

Recommendations from the Environmental Investigation Agency regarding revision of the Wildlife Protection Law of the People's Republic of China

30 September 2022

EIA is an international non-governmental organization committed to investigating environmental crime and abuse and advocating for effective laws, enforcement and criminal justice responses to combat it. Since its establishment in 1984, EIA has played a key role in contributing to international and national decision-making in relation to combating environmental crimes such as illegal wildlife trade, including through the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). EIA's work on wildlife trade focuses on trade in elephant ivory, tigers and other Asian big cats, rhinoceroses, pangolins and totoaba, although our investigation findings and policy recommendations are of relevance to many other wildlife species.

EIA contributed comments and recommendations during the previous revision of the Wildlife Protection Law of the People's Republic of China (hereafter referred to as "the Law") in 2016¹, and to consultation drafts of implementing regulations.² EIA also submitted recommendations in February and October 2020 upon the announcement of a revision to the Wildlife Protection Law.

The comments below relate to the revised draft of the Wildlife Protection Law of the People's Republic of China published in September 2022 alongside a call for comments from members of the public (hereafter referred to as "the revision draft").

Desired Outcomes

EIA's primary desired outcome of the Wildlife Protection Law revision process is a legal framework which prohibits commercial exploitation of some of the world's most threatened wild animal species, including commercial breeding and trade for any purpose. Amendments to the Law are urgently needed to ensure that China's legal frameworks no longer serve to legitimise and perpetuate demand for wild animal species which are threatened with extinction due in large part to demand in China. A failure to adopt such amendments would risk undermining China's leadership in global biodiversity governance, especially as the Chair of the 15th Conference of the Parties to the Convention on Biological Diversity in 2022.

EIA applauds the Chinese Government's decision to amend the Wildlife Protection Law in recognition of the threats posed to people in China and around the world by the biodiversity crisis and current and future zoonotic epidemics. We are encouraged by several elements of the revision draft, including new efforts to tackle overconsumption

¹ <https://eia-international.org/wp-content/uploads/EIA-Position-Paper-on-Chinas-Draft-Wildlife-Law-February-3-2016.pdf>; https://eia-international.org/wp-content/uploads/2.-EIA-comments-on-second-draft-of-WPL_Summary-of-key-concerns_Final.pdf and https://eia-international.org/wp-content/uploads/3.-EIA-comments-on-second-draft-of-WPL_Specific-comments_Final.pdf

² <https://eia-international.org/wp-content/uploads/EIA-comments-on-WPL-draft-implementation-regulations-bilingual.pdf>

of wildlife, strengthen law enforcement, and increase penalties for violations of the law.

However, EIA is extremely disappointed to see that no amendments have yet been proposed to key provisions in the law that permit commercial exploitation of highly threatened wild animal species for non-food purposes. Further amendments are urgently needed to secure the following positive outcomes for threatened species³ especially elephants, tigers and other big cats, rhinoceroses, bears and pangolins:

- Closure of domestic markets for the parts and derivatives of all big cats, including medicinal products containing leopard bone (which may refer to the bones of leopard, clouded leopard and snow leopard),⁴ rhinoceroses, pangolins, elephants, bears and other threatened species
- A time-bound plan for the phase out of commercial tiger breeding operations and the closure of domestic markets for parts and derivatives of captive bred tigers consistent with international agreements⁵
- Ensure robust, centralised monitoring and inspection of facilities keeping elephants, tigers and other big cats, rhinoceroses, bears and pangolins in captivity to ensure that parts and derivatives do not enter trade
- The destruction of parts and derivatives of elephants, tigers and other big cats, rhinoceroses, bears, pangolins and other threatened species which are no longer required for enforcement and prosecution purposes, and of privately held stocks of captive bred tiger parts and derivatives
- Criminalise possession of wild animals or wild animal products⁶ sourced in contravention of the Law or international conventions to which China is a Party
- Prohibit the auction of seized wild animals or wild animal products

Given that the current revision of the Wildlife Protection Law was initiated in the wake of concerns, triggered by the emergence of COVID-19, relating to the human health risks posed by trade in wild animals, the revision further presents an opportunity to extend prohibitions on breeding and trade of wild animals for consumption as food to consumption for other purposes, such as traditional medicines and health tonics, given

³ With the term “threatened species”, EIA is referring to all species of wildlife assessed as Vulnerable, Endangered or Critically Endangered under the IUCN Red List. See also <https://www.iucnredlist.org/about/faqs#:~:text=Species%20in%20the%20Vulnerable%2C%20Endangered,Possibly%20Extinct%20in%20the%20Wild>

⁴ See for example, EIA. 2018. Down to the bone: China's alarming trade in leopard bones. Available from: <https://eia-international.org/wp-content/uploads/Chinese-Government-agency-issuing-permits-for-commercial-trade-in-bone-of-hundreds-of-leopards.pdf>

⁵ For example, CITES Decision 14.69; CITES Res. Conf. 12.5 (Rev. CoP18); recommendations adopted by the 3rd Stocktaking Conference on Tiger Conservation

⁶ In all instances throughout this document when referring to wild animals or wild animal products, this includes all captive specimens of wild animal species and parts and derivatives derived from captive specimens

similar public health risks are inherent in the breeding and processing for such products

Overview of key concerns

EIA is very concerned that in its current form, the revision draft appears to represent a serious missed opportunity to reduce demand for wild animal species whose survival in the wild is threatened by trade in their body parts, such as pangolins, tigers, leopards, elephants, rhinos and bears, by imposing an unambiguous prohibition on commercial trade in these and other threatened species. We recognise many of the changes in the revision draft to be potentially positive, such as further restrictions on consumption of wild animals as food. However, the failure to amend provisions which allow for the commercial breeding and trade of even protected species for non-food purposes such as traditional medicine and ornamental items risks overshadowing and undermining positive changes elsewhere.

