

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

**2 November 2020**

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 2016<sup>1</sup>, and to consultation drafts of implementing regulations.<sup>2</sup> EIA also prepared recommendations in February 2020 upon the announcement of a revision to the Wildlife Protection Law.<sup>3</sup>

The comments below relate to the revised draft of the Wildlife Protection Law of the People's Republic of China published in October 2020 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 as the host of the 15<sup>th</sup> Conference of the Parties to the Convention on Biological Diversity in 2021.

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

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<sup>1</sup> <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](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](https://eia-international.org/wp-content/uploads/3.-EIA-comments-on-second-draft-of-WPL_Specific-comments_Final.pdf)

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

<sup>3</sup> <https://eia-international.org/report/wildlife-protection-law-recommendations-2020/>

several elements of the revision draft, including new efforts to tackle overconsumption 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 endangered species<sup>4</sup> 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),<sup>5</sup> 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 agreements<sup>6</sup>
- 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 endangered 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 products<sup>7</sup> 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

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<sup>4</sup> With the term “endangered 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.worldwildlife.org/pages/what-does-endangered-species-mean>

<sup>5</sup> 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>

<sup>6</sup> For example, CITES Decision 14.69; CITES Res. Conf. 12.5 (Rev. CoP18); recommendations adopted by the 3<sup>rd</sup> Stocktaking Conference on Tiger Conservation

<sup>7</sup> 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<sup>8</sup> 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 protection<sup>9</sup> in effect enables laundering of illegal wildlife specimens, undermines enforcement efforts and stimulates demand for the species.<sup>10</sup>

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

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<sup>8</sup> EIA research has indicated that trade in protected species for the purposes of traditional medicine and ornamental items is occurring through provisions in the current law allowing trade for "public exhibition... heritage conservation or other special purposes"

<sup>9</sup> 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

<sup>10</sup> 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/>

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 experimenting with the fate of endangered 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-19<sup>11</sup>. 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 action<sup>12</sup>. The Halo effect<sup>13</sup> 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 host the 15<sup>th</sup> Conference of the Parties to the Convention on Biological Diversity in 2021. This can be achieved by adopting language suggested below to permanently prohibit domestic trade and

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<sup>11</sup> 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>

<sup>12</sup> 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].

<sup>13</sup> Neugaard, B. (2020). Halo effect. [online] *Encyclopedia Britannica*. Available at: <https://www.britannica.com/science/halo-effect> [Accessed 20 Feb. 2020].

utilisation of wild animal species under special state protection; provide for essential definitions of concepts such as breeding for conservation purposes; and extend 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 updated list of wild animal species under special state protection. Members of the National People's Congress evidently share this concern.<sup>14</sup> The current ambiguous situation regarding implementing regulations is undermining urgently needed efforts to protect endangered species<sup>15</sup>, 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.<sup>16</sup>

### **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 and 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, paragraph 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 important ecological, scientific and social value.~~ all terrestrial and aquatic species of*

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<sup>14</sup> 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].

<sup>15</sup> As per comment above, referring to all species of wildlife assessed as Vulnerable, Endangered or Critically Endangered under the IUCN Red List

<sup>16</sup> 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>

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, paragraph 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~~; shall implement 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, paragraph 2):

*The illegal hunting, catching, transport or trade of wild animals shall be prohibited. The illegal consumption or utilisation of wild animals as food or for other purposes shall be prohibited.*

### **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, paragraph 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 25**

We commend the addition of paragraph 1 in this article prohibiting or restricting hunting or large-scale killing of all terrestrial wild animals.

### **Article 26**

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 breeding of wild animals under special state protection such as tigers for non-conservation purposes, we recommend the addition of language to clarify 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.<sup>17</sup>

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 Xionsen 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*

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<sup>17</sup> See for example <https://eia-international.org/wp-content/uploads/EIA-Hidden-in-Plain-Sight-Chinese-lang-version-FINAL1.pdf>

*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.<sup>18</sup> 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 viable<sup>19</sup>. 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 26 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.

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 groups<sup>20</sup>.

Suggested amendments (Article 26, paragraphs 1-2):

*The state shall support relevant scientific research institutions in conducting captive breeding of wild animals under special state protection for the purposes of ~~protection~~*

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<sup>18</sup> See summary record from 14<sup>th</sup> Conference of the Parties to CITES:

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

<sup>19</sup> Challender et al. 2019. Evaluating the feasibility of pangolin farming and its potential conservation impact. *Global Ecology and Conservation* 20

<sup>20</sup> SSN/ENV, July 2014, *Caged assets: tiger farming and trade*, accessible on: <https://eia-international.org/wp-content/uploads/Caged-Assets-revised.pdf>



of the species recovery of the species in the wild. 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 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. Any trade in the parts and products of the species under special state protection held by any captive breeding operation for any purpose, including for the recovery of the species in the wild, shall be prohibited.

