

Ashley Prout McAvey
Testimony in favor of a strengthened H.297
Senate Committee on Economic Development, Housing and General
Affairs (Room 27)
March 23, 2016

Good morning. My name is Ashley Prout McAvey and I am the citizen activist behind IvoryFreeVermont and my voice represents thousands of Vermonters in full support of a strengthened H.297. We are all volunteers and do not receive a cent from any groups for our fact- and passion-driven mission.

After having researched the evils of the poaching the crisis on the ground in Africa, specifically in Zimbabwe, I spent six years at Yale as an undergraduate studying Environmental Biology and then received my Master of Environmental Management from the Yale School of Forestry and Environmental Studies.

In 2012 when it became clear that unless action is taken, elephants and rhinos will be extinct in our lifetime, I started my activism here in Vermont. The movement has taken on a life of its own and after 4 years of huge personal sacrifice, I am overwhelmed at the response of the thunderous outcry from Vermonters to take action today. They are all looking to you right now.

We simply cannot keep up with the outreach including personal invitations I have to speak at Champlain College, The Lake Champlain Waldorf School, Vermont Commons, and to a group of students traveling to Africa this fall from the Northeast Kingdom to name just a few of the emails waiting for us to respond to.

Before I start, I want to tell you what IvoryFreeVermont has become and who we are:

- After introducing H.297 in 2015, we marched on October 4th on Church Street as part of a global elephant and rhino march. Over 325 people marched to fight for H.297.
- *Vermont Battles for Elephants* is an 8-minute film by elephant activist Taegen Yardley and her friends at Vermont Commons School and is now playing indefinitely on 18 of the state's 25 community access stations, including in Brattleboro, Burlington, Rutland, Waitsfield. The film has received widespread attention and acclaim and was part of the recent U.N. Wildlife Film Festival and was just this week translated into Chinese—these Vermont kids are now spreading their message throughout China.
- We are partners with the Burlington International Airport to publicize H.297 and friend and partner Director Gene Richard's has huge banners and signs throughout the airport on H.297 and has offered to share *Vermont Battles for Elephants* with other airport communications networks across the U.S. just as he has it playing currently in two places for waiting travelers.
- We have strong partnerships with the spiritual and religious community via the newsletter of Vermont Interfaith Power and Light which reaches upwards of 750 individuals/church communities across the state.
- We have made a strong presence on TV and radio and appear in frequent ads in papers such as today's Seven Days encouraging citizens to reach out the five of you in addition to their own Senators.

- We have outreach to Catholic Church community in Vermont to capitalize on the wildlife trafficking remarks made by the Pope when in Kenya at the end of November 2015.
- We have Front Porch Forum penetration throughout the state via our 280 elephant action team members.
- And we have support and endorsement from people such as Jon Fishman of the band Phish, Melinda Moulton and Lisa Steele of Main Street Landing, and top business leaders at corporations throughout the state including businesses such as Ben and Jerry's.
- In short, we are here, we are growing every day, and we are not going away.

I am here to explain why we are fighting so hard for these creatures and the people who depend on their well-being for their own livelihoods. Just recently, the bill passed through the House with an astonishingly strong 135-4 vote. Given this success, those in opposition of the bill are raising their voices louder than ever and we are poised to rebuke each and every one of their flawed arguments.

The first point they raise is that the bill won't do anything. Fact: Close the market (monetary value), and elephants have a chance. The *proof* is history. History from the 1989 CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) international ban (foiled by one-off sales in 1999 and 2008 resulting in the current crisis of today) is proof that this concept works, demand shrinks, and animals (and the millions of people who depend on them for a stable Africa with vibrant tourism) have a chance. Also recall the brilliantly delivered testimony of Pat Bosco, USFWS Special Agent (Retired) who told the House Committee on Fish, Wildlife, and Water Resources, "If there's a legal market for ivory, there's always going to be the illegal trade behind it," when he spoke in favor of H.297 without exemptions. He reiterated in his testimony that in his years and years of experience, the best solution is a bill that shuts down the trade. No number of boots on the ground will protect these species from the demand that is pouring into the poachers' (and often times terrorists') hands from China (#1) and the USA (#2).

