

Congress of the United States
Washington, DC 20515

October 17, 2017

President Dan Blue
Vice President Toi Hutchison
National Conference of State Legislatures
444 North Capitol Street, N.W., Suite 515
Washington, D.C. 20001

Governor Terry McAuliffe, Virginia – Chair
Governor Brian Sandoval, Nevada – Vice Chair
National Governors Association
444 North Capitol Street, NW Suite 267
Washington, DC 20001

Dear Governors and State Legislators:

We write to make you aware of the potentially devastating and unintended consequences of broadly crafted state ivory bans that are currently in place or under consideration in nearly half the United States. State ivory bans that broadly define ivory to include walrus and mammoth ivory are creating confusion in the market place for legal ivory products crafted by Alaskans, including Alaska Natives (i.e., indigenous Alaskans) practicing centuries-old traditions. While these State ivory bans are designed to combat the illegal trade of African and Indian elephant ivory, they have unfortunately confused consumers as to what other ivory products are legal, resulting in decreased demand for legal Alaska Native handicraft and mammoth ivory carvings. We urge all of you to consider tailoring your states' existing and potential ivory laws to recognize these economically vital, wholly sustainable, culturally significant, and federally legal forms of art and expression when enacting legislation to address the elephant ivory trade and elephant poaching.

African and Asian elephant populations have decreased over the last decade due to illegal poaching. The U.S. Fish and Wildlife Service (FWS) lists African elephants as a threatened species under the Endangered Species Act. Last year the FWS issued a revised regulation, which increased restrictions on commercial and noncommercial trade in raw and worked ivory of African elephants.¹ The revised regulation does not apply to non-African elephant ivory and requires no documentation for these other types of ivory.²

¹ Endangered and Threatened Wildlife and Plants; Revision of the Section 4(d) Rule for the African Elephant, 81 Fed. Reg. 36388 (June 6, 2016).

² Fish and Wildlife Service, Revisions to the Endangered Species Act (ESA) Special rule for the African Elephant: Questions and Answers 5 (June 2016).

States like California, New Jersey, New York and Hawaii have also responded to this crisis by enacting overbroad bans on ivory sales. These states' laws generally include walrus and mammoth ivory that are used by Alaska Natives and Alaskans to produce artistic carvings, clothing, or authentic handiworks. At least 19 other states have considered or introduced ivory ban bills in their states legislatures.³ Recent reports have shown that these broader state ivory bans are in fact negatively impacting the market for Alaska Native handiworks. Additionally, some producers have had to give up selling their products at events in the Lower 48 states due to the difficulty in explaining that their products are or should be legal to sell, buy, and transport.

In October of 2016, at a hearing in Fairbanks, Alaska at the Alaska Federation of Natives convention on this issue, Dr. Rosita Worl of the Sealaska Heritage Institute outlined the problem with these bans. "The differing ... bans are confusing and, collectively, may serve as a deterrent to those who might be inclined to buy Alaska ivory art, and will only serve to seriously undermine the ivory art market. Suppression of the ivory market will be devastating to Alaska Native hunters, craftspeople, and artisans...."⁴

Walrus are already protected as a species from unauthorized take under the Marine Mammal Protection Act. However that Act explicitly exempts Alaska Natives from the requirements of the act so long as they take the animal "for subsistence purpose or for the purpose of creating and selling authentic native articles of handicraft and clothing," in a non-wasteful manner.⁵

Mammoth ivory is not currently regulated under any federal law and since the animals have been extinct for over 10, 000 years, there is little conservation benefit to limiting the sale of their ivory. Despite the fact that poachers and illegal salesmen have tried to claim elephant ivory is mammoth ivory to fraudulently sell illegal product, FWS can apply simple tests and observations differentiate elephant and mammoth ivory. Further, the Department of the Interior recently published a pamphlet to educate the general public on legality and cultural importance of Alaskan

³ States Banning The Sale of Fossil Ivory and Proposed Legislation, The Journal of Paleontological Sciences, available at, <http://www.aaps-journal.org/fossil-ivory-legislation.html> (Feb. 22 2017).

⁴ Testimony of Dr. Rosita Worl, President, Sealaska Heritage Institute 8 (Oct 20 2016) (Field Hearing of the Fisheries, Water, and Wildlife Subcommittee of the Senate Committee on Environment and Public Works; *see also id.* at 6 ("Rural villages are characterized by high energy and transportation costs, and lack of infrastructure to support economic development. The production and exchange of arts and crafts is an ancient tradition that supported vibrant and sustainable indigenous communities throughout Alaska. It was expanded to include the sale of arts and crafts with the arrival of Westerners. Today, arts and crafts still play an even greater role in village economies. Walrus ivory, including mammoth and mastodon ivory, are also used as creative high art expressions that are widely coveted in the art world. Arts and craft production and sale, including ivory, is one means of providing modest, but critically financial benefits to Natives who otherwise lack economic opportunities. While we lack hard data on the value of ivory production, we know that ivory plays a significant role in Alaska's small-scale subsistence economies, and the annual arts and crafts tourist market that is well over \$32 million. We know that village artisans can make up to 35,000 to 50,000 dollars annually, and that those earnings are widely shared among family and community members."))

⁵ 50 CFR 18.23.

ivory carving with walrus and mammoth tusk.⁶ Thus, banning mammoth ivory is not necessary to stop the trade of elephant ivory.

In conclusion, while we can all agree that measures must be taken to combat the elephant poaching crisis, harming Alaska's rich cultural traditions and rural economies will do nothing to achieve additional conservation benefit. Alaska Native artists – many of whom live in remote villages with few economic opportunities – should not be the victims of this well-intended effort. We call on you to consider the impacts that the existing bans are having and that other potential bans could have on Alaskans—and your constituents who travel to Alaska. Any new legislation banning the importation and sale of elephant ivory should clearly recognize existing federal exceptions for Alaska Natives in federal law and not include walrus or mammoth ivory. We hope that we can all work together at the federal and state level to combat elephant poaching while also supporting both the traditions of Alaska's indigenous communities as well as the rural economy that depends on the ability of our Alaska Native artisans to sell their traditional craft; these are traditions that should be preserved and can be appreciated by all citizens from all states.

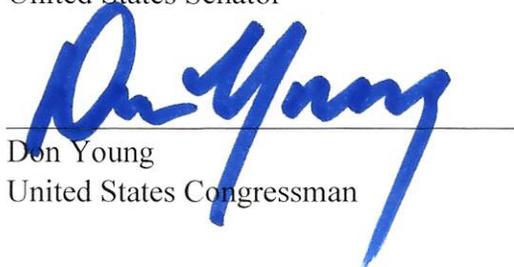
Sincerely,



Dan Sullivan
United States Senator



Lisa Murkowski
United States Senator



Don Young
United States Congressman

⁶ *Alaska Native Ivory*, Indian Arts and Crafts board, Department of Interior, available at https://www.doi.gov/sites/doi.gov/files/uploads/iacb_alaska_ivory_brochure_2017_web.pdf.