

# FOIE GRAS'S GOOSE IS COOKED: MEAT PRODUCERS ARE SHOVING FOIE GRAS DOWN OUR THROATS, BUT THE PACT ACT COULD BRING THEM DOWN

Sierra Van Allen\*

## I. INTRODUCTION

The production and consumption of foie gras has long been controversial in the United States because of the force-feeding of ducks and geese on foie gras farms. While there are some federal animal welfare statutes, they have all included exceptions that appear to leave these ducks and geese outside of their protection. Passed in 2019, the federal PACT Act includes one such exception, excluding customary and normal agricultural husbandry. Upon closer look, however, force-feeding to create foie gras may not be “customary” or “normal.” Realizing that force-feeding is not part of this exclusion means that it is an “animal crush” under the PACT Act, making it a federal crime that should be prosecuted by the Department of Justice.

## II. HISTORY

Foie gras is “as rich as butter but, gloriously, will not so quickly melt in your mouth.”<sup>1</sup> A delicacy primarily eaten by the wealthy, this decadent goose or duck liver can cost between forty and eighty dollars per pound.<sup>2</sup> In comparison, the average cost of boneless chicken breast in the United States in January of 2022

---

\* © 2024, Sierra Van Allen, All Rights Reserved. Stetson University College of Law, Juris Doctor Candidate, Class of 2024. University of Arkansas, Bachelor of Arts in International Relations, Class of 2015. Notes and Comments Editor, *Stetson Law Review* 2023–2024.

1. Craig Claiborne, *Foie Gras*, N.Y. TIMES (Oct. 24, 1979), <https://www.nytimes.com/1979/10/24/archives/a-quest-for-the-finest-foie-gras.html>.

2. *Buying Foie Gras*, GOURMET FOOD STORE, <https://www.gourmetfoodstore.com/buying-foie-gras-15159> (last visited Nov. 5, 2023).

was \$3.73 per pound.<sup>3</sup> Despite the steep cost, Americans eat roughly 420 tons of foie gras each year.<sup>4</sup>

Since the 1980s, when foie gras production began in the United States, the dish has proven to be controversial.<sup>5</sup> “Foie gras” is French for “fatty liver.”<sup>6</sup> The piece of meat eaten is a bird’s liver that has become enlarged due to being overworked.<sup>7</sup> While in nature a duck or goose may overeat to store energy for migration, most foie gras is produced by artificially replicating this process through force-feeding.<sup>8</sup> Producers use the “gavage” process multiple times a day, wherein a metal tube is shoved down the birds’ throat and into its stomach, forcing them to consume up to four pounds of grain daily.<sup>9</sup> This immense amount of food strains the liver to the point of hepatic steatosis, commonly known as fatty liver disease.<sup>10</sup>

A luxury ingredient to chefs and a product of cruelty to animal welfare advocates, foie gras has faced continued threats. In 2013, an animal rights group released undercover footage from inside Hudson Valley Foie Gras in New York, depicting the cruelty the ducks face before they are ultimately slaughtered.<sup>11</sup> Abroad, many countries have successfully banned either the production of foie gras, the sale of foie gras, the import of foie gras, or a combination

---

3. *Average Price: Chicken Breast, Boneless (Cost per Pound/453.6 Grams) in U.S. City Average*, FED. RESERVE OF ST. LOUIS: FRED, <https://fred.stlouisfed.org/series/APU0000FF1101> (last visited Nov. 5, 2023).

4. THOMAS J. SHEPSTONE, *THE ECONOMIC IMPORTANCE OF THE NEW YORK STATE FOIE GRAS INDUSTRY*, (Shepstone Mgmt. Co. Plan. & Rsch. Consultants ed. 2004), <http://shepstone.net/wp-content/uploads/2016/08/EconomicReport.pdf>.

5. *What is Foie Gras?*, ANIMAL EQUALITY (Feb. 8, 2022), <https://animalequality.org/blog/2022/02/08/what-is-foie-gras>; *Foie Gras History*, D’ARTAGNAN, <https://www.dartagnan.com/foie-gras-history.html> (last visited Nov. 5, 2023).

6. *Foie Gras History*, *supra* note 5.

7. *Id.*

8. Jessica Loticus, *What is Foie Gras and Why Is It Inhumane?*, THAT WAS VEGAN? (Nov. 16, 2020), <https://www.thatwasvegan.com/2020/11/16/what-is-foie-gras-and-why-is-it-inhumane/>.

9. ANIMAL EQUALITY, *supra* note 5.

10. Warren Skippon, *The Animal Health and Welfare Consequences of Foie Gras Production*, 54 *CANADIAN VETERINARY J.* 403, 403 (2013). Hepatic Steatosis can cause organ failure and can cause the liver to grow ten times its natural size.

11. Rachel Tepper, *Undercover Foie Gras Footage Shot at Hudson Valley Foie Gras Alleges Cruel Practices*, HUFFINGTON POST (Dec. 6, 2017), [https://www.huffpost.com/entry/undercover-foie-gras-video-hudson-valley\\_n\\_3429492](https://www.huffpost.com/entry/undercover-foie-gras-video-hudson-valley_n_3429492); *see also* mercyforanimals, *Amazon Cruelty – Mercy for Animals Exposes Suffering Behind Foie Gras*, YOUTUBE (Aug. 30, 2013), [https://www.youtube.com/watch?v=9ECEf0\\_nQcI](https://www.youtube.com/watch?v=9ECEf0_nQcI) (showing the force-feeding process, bloodied and panting ducks, and barrels full of dead ducks).

thereof.<sup>12</sup> Domestically, both the state of California<sup>13</sup> and the city of New York<sup>14</sup> have attempted to ban foie gras, but both have faced legal challenges from producers.<sup>15</sup>

Ban attempts are occurring at the state level because federal animal welfare statutes contain exceptions that exclude foie gras production from their protection.<sup>16</sup> The Preventing Animal Cruelty and Torture Act (“PACT Act”), however, could be interpreted in a way that renders the force-feeding utilized in foie gras production federally illegal.<sup>17</sup> Though the PACT Act is a criminal statute that does not permit citizen suits, the plain language of the statute indicates that the pain inflicted on birds during force-feeding is a covered illegal act.<sup>18</sup> U.S. producers of foie gras should be made to comply with the PACT Act and forced to cease inflicting gavage on ducks and geese or otherwise face prosecution.

### III. THE LEGALITY OF FOIE GRAS IN THE UNITED STATES

Foie gras production likely originated in ancient Egypt.<sup>19</sup> Since then, France has emerged as the leading producer of foie gras, producing over six times the amount of foie gras as the next leading producer in 2020.<sup>20</sup> While the United States is not a worldwide leader of foie gras production, the practice remains legal across the country with few exclusions. The vast majority of foie gras produced in the United States comes from just two farms:

---

12. *What is Foie Gras, Why Is it Cruel, and Where Is it Banned?*, SINERGIA ANIMAL, <https://www.sinergiaanimalinternational.org/single-post/what-is-foie-gras> (last visited Nov. 5, 2023) (listing the countries that have fully or partially banned foie gras).

13. CAL. HEALTH & SAFETY CODE §§ 25980–84 (2004).

14. N.Y.C., N.Y., ADMIN. CODE §§ 17-1901–03 (2019).

15. *See* Association des Éleveurs de Canards et d'Oies du Québec v. Harris, 79 F.Supp.3d 1136 (C.D. Cal. 2015); *see also* Verified Complaint, La Belle Farm, Inc., v. City of New York, No. 0656399-2022, 2022 WL 2067632 (N.Y. Sup. May 20, 2022).

16. *See* Transportation of Animals (The Twenty-Eight Hour Law) 49 U.S.C. § 80502 (2018); Twenty-Eight Hour Law Annotated of 1906, ch. 3594, § 607, 34 Stat. 7, 13 (Government Printing Office, 1909); *see also* Humane Methods of Livestock Slaughter Act, 7 U.S.C. § 1902(a) (2018); *see also* 7 U.S.C. § 2132(g) (2018).

17. 18 U.S.C. § 48 (2018).

18. *Id.*

19. *A Short History of Foie Gras*, WALL ST. J. (May 31, 2008, 12:01 AM), <https://www.wsj.com/articles/SB121207726422829649>.

20. Eloise Trendera, *Volume of Foie Gras Produced Worldwide Between 2013 and 2020, by Country*, STATISTA (Feb. 8, 2022), <https://www.statista.com/statistics/1232694/evolution-world-foie-gras-production/> (depicting a graph that shows France produced 14,266 tons and Hungary produced 2,147 tons of foie gras in 2020).

Hudson Valley Foie Gras and La Belle Farm, both located in Sullivan County, New York.<sup>21</sup>

Although the United States does have some federal animal welfare laws, foie gras production has managed to escape abolition because of exceptions included in these statutes, either specifically exempting birds or farm animals altogether. Without a federal ban, cities and states must ban foie gras locally if they wish to do so. Despite the efforts of animal welfare groups and animal-lovers, the two main producers of U.S. foie gras have remained largely unaffected and foie gras remains legal in a majority of the country.

#### A. Bird Exclusion in Federal Animal Welfare Statutes

The United States has enacted some major animal welfare statutes that criminalize harming animals, but birds have predominantly been excluded from their protection. The reason for their exclusion is not articulated in the statutes. It may be because the birds are being used as food,<sup>22</sup> because they are perceived as

---

21. Marina Bolotnikova, *Is Foie Gras Really Any Worse Than Factory Farmed Meat?*, GRID (June 22, 2022, 11:39 AM), <https://www.grid.news/story/politics/2022/06/11/scofflaw-chefs-and-litigious-farmers-will-new-yorks-foie-gras-ban-make-a-difference/>. In 2003, New York foie gras farms—namely Hudson Valley Foie Gras and La Belle Farm—accounted for 71% of the United States foie gras market. SHEPSTONE, *supra* note 4. As of 2020, Hudson Valley Foie Gras sold around \$28 million in foie gras yearly and La Belle Farm sold around \$10 million in foie gras yearly. John Leland, *A Luxury Dish Is Banned, and a Rural County Reels*, N.Y. TIMES (Jan. 17, 2020), <https://www.nytimes.com/2020/01/17/nyregion/foie-gras-farmers.html>.