The results of EIA's investigations and research indicate that 'utilisation' or legal domestic trade in these species, including in parts and derivatives of captive bred specimens, is a high-risk approach that exacerbates the trade threat they face in the wild. EIA has obtained evidence that demonstrates that the "special marking" scheme implemented under the current Law and maintained in the revision draft to regulate legal trade in wild animals under special state protection⁷ in effect enables laundering of illegal wildlife specimens, undermines enforcement efforts and stimulates demand for the species.⁸

EIA recommends the application of the precautionary principle as set out in the 1992 Rio Declaration on Environment and Development in the revision process. The precautionary principle is a well-established principle under public international law that is recognized as a valid legal principle in international instruments such as CITES and the Convention on Biological Diversity as well as several national and regional jurisdictions such as India and the European Union. The precautionary principle requires prevention of serious or irreversible damage irrespective of scientific uncertainty regarding the same. Given evidence that legal domestic trade is harmful to wildlife that is threatened by trade, the focus of the Law should be on exercising precaution, acting in the best interest of the world's natural heritage and not

⁷ This category includes tigers, leopards, snow leopards, clouded leopards, Asian elephants and Chinese pangolin. EIA understands that other species including lions, jaguars, African elephants, rhinoceroses and African pangolin species are managed as species under special state protection due their listing on CITES Appendices

⁸ See for example EIA. 2013. Hidden in Plain Sight: China's clandestine tiger trade. Available from: <https://eia-international.org/wp-content/uploads/EIA-Hidden-in-Plain-Sight-Chinese-lang-version-FINAL1.pdf>; EIA. 2020. Bitter Pill to Swallow: China's Flagrant Trade in Leopard Bone Products. Available from: <https://eia-international.org/report/bitter-pill-to-swallow-chinas-flagrant-trade-in-leopard-bone-products/>; EIA. 2020. Smoke and Mirrors: China's complicity in the global illegal pangolin trade. Available from: <https://eia-international.org/report/chinas-complicity-in-the-global-illegal-pangolin-trade-smoke-and-mirrors/>

experimenting with the fate of threatened wildlife through utilisation or legal trade. EIA therefore recommends prohibiting all sale, purchase and utilisation of wild animal species under special state protection, including specimens derived from captive sources.

Moreover, EIA notes that the current revision of the Law was initiated as a result of concerns around health risks posed by trade in wild animals, triggered by the emergence of COVID-19⁹. A prohibition on eating terrestrial wild animals and breeding and trade for the purposes of consumption as food, first adopted in February 2020 and enshrined in the revision draft, represents a significant policy change aimed at addressing these risks. However, it is very concerning that consumption and related breeding and trade for other purposes, including as traditional medicines, not only continues to be permitted but is specifically legitimised in the revision draft. Given that health risks related to the breeding, processing and transportation of wild animal species may be present regardless of the ultimate purpose of consumption, these exemptions undermine the fundamental purpose of this revision process and the ambition displayed to date.

Behavioural science shows that repetitive exposure to a type of idea or action will lead to the normalisation of that idea or action¹⁰. The Halo effect¹¹ predicts the audience will then have the tendency to normalise and justify other ideas or actions relating to the same topic. By permitting a legal use of wild animal parts and products for any purpose, the Law is increasing the risk of the public maintaining their consumption of wild animals as food as well as for other uses. The legitimising of medical use of wildlife is particularly problematic, as traditional Chinese medicine promotes the idea of food and medicine as intrinsically related, thus sustaining the consumer motivation to eat wild animals or their products. To minimise relapse of wild meat consumption and the risk of the emergence of new human-animal health issues, the revised Law should make it clear that wild animal consumption of any kind at a commercial scale is unacceptable.

The current process of revising the Law offers an invaluable opportunity for China to demonstrate conservation leadership as it prepares to Chair the 15th Conference of the Parties to the Convention on Biological Diversity in 2022. This can be achieved by adopting language suggested below to permanently prohibit domestic trade and utilisation of wild animal species under special state protection; provide for essential definitions of concepts such as breeding for conservation purposes; and extend

⁹ National People's Congress of the People's Republic of China. 2020. 加大打击和惩治乱捕滥食野生动物行为, 全国人大常委会法工委启动修法工作. Available from: <http://www.npc.gov.cn/npc/c30834/202002/c864210c8208481798e1d2c87bace055.shtml>

¹⁰ Dempsey, R., McAlaney, J. and Bewick, B. (2018). A Critical Appraisal of the Social Norms Approach as an Interventional Strategy for Health-Related Behavior and Attitude Change. *Frontiers in Psychology*, [online]. Available at: <https://www.frontiersin.org/articles/10.3389/fpsyg.2018.02180/full> [Accessed 20 Feb. 2020].

¹¹ Neugaard, B. (2020). Halo effect. [online] *Encyclopedia Britannica*. Available at: <https://www.britannica.com/science/halo-effect> [Accessed 20 Feb. 2020].

prohibitions to non-food forms of consumption in the interests of addressing risks to public health. Adopting the recommendations below would also bring China's legislation into compliance with key Decisions and Resolutions adopted by the Conference of the Parties to CITES.

EIA also notes with concern that key implementing regulations and relevant lists relating to the Law have not yet, to the best of our knowledge, been officially promulgated, such as the draft Management Methods of the Special Marks for Special State Protection Wild Animals and Their Derivatives, the update of the list of wild animals of important ecological, scientific or social value. Members of the National People's Congress evidently share this concern.¹² The revision draft makes reference to implementation methods and regulations not yet published by the State Council Wildlife Management Authority or provincial governments. The current ambiguous situation regarding implementing regulations is undermining urgently needed efforts to protect threatened species¹³, and as such this work should be expedited as a matter of urgency. EIA has serious concerns regarding the consultation drafts of implementing regulations circulated in 2016; please see our comments submitted at the time.¹⁴

Comments on specific articles and suggested language

Suggested deletions are reflected in strikethrough (~~strikethrough~~), and suggested additions are underlined.

Article 2

As currently written, the definition of wild animal species protected by the Law may be read as excluding species other than those which are "rare or near extinction" or have "important ecological, scientific or social value". Noting that in fact the revised draft provides protections for wild animal species beyond these categories, EIA recommends inserting a clear definition which ensures in principle that all wild animal species are afforded some degree of protection, and that same level of protection be afforded to specimens in captivity.

Suggested amendments (Article 2, clause 2):

The wild animals protected under this Law refers to ~~the species, both terrestrial and aquatic, which are rare or near extinction, and terrestrial species which are of~~

¹² National People's Congress of the People's Republic of China. 2020. 加大打击和惩治乱捕滥食野生动物行为, 全国人大常委会法工委启动修法工作. [online] Available at: <http://www.npc.gov.cn/npc/c30834/202002/c864210c8208481798e1d2c87bace055.shtml> [Accessed 29 Oct 2020].

