

Memorandum in Support

COMMITTEE ON ANIMALS AND THE LAW

Animals # _____

April _____, 2019

S. 1486
A. 1111-A

By: Senator Hoylman
By: M. of A. L. Rosenthal
Senate Committee: Environmental Conservation
Assembly Committee: Environmental Conservation
Effective Date: Immediately

AN ACT to amend the Environmental Conservation Law, in relation to prohibiting the sale, trade or bartering or possession with intent to sell, trade or barter of certain wild animals or wild animal products and the penalties imposed therefor.

LAW & SECTION REFERRED TO: Sections §§11-0536, 71-0924 & 71-0927 of the Environmental Conservation Law.

THE COMMITTEE ON ANIMALS AND THE LAW **SUPPORTS THIS LEGISLATION**

Section one of the bill would amend the Environmental Conservation Law Section 11-0536, Subdivision 1, by adding the words "traded," "bartered," and "possessed with intent to sell, trade, or barter" to the prohibited acts already proscribed by the statute, and adding giraffes (*Giraffa Camelopardalis*) as a protected species. Additionally, this section is amended to provide more comprehensive protection for all rhinoceros by replacing the current language naming only two rhinoceros subspecies, Sumatran Rhinoceros (*Dicerorhinus sumatrensis*) and Black Rhinoceros (*Dicero bicornis*), with the more comprehensive species name Rhinoceros (*Rhinocerotidae*), which will include all subspecies.

Section 2 would amend Environmental Conservation Law Section 71-0924 by adding a new Subdivision (e), which would provide that violations of Environmental Conservation Law Section 11-0536, prohibiting the sale of certain wild animals or wild animal parts, would be classified as a Class D felony under the Penal Law when the value of wildlife or parts thereof exceeds twenty-five thousand dollars. In addition to other fines or penalties, the new subdivision (e) imposes a mandatory fine of either twenty thousand dollars or up to twice the fair market value of the wildlife, or parts thereof, whichever is greater.

For species threatened with extinction, each animal killed for their parts, for display, for consumption, medicinal purposes or otherwise means one more step towards extinction. Unlike other commodities, wildlife does not reproduce on demand and their reproductive success is sensitive to environmental and other factors that cannot be manipulated at will. For giraffes, the reality is devastating, as poaching for bushmeat, excessive sport hunting and public demand for

giraffe trophies, trinkets, jewelry and clothing over the past 30 years has led to a 40% decline in population.¹

Unfortunately, giraffes are virtually unprotected under international, federal or state law, although the excessive rate of decline has garnered the concern of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).² At their May 2019 meeting, this consortium of 183 member nations, united to mitigate the threat of extinction for species subject to trade, will consider adopting limited restrictions on excessive commercial trade of giraffe species. Even if approved, it is unknown whether the recommendation will yield positive results or in what time frame.³

A 2018 investigation of online and U.S. retail markets conducted by the Humane Society of the United States (HSUS) revealed that the United States is a major destination for commercialized giraffe products and parts, primarily bone, hide, tails and trophies.⁴ Between 2006 and 2015, over 40,000 giraffe parts, the rough equivalent of 4000 giraffes, were introduced into U.S. markets primarily for commercial purposes. Alarming, despite the population decline, the lack of protections and the unregulated thriving market portends inevitable extinction for this species.⁵ That reality is confirmed by the International Union for the Conservation of Nature (IUCN), the recognized global authority on the status of the natural world's announcement last year that the Kordofan and Nubian giraffes subspecies are now extinct, due largely to habitat loss and international exploitation.⁶ With only 100,000 giraffes remaining in the wild, it is chilling to consider that one out of every 25 of those giraffes ends up in the U.S. as some form of home décor, rugs or jewelry.⁷

Of critical concern, New York State was identified by the HSUS as a leading source of commercial activity related to giraffe products in the United States. Despite New York's demonstrated commitment to protecting wildlife threatened with extinction, clearly expressed in the endangered species protections found in ECL Title 5, there are currently no protections or restrictions upon the commercialization of giraffe body parts. The proposed legislation would add giraffes under the protective umbrella of Section 11-0536, and would help eliminate activities

