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Comments

Drop Dead Stylish: Mitigating Environmental Impact of Fur Production Through Consumer Protection in the Truth in Fur Labeling Act of 2010

Isaac P. Wakefield*

I. INTRODUCTION

During the 2010 Olympic Games, animal rights groups criticized figure skater Johnny Weir for wearing authentic fox fur on his costume. Weir ultimately assented to wearing faux fur during the games.¹ Although Weir's case shows active pressure from animal rights advocates, instances of radical activism, such as dousing fur-clad celebrities with red paint, seem to be largely a thing of the past.² Many animal rights groups now devote themselves to campaigning in alternative ways and use legal strategies to accomplish their goals. Specifically, anti-fur campaigns raise public awareness about cruelty in order to increase protections for animals that fur producers use to make

* J.D., The Dickinson School of Law of the Pennsylvania State University, 2011.

1. See *Weir Changes Mind About Wearing Fur*, NBCOLYMPICS.COM (Jan 28, 2010, 10:12 PM), <http://i.nbcolympics.com/newsfeatures/news/newsid=402420.html#weir+changes+mind+about+wearing>.

2. See Ellen P. Goodman, *Animal Ethics and the Law*, 79 TEMP. L. REV. 1291, 1292 (2006) (book review).

products for retail sale.³ The fur industry has combated the resulting bad press by proffering claims that fur is a “green,” eco-friendly product.⁴ Anti-fur proponents, however, claim that the fur industry’s eco-friendly marketing strategies are “greenwashing,”⁵ that is, “[an] organization spend[ing] more time and money claiming to be ‘green’ through advertising . . . than actually implementing . . . practices that minimize environmental impact.”⁶

Fur industry critics have traditionally targeted animal welfare, but this comment endeavors to focus on the *environmental* impact of the fur industry. This comment analyzes the interplay of environmental and animal welfare concerns, statutory fur product labeling regulations, and the impact of a population of informed consumers. It then suggests the potential environmental benefits that could flow from amendments to certain consumer protection statutes.

In 2009, Congressional lawmakers introduced the Truth in Fur Labeling Act (“TFLA”),⁷ which sought to amend the Fur Products Labeling Act of 1951 (“FPLA”)⁸ to close loopholes in the FPLA’s statutory framework that fur producers could exploit, leading to consumer confusion. Congress passed the proposed bill, and President Barack Obama signed it into law on December 18, 2010.⁹ By ensuring that consumers are more fully informed, the TFLA could potentially impact the fur industry’s bottom line, scaling back its size and environmental impact. At a minimum, more stringent labeling laws may force fur producers to consider more eco-friendly production methods to cater to consumer demands. In this way, the TFLA may achieve an originally unanticipated goal of benefiting environmental health.

3. See generally HUMANE SOC’Y OF THE U.S. (HSUS) “FUR FREE” CAMPAIGN, <http://www.hsus.org/furfree> (last visited Mar. 7, 2011); PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS (PETA), <http://www.peta.org/> (last visited Mar. 7, 2011). PETA and the HSUS work to keep the public apprised of the deplorable living conditions on animal factory farms, inhumane methods of euthanasia, and the problem of importation of animal furs produced from domestic animals overseas.

4. See *Fur is Green*, THE FUR COUNCIL OF CAN., <http://www.furisgreen.com/furisgreen.aspx> (last visited March 7, 2011).

5. See generally The Humane Soc’y of the U.S., *Toxic Fur: The Impacts of Fur Production on the Environment and the Risks to Human Health* (2009) [hereinafter *Toxic Fur*], <http://www.humanesociety.org/assets/pdfs/fur/toxic-fur-january-22-2009.pdf> (labeling the fur industry’s marketing strategies as “greenwashing”).

6. *About Greenwashing*, ENVIROMEDIA SOC. MKTG. GREENWASHING INDEX, (2011), <http://www.greenwashingindex.com/what.php>.

7. H.R. 2480, 111th Cong. (2010) (bill subsequently enacted).

8. 15 U.S.C. § 69 (2006).

9. Truth in Fur Labeling Act of 2010, Pub. L. No. 111-313, 124 Stat. 3326 (2010).

II. BACKGROUND

A. *General Animal Rights Concerns*

“Fur ranches” have largely replaced the traditional method of trapping in the wild as the primary means of fur acquisition.¹⁰ “Fur ranches” or “fur factory farms” are often viewed as cruel and environmentally unfriendly institutions, housing thousands of animals, often in barren wire cages, amidst their own waste, and without protection from the elements.¹¹ These squalid conditions can make these farms hotbeds for disease.¹² Additionally, confining naturally wild animals in the manner done on these farms can lead to the animals suffering from psychological disorders.¹³

Generally, an animal is raised and killed on a fur farm, and its pelt travels to auction.¹⁴ Farmers commonly kill these animals by “gassing, neck-breaking, or anal or genital electrocution.”¹⁵ These methods are calculated to do the least damage to the pelts and thereby increase the producers’ economic benefit.¹⁶ Producers then remove the animals’ skin, and send the pelts for processing to become garments.¹⁷ Dressing, dyeing and other manufacturing processes follow, and the fur ultimately ends up as part of a garment on a rack in a retail store.¹⁸

In spite of the cruelty claims leveled against the industry, fur proponents like the International Fur Trade Federation (“IFTF”) claim that animal welfare is a paramount concern, and that they hope to “ensure that farming systems continue to have a high standard of animal welfare.”¹⁹ These entities argue that the animals on fur farms are some of the “world’s best cared-for livestock.”²⁰ Despite these claims, animal

10. See Editors of E: The Envtl. Magazine, *Fighting Over Fur: Activists Attack the Fur Industry Over the Environmental Impacts of Fur Farming and Wild Trapping*, DAILY GREEN, May 16, 2009 [hereinafter *Fighting Over Fur*], <http://www.thedailygreen.com/environmental-news/latest/fur-environmental-impacts-460509> (stating that approximately eighty-five percent of the industry’s pelts now come from farm-raised animals).