¹³ As per comment above, referring to all species of wildlife assessed as Vulnerable, Endangered or Critically Endangered under the IUCN Red List

¹⁴ EIA. 2016. Comments on draft implementation regulations for the revised law of the People's Republic of China on the Protection of Wildlife. Available from: <https://eia-international.org/wp-content/uploads/EIA-comments-on-WPL-draft-implementation-regulations-bilingual.pdf>

important ecological, scientific or social value. all terrestrial and aquatic species of wild animals, including specimens of those species in captivity, in accordance with the purposes of this Law as stipulated in Article 1.

Article 3

As is laid out Article 1, the purpose of the Law is to protect wild animals and promote establishment of ecological civilization. This should be reflected in this Article.

Suggested amendments (Article 3, clause 2):

The state safeguards the lawful rights and interests of organisations and individuals engaged in the protection of wild animals and related activities, including scientific research ~~and captive breeding~~, according to the law.

Article 4

The Law should prioritise protection of wildlife and, in accordance with the precautionary principle, should not encourage utilisation.

Suggested amendments (Article 4):

The state shall pursue a policy of prioritising protection, ~~regulating utilisation and~~; stringent monitoring and management and guarding against risks; shall encourage scientific research into wild animals and the cultivation of public awareness of protecting wild animals; and shall promote the harmonious symbiosis of man and nature.

Article 6

While we commend amendment of this article to explicitly prohibit illegal trade and consumption of wild animals in addition to hunting, the prohibition should not be restricted only to illegal consumption as food.

Suggested amendments (Article 6, clause 2):

The illegal consumption of wild animals as food shall be prohibited. The utilisation of threatened wild animal species, including from captive bred specimens, shall be prohibited. The general public should strengthen their awareness of protecting ecosystems and upkeeping public health safety, and reject the illegal consumption of wild animals as food and the utilisation of threatened species for other purposes, adopt a scientific, healthy and civilised lifestyle.

Article 13

In accordance with the precautionary principle, language should be added to this article to ensure that utilisation of wild animals is not permitted in situations where it cannot be guaranteed such activities will not harm the species' conservation status or human health.

Suggested amendments (Article 13, clause 1):

The people's government at the county level and above shall, when drawing up plans relating to exploitation and utilisation, give due consideration to the protection of wild animals and their habitats; shall analyse, calculate and evaluate all potential impacts that implementation of these plans may have on protection and wild animals and their habitats; and shall avoid or reduce adverse impacts that could result from the implementation of these plans. In accordance with the precautionary principle, exploitation and/or utilisation shall not be permitted in situations where it cannot be guaranteed such activities will not harm wild animals or their habitats, including in situations of uncertainty where potential impacts on wild animals cannot be evaluated.

Article 18

To standardise and ensure scientific, humane methods are used across the country, we recommend specifying the level to government responsible and involve credible academic institutions to develop protocols of measures.

Suggested amendments (Article 18):

The ~~local~~ people's governments concerned at county level and above in collaboration with relevant academic institutions shall develop a scientific and humane protocol based on systematic assessment, to take based on the actual circumstances and needs, shall take measures including population control, setting up quarantine and protection facilities, to prevent and control potential harm caused by wild animals so as to guarantee the safety of people's lives and properties, ecologic safety, and agricultural production.

Article 21 and 22

We recommend that the hunting and capture of wild animals under special state protection, terrestrial wild animals of important ecological, scientific or social value, or wild animals under special local protection should only be allowed based on non-detriment findings.

Suggested amendments (Article 21 clause 2):

Where the hunting or catching of wild animals under first class state protection is necessary for scientific research, population control, epidemic monitoring or other special purposes, the entity concerned shall submit a non-detriment finding report to apply to the department of wild animal protection under the State Council for a special hunting and catching licence. Where the hunting or catching of wild animals under second class state protection is necessary, the entity concerned shall submit a non-detriment finding report to apply to the department of wild animal protection under the people's government of the province, autonomous region or municipality for a special hunting and catching licence.

Suggested amendments (Article 22):

Any entity that hunts or catches terrestrial wild animals of important ecological, scientific or social value or wild animals under special local protection shall submit a non-detriment finding report to obtain a hunting licence issued by the department of wild animal protection under the local people's government at the county level and above in accordance with the law, and shall observe the hunting quota assigned.

【 Article 25 of the 2020 revision draft 】

We are concerned that Article 25 of the 2020 revision draft has been removed. As Article 22 of the revision draft no longer covers wild animals that are not under special state protection, special local protection, or of important ecological, scientific or social value, the removal of this Article renders the hunting, capture and killing of these species unregulated.

We recommend reinserting the Article to prohibit or restrict the hunting, capture and killing of all terrestrial wild animals. Or, at the very least, revert back to the language of Article 22 of the Wildlife Protection Law in effect that covers all terrestrial wild animals apart from those under special state protection.

Article 25

The new language in clause one of the Article that “Captive breeding of wild animals will be managed in a categorised and graded manner, stringently protecting and scientifically utilising wild animal resources” is ambiguous. The draft also lacks language about any regulation of the captive breeding of terrestrial wild animals that are not under special state protection, of important ecological, scientific or social value, or special local protection.

EIA commends the removal of language in the draft revision which explicitly refers to breeding for purposes other than protection of the species. However, given that this article as written in the current law has to date been interpreted to allow commercial breeding of wild animals under special state protection, such as tigers, for non-conservation purposes, we recommend the addition of language to ensure this is no longer permitted.

For wild animal species that are threatened by trade, captive breeding for any purposes other than conservation poses an unacceptable risk to the species. Captive breeding for non-conservation purposes is of particular concern for tigers, the large-scale commercial breeding of which has not lessened pressure on wild populations but has instead perpetuated and stimulated demand for all big cat products, reduced stigma of consumption of tiger products, and has provided traders with opportunities to launder illegally-sourced tiger specimens.¹⁵

¹⁵ See for example EIA UK (2013). *Hidden in Plain Sight*. [online] Environmental Investigation Agency UK. Available at: <https://eia-international.org/wp-content/uploads/EIA-Hidden-in-Plain-Sight-Chinese-lang->

Moreover, definition of what may constitute a “scientific research institution” is not sufficiently restrictive to prevent such facilities from engaging in activities which are harmful to the conservation of protected species. For example, facilities such as the Siberian Tiger Park and Xiongsen Tiger and Bear Mountain Village, while sometimes described as scientific institutions, are offering for sale products marketed as derived from tigers and/or lions and are keeping tigers in conditions that are inconsistent with conservation breeding.