¹ Center for Biological Diversity, et al. (2017, April 18). "Petition to the U.S. Fish and Wildlife Service to list the Giraffe (*Giraffa Camelopardalis*) under the Endangered Species Act," pp1-126, available at:

<https://ecos.fws.gov/docs/petitions/92212/912.pdf> (along with the Center for Biological Diversity, other organizations involved in authoring the petition include the Humane Society International, the Humane Society of the United States, the International Fund for Animal Welfare and the Natural Resources Defense Council)

² 27 UST 1087; TIAS 8249; 993 UNTS 243

³ The proposals request that *Giraffa Camelopardalis* be listed as a CITES Appendix II species, which would require countries exporting giraffe or giraffe parts or products to establish oversight mechanisms to ensure that the specimen or product was legally obtained, and export will not threaten the species' survival

⁴ HSUS, HSI and partners sue U.S. over failure to protect giraffes (2018),

<https://blog.humanesociety.org/2018/12/hsus-hsi-and-partners-sue-u-s-over-failure-to-protect-giraffes.html>

⁵ 2018 HSUS study: www.hsi.org/wp-content/uploads/assets/pdfs/giraffe-report-HSI-HSUS-082318.pdf

⁶ IUCN 2019. The IUCN Red List of Threatened Species. Version 2019-1. <http://www.iucnredlist.org>. downloaded on 17 April 2019

⁷ Center for Biological Diversity, et al. (2017, April 18). "Petition to the U.S. Fish and Wildlife Service to list the Giraffe (*Giraffa Camelopardalis*) under the Endangered Species Act," pp 1-126, available at:

<https://ecos.fws.gov/docs/petitions/92212/912.pdf>

in New York that pose a looming threat to the survival of this iconic species, while serving as a role model for other states.

Like the giraffes, all subspecies of rhinoceros are critically threatened in the wild. Consequently, the proposed amendment to create a more comprehensive protection of all rhinoceros, instead of only the two subspecies currently included in the ECL, is imperative. In 1900, over a million rhinoceros roamed the earth. Today, less than 3% remain in the wild. According to the International Rhino Foundation, of the 30,000 rhinoceroses existing in wild habitats, all five subspecies are being decimated by poaching and habitat loss and the subsequent reduction of critical genetic diversity.⁸ The impact of this population decline is far from simply an academic estimate. In 2011, a sub-species of the Javan rhino was declared extinct, and in 2018 the world lost the last male Northern White Rhino, rendering the species extinct once the remaining two captive female Northern White females die.

Unlike giraffes, commercial trade in rhinoceros and rhino parts is subject to various restrictions under federal law, including the U.S. Endangered Species Act (16 U.S.C. §1531 et seq.), the Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5306, et seq.), and under CITES. In 2014, New York amended the Environmental Conservation Law to include a new section 11-0535-a, making the sale, purchase, trade, barter or distribution of ivory articles or rhinoceros horns illegal -- subject to limited exceptions. Recognizing the difficulties associated with distinguishing the various subspecies, the NYS Department of Environmental Conservation developed guidelines in 2018 stating that the restrictions imposed by ECL Section 11-0535-a apply to all rhinoceros, not just to the two subspecies cited in the law.⁹ By amending Section 11-0536 to include all rhinoceros and remove the specific references to the two subspecies, this bill removes an ambiguity in the law, providing better assurance that rhinoceros will benefit from the intended protections. Additionally, aligning the two laws ensures that law enforcement officials are able to identify and proceed against those acting illegally in violation of these provisions.

