Please Support Intro 1378
Foie Gras, a Product of Cruelty

Foie gras is the diseased and enlarged liver of a duck or goose produced through force-feeding

For more information, please visit www.nycfoiegras.com
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**FACTSHEET**

**What exactly is foie gras?**

*Foie Gras* (pronounced 'fwä-ˈgrä')—French for “fatty liver”—is a luxury food product made from the diseased and enlarged liver of a duck or goose and sold in about 1.5% of New York City restaurants. *Foie gras* is produced by force-feeding ducks and geese until their liver becomes diseased and grows up to 10 times its normal, healthy size.

**What is force-feeding?**

Ducks and geese suffer immensely in the *foie gras* industry, relentlessly forced-fed multiple times every day for weeks. The feeding process is excruciating; workers shove a foot-long pipe down the bird's esophagus and directly inject a large mass of food into their delicate digestive system. The over-feeding causes liver disease, enlarging the organ to 10 times its normal, healthy size. After enduring weeks of force-feeding, the bird is slaughtered and the liver is sold as *foie gras*.

**What are the animal welfare issues associated with force-feeding?**

*Damage to the liver & other diseases:* Force-feeding results in numerous illnesses and diseases, including hepatic lipidosis, bacterial and fungal infections, malnourishment, and lameness. For these reasons, mortality rates for force-fed ducks are 10 to 20 times higher than those for non-force-fed ducks.

*Damage to the esophagus:* Force-feeding causes a number of injuries: bruising or perforation of the esophagus; hemorrhaging and inflammation of the neck resulting from the repeated insertion of the pipe to the throat; and asphyxia caused by food improperly forced into the trachea.

*Fear & Stress:* Like all animals, including humans, ducks and geese experience great fear, as well as acute and chronic stress from the multiple daily force-feedings and the pain associated with them.

**What is the public's sentiment towards foie gras?**

- 81% of New York voters support legislation to prohibit the sale of force-fed *foie gras*.
- 28 New York City Council Members have co-sponsored Intro 1378
- 100+ NYC-based restaurants support a sales ban on force-fed *foie gras*.
- 50+ NY-based veterinarian professionals support a sales ban on force-fed *foie gras in NYC*.
- 50+ leading not-for-profit charities support a prohibition on the sale of *foie gras* in NYC.
- Retailers—such as Costco, Safeway, Target, Giant Eagle, Whole Foods Market and Wolfgang Puck—refuse to sell *foie gras* over animal cruelty.

**Has foie gras been banned anywhere in the world?**

Yes! Due to the animal cruelty involved, the State of California and several countries—including the United Kingdom, Denmark, Finland, Germany, Israel (formerly the world’s fourth-largest *foie gras* producer), Norway, Poland, Sweden, Switzerland, and Argentina—have either outright prohibited force-feeding for *foie gras* production and/or sale or have interpreted production as illegal under existing anti-cruelty laws.
New Poll: Eighty-one percent of New York voters support legislation to prohibit the sale of force-fed foie gras

NEW YORK CITY — A new citywide poll supported by a coalition of 42 public-interest charities shows 81 percent of New York City voters support Intro 1378, a bill introduced by Council Member Carlina Rivera that would prohibit the sale of foie gras from force-fed ducks and geese.

The survey, conducted by Mason-Dixon, shows that 78% of Democrats, 83% of Republicans and 88% of independents support the sales prohibition.

“These polling results demonstrate that New Yorkers of all political persuasions oppose animal cruelty and overwhelmingly support a prohibition on the sale of foie gras which comes from tortured ducks and geese,” said Council Member Carlina Rivera. “I can think of nothing more common sense than ending the egregious practice of selling a luxury food item made from abused animals.”

“It’s no surprise that New Yorkers overwhelmingly support protecting ducks and geese from the abusive foie gras industry,” said Council Member Justin Brannan. “Force-feeding a bird for the sole purpose of making it sick to create some bizarre delicacy is gruesome and inhumane.”

These poll numbers confirm that the public overwhelmingly supports laws that protect animals. Force-feeding birds until their liver is diseased and enlarged to 10 times its healthy size has no place in New York City.
Hudson Valley Foie Gras uses orchestrated and staged tours to mislead the public about the welfare of ducks force-fed for foie gras.

Prior to 1997, Hudson Valley Foie Gras (HVFG) allowed tours into their actual facility where force-feeding production occurred. Following a telling visit and incriminating review of the facilities from Dr. Holly Cheever, DVM and Whole Foods Communications Director Margaret Wittenberg, HVFG began staged tours in an attempt to conceal inhumane practices and abuse. Dr. Cheever states “what [HVFG] learned in 1997 is that they CANNOT show the birds in the last 10-14 days of production—they are too clearly ill...they also learned that they CANNOT show how feeding is done regularly because it is too hurried, noisy, smelly, therefore it looks violent.”

HVFG continues to falsely claims that their tours reflect actual production methods. These claims have been discredited by several investigations into HVFG by animal protection groups and by Dr. Cheever who has proved that the “serenity” of staged tours is impossible due to production volume.

Investigations into HVFG have found that a single worker was expected to force-feed several hundred birds three times each day. So many ducks died from ruptured organs resulting from overfeeding that workers who killed fewer than 50 birds per month were given a bonus. Investigators documented workers dragging ducks by their necks along the wire floor and pin them between their legs before ramming the metal force-feeding tubes down their throats. These investigations reflect actual feeding production methods which are not shown during their staged tours.

At HVFG, a single worker is responsible for feeding more than 350 birds three times a day. Therefore, feeders are required to complete over 1050 feedings per day. HVFG staged tours show two female workers spending several minutes gently “slo-mo” feeding healthy bird in a “zen-like serenity” for guests. The reality is that workers inside HVFG have only seconds to feed each bird in order to hit their output numbers. Additionally, in the final two weeks, birds are deathly ill and much harder to feed due to their strong aversion to the tube. These sick birds are not shown on tours and during feedings, fight and struggle due to pain. The time pressure, coupled with birds struggling to get away, require workers to use forceful and cruel feeding methods that lead to sever injuries to the esophagus. Simply put, HVFG’s claims are not supported by the facts.

Margaret Wittenberg of Whole Foods wrote to Dr. Cheever following their tour of HVFG, calling it “tragic” and “upsetting.” She further wrote: “Neither will our company endorse it or any by-products related to the production of foie gras.” Additionally, in a review of myths presented by the foie gras industry to the City Council, several New York-based veterinarians stated: “the foie gras industry often uses staged footage in attempts to counter the overwhelming evidence and irrefutable video footage collected by animal protection groups showing the inhumane conditions on foie gras farms in the US.”

Not a single New York City job will be lost by passing a ban to prohibit the sale of foie gras from force-fed birds.

A tiny percentage, less than 1.5%, of restaurants serve foie gras in NYC. Of the restaurants who serve foie gras, this is one luxury item on their menu of dozens of items. There can be no creditable argument made, nor did a single business in NYC testify, that any jobs would be lost due to the bills
passage. Alternatively, this bill would promote and protect NYC’s culinary reputation by removing a product that come from one of the cruelest productions practices on earth: force-feeding.

**The only veterinarian in opposition to Intro 1378 is a paid consultant for HVFG and mislead the Committee during his testimony.**

Dr. Lawrence Bartholf’s testimony in support of the treatment of ducks on HVFG farms is biased and should be deemed untrustworthy due to his being paid by HVFG as a consultant.

Additionally, Dr. Bartholf misled the Committee on several accounts:

- Dr. Bartholf’s testimony that the livers of force-fed ducks are not diseased is plainly false. Every creditable professional who’s studied the impacts of force-feeding has agreed that clinical signs of hepatic lipidosis can include brain damage due to liver failure, difficulty breathing, lack of appetite, depression and abdominal enlargement or fluid accumulation in the abdomen.
- Dr. Bartholf’s claiming it is the “normal ability in birds (for their liver to grow 10 times it’s normal size) because they migrate” is factually incorrect. In the case of foie gras, the liver is deliberately enlarged to up to 10 times its normal size via force-feeding multiple times daily for several weeks. In contrast, according to the AVMA’s summary of the peer-reviewed literature, duck livers showing seasonal changes enlarge only by a maximum of 1.5 times their normal size. Additionally, Dr. Bartholf failed to disclose that ducks raised for foie gras are a hybrid duck that doesn’t exist in the wild and therefore don’t migrate.
- Dr. Bartholf claimed that “the esophagus is flexible and durable” and that a “feeding tube is a non-event for them.” The indisputable facts are as follows: The mouth of the inserted pipe or funnel does cause injuries, bruising and/or perforation of the esophagus. Food accidentally entering the adjacent windpipe can lead to aspiration-associated irritation, infection and consequent difficulty breathing. Asphyxia (suffocation) can occur if food accidentally enters the trachea instead of the adjacent esophagus. The Scientific Committee on Animal Health and Animal Welfare of the European Commission found that the “oropharyngeal area is particularly sensitive and is physiologically adapted to perform a gag reflex in order to prevent fluids entering the trachea. Force feeding will have to overcome this reflex and hence the birds may initially find this distressing and injury may result.” These life-threatening consequences of constraint and force-feeding cannot be considered a “non-event,” as ignorantly described by Dr. Bartholf.

**Not a single resident or business of New York City testified in opposition in the passing of Intro 1378.**

This lack of opposition affirms previously conducted research, including a survey conducted by Mason-Dixon, showing that 81% of New Yorkers support this legislation. Only people who live outside of New York City and are financially tied to Hudson Valley Foie Gras or La Bella Farms testified in opposition. Alternatively, in support of Intro 1378, hundreds of New York City residents, dozens of not-for-profit organizations, 100 New York City based restaurants, and the Humane Society Veterinarian Medical Association—on behalf of 9000 members nationwide, and 300 members in New York—testified in full support. Two world-renowned veterinarians also testified at the hearing in support, both being independent, unpaid, and fully endorse Intro 1378.
Hudson Valley Foie Gras
An Industrial Foie Gras Factory Farm

Hudson Valley Foie Gras (HVFG) is a Concentrated Animal Feeding Operation (CAFO) located in Ferndale, NY. According to documents, HVFG is permitted to confine up to 138,000 ducks, generates 3,090 tons of manure, 500 tons of litter and bedding, and 1,500,000 gallons of wastewater.

Facts about HVFG:

- The New York Times exposed HVFG for exploiting and abusing their undocumented workers: “Animal-rights advocates have made a big deal about the way the ducks are force-fed to produce the enormously swollen livers from which the foie gras is made. But I've been looking at the plight of the underpaid, overworked and often gruesomely exploited farmworkers who feed and otherwise care for the ducks. Their lives are hard. The workers have no right to a day off or overtime pay. They don’t get any paid vacation or sick days. When I asked one worker if he knew of anyone who had a retirement plan, he laughed and laughed.”

- HVFG violated its Clean Water Act obligations on many occasions and in numerous ways. In a strongly worded opinion, the court issued an injunction against further Clean Water Act violations by HVFG, ordered HVFG to hire an expert and take remedial action, declared that HVFG will be fined $25,000 per day per violation for further violations, and ordered HVFG to pay $50,000 for an environmental project on the Middle Mongaup River—the final resting place for HVFG’s water pollution.
• New York State Department of Environmental Conservation, Division of Water, sent HVFG a notice of violation in 2012.
• On September 5, 2018, the New York State Department of Environmental Conservation, Division of Water, conducted a comprehensive inspection of HVFG to determine the compliance with SPDES General Permit for CAFOs and found the overall rating for HVFG “unsatisfactory.” They identified more than half a dozen violation.
• HVFG tried to define itself as “The Humane Choice” in its promotional materials while brutalizing ducks for gourmet profits. Their false advertising violated state and federal laws by telling consumers force-fed foie gras was “humane.” HVFG removed its deceptive “humane” language.
• COK (Compassion Over Killing) goes undercover inside Hudson Valley Foie Gras. What he documented can only be described as a torture chamber for birds—from pipes being shoved down their throats and food pumped into their stomachs to being grabbed by their wings, shackled upside down, and their throats slit.
• A PETA investigation at Hudson Valley Foie Gras in New York (previously called “Commonwealth Enterprises”) found that a single worker was expected to force-feed 500 birds three times each day. The pace meant that they often treated the birds roughly and left them injured and suffering. So many ducks died from ruptured organs resulting from overfeeding that workers who killed fewer than 50 birds per month were given a bonus. A worker told a PETA investigator that he could feel tumor-like lumps, caused by force-feeding, in some ducks’ throats. One duck had a maggot-ridden neck wound so severe that water spilled out of it when he drank.
• Another PETA investigation at Hudson Valley in 2013 documented that prior to the force-feeding period, young ducks were crammed by the thousands into huge warehouse-like sheds in conditions that are virtually identical to those for “broiler” chickens and turkeys on factory farms. Ducks who were being force-fed were confined, up to a dozen at a time, to a pen measuring just 4 feet by 6 feet. PETA’s investigator saw workers drag ducks by their necks along the wire floor and pin them between their legs before ramming the metal force-feeding tubes down their throats.
• The New York Times exposed HVFG again for poor working conditions and failing to give workers days off. "The conditions for the workers are crueler than the conditions for the ducks," said Maura Gonzales Rusas, a feeder. "It's hard work, it's heavy work, and we never seem to get to rest."
• Mercy for Animals releases shocking hidden-camera video of intentional animal torture secretly recorded at HVFG. MFA’s undercover investigator documented a culture of cruelty at HVFG, including: Workers violently shoving metal pipes down ducks’ throats, dead ducks—killed by the cruel force-feeding process—callously thrown away into trash bins, birds with open, bleeding wounds left to suffer without proper veterinary care, and fully conscious ducks being shackled upside down and having their throats cut open.
• The Better Business Bureau found the claims made by HVFG and their paid consultant Lawrence Bartoff to constitute false advertising
• Dr. Ward Stone, the former senior wildlife pathologist for the New York State Department of Environmental Conservation, has conducted necropsies on ducks who died during force feeding at Hudson Valley Foie Gras and writes, "I eat meat including ducks on occasion. However, the short tortured lives of ducks raised for Foie Gras is well outside the norm of farm practice. Having seen the pathology that occurs from Foie Gras Production, I strongly recommend that this process be outlawed."
Hudson Valley Foie Gras manure pit and tank
Foie Gras Industry’s “Poll” Discredited

The foie gras industry is attempting to mislead the public and the NY City Council by claiming their “poll,” conducted by Change Research, shows that “New Yorkers are not in favor of the proposed ban.” This statement stems from a severely flawed survey. Alternatively, an creditable poll, conducted by Mason-Dixon, found that 81% of New York voters support Intro 1378.

Change Research is an unreliable polling company that uses non-traditional polling methods.

- Change Research uses “online” polling methods
  - The top 40 polling companies in the US all use “live” polling methods. This is the most traditional and accurate polling method. According to Pew Research, “The accuracy of a poll depends on how it was conducted. Most of Pew Research’s polling is done by telephone. By contrast, most online polls that use participants who volunteer to take part do not have a proven record of accuracy.”
  - According to the New York Times, “...the alternatives to traditional polling are not fully mature, and the absence of a clear set of standards for online polling research has opened the floodgates to unproved surveys of uncertain quality.”
- According to FiveThirtyEight’s Pollster Ratings, based on the historical accuracy and methodology of each firm’s polls, the top 35 out of 36 polling organizations with an A+/A+A- rating exclusively use “live” polling methods. Live pollsters include trusted companies like: ABC, CBS, NBC, La Times, Mason-Dixon, CNN, and Gallop.
- According to FiveThirtyEight’s Pollster Ratings, Mason-Dixon, used by Voters for Animal Rights, is rated #36 in the US versus Change Research’s standings at #284.
- Change Research is self-identified as a “political organization,” this excludes Change Research from being a full unbiased third-party polling company. Mason-Dixon, on the other hand, is a “market researcher” firm.
- Traditional polling is centered around reading questions live, adjusting for biases, and identifying the respondent as a voter. Live polling is conducted by highly trained professionals to verify the respondents. Online polling methods simply cannot account for these biases. In fact, nearly 25% of the respondents did not finish the Change Research poll.
- Online polling is certainly more convenient, but historically inconsistent. FiveThirtyEight developed a statistic to evaluate pollster performance to assess these inconsistencies, and clearly, Change Research ranks poorly. Change Research’s tagline “fast, affordable” pales in comparison to the time and investment made by Mason-Dixon on behalf of VFAR for valid, reliable results representing the opinions of all New York voters accurately.
- Inclusivity matters. Online polling is inherently bias towards white educated respondents, excluding the valid and rightful opinions of New York voters with less readily available access to online polls, including low income voters, voters of color, voters with disabilities, and seniors.

Change Research conducted a “message testing” survey instead of a “public opinion poll.” The results of their survey do not measure public opinion on Intro 1378.

- Message testing is used by political campaigns to test public reaction to a variety of talking points to see if a communication strategy is likely to work. It does not measure “public opinion” as it exists now but rather voter reactions to a series of positive statements.
- A public-opinion poll is a poll taken by sampling a cross section of the public in an effort to estimate public attitudes on issues.
• Change Research conducted a message testing survey, not a public-opinion poll. The survey biased respondents with factually incorrect and misleading pro-foie gras talking points prior to surveying their level of support or opposition for Intro 1378. The talking points used to influence respondent’s opposition to Intro 1378 have been refuted and the results cannot be seen as a measure of the public’s opinion on this bill.

The Change Research survey questions are misleading, biased, and inaccurately describes Intro 1378.

• The key question surveyed, asked: “There is a proposal in the City Council to ban the sale of foie gras and other duck products in New York City. Do you support or oppose this?”

• Intro 1378 prohibits the sale of “any force-fed product” which is defined as “any product that is the result of force-feeding a bird with the intent to fatten or enlarge the bird’s liver.”
  o The survey is indisputably null and void for the simple reason that the question surveyed fails to include the term “force-fed” which is a vital part of the legislation. Foie gras from non-force-fed birds would not be covered by this bill. The failure to include “force-fed” is an egregious mischaracterization of Intro 1378 and the results cannot be seen as an accurate reflection of public opinion.
  o The survey inaccurately states that the proposed bill would “ban the sale of foie gras and other duck products.” This is incorrect and misleading. The bill would only prohibit the sale of foie gras from force-fed birds. The proposal does not include nor would it prohibit the sale of “other duck products.”

Despite the survey having been conducted by a less than reputable polling company, the survey questions being factually incorrect and misleading, and 25% of respondents did not even complete the survey, the results still favor banning the sale of foie gras. The foie gras industry has interpreted the date from this survey in their favor, when the results, in fact, show otherwise:

• Respondents when provided the following statements lean heavenly in favor of banning the sale of foie gras. Paraphrased below:
  o “According to French law, foie gras is the diseased liver of a duck or goose fattened by force-feeding corn with a feeding tube...painful force-feedings several times a day...thick pipe is rammed down their throats.” In response to this statement, 64% are “more likely to support the ban” versus 11% “more likely to oppose the ban.”
  o “The mortality rate of ducks is nine times greater than usual during the force-feeding period.” In response to this statement, 57% are “more likely to support the ban” versus 12% “more likely to oppose the ban.”

• 73% of those surveyed agree that the New York City Council should play a role in what food are allowed to be served in restaurants.
• 88% of those surveyed have not eat foie gras in the last two years.
• The Change Research survey results initially found a 11-point lead in favor of banning the sale of foie gras prior to being exposed to pro-foie gras talking points.
Coalition Statement Of Support For Intro 1378, A Bill To Prohibit The Sale Of Foie Gras From Force-Fed Birds In New York City

We, the undersigned group of over 50 nonprofit organizations, with significant membership in New York City, respectfully urge support for Intro 1378, introduced by Council Member Carlina Rivera. This legislation would prohibit the sale of “force-fed” foie gras in New York City and uphold humane standards by protecting animals that suffer as a result of the inhumane foie gras industry.

“Foie gras” is produced by inserting a 10- to 12-inch metal or plastic tube into a duck or goose’s esophagus, and rapidly delivering huge amounts of concentrated grain, fat, and compressed air into the bird via a pneumatic or hydraulic pump. This process is repeated up to three times a day for several weeks until the liver becomes diseased and grows up to 10 times its natural size before the bird is slaughtered. This forced-feeding causes extreme pain and suffering. The sale and production of foie gras is banned in the State of California and also prohibited in several countries, including Germany, Italy, Norway, Poland, Turkey, Israel, and India. The U.K. has outlawed the production of foie gras.

Council Member Carlina Rivera has introduced a common-sense bill that would end the unnecessary suffering by prohibiting the sale of products from force-fed birds in New York City. We applaud the City’s commitment in recent years to protecting sharks from the shark fin industry, puppies from puppy mills, and wild animals from circuses. We strongly support New York City joining dozens of countries, the State of California, and many prominent retailers in prohibiting the sale of foie gras from force-fed birds.

Sincerely,

Voters For Animal Rights
The Humane Society of the United States
Humane Society Veterinary Medical Association
Physicians Committee for Responsible Medicine
In Defense of Animals
Catskill Animal Sanctuary
Farm Sanctuary
Woodstock Farm Animal Sanctuary
Tamerlaine Farm Animal Sanctuary
Factory Farming Awareness Coalition
Mercy For Animals
Their Turn
Compassion Over Killing
Animal Haven
Jewish Initiative for Animals
Last Chance for Animals
NYS Humane Association
Animal Protection And Rescue League
Humane Society of New York
Compassion in World Farming
Barn Sanctuary
The Humane League
Animal Equality
PETA
Farm Forward
Animal Defenders International
Wild Bird Fund
Jewish Veg
The Shamayim V'Aretz Institute
Animal Welfare Institute
Mayor’s Alliance For NYC’s Animals
Better Food Foundation
Encompass
Lady Freethinker
FOUR PAWS International
St. Hubert’s Animal Welfare Center
The New York City Vegetarian & Vegan Meetup
Gentle Barn
Direct Action Everywhere
Anonymous for the Voiceless
Vegan Outreach
Albert Schweitzer Foundation
South Fork Foundation
Viva!
NYU SALDF
NYC Hip Hop Is Green
World Animal Protection
Animal Connection
V for Veganism
HEART
Vegans of New York
Compassionate Action for Animals
Avian Welfare Coalition
The Land and Sea Institute
Conservative Animal Welfare Foundation
Coexistence of Animal Rights on Earth
Friends of Animals
Veterinary Professional Support for New York City’s Intro 1378 to Prohibit Sale of Foie Gras from Force-Fed Birds

On behalf of the Humane Society Veterinary Medical Association (HSVMA), a national organization of more than 9,000 veterinary professional members with a focus on animal health and welfare, we convey our strong support for New York City Intro 1378. This bill, introduced by Council Member Carlina Rivera, would prohibit the sale of foie gras from force-fed ducks and geese. Joining with HSVMA, several individual licensed New York veterinary professionals have also signed this letter of support.

Foie gras is a luxury food produced by inserting a pipe down the esophagus and inhumanely force-feeding ducks or geese up to several times daily, in order to intentionally induce hepatic lipidosis, a disease state of liver enlargement. The fatty livers, which can be enlarged 10 times past their normal size, are then sold as a delicacy. Serious health ramifications to the birds can include esophageal trauma, difficulty breathing, mobility problems, aspiration, liver hemorrhage, and even cardiac or renal failure.

There is significant scientific evidence to support ending force-feeding in the foie gras industry:

The Scientific Committee on Animal Health and Animal Welfare of the European Commission declared that “[T]here is good evidence that liver structure and function...is severely altered and compromised in force-fed ducks and geese. [The Committee] concludes that force-feeding, as currently practiced, is detrimental to the welfare of the birds.”

Additionally, several well-respected veterinarians and animal welfare experts have attested to the harm caused by force-feeding ducks and geese:

- "Due to the enormous size of the livers ... the birds have no room for their air sacs to fill with oxygen ... analogous to feeling as if one is [being smothered]." -Dr. Holly Cheever, DVM, Humane Society Veterinary Medical Association
- “The practice of force-feeding amounts of food far beyond the limits of the duck’s need to eat causes pain and suffering. Ducks are highly capable of feeling pain, especially in the throat area. They have a gag reflex that would be overcome by the tube insertion, and this would cause distress in the bird.” - Dr. Debra Teachout, DVM, MVS
- “Force-feeding in the foie gras industry is inherently cruel. ... This feeding beyond what the ducks would eat normally causes hepatic lipidosis, or fatty liver, which impairs liver function. Severe liver impairment can lead to conditions like enlargement of the liver, fluid in the abdomen and eventually death.” - Dr. Lorelei Wakefield, VMD
- “In my opinion, [force-feeding] is cruel and inhumane, as it involves rough, invasive handling and can result in trauma and injuries to the esophagus. The process overrides
the natural system of hunger and satiety and the birds in the video appear to be frightened and distressed - they move immediately away from the handler as soon as they are released.” - Dr. Sara Shields, PhD, an animal welfare expert with an emphasis in poultry

- “[T]he process of force-feeding birds in order to deliberately induce a disease state is patently inhumane, causing severe physical pain and psychological distress.” - Dr. Lee Schrader, DVM

Establishing an animal cruelty offense to discourage foie gras production and prohibit its sale from force-fed ducks and geese is a common-sense reform that advances the welfare of animals.

We strongly encourage members of the New York City Council to co-sponsor and pass Intro 1378.

Sincerely,
Eileen Jefferson, DVM
New York State Representative, Humane Society Veterinary Medical Association (HSVMA)

Holly Cheever, DVM
Vice President, New York State Humane Association (NYSHA)
and Leadership Council, Humane Society Veterinary Medical Association (HSVMA)

John Green, DVM
Michal Hess, DVM – Glendale, NY
Susan Whittred, DVM – Rockaway, NY
Wendy Ip, BVetMed – New York, NY
Dr. Vanessa Spano, DVM, AVSAB - New York, NY
Gloria Tulliu, DVM – Queens, NY
Gretchen Cawein, DVM – New York, NY
Andrew Kaplan, DVM – New York, NY
Justin Lamb, Brooklyn, NY
Anne Marie McPartlin, veterinary technician
Deanna Price, veterinary technician
Denise Shea, veterinary technician
Alysa Cook, DVM
Dr. Steven Marvin Bruck
Dr. Tim Patrick Vleuten
Emily Margaret Hirsch, veterinary student
Joelle Stingone, veterinary technician
Kara Abbott, veterinary student
Kim Keane, veterinary technician
Kristen Cameron Schott, veterinary student
Dr. Pam Shultz
Dr. Pamela Perry
Dr. Pratikshya Patil
Michelle Brownstein, DVM

Dr. Adriana Pena
Dr. Amy J. Scarpinato
Dr. Betty Garcia Nussbaum
Dr. Danielle Pugliese
Dr. Dennis Dougherty
Dr. Elizabeth Alexander
Dr. Elizabeth O. Higgins
Dr. Eva Armfield
Dr. Hyunmin Kim
Dr. John Glenn Hynes
Dr. John Wendell Green
Dr. Kathleen Makolinski
Dr. Lawrence Silberg
Dr. Lena DeTar
Dr. Linda Hunter
Dr. Lisa Hara Levin
Dr. Lucia A. Roberts
Dr. Lynn Santors
Dr. Margaret B. Ohlinger
Dr. Marie Butcher
Dr. Mary Catherine Dryoff
Michelle White, DVM
Restaurant Support for New York City’s Intro 1378 to Prohibit Sale of Foie Gras from Force-Fed Birds

We, the undersigned New York City-based restaurants, support Intro 1378, introduced by Council Member Carlina Rivera. This legislation would prohibit the sale of “force-fed” foie gras in New York City and uphold humane standards by protecting animals that suffer as a result of the inhumane foie gras industry. We support this legislation because protecting the reputation of New York City is in our economic interest and is the right thing to do. Allowing a tiny percentage of restaurants to serve a product that derives from tortured animals give our culinary reputation a black-eye.

“Foie gras” is produced by inserting a foot-long metal or plastic tube into a duck or goose’s esophagus, and rapidly delivering huge amounts of concentrated grain, fat, and compressed air into the bird via a pneumatic or hydraulic pump. This process is repeated up to three times a day for several weeks until the liver becomes diseased and grows up to 10 times its natural size before the bird is slaughtered. This forced-feeding causes extreme pain and suffering.

Council Member Carlina Rivera has introduced a common-sense bill that would end the unnecessary suffering by prohibiting the sale of products from force-fed birds in New York City. We strongly support New York City joining dozens of countries, the State of California, and many prominent retailers in prohibiting the sale of foie gras from force-fed birds.

Sincerely,

Juice Generation - 16 loc. in New York City
Organic Grill - East Village, Manhattan, NY
VSPOT - 1 Manhattan & 1 Brooklyn loc.
Toad Style - Brooklyn, NY
PS Kitchen - Hell’s Kitchen, Manhattan, NY
Elisa’s Love Bites - Brooklyn, NY
Fermento - Brooklyn, NY
JAJAjA Plantas Mexicana - Manhattan, NY
Bodai Vegetarian - 2 loc. in Brooklyn, NY
Little Choc Apothecary - Brooklyn, NY
Riverdel - Brooklyn, NY
Adelina’s - Brooklyn, NY
Franchia Vegan Cafe - Manhattan, NY
Familiars - Brooklyn, NY
Plant Food +Wine - Manhattan, NY
Bar Verde - Manhattan, NY
XYST - Manhattan, NY
A Live Kitchen - Queens, NY
May Kaidee NYC - Manhattan, NY
Vegan’s Delight - The Bronx, NY
Red Pipe Organic Cafe - Queens, NY
FREEHOLD - Brooklyn, NY
Bhatti Indian Grill - Manhattan, NY
Moti Mahal Delux - Manhattan, NY
Go Zen - Manhattan, NY
Candle 79 - Manhattan, NY
Blossom - 2 loc. in Manhattan, NY
Rockin Raw - Manhattan, NY
amor y amargo - Manhattan, NY
fire&water - Manhattan, NY
proletariat - Manhattan, NY
desnuda - Manhattan, NY
honeybee’s - Manhattan, NY
Happy Zoe Vegan Bakery - Brooklyn, NY
Blossom Du Jour - 3 loc. in Manhattan
Risotto Burger - Brooklyn, NY
Cinnamon Snail - 2 loc. Manhattan, NY
death&co - Manhattan, NY
avant garden - Manhattan, NY
mother of pearl - Manhattan, NY
cienfuegos - Manhattan, NY
Chickpea & Olive - Brooklyn, NY
Urban Vegan Kitchen - Manhattan, NY
Brooklyn Whiskers - 2 loc. in Brooklyn, NY
Perelandra Juice Bar and Kitchen - Brooklyn, NY
Thai Farm Kitchen, Brooklyn, NY
Pure Ktchn, Manhattan, NY
Spring Natural Kitchen, Manhattan, N
Delice & Sarrasin - Manhattan, NY
Junoon Restaurant - Manhattan, NY
Next Stop Vegan - The Bronx, NY
Awadh Restaurant - Manhattan, NY
Terri - 3 locations in Manhattan, NY
Divya's Kitchen - Manhattan, NY
Spicy Moon - Manhattan, NY
Champs - Brooklyn, NY
Hartbreakers - Brooklyn, NY
Screamers Pizzeria - 2 loc. in Brooklyn
Marty's V-Burger - Manhattan, NY
Bombay Sandwich Co. - Manhattan, NY
Bar Velo - Brooklyn, NY
Seasoned Vegan - Harlem, NY
HanGawi - Manhattan, NY
Sacred Chow - Manhattan, NY
Candle Cafe - 2 loc. in Manhattan, NY
Double Zero - Manhattan, NY
The Chick Shop - Manhattan, NY
Kollectiv - Manhattan, NY
Beyond Sushi - 6 loc. in Manhattan, NY
Franchia Vegan Cafe - Manhattan, NY
Next Stop Vegan - The Bronx, NY
Asya Indian Restaurant - Brooklyn, NY
Tandoori Place, The Bronx, NY
Enthaice Thai Kitchen, Queens, NY
Baoburg, Brooklyn, NY
Bua Thai Ramen & Robata Grill, Manhattan, NY
Foie Gras Myths Busted

We’d like to shed some light on the five most common myths used by the *foie gras* industry to justify the force-feeding of ducks and geese.

The rebuttals to the industries false claims have been prepared by the following group of New York based veterinarians:

Eileen Jefferson, DVM – High Falls, NY
Michael Hess, DVM – Glendale, NY
Gretchen Cawein, DVM – New York, NY
Gloria Tulliu, DVM – Queens, NY
Justin Lamb, DVM – Brooklyn, NY
Andrew Kaplan, DVM – New York, NY
Susan Whittred, DVM – Rockaway, NY

*Claim 1*

“Ducks have no gag reflex & their esophagi have a tough lining, so they can swallow fish & other prey without pain.”

