BEFORE THE OREGON DEPARTMENT OF FISH AND WILDLIFE

Petition to Initiate Rulemaking to Amend OAR 635-056-0050 to Add Mink to the Prohibited Species List

---

I. PETITIONER

The Center for Biological Diversity (Center) is a non-profit conservation organization with more than 1.7 million members and supporters, including throughout Oregon and the Pacific Northwest, dedicated to the conservation of endangered species and wild places.

II. INTRODUCTION

Over the past ten months, the scientific community has significantly expanded its understanding about the severity of risks that commercial mink farming operations pose to human health and wild animal populations. This expansion in scientific understanding has its roots in the COVID-19 pandemic, which continues to ravage human and mink populations worldwide, but it is not exclusively confined to that virus alone. Rather, what the pandemic has shown is a unique vulnerability for mink, both wild and domestic, to become infected by and transfer disease back to humans (known as "bidirectional transmission"), as well as the high probability that commercially farmed, domestic mink infected with a virus can escape their enclosures and introduce the virus into wild mink populations.

Native to North America, including throughout Oregon, wild American mink (*Mustela vison*) are inquisitive and fiercely territorial mammals with vast natural ranges. Renowned for their solitary nature, these semiaquatic animals typically measure in size from approximately 18 to 30 inches in length. Their glossy coats, which generally consists of shades of black, white, or brown, have historically been highly coveted as luxury products for use in furnishings, coats, stoles, hats, and other clothing items.

As early as the late 1800's, mink began to be raised for commercial purposes in North America to accommodate what was then a growing market for luxury fur products. As agricultural production methods and product demands changed, however, so did commercial methods of farming mink for their fur, leading to a dramatic shift by the late 1990's from smaller, more defuse mink fur farming operations to larger, more concentrated commercial fur farms. The largest subset of these more concentrated operations, sometimes referred to in Oregon as "Confined Animal Feeding Operations," can house tens of thousands of animals, generally in small, cramped cages where they are not able to express their natural behaviors.

In recent years, the demand for mink and other fur products has dramatically declined as the commercial market for these products has diminished. Indeed, as the high fashion juggernaut *Vogue* magazine recently summarized, "[n]o longer the marker of luxury it was, fur is now often seen as a retrograde product . . . ."[1] Despite consumer demand shifting away from animal fur as a luxury item, mink farming operations have continued to persist in the United States, including in the state of Oregon (although much of U.S. mink is exported to China). Today, domesticated American mink are the most commonly farmed species in the American fur industry.

Against this backstop of extreme zoonotic disease[2] vulnerability and concentrated animal production practices, paired with a deep-seated public interest in protecting wildlife populations, the Center hereby urgently requests that the Oregon Department of Fish and Wildlife (Department) act to protect Oregon's wild American mink populations by listing the American mink (*Mustela vison*) and European mink (*Mustela lutreola*) on the state's Prohibited Species List regulation (OAR 635-056-0050). In addition to protecting wild mink, Petitioner believes that granting the requested action is essential for protecting imperiled Oregon mustelid populations—such as Pacific fishers (*Martes pennanti*), wolverines (*Gulo gulo*), and federally threatened Humbodt martens (*Martes caurina humboldtensis*), a subspecies of American martens (*Martes americana*)—from potential risks related to the introduction and spread of disease from farmed domestic mink populations into the wild, as well as other mustelid species native to Oregon, including ermines (*Mustela erminea*), long-tailed weasels (*Mustela frenata*), American badgers

[1] Rosalind Jana, *Mink Farming and COVID-19: Here's Why Fashion Needs to Finally Say Goodbye to Fur*, Vogue (Nov. 13, 2020), https://www.vogue.com/article/mink-farming-covid-19-why-fashion-should-say-goodbye-to-fur.

[2] Zoonotic diseases (also known as zoonoses) are caused by viruses, bacteria, parasites, fungi, and prions that spread between animals and people.

(*Taxidea taxus*), and river otters (*Lutra canadensis*). Petitioner also believes that this action will protect other animals that may come in to contact with potentially infected mustelids, including mink predators such as coyotes *(Canis latrans*), wolves (*Canis lupus*), bobcats (*Lynx rufus*), and various species of owls, hawks, and eagles, and mink prey species such as frogs, water birds, mice, rabbits, and muskrats. Petitioner's requested action is further economically viable for businesses, and will not overlap, duplicate, or conflict with any other state or federal rules, or with any local government regulations.

III. RULEMAKING REQUEST

Petitioner requests that the Department initiate rulemaking to amend the Prohibited Species List regulation (OAR 635-056-0050) to include American mink (*Mustela vison*) and European mink (*Mustela lutreola*).

Proposed Rule Language (Proposed new language is underlined and in italics; no deletions are requested):

OAR 635-056-0050 (Prohibited Species List)

(1) Except as otherwise provided in these rules or other rules of the commission, live wildlife listed below may not by imported, possessed, sold, purchased, exchanged or transported in the state:

. . . .

(a) Prohibited Mammals: Common Name — Family — Genus/species:

. . . .

(B) Order Carnivora:

. . . .

(vi) American Mink — Mustelidae — Neovison vison;

(vii) European Mink — Mustelidae — Mustela lutreola;

. . . .

IV. LEGAL GROUNDS FOR PETITION

a. Restatement of the Law

Pursuant to ORS § 183.390, "[a]n interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. The Attorney General shall prescribe by rule

the form for such petitions and the procedure for their submission, consideration and disposition. Not later than 90 days after the date of submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with ORS 183.335 (Notice)."

Pursuant to the Attorney General's Model Rules for Rulemaking (OAR 137-001-0070):

(1) An interested person may petition an agency to adopt, amend, or repeal a rule. The petition shall state the name and address of the petitioner and any other person known to the petitioner to be interested in the rule. The petition shall be legible, signed by or on behalf of the petitioner, and shall contain a detailed statement of:

(a) The rule petitioner requests the agency to adopt, amend, or repeal. When a new rule is proposed, the petition shall set forth the proposed language in full. When an amendment of an existing rule is proposed, the rule shall be set forth in the petition in full with matter proposed to be deleted and proposed additions shown by a method that clearly indicates proposed deletions and additions;

(b) Facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment, or repeal of the rule;

(c) All propositions of law to be asserted by petitioner.

(2) If the petitioner requests the amendment or repeal of an existing rule, the petition must also contain comments on:

(a) Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses;

(b) The continued need for the existing rule;

(c) The complexity of the existing rule;

(d) The extent to which the existing rule overlaps, duplicates, or conflicts with other state or federal rules and with local government regulations; and

(e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.

b. Grounds for Granting the Petitioner's Requested Action

i. Reasons for Adopting the Proposed Rule Amendment

1. Mink and Zoonotic Disease Risks: Significant Changes in Scientific Understanding About Risks to Public Safety and Native Wildlife Health from Commercial Mink Farming Since the Agency Adopted and Most Recently Updated the Prohibited Species List

According to the U.S. Centers for Disease Control and Prevention, the majority of emerging infectious diseases in recent years have originated in wildlife, and the rate of outbreaks of these diseases is increasing.[3] Similarly, the World Health Organization has warned that future pandemics *will likely* be caused by wildlife, and will be zoonotic in origin.[4] As has been experienced during the COVID-19 pandemic, which itself is understood to likely have originated in bats, zoonotic disease transmission events related to mink can occur at a minimum from interactions between human and farmed mink populations, and from wildlife populations coming into contact with escaped, infected farmed mink without human presence.[5] In the case of mink and other wildlife, the collection, production, trade, and sale of wild animals can be a serious risk factor for these types of spillover events, but those risks become particularly acute when they involve captive wild animal species that have been domesticated, are living under poorly regulated and stressful conditions that exacerbate the shedding of zoonotic pathogens, and are prone to escaping into the wild—such as those that are present at commercial mink farming operations.[6]

---

[3] Ctrs. For Disease Control & Prevention, Zoonotic Diseases, https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html (last visited Jan. 12, 2021).

[4] Özgün E. Can, et al., *Dealing in Deadly Pathogens: Taking Stock of the Legal Trade in Live Wildlife and Potential Risks to Human Health*, 17 Glob. Ecology & Conservation e00515 (2019).

[5] Zoe Schlanger, *The Mink Pandemic is No Joke*, The Atlantic (Dec. 23, 2020), https://www.theatlantic.com/health/archive/2020/12/minks-pandemic/617476/.

