



COMMENTS ON THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON THE PROTECTION OF WILDLIFE (SECOND DRAFT REVISION)

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SUMMARY OF KEY CONCERNS

As an international NGO specialised in investigating environmental crime and illegal wildlife trade, EIA's comments below are largely focused on species that are seriously threatened by trade such as elephants, rhinos, tigers, leopards, snow leopards, clouded leopards, Asiatic lions, pangolins, bears and helmeted hornbill. These are among the species EIA believes should be listed as having the highest level of protection, such as first-class state protection.

EIA remains deeply concerned that the language of the proposed revisions to the Wildlife Protection Law will continue to risk the survival of wild tigers and other species, by continuing to allow commercial breeding and domestic trade in parts and derivatives.

While there have been a few concessions to concerns voiced by Chinese civil society, academics and lawyers following the first set of revisions, EIA believes they can be further strengthened. For example, EIA commends the removal of wildlife *breeding* as a priority approach (Art. 4), and is encouraged that for wildlife under state protection, which would include endangered species, state support for captive breeding would be restricted to scientific research institutions for the purposes of conservation (Art. 26). This is contradicted however by Articles that enable trade in parts and products of captive bred specimens (Art. 29), and allow animal performances (Art. 28). While captive breeding operations are required to contribute to conservation and scientific research and not threaten wild populations (Art. 27), there are no criteria or conditions established. EIA also commends the prohibition of the production and trade of foodstuffs containing wildlife under special state protection (Art. 31), but believes this must be explicitly extended to captive bred specimens of species under special state protection. Encouraged by the above positive developments, EIA has made further recommendations to strengthen these points.

Overall, EIA remains very concerned regarding the following aspects of this draft:

Commercial captive breeding of endangered species is still allowed (Art. 1, 3, 4, 21, 26, 27):

Though no longer explicitly mentioned, wildlife under special state protection can still be captured from the wild for commercial purposes such as commercial captive breeding with a special hunting permit. EIA recommends that provisions that can be used to allow such capturing be removed and penalties be specified for violations.

The captive breeding permitting system does not prohibit commercial breeding for the purposes of trade and utilisation of endangered species. EIA is particularly concerned by this provision, which would allow the continued breeding of tigers for commercial purposes, in contravention of CITES Decision 14.69. EIA recommends that breeding of species under special state protection, such as tigers and other Asian big cats, for any reason other than

conservation and by any institution other than an accredited conservation organization affiliated to an internationally-recognised conservation breeding programme be stopped, and an action plan developed to phase out existing commercial facilities. This is particularly relevant for species whose range includes but is not limited to China.

Utilisation and trade of endangered species continue to be encouraged and formalised (Art. 1, 3, 4, 28, 29, 30, 31, 34, 36):

The first chapter sets the tone for the law to continue encouraging the utilisation of wildlife. More specifically, it formalises a system under which wildlife under state protection may be traded and utilised, including for medicinal purposes. This draft more clearly sanctions further commercialisation of some of the species EIA is concerned about, including tigers, as their utilisation would be fast-tracked and captive-bred specimens no longer subject to the same protection measures as their wild counterparts.

EIA's investigations have gathered evidence to show the systems that regulate the legal trade in endangered species is flawed. The domestic legal trade in parts and derivatives of tigers and elephants, which is restricted by CITES, provides a cover for illegal trade, stimulates demand and undermines enforcement. EIA recommends that any possession and utilisation of wildlife under special state protection should only be permitted in instances that will benefit the protection of the species as externally verified by conservation experts, and will not damage wild populations e.g. for the purposes of training law enforcement. For species that are seriously threatened by trade – such as elephants, rhinos, tigers, leopards, snow leopards, clouded leopards, Asiatic lions, pangolins, and helmeted hornbill – EIA recommends strictly prohibiting utilisation and commercial trade in specimens from both wild or captive sources. EIA also recommends that the law ensure the implementation of CITES restrictions and prohibitions on domestic trade.

There are no provisions in any of the current Articles that prohibit and criminalise possession and there are no provisions regarding the disposal of confiscated specimens and specimens of deceased captive bred animals under special state protection.

De-centralised management of wildlife under highest state protection (Art. 11, 21, 26, 28, 29, 34):

The draft passes most responsibility for implementation of the wildlife law to provincial-level government departments, but makes little requirements relating to planning, supervisory or accountability mechanisms. This is a significant loophole, which can be exploited to the detriment of wildlife and impedes China's ability to report on obligations under international treaties.

EIA recommends that the law designate authority at the central level over the conservation and management of wildlife under first-class state protection at minimum.

Lack of transparency and formal mechanisms for public participation (Art. 5,12, 13,42):

Article 5 stipulates that all units and individuals have an obligation to protect wildlife and the right to report activities violating the law. However, details are still lacking in the above provisions to ensure that the relevant information is released and accessible and that public participation, such as in reporting of violations and litigation, is possible and valued. The fifth chapter of the revised Environmental Protection Law of China (2014) has set examples for such provisions.

Lack of clarity over which violations constitute criminal offence (Chapter 4 and Art. 59)

EIA notes with concern that while penalties are listed for certain violations of this Law, it is not explicit that they are criminal offences, as opposed to administrative offences carrying a fine, confiscation of illegal wildlife and associated financial proceeds. The current law and the first revision draft specified respectively six and seven violations that can constitute a criminal offence. The removal of these clear references raises questions over China's commitment to treat organized wildlife crime as "serious crime" as per the definitions of the UN Convention against Transnational Organised Crime, to which China is a signatory.