*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. Anyone 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. Anyone 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 animals protection under the people's government at county level or above and shall obtain a captive breeding permit. 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 which China has concluded or to which China is a party for any purposes other than recovery of the species in the world shall be prohibited.*

## **Article 27**

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. However, as written, requirements for provision of suitable conditions appears to apply only to wild animal species under special state protection; this should be extended to all wild animals.

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 27, paragraphs 1):

*Captive breeding of wild animals shall benefit the protection of the species and scientific research, and may not damage wild populations. Anyone intending to breed*

*wild animals ~~under special state protection~~ 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.<sup>21</sup> EIA understands the exemption provided in the second paragraph 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.

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, and to restrict the movement, transfer and utilisation 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

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<sup>21</sup> 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/>

provisions being used to permit commercial trade, and to facilitate the release of information relating to any such permits to interested stakeholders.

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, paragraphs 1-3):

*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~~ transfer or transport of wild animals under special state protection or the products thereof is necessary for scientific research, captive breeding, public exhibition or performances, heritage conservation or other special purposes, 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 26, the unit involved shall obtain the approval of departments of wild animal protection under the State Council, shall be obliged to demonstrate how the transfer or transport will benefit the species in the wild, people's government of the province, autonomous region or municipality, and shall obtain or use special markings in line with regulations, and shall guarantee*

*traceability. Exemptions may be provided by other regulations that designated a different authorization agency by the State Council.*

*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 29**

As currently written, this Article leaves the door open for commercial breeding and utilisation of protected species that are seriously threatened by trade. As noted above (see comments on Article 26), 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.

Suggested addition (Article 29, paragraph [3]):

*Where commercial breeding and utilisation of wild animal species that are threatened by trade presents an unacceptable risk of perpetuating or stimulating demand, complicating law enforcement or providing routes for laundering of illegally-sourced specimens, as determined according to the precautionary principle, these species, including at a minimum tigers, leopards, snow leopards, clouded leopards, lions, jaguars, elephants, rhinoceroses, pangolins and bears, shall not be added to the aforementioned list. The sale, purchase and utilisation of these species and the products thereof, including from captive sources, shall be strictly prohibited.*

## **Articles 30 and 31**

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, despite 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 these articles 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.

Suggested amendments (Article 30):

*Anyone 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, and shall abide by laws, regulations and relevant national statutes, except for species under special state protection, the utilisation of which, including from captive bred specimens is prohibited for any purpose, excepting transfer or transport for the purposes of 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 26.*

Suggested amendments (Article 31):

*The consumption as food, medicine or for other purposes of wild animals under special state protection, terrestrial wild animals of important ecological, scientific or social value and other terrestrial wild animals, including captive-bred specimens, shall be prohibited.*

*The hunting, capture, trade or transport of terrestrial wild animals which have grown and bred naturally in the wild for the purpose of consumption as food, medicine or for other purposes shall be prohibited.*

*The production and trade of wild animals as stipulated in the first paragraph of this article and the products thereof shall for use as food, medicine or for other purposes shall be prohibited.*

*The illegal purchase of wild animals as stipulated in the first paragraph of this article and the products thereof for use as food, medicine or for other purposes shall be prohibited.*

### 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 39, paragraphs 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 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.*

*The wild animals included in the list mentioned in the first paragraph, ~~subject to approval by the department of wild animal protection under the State Council,~~ shall be managed as wild animals under special state protection where this law applies.*

### Article 43

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 and 8 of the Law.

Suggested addition (Article 43, paragraphs 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 26, 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 at a minimum 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 the buying, selling, or utilisation activities covered by the documents shall be made public in accordance with the law.

#### **Article 46**

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 43 is implemented effectively.

Suggested amendments (Article 46):

*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 48-61**

EIA commends the raising of maximum fines for violations of the Law, and the addition of lifelong bans on breeding or trading of wild animals and the products thereof for those found to have violated provisions of the Law.

#### **Article 52[a]**

As noted above (see comments on Article 27), the Law at present does not define consequences for violation of Article 27, including abuse of wild animals. EIA therefore recommends adding an article to the Law to reflect this.