The Committee on Animals and Law applauds the sponsors for recognizing the need for New York to take an important step forestalling further threats to the survival of the giraffe and removing ambiguities in the law associated with rhinoceros. The Committee further commends the sponsors for recognizing that inadequate penalties and fines fail to disincentivize those who significantly profit from the unlawful commercialization of protected wildlife species, and increasing penalties to provide a more appropriate disincentive for illegal taking. By adopting the proposed amendments to ECL Sections 71-0924 and 71-0927, New York will further its commitment to preventing tragic and unnecessary species extinction.

For the foregoing reasons, the Committee on Animals and the Law **SUPPORTS** the passage and enactment of this legislation.

⁸ International Rhino Foundation:

https://rhinos.org/?gclid=Cj0KCQjwwODIBRDuARIsAMy_28WtmMDiySahfhJ9zhLyMy_KVh09dowU9jrmV2gx CjejeWWBdaliF0AaAr_lEALw_wcB

⁹ http://www.dec.ny.gov/docs/wildlife_pdf/ivoryfaqs.pdf

S 1486 HOYLMAN Same as [A 1111-A](#) Rosenthal L
ON FILE: 01/15/19 Environmental Conservation Law
TITLE....Relates to prohibiting the sale, trade or bartering
or possession with intent to sell, trade or barter of certain
wild animals or wild animal products and to the penalties
imposed therefor

01/15/19 REFERRED TO ENVIRONMENTAL
CONSERVATION

A1111-A Rosenthal L Same as [S 1486](#) HOYLMAN
Environmental Conservation Law
TITLE....Relates to prohibiting the sale, trade or
bartering or possession with intent to sell, trade or
barter of certain wild animals or wild animal
products and to the penalties imposed therefor

01/14/19 referred to environmental conservation
02/20/19 amend and recommit to environmental
conservation

02/20/19 print number 1111a

STATE OF NEW YORK

1486

2019-2020 Regular Sessions

IN SENATE

January 15, 2019

Introduced by Sens. HOYLMAN, BAILEY, BOYLE, KAVANAGH, KRUEGER, SEPULVEDA
-- read twice and ordered printed, and when printed to be committed to
the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to
prohibiting the sale, trade or bartering or possession with intent to
sell, trade or barter of certain wild animals or wild animal products
and the penalties imposed therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 11-0536 of the environmental
2 conservation law, as amended by chapter 338 of the laws of 2009, is
3 amended to read as follows:
4 1. Except as provided in subdivision three hereof, no part of the skin
5 or body, whether raw or manufactured, of the following species of wild
6 animals or the animal itself may be sold, **traded, bartered,** or offered
7 for sale, **or possessed with intent to sell, trade or barter** by any indi-
8 vidual, firm, corporation, association or partnership within the state
9 of New York:--Leopard (*Panthera pardus*), Snow Leopard (*Uncia*), Clouded
10 Leopard (*Neofelis nebulosa*), Tiger (*Panthera tigris*), Asiatic Lion
11 (*Panthera leo persica*), Cheetah (*Acinonyx jubatus*), Alligators, Caiman or
12 Crocodile of the Order Crocodylia (except as provided in subdivision two
13 of this section), tortoises of the genus *Gopherus*, marine turtles of the
14 family Cheloniidae and the family Dermochelidae, Vicuna (*Vicugna vicug-*
15 *na*), Wolf (*Canis lupus*), Red Wolf (*Canis niger*), or Tasmanian Forester
16 Kangaroo (*Macropus giganteus tasmaniensis*) or Polar Bear (*Thalarctos*
17 *maritimus*), Mountain Lion, sometimes called Cougar (*Felis concolor*),
18 Jaguar (*Panthera onca*), Ocelot (*Felis pardalis*), or Margay (*Felis*
19 *wiedii*), [~~Sumatran Rhinoceros (*Dicerorhinus sumatrensis*), or Black~~
20 ~~Rhinoceros (*Dicero bicornis*)~~] **Rhinoceros (Rhinocerotidae) or Giraffe**
21 **(*Giraffa camelopardalis*)**.