[6] Mason, et al., *Frustrations of Fur-farmed Mink*, 410 Nature 35, DOI: 10.1038/35065157 (2001); Hovland, et al., *Two's Company? Solitary Vixens' Motivations for Seeking Social Contact*, 135 Applied Animal Behavior Science 110, DOI: 10.1016/j.applanim.2011.10.005 (2011); Svendsen, et al., *Novelty Exploration, Baseline Cortisol Level in Fur-chewing Mink with Different Intensities of Stereotypic Behavior*, 147 Applied Animal Behaviour Science 172, DOI: 10.1016/j.applanim.2013.05.011 (2013); Hansen, S. & Damgaard, B., *Running in a Running Wheel Substitutes for Stereotypies in Mink (Mustela vison) but Does it Improve Their Welfare?*, 118 Applied Animal Behaviour Science 76, DOI: 10.1016/j.applanim.2009.02.025 (2009); Braastad, *Effects of Prenatal Stress on Behaviour of Offspring of Laboratory and Farmed Mammals*, 61 Applied Animal Behaviour Science 159, DOI: 10.1016/S0168-1591(98)00188-9 (1998).

Such compounded zoonotic vulnerabilities have illustratively played out, and continue to play out, in Oregon's domestic and wild mink populations. On November 19, 2020, following outbreaks of SARS-CoV-2[7] among mink and human populations in several countries (including Denmark, Spain, Italy, Sweden, Greece, and Canada) and numerous states across the U.S.,[8] Oregon faced its first reported instance of commercially farmed domestic mink experiencing symptoms of SARS-CoV-2.[9] Upon the Oregon Department of Agriculture (ODA) taking representative samples from 10 of the approximately 12,000 mink raised on that one commercial fur farming operation, all of them came back positive for the virus.[10] Despite the severity of the outbreak concern, it reportedly took state regulators four days from reporting to place the operation under quarantine and ask its workers to self-isolate.[11]

In December, quickly following on the heels of the first reported case of SARS-CoV-2 in a commercial Oregon mink farming operation, came reports that at least one of the farmed mink infected with the virus had escaped its confinement and entered into the wild.[12] Then earlier this week, ODA reported that it had captured a second mink in the wild that was infected with SARS-CoV-2; it believes this mink, as well as another mink caught at the same time, to have also escaped from the same facility.[13] In addition to capturing in the wild a second escaped, infected farmed mink, ODA also reported that a number of the mink in the commercial fur farming

[7] SARS-CoV-2 is the animal virus linked to COVID-19 in humans.
[8] *See* Exhs. A & B; *see also* Oude Munnink, et al., *Transmission of SARS-CoV-2 on Mink Farms Between Humans and Mink and Back to Humans*, 371 *Science* 172, DOI: 10.1126/science.abe5901 (Jan. 8, 2021); Zoe Schlanger, *The Mink Pandemic is No Joke*, The Atlantic (Dec. 23, 2020), https://www.theatlantic.com/health/archive/2020/12/minks-pandemic/617476/.
[9] Tracy Loew, *An Oregon Mink Farm Has a COVID-19 Outbreak Among Animals and Workers*, Salem Statesman Journal (Nov. 27, 2020), https://www.statesmanjournal.com/story/news/local/coronavirus/2020/11/27/covid-19-confirmed-10-oregon-mink-farm-regon-department-agriculture/6441838002/.
[10] *Id*.
[11] *Id*.
[12] April Ehrlich, *Mink Infected with the Coronavirus Escapes Oregon Fur Farm*, Oregon Public Broadcasting (Dec. 29, 2020), https://www.opb.org/article/2020/12/29/coronavirus-mink-oregon/ ("A mink caught outside a farm in Oregon in mid-December has tested positive for low-levels of the coronavirus. State officials believe the mink escaped from a small farm that was already under quarantine because of a coronavirus outbreak among mink and humans.").
[13] ODA, *Tests at an Oregon Mink Farm Show SARS-CoV-2 Still Present with No Virus Mutations; Testing, Surveillance, and Trapping Continues*, News Release (Jan. 13, 2021), https://odanews.wpengine.com/tests-at-an-oregon-mink-farm-show-sars-cov-2-still-present-with-no-virus-mutations-testing-surveillance-and-trapping-continues/.

operation experiencing the original outbreak were now experiencing "new infections, not reinfections."[14]

What these events vividly portray is the exact moment in which theoretical science regarding the potential spread of a highly transmissible disease from a commercial mink farming operation to human and wild mink populations became a devastating reality. Now the question remains: how devastating will it be?[15] What we know at this point is that commercial mink farming operations, which raise domestic mink that are bred in captivity to display certain economically favorable behavior and morphological traits,[16] present a very real threat to wild mink populations; that mink are highly susceptible to SARS-CoV-2; that mink exposed to SARS-CoV-2 or COVID-19 (and potentially other diseases) can bidirectionally spread the disease to humans or to other mink; and further that transmission of SARS-CoV-2 can be fatal to mink.[17] For now at least, there remains time for Oregon to put the necessary checks in place to stop a potential future in which Oregon's commercial mink farming operations act as incubators

---

[14] *Id*.

[15] *See, e.g.*, Smriti Mallapaty, *COVID Mink Analysis Shows Mutations are Not Dangerous – Yet*, Nature (Nov. 16, 2020), https://www.nature.com/articles/d41586-020-03218-z; James Gorman, *How Mink, Like Humans, Were Slammed by the Coronavirus*, N.Y. Times (Dec. 23, 2020), https://www.nytimes.com/2020/12/23/science/covid-mink-animals.html (summarizing that "[n]ot only are mink the only nonhuman animal known to become severely ill and die from the virus, they are the only animal known to have caught the virus from humans and then passed it back. What terrified Danish officials was that the virus that jumped back to people carried mutations that seemed as if they might affect how well vaccines work"); Adam Lauring & Emma Hodcroft, *Genetic Variants of SARS-CoV-2—What do They Mean?*, DAMA (Jan. 6, 2021), https://jamanetwork.com/journals/jama/fullarticle/2775006 ("The apparent adaptation of SARS-CoV-2 to mink was nevertheless concerning because continued evolution of the virus in an animal reservoir could potentially lead to recurrent spillover events of novel SARS-CoV-2 from mink to humans and other mammals. For this reason, many countries have increased surveillance efforts and in some cases implemented large-scale culls (ie, selective slaughter) of mink on farms."); Holly Ellyatt, *Coronavirus Mutations: Here are the Major COVID Strains We Know About*, CNBC (Jan. 12, 2021), https://www.cnbc.com/2021/01/12/covid-mutations-all-the-major-strains-we-know-about.html.

[16] *See, e.g.*, Wiener & Wilkinson, *Deciphering the Genetic Basis of Animal Domestication*, 278(1722) Proc. Biol. Sci. 3161 (2011); Karimi, et al., *Opportunities for Genomic Selection in American Mink: A Simulation Study*, 14(3) PLoS One e0213873 (2019); Kidd, et al., *Hybridization Between Escaped Domestic and Wild American Mink (Neovison vison)*, 18 Molecular Ecology 1175 (2009).

[17] Fur Commission USA, Fact Sheet on Coronavirus Cases on US Mink Farms (Nov. 27, 2020), http://furcommission.com/wp-content/uploads/2020/11/FCUSA-Covid-White-Paper-Nov27.pdf ("The virus is primarily affecting older mink and the average per farm outbreak duration is 5-7 days. Older mink tend to succumb to the disease within a few days while younger animals generally recover with clinical signs abating within 7-10 days.").

for COVID-19 (or another future pandemic[18]) and to stop the spread of COVID-19 across human and wild animal populations by including listing American mink and European mink on the Oregon Prohibited Species List. But the Department must act quickly.

Limiting and otherwise increasing monitoring related to the trade and farming of domestic mink will protect wild mink populations, help to protect human populations against further spread of COVID-19, and provide a cost-effective way of stopping future pandemics before they start. It could also help to protect other imperiled mustelids from risks related to the introduction and spread of disease from farmed mink populations into the wild, including Pacific fishers, (*Martes pennanti*), wolverines (*Gulo gulo*), and Humboldt martens (*Martes caurina humboldtensis*), all of which are categorized as Species of Greatest Conservation Need in the Oregon Conservation Strategy.[19] Additionally, wolverines are listed as a threatened species under the Oregon Endangered Species Act,[20] and the coastal distinct population segment of Humboldt martens are listed as a threatened species under the Federal Endangered Species Act.[21]

Granting Petitioner's request also provides important protections to other mustelid species native to Oregon, including ermines (*Mustela erminea*), long-tailed weasels (*Mustela frenata*), American badgers (*Taxidea taxus*), and river otters (*Lutra canadensis*).[22] Granting this action will further protect other animals that may come in to contact with potentially infected mustelids, including mink predators such as coyotes *(Canis latrans*), wolves (*Canis lupus*), bobcats (*Lynx rufus*), and various species of owls, hawks, and eagles, and mink prey species such as frogs, water birds, mice, rabbits, mice, and muskrats.

