



THE HUMANE SOCIETY
OF THE UNITED STATES



HUMANE SOCIETY
INTERNATIONAL

To: Honorable Chair Rhoads and Committee Members
House Judiciary Committee

From: Inga Gibson, Hawaii State Director, The Humane Society of the United States-Humane Society International, PO Box 891131, Honolulu, HI 96830, igibson@humanesociety.org

RE: S.C.R. 149 S.D1 /S.R. 108: In Support - Relating to the Buying and Selling of Ivory

On behalf of The Humane Society of the United States' members and supporters across Hawaii and The HSUS's international arm, Humane Society International (HSI), we urge your support for S.C.R 149/S.R. 108.

African elephants are very seriously threatened by poaching to supply the illegal ivory trade. Elephant poaching in Africa has escalated in recent years with *tens of thousands of elephants poached each year*. Numerous high-volume seizures of ivory tusks, destined for Asia, have occurred in recent years, illustrating both the large number of elephants poached for the illicit trade, as well as the trade routes from Africa to Asia, principally China. Once tusks reach China, they are carved into ivory trinkets—statues, jewelry, and the like—which are illegally traded internationally and offered for sale worldwide, including in the United States.

Since 1990 the international trade in African elephant ivory has been illegal under the United Nations' Convention on International Trade in Endangered Species (CITES). Making this trade illegal was an important step to making it more difficult for elephant poachers to launder ivory from poached elephants into the legal ivory trade. In the decade before this ban, over half of Africa's elephants were poached to supply the illegal ivory trade. In the decade after the ban, poaching declined and many populations stabilized or even increased. However, southern African countries never agreed with the ban and wanted to keep trading ivory. Over the course of the next decade, CITES twice allowed these countries to sell ivory to Japan and China under highly controlled circumstances. This was a dire mistake as it stimulated market demand for ivory in those countries, which stimulated poaching of elephants for their ivory which was funneled into the legal trade in these countries. *The only way to stop elephant poaching is to kill market demand once and for all.*

In March 2007, the results of an investigative report into the ivory trade in the United States, which was sponsored by The Humane Society of the United States/Humane Society International (HSUS/HSI), were released¹. This report concluded that *the United States is the world's second largest ivory market place*. Investigators found thousands of ivory retail markets in 16 American cities that they visited in 2006 and 2007. More than 24,000 ivory objects were found for sale, almost half of them in New York City alone. *Other top cities included Los Angeles, San Francisco and Honolulu*. Most ivory objects for sale were jewelry or small carved figures, an estimated one-third of which were carved and imported illegally from China in the past 18 years (during which the international trade in elephant ivory was banned).

This report confirmed the findings of a 2002 HSUS reportⁱⁱ, the first of its kind, which examined the U.S. ivory trade and demonstrated that ivory marketers use false labeling to take advantage of loopholes in U.S. laws and regulations.

In the United States, CITES is implemented through the Endangered Species Act (ESA) which makes it generally illegal to import ivory into the U.S. However, there are exceptions to this rule. Generally, any ivory possessed prior to July 1, 1975 is “pre-Convention” and can be traded internationally for commercial purposes. Sport-hunted elephant trophies can be exported and imported but not for commercial purposes.

In addition to implementing CITES rules, the ESA also has its own rules governing international trade as well as domestic trade. Under the ESA, the Asian elephant is listed as “endangered” and the African elephant as “threatened”. This means that, in general, it is illegal to import, export or sell Asian elephant ivory on the domestic U.S. market. However, African elephant ivory legally imported to the United States prior to 20 January 1990 (when the 1989 CITES ivory trade ban became effective) may be sold on the domestic market. Furthermore, import, export and sale of ivory that is “antique” (more than 100 years old) are allowed provided that there is documentation showing the age of the ivory.

The other U.S. law of relevance is the African Elephant Conservation Act, which banned the importation of raw and worked ivory on 9 June 1989. The ban does not include sport-hunted elephant trophies.