22. *Farm Animal Protection FAQ*, THE HUMANE SOC'Y OF THE U.S., <https://www.humanesociety.org/resources/farm-animal-protection-faq> (last visited Nov. 5, 2023) (stating that “there are no federal animal welfare laws regulating the treatment of the billions of ‘food animals’ while they’re on the farm”); *see also* Andrew Chamings, *California’s Controversial Animal Cruelty ‘Bacon Law’ Heading to the Supreme Court*, SFGATE (Mar. 28, 2022), <https://www.sfgate.com/politics/article/California-pigs-bacon-bill-heads-to-Supreme-Court-17034385.php> (detailing challenge to California’s “bacon ban” that requires pigs raised for food be kept in enclosures big enough for them to stand up and turn around).

less intelligent than other animals,<sup>23</sup> or because they are simply not as cute as the animals Americans want to protect.<sup>24</sup>

The few federal animal welfare statutes that do, or did at one time, protect birds have never applied to birds raised for food. In 1918, a federal law was passed that prohibited trapping or killing United States-owned homing pigeons, but the law was later repealed as it became unnecessary.<sup>25</sup> The Migratory Bird Treaty Act prohibits the taking, killing, or possessing of migratory birds in the United States that are in danger of going extinct.<sup>26</sup> A section of the Animal Welfare Act prohibiting animal fighting bans cockfighting.<sup>27</sup> Apart from these rare examples, birds have generally been excluded from federal animal protection laws.

---

23. Lori Marino, *Thinking Chickens: A Review of Cognition, Emotion, and Behavior in the Domestic Chicken*, NAT'L CTR. FOR BIOTECHNOLOGY INFO. (Jan. 2, 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5306232/> (stating that “[c]hickens are misperceived as lacking most of the psychological characteristics we recognize in other intelligent animals”); *Sentience in Farm Animals: Ducks*, THINK DIFFERENTLY ABOUT SHEEP, <http://thinkdifferentlyaboutsheep.weebly.com/sentience-in-farm-animals-ducks.html> (last visited Nov. 5, 2023) (claiming that ducks are “sentient, with the ability to feel pain, experience emotion, capable of compassion, intelligent and aware of themselves and their environment”).

24. Tom Chao, *The 500 Cutest Animals*, LIVE SCI. (Apr. 1, 2011), <https://www.livescience.com/13524-500-cutest-animals-list.html> (Ranking animals by cuteness, with the domesticated duck ranked number 416 and no geese listed. Meanwhile, there are five different kinds of pigs listed, a cow ranked number 297, and three goats listed. The top-ranking spots are all reserved for mammals.).

25. Robert Brammer, *The Legal History of Pigeons*, LIBR. OF CONG. (Sep. 15, 2021), <https://blogs.loc.gov/law/2021/09/the-legal-history-of-pigeons> (explaining that the law protecting homing pigeons was enacted due to the pigeons’ use as communicators during the first and second World Wars); see also *Carrier Pigeons*, NAT'L MUSEUM OF THE U.S. NAVY, <https://www.history.navy.mil/content/history/museums/nmusn/explore/photography/wwi/wi-aviation/pigeons.html> (last visited Nov. 5, 2023) (describing a 1917 event wherein carrier pigeons caused the crew of a Navy ship to be rescued at wartime).

26. Migratory Bird Treaty, 16 U.S.C. §§ 703–712 (2018); 50 C.F.R. § 10.13 (2023) (listing each species protected by the Migratory Bird Treaty Act and excluding Moulard and Barbarie ducks); *Our Animals*, HUDSON VALLEY FOIE GRAS, <https://www.hudsonvalleyfoiegras.com/> (last visited Nov. 5, 2023) (showing the two duck species farmed at Hudson Valley Foie Gras, the Moulard and the Hudson Valley duck); *About La Belle Farm*, BALDOR FOOD, <https://www.baldorfood.com/farms/la-belle-farm> (last visited Nov. 5, 2023) (showing the two duck species farmed at La Belle Farm, the Moulard and the Barbarie duck).

27. 7 U.S.C. § 2156 (2018) (outlawing “any person [from] knowingly sponsor[ing] or exhibit[ing] an animal in any animal fighting venture,” and, more specifically, from “[b]uying, selling, delivering, or transporting . . . a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture.”).

### 1. *The Twenty-Eight Hour Law*

The federal Twenty-Eight Hour Law focuses on the welfare of animals being transported. Passed in 1873, the law requires that any vehicle transporting animals unload them, feed them, and provide them with water if they were confined in the vessel for twenty-eight consecutive hours.<sup>28</sup> Although more poultry is consumed annually in the United States than any other meat, birds are entirely excluded from Twenty-Eight Hour Law protection.<sup>29</sup> The law applies to “cattle, sheep, swine, or other animals,” but “other animals” is defined as only including “mules and horses.”<sup>30</sup>

### 2. *Humane Methods of Livestock Slaughter Act*

Enacted in 1958, the Humane Methods of Livestock Slaughter Act requires that animals used for food be slaughtered “humane[ly].”<sup>31</sup> This means that the animal must either be rendered insensible to pain prior to slaughter or be slaughtered with a single blow prior to being “shackled, hoisted, thrown, cast, or cut.”<sup>32</sup> This statute specifically applies to “cattle, calves, horses, mules, sheep, swine, and other livestock.”<sup>33</sup> “Livestock” is further defined as “cattle, sheep, swine, goat, horse, mule, or other

---

28. 49 U.S.C. § 80502 (2018).

29. *Poultry Sector at a Glance*, U.S. DEPT OF AGRIC.: ECON. RSCH. SERV. (June 1, 2023), <https://www.ers.usda.gov/topics/animal-products/poultry-eggs/sector-at-a-glance/> (reporting that U.S. poultry sales have outperformed red meat sales since 2015).

30. 49 U.S.C. § 80502 (2018); *Twenty-Eight Hour Law Annotated of 1906*, ch. 3594, § 607, 34 Stat. 7, 13 (Government Printing Office, 1909) (defining “other animals” in the 1906 version of the law, where the most recent version of the law fails to provide this definition).

31. *Humane Methods of Livestock Slaughter Act*, Pub. L. 85-765, 72 Stat. 862 (1958) (current version at 7 U.S.C. §§ 1901–1907 (2018)).

32. 7 U.S.C. § 1902(a) (2018); *see also* *Humane Methods of Slaughter Act of 1977: Hearing on H.R. 3367 Before the Subcomm. on Livestock and Grains of the H. Comm. On Agriculture, 95th Cong. 10, 15 (1978)*. In this hearing, witness, rancher, and livestock slaughter facility designer, Temple Grandin, testified that it was then common practice to shackle and hoist cattle while they were fully conscious, describing a plant where “up to five live steers would be shackled at once and sometimes they hung for five to ten minutes bellowing and kicking before being slaughtered,” noting that their screams could be heard all the way in the plant’s parking lot. *Id.* Cows’ legs were often broken or dislocated, and their pelvises were often split during this process. *Id.*

33. 7 U.S.C. § 1902 (2018).

equine.”<sup>34</sup> An equine is a member of the horse family.<sup>35</sup> Birds are completely excluded from the Humane Methods of Livestock Slaughter Act and can legally be slaughtered inhumanely. It is therefore typical for poultry to be shackled and hung upside down without first being stunned.<sup>36</sup>

### 3. *Animal Welfare Act*

The Animal Welfare Act was enacted in 1966 to ensure the humane treatment of animals.<sup>37</sup> This statute also fails to provide protection for any birds. Though Congress found it “essential to regulate . . . the transportation, purchase, sale, housing, care, handling, and treatment of animals,” it was not deemed essential to regulate the treatment of farm animals.<sup>38</sup> The statute explicitly excludes not only all farm animals, livestock, or poultry intended for use as food, but also excludes birds bred for use in research.<sup>39</sup> Had this statute not prioritized pets over other species and left farm animals unprotected, it may have prevented the force-feeding of ducks and geese used to make foie gras.<sup>40</sup> The Animal Welfare Act is a good example of disfavoring protections for animals used for food. This statute *does* protect roosters used for cockfighting, even though they are birds, likely because they are not eaten.<sup>41</sup>

### 4. *Preventing Animal Cruelty and Torture Act*

The newest of these federal animal welfare statutes is the Preventing Animal Cruelty and Torture Act (“PACT Act”). In 1999, the first version of the PACT Act was enacted, titled “the Depiction

---

34. 9 C.F.R. § 301.2 (2019).

35. *Equine*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/equine> (last visited Nov. 5, 2023).

36. *Poultry Slaughter and Evisceration*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://medbox.iab.me/modules/en-cdc/www.cdc.gov/niosh/topics/poultry/slaughter.html> (last visited Nov. 1, 2023).

37. Animal Welfare Act of 1966, Pub. L. 89-544, 80 Stat. 350 (current version at 7 U.S.C. § 2131 (2018)).

38. *Id.*

39. 7 U.S.C. § 2132 (2018).

40. When the Animal Welfare Act was first enacted in 1966, it focused entirely on cats, dogs, and certain laboratory animals. In 1970, it was amended to include *most* warm-blooded animals, and again in 1976 to include provisions on the treatment of animals during transportation and animal fighting ventures. H.R. REP. NO. 94-801, at 759 (1976).

41. 7 U.S.C. § 2156 (2018); H.R. REP. NO. 94-801, at 759, 761–62 (1976) (discussing amending the Animal Welfare Act to make dogfighting and cockfighting a federal crime, though nearly the entire “Need for Legislation” reasoning focuses on dogfighting).

of Animal Cruelty Statute,” in response to a growing market for animal crush videos.<sup>42</sup> These crush videos circulating the internet were largely sexual in nature, often depicting a woman slowly crushing a rabbit, hamster, cat, or small dog with her bare feet or a high-heeled shoe.<sup>43</sup> This original crush video statute defined the “depiction of animal cruelty” as

[A]ny visual or auditory depiction, including any photograph, motion-picture film, video recording, electronic image, or sound recording of conduct in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed, if such conduct is illegal under Federal law or the law of the State in which the creation, sale, or possession takes place, regardless of whether the maiming, mutilation, torture, wounding, or killing took place in the State.<sup>44</sup>

Despite its effectiveness, the Supreme Court invalidated the statute in April 2010 on First Amendment grounds because the terms “wounding” and “killing” do not necessarily require cruelty and because videos filmed in a state where an act was legal could become illegal when they crossed state borders.<sup>45</sup> The statute was deemed overbroad.<sup>46</sup>

Soon after the Court invalidated the Depiction of Animal Cruelty Statute, animal crush videos began to reemerge for sale on the internet.<sup>47</sup> In response, the more narrowly-drawn Animal Crush Video Prohibition Act was enacted in December 2010.<sup>48</sup> While the new statute again prohibited the creation of the crush videos, it still did not prohibit the underlying acts that were being filmed.<sup>49</sup> Although not a *federal* crime, the underlying act of animal

---

42. H.R. REP. NO. 111-549, at 2 (2010).

43. *Id.*

44. *Id.* at 3.