---

[18] Zoe Schlanger, *The Mink Pandemic is No Joke*, The Atlantic (Dec. 23, 2020), https://www.theatlantic.com/health/archive/2020/12/minks-pandemic/617476/ (explaining that "[r]espiratory viruses replicate so readily in minks and their mustelid relatives (ferrets, most notably) that the animals are often used to study human illnesses," and that "[f]armed mink have proved to provide absolutely excellent conditions for the virus to be fruitful and multiply. In addition to all of the ways mustelid physiology makes them similarly predisposed to the malady as humans, mink on farms are housed closely together. Social distancing is out of the question, and transmission is all but guaranteed").

[19] *See* Department, *The Oregon Conservation Strategy*, Chapter 6: Strategy Species (2016), https://oregonconservationstrategy.org/ocs-strategy-species/.

[20] Department, Threatened, Endangered, and Candidate Fish and Wildlife Species, https://www.dfw.state.or.us/wildlife/diversity/species/threatened_endangered_candidate_list.asp (last visited Jan. 14, 2021).

[21] U.S. Fish & Wildlife Service, Pacific Marten Coastal Population, https://www.fws.gov/Oregonfwo/articles.cfm?id=149489728 (last visited Jan. 14, 2021).

[22] Department, Weasels, Skunks, Badgers and Otters, https://myodfw.com/wildlife-viewing/species/weasels-skunks-badgers-and-otters (last visited Jan. 12, 2021).

2. The Continued Need for the Existing Rule

The objective of the Prohibited Species List is to "protect Oregon's native wildlife."[23] This regulation is backed by "the policy of the State of Oregon that wildlife shall be managed to prevent serious depletion of any indigenous species and to provide the optimum recreation and aesthetic benefits for present and future generations."[24] Petitioner's request to include American mink and European mink on the Prohibited Species List serves those purposes. Indeed, in granting Petitioner's requested action, the Department has a significant opportunity to protect wild mink populations and other wildlife by decreasing the likelihood of further zoonotic disease introduction and transmission from farmed mink, while also preventing future public health and conservation emergences.

Further, for the purpose of this petition and in furtherance of the objectives of OAR 635-056-0050, domestic American mink bred and raised for the purpose of commercial fur farming should be considered "nonnative."[25] First, numerous studies have found that because native populations can be negatively impacted by domesticated organisms through predation, resource competition, genetic disruption, and disease introduction, "[t]he overwhelming presence of domestic animals and their hybridization with mink in natural populations is of great concern for the future sustainability of wild mink populations."[26] Indeed, a 2009 study determined there to be at least "two avenues by which population declines of wild mink may be induced by the mink

[23] OAR 635-056-0000.
[24] ORS § 496.012.
[25] The status of the native wild American mink should remain unchanged. Wild American mink are native throughout the state of Oregon. Oregon Department of Fish & Wildlife, Weasels, Skunks, Badgers and Otters, https://myodfw.com/wildlife-viewing/species/weasels-skunks-badgers-and-otters (last visited Jan. 12, 2021) (identifying that "[i]n Oregon, the mink is found throughout the state and is associated with river, lake, pond, or marsh environments. They forage along overhanding banks, and in holes and crevices").
[26] Kidd, et al., *Hybridization Between Escaped Domestic and Wild American Mink (Neovison vison)*, 18 Molecular Ecology 1175, 1175 (2009); *see also* Morris, et al., *Functional Genetic Diversity of Domestic and Wild American Mink (Neovison Vison)*, 13 Evolutionary Applications 2610, 2610 (2020) ("We found evidence to suggest domestic release events are affecting the functional genetic diversity of wild mink."); Bowman, et al., *Assessing the Potential for Impacts by Feral Mink on Wild Mink in Canada*, 139 Biological Conservation 12, 12 (2007) ("Our analysis suggests that the conditions exist for feral mink to contribute to wild mink declines through outbreeding depression or the introduction of disease."); Bowman, et al., *Testing for Bias in a Sentinel Species: Contaminants in Free-Ranging Domestic, Wild, and Hybrid Mink*, 112 Environmental Research 77 (2012); Wilkins, et al., *The "Domestication Syndrome" in Mammals: A Unified Explanation Based on Neural Crest Cell Behavior and Genetics*, 197(3) Genetics 795 (2014).

escaping from mink farms:" 1) introgressive hybridization with domestic mink leading to the introduction of maladoptive genes (or disruption of locally adapted gene complexes) into wild mink populations, and 2) through the introduction of highly infectious, fatal diseases.[27] As these and other studies overwhelmingly find, the protection and preservation of Oregon's native American mink populations requires, in part, that they be kept separate from farmed domestic American mink populations. Petitioner proposes its requested action in furtherance of that goal.

Second, the significant physical, genetic, and other differences between wild American mink and domestic farmed American mink is not only clearly charted through countless scientific studies, but is also reenforced throughout Oregon law, which establishes a very different regulatory structure for commercially farmed domestic mink than it does for wild mink. For example, Department regulations specifically remove "domesticated fur-bearing . . . mink" from the definition of "species of wildlife that are protected . . . ."[28] This is because "domesticated fur-bearing animals," including mink, are defined through statute as "livestock," not wildlife.[29] As such, "[t]he breeding, raising, producing in captivity and marketing of . . . mink . . . is an agricultural pursuit."[30] Indeed, the law is clear that, "all such animals raised in captivity are domesticated fur-bearing animals . . . . not within the purview of the state game laws."[31] These animals should, therefore, be subject to inclusion on the Prohibited Species List.

3. The Complexity of the Existing Rule

The rule amendment requested by Petitioner is not complex. Amending the existing regulation to add two species of mink to the prohibited species list (the American mink and the European mink) will merely require adding those two species into the already existing framework previously established in the regulation and will not require the deletion or revision of any other language in that regulation.

[27] Kidd, et al., *Hybridization Between Escaped Domestic and Wild American Mink (Neovison vison)*, 18 Molecular Ecology 1175 (2009).
[28] OAR 635-044-0450(5)(c); 635-044-0400; 635-044-0440.
[29] ORS § 596.010(3).
[30] ORS § 596.020(2).
[31] *Id*.

ii. Options for Achieving the Existing Rule's Substantive Goals While Reducing the Negative Economic Impact on Businesses

The existing regulation includes language sufficient to protect any negative economic impacts on businesses that Petitioner's proposed amendment may implicate.[32] To reduce negative economic impacts on businesses from the proposed amendment, Petitioner requests that the protections those exemptions afford remain in place.

Specifically, the regulation presently includes as an exemption to the prohibitions contained in OAR 635-056-0050(1) (containing the list of prohibitions and prohibited species) that "[t]he department may issue a permit for the importation, possession, sale, purchase, exchange or intrastate transportation of prohibited species and those species not yet classified if the department finds that" six identified standards have been met.[33] Those standards are:

a. The facility is constructed to minimize escape of prohibited species;
b. There are adequate security and safety programs and procedures which minimize the possibility of escape;
c. There is adequate record keeping to aid in tracking of confined animals or recovery of escaped animals;
d. There are adequate procedures, equipment and trained staff to maximize capture of escaped animals;
e. Adequate veterinary care is provided to identify and minimize the spread of diseases; and
f. The applicant has a good reputation for care of animals and compliance with the wildlife laws.

Petitioner believes that these standards, if they are achievable for commercial mink farming operations, are essential for protecting against the spread of disease from the domestic mink farmed in these operations to wild mink populations. Indeed, Petitioner believes that these standards are important for establishing a necessary security structure that is not currently in place and that can confirm that businesses farming domestic mink for fur purposes are able to minimize the possibility of escape from these operations, meaningfully track and recover

[32] *See* OAR 635-056-0050(2).
[33] OAR 635-056-0050(2) (a)-(f).

escaped animals, and ensure necessary precautions are put into place to halt the spread of COVID-19 from farmed to wild mink populations.

Indeed, Petitioner believes that these common-sense protections will supply essential information on the number and frequency of farmed mink that escape into the wild—information that is not currently available to the state or interested stakeholders, such as the Center. To Petitioner's knowledge, there is currently no program in place requiring commercial mink farmers to monitor, record, and report escapes; proactively work to limit those escapes; maximize capture of escaped animals; certify that the animals are being provided with adequate veterinary care; and to otherwise show that the operation has a good reputation for care of animals and compliance with wildlife laws. Indeed, in light of the information currently available to Petitioner—which shows that of the one *reported* mink farming operation in Oregon that has experienced a COVID-19 outbreak and is under quarantine, at least three mink, included two infected mink, were able to escape into the wild[34]—it seems likely that a large number of farmed domestic mink likely do escape into the wild and can easily carry disease (such as SARS-CoV-2), maladoptive or disruptive genes, and other contaminants to wild populations. Accordingly, including mink on the Prohibited Species List and implementing the protections that accompany that listing will not only reduce the negative economic impact on commercial mink farming operations, but will also drastically increase the protections for Oregon's native mink and other wildlife populations.

iii. The Extent to Which the Existing Rule Overlaps, Duplicates, or Conflicts with other State or Federal Rules and With Local Government Regulations

The commercial mink farming industry is profoundly under-regulated and exempted from most major federal and state permit and licensure requirements.[35] As a result, an amendment to

[34] Douglas Perry, *Oregon Mink Trapped in Wild Tests Positive for Coronavirus, Raising Fears of "Mutant Viral Strain*," The Oregonian/OregonLive (Dec. 25, 2020), https://www.oregonlive.com/coronavirus/2020/12/oregon-mink-trapped-in-wild-tests-positive-for-coronavirus-raising-fears-of-mutant-viral-strain.html; ODA, *Tests at an Oregon Mink Farm Show SARS-CoV-2 Still Present with No Virus Mutations; Testing, Surveillance, and Trapping Continues*, News Release (Jan. 13, 2021), https://odanews.wpengine.com/tests-at-an-oregon-mink-farm-show-sars-cov-2-still-present-with-no-virus-mutations-testing-surveillance-and-trapping-continues/.