**Facts:**

In foie gras production, force-feeding is accomplished via a long metal pipe inserted down the bird’s esophagus. Whereas a bird swallowing its own food uses voluntary muscle movements and digestive reflexes, the forced action of inserting a foreign object poses much more risk, over which the bird has no control. The mouth of the inserted pipe or funnel can cause injuries, and bruising or perforation of the esophagus can occur from insertion of the pipe or funnel. Injuries can also occur from the food being too hot. In addition, aspiration may occur; food accidentally entering the adjacent windpipe can lead to aspiration-associated irritation, infection and consequent difficulty breathing. Asphyxia (suffocation) can occur if food accidentally enters the trachea instead of the adjacent esophagus.

Approximately 95% of the birds used in U.S. foie gras production are Muscovy or Muscovy/Mallard hybrid ducks. Because both breeds are dabbling ducks and not diving ducks, their natural, swallowed diet consists primarily of aquatic plants and insects, or sometimes small fish, but not “large prey.”

Additionally, the Scientific Committee on Animal Health and Animal Welfare of the European Commission found that the “oropharyngeal area is particularly sensitive and is physiologically adapted to perform a gag reflex in order to prevent fluids entering the trachea. Force feeding will have to overcome this reflex and hence the birds may initially find this distressing and injury may result.”
Claim 2
“In nature, ducks fatten their livers for energy prior to migration, & the effect is reversible.”

Facts:
Foie gras, or “fatty liver,” refers to the condition known medically as hepatic lipidosis. It results from excessive fat content in the diet and/or too large or too frequent feedings. In the case of foie gras, the liver is deliberately swelled to up to 10 times its normal size via force-feeding multiple times daily for several weeks. In contrast, according to the AVMA’s summary of the peer-reviewed literature, duck livers showing seasonal changes enlarge by a maximum of 1.5 times their normal size.

Clinical signs of hepatic lipidosis can include brain damage due to liver failure, difficulty breathing, lack of appetite, depression and abdominal enlargement or fluid accumulation in the abdomen. In pet birds accidentally subjected to an improper diet, hepatic lipidosis is intervened upon to avoid life-threatening consequences. In foie gras manufacture, the diseased liver and associated ailments are overlooked for the end goal of creating the food product. Due to the severity of illness caused by force-feeding, ducks raised in the foie gras industry often experience mobility problems.

Claim 3
“Independent veterinarians & scientists conclude that hand-feeding ducks causes them no harm.”

Facts:
In its “Welfare Implications of Foie Gras Production” literature review, the American Veterinary Medical Association (AVMA) lists multiple health risks of foie gras production, including “potential for injury,” “distress from restraint,” “compromised health and welfare,” and “creation of a vulnerable animal more likely to suffer from otherwise tolerable conditions such as heat and transport.” When thoroughly studying the use of force-feeding in the foie gras industry, the Scientific Committee on Animal Health and Animal Welfare of the European Commission declared that, “[T]here is good evidence that liver structure and function...is severely altered and compromised in force fed ducks and geese. [The Committee] concludes that force feeding, as currently practiced, is detrimental to the welfare of the birds.”

Additionally, several well-respected veterinarians have attested to the harm caused by force feeding ducks and geese:

- "Due to the enormous size of the livers ... the birds have no room for their air sacs to fill with oxygen ... analogous to feeling as if one is [being smothered]." - Holly Cheever, DVM of the Humane Society Veterinary Medical Association
- "The practice of force feeding amounts of food far beyond the limits of the duck’s need to eat causes pain and suffering. Ducks are highly capable of feeling pain especially in the throat area. They have a gag reflex that would be overcome by the tube insertion, and this would cause distress in the bird." - Dr. Debra Teachout, DVM, MVS
- “Force-feeding in the foie gras industry is inherently cruel. ... This feeding beyond what the ducks would eat normally causes hepatic lipidosis, or fatty liver, which impairs liver function. Severe liver impairment can lead to conditions like enlargement of the liver, fluid in the abdomen and eventually death.” - Dr. Lorelei Wakefield, VMD
- “In my opinion, [force-feeding] is cruel and inhumane, as it involves rough, invasive handling and can result in trauma and injuries to the esophagus. The process overrides the natural system of hunger and satiety and the birds in the video appear to be frightened and
distressed - they move immediately away from the handler as soon as they are released.” - Dr. Sara Shields, PhD, animal welfare expert with an emphasis in poultry

- “[T]he process of force feeding birds in order to deliberately induce a disease state is patently inhumane, causing severe physical pain and psychological distress.” - Dr. Lee Schrader, DVM

Claim 4

“American foie gras is raised on small-scale farms using artisanal methods.”

Facts:
Investigators recounting their experiences at Sonoma Foie Gras near Stockton, California stated:

“We could tell when we were getting close to the farm because of the smell. It smelled like a mixture of feces, vomit and death. It was the kind of smell that plagues your senses and stays in your clothes.”

“Once we got inside, we knew why it smelled so foul,” recalls an investigator. “When we turned on the lights, we saw row after row of ducks crowded into filthy pens. Most of them were covered in vomit and often blood from body cavities and gaping wounds.”

Investigators videotaped while employees at both facilities force fed the ducks, repeatedly shoving a large metal pipe attached to a pneumatic feed pump directly into the esophagi of the birds and forcefully inserting massive quantities of feed into their gullets. Also documented were ducks too weak and overweight to defend themselves as rats at Sonoma Foie Gras ate their wounds.

The foie gras industry often uses staged footage in attempts to counter the overwhelming evidence and irrefutable video footage collected by animal protection groups showing the inhumane conditions on foie gras farms in the US.

Claim 5

“The American Veterinary Medical Association has investigated foie gras production, and for three consecutive years refused to take a position against it.”

Facts:
In 2007, after three consecutive years of not taking a position, the American Veterinary Medical Association (AVMA) approved a resolution condemning the artificial force-feeding of ducks and/or geese to produce foie gras. The AVMA continues to educate its veterinarian members about the welfare and health concerns of foie gras on its website.

The Humane Society Veterinary Medical Association (HSVMA), a national veterinary medical association focused specifically on animal welfare with over 9,000 members nationwide, is opposed to foie gras. It strongly supports currently pending legislation to prohibit sale of foie gras in New York City.
Amber Canavan’s Statement for the Foie Gras Hearing in New York City

Dear Members of the Health Committee,

My name is Amber Canavan, and I visited Hudson Valley Foie Gras in 2011. I did so without permission, because I did not believe the misleading advertisements that the company puts out and I thought the public had a right to know the truth. I was right to be suspicious. I found that Hudson Valley Foie Gras is an industrial factory farm that force-feeds animals until they become sick and slaughters them just before they would die from the very process itself.

I discovered that the birds were being kept in wire-bottomed pens suspended over a river of sludge composed of their own urine and droppings. The shed was so long and the air was so hazy that I could barely see the end of it—just row after row of pens filled with distressed birds. When not being used, the force-feeding tubes, which are about the length of my forearm, are left dangling menacingly over their heads. Many of the ducks at the facility barely moved and had difficulty walking and breathing—experts say that this is because of their engorged livers and being forced to stand 24/7 on the wire.

Ducks are semi-aquatic animals. They swim and dive. To be deprived of access to any water except enough to dip their beaks in must be torture for them. They can’t groom themselves and can’t relieve the pressure on their joints and feet as they normally would by floating in water. Several of them had dried discharge around their eyes and nostrils. The skin and feathers of many of the ducks were caked with feces, and some of the birds suffered from open, untreated wounds. I found the corpses of dead ducks lying beside living birds in several pens.

I had hopes that the legal system would do something to help these suffering animals. Instead, after I exposed the truth, Hudson Valley Foie Gras used its political influence to have me prosecuted and thrown in jail. While being incarcerated is awful, it made me think deeply about the animals used by the foie gras industry, all of whom are subjected to far, far worse for their entire lives only to be killed or die horribly.

I know that if any decent, kind person saw the sick, frightened, miserable birds and the conditions that they are forced to endure on foie gras farms, they would never touch this product again. I am extremely grateful to the city council for hearing me out today and considering this issue. Please, do not allow Hudson Valley Foie Gras or any other greedy company from the foie gras industry to sell its products in this progressive city.

Sincerely,
Amber Canavan
June 17, 2019

To New York City Council,

My name is Herve Breuil, I am the Shelter Director at Woodstock Farm Sanctuary in High Falls, New York. Woodstock Farm Sanctuary offers sanctuary and cares for 370 rescued farmed animals, including 40 ducks, who were rescued from cases of neglect and abuse.

I am here today to testify in strong support of New York City Council Intro. 1378 to ban the sale of foie gras in New York City. My personal experience exposing the cruelty involved in foie gras production comes both from my former role as an undercover investigator of foie gras farms in France, and my experience as a farm sanctuary animal caretaker.

I am originally from France, where I previously worked as a campaign manager for the French organization L214. One of the campaigns I worked on is called “Stop gavage” (stop force-feeding), a campaign focused on exposing and informing about the cruelty of foie gras production in France. France is the 1st producer of foie gras in the world with 75% of the world production.

During my investigations I filmed foie gras farms in Brittany and the South West of France, revealing the immense suffering caused to ducks and geese in its production, including from force feeding, and other cruelty.

I witnessed ducks being forced fed 2 lbs of a corn mash within 5 seconds, twice a day, by means of a metal tube, 20 - 30 centimeters long, being thrust down their throats till it reaches the stomach. This results in the liver becoming almost ten times larger than its normal size, and the bird develops an illness: hepatic steatosis.

If the bird struggles when the tube is thrust down his throat, or if his esophagus contracts with the urge to vomit, he runs the risk of suffocation and fatal perforation of the neck.

I have seen many ducks dead inside their cage or dying after suffocating or having their necks perforated.

Insertion of the tube causes lesions which become germ-infested and painfully inflamed. The unbalanced and forced over-feeding frequently causes potentially fatal diseases of the digestive system.

Immediately after each force-feeding session the bird suffers from breathlessness and diarrhea. The enlargement of the liver makes it difficult to breathe, and all movement is painful.

If this treatment were to be continued, it would cause the death of the force-fed animals. They are slaughtered before they die from its consequences. However, the weakest animals are dying when they arrive in the slaughter room, and many don't last that long: the mortality rate of ducks is 9 times greater than usual during the force-feeding period.
The inherent violence of foie gras production would alone justify its abolition. However, for most of these animals their ordeal is not limited to the brutality of force-feeding. Many are amputated of part of their beak, without anesthetic, by pliers or scissors. Female ducks are usually ground up alive or gassed shortly after hatching, because their livers have more veins than those of males and not suitable to produce foie gras.

23 of the 28 European Union countries have banned the production of foie gras because of its cruelty. France is an exception. However, most French people are opposed to foie gras. According to a survey from November 2017, 58% of French people are in favor of banning the force feeding of ducks and geese. 37% of French people refuse to buy foie gras for ethical reasons. And the French department of agriculture numbers show that foie gras consumption decreased by an incredible 28% in 2016 (notably because of the avian flu), marking the 6th year of consumption decrease.

As Shelter Director I can attest to the basic needs and unique personalities of the ducks, which they are prevented from expressing. It is natural for ducks to spend a large part of their life on water. In these farms, the birds are kept in sheds, then in cages where their feet are injured by the wire floor. When they don't have access to water, their feet develop ulcerative pododermatitis and their hocks become inflamed. In a foie gras farm they are denied their most natural needs: they can never swim or fully spread their wings or blow bubbles in water to clean their nostrils or preen after swimming or dig holes in puddles to forage for bugs or choose their friends.

Ducks are social animals and at a sanctuary they get the chance to choose their friends. We have a blind duck, Coconut. She has 2 friends, Arwen and Tom who never leave her side and guide her to the food and pond and back to the coop at night. There is also Teddy and Quincy. Whereas it is said ducks do not mate for life, unlike geese, these 2 were rescued together in 2009 and have been inseparable since. Ducks can live to be 12 years but they only get 3 months in a foie gras farm.

As a Frenchman, duck caregiver, and advocate for the compassionate treatment of animals, I urge you to vote yes on New York City Council Intro. 1378 to ban the sale of foie gras in New York City.

Sincerely,

Herve Breuil
Testimony in Support of the passage of Intro 1378 (force-fed foie gras sales ban)

Dear Members of the Committee on Health,

My name is Sarahjane Blum and as both a born and raised New Yorker and someone who has witnessed first hand what ducks force-fed for foie gras endure, I am writing to strongly encourage 1378 be passed by your committee.

I spent over a year visiting Hudson Valley Foie Gras and documenting the conditions of the farm. During that period, I witnessed how painful and brutal force-feeding is, both during the feeding itself and for the entire month when the procedure is repeated multiple times a day, every day.

As part of the feedings, I saw farmworkers routinely and roughly grab birds by their necks and violently wrench them into position shoving the three foot long metal pipes down the necks of birds who during the first half of the month were still trying to escape, and by the end too weak to struggle. Though the industry calls them tubes, these pipes are wider than the iron window grates we see walking down the streets of New York City daily. They often tear holes into the necks and organs of the birds being fed causing the animals to die painfully over the next several hours or days. In nearly all cases, the physical trauma of feeding makes it harder and hard for the birds to breathe, their beaks and throats become raw and painful, and their unnatural weight gain makes it hard for them to move or be comfortable even when still.

By late in the month of a force-feeding cycle, the pens and cages are filled with diseased and dying birds.

I encountered birds with pus encrusted eyes and bleeding sores, birds too weak to lift their heads, and among them, lifeless birds whose beaks were filled with the hard corn mash they had been force-fed, and then choked on until they died from asphyxiation or heart failure.

Birds who die during the process could lay among the living for up to a day, but they are eventually tossed into trash cans which stood in plain sight of the pens and cages where the birds still slated for forced feeding were. As often as not, I saw that the workers didn’t even bother to close the lids of trash cans since they would need them soon enough again.

In the wild, ducks can live over a decade, but it takes only a month of this force-feeding to bring them to the brink of death. Foie gras production involves inducing a fatal liver disease into ducks and geese and then killing them just before the disease would cause their organs to fail, and then packaging a diseased organ as a delicacy.

New Yorkers are too savvy to fall for this packaging, which is why over 80% of voters oppose the sale of foie gras in our city. It’s also why I’m confident you will support the passage of Intro 1378 into committee.

Sincerely,
Sarahjane Blum
Scientists and Experts Statements on Force-Feeding for Foie Gras Production and Animal Welfare

The force feeding of ducks and geese for the production of foie gras is a cruel and inhumane practice that should be banned.

— Dr. Ian J.H. Duncan, Emeritus Chair in Animal Welfare, University of Guelph

This overfeeding will lead to liver enlargement and malfunction, causing chronic metabolic dysfunction and illness. The ducks at this facility, therefore, are being subjected to extremely inhumane conditions causing them to suffer greatly.

— Dr. Nedim C. Buyukmihci, VMD, emeritus professor of veterinary medicine, University of California

There is good evidence that liver structure and function...is severely altered and compromised in force fed ducks and geese. [The Committee] on Animal Health and Animal Welfare concludes that force feeding, as currently practised, is detrimental to the welfare of the birds.

— Europe’s Scientific Committee on Animal Health and Animal Welfare

Having studied the process of force-feeding ducks over a 14-year period, including witnessing 2 New York producers, I can state that this process is easily the cruelest form of food animal production. In no other food-producing system do we intentionally create a painful and fatal illness (liver failure) in thousands of suffering animals, whose husbandry includes the infection by pneumonia, liver engorgement to 10-times normal size, inability to walk due to their swollen abdomen, brain damage from liver failure (some birds show seizures while being force-fed,) in addition to the pain of limb fractures and ruptured esophagi from rough handling. There is no need to create and then consume a diseased organ from a suffering duck.”

— Dr. Holly Cheever, DVM

If one looks at the production of foie gras for what it really is—causing a healthy liver to become diseased by forced overfeeding—then eating it could leave a whole different taste in your mouth.

— Dr. Greg Burkett, DVM, board-certified avian specialist

Force-feeding in the foie gras industry is inherently cruel. ... This feeding beyond what the ducks would eat normally causes hepatic lipidosis, or fatty liver, which impairs liver function. Severe liver impairment can lead to conditions like enlargement of the liver, fluid in the abdomen and eventually death.

— Dr. Lorelei Wakefield, VMD

The practice of force feeding amounts of food far beyond the limits of the duck’s need to eat causes pain and suffering. Ducks are highly capable of feeling pain especially in the throat area. They have a gag reflex that would be overcome by the tube insertion, and this would cause distress in the bird.

— Dr. Debra Teachout, DVM, MVS
In my opinion, [force-feeding] is cruel and inhumane, as it involves rough, invasive handling and can result in trauma and injuries to the esophagus. The process overrides the natural system of hunger and satiety and the birds in the video appear to be frightened and distressed—they move immediately away from the handler as soon as they are released.

— Dr. Sara Shields, PhD, animal welfare expert with an emphasis in poultry

[The process of force feeding birds in order to deliberately induce a disease state is patently inhumane, causing severe physical pain and psychological distress.]

— Dr. Lee Schrader, DVM

It is well-documented that the process of force-feeding these birds inflicts suffering in the form of traumatic injuries to their esophaguses and stomachs as well as severely diseased fatty livers.

— Dr. Armaiti May, DVM, CVA

Most egregious is the fact that the animals are force fed to create the fatty liver constitutive of foie gras. Many people do not realize that veterinary medicine recognizes ‘fatty liver’ as a pathological condition, i.e. a disease.

— Dr. Bernard Rollin, PhD, distinguished professor of animal sciences, Colorado State University

The liver steatosis caused by ‘gavage’ is a pathological process that shows itself first by a fatty degeneration of the hepatic cells and then by necrosis. The fatty liver cannot be seen as normal. It is a categorical sign of a state of illness with clinical symptoms.

— Dr. Marianne Heimann, Veterinary Pathologist

The production of fatty liver for foie gras... raises serious animal welfare issues and it is not a practice that is condoned by FAO.

— The Food and Agriculture Organization (FAO) of the United Nations

It’s the same as cigarettes, it should carry a health warning so that people know what’s been done to the animal.

— Influential French Chef Albert Roux

I eat meat including ducks on occasion. However, the short tortured lives of ducks raised for foie gras is well outside the norm of farm practice. Having seen the pathology that occurs from foie gras production, I strongly recommend that this process be outlawed.

— Dr. Ward Stone, Senior Wildlife Pathologist, New York Dept of Environmental Conservation
Scientists and Experts Statements on Force-Feeding for Foie Gras Production and Animal Welfare (cont’d)

Foie gras is in fact a diseased liver... Forced feeding of waterfowl, or food induced hepatic steatosis, leads to pathological changes in the liver which cause undeniable suffering to these animals. The economic goal of the process is to effect the maximum change to this organ in the minimum amount of time in order to maximize profits. It must, however, be ended before the manifestations of degeneration, which are unavoidable beyond a certain point, affect the quality (the powdery texture) of the product or the overall health of the birds... Moreover, at the end of this process the birds are unable to make the slightest exertion, which is the direct opposite of the purpose [of fatty buildup] under natural conditions... There is no comparison between the natural buildup of fats by waterfowl before migration, which occurs in peripheral tissue (50% in the breast area), and the extreme conditions which result from forced feeding.

— French veterinarian Dr. Yvan Beck, in his comprehensive study, "The force-feeding of poultry and the production of foie gras"

My view on the production of foie gras is clear and supported by biological evidence. This practice causes unacceptable suffering to these animals... It causes pain during and as a consequence of the force-feeding, feelings of malaise as the body struggles to cope with extreme nutrient imbalance and distress caused by loss of control over the birds’ most basic homeostatic regulation mechanism as their hunger control system is over-ridden.

— Christine Nichol, Professor of Animal Welfare at the School of Veterinary Science at the University of Bristol

Force feeding quickly results in birds that are obese and in a pathological state, called hepatic lipidosis or fatty liver disease. There is no doubt that in this pathological state, the birds will feel very ill. In my view it is completely unethical to deliberately promote a diseased state in an animal. The birds’ obesity will lead to a myriad of other problems from skeletal disorders to difficulties in coping with heat stress and all of which are accompanied by feelings of malaise.

— Dr. Ian Duncan, a poultry welfare expert and professor in Applied Ethology at the University of Guelph in Canada

I believe that the conditions described, under which these birds were kept and the fact that they had been force-fed to create an obese and unhealthy state constitutes unnecessary cruelty... The liver is there to clean out toxins from the blood stream. If the liver can’t work properly, you’ve got all these toxins flowing through the blood, making them feel bad in various ways, so it can harm various organs as well as the brain.

— Dr. Laurie Siperstein-Cook, Avian Veterinarian

Force-feeding ducks and geese up to 4 pounds of mash a day for a ‘delicacy’ causes the animals to suffer from a painful illness that causes their livers to swell up to ten times their normal size. Anyone who eats foie gras is personally responsible for the suffering of these animals. It is up to restaurateurs and consumers to refuse to contribute to this suffering by refusing to eat or serve foie gras.

— Dr. Elliot M. Katz, DVM
Scientists and Experts Statements on Force-Feeding for Foie Gras Production and Animal Welfare (cont’d)

I have several professional concerns about the methods used to raise these birds... although these animals have a genetic predisposition to store larger amounts of fat in their liver, they do so for the specific purpose of preparing to migrate. The birds in the industry do not migrate and do not presumably receive the external environmental cues that would normally signal them to begin to eat more than usual. In addition to this, under natural situations, the birds eat a particular amount voluntarily. In light of that, it is a false statement that the techniques the industry uses is simply mimicking a natural behavior. Despite the misrepresentation of the industry using natural techniques, force-feeding in itself can cause significant discomfort.

— Dr. Emily Levine, Veterinarian & Ethology Expert

Force-feeding is by all accounts a cruel way of raising an animal... the liver is made incapable of functioning, thus becoming excessively fatty and smooth.

— Hrayr Berberoglu, Professor Emeritus of Hospitality and Tourism Management specializing in Food and Beverage

Does foie gras amount to cruel and unusual punishment? — with an absolute yes.

The birds do suffer during the feeding process. A stomach tube is rapidly forced through the esophagus into the stomach, sometimes leading to injury, and the huge amount of food being forced into the stomach causes harm in and of itself. Not only does the liver become enlarged, it also malfunctions, so the birds are chronically ill. The ducks are kept in crowded conditions, and their bills, which are rich in nerve endings, are removed with scissors, which causes acute and chronic pain and prevents normal feeding and preening.

When you consider what these birds must endure — and the many other food choices available—it seems that promoting foie gras reflects human indulgence at its worst.

— Nedim C. Buyukmihci, Veterinarian with 30 years’ experience

We’ve all read claims that foie gras production is somehow in line with birds’ natural habits. These claims are certainly not rooted in science. They obscure how far beyond physiologic variations the liver is pathologically enlarged to produce foie gras. They also do not acknowledge that the repetitive, involuntary insertion of a foreign object into an animal’s esophagus is not natural, but rather inherently stressful.

— Dr. Eileen Jefferson, DVM
FOIE GRAS PRODUCTION: DOING THE MATH

The 1997 Whole Foods Inc. tour was crucial, in my opinion, since it taught the plant producers how to create their current artificial tours, which they have been conducting since the fall of 2004, shortly after the CA law was signed banning FG sales and production in 2012. They saw clearly that the writing was on the wall and had to devise a demonstration to assist them in fighting for their economic lives. What they learned in 1997 is that they CANNOT show the birds in the last 10-14 days of production—they are too clearly ill, even to the untrained public's eye. They also learned that they CANNOT show how feeding is done regularly because it is too hurried, noisy, smelly, therefore it looks violent.

So: as for the math: I have heard Marcus Henley, their PR man and plant manager, state on several occasions (Chicago city council hearing, MASS state legislature hearing, & on my tour in 11/05) that:

1) they produce 6,000 birds per week: check their website, it once was cited there, too.

2) He also stated repeatedly that they have 150 workers on site: (the importance of that fact is that with that much labor at hand, it would only take about 15 minutes to hide the evidence, strew fresh sawdust on the duckling pens so they look clean, and cherry-pick out the sick birds in the production line if there was an "unannounced" tour—which there are not.)

3) He has stated that each worker handles 350 birds per feeding and does 3 feedings per day. That means that each worker has 1050 bird feedings/interactions per day, and if you do the same process 1050 times daily in a hurry because your shift is so long, you will not see the zen-like serenity that the 2 female workers exhibit on the staged tours as they handle their few birds.

4) Doing the math, if each handler is processing 350 birds every week and the total weekly production is 6,000, then there must be at least 17 workers per shift:—Henley claims that the feeders stay with their same population of birds since they know them familiarly and it is less stressful on the birds (I doubt that)—i.e., in their last (4th) week before their death, the 6,000 ducks about to die must be handled by at least 17 people (350 birds per worker), but meanwhile, other workers are feeding the early-stage birds.

Conclusion: there may be twice as many workers feeding birds at each shift, but there must be at least 17—and that is a far cry from the 2 tiny gentle "slo-mo" ladies that all the guests describe.

I have asked 3 veterinary visitors and have heard the testimony from 3-4 chefs at legislative hearings, all describing 1-2 workers operating during their tours. Mine had only 2 workers. When I clocked their number of birds per worker per unit time, the best production that HVFG would be capable of—IF these tours were representative—would be about 300-500 birds per week. If they were operating at the speed that workers do normally without observation, they MIGHT achieve 700—but their speed is about half that of the regular feeding shifts (from my personal observation of HVFG and other plants on videos and
the 1997 tour)--so it might produce 300-500 birds per week, to be generous, if the image portrayed on
the tours was representative.

So here's the problem: 300-500 ducks DOES NOT EQUAL 6,000.

Here is the 2nd problem: I examined birds from HVFG and so did Dr. Ward Stone, the NYS wildlife
pathologist, and Cornell Veterinary School; Farm Sanctuary has photos and videos on their website
from the same population of birds taken at this time (end of Sept and early Oct 2005). This was 6
weeks before my tour. The evidence from these seized birds--photo, video, necropsy report from Dr.
Stone and from Cornell vet school's pathology dept., show birds and husbandry that is completely
dissimilar to the image I was shown on my tour a short time later, and dissimilar to the tours taken a
couple of months earlier by veterinarians who testified at the AVMA's House of Delegates hearings in
July '05.

In short, the 2 pieces of evidence do not match, i.e. the peaceful vision of the sanitized tour's feeding
operation, vs. the state of the ducks when no visitors are present.

Inevitable conclusion: the tours do not represent accurately the actual state of the operation.
To: Dr. Holly Cheever  
From: Margaret Wittenberg  
RE: foie gras background info  
Date: January 27, 1997

It was a pleasure meeting you, although unfortunately under tragic circumstances. Attached are the background materials we spoke about from both D’Artagnan, Inc, and the ASPCA.

Both Michael Corsello and I found the trip to be very upsetting that these types of practices still exist. As we told you, our main reason for going was to be able to see for ourselves what D’Artagnan claimed to all our stores, and repeatedly to both Michael and me, to be almost a pleasurable experience for the ducks. Obviously, that is not the case. Neither will our company endorse it or any by-products related to the production of foie gras.

We look forward to your report. You can FAX it to me via our company FAX (512-477-1301) or, if you wish to keep it more classified, send it to my home FAX (512-894-0456). Also, we expect a bill that includes your time, mileage, and expenses.

Thank you,

Margaret Wittenberg  
Communications Director  
Quality Assurance  
601 N. Lamar #900  
Austin, Texas 78703  
(512) 477.5566 ext. 126  
(512) 477.1301 fax  
wittenberg@wholefoods.com

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Please acknowledge receipt by ☐ telephone ☑ fax  
To communicate accurate company and industry information among all team members and allow a safe forum for team member expression.
Foie gras producer uses engine oil to grease pipes forced down geese throats

Exclusive: Secret footage also shows birds thrown violently into cages, leaving them injured and in pain

By: Jane Dalton @JournoJane
Tuesday 16 April 2019 17:47

A leading producer of foie gras has been using engine oil to grease the pipes it uses to force down birds’ throats.

Secret footage taken by an undercover investigator shows oil intended for vehicles being applied to the rods before they are shoved into the geese to force-feed them.

The clips, taken on a farm in Ukraine, also show birds being thrown violently into cages, leaving them injured and in pain.

Injured and dead birds were left to suffer or rot in piles, the witness reported.

Foie gras is the fatty livers of geese force-fed to make them unnaturally overweight. Its production is considered so cruel that it is banned in the UK but imports are legal. Campaigners have been lobbying for an import ban after Brexit.

The investigator who used a hidden camera to film the footage said he saw geese clearly suffering after being force-fed then tossed aside. Some vomited, some panted. They had already suffered from being squashed together on lorries, he said.

“What I saw cannot be compared with what I originally expected to see. I worked there for about a month so as not to cause suspicion by leaving after the first day, but it was very difficult for me.

“They bring birds for breeding in a truck. In each section there should be 12 birds but in fact there are about 40, therefore they are already in terrible stress and aggressive to each other.

“Birds are thrown from the height of the truck into cages that are also very small.

“I saw a lot of cases where birds were trying to get out of the cage but were clinging to the pintle [hinge bolt] and immediately died directly on them or from wounds.”
Force-feeding, which makes livers swell to 10 times their normal size, also often causes internal injuries.

Ukraine has only one foie gras producer, MHP, which is the country’s largest poultry producer. Its keeps 20,000 birds in an industrial-style foie gras unit.

Last year the company said it sold 50,000 tons of foie gras, mostly exported.

The country’s animal-welfare laws ban painful and injurious methods to obtain animal products but the witness said about 20 birds a day died from force-feeding or injuries.

It is not known whether Ukrainian foie gras ends up on sale in Britain but France, the Netherlands and China all import it.

Fortnum & Mason and Harrods in London both sell geese livers but it is not known whether they source foie gras from Ukraine.

Animal-welfare group Open Cages, which obtained the footage, said the violent force-feeding, violent handling and injuries happened on farms that supply Britain.

“The practices documented here have been seen time and time again on foie gras farms, meaning that any foie gras sold in stores in the UK came from farms with similar levels of animal cruelty,” said chief executive Connor Jackson.

“By allowing the sale of foie gras on our shores we are putting money in the pockets of this disgraceful industry.

“While imported foie gras remains on the menu, these poor animals’ cries will haunt us for years to come.”

A spokeswoman for MHP said the company was “deeply concerned about the practices that appear to be shown in this video”, adding: “As a result, we are undertaking a full investigation and audit of the facility.

“We take our responsibilities to the animals we rear very seriously. MHP’s policy on the humane treatment of animals has been created in line with global best practice and covers the process from production to shipment with an in-built cycle of continuous review and improvement.

“As a certified exporter to the EU our facilities are regularly audited by the relevant authorities.

“If our high standards have not been met, we will take immediate action to correct this. We will not compromise on animal welfare.”

The Independent has asked Fortnum & Mason and Harrods whether they buy their foie gras from Ukraine.

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Ukraine's last foie gras farm to be closed

Following an exposé published earlier this year, Ukrainian poultry company MHP will cease production at Ukraine's only foie gras farm.

by The Poultry Site
1 August 2019, at 10:41am

Is this the death throes of foie gras? April this year animal protection organisation Open Cages published undercover footage from Ukraine’s only foie gras farm, where an undercover worker used a secret camera. Numerous UK restaurants responded by dropping foie gras from their menu following the expose. The company operating the farm today announced an "End of operations" following international pressure. This farm is the only facility in Ukraine officially producing foie gras.

The conditions documented include birds being thrown violently from the truck into cages, metal feeding pipes lubricated with engine oil being shoved down the bird’s throats to pump them full of food, and injured and dead birds being left to suffer or rot in piles. Force-feeding is standard practice on most foie gras farms to fatten the animals’ livers so they swell to ten times their normal size and become diseased. They are then slaughtered and their "fatty liver" sold as foie gras. The largest Ukrainian poultry producer MHP claims to have sold 50,000 tonnes of foie gras in 2018.

The company today writes: "MHP believes that the production of foie gras is not consistent with the Company's strategy and policy of being a global leader in E&S and Animal Welfare." Following the ditching of foie gras from prestigious UK restaurateurs as James Thomson OBE, and the closing down of Ukraine’s last foie gras farm, many more UK restaurants are expected to drop the product. As of September, Ukraine will have ceased all foie gras production.

Open Cages CEO Connor Jackson comments: “It’s hard to believe that foie gras even exists. Force feeding animals until their liver swells 10 times bigger is simply barbaric, and the product’s ‘luxury’ label is almost laughable. We are absolutely thrilled to see this company choose to stand against needless suffering by shutting down. Any UK restaurants still serving foie gras will be taking a hard look in the mirror: animal cruelty is bad business.”

Open Cages is urging Michael Gove and the UK Government to ban the sale of foie gras, post Brexit, as well as calling on eateries to remove the product from their menu.