11. See ERIN E. WILLIAMS & MARGO DEMELLO, *WHY ANIMALS MATTER: THE CASE FOR ANIMAL PROTECTION* 154 (2007).

12. See *id.* at 154-55.

13. TOM REGAN, *EMPTY CAGES: FACING THE CHALLENGE OF ANIMAL RIGHTS* 109 (2004) [hereinafter REGAN, *EMPTY CAGES*].

14. See INT’L FUR TRADE FED’N, *THE SOCIO-ECONOMIC IMPACT OF INTERNATIONAL FUR FARMING* 5, available at <http://www.furcommission.com/resource/Resources/IftfEfbfa.pdf> (last visited Mar. 8, 2011).

15. *Toxic Fur*, *supra* note 5.

16. See *Fighting Over Fur*, *supra* note 10.

17. See *Toxic Fur*, *supra* note 5.

18. See INT’L FUR TRADE FED’N, *supra* note 14, at 5.

19. *Id.* at 9.

20. REGAN, *EMPTY CAGES*, *supra* note 13, at 110.

advocates and the general public still have many reasons to be wary of the industry. In addition to animal rights and ethical issues involving fur farms, there is concern over the fur industry contributing to environmental destruction.

B. Environmental Concerns of Fur Production

The fur industry, from farming and trapping, to pelt processing, can detrimentally impact the environment. The Humane Society of the United States (“HSUS”) notes that the devastating environmental effects of the industry are evident in several key areas including air and water pollution, damaged ecosystems, inefficient energy use, and fur’s unnatural character.²¹

Fur producers’ primary goal in running their operations is increasing profits, often at the expense of animal welfare and the surrounding environment.²² People for the Ethical Treatment of Animals (“PETA”) suggests that “[e]ach mink skinned by fur farmers produces 44 pounds of feces” in its lifetime, totaling over a million pounds of waste every year on mink farms alone.²³ This waste can produce hazardous byproducts including often uncontrollable amounts of phosphorous and nitrates.²⁴ Likewise, the processing of fur and disposal of carcasses also contribute to air pollution.²⁵ Incineration releases air pollutants such as carbon monoxide and nitrogen oxides, among others.²⁶

Treating fur often involves the use of chemicals that are toxic to humans, such as formaldehyde and chromium.²⁷ The National Cancer Institute notes that the Environmental Protection Agency (“EPA”) has designated formaldehyde as a probable human carcinogen.²⁸ Likewise, the Agency for Toxic Substances and Disease Registry recognized that chromium has differing effects depending on exposure levels, but can cause respiratory problems.²⁹ Further chemical byproducts of the processing of fur include ammonia, chlorine, and sulfuric acid.³⁰

21. See generally *Toxic Fur*, *supra* note 5.

22. See *Wool, Fur and Leather: Hazardous to the Environment*, PETA.ORG, [hereinafter *PETA Factsheet*] http://www.peta.org/mc/Factsheet_display.asp?ID=146 (last visited Mar. 8, 2011).

23. *Id.*

24. *See id.*

25. *See Toxic Fur*, *supra* note 5.

26. *See id.*

27. *See id.*

28. See *Formaldehyde and Cancer Risk*, NAT’L CANCER INST., (Nov. 15, 2010), <http://www.cancer.gov/cancertopics/factsheet/Risk/formaldehyde>.

29. See AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY, CHROMIUM 1 (2008), available at <http://www.atsdr.cdc.gov/tfacts7.pdf>.

30. *See Toxic Fur*, *supra* note 5.

Although not normally as dangerous as the other chemicals, ammonia can “cause eye irritation or even death at high levels.”³¹ This is all indicative of the fur industry’s potential to contribute to air pollution; however, air pollution is only one harmful consequence of fur farming and production.

The fur industry is also a potential contributor to water pollution. Fur farming creates a substantial risk of polluting surrounding environments through rainwater runoff of chemicals, which can endanger local human water supplies, as well as animal and plant populations.³² Feces and waste contain nitrates, phosphates and other chemicals, which are as toxic to water systems as they are to the air.³³ Soil transforms nitrogen into nitrates, and water that contains nitrates can be hazardous to human health.³⁴ Specifically, infants who drink nitrate-contaminated water can be at risk for developmental problems.³⁵

In 1999, the Department of Ecology in the State of Washington fined the Marr Mink Farm twenty four thousand dollars for water pollution after confirming that mink manure and nutrient pollution from runoff and discharge of septic-tank waste was in excess of permitted levels.³⁶ Similarly, in 2009, the Fuhrmann Mink Farm in Wisconsin agreed to replace several neighboring wells after being declared a “spill site” under Wisconsin’s Spills Law.³⁷ An investigation into the sources of high nitrate concentration in several local wells led to the farm where contaminated soil and groundwater was found around former mink pens and manure deposits.³⁸ The Fuhrmann Mink Farm ultimately agreed to replace several wells and pay fifteen thousand dollars in settlement.³⁹

Instances of the fur industry’s pollution are not only potentially harmful to humans, but some scholars speculate these pollution activities are key contributors to ecosystem damage. Degraded ecosystems can result in the loss in the number of some, and the threatened extinction of

31. ROBBIN MARKS, *CESSPOOLS OF SHAME: HOW FACTORY FARM LAGOONS AND SPRAYFIELDS THREATEN ENVIRONMENTAL AND PUBLIC HEALTH* 18 (2001), available at <http://www.nrdc.org/water/pollution/cesspools/cesspools.pdf>.

32. See *PETA Factsheet*, *supra* note 22.

33. See *Toxic Fur*, *supra* note 5.

34. See MARKS, *supra* note 31, at 23.

35. See *id.*

36. See News Release, Wash. Dep’t of Ecology, Whatcom Cnty. Mink Farm Fined \$24,000 for Water Pollution (Dec. 15, 1999) [hereinafter Whatcom Mink Farm Fined], available at <http://www.ecy.wa.gov/news/1999news/99-264.html>.