[35] *See, e.g.*, U.S. Dep't of Agric., Animal and Plant Health Inspection Service, Licensing and Registration of Commercial Animal Dealers, https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/ct_awa_regulated_businesses (last visited Jan. 11, 2021) (explaining that "purchases and sales of animals used only for the purposes of food or fiber

the state's Prohibited Species List to include American and European mink will not overlap, duplicate, or conflict with any other state or federal rules or local government regulations.

The only permitting program that is tangentially related to the Petitioner's requested action is ODA's permitting program for Confined Animal Feeding Operations (CAFO), which issues National Pollutant Discharge Elimination System (NPDES) permits—which are water quality permits—to only the largest commercial fur-bearing animal farming operations in the state.[36] However, the action requested by Petition will not duplicate or conflict with the state's CAFO permitting program for a number of reasons. First, not all commercial fur farming operations, including commercial mink-farming operations, are required to obtain a state-issued NPDES permit. Rather, to be included in the NPDES permitting program, the ODA must "designate" the operation as a CAFO, and thereafter require that the operation obtain a permit.[37] Such designations are generally based in part on the size of the operation, and only include a subset of the state's commercial mink farming operations (presently, the state has issued approximately 11 NPDES permits to fur-bearing CAFOs).[38] Second, even for the small subset of commercial mink operations that are required to obtain a NPDES permit, that permit requirement will not be duplicated or otherwise conflict with any additional permitting obligations that may arise as a result of inclusion of mink on the Prohibited Species List. Quite the opposite, inclusion of mink on the Prohibited Species List will trigger the additional, separate permit obligations detailed in OAR 635-056-0050(2) that are not otherwise required by a NPDES permit. Finally, Petitioner is aware of no further relevant permitting or licensing programs for commercial mink-farming operations that are not classified as CAFOs by the state. Indeed, Petitioner is not aware of any regulation or other requirement for the state to even tally the total number of smaller commercial mink-rearing facilities in Oregon. Therefore, amending the state's Prohibited

(including fur)" are exempt from licensure requirements); 7 U.S.C. § 2132(g) (exempting from the definition of "animal" under the Animal Welfare Act "farm animals . . . used or intended as good or fiber," including farmed fur-bearing animals).

[36] *See* Or. Dep't of Agric., Programs, Natural Resources, Confined Animal Feeding Operations (CAFO), https://www.oregon.gov/ODA/programs/NaturalResources/Pages/CAFO.aspx (last visited Jan. 11, 2021).

[37] *Id*. (explaining that classification of a fur-bearing animal farming operation as a CAFO is "designated by Director").

[38] George Plaven, *Additional Mink Test Positive for COVID-19 at Oregon Farm*, Capital Press (Jan. 13, 2021), https://www.capitalpress.com/state/oregon/additional-mink-test-positive-for-covid-19-at-oregon-farm/article_13b98668-55c5-11eb-b47d-47e56f78d923.html.

Species List to include American mink and European mink will not overlap, duplicate, or conflict with any other state or federal rules or local government regulations.

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Department act quickly by amending the state's Prohibited Species List (OAR 635-056-0050) to include American mink (*Mustela vison*) and European mink (*Mustela lutreola*). Given the ongoing risk of transmission of SARS-CoV-2 in farmed mink populations, the significant risk of infected farmed mink escaping into the wild and infecting wild mink populations, and growing concerns related to new, more contagious strains of COVID-19 being diagnosed across the country, such measures are necessary to protect the health of Oregonians and the state's wild mink populations.

Pursuant to ORS § 183.335, Petitioner looks forward to the Department's written response within 90 days of receipt of this petition concerning whether this petition presents substantial information to warrant the action requested, and whether the agency will initiate the requested rulemaking by issuing public notice.

Thank you for your time and attention to this petition.

Sincerely,

Hannah Connor, Senior Attorney
Center for Biological Diversity
P.O. Box 2155
St. Petersburg, FL 33731
hconnor@biologicaldiversity.org
(202) 681-1676

Lori Ann Burd, Environmental Health Director
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211
laburd@biologicaldiversity.org
(971) 717-6405

EXHIBIT A

November 6, 2020

VIA ELECTRONIC MAIL

Alexis Taylor
Director, Oregon Department of Agriculture
ataylor@oda.state.or.us

Issak Stapleton
Director of Food Safety and Animal Health, Oregon Department of Agriculture
istapleton@oda.state.or.us

Wym Matthews
Confined Animal Feeding Operation (CAFO) Program Manager, Oregon Department of Agriculture
wmatthews@oda.state.or.us

Patrick Allen
Director, Oregon Health Authority
OHA.DirectorsOffice@state.or.us

Cara Biddlecom
Interim Public Health Director, Oregon Health Authority
cara.m.biddlecom@dhsoha.state.or.us

Dear Oregon Department of Agriculture and Oregon Health Authority officials,

On behalf of the Center for Biological Diversity (Center) and our over 30,197 members and supporters in Oregon, we write to ask you to immediately conduct an investigation into COVID-19 outbreaks and potential zoonotic transmission at Oregon's 11 permitted mink confined animal feeding operations, as well as any other mink operations in the state. With reports of significant outbreaks amongst mink in the United States, and even more alarming, an outbreak of a mutant COVID-19 strain spreading from mink to humans in Denmark, we urge your prompt attention to this urgent public health threat.

The Center is a non-profit environmental organization that for thirty years has been dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center's Environmental Health Program aims to ensure that all species, humans included, are safe from dangerous pollution from an array of sources, including from industrial animal farming operations. Our Oregon-based office is located in Portland.

Earlier this week, Denmark announced that it will be killing all 15 million of the mink raised in the nation following confirmation from the Danish Health Minister that 12 people had been infected with a mutated strain of COVID-19 that was spreading from mink to humans.[1] The main reason that Denmark, which is the largest producer of mink skin and fur in the world, decided to take this drastic action was simple: the mutated strain could undermine the efficacy of a COVID-19 vaccine or even pose its own novel risks. About half of northern Denmark's 783 human COVID-19 cases are related to mink farming.

While there have, thankfully, been no confirmed cases of mutated COVID-19 in the United States, COVID-19 has hit mink production facilities in the United States as well. Since August, the U.S. Department of Agriculture has announced confirmed cases of COVID-19 in mink at nine Utah mink farms,[2] leading to an estimated 10,000 mink deaths.[3] In addition, at least 3,400 mink have died over the last month after contracting COVID-19 in Wisconsin.[4]

The risk of the same happening in Oregon is not merely theoretical, and the time to open a public investigation into COVID-19 at Oregon's mink operations is now. Indeed, as early as September, the Center for Infectious Disease Research and Policy at the University of Minnesota published a report on the emerging research about the zoonotic transmission of COVID-19 among human and nonhuman animals, and found that "new studies suggest that high proportions of cats and dogs may have acquired COVID-19 from their owners and that the virus jumped back and forth between humans and minks on farms in the Netherlands."[5] Specifically, a study of infections at 16 mink farms in the Netherlands determined that the virus could be spread bidirectionally between mink and humans. Ultimately, the researchers that conducted the study "conclude[d] that initially the virus was introduced from humans and has evolved on mink farms, most likely reflecting widespread circulation among mink in the first SARS-CoV-2 mink farms, several weeks prior to detection." SARS-CoV-2 is the virus that causes COVID-19.

---

[1] Associated Press, *Denmark Wants to Cull 15 Million Minks Over COVID-19 Fears*, AP News (Nov. 4, 2020), *available at* https://apnews.com/article/denmark-cull-15-million-minks-covid-19-37f57a303bbf738efca50918c35696de.

[2] U.S. Dep't of Agric., Confirmed Cases of SARS-CoV-2 in Animals in the United States (Oct. 14, 2020), *available at* https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/sa_one_health/sars-cov-2-animals-us.

[3] Wilson Wong, *Nearly 10,000 Minks Die After Covid-19 Outbreak at Utah Fur Farms*, NBC News (Oct. 9, 2020), *available at* https://www.nbcnews.com/news/us-news/thousands-minks-die-covid-19-utah-farms-n1242754.

