



**THE HUMANE SOCIETY
OF THE UNITED STATES**

OFFICERS

David O. Wiebers, M.D.
Chair of the Board

Anita W. Coupe, Esq.
Vice Chair of the Board

Walter J. Stewart, Esq.
Board Treasurer

Wayne Pacelle
President & CEO

G. Thomas Waite III
Treasurer & CFO

Roger A. Kindler, Esq.
General Counsel & CLO

Janet D. Frake
Secretary

Andrew N. Rowan, Ph.D.
*Executive Vice President
Operations*

Michael Markarian
*Executive Vice President
External Affairs*

STAFF VICE PRESIDENTS

John Balzar
*Senior Vice President
Communications*

Patricia A. Forkan
*Senior Vice President
External Affairs International*

John W. Grandy, Ph.D.
*Senior Vice President
Wildlife & Habitat Protection*

Holly Hazard
Chief Innovations Officer

Heidi Prescott
*Senior Vice President
Campaigns*

Katherine B. Liscomb
*Administration &
Animal Care Centers*

Richard M. Clugston, Ph.D.
Higher Education

Geoffrey L. Handy
*Media and Online
Communications*

Jonathan R. Loworn, Esq.
Animal Protection Litigation

Kathleen C. Milani
Investigations and Video

Miyun Park
Farm Animal Welfare

Nancy Perry, Esq.
Government Affairs

Steve Putnam
*Business Development &
Corporate Relations*

Robert G. Roop, Ph.D., SPHR
*Human Resources &
Education Programs*

Melissa Seide Rubin, Esq.
Field & Disaster Services

John M. Snyder
Companion Animals

Martin L. Stephens, Ph.D.
Animal Research Issues

DIRECTORS

Leslie Lee Alexander, Esq.
Patricia Mares Asip

Peter A. Bender
Barbara S. Brack

Anita W. Coupe, Esq.
Neil B. Fang, Esq., C.P.A.

Judi Friedman
David John Jhirad, Ph.D.

Jennifer Leaning, M.D., S.M.H.
Kathleen M. Linehan, Esq.

William F. Mancuso
Mary I. Max

Patrick L. McDonnell
Gil Michaels

Judy Ney
Judy J. Peil

Marian G. Probst
Joshua S. Reichert, Ph.D.

Jeffery O. Rose
James D. Ross, Esq.

Marilyn G. Seyler
Walter J. Stewart, Esq.

John E. Taft

September 10, 2008

VIA CERTIFIED MAIL

The Honorable Martha Coakley

Attorney General
One Ashburton Place
Boston, MA 02108

Re: **Illegal Activities in Violation of Massachusetts Gambling Laws**

Dear Ms. Coakley:

As you may know, for many years The Humane Society of the United States (“HSUS”), in close cooperation with our professional colleagues at the Massachusetts Society for the Prevention of Cruelty to Animals (“MSPCA”), has campaigned against Annual Oak Bluffs Monster Shark Tournament in Martha’s Vineyard, Massachusetts (“Shark Tournament”) and worked closely with Oak Bluffs Town officials to end the tournament and the cruelty, suffering and waste of life that inevitably occurs as a result. This year, to learn more about the inner workings of the Shark Tournament and because of persistent reports of large and possibly illegal bets, sometimes referred to as Calcuttas, HSUS sent a team of undercover investigators to the tournament. With this letter, and on behalf of HSUS and our more than 295,000 members and supporters in Massachusetts, I write to inform you about our investigation into apparent criminal violations of Massachusetts gambling laws. This letter is based on the results of our investigation and a legal analysis performed by our outside counsel on this matter, Latham & Watkins LLP.

Our investigation has revealed evidence that the tournament, sponsored by Sharks Unlimited, Inc. (“Sharks Unlimited”), is largely a platform for illegal gambling activities involving bets totaling in excess of \$1 million. As discussed below, we believe that these activities are crimes under Massachusetts law. Unless these tournaments are stopped, however, we believe that illegal gambling will continue to be the driving force behind these inhumane and grotesque shark tournaments.

We therefore ask for your help to end these illegal gambling activities, and we do not request this lightly. Sharks play an incredibly important role in the marine ecosystem. These big money shark tournaments are designed to kill large

numbers of these animals; they are bloody and ecologically irresponsible spectacles in which some of Earth's most ancient predators are hauled out of the ocean and hung up for bragging rights and gruesome pictures. Some of these animals are recognized worldwide as species in decline and vulnerable to extinction, and shark tournaments are contributing to this decline in shark populations. If the Commonwealth's gambling laws are enforced, as they should be, we believe that these shark tournaments will cease to exist in Massachusetts.