37. See News Release, Wis. Dep’t of Justice Fuhrmann Mink Farm, Inc. Ordered to Replace Wells and Pay Penalties, (Sept. 14, 2009), available at <http://dnr.wi.gov/org/es/enforcement/DOCS/FuhrmannMinkFarmPR.pdf>.

38. See *id.*

39. See *id.*

other, animal species.⁴⁰ For example, nitrogen can facilitate the over-accumulation of nutrients in “lakes and estuaries, which in turn harms fish and is likely to result in species changes.”⁴¹ The levels of nitrates in excrement, which may runoff and contaminate local water sources, can result in abnormal algae growth that leads to depleted oxygen levels for plants and animals in the water supply.⁴² In the Marr Mink Farm case, the Washington Department of Health allowed a maximum of 230 mg/L of “biological oxygen demand,” that is, the “measurement of how much oxygen is available in water for fish and other biota” in residential septic fields.⁴³ The mink farm was almost ten times over this prescribed limit.⁴⁴ Anti-fur advocates argue that nitrogen output from farms can also damage forests by preventing wintering of trees and weakened forestation.⁴⁵

All of this evidences the fur industry’s potential to accelerate the loss of biodiversity through pollution. Because of the interconnectivity of elements like air, soil, and water in the environment, if not handled properly, large enough quantities of chemicals present in waste and byproducts of fur production can upset many facets of an ecosystem.

Furthermore, the fur industry is energy inefficient. Approximately fifteen times more energy is needed to produce a real fur garment than a faux fur garment.⁴⁶ This constitutes a drain on several already limited energy sources, specifically fuel. In her article regarding energy use in the fur industry, Doris Dixon analyzes the industry’s energy usage based on the “total energy content” of an item, that is, “the total of the energy obtained by burning the item plus the energy required to produce the item and transport it to the end user.”⁴⁷ Dixon compares faux fur, trapped fur, and farmed fur, and her conclusions corroborate the fact that farmed and trapped fur cost more in terms of energy, than fake fur.⁴⁸ Although mathematical data calculations are probative, simple consideration of the many facets of the industry provides evidence of the discrepancy between faux and authentic fur. Fur farms require production and shipment of feed, removal of waste, and shipment to

40. See *THE FUTURE OF ANIMAL FARMING: RENEWING THE ANCIENT CONTRACT* 47-48 (Marian Stamp Dawkins & Roland Bonney eds., 2008).

41. MARKS, *supra* note 31, at 31.

42. See *How the Fur Trade Spreads Chemical Poison*, ANTI FUR SOCIETY, http://www.antifursociety.org/fur_is_it_green.html (last visited Mar. 8, 2011).

43. Whatcom Mink Farm Fined, *supra* note 36.

44. See *id.*

45. See *How the Fur Trade Spreads Chemical Poison*, *supra* note 42.

46. *Fighting Over Fur*, *supra* note 10.

47. Doris Dixon, *Animal Furs: Trapped or Ranches, an Energy Waste*, GLOBAL ACTION NETWORK, <http://www.gan.ca/campaigns/fur+trade/factsheets/fur+%3A+a+waste+of+energy.en.html> (last visited Mar. 8, 2011).

48. See *id.*

tanning factories and manufacturers.⁴⁹ Trapping furs involves travel to check trap lines, production of traps and shipping costs.⁵⁰ Faux fur requires none of the same pre-factory uses of fuel and other energy expenditures that the other more environmentally intrusive methods necessitate. Despite the fur industry's potentially environmentally harmful activities, industry proponents continue to advance claims that they are "green" and "natural."⁵¹ However, the chemicals used in fur treatment are necessary to *prevent* the natural process of biodegrading.⁵² Furthermore, anti-fur advocates suggest that there is nothing "natural" about removing animals from their traditional habitats or farming them with the purpose of becoming fashion statements.⁵³ Finally, the trapping of animals to acquire fur involves traps that cannot discriminate, which may unintentionally catch members of "threatened and endangered species."⁵⁴

This evidence speaks to the destructive and unnatural character of the fur industry and its potential to endanger human health, animal welfare and the environment. Addressing environmental concerns in conjunction with animal rights is important because of the interplay present between the two movements. A primary way to affect change in the environmental area of fur production is to focus on the same demographic that the animal rights movements target in advocating a fur free lifestyle; that is the consumer.

C. *Consumer Consciousness*

Today, the fur industry continues to push its way into the fashion arena. However, many consumers have begun to trend toward animal and environmentally friendly products, and there is potential in this area to reduce the fur industry's environmentally intrusive activities. Consumers drive the market, dictate levels of production, and can encourage putting in place mechanisms that appeal to the ethically-minded consumers. Such individuals are unable to exercise their full potential in compelling market change without being fully informed about the products and industries they support. This is the purpose of labeling laws like the TFLA and this is how consumers can be viewed as the link between the TFLA and the mitigation of the fur industry's environmental impact.

49. *See id.*

50. *See id.*

51. *See Fur is Eco-Logical*, FUR COUNCIL OF CAN., <http://www.furisgreen.com/renewable.aspx> (last visited March 7, 2011).

52. *See Toxic Fur*, *supra* note 5.

53. *See id.*

54. *Id.*

D. *The Fur Products Labeling Act of 1951 and the Truth in Fur Labeling Act of 2010*

Prior to the TFLA, the FPLA governed the labeling of products that contained fur. The FPLA was the vehicle through which the Federal Trade Commission (FTC) governed the labeling of fur that retailers sold.⁵⁵ The Act granted rulemaking authority to the FTC, giving their rules and regulations the force of law.⁵⁶ However, concerns over the efficacy of the FPLA inspired proposed amendments of the law, which include the TFLA.

