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GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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FORESTRY AND WILDLIFE
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the Senate Committee on
JUDICIARY AND LABOR

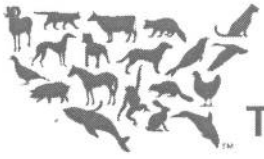
Wednesday, April 10, 2013
10:00 AM
State Capitol, Conference Room 016

In consideration of
SENATE CONCURRENT RESOLUTION 149, SENATE DRAFT 1/
SENATE RESOLUTION 108, 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 Draft 1/Senate Resolution 108, Senate Draft 1 urge 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 these resolutions.**

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.



THE HUMANE SOCIETY
OF THE UNITED STATES



HUMANE SOCIETY
INTERNATIONAL

To: Honorable Chair Hee and Committee Members
Senate 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.

hee2 - Kathleen

From: mailinglist@capitol.hawaii.gov
Sent: Monday, April 08, 2013 3:11 AM
To: JDLTestimony
Cc: dmelloj@hawaii.edu
Subject: *Submitted testimony for SCR149 on Apr 10, 2013 10:00AM*

SCR149

Submitted on: 4/8/2013

Testimony for JDL on Apr 10, 2013 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Jared Dmello	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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