We would appreciate the opportunity to meet with you to share the details of our investigation. In the interim, we thought that you would find the following summary of our findings to be helpful.

HSUS' undercover team investigated the 22nd Annual Oak Bluffs Monster Shark Tournament held between July 17-19, 2008. Our investigation revealed that the tournament is a gambling operation, involving at least three distinct activities that we believe violate Massachusetts gambling laws.

- **Lottery.** The first illegal activity is the tournament itself, which is structured as a lottery in which 233 fishing teams paid up to \$1,475 each for the chance to win substantial prizes awarded to teams earning the highest scores in the fishing tournament. Scores were awarded only for three species of sharks, and each shark had to be above the minimum weight for the species. Participants caught sharks by “chumming the water” – i.e., pouring mixtures of fish parts and fish oil into the water, casting fishing lines into those areas, waiting for sharks to bite baited hooks, and then reeling in the sharks. The team that lucked into catching the biggest shark, among the many sharks lured into the chummed waters, won a pot of cash.
- **Betting Pools.** The second illegal activity involved betting pools known as “Added Entry Divisions,” where participants vied for the chance to win additional prizes. The Added Entry Divisions consisted of four separate divisions, and teams could participate in any or all of the divisions by paying the “entry fee” for the division, which ranged from \$600 to \$5,000. In all, over \$366,000 in entry fees were collected, recorded, and pooled by Sharks Unlimited organizers at the Lamp Post Tavern in Oak Bluffs, MA. The team that selected the winner in a given division won all of the money pooled for that division.
- **Raffles.** The third illegal activity was a raffle contest sponsored by the for-profit entity Sharks Unlimited as part of the Shark Tournament.

As further discussed below, we believe that the Shark Tournament, including the Added Entry Divisions and the raffle contest, violated Massachusetts criminal laws prohibiting lotteries, pool betting and raffles.

Shark Tournament/Lottery. The Shark Tournament is structured as a lottery, and is therefore illegal. Massachusetts law prohibits any person from setting up or promoting a lottery for money or other property.¹ A lottery consists of three elements: (1) payment of a price (2) for a chance (3) to gain a prize.²

With respect to the second element (chance), the law states that for there to be a lottery, chance must predominate over skill in the results of the game, or the element of chance must be present in such a manner as to thwart the exercise of skill or judgment in a game.³ There can be no reasonable dispute on the overwhelming role of “chance” in determining the outcome of fishing and hunting contests, and particularly in these shark tournaments. For example, attorney generals in other states have observed that capturing a specific animal in a contest is largely a chance event, given the unpredictability of animals.⁴ Notably, under Massachusetts law, even games that require some skill, such as video game poker, are illegal lotteries because chance predominates over skill in determining the outcome of the game.⁵

The Shark Tournament satisfies each statutory element of an illegal lottery. First, participants paid an entry fee for the chance to win one of several substantial prizes. Second, the participants had no control over which shark happened to bite their hooks in the chum-frenzied waters; in other words, landing the biggest shark was pure chance. Third, the participants played to win prizes, including a boat worth over \$50,000. Under Massachusetts law, these activities are illegal, and subject violators to a fine of up to \$3,000 and up to three years of imprisonment.

Added Entry Divisions/Pool Betting. The Added Entry Division of the Shark Tournament is an illegal pool betting scheme. Massachusetts law criminalizes specific activities that support pool betting.⁶ First, no person may be present in a building with a book or any device for “registering bets,” or “buying or selling pools,” upon the result of a “game” or “competition.” Second, no persons may register bets, or buy or sell pools. Third, the owner of a building may not knowingly allow it to be used for registering bets or buying or selling pools.

Massachusetts case law defines a “bet” as the “hazard of money or property upon an incident by which one or both parties stand to lose or win by chance.”⁷ Consistent with this definition, courts in several states have found a meaningful distinction between contests in which there is a pre-determined prize contributed by an event organizer, and contests in which the

¹ ALM GL ch. 271, § 7.

² *Commonwealth v. Wall*, 295 Mass. 70 (Mass. 1936).

³ *United States v. Marder*, 48 F.3d 564 (1st Cir. Mass. 1995).

⁴ See Opinion No. 99-084, 1999 Tenn. AG LEXIS 84 (1999); Opinion No. 99-5, 1999 Okla. AG LEXIS 15 (1999).

⁵ *Marder*, 48 F.3d 564.

⁶ ALM GL ch. 271, § 17.