The threat posed by commercial breeding to wild tigers has been recognised by the international community as represented by the Conference of the Parties to CITES, which adopted Decision 14.69, which states:

“Parties with intensive operations breeding tigers on a commercial scale shall implement measures to restrict the captive population to a level supportive only to conserving wild tigers; tigers should not be bred for trade in their parts and derivatives.”

When this Decision was adopted, the Parties specifically voted to specify that it applies to domestic as well as international trade.¹⁶ This article should therefore be amended to bring China’s legislation into compliance with this Decision.

The language and application of this Article to date is also of concern for other species such as pangolins and rhinoceroses. When evaluated against various biophysical, market and regulatory conditions, the use of captive breeding of pangolins to meet consumer demand for pangolins scales has been determined to not be commercially viable¹⁷. Any permitted breeding activities also risk offering means through which to launder pangolins and rhinoceros horn illegally sourced from the wild.

EIA therefore recommends that language be added to Article 25 to specifically prohibit captive breeding of wild animals under special state protection for any purpose other than for the conservation of the species, given the unacceptable risk posed to the conservation of the species in the wild. While for many protected species there is little or no conservation justification for keeping the species in captivity, where captive populations exist we recommend that keeping and breeding of elephants, tigers and other big cats, bears and rhinoceroses be restricted to programmes and scientific institutions that are part of internationally recognised scientific conservation breeding initiatives, managed via studbooks.

[version-FINAL1.pdf](#) and Rizzolo (2021) Effects of legalization and wildlife farming on conservation. *Global Ecology and Conservation*, Vol 25 [online] Available at: <https://www.sciencedirect.com/science/article/pii/S2351989420309318>

¹⁶ See summary record from 14th Conference of the Parties to CITES:

<https://www.cites.org/sites/default/files/eng/cop/14/rep/E14-Com-II-Rep-14.pdf>

¹⁷ Challender et al. 2019. Evaluating the feasibility of pangolin farming and its potential conservation impact. *Global Ecology and Conservation* 20

Language should also be added to this Article to define “captive breeding of wild animals under special state protection for the purposes of protection of the species”, and to ensure that information relating to permits for such activities is made available to relevant stakeholders. According to experts at the Zoological Society of London, conservation breeding specifically relating to tigers aims to maintain a population which is physically, behaviourally and genetically healthy and representative of the taxon in the wild. It requires maintenance of maximum genetic diversity through centrally managed breeding of a population with fully known ancestry, selecting particular individuals for pairing on genetic grounds, housing the stock in facilities preserving natural behaviours and avoiding hand-rearing or use of unnatural social groups¹⁸.

Suggested amendments (Article 25)

~~Apply categorised and graded management to the captive breeding of wild animals, to strictly protect and scientifically utilise wild animal resources. The state shall support relevant scientific research institutions in conducting captive breeding of wild animals under special state protection for the purposes of protection of the species recovery of the species in the wild.~~

~~For captive breeding of wild animals under special state protection, the state shall implement a permit system. Any entity intending to breed wild animals under special state protection shall obtain the approval of departments of wild animal protection under the people's government of the province, autonomous region or municipality and shall obtain a captive breeding permit. Exemptions may be provided by other regulations that designated a different authorization agency by the State Council.~~

~~Any entity intending to breed terrestrial wild animals of important ecological, scientific or social value shall file their operation with the department of wild animal protection under the people's government of the county.~~

~~For captive breeding of wild animals under special state protection, terrestrial wild animals of important ecological, scientific or social value and wild animals under special local protection for the purposes of recovery of species in the wild, the state shall implement a permit system.~~

~~Any entity intending to breed wild animals under special state protection shall obtain the approval of the department of wild animal protection under the State Council and shall obtain a captive breeding permit. Breeding operations that claim to conduct captive breeding of wild animals under special state protection for the purposes of protection of the species shall provide a plan demonstrating how the operation is part of an internationally recognised scientific captive breeding program, and detailing how the operation enables recovery of the species in the wild. Applications shall be~~

¹⁸ SSN/ENV, July 2014, *Caged assets: tiger farming and trade*, accessible on: <https://eia-international.org/wp-content/uploads/Caged-Assets-revised.pdf>

considered by the department of wild animal protection under the State Council in consultation with national experts and members of the IUCN Captive Breeding Specialist Group and results of decisions shall be made publicly available, alongside supporting materials. The manufacturing, sale, purchase or utilization of species under special state protection and the products thereof for any purpose by any captive breeding operation shall be prohibited.

Captive breeding of wild animals under special state protection or non-native wild animals, the trade in which is prohibited or restricted by international conventions to which China is a party, for any purposes other than recovery of the species in the wild, shall be prohibited.

Any entity intending to breed terrestrial wild animals of important ecological, scientific or social value or wild animals under special local protection shall obtain the approval of departments of wild animal protection under the people's government of the province, autonomous region or municipality and shall obtain a captive breeding permit

~~The captive breeding of terrestrial animals with important ecological, scientific, or social value~~ other terrestrial wild animals shall be filed with the department of wild animal protection under the people's government at the county level.

The department of wild animal protection under the State Council shall set up a centralised, publicly accessible captive breeding database to provide record and traceability of all wild animal captive breeding in China.

Any entity intending to breed wild animals under special state protection or terrestrial wild animals with important ecological, scientific, or social value, for the purposes of recovery of the species in the wild shall use legally-acquired captive-bred offspring as founder stock, and shall establish a species genealogy, breeding records and records of individual data. Where it is absolutely necessary to use wild founder stock for the purposes of protecting the species, this shall abide by regulations in this law relating to hunting or capture of wild animals and abide by the laws and regulations on human health and animal disease prevention.

Captive-bred offspring as referred to in this law are those individuals bred and born in human-controlled conditions whose parent stock were also born under human-controlled conditions.

