),<sup>46</sup> the raising of fur-bearing animals involves "good husbandry and humane farm management practices," as sound genetics and quality feed programs are necessary to ensure optimal growth and production of top quality pelts.<sup>47</sup> However, there is a lack of clear definition on what those terms actually mean, and therefore any regulation on the fur farming industry has been hard to enforce and often overlooked.fn? Because there currently only exist ambiguous standards on what a good fur farm should involve, the laws have allowed farmers too much discretion and freedom.

In the United States, there is currently no federal regulation governing how animals on fur farms are to be housed or killed, since animals raised for fur are not covered under the federal

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<sup>42</sup> Id.

<sup>43</sup> US Mink – State of the Industry, found at <http://www.furcommission.com/us-mink-state-of-the-industry-2011>, retrieved June 11, 2011.

<sup>44</sup> Id.

<sup>45</sup> FCUSA, "Fur Facts," found at <http://www.furcommission.com/farming/pelts.htm>, retrieved Apr. 30, 2003.

<sup>46</sup> Fur Commission USA is a non-profit trade association representing over 400 farming families working on close to 300 farms in about two dozen states. These farmers market over 3 million of the world's finest mink pelts annually, valued at over \$290 million a year at auction.

<sup>47</sup> Fur Farming in North America, Fur Commission USA, found at <http://www.furcommission.com/welfare/animal-welfare-v-animal-rights/>

Animal Welfare Act. Additionally, the slaughter of furbearing animals is also not covered by the Federal Humane Slaughter Act.<sup>fn?</sup> Furthermore, slaughter of fur-farmed animals typically takes place on the farm, and therefore equipment and methods used are not regulated by any federal agency. Though several states have imposed individual guidelines overseeing the quality of life on fur farms, their guidelines are often vague and lacking in many aspects.

For example, in Idaho, fur farming is deemed an agricultural pursuit and its Department of Agriculture “division of animal industries” has the authority to inspect fur farms at anytime. However, no regulations exist to tell famers exactly how they must maintain the farm, and the number of existing farms is unknown since no license is required to keep a fur farm in that state.<sup>48</sup> With respect to disease, the fur farms may possess or import any domestic fur bearing animals with a certificate of veterinary inspection, and domestic fur-bearing animals may be sold, traded, bartered or exchanged between fur farms.<sup>49</sup> However, the animals are rarely, if ever, brought to a veterinarian after the initial check-up, and often contract diseases that they carry with them after they have been on a farm.<sup>fn?</sup>

In Illinois, those farms breeding mink and fox are exempt from the requirement to obtain a furbearing mammal breeder license from its Department of Natural Resources if “(1) they are deemed as farmers for Federal income tax purposes, and (2) at least 20 percent of their gross farm income as reported on Federal tax form Schedule F (Form 1040) for the previous year is generated from the sale of mink, red fox or arctic fox as live animals, pelt or carcasses.”<sup>50</sup> This statute creates loopholes for fur farmers to avoid being subjected to any type of inspection or regulation. And in Montana, fox and minx are specifically exempted from the fur farm-licensing

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<sup>48</sup> Idaho Code Ann. § 18-7040

<sup>49</sup> Id.

<sup>50</sup> 720 Ill. Comp. Stat. Ann. 215/4

requirement; in that state, the Department of Fish, Wildlife and Parks only periodically inspects farms raising animals such as otters, lynx, and beavers.<sup>51</sup>

While many states have anti-cruelty statutes, most of them specifically exempt customary or accepted farming practices.<sup>52</sup> Also, the current laws that do exist are very vague when dealing with the concepts of animal “welfare”, “suffering”, “needs” or “necessary” pain, especially when it comes to fur farming.<sup>53</sup> Seen in both the statutes of various states and Canada, codes and statutes often merely make “suggestions” and set standards in very ambiguous ways. For example, Canada has had a Recommended Code of Practice for the Care and Handling of Mink and a Recommended Code of Practice for the Care and Handling of Fox since as early as 1988, but Canada’s fur industry is still responsible for the death of about two million animals each year.<sup>54</sup> With language like, “*It is advisable* to construct a protective fence around the perimeter of the area where the mink are housed,” and “A sufficient quantity of food should be given at all times to ensure the health and well-being of the mink,” it is no surprise that the Code has no force of law.<sup>55</sup> While these laws set commonly acceptable principles about animal protection, they also leave wide margins for subjective interpretations, and when the farmers’ main objective is always to make money, room for discretion is dangerous. These margins are then used both by fur farmers to justify their practice and by animal right associations to justify their opposition.