The many exceptions in U.S. law with regard to ivory trade create confusion among the public as well as those who trade in ivory. The problems with proving the legality of ivory items for sale was clearly stated by a member of the International Ivory Society who is also a member of the International Society of Appraisers and a past president of the Oriental Art Society of Chicago: “...as a dealer in ivory products, I am not sure how I would respond to a customer who asked for a written statement from the seller that clearly states the ivory sold is not restricted. Anything I give the customer would have no legal standing (except to possibly embarrass me in the future), and I have no authority to issue any paperwork with legal standing on ivory issues. Most collectors and dealers of ivory with whom I have talked believe that they have acquired all of their ivory legally, but would be hard pressed to prove it with the necessary paperwork.”ⁱⁱⁱ

Even wildlife forensics experts have difficulty determining whether or not ivory qualifies for one of the many ivory trade exemptions under U.S. federal laws. Ivory is a term that can refer to the tusks of Asian or African elephants, or the tusks of extinct mammoths (dug up from the frozen tundra of Siberia or Alaska), or, to a much lesser extent, the teeth of hippos, walrus, sperm whale, narwhal, warthog or boar. Only experts, using special equipment, can sometimes tell the difference between Asian and African elephant tusks, or between elephant and mammoth tusks. Even then, it is not always possible to tell the difference between ivories of these closely related species. The fact that ivory carvings can be made from other mammals, including extinct ones that are not regulated by international or domestic law, offers an easy means for smugglers to get around legal requirements by simply claiming elephant ivory carvings to be those of another species.

An example of the problems that can arise is demonstrated by a U.S. Fish and Wildlife Service (USFWS) seizure of ivory carvings being imported from Hong Kong^{iv}. The subject was importing 56 ivory carvings (mainly “netsukes” which are small ivory carvings of animals or people) in his baggage, and told the Wildlife Inspector that they were all mammoth ivory and did not require a permit. He had receipts from Hong Kong shops where he had purchased the items, stating that they were “mammoth tusk carvings”. The carvings were sent to the USFWS National Fish and Wildlife Forensics Laboratory to be tested. Out of the 55 carvings tested, ten were made from ivory from African or Asian elephants (these items were seized), while another 6 carvings were made from extinct elephant ivory from mammoths or mastodons. However, the majority of the carvings could not be determined with accuracy to be either elephant ivory or the ivory from mammoths. In fact, 29 carvings were made from “elephant ivory of an indeterminate source”. Furthermore, ten of the carvings were found to be “carvings made from dentine (ivory) of an indeterminate source”, presumably meaning that it could not be determined even which type of animal the ivory originated from. If one of the most advanced wildlife forensics laboratories in the world has difficulty distinguishing between ivories, and thus between potentially legal or illegal items, it is almost impossible to expect the average ivory buyer to be able to do so. *The only logical conclusion, therefore, is that ivory trade must be stopped in order to halt the escalating number of elephants poached to supply the trade.*

Although by far the largest market and demand for elephant ivory appears to be in Asia, particularly China, the United States is also a large market for worked ivory. Before the international ivory trade ban imposed by CITES in 1990, the United States was one of world’s leading consumers of ivory. The United States was never fully weaned from the ivory trade. There is the highly lucrative market for “antique” ivory objects, such as carvings—some worth millions of dollars each—that are imported legally, mainly from Europe, and traded domestically in the high-end art market. There is also a market in relatively less expensive, non-antique Asian-style carvings, including the very popular small carvings of animals or people known as netsuke; the supply for this market appears to rely, at least in part, on illegal imports of ivory from Hong Kong that was carved in China.