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Abstract

The production of pâté de foie gras involves force-feeding ducks and geese by placing a long tube down the birds’ esophagi and pumping an unnatural quantity of food directly into their stomachs. Force-feeding induces hepatic lipidosis and causes the birds’ livers to become diseased and swollen. Substantial scientific evidence suggests that force-feeding causes pain and injury from feeding tube insertion, fear and stress during capture and handling, gait abnormality due to distended livers, pathologies in liver function, and increased mortality. Force-feeding birds to produce foie gras is detrimental to their welfare.

Introduction

Foie gras, French for “fatty liver,” is a food item produced from the livers of overfed ducks and geese. The majority of the world’s foie gras is now made from duck livers, and approximately 80% is produced in France. In the United States, there are three facilities producing livers for foie gras, slaughtering in total more than 400,000 ducks annually.

Birds force-fed for foie gras can suffer from a number of significant welfare problems, including frustration of natural behaviors, injury, liver disease, lameness, diseases of the respiratory and digestive tracts, and high rates of mortality.

The Scientific Committee on Animal Health and Animal Welfare (SCAHAW) is the European Union’s most authoritative scientific body on farm animal welfare. Members include more than a dozen professors of veterinary medicine and animal science from across Europe. After a thorough investigation, SCAHAW concluded that “force feeding, as currently practised, is detrimental to the welfare of the birds.”

Force-Feeding

Between 10-14 weeks of age, birds on foie gras facilities begin to be force-fed by producers, with ducks usually force-fed twice daily for 12-15 days and geese three times a day for 15-21 days. In some instances, geese may be force-fed six times per day for 13-14 days, in order to reduce the total amount of corn that is used. When birds are kept in floor pens, capture and handling for the force-feeding procedure is stressful, as measured by an increase in corticosterone (stress hormone) levels.

The procedure starts with holding a bird by the neck, drawing the animal towards the feeding pipe, thrusting a pipe approximately 20-30 cm (8-12 in) in length down the bird’s throat, and initiating the food pumping process. Corn mash is pushed through the pipe and into the bird’s esophagus with an auger or, in large units, via pneumatic pump. At the first force-feeding, 180 g (0.4 lb) of food is forced into a duck. By the last feeding, the amount is increased to 450 g (1 lb), injected in as little as 2 seconds. Reportedly, if the corn mash becomes lodged in the bird’s esophagus, a stick is sometimes used to force it down. This quantity of mash, injected twice daily, is much more food than ducks eat voluntarily.

Ducks and geese are natural omnivores. The corn-based feed force-fed to birds in foie gras production is nutritionally incomplete. According to Yvan Beck, an expert on force-feeding in foie gras production: “The food given to palmipeds [waterfowl] does not cover the physiological needs of this species. It is an unbalanced diet,
designed to artificially cause hepatic lipidosis.” Beck explains that if the feed were given under natural conditions, the birds would refuse it, and that the birds could not survive on this diet alone due to the deficiencies that it would lead to in the long term.17

A chemical analysis of the corn mash used at Hudson Valley Foie Gras in New York established the feed did not meet the nutrient requirements of ducks, being “too low in protein and too high in trace minerals.”18,19 Ducks reportedly removed from a foie gras farm in California who were presented to a veterinarian for inspection were extremely ill and showed signs of malnutrition.20

After the birds’ livers have expanded significantly, the animals are slaughtered and the livers are removed and processed.1

**Liver Disease**

The purpose of pre-force-feeding, where access to food is increased to reach higher than normal ad libitum consumption, is in part to cause the “onset of liver steatosis”1 or fatty degeneration—a pathological condition characterized by the presence of abnormally large quantities of fat within cells. The concentration of fat gives foie gras its distinctive taste. The liver of a healthy duck or goose is approximately 5% fat, while the liver of a force-fed bird is about 50-60% fat.21-23

Force-feeding causes a rapid increase in the size of birds’ livers. Estimates of this change in size vary between six and greater than ten times its original, healthy weight.11,23,24 The process changes the biochemical composition of the organ and results in impaired hepatic function.25,26

From the SCAHAW report:

> The most obvious change [resulting from force-feeding] is the increase in the number of large fat globules visible in the cells. A limited increase in the presence of fat globules in liver can occur in normal liver in certain conditions but no normal animal has steatosis of the liver to the extent which occurs in all force fed birds. During the force feeding period, liver function is impaired.27

In a sworn affidavit before the New York State Department of Agriculture and Markets, Bruce Feldmann described the liver disease of three ducks he examined who were reportedly taken from a California foie gras farm: “[T]hese animals suffered from various diseases, including hepatic lipidosis and possibly hepatic encephalopathy, which were brought on directly by the force feeding process they were subjected to.”20

When functioning normally, the liver processes fats and filters toxins.28 Hepatic encephalopathy is damage to the brain caused by toxins in the blood that are not filtered as they would normally be by a healthy liver.29

Ian Duncan, Emeritus Chair in Animal Welfare at the University of Guelph, states: “Force feeding quickly results in birds that are obese and in a pathological state, called hepatic lipidosis or fatty liver disease. There is no doubt, that in this pathological state, the birds will feel very ill.”30

In surveys cited in the SCAHAW report, 25 pathologists from various countries were asked their opinions of the condition of force-fed livers. Most stated the condition of foie gras livers was pathological. SCAHAW stated that “because normal liver function is seriously impaired in birds with the hypertrophied liver which occurs at the end of force feeding this level of steatosis should be considered pathological.”31

Defenders of foie gras production sometimes argue force-feeding replicates a natural behavior of wildfowl before migration:1 Ducks and geese increase their food intake in order to produce fat to fuel their long flights. However, wild ducks and geese go through a very specific set of annual physiological adaptations triggered by changes in day length in order to adjust for increased fat metabolism at this time. Even if they were to be physiologically prepared for migration during the force-feeding period, birds do not eat larger-than-normal...
meals as they assimilate energy reserves for migratory flights; rather, they eat many small meals throughout the day.\footnote{32} Further, the Muscovy duck, from whom most ducks raised for foie gras are derived, does not migrate.\footnote{33} SCAHAW concludes: “Hence, whilst the domestic goose might well be adapted to store food before migration, it is less likely that a cross between the domestic duck and the Muscovy duck, the Mulard, has such a potential for food.”\footnote{34}

Moreover, normally, fat is not stored in the liver but synthesized in the organ and then stored in adipose tissue and muscles.\footnote{35} The livers of migrating birds never more than double in size.\footnote{36} Force-feeding is therefore not analogous to the behavioral and physiological process in which pre-migratory birds engage.

\section*{Fear}

Behavioral evidence suggests that force-feeding causes fear.\footnote{37} Ducks show signs of aversion to force-feeding\footnote{38} and may not voluntarily enter a feeding pen. One study, for example, compared responses of force-fed and non-force-fed ducks to a feeding pen. In general, the non-force-fed ducks went from the home pen into the feeding pen willingly. In contrast, the force-fed ducks had to be driven out of the home pen.\footnote{39} SCAHAW concludes: “Since the feeding pen was attractive to the birds which were not force-fed, the results indicate that the force feeding pen was not attractive to the force fed ducks and that the procedure might involve an aversive component.”\footnote{39}

\section*{Injuries}

A variety of injuries can occur during force-feeding: injury from handling caused by the tubing of the force-feeding funnel; trauma caused by injecting high-temperature corn mash; inflammation of the neck resulting from too forcible an introduction of the pipe to the throat; bruising or perforation of the esophagus when the pipe is inserted; or asphyxia caused by food improperly forced into the trachea.\footnote{7}

Duncan explains: “[T]he regular insertion of a feeding tube down the esophagus several times a day will inevitably lead to damage of the esophagus. When the esophagus becomes damaged, then the painfulness of every force feeding episode will be exacerbated.”\footnote{30}

In a declaration submitted to the San Joaquin County District Attorney, Laurie Siperstein-Cook states: “It has been shown on necropsy that the esophagus \textit{[sic]} of force-fed ducks exhibit scarring from the repeated trauma from the wide metal tubes that are pushed down the esophagus during the force-feeding process. Rough handling by the workers doing the force-feeding would exacerbate this trauma to the mucosal surface of the esophagus.”\footnote{28}

SCAHAW reports:

Most injuries caused by tissue damage during handling or tube insertion would result in pain. The oropharyngeal area is particularly sensitive and is physiologically adapted to perform a gag reflex in order to prevent fluids entering the trachea. Force feeding will have to overcome this reflex and hence the birds may initially find this distressing and injury may result.\footnote{40}

The working group was informed that ducks at the end of the force feeding period can have serious injuries to the oesophagus or, more usually, having \textit{[sic]} clear evidence of tissue damage in the oesophagus. It seems likely that birds have sufficient damage to oesophagus tissue, caused by the force feeding process to have been painful to the birds.\footnote{41}

Ducks used in foie gras production are prone to broken bones. The SCAHAW report states: “Different lesions can be observed on carcasses. The most frequent are bone fractures. They occur on wing bones, mainly the humerus.”\footnote{42} The report continues by explaining that the prevalence of bone fractures due to handling at slaughter for Mulard ducks is between 30-70\%.\footnote{43} Scientists postulate that the problem of broken bones could be
due to changes in homeostasis caused by force-feeding of an abnormal diet, which could affect metabolism of calcium and phosphate and subject birds to osteopathy, “making their bones more fragile or even more painful.”

Greg Harrison, Diplomate of the American Board of Veterinary Practitioners and the European College of Avian Medicine and Surgery agrees: “The lack of sufficient protein, vitamins and minerals (calcium) leads the young birds’ rapidly growing bones to be structurally flawed (osteodystrophy). This leads to bending and breaking (rickets).”

**Lameness**

Some force-fed birds are unable to stand. SCAHAW found that force-fed birds with “expanded livers had difficulty in standing and their natural gait and ability to walk were severely impaired.” This is assumed to be because of the gross changes in body anatomy caused by the force-feeding. The great expansion of the liver seems to force the birds’ legs out to the side, placing undue stresses on the birds’ leg joints.

Feldmann examined two ducks reportedly from the California foie gras operation and noted: “The legs of both ducks also appeared swollen, and the bottoms of the feet were encrusted with ulcerated calluses. It appeared that the act of walking (or attempted walking) caused the ducks considerable pain, and they therefore avoided it when possible.”

Siperstein-Cook also found foot and leg disorders and declared that ducks kept on wire surfaces “will develop foot sores that lead to the infection called bumblefoot. This is a painful condition that can progress into the joint of the foot causing pain and difficulty walking.” Bumblefoot has also been found in ducks reportedly from New York foie gras operations.

Bone and skin disorders linked to the nutritional deficiencies in the diet of force-fed birds may exacerbate the problem. Harrison explains:

> [Nutritional] imbalances also lead to a skin disorder known as hyperkeratosis (thinning, flaking, excess callus formation, slow healing). The bone pain combines with the lethargy from the toxins and leads to further immobilization of the bird. This lack of exercise leads to poor circulation in the feet. These factors combine with the hyperkeratosis to allow ulcers to form on the bottom of the feet. These become infected, red and swollen. Pain and bacterial toxins further complicate the situation.

**Other Diseases**

Force-fed birds suffer from a variety of diseases. One poultry handbook states:

Force-fed animals are fragile animals, and the accidents or illnesses during the course of this operation are many and varied: anoxemia, due to insufficient aeration; toxemia, which is an intoxication of the blood; cirrhosis of the liver; candidosis, which is provoked by a yeast which profits from esophageal inflammations (due to the feeding tube, for example); feeding tube injuries, caused by clumsiness, which can go as far as the bursting of the crop; “blue thigh”, due to internal muscular hemorrhages provoked by a deficiency in vitamin K and poor manipulation of the animals.

A guide to diseases of waterfowl notes: “The digestive pathology of the goose and the duck in the midst of force-feeding contains distinct causes linked to the operation of force-feeding, to latent parasitism and to bacterial or fungal infections.” Diseases suffered by force-fed ducks and geese include “[t]uberculosis; bowel obstruction; indigestion; tympanism; parasitism; amidostomosis; epomiodostomosis; spiruriosis; enteritis; intestinal indigestion; fibrosis of the liver; hypoglycemic coma; bronchial obstruction.”
In the section on enterotoxemias, the guide notes: “The determining causes are of nutritional origin. The excess of starch creates a diminishing intestinal pH; it results in an unbalanced microbial intestinal flora favoring the implantation and multiplication of toxin producing germs; clostridia, colibacillus, salmonella....”

Conditions that are rare in healthy birds can become common in force-fed birds: “Mycosis of the digestive tract, caused by Candida albicans, can occur frequently in some classes of poultry but not in geese. An exception is force-fed birds, where inflammation of the oesophagus may be caused by the insertion of the corn dispenser. This inflammation can then provide a port of entry for Candida albicans.” In one study, candidosis was observed in up to 6% of birds. The necropsy of a duck apparently taken from the foie gras farm in California revealed lesions in the esophagus where bacteria and yeast had proliferated.

Thermoregulatory and respiratory disorders are also common. After force-feeding, ducks pant intensely to vent the excess heat generated by their forced over-consumption of grain: “The problem of thermoregulation which translates into the increase in the open beak frequency is therefore directly linked to force-feeding.” When ducks are kept in individual cages, in which they cannot spread their wings, they are prevented from cooling themselves and consequently pant more and consume more water during the force-feeding period. Some ducks allegedly from New York’s Hudson Valley Foie Gras died of aspiration pneumonia, a painful condition resulting from food being pushed into the birds’ lungs during the force-feeding process. Necropsy reports also showed that other ducks alleged to be from the same facility were severely congested, demonstrated signs of bronchiolitis and aspiration pneumonia, and had food material in their lungs.

Veterinary inspection of force-fed ducks reportedly from a California foie gras farm revealed signs of infection, neurologic damage, and impaction of the crop and esophagus with undigested food.

SCAHAW notes the “effects of force feeding are lethal when the procedures are continued” and found that “[t]he mortality rate in force fed birds varies from 2% to 4% in the two week force feeding period compared with around 0.2% in non force fed ducks.”

**Housing**

In addition to the serious health issues resulting from force-feeding, birds raised for foie gras production also suffer as a result of their confinement on typical foie gras facilities. Ducks and geese are web-footed birds who primarily live in water. In nature, they are social animals and spend much of their time foraging and maintaining their plumage by bathing and preening. In foie gras production, however, the birds are housed at high densities and prevented from engaging in natural behaviors.

Both pen and cage systems provide only 900-2,500 cm$^2$ (1.0-2.7 ft$^2$) per duck or 3,300 cm$^2$ (3.6 ft$^2$) per goose. A group cage holds four to five ducks or three geese. The walls and floor are made of wire mesh, and the front is composed of metal bars, allowing access to a water trough placed outside the cage. It has no roof and the birds are restrained one at a time for force-feeding. A group pen holds 12 to 15 ducks or 9 geese, and has wire mesh walls and slatted floors. Water is available from a trough placed inside the pen.

Birds raised for foie gras are unable to forage for food and are denied water in which to swim and clean their plumage. The absence of opportunities to engage in these instinctual behaviors is likely to cause frustration and stress. Waterfowl are strongly motivated to bathe in water. In an experiment designed to assess their level of motivation, ducks lifted heavily weighted doors in order to gain access to a pen with bathing water. They performed this behavior at least as often as they lifted the weights in order to access a pen with food, suggesting that the internal drive to swim is as strong as the drive to eat.

On some farms, birds are housed in near darkness, in an attempt to keep them calm. Sonoma Foie Gras in California reportedly keeps its birds in darkened sheds for the two-week force-feeding period. Darkness likely impairs normal exploratory behaviors and physical exercise.
Conclusion

Expert opinions and an extensive scientific literature have found that force-feeding ducks and geese for foie gras production causes significant welfare issues, including disease, injury, and increased mortality. Animal welfare scientist Christine Nicol, Professor of Animal Welfare at the School of Veterinary Science at the University of Bristol, states: “My view on the production of foie gras is clear and supported by biological evidence. This practice causes unacceptable suffering to these animals...It causes pain during and as a consequence of the force feeding, feelings of malaise as the body struggles to cope with extreme nutrient imbalance, and distress due to the forceful handling. The most extreme distress is caused by loss of control of the birds’ most basic homeostatic regulation mechanism as their hunger control system is over-ridden.”

The Scientific Committee on Animal Health and Animal Welfare concludes that force-feeding, as currently practised, is detrimental to the welfare of the birds...[T]he management and housing of the birds used for producing foie gras have a negative impact on their welfare. It should be noted that these are the only farm animal that are force fed and in some countries this procedure is prohibited.

After a comprehensive two-year study, the independent Pew Commission on Industrial Farm Animal Production, a project of The Pew Charitable Trusts and the Johns Hopkins Bloomberg School of Public Health chaired by former Kansas Governor John Carlin and including former U.S. Agriculture Secretary Dan Glickman, came to the conclusion that the practice of force-feeding birds to make foie gras should be ended.

Opinion leaders and the public have reflected these scientific findings. During an interview, Pope Benedict XVI (then Cardinal Joseph Ratzinger) said: “Certainly, a sort of industrial use of creatures, so that geese are fed in such a way as to produce as huge a liver as possible, or hens live so packed together that they become just caricatures of birds, this degrading of living creatures to a commodity seems to me in fact to contradict the relationship of mutuality that comes across in the Bible.” Social conservative, author, commentator, and political figure Patrick Buchanan said on The McLaughlin Group, “Look, on the foie gras, I think this is manifest cruelty to animals, it seems to me. And it is a brutal thing. And I think I would certainly ban that type of thing being done in this country.” A 2004 Zogby poll reportedly found that 77% of U.S. adults believe the process of force-feeding ducks and geese to produce foie gras should be banned.

This reaction has been translated into policy. In 2004, the California legislature banned the production and sale of force-fed pâté de foie gras in the state on animal welfare grounds. Though later repealed, the city of Chicago banned the sale of foie gras in restaurants and groceries in 2006. Production has also been banned in more than a dozen countries, where force-feeding has been deemed a violation of national animal welfare laws. These countries include Argentina, Denmark, Finland, Germany, Israel, Italy, Norway, Poland, and the United Kingdom.

Reference List


49. Schlafer DH. 2005. Necropsy report by Donald Schlafer, DVM, of Cornell University College of Veterinary Medicine, Veterinary Medical Teaching Hospital (Ithaca, NY, October 4).


60. Letter dated February 3, 2004, from C. Nicol to Lauren Ornelas, Viva USA, opposing foie gras production methods.


The Humane Society of the United States is the nation's largest animal protection organization—backed by 10 million Americans, or one of every 30. For more than a half-century, The HSUS has been fighting for the protection of all animals through advocacy, education, and hands-on programs. Celebrating animals and confronting cruelty. On the Web at humanesociety.org.
Ferndale, N.Y.

The building housing the ducks in this lush region of the Catskills in upstate Sullivan County was huge, a cross between a gigantic Quonset hut and an airplane hangar. The ducks, tens of thousands of them ready to be slaughtered for foie gras, were stuffed and listless in their pens. It was a very weird scene. Genetically unable to quack, the ducks moved very little and made hardly any noise.

Animal-rights advocates have made a big deal about the way the ducks are force-fed to produce the enormously swollen livers from which the foie gras is made. But I've been looking at the plight of the underpaid, overworked and often gruesomely exploited farmworkers who feed and otherwise care for the ducks. Their lives are hard.

Each feeder, for example, is responsible for feeding 200 to 300 (or more) ducks — individually — three times a day. The feeder holds a duck between his or her knees, inserts a tube down the duck's throat, and uses a motorized funnel to force the feed into the bird. Then on to the next duck, hour after hour, day after day, week after week.

The routine is brutal and not very sanitary. Each feeding takes about four hours and once the birds are assigned a feeder, no one else can be substituted during the 22-day force-feeding period that leads up to the slaughter. Substituting a feeder would upset the ducks, according to the owners of Hudson Valley Foie Gras, which operates the farm.

Not only do the feeders get no days off during that long stretch, and no overtime for any of the long hours, but they get very little time even to sleep each day. The feeding schedule for the ducks must be rigidly observed.

When I asked one of the owners, Izzy Yanay, about the lack of a day of rest, he said of the workers: “This notion that they need to rest is completely futile. They don’t like to rest. They want to work seven days.”

Covering this story has been like stepping back in time. Farmworkers in New York do not have the same legal rights and protections that other workers have, and the state's multibillion-dollar agriculture industry has taken full advantage of that. The workers have no right to a day off or overtime pay. They don’t get any paid vacation or sick days. When I asked one worker if he knew of anyone who had a retirement plan, he laughed and laughed.

To understand how it's possible to treat farmworkers in New York this way you have to look back to the 1930s when President Franklin Roosevelt was trying to get Congress to pass the Fair Labor Standards Act to provide basic wage and hour protections for workers. Among the
opponents were segregationist congressmen and senators who were outraged that the protections would apply to blacks as well as whites.

Most agricultural and domestic workers were black, and the legislation was not passed until those two categories of workers were excluded. New York State lawmakers, under heavy and sustained pressure from the agriculture lobby, have similarly exempted farmworkers (the vast majority of whom are now Latino) from most state labor law protections.

There was a good chance — right up until Monday, when the State Senate went through a sudden and cataclysmic change from Democratic to Republican control — that something might be done about this legislatively. On Monday evening, the Assembly passed (and Gov. David Paterson has promised to sign) a bill extending much-needed labor protections to farmworkers, including the right to at least one day of rest per week and, more important, the right to bargain collectively.

Republican senators were split on the bill, however, and the New York Farm Bureau, the lead lobbying agency for the agriculture industry, is furiously opposed to passage. With the upheaval in the Senate, the fate of the bill, called the Farmworkers Fair Labor Practices Act, is unknown.

A major supporter of the bill, the Rev. Richard Witt, executive director of the Rural and Migrant Ministry of New York, said the Senate shift would have no effect on the campaign for passage of the bill. Another supporter, Kerry Kennedy, founder of the Robert F. Kennedy Center for Justice and Human Rights, also said she will continue to push hard for passage.

“It’s shocking that these conditions could exist in New York State,” Ms. Kennedy said. “We talked to a worker who had not had a day off in 10 years.”

That is not an argument that carries much weight with the Farm Bureau. Sounding like an echo of Mr. Yanay, the bureau’s spokesman, Peter Gregg said, “They don’t want days off. The farmworkers want to work. They came here to make money.”
No Days Off at Foie Gras Farm; Workers Complain, but Owner Cites Stress on Ducks

By STEVEN GREENHOUSE
APRIL 2, 2001

Inside several large barns rising out of the muddy fields here, migrant workers feed nearly 30,000 ducks three times a day by inserting tubes down their throats. After 30 days of intensive feeding, the farm sends the birds to slaughter, producing a prized gastronomic delight from their swollen, succulent livers: foie gras.

In the last decade, the Hudson Valley Foie Gras farm in this Catskill community has had astonishing success. It now produces three-fourths of all American-made foie gras, and visiting chefs from France have given the farm the ultimate compliment, saying its foie gras rivals the French variety.

But while the farm's owners bask in the acclaim of food writers and celebrity chefs, the 80 feeders -- all immigrants from Mexico -- lead an existence that is light-years removed from the opulence that foie gras symbolizes. The workers, who know that animal-rights groups often complain about the treatment of the birds, have a big complaint of their own: the farm requires them to work 30 days in a row, and some say they have not had a full day off in years.

"The conditions for the workers are crueler than the conditions for the ducks," said Maura Gonzales Rusas, a feeder. "It's hard work, it's heavy work, and we never seem to get to rest."

As one of the largest agricultural employers in the state, Hudson Valley Foie Gras has become ground zero in a debate over whether the 30,000 farm workers in New York should be given a right that state law guarantees all other workers: a day of rest each week. Leaders of the New York State Senate and Assembly are considering such day-of-rest legislation, with a vote expected sometime this fall.

On one side are the New York State A.F.L.-C.I.O. and many members of the clergy, who are battling on behalf of the workers, saying that no one should be denied such a basic right. On the other side is the New York State Farm Bureau, the main growers' association, which says such legislation would badly hurt the agricultural industry.

Hudson Valley's owners assert that if their workers could take a day off, the feeding process would be disrupted and the ducks and their livers would not grow as fast or be as tasty.

"Our biggest problem is literally the ducks get used to one feeder and the quality of the results will be greatly damaged if someone else comes in one day a week to do the feedings," said Michael A. Ginor, an owner of Hudson Valley, adding that the farm tries to raise its birds with as little stress as possible.

Similarly, apple and berry growers voice fears that if their workers were given a day off during the harvest, much of the fruit would rot. And dairy farmers worry about who will milk the cows if their one hired hand has a day off.
"There are times when farmers need the extra help, and that may require having people work seven days a week," said John Lincoln, an upstate dairy farmer who is president of the state Farm Bureau.

This year, farm-worker advocates and labor unions have made day-of-rest legislation their primary goal to help New York's farm workers. Unlike almost all other workers in the state, farm workers lack certain rights, including the right to bargain collectively and time-and-a-half overtime pay when they work more than 40 hours a week.

"For those of us from a Judeo-Christian background, it's fundamental that everyone should be given a day of rest," said the Rev. Richard Witt, executive director of the Rural and Migrant Ministry of New York.

Three times a day, Ms. Gonzales works to fatten the 350 ducks assigned to her, usually taking less than 30 seconds to feed each one. A short, round-faced woman with ruddy cheeks, Ms. Gonzales moves slowly from pen to pen, pressing a finger under each bird's bill to open its mouth. She then uses a funnel and a small motor to force cornmeal, up to a pound each feeding, into a plastic tube and down the ducks' throats. The farm's owners say the tube does not hurt because the birds have calcified esophagi.

Many nights she sleeps only four hours, from 1:30 to 5:30 a.m., because the schedule often requires her to feed the ducks from 10 p.m. to 1 a.m., then 6 to 9 a.m., and again in the afternoon -- more than 1,000 feedings a day.

"When you work 30 days straight, you lose out on a lot," said Ms. Gonzales, 29, the mother of two boys, 10 and 3. "I'd like to have more time to spend with my children. And there's never time to go to church.

"Sometimes you get so tired that you fall asleep right in the middle of a feeding," she said in Spanish. "Usually one of the ducks will wake you back up because it's hungry."

When the intensive feeding begins, the ducks are 14 weeks old and their livers weigh 3 ounces. By the end, the livers often weigh 1.5 pounds to 2 pounds. Hudson Valley sells Grade A livers, the largest and least blemished ones, for about $27 a pound. Hudson Valley's owners said the farm produced more than 400,000 pounds of livers last year, yielding revenues of about $10 million and pretax profits of $1.5 million.

Ms. Gonzales often works 63 hours a week, 9 hours a day for 7 days, and her hourly wage is $6, more than many of the state's farm workers earn. If her flock yields enough Grade A livers, she can receive a bonus of $300, though the bonuses are often half that.

Like many of the feeders -- they call themselves "engordadores," meaning fatteners -- she sends much of her money to relatives in Mexico, where many workers say they can earn only $6 a day.

Often the day after ducks are sent to slaughter, the workers are given a new batch, restarting the 30-day cycle, although some workers are allowed to take 30 days off, without pay. Occasionally, several workers said, they get a day or two off from feeding between cycles, but on those days they often have to clean the barns and unload trucks carrying new birds.

"I haven't had a full day off since I started working," said Nicholas Castelan Reyes, who has been a feeder since August 1999. Mr. Castelan said it would be easy for Hudson Valley to give each worker a day off each week and to have a backup worker feed the ducks that day.
But Mr. Ginor said such a change could seriously damage the quantity and quality of foie gras produced. Mr. Ginor said the birds would be frightened if a different worker fed the birds on the day the usual feeder was off.

"Stress is a big factor in foie gras production," he said. "When ducks are stressed, the foie gras is not as high quality. The size of the liver depends on the quality of the food and the stress levels of the bird."

Because the livers would be smaller if the workers took a day off, he said, the bonuses would be smaller too. Several workers disagreed, saying that using a backup feeder would have little effect.

But Izzy Yanay, an owner who oversees the farm day to day, said foie gras operations in France, Hungary and Israel had experimented with backup feeders, only to find that it hurt quantity and quality.

In France's foie gras industry, individual workers usually feed their ducks 14 days in a row -- compared with the 30-day cycle here -- at which point the ducks go to slaughter. These workers are then usually given 4 days off before they begin a new 14-day cycle. French workers receive five weeks' paid vacation, while the Hudson Valley workers, like most farm workers in the United States, receive none.

Mr. Ginor said that if the state passed a law giving workers the right to take a day of rest, he might seek to hire only those workers who agreed beforehand not to ask for a day off. Government officials said it would be illegal to require workers to forgo a basic right as a condition of employment.

Supporters of the day-of-rest legislation say that to discourage farmers from pressuring farm laborers into working seven days a week, any legislation should require that time and a half be paid to those who work on the seventh day.

But farmers oppose this idea, saying it would force farmers to give all their workers a day off.

"If you have a requirement to pay overtime on a voluntary day of rest, it means farmers won't be able to afford to hire a person on that day," said Julie Suarez, issues coordinator for the state Farm Bureau. "The reality is a lot of farmers aren't doing well financially, and you can't get blood from a stone."
HOW THE POLL WAS CONDUCTED

This poll was conducted by Mason-Dixon Polling & Research, Inc. of Jacksonville, Florida from February 4 through February 7, 2019. A total of 625 registered New York City voters were interviewed citywide by telephone.

Those interviewed were randomly selected from a phone-matched NYC voter registration list that included both land-line and cell phone numbers. Quotas were assigned to reflect voter registration by borough.

The margin for error, according to standards customarily used by statisticians, is no more than ± 4 percentage points. This means that there is a 95 percent probability that the "true" figure would fall within that range if all voters were surveyed. The margin for error is higher for any subgroup, such as a gender or age grouping.
QUESTION: Do you feel that animals raised for food should or should not be well cared for?

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QUESTION: Foie gras is the diseased and enlarged liver of a duck or goose, produced through force-feeding. Force-feeding is the standard practice used for producing foie gras that involves inserting a foot-long tube into a bird’s esophagus that rapidly delivers huge amounts of concentrated grain and compressed air into the bird. This force-feeding is repeated up to three times a day for several weeks until the liver becomes diseased and grows to 10 times its natural size before the bird is slaughtered. Would you support a city-wide law to prohibit the sale of foie gras from force-fed birds?

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QUESTION: The New York City Council will soon vote on a bill to prohibit the production and sale of foie gras from force-fed birds. If approved by the City Council, would you support or oppose Mayor Bill de Blasio signing this bill into law?

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Humane Society of U.S. v. HVFG, Llc.

Decided May 6, 2010

OPINION ORDER

HAROLD BAER JR., District Judge

Plaintiff The Humane Society of the United States, ("Plaintiff" or "HSUS") brings this suit against Defendant HVFG, L.L.C. ("Defendant" or "HVFG") for violations of the Clean Water Act. See 33 U.S.C. § 1365 (2010). HSUS contends that HVFG violated two state-issued Clean Water Act permits, because HVFG discharged pollutants in excess of permitted levels and failed to follow the permits' reporting and monitoring requirements. HVFG claims that it is not liable for any Clean Water Act violations because certain alleged violations are not actionable under the statute, all other violations were resolved in an Order on Consent with the state environmental agency, and that it has otherwise demonstrated that HVFG did not violate the permit requirements. The parties cross-moved for summary judgment. This Court finds that there are sufficient undisputed material facts to show that HVFG committed a number of Clean Water Act violations, but that only some of them are actionable. For the reasons that follow, Plaintiff's motion for summary judgment is DENIED in part and Defendant's motion is GRANTED to the extent that certain alleged violations have been mooted by subsequent state action, as is spelled out below. Plaintiff's motion for summary judgment is otherwise GRANTED. Defendant's motion is DENIED with regard to the reporting and monitoring violations that were not resolved by the state action.1 In light of the prior remedial actions by HVFG, I find the most appropriate remedy here is a nine-month affirmative injunction to ensure HVFG's proper compliance with, and understanding of, its monitoring and reporting requirements pursuant to the Clean Water Act permits, as well the establishment of an environmental benefit project.

1 Defendant's motion for summary judgment did not raise any additional issues

I. BACKGROUND

2 The background is drawn from undisputed facts submitted by the parties, and any material disputes are noted. Plaintiff moved to strike certain materials filed by Defendant in opposition to Plaintiff's summary judgment motion and in support of its own motion, because the submissions were untimely and otherwise inadmissible pursuant to Rule 56(e) of the Federal Rules of Civil Procedure. Rather than address these arguments in detail, I have concluded that even without reference thereto, Defendant is liable for certain reporting and monitoring violations. See infra.