[4] Hope Kirwan, *More than 3K Mink Reported Dead at WI Mink Farm from COVID*, Wisconsin State Farmer (Nov. 5, 2020), *available at* https://www.wisfarmer.com/story/news/2020/11/05/more-than-3-k-mink-reported-dead-wi-mink-farm-covid/6174646002/.

[5] Mary Van Beusekom, *COVID-19 Likely Spreading from People to Animals-And Vice Versa*, CIDRAP News (Sept. 18, 2020), *available at* https://www.cidrap.umn.edu/news-perspective/2020/09/covid-19-likely-spreading-people-animals-and-vice-versa; *see also* Oude Munnink BB, *et al*. (2020), Jumping back and forth: anthropozoonotic and zoonotic transmission of SARS-CoV-2 on mink farms, *bioRxiv*, doi: https://doi.org/10.1101/2020.09.01.277152, *available at* https://www.biorxiv.org/content/10.1101/2020.09.01.277152v1.

While this industry operates in secrecy, based on the best information available to us, there are 11 permitted confined animal feeding operations raising furbearing animals in Oregon. Based on a recent presentation by the Oregon Department of Agriculture, we believe all 11 of these permitted operations are mink-rearing facilities.[6] These facilities house approximately 438,327 animals. In addition, there are an unknown number of smaller facilities raising mink in the state. We do not wish to spread alarm; however, we are deeply concerned that these facilities could, knowingly or unknowingly, be contributing to the spread of COVID-19 in the state, or could even house or come to house new mutations of COVID-19, like the one discovered in Denmark.

We therefore strongly request that you immediately send inspectors to all mink-rearing facilities, starting with the ones containing the largest concentration of animals, to conduct an investigation and ensure that these facilities do not imperil public health. We further request that you promote public health and safety through transparency by making information about any cases of COVID-19 transmission on Oregon mink farms immediately available to the public.

In addition, if a public health threat is discovered and the animals must be killed, concerted attention must be focused on safe carcass disposal. Disposal of animal carcasses via unlined burial or on-site incineration can both pose additional public health threats.[7]

Thank you for your attention to this matter,

Lori Ann Burd
Environmental Health Director
Center for Biological Diversity
P.O. Box 11374, Portland, OR 97211
T: (971) 717-6405
E: laburd@biologicaldiversity.org

Hannah Connor
Senior Attorney
Center for Biological Diversity
P.O. Box 2155, St. Petersburg, FL 33713
T: (202) 681-1676
E: hconnor@biologicaldiversity.org

[6] *See* presentation by Wym Matthews at Clackamas Community College on the Oregon Department of Agriculture CAFO Program, at 11, *available at* https://www.clackamas.edu/docs/default-source/degrees-certificates/departments-programs/wet-orwef---stormwater---or-dept-of-ag-cafo-program.pdf?sfvrsn=8fb68d68_0.
[7] *See, e.g.,* Marchant-Forde JN and Boyle LA (2020), COVID-19 Effects on Livestock Production: A One Welfare Issue, *Front. Vet. Sci.* 7:585787, doi: 10.3389/fvets.2020.585787, *available at* https://www.frontiersin.org/articles/10.3389/fvets.2020.585787/full; Center for Biological Diversity, Emergency Petition for Rulemaking on Farm Animal Carcass Management During Animal Health Emergencies (2020), *available at* https://www.biologicaldiversity.org/programs/environmental_health/pdfs/2020-06-28-APHIS-Petition.pdf.

EXHIBIT B

CENTER for BIOLOGICAL DIVERSITY Because life is good.

December 1, 2020

VIA ELECTRONIC MAIL

The Honorable Kate Brown,
Governor
State of Oregon
Kate.brown@oregon.gov
Via: Amira.streeter@oregon.gov

Patrick Allen
Director
Oregon Health Authority
OHA.DirectorsOffice@state.or.us

Alexis Taylor
Director
Oregon Department of Agriculture
ataylor@oda.state.or.us

Issak Stapleton
Director of Food Safety and Animal Health
Oregon Department of Agriculture
istapleton@oda.state.or.us

Wym Matthews
CAFO Program Manager
Oregon Department of Agriculture
wmatthews@oda.state.or.us

Cara Biddlecom
Interim Public Health Director
Oregon Health Authority
cara.m.biddlecom@dhsoha.state.or.us

Dr. Ryan Scholz
State Veterinarian
Oregon Department of Agriculture
rscholz@oda.state.or.us

Dr. Emilio Debess
Public Health Veterinarian
Oregon Health Authority
Emilio.e.DeBess@state.or.us

Re: COVID-19 Outbreaks in Mink Farming Operations in Oregon

Dear Governor Brown and Officials from Oregon's Department of Agriculture and Health Authority,

We write on behalf of the Center for Biological Diversity (Center) and our over 30,197 members and supporters in Oregon. On November 6, 2020, as alarming outbreaks of SARS-CoV-2[1] were taking hold on mink farms across the United States and internationally, the Center wrote to your Agencies with a simple request: investigate the potential spread of COVID-19 at Oregon's permitted mink confined animal feeding operations and promote public health, transparency and safety by providing detailed information to the public about any instances of coronavirus transmission at Oregon's mink farms.[2]

As the Center maintained in that letter and continues to maintain, mink farming operations present a unique threat to fighting the coronavirus pandemic because of the ability of the virus to bidirectionally spread between mink and humans, because of the potential mutability of the virus under these

[1] SARS-CoV-2 is the animal virus linked to COVID-19 in humans.
[2] *See* Exhibit A.

circumstances to adapt in a way that could undermine attempts to develop an effective vaccine for COVID-19, and because, as the Centers for Disease Control and Prevention (CDC) and other health agencies have long held, the best way to protect against the spread of the virus is to avoid coming into contact with anyone or anything infected. For those potentially exposed, contact tracing—a key strategy for preventing further spread of COVID-19— means "[i]dentifying contacts and ensuring they do not interact with others," and requires "communication with the public" and that "[k]ey public officials . . . engage[] and support[] case investigation and contact tracing efforts."[3]

Yet on November 19, 2020, the Agencies responded dismissively to the Center's common-sense request, stating that instead of taking actions to affirmatively investigate and prevent the spread of the disease in Oregon's mink populations and farm workers, they were working with the industry by "proving information on biosecurity" and "develop[ing] collaborative disease response plans," and that specifically they were "not testing mink at this time."[4] In their response, the Agencies' further detailed a wait-and-see approach in which an outbreak would necessarily need to take hold before the Agencies implemented a *response* plan—which, to be clear, is quite different than the type of *preventative* plan originally requested by the Center.

On that *exact same day*, Oregon faced its first reported instance of mink experiencing symptoms of SARS-CoV-2.[5] Upon ODA taking representative samples from 10 of the approximately 12,000 mink on that one fur farming operation, all of them came back positive for the virus.[6] Despite the severity of the outbreak concern, it took state regulators four days from reporting to place the operation under quarantine and ask its workers to self-isolate.[7]

Despite these lags in testing, quarantine, and timing for the requested self-isolation, and the chilling fact that 100% of the animals tested at that facility were found to be positive for the virus, the Agencies, citing privacy concerns, have declined to even vaguely identify where the outbreak is taking place. The Agencies have further declined to revisit their position of passive response to outbreaks in this industry rather than proactive prevention. This is unacceptable.

As to the State's refusal to release any information regarding workers that may have been infected in this outbreak, we remind you that this is not the first instance of an outbreak of COVID-19 in a workplace in Oregon. Indeed, suspected workplace outbreaks of COVID-19 are required to be reported to the local public health authority per OAR 333-018-015, and according to publicly available data from the Oregon Health Authority (OHA), those instances have been significant.[8] Further, and perhaps

---

[3] Centers for Disease Control and Prevention, Principles of Contact Tracing, https://www.cdc.gov/coronavirus/2019-ncov/php/principles-contact-tracing.html (last updated Oct. 21, 2020).
[4] *See* Exhibit B.
[5] Tracy Loew, *An Oregon Mink Farm Has a COVID-19 Outbreak Among Animals and Workers*, Salem Statesman Journal (Nov. 27, 2020), https://www.statesmanjournal.com/story/news/local/coronavirus/2020/11/27/covid-19-confirmed-10-oregon-mink-farm-regon-department-agriculture/6441838002/.
[6] *Id*.
[7] *Id*.
[8] *See, e.g.*, KWG Staff, *Here are the 89 Active COVID-19 Workplace Outbreaks in Oregon*, KWG News (Nov. 25, 2020), https://www.kgw.com/article/news/health/coronavirus/dont-publish-here-are-the-89-active-covid-19-workplace-outbreaks-in-oregon/283-c7f75a88-bcb8-44d8-be6e-020eef6bd4c7; OHA, *OHA to Take on Role of Reporting of Large COVID-19 Workplace Outbreaks* (Mary 28, 2020), https://www.oregon.gov/oha/ERD/Pages/OHA-reporting-large-COVID-19-workplace-outbreaks.aspx.

more importantly, in many of these instances OHA has made available data on these outbreaks, including details such as the facility name, county, reporting date, total cases, and total deaths.[9] This information is widely disseminated, including in the *Oregonian* and other newspapers, allowing the public to take appropriate measures to determine if they may have come into contact with these facilities or any of their workers, and to quarantine and seek out testing to determine whether they are now infected with the virus, as necessary.