45. *United States v. Stevens*, 559 U.S. 460, 475 (2010).

46. *Id.* at 482.

47. H.R. REP. NO. 111-549, at 5-6 (2010) (referencing websites that emerged offering custom-made crush videos, wherein the customer could choose their model and their “victim,” as well as non-custom videos showing the crushing of “rabbits, hamsters, mice and pinkies, tortoises, quail, chicken, ducks, frogs, snakes, and cats”).

48. *Preventing Animal Cruelty and Torture (PACT) Act*, ANIMAL WELFARE INST., <https://awionline.org/content/preventing-animal-cruelty-and-torture-pact-act> (last visited Nov. 2, 2023); Statement by the Press Secretary, 2010 WL 4994790.

49. *Preventing Animal Cruelty and Torture (PACT) Act*, *supra* note 48. Although criminal laws are usually created at the state level, from 1994 to 2019, the number of federal criminal statutes increased by thirty-six percent. GianCarlo Canparò, et al., *Count the Code:*



crushing was already illegal in all fifty states at the time of the Act's passing.<sup>50</sup> The Animal Crush Video Prohibition Act focused instead on the circulation of crush videos because finding the perpetrators of the underlying act was often difficult, as the videos typically only showed a woman's legs and feet.<sup>51</sup>

The PACT Act was proposed in 2019 as the "next logical step" to close this loophole and make it federally unlawful to engage in the underlying act of animal crushing, "regardless of whether a video is produced."<sup>52</sup> When signing the PACT Act bill into law, President Trump questioned why the "commonsense" legislation was not passed long ago.<sup>53</sup>

"Animal crushing" is defined broadly in the statute to not only include the crushing described above, but also to include burning, drowning, suffocating, impaling, or otherwise subjecting animals to serious bodily injury.<sup>54</sup> Unlike the other laws mentioned above, the PACT Act *does* specifically include birds as "animals."<sup>55</sup> The law has not been applied to foie gras force-feeding, however, because of what has been interpreted as a farm animal exception. Listed under the statute's exceptions are both "a customary and normal veterinary, agricultural husbandry, or other animal management practice" and "the slaughter of animals for food."<sup>56</sup> While initially these exceptions appear to exclude the ducks and geese used for foie gras from protection, a closer reading shows that force-feeding may actually be prohibited under the law.

---

*Quantifying Federalization of Criminal Statutes*, HERITAGE FOUND. (Jan. 7, 2022), <https://www.heritage.org/crime-and-justice/report/count-the-code-quantifying-federalization-criminal-statutes>.

50. 145 CONG. REC. 25,898 (1999) (statement of Sen. Bachus) ("In every State it is against the law for them to do it, but we cannot identify these people. But we can identify who is selling them.").

51. 145 CONG. REC. 31,217 (1999) (statement of Sen. Smith) ("It has been difficult for enforcement agents to determine when the practice occurred, where it occurred, and who has been involved, since feet and the crushing of the animals are the only images on the video.").

52. 165 CONG. REC. 8356 (2019) (statement of Rep. Deutch) ("This bill today takes the next logical step and criminalizes those acts underlying that crime as well."); *Id.* (2019) (statement of Rep. Axne) ("It strengthens the animal crush video law by prohibiting animal cruelty, regardless of whether a video is produced."); 18 U.S.C. § 48 (2018).

53. Remarks by President Trump in a Signing Ceremony for H.R. 724, the Preventing Animal Cruelty and Torture (PACT) Act, 2019 WL 6318043 (Nov. 25, 2019), at \*1.

54. 18 U.S.C. § 48(f)(1) (2018).

55. *Id.*

56. *Id.* at (d)(1)(A)–(B).

## B. United States Attempts to Ban Foie Gras Force-Feeding

Several states have considered or attempted foie gras bans, but only two bans have both managed to pass and, while certainly under attack, remain current: the state of California and New York City.<sup>57</sup> Because California is the most populous state and New York state is home to the two largest foie gras producers in the country, both bans have been challenged by foie gras farms.

### 1. California's Foie Gras Ban

In 2004, California became the first state to pass a bill banning foie gras. Senate Bill 1520 passed twenty-one to fourteen.<sup>58</sup> California Health and Safety Code Chapter 13.4, titled “Force Fed Birds,” prohibits force-feeding birds “for the purpose of enlarging the bird’s liver beyond normal size.”<sup>59</sup> Not only does the statute prohibit force-feeding in the state, but it also prohibits foie gras from being sold in California if it was produced using force-feeding in *another* state.<sup>60</sup> It is important to note that the statute does not ban the *product* that is foie gras; it bans the *process* of force-feeding to create foie gras. A person who violates the statute can be prosecuted by the district or city attorney where the violation occurred and can be issued a one-thousand-dollar citation for each violation.<sup>61</sup>

Although the bill was passed in 2004, the California state legislature allowed foie gras producers until July 1, 2012—seven and a half years—to come into compliance with the new law before they began enforcement.<sup>62</sup> Despite this lengthy grace period, foie

---

57. Susan Adams, *Legal Rights of Farm Animals*, 40 MD. BAR J. 19, 21 (2007) (stating that in 2007 Connecticut, Illinois, New Jersey, and New York considered legislation to ban foie gras production); Emily Monaco, *The Chicago Ban on Foie Gras Is Long Gone, But the Controversy Isn't*, INSIDE HOOK (June 7, 2022, 7:26 AM), <https://www.insidehook.com/article/food-drink-chicago/chicago-foie-gras> (explaining that Chicago banned foie gras in 2006 but the ban was repealed shortly after in 2008).

58. *SB-1520 Force Fed Birds*, CAL. LEGIS. INFO., [https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill\\_id=200320040SB1520](https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=200320040SB1520) (last visited Nov. 5, 2023).

59. CAL. HEALTH & SAFETY CODE § 25981 (2004).

60. *Id.* § 25982.

61. *Id.* § 25983; see also Reuters Staff, *Foie Gras Off Amazon.com's Menu in California After Settlement*, THOMSON REUTERS (Dec. 7, 2018, 7:49 PM), <https://www.reuters.com/article/us-amazon-com-california-foie-gras/foie-gras-off-amazon-coms-menu-in-california-after-settlement-idUSKBN1O7016> (stating that Amazon paid \$100,000 in penalties and costs when they were prosecuted for violating California's foie gras ban).

62. CAL. HEALTH & SAFETY CODE § 25984 (2004).

gras producers did not adjust their practices to eliminate force-feeding and restaurants did not remove foie gras from their menus.<sup>63</sup> Instead, foie gras producers and restaurants brought a legal challenge against the state.

In 2012, the Force-Fed Birds laws went into effect.<sup>64</sup> One day later, Association des Éleveurs de Canards et d'Oies du Québec, Hudson Valley Foie Gras, and Hot's Restaurant Group filed a lawsuit against the then-Attorney General of California, Kamala Harris, and the State of California.<sup>65</sup> Association des Éleveurs de Canards et d'Oies du Québec ("AECOQ") translates to the "Association of Duck and Goose Breeders of Quebec" and is a Canadian non-profit formed in 2009, whose vision is to increase the production volume of duck and goose breeders in Quebec.<sup>66</sup> Hudson Valley Foie Gras is the top foie gras producer in the United States.<sup>67</sup> Hot's Restaurant Group operated a restaurant, Hot's Kitchen, in Hermosa Beach that refused to stop selling foie gras.<sup>68</sup>

The foie gras advocates argued that the California foie gras ban was preempted by the federal Poultry Products Inspection Act ("PPIA").<sup>69</sup> The relevant portion of PPIA regulates U.S. poultry sales by preventing states from imposing "ingredient requirements" that "unduly interfere with the free flow of poultry products in commerce."<sup>70</sup> The State argued that the foie gras statute is not a ban on the *ingredient* that is foie gras, but rather

---

63. Bolotnikova, *supra* note 21 (quoting chef Gabriel Glasier, who claimed that chefs continued to sell foie gras in California by instead referring to it as unicorn meat).

64. CAL. HEALTH & SAFETY CODE § 25984 (2004).

65. See Association des Éleveurs de Canards et d'Oies du Québec v. Harris, No. 2:12-cv-05735-SVW-RZ, 2012 WL 12842942 (C.D. Cal. Sep. 28, 2012).

66. Association of Duck and Goose Breeders of Quebec (AECOQ), CTAQ, <https://conseiltaq.com/association/aecoq/> (last visited Oct. 30, 2023).

67. John Leland, *supra* note 21 (stating that Hudson Valley Foie Gras sells about \$28 million, and La Belle sells about \$10 million in foie gras each year).

68. Association des Éleveurs de Canards et d'Oies du Québec v. Harris, 79 F. Supp. 3d 1136, 1138 (C.D. Cal. 2015).; see also PETA Sues Hermosa Beach's Hot's Kitchen over Foie Gras, EASY READER NEWS (Dec. 4, 2012), <https://easyreadernews.com/peta-foie-gras/> (explaining that after the foie gras ban took effect, Hot's refused to stop selling foie gras, leading animal rights advocates to protest outside the restaurant and, ultimately, leading to PETA suing the restaurant for violation of the ban).