A. Statutory Background

The Clean Water Act ("CWA" or "Act") was established "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251. It seeks to eliminate the discharge of pollutants into navigable waters, and has an "interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." Id. To carry out these goals, the CWA created the National Pollutant Discharge Elimination System ("NPDES"), which provides the Environmental Protection Agency ("EPA") with the authority to
issue permits that regulate the discharge of pollutants according to certain specified conditions. See 33 U.S.C. § 1342; see also Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc., 484 U.S. 49, 52-53 (1987). The statute also allows a state to take control of this permit system and administer the NPDES itself, so long as it conforms to federal guidelines and is approved by the EPA Administrator. Id. New York State has established its own permit system, referred to as the State Pollutant Discharge Elimination System ("SPDES," pronounced "spee-dees"), which is operated by the New York State Department of Environmental Conservation ("DEC"). See Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York, 273 F.3d 481, 486 (2d Cir. 2001); N.Y. Envtl. Conserv. Law §§ 17-0105(13); 17-0701; 17-0803. "Generally speaking, the NPDES [and SPDES] requires dischargers to obtain permits that place limits on the type and quantity of pollutants that can be released into the Nation's waters." South Florida Water Mgmt. Dist. v. Miccosukee Tribe of Indians, 541 U.S. 95, 102 (2004).

The CWA "formally prohibits the discharge of a pollutant by any person  from any point source to navigable waters except when authorized by a permit issued under the National Pollutant Discharge Elimination System." Waterkeeper Alliance, Inc. v. EPA, 399 F.3d 486, 491 *3 (2d Cir. 2005); see also 33 U.S.C. §§ 1311, 1342. A "point source" is "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged," which includes concentrated animal feeding operations or "CAFOs." 33 U.S.C. § 1362(14). "CAFOs are the largest of the nation's 238,000 or so animal feeding operations — agriculture enterprises where animals are kept and raised in confinement." Waterkeeper Alliance, 399 F.3d at 492 (internal quotations omitted). NPDES permit requirements for CAFOs "apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals." 40 C.F.R. § 122.23(a). Any CAFO that "discharges or proposes to discharge" must seek coverage pursuant to a permit. § 122.23(d)(1).

3 The term "person" means "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body." 33 U.S.C. § 1362(5).

The Act provides essentially two methods of enforcement for this regulatory structure. The EPA or a state agency like the New York DEC may enforce permit requirements through administrative, civil, and criminal sanctions. See 33 U.S.C. § 1319. In addition, "[i]n the absence of federal or state enforcement, private citizens may commence civil actions against any person alleged to be in violation of the conditions of either a federal or state NPDES permit." Gwaltney, 484 U.S. at 53 (internal quotations omitted); see also 33 U.S.C. § 1365(a). Prior to bringing suit, a citizen must first give 60 days' notice "(i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order." § 1365(b). In a successful "citizen suit," a district court may order civil penalties and equitable relief; the citizen who brings suit may also be entitled to expenses and attorney's fees. See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., 528 U.S. 167, 175 (2000); 33 U.S.C. § 1365(a), (d).

B. Factual Background

HSUS is a non-profit membership organization with over 846,000 members and constituents in New York State and over 11 million members and constituents total. It is a self-described "animal protection organization," whose goals include "protecting the nation's wildlife and wildlands and fostering the humane treatment of all animals." See The Humane Society of the United States, About Us: Overview, http://www.humanesociety.org/about/overview/(last visited Apr. 18, 2010); Decl. of Dr. John W. Gandy, ¶¶ 1-2. HVFG operates Hudson Valley Foie Gras, a CAFO that raises and slaughters ducks for the production of foie gras. HVFG
operates two facilities near Ferndale, New York, which include duck-raising facilities, manure storage tanks and pits, and a slaughterhouse facility. The facilities are permitted to confine up to 100,000 ducks, and contained approximately 41,000 ducks as of March 13, 2009. As is perhaps obvious, HVFG's operations create a sizeable quantity of waste and by-products. Annually, HVFG generates more than 5,000 tons of manure, 600 tons of litter and bedding, and 5 million gallons of wastewater. The facilities are located near or bordered by the Middle Mongaup River, a perennial stream that flows into the Mongaup River. Wastewater from the slaughterhouse operation is treated and discharged into the Middle Mongaup River through a streambank pipe.


A third facility operated by HVFG was shut down by October 30, 2007.

The New York DEC issued two SPDES permits to HVFG that are relevant to this action. SPDES Permit No. NY 023-5393 regulates the discharge of pollutants from HVFG's duck slaughtering operation. See Decl. of Sarah L. Conant in Supp. of Pl's Mot. for Summ. Judgment ("Conant Decl."). Ex B (SPDES Permit No. NY-023-5393) (hereafter "Slaughterhouse SPDES Permit"). The Slaughterhouse SPDES Permit places numerical restrictions on the discharge of certain designated parameters that can act as harmful water pollutants, such as temperature, ammonia, settleable solids, phosphorous, chlorine, and fecal coliform. In addition, the permit requires certain monitoring activities, reporting requirements, and recordkeeping conditions. The DEC also issued SPDES General Permit No. GP-04-02, which more generally regulates HVFG's CAFO operations at its two facilities. Conant Decl., Ex. K (SPDES General Permit for CAFOs No. GP-04-02) (hereafter "CAFO SPDES Permit"). The CAFO SPDES Permit prohibits any discharge of wastewaters into the surface waters of the State. It likewise contains detailed reporting, monitoring, and recordkeeping requirements, and in particular calls for the creation of a "Comprehensive Nutrient Management Plan" or "CNMP" to ensure practices in compliance with the permit.

6 A "parameter" is a particular attribute of a discharge, such as the specific pollutants, discharge characteristics, or water quality indicators, such as color or pH value of the discharge. See Pub. Interest Research Group of New Jersey, Inc. v. Hercules, Inc., 50 F.3d 1239, 1242 (3d Cir. 1995).

7 Each of these items qualify as a pollutant under the Clean Water Act. See 33 U.S.C. 1362(6). Discharge of wastewater with a temperature above permitted levels can have an adverse impact on certain cold water aquatic species, enhance chlorine and ammonia toxicity, and increase algae growth rates. Ammonia can be toxic to fish and stimulates algae growth. Phosphorous similarly stimulates algae, and chlorine is likewise toxic to aquatic organisms. Fecal coliform is an organism that indicates the potential presence of pathogenic bacteria and viruses, and higher than permitted levels poses a threat to human health. See Decl. of Bruce A. Bell, Ph.D., P.E., BCEE in Supp. of Pl's Mot. ("Bell Decl.") ¶ 7.

8 The permit provides an exception to this prohibition when there is a "25-year, 24-hour Storm Event." The exception is not relevant in this action.

After it provided a 60-day notice of intent, on September 6, 2006, HSUS filed a complaint against HVFG for violations of its Slaughterhouse SPDES Permit. On December 21, 2006, HSUS sent a second 60-day notice to HVFG, this time with regard to violations of its CAFO SPDES.
Permit. On February 15, 2007, HVFG entered into an Order on Consent with the DEC. See Conant Decl., Ex. Q (DEC Order on Consent) (hereafter "DEC Order" or "Order"). The DEC Order purported to cover violations of both the Slaughterhouse and CAFO SPDES Permits. It laid out a timetable and directions for HVFG to come into compliance with the permits, required the payment of a $50,000 civil penalty, and required that they fund the purchase of an "Environmental Benefits Project" or clean up litter surrounding the Mongaup River. The DEC Order also stated that the DEC conducted an inspection of HVFG facilities on June 20, 2006, and from that date to the date of the Order, "the Department is not aware of any discrepancies from proper operating procedures." DEC Order ¶ 13. On March 6, 2007, HSUS filed an amended complaint, which incorporated alleged violations of both the Slaughterhouse and CAFO SPDES Permits. Defendant moved for early summary judgment on May 7, 2007, which was denied. See Order, Aug. 11, 2009 (Docket No. 50).

$20,000 of the penalty was suspended and would only need to be paid if HVFG violated the DEC Order.

Plaintiff now moves for summary judgment on its claims. HSUS argues that there is no material factual dispute that HVFG violated both its Slaughterhouse and CAFO SPDES Permits. Plaintiff claims that Defendant violated its Slaughterhouse SPDES Permit through (1) discharges in excess of the permitted levels for temperature, chlorine, settleable solids, phosphorous, ammonia, and fecal coliform; (2) improper calibration and use of temperature, chlorine, and settleable solid testing equipment; (3) failure to take discharge reporting samples at proper locations; (4) failure to properly record the time, location, and chain of custody for discharge reporting samples; (5) failure to correctly report temperature on certain dates; and (6) failure to show a basis for certain chlorine sample reports. Plaintiff claims the Defendant violated its CAFO SPDES Permit through (1) impermissible discharges of pollutants in 2005 and 2006; (2) failure to properly complete and maintain a Comprehensive Nutrient Management Plan; and (3) improper storage of waste in a lagoon and storage tanks not constructed or certified by an engineering professional. HVFG opposes HSUS's motion and cross-moved for summary judgment, on the grounds that there is no liability for violations of either permit because (1) the DEC Order precluded or mooted all of Plaintiff's claims; (2) the alleged reporting and recordkeeping violations and any alleged violations of the CAFO SPDES Permit are not actionable Clean Water Act violations; and (3) to the extent they are actionable violations, undisputed material facts demonstrate that they did not violate these requirements. Oral argument on these motions was held on March 23, 2010. The following week at a conference in chambers, this Court discussed and advised both parties of its tentative findings as well as certain proposed remedies. Finally, the parties each submitted letter briefs that addressed the Court's suggested relief of an injunction and equitable environmental remedial measures.

In a letter dated March 17, 2010, Plaintiff withdrew its request for a finding of liability with regard to pre-January 1, 2007 violations of CAFO SPDES permit except for those related to the CNMP, and also with regard to failure to notify and report the 2005 and 2006 discharges.

II. DISCUSSION

A. Legal Standard

Summary judgment is warranted if the moving party shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. See Cordiano v. Metacon Gun Club, Inc., 575 F.3d 199, 204 (2d Cir. 2009); see also Fed.R.Civ.P. 56(c). A material fact is one that will affect the outcome of the suit, and a dispute about a material fact occurs where there is sufficient evidence for a reasonable fact finder to return a verdict for the nonmoving party. See, e.g., Sista v. CDC Ixis North America, Inc., 445 F.3d 161, 169 (2d Cir. 2006). Evidence must
be viewed in a light most favorable to the non-moving party, and all inferences must be drawn in their favor. See Cordiano, 575 F.3d at 204. A party opposing summary judgment "may not rest upon the mere allegations or denials of the adverse party's pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." Sista, 445 F.3d at 169; Fed.R.Civ.P. 56(e).

B. Standing

1. Constitutional/Associational Standing

7 "Plaintiff must satisfy the case-or-controversy requirement of the Constitution to have standing to bring a lawsuit. See U.S. CONST. art. III, § 2. " To satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." Laidlaw, 528 U.S. at 180-181 (2000) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561 (1992)). For an association to have standing, it must show that (1) its members would otherwise individually have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim nor the relief requires participation of individual members. See id.; Bldg. Constr. Trades Council v. Downtown Dev., Inc., 448 F.3d 138, 144 (2d Cir. 2006).

HSUS has provided more than sufficient facts to demonstrate that it has constitutional standing to bring this suit. See Laidlaw, 528 U.S. at 183; see also Downtown Dev., 448 F.3d at 146. Defendant suggests that this suit is not sufficiently germane to HSUS's organizational purpose. While it is certainly true that HSUS is, in its own words, an "animal protection organization," this does not mean it cannot bring a Clean Water Act suit. The Second Circuit determined in Downtown Development that "germaneness" is a fairly modest test, and need only show that it would "reasonably tend to further the general interests that individual members sought to vindicate in joining the association and whether the lawsuit bears a reasonable connection to the association's knowledge and experience." 448 F.3d at 149. Plaintiff here passes that test.

2. Statutory Standing

HSUS must also satisfy a number of statutory requirements under the Clean Water Act in order to properly bring suit against HVFG. A party may bring a citizen suit under the CWA when it (1) provides 60 days' notice to the alleged violator, the EPA, and the state; (2) has alleged a continuing violation of the Act; and (3) has not been precluded by EPA or state action. See Laidlaw, 528 U.S. at 174-75; 33 U.S.C. §§ 1365, 1319. HVFG essentially claims that HSUS has failed to satisfy any of these elements. To the contrary, HSUS has shown more than enough evidence to demonstrate that it meets these requirements.

8 "The CWA states that no citizen suit may commence "prior to sixty days after the plaintiff has given notice of the alleged violation." 33 U.S.C. § 1365(b)(1)(A). The purpose of the notice provision is to give a violator the opportunity to come into compliance, and/or for the state or EPA to bring its own enforcement action, and thus render the citizen suit unnecessary. See Gwaltney, 484 U.S. at 60; Trout Unlimited, 274 F.3d at 488. According to the Second Circuit, the notice must list "each separate pollutant that will be alleged in a subsequent complaint as the basis of a violation of the Act." Trout Unlimited, 273 F.3d at 487 (adopting rule from Pub. Interest Research Group v. Hercules, 50 F.3d 1239, 1248 (3d Cir. 1995)); see also 40 C.F.R. § 135.3(a) (stating that the notice "shall include sufficient information to permit the recipient to identify" the components of an alleged violation). In this case, HSUS provided appropriate and sufficient notice prior to filing suit. Both notice letters were submitted to the proper parties, and both detail each of the pollutants alleged to be the basis of the violations.11 "Once the discharge violation is noticed, any subsequently discovered monitoring, reporting or recordkeeping violation that is
directly related to the discharge violation may be included in the citizen suit." Hercules, 50 F.3d at 1248. HVFG was given sufficient notice of the violations of both permits to investigate the merits of the claims, determine the scope of the problem, and come into compliance.

The first notice letter does not expressly mention settleable solids in the body of the letter. However, it notes that there are other pollutant discharges and incorporates an attached declaration, which lists settleable solids as one of the alleged pollutant violations.

As noted, a citizen suit cannot proceed if it has been precluded by an EPA or state enforcement action. The CWA bars a citizen from filing suit where "the [EPA] Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State." 33 U.S.C. § 1365(b)(1)(B); see Laidlaw, 528 U.S. at 175. This bar does not apply here, however, because the DEC Order was a purely administrative action and did not involve any judicial proceeding. See Friends of the Earth v. Consol. Rail Corp., 768 F.2d 57, 63 (2d Cir. 1985); City of Newburgh v. Sarna, No. 09 Civ. 5117 (CM), 2010 WL 572118, at *15 (S.D.N.Y. Feb. 5, 2010) (citing Consol. Rail). The Act also prohibits any action for an award of civil penalties where "the Administrator, the Secretary, or the State has issued a final order not subject to further judicial review and the violator has paid a penalty assessed . . ." 33 U.S.C. § 1319(g)(6)(A)(iii). This section does not apply where a citizen has filed suit "prior to commencement of an action under this subsection" or where the citizen has given the required 60-day notice prior to the commencement of a state action and files suit within 120 days of the notice. See § 1319(g)(6)(B). Here, HSUS provided notice of the Slaughterhouse SPDES Permit violations on June 6, 2006 and filed suit on September 6, 2006, well before any agreement was reached between the DEC and HVFG. As such, these claims cannot be barred by the later-produced DEC Order. See id. Plaintiff submitted a second notice letter for violations of the CAFO SPDES Permit on December 21, 2006, the DEC Order was signed on February 15, 2007, and the complaint was amended to include these further violations on March 6, 2007. Since Plaintiff gave notice prior to the state action, and filed suit within 120 days, these violations are likewise not precluded by the statute. See id.

Even if it were applicable, HSUS provided notice and commenced its action for violations of the Slaughterhouse SPDES Permit before HVFG signed the DEC Order. Therefore, § 1365(b)(1)(B) would not preclude the violations that HVFG is ultimately liable for. See, e.g., Laidlaw, 528 U.S. at 175; Atlantic States Legal Found. v. Eastman Kodak Co., 933 F.2d 124, 127 (2d Cir. 1991).

Finally, HVFG must demonstrate a "continuing violation" in order to proceed with the lawsuit. There is no statutory standing to sue "for violations that have ceased by the time the complaint is filed." Laidlaw, 528 U.S. at 175. According to Supreme Court precedent, "citizen-plaintiffs [must] allege a state of either continuous or intermittent violation—that is, a reasonable likelihood that a past polluter will continue to pollute in the future." Gwaltney, 484 U.S. at 53. Whether a continuing violation exists or not is determined at the time the complaint was filed. See Connecticut Coastal Fishermen's Assoc. v. Remington Arms Co., 989 F.2d 1305, 1311 (2d Cir. 1993) (citing similar holdings from the 11th and 4th Circuits). To survive summary judgment, Plaintiff must show "that defendant's violations continued subsequently to the date the complaint was filed, or present proof from which a trier of fact could find a continuing likelihood that violations would recur." Id. In this case, HSUS has provided ample evidence that permit violations by HVFG continued at the time the complaint was filed, and even when it was later amended to include further permit violations. While the discharge violations in excess of permitted levels occurred prior to commencement, the reporting and monitoring-based violations of both permits
continued after the suit was filed. The fact that some, but not all, of these violations were ultimately resolved by a DEC Order months after the complaint was filed simply confirms that HSUS satisfactorily alleged continuing violations at the time the action was commenced.

C. HVFG Violated the Slaughterhouse and CAFO SPDES Permits

Plaintiff has demonstrated sufficient undisputed material facts to prove that Defendant violated both its Slaughterhouse and CAFO SPDES Permits. As the facts below demonstrate, HVFG discharged pollutants in excess of the designated levels in the Slaughterhouse SPDES Permit, and also failed to properly follow the permit's monitoring and reporting requirements. Similarly, HVFG twice discharged pollutants in violation of its CAFO SPDES Permit prohibition on discharge, failed to properly maintain and complete a CNMP as required by the permit, and did not properly design or certify certain waste storage systems.

1. Slaughterhouse SPDES Permit

Discharge Violations

HVFG's Slaughterhouse SPDES Permit contains two sections. Part I details the "Permit Limits, Levels, and Monitoring Definitions." The section provides a table which lists, *inter alia*, the parameter to be tested (e.g. total residual chlorine), the type and level of effluent limitations on the parameter (e.g. a "daily maximum" temperature of 70 degrees), and the monitoring requirements for each parameter (e.g. a monthly "grab" sample at the effluent location). The permit requires HVFG to submit to the DEC a monthly "Wastewater Facility Operation Report," more generally known as a "Discharge Monitoring Report" or "DMR," that contains the monitoring results for the pollutant parameters listed in the table. The responsible corporate officer is required to sign each DMR and certify its accuracy. Id., Part II, § 10.2.

Evidence of a violation contained in a defendant's own DMR is sufficient to show liability on summary judgment. See *Friends of the Earth v. Eastman Kodak Co.*, 834 F.2d 295, 298 (2d Cir. 1987).

An effluent limitation is "any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance." 33 U.S.C. § 1362(11).

Plaintiff shows, through DMRs submitted to the DEC, that HVFG exceeded the permitted parameter levels in the Slaughterhouse SPDES permit. HVFG exceeded the temperature parameter, 70 degrees, from July 1, 2001 to August 1, 2005. See Slaughterhouse SPDES Permit, Part I, at 5-6 (temperature parameter); Bell Decl., ¶ 12, Ex. D (list of dates and temperatures above parameter maximum taken from DMRs).

Putting aside arguments about mootness or lack of standing, Defendant's response is only that the majority of these violations occurred from June to October, and that they are not required to report temperature during those months. This is simply incorrect. The table for "Final Permit Limits, Levels and Monitoring" contains two pages, one for reporting parameters from June 1 to October 31, and one to report parameters from November 1 to May 31, and in both instances the permit requires that temperature not exceed 70 degrees. See Slaughterhouse SPDES Permit, Part I, at 5-6. As such, it cannot be disputed that HVFG violated the temperature requirements of the Slaughterhouse SPDES Permit.

HSUS demonstrates that HVFG reported discharge samples in excess of other parameter limits as well. Defendant reported (1) chlorine levels greater than the daily maximum, 0.1 mg/l, from July 1, 2001 to October 15, 2005; (2) settleable solids in excess of the parameter limit of 0.3 ml/l on November 8, 2001; (3) ammonia nitrogen samples in excess of the limit of 2.2 or 2.15 lbs/per day from February 1, 2002 to October...
(4) phosphorous levels greater than the daily limit of 0.17 lbs/day and also failed to report levels from July 1, 2001 to May 31, 2006; and (5) fecal coliform levels greater than the maximum of 200 No./100 ml, from October 2001 to May 2005. See Slaughterhouse SPDES Permit, Part I, at 5-6; Bell Decl., ¶¶ 17, 22, 26, 28, 30, and Ex. D. Again setting aside standing and mootness arguments, HVFG provides no evidence which materially disputes Plaintiff’s claims or would show that they in fact did not violate these parameter limits. Though Plaintiff faces further legal hurdles, some of which they do not clear, HSUS sufficiently demonstrates that HVFG discharged pollutants in excess of the parameter limits.

14 Unlike the temperature parameter, the Slaughterhouse SPDES Permit slightly alters the limit for ammonia nitrogen between June to October and November to May.

15 In some instances, HVFG disputes the specific number of violations as certain parameters were required to be sampled monthly instead of daily. As such, they claim that HSUS unfairly exaggerated the number of violations by deeming a monthly report in excess of a permitted level to count as thirty or so separate violations, one for each day of that month. While the specific number of violations is important for calculating civil penalties, it does not impact a finding of liability for permit violations. Regardless of the number of times, Plaintiff has proved that Defendant exceeded certain parameter limits and therefore violated the express requirements of the permit.

**Reporting and Monitoring Violations**

16 As with the claims of discharge violations, HSUS details the number of violations based on the days HVFG was not in compliance with the Slaughterhouse SPDES Permit’s reporting and monitoring requirements. As noted, supra, the number of violations is relevant to the degree of civil penalties that may be awarded, and are irrelevant to the question of whether or not HVFG violated elements of the permit in the first instance. As such, I need not reference the specific number of “per day” violations that HSUS contend occurred.

The Slaughterhouse SPDES Permit also establishes a set of detailed requirements for the monitoring and reporting of pollutant discharge, and HSUS demonstrates that HVFG failed to properly follow some of these requirements as well. First, Defendant failed to properly calibrate the thermometers used to measure temperature, as well as the "HACH colorimeter" used to measure chlorine. A permit holder is required to "periodically calibrate and perform manufacturer's recommended maintenance procedures on all monitoring and analytical instrumentation to insure accuracy of measurement" and to keep a log of this maintenance. Slaughterhouse SPDES Permit, Part II, § 10.1(e). According to HSUS' expert, the EPA requires that thermometers used to measure discharge samples be calibrated against a precision thermometer certified by the National Institute of Standards and Technology ("NIST"). See Bell Decl. ¶ 13. Defendant initially admitted that it did not calibrate its thermometer or keep calibration records. See Pl's Stmt. of Mat. Facts, ¶ 27; Def.'s Respon. to Requests for Admissions, ¶ 4-5. Further, deposition testimony from two HVFG employees likewise indicates that the thermometer was not calibrated. See Pl's Stmnt. of Mat. Facts, ¶ 27; Ponce Dep. at 38:18-20 (Dec. 8, 2009); Caruso Dep. at 59:5-12. Defendant submitted three declarations in conjunction with the summary judgment motions, which state that HVFG actually used a pre-calibrated NIST-certified thermometer that need not be regularly calibrated. See Henley Decl. ¶ 151; Jaeger Decl. ¶ 11; Morgan Decl. ¶ 10. These late-filed declarations, submitted with no other evidentiary support, are insufficient to raise a material dispute in light of the prior admissions and deposition testimony of the HVFG employees who performed the measurements. Indeed, one of the individuals now certain that HVFG used a pre-calibrated thermometer, see Jaeger Decl. ¶ 11,
previously testified at his deposition that HVFG used "multiple thermometers," and that they were calibrated by "compar[ing] them to each other." Jaeger Dep. at 159:22-160:13. "It is beyond cavil that a party may not create an issue of fact by submitting an affidavit in opposition to a summary judgment motion that . . . contradicts the affiant's previous deposition testimony." Bickerstaff v. Vassar College, 196 F.3d 435, 455 (2d Cir. 1999) (internal quotations omitted).

Plaintiff also provides sufficient evidence to show Defendant failed to properly calibrate the HACH colorimeter, an instrument used to measure chlorine levels. According to HSUS, this instrument requires calibration with a standard chlorine solution. See Bell Decl. ¶ 18 (citing manufacturer's instructions). HVFG has no calibration records for the colorimeter, and HVFG's "wastewater operator" testified, contrary to the manufacturer instructions, that one need only "zero it out" with any water sample available. Jaeger Dep. at 150:8-16. That HVFG submitted additional declarations that simply assert the instrument "must" be calibrated in order for it to function, without any citation to the manufacturing instructions or some other evidence, simply further highlights that Defendant is not itself perfectly clear as to how properly to calibrate its chlorine testing equipment.

Similar to the calibration requirement, the Slaughterhouse SPDES Permit also requires that "monitoring and analysis must be conducted using test procedures promulgated pursuant to 40 CFR Part 136," federal regulations that describe the required testing methods for Clean Water Act discharge monitoring. See Slaughterhouse SPDES Permit, Part II, § 10.4(a). The measurement of settleable solids may be accomplished by the "Imhoff Cone" test. See 40 C.F.R. § 136.3. The evidence demonstrates that HSUS did not utilize the proper analytical method for the Imhoff Cone test. Four different HVFG employees described what they believed to be the proper method for performing the test, each answer differed, and none included all the required elements of the testing method, such as the need to agitate the cone after letting the sample settle for 45 minutes. Compare, e.g., Jaeger Dep. at 176:2-23 (stating that he simply fills the cone with a one liter sample and waits an hour) with EPA Method 160.5 (requiring 45 minute wait, "gentle agitation" near sides of cone, and additional 15 minute wait before taking measurement). The inability to describe or perform this test is even harder to comprehend given the fact that this Court found a straightforward explanation on the New York DEC website after just a few minutes of browsing. See New York DEC, Plain English Guide for Testing and Reporting of Small Wastewater Systems, http://www.dec.ny.gov/chemical/8705.html (last visited Apr. 19, 2010) (describing EPA Method 160.5 for testing settleable solids). While this sort of violation may seem minor, the fact that a regulated CAFO like HVFG could not comprehend the basic research necessary to ensure compliance with its permit and the Clean Water Act is at best, disturbing.

The Slaughterhouse SPDES Permit also requires that reporting samples be taken at the "effluent" location, the point where the discharge enters the river. See Slaughterhouse SPDES Permit, Part I, at 4-6; Bell Decl. ¶ 10. Plaintiff contends that Defendant failed to take samples for the measurement of temperature, chlorine, and settleable solids at the proper location, and cites testimony from a number of HVFG employees who described taking samples at a variety of locations other than at the streambank pipe where wastewater is discharged. See PI's Statement of Material Facts, ¶¶ 28, 34, 39. HVFG's response is *14 that they take additional "voluntary" samples at other locations "to monitor the entire process" and are for internal use only. See Def.'s Stmt. of Material Facts in Opp. to Pl.'s Stmt. of Material Facts, ¶¶ 28, 34, 39. This response is incomplete and insufficient. Other than the assertions of three individuals in declarations filed with the summary judgment motions, HVFG provides not a scintilla of evidence to back up its claim that only the samples taken at the effluent
location were included in the reports submitted to the DEC, such as some record of sample data segregated by location. Further, if Defendant had actually read the permit carefully, it might have noticed that it also states: "If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculations and recording of the data on the Discharge Monitoring Reports." Slaughterhouse SPDES Permit, Part I, at 10(e) (emphasis added). In other words, Defendant has provided no sufficiently material fact that contradicts Plaintiff's evidence that water samples were taken at improper locations, and even highlights a potential further violation of the permit with regard to the need to report all sampling data.

Plaintiff next claims that Defendant failed to properly record the time, location, and chain of custody for samples taken to measure temperature, chlorine, settleable solids, phosphorous, ammonia, and fecal coliform. The Slaughterhouse SPDES Permit requires that HVFG keep monitoring information records for at least three years, and must include "the date, exact place, and time of sampling or measurements . . . the individual(s) who performed the sampling or measurements . . . the date(s) analyses were performed . . . the individual(s) who performed the analyses . . . the analytical techniques or methods used; and . . . the results of such analyses." Part II, § 10.3. HVFG admitted in Plaintiff's Request for Admissions that it did not keep records of the time of day or chain of custody for its monitoring samples. See Def's Resp. to Pl's Request for Admissions, ¶¶ 17-18, 25. Defendant now claims that the time of day is "irrelevant," that they need not record a chain of custody because "samples are taken at the discharge point, and temperature levels are immediately recorded," and the location for testing is recorded in HVFG's "Standard Operating Procedures Manual." See Def's Stmt. of Material Facts in Opp. to Pl's Stmt of Material Facts, ¶¶ 29, 33, 38, 44, 47, 51. However HVFG may feel about the relevance or need of certain recordkeeping in light of how they perform their tests, the permit clearly requires that they record the time of sampling, who performed the sampling and analysis, and where the sampling occurred. As the complete absence of records in support of their arguments itself tends to indicate, HVFG did not properly keep records as required by its Slaughterhouse SPDES Permit.

Two more points raised by HSUS, while minor, are nonetheless straightforward violations of the Slaughterhouse SPDES Permit. First, HVFG failed to correctly report certain temperature measurements in July 2007, as the temperature measurements on the handwritten form report kept by HVFG differed from the DMR submitted to the DEC. See Bell Decl., Ex. K, L (Printed and Handwritten Wastewater Facility Operation Reports for July 2007). HVFG's only response is that temperature measurements need not be reported in July. See Def's Stmt. of Material Facts in Opp. to Pl's Stmt of Material Facts, ¶ 30. As described, supra, this is simply an incorrect reading of the Slaughterhouse SPDES Permit, which requires year-round temperature measurement. Second, HVFG reported chlorine levels in October 2007 despite a lack of any basis to report these numbers. The HVFG wastewater operator testified that he took the handwritten measurements of discharge samples, re-typed the data, and submitted the typed DMR to the DEC. Jaeger Dep. at 72:21-73:22. The October 2007 handwritten DMR contains no data on chlorine levels, yet the typed DMR submitted to the DEC contained this information. Lacking a basis to report these findings, HVFG could not fairly certify the accuracy of the information it submitted to the DEC, in violation of its permit. See Slaughterhouse SPDES Permit, Part I at 10 (all information recorded on DMR shall be based upon measurements or samples carried out by Permittee); Part II, § 10.2(c) (Permitee must certify accuracy of report). HVFG claims it sent the handwritten notes to certain consultants, who transferred it to another form, but provides no evidence to support this claim. Notably, this
violation also highlights why the chain of custody recordkeeping requirements mentioned in the previous paragraph are important: had HVFG maintained proper records, it might have been able to explain what happened to this missing data, or not lost it in the first instance.

2. CAFO SPDES Permit

Unlike the Slaughterhouse SPDES Permit, which permits the discharge of pollutants up to a certain level, the CAFO SPDES Permit flatly prohibits any other discharge. See CAFO SPDES Permit, § VI.A-B ("There shall be no discharge of process wastewater pollutants to the surface waters of the State . . ."). Additionally, the permit requires that HVFG complete and maintain a Comprehensive Nutrient Management Plan (CNMP), which "shall describe and ensure the implementation of practices which are to be used to assure compliance with the limitations and conditions of this permit." Id. § VII.A. Finally, the permit sets forth a number of required "Best Management Practices," such as the need to amend waste-handling procedures *16 and structures before expanding operations, immediately report any discharge to the state, and keep records required by the permit for at least five years. Id. § VIII and IX.

HSUS alleges three categories of CAFO SPDES Permit violations by HVFG: (1) the prohibited discharge of pollutants; (2) the failure to properly maintain and amend a complete CNMP; and (3) the improper storage of waste products. First, HVFG discharged pollutants in violation of the permit in March 2006, when an employee accidentally released liquid manure from a truck that ran downhill into a creek. In October 2006, the DEC indicated in an annual inspection of HVFG facilities that there was "evidence of runoff discharged directly to a surface water." Conant Dec., Ex. L (CAFO Inspection Report at 6). Second, HVFG installed waste storage pits at one facility in 2004, and waste storage lagoons at another location in 2006, and in both instances failed to properly amend the CNMP for that location to reflect this change until February 2008. HVFG also failed to maintain a complete CNMP that included the waste handling operations and procedures at one of their facilities. Finally, neither the waste storage lagoon nor the waste storage pits were formally designed by a professional engineer, and neither were certified by an engineer until February 2008. Defendant also failed to document the waste storage periods for these structures until 2006 or 2007. Though HVFG disputes certain aspects of these alleged violations, such as whether the violation is merely "technical" or involves a discharge into waterways, Defendant does not directly challenge the factual foundation for the claims. Given the further fact that all of these claims were addressed by the DEC in its Order on Consent with HVFG, it is clear that these violations of the CAFO SPDES Permit occurred. However, as described more fully below, the DEC's consideration of these violations also render Plaintiff's claims under this permit moot.