This type of information is essential to efforts to contain the spread of COVID-19. And yet, despite the unique and elevated threat of a COVID-19 outbreak at a mink farming operation to public health, the Agencies have elected to keep secret nearly all information regarding the most recent outbreak at one such operation. On the precipice of a vaccine arriving, what is the purpose of depriving doctors, members of the public, and public health officials of the information they need to protect themselves and to ensure that a form of the virus isn't being transmitted between human and mink that would undermine the efficacy of vaccination efforts? We can see none.

According to recent data, many of the currently reported Oregon workplace COVID-19 outbreaks are in Marion County, which is where 8 of Oregon's 11 confined animal feeding operations for fur-bearing animals are located and an unknown number of smaller mink farming operations may exist. Since the Agencies have yet to release any information regarding the location of the mink farming operation at the center of the current outbreak, it is unclear whether there is a connection between that outbreak and other workplace outbreaks, but this obviously must be investigated.[10] In the nightmare scenario of a mutated form of the virus being transmitted, contact tracers and other public health officials would desperately need information about whether the workers at the mink operation have been in contact with people involved in other workplace outbreaks.

The Agencies have further refused to release any information on how many workers on the mink farming operation in question have tested positive for COVID-19, or the condition of those workers. Oregon is choosing to keep this information secret by vaguely citing to privacy concerns, even though this information is available for other workplaces. The Agencies must release this information, or provide a rationale, based in law and not just a desire to protect a highly secretive industry, for its decision to treat these mink farming operations differently than other workplaces.

Regarding the State's refusal to release more information about the infected mink, again citing basic privacy concerns, the public has a right to information beyond that the 10 mink tested by ODA have tested positive for the virus and that they will be retested. Those mink are not subject to any privacy laws, and the release of basic knowledge about what is happening with their infections is a critical matter of public health and safety. Therefore, the Center reiterates its request that the Agencies make publicly available essential information on the outbreak of COVID-19 at this mink farming operation, including its name and location, total number of mink infected and their status, total number of workers infected and their status, and information regarding ongoing monitoring of this situation tailored to the specific threat—including potential virus mutation related to mink operations, not just agriculture operations generally. The Center further requests information on what has happened to the mink since the outbreak was discovered, including any uses of euthanasia, what types of euthanasia

[9] *Id.*
[10] *Id.*

have been employed, and the means with which the animal carcasses have been disposed.[11] Denmark has faced unique challenges in disposing of infected mink carcasses, and the public has a right to know how Oregon will handle this matter.

All these facts are basic things that must be released for this threat to public health to be addressed.

Thus, especially given that there have now been confirmed cases of SARS-CoV-2 in mink in Oregon, we strongly request that the Agencies' reconsider and change their approach for addressing COVID-19 at mink farming operations in Oregon from being responsive to reported outbreaks to preventing future outbreaks through investigation, testing of mink, and transparency with the public. As studies have demonstrated, mink can be asymptomatic carriers, and the virus can circulate in mink populations for several weeks prior to detection.[12] Waiting for the next outbreak to take place before acting could be too late for addressing and limiting the spread of the disease or, as the *Washington Post* frankly summarizes, "avoid[ing] Denmark's disaster."[13]

Finally, given the growing risk of this industry to public health and the environment, the Center also supports the growing call for Governor Kate Brown to impose an immediate quarantine of all mink farming operation in Oregon, halt breeding programs to arrest the expansion of animal hosts for the virus and coordinate with the U.S. Department of Agriculture to implement a government buy-out program for the state's mink farms.

Sincerely,

Lori Ann Burd
Environmental Health Director
Center for Biological Diversity
P.O. Box 11374, Portland, OR 97211

Hannah Connor
Senior Attorney
Center for Biological Diversity
P.O. Box 2155, St. Petersburg, FL 33713

[11] According to recent news reports, for example, after several thousand mink were euthanized in a "rushed cull" and buried in shallow mass graves in Denmark, the carcasses as they started to decompose rose to the surface of the graves. Jon Henley, *Culled Mink Rise from the Dead to Denmark's Horror*, The Guardian (Nov. 25, 2020), https://www.theguardian.com/world/2020/nov/25/culled-mink-rise-from-the-dead-denmark-coronavirus. As photos and videos of the emerging bodies began to find their way onto social media, Denmark all of a sudden found itself in the middle of a public relations nightmare as social media users began dubbing 2020 "the year of the zombie mutant killer mink." *Id*. Even further, as the Center noted with citation in its November 6 letter, "if a public health threat is discovered and the animals must be killed, concerted attention must be focused on safe carcass disposal. Disposal of animal carcasses via unlined burial or on-site incineration can both pose additional public health threats."

[12] Mary Van Beusekom, *COVID-19 Likely Spreading from People to Animals-And Vice Versa*, CIDRAP News (Sept. 18, 2020), *available at* https://www.cidrap.umn.edu/news-perspective/2020/09/covid-19-likely-spreading-people-animals-and-vice-versa ("We conclude that initially the virus was introduced from humans and has evolved on mink farms, most likely reflecting widespread circulation among mink in the first SARS-CoV-2 mink farms, several weeks prior to detection."); *see also* Oude Munnink BB, *et al*. (2020), Jumping back and forth: anthropozoonotic and zoonotic transmission of SARS-CoV-2 on mink farms, *bioRxiv*, doi: https://doi.org/10.1101/2020.09.01.277152, *available at* https://www.biorxiv.org/content/10.1101/2020.09.01.277152v1.

[13] Kim Bellware, Fourth State Confirms Mink Farm Coronavirus Outbreaks as U.S. Looks to Avoid Denmark's Disaster, Washington Post (Nov. 30, 2020), https://www.washingtonpost.com/science/2020/11/30/mink-coronavirus-oregon/.

T: (971) 717-6405
E: laburd@biologicaldiversity.org

T: 202-681-1676
E: hconnor@biologicaldiversity.org

EXHIBIT A

November 6, 2020

VIA ELECTRONIC MAIL

Alexis Taylor
Director, Oregon Department of Agriculture
ataylor@oda.state.or.us

Issak Stapleton
Director of Food Safety and Animal Health, Oregon Department of Agriculture
istapleton@oda.state.or.us

Wym Matthews
Confined Animal Feeding Operation (CAFO) Program Manager, Oregon Department of Agriculture
wmatthews@oda.state.or.us

Patrick Allen
Director, Oregon Health Authority
OHA.DirectorsOffice@state.or.us

Cara Biddlecom
Interim Public Health Director, Oregon Health Authority
cara.m.biddlecom@dhsoha.state.or.us

Dear Oregon Department of Agriculture and Oregon Health Authority officials,

On behalf of the Center for Biological Diversity (Center) and our over 30,197 members and supporters in Oregon, we write to ask you to immediately conduct an investigation into COVID-19 outbreaks and potential zoonotic transmission at Oregon's 11 permitted mink confined animal feeding operations, as well as any other mink operations in the state. With reports of significant outbreaks amongst mink in the United States, and even more alarming, an outbreak of a mutant COVID-19 strain spreading from mink to humans in Denmark, we urge your prompt attention to this urgent public health threat.

The Center is a non-profit environmental organization that for thirty years has been dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center's Environmental Health Program aims to ensure that all species, humans included, are safe from dangerous pollution from an array of sources, including from industrial animal farming operations. Our Oregon-based office is located in Portland.

Earlier this week, Denmark announced that it will be killing all 15 million of the mink raised in the nation following confirmation from the Danish Health Minister that 12 people had been infected with a mutated strain of COVID-19 that was spreading from mink to humans.[14] The main reason that Denmark, which is the largest producer of mink skin and fur in the world, decided to take this drastic action was simple: the mutated strain could undermine the efficacy of a COVID-19 vaccine or even pose its own novel risks. About half of norther Denmark's 783 human COVID-19 cases are related to mink farming.