Although there are clear legislative trends that can be identified among the fifty US states?, at the same time, there is much variation among these state laws. States differ with respect to how they define key concepts such as “animal” and “animal facility,” the industries

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<sup>51</sup> Mont. Code Ann. § 81-30-103.

<sup>52</sup> Id.

<sup>53</sup> Ariz. Rev. Stat. Ann. § 13-2301(C)(2); Fla. Stat. Ann. § 828.41(1)(b); N.H. Rev. Stat. Ann. § 644:8-e(III)(a)(2); Ohio Rev. Code Ann. § 2923.31(O); Utah Code Ann. § 76-6-110(1)(a)(iii).

<sup>54</sup> Fur Factory Farming, Global Action Network, found at <http://www.gan.ca/campaigns/fur+trade/factsheets/fur+factory+farming.en.html> (last visited??)

<sup>55</sup> Recommended Code of Practice for the Care and Handling of Mink, found at [www.nfacc.ca/pdfs/codes/Mink%20Code%20of%20Practice.pdf](http://www.nfacc.ca/pdfs/codes/Mink%20Code%20of%20Practice.pdf)

and animal uses they protect, the behaviors they proscribe and punish, and the punishments and remedies they permit. It is this ambiguity that a federally issued ban could correct.

#### IV. OPPOSITION TO FUR FARMING IN THE UNITED STATES

The recent developments in European countries have been supported philosophically by a growing sense of public morality. More specifically, there appears to be a growing realization that society has a clear stake in safeguarding animals from acts of cruelty. Not only is it morally wrong to make helplessly innocent animals suffer to the extents they do on a fur farm, but humanity may also benefit [how so?] from living in a society where such selfish cruelty is not condoned behavior. The realization that we have an ethical duty to all living creatures is one that everybody should come to. Beginning with animals, society would undoubtedly benefit from a practice of reducing the amount of pain and suffering that we as human beings can, and do, inflict on other living things [how so?]. From the developments in countries like England, the direction of progress development in this area is becoming obvious; there is growing support for the proposition that fur farming is unethical and it is time for the cruelty to stop. The ethical arguments that spurred an abolition of fur farms in the European countries undoubtedly would justify similar legislation in the United States.

In support of this position, we should first take a look at the many previous attempts at legislation in defining animal cruelty, which is uniformly prohibited in the United States. Animal cruelty has been defined as “[t]he infliction of physical pain, suffering, or death upon an animal, when not necessary for purposes of training or discipline or (in the case of death) to procure food or to release the animal from incurable suffering, but done wantonly, for mere sport, for the

indulgence of a cruel and vindictive temper, or with reckless indifference to its pain.”<sup>56</sup> This definition effectively notes that pain in excess of that needed for discipline is always unwarranted. Included in other definitions of cruelty are often physical acts, such as beating, kicking, hitting, stabbing, and so on.<sup>57</sup> Such definitions reflect the ever more popular the idea that animals could be harmed solely, or principally, by the infliction of adverse physical activity. However, given our current understanding of animals, specifically of their mental states and behavioral needs, a much wider definition of harm is now necessary than was previously developed through simple appeals to physical cruelty. The same should apply to pain and physical injury an animal is forced to inflict upon themselves because of the lifestyle human beings are subjecting them to. We now know that animals can be harmed, sometimes severely, in a range of other ways: for example, by subjection to unsuitable environments where their basic behavioral needs are frustrated.fn?