17 It is unclear precisely what "the waste storage periods" means. Neither the Plaintiff's expert witness, nor the DEC, who expressly considered it in the Order, explain how this is a violation. It is ultimately not relevant, as I find that these violations are moot.

D. The Permit Violations Are Clean Water Act Violations

HVFG insists that it is not liable because most of the permit violations are not actually Clean Water Act violations. According to Defendant, the reporting and monitoring violations of the Slaughterhouse SPDES Permit do not involve a discharge into a navigable waterway and therefore cannot sustain liability. Similarly, since the CAFO SPDES Permit prohibits any discharge into waterways, it is actually not even a Clean Water Act permit. While creativity is to *17 be commended, this argument stretches credulity to its breaking point. It is abundantly clear from the statutory language, case law, and the permits themselves that a violation of the requirements of either permit is a violation of the CWA.
Congress did not merely pass legislation that required "no dumping" signs posted along the waters of the United States, and whether a party is liable for a violation under the Clean Water Act is often not as simple as where a party discharged pollutants into a navigable waterway. The CWA is a complex regulatory structure that established numerous detailed requirements for regulated parties, multiple enforcement mechanisms, and, most critically, a permit system to regulate the unfortunate reality of continuing water pollution. "An NPDES permit serves to transform generally applicable effluent limitations and other standards including those based on water quality into the obligations . . . of the individual discharger . . ." EPA v. California ex rel. State Water Res. Control Bd., 426 U.S. 200, 205 (1976). While a discharge into a waterway in violation of a permit limit or prohibition is obviously a CWA violation, it is the beginning, not the end of a permittee's responsibilities under the Act. The Act deems compliance with a permit to be compliance for enforcement purposes, see 33 U.S.C. § 1342, and the obvious tradeoff is that noncompliance with its requirements, discharge or otherwise, is a violation and grounds for liability. See Atlantic States Legal Found., Inc. v. Eastman Kodak Co., 12 F.3d 353, 357 (2d Cir. 1993). As federal regulations clearly explain, "[t]he permittee must comply with all conditions of this permit . . . Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action . . ." 40 C.F.R. § 122.41(a) (emphasis added); see also Laidlaw, 528 U.S. at 174 ("noncompliance with a permit constitutes a violation of the act"); Gwaltney, 484 U.S. at 52 ("The holder . . . is subject to enforcement action . . . for failure to comply with the conditions of the permit."). If HVFG had any further doubt as to whether it would face liability for reporting and monitoring violations of the Slaughterhouse SPDES Permit, or for violations of the "no-discharge" CAFO SPDES Permit, it need only look to the face of these permits. Both unambiguously state that "any permit noncompliance" is a violation of the Clean Water Act. See Slaughterhouse SPDES Permit, *18 Part II, § 1.f; CAFO SPDES Permit, § X.A. A CAFO like HVFG is obligated to comply with all aspects of its permits, not merely the discharge limits or prohibitions, and may suffer liability under the Clean Water Act if it fails to do so.

The discharge need not be directly into a navigable waterway, as Defendant also appears to argue. "The Act does not forbid the addition of any pollutant directly to navigable waters from any point source, but rather the addition of any pollutant to navigable waters . . . Thus, from the time of the CWA's enactment, lower courts have held that the discharge into intermittent channels of any pollutant that naturally washes downstream likely violates [the Act], even if the pollutants discharged from a point source do not emit 'directly into' covered waters, but pass 'through conveyances' in between." Rapanos v. United States, 547 U.S. 715, 743 (2006) (Scalia, J.).

It is likewise clear that HSUS can bring a citizen suit based on these violations. Pursuant to the Act, a citizen suit may be commenced against anyone "alleged to be in violation of . . . an effluent standard or limitation under this chapter." 33 U.S.C. § 1365(a)(1)(A). An "effluent standard or limitation" is defined in the same section and includes, "a permit or condition thereof issued under section 1342 of this title." § 1365(f). "There is nothing in the language or legislative history of the Act to suggest that a citizens' suit may seek to enforce only those conditions of an NPDES permit that regulate the quality of a discharge immediately before its release into navigable waters." Connecticut Fund for Env't v. Raymark Indus., Inc., 631 F. Supp. 1283, 1285 (D.Conn. 1986) (Cabrines, J.); see also Waterkeeper Alliance, 399 F.3d at 503-04 (describing importance for citizen to be able to "enforce the terms" of nutrient management plan); Northwest Envtl. Advocates v. City of Portland, 56 F.3d 979, 988 (9th Cir. 1995) (collecting cases and stating, "[i]n fact, permit conditions that courts commonly enforce . . . are not effluent limitations, but rather requirements for retaining records of discharge..."
A citizen suit under the Clean Water Act is designed to "supplement, not supplant" state action, and may become moot when the EPA or state resolves the alleged violations through some form of enforcement. See Gwaltney, 484 U.S. at 60. According to HVFG, regardless of the relative merits of Plaintiff's case, the entire action was mooted after the DEC Consent Order. Since the Order covered violations of both permits, and required HVFG to pay civil penalties and perform equitable relief, the company should not now be subject to further punishment through this civil suit. HSUS argues in response that none of the claims are moot because a number of the violations continued even after the Order was signed.

An action brought pursuant to the CWA only becomes moot where "subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." Laidlaw, 528 U.S. at 189. The test for mootness is "stringent," and the burden of proof lies with the party that makes this claim. Id. "Mootness doctrine thus protects defendants from the maintenance of suit under the Clean Water Act based solely on violations wholly unconnected to any present or future wrongdoing, while it also protects plaintiffs from defendants who seek to evade sanction by predictable protestations of repentance and reform." Gwaltney, 484 U.S. at 66-67. State enforcement actions, such as a consent order, render an action moot where there is no realistic chance of a continuing violation. "If the state enforcement proceeding has caused the violations alleged in the citizen suit to cease without any likelihood of recurrence — has eliminated the basis for the citizen suit — we believe that the citizen action must be dismissed." Atlantic States Legal Found. v. Eastman Kodak Co., 933 F.2d 124, 127 (2d Cir. 1991). Again, the critical element is that the state enforcement action must resolve the violations such that they are unlikely to recur; the citizen suit will not be rendered moot where there was no dispositive settlement or the action was not completely resolved. See id. at 128; Coalition for a Liveable West Side, Inc. v. New York City Dept. of Envtl. Protection, 830 F.Supp. 194, 197 (S.D.N.Y. 1993) (cannot establish mootness where, despite DEC enforced remedial measures, "permit violations . . . continue and are likely to continue for at least several years").

This case presents a somewhat complicated scenario, as HVFG committed a number of distinct violations of two different SPDES permits. However, mootness need not be an all-or-nothing question. In Atlantic States Legal Foundation v. Pan American Tanning Corporation, the Second Circuit determined that a CWA action for civil penalties may continue even when a defendant sufficiently establishes that it has come into compliance to moot claims for injunctive relief. See 993 F.2d 1017, 1020-21. If the state enforcement action does not cover, or fails to resolve all of the permit violations, then those violations that are continuing or likely to recur need not and should not be mooted.

E. Mootness

A citizen suit under the Clean Water Act is designed to "supplement, not supplant" state action, and may become moot when the EPA or state resolves the alleged violations through some form of enforcement. See Gwaltney, 484 U.S. at 60. According to HVFG, regardless of the relative merits of Plaintiff's case, the entire action was mooted after the DEC Consent Order. Since the Order covered violations of both permits, and required HVFG to pay civil penalties and perform equitable relief, the company should not now be subject to further punishment through this civil suit. HSUS argues in response that none of the claims are moot because a number of the violations continued even after the Order was signed.

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In this case, the DEC Order clearly resolved all of the violations of the CAFO SPDES permit. Each violation that was alleged by HSUS was expressly covered by the Order and resolved. See DEC Order, ¶ 9. Plaintiff here fails to provide any
significant evidence to indicate that these violations are likely to recur, nor any evidence of recurrence during the nearly three years since the Order was signed. To further consider violations of this permit, all of which were passed upon by the DEC, would be an impermissible attempt to second guess the state enforcement action. See Atlantic States, 933 F.2d at 127. Likewise, the discharge violations of pollutants in excess of the parameter levels in the Slaughterhouse SPDES Permit are sufficiently mooted by the DEC Order. The Order specifically mentioned these violations, and required HVFG to pay certain penalties and take remedial actions in response. See DEC Order, ¶ 12. As with the CAFO SPDES Permit violations, HSUS does not demonstrate that these discharge violations have recurred or are likely to do so. Shortly after HSUS filed suit, HVFG worked in good faith and diligently with the DEC to remediate certain violations, and three years later none of these particular violations have recurred. As such, all claims specifically enforced by the Order have been rendered moot.

19 Although Plaintiff notes that certain CAFO SPDES violations were not fully remediated for a period of time after the Order was signed, the DEC expressly provided for this time in the Order and otherwise extended the time to comply when some of HVFG's initial submissions were deemed inadequate.

However, the reporting and monitoring violations of the Slaughterhouse SPDES Order have not been mooted by the DEC Order. Although, as Defendant has repeatedly pointed out, the Order says that HVFG otherwise "appears to be in compliance," the reporting and monitoring violations were never expressly considered in the document. Nor does HVFG provide any other evidence to indicate that the DEC considered and resolved these violations. The fact that all of the other violations were directly listed in the Order persuades me that these particular violations were not contemplated, let alone resolved so as to moot HSUS' claims. Most damning, though, is the clear evidence that Defendant's violations continue and are likely to recur, e.g. their contention that the time of sampling is "irrelevant" to proper recordkeeping and the improper description of the Imhoff Cone testing method, which demonstrate that HVFG still does not understand or choose to follow these requirements of the permit. Further, HVFG's failure to properly report temperature because they believed that it is unnecessary in summer months, and their failure to maintain the original handwritten records of chlorine samples, both occurred after the DEC Order was signed. The DEC Order did not cover the reporting and monitoring violations of the Slaughterhouse SPDES Permit, and even if it had, HSUS has provided sufficient evidence that these violations have recurred or are likely to do so.

* * * In summary, the undisputed material facts indicate that HVFG violated both its Slaughterhouse SPDES and CAFO SPDES Permits. With regard to the Slaughterhouse SPDES Permit, HVFG (1) discharged pollutants — wastewater above the allowed temperature, chlorine, ammonia, settleable solids, phosphorous, and fecal coliform — in excess of the permit's parameter limits; and (2) failed to comply with a variety of reporting and monitoring requirements, described supra. HVFG also violated its CAFO SPDES Permit because (1) it discharged pollutants despite its "no discharge" requirement; (2) failed to properly maintain and amend its Comprehensive Nutrient Management Plan, and; (3) failed to properly design and certify its waste storage structures. Although there is sufficient evidence to sustain each of these permit violations, the DEC Order entered into by HVFG expressly encompassed all of the CAFO SPDES Permit violations, as well as the excess discharge violations of the Slaughterhouse SPDES Permit. Since these violations were fully resolved and there is no evidence or likelihood of recurrence, Plaintiff's claims based on these violations are rendered moot. However, HVFG remains liable for the reporting and monitoring violations of the Slaughterhouse SPDES Permit because it was not
covered by the DEC Order, and because there is evidence that the violations continued to occur after the Order was signed.

F. Remedies

In each case brought pursuant to § 1365(a), "the district court has discretion to determine which form of relief is best suited, in the particular case, to abate current violations and deter future ones." Laidlaw, 528 U.S. at 192; see also Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York, 451 F.3d 77, 87 (2d Cir. 2006) ("District courts have broad discretion in calculating civil penalties under the CWA."). The Act authorizes a court to order civil penalties and injunctive relief. See 33 U.S.C. § 1365(a) ("shall have jurisdiction . . . to enforce such an effluent standard or limitation . . . and to apply any appropriate civil penalties"). The Clean Water Act authorizes civil penalties of up to $25,000 per day for each violation.

In calculating civil penalties under the CWA, the court may begin either with the violator's estimated economic benefit from noncompliance (known as the 'bottom-up' method) or with the statutory maximum allowable penalty (known as the 'top-down' method)," and may then make appropriate adjustments. Trout Unlimited, 451 F.3d at 87; see also § 1319(d).

1. Civil Penalties

In many Clean Water Act cases, a defendant may voluntarily come into sufficient compliance with its permit obligations to such an extent that an injunction would be an unnecessary burden, while a civil penalty will still issue to deter future violations and compensate for the prior environmental harm and corresponding economic benefits of being an environmental scofflaw. See, e.g., Laidlaw, 528 U.S. at 192-93. This case presents the opposite situation. Though HVFG remains in violation of certain permit requirements, it clearly made a good-faith effort to resolve its permit issues with the DEC and already has paid significant financial penalties as a result. Further, HSUS has not shown that HVFG has discharged any pollutants in violation of its permits since its signed the DEC Order, and the only violations for which it remains liable are reporting and monitoring requirements. Notably, though they still suggest HVFG should be liable for $550,000 to over $600 million in civil penalties for these violations, HSUS generally agrees that these penalties are not necessary in this case if other remedial relief is ordered. In light of Defendant's decision to voluntarily work with the state environmental agency to remediate its violations, its payment of civil and equitable penalties as part of the DEC Order, and a lack of any evidence of further actual improper pollutant discharges, I find that civil penalties are not appropriate in this case.

2. Injunctive Relief

An injunction does not issue automatically upon a finding of a Clean Water Act violation, but rather Plaintiff must still demonstrate irreparable harm. See City of New York v. Anglebrook Ltd. P'Ship, 891 F. Supp. 908, 925 (S.D.N.Y. 1995) (citing Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982); Amoco Production Co. v. Village of Gambell, 480 U.S. 531 (1987)). In this unusual case, injunctive relief as set out below, is actually more appropriate than further civil penalties. Though HVFG already paid a significant fine to the DEC, it remains clear that HVFG still does not fully understand its obligations under its SPDES permits. Defendant's conflicted and multiple responses to its reporting violations indicates that it lacks a firm grasp of what it must do to be a responsible environmental citizen under the CWA permit system. The requirements of these SPDES Permits are detailed, technical, and complex, and it is hardly mindboggling that Defendant does not know how to properly comply with them. As Plaintiff's point out, the improper monitoring and recordkeeping makes it impossible to accurately determine whether there has been any improper
discharges of pollutants by HVFG; this is precisely the sort of irreparable harm that merits an equitable remedy. As such, mandatory injunctive relief to ensure HVFG accurately carries out its reporting and recordkeeping responsibilities would be in the best interest of all concerned. Plaintiff's desire to protect the Mongaup River and its environs is commendable and will come closer to fruition with a remedy that calls for more easily verified data and better reporting and monitoring. Defendant will benefit from a reduced risk of future CWA liability because it will better understand its obligations under both permits. To accommodate those goals,

(1) HSUS will for nine (9) months, to begin August 1, 2010 and concluding February 1, 2011, ensure full compliance with their reporting and recordkeeping obligations.

(2) By no later than thirty (30) days from the date of this Order, HVFG and HSUS will submit to this court the name of a mutually agreed-upon and available Clean Water Act compliance expert (the "CWA Expert" or "Expert"). The CWA Expert must have experience with the New York SPDES Permit system, and have a clear understanding of what constitutes proper recordkeeping and reporting as required by the Slaughterhouse SPDES Permit. Prior work experience with the DEC is particularly favored.

(3) If the parties cannot agree upon a particular expert within thirty (30) days, they will within five (5) days thereafter, i.e. the 35th day, each submit to this Court the names and backgrounds of two available experts. The Court will then designate one of these individuals as the CWA Expert. HVFG will pay for the services of the Expert.

(4) Within thirty (30) days of the date that the CWA Expert is chosen, HVFG shall meet with him or her at the HVFG facilities, submit their records and reports for evaluation, and correct any improper recordkeeping or reporting practices identified by the Expert.

(5) The Expert shall only review the recordkeeping and reporting requirements that HVFG violated, as described by this Opinion and Order. Within seven (7) days from the date of this initial meeting, the Expert will submit a report to both HVFG and HSUS that details the results of his or her compliance review.

(6) After the initial compliance meeting, the CWA Expert will return to the HVFG facilities once every thirty (30) days for the next nine months. HVFG is expected to cooperate with the expert and to be in full and strict compliance with all of its recordkeeping and reporting requirements throughout the nine month period.

(7) The CWA Expert will provide a detailed, written certification that either confirms HVFG is in compliance, or that it remains in violation of certain permit requirements. This certification report will be submitted to HSUS and this Court no later than seven (7) days after each inspection. Two successive reports of still-existing violations will result in a penalty of $30,000. Additional reports of violations during the injunctive period will result in a penalty of $50,000 per reported violation. It is the responsibility of HSUS to notify the Court of violations that might subject HVFG to civil penalties.

(8) After the CWA Expert has met with HVFG for nine months, he will issue a final written certification report. If the report states that HVFG is in complete compliance with its recordkeeping and reporting obligations, this injunction will be dissolved without further recourse. If the report concludes that HVFG continues to violate its recordkeeping or reporting obligations, HVFG will be subject to a penalty of $25,000 per day per violation until corrected and approved by the Expert.

3. Costs and Attorney's Fees

Under the CWA, a district court also "may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate." 33 U.S.C.
§ 1365(d); Laidlaw, 528 U.S. at 175. The parties are instructed to submit briefs of no more than five (5) pages on the costs and attorney's fees sought in this case, with substantiation for time spent, within twenty (20) days of the date hereof.

4. Other Equitable Relief

A district court retains its traditional discretion to award equitable relief in a Clean Water Act suit so that it may "enforce such an effluent standard or limitation" and ensure that the purpose of the Act is satisfied. See 33 U.S.C. § 1365(a); Weinberger v. Romero-Barcelo, 456 U.S. 305, 318 (1982) (statute permits "the exercise of a court's equitable discretion . . . to order relief that will achieve compliance with the Act"). Though an injunction is the most frequently considered equitable relief, the court retains its full panoply of equitable powers. See United *25 States v. City of Niagara Falls, 706 F. Supp. 1053, 1059 (W.D.N.Y. 1989) ("the district court . . . retains the full measure of equitable discretion in fashioning appropriate enforcement relief"); Coalition for a Liveable West Side, Inc. v. New York City Dept. of Envtl. Protection, No. 92 Civ. 9011, 1998 WL 78285, at *5 (S.D.N.Y. Feb. 24, 1998) (considering but ultimately denying request for appointment of special master); see also U.S. Pub. Interest Research Group v. Atlantic Salmon of Me., LLC, 339 F.3d 23, 32 (1st Cir. 2003) ("once a citizen suit is brought and establishes a present violation, there is nothing in the statute or in Gwaltney that prevents a court from ordering equitable relief to remedy the harm done in the past"); Natural Res. Def. Council v. Southwest Marine, Inc., 236 F.3d 985, 1000 (9th Cir. 2000) (In CWA suit, "[s]o long as the district court's equitable measures are reasonably calculated to remedy an established wrong, they are not an abuse of discretion") (internal citations and quotations omitted).

Both parties submitted letter briefs to the Court to provide their view of appropriate remedies in light of Defendant's reporting and recordkeeping violations. HSUS stated that an environmental project, paid for by HVFG in the amount of $100,000, would be an appropriate alternative to civil penalties. HVFG, to its credit, agreed to fund an environmental project to remediate its CWA violations, but believes a payment of $15,000 is proper. I agree that an environmental project paid for by Defendant would be suitable and just in lieu of civil penalties. In light of the facts of this case and given the much larger civil penalties that could be imposed for these violations, a $50,000 payment by HVFG to a suitable project is appropriate. An appropriate project should be related to the same sort of concerns raised by the violations at issue in this litigation, i.e. monitoring and tracking water pollution levels in the navigable waterways where pollutants discharged by HVFG may ultimately end up. HSUS has already recommended an organization for just such a purpose, but provided little in the way of details. The parties are instructed to discuss such a project and come to agreement on the details. This court will retain jurisdiction to resolve questions involving the relief granted above.

III. CONCLUSION

For the reasons described above, Plaintiff's Motion for Summary Judgment is GRANTED to the extent that it has proved Defendant's reporting and monitoring violations of its Slaughterhouse SPDES Permit, and DENIED to the extent that all of the CAFO SPDES Permit violations, and the discharge violations of the Slaughterhouse SPDES Permit, have been rendered moot by the New York DEC Order on Consent.

The Clerk of the Court is instructed to close the relevant motions and remove them from my docket.

SO ORDERED

http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071367idArticle=LEGIARTI000006584967dateTexte=20100419 (last visited Apr. 18, 2010). However, it may be produced by other methods as well.

Appeal from the United States District Court for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Argued and Submitted December 7, 2016 Pasadena, California

Filed September 15, 2017


Opinion by Judge Nguyen
SUMMARY*  

Preemption / Poultry Products Inspection Act

The panel reversed the district court’s grant of summary judgment in favor of plaintiffs who challenged California Health and Safety Code § 25982, a provision that bans the sale of products made from force-fed birds, such as foie gras; vacated the district court’s permanent injunction; and remanded for further proceedings.

The panel rejected plaintiffs’ express preemption argument - that California’s sales ban was expressly preempted because the Poultry Products Inspection Act (“PPIA”) prohibited states from imposing “ingredient requirements” that were “in addition to, or different than,” the federal law and its regulations. 21 U.S.C. § 467e. The panel held that section 25982 was not expressly preempted. Specifically, the panel held that the ordinary meaning of “ingredient” and the purpose and scope of the PPIA made clear that “ingredient requirements” pertain to the physical components that comprise a poultry product, not animal husbandry or feeding practices. The panel held that California law did not impose a preempted ingredient requirement, and section 25982 was not preempted by the PPIA even if it functioned as a total ban on foie gras.

The panel also rejected plaintiffs’ arguments that the PPIA impliedly preempted section 25982 under the doctrines of field and obstacle preemption. First, under the

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.
doctrine of field preemption, states are precluded from regulating conduct in a field that Congress has determined it will regulate. The panel held that because the PPIA itself contemplated extensive state involvement, Congress clearly did not intend to occupy the field of poultry products. Second, obstacle preemption occurs where state law stands as an obstacle to the purposes and objectives of Congress. The panel held that plaintiffs failed to explain how section 25982 stood as an obstacle to the PPIA’s objectives of ensuring that poultry products are “wholesome, not adulterated, and properly marked, labeled, and packaged.” 21 U.S.C. § 451.

COUNSEL

Aimee Feinberg (argued), Deputy Solicitor General; Peter H. Chang, Deputy Attorney General; Constance L. LeLouis, Supervising Deputy Attorney General; Douglas J. Woods, Senior Assistant Attorney General; Edward C. DuMont, Solicitor General; Xavier Becerra, Attorney General; Office of the Attorney General, Sacramento, California; for Defendant-Appellant.

Michael Tenenbaum (argued), The Office of Michael Tenenbaum, Santa Monica, California, for Plaintiffs-Appellees.
OPINION

NGUYEN, Circuit Judge:

In 2004, California passed legislation to prohibit the practice of force-feeding ducks or geese to produce foie gras, an expensive delicacy made from their liver. California determined that the force-feeding process, which typically involves inserting a 10- to 12-inch metal or plastic tube into the bird’s esophagus to deliver large amounts of concentrated food, is cruel and inhumane. The state therefore prohibited force-feeding a bird “for the purpose of enlarging the bird’s liver beyond normal size,” Cal. Health & Safety Code § 25981, as well as the in-state sale of products made elsewhere from birds force-fed in such a manner, id. § 25982. The legislation does not ban foie gras itself, but rather the practice of producing foie gras by force-feeding. California provided a grace period of over seven and a half years for producers to transition to alternative methods of producing foie gras. Id. § 25984.

On July 2, 2012, the day after the state law took effect, Plaintiffs sued the state of California, challenging only Health and Safety Code section 25982, the provision that bans the sale of products made from force-fed birds. Plaintiffs initially argued that the sales ban violates the Due
Process and Commerce Clauses of the U.S. Constitution. After these claims were dismissed, Plaintiffs amended their complaint to allege that the federal Poultry Products Inspection Act (the “PPIA”), which has been on the books for over fifty years, preempts the state provision. The district court concluded that section 25982 is expressly preempted by the PPIA and granted Plaintiffs summary judgment. We reverse and remand.

I. BACKGROUND

Plaintiffs Hudson Valley Foie Gras and the Association des Éleveurs de Canards et d’Oies du Québec raise birds for slaughter and produce foie gras at their facilities in New York and Quebec, respectively; Plaintiff Hot’s Restaurant Group is a restaurant in California that sells foie gras.

The foie gras products that Plaintiffs make and sell are produced by force-feeding birds to enlarge their livers. From the day they hatch, the birds undergo a regimented feeding process that lasts for about eleven to thirteen weeks. Ass’n des Éleveurs de Canards et d’Oies du Québec v. Harris (Canards I), 729 F.3d 937, 942 (9th Cir. 2013). For the first few months, the birds are fed various pellets that are made available to them twenty-four hours a day. Id. Then, for a two-week period, the feeding pellets are available only during certain times of the day. Id. In the final stage of the feeding process, which lasts up to thirteen days, the birds are force-fed in a process called gavage, during which feeders use “a tube to deliver the feed to the crop sac at the base of the duck’s esophagus.” Id.

A. California’s Force-Feeding Ban

In 2004, the California state legislature enacted a statutory framework to end the practice of force-feeding
birds to fatten their livers. Cal. Health & Safety Code §§ 25980–25984. Section 25981 makes it illegal to force-feed a bird “for the purpose of enlarging the bird’s liver beyond normal size.” Section 25982, the only provision challenged in this case, prohibits selling a product “in California if it is the result of force feeding a bird for the purpose of enlarging the bird’s liver beyond normal size.” A “bird” is defined to include a duck or a goose, id. § 25980(a), and “force-feeding” is defined as a process by which a bird consumes more food than it would typically consume voluntarily, conducted through methods such as “delivering feed through a tube or other device inserted into the bird’s esophagus,” id. § 25980(b).

California’s law was designed to rectify what the state considered an inhumane feeding practice. See 2004 Cal. Legis. Serv. Ch. 904 (S.B. 1520) (Legislative Counsel’s Digest) (seeking to establish provisions for force-feeding birds similar to those already in place for “keeping horses or other equine animals”). According to the legislative analysis of the law, force-feeding commonly requires a worker to hold the bird between her knees, grasp the bird’s head, insert a 10- to 12-inch metal or plastic tube into the bird’s esophagus, and deliver large amounts of concentrated meal and compressed air into the bird. See, e.g., Cal. Assemb. Comm. on Bus. & Professions, Analysis of S.B. 1520, 2003–2004 Reg. Sess., at 4–5 (June 20, 2004); Cal. Sen. Comm. on Bus. & Professions, Analysis of S.B. 1520, 2003–2004 Reg. Sess., at 5–6 (May 6, 2004). The bird is force-fed up to three times a day for several weeks and its liver grows to ten times the size of a normal liver. Cal. Assemb. Comm. on Bus. & Professions, Analysis of S.B. 1520, 2003–2004 Reg. Sess., at 5 (June 20, 2004). This process is apparently “so hard on the birds that they would die from the pathological damage it inflicts if they weren’t slaughtered first.” Cal.
In enacting the force-feeding ban, California also considered a study conducted by the European Union’s Scientific Committee on Animal Health and an Israeli Supreme Court decision. The European Union study concluded that force-feeding is detrimental to the welfare of birds, and the Israeli Supreme Court similarly concluded that force-feeding causes birds pain and suffering. Cal. Assemb. Comm. on Bus. & Professions, Analysis of S.B. 1520, 2003–2004 Reg. Sess., at 6–7 (June 20, 2004); Cal. Sen. Comm. on Bus. & Professions, Analysis of S.B. 1520, 2003–2004 Reg. Sess., at 7–8 (May 6, 2004). In light of these and other factors, California decided to enact the ban, joining a growing list of countries around the world.1

California’s legislature intended to ban not foie gras itself, but rather the practice of producing foie gras by force-feeding. The law’s author, Senator John Burton, made clear when he introduced the bill that it “has nothing to do . . . with banning foie gras” and that it prohibits only the “inhumane force feeding [of] ducks and geese.” Then-Governor Arnold

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Schwarzenegger echoed this sentiment in his signing statement: “This bill’s intent is to ban the current foie gras production practice of forcing a tube down a bird’s throat to greatly increase the consumption of grain by the bird. It does not ban the food product, foie gras.” Signing Message of Governor Arnold Schwarzenegger, Sen. Bill 1520, 2003–2004 Reg. Sess. (Sept. 29, 2004). The legislature provided more than seven and a half years between the passage of the law and its effective date to allow producers to transition to producing foie gras without force-feeding. Id.; see Cal. Health & Safety Code § 25984(a) (This law “shall become operative on July 1, 2012.”).

B. The PPIA

Originally enacted in 1957, the PPIA was intended to ensure that the nation’s poultry products “are wholesome, not adulterated, and properly marked, labeled, and packaged.” 21 U.S.C. § 451; see Food & Water Watch, Inc. v. Vilsack, 808 F.3d 905, 909 (D.C. Cir. 2015) (discussing Congress’s intent to protect consumer health and welfare by ensuring that poultry products are “wholesome, not adulterated, and properly marked, labeled, and packaged.” (quoting 21 U.S.C. § 451)). The PPIA accomplishes this goal by, inter alia, authorizing the inspection of slaughterhouses and poultry-processing plants, 21 U.S.C. § 455, setting proper sanitation requirements, id. § 456, authorizing the Secretary of the U.S. Department of Agriculture (“USDA”) to establish labeling and container standards, id. § 457, prohibiting the sale of adulterated, misbranded, or uninspected poultry products, id. § 458, establishing record-keeping requirements, id. § 460, and instituting storage and handling regulations, id. § 463. See also Levine v. Vilsack, 587 F.3d 986, 989 (9th Cir. 2009).
In 1968, Congress passed the Wholesome Poultry Products Act, which amended the PPIA “to provide for cooperation with appropriate State agencies with respect to State poultry products inspection programs, and for other purposes.” Pub. L. No. 90-492, 82 Stat. 791 (1968); see also H.R. Rep. No. 90-1333, at 2 (1968), reprinted in 1968 U.S.C.C.A.N. 3426, 3426–27. The 1968 amendment also added an express preemption clause to the PPIA, which states that “[m]arking, labeling, packaging, or ingredient requirements . . . in addition to, or different than, those made under [the PPIA] may not be imposed by any State.” 21 U.S.C. § 467e (emphasis added). At issue here is whether California’s ban on products made by force-feeding birds constitutes an “ingredient requirement” under the PPIA’s preemption clause.

C. Procedural History

Initially, Plaintiffs claimed that section 25982 violates the Due Process Clause and the dormant Commerce Clause of the U.S. Constitution. The district court denied Plaintiffs’ request to enjoin California from enforcing section 25982, Ass’n des Éleveurs de Canards et d’Oies du Québec v. Harris, No. 12-CV-05735, 2012 WL 12842942 (C.D. Cal. Sept. 28, 2012), and we affirmed the district court’s ruling, Canards I, 729 F.3d at 942. The issue of preemption was not before us in Canards I.

On remand, Plaintiffs amended their complaint to allege that section 25982 is preempted by the PPIA. California moved to dismiss the complaint, and Plaintiffs moved for summary judgment on their preemption claim, arguing that the PPIA both expressly and impliedly preempts section 25982. The district court denied the State’s motion to dismiss and granted Plaintiffs’ motion for summary judgment. It found that section 25982 imposes an
“ingredient requirement” and is expressly preempted by the PPIA. *Ass’n des Éleveurs de Canards et d’Oies du Québec v. Harris (Canards II)*, 79 F. Supp. 3d 1136, 1144–48 (C.D. Cal. 2015). The district court permanently enjoined California from enforcing section 25982. *Id.* at 1148.

**II. STANDARD OF REVIEW**

We review de novo a district court’s grant of summary judgment. *Lee v. ING Groep, N.V.*, 829 F.3d 1158, 1160 (9th Cir. 2016). Viewing the evidence in the light most favorable to the nonmoving party, we must determine whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law. *Oswalt v. Resolute Indus., Inc.*, 642 F.3d 856, 859 (9th Cir. 2011). We also review de novo questions of preemption and statutory interpretation. See, e.g., *Aguayo v. U.S. Bank*, 653 F.3d 912, 917 (9th Cir. 2011).