Suggested language:

*If anyone, in violation of Article 27 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 one and five times the value of the wild animals and products thereof and shall not be issued permits for any keeping, breeding or trade of wild animals in the future. Where this constitutes a crime, they shall be pursued for criminal responsibility in accordance with the law.*

### **Article 53**

As noted above (see comments on Articles 30 and 31), EIA recommends extending prohibitions beyond only consumption of wild animals as food to cover other forms of consumption such as traditional medicine and healthcare tonics, given the likely similar conditions and risks involved. The language of this article should be amended to reflect this.

Suggested amendments (Article 53, paragraphs 2 and 3):

*If anyone, in violation of the third clause of Article 28, the second clause of Article 31 and the second clause of Article 34, sells, utilises or transports terrestrial wild animals of important ecological, scientific or social value or wild animals under special local protection or the products thereof without proof of legal origin or special marking, or trades or transports for the purposes of consumption as food, medicine or other purposes terrestrial wild animals of important ecological, scientific or social value that has grown and bred naturally in the wild or wild animals under special local protection, the department of wild animals protection under the people's government at county level or above or the department of market supervision and management shall, dividing responsibility according to their professional duties, confiscate the wild animals and products thereof and fine the perpetrator between one and 10 times the value of the wild animals and products thereof. Where this constitutes a crime, they shall be pursued for criminal responsibility in accordance with the law.*

*If anyone, in violation of the second clause of Article 31, trades or transports other terrestrial wild animals which have grown and bred naturally in the wild for the purpose of consumption as food, medicine or other purposes, the department of wild*

*animals protection under the local people's government at county level or above or the department of market supervision and management shall, dividing responsibility according to their professional duties, confiscate the wild animals and products thereof, and fine the perpetrator between one and five times the value of the wild animals and products thereof. Where this constitutes a crime, they shall be pursued for criminal responsibility in accordance with the law.*

#### **Article 54**

As above (see comments on Articles 30 and 31), EIA recommends extending prohibitions beyond only consumption of wild animals as food to cover other forms of consumption such as traditional medicine and healthcare tonics, given the likely similar conditions and risks involved. The language of this article should be amended to reflect this.

Suggested amendments (Article 53, paragraphs 1-2):

*If anyone, in violation of the first and fourth clauses or Article 31 of this Law, eats or consumes as medicine or other purposes, or illegally purchases for the purposes of consumption as food, medicine or other purposes wild animals under special state protection, terrestrial wild animals of important ecological, scientific or social value or the products thereof, the department of wild animals protection under the people's government at county level or above or the department of market supervision and management shall, dividing responsibility according to their professional duties, order the cessation of illegal activities, confiscate the wild animals or products thereof, fine the perpetrator between two and 20 times the value of the seized wild animals or products thereof, record relevant information on the illegal activity in social credit records, and inform society. If anyone eats or consumes as medicine or other purposes, or illegally purchases for the purposes of consumption as food, medicine or other purposes other terrestrial wild animals or the products thereof, the department of wild animals protection under the local people's government at county level or above or the department of market supervision and management shall, dividing responsibility according to their professional duties, order the cessation of illegal activities, confiscate the wild animals or products thereof, and fine the perpetrator between one and 10 times the value of the seized wild animals or products thereof.*

*If anyone, in violation of the third clause of Article 31, produces or trades foodstuffs, medicines or health tonics made using wild animals under special state protection, terrestrial wild animals of important ecological, scientific or social value, other terrestrial wild animals or the products thereof, the department of wild animals protection under the people's government at the county level and above or 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 location of illegal trade, and shall fine the perpetrator*

*between 15 and 30 times the value of the unlawful income. The Public Security Bureau may also detain management and other personnel who are directly responsible for between five and 10 days. Where human health and safety is harmed, or the circumstances are serious, they may, having obtained approval from the people's government with the authority to give approval, issue an order to cease business and close. 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 for life from engaging in production and trade of wild animals and the products thereof. Where this constitutes a crime, they shall be pursued for criminal responsibility in accordance with the law.*

## **Article 62**

EIA is very concerned by the addition of language in this Article that specifically condones the auction of seized wild animal products. 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".

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

Suggested amendments (Article 62, paragraph 2):

*Departments of wild animal protection under the people's government at county level and above and other departments with professional responsibilities for monitoring and administration of wild animal protection may deal with seized wild animals and the products thereof through means such as ~~auction~~, shelter or harmless destruction, in accordance with the law. The consumption of seized dead specimens 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.*

## **Article 62[a]**

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.

*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.*