~~The detailed methods of the categorised and graded management of the captive breeding of wild animals shall be set by the State Council wildlife management authority.~~

Article 26

EIA commends the amendment made to this Article in the revision draft to require that captive breeding of any wild animals (not only wild animal species under special state protection) benefit the protection of the species.

EIA commends the inclusion in this Article of language specifying that wild animals shall not be abused. However, in the absence of definitions of such abuse or of Articles in the Law specifying consequences for violating this Article, this language is at present insufficient to ensure the legal application of this provision.

Suggested amendments (Article 26, clauses 1):

Captive breeding of wild animals shall benefit the protection of the species and scientific research, and may not damage wild populations. Any entity intending to breed wild animals shall ensure that they have the necessary living space and conditions for the movement, reproduction, hygiene and health of the animal according to its habits and properties; that they are equipped with adequate premises, facilities and technology in line with the purpose, type and scale of the captive breeding operation; that they can satisfy relevant technical standards and disease prevention requirements; and that the wild animal is not abused. The abuse of wild animals in captivity shall be prohibited. Behaviour that constitutes abuse of wild animals shall be defined by the department of wild animal protection under the State Council, in consultation with national and international experts in animal welfare, and this definition shall be published in a timely manner.

Article 28

EIA is very concerned that while significant amendments have been made to other articles in the Law to extend protections and prohibit trade in terrestrial wild animals for consumption of food, the language of this Article as it relates to trade and utilisation of wild animal species under special state protection is largely unchanged.

EIA has documented how provisions in this Article as currently written are being interpreted to permit commercial trade in the parts and derivatives of wild animal species under special state protection, such as leopards. For example, in March 2018 a single permit was issued by the State Forestry Administration (since renamed the National Forestry and Grasslands Administration) to allow the sale of 1.23 tonnes of leopard bone to a pharmaceutical company for the production of traditional medicine products.¹⁹ EIA understands the exemption provided in the second clause of this Article for “heritage conservation” to be interpreted in this and other cases to permit commercial trade for the purposes of commercial production and trade of traditional medicine products.

¹⁹ Environmental Investigation Agency. 2018. Down to the bone: China’s alarming trade in leopard bones. Available from: <https://eia-international.org/report/down-to-the-bone-chinas-alarming-trade-in-leopard-bones/>

This article should be revised to prohibit all sale and purchase of the parts and products of wild animals under special state protection for any reason.

Amending the language of this Article to prohibit the sale, purchase and utilisation of wild animal species under special state protection would also bring China's wildlife law into compliance with Decisions and Resolutions adopted by CITES Parties, including the following:

- CITES Res. Conf. 12.5 (Rev CoP18), *Conservation of and trade in tigers and other Appendix-I Asian big cat species*, which URGES "all Parties in whose jurisdiction there is a legal domestic market for specimens of tiger and other Asian big cats species that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in tiger and other Asian big cat specimens"
- CITES Decision 14.69 which states, "tigers should not be bred for trade in their parts and derivatives"
- CITES Decision 18.116 which states, "Parties in which illegal markets for rhinoceros horn exist are encouraged to develop demand reduction programmes targeted at key identified audiences, taking into consideration the provisions in Resolution. Conf. 17.4 on Demand reduction strategies to combat illegal trade in CITES-listed species and taking advantage of the experience and expertise developed in other jurisdictions and by other organizations. Parties are urged to close those markets that contribute to poaching or illegal trade."

Language should also be added to this article to specifically prohibit possession of illegally-sourced wild animals and the products thereof, as is required by Article VIII of the CITES Convention text.

Suggested amendments (Article 28):

The sale, purchase and utilisation of wild animals under special state protection or the products thereof shall be prohibited. The possession of wild animals under special state protection or the products thereof that were sourced illegally, including in contravention of international treaties to which China is Party, shall be prohibited.

~~*Where the sale, purchase or utilisation of wild animals under special state protection and the products thereof is necessary for scientific research, captive breeding, public exhibition or performances, heritage conservation or other special purposes, the entity involved shall obtain the approval of departments of wild animal protection under the people's government of the province, autonomous region or municipality, and shall obtain and use special markings in line with regulations, and shall guarantee traceability. Exemptions may occur when the State Council has set other regulations that designated a different authorization agency.*~~

The scope and management methods of the special marking for the wild animals under special state protection and the products thereof shall be set by the State Council wildlife protection and management department.

The sale or utilisation of terrestrial wild animals of important ecological, scientific or social value, and wild animals under special local protection and the products thereof, shall require provision of proof of legal origin, such as a hunting, captive breeding, import or export permit.

Article 29

As currently written, this Article leaves the door open for commercial breeding and utilisation of state protected species that are seriously threatened by trade. The current language does not define “mature and stable techniques for captive breeding”. We recommend adding clear definition to the clause.

As noted above (see comments on Article 25), commercial breeding and utilisation of wild animal species that is threatened by trade, such as tigers and other big cats, pangolins, bears, elephants and rhinoceroses, poses an unacceptable risk to the species.

As such, and in accordance with the precautionary principle, language should be added to this Article to specify that the mechanism described herein to permit and regulate commercial breeding and utilisation of wildlife shall not be permitted for such species.

The law should exclude species under special state protection from being included in any Catalogue of Livestock and Poultry Genetic Resources. We are concerned that the revision draft has loosened the conditions for including species in such a Catalogue, as the 2020 draft stipulated that scientifically evidenced evaluation must be done by the State Council agriculture and rural affairs management authority and related State Council departments while the current revision draft no longer stipulates a department responsible.

In addition, the revision draft no longer refers to a specific Livestock Genetic heritage Catalogue. For clarity and implementation, we suggest keeping the language of the 2020 draft and specify the list as the National Catalogue of Livestock and Poultry Genetic Resources.

