

## Memorandum in Support

### COMMITTEE ON ANIMALS AND THE LAW

Animals #4

April 29, 2019

S. 1486

By: Senator Hoylman

A. 1111-A

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.

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 would be 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.<sup>1</sup>

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<sup>1</sup> 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

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).<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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 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.<sup>8</sup> The impact of this population

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the United States, the International Fund for Animal Welfare and the Natural Resources Defense Council)

<sup>2</sup> 27 UST 1087; TIAS 8249; 993 UNTS 243

<sup>3</sup> 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

<sup>4</sup> 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>

<sup>5</sup> 2018 HSUS study: [www.hsi.org/wp-content/uploads/assets/pdfs/giraffe-report-HSI-HSUS-082318.pdf](http://www.hsi.org/wp-content/uploads/assets/pdfs/giraffe-report-HSI-HSUS-082318.pdf)

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

<sup>7</sup> 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>

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.<sup>9</sup> 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 the 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.

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[https://rhinos.org/?gclid=Cj0KCQjwwODIBRDuARIsAMy\\_28WtmMDiySahfhJ9zhLyMy\\_KVh09dowU9jrmV2gx CjejeWWBdaliF0AaAr\\_IeALw\\_wcB](https://rhinos.org/?gclid=Cj0KCQjwwODIBRDuARIsAMy_28WtmMDiySahfhJ9zhLyMy_KVh09dowU9jrmV2gx CjejeWWBdaliF0AaAr_IeALw_wcB)

<sup>9</sup> [http://www.dec.ny.gov/docs/wildlife\\_pdf/ivoryfaqs.pdf](http://www.dec.ny.gov/docs/wildlife_pdf/ivoryfaqs.pdf)