Fur farming is the perfect illustration of harms that go beyond just a person physically kicking or punching an animal. In preparation for issuing the ban on fur farming, the United Kingdom Government's own advisory body, the Farm Animal Welfare Council (FAWC), made public its disapproval of mink and fox farming in 1989.<sup>58</sup> Its judgment makes clear the particular cruelties in subjecting essentially wild animals to intensive farming:

Mink and fox have been bred in captivity for only about 50-60 generations and the [FAWC] is particularly concerned about the keeping of what are essentially wild animals in small barren cages. The [FAWC] believes that the systems employed in the farming of mink and fox do not satisfy some of the most basic criteria which it has identified for protecting the welfare of farm animals. The current cages used for fur farming do not appear to provide appropriate comfort or

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<sup>56</sup> State v. Avery, 44 N. H. 302; Paine v. Bergh, 1 City CL R. (N. Y.) 100 not proper cites

<sup>57</sup> See e.g. Simon Brooman & Debbie Legge, Law Relating to Animals 46-47 (Cavendish Publ. Ltd. 1997) (discussing the pioneering Protection of Animals Act 1911 in the United Kingdom).

<sup>58</sup> Press Notice, FAWC, Farm Animal Welfare Council Disapproves of Mink and Fox Farming (Apr. 4, 1989)

shelter, and do not allow the animals freedom to display most normal patterns of behaviour.<sup>59</sup>

This strong position has been subsequently confirmed by further scientific research. A comprehensive review of the welfare of farmed mink in 1999, undertaken by Professor D. M. Broom, Professor of Animal Welfare at the University of Cambridge, and his colleague, A. J. Nimon of the Department of Clinical Veterinary Medicine, concluded that “the high level and pervasiveness of stereotypies among farmed mink, and the incidence of fur chewing and even self-mutilation of tail tissue, suggest that farmed mink welfare is not good. Stereotypes? are associated with negative consequences such as slower kit growth, and higher levels of feed intake without an increase in growth.”<sup>60</sup> A further study, published in 2001 by the same authors in relation to the welfare of farmed foxes, concluded:

Research on fox welfare in relation to housing shows that farmed foxes have a considerable degree of fear, both of humans and in general, that the barrenness of the cages is a significant problem for the foxes, and that farmed foxes can have substantial reproduction problems. There is clear evidence that the welfare of farmed foxes in the typical bare, wire-mesh cages is very poor.<sup>61</sup>

In the light of this research, it is difficult to assert? that fur farming does not impose suffering on animals, though it does not come in the form of traditional direct infliction of physical cruelty. The issue is not whether direct, physical pain is inflicted upon such animals. Rather, it is that the confinement of wild creatures in barren, sterile enclosures where their behavioral needs cannot be adequately met, and? involves the kinds of deprivation that inevitably result in the infliction of cruelty in the form of self-inflicted injuries. Such forms of confinement cannot by their nature be made “animal-friendly”; no captive environment can adequately

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<sup>59</sup> Id. at 1.

<sup>60</sup> A. J. Nimon & D. M. Broom, *The Welfare of Farmed Mink (Mustela Vison) in Relation to Housing and Management: A Review*, 8 *Animal Welfare* 205, 222 (1999).

<sup>61</sup> A. J. Nimon & D. M. Broom, *The Welfare of Farmed Foxes Vulpes Vulpes and Alopex Lagopus in Relation to Housing and Management: A Review*, 10 *Animal Welfare* 223, 241-42 (2001).

facilitate the full range of social and behavioral needs that are essential to the well-being of such creatures. The worst aspects of fur farming may conceivably be ameliorated by some environmental improvements, but no reform can eradicate the suffering inherent in farming animals for their fur.

Furthermore, we must acknowledge the growing ethical concerns that revolve around the practice of animal farming.

[I]n such farming we keep essentially wild animals captive and make them subservient to our purposes; we frustrate their basic behavioral needs, and we kill them in a frequently inhumane way (through, for example, gassing, neck-breaking, suffocation, or anal electrocution). We do all this even though these animals have not harmed us and do not pose any threat to our life or well-being. They cannot “assent” to their maltreatment, or even vocalize their own interests. Theirs is a state of moral innocence; they are without the means of defense, and are wholly vulnerable. In short, we have made them entirely dependent upon us; they deserve, as a matter of justice, special moral solicitude.<sup>62</sup>