Suggested amendments (Article 29, clause 1 and 3):

Wild animals under special state protection for which there exists mature and stable knowledge and techniques for captive breeding may, following scientific deliberation and evaluation, be included on a catalogue of captive-bred wild animals under special state protection drawn up by the department of wild animal protection under the State Council. Special markings can be obtained for the wild animals included on this catalogue and the products thereof through the provision of a captive breeding permit. The special markings shall be issued in line with annual production quotas verified by

the departments of wild animal protection under the people's government of the province, autonomous region or municipality. The sale and utilisation of these wild animals and products thereof shall depend on the special marking to guarantee traceability. Wild animal species that are threatened by trade, including tigers, leopards, snow leopards, clouded leopards, lions, jaguars, elephants, rhinoceroses, pangolins and bears etc, shall not be added to the aforementioned catalogue. The sale, purchase and utilisation of these species and the products thereof, including from captive sources, are strictly prohibited.

Captive-bred populations of terrestrial wild animals which have been domesticated, which show established traits artificially selected for economic reasons, for which captive breeding techniques are mature and for which disease prevention and control systems are established may, following provision of scientific proof and evaluation by the State Council agriculture and rural affairs management authority and related State Council departments, be included in a ~~Catalogue of Livestock and Poultry Genetic Resources~~ the National Catalogue of Livestock and Poultry Genetic Resources in accordance with relevant regulations.

Articles 30

EIA is concerned and disappointed to note that Article 30 continues to sanction the utilisation of wild animals for non-food purposes without prohibiting such use for species under special state protection. In particular, the revision draft explicitly lists medicinal use as a need for wildlife utilisation. This is in stark contrast to the precautionary approach demonstrated in Article 31 which prohibits consumption of almost all terrestrial wild animals as food. While we commend the precautionary approach in Article 31, the failure to extend this prohibition to consumption for other purposes, even where the species is protected, risks undermining the effectiveness, coherence and ambition of this significant move.

Whether they are processed and consumed as food, traditional medicine, healthcare tonics or as decorative items, the commercial breeding, processing and consumption of wild animals can pose risks to both the conservation of the species and public health. As noted above, EIA has documented how the current Law is being interpreted to permit the sale, purchase and utilisation of the parts and derivatives of species under special state protection such as leopard bone, bear bile, saiga horn, elephant ivory, elephant skin and pangolin scales for consumption as medicines or healthcare tonics. There are well-documented findings that legal trade mechanisms enshrined in the law are susceptible to abuse and laundering of illegally-sourced stock, as well as concerns that maintenance of a legal market for such products is serving to legitimise consumption and so perpetuate demand for species subject to high levels of poaching and trafficking to markets in China.

Language in Article 30 (31 if insertion of Article 25 is adopted) should therefore be amended to specifically prohibit the use of wild animals under special state protection

for medicinal and ornamental purposes. This is essential in order to coherently achieve the stated objective of the current revision process, namely to address public health concerns related to consumption of wild animals, as well as to ensure that any utilisation shall benefit the breeding and conservation of wild populations and abide by the requirements of ecological civilization.

Suggested amendments (Article 30):

Any entity utilising wild animals and the products thereof shall primarily use captive-bred populations, shall benefit the breeding and conservation of wild populations, shall abide by the requirements of ecological civilization, respect social moral standards, and shall abide by laws, regulations and relevant national statutes. For species under special state protection including captive bred specimens, utilisation is prohibited including for purposes such as medicine, exhibition, relic conservation or other special circumstances.

The production and utilisation of wild animals and the products thereof as medicine ~~etc~~ shall abide by the Medicine Management Law of the PRC and other relevant laws and regulations relating to administration of medicines.

Article 31

Since the *Decisions of the Standing Committee of the National People's Congress relating to a total prohibition on illegal wildlife trade, eliminating the bad habit of excessive eating of wildlife, and effectively safeguarding the lives and health of the public* came into effect in 2020, the State invested significant efforts on changing the related captive breeding operations and paid out large compensations for the change. The revision of the Law should adhere to the goal of the aforementioned Decision to safeguard the lives and health of the public, and explicitly prohibit the eating of wild animals including specimens from captivity and captive breeding.

Suggested amendments (Article 31 clause 1):

The consumption as food of wild animals under special state protection, terrestrial wild animals of important ecological, scientific or social value and other terrestrial wild animals shall be prohibited. This includes specimens and the products thereof originating from captivity or captive breeding.

Article 34

The Article should be amended to reflect a ban on the commercial trade of species under special state protection. Compared to the current law, the draft removed regulations of the transport, carrying, or posting of other terrestrial wild animals. This deletion negatively impacts the protection of wild animal species and disease prevention and control. We recommend amending the regulations involving other terrestrial wild animals.

This article should be revised to restrict the transport, transfer, posting of any such products to explicitly non-commercial purposes that are demonstrably beneficial to the conservation of the species and/or the implementation of protections thereof, such as judicial processes or training of law enforcement officers. The onus of responsibility of proof of benefit to the species in the wild should rest with the proponent (unit/individual/company) and should be submitted in writing as part of the application process and evaluated in a transparent manner.

Any permits for genuine transfer and/or transport of wild animals under special state protection or the products thereof should fall under the jurisdiction of central authorities to ensure consistency of application, to remove the possibility of such provisions being used to permit commercial trade, and to facilitate the release of information relating to any such permits to interested stakeholders.

Suggested amendments (Article 34 clause 1-2, suggested new clause 3)

Where the transport, carrying, or posting of wild animals under special state protection or the products thereof is necessary for scientific research, rescue, rehabilitation, reintroduction to the wild, judicial processes, training of law enforcement officers, or transfer between accredited conservation facilities as determined in accordance with Article 25, the unit involved shall obtain the approval of departments of wild animal protection under the State Council, and shall demonstrate how the transfer or transport will benefit the species in the wild. Any entity transporting, carrying, or posting wild animals or products thereof stipulated in the second clause of Article 29 ~~across a county border~~ shall hold or present a permit, a copy of the approval document or a special marking as stipulated in Articles 21, 25, ~~28~~ or 29.

Any entity transporting, carrying, or posting wild animals of important ecological, scientific or social value, wild animals under special local protection, or other terrestrial wild animals and products thereof across a county border shall hold proof of legal origin such as a hunting permit, captive breeding permit, or import/export documents.

Departments of wild animal protection under the State Council shall be obliged to publish information relating to the issuance of permits to transfer or transport wild animals under special state protection and/or the products thereof, including details such as the species and quantities covered, the recipient institution and the purposes for which the transfer or transport was approved.