The TFLA was introduced in the House of Representatives on May 19, 2009,⁵⁷ and was subsequently referred to the House Committee on Energy and Commerce where it remained until July 15, 2010.⁵⁸ The House voted on and passed the TFLA on July 28, 2010,⁵⁹ and the Senate passed the bill on December 7, 2010.⁶⁰ President Barack Obama signed the TFLA into law on December 18, 2010.⁶¹

This bill addressed perceived insufficiencies of the FPLA. For example, prior to the TFLA's enactment, the FPLA permitted garments containing less than one hundred fifty dollars in fur to be sold in the United States without an identifying label.⁶² This exemption, discussed in more detail *infra*, was termed a "glaring loophole," which needed closure to "guarantee consumers full and accurate information."⁶³ The increased use of fur as trim often forces consumers to guess whether the fur on a garment is real or fake, because the garment lacks a label. The one hundred fifty dollar exemption allowed "multiple animal pelts on a

55. 15 U.S.C. § 69f (2006).

56. See Thomas W. Merrill & Kathryn Tongue Watts, *Agency Rules With the Force of Law*, 116 HARV. L. REV. 467, 549 (2002). See also 15 U.S.C. § 69f(a)(1) ("[e]xcept as otherwise specifically provided in this subchapter, sections 69a, 69d, and 69h(b) of this title shall be enforced by the Federal Trade Commission under rules, regulations, and procedures provided for in the Federal Trade Commission Act.").

57. See *Bill Summary and Status-All Congressional Actions H.R.2480 Truth in Fur Labeling Act of 2010*, THOMAS (Library of Congress), <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR02480:@@R> (last visited Jan. 28, 2011).

58. See *id.*

59. See *id.*

60. See *id.*

61. See *id.*

62. See 15 U.S.C. § 69(d) (2006) (the subsequently amended portion of the act which defines "fur product" as "any article of wearing apparel made in whole or in part of fur or used fur; except that such term shall not include such articles . . . as the Commission shall exempt by reasons of the relatively small quantity or value of the fur or used fur contained therein."). The FTC has provided an exemption for garments where the value of fur does not exceed one hundred fifty dollars. See 16 C.F.R. § 301.39(a) (2010).

63. Representative James Moran, *The Introduction of the Truth in Fur Labeling Act of 2009*, Address in the House of Representatives (May 19, 2009).

garment without a label,” because the cost and size of each animal varies.⁶⁴

The TFLA’s new restrictions have the potential to affect environmental changes by placing further strictures on fur manufacturers, as well as raising consumer awareness. The TFLA is, by definition, a consumer protection law, but there is potential for environmental benefits to flow from its enactment.

III. ANALYSIS: THE PURPOSE AND POTENCY OF THE FPLA AND TFLA, AND THE CONSUMER LINK BETWEEN THESE ACTS AND ENVIRONMENTAL PROTECTION

A. *The Unfulfilled Statutory Purpose of the FPLA and Insufficiencies of Other Statutes*

In 1951, Congress enacted the FPLA.⁶⁵ As noted above, Congress charged the FTC with the task of implementing and enforcing the Act.⁶⁶ Over the years, judicial opinions and FTC rulings have articulated the FPLA’s underlying purpose. Eight years after Congress enacted the FPLA, the Supreme Court heard the *FTC v. Mandel Brothers* case, which involved an FTC cease-and-desist order against Mandel Brothers for alleged violations of the FPLA.⁶⁷ In *Mandel Brothers*, the Court stated that the “avowed purpose [of the Act] . . . was to protect ‘consumers . . . against deception . . . resulting from misbranding, false or deceptive advertising, or false invoicing of fur products and fur.’”⁶⁸ The Court further stated that the bill was designed “to protect consumers and others from widespread abuses arising out of false and misleading matter in advertisements and otherwise.”⁶⁹ The Court ultimately found the retailer liable, evincing its concern with protecting and fully informing consumers.⁷⁰ Subsequent court decisions have cited the *Mandel* Court’s articulation of the FPLA’s consumer protection purpose as well.⁷¹

Although the clear purpose has been articulated by the legislature and cited by the courts and the Act’s plain language sets regulation for labeling both domestic and imported fur products, producers and retailers have taken advantage of certain deficiencies in the FPLA’s regulatory

64. *Id.*

65. *See generally* 15 U.S.C. §§ 69-69j.

66. *See id.* § 69f.

67. 359 U.S. 385 (1959).

68. *Id.* at 388 (quoting S. REP. NO. 82-78, at 1 (1951)).

69. *Id.* at 388 (quoting H.R. REP. NO. 82-546, at 1 (1951)).

70. *See id.* at 391 (holding that a retail sales slip was an “invoice” within the meaning of the Act, and the retailer was therefore liable).

71. *See Mannis v. FTC*, 293 F.2d 774, 777 (9th Cir. 1961) (stating the purpose of the Act is to “protect[] . . . consumers”).

structure. For example, as stated above, prior to the TFLA's enactment, the FPLA contained an exception from labeling requirements for products that the FTC exempted by reason of their relatively small fur value or quantity.⁷² The FTC's regulations contained an exemption, which provided in pertinent part that:

(a) If the cost of any fur trim or other manufactured fur or furs contained in a fur product . . . does not exceed one hundred fifty dollars (\$150) to the manufacturer of the finished fur product, *or* if a manufacturer's selling price of a fur product does not exceed one hundred fifty dollars (\$150) . . . the fur product shall be exempted from the requirements of the Act and regulations in this part.⁷³

This threshold dollar amount allowed many products containing small amounts of fur (e.g., fur trim products, gloves, scarves, etc.) to be produced and sold with no label.⁷⁴