The opposition has stated that poaching of elephants is disgraceful but that it has nothing to do with their buying and selling of ivory. Fact: The crisis of today—an elephant slaughtered every 15 minutes, 96 a day and recently reported Tanzania has lost 2/3 of its once vibrant elephant population in just four years—is fueled by one thing and one thing alone: present day demand for ivory. Where does the demand come from? It comes from a trade that is bolstered every time a person in this world buys and sells ivory and —whether or not that ivory is old or new, aged or white, and regardless of its use. A legal trade in ivory is perpetuating the slaughter of the last remaining elephants. It is very comforting for someone who profits from the sale of ivory to say that “their” ivory has nothing to do with the crisis of today. But they are wrong and it is simple supply and demand. When trade flourishes because of a dollar value on ivory, demand can only be met one way: the killing of live elephants today.

The opposition has stated that the bill is “nothing more than headline-grabbing pieces of legislation that makes us all feel good (and politicians love to attach their name to).” Fact: Consider for a moment the nature in which these highly intelligent, extremely social animals are slaughtered-- AK47s, poisoned watermelons, cyanide dumped in watering holes (thereby killing entire ecosystems in the process), the hacking off of elephant tusks and rhino horns while the

animals are still alive, paralysis darts so the elephant or rhino cannot move yet is fully cognizant of machetes slicing into its skulls, and poisoned darts leading to weeks and weeks of extreme suffering before a long, unspeakable death. Let alone the human toll of which I will soon speak. I assure you this is not a feel good piece of legislation.

The opposition states that the bill will make thousands of dollars worth of legal ivory and horn worthless. Fact: Federal courts have ruled that commercial value is not the sole value an item possesses and therefore eliminating an item's commercial value does not constitute a taking. (*Andrus v. Allard*, 44U.S. 51 (1979)). So are we here in Vermont to allow the planet's last elephants and rhinos to go extinct because some citizens in this room will not be able to sell their ivory chess sets and guns? The mere suggestion is the entire crux of the problem: greed. I will say that I personally own ivory from my grandmother. I will be just fine not selling it and instead passing it along to my children. The sentimental value is a value and one I will be pleased to give it—the audacity to think I should require financial compensation. Let me also remind you of Mary Louise Smith, a Burlington, Vermont woman who owns a 1925 Steinway piano with ivory keys. Please look at her written letters to the Committee before the bill made its way to the House. She wrote passionately of her support of H.297 without exemptions. Another example is John Martin, owner of Martin's Coins & Jewelry, a premier New England coin and jewelry dealer located in South Burlington, Vermont. Martin's Coins is our State's first business champion of H.297. This is one of the most respected dealers in Vermont. In signing on as the State's first champion of H. 297 without exemptions, John K. Martin, Jr., told me personally that he has been offered ivory in the past but never had any interest in its continued trade for all of the reasons I am listing this morning. He also has in his ownership ivory of significant value and told me he is more than willing to forgo any right to sell it. He knows what is at stake and hundreds of Vermonters applaud his stand.

The opposition states we should allow a legal trade. Fact: Up to 90% of so-called legal antiques are sourced with ivory from recently slaughtered elephants. Even when legitimately 100 years old or older, antique ivory or any ivory in a legal intrastate trade perpetuates the slaughter. Legal vs. illegal is ultimately irrelevant for even when one trades "legal" ivory, they are perpetuating a trade that is decimating these creatures and shattering the livelihoods of those who depend on them solely—not just for a small portion of their livelihoods as some antique dealers have some piece in ivory, but full tourism industries toppling to the ground. That is a burden far greater than a few thousand dollars worth of chess pieces or ivory bangles. I share part of an email I received last spring from a safari operator in Kenya:

Poaching of elephants has caused a huge impact on tourism for many years. Tourism which is the number one source of revenue for Kenya has drastically gone down due to poaching...I have many times run into dead elephants on safari which were slaughtered by poachers some of which we had seen and filmed the previous day. As a result many of my guests promised never to return after seeing the dead elephants...This is a big impact to local people. Poaching is a rampant issue that needs to be dealt with much vigour and strictness.