69. Association des Éleveurs, 79 F. Supp. 3d at 1138. Initially, they also argued that the ban violated the dormant Commerce Clause, but the court denied their request to enjoin the state from enforcing the ban on dormant Commerce Clause grounds because the ban was nondiscriminatory and did not undermine either an inherently national market or a market that required a uniform system of regulation. Association des Éleveurs, 2012 WL 12842942, at \*9.

70. 21 U.S.C. § 467(e) (2018).

the *process* of force-feeding to create foie gras.<sup>71</sup> The court, however, found that the law banned “certain types of foie gras products—i.e. foie gras from force-fed birds,” considered this an ingredient-ban preempted by PPIA, granted summary judgment in favor of the Plaintiffs, and enjoined the state from enforcing the sales ban.<sup>72</sup> The ban prohibiting force-feeding within California remained in force—only the ban on force-fed foie gras from out of state was lifted.<sup>73</sup>

Foie gras returned to California with a vengeance.<sup>74</sup> The force-feeding used for foie gras production is considered by many animal welfare advocates to be one of the worst instances of cruelty in the meat industry today.<sup>75</sup> Undeterred by the perceived seriousness of the issue by ducks and duck-lovers alike, District Judge Stephen Wilson found it appropriate to fill his opinion with puns, like “runs afoul of federal law” and “have her pate and eat it, too.”<sup>76</sup> In a win for animal advocates, however, the Ninth Circuit reversed the district court on appeal in 2017.<sup>77</sup>

In her opinion reinstating the sales ban, Circuit Judge Jacqueline Nguyen echoed what Governor Arnold Schwarzenegger said when he signed Senate Bill 1520 into law: “[t]his bill’s intent is to ban the current foie gras production practice . . . It does not ban the food product, foie gras.”<sup>78</sup> The court found that the PPIA’s “ingredient requirement” refers to a physical food component, like spices or sweeteners, and not to methods of animal husbandry.<sup>79</sup> The court found “force-fed” to be a production method similar to “cage-free” and differentiated these from ingredients in that they refer to “the treatment of the birds *while alive*.”<sup>80</sup>

The court also referenced the PPIA’s purpose, ensuring proper poultry packaging and labeling, and found it was not impeded by

---

71. *Association des Éleveurs*, 79 F. Supp. 3d at 1144–45.

72. *Id.* at 1145.

73. *Id.* at 1139.

74. Crystal Coser, *18 Places to Celebrate the Return of Foie Gras*, EATER L.A. (Jan. 20, 2015, 10:15 AM), <https://la.eater.com/maps/the-return-of-the-foie-gras-map-guide> (listing eighteen restaurants in and around Los Angeles where chefs celebrated the lifting of the ban with a new foie gras menu item).

75. Bolotnikova, *supra* note 21 (quoting Voters for Animal Rights’s Matt Dominguez as saying, “it’s like the cruelest thing on earth.”).

76. *Association des Éleveurs*, 79 F. Supp. 3d at 1138, 1142.

77. *Association des Éleveurs de Canards et d’Oies du Québec v. Becerra*, 870 F.3d 1140, 1153 (9th Cir. 2017).

78. *Id.* at 1144.

79. *Id.* at 1147–48.

80. *Id.* at 1149.

California's force-feeding ban.<sup>81</sup> In fact, “[t]he PPIA is wholly silent on the treatment of farm animals, (including feeding procedures) or methods of slaughter for poultry.”<sup>82</sup> Ultimately, the court concluded that there was no required compelling evidence of an intention to preempt.<sup>83</sup>

In 2017, California was once again free to enforce its foie gras force-feeding legislation, but that freedom was short-lived. The U.S. District Court for the Central District of California decided in July of 2020 and the Ninth Circuit U.S. Court of Appeals affirmed in May of 2022 that so long as the “sale” of force-fed foie gras occurs outside of California, the import and consumption of the product is permitted within the state under the force-feeding statutes.<sup>84</sup> The court interpreted a sale inside the state of California as requiring either the product or the seller to be physically within the state at the time of sale.<sup>85</sup> Although this interpretation allows California residents to remotely purchase force-fed foie gras from out-of-state producers (i.e. online, phone, and fax sales), restaurants are still prohibited from offering it on their menus and grocery stores are prohibited from offering it on their shelves because the remotely-purchased foie gras cannot then be *resold* within the state.<sup>86</sup> The ban is still in effect as of 2023, when the Supreme Court declined to hear the foie gras producers' challenge.<sup>87</sup>

## 2. *New York City's Foie Gras Ban*

New York City made the next U.S. attempt to ban foie gras force-feeding. In 2019, the city voted to prohibit the storing, keeping, maintaining, offering for sale, or selling of any force-fed foie gras, regardless of where it was produced.<sup>88</sup> Any product sold under the name “foie gras” would be presumed to be the result of

---

81. *Id.* at 1144.

82. *Id.* at 1148.

83. *Association des Éleveurs*, 870 F.3d at 1146, 1152.

84. *Association des Éleveurs de Canards et d'Oies du Québec v. Harris*, No. 2:12-cv-05735-SVW-RZ, 2020 WL 5049182, at \*5 (C.D. Cal. July 14, 2020).

85. *Id.*

86. *Id.*; see also *California Court Okays Import of Foie Gras from out of State, Barred in 2012*, THE GUARDIAN (May 7, 2022, 4:13 PM), <https://www.theguardian.com/us-news/2022/may/07/california-foie-gras-bans-partly-lifted> (quoting Chef Sean Chaney, who hopes he is permitted to cook foie gras for his Californian restaurant patrons again soon).

87. Ariane de Vogue, *Supreme Court Ducks Fight over Foie Gras, Leaving California Ban in Place*, CNN (May 22, 2023, 11:17 AM), <https://www.cnn.com/2023/05/22/politics/foie-gras-california-supreme-court/index.html>.

88. N.Y.C., N.Y., ADMIN. CODE § 17-1902 (2019).

force-feeding and the seller would have the burden of proving otherwise.<sup>89</sup> Violation of the ordinance could result in a fine between five hundred and two thousand dollars per offense.<sup>90</sup> Enforcement, however, was not to begin until November 25, 2022—two years later.<sup>91</sup>

The New York City ban was challenged before enforcement had even begun. On May 20, 2022, the United States' two largest foie gras producers, La Belle Farm and Hudson Valley Foie Gras, filed a complaint with the Supreme Court of New York.<sup>92</sup> Their argument is that New York State Agricultural Law Section 305-a preempts the foie gras ban because it prohibits local governments from unreasonably restricting or regulating farm operations within agricultural districts unless public health or safety is threatened.<sup>93</sup> New York City, however, is not demanding that the farms change their operations; it simply will not allow their foie gras products to be sold within its jurisdiction.<sup>94</sup> Another animal welfare statute was recently upheld based on similar issues.<sup>95</sup> In May of 2023, the Supreme Court found that a California law requiring pork sold within the state be produced on farms where the pigs had enough space to stand up and turn around did not violate the dormant Commerce Clause, despite its enactment requiring many out-of-state farms to completely revamp their operations in order to continue selling pork in California.<sup>96</sup> The Court found that “[i]n our interconnected national marketplace, many (maybe most) state laws have the ‘practical effect of controlling’ extraterritorial behavior.”<sup>97</sup>

Though a final decision has not yet been made, Judge Mabelle Sweeting of the Supreme Court of the State of New York issued a preliminary injunction on September 16, 2022, preventing the city from beginning enforcement on its planned date of

---

89. *Id.*

90. *Id.* § 17-1903.

91. *Id.* § 17-1901–03.

92. Verified Complaint, *La Belle Farm, Inc. v. the City of New York* (N.Y. Sup. Ct. May 5, 2022) (No. 0656399-2022), 2022 WL 2067632.

93. N.Y. AGRIC. & MKTS. LAW § 305-a(a) (McKinney 2021).

94. N.Y.C., N.Y., ADMIN. CODE §§ 17-1902 (2019) (prohibiting retail and food service establishments from storing, keeping, maintaining, offering for sale, or selling foie gras, but not restricting any farming operations).

95. *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 391 (2023).

96. *Id.* at 370–71.

97. *Id.* at 374.

November 25, 2022, pending hearing and final determination.<sup>98</sup> Following this preliminary injunction, the State of New York Department of Agriculture and Markets ordered New York City to continue allowing the sale of foie gras.<sup>99</sup> In response, the city of New York petitioned the Supreme Court of New York, which ordered the Department of Agriculture and Markets decision annulled as arbitrary and capricious on August 3, 2023.<sup>100</sup> Litigation is ongoing as of 2023.

Because New York City is such a huge market for foie gras—both Hudson Valley and La Belle send one third of the foie gras they produce to New York City—the outcome of this case could prevent countless ducks from being subjected to the pain of force-feeding.<sup>101</sup> In the meantime, however, New York City’s sales of foie gras have increased by almost thirty percent.<sup>102</sup>

#### IV. *HOW THE PACT ACT CAN BE USED TO STOP FORCE-FEEDING IN FOIE GRAS PRODUCTION*

The federal PACT Act’s exclusions for both the slaughter of farm animals and for customary and normal animal husbandry can be interpreted in a way that does not include the force-feeding aspect of foie gras production. If the production of foie gras is included in the statute’s protections, the act of gavage may be prohibited as either an act of suffocating, impaling, or subjecting an animal to serious bodily injury.

##### A. Interpretation of the PACT Act Exceptions

The PACT Act includes six general exceptions as well as exceptions for good-faith distribution and unintentional conduct.<sup>103</sup>

---

98. Preliminary Injunction, *La Belle Farm, Inc. v. City of New York*, 2022 WL 2067632 (No. 0656399-2022).

99. N.Y. DEP’T OF AGRIC. & MKTS., *COMPELLING COMPLIANCE WITH THE PROVISIONS OF SECTION 305-A(1) OF THE AGRICULTURE AND MARKETS LAW* (Dec. 14, 2022).

100. *City of New York v. Ball*, No. 900460-23, 2023 WL 4940445, at \*9 (N.Y. Sup. Aug. 3, 2023).

101. Leland, *supra* note 21.

102. Jennifer Gould, *NYC’s Impending Foie Gras Ban Has Boosted Sales up to 30 Percent*, N.Y. POST (Dec. 29, 2019, 10:27 PM), <https://nypost.com/2019/12/29/nycs-foie-gras-ban-has-boosted-sales-up-to-30-percent/> (quoting restaurant owner, Georgette Farkas, who says people are ordering more foie gras as a political statement that says “stay off my dinner table”).