This loophole kept the FPLA from facilitating its consumer protection goal. The HSUS has taken note of several sources of confusion to the consumer based on the labeling loophole.⁷⁵ To illustrate its point, the HSUS calls the one hundred fifty dollar threshold "deceptive" and "unreasonable," and uses the example of a five hundred dollar jacket, which contains less than one hundred fifty dollars worth of fur trim and would not require a label.⁷⁶ Consumers can be left guessing whether the name brand five hundred dollar jacket with the fur lined hood contains real or faux fur. According to some of the HSUS's species value estimates, such a garment could contain 30 rabbits at 5 dollars each, 9 chinchillas at 16 dollars each, or 3 minks at 50 dollars each, and the consumer would be given no indication of this.⁷⁷

The anti-fur community is equally concerned about dyed fur compounding the problem. Treating and dyeing fur unnatural colors often makes it appear more artificial to the consumer, but the garment still may not require a label. Seeing this seemingly faux fur trim, and noting the absence of a label, even a consumer who is aware of the industry problems may still purchase the item assuming it to be

72. See 15 U.S.C. § 69(d) (2006) (amended 2010).

73. 16 C.F.R. § 301.39(a) (2011) (emphasis added).

74. See H.R. REP. NO. 111-571, at 2 (2010), *available at* 2010 WL 2926502. The Committee on Energy and Commerce cites the HSUS in acknowledging that "14% of products trimmed with animal fur go unlabeled because they fall below the \$150 threshold." *Id.*

75. See *generally Support The Truth in Fur Labeling Act*, HUMANE SOC'Y OF THE U.S. (2009), *available at* <http://www.hsus.org/web-files/PDF/fur-labeling-hr2480-s1076.pdf> (last visited Sept. 9, 2009).

76. See *id.*

77. See *id.*

artificial.⁷⁸ Therefore, with the FPLA loophole, the industry could be fed by inadvertent support from purchasers who would not otherwise condone such fur use.

The legislature had attempted to more strictly regulate the use of fur through other laws like the Dog and Cat Protection Act of 2000 (“DCPA”).⁷⁹ In China, fur producers use notoriously cruel methods of killing the “raccoon dog,” the fur of which was often, and still is, sold in the United States market.⁸⁰ Congress enacted the DCPA to prevent domestic dog and cat fur from being imported into the United States. At the time, the one hundred and fifty dollar loophole was addressed, and the proposed DCPA sought to remove the “of relatively small quantity or value” exemption.⁸¹ The DCPA did establish large civil penalties for offenders,⁸² and attempted to ensure accurate labels for consumer protection.⁸³ However, the one hundred fifty dollar exemption still remained.⁸⁴ Furthermore, small amounts of this fur remained present in the American retail market, as evidenced by the widely publicized HSUS investigation of major retailers like Foot Locker and Barneys, which determined that those retailers were selling fur trimmed garments composed of authentic, often domestic animal fur that were either mislabeled or entirely unlabeled.⁸⁵ It became apparent that legislation needed to go further and require that *all* garments, regardless of value or quantity, be labeled. The FPLA and DCPA seem largely ineffective because a significant portion of garments continued entering the marketplace without a label.

Another glaring deficiency is evident in the FTC’s enforcement of the FPLA. The FTC investigated claims of alleged violations of the FPLA, but often terminated these investigations, ultimately requiring the violator to incur little more than the costs of compliance with the Act. For example, the FTC closed an investigation into whether Macy’s had falsely advertised a jacket containing authentic fur after the company showed it had sold very few jackets and agreed to adopt stricter labeling mechanisms in compliance with the law.⁸⁶ Likewise, in an inquiry into

78. *See id.*

79. 19 U.S.C. § 1308 (2006).

80. *See Support The Truth in Fur Labeling Act, supra* note 75.

81. 15 U.S.C. § 69(d) (amended 2010).

82. 19 U.S.C. § 1308(c)(1).

83. *See* Act of Nov. 9, 2000, Pub. L. No. 106-476, 114 Stat. 2101, § 1442(b)(3) (codified at 19 U.S.C. § 1308) (stating a statutory purpose of ensuring accurate labeling for consumers’ benefit).

84. *See* 15 U.S.C. § 69(d) (amended 2010).

85. *See Support The Truth in Fur Labeling Act, supra* note 75.

86. Letter from James Kohm, Assoc. Dir., Enforcement Div. of FTC Bureau of Consumer Prot., to William MacLeod, Esq., Kelley, Drye & Warren (Feb. 19, 2009) (on file with LexisNexis).

whether Saks, Inc. had sold jackets with a detachable authentic fur collar labeled as faux, the FTC closed its investigation once the company wrote letters to buyers offering refunds, and adopted stricter quality control standards.⁸⁷

It is also interesting to note that other textile-focused consumer protection laws do not contain any exemptions for labels on clothing products. Specifically, the Wool Products Labeling Act of 1939 contains no provision exempting a certain value threshold or quantity of wool used from requiring a label.⁸⁸

B. The TFLA's Ability to More Effectively Perpetuate the FPLA's Statutory Purpose and Ensure Consumer Protection

The TFLA is a basic, yet potentially effective amendment to the FPLA, which aims to close the FPLA's loopholes to avoid consumer deception and facilitate consumers receiving requisite information. Congressman Jim Moran (D, VA.), who introduced the legislation along with Representative Mary Bono Mack (R, CA.), is quoted as saying that "[t]he fur loophole deprives American consumers of the facts needed to make an informed purchase."⁸⁹ Moran's concern was that many Americans prefer faux to real fur, but exploitation of this loophole results in producers and retailers "pawning off [real] fur as artificial" thereby engaging in consumer deception.⁹⁰ Representative Mack echoed Moran's concerns stating that the ability to make informed decisions "depend[s] on product labels."⁹¹ Another sponsor of the bill has further indicated that its purpose is more than empowering consumers to make informed decisions.⁹² The Act is about "allow[ing] consumers to make decisions about whether they want to support . . . a practice that, given all the facts, so many would be adamantly opposed to."⁹³ The provisions of the TFLA embody these sentiments by seeking to ensure that consumers

87. Letter from Jams Kohm, Assoc. Dir., Enforcement Div. of FTC Bureau of Consumer Prot., to Linda Goldstein, Esq., Manatt, Phelps & Phillips, LLC (May 28, 2009) (on file with LexisNexis).