Along with the animals, these are the real victims living this horror on a daily basis as well as the rangers shot dead trying to protect the animals. *These* are real burdens and sacrifices—not auctioneers or owners of antique guns with ivory inlays not being able to sell their wares.

The opposition states that China is the problem. Fact: We can't point fingers at China while we ourselves allow the very trade that we want to stop there. Also, China does watch what we do and responds accordingly. Tightened federal regulations in concert with state bans together will give the message to China that they, too, need to do the same. Our actions here in this country on a state by state basis have a resounding effect on action in China. Here's proof: sensing pressure from this country and around the world, Hong Kong just announced it will be phasing out ivory sales.

The opposition has said we should just let the federal government deal with this. Fact: 25 states in this country have legislation in process to tighten state bans. Why? Because federal regulations do not touch intrastate trade. The Federal Endangered Species Act has statute limitations and does not and cannot reach intrastate commerce. In addition, federal regulations are focused on imports, exports, and interstate sales only. They were not *designed* for intrastate trade—intrastate trade being the smaller items that you see at antique shops, flea markets, and auction houses. Another vital point is that only 10% of all of the illegal ivory in this country is confiscated at our borders, so the vast majority of ivory coming into this country today (fully 90%) is going to still make it onto the state level regardless of how tight the federal restrictions are; therefore states need to limit retail sales. This is why New Jersey, New York, California, Washington, and soon our neighbors below us Connecticut and Massachusetts (not to mention dozens of other states with pending legislation) have laws and will have laws on the books.

The last point I will rebuke is the notion that we should do nothing because hunting is still legal in some countries. Fact: While trophy hunting for threatened species is increasingly controversial in and of itself, the number of permits given for elephants is a tiny percentage of the 35,000 elephants illegally poached every year. As a miniscule piece of any national economy, revenue from trophy hunting never accounts for more than 0.27 percent of GDP. For tourism, trophy hunting revenues account for only 1.8% of overall tourism in 9 countries that were studied. Even pro-hunting sources find that only 3% of the money actually reaches the rural community where the hunting occurs. Also, an elephant tusk is worth approximately \$21,000 on the black market but a single living elephant can draw billions of dollars in tourist dollars over the course of its lifetime. The focus should be on preservation of the species to do the most good.

The blood ivory trade of today, the very ivory trade that the opposition is in such favor of continuing has created killing on an industrialized scale and by the world's worst militia and terrorist groups. The \$1.4 billion ivory trade feeds crime syndicates funding military resistance groups such as Al-Shabaab, Janjaweed, Lord's Resistance Army, and Boko Haram (see matrix).

The horrific, sickening terrorist attacks this week in Brussels remind us that if there is any way we can shut off any funding sources to these most evil people in the world, we must do so. Governor Chris Christie knew this emphatically. He also knew that greed to continue a legal trade—any legal trade—is what will mean the end of the elephants.

The most important part of my testimony today is about the specifics of H.297. Please note that the bill was introduced mirroring New Jersey, with zero exemptions. For the last year and a half House members have heard outcry from Vermonters from every part of this state demanding a clean bill. While a compromise for limited antiques and limited musical instruments would have been and is palatable to our team, in the House Committee it was suggested to have a bill to simply mirror the federal regulations, thereby going off on a vastly different track than the states that have already enacted legislation with the limited exemptions I just listed.

As such, a perfect bill became hugely flawed. This measure went far beyond a reasonable compromise. Federal regulations were not written for the kind of trade that happens on a state level. To simply apply those regulations with broad exemptions to the state level will do more harm than good. This is not what Vermont is all about. We have fought too hard to let this happen. And we need leadership on this Committee now to strike a balanced compromise that we can accept.

Why would this current bill be devastating? Because it would be the weakest law in the country. In reaching out to Chief Correspondent, Special Investigations Unit for National Geographic Bryan Christy recently, he stated that, “history shows that wildlife traffickers, like all smugglers, venue shop the US for weak jurisdictions. Were Vermont to adopt rules noticeably less restrictive than other states, it could become a trafficking hub, conceivably even more attractive than states not on the record with respect to the Ivory trade. "I bought it in Vermont" could become a defense depending on what Vermont's "weaker" rules look like.”