While it may be possible, in theory, to have a regulated domestic trade in ivory objects, it is impossible in practice. This is because those involved in the ivory trade know how to circumvent laws, as was demonstrated by the results of this investigation. It is legal to import and sell “antique” Asian or African ivory and shopkeepers routinely offered to prepare fraudulent documents for HSUS investigators about the age of ivory they were offering for sale. It is clearly illegal to sell the tusks of sport-hunted elephants imported after 1990 yet tusk buyers offered to buy such tusks from HSUS investigators. It is clearly illegal to import ivory to the United States without proper permits, yet HSUS investigators were advised by those in the ivory trade about how to do so. It is legal to sell mammoth ivory, which is an unregulated substance, so shopkeepers selling elephant ivory are willing to prepare fraudulent documents that the ivory is mammoth ivory and not elephant.

Finally, some jurisdictions within the United States have laws that can affect the legality of the sale of ivory. For example, in the state of California it is unlawful to import elephants or their parts and products for commercial purposes, or to possess with intent to sell, or to sell within the

state such items. *Similar state laws, ideally those with clear possession prohibitions (and a rebuttable presumption burden) are necessary to close Federal law loopholes.*

The HSUS/HSI supports S.C.R. 149/S.R. 108 because, if enacted, it would bring public attention to this important issue which is a vital step toward reducing the ivory trade in order to protect elephants.

Thank you for this opportunity to provide testimony.

ⁱ Martin, E.B. and D. Stiles. 2008. *Ivory Markets in the USA*. Care for the Wild International and Save the Elephants. London.
<http://www.savetheelephants.org/files/pdf/publications/2008%20Martin%20&%20Stiles%20Ivory%20Markets%20in%20the%20USA.pdf>

ⁱⁱ The Humane Society of the United States. 2002. *An Investigation of Ivory Markets in the United States*. Washington, DC. http://www.humanesociety.org/assets/pdfs/Ivory_Trade_Report.pdf

ⁱⁱⁱ Norman Sandfield, *IIS Newsletter* 2002-45.

^{iv} Details from a USFWS Import / Export Declaration form obtained under the Freedom of Information Act.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
WILLIAM J. AILA, JR.
Chairperson

LATE

Before the House Committee on
JUDICIARY

Tuesday, April 23, 2013
10:30 AM
State Capitol, Conference Room 325

In consideration of
SENATE CONCURRENT RESOLUTION 149, SENATE DRAFT 1
URGING HAWAII RESIDENTS AND BUSINESSES TO COMPLY WITH THE
CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF
WILD FAUNA AND FLORA AND NOT TO BUY OR SELL IVORY OF UNKNOWN
ORIGIN THAT MAY HAVE BEEN ILLEGALLY SMUGGLED INTO THE STATE

Senate Concurrent Resolution 149, Senate Draft1 urges Hawaii residents and businesses to comply with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and not to buy or sell ivory of unknown origin that may have been illegally smuggled into the state. **The Department of Land and Natural Resources (DLNR) supports this resolution.**

DLNR supports compliance with CITES as it relates to the ban on the sale of ivory products in the State and the contribution this ban will have on protecting African elephants and rhinoceroses from extinction. The United States instituted the Code of Federal Regulations (CFR) Title 50 § 23 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to regulate international trade in wildlife and plants, including parts, products and derivatives, to ensure trade is legal and does not threaten the survival of the species. In addition to elephants and rhinoceroses, ivory comes from whale teeth, walruses, hippopotami, warthogs, mastodons, and mammoths. Many of these animals are listed under the United States Endangered Species Act (ESA), including the African elephant, the Asian elephant, the northern white rhinoceros, the Sumatran rhinoceros, the black rhinoceros, the Javan rhinoceros, and the great Indian rhinoceros. Whales and walruses are protected under the Marine Mammal Protection Act, and some species are also listed or are proposed for listing under the ESA. In June 1989, the United States banned the import of all worked and raw ivory.

While these protections exist, it is legal to sell jewelry and antiques, if it was imported before the 1989 ban or if the ivory is at least one hundred years old at the time of import. Urging residents

and businesses in Hawaii to not buy or sell ivory of unknown origin will contribute to protecting all species in the ivory trade.