88. 15 U.S.C. § 68 (2006).

89. Press Release, Congressman Jim Moran, Truth in Fur Labeling Act Introduced (May 19, 2009), available at http://moran.house.gov/list/press/va08_moran/FurLabel.shtml.

90. *Id.*

91. *Id.*

92. See Press Release, Humane Soc'y of the U.S., Congress Calls for Truth in Fur Labeling In Response to Ongoing Misrepresentation (May 20, 2009), available at http://www.humanesociety.org/news/press_releases/2009/05/congress_calls_for_truth_in_fur_labeling_052009.html.

93. *Id.*

are fully apprised of the fur composition of the product they are considering purchasing.

The TFLA provided changes to the substantive language of the FPLA and required revisions to the Fur Products Name Guide.⁹⁴ The most important provision of the FPLA that the TFLA impacted is § 69(d), which defined a “fur product” as “any article of wearing apparel . . . made of fur; except . . . [this] shall not include such article[s] . . . as the Commission shall exempt by reason of the relatively small quantity or value of the fur.”⁹⁵ Under the TFLA, this section was amended by “striking ‘except that’ and all that follows” of section 69(d).⁹⁶ In this way, the TFLA mandated that the FTC eradicate the one hundred fifty dollar exemption.

In ridding the law of the exemption, the TFLA has gone the way of, and in some instances further than, legislation in several states that preceded it in mandating stricter provisions than those provided for by the FPLA. Wisconsin requires labeling similar to that of the FPLA.⁹⁷ However, the threshold exemption value is set at fifty dollars, instead of one hundred fifty dollars.⁹⁸ Other states had already gone as far as the TFLA goes by enacting legislation requiring labeling regardless of value or quantity of fur in the item. On June 1, 2010, a Delaware statute became effective which stipulates:

[n]o merchant shall sell, offer or display for sale any coat, jacket, garment, or other wearing apparel made wholly or partially of animal fur, *regardless of the price* of the wearing apparel or the *amount or value* of the fur contained therein, without having attached to and conspicuously displayed on such apparel a tag, label or sticker that clearly and legibly states in English that such apparel contains real animal fur.⁹⁹

Similarly, the State of New York made it illegal to “knowingly import for profit, sell at retail, offer for sale at retail, or manufacture articles of clothing which include or have attached in *any quantity* and of *any value*, fur that is not labeled as being ‘faux fur’ or ‘real fur’, or is incorrectly labeled,”¹⁰⁰ and has taken additional animal welfare steps as well.¹⁰¹ The

94. See generally Truth in Fur Labeling Act of 2010, Pub. L. No. 111-313, 124 Stat. 3326 (2010).

95. 15 U.S.C. § 69(d) (amended 2010).

96. § 2(a), 124 Stat. at 3326.

97. See Wis. STAT. § 100.35(1) (2010).

98. See *id.*

99. DEL. CODE ANN. tit. 6, § 2508 (2009) (emphasis added).

100. N.Y. GEN. BUS. LAW § 399-aaa (2010) (emphasis added).

101. See *New York First State to Ban Anal Electrocutation for Fur*, HUMANE SOC’Y OF THE U.S. (Aug. 28, 2007), http://www.hsus.org/furfree/news/new_york_bans_anal_

New York statute goes so far as to require labels on both faux and real fur, a measure that seems to ensure consumer information to the greatest possible extent.¹⁰² By eradicating the one hundred fifty dollar exemption, Congress has gone the way of these several states in following the trend towards furthering consumer information.

In addition to removal of the exemption, the TFLA also required the original 1951 Fur Products Name Guide ("FPNG") to be revised in accordance with the changing law.¹⁰³ The FPNG "defines how fur products may be listed on the label," and "has been criticized as outdated and inaccurate."¹⁰⁴ The revisions to the FPNG stem from the concerns over, and investigations into, the use of raccoon dog fur (a relatively domesticated species) in China, which many American retailers were importing. Under the FPNG this species appears on labels as "Asiatic Raccoon."¹⁰⁵ Under the TFLA, the FTC is to initiate a rulemaking to revise the FPNG.¹⁰⁶ Therefore, each of TFLA's provisions is, in some way, in keeping with, and in furtherance of, the avowed purpose of the FPLA. If the Act's goal of informing consumers is achieved, there is a potential that informed consumers could force a shift in the market, which would have a deleterious impact on the fur industry.

C. *A Note on the Importance of the Informed Consumer in the U.S. Market Economy*

In a presentation during the 1997 Conference on Advertising for Economy and Democracy, FTC Commissioner Mary Azcuenaga illustrated the importance of informed consumers relative to their impact in the market.¹⁰⁷ As an example, she noted how producers in the United States had conducted manufacturing and processing, while ignoring their environmental impact.¹⁰⁸ She claims that increased consumer concern and awareness impacted purchasing decisions, and were powerful market forces that "compelled" changes in products, production methods and advertising schemes, in order to appeal to the sensitivities of these

electrocution.html (noting that New York is also the first state to ban the electrocution method of euthanasia to make fur products).

102. See N.Y. GEN. BUS. LAW § 399-aaa.

103. See Pub. L. No. 111-313, § 4, 124 Stat. 3326, 3326 (2010).

104. H.R. REP. NO. 111-571, at 2-3 (2010), available at 2010 WL 2926502.

105. See 16 C.F.R. § 301.0 (2011).

106. See Pub. L. No. 111-313, § 4, 124 Stat. 3326, 3326 (2010). The FTC had not taken such action as of the time of this writing.

107. See generally Mary L. Azcuenaga, Comm'r, FTC, Address Before the Turkish Association of Advertising Agencies Conference on Advertising for Economy and Democracy: The Role of Advertising and Advertising Regulation in the Free Market (Apr. 8, 1997), available at <http://www.ftc.gov/speeches/azcuenaga/turkey97.shtm>.