103. 18 U.S.C. § 48(d) (2018).

(d) Exceptions.--

(1) In general.--This section does not apply with regard to any conduct, or a visual depiction of that conduct, that is--

(A) a customary and normal veterinary, agricultural husbandry, or other animal management practice;

(B) the slaughter of animals for food;

(C) hunting, trapping, fishing, a sporting activity not otherwise prohibited by Federal law, predator control, or pest control;

(D) medical or scientific research;

(E) necessary to protect the life or property of a person; or

(F) performed as part of euthanizing an animal.<sup>104</sup>

The two exceptions that could most closely apply to the production of foie gras are: (1) “the slaughter of animals for food,” and (2) “a customary and normal veterinary, agricultural husbandry, or other animal management practice.”<sup>105</sup> The exception for the slaughter of animals for food cannot apply to gavage because this process occurs in the time leading up to the ultimate slaughter of the bird. The exception for customary and normal agricultural husbandry, however, is more relevant to foie gras force-feeding.

1. *What is “Customary”?*

When a statute does not define a word, courts construe the word according to its plain and ordinary meaning.<sup>106</sup> To determine the plain meaning of an undefined word, courts have often consulted dictionary definitions.<sup>107</sup> “Customary” is defined in Merriam-Webster’s dictionary as “(1) commonly practiced, used, or

---

104. 18 U.S.C. § 48(d)(1) (2018).

105. *Id.*

106. *Perrin v. United States*, 444 U.S. 37, 42 (1979) (stating that “[a] fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning”).

107. *CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1223 (11th Cir. 2001) (stating that “[i]n order to determine the common usage or ordinary meaning of a term, courts often turn to dictionary definitions for guidance”).



observed [or] (2) based on or established by custom.”<sup>108</sup> Under either definition, force-feeding animals is not a “customary” agricultural husbandry practice.

Five hundred thousand ducks and geese are force-fed to produce foie gras annually in the United States.<sup>109</sup> While force-feeding is common in the foie gras industry, no other livestock product is produced via force-feeding.<sup>110</sup> Over ten billion land animals are slaughtered annually in the United States to produce meat, dairy, and eggs.<sup>111</sup> With roughly only 0.005 percent of the land animals slaughtered annually in the United States being force-fed, the act of force-feeding cannot be considered commonly practiced, and thus is not “customary.” While the number of fish killed in the United States annually is a more difficult statistic to obtain because many are fished from oceans off the coast, in 2018 alone at least two trillion fish were killed by humans worldwide.<sup>112</sup> With the addition of fish to the total number of animals slaughtered annually, the percentage of animals that are force-fed is even lower.

With foie gras’ origin in Egypt, and France as the center of the ingredient’s culinary tradition, foie gras production is comparatively unimportant to American culture.<sup>113</sup> Foie gras was

---

108. *Customary*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/customary> (last visited Oct. 23, 2023); *see also* *Motes v. Arkansas*, No. CACR 07-29, 2007 WL 3276797, at \*2 (Ark. Ct. App. 2007) (quoting *Julian v. State*, 298 Ark. 302, 304 (1989)) (defining “customary” using the dictionary definition, “commonly practiced, used or observed” to determine that it is customary for people to be in mobile homes overnight).

109. *Foie Gras Facts*, STOP FORCE FEEDING, <https://www.stopforcefeeding.com/facts> (last visited Oct. 23, 2023).

110. *Association des Éleveurs de Canards et d’Oies du Québec v. Harris*, No. 2:12-cv-05735-SVW-RZ, 2020 WL 5049182, at \*4 (D. Cal. Jul. 14, 2020).

111. *Factory Farms*, A WELL-FED WORLD, <https://awellfedworld.org/factory-farms/> (last visited Oct. 23, 2023).

112. Matt Mellen, *The Number of Fish Killed in 2018 Will Shock You*, ECOHUSTLER (Apr. 29, 2019), <https://ecohustler.com/nature/the-number-of-fish-killed-in-2018-will-shock-you>.

113. *Foie Gras History*, *supra* note 5. French consumption of foie gras is customary because the practice has been popular for hundreds of years. *See Origins*, CIFO, <https://thefoiegras.co.uk/foie-gras/origins> (last visited Oct. 23, 2023) (explaining that foie gras has been produced and eaten in France since the Middle Ages); *see also Evolution of the Volume of Duck and Goose Foie Gras Produced in France from 2007 to 2021*, STATISTICA (Oct 14, 2022), <https://www.statista.com/statistics/453619/production-of-foie-gras-in-france/> (showing that France produced 11,719 tons of foie gras in 2021); *Global Foie Gras Market Size by Product Type, By Application, By Geographic Scope And Forecast*, VERIFIED MKT. RSCH. (July 2021), <https://www.verifiedmarketresearch.com/product/foie-gras-market> (finding that France contributes to over sixty-five percent of the global foie gras market); *The Production Regions*, CIFO, <https://foiegras-factsandtruth.com/heritage/the-production-regions> (last visited Oct. 23, 2023) (showing a map of the five main foie gras

only formally introduced to the United States in the mid-1980s.<sup>114</sup> Additionally, “[a]most all of the foie gras produced in the United States comes from two duck farms in Sullivan County [New York].”<sup>115</sup> If ninety percent of domestic foie gras is produced by two farms in New York, force-feeding cannot be considered a commonly practiced custom in the United States.<sup>116</sup>

## 2. What is “Normal”?

The second qualifier for the agricultural husbandry exception in the PACT Act is that the process be “normal.”<sup>117</sup> Merriam-Webster’s dictionary defines “normal” as “(1) conforming to a type, standard, or regular pattern: characterized by that which is considered usual, typical, or routine [or] (2) occurring naturally.”<sup>118</sup> Ducks and geese raised for foie gras are the *only* agricultural animals subjected to gavage, so it cannot be a “normal” agricultural practice.<sup>119</sup> Gavage is also used on lab mice,<sup>120</sup> human babies that are struggling to breastfeed,<sup>121</sup> and sick animals,<sup>122</sup> but because these other uses are not agricultural practices, they do not support the idea that gavage is a “normal” agricultural husbandry practice.

In 2015, the Supreme Court of Pennsylvania determined that a farm’s application of biosolids (sewage sludge) to its fields was a “normal agricultural practice.”<sup>123</sup> When the plain language of the

---

regions in France in 2013 and asserting that the French foie gras industry employs roughly 100,000 people).

114. *Foie Gras History*, *supra* note 5.

115. Leland, *supra* note 21.

116. Lukas Southard, *How a NYC Ban on Foie Gras Could Devastate a Catskills County that depends on it*, TIMES UNION (Mar. 30, 2021), <https://www.timesunion.com/hudsonvalley/makers/article/ban-on-foie-gras-could-devastate-a-Catskill-county-16019528.php>.

117. 18 U.S.C. § 48 (2018).

118. *Normal*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/normal> (last visited Oct. 23, 2023).

119. *On Force-Feeding Geese and Ducks (Gavage)*, SLOW FOOD FOUND. FOR BIODIVERSITY (Oct. 2018), [https://www.slowfood.com/wp-content/uploads/2018/10/ING\\_linee\\_guida\\_gavage.pdf](https://www.slowfood.com/wp-content/uploads/2018/10/ING_linee_guida_gavage.pdf).

120. Carissa P. Jones et al., *Evaluation of Mice Undergoing Serial Oral Gavage While Awake or Anesthetized*, 55 J. AM. ASS’N LAB’Y ANIMAL SCI., 805, 805 (2016).

121. *Gavage Feeding for Babies*, MICH. MED., <https://www.med.umich.edu/1libr/pa/UMHomeGavageFeed.pdf> (last visited Oct. 23, 2023).

122. Adam Gregory, *Gavage Feeding of Birds*, IMPROVE VETERINARY PRAC. (Oct. 18, 2022), <https://www.veterinary-practice.com/article/gavage-feeding-of-birds> (explaining how to gently and safely tube-feed hospitalized birds to minimize risk of adverse incidents).

123. *Gilbert v. Synagro Cent.*, 131 A.3d 1, 23 (Pa. 2015).

relevant statute was unclear, the court turned to legislative intent.<sup>124</sup> Because the legislature intended to protect farms from nuisance lawsuits, the court found that considering biosolid application as a “normal” agricultural practice was consistent with the statute’s purpose.<sup>125</sup> Next, the court found that biosolid application was “normal” because the practice was employed widely in the state and nationwide, with sixty-seven percent of biosolids land application being for agricultural use.<sup>126</sup>

When Congress enacted the PACT Act, the intention was to end *all* types of animal cruelty.<sup>127</sup> If the statute is ambiguous as to a particular action, it should be interpreted in a way that further reduces animal cruelty, in alignment with the purpose of the Act.<sup>128</sup> Additionally, foie gras production is not widespread across the nation, unlike biosolid application on farm fields.<sup>129</sup> Because force-feeding is neither “customary” nor “normal,” and is not a method of slaughter, it does not fall under any exception of the PACT Act. Therefore, the gavage process used in foie gras production should be prohibited under this federal statute.

#### B. Interpretation of the Definition of “Crushing”

The PACT Act prohibits “animal crushing,” which is broadly defined in the statute to mean “actual conduct in which one or more living non-human mammals, birds, reptiles, or amphibians is purposely crushed, burned, drowned, suffocated, impaled, or otherwise subjected to serious bodily injury.”<sup>130</sup> The listed acts that could best be applied to the gavage process of foie gras production are suffocating, impaling, or subjecting birds to serious bodily injury.

---

124. *Id.* at 20.

125. *Id.* at 20–21.

126. *Id.* at 21–22.

127. 165 CONG. REC. 8357 (2019) (statement of Rep. Fitzpatrick) (“Together, we will end all types of animal cruelty and will continue to be a voice for the voiceless.”); 165 Cong. Rec. 8356 (2019) (statement of Rep. Deutch) (“This bill has received so much bipartisan support, because Americans care about animal welfare.”); 165 CONG. REC. 8356 (2019) (statement of Rep. Axne) (“[T]here is nothing like bringing animals to the forefront that brings people together.”).