We offer a compromise that is in line with California, Washington, and New York. We absolutely can accept and will create a compromise which has limited exemptions for antiques and limited exemptions for musical instruments. This would be in line with current laws and is reasonable, and still a far cry from the way it was introduced. But, while addressing concerns of antique dealers and musicians, it would still be strong and something for which Vermont could be proud. At the current state, we cannot support it and will not watch as Vermont sets the bar to a whole new low, with huge consequences on the national and global landscape. All eyes are on this Committee right now and the fate of 4 years of grassroots movement and indeed the fate of two of the planet’s most iconic species not to mention countless human lives and millions of humans’ livelihoods comes down to the five of you. It’s that simple.

We propose the following wording as the limited exemptions for antiques and the limited exemptions for musical instruments, perfectly in line with other state legislation:

(C) When the covered animal species part or product is part of a bona fide antique or a musical instrument, including, but not limited to, string instruments and bows, wind and percussion instruments, and pianos, if:

(A) The ivory is pre-Convention (removed from the wild prior to February 26, 1976 (the date the African elephant was first listed under CITES) if it is elephant ivory;

(B) The covered animal part is a fixed component or components of a larger manufactured item and is not, in its current form, the primary source of value of the item;

(C) The total weight of the covered animal component or components is less than 200 grams;

(D) The manufactured item is not made wholly or primarily of the covered animal;

(E) The ivory is not raw^[EP1] ; and

(F) The owner or seller provides historical documentation demonstrating provenance and showing:

(1) That the item is not less than 100 years old if it is an antique;

(2) That the item was manufactured no later than 1975 if it is a musical instrument.

For musical instruments, aside from New Jersey, the other enacted laws and pending legislation have musical instrument exemptions. We could support this. However, there should be a cut off year threshold to limit the exemption to musical instruments manufactured prior to 1975.

For antiques, we cannot support a blanket antique exception nor can we support a broad de minimis exemption. While current de minimis exemption has the 200 grams limitation, it doesn't include any other thresholds, such as making sure that the exempt item is not made wholly or primarily of ivory and that ivory is not the primary value of the item. The current 200 grams exemption could be interpreted as an exemption for small, fully carved ivory items weighing less than 200 grams, such as an ivory bangle or a pair of earrings or this small figurine. As you know and have seen in the undercover Humane Society video I sent on Hawaii's markets, such small, fully carved ivory items dominate the illegal ivory trade.

For documentation: Any exempt item (such as musical instruments or de minimis antiques) must have documentation to prove its legality. In a way, exempt items are receiving special treatment and it is only fair to ask the seller of an endangered species product to demonstrate that their item was obtained legally and did not violate international or U.S. domestic law in the first place.

Last, regarding delayed enactment, the original bill had a reasonable delayed enactment of 6 months. That changed to 18 months. Please note that regarding delayed enactments, these are the lengths of time for the four states on the books:

NJ: 6 months

CA: 6 months

WA: 3 months

NY: The bill took effect immediately (August 12, 2014)

The important point here is that the states that have enacted laws fall anywhere from 3 months to 6 months. We propose a compromise of 9 months instead of 6. Most important, NY (#1) and CA (#2) had the two largest ivory markets in this country. For Vermont to have an 18 month delayed enactment drastically longer than the two top ivory markets in the country is misguided at best and unethical at worst.