While there have, thankfully, been no confirmed cases of mutated COVID-19 in the United States, COVID-19 has hit mink production facilities in the United States as well. Since August, the U.S. Department of Agriculture has announced confirmed cases of COVID-19 in mink at nine Utah mink farms,[15] leading to an estimated 10,000 mink deaths.[16] In addition, at least 3,400 mink have died over the last month after contracting COVID-19 in Wisconsin.[17]

The risk of the same happening in Oregon is not merely theoretical, and the time to open a public investigation into COVID-19 at Oregon's mink operations is now. Indeed, as early as September, the Center for Infectious Disease Research and Policy at the University of Minnesota published a report on the emerging research about the zoonotic transmission of COVID-19 among human and nonhuman animals, and found that "new studies suggest that high proportions of cats and dogs may have acquired COVID-19 from their owners and that the virus jumped back and forth between humans and minks on farms in the Netherlands."[18] Specifically, a study of infections at 16 mink farms in the Netherlands determined that the virus could be spread bidirectionally between mink and humans. Ultimately, the researchers that conducted the study "conclude[d] that initially the virus was introduced from humans and has evolved on mink farms, most likely reflecting widespread circulation among mink in the first SARS-CoV-2 mink farms, several weeks prior to detection." SARS-CoV-2 is the virus that causes COVID-19.

---

[14] Associated Press, *Denmark Wants to Cull 15 Million Minks Over COVID-19 Fears*, AP News (Nov. 4, 2020), *available at* https://apnews.com/article/denmark-cull-15-million-minks-covid-19-37f57a303bbf738efca50918c35696de.

[15] U.S. Dep't of Agric., Confirmed Cases of SARS-CoV-2 in Animals in the United States (Oct. 14, 2020), *available at* https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/sa_one_health/sars-cov-2-animals-us.

[16] Wilson Wong, *Nearly 10,000 Minks Die After Covid-19 Outbreak at Utah Fur Farms*, NBC News (Oct. 9, 2020), *available at* https://www.nbcnews.com/news/us-news/thousands-minks-die-covid-19-utah-farms-n1242754.

[17] Hope Kirwan, *More than 3K Mink Reported Dead at WI Mink Farm from COVID*, Wisconsin State Farmer (Nov. 5, 2020), *available at* https://www.wisfarmer.com/story/news/2020/11/05/more-than-3-k-mink-reported-dead-wi-mink-farm-covid/6174646002/.

[18] Mary Van Beusekom, *COVID-19 Likely Spreading from People to Animals-And Vice Versa*, CIDRAP News (Sept. 18, 2020), *available at* https://www.cidrap.umn.edu/news-perspective/2020/09/covid-19-likely-spreading-people-animals-and-vice-versa; *see also* Oude Munnink BB, *et al*. (2020), Jumping back and forth: anthropozoonotic and zoonotic transmission of SARS-CoV-2 on mink farms, *bioRxiv*, doi: https://doi.org/10.1101/2020.09.01.277152, *available at* https://www.biorxiv.org/content/10.1101/2020.09.01.277152v1.

While this industry operates in secrecy, based on the best information available to us, there are 11 permitted confined animal feeding operations (CAFO) raising furbearing animals in Oregon. Based on a recent presentation by the Oregon Department of Agriculture, we believe all 11 of these permitted operations are mink-rearing facilities.[19] These facilities house approximately 438,327 animals. In addition, there are an unknown number of smaller facilities raising mink in the state. We do not wish to spread alarm, however, we are deeply concerned that these facilities could, knowingly or unknowingly, be contributing to the spread of COVID-19 in the state, or could even house or come to house new mutations of COVID-19, like the one discovered in Denmark.

We therefore strongly request that you immediately send inspectors to all mink-rearing facilities, starting with the ones containing the largest concentration of animals, to conduct an investigation and ensure that these facilities do not imperil public health. We further request that you promote public health and safety through transparency by making any cases of COVID-19 transmission on Oregon mink farms immediately available to the public.

In addition, if a public health threat is discovered and the animals must be killed, concerted attention must be focused on safe carcass disposal. Disposal of animal carcasses via unlined burial or on-site incineration can both pose additional public health threats.[20]

Thank you for your attention to this matter,

Lori Ann Burd
Environmental Health Director
Center for Biological Diversity
P.O. Box 11374, Portland, OR 97211
T: (971) 717-6405
E: laburd@biologicaldiversity.org

Hannah Connor
Senior Attorney
Center for Biological Diversity
P.O. Box 2155, St. Petersburg, FL 33713
T: 202-681-1676
E: hconnor@biologicaldiversity.org

[19] *See* presentation by Wym Matthews at Clackamas Community College on the Oregon Department of Agriculture CAFO Program, at 11, *available at* https://www.clackamas.edu/docs/default-source/degrees-certificates/departments-programs/wet-orwef---stormwater---or-dept-of-ag-cafo-program.pdf?sfvrsn=8fb68d68_0.

[20] *See, e.g.*, Marchant-Forde JN and Boyle LA (2020), COVID-19 Effects on Livestock Production: A One Welfare Issue, *Front. Vet. Sci.* 7:585787, doi: 10.3389/fvets.2020.585787, *available at* https://www.frontiersin.org/articles/10.3389/fvets.2020.585787/full; Center for Biological Diversity, Petition to Emergency Petition for Rulemaking on Farm Animal Carcass Management During Animal Health Emergencies (2020), *available at* https://www.biologicaldiversity.org/programs/environmental_health/pdfs/2020-06-28-APHIS-Petition.pdf.

EXHIBIT B

From: Andrea Cantu-Schomus <acantuschomus@oda.state.or.us>
Sent: Thursday, November 19, 2020 4:53 PM
To: Lori Ann Burd <LABurd@biologicaldiversity.org>
Cc: Modie Jonathan N <JONATHAN.N.MODIE@dhsoha.state.or.us>
Subject: Letter

Dear Lori Ann Burd,

Thank you for contacting the Oregon Department of Agriculture (ODA) and the Oregon Health Authority (OHA) regarding your concerns for COVID-19 mutation and transmission in Oregon's mink production facilities. Our intention for this communication is to educate and inform the Center for Biodiversity about the actions Oregon is taking to protect all agricultural producers and farmworkers from COVID-19 exposure and illness. The response below is provided by Dr. Ryan Scholz, ODA state veterinarian, and Dr. Emilio Debess, OHA public health veterinarian.

You are correct in stating that there have been no confirmed cases of mutated COVID-19 in the United States. In addition, there have been no reports of symptoms consistent with SARS-CoV-2 (the virus which causes COVID-19 infection in people) in mink in Oregon. The SARS-CoV-2 virus in livestock and pets (dogs and cats) is a disease reportable to the state veterinarian. Guidelines provided by the Centers for Disease Control (CDC) recommend against testing for SARS-CoV-2 in mink unless there are consistent symptoms on a mink farm with a potential history of exposure. Because Oregon has not had any reports of consistent symptoms or mortalities, ODA is not testing mink at this time.

ODA and Dr. Scholz are engaged with the Oregon mink industry providing information on biosecurity, as well as specific steps to take in order to prevent the introduction of SARS-CoV-2 into mink farms. This outreach is ongoing. As the lead agency responsible for animal health and disease control in Oregon livestock, ODA has also been actively working with state and federal partners to prevent and prepare for detections of SARS-CoV-2 in Oregon livestock.

ODA is prepared to respond and investigate any reports of increased mortalities or other symptoms consistent with SARS-CoV-2 on Oregon mink farms. Response plans will include quarantine and appropriate testing of affected farms, epidemiologic investigation to determine any potential exposures to other farms, and management of any mortalities to ensure disposal is conducted in a manner that protects the public's health.

As the State Veterinarian and the State Animal Health Official for Oregon, Dr. Scholz is responsible for the prevention and control of reportable diseases in all livestock, including SARS-CoV-2. ODA and Dr. Scholz are working with all Oregon livestock industries to provide outreach on biosecurity measures to prevent the introduction of reportable diseases, provide

disease surveillance, and develop collaborative disease response plans for all reportable and foreign animal diseases.

While ODA is responsible for livestock, the Oregon Health Authority is responsible for creating guidelines and education for different communities (including agricultural workers) regarding the potential for COVID-19 infection in the workplace. OHA, along with the Public Health Veterinarian Dr. Debess, is very aware of the potential for bi-directional transmission—human to animal and vice-versa—and emphasizes the use of personal protective equipment and ensuring cleanliness in the workplace to workers and other staff.

In the case of agricultural workers, OHA is reaching out to facilities in the state to discuss their needs for keeping workers and their communities safe. OHA continues to work cooperatively with the industry and state and local agency partners toward this endeavor during the pandemic. Conducting case investigations and contact tracing is OHA's primary goal in public health. Reporting of human cases in such facilities will follow OHA guidelines that require reporting of workplace outbreaks involving five or more positive cases in a workplace with 30 or more staff.

Per OHA guidance for agricultural workers (including those working on a mink farm), new and incoming workers will be offered free COVID-19 tests to identify both symptomatic and asymptomatic cases. Based on the results, follow-up testing will be available to all staff in such facilities. ODA is supporting agricultural workers and the agricultural industry by providing free KN95 masks directly and through the Oregon State Extension service, distributing temporal thermometers and other necessary supplies. All of these activities are providing coordinated support for agricultural workers in these facilities and will aid in the identification of SARS-CoV-19 infections and contact tracing.