As Professor Andrew Linzey further puts it, “[the animals’] sheer vulnerability, their inability to articulate their needs, and their moral innocence compels us to insist that they be treated with special care and protected from exploitation.”<sup>63</sup>

Another ethical factor that promotes change in our views on fur farming is the unquestionable fact that the law has a specific role in protecting the helpless and vulnerable. Not only should the brutal keeping and killing of animals for their skins tug at one’s heart and stir up ethical concerns in an individual, but it has been widely acknowledged by the courts and the government as well. Courts have continued to welcome [how do we know they welcome?] a range of legislative measures that grant specific protection to those who are easily abused and

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<sup>62</sup> The Revd Professor Andrew Linzey, The Ethical Case for European Legislation Against Fur Farming, 13 Animal L. 147, 155 (2006)

<sup>63</sup> Id.

exploited.<sup>64</sup> The notion then that there is a legitimate social or public interest in limiting animal suffering has a long history. There is a benevolent motivation behind socially progressive legislation that some would hold to be the proper function of law, namely to defend the innocent and defenseless.

As noted by many scholars, it is held that suffering can sometimes, though very rarely, be justified if it can be shown to be necessarily inflicted, or if there would be sufficient benefit and if the end result cannot be achieved by other means and “to show that something is necessary requires more than a simple appeal to what is fashionable, or even desirable.”<sup>65</sup> In order to prove necessity, one must be able to show that the essential good was procured in the only way possible.<sup>66</sup> Holding fur farming to this standard makes it immediately obvious that fur farming fails the basic moral test. First of all, the wearing of fur is a luxury, far from being an essential good. While furs may be viewed as fashionable, desirable, and a sign of status, it cannot reasonably be deemed an essential. It is obviously unjustifiable to inflict suffering on animals for such a non-essential, trivial end, such as being fashionable. Especially considering the abundance of faux-fur fabrics available today, there is no excuse for purchasing clothes that are made from fur or that contain any fur trim.fn [should probe deeper into availability of fake fur]

In addition to animal rights and ethical issues involving fur farms, there is concern that the entire fur industry, including farming, trapping, and pelt processing, also detrimentally impacts the environment. The Humane Society of the United States ("HSUS") notes that the devastating environmental effects of the industry are evident in several key areas including air

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<sup>64</sup> See e.g. Kevin Dolan, *Laboratory Animal Law* (Blackwell Sci. 2001) (providing an overview of the legal obligations to animals used in research).

<sup>65</sup> The Rev'd Professor Andrew Linzey, *The Ethical Case for European Legislation Against Fur Farming*, 13 *Animal L.* 147, 155 (2006). Improper cite—don't repeat full citations

<sup>66</sup> Gary L. Francione, *Animals--Property or Persons?* in *Animal Rights: Current Debates and New Directions* 108, 115-16 (Cass R. Sunstein & Martha Nussbaum eds., Oxford U. Press 2004) (describing how hunting, fur production, and cosmetic animal testing cause suffering that is ultimately unnecessary).

and water pollution, damaged ecosystems, inefficient energy use, and fur's unnatural character.<sup>67</sup> As mentioned earlier, fur producers' primary goal in running their operations is increasing profits, often at the expense of animal welfare and the surrounding environment. People for the Ethical Treatment of Animals ("PETA") suggests that "each mink skinned by fur farmers produces 44 pounds of feces" in its lifetime, totaling over a million pounds of waste every year on mink farms alone.<sup>68</sup> This waste can produce hazardous byproducts often including uncontrollable amounts of phosphorous and nitrates.<sup>69</sup> Likewise, the processing of fur and disposal of carcasses also contribute to air pollution, as incineration releases air pollutants such as carbon monoxide and nitrogen oxides, among others.<sup>70</sup>

Specifically, treating fur often involves the use of chemicals that are toxic to humans, such as formaldehyde and chromium.<sup>71</sup> The National Cancer Institute notes that the Environmental Protection Agency ("EPA") has

designated formaldehyde as a probable human carcinogen. Likewise, the Agency for Toxic Substances and Disease Registry recognized that chromium has differing effects depending on exposure levels, but can cause respiratory problems. Further chemical byproducts of the processing of fur include ammonia, chlorine, and sulfuric acid. Although not normally as dangerous as the other chemicals, ammonia can cause eye irritation or even death at high levels. This is all indicative of the fur industry's potential to contribute to air pollution; however, air pollution is only one harmful consequence of fur farming and fur production.<sup>72</sup>

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<sup>67</sup> The Humane Soc'y of the U.S., Toxic Fur: The Impacts of Fur Production on the Environment and the Risks to Human Health (2009) [hereinafter Toxic Fur], <http://www.humanesociety.org/assets/pdfs/fur/toxic-fur-January-22-2009.pdf>.

