

**TESTIMONY BEFORE THE HOUSE SUBCOMMITTEE ON
FISHERIES, WILDLIFE AND OCEANS ON HR5534
THE BEAR PROTECTION ACT OF 2008
by Matt Hogan, Executive Director
Association of Fish and Wildlife Agencies
March 11, 2008**

Thank you, Madam Chair. I am Matt Hogan, Executive Director, of the Association of Fish and Wildlife Agencies (Association). I appreciate the opportunity to share with you the Association's perspectives on HR5534, the Bear Protection Act. The Association of Fish and Wildlife Agencies was founded in 1902 as a quasi-governmental organization of public agencies charged with the protection and management of North America's fish and wildlife resources. The Association's governmental members include the fish and wildlife agencies of the states, provinces, and federal governments of the U.S., Canada, and Mexico. All 50 states are members. The Association has been a key organization in promoting sound resource management and strengthening federal, state, and private cooperation in protecting and managing fish and wildlife and their habitats in the public interest.

The Association opposes HR5534 as it is currently written. We conclude that this bill would do little if anything to address the intended purpose of the bill – the poaching of bears for their viscera. In fact, it may hinder efforts to address the illegal harvest and trade of bear viscera as well as other wildlife and their parts. Therefore, we believe strongly that it represents an unnecessary intrusion into state wildlife management authorities.

Under existing law, any interstate movement of viscera from or into a state from a bear that has been illegally taken and/or where possession, use or sale is not legal is already subject to prosecution under the Lacey Act. Currently bear populations in the United States (and North American) are healthy, robust and expanding in most places. When and where domestic poaching occurs, state and federal law enforcement is adequately addressing it. With respect to populations of Asian bears which are most subject to poaching for their viscera, but also under intense pressure from habitat loss, this bill would have arguably minimal affect. HR5534 is therefore both unnecessary and could quite possibly have a negative impact on efforts to address the serious threats to Asian bear populations by detracting from capacity in the U.S. Fish and Wildlife Service's Division of Law Enforcement from higher priorities, especially addressing illegal international trade and commerce of wildlife parts or products.

The Association is far from alone in this conclusion. The April 2002 comprehensive report from TRAFFIC North America on the status, management and trade of the American black bear in North America definitively concludes "Given the information gleaned from its surveys, and the continuing growth of most North American black bear populations, TRAFFIC concluded that further laws banning all trade in bear gallbladders or other parts at the national level are currently unnecessary. Indeed, concerns exist that closing legal markets have the unintended consequence of raising prices in the underground market and perhaps stimulating poaching and illegal trade. In addition, TRAFFIC is concerned that expending the necessary resources to enforce such a ban could detract from the conservation of other species that are far more endangered or threatened by trade or for other reasons."

Madam Chair, we understand that the intent of the bill sponsor is to help address the poaching of Asian bear species for their gall. We applaud efforts to address the poaching of Asian bear species for their gall. However, the bill as currently drafted focuses its application only on the regulation of trade of bear viscera in the United States based on the premise that domestic poaching of U.S. indigenous bear species is contributing to the market demand for bear gall, and is having (or could in the future have) a significant negative impact on U.S. bear populations. There is no substantiation to support either of these premises, and the Association therefore concludes that as introduced, HR5534 is neither necessary nor helpful in addressing the decline of foreign bear species. The Association is certainly willing to work with the bill sponsors and the USFWS on a more appropriately focused import-export bill that would address any existing regulatory deficiencies under the Convention on International Trade in Endangered Species of Fauna and Flora (CITES). However, a bill that addresses only domestic activities is simply without need and does little to address the real need.

As noted above, bear populations throughout the United States are robust and generally increasing. Also,, the statutory responsibility for the conservation and management of bear species in the United States lies largely with the State fish and wildlife agencies, with the exception of polar bear, grizzly bear and Louisiana black bear, where the USFWS shares jurisdiction for these species with the States.

Regulation of bear harvest and allowable use of any parts or products (fur, claws, gall, etc.) is thus closely regulated by all State Fish and Wildlife agencies including through the application and enforcement of the Lacey Act by State and federal wildlife officers. As you are aware, the Lacey Act already makes it a federal violation to transport or sell in interstate or foreign commerce any wildlife that is illegally taken in the state of origin. Accordingly, any bear that was illegally taken (poached) for it's viscera or any other purpose is already a violation of state law and if that bear or any part of that bear (including the viscera) was transported out of the state from which it was taken, it would immediately trigger the Lacey Act. In addition, information from the States substantiates that while incidental illegal harvest occurs, there is no significant population impact from illegal harvest in any bear range state. If there were, I can assure you that our State fish and wildlife agencies would take appropriate action to address it. The states spend tens of millions of dollars each year in wildlife law enforcement and I assure you would be aware of any significant poaching of domestic bear populations. The several States' record on conservation law enforcement speaks for itself and there is no substantiated evidence that would compel federal intervention. The State fish and wildlife agencies are prepared to respond to any increase in poaching of bears.

This conclusion is also corroborated by the USFWS in a paper delivered in 1997 at the 2nd International Symposium on the Trade of Bear Parts, in which Dr. Gnam and Dr. Lieberman of the Office of Management Authority conclude that the FWS "...Division of Law Enforcement has determined that the poaching of American black bear for their gall bladders and other parts to supply the demands of the Asian market for these products is not a significant problem and does not occur on any large scale."

The Association believes, therefore, that the application of the Lacey Act to all US domestic commerce in bear viscera, whether it is legal in a state or not, as proposed in HR5534 is unnecessary for bear resource protection, and is an inappropriate federal intrusion into state management authorities and prerogatives.

Our state-based system of fish and wildlife conservation in the United States is justifiably the envy of the rest of the world. Accordingly, we would respectfully suggest that rather than the creation of additional federal statutory authority as contemplated in HR 5534 , especially where it preempts state management prerogatives, the provision of additional resources to the U.S. Fish and Wildlife Service's Division of Law Enforcement would be a more appropriate and effective means of affecting Asian bear populations by the regulation of illegal trade in their parts or products. The Association has long been an advocate for increasing funds for FWS Special Agents and Port (of Entry) Inspectors to more effectively deal with illegal trade in foreign commerce.

I would reiterate as indicated earlier, the Association would be happy to work with the bill sponsors and USFWS on a more narrowly focused import-export bill that could address some legal deficiencies in CITES that might exist now. With respect to the savings clause in HR 5534, it does not adequately save the states' authorities. However, we do have language which we believe would do that, and will be happy to work with staff if you so desire.

In conclusion, the Association believes HR5534 as introduced is both unnecessary and inappropriately expansive in its reach to domestic bear species, while doing little to protect and conserve bear populations at risk of poaching for their viscera. Accordingly, we therefore must oppose HR5534 as introduced.

Again, thank you for providing us with the opportunity to testify on this legislation.