108. See *id.*

informed consumers.¹⁰⁹ However, because markets do not always produce the sufficient amount of information necessary to equip consumers to make their purchase, regulations (such as the TFLA) are often promulgated, which require disclosure of information where consumers would otherwise be unable to obtain it.¹¹⁰

D. The Informed Consumer, Fur Labeling and Potential Impact on the Fur Industry

As Commissioner Azcuenaga noted, producers have an interest in protecting their reputations and appealing to consumers, because they only profit when there is a demand for their product.¹¹¹ Therefore, the United States division of the World Society for the Protection of Animals stresses that “the power to stop [fur] production lies with the consumer,” as the “industry grows or declines with public demand.”¹¹² This is particularly true in the years since 2000, as fur, which had become a waning industry, has begun to crawl back into the fashion world.¹¹³

Skeptics of the TFLA believe it may not have an impact on either animal rights or environmental concerns, in light of the relative ineffectiveness of the FPLA. They argue that more stringent measures must be taken, such as outright bans, in order to have a significant impact. However, one should not doubt the power of the informed ethical consumer in affecting market changes. It is by way of informing consumers that stricter labeling guidelines can be effective in mitigating the fur industry’s environmental damage.

Historical evidence suggests that properly informed consumers turn their backs on the traditional fur production industry in favor of alternative synthetic materials and faux fur. Since the inception of anti-fur campaigns, there has been evidence of their impact on the development of more fur-conscious populous.¹¹⁴ PETA’s campaign using celebrities claiming that they would rather go naked than wear fur is probably one of the most recognizable animal welfare campaigns ever.¹¹⁵ There was a decrease in the number of mink farms in the United

109. *See id.*

110. *See id.*

111. *See id.*

112. *Be Fur Free: A Consumer Guide*, WORLD SOC’Y FOR THE PROT. OF ANIMALS, http://www.wspausa.org/pages/3079_be_fur_free_a_consumer_guide.cfm (last visited Jan. 27, 2010).

113. *See id.*

114. *See* LISA YOUNT, *ANIMAL RIGHTS* 36 (2d ed. 2008) (noting that since the 1970s “organizations such as PETA waged attention-getting campaigns against wearing fur. . .”).

115. *See id.*

States from more than 1200 in 1968, to 307 in 2003.¹¹⁶ This drop speaks to the power of consumers made more aware by such campaigns and protests leading to a lessened demand for fur products.

Likewise, the Fur Commission of the United States released statistics indicating a recent downward trend in worldwide fur sales from just over fifteen billion dollars to just over thirteen billion from 2007 to 2008.¹¹⁷ The Commission attempts to attribute this to the recent economic downturn, but the consistent drop in the number of farms over the past several years does not seem to corroborate this argument.

However, the industry is still claiming relative stability due to its attempt to push fur back into fashion. For example, Chairman Andreas Lenhart of the IFTF noted the increasing visibility of fur in fashion and claimed that “[c]onsumers . . . [are] embracing the comfortable and warm feeling of natural fur.”¹¹⁸ However, if fashion appeal were as successful as the industry claims, then there would be no need to “invest[] in slick marketing campaigns,” with the goal of increasing sales.¹¹⁹ Evidently, these “greenwashing” campaigns have become necessary because the cruelties often accompanying fur production have gained public attention through animal rights and humanity movements.¹²⁰

This growing attention has developed a prevailing trend towards consumers favoring natural, environmentally friendly products in the marketplace, which can be applied to the fur industry by analogy.¹²¹ Natural product markets for goods such as hybrid cars, dolphin-free tuna, organic and free-range foods, as well as free trade coffee have gained “measurable success” as a result of “ethical consumerism.”¹²²

Reactions by consumers to anti-cruelty and eco-friendly campaigns can best be understood by taking account of the justifications and theories for the animal rights movement. Some activists subscribe to a

116. *Id.* Another author, citing similar statistics, believes they are indicative of people coming to terms with the importance of animal welfare and being able to adjust their lives accordingly. See TOM REGAN, ANIMAL RIGHTS, HUMAN WRONGS: AN INTRODUCTION TO MORAL PHILOSOPHY 119-20 (2003) [hereinafter REGAN, ANIMAL RIGHTS].

117. See Press Release, Int'l Fur Trade Fed'n, Global Fur Sales Show Relative Stability Despite Econ. Downturn (Mar. 27, 2009), available at <http://www.furcommission.com/news/newsF11f.htm> (last visited Jan. 28, 2010).

118. *Id.*

119. WILLIAMS & DEMELLO, *supra* note 11, at 151-52.

120. See *id.* at 152.

121. See CONSUMERS FOR A FUR FREE SOC'Y, CONSUMERS TURN THEIR BACKS ON RETAILERS SELLING FUR 5, http://www.bornfreeusa.org/downloads/pdf/What_Wrong_with_Fur.pdf (last accessed Mar. 8, 2011) (explaining that “[a]s more markets embrace the ideologies surrounding ethical consumerism, the tides are shifting as we observe the natural product industry seeing all-time highs. . .”).

122. *Id.* at 5.

rights-based theory in which animals have inviolable rights, which must be honored.¹²³ Others subscribe to a more utilitarian, balancing view accepting that some use of animals will persist. This use becomes unacceptable where the harms to the animals outweigh the burden to society.¹²⁴ Still others posit theories that are a synthesis of these justifications. Whatever the motivation, the fur-free movement appears to have relevance under each of these theories. Not only do some anti-fur proponents believe it is the animals' right not to be used in a fur garment, others believe that the benefit of using fur is satisfied by synthetic materials, and therefore the harm outweighs the benefit. Similarly, the argument can be made that, based on utilitarian theories, when weighed against each other, the benefit of having an environment unscathed by the intrusive activities of the fur industry outweighs any rationale in favor of fur production. These general philosophical theories speak to the motivations underlying consumers' consciences and their impact on the market.