Hearing of SENATE CONCURRENT RESOLUTION 149
Tuesday 23 April 2013, 10:30am, Room 229

LATE

21 April 2013

Dear Rep. Rhoads, Rep. Har and the Judiciary Committee:

Please accept the following testimony for SCR 149 from an individual scientist specializing in protected species and also ivory issues.

For the last five years, I have served as a research scientist at the Pacific Islands Fisheries Science Center here in Honolulu focused on improving the plight of the Hawaiian monk seal. However, this January (2013) I left NOAA to work on issues surrounding the illicit ivory trade for “Save the Elephants”, a Kenyan organization. Indeed, I will be departing Hawaii this May (2013) for Kenya. My new position has allowed me to work once again with the African elephant—the animal that I had the opportunity to spend countless hours observing in the wild for my doctoral research between 2001-2008. I researched the long term impacts of poaching on surviving elephants then and discovered that there are long-lasting negative behavioral and physiological consequences for this highly social species when elephant families are devastated by poachers.

I commend you for prioritizing Senate Concurrent Resolution SCR 149/SR 108 that urges Hawaii residents and businesses to comply with CITES and not trade in ivory of unknown origin that may have been smuggled into the state. Raising awareness here in Hawaii and requiring compliance in all States is needed if the situation for the elephant is to improve. I just returned from the CITES CoP16 in Bangkok and I am very versed in the full extent of the damage that the reckless and rampant illegal trade in ivory is causing to elephant populations, African ecosystems, rangers and their families, as well as African economies.

Over 38 tons of illegal ivory was reported seized in 2011 globally; the tonnage for 2012 has yet to be finalized but looks to be even worse. Seizures likely only catch 10-20% of the underground trade; this means 25,000-40,000 elephants are being killed each year to supply the unfettered, unregulated and merciless trade. This translates in an annual offtake that is unsustainable and will lead to local extinctions in the coming years if it continues.

Most of the illegal trade appears to be occurring in China and Thailand, but it also occurs in the USA. Indeed, I myself, detected illegal ivory on sale at a stall in Honolulu’s China town New Year’s celebration this February (see attached picture). Generally-speaking, an immense amount of trade in illicit ivory is occurring via the internet; I myself, have posed as a buyer from Honolulu inquiring about purchasing ivory products and having them shipped to Hawaii to a few ivory selling sites online. I was told that it is no problem. One was a Chinese-based company and one an auction/collector’s site out of Las Vegas.

This means that illegal ivory is here and more can easily come -- Hawaii is not immune to this scourge. Large shipping containers of tusks will likely not be seized here but transport of the contraband in personal luggage or in the mail is entirely possible. Vigilance, especially by Customs, and compliance is needed here in our State. I urge Senators to go beyond the current SCR 149 and to take bolder action, such as to commission a review of illegal ivory sales touching our State in local markets and on the internet and reviewing and updating the laws and penalties for dealing in illegal ivory here.

Customs agents too can be mobilized to better screen for illegal wildlife products. Public awareness campaigns can be part of the solution as well; many of my friends and neighbors here in Hawaii did not realize that ivory carvings only come from dead elephants (tusks cannot be harvested from live elephants). Lastly, direct engagement with Chinese and Thai counterparts on the issue in order to affect the needed change in consumer behavior can be a goal of each Congressman and woman listening to this testimony today.

The volume of illegal ivory may not be large in Hawaii, but it is nonetheless important-- Hawaii has the opportunity to serve as a model on this issue for other states by taking extra measures and precautions to remain in CITES compliance. Thank you again for giving this issue time and attention now, when it is most needed for elephants.

Sincerely,

Kathleen S. Gobush, PhD
Strategist & Research Scientist
Save the Elephants
Honolulu, Hawaii

Please see photo next page- illegal ivory carvings on sale in Honolulu's Chinatown. The vendor admitted not knowing the origin when asked. The carvings are small but represent a dead individual elephant. February 2013.