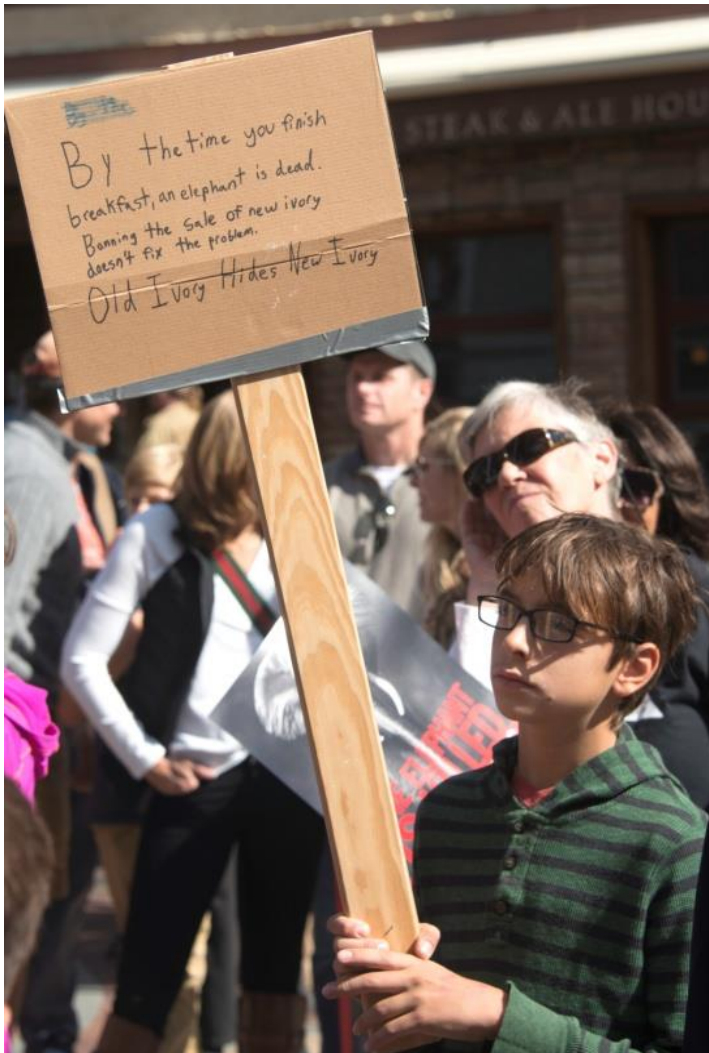
We are not calling your bluff. We are not playing games. And while it may not please everyone particularly those involved in ivory sales in this room, as you will soon be hearing from the vast majority of your constituents and Vermonters all around the state, this is overwhelmingly what Vermont wants. And it is a compromise, a reasonable compromise, and one that deserves to move forward now. There simply is no more time to debate and wait and see. The longer we wait, the more bloodshed. We cannot let this trail into another year. The time is now and we need a hero on this Committee to move this along.

In closing, I respectfully ask you to consider the word “sledgehammer” brought up by the opposition last week. I share with you now a photo of my favorite elephant and one I keep in my constant thoughts. His name is Philo and this photo was taken by my friend Ike Leonard on Jan. 22, 2013. Philo as you can see is full of confidence and majesty. This is Philo five days later, shot by poachers and left to rot, his tusks hacked off. This was taken by another friend, best-selling author and world-renowned scientist Carl Safina, who is desperate for state action here in Vermont. This is a sledgehammer.