Causes like anti-fur are often found particularly appealing because of the "empathy for animals so natural to most people."¹²⁵ Although the philosophical theories are varied and nuanced, one constant theme seems to emerge; "animals should be treated better than they are."¹²⁶ The TFLA is a law that potentially affords the consumer the ability to make rational decisions based on their ethical feelings about the cruelty and environmental impact of the fur industry.

If a loophole remained in the labeling laws, consumers will be unable to exercise their own conscience-based judgments regarding animal rights and environmental protection. Absent labels could lead to purchases by consumers who would not otherwise purchase fur, but who assume the fur is faux because no label is affixed to the garment.

There may be reasons beyond ethics for a consumer to need information contained on these labels, such as "allerg[ies]."¹²⁷ Regardless, the more aware and informed the consumer is, the more potent their power in the market will be. Therefore, although the articulated goal of the TFLA and the FPLA is the protection of consumers, the benefits of adopting the TFLA will assuredly touch environmental concerns as well. As discussed *supra* in Section II, there are a multitude of detrimental effects of the fur industry on the environment, which could be mitigated by the industry's decline. The fur industry will likely feel the effects of a fully informed consumer base

123. See Goodman, *supra* note 2, at 1291.

124. See *id.*

125. *Id.* at 1298.

126. *Id.* at 1308.

127. See SUPPORT THE TRUTH IN FUR LABELING ACT, *supra* note 75.

that continues the trend towards conscientious purchasing armed with more information than before. This could precipitate a reduction in the industry's bottom line, or compel furriers to actually put in place environmentally-friendly mechanisms that appeal to consumers.

If the industry turns lower profits because people are making more informed purchases, this would correlate to less production and thus an alleviation of the environmental impact. It is important to remember that the entire fur production process involves use or creation of environmental contaminants.¹²⁸ Such use and creation would necessarily be reduced alongside continued shrinking of the industry as consumers exercise their power. There would be less inefficient use of energy and less production of non-biodegradable products.¹²⁹ All of this means an overall benefit for local environments and ecosystems and, in the aggregate, of the environment as a whole.

The scaling back of the industry's environmental impact could also result from furriers' reliance on their reputations to acquire and retain customers. Therefore, even if the impact of the TFLA is something less than a dent in fur producers' bottom line, at the very least a full disclosure label regulation may force the industry to stop engaging in "greenwashing" and actually put in place more eco-friendly mechanisms to appeal to a market of fully aware consumers. Of course, requiring labels on all fur products is not the only way to mitigate the environmental damage caused by the fur industry.

E. A More Stringent Alternative

There is one more direct and definitive alternative to labeling and other laws that seek to regulate this industry. This is the path of banning fur farms and fur production in the United States. European nations have been more receptive to this kind of legislative control of fur farming.¹³⁰ Perhaps the best alternative is for the United States to go the way of England and promulgate an outright ban on fur farming altogether.¹³¹

In England, the Fur Farming (Prohibition) Act is designed to "prohibit the keeping of animals solely or primarily for slaughter for the value of their fur; to provide for the making of payments in respect of the related closure of certain businesses; and for connected purposes."¹³² England is not alone in taking these progressive measures. In general,

128. See LISA KEMMERER, *IN SEARCH OF CONSISTENCY: ETHICS AND ANIMALS* 456 (2006) (noting that "formaldehyde and chromium" are both toxic chemicals used in the process").

129. *Id.*

130. See YOUNT, *supra* note 114, at 37.

131. *See id.*

132. Fur Farming (Prohibition) Act, 2000, c. 33 (Eng.).

“Europe has been a more fertile ground than the United States for legislative control of intensive farming.”¹³³ “Austria, . . . Scotland, and Wales have passed legislation . . . prohibit[ing] raising mink and other animals solely or primarily for their fur.”¹³⁴ Furthermore, “Denmark and Norway have declared that fur mills are ‘ethically unacceptable.’”¹³⁵ While it is true that a large amount of fur in the United States is imported, it stands to reason that banning domestic fur farming would significantly impede the progress of the industry. Currently, no such ban appears to be on the horizon in the United States. Therefore, one can only hope that the TFLA will have both its desired and unanticipated impacts.

IV. PROGNOSIS AND CONCLUSIONS

The avowed purpose of consumer protection in the TFLA can be linked to both animal welfare and environmental consequences. Regardless of its claims of being “green” and eco-friendly, the evidence of fur industry pollution is widely apparent. In seeking to ensure that consumers are fully informed, the TFLA could potentially fulfill a goal that was not part of its stated purpose: tempering the industry’s environmental impact.

More extensive labeling will provide the consumer with information they could not otherwise obtain. A population of fully aware and fully informed consumers are better able to make a decision of whether or not to support the fur market for ethical, health, or any other reason. This sort of consumerism could decrease the fur industry’s profits and size in the United States or affect adoption of truly eco-friendly mechanisms as the industry tries to cater more to the ethical, eco-conscious consumers.

Any reduction in the size of the fur industry would consequently mean mitigation of its environmental impact. Therefore, the prospective benefits of the TFLA for animal rights and consumer protection could ultimately benefit environmental health as well. The FPLA simply did not keep up with changes in fashion like fur trim’s popularity or the prevalence of artificially dyed products, which made the TFLA a necessary piece of legislation to keep consumers fully apprised of the content of their purchases. Although there are potentially harsher alternatives, such as the complete eradication of the fur industry, this piece of legislation has the potential to be another integral part of the evolution of laws furthering the goals of proponents of both animal rights

133. YOUNT, *supra* note 114, at 37.

134. REGAN, ANIMAL RIGHTS, *supra* note 116, at 120.

135. *Id.*

and environmental law. Time will tell whether its adoption will lead to the potential outcomes hypothesized in this comment.