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD04831-02-9

1 § 2. Section 71-0924 of the environmental conservation law, as amended
2 by chapter 326 of the laws of 2014, is amended to read as follows:

3 § 71-0924. Illegal commercialization of fish, shellfish, crustaceans,
4 and wildlife.

5 1. Notwithstanding any other provision of this chapter, when a
6 violation involves the sale, trade or barter of fish, shellfish, crusta-
7 ceans, wildlife, or parts thereof, the sale, trade or barter of which is
8 prohibited by the fish and wildlife law, the following additional penal-
9 ties shall be imposed:

10 [~~1.~~] a. where the value of fish, shellfish, crustaceans, wildlife, or
11 parts thereof, is two hundred fifty dollars or less, the offense shall
12 be a violation punishable by a fine of five hundred dollars and/or not
13 more than fifteen days of imprisonment;

14 [~~2.~~] b. where the value of fish, shellfish, crustaceans, wildlife, or
15 parts thereof, is more than two hundred fifty dollars but does not
16 exceed one thousand five hundred dollars, the offense shall be a misde-
17 meanor punishable by a fine of five thousand dollars and/or not more
18 than one year of imprisonment;

19 [~~3.~~] c. where the value of fish, shellfish, crustaceans, wildlife, or
20 parts thereof, exceeds one thousand five hundred dollars, the offense
21 shall constitute a class E felony under the provisions of the penal law;
22 [~~and~~]

23 [~~4.~~] d. where the value of ivory articles, as defined in section
24 11-0535-a of this chapter, exceeds twenty-five thousand dollars, the
25 offense shall constitute a class D felony under the provisions of the
26 penal law; and

27 e. with respect to a violation of the provisions of section 11-0536 of
28 this chapter, in addition to any other fines or penalties, where the
29 value of wildlife, or parts thereof, exceeds twenty-five thousand
30 dollars, the offense shall constitute a class D felony under the
31 provisions of the penal law, and shall be punishable by a fine of the
32 greater of: (i) twenty thousand dollars; or (ii) up to twice the fair
33 market value of the wildlife, or parts thereof.

34 [~~5.~~] 2. For the purposes of this section the value of fish, shellfish,
35 crustaceans and wildlife shall be the fair market value of or actual
36 price paid for such resource, whichever is greater. For purposes of this
37 section, "sale" shall include the acts of selling, trading or bartering
38 and all related acts, such as the act of offering for sale, trade or
39 barter, and shall also include the illegal possession of fish, shellf-
40 ish, wildlife or crustacea with intent to sell. It shall be presumptive
41 evidence of possession with intent to sell when such fish, shellfish,
42 wildlife or crustacea is possessed in quantities exceeding the allowable
43 recreational quantities, or is possessed in a retail or wholesale outlet
44 commonly used for the buying or selling of such fish, shellfish, wild-
45 life or crustacea, provided, however, that nothing in this subdivision
46 shall preclude the admission of other evidence which may serve to inde-
47 pendently prove a defendant's intent to sell.

48 § 3. Subdivisions 1, 2 and 3 of section 71-0927 of the environmental
49 conservation law, subdivisions 1 and 2 as amended and subdivision 3 as
50 added by chapter 284 of the laws of 2004, are amended to read as
51 follows:

52 1. Anyone convicted of violating the prohibition against harvesting,
53 taking, possessing or transporting shellfish under facts and circum-
54 stances meeting the criteria for imposition of sanctions pursuant to
55 paragraph c of subdivision [~~3~~] 1 of section 71-0924; or anyone convicted
56 two or more times within five years of violating the prohibition against

1 harvesting, taking, possessing or transporting shellfish under facts and
2 circumstances meeting the criteria for imposition of sanctions pursuant
3 to paragraph b of subdivision [3] 1 of section 71-0924, or of violating
4 subdivision 1 or 2, paragraph e or f of subdivision 3, subdivision 6, 8,
5 9, 10, 11, or 13 of section 13-0309, section 13-0317, subdivision 2 of
6 section 13-0323, section 13-0325, [~~subdivision 3 or 5 of~~] section
7 13-0327, or section 13-0344 of this chapter shall have his license to
8 take and land shellfish revoked and shall not be relicensed for a mini-
9 mum of five years thereafter, in addition to any other sanction imposed
10 pursuant to this article.