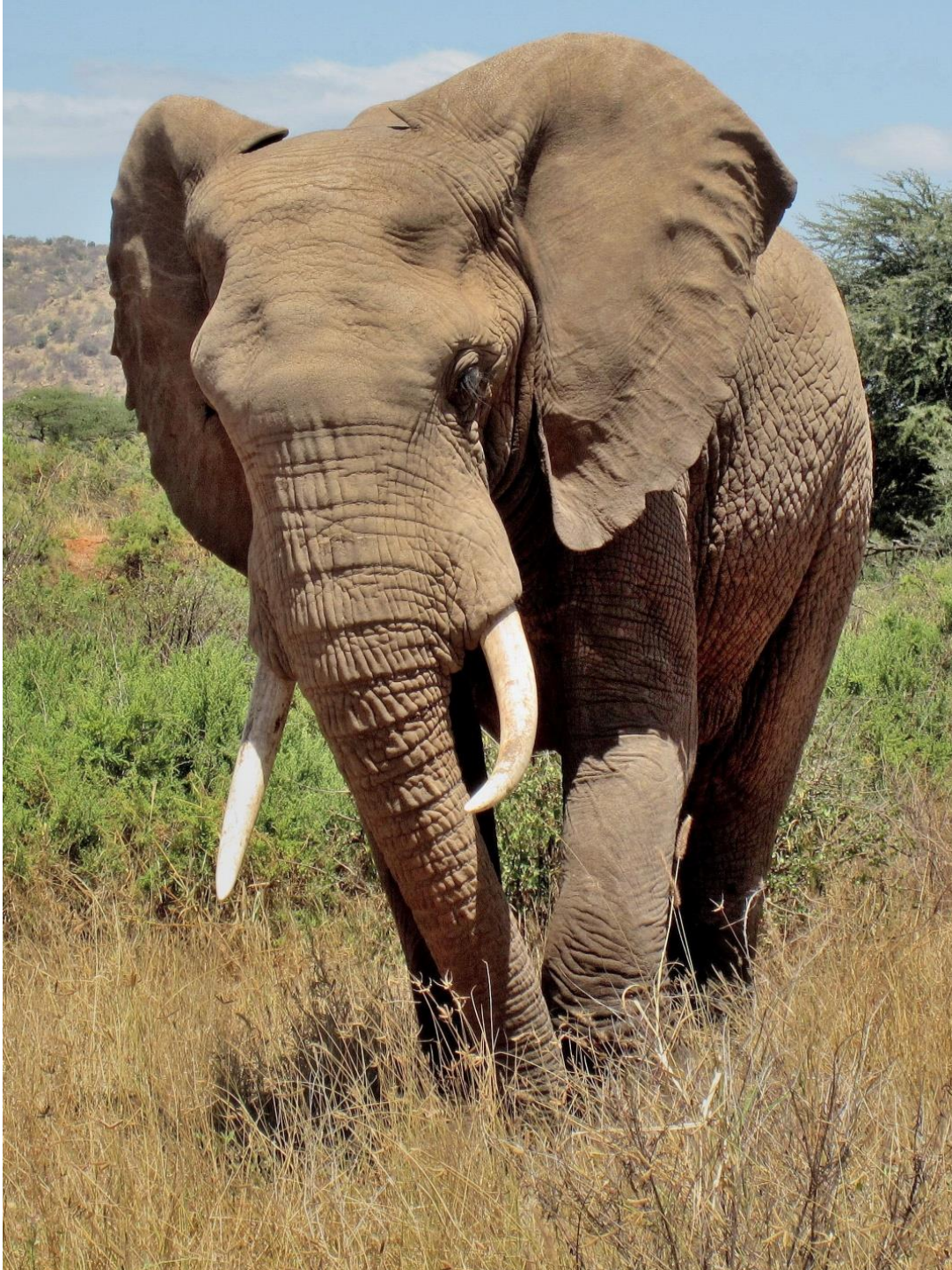
I also want to show this photo. This is Roger Gower, a young British pilot who was on an anti-poaching mission in Tanzania 2 months ago when he was shot and killed while flying his helicopter, approaching three recently slaughtered elephants. He died just a few weeks ago in January 29th. This is a sledgehammer. You may ask what the chess set you saw last week or this piece of ivory of my grandmother’s has to do with Roger Gower or the 1,000 rangers who have been gunned down trying to protect the 35,000 elephants slaughtered each year. The answer is nothing...unless I decide to sell or buy this ivory today. The second I do that, our innocent ivory has everything to do with this unspeakable loss. If Roger Gower were your son, would you still think that the chess set is worth selling? Think of that very hard. Countless lives—animal and humans—and the imminent extinction of two of our planet’s most majestic species rests in your decision. Please do not delay this any further. Thank you.



The elephant movement in Vermont has gone global with people sending Tweets from places as far away as New Zealand, Italy, and Kenya. Here Kenyan wildlife ranger Johny Mad-dog shows his hopes for Vermont and is quoted as saying, "we have lost lives, bad wounds, and still fighting...we must win this war." Credit: ElephantsDC



A young marcher, one of 325 people of all ages, holding a sign that shows support for H.297 without exemptions at the Global March for Elephants and Rhinos on Church Street in Burlington, Vermont on 10/4/15. Credit: Tim Fries



Philo by ©Ike Leonard Conservationists named this Samburu elephant Philo. He was a 15-year-old bull, full of teenage swagger, seen here on Jan. 22, 2013.



Philo Corpse by ©Carl Safina Philo, five days later. He was shot by poachers and left to rot, his tusks hacked off.



Roger Gower (www.dailymail.co.uk)