Through collaborative outreach on COVID-19 prevention, on-farm biosecurity, and ongoing disease surveillance activities, ODA and OHA are protecting the health of Oregonians and livestock (including mink) from reportable and foreign animal diseases, including SARS-CoV-2. Again, thank you for your interest on this issue and please feel free to share the information provided in this message with your members.

Sincerely,

Dr. Ryan Scholz, State Veterinarian, ODA

Dr. Emilio Debess, Public Health Veterinarian, OHA

Contact Information:

Andrea Cantu-Schomus

Communications, Oregon Department of Agriculture

acantuschomus@oda.state.or.us

503-881-9049

Jonathan Modie

Communications, Oregon Health Authority

Jonathan.n.modie@state.or.us

971-673-1102

Andrea Cantu-Schomus, Director of Communications
Oregon Department of Agriculture – Director's Office
635 Capitol St NE, Salem, OR 97301-2532
503.881.9049 | Oregon.gov/ODA | Pronouns she, her, hers

EXHIBIT C

Index to Exhibit C

(Petition to Initiate Rulemaking to Amend OAR 635-056-0050 to Add Mink to the Prohibited Species List)

1. Rosalind Jana, *Mink Farming and COVID-19: Here's Why Fashion Needs to Finally Say Goodbye to Fur*, Vogue (Nov. 13, 2020), https://www.vogue.com/article/mink-farming-covid-19-why-fashion-should-say-goodbye-to-fur
2. Ctrs. For Disease Control & Prevention, Zoonotic Diseases, https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html (last visited Jan. 12, 2021)
3. Özgün E. Can, et al., *Dealing in Deadly Pathogens: Taking Stock of the Legal Trade in Live Wildlife and Potential Risks to Human Health*, 17 Glob. Ecology & Conservation e00515 (2019)
4. Zoe Schlanger, *The Mink Pandemic is No Joke*, The Atlantic (Dec. 23, 2020), https://www.theatlantic.com/health/archive/2020/12/minks-pandemic/617476/
5. Mason, et al., *Frustrations of Fur-farmed Mink*, 410 Nature 35, DOI: 10.1038/35065157 (2001)
6. Hovland, et al., *Two's Company? Solitary Vixens' Motivations for Seeking Social Contact*, 135 Applied Animal Behavior Science 110, DOI: 10.1016/j.applanim.2011.10.005 (2011)
7. Svendsen, et al., *Novelty Exploration, Baseline Cortisol Level in Fur-chewing Mink with Different Intensities of Stereotypic Behavior*, 147 Applied Animal Behaviour Science 172, DOI: 10.1016/j.applanim.2013.05.011 (2013)
8. Hansen, S. & Damgaard, B., *Running in a Running Wheel Substitutes for Stereotypies in Mink (Mustela vison) but Does it Improve Their Welfare?*, 118 Applied Animal Behaviour Science 76, DOI: 10.1016/j.applanim.2009.02.025 (2009)
9. Braastad, *Effects of Prenatal Stress on Behaviour of Offspring of Laboratory and Farmed Mammals*, 61 Applied Animal Behaviour Science 159, DOI: 10.1016/S0168-1591(98)00188-9 (1998)
10. Oude Munnink, et al., *Transmission of SARS-CoV-2 on Mink Farms Between Humans and Mink and Back to Humans*, 371 *Science* 172, DOI: 10.1126/science.abe5901 (Jan. 8, 2021)
11. Tracy Loew, *An Oregon Mink Farm Has a COVID-19 Outbreak Among Animals and Workers*, Salem Statesman Journal (Nov. 27, 2020), https://www.statesmanjournal.com/story/news/local/coronavirus/2020/11/27/covid-19-confirmed-10-oregon-mink-farm-regon-department-agriculture/6441838002/
12. April Ehrlich, *Mink Infected with the Coronavirus Escapes Oregon Fur Farm*, Oregon Public Broadcasting (Dec. 29, 2020), https://www.opb.org/article/2020/12/29/coronavirus-mink-oregon/
13. ODA, *Tests at an Oregon Mink Farm Show SARS-CoV-2 Still Present with No Virus Mutations; Testing, Surveillance, and Trapping Continues*, News Release (Jan. 13, 2021), https://odanews.wpengine.com/tests-at-an-oregon-mink-farm-show-sars-cov-2-still-present-with-no-virus-mutations-testing-surveillance-and-trapping-continues/
14. Smriti Mallapaty, *COVID Mink Analysis Shows Mutations are Not Dangerous – Yet*, Nature (Nov. 16, 2020), https://www.nature.com/articles/d41586-020-03218-z
15. James Gorman, *How Mink, Like Humans, Were Slammed by the Coronavirus*, N.Y. Times (Dec. 23, 2020), https://www.nytimes.com/2020/12/23/science/covid-mink-animals.html
16. Adam Lauring & Emma Hodcroft, *Genetic Variants of SARS-CoV-2—What do They Mean?*, DAMA (Jan. 6, 2021), https://jamanetwork.com/journals/jama/fullarticle/2775006
17. Holly Ellyatt, *Coronavirus Mutations: Here are the Major COVID Strains We Know About*, CNBC (Jan. 12, 2021), https://www.cnbc.com/2021/01/12/covid-mutations-all-the-major-strains-we-know-about.html

18. Wiener & Wilkinson, *Deciphering the Genetic Basis of Animal Domestication*, 278(1722) Proc. Biol. Sci. 3161 (2011)
19. Karimi, et al., *Opportunities for Genomic Selection in American Mink: A Simulation Study*, 14(3) PLoS One e0213873 (2019)
20. Kidd, et al., *Hybridization Between Escaped Domestic and Wild American Mink (Neovison vison)*, 18 Molecular Ecology 1175 (2009)
21. Fur Commission USA, Fact Sheet on Coronavirus Cases on US Mink Farms (Nov. 27, 2020), http://furcommission.com/wp-content/uploads/2020/11/FCUSA-Covid-White-Paper-Nov27.pdf
22. Department, *The Oregon Conservation Strategy*, Chapter 6: Strategy Species (2016)
23. Department, Threatened, Endangered, and Candidate Fish and Wildlife Species, https://www.dfw.state.or.us/wildlife/diversity/species/threatened_endangered_candidate_list.asp (last visited Jan. 14, 2021)
24. U.S. Fish & Wildlife Service, Pacific Marten Coastal Population, https://www.fws.gov/Oregonfwo/articles.cfm?id=149489728 (last visited Jan. 14, 2021)
25. Department, Weasels, Skunks, Badgers and Otters, https://myodfw.com/wildlife-viewing/species/weasels-skunks-badgers-and-otters (last visited Jan. 12, 2021).
26. Oregon Department of Fish & Wildlife, Weasels, Skunks, Badgers and Otters, https://myodfw.com/wildlife-viewing/species/weasels-skunks-badgers-and-otters (last visited Jan. 12, 2021)
27. Morris, et al., *Functional Genetic Diversity of Domestic and Wild American Mink (Neovison Vison)*, 13 Evolutionary Applications 2610, 2610 (2020)
28. Bowman, et al., *Assessing the Potential for Impacts by Feral Mink on Wild Mink in Canada*, 139 Biological Conservation 12, 12 (2007)
29. Bowman, et al., *Testing for Bias in a Sentinel Species: Contaminants in Free-Ranging Domestic, Wild, and Hybrid Mink*, 112 Environmental Research 77 (2012)
30. Wilkins, et al., *The "Domestication Syndrome" in Mammals: A Unified Explanation Based on Neural Crest Cell Behavior and Genetics*, 197(3) Genetics 795 (2014)
31. Douglas Perry, *Oregon Mink Trapped in Wild Tests Positive for Coronavirus, Raising Fears of "Mutant Viral Strain*," The Oregonian/OregonLive (Dec. 25, 2020), https://www.oregonlive.com/coronavirus/2020/12/oregon-mink-trapped-in-wild-tests-positive-for-coronavirus-raising-fears-of-mutant-viral-strain.html
32. U.S. Dep't of Agric., Animal and Plant Health Inspection Service, Licensing and Registration of Commercial Animal Dealers, https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/ct_awa_regulated_businesses (last visited Jan. 11, 2021)
33. Or. Dep't of Agric., Programs, Natural Resources, Confined Animal Feeding Operations (CAFO), https://www.oregon.gov/ODA/programs/NaturalResources/Pages/CAFO.aspx (last visited Jan. 11, 2021)
34. George Plaven, *Additional Mink Test Positive for COVID-19 at Oregon Farm*, Capital Press (Jan. 13, 2021), https://www.capitalpress.com/state/oregon/additional-mink-test-positive-for-covid-19-at-oregon-farm/article_13b98668-55c5-11eb-b47d-47e56f78d923.html