128. *See supra* note 127.

129. *See* SHEPSTONE, *supra* note 4 (showing a pie chart of the U.S. foie gras market in 2003, wherein New York represented 71%, California represented 16%, France represented 7%, and Canada represented 6% of the U.S. market).

130. 18 U.S.C. § 48(f)(1) (2018).

### 1. What Does it Mean to “Suffocate”?

To “suffocate” is defined in Merriam-Webster’s dictionary as “(1) to stop the respiration of (as by strangling or asphyxiation); or (2) to deprive of oxygen.”<sup>131</sup> Ducks and geese are at least partially deprived of oxygen when they are force-fed or when their livers expand so much that they can barely breathe. The following description of gavage in a foie gras plant depicts how the birds are “suffocated”:

For the next 22 days they are fed six times a day. A spiral nozzle or straight rubber hose is pushed five inches down their throats and more food than they want is gunned into their stomachs. If the mushy corn sticks in the birds pipes a stick is sometimes used to force it down.<sup>132</sup>

The force-feeding of the birds continues “to the point that they can barely breathe.”<sup>133</sup> In addition to the blocked airflow due to objects inserted into the birds’ throats, their abdomens also expand from being overstuffed, creating pressure on the lungs that restricts their breathing even when they are not actively being force-fed.<sup>134</sup> Some ducks and geese die during foie gras production due to aspiration pneumonia, which is caused by grain being forced into a bird’s lungs or when a bird chokes on its own vomit.<sup>135</sup> Birds force-fed for foie gras have a mortality rate up to twenty times higher than birds who are not force-fed.<sup>136</sup>

---

131. *Suffocate*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/suffocation> (last visited Oct. 23, 2023).

132. Peter Finn, *To Hungarian Professor, What’s Good for the Goose Is Good for the Goose Liver Industry*, WASH. POST FOREIGN SERV. (Jan. 31, 2000), <https://www.washingtonpost.com/wp-srv/WPcap/2000-01/31/072r-013100-idx.html>.

133. Lina Zeldovich, *Farmers and Chefs Think There May Be an Ethical Future for Foie Gras*, QUARTZ (Nov. 20, 2019), <https://qz.com/1750093/farmers-and-chefs-think-there-may-be-an-ethical-future-for-foie-gras>.

134. FOIE GRAS FACTS, <http://foiegrasfacts.com/> (last visited Oct. 23, 2023).

135. *Foie Gras: Cruelty to Ducks and Geese*, PETA, <https://www.peta.org/issues/animals-used-for-food/factory-farming/ducks-geese/foie-gras/> (last visited Oct. 23, 2023) [hereinafter *Cruelty to Ducks and Geese*].

136. *Scientists and Experts on Force-Feeding for Foie Gras Production and Duck and Goose Welfare*, THE HUMANE SOC’Y OF THE U.S., <https://www.humanesociety.org/sites/default/files/docs/hsus-expert-synopsis-force-feeding-duck-and-geese-welfare.pdf> (last visited Sept. 23, 2023).

## 2. What Does it Mean to Be “Impaled”?

Foie gras could also be prohibited under the PACT Act’s restriction on impaling. “Impale” is defined in Merriam-Webster’s dictionary as “to pierce with or as if with something pointed.”<sup>137</sup> The birds used in foie gras production could be considered “impaled” with the feeding tube when it is shoved down their throats or when the feeding tube cuts into the walls of their throats. Workers at foie gras production plants typically ram metal pipes down the birds’ throats twice daily.<sup>138</sup> Sick, dying, and dead birds on foie gras farms have been found with “holes in their necks from being impaled with feeding pipes.”<sup>139</sup>

## 3. What Does it Mean to Inflict “Serious Bodily Injury”?

Though force-feeding ducks and geese to produce foie gras could be considered “crushing” under the PACT Act because the birds are both suffocated and impaled, the best argument for prohibiting gavage under the PACT Act comes from the definition for “serious bodily injury.” If gavage subjects the foie gras birds to serious bodily injury, it should be illegal under the PACT Act. Unlike the Act’s prohibition of suffocating and impaling animals, which are undefined in the statute, the PACT Act provides a definition for serious bodily injury.<sup>140</sup> The text of the Act provides that the meaning of serious bodily injury is defined in section 1365.<sup>141</sup> Section 1365, titled “Tampering With Consumer Products,” defines “serious bodily injury” as “bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.”<sup>142</sup>

Force-fed ducks and geese are at a high risk of dying due to force-feeding practices and, of course, are certain to experience

---

137. *Impale*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/impaling> (last visited Oct. 23, 2022).

138. *Cruelty to Ducks and Geese*, *supra* note 135.

139. Moira Colley, *Pamela Anderson to Gordon Ramsay: Drop the Foie Gras at Flagship Restaurant*, PETA (Oct. 9, 2018), <https://www.peta.org/media/news-releases/pamela-anderson-to-gordon-ramsay-drop-the-foie-gras-at-flagship-restaurant/>.

140. 18 U.S.C. § 48(f)(1) (2018).

141. *Id.*

142. 18 U.S.C. § 1365(h)(3) (2018).

extreme physical pain. The following quote explains the higher risk of death faced by birds subjected to gavage:

[M]ortality rates in the force-feeding period are four to 20 times as high as they are in non-force-fed flocks of the same age. In non-force-fed flocks, average mortality is 0.1% per week for flocks at 12 weeks of age. In force-fed flocks, the average mortality is between 0.5% and 2% per week for birds this age. The main causes of this high mortality include: injuries to the throat, liver failure or rupture and heat stress— all of which are directly linked to the practice of force-feeding.<sup>143</sup>

The next quote, from Sinergia Animal International, depicts the extreme physical pain ducks and geese raised for foie gras are subjected to on these farms:

Force-fed ducks and geese experience pain, injury, and distress. Birds are repeatedly captured and restrained, and metal tubes are inserted down their throat up to three times per day, which can cause increased cortisol levels as well as severely damaging cells and causing inflammation in the lining of the intestine. Studies suggest that acute stress levels in force-fed birds remain high throughout the force-feeding period. The rapid distention of the lower esophagus that occurs when food is pumped down the tube results in pain and ongoing discomfort. This can also lead to esophageal injuries like tears and punctures. Force-feeding also causes increased physiological heat production — to deal with the expansion of the esophagus — as well as panting and diarrhea.<sup>144</sup>

Although not specifically related to force-feeding, it is worth mentioning that only male ducks are raised for foie gras—female ducks are unable to put on as much weight as their male counterparts and have bigger veins in their livers, making them unsuitable for foie gras.<sup>145</sup> These female chicks used to be ground

---

143. IAN DUNCAN, THE SCIENTIFIC CASE AGAINST FOIE GRAS 5 (BCSPCA ed., 2009), <https://spca.bc.ca/wp-content/uploads/foie-gras-scientific-report.pdf>; see SCIENTIFIC COMMITTEE ON ANIMAL HEALTH AND ANIMAL WELFARE, WELFARE ASPECTS OF THE PRODUCTION OF FOIE GRAS IN DUCKS AND GEESE 47 (Dec. 16, 1998), [https://food.ec.europa.eu/system/files/2020-12/sci-com\\_scah\\_out17\\_en.pdf](https://food.ec.europa.eu/system/files/2020-12/sci-com_scah_out17_en.pdf).

144. *What is Foie Gras, Why Is it Cruel, and Where Is it Banned?*, *supra* note 12.

145. *Unseen Suffering: What Happens Inside the Foie Gras Industry*, THE HUMANE LEAGUE (Apr. 6, 2021), <https://thehumaneleague.org/article/foie-gras> (stating that male ducks can put on more weight than female ducks); *Ellen, Carrie, Emily, & Kristen: Ducks*

up alive, or “macerated” in the United States to be used for fertilizer or cat food, and still are abroad.<sup>146</sup> Now, however, Hudson Valley Foie Gras and La Belle Farm either raise the female chicks for meat on site or sell them to be raised for meat elsewhere.<sup>147</sup> The male ducks are likely to have their beaks snipped<sup>148</sup>, begin being force-fed after about twelve weeks,<sup>149</sup> then are slaughtered at around fourteen weeks old.<sup>150</sup> The natural lifespan of a duck is between five and twenty years.<sup>151</sup>

When debating the PACT Act bill, many members of Congress discussed types of animal cruelty that would be rendered a federal crime upon the Act's passing.<sup>152</sup> Congresswoman Cindy Axne, representing Iowa, supported the bill's passing to combat extreme animal cruelty and provided examples of cruelty that had occurred

*Rescued from Foie Gras Factory*, FARM SANCTUARY (May 12, 2013), <https://www.farmsanctuary.org/news-stories/ducklings-saved-from-foie-gras-factory/> (stating that female ducks have larger veins in their livers).

146. *The Trendiest Thing You Can Do With Foie Gras Is Give it a Hard Pass*, PETA, <https://www.peta.org/features/what-is-foie-gras/> (last visited Sept. 23, 2023) (stating that ground-up female chicks have been used for fertilizer or cat food).

147. *Ellen, Carrie, Emily, & Kristen: Ducks Rescued from Foie Gras Factory*, *supra* note 145 (stating that “now many facilities, including Hudson Valley Foie Gras, raise [female ducklings] for meat”); *The Physiology of Foie: Why Foie Gras Is Not Unethical*, BELLA BELLA GOURMET FOODS, <https://bellabellagourmet.com/blogs/news/the-physiology-of-foie-why-foie-gras-is-not-unethical> (last visited Sept. 23, 2023) (stating that “La Belle sends its female ducklings to Trinidad within weeks of hatching, where they are raised for meat”); Alice Di Conetto et al., *The Unjustified Mass Killing of Baby Chicks and Ducklings Must End*, THE BRUSSELS TIMES (Jan. 9, 2023), <https://www.brusselstimes.com/349517/the-unjustified-mass-killing-of-baby-chicks-and-ducklings-must-end> (explaining that male chicks in the egg industry and female chicks in the foie gras industry are still macerated by “grinding” or “shredding” in the European Union).