**III. DISCUSSION**

Plaintiffs invoke three separate preemption doctrines in support of their view that the state ban on the sale of foie gras produced by force-feeding methods cannot be enforced. First, they argue that the federal PPIA expressly preempts section 25982 because it imposes an “ingredient requirement” on the production of foie gras. Second, relying on the doctrine of implied preemption, Plaintiffs contend that Congress intended to comprehensively regulate the field of poultry products and thus left no room for state laws such as section 25982. Finally, Plaintiffs argue that implied preemption also applies because section 25982 stands as an obstacle to the purpose of PPIA. We address each of Plaintiffs’ arguments in turn.
A. Express Preemption

Plaintiffs’ main argument, and the ground upon which the district court granted summary judgment, is that California’s sales ban is expressly preempted because the PPIA prohibits states from imposing “ingredient requirements” that are “in addition to, or different than,” the federal law and its regulations. 21 U.S.C. § 467e.

In determining whether section 25982 is preempted by the PPIA, Congress’s intent “is the ultimate touchstone.” Wyeth v. Levine, 555 U.S. 555, 565 (2009) (quoting Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996)). Where the federal statute contains an express preemption clause, we must determine the substance and scope of the clause. Altria Grp., Inc. v. Good, 555 U.S. 70, 76 (2008). In so doing, we assume “that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.” Lohr, 518 U.S. at 485 (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)). And finally, “when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily ‘accept the reading that disfavors pre-emption.’” Altria Grp., Inc., 555 U.S. at 77 (quoting Bates v. Dow Agrosciences LLC, 544 U.S. 431, 449 (2005)).

We begin by noting two points of agreement between the parties. First, Plaintiffs do not dispute that California’s historic police powers extend to issues of animal cruelty. See Canards I, 729 F.3d at 952 (citing United States v. Stevens, 559 U.S. 460, 469 (2010)); Hughes v. Oklahoma, 441 U.S. 322, 337 (1979) (highlighting that protecting animals, like safeguarding the health and safety of citizens, is a legitimate state interest). Because animal cruelty is a field traditionally regulated by the states, compelling evidence of an intention to preempt is required. See Lohr,
518 U.S. at 485. Second, the parties also agree that Congress intended to preempt state laws regulating the ingredients of poultry products. The only dispute is whether California’s sales ban imposes an “ingredient requirement” that is “in addition to, or different than, those made under [the PPIA].” 21 U.S.C. § 467e.

Plaintiffs argue that section 25982 imposes an “ingredient requirement” because it requires that foie gras be made only from the livers of birds who were not force-fed. Plaintiffs do not claim that foie gras produced from non-force-fed birds is in any way inferior to foie gras made from the livers of force-fed birds, only that federal law is silent on the former. The State counters that section 25982 does not address ingredients at all, but rather regulates California’s market by proscribing the sale of products produced by force-feeding birds to enlarge their livers. And to the extent that section 25982 can be construed as a ban on foie gras itself, the State argues that the PPIA does not prevent a state from banning poultry products. Based on the ordinary meaning of “ingredient” and the plain language and purpose of the PPIA, we hold that section 25982 is not expressly preempted by the PPIA.

1. “Ingredient Requirements” Refers to the Physical Composition of Poultry Products

We must first determine the scope and substance of the PPIA’s “ingredient requirements.” Altria Grp., Inc., 555 U.S. at 76. Because the PPIA does not define the term “ingredient,” we look to the ordinary meaning of the term. See, e.g., Sandifer v. U.S. Steel Corp., 134 S. Ct. 870, 876 (2014) (“It is a ‘fundamental canon of statutory construction’ that, ‘unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.’” (quoting Perrin v. United States, 444 U.S. 37, 42 (1979))).
“Ingredient” is defined as “one of the foods or liquids that you use in making a particular meal.” Macmillan English Dictionary 776 (2nd ed. 2007); see also New Oxford American Dictionary 893 (3rd ed. 2010) (“any of the foods or substances that are combined to make a particular dish”); Webster’s New World Dictionary 248 (mod. desk ed. 1979) (“any of the things that make up a mixture; component”). Accordingly, the term “ingredient” as used in the PPIA is most naturally read as a physical component of a poultry product.

This reading of “ingredient” also draws support from the statutory scheme as a whole. See Ransom v. FIA Card Servs., N.A., 562 U.S. 61, 70 (2011); Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 70, 167 (2012) (“Context is the primary determinant of meaning.”). For example, the PPIA allows the import of foreign poultry products only if, inter alia, the products “contain no dye, chemical, preservative, or ingredient which renders them unhealthful, unwholesome, adulterated, or unfit for human food.” 21 U.S.C. § 466. Similarly, the PPIA’s “Definitions” section contains phrases such as: “ingredients only in a relatively small proportion”; “to assure that the poultry ingredients in such products are not adulterated”; “common names of optional ingredients (other than spices, flavoring, and coloring) present in such food”; and “fabricated from two or more ingredients.” 21 U.S.C. § 453. Only a physical component can be added in “relatively small proportion,” “adulterated,” or “fabricated” in the manner described in the PPIA. In addition, regulations implementing the PPIA use the term “ingredient” in a manner consistent with its ordinary meaning. See, e.g., 9 C.F.R. § 424.21 (approving a chart of ingredients, including: acidifiers, antifoaming agents, artificial sweeteners, food binders and extenders, coloring agents, and
proteolytic enzymes). The consistent usage of “ingredient” in the PPIA and its implementing regulations further confirms that the term is used to mean a physical component of a product. See Util. Air Regulatory Grp. v. EPA, 134 S. Ct. 2427, 2441 (2014) (We ordinarily assume “that identical words used in different parts of the same act are intended to have the same meaning.” (quoting Envtl. Def. v. Duke Energy Corp., 549 U.S. 561, 574 (2007))).

Congress made clear that the PPIA’s “ingredient requirements” address the physical components of poultry products, not the way the animals are raised. See Wyeth, 555 U.S. at 565 (emphasizing that “the purpose of Congress is the ultimate touchstone in every pre-emption case” (quoting Lohr, 518 U.S. at 485)). The PPIA regulates “ingredient requirements” for the purpose of ensuring that poultry products are “wholesome, not adulterated, and properly marked, labeled, and packaged.” 21 U.S.C. § 451; see id. § 452 (declaring Congressional policy of preventing distribution of “poultry products which are adulterated or misbranded”); see also Armour & Co. v. Ball, 468 F.2d 76, 80–81 (6th Cir. 1972) (explaining the purpose of “ingredient requirements” within the Federal Meat Inspection Act’s (“FMIA”) identical preemption clause). The PPIA therefore authorizes the USDA, acting through its Food Safety and Inspection Service (“FSIS”), to prescribe standards of identity or composition for poultry products. 21 U.S.C. § 453(h)(7); 9 C.F.R. § 381.155(a)(1). These “ingredient requirements” cannot be read to reach animal husbandry practices because the federal law “does not regulate in any manner the handling, shipment, or sale of live poultry.” H.R. Rep. No. 85-465 at 1 (1957), reprinted in 1957
The USDA has even represented in legal filings that “[t]he PPIA is wholly silent on the treatment of farm animals, (including feeding procedures) or methods of slaughter for poultry.” Motion for Summary Judgment, at 2, Animal Legal Def. Fund v. USDA, No. 12-cv-04028 (C.D. Cal. Apr. 22, 2016), ECF No. 67; id at 3 (“[The FSIS] has no authority to regulate the care or feeding of birds prior to their arrival at the slaughter facility.”) (citing Decl. of Alice M. Thaler, Senior Director for Program Services in the Office of Public Health Science, FSIS, USDA, at ¶¶ 6–7, Animal Legal Def. Fund v. USDA, No. 12-cv-04028 (C.D. Cal. Nov. 28, 2012), ECF No. 26-1)). Accordingly, the PPIA’s “ingredient requirements” are limited to the physical components of poultry products and do not reach the subjects of animal husbandry or feeding practices.

The ordinary meaning of “ingredient” (in line with the statutory context and the presumption of consistent usage) and the purpose and scope of the PPIA together make clear that “ingredient requirements” pertain to the physical components that comprise a poultry product, not animal husbandry or feeding practices. Having determined the

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2 Although 21 U.S.C. § 453(g)(2)(A) makes a passing reference to “live poultry,” it does so only in the context of explaining circumstances in which a final poultry product could be deemed adulterated.

3 We again reject Plaintiffs’ assertion that the USDA’s Policy Book requires foie gras to come from force-fed birds. Canards I, 729 F.3d at 950 (“It says nothing about the force feeding of geese and ducks.”). Moreover, the background memos and letters on which Plaintiffs rely are “couched in tentative and non-committal terms.” Reid v. Johnson & Johnson, 780 F.3d 952, 965 (9th Cir. 2015). The USDA has explicitly stated that the PPIA does not address the treatment of farm animals (including feeding procedures) and, based on the plain language and purpose of the law, we agree.
parameters of the PPIA’s “ingredient requirements,” we now
turn to whether section 25982 can be construed as imposing
an “ingredient requirement.”

2. California Law Does Not Impose a Preempted
Ingredient Requirement

California’s ban on the in-state sale of foie gras produced
by force-feeding contrasts starkly with the PPIA’s
conception of “ingredient requirements.” Section 25982
does not require that foie gras be made with different
animals, organs, or physical components. Nor does it require
that foie gras consist of a certain percentage of bird liver. Cf.
Armour & Co., 468 F.2d at 80–81 (holding that a state law
requiring a 12% protein content in sausage meat was
preempted because, inter alia, federal regulations required
only an 11.2% protein content). It simply seeks to prohibit
a feeding method that California deems cruel and inhumane.
Section 25982 therefore addresses a subject entirely separate
from any “ingredient requirement”: how animals are treated
long before they reach the slaughterhouse gates.

Plaintiffs argue that while section 25982 may not appear
to be an “ingredient requirement,” the law functions as one
because it requires the production of foie gras using non-
force-fed, rather than force-fed, livers. As an initial matter,
it is not the livers that are force-fed, it is the birds.
Regardless, Plaintiffs’ reading of the PPIA would require us
to radically expand the ordinary meaning of “ingredient.”
The difference between foie gras produced with force-fed
birds and foie gras produced with non-force-fed birds is not

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4 Nearly all of the cases that Plaintiffs cite in their brief are irrelevant
to the issue of “ingredient requirements” because they deal with other
portions of the PPIA’s preemption clause.
one of ingredient. Rather, the difference is in the treatment of the birds *while alive*. “Force-fed” is not a physical component that we find in our poultry; it is a feeding technique that farmers use. The same logic applies to the difference between regular chicken and cage-free chicken. “Cage-free” is no more an “ingredient” than “force-fed.” Although Plaintiffs invite us to expand the definition of “ingredients” to include animal husbandry practices, that is within Congress’s bailiwick, not ours. *See, e.g., Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725 (2017) (“And while it is of course our job to apply faithfully the law Congress has written, it is never our job to rewrite a constitutionally valid statutory text under the banner of speculation about what Congress might have done had it faced a question that, on everyone’s account, it never faced.”). The PPIA, which is silent on the topic of animal husbandry and feeding practices, may not be read to supplant state law on an entirely different topic. *See Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 517, 523 (1992) (“Congress’ enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted.”).

Alternatively, Plaintiffs argue that section 25982 is functionally a ban on *all* foie gras. According to Plaintiffs, section 25982 bans the “ingredient” of foie gras because it bans the *process* by which it is made, i.e. force-feeding. This argument fails for two independent reasons. First, nothing in the record before us shows that force-feeding is *required* to produce foie gras. The district court assumed, without deciding, that alternative methods of producing foie gras are available. 5 *Canards II*, 79 F. Supp. 3d at 1145 n.8. And as

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5 Plaintiffs do not appear to dispute that alternative methods of producing foie gras are available. In fact, it appears that high-quality
noted above, California never intended to ban foie gras entirely—only foie gras produced by force-feeding. See Signing Message of Governor Arnold Schwarzenegger, Sen. Bill 1520, 2003–2004 Reg. Sess. (Sept. 29, 2004); Canards I, 729 F.3d at 945 n.4 (“Section 25982, however, does not prohibit foie gras. It bans the sale of foie gras produced through force feeding, but would not ban foie gras produced through alternative methods.”); Cal. Health & Safety Code § 25984 (providing an effective date over seven and a half years after passage so that producers could transition to alternative methods of producing foie gras). Section 25982 therefore precludes only Plaintiffs’ preferred method of producing foie gras.

Moreover, even if section 25982 results in the total ban of foie gras regardless of its production method, it would still not run afoul of the PPIA’s preemption clause. The PPIA targets the slaughtering, processing, and distribution of poultry products, 21 U.S.C. §§ 451–452, but it does not mandate that particular types of poultry be produced for people to eat. Its preemption clause regarding “ingredient requirements” governs only the physical composition of poultry products. Nothing in the federal law or its implementing regulations limits a state’s ability to regulate the types of poultry that may be sold for human consumption. If foie gras is made, producers must, of

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course, comply with the PPIA. But if a state bans a poultry product like foie gras, there is nothing for the PPIA to regulate. The fact that Congress established “ingredient requirements” for poultry products that are produced does not preclude a state from banning products—here, for example, on the basis of animal cruelty—well before the birds are slaughtered.

Our conclusion here is consistent with rulings in both the Fifth and Seventh Circuits. In *Empacadora de Carnes de Fresnillo, S.A. de C.V. v. Curry*, the Fifth Circuit examined whether the FMIA’s identical preemption clause was triggered by a Texas law that banned horsemeat. 476 F.3d 326, 333–35 (5th Cir. 2007). The court explained that the FMIA’s preemption clause governs matters such as “meat inspection and labeling requirements. It in no way limits states in their ability to regulate what types of meat may be sold for human consumption in the first place.” *Id.* at 333. Because the FMIA does not limit a state’s ability to define which meats are available for human consumption, the court found that the federal law could not preempt Texas’s horsemeat ban. *Id.*

Several months later, the Seventh Circuit reached the same conclusion. In *Cavel International, Inc. v. Madigan*, the plaintiff argued that the FMIA’s preemption clause swept aside state laws that banned the slaughter of horses for human consumption. 500 F.3d 551, 553 (7th Cir. 2007). The Seventh Circuit determined that this “argument confuses a premise with a conclusion.” *Id.* The court explained:

> When the [FMIA] was passed (and indeed to this day), it was lawful in some states to produce horse meat for human consumption, and since the federal government has a
legitimate interest in regulating the production of human food whether intended for domestic consumption or for export . . . it was natural to make the Act applicable to horse meat. That was not a decision that states must allow horses to be slaughtered for human consumption. The government taxes income from gambling that violates state law; that doesn’t mean the state must permit the gambling to continue. Given that horse meat is produced for human consumption, its production must comply with the Meat Inspection Act. But if it is not produced, there is nothing, so far as horse meat is concerned, for the Act to work upon.

_Id._ at 553–54. Like the Fifth Circuit, the Seventh Circuit found that the FMIA is concerned with inspecting facilities at which meat is produced for human consumption, not “preserving the production of particular types of meat for people to eat.” _Id._ at 554 (quoting _Empacadora de Carnes de Fresnillo_, 476 F.3d at 333).

Like the state bans on horsemeat in _Empacadora de Carnes de Fresnillo_ and _Cavel_, section 25982 is not preempted by the PPIA even if it functions as a total ban on foie gras.⁶ Presumably, Congress could have authorized

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⁶ Section 25982 was inspired, in part, by California’s own ban on horsemeat. _See_ Cal. Assemb. Comm. on Bus. & Professions, Analysis of S.B. 1520, 2003-2004 Reg. Sess., at 7 (June 20, 2004) (noting that there is only a small step between a ban on horse, cat, and dog meat and a ban on force-feeding birds). As societal values change, so too do our notions of acceptable food products. Like foie gras, horsemeat was once a delicacy. _Cavel_, 500 F.3d at 552. Today, many states, including California, ban horsemeat because they consider the idea of eating horse
force-fed bird products, but “Congress did not write the statute that way.” United States v. Naftalin, 441 U.S. 768, 773 (1979); see also Dodd v. United States, 545 U.S. 353, 359 (2005) (“[W]e are not free to rewrite the statute that Congress has enacted.”).

Instead of addressing Empacadora de Carnes de Fresnillo and Cavel, Plaintiffs rely on the Supreme Court’s decision in National Meat Ass’n v. Harris, 565 U.S. 452 (2012). This case, however, bears little resemblance to National Meat. The California statute at issue in National Meat governed the slaughter of nonambulatory pigs. 565 U.S. at 455. In order to ensure that slaughterhouses handled nonambulatory pigs in a particular way, the state statute included a sales ban on selling meat or products from such pigs. Id. at 463–64.

The Supreme Court in National Meat found that the state statute was preempted because it regulated matters that fall within the heart of the FMIA’s regulatory scope: the activities of slaughterhouses. According to the Court, the state law interfered in the operations of slaughterhouses, imposing requirements regarding the treatment of nonambulatory pigs that did not exist under the federal law and its regulations. Id. at 460–64 (emphasizing that the nonambulatory pig statute “functions as a command to repugnant. See id.; Cal. Penal Code §§ 598c-598d. California, like a growing number of countries around the world, has concluded that force-fed foie gras is similarly repugnant. The PPIA and its preemption clause do not stand in the way of society’s evolving standards regarding animal treatment. Cf. Stevens, 559 U.S. at 469 (“[T]he prohibition of animal cruelty itself has a long history in American law, starting with the early settlement of the Colonies.”); see generally Emily Stewart Leavitt, Animals and Their Legal Rights: A Survey of American Laws from 1641 to 1990 1-47 (4th ed. 1990).
slaughterhouses [on how] to structure their operations”). The Court explained that while “a slaughterhouse may take one course of action in handling a nonambulatory pig” under the FMIA and its implementing regulations, “under state law the slaughterhouse must take another [course of action].” *Id.* at 460. In distinguishing the nonambulatory pig law from the horsemeat bans in *Empacadora de Carnes de Fresnillo* and *Cavel*, the Court underscored that the horsemeat bans “work[] at a remove from the sites and activities that the FMIA most directly governs.” *Id.* at 467. Unlike the horsemeat cases, the Court found that the nonambulatory pig statute “reaches into the slaughterhouse’s facilities and affects its daily activities.” *Id.* The Court thus concluded that the FMIA preempted California’s nonambulatory pig statute.

*National Meat* does not apply here because it addressed a different preemption argument in the context of a very different state law.7 As an initial matter, *National Meat* and the present case deal with different portions of the FMIA’s and PPIA’s parallel preemption clauses; while *National Meat* focused exclusively on the “premises, facilities and operations” portion of the FMIA’s preemption clause, Plaintiffs here invoke only the “ingredient requirements” portion of the PPIA’s preemption clause. Moreover, section 25982, like the horsemeat bans in *Empacadora de Carnes de Fresnillo* and *Cavel*, “works at a remove from the sites and activities that the [PPIA] most directly governs.” *Nat’l Meat Ass’n*, 565 U.S. at 467. Section 25982 also does not reach

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7 We also note that, unlike the FMIA at issue in *National Meat*, the PPIA does not explicitly incorporate the Humane Methods of Slaughter Act. We have not had the occasion to decide whether poultry should be considered “other livestock” under the Humane Methods of Slaughter Act, see 7 U.S.C. § 1902(a), and we need not decide that issue here.
into a poultry “slaughterhouse’s facilities and affect[] its
daily activities.” Id. We therefore hold that the PPIA does
not expressly preempt California Health and Safety Code
section 25982.

B. Implied Preemption

Alternatively, Plaintiffs argue that the PPIA impliedly
preempts section 25982 under the doctrines of field and
obstacle preemption. Neither doctrine, however, applies
here.

Under the doctrine of field preemption, “States are
precluded from regulating conduct in a field that Congress,
acting within its proper authority, has determined must be
regulated by its exclusive governance.” Arizona v. United
States, 567 U.S. 387, 399 (2012). Courts may infer field
preemption from a framework of regulation so pervasive
“that Congress left no room for the States to supplement it”
or where the federal interest is “so dominant that the federal
system will be assumed to preclude enforcement of state
laws on the same subject.” Id. (quoting Rice, 331 U.S. at
Plaintiffs concede that the PPIA does not regulate the field
of animal care and feeding, but view the PPIA as broadly
occupying the field of all edible products that result from
raising poultry for food.

Plaintiffs’ field preemption argument ignores the states’
role in poultry regulation. Cf. Arizona, 567 U.S. at 401
(“Field preemption reflects a congressional decision to
foreclose any state regulation in the area, even if it is parallel
to federal standards.”) (emphasis added)); Campbell v.
Hussey, 368 U.S. 297, 330 (1961) (finding a state law
preempted because the federal law does not allow even
“complementary” or “supplement[al]” state requirements).
The express preemption clause at the heart of Plaintiffs’ case clearly provides that the PPIA “shall not preclude any State . . . from making requirement[s] or taking other action, consistent with [the PPIA], with respect to any other matters regulated under [it].” 21 U.S.C. § 467e; see also Bates, 544 U.S. at 447. It also explains that state laws regarding storage and handling are preempted only if the Secretary of Agriculture finds those laws to “unduly interfere with the free flow of poultry products in commerce . . . .” Id. In addition, states may implement standards for the inspection of poultry sold in-state, even if those standards are more rigorous than the ones imposed by federal law. Miss. Poultry Ass’n v. Madigan, 31 F.3d 293, 296 (5th Cir. 1994) (en banc) (“Principles of federalism . . . led Congress to choose not to displace state inspection programs. Instead, Congress in these amendments created a complex ‘marbled cake’ scheme . . . .” (citing 21 U.S.C. § 454(a)) (footnote omitted)). Because the PPIA itself contemplates extensive state involvement, Congress clearly did not intend to occupy the field of poultry products. See Empacadora de Carnes de Fresnillo, 476 F.3d at 334 (“Congress did not intend to preempt the entire field of meat commerce under the FMIA.”).

Plaintiffs’ theory of obstacle preemption fares no better. Obstacle preemption, which is a form of conflict preemption, occurs “where the challenged state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” Arizona, 567 U.S. at 399–400 (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)); see also Crosby v. Nat’l Foreign Trade Council, 530 U.S. 363, 373 (2000) (“What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects . . . .”). As with express preemption, courts “assume that
'the historic police powers of the States’ are not superseded ‘unless that was the clear and manifest purpose of Congress.’” *Arizona*, 567 U.S. at 400 (quoting *Rice*, 331 U.S. at 230).

Plaintiffs fail to explain how section 25982 stands as an obstacle to the PPIA’s objectives of ensuring that poultry products are “wholesome, not adulterated, and properly marked, labeled, and packaged.” 21 U.S.C. § 451; *see also* 21 U.S.C. § 452. The PPIA most directly regulates “official establishments,” where the “inspection of the slaughter of poultry, or the processing of poultry products,” occurs. 21 U.S.C. § 453(p); *see* 9 C.F.R. § 381.1; *see also* Nat’l Meat Ass’n, 565 U.S. at 467 (noting that the F MIA most directly governs establishments where slaughtering and processing occurs). Section 25982, in contrast, prohibits what California finds to be a cruel feeding practice that occurs far away from the official establishments that the PPIA regulates. *See Empacadora de Carnes de Fresnillo*, 476 F.3d at 334–35. Moreover, nothing in section 25982 interferes with the USDA’s “authority to inspect poultry producers for compliance with health and sanitary requirements, require[] inspection of poultry after slaughter, establish[] labeling requirements for poultry products, [or] allow[] for withdrawal of inspections for noncompliance and the imposition of civil and criminal penalties for the sale of adulterated products.” *Levine*, 587 F.3d at 989 (citing 21 U.S.C. §§ 455–57, 461). As the Supreme Court has cautioned, we should not “seek[] out conflicts between state and federal regulation where none clearly exists.” *English v. Gen. Elec. Co.*, 496 U.S. at 90 (quoting *Huron Portland Cement Co. v. Detroit*, 362 U.S. 440, 446 (1960)). Accordingly, we conclude that section 25982 does not stand as an obstacle to accomplishing the PPIA’s purposes.
IV. Conclusion

Because Health and Safety Code section 25982 is not preempted by the PPIA, California is free to enforce it. We **REVERSE** the district court’s grant of summary judgment, **VACATE** the district court’s permanent injunction, and **REMANDE** the case for further proceedings consistent with this opinion.
The welfare of ducks during foie gras production
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Abstract

This review, which focuses on foie gras production from ducks in France, highlights welfare problems that may arise in the final (third) stage of production, when force-feeding occurs and which lasts 12 to 15 days. Welfare problems arising in the first two stages are also considered. The male mulard duck, a non-migratory hybrid between a muscovy drake (Cairina moschata) and a female domestic duck (Anas platyrhynchos), is used most frequently despite being fearful, nervous and maladapted to force-feeding conditions. During the period of force-feeding mortality is 2 to 6%, higher than in fattening units for meat production. Welfare deteriorates markedly as ducks progress through the three production stages. Posture and gait abnormalities and wing lesions develop, and contact dermatitis is widespread and often severe. Oesophagitis and other injuries are documented. Steatosis and other liver changes are pathological and can limit duck survival. Group housing necessitates the use of crowd-gates to facilitate force-feeding of birds, who show aversive behaviour towards the force-feeder. Cages are small, with a mesh floor without litter or a rest area. Access to open water for bathing or full immersion of the head may be insufficient and make thermoregulation difficult. We conclude that force-feeding causes very poor welfare in ducks and should not be practised. Should foie gras production without force-feeding become possible, duck livers should not reach a weight at which there are pathological effects. Inadequate housing and management conditions should be prevented by establishing limits for the prevalences of contact dermatitis (footpad and digits), breast lesions and gait abnormalities, which should not be exceeded prior to slaughter. Limits should also be established for the prevalence of wing and other body lesions after slaughter.

Keywords
Animal welfare, control of feeding behaviour, foie gras, force-feeding, liver steatosis, mulard duck

Introduction

With increasing societal concern about animal welfare, a number of farm animal production practices have come under scrutiny. One such practice is the force-feeding of ducks and geese for the production of foie gras (fatty liver or hepatic steatosis). In 1998, the Scientific Committee on Animal Health and Animal Welfare (SCAHAW) reported to the European Commission on the welfare aspects of foie gras production in ducks and geese (SCAHAW 1998). They concluded that “force-feeding is detrimental to the welfare of the birds.” French researchers, who studied several physiological and behavioural measures during force-feeding and did not find supporting scientific evidence, have objected to this conclusion (Guémené & Guy 2004).

Examination of duck welfare in foie gras production is timely, as there have been recent public calls for the practice to be banned. In January 2016, the individual...
Caging of ducks for foie gras production in France was replaced by group (collective) housing, with at least 3 birds per group (Anon 2015). This review, which focuses on foie gras production in France, highlights the welfare problems that may arise in the final (third) stage of foie gras production, when force-feeding occurs. Where pertinent, welfare problems that may arise in the first two stages are also described.

We focus on research in ducks rather than geese because ducks are used in over 97% of foie gras production in France (18,600 tons in 2013, Litt & Pé 2015). Most of the foie gras literature is in French. Foie gras producing countries in the European Union are France, Belgium, Bulgaria, Hungary and Spain (Litt & Pé 2015), producing approximately 90% of the world's foie gras. Force-feeding of ducks and geese for foie gras is banned in a large number of European and other countries, but many countries where production is banned continue to import it.

The terms force-feeding and gavage are used interchangeably here. Other terms, such as assisted feeding, cramming and over-feeding, are sometimes used in the literature. The main food used, maize, is usually called corn in North America. In some instances approximate translations are used, because the equivalent English word does not seem to exist (eg ‘nervosisme’). The term ‘élevage’ means rearing or breeding but is also used to describe stages of production (eg starter, grower).

**Background information**

The male mulard duck, the mulard being a hybrid between a muscovy drake (*Cairina moschata*) and a female domestic duck (*Anas platyrhynchos*) which is a mallard, is used most frequently for force-feeding because it has a good potential for production and is relatively easy to manage when housed individually (Guémené & Guy 2004). The breed of domestic duck/mallard most often used is the Pekin, so this name will be used here unless specified otherwise. In France only male mulards are usually reared for foie gras production (Baeza 2006), while females are killed once they have been identified following hatching. This is because their fatty livers are of poor quality and therefore unsuitable as a product with the appellation “100% foie gras” (Marie-Etancelin *et al* 2015).

The process of foie gras production in France is described in SCAHAW (1998), Guémené and Guy (2004), Rodenburg *et al* (2005) and Guémené *et al* (2007). Briefly, it can be divided into three stages:

1. **Starting:** Birds are fed *ad libitum* from the time of hatching until 6 to 9 weeks. They are initially kept indoors, usually on straw, and eventually allowed outdoors during the day.

2a. **Growing:** Birds are feed-restricted for a period of 3 to 5 weeks. This restriction may be in time (hourly feed restriction, when birds are fed *ad-libitum* but for only a short period, once daily) or amount (quantitative feed restriction, when birds are fed a reduced amount of food daily). Birds normally have outdoor access during the day.

2b. **Pre-force-feeding:** Birds are fed as much as possible for 3 to 10 days. The aim is to dilate the oesophagus and stimulate the digestive secretions necessary for the assimilation of a large amount of food, and start the process of liver steatosis. The liver can weigh up to 180 g by the end of this stage, compared with 80 g with normal feeding. Ducks usually have outdoor access during the day.

3. **Force-feeding:** From 12 weeks of age and usually for 12 to 15 days, ducks are force-fed increasing amounts of energy-rich food with a high carbohydrate, low protein content and an abnormal amino acid and mineral balance (AVMA 2014). They are force-fed twice daily with a feeding tube powered by a pneumatic or
hydraulic pump; at the beginning each receives 180 to 200 g of maize per meal,
increasing to 450 g (1000 g after water is added to make mash) per meal towards the
end of the force-feeding stage. Up to 400 individually caged ducks per hour can be
force-fed by one person using a pneumatic pump (Guémené & Guy 2004), and even
more if a hydraulic dispenser is used. They are kept indoors in cages and in a
controlled environment.

**Literature Search**

In order to find peer-reviewed literature on the force-feeding of ducks, we conducted
a search of the following databases: Medline (PubMed, US National Library of
Medicine), Google Scholar (Google), Scopus (Elsevier), VetMed Resource (CABI,
Centre for Agriculture and Bioscience International) and Web of Science (Thomson
Reuters). Each search had the same terms, which were used as subject headings and as
keywords. How they were combined varied, depending on the database stipulations.
While we focussed on peer-reviewed published research, we also made use of ‘grey’
literature such as technical reports, and other material that may not have been
subjected to editorial control or peer review. The report by SCAHAW (1998)
provided background information and served as a useful guide on potential welfare
topics to consider. Only publications in English or French were included.
The proceedings from the biennial conferences ‘Journées de la Recherche sur les
Palmipèdes à Foie Gras’ were a rich source of information on research covering a
wide range of aspects of foie gras production, including welfare. Of the 78 references
included in this review, 25 are proceedings from these conferences. This material
helped us identify the main researchers in the field and the current research topics.
These conferences are supported by a number of organisations, such as the research
institutes ITAVI (Institut Technique de l’Aviculture et de l’Elevage des Petits
Animaux) and INRA (Institut National de la Recherche Agronomique).
The welfare issues we have identified are organised under six main headings:
mortality, physical health, general behaviour, force-feeding, housing and other.

**Mortality**

Limited mortality figures are available for ducks during the two-week force-feeding
period (Servière et al 2011) and it is difficult to find a reasonable baseline for
comparison, such as the mortality rate of non force-fed mulard ducks. SCAHAW
(1998) concluded that mortality during the force-feeding period was typically 2 to 4%.
In 2006 the French national average mortality of force-fed birds was 2.4% (Laborde et
al 2010) and in 2013 it was 2.2% (Litt & Pé 2015).
In an experimental study exploring the effects of group size and stocking density on a
number of production measures during force-feeding, average mortality was 5.6%
(range 1.4-13.9) (Mirabito et al 2002a). The highest mortality was seen in the largest
group (9 birds) with the highest stocking density (1000 cm² per bird). These data
compare unfavourably with mortality rates of muscovy ducks in fattening units for
meat production, where in the two weeks before slaughter the mortality rate was 0.2%
(SCAHAW 1998).

**Physical health**

The health of birds can be assessed using a wide range of variables including gross
body anatomy, posture, walking ability (gait), face, body and plumage condition, presence of bone fractures, presence and severity of skin lesions as well as mortality (Jones & Dawkins 2010a; Liste et al 2012; Makagon et al 2015; Saraiva et al 2016).

There are few such studies in force-fed ducks (but see Litt et al 2015 a, c).

Gait means walking ability, and is often recorded as an on-farm measure of welfare in poultry raised for meat (Bradshaw et al 2002, Makagon et al 2015). Impaired gait can cause poor welfare because of its association with pain (Saraiva et al 2016), and is economically important as ducks with moderate to severe walking problems are often culled from the flock (Makagon et al 2015). A number of gait score systems have been developed for use in ducks (Jones and Dawkins 2010a; O’Driscoll & Broom 2011; Liste et al 2012; Makagon et al 2015; Saraiva et al 2016). They need to be standardised so that meaningful comparisons between studies can be made.