Article 37

As currently written, this article potentially allows for discretion to be applied with regard to domestic protections for CITES-listed species which are not native to China. The language of the article should be strengthened to ensure that all CITES-listed species, at the very least all Appendix I species, are consistently managed as wild animals under special state protection within China.

Suggest amendments (Article 37, clauses 1 and 4):

Lists of wild animals and products thereof the trade in which is prohibited or restricted by international conventions which China has concluded or to which China is a party shall be ~~drawn up, revised~~ listed systematically and announced by the Chinese CITES Management Authority. These lists shall consistently include all species of wild animals and products thereof, the trade in which is prohibited or restricted by international conventions which China has concluded or to which China is a party, including captive-bred specimens and including species which CITES Parties have decided should not be traded domestically.

The wild animals included in the list mentioned in the first clause, ~~subject to approval by the department of wild animal protection under the State Council, can~~ shall be managed as wild animals under special state protection in accordance with the regulations stipulated in this law.

Article 42

As noted above (see comments on Article 28), EIA recommends amending the Law to prohibit all sale, purchase and utilisation of the parts and products of species under special state protection for any reason. The language of this article should be amended to reflect this.

EIA research has found that as the Law is currently implemented, publicly available information regarding the issuance of permits to buy, sell or utilise wild animal species under special state protection is insufficient to enable key stakeholders such as civil society organisations, academics or CITES Parties to estimate and evaluate the scale or nature of permitted trade in protected species. For example, while the National Forestry and Grassland Administration website hosts a database of information on permits granted, key information such as the species, quantities, body parts/derivatives or purposes covered by the permits are not made public.

The language of this Article should therefore be strengthened to require publishing of such information in order to enable “citizens, legal entities and other organisations to participate in wild animal protection activities” as encouraged by Articles 5 of the Law.

Suggested addition (Article 42, clauses 1 and 2):

The forgery, modification, sale, purchase, transfer, borrowing or lending of special hunting and catching licences, hunting licences, captive breeding permits for the breeding of wild animals that benefits the conservation of the species as stipulated in Article 25 and special labels, ~~documents which approve the sale purchase or utilisation of wildlife under special state protection and the products thereof, or import and export permits is prohibited.~~

Information relating to the granting of permits, special markings and approval documents stipulated above, including information on the species, source, body

parts/derivatives and quantities covered by the documents, the entity to which the permit has been granted and the purposes or nature of activities covered by the documents shall be made public in accordance with the law.

Article 44

As noted above, EIA is concerned that the draft has removed the regulations involving other terrestrial wild animals. We recommend amending this article to ensure the protection and management stipulated cover all terrestrial wild animals.

Suggested amendments (Article 44)

The people's congresses of provinces, autonomous regions and municipalities or their standing committees may, according to the actual local circumstances, draw up management regulations for wild animals under special local protection ~~etc~~ and other terrestrial wild animals.

Article 45

As noted above, EIA is concerned that despite the requirements in the Law, government departments responsible for issuance of permits relating to the sale, purchase or utilisation of wild animals under special state protection have to date not made public key information relating to the granting of such permits, special markings and approval documents. EIA therefore recommends adding language to this Article to ensure Article 42 is implemented effectively.

Suggested amendments (Article 45):

Where departments of wild animal protection or other relevant departments and institutions do not make decisions relating to administrative permits or according to the law; discover illegal behaviour or receive reports of illegal behaviour and do not investigate, fail to make public information relating to the granting of permits, special markings and approval documents in accordance with the law, or fail to investigate according to the law; abuse their powers of authority; or in any other way fail to conduct their professional duty in accordance with this law, it is the duty of the relevant departments and institutions of the people's government at an equivalent or higher level to stop and rectify this behaviour; the manager responsible and other staff directly responsible shall receive a demerit, a major demerit or a demotion. If there are serious consequences, they shall be fired, and the person in charge should admit responsibility and resign. Where this constitutes a crime, they shall be pursued for criminal responsibility in accordance with the law.

Articles 47-60

EIA commends the raising of maximum fines for violations of the Law. We are disappointed that the additions in the 2020 draft of lifelong bans on breeding or trading of wild animals and the products thereof for those found to have violated provisions of the Law have been removed. EIA fully supports that penalties should be proportionate

to the crime, but firmly believes that criminal activities cannot be effectively disrupted without holding those in charge accountable. We strongly recommend reinstating the liability stipulated in the 2020 draft in Articles 51, 53 and 55, and add it to Article 52, even if the level of penalties would be adjusted, such as setting a limited time period for the restriction on operations.

Article 51

As we recommend to amend Article 25 to reinstate the permit requirement for the captive breeding of wild animals of important ecological, scientific or social value, we recommend Article 51 be amended accordingly.

Suggested amendments (Article 51):

If any entity, in violation of the second clause of Article 25 of this Law, breeds wild animals under special state protection or wild animals stipulated in the second clause of Article 29, terrestrial wild animals of important ecological, scientific or social value, or wild animals under special local protection without a captive breeding permit, the wild animals and products thereof shall be confiscated by the department of wild animal protection under the people's government at the county level and above, and the perpetrator shall be fined between one and ten times the value of the wild animals and products thereof. The main persons responsible, the persons directly in charge and personnel in key positions shall have income generated at that entity during the period of illegal behaviour confiscated, shall be fined between one and 10 times the value of that confiscated income, and shall be banned from engaging in captive breeding of wild animals for at least 10 years up to life.

~~If any entity, in violation of third clause of Article 25, breeds wild animals with important ecological, scientific or social value without filing a record, the wildlife protection departments of county level people's governments shall order rectifications within a deadline, and where the rectifications are not made in time, the perpetrator shall be fined between 500 and 2,000 yuan.~~

[Recommend insertion of a new Article X]

The draft at present does not define consequences for violation of Article 26, including abuse of wild animals. EIA therefore recommends adding an Article after Article 51 to amend this.

Suggested language:

If any entity, in violation of Article 26 of this Law, abuses wild animals; fails to ensure they have the necessary living space and conditions for the movement, reproduction, hygiene and health of the animal according to its habits and properties; fails to provide adequate premises, facilities and technology in line with the purpose, type and scale of the captive breeding operation; or fails to satisfy relevant technical standards and disease prevention requirements, the wild animals and products thereof shall be

confiscated by the department of wild animal protection under the people's government at the county level and above, and the perpetrator shall be fined between two and 20 times or one and 10 times the value of the wild animals and products thereof in accordance with the level of fine for respective category of wild animals as per Article 52, and shall not be issued permits for any keeping, breeding or trade of wild animals for at least 10 years up to life; where this constitutes a crime, they shall be pursued for criminal responsibility in accordance with the law.