<sup>68</sup> Wool, Fur and Leather: Hazardous to the Environment, PETA.org, [hereinafter PETA Factsheet] [http://www.peta.org/mc/Factsheet\\_display.asp?ID=146](http://www.peta.org/mc/Factsheet_display.asp?ID=146).

<sup>69</sup> Id.

<sup>70</sup> Id.

<sup>71</sup> The Humane Soc'y of the U.S., Toxic Fur: The Impacts of Fur Production on the Environment and the Risks to Human Health (2009) [hereinafter Toxic Fur], <http://www.humanesociety.org/assets/pdfs/fur/toxic-fur-january-22-2009.pdf>. improper cite

<sup>72</sup> Drop Dead Stylish: Mitigating Environmental Impact of Fur Production Through Consumer Protection in the Truth in Fur Labeling Act of 2010, 19 Penn St. Envtl. L. Rev. 267, 270 (2011). Who wrote?

Additionally, the fur industry is also a potential contributor to water pollution. Fur farming creates a substantial risk of polluting surrounding environments through rainwater runoff of chemicals, which can endanger local human water supplies, as well as animal and plant populations, and feces which contain nitrates, phosphates and other chemicals, which are as toxic to water systems as they are to the air.<sup>73</sup> “In December 1999, for example, the Washington State Department of Ecology fined one mink farmer \$24,000 for polluting ditches that drain into a local creek.<sup>74</sup> The US Environmental Protection Agency has also filed complaints against companies involved in fur production and transportation for illegally generating and disposing of hazardous waste from the processing of pelts.”<sup>75</sup> Soil transforms nitrogen into nitrates, and water that contains nitrates can be hazardous to human health.<sup>76</sup>

## V. TIME FOR CHANGE IN THE UNITED STATES

The awareness brought about by all recent findings should be spurring legislative attempts to limit the infliction of suffering on animals. The need for reform extends not only to the protection of domestic species, but also to farm managed species that are subject to commerce and exploitation. As already noted, the institutionalized use of animals in modern farming has become a major area of concern. An increasing number of people want to move towards a society in which commercial institutions do not routinely and habitually abuse animals. For example, “[a] United Kingdom opinion poll on animal welfare found strong majorities against training animals for circuses (sixty-one percent), keeping veal calves in crates

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<sup>73</sup> The Humane Soc’y of the U.S., *Toxic Fur: The Impacts of Fur Production on the Environment and the Risks to Human Health* (2009) [hereinafter *Toxic Fur*], <http://www.humanesociety.org/assets/pdfs/fur/toxic-fur-january-22-2009.pdf>. improper cite

<sup>74</sup> *Id.*

<sup>75</sup> *Fur: Mean-Not Green*, <http://www.peta.org/issues/animals-used-for-clothing/environmental-hazards-of-fur.aspx>

<sup>76</sup> *Id.*

(seventy-eight percent), hunting foxes for recreation (seventy-two percent), keeping ‘battery’ hens (seventy-two percent), and trapping animals for fur (seventy-six percent).”<sup>77</sup>

The United States has over the past few decades developed labeling laws and other laws that only minimally seek to regulate this fur industry. However, despite the existing legislation, fur farming continues to be a large problem for this country. The most viable solution now is to ban fur farms and fur production in the United States altogether. As we have discussed, European nations have been extremely receptive to this kind of legislative control of fur farming, and there appears no reasons the United States should not follow in England’s righteous footsteps and promulgate an outright ban on fur farming altogether. While it is true that in a democratic society, the risk of disagreement has to be acknowledged, the alternative of not even beginning the political process because of the inevitable risk of inconsistency is not one that should be followed.