148. *Poultry*, ANIMALS' ANGELS, <https://www.animalsangels.org/issues/poultry> (last visited Oct. 30, 2023) (stating “males are cruelly debeaked in order to avoid too many losses due to fighting”); *Videos Show Horror Behind Foie Gras*, THE CONNEXION (Nov. 30, 2016), <https://www.connexionfrance.com/article/French-news/Videos-show-horror-behind-foie-gras> (showing a video that at 2:27 depicts male foie gras chicks in a machine where their beaks are “sliced off by a white hot metal blade”).

149. Grace Hussain, *Is This the Beginning of the End for Foie Gras?*, SENTIENT MEDIA (Jan. 26, 2022), <https://sentientmedia.org/foie-gras/> (stating that gavage begins at 10–14 weeks and continues for 12–21 days).

150. *Torture in a Tin: Viva! Foie-gras fact sheet*, VIVA! (July 2015), [https://viva.org.uk/wp-content/uploads/2020/03/foiegras\\_factsheet.pdf](https://viva.org.uk/wp-content/uploads/2020/03/foiegras_factsheet.pdf) (claiming ducks are typically slaughtered at 100 days); *The Breeding Phase*, CIFO, <https://foiegras-factsandtruth.com/breeding/the-breeding-phase> (last visited Oct. 23, 2023) (showing a lifespan timeline from twelve to sixteen weeks).

151. Jennifer Gaeng, *Duck Lifespan: How Long Do Ducks Live?*, A-Z ANIMALS (Sept. 23, 2023), <https://a-z-animals.com/blog/duck-lifespan-how-long-do-ducks-live/> (stating that “ducks can live anywhere from five to ten years on average, but they can live up to twenty years if properly cared for”).

152. *See generally* 165 CONG. REC. 8355–57 (2019).

in her state that she hoped the Act would make a federal crime.<sup>153</sup> One of the examples she provided was that of an Iowa veterinarian who was “debarking dogs by shoving rod-like objects into their vocal chambers without anesthesia.”<sup>154</sup> Shoving a rod down a dog’s throat to damage its vocal cords is a strikingly similar action to shoving a pipe down a duck’s throat to pump grain into its stomach. If members of Congress considered a woman debarking four dogs in this manner to be cruelty that would be criminal under the Act, surely they would also consider the annual force-feeding of thousands of ducks cruel enough to be criminal under the Act.<sup>155</sup>

Even the Ninth Circuit U.S. Court of Appeals recognized the trauma faced by ducks and geese when they are inflicted to gavage. In *Association des Éleveurs v. Becerra*, Circuit Judge Jacqueline Nguyen found that force-fed birds’ livers “grow to ten times the size of a normal liver” and, notably, that the process is “so hard on the birds that they would die from the pathological damage it inflicts if they weren’t slaughtered first.”<sup>156</sup>

In a rare attempt by a plaintiff to use the PACT Act to criminalize a type of animal cruelty, the Fourth District Court of Appeal of California flatly refused to engage in any statutory interpretation. *Kriple v. California Horse Racing Board* was an attempt by a horse trainer to compel the California Horse Racing Board (“CHRB”) to ban the use of whips during horse races.<sup>157</sup> The court was asked to compel the CHRB to ban riding crops by issuing a writ of mandate, citing state and federal law, California Penal Code section 597 and the PACT Act, respectively.<sup>158</sup> The court took the position that because the PACT Act did not *specifically* require

---

153. 165 CONG. REC. 8356 (2019).

154. *Id.* (statement of Rep. Axne) (“Whether it is the veterinarian in my own State of Iowa—ranked 49th when it comes to animal welfare laws—who was recently arrested for debarking dogs by shoving rod-like objects into their vocal chambers without anesthesia, or whether it is in my neighboring State of Nebraska, where a man was recently accused of severely burning a cat by holding it under water, scalding hot water, across this country, people are torturing animals and it absolutely has to stop.”).

155. Maria Murray, DA: *Woman Arrested for Illegally Debarking Dogs in Lancaster County*, FOX29 PHILA. (Nov. 13, 2018), <https://www.fox29.com/news/da-woman-arrested-for-illegally-debarking-dogs-in-lancaster-county> (explaining that the woman was arrested for debarking “a Husky, a Doberman Pinscher, a Beagle mix, and a Spaniel mix”).

156. *Association des Éleveurs de Canards et d’Oies du Québec v. Becerra*, 870 F.3d 1140, 1143–44 (9th Cir. 2017) (quoting Cal. Assemb. Comm. On Bus. & Professions, Analysis of S.B. 1520, 2003–2004 Reg. Sess., at 2 (Aug. 17, 2004); Cal. Sen. Comm. on Bus. & Professions, Analysis of S.B. 1520, 2003–2004 Reg. Sess., at 3 (Aug. 25, 2004)).

157. *Kriple v. Cal. Horse Racing Bd.*, No. 37-2019-00062205-CU-WM-CTL, 2022 WL 1534604, at \*1 (4th Cal. Ct. App. May 16, 2022).

158. *Id.* at \*2, \*4.



the CHRB to adopt the *specific* rule Kriple sought, a ban on riding crop use, they would not issue the requested writ of mandate.<sup>159</sup> The court did not delve into whether striking horses with riding crops met the definition of “animal crushing” under the Act; it simply dismissed Kriple’s claim because the Act made no mention of the specific scenario at hand. Additionally, the court decided that because the PACT Act had never been construed to bar the use of riding crops, they would not be the first to do so.<sup>160</sup> By failing to perform any statutory analysis, the court failed to recognize that the term “animal crushing” has a much broader definition under the statute than its plain meaning, a difference that could have changed the outcome of the case.

*United States v. Vincent* is a case that *did* interpret PACT Act provisions, specifically the “serious bodily injury” provision.<sup>161</sup> Vincent shared child pornography and bestiality videos with a person online who, unbeknownst to him, was an undercover FBI agent.<sup>162</sup> He was charged with distribution and possession of child pornography as well as distribution of an animal crush video under the PACT Act.<sup>163</sup> Vincent’s argument against his PACT Act charge was that the acts of bestiality in the video he shared did not constitute a serious bodily injury, and if they did, the rule of lenity should apply because the statute is unconstitutionally vague.<sup>164</sup>

The fifty-second bestiality video that Vincent shared depicted “a black man, with his face clearly visible, engaging in sex acts with a dog, including oral sex.”<sup>165</sup> Through the FBI’s investigation, it was discovered that the man in the video was Vincent himself and the dog in the video was Vincent’s dog.<sup>166</sup> Vincent argued that performing oral sex on his dog did not inflict serious bodily injury on the dog because he did not use force, the dog was not injured, and the dog did not appear threatened.<sup>167</sup>

---

159. *Id.* at \*4.

160. *Id.*

161. *United States v. Vincent*, No. 3:21-cr-10-TCB, 2022 WL 2452301, at \*4 (N.D. Ga. July 6, 2022).

162. *Id.* at \*1.

163. *Id.*

164. *Id.* at \*4–7 (adopting the definition of the Rule of Lenity used in *Wooden v. United States*, 142 S. Ct. 1063, 1075 (2022), (“If a federal criminal statute is grievously ambiguous, then the statute should be interpreted in the defendant’s favor.”)).

165. *Id.* at \*1.

166. *Id.*

167. *Id.* at \*5.

The court interpreted the PACT Act's language as an ordinary person would and found that performing sex acts on animals does constitute a serious bodily injury and therefore a "crushing" under the Act because animals cannot give enthusiastic consent and, in this case, the dog was physically incapable of refusing.<sup>168</sup> Although the dog may not have been externally injured, the dog could have had internal trauma, and that was enough to be considered a serious bodily injury by the court.<sup>169</sup>

If the performance of oral sex on a dog, wherein the dog has no visible injuries, constitutes a serious bodily injury under the PACT Act, certainly the multitude of horrific injuries sustained by ducks and geese via gavage also meets the definition. The ducks on foie gras farms are also incapable of consenting to having tubes shoved down their throats and being stuffed with grain. These birds have lacerations in their esophagus, have difficulty breathing, have grossly enlarged and diseased livers, and suffer in fear until they are slaughtered. This is serious bodily injury. This is an "animal crush" under the PACT Act.

Why is it that the court in *Vincent* found that any "ordinary person" would conclude that Vincent's acts seriously injured his dog, yet there has been no federal action taken at all against the foie gras farms in the United States? Why is it that a rod shoved down four dogs' throats to debark them is given more attention than the metal pipes used to force-feed five hundred thousand ducks and geese every year? Could it be that if an animal is tasty, if it has feathers instead of fur, and if it's making the right people a whole lot of money, Americans just don't care as much?<sup>170</sup>

The extreme pain and often premature deaths suffered by force-fed ducks and geese fit the provided definition of being subjected to serious bodily injury and thus satisfy the definition of "crushing" under the PACT Act. Because the process of gavage does not fall under the "customary and normal agricultural

---

168. *Id.* at \*5, \*6.

169. *Id.* at \*6.

170. Justin Marceau, *Palliative Animal Law: The War on Animal Cruelty*, 134 HARV. L. REV. F. 250, 254–56 (2021) (stating that "[a]nimals raised for food make up well over 90% of the domestic animals in this country, and yet the corporations operating slaughterhouses are arguably inoculated from prosecution unless a prosecutor can show beyond a reasonable doubt that the pain and suffering they might cause is not 'customary and normal'" and providing an example where animal advocates rallied to give the maximum penalty to a man who kicked a cat, even though it faced no injuries, to demonstrate how animal lawyers focus on individual abusers rather than systemic abuse).

husbandry” exception and is consistent with the statute’s definition of “animal crushing,” foie gras production via force-feeding should be federally illegal under the PACT Act.