Article 52

As noted above (see comments on Articles 30, 34), EIA recommends extending prohibitions to cover other forms of consumption of wild animals under special state protection and their products thereof, such as traditional medicine and healthcare tonics, given the conditions and risks involved. The language of this article should be amended to reflect this.

Suggested amendments (Article 52, clauses 1):

If any entity, in violation of the first or second clause of Article 28, the first clause of Article 29, Article 30, or the first clause of Article 34, sells, purchases, utilises, transports, carries or mails wild animals under special state protection or the products thereof or the wild animals stipulated in the second clause of Article 29 or the products thereof without permission, without a special marking or in violation of the prescriptions of the special marking, or without holding or presenting a captive breeding permit or permission document or a special marking, or for purposes such as medicine or exhibition, the department of wild animal protection under the people's government at the county level and above and the department of market supervision and management shall, dividing responsibility according to their professional duties, confiscate the wild animals and the products thereof and all unlawful income, order the closure of the illegal operation, and shall fine the perpetrator between two and 20 times the value of the wild animals and products thereof. If the circumstances are serious, the perpetrator's captive breeding permit and permission documents shall be revoked and their special markings recalled. Where this constitutes a crime, they shall be pursued for criminal responsibility in accordance with the law. The main persons responsible, the persons directly in charge and personnel in key positions shall have income generated at that entity during the period of illegal behaviour confiscated, shall be fined between one and 10 times the value of that confiscated income, and shall be banned from engaging in the captive breeding, purchase, sale, utilisation, transport and other operations of wild animals and the products thereof for 10 years up to life.

Article 53

We recommend holding the managing persons of illegal operation responsible and reinstating punishments in line with the 2020 draft.

Suggested amendments (Article 53 clause 2):

If any entity, in violation of the third clause of Article 31, produces or trades foodstuffs made using wild animals protected by this Law or other terrestrial wild animals and the products thereof, the department of wild animal protection under the people's government at the county level and above and the department of market supervision and management shall, dividing responsibility according to their professional duties, issue an order to cease the illegal behaviour, shall confiscate the wild animals and products thereof and all unlawful income, shall issue an order to close the venue of illegal operation, and shall issue ~~of~~ a fine equivalent to between 15 and 30 times the value of the unlawful income; where this constitutes a crime, they shall be pursued for criminal responsibility in accordance with the law. The main persons responsible, the persons directly in charge and personnel in key positions shall have income generated at that entity during the period of illegal behaviour confiscated, shall be fined between one and 10 times the value of that confiscated income, and shall be banned from engaging in production and trade of wild animals and the products thereof for 10 years up to life.

Article 55

We recommend holding the managing persons of illegal operation responsible and reinstating punishments in line with the 2020 draft.

Suggested amendments (Article 55):

If any entity, in violation of Article 33, provides a trading platform for exhibition, trading or consumption services enabling the illegal sale, purchase, eating or utilisation of wild animals or the products thereof or of prohibited hunting equipment, the department of market supervision and management under the people's government at county level and above shall issue an order to cease this illegal behaviour and make corrections within a prescribed time limit; shall confiscate all unlawful income; and shall issue a fine of between two and 10 times the amount of this unlawful income. Where no unlawful income was gained or the unlawful income is less than 5000 yuan, a fine of between 10,000 and 100,000 yuan shall be issued; where this constitutes a crime, they shall be pursued for criminal responsibility in accordance with the law. Where the circumstances are serious, the main persons responsible, the persons directly in charge and personnel in key positions shall have income generated at that entity during the period of illegal behaviour confiscated, shall be fined between one and 10 times the value of that confiscated income, and shall be banned from engaging in trade and consumption of wild animals and the products thereof for 10 years up to life.

Article 61

EIA is very concerned that instead of a number of methods suggested in the 2020 draft, the current draft no longer specifies any method of dealing with confiscated wild animals and products thereof. Instead, the draft states that "detailed methods will be set by the State Council wildlife protection and management department together with

other relevant departments of the State Council”. This language is ambivalent and makes it difficult for the public and other organisations to provide constructive comments.

Without further specification, the auction of confiscated wild animal and products thereof remains a possibility. Particularly where the species is threatened by trade, auctioning of seized stock reaffirms the idea that such products are valuable, risks legitimising and perpetuating demand for the parts and products of that species, and potentially provides traffickers with an avenue to launder illegally sourced stock.

CITES Resolution 9.10 (Rev. CoP15) on *Disposal of illegally traded, confiscated and accumulated specimens* does not allow sale of dead specimens of CITES Appendix-I species, including parts and derivatives. Instead, the Resolution recommends that “Parties dispose of confiscated and accumulated dead specimens of Appendix-I species, including parts and derivatives, only for bona fide scientific, educational, enforcement or identification purposes, and save in storage or destroy specimens whose disposal for these purposes is not practicable”.

Auction would therefore be in contravention of this Resolution, and should not be sanctioned as a method of the disposing of confiscated wild animals or the products thereof, particularly if the species is protected or listed on CITES Appendix I.

Suggested amendments (Article 61):

Departments of wild animal protection under the people’s government at county level and above and other departments or agencies with responsibilities for the monitoring and administration of wild animal protection shall deal with confiscated wild animals and the products thereof through means such as rescue, release back into the wild, or harmless destruction in accordance with the law. The auction, and consumption of confiscated wild animals or the products thereof as food, medicine or for other purposes is prohibited; such specimens should be destroyed when no longer needed for judicial purposes or training of law enforcement personnel.

[Recommend insertion of a new Article X]

Noting the potential for stockpiles of dead specimens of wild animals under special state protection and the products thereof, including privately-held stockpiles, to enter commercial trade, EIA recommends the addition of a new Article in the Law to ensure that such stockpiles be destroyed.

Suggested language

Existing stock of dead specimens of wild animals under special state protection and the products thereof, including those held by private companies and individuals, shall be audited and destroyed in the presence of staff of wild animal protection departments and independent monitors.