When birds are kept in restrictive environments where they cannot move freely, recognising mobility problems becomes difficult. Anecdotal observations by SCAHAW (1998) suggest that abnormalities in posture and gait in fattened ducks occur to the extent that some die from becoming immobile and unable to access water.

The legs of force-fed birds are pushed outwards, so that they cannot be held vertically when the bird is standing or walking. SCAHAW concluded that this is caused by the hypertrophy of the liver, which pushes the legs laterally and causes difficulty in standing and impairment of their natural gait.

Recently Litt et al described the development (2015a) and application (2015c) of an evaluation grid (‘grille d’évaluation’) to assess the physical condition of mulard ducks. A subjective scoring system with three or four degrees of severity for each measure was used. The grid was applied to 63 groups of ducks on 44 different commercial farms at the end of each of the three main stages of production. Birds in the force-fed group were evaluated after slaughter in an abattoir. Four main physical abnormalities were noted at all stages: dermatitis of the footpad, toe (digit) and hock (hock burn), and damage to the breast area. Breast abnormalities included loss of feathering and lesions (blisters, ulceration and the formation of crusts). Ventral feathering loss was more commonly noted during the growth stage while breast lesions were noted after slaughter. Footpad and toe dermatitis lesions appeared very early and very frequently in the production process. Wing lesions were noted at the end of force-feeding; 88% of lesions probably occurred at the stages of collection, transport to the abattoir and shackling. Other body injuries, such as scratches to the dorsal part of the body, pseudo-crop injury (lacking a defined crop, the mulard has an oesophageal out-pouching called the pseudo-crop) and joint abnormalities, were also noted after slaughter. Litt et al (2015c) concluded that the most useful measures were the presence and severity of dermatitis of the footpad and digits, the condition of the breast, back injuries (eg scratches or haematomas) and injuries to the pseudo-crop.

Overall, the prevalence of lesions varied greatly between farms and groups of birds, and associations with fixed factors such as starter density and season were not sufficient to explain this variability.

Comparisons between Litt et al’s (2015c) evaluation grid and other studies in ducks reared for meat should be made with caution. Force-fed ducks are housed and managed very differently, and are fattened for much longer. What is clear is that the welfare of force-fed ducks, as assessed by general physical condition, deteriorated significantly as they progressed through the three production stages.

In a survey of Pekin ducks commercially reared for meat in the UK, the physical and plumage condition of the ducks was recorded at two ages, 23 and 41 days (Jones & Dawkins 2010a). The birds’ condition deteriorated between 23 and 41 days, but this
was not marked. At slaughter, the incidence of moderate and severe footpad dermatitis lesions was 10% and 3%, 32% of ducks had calloused toes and 11% had pink hocks. In other commercial trials evaluating open water sources for farmed ducks over 43 days, contact dermatitis lesions were mild and general condition good (O’Driscoll & Broom 2011; Liste et al 2012). In contrast, Litt et al (2015b) found that by 14 weeks of age, the end of force-feeding, all the duck foot samples had moderate to severe macroscopic signs of epidermal ulceration. Pododermatitis was common, and developed early in the birds’ lifetime. Bijja et al (2013) studied ducks during the period prior to force-feeding, when they were allowed outdoor access either onto a meadow with scattered trees or onto woodland. At 9 and 11 weeks of age both groups (especially the one with woodland access) had developed moderate to severe pododermatitis.

An increase in enteric flora load and in faecal streptococci, causing gastro-intestinal upset and diarrhoea, has been noted at the beginning of force-feeding. Enteric flora overgrowth and infections can exacerbate any existing contact dermatitis and cause death in force-fed birds (Laborde et al 2010).

Contact dermatitis is an umbrella term that includes footpad and toe dermatitis (also known as pododermatitis or foot burn), hock burns and breast blisters and burns in poultry (Shepherd & Fairchild 2010; Hepworth et al 2011). It is a condition which causes pain and disability (Haslam et al 2007; Saraiva et al 2016), leading to poor welfare and significant economic loss. Animal welfare audits often include contact dermatitis as an indicator of housing conditions and bird welfare (Haslam et al 2007; Hepworth et al 2011; Saraiva et al 2016); this may be useful for foie gras ducks too.

Reports of post-mortem examinations of ducks that die during or at the end of force-feeding are sparse in the published scientific literature. There is little information on injuries, disease incidence and nature, causes of death, the incidence of secondary oesophageal infections (such as Candidiasis, a yeast infection caused by Candida albicans) or on other complications that may arise. SCAHAW (1998) reported that secondary infections with C.albicans was present in up to 6% of birds.

**General Behaviour**

Mulard ducks are most often used for foie gras production, despite being recognised as particularly fearful, nervous and hyper-reactive – the term ‘nervosisme’ is used in French. These behaviours become evident at 5 to 7 weeks of age (Guémené et al 2002). Birds show panic and flight responses to the approach of humans and are generally described as being ‘sensitive to the environment’ (Guémené et al 2002; Guémené et al 2006b; Laborde & Voisin 2013). It seems that the move from individual to group housing has brought the problem of ‘nervosisme’ in ducks to the fore. Certain behavioural characteristics of mulards are recognised: while ducks are gregarious and sociable towards conspecifics (Guémené et al 2006b), making group housing enriching, they are fearful of humans, nervous, and highly reactive to their environment (Laborde & Voisin 2013). Therefore, they are less well able to cope with environmental changes and with the presence of humans. They struggle and try to escape when approached for force-feeding thereby necessitating the use of crowd-gates.

French scientists have established a research project called “CaNervosisme” to address these undesirable characteristics. The project includes a large number of different experiments looking at factors such as the birds’ phenotype, genotype, genetic manipulations, provenance, rearing conditions, group size, behavioural and...
physiological responses and exposure to humans (Guémené et al. 2002; Faure et al. 2003; Guémené et al. 2004; Guémené et al. 2006b; Arnaud et al. 2008; Laborde & Voisin 2013). For example, Arnaud et al. (2008) found that mulards showed greater panic responses and fear of humans, and appeared to be more sensitive to social stress (isolation from other ducks) than the two parent types, evidence of heterosis. A heterosis effect was also found for basal adrenal activity, with mulards having higher basal levels of corticosterone than parental lines.

There are many aspects of husbandry and practice prior to force-feeding that may affect the birds’ behaviours during force-feeding, but effects are not clear-cut. Nevertheless, it seems that ‘nervosisme’ has two main components: fear of humans and fear of the environment. Because foie gras production involves close human contact and sudden environmental changes, it has severe negative effects on the birds’ welfare.

**Force-feeding**

A major objection to the practice of foie gras production is that, unlike other farmed animals, the birds cannot choose what, when and how much they will eat. They cannot show a food preference or feed spontaneously, and are fed considerably more than they would eat voluntarily. They receive this food without having the opportunity to forage in a species-specific manner.

Force-feeding, where the duck is restrained and a rigid tube is inserted into the oesophagus, has the potential to cause injury and pain so the condition of the upper digestive tract is of particular interest. A number of studies have looked for histological evidence of pain at different stages of force-feeding. Servière et al. (2002) described signs of sub-acute moderate and multifocal oesophagitis, which may be a result of effects of abrasion and distension of the upper digestive tract caused by food boluses. In other experiments, force-fed ducks were compared with pharmacologically-treated control ducks, in which neurogenic inflammation of the upper digestive tract was provoked under anaesthesia by an irritating substance containing mustard oil (Servière et al. 2002) or hydrochloric acid (HCl) (Servière et al. 2011). For example, in Servière et al. (2011) varying concentrations of HCl were applied to different parts of the upper digestive tract and the resulting neurogenic inflammatory response compared with that due to the force-feeding regime.

Neurogenic inflammation describes the local release of inflammatory mediators from afferent neurons upon activation of sensory nerve fibres (Rosa & Fantozzi 2013). These neuropeptides cause an inflammatory response characterized by plasma extravasation, local vasodilatation, leukocyte and platelet adhesion, and mast cell degranulation. By measuring degrees of the extravasation response in both groups, the authors concluded that the mechanical insult to upper digestive tract walls due to the force-feeding regime is moderate compared with chemical nociceptive stimulation with HCl.

One may question whether the above experiments are a good way of evaluating pain caused by force-feeding. The irritating substances may not produce standardized inflammatory responses (and consequent pain) with which force-feeding effects can be compared. Mechanical stimulation, such as excessive distension, may also induce visceral nociception. Detailed post-mortem examination of the upper digestive tract and other body areas may be more informative, as well as behavioural observations. Recording facial and body lesions is particularly relevant, as it seems that the likelihood of injury may increase in group-housed birds because of the need to catch,
position and restrain them (Guémené et al 2002; Guémené et al 2006b).

**Effects on the liver**

The potential to develop hepatic steatosis depends on the species of waterfowl and also varies with the genotype (Baéza et al 2013). Some migratory waterfowl, such as greylag geese *Anser anser*, eat more than their normal amount of food in the days before migration. The muscovy and the mulard duck, however, are non-migratory and do not develop a hypertrophied liver when reared normally. Force-feeding results in an increase in liver size and fat content. By the end of force-feeding, the duck’s liver is 7 to 10 times the size of a normal one with an average weight of 550 to 700 g and a fat content of 55.8% (Babilé *et al* 1996; Gabarrou *et al* 1996). This increase in liver weight is accompanied by a substantial overall live-weight gain in the range of 50 to 85%. In comparison, the average weight of a non force-fed drake’s liver is 76 g with a fat content of 6.6% (Babilé *et al* 1996).

Steatosis and other changes that occur as a result of general management for foie gras production, in particular force-feeding, are pathological and can limit the ducks’ survival potential. The enlarged liver may cause discomfort, compress airsacs (reducing respiratory capacity) and abdominal organs. When liver function is severely compromised, hepatic encephalopathy (central nervous dysfunction due to effects of toxins such as ammonia on the brain) may develop (SCAHAW 1998).

A detailed illustration of the steatosis process is presented in Baéza *et al* (2013). Steatosis results from an increased capacity of hepatic lipogenesis and insufficient capacity to export newly synthesised triglycerides, resulting in their accumulation in hepatocytes. Peripheral tissues cannot take up sufficient circulating lipids, thus favouring their return towards the liver. Hepatocytes hypertrophy due to accumulation of fat and other components (water, minerals, proteins, phospholipids). Lipid synthesis in the liver is maximised when the food is high in starch and low in protein, such as maize. Maize also has high levels of thiamine and biotin, which are necessary for the conversion of sugars to lipids. To reduce the ducks’ capacity to make Very Low Density Lipoprotein, which carries lipids away from the hepatocytes to peripheral tissue, the diet is restricted in levels of certain nutrients necessary for their synthesis such as amino acids methionine and choline (Gabarrou *et al* 1996). Force-feeding a high-energy, high carbohydrate diet turns a normal liver into a steatotic one in under two weeks (Gabarrou *et al* 1996).

In an experiment by Babilé *et al* (1996), mulard ducks were force-fed for 10, 13 and 16 days, and at the end of each period were released back into the group. For the first few days they did not eat but drank copiously, and lost a lot of weight in the first week. The longer the force-feeding period, the longer it took for ducks to start eating spontaneously again (8 to 15 days). The liver returned to its initial weight after 15 days following the end of force-feeding for groups force-fed for 10 and 13 days, and took 30 days for those force-fed for 16 days. These results give an insight into the degree of insult from which the liver had to recover. Prolonging the force-feeding from 13 to 16 days has a disproportional effect on time to liver weight recovery (an increase from 15 to 30 days), suggesting that 16 days of force-feeding brings the duck close to severe liver dysfunction and failure.

Bénard *et al* (1998, 2006) examined the effects of force-feeding on liver function, morphology and pathology. Group-housed ducks were force-fed for 2 weeks and then received normal *ad-libitum* feeding for 4 weeks. This cycle was performed three times, with force-fed birds compared with a control group fed *ad-libitum* throughout. Blood
samples were taken at the end of every force-feeding or free-feeding cycle from the
test birds and at the same time from controls. A bromosulphophthalein (BSP)
clearance test, a measure of the liver’s ability to detoxify, was also performed. Birds
were killed after 2, 6, 8, 12, 14 and 18 weeks and their livers examined.

While the weight of the non force-fed birds did not change significantly, the test
ducks put on weight (1.5 to 2 kg), but lost it during the 4-week non force-feeding
period (1.4 to 2.3 kg). Gross hepatomegaly was noted in force-fed birds and
concentrations of liver enzymes lipase, alanine aminotransferase and aspartate
aminotransferase rose significantly at the end of each force-feeding period. After 4
weeks of normal feeding they returned to levels similar to those of the control group.

After 2 weeks of force-feeding, hepatocytes in control birds had an average diameter
of 7-10 µm whereas signs of steatosis were obvious in force-fed birds: hepatocyte
diameter was 35-40 µm and the cell was full of fat vacuoles. After 3 cycles of force-
feeding the liver structure was similar, but 4 weeks later most of the liver cells had an
average diameter similar to that of controls, and were no longer full of fat. BSP
clearance, as measured graphically by the area under the curve, was reduced in force-fed
birds at 2 and 8 weeks compared with controls, while it returned to normal after
periods of free-feeding as well as after the third force-feeding cycle. The elimination
half-life (T½) of BSP was greatly prolonged at the end of each force-feeding period
but returned to normal (values same as controls) after 4 weeks of free-feeding.

The authors concluded that since animals were able to withstand three consecutive
cycles of force-feeding with four-week intervals of normal feeding, and that no
pathology was found after these rest periods, force-feeding does not induce diet-
related pathological changes since the steatosis was reversible. Consequently, animal
welfare is not adversely affected. However, we argue that survival after a problem
does not mean that the problem was of no significance. While steatosis was reversible
in the studies described above, its reversibility does not mean that the liver changes
were not pathological. The reduction in the liver’s ability to detoxify at the end of the
force-feeding period, as indicated by a slower BSP clearance, longer BSP half-life and
raised liver enzymes, is clear evidence of clinical pathology. These and various other
data show that the steatosis obtained by force-feeding induces an impairment of
hepatic function (SCAHAW 1998). In Babilé et al (1996), liver weight after 16 days
of force-feeding took 30 days to reduce to normal, and in other studies the mortality
of ducks increased when the force-feeding period was prolonged beyond 15 days
(SCAHAW 1998).

There are other points in the articles by Bénard et al (1998, 2006) that deserve
attention. Force-feeding was performed on ducks housed in groups on the floor, by
one person seated on a stool within their pen. This force-feeding is not typical of
current practice (Litt 2010), taking much longer, about 30 seconds. The birds were
closely examined twice daily throughout the study; force-fed birds were kept on wire
mesh floors and developed signs of tibio-tarsal arthritis as well as skin calluses on
their feet. These lesions disappeared when they were returned to straw litter for free-
feeding. After an initial 3-day period of agitation they showed increasingly longer
periods of rest between each force-feeding, as well as an increase in wing flapping;
the authors do not explain these behavioural changes. Agitation and wing flapping
may be due to pain or fear, increasingly longer periods of rest due to pain, lethargy or
abdominal discomfort. Hypertrophied livers can cause discomfort in a number of
other species and this may also occur in ducks (SCAHAW 1998). There is no mention
of access to water troughs for head immersion and wet preening, and despite close
examination twice daily, the state of the ducks’ face, eyes and nostrils are not
described. The results of this study do not support the authors’ conclusion that force-feeding did not cause suffering. We suggest that additional physiological measures could be used in the assessment of liver function in force-fed ducks such as bile acids, ammonia, urea nitrogen, gamma-glutamyltransferase, uric acid and coagulation factors in the blood and ketones in the blood or urine (Harr 2005). These measures are commonly used in other species. In addition, because maize is not a balanced diet for ducks other abnormalities may be present, such as hormone imbalances or altered calcium to phosphate ratios leading to bone pathology (SCAHAW 1998), so these should be measured too.

**Effects on behaviour**

Compared with physical and physiological effects, there is an even greater lack of published data on the behavioural responses to force-feeding both during the procedure itself and at other times, eg immediately beforehand when the ducks anticipate a potentially unpleasant experience, and afterwards when they have to digest a large amount of food. When behavioural responses are described, their interpretation and significance from a welfare perspective is often lacking or incomplete (Bénard et al 1998, 2006).

The gag or pharyngeal reflex is a reflex contraction of the back of the throat, evoked by touching the roof of the mouth, the back of the tongue or the back of the throat. There is a contraction of both sides of the posterior oral and pharyngeal musculature, and humans report that this is an unpleasant experience (Shriprasad & Shilpashree 2012). The reflex helps to prevent material from entering the throat, except as part of normal swallowing, and protects against choking and aspiration. There is controversy as to whether the reflex is present in ducks; we agree with SCAHAW (1998) that it probably is. Unlike some birds such as pelicans and storks, mulard ducks consume food by dabbling and sieving and do not swallow large food items. There is no reason why the pharyngeal reflex would be absent in these ducks. Initially, force-feeding stimulates this reflex but after a certain time it stops. The adaptation time required for the gag reflex to be extinguished, and how this affects the duck, are not known.

Carrière et al (2006) compared the behaviour of force-fed mulards (during the hour after the second, twelfth and twenty-fourth meal) with controls that were kept in the same conditions but not handled or force-fed. Test birds were force-fed twice daily for 13 days (the amount fed and whether it increased day by day are not specified) while control ducks had *ad-libitum* access to food, which was provided every morning at the same time as the test ducks were force-fed. The behaviour of the control ducks was video-recorded the day after the recording of the test ducks. Force-fed ducks spent more time lying down, and walked less frequently and for a shorter time than control ducks. The authors explain these results by the negative effects of the duck’s weight gain on posture and movement. We argue that this has consequences for the duck’s welfare. Excess weight can reduce the animal’s mobility in a number of ways including pressure from an enlarged abdomen, reduced respiratory capability and joint pain. As with broilers (Bradshaw et al 2002; Weeks 2014), lack of mobility is likely to lead to further consequences that reduce welfare such as poor muscle strength, skeletal defects, skin lesions and altered social interactions with conspecifics. Other changes in behaviour in test birds included spending less time with their head at rest, reduced grooming and preening, and spreading their wings and shaking their tail less often. Self-grooming, preening and wing-stretching are all behaviours generally associated with good welfare in birds.
The time spent performing these behaviours was reduced in force-fed compared with control birds and decreased over time. Force-fed birds shook their heads more than controls, especially after the first force-fed meal but also after subsequent meals. The authors suggest that this may be a reaction to handling by the force-feeder, or to the introduction of a large amount of food into the oesophagus. Head-shaking normally indicates an aversive event and also occurs when birds are deprived of access to open water (Rodenburg et al. 2005). It may also be evidence of stimulation of the gag reflex.

Most intensive farms for foie gras production have air ventilation systems to keep ambient temperatures relatively low, in an attempt to reduce thermal stress in the birds. Nevertheless, the force-fed ducks spent a lot of time panting and this increased with time. After the twelfth meal 5 out of 9 ducks panted, and after the last all panted in the hour after force-feeding. This behaviour was not evident in the control ducks at any time. Force-feeding disrupted the test birds’ thermal homeostasis, causing them to spend a proportion of their time budget panting, while control birds fed ad-libitum remained in thermal homeostasis and did not pant. These behavioural changes indicate poorer welfare in the test birds, which worsened over time. Panting to aid evaporative cooling is part of the thermoregulatory response to the ingestion of large amounts of high-energy food, as is immersion of the face and, by wet preening, the body in water (Rodenburg et al. 2005). The birds had access to water but it is not clear whether it was to water troughs, showers, baths or nipple drinkers; it seems that water was only available for drinking. This study was limited to studying birds for one hour after each force-feeding and did not consider the effect of handling of test birds, separate from the effect of force-feeding, as controls were not handled prior to feeding.

Ducks’ behavioural responses to force-feeding were also examined by Faure et al. (1998, 2001). In the first experiment (Faure et al. 1998), the hypothesis was that if force-feeding caused aversion, the ducks would not spontaneously leave their rearing pen or go into the test pen where they were force-fed. Force-fed birds showed aversion to entering the test pen, compared with controls (not force-fed). However, there were some methodological issues with this experiment (eg birds were fed just once daily).

In the second experiment (Faure et al. 2001), the flight distances of ducks from the force-feeder and from an unknown observer were measured in ducks housed in individual cages. Flight distance was the distance between the person and the duck’s cage, at the time when the duck withdrew its head as the person approached it. Tests were performed several hours after the force-fed meal on days 3, 7, 9 and 11. Initially the flight distances were similar, but on days 7 and 9 ducks avoided the unknown person more than the force-feeder and their avoidance of the force-feeder decreased during the force-feeding period. The authors concluded that there was no evidence of an aversion to the force-feeder. This is a poorly controlled experiment with alternative explanations for the results and it does not demonstrate that force-feeding is not aversive to ducks. It is well known to those who force-feed ducks that the birds show initial avoidance and struggling but reduce this over time, presumably because they learn that they are less likely to be caused pain if they do. There is the confounding effect of greater familiarity of the force-feeder compared with the unknown observer, and the choice of flight distance as a measure of aversion is problematic (eg duck movements in an individual cage are limited). Repeating this experiment using two persons of equal familiarity, with one doing the force-feeding and the other not, as well as using measures other than flight distance, is indicated.
Effects on physiology

A number of studies have examined the effects of force-feeding and its different components (handling, intubation) on various physiological indicators of acute and chronic stress in mulard ducks (Guémené et al 2001; Mirabito et al 2002c; Guémené et al 2006a; Flament et al 2012; Mohammed et al 2014). Some have shown no effects of force-feeding on blood corticosterone levels or ACTH sensitivity (e.g. Guémené et al 2001; Flament et al 2012), while others have had different results. For example, Mirabito et al (2002c) found that force-feeding caused significant increases in blood corticosterone in some ducks on some days and Mohammed et al (2014) noted that blood corticosterone levels of force-fed ducks rose while those of controls did not. In humans (Legler et al 1982) and animals (Broom & Johnson 2000) plasma glucocorticoid concentrations are not consistently related to eating.

The experimental design of studies needs to be improved, and the methodology clearly established, before the usefulness of corticosterone as a measure of acute or chronic stress in force-fed ducks can be determined.

Effects on thermoregulation

Force-fed ducks are susceptible to thermal stress, which causes panting in order to disperse the extra heat generated from digestion. They may spend large amounts of time, standing or lying down, performing this behaviour (Carrière et al 2006). Thermal stress makes the duck prone to discomfort, reduces food digestibility and increases mortality. Nutritional supplements containing electrolytes and anti-oxidants have been developed to mitigate these effects (Mathiaud et al 2013). Immersion in water is another homeostatic mechanism for thermoregulation in birds, but if sufficient water for immersion is not available, heat stress becomes a greater risk (Rodenburg et al 2005).

Alternatives to force-feeding

Researchers and farmers are keen to find a way of producing foie gras without the need to force-feed. The main methods are summarised in Guy et al (2007). One approach is to stimulate the birds to over-eat voluntarily to a degree that is sufficient to cause hepatic steatosis. Spontaneous over-eating leading to liver steatosis can be stimulated in geese by manipulating day length (because photoperiod is a major environmental factor controlling migration and the pre-migratory fattening process) and feeding regimes (Fernandez et al 2013; Guy et al 2013; Bonnefont et al 2015; Fernandez et al 2015). However this response is not seen in ducks, the variability in the response is high, the production cycle is long (up to 31 weeks), the liver produced is less liked by some consumers (Fernandez et al 2015) and there are negative effects on the environment (Brachet et al 2015). Life Cycle Analysis (LCA) examines a product's complete life cycle from raw materials to final disposal of the product (Williams 2009). Brachet et al (2015) used LCA to estimate potential impacts on the environment, and found that non force-fed geese had a greater impact due to a longer production time and higher food consumption while achieving lower liver weights. EU Regulations 1538/91 and 543/2008 state that in order to be called foie gras, the minimum liver weight must be 300 grams net in ducks and 400 grams net in geese. These weights cannot be achieved without force-feeding but if they were reduced, it
may be possible to produce a fatty liver that is still acceptable to consumers without
force-feeding. A maximum liver weight should be specified, in order to prevent the
accumulation of toxic substances and other adverse effects on welfare due to liver
malfunction.

Housing

Individual and group housing

Until recently, most production systems placed ducks in individual cages during the
force-feeding period. The cages prevent the ducks from avoiding the force-feeding.
The main advantages to the producer are that the ducks can be force-fed rapidly one
after the other, without the feeder having to catch them, and that “they always remain
in the right position” (Guémené & Guy 2004). Individual cages are small and greatly
restrict the bird’s movements; they do not allow the bird to turn around, stretch and
flap its wings, stretch to its full height or length or show more than a minimal
behavioural repertoire. The degree of restriction increases as the bird grows rapidly
and fattens.

As of January 2016, the individual caging of ducks for foie gras production is illegal
in France (Anon 2015). Ducks have to be housed in groups of at least 3 birds although
cage dimensions and bird density are not specified. This bylaw refers to the Council
of Europe (1999) recommendations for muscovy ducks (Cairina moschata) and
hybrids of muscovy and domestic ducks (Anas platyrhynchos), which state in more
detail what the birds should be able to do when housed together.

Factors that affect welfare in group housing include group size, stocking density, type
of flooring, provision of litter or bedding material, access to water for drinking, and
the provision of water for bathing or at least full immersion of the head (Mirabito et al
2002a, b, c; Mirabito 2006). Management of the air space and ventilation, maintaining
cleanliness and controlling disease, and ensuring homogeneity of groups are also
important. Potential undesirable effects of group housing include increased aggression
between birds, difficulty in maintaining cleanliness (especially in larger groups),
competition at water sources, and difficulties in catching birds causing repeated stress
(Guémené et al 2002; 2006a).

Previous work on group housing has examined the effects of floor space and group
size on production, behaviour and blood corticosterone (Mirabito et al 2002a, b, c). In
general, the best production results were obtained when ducks had 2000 cm² of floor
area each, and larger groups (9 ducks) had higher mortality and poorer cleanliness
(Mirabito et al 2002a). However, birds kept at the highest stocking density in the
smallest group had more humeral lesions at slaughter, perhaps a reflection of reduced
activity and subsequent bone weakness. Surface area per bird was the main factor that
influenced behaviour, with birds kept at 1000 cm² each moving less and stretching
their wings less frequently than birds kept at a density of 1500 or 2000 cm² (Mirabito
et al 2002b).

The effects of group size (3, 6 or 9 ducks) and surface area per bird (1000, 1500 and
2000 cm²) on blood corticosterone before and after force-feeding and on the HPA axis
were explored, and compared with birds housed individually (Mirabito et al 2002c).
Effects of different housing conditions on blood levels of corticosterone were not
clear-cut, and were difficult to interpret. Increases were noted for ducks housed
individually after the 1st and 11th meal, findings which are not in agreement with those
of Guémené et al (2001). There was no evidence of abnormalities in sensitivity or
reactivity of the HPA axis, except for some unusual results obtained for the group of 6 ducks kept at 1500 cm² stocking density.

Between 2007 and 2009, trials of group versus individual housing of ducks were performed by Litt (2010). The focus was largely on production outcomes rather than on welfare. While birds were fed the same amount, group-housed birds had smaller livers, force-feeding took longer and more water was required for cleaning. There was a small increase in breast tissue (‘magret’), also noted by Mirabito et al (2002a).

Cage design in group housing

More recent models of group cages have been modified, particularly with regard to containment (restraint using one or more crowd-gates, ‘peigne de contention’) of birds when force-fed and the work conditions of force-feeders. The restraining containment method aims to make force-feeding easier by bringing birds to the front of the cage and immobilising them. A back wall pushes the birds forwards. As they collect at the front, the front vertical grid wall descends backwards over them and prevents them from escaping or moving the body. Group-housed birds may be susceptible to injury resulting from getting caught in the cage’s containment mechanism, or from being restrained for a long time as the force-feeder works up one row of cages and back down the other before releasing the mechanism. Because birds immobilised by the crowd-gates may be facing any direction, the force-feeder must be able to insert the feeding tube from any angle (Cepso 2013). This can increase the risk of injury, especially if the bird struggles and resists or if others get in the way. It is more difficult and takes longer for the force-feeder to carry out their task, especially with larger groups (Mirabito et al 2002a; Litt 2010). The force-feeder is unable to develop a steady rhythm, working their way uninterrupted along a row of cages as is possible with individual caging.

A brochure by the agricultural group Centre d’Etudes des Palmipèdes du Sud Ouest Cepso Chambagri (Cepso 2013) illustrates 12 different types of cages available, and provides a summary table which compares the cage systems with regard to density, minimum floor space per bird and other parameters. Recommended cage floor surface area is 4000 cm² for 3 ducks, 5000 cm² for 4 and at least 1200 cm² surface area per bird (the equivalent of 2 size A4 sheets of paper) for 5 ducks or more. The cage should be tall enough for the bird to stretch fully to its vertical height and there is usually no roof. Ten of the systems have a movable back wall, and all but one have a front vertical grid wall that can move back and down to immobilise the birds. Based on available published studies, the choice of cage floor surface area per bird seems to be a compromise between economics and duck comfort (1000-1200 cm² or 1500-2000 cm²). Most cages are small, with a surface area of 1200 cm² to 1300 cm² per bird.

Flooring and provision of litter or bedding

Force-fed ducks are usually kept on a mesh floor (‘caillebotis’) made of some type of steel (galvanised or stainless) and less commonly of plastic. As force-feeding progresses, they become more inactive and rest on this firm bare surface as litter or bedding is not provided. Contact dermatitis is common and develops early during the production process (Litt et al 2015c). It is already of moderate to marked severity when birds are ready for force-feeding (end of stage 2b). Lesions may improve, worsen (Litt et al 2015b) or stay the same (Litt et al 2015a, c) during force-feeding.

Bénard et al (2006) noted that force-fed birds kept on wire mesh floors developed
signs of tibio-tarsal arthritis as well as skin calluses on their feet. These lesions disappeared when birds were returned to straw litter for free-feeding. Many environmental factors have been associated with the development of contact dermatitis in chickens kept for meat production. Why it occurs in some flocks and not in others is not fully understood. A major contributing factor, particularly at the onset, is the type of litter, or ground quality if litter is not provided. Damage occurs to the skin surfaces that have prolonged contact with litter, usually starting with the footpad and toes, then the rear surface of the hock and, when severe, the breast area. While high moisture litter is sufficient to cause the condition, litter depth, ammonia levels, climatic conditions, condensation, ventilation, stocking density, rearing system, leg weakness, overweight and inactivity, ground quality and diet (such as levels of methionine, choline and certain vitamins) are also recognised as causative factors (Haslam et al 2007; Bassett 2009; Shepherd & Fairchild 2010; Hepworth et al 2011; Saraiva et al 2016).

Council of Europe recommendations (Council of Europe 1999) state that “Where ducks are housed, floors shall be of a suitable design and material and not cause discomfort, distress or injury to the birds. The floor shall include an area sufficient to enable all birds to rest simultaneously and covered with an appropriate bedding material” (article 10, point 6) and “Adequate litter shall be provided and maintained, as far as possible, in a dry, friable state in order to help the birds to keep themselves clean and to enrich the environment” (article 11, point 4). Despite these recommendations, currently the standard group cage lacks an area where ducks can rest together, and there is no bedding material or litter to ensure their comfort and cleanliness or to provide substratum for foraging and exploratory behaviours. The cage is barren and not enriched beyond the provision of water troughs and conspecifics.

Access to water

Ducks spend considerable time performing complex preening behaviours (Rodenburg et al 2005). After feeding followed by bathing (an important element being immersion of the head and wings), they carry out a variety of shaking movements to remove water and cleaning movements to remove foreign bodies. An elaborate sequence is then carried out to distribute oil on the feathers from the uropygial gland above the tail. This is necessary for waterproofing and heat regulation. A short period of sleep often follows preening. The sequence of feeding, bathing, preening and sleeping may be repeated a number of times during the day. Council of Europe recommendations (Council of Europe 1999) state that “Access to an outside run and water for bathing is necessary for ducks, as water birds, to fulfill their biological requirements. Where such access is not possible, the ducks must be provided with water facilities sufficient in number and so designed to allow water to cover the head and be taken up by the beak so that the duck can shake water over the body without difficulty. The ducks should be allowed to dip their heads under water” (article 10, point 2).