Though majorities are not always right and popular sensitivities can be misguided, such considerations should not blind us to the fact that animal protection legislation in a democratic society has always depended, as a last resort, on popular support.<sup>78</sup> In a changing world with developing moral sensitivities, it follows that the law should reflect those changed moral perceptions. In the case of fur farming, opinion polls in the United Kingdom have shown that up to seventy-six percent of the population supports an outright ban on the practice.<sup>79</sup> The movement for the protection of animals needs just that type of public support in order to achieve legislative change. The law is the outward and visible sign of a changed, or changing, moral

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<sup>77</sup> Andrew Linzey, *Animal Gospel: Christian Faith as if Animals Mattered* 137 (Westminster John Knox Press 1998) (citing and discussing a Market Opinion & Research International (MORI) Poll on Animal Welfare from the Daily Telegraph).

<sup>78</sup> See e.g. Cass R. Sunstein, Introduction: What Are Animal Rights? in *Animal Rights: Current Debates and New Directions*, 3, 8 (Cass R. Sunstein & Martha Nussbaum eds., Oxford U. Press 2004) (describing how the balancing of human and animal interests depends on personal values).

<sup>79</sup> ????

consensus. Given such a longstanding consensus in a democratic society, those who wish to frustrate the majority view must provide convincing arguments, and they have yet to do so.

The public should be in a position where they can be confident that animals are treated humanely, and be able to trust that their elected representatives and the public authorities take the issue of public morality seriously. Instead of waiting for the individual states to properly enforce their regulations, which, as we have discussed are not sufficiently adequate to protect against animal cruelty to begin with, it is time for the federal government to act on behalf of the entire country and impose a country-wide ban.

While fur farming proponents may argue that not everything that the public dislikes should be made illegal, they must acknowledge the fact that arguments for prohibition or abolition have been well made. It is also true that changing the law, even if justifiable in terms of preventing abuses, should be used sparingly, especially when abolitionist legislation is proposed. But even if arguments for the prohibition of existing practices should be treated with caution, it does not follow that such arguments cannot be made. Some systems of abuse cannot be reformed, because, although their worst aspects may be ameliorated through regulation, they constitute a moral offense that is so grave and so ingrained that abolition is the only proper course of action.<sup>80</sup> Fur farming is one of these abuses that cannot be reformed. States have tried individually to promulgate regulations that they believed would ameliorate the effects of the practice. Unfortunately, based on inspections and research, it has become clear that the regulations are not sufficient.

## VI. CONCLUSION

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<sup>80</sup> Steven M. Wise, *Animal Rights, One Step at a Time*, in *Animal Rights: Current Debates and New Directions* 19, 21-22 (Cass R. Sunstein & Martha Nussbaum eds., Oxford U. Press 2004).

Even with the handful of countries banning or restricting fur farming, globally, fur-farm production is increasing. This phenomenon can be traced the increased marketing and public acceptance of fur trim. Today, male minks and foxes are killed almost exclusively for use in fur-trimmed accessories such as hats, jacket collars, and ruffs.

The United States should follow the examples set by multiple European countries and abolish fur farming altogether. As discussed, the uses of fur are not essential, and definitely not a legitimate reason to subject animals to such difficulties. A federal ban on the practice altogether would be a step in the right direction, the direction that many countries have already taken, and countless more are headed in. A failure by the US government to create a new law ending fur farming would effectively be the United States turning its back on a long history of progressive anti-cruelty legislation and a struggle to eliminate unjustifiable suffering in our society. It would be to act in ignorance of the knowledge that we have acquired about the sentience and behavioral complexity of the other creatures with whom we share the earth, and constitute a worrying precedent that commercial concerns are immune from public moral sensibility. This evidence speaks to the destructive and unnatural character of the fur industry and its potential to endanger human health, animal welfare and the environment.

Furthermore, there is a need to address environmental concerns in conjunction with animal rights because of the interplay present between the two movements. In short, any system of farming that inherently exposes animals to high levels of suffering for trivial ends cries out for abolitionist legislation. Thus the United States government should issue a federal ban on fur farming.