11 2. Anyone convicted of unlawfully harvesting, taking, possessing or
12 transporting any marine fish, shellfish or crustacea under facts and
13 circumstances meeting the criteria for imposition of sanctions pursuant
14 to paragraph c of subdivision [3] 1 of section 71-0924; or anyone
15 convicted two or more times within five years of unlawfully harvesting,
16 taking, possessing or transporting any marine fish, shellfish or crusta-
17 cea under facts and circumstances meeting the criteria for imposition of
18 sanctions pursuant to paragraph b of subdivision [3] 1 of section
19 71-0924, or of violating subdivision 1, paragraph c of subdivision 2,
20 subdivision 5, 6, 7 or 9 of section 13-0329, or section 13-0344 of this
21 chapter shall have his license to take and land lobsters revoked and
22 shall not be relicensed for a minimum of five years thereafter, in addi-
23 tion to any other sanction imposed pursuant to this article.

24 3. Any person convicted of violating the prohibition against harvest-
25 ing, taking, possessing or transporting any marine food fish under facts
26 and circumstances meeting the criteria for imposition of sanctions
27 pursuant to paragraph c of subdivision [3] 1 of section 71-0924; or any
28 person convicted two or more times within five years of violating the
29 prohibition against harvesting, taking, possessing or transporting any
30 marine food fish under facts and circumstances meeting the criteria for
31 imposition of sanctions pursuant to paragraph b of subdivision [3] 1 of
32 section 71-0924, or of violating section 13-0344 of this chapter, shall
33 have his license to take and land marine food fish revoked and shall not
34 be licensed for a minimum of five years thereafter, in addition to any
35 other sanctions imposed pursuant to this article.

36 § 4. This act shall take effect immediately. Effective immediately,
37 the addition, amendment and/or repeal of any rule or regulation neces-
38 sary for the implementation of this act on its effective date are
39 authorized to be made and completed on or before such date.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S1486

SPONSOR: HOYLMAN

TITLE OF BILL:

An act to amend the environmental conservation law, in relation to prohibiting the sale, trade or bartering or possession with intent to sell, trade or barter of certain wild animals or wild animal products and the penalties imposed therefor

PURPOSE OR GENERAL IDEA OF BILL:

The purpose of this bill is stop the sale, trade, and barter of all giraffes and giraffe parts in New York State.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 amends subdivision 1 of section 11-0536 of the environmental 2 conservation law, as amended by chapter 338 of the laws of 2009 to prohibit sale, trade, bartering and possessing with intent to sell any giraffe or giraffe parts.

Section 2 amends section 71-0924 of the environmental conservation law, as amended 23 by chapter 326 of the laws of 2014 to provide penalties and fines for violation of the aforementioned provision.

JUSTIFICATION:

In early 2018, the Humane Society of the United States conducted an investigation to determine the commercial availability of giraffe parts and products for sale in the U.S. New York was identified as one of the main locations selling giraffe products.

The giraffe, the tallest land animal, is at risk of extinction. The population has shrunk 40t in just 30 years. The total population is just under 100,000, one third that of elephants in Africa. Demand for giraffe parts in the US and in NY can fuel poaching and trophy hunting, further decreasing giraffe populations already facing severe threats from habitat loss and civil unrest. From 2006 to 2015, the U.S. imported approximately 40,000 giraffe parts and products, mostly for commercial purposes.

It is the responsibility of New Yorkers to stop the sale, trade and barter of these majestic creatures to save them from extinction.

PRIOR LEGISLATIVE HISTORY:

2018: S.9159 (Hoylman) - Died in Rules

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

To be determined.

EFFECTIVE DATE:

Immediately.