⁷ *Commonwealth v. Sullivan*, 218 Mass. 281, 283 (Mass. 1914).

participants alone contribute the prize money.⁸ The latter typically signals illegal betting because the prize money is not for a definite, guaranteed sum, and therefore the element of chance is especially prominent.⁹

Under Massachusetts law, “registering” a bet means committing the event or transaction to writing.¹⁰ For example, a bettor registers a bet if he or she records the bet and delivers the recording to the person receiving the bet.¹¹

The Added Entry Division is textbook pool betting because the participant gamblers pay a fixed price into a pool, and then make a selection on the outcome of the tournament, with the winner’s payoff depending solely on the number of gamblers and the number of winners. Sharks Unlimited violated the criminal pool betting statute by administering the lucrative Added Entry Division pools in the Shark Tournament. In addition, by collecting entry fees and recording information about each bet in a notebook, the organizers violated the statutory prohibition on being present in a place with a book for “registering bets” on the results of a “competition,” as well as the prohibition on registering bets. The entry fees are “bets” because the participants risked their money for the chance to win a prize based on the highly uncertain outcome of correctly selecting which team would win the Shark Tournament. Finally, the Shark Tournament squarely fits the ordinary meaning of a “competition,” which includes a contest for a prize.

Sharks Unlimited is not alone in violating the betting pool statute. The owners and managers of the Lamp Post Tavern also violated the law by hosting this criminal activity because they knowingly allowed their building to be used or occupied for registering bets. In addition, the participants in the Added Entry Division also committed crimes because each participant in the pool registered bets on forms they delivered (along with cash) to Sharks Unlimited organizers at the Lamp Post Tavern.

Raffle. The Shark Tournament also involved an illegal raffle. Massachusetts law prohibits all for-profit organizations from holding a “raffle,” without exception.¹² Even non-profit organizations are restricted from holding raffles without first obtaining a permit.¹³ A “raffle” is

⁸ See, e.g., *State v. American Holiday Association, Inc.*, 151 Ariz. 312 (Arizona 1986), *Toomey v. Penwell*, 76 Mont. 166, 173 (Mont. 1926), *People v. Fallon*, 152 N.Y. 12 (N.Y. 1892), *Humphrey v. Viacom, Inc.*, 2007 U.S. Dist. LEXIS 44679, *20 (D.N.J. 2007). See also Attorney General Martha Coakley, *Advisory on Poker Tournaments*, June 30, 2005, http://www.mass.gov/?pageID=cagoterminal&L=3&L0=Home&L1=Non-Profits+%26+Charities&L2=Charitable+Organizations&sid=Cago&b=terminalcontent&f=nonprofit_pokeroverview&csid=Cago.

⁹ See *Humphrey*, 2007 U.S. Dist. LEXIS 44679, *20-21; *Fallon*, 152 N.Y. 12, *19.

¹⁰ *Commonwealth v. Demogenes*, 349 Mass 585 (Mass. 1965).

¹¹ *Commonwealth v. Pasquale*, 334 Mass. 669 (Mass. 1956).

¹² ALM GL ch. 271, § 7A.

¹³ *Id.*

defined as “an arrangement for raising money by the sale of tickets, certain among which, as determined by chance after the sale, entitle the holders to prizes.”¹⁴ The business registration records of Sharks Unlimited demonstrate that it is a for-profit organization, and our investigation revealed that no organization applied for a permit to operate a raffle as part of the Shark Tournament. Therefore, Sharks Unlimited violated Massachusetts criminal laws when it held the raffle.

* * *

As set forth in this letter, our investigation has uncovered evidence that Sharks Unlimited and the participants in the Shark Tournament committed criminal violations of Massachusetts gambling laws. Notably, the owner and operators of Sharks Unlimited conduct additional shark tournaments in Massachusetts each year. It is clear that illegal gambling is the driving force behind these inhumane shark tournaments. If the illegal gambling is eliminated, we believe that the motivation for holding, and participating in, these sickening events will disappear. For the foregoing reasons, we respectfully request that the Attorney General’s office investigate and, as necessary, prosecute these crimes.

We greatly appreciate your consideration of the matters raised in this letter, and we look forward to meeting with you to discuss our findings. I will contact your office to set up a meeting. In the interim, please feel free to call me directly at (301) 258-3145 with any questions you may have regarding this matter.

Best regards,

A handwritten signature in black ink, appearing to read 'Jon Lovvorn', with a horizontal line extending to the right from the end of the signature.

Jon Lovvorn, HSUS

cc: Dr. John Grandy, HSUS
Carter Luke, CEO, MSPCA
James Barrett, Latham & Watkins LLP

¹⁴ *Id.*