The provision of a good open water system such as troughs improves eye, nostril and feather condition and reduces disease (Knierim et al 2004; Jones et al 2009; Jones & Dawkins 2010a, b; O’Driscoll & Broom 2011; O’Driscoll & Broom 2012, Liste et al 2012). Water troughs must be wide enough and deep enough so that ducks can immerse and wet their head fully, and long enough so that there is no competition between ducks for access although it may not be necessary for all birds to bathe simultaneously (Waitt et al 2009). The Cepso brochure (Cepso 2013) states that there
should be at least 800 mm length of water trough per cage, but it is not clear if this is
dependent on group size. In addition, the width and depth dimensions of the troughs
are not supplied. While studies state that water troughs are provided for drinking and
head immersion, to our knowledge none published so far have examined whether the
troughs are actually used for what they are intended, or reported on water cleanliness
and duck behaviour at the troughs.

Dimensions are available for troughs used in experimental conditions in British
studies of farmed ducks, eg: 950 mm long, 125 mm wide and 80 mm deep (Jones et al
2009; Waitt et al 2009) or 1600 mm long, 150 mm wide and 100 mm deep
(O’Driscoll & Broom 2011, Liste et al 2012, 2013). However, ducks in these studies
are younger, smaller and lighter than ducks at force-feeding, and the troughs are often
placed on the ground rather than attached to cages. Little attention seems to have been
paid to water trough dimensions in other studies, or to whether the birds are able to
perform immersive behaviour in addition to drinking, or to water cleanliness and
trough maintenance. As ducks lack sweat glands, immersion in water as well as
panting is a vital homeostatic mechanism for thermoregulation in force-fed birds
subjected to a high level of thermal stress due to the ingestion of large amounts of
food.

When mulard ducks are kept in individual cages, they have access to water via nipple
drinkers (Rodenburg et al 2005) or via troughs but, because of the restrictive cage, the
type of trough and increasing bird size, they may not be able to immerse their heads
fully, spread water over their feathers and self-groom. It is notable that they are
unable to keep themselves clean, especially towards the end of force-feeding. Force-
feeding with maize mash is messy and it not clear whether group housing results in
cleaner birds with improved welfare.

Other welfare issues

The human-animal relationship

In the case of foie gras production, the relationship between the stockman (the force-
feeder) and the force-fed ducks has received little attention despite the major impacts
stockmanship has on animal welfare (Boivin et al 2003; Hemsworth 2007). Perhaps
this is because the force-feeder is often only involved in the final stage rather than in
the whole production process, and their work is normally restricted to force-feeding
and cleaning activities. Concerns have been raised that group housing (obligatory as
of January 2016) makes the force-feeder’s work harder and take longer (Litt 2010).
Workers have to modify their technique and movements, and access to birds is more
difficult.

Fear responses in ducks include freezing, alarm calling, agitation, attempts to run
away rapidly and vigorous struggling if caught (Ekesbo 2011). There is substantial
evidence that negative interactions between humans and animals increase the animals’
fear (Boivin et al 2003; Hemsworth 2007); fearful animals are more difficult to
handle. Mulards show fear of humans (Arnaud et al 2008), and when force-fed they
pull back (‘movement de recul’) (Laborde & Voisin 2013). Difficulties in catching
and restraining birds for force-feeding led to the development of a containment
system using a crowd-gate, which reduces the birds’ ability to struggle, resist or
escape. The need for containment strongly indicates that ducks find the force-feeding
procedure aversive.
Domestic animals usually develop a relationship with the person looking after them, especially if that person provides food and other positive resources such as bedding, and activities such as talking, petting and grooming. Containment may make force-feeding quicker and easier, but has a negative impact on the stockperson-animal relationship. If ducks were being offered appropriate food and did not find the procedure painful, frightening or otherwise aversive, there would be no need for containment. Instead, they would move voluntarily towards the force-feeder and stay still while being fed because food is a necessary and desirable resource supplied by the feeder. Habituation is defined as a decrease in responding resulting from repeated stimulation (Shettleworth 2010), providing that it is not due to sensory adaptation or motor fatigue. Habituation to an extremely unpleasant stimulus is less likely than to a slight one, and is also unlikely if the stimulus remains biologically relevant (Shettleworth 2010). Habituation to force-feeding is unlikely to occur.

Control over the environment and motivation

A major objection to the practice of foie gras production is that the birds cannot chose what, when and how much they will eat. They cannot show a food preference or feed spontaneously. They are the only farmed species that is not able to feed by expressing normal feeding behaviour, and are fed considerably more than they would eat voluntarily. They receive this food without having the possibility to forage in a species-specific manner ie by pecking, nibbling and swallowing and, if there is access to open water, dabbling, sieving and up-ending. Motivated behaviours have two phases: an ‘appetitive’ phase in which the animals search or prepare for the opportunity to perform a ‘consummatory’ phase (Mason & Burns 2011). In the case of food, their expression is vital to the animal’s survival so both phases are driven by strong motivations, and emotions appear to be important in their control. Being unable to satisfy these strong motivations leads to frustration (Mason & Burns 2011).

An important concept in relation to understanding animal welfare is the control which an individual has over its environment (Broom 1991). Welfare is poorer when the individual lacks control and is affected by the consequences (Broom 2008). Birds in foie gras production cannot control their own feeding nor can they control the amount and nature of their contact with humans. This lack of control leads to very poor welfare.

The European Charter and the Welfare Quality® project

In 2008 the European Federation of Foie Gras, consisting of all the representatives of foie gras producing countries in the European Union, was signatory to a European Charter on the “breeding of waterfowl for foie gras” (see http://www.eurofoiegras.com/docs/EUROFOIEGRAS_CHARTE_UK.pdf). (The term ‘élevage’ is not translated accurately here; the Charter is not about breeding but about rearing and fattening, or production). The Charter is derived from the twelve criteria of the Welfare Quality® project and uses the term ‘assisted feeding’ in the English and ‘gavage’ in the French version. The Federation claims that “if performed by professionals under regulated conditions, gavage does not cause any suffering to the animals” (see http://www.eurofoiegras.com/en/page/euro-foie-gras_p134/). A support programme called ‘Palmi G Confiance’ was created in 2014 to help foie gras producers meet the standards of the European Charter with regard to animal welfare.
and good practice. Researchers are working with the poultry industry to develop a simple welfare assessment method that can be used on a large scale and is largely based on animal measures. Some research is focussed on identifying measures easily taken in the abattoir that are correlated with on-farm measures that are more difficult to collect (Litt et al 2015a).

The four welfare principles and 12 criteria proposed by the Welfare Quality® project (Welfare Quality® Consortium 2009) are a development of the Five Freedoms (Brambell 1965). We have made a preliminary attempt at assessing the welfare of ducks in foie gras production using the Welfare Quality® assessment system (Table 1). There are four columns in the Welfare Quality® assessment system. The first lists the four welfare principles, and the second presents the criteria associated with each of these principles. Using the information provided by this review, we have completed the last two columns. In the third column we state whether the criterion is met or not, and in the fourth we give examples of how the criterion is or is not met. We conclude that only three of the 12 criteria and none of the welfare principles are met in current systems of foie gras production.

Table 1 at end of paper

Other stages of foie gras production

While the primary aim of this review has been to highlight the welfare problems in the last stage of foie gras production, welfare problems have also been identified in the first two stages. These include the early, frequent and rapid development of contact dermatitis, fear of humans and high sensitivity to the environment, and lack of access to open water for bathing or at least full immersion of the head. It seems that under commercial conditions water is normally only provided by nipple drinkers, despite ducks being aquatic animals who spend most of their lives close to or on water.

Conclusions and animal welfare implications

Force-fed birds are the only farmed species that is not able to feed by expressing normal feeding behaviour. There is substantial evidence from behavioural observations that force-feeding is aversive, and causes high mortality compared with other duck production systems. The physical condition of the birds deteriorates as they progress through the stages of foie gras production. Force-feeding an unbalanced diet in large amounts causes significant liver pathology. Hepatic steatosis has the potential to be fatal if force-feeding is prolonged beyond 15 to 16 days. Force-feeding causes oesophagitis and leads to other abnormalities such as gait disturbances, wing lesions, and bone pathology which can result in fractures. Contact dermatitis, a painful skin condition, is widespread, starts in the early stages of production, is present in all stages and can be severe. Due to their fear of humans, nervousness and sensitivity to the environment, mulard ducks are maladapted to the conditions of foie gras production, especially during force-feeding. When group-housed they keep away from the force-feeder; they have to be rounded up and immobilised with crowd-gates in order to be force-fed. This indicates that ducks regard the experience of being handled and force-fed as a negative one, to be avoided. They are very susceptible to thermal stress due to the large amounts of food force-fed, and this makes them spend a large proportion of their time panting.
Housing provisions are poor, with small, barren group cages and a bare mesh floor; resting places, litter or bedding are not provided despite Council of Europe recommendations. It is not clear whether the troughs supplied on the cages of force-fed ducks are effective for bathing or full head immersion, or enable them to keep their plumage clean and to thermoregulate adequately. In the first two stages of production, access to open water suitable for bathing may be lacking; water supplied in the form of nipple drinkers does not allow full immersion of the head. The European Federation of Foie Gras claims that “if performed by professionals under regulated conditions, gavage does not cause any suffering to the animals.” We conclude from this literature review that force-feeding causes very poor welfare in ducks and should not be practised. In the future, the production of foie gras in ducks without the need to force-feed may become possible. In order to prevent the accumulation of toxic substances and other adverse effects on welfare due to liver malfunction, maximum liver weights should be specified and based on scientific studies. To avoid poor welfare associated with inadequate housing and management, birds should be checked before and after slaughter using animal-based welfare outcome indicators. For example, maximum acceptable prevalences of contact dermatitis, posture and walking difficulties, wing fractures and other body lesions could be established.

Acknowledgements and conflicts of interest

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Institut Technique de l’Aviculture: Paris, France


Table 1. Principles and criteria that underpin the Welfare Quality® assessment system, and whether they are met by force-feeding of mulard ducks

<table>
<thead>
<tr>
<th>Welfare principles</th>
<th>Criterion</th>
<th>Is it met?</th>
<th>Example of how criterion is or is not met</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good feeding</td>
<td>Animals should not suffer from prolonged hunger, ie they should have a sufficient &amp; appropriate diet.</td>
<td>No</td>
<td>Duck is fed a diet that is neither appropriate nor sufficient (diet is excessive); it cannot regulate its intake to achieve satiety &amp; homeostasis</td>
</tr>
<tr>
<td></td>
<td>Animals should not suffer from prolonged thirst, ie they should have a sufficient &amp; accessible water supply.</td>
<td>Yes</td>
<td>There may be problems with maintaining cleanliness, ensuring ease of access to water troughs &amp; trough design</td>
</tr>
<tr>
<td>Good housing</td>
<td>Animals should have comfort around resting.</td>
<td>No</td>
<td>There is no resting area &amp; no bedding, the floor consists of wire or plastic mesh</td>
</tr>
<tr>
<td></td>
<td>Animals should have thermal comfort, ie they should neither be too hot nor too cold.</td>
<td>No</td>
<td>There is thermal stress due to large amounts of high energy food leading to prolonged panting</td>
</tr>
<tr>
<td></td>
<td>Animals should have enough space to be able to move around freely.</td>
<td>Yes</td>
<td>More behavioural research is necessary to confirm optimal cage size &amp; design &amp; stocking density</td>
</tr>
<tr>
<td>Good health</td>
<td>Animals should be free of</td>
<td>No</td>
<td>Injuries due to containment,</td>
</tr>
<tr>
<td>Physical Injuries</td>
<td>Physical Injuries</td>
<td>Capture, Handling &amp; Force-Feeding Occur</td>
<td></td>
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<td>-------------------</td>
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<td></td>
</tr>
<tr>
<td>Animals should be free of disease, ie farmers should maintain high standards of hygiene &amp; care</td>
<td>No</td>
<td>Footpad &amp; hock dermatitis, lesions to breastbone are frequent &amp; often severe; liver steatosis is caused deliberately</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appropriate Behaviour</th>
<th>Appropriate Behaviour</th>
<th>Further Research Needed on Social Behaviour in Group Housing, Optimal Group Size &amp; Social Behaviours, Signs of Good Welfare</th>
</tr>
</thead>
<tbody>
<tr>
<td>Animals should be able to express normal, non-harmful, social behaviours, eg grooming.</td>
<td>Yes</td>
<td>Further research needed on social behaviour in group housing, optimal group size &amp; social behaviours, signs of good welfare</td>
</tr>
</tbody>
</table>

| Animals should be able to express other normal behaviours, ie it should be possible to express species-specific natural behaviours such as foraging. | No | There is no substratum for foraging; further research is necessary on the use of water troughs, preening & grooming behaviours |

| Animals should be handled well in all situations, ie | No | Catching, handling & force-feeding do not promote good |
| Negative emotions such as fear, distress, frustration or apathy should be avoided whereas positive emotions such as security or contentment should be promoted | No | Fear, distress, frustration, pain & other negative emotions are very likely when ducks are subjected to the stages of foie gras production, especially during force-feeding. Problem of nervousness & hyper-reactivity in mulard ducks |
The foie gras industry funds scientific publications to help defend its practice of force-feeding birds.

**French scientists to the rescue of foie gras:**

*a bit of science, a lot of bad faith*

Author: Stop Gavage
www.stopgavage.com

*Foie gras is produced by force-feeding ducks or geese so as to enlarge their liver up to ten times its normal size. To fend off bans threatening this practice, the foie gras industry has commissioned scientific publications aimed at denying that it is detrimental to the birds’ health and welfare. A book published in France sheds light on these financial conflicts of interest and on the methods used to enlist scientists in an organized campaign to manipulate opinion.*

Considered incompatible with animal protection laws, the practice of force-feeding has already been banned in most European Union countries. Israel halted production in 2005 after a Supreme Court decision stating that “the ‘needs of agriculture’ do not always override the interest of animal protection”. *(1)* The state of California voted for a law making force-feeding illegal starting in 2012. The city of Chicago has outlawed the sale of foie gras since August, 2006. Alderman Joe Moore, who sponsored this ordinance, said, “Our laws are a reflection of our culture. Our culture does not condone the torture of innocent and defenseless creatures”. *(2)*

Thus threatened, the foie gras industry has adopted a method dear to the tobacco lobby: the funding of scientific publications.

Most of this funding is allocated to a small group of scientists from INRA, the French National Institute for Agricultural Research. These researchers claim to have “undertaken studies aimed at providing the debate with objective data” *(3)*, and conclude that “there is no scientific fact that suggests that this procedure is detrimental to the well-being of the animals”. *(4)*

Drawing from the conclusions of these experts, foie gras producers succeeded in passing a law through the French Parliament in 2005 that legitimizes force-feeding in France, based on the argument that “from a scientific point of view, there is no doubt” that force feeding is conducted “without stress or suffering to the animal”. *(5)* Artisan Farmers Alliance, the lobby group for the foie gras industry in the USA, also bases much of its case for defending the practice of force-feeding on the INRA studies, presenting them as hard science from independent, renowned experts.

“The there is no scientific fact that suggests that this procedure is detrimental to the well-being of the animals,” claims Daniel Guémené, a French scientist whose research is funded by foie gras producers.

The dark side of the story, revealed in a book published in France at the
end of 2006 (see inset on previous page), paints a less rosy picture. It actually represents a typical example of scientific publications controlled by an industry, publications in which the researchers involved knowingly hide facts that are negative to the commissioners of the studies.

A Conflict of Interest

As the investigation in this book shows, the studies in question were ordered and commissioned by foie gras producers, with the express goal of “creating a scientific argument in favor of foie gras production”. (9) Backed by solid evidence, this investigation shows how several facts proving the harmfulness of force-feeding were knowingly dismissed by scientists in charge of these studies.

It has been well-established that research funded by an industry tends to draw conclusions that are favorable to that same industry (see inset below). Concerning foie gras, the INRA scientists' conclusions could not be more in favor of those who ordered the studies – they correspond, point by point, to the arguments that a marketing study recommends to the foie gras industry “in order to most effectively resist the inevitable attacks and pressure from the media, and to reassure the foie gras consumer”. (10)

Healthy Cadavers

Among the existing arguments in favor of foie gras is that of the “reversibility” of force-feeding. In response to a journalist asking, “Is foie gras the product of a sick liver?” Gérard Guy, the director of the foie gras experimentation unit at INRA, responds, “The scientists’ answer is clear. The answer is no. Foie gras is not the product of a sick liver. And I can cite two studies (in which) researchers demonstrated reversibility in animals. For example, if the force feeding of a goose is interrupted, we see that its liver will return to normal”. (11)

With all the authority delegated to his expert opinion, this researcher states that only incurable illnesses are true illnesses... Others, as serious as they may seem, are actually not so because they can be cured!

To back up their claim that the livers of force-fed birds are not diseased, the INRA researchers reference six articles (12), all authored by Geneviève Bénard (among others). In addition to being a member of the Scientific Council of the CIV, the French Meat Information Center, the official lobby organization of the French meat industry, Geneviève Bénard is also a member of the Research and Development Commission of CIFOG, the French foie gras producers’ association. (13) One of these articles opens with this show of support: “In an animal welfare context, we should be looking for ever more demonstrative experimental arguments in order to defend, particularly in the European context, the foie gras industry”. (14)

These studies, even though they were undertaken to demonstrate the harmlessness of force-feeding, reveal a few surprising facts. One of them shows that more than 6% of birds released after 10 to 16 days of force-feeding died. “The mortality rate increases with the length of force-feeding (…). The animals that died had difficulty moving and, therefore, were unable to drink”. (15) Some birds were so weakened that they were no

The influence of funding on scientific results

What's the point in asking who funds which study? Doesn’t the scientific method guarantee the researchers' objectivity? The fact is, proof of the influence that funding has on the results of scientific studies is piling up. By analyzing 106 studies determining the dangers of secondhand smoke, a prestigious medical journal showed in 1998 that “the only factor (statistically) associated with the review's conclusion was whether the author was affiliated with the tobacco industry. Three quarters of the articles concluding that passive smoking was not harmful were written by tobacco industry affiliates”. (19) In 2003, an analysis of 1140 medical studies confirmed the influence of funding sources beyond the case of tobacco: “we found that industry-sponsored studies were significantly more likely to reach conclusions that were favorable to the sponsor”. (20)
longer even capable of getting up to drink and died of thirst under the experimenters’ watch.

In addition to the animals that die despite discontinuing force-feeding, those that die during force-feeding need to be accounted for: according to statistics from the foie gras industry itself, more than a million ducks and geese die each year during force-feeding in France (see inset on previous page).

What do INRA researchers conclude from such observations? That force-feeding affects birds’ vital functions? No. They conclude that “liver steatosis is actually therefore a non-pathological, totally reversible process”. (21) How these researchers resuscitate the animals that die during force-feeding remains a mystery...

Dying, but Happy

If so many birds die from force-feeding, how do those who survive fare? A manual for force-feeders that describes the birds’ state at the end of force-feeding talks of “the tired aspect of fatted poultry, their huge size, their panting, and the animal that appears to have more and more difficulty moving”. (22)

Still, INRA experts remain positive: “The results of [our] research do not support any of the claims put forth that this practice significantly endangers the well-being of palmipeds”. (23)

Force-Feeding isn’t Harmful... when it isn’t Harmful

These same scientists explain that “in absence of wounds or pathological signs, force-feeding does not appear to be a source of ‘pain’”. (24)

So why this clarification? Because, as one of their experimental logs shows (25), the researchers in question noted that force-feeding causes wounds and painful damage to the esophagus... By excluding the observations proving harm by force-feeding, they are comfortable with concluding that it is harmless!

These same experts use the exact same procedure to determine the states of livers: first, they claim that “a good foie gras will normally not have macroscopic lesions, areas of necrosis or hemorrhage”. (26) Using this definition that automatically excludes livers showing these problems, it is convenient for them to conclude that, “a fatted liver liver obtained through force-feeding is therefore not, in any case, a sick organ”.

Here is how similar reasoning would sound in the debate over the dangers of tobacco: “In absence of tracheal irritation, the passage of smoke in the throat is not a source of discomfort. We have also observed that a person who quits smoking in time can have lungs resembling those of a non-smoker. The results of our scientific research do not support the idea that smoking is harmful.”

Nothing would actually be false in such a statement... one that carefully avoids the term ‘lung cancer’ as well as any mention of the life expectancy of smokers.

Happy to be Force-Fed?

Do palmipeds show an aversion to force-feeding? In a magazine aimed at the general public, INRA

In 1995, even as the European Commission was planning to force egg producers to give a bit more space to hens in battery cages, an INRA researcher, Jean-Michel Faure, claimed that “a large cage is not a welfare requirement for these poultry birds, whose current cages are of sufficient size”. (27)

Egg producers were satisfied by the bold support of this researcher. INRA management were less thrilled when the pamphlet Hens Prefer Cages was published, making a mockery of the claim and casting doubt on the institute’s scientific credibility.

Since the 1980s, foie gras production, promoted as a traditional and small-scale business, also relies on the most extreme factory farming methods. According to statistics from the industry itself (28), more than 87% of ducks, nearly all of those who are force-fed for major brands, are enclosed during force-feeding in battery cages so small that they cannot even turn around, much less stretch their wings.

Even though the installation of new cages of this type has been illegal since January 2005 by a European recommendation, foie gras producers refuse to comply. The French Ministry of Agriculture, a traditional ally of agro-business, is currently fighting the Council of Europe in order to allow the continuation of this type of extreme enclosure. (29) The INRA researchers’ opinion on this matter? For the force-feeding of ducks, “rearing in individual [battery] cages is the best solution”. (30)
researchers state that the geese “go to be force-fed just as they would go feed themselves on their own,” and that this practice “doesn’t scare them any more than feeding does.”(31) However, experiments at their own institute a few years earlier show that, during a force-feeding period, a goose refuses to eat for several days if no longer forced...(32) So, who should we believe – the geese or the INRA researchers?

When it comes to defending force-feeding for ducks, these same experts maintain that “force-fed palmipeds develop (...) no avoidance behavior toward the force-feeder,”(33) but when the threat of a ban on cages comes into play, they recall that their “main advantage lies with the fact that handling (...) related to force-feeding is made easier; the animal is unable to escape or turn around” (see inset on previous page).

No Alternatives to Force-Feeding?

Do alternatives to force-feeding exist for the production of foie gras? “We really don’t have anything available (...) to be able to produce foie gras without force-feeding,” states Marie-Pierre Pé, the chief representative of CIFOG.(34) “To produce foie gras without force-feeding, for the time being, still needs some work!” (35) confirms Gérard Guy, an INRA researcher.

His colleague, Daniel Guémené, has returned from Chicago, where he participated in the campaign aiming to reinstate the sale of foie gras in the city, following a ban in August 2006.(36) Perhaps he will have taken the opportunity to try one of the alternative non force-fed varieties, called ‘faux gras,’ that Chicago restaurants developed only a few weeks after the ban.(37) Will all this help INRA to speed up its research on foie gras alternatives?

Nothing could be less certain... Even though, ten years ago already, a Belgian butcher developed a product using non-steatotic livers (38), INRA researchers claim to this day, with no justification, that this approach “is simplistic (...) and doesn’t effectively correspond to the demand” (39) for force-feeding alternatives. It is difficult to understand how the work that one single butcher took on several years ago could be so out of reach for the flagship French agricultural research institute.

An Embarrassing Scientific Report

In 1998, the Scientific Committee on Animal Health and Animal Welfare of the European Commission published a 93-page report on the welfare of birds used for foie gras production. This report was based on the work of a 12-person working group, which included 3 INRA scientists. After an extensive review of the existing literature (over 166 references) and visits to foie gras farms, the committee’s conclusions were critical of force-feeding and recommended the development of alternative methods of production (see inset on top of page).

The very existence of this report worries the foie gras industry because it has provided a significant scientific argument in the debates leading up to the foie gras ban in most European countries, and more recently in Israel and California. In a document published by the US foie gras industry, the INRA researchers now seek to discredit this embarrassing report:

“the scientific data do not support the statement written in the report from the European Veterinary Scientific Committee (1998) that ‘[t]he scientific committee on animal health and animal welfare concludes that force feeding, as currently practiced, is detrimental to the welfare of the birds.’ That statement, while clearly taken for granted by opponents of foie gras, was based on the very limited amount of scientific literature available at the time and is not supported by the extensive scientific experimentation done in the intervening years”.(40)

In order to contradict the European report’s conclusions, these INRA researchers reference 15 scientific studies (41) that were published after the European report. All but one are their own studies commissioned by the foie gras industry, and the last one was directly authored by employees of the industry.(42)

Who would dare claim that legislation on questions of public health related to tobacco and alcohol should be influenced by studies commissioned by Philip Morris and the Beer Wholesalers Association? Why should it be any different when what is at stake is the welfare of birds force-fed for the profit of the foie gras industry?
Foie Gras: Debating the Suffering of Ducks

A book exposes the fact that animal welfare research on force-fed animals is financed by the foie gras industry.

“There is no scientific proof that this practice (force-feeding) is a source of animal maltreatment.” This categorical statement by Daniel Guémené, a researcher from the Inra (1) avian research station in Nouzilly, near Tours, reappears on the cover of a book about force-feeding and foie gras that came out last month.(2) Right above the quote is a photo of two ducks in their cage during force-feeding: the animal in the foreground’s bill is wide open and panting, still covered with corn mash; in the background the second animal’s bill is being carelessly held open by a farmer holding a long tube with a funnel attached to the end in his other hand. The message is clear. Inra scientists are blind to the same things that leap off the page to sensitive eyes, that force-feeding is an ordeal for ducks.

But the book by Antoine Comiti, an activist from the organization Stop Gavage (Stop Force-Feeding), doesn’t merely want to be an indictment of factory farming and animal suffering. The author, who is also a medical computer science consultant, voices serious doubts about the neutrality of Inra researchers working on animal welfare. Their work is funded in part by Cifog (the French foie gras producers’ association), which has, as any trade group worth its name, the sole goal of increasing production. He sees an obvious conflict of interest when they are asked to provide expertise on the suffering of force-fed ducks. They can be counted on to furnish results that the industry expects.

“I would like other teams in the world to work with our issue and be able to come up with a contradiction,” explains Daniel Guémené, with whom we spoke in his Nouzilly office. “Our studies were published in journals with peer-review committees. We did everything by the rules. The research contracts we signed have received much publicity. I am completely willing to accept financing from Stop Gavage.”

Behind the controversy, the question of Inra’s position has emerged as well. For sixty years, the public institute has been serving the interests of developing the agricultural industry, with widely recognized success.

“Contradictory Orders”

But today, these same measures it helped to establish are being reconsidered. The French research law, passed in March 2006, now assigns a dual role to public research entities: helping economic actors innovate while also producing independent expertise. This represents “contradictory orders,” comments Rémi Barré, a specialist in the research process. This is the essence of what Antoine Comiti’s book brings to light. Inra management maintains that it has already taken these questions into consideration. “Agri Bien-Être” (Agro Well-Being), a working group open to civil society, meets regularly, and the ethics committee has carefully considered the framework provided to the various partnerships of the Institute.

The issue of animal suffering has long been the subject of numerous debates in Northern Europe and in Anglo-Saxon countries. It is still surfacing in France. Foie gras industry professionals turned to Inra research to contradict a report by European Commission experts who denounced force-feeding in 1998, considering that it was causing suffering for ducks. Last spring, Israel decided to stop foie gras production for this reason. This year, some American cities like Chicago decided to ban foie gras consumption in restaurants. Daniel Guémené is regularly called upon to present the results of his research showing the absence of a stress hormone in ducks during force-feeding. “When I started researching stress indicators in ducks, I was quite surprised not to find anything,” recalls Daniel Guémené.

“The problem is knowing whether these strictly biological indicators suffice in defining animal well-being,” questions nonetheless Florence Burgat, director of research at Inra.

YVES MISEREY

(1) Institut national de recherche agronomique (French National Institute for Agricultural Research).
(2) L’INRA au secours du foie gras (Inra to the Rescue of Foie Gras), by Antoine Comiti, Editions Sentience, 25 euros.
Each year in France, 30 million palmipeds—most of them ducks—are force-fed in order to produce foie gras, the delicacy of choice for special occasions. Force-feeding involves over-enlarging the liver by filling the animal’s stomach with large quantities of corn over a twelve day period, using a tube called an ‘embuc’.

Animal rights organizations condemn this practice, judged harmful to the well-being of birds. To counter their arguments, foie gras producers stand behind studies by the French National Institute for Agricultural Research (INRA).

It just so happens that the studies in question are in part (up to 20%) financed by the Interprofessional Committee for Foie Gras (Cifog), which promotes the industry.

In a well-documented work titled INRA to the Rescue of Foie Gras (Editions Sentience, 274 p., €25), Antoine Comiti, president of the organization Stop Gavage, picks apart the methods that certain researchers use, in his opinion, to generate data which absolve factory farming.

Mr. Comiti notes that this research attempts to counter the conclusions of a study published in 1998 by experts to the European Commission, who denounced force-feeding and inspired recommendations from the Council of Europe enacted in 1999. These recommendations banned force-feeding in countries where it was not practiced yet, prohibited the use of small, individual cages and encouraged research on alternative methods.

Increased Mortality

In a summary of INRA research on the topic, presented in 2004, researchers from the Institute concluded that force-feeding “does not appear to be a significant cause of nociceptive information (pain),” with conclusions based on the behavior of palmipeds and the measurement of stress hormones.

“This is pseudo science and opportunistic research driven by researchers reared in the field of Animal Production,” says Robert Dantwer, who has just recently retired from INRA, where he specialized in these same stress hormones. Mr. Dantzer, who was among the authors of the 1998 European report, believes that “we don’t know if the molecule in question is relevant in the case of ducks during force-feeding.”

On the other hand, he notes, a clear indicator of animal well-being does exist, one that his colleagues strangely neglect: animal mortality. Yet the figures are available and provided by professionals. In 2002, after an average of 13.4 days of force-feeding, 3% of the animals (or about one million) were dead, “a proportion six times higher than that of their counterparts raised in standard conditions,” reports Antoine Comiti.

Patrick Herpin, the assistant scientific director of animal production, makes a strange comparison: “For pigs, from three weeks of life, mortality can reach 12%.” He mentions that INRA has an ethics committee and a group called ‘Agri bien-être animal’ (Agro animal well-being). In 2006, this group of researchers had a budget of 5,400 euros, which is “totally insufficient for conducting independent research,” criticizes Antoine Comiti.

Aware that its ties with the agricultural industry may cause conflicts of interest, INRA has been planning for several years to draw up a socioeconomic partnership charter and to instate a “statement of interest” for its researchers.

For the time being, the scientific management has proposed a meeting with Antoine Comiti on January 24th. A proud vegetarian, the president of Stop Gavage believes that connivances with other animal production industries exist and hopes, using force-feeding as an example, “to ask what is legitimate to do to animals in order to eat them.”
Int. No. 1378-2019

By Council Members Carlina Rivera, Brad S. Lander, Justin L. Brannan, Robert F. Holden, Ydanis A. Rodriguez, Fernando Cabrera, Andrew Cohen, Helen K. Rosenthal, Rafael Salamanca, Jr., Diana Ayala, Rafael L. Espinal, Jr., The Public Advocate (Mr. Williams), Mark Levine, Costa G. Constantinides, Stephen T. Levin, Margaret S. Chin, Alicka Ampry-Samuel, Alan N. Maisel, Carlos Menchaca, Barry S. Grodenchik, Karen Koslowitz, Antonio Reynoso, Eric A. Ulrich

A Local Law to amend the administrative code of the city of New York, in relation to banning the sale of certain poultry products that are the result of force-feeding birds

Be it enacted by the Council as follows:

Section 1. Title 17 of the administrative code of the city of New York is amended by adding a new chapter 19 to read as follows:

CHAPTER 19  
FORCE-FED PRODUCTS  
§ 17-1901 Definitions  
§ 17-1902 Prohibited Conduct  
§ 17-1903 Penalty

§ 17-1901 Definitions. For the purposes of this section, the following terms have the following meanings:

Food service establishment. The term “food service establishment” means a place where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

Force-feeding. The term “force-feeding” means the practice of forcing by any means food or supplements into the throat, esophagus or stomach of a bird.

Force-fed product. The term “force-fed product” means any product that is the result of force-feeding a bird with the intent to fatten or enlarge the bird’s liver.

§ 17-1902 Prohibited conduct. a. No person, or any agent thereof, shall sell or offer for sale, or in any food service establishment provide or offer to provide by sale or any other manner, any force-fed product.  
b. Violations of subdivision a of this section shall accrue for each individual force-fed product sold or provided, and in the case of offerings, shall accrue for each day any force-fed product is offered for sale or any other manner of provision.

§ 17-1903 Penalty. Any person who is found to violate any provision of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of no more than $1,000, or a term of imprisonment for no more than one year, or both, for each such violation.

§ 2. This local law takes effect 90 days after it becomes law, except that the department of health and mental hygiene shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.
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