## V. ENFORCEMENT

Because the PACT Act does not contain a provision allowing for citizen suits, there is little the public can do to enforce the statute against foie gras producers short of pressuring the Department of Justice to do so. A citizen cannot sue the federal government to compel it to act because of the principle of sovereign immunity.<sup>171</sup>

In July of 2021, the Bureau of Land Management decided to round up and remove 296 wild horses from Onaqui Mountain range in central Utah due to drought conditions that resulted in limited grass on which the animals could graze.<sup>172</sup> Citizens who regularly visited the mountain range to view and photograph the herd sued both the U.S. Bureau of Land Management (“BLM”) and the American Society for the Prevention of Cruelty to Animals (“ASPCA”) for their roles in removing almost three quarters of the Onaqui herd, while allowing commercial livestock to remain.<sup>173</sup> While the primary cause of action arose under the Wild and Free-Roaming Horses and Burros Act, the plaintiffs also included assertions under the National Environmental Policy Act (“NEPA”), the 28-Hour Law, the Lacey Act, and the PACT Act.<sup>174</sup>

Discussion of the PACT Act in this case was short—limited to two paragraphs.<sup>175</sup> The court simply found that the plaintiffs could not assert a claim under the PACT Act because, as part of the United States criminal code, it can only be enforced by the Department of Justice.<sup>176</sup> The claim under the PACT Act was dismissed.<sup>177</sup>

Without a citizen suit provision, it is up to the Department of Justice to enforce the PACT Act against foie gras producers. While the PACT Act permits either issuing a monetary fine,

---

171. *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 652, 704 (1949).

172. *Arcamone-Makinano v. U.S. Bureau of Land Mgmt.*, No. 2:21-cv-00458-JNP-CMR, 2022 WL 3045192, at \*1 (D. Utah. May 6, 2022).

173. *Id.*

174. *Id.*

175. *Id.* at \*3.

176. *Id.*

177. *Id.* at \*4.

imprisonment for up to seven years, or both as a penalty for violating the statute, because the federal government has yet to recognize that force-feeding falls under the Act, it would be unfair to penalize foie gras farms in this way prior to giving them proper notice that their actions have been deemed criminal. To demand that the foie gras farms stop force-feeding ducks while avoiding criminal penalties, the Department of Justice could create a Deferred Prosecution Agreement with the companies.

A Deferred Prosecution Agreement is a “middle ground” between not prosecuting at all and criminal conviction.<sup>178</sup> Under these agreements, the government informs the company of their intent to prosecute but gives it time to comply before doing so.<sup>179</sup> If the company complies with the government’s conditions, it will not be prosecuted and will avoid criminal liability.<sup>180</sup>

In the context of force-feeding enforcement under the PACT Act, the Department of Justice could create a Deferred Prosecution Agreement with foie gras producers, allowing them a certain amount of time to stop force-feeding ducks and geese before they are held criminally liable. This would give the foie gras farms the necessary time to update their production practices to remove the force-feeding component, which would be less of an economic hardship than commanding an immediate stop. Other benefits of utilizing a Deferred Prosecution Agreement are the ability to avoid the collateral consequences of a criminal conviction and general unfairness.<sup>181</sup>

If the foie gras producers ceased force-feeding at the conclusion of the determined time period in the Deferred Prosecution Agreement, they would face no criminal charges and force-feeding to produce foie gras would be eradicated in the United States. If the producers continued to force-feed, they would face the fines and possible imprisonment outlined in the PACT Act.

The United States is willing to enforce bans to prevent cruel acts against animals and has done so in the past. The ivory trade was banned to protect elephants,<sup>182</sup> turtle shell products were

---

178. Dep’t of Just., Principles of Federal Prosecution of Business Organizations 9-28.200 General Considerations of Corporate Liability (July 2020).

179. United States v. Saena Tech Corp., 140 F. Supp. 3d 11, 12–13 (D.D.C. 2015).

180. *Id.*

181. Dep’t of Just., Principles of Federal Prosecution of Business Organizations 9-28.1100 Collateral Consequences (July 2020).

182. 50 C.F.R. § 17.40(e) (2016).

banned to protect the hawksbill turtle,<sup>183</sup> the import of parrots was banned to protect exotic birds,<sup>184</sup> and the import of sealskin clothing was banned to protect Canadian seals.<sup>185</sup> By enforcing the PACT Act, the United States could ban gavage to protect thousands of young ducks and geese.

## VI. A FUTURE WITHOUT FORCE-FEEDING

Foie gras sales, production, or both have already been banned in several countries, including Argentina, Australia, Austria, the Czech Republic, Denmark, Finland, Germany, India, Ireland, Israel, Italy, Luxembourg, Malta, the Netherlands, Norway, Poland, Sweden, Switzerland, the United Kingdom, and Turkey.<sup>186</sup> Even in France, the leading producer of foie gras, three cities have enacted foie gras bans.<sup>187</sup> In the United States, some supermarkets such as Target,<sup>188</sup> Whole Foods, and Trader Joe's<sup>189</sup> refuse to sell foie gras in their stores.<sup>190</sup> There are several vegan "faux gras" recipes available to recreate the taste of foie gras without harming ducks, including a recipe from a Michelin-starred chef.<sup>191</sup>

183. Convention on International Trade in Endangered Species of Wild Fauna and Flora art. 3, Mar. 3, 1973, 27 U.S.T. 1087.

184. Wild Bird Conservation Act of 1992, Pub. L. 102-440, 106 Stat. 2224 (current version at 16 U.S.C. § 4904 (2018)).

185. Marine Mammal Protection Act of 1972, Pub. L. 92-522, 86 Stat. 1027 (current version at 16 U.S.C. § 1371 (2018)).

186. *What Is Foie Gras, Why Is it Cruel, and Where Is it Banned?*, *supra* note 12.

187. Hannah Thompson, *Lyon Becomes Third City in France to Ban Foie Gras on Cruelty Grounds*, CONNEXION (Dec. 8, 2021), <https://www.connexionfrance.com/article/French-news/Lyon-becomes-third-city-in-France-to-ban-foie-gras-on-cruelty-grounds> (explaining that Lyon banned foie gras from official events, ceremonies, and buffets, and referring to foie gras as a "French shame").

188. *Target Stops Selling Foie Gras*, PETA (Jan. 2008), <https://www.peta.org/about-peta/victories/target-stops-selling-foie-gras/>.

189. Assembly Comm. on Bus. and Pro. 40-1520, 3rd Sess., at 3–4 (Cal. 2004); *See also* S.B. 1520 (Cal., 2004).

190. *Giant Eagle Stops Selling Cruelly Produced Foie Gras*, PETA (Apr. 2007), <https://www.peta.org/about-peta/victories/giant-eagle-stops-selling-cruelly-produced-foie-gras/> (stating that Giant Eagle's 230 grocery stores do not sell foie gras); *see also* Hilary Pollack, *Wolfgang Puck v. Foie Gras*, VEGNEWS (Mar. 3, 2012), <https://vegnews.com/2012/3/wolfgang-puck-vs-foie-gras> (explaining that Chef Puck stopped serving foie gras in his seventy restaurants in 2007 and actively supported California's foie gras ban). *But see* La Belle Farm Store, *La Belle Foie Gras Grade A, Whole Frozen, 1.6 – 2.1 LBS*, AMAZON, <https://www.amazon.com/> (search in search bar for La Belle Foie Gras) (last visited Oct. 23, 2023) (showing a listing for under two pounds of La Belle Farms frozen foie gras for \$155.00).

191. Andrea Smith, *A Michelin-Starred Restaurateur Has Created Vegan 'Faux Gras' as a Humane Alternative to Foie Gras*, LONELY PLANET (May 16, 2018),

While an outright ban on foie gras may be preferable for the birds, for those who cannot fathom forgoing foie gras, it is possible to produce without force-feeding. Wild geese naturally overeat to store fat and energy prior to migrating.<sup>192</sup> A farm in Spain has begun producing foie gras from these geese who have naturally gorged themselves.<sup>193</sup> Because the farmers must wait until October for the geese to prepare for migration, they only slaughter once a year, while a larger foie gras production plant using gavage may slaughter every few weeks.<sup>194</sup>

If the federal PACT Act is used to rid the United States of force-feeding to create foie gras, it could create an environment where Americans are more willing to look critically into other inhumane farming methods. Critic of the New York City foie gras ban, Chef Marco Moreira asks “What’s next? No more veal?”<sup>195</sup> Critic of the California ban, Chef Dean Fearing says “We might as well stop eating meat all together. I tell ya, if anyone’s been to a slaughter house they wouldn’t like that.”<sup>196</sup> While incredulous notions to many, to animal welfare advocates, an end to foie gras could provide the momentum needed to gain protections for the farm animals that have long been left vulnerable in the United States—the exceptions to the rules.

## VII. CONCLUSION

Although ducks, geese, and all species of birds have historically been left defenseless under American animal welfare laws, the PACT Act of 2019 could be the federal statute that saves thousands of ducks and geese from the horrors of being force-fed to

---

<https://www.lonelyplanet.com/news/alexis-gauthier-vegan-faux-gras>; see also Alexis Gauthier, *Alexis Gauthier’s Faux Gras*, PETA UK, <https://www.peta.org.uk/recipes/alexis-gauthiers-faux-gras/> (last visited Oct. 23, 2023) (providing the recipe for a mushroom, walnut, and Cognac based foie gras alternative, where the ingredients are blended together and then refrigerated until firm).

192. Lauren Frayer, *This Spanish Farm Makes Foie Gras Without Force-Feeding*, NPR: THE SALT (Aug. 1, 2016), <https://www.npr.org/sections/thesalt/2016/08/01/487088946/this-spanish-farm-makes-foie-gras-without-force-feeding>.

193. *Id.*

194. *Id.*

195. Jeffery C. Mays & Amelia Nierenberg, *Foie Gras, Served in 1,000 Restaurants in New York City, Is Banned*, N.Y. TIMES (Oct. 30, 2019), <https://www.nytimes.com/2019/10/30/nyregion/foie-gras-ban-nyc.html>.

196. Carolyn Alburger, *Chefs Weigh In: The California Foie Gras Ban*, EATER (Apr. 19, 2012), <https://www.eater.com/2012/4/19/6595121/chefs-weigh-in-the-california-foie-gras-ban>.

make foie gras. While the PACT Act makes an exception for customary and normal animal husbandry, force-feeding is not customary and normal in the United States, so it does not fall under that exception. The serious bodily injury the birds face during the gavage process clearly constitutes an “animal crush” as defined in the statute. Therefore, the farms performing gavage on ducks and geese, mainly Hudson Valley Foie Gras and La Belle Farm, should be required by the Department of Justice to stop utilizing force-feeding or face criminal prosecution for their thousands of violations of the PACT Act.