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《国家重点保护野生动物及其制品专用标识管理办法》（征求意见稿）及其专用标识范围（第一批）公开征求意见

"Measures for the Administration of the Special Marking System of National Key Protected Wild Animals and Products thereof" (Draft for Comment) and the Scope of the Special Marking System (First Batch) for Public Comments

包括生而自由基金会 (Born Free Foundation)、环境调查署 (EIA)，捍卫野生动物 (Pro Wildlife) 与物种生存网络 (Species Survival Network) 等多个署名组织为国家林业和草原局在 2022 年 5 月 6 日发布的《国家重点保护野生动物及其制品专用标识管理办法》（征求意见稿）及其专用标识范围（第一批）公开征求意见提供了以下建议。在此对国家林草局给予我们这样一个机会来提交关于这个关键法案的反馈表示感谢。

We, the undersigned, submit the following comments and recommendations regarding the "Administrative Measures for the Special Marking System of National Key Protected Wildlife and Their Products" (Draft for Comment) (herein referred to as "Measures") and the "Scope of the Special Marking System (First Batch) for Public Comments" (herein referred to as "Scope"). On behalf of Born Free, Environmental Investigation Agency, Pro Wildlife, and Species Survival Network we thank the National Forestry and Grassland Administration for the opportunity to submit feedback on this important piece of legislation.

我们下面的反馈主要与文件 2 第 2 部分有关在中药中使用虎骨和犀牛角的内容有关。尤其令人欣慰的是，我们在关于专用标识范围的文件中看到以下部分。看来这些部分禁止发布使用老虎和犀牛产品的专用标识，并实际上确保了《濒危物种国际贸易公约》(CITES) 的实施与减少对其他老虎和犀牛身体部位的需求、偷猎和贩运：

- 2.1.4 禁止使用虎骨、犀牛角生产药品或中药饮片。
- 2.2.2 禁止出售、购买、运输、携带、寄递虎或犀牛标本。
- 2.3.3. 禁止使用虎、犀牛皮张生产任何制品。
- 2.4.3 禁止使用虎、犀牛任何原材料生产经营任何制品。

Our comments below primarily relate to document 2, part 2 regarding the use of tiger bone and rhino horn in Traditional Chinese Medicine. In particular, we are encouraged to see the following sections in the Scope document concerning Traditional Chinese Medicine that would appear to prohibit the issuance of markings for using tiger and rhino products, and in effect ensure implementation of the Convention on International Trade in Endangered Species (CITES) to reduce demand, poaching and trafficking of other tiger and rhino body parts:

- 2.1.4 It is forbidden to use tiger bones and rhino horns to produce medicines or decoction pieces or traditional Chinese medicine.
- 2.2.2 It is prohibited to sell, buy, transport, carry, or send specimens of tiger or rhinoceros.
- 2.3.3. It is forbidden to use tiger and rhino hides to produce any products.
- 2.4.3 It is forbidden to use any tiger and rhino raw products to produce and engage in any products.

1. 我们想分享一些建议，以澄清上述文本的范围，以确保它明确适用于人工繁育虎和犀牛的标本。这可以通过添加 “[...] 包括来自人工繁育的标本” 来反映对范围文件文本的修改，如下所示：

- 2.1.4 禁止使用虎骨、犀牛角生产药品或中药饮片，包括来自人工繁育的标本。
- 2.2.2 禁止出售、购买、运输、携带、寄递虎或犀牛标本，包括来自人工繁育的标本。
- 2.3.3. 禁止使用虎、犀牛皮张生产任何制品，包括来自人工繁育的标本。
- 2.4.3 禁止使用虎、犀牛任何原材料生产经营任何制品，包括来自人工繁育的标本。

1. We would like to share a few recommendations that would clarify the scope of the above text to ensure that it explicitly applies to specimens of captive bred tiger and rhino. This could be reflected in amendments to the Scope document text by adding “[...] including from captive bred specimens” as follows:

- 2.1.4 It is forbidden to use tiger bones and rhino horns to produce medicines or processed Traditional Chinese Medicine ingredients *including from captive-bred and wild specimens*.
- 2.2.2 It is prohibited to sell, buy, transport, carry, or send specimens of tiger or rhinoceros *including from captive-bred and wild specimens*.
- 2.3.3. It is forbidden to use tiger and rhino hides to produce any products *including from captive-bred and wild specimens*.
- 2.4.3 It is forbidden to use any tiger and rhino raw products to produce and deal with any products *including from captive-bred and wild specimens*.

禁止在中药中使用虎骨和犀牛角是野生动物保护的重要一步。不过，专用标识的范围文件没有说明是否它也包括人工繁育标本。只有明确将禁令扩大到人工繁育标本，中国才能遏制老虎及犀牛器官的需求和贸易，消除非法来源的野生动物产品进入合法贸易的风险。注意到该措施和装用标识的范围文件实际上是执行从属于野生动物保护法（WPL）的规定，明确禁止使用来自野生和人工繁育标本的虎骨、犀牛角和其他身体部位需要被载入最新国务院令（如 2016 年的象牙贸易禁令¹）即野生动物保护法修正案。这的确是向前迈出的重要一步，展示了中国在生物多样性保护方面的领导地位。

Prohibiting the use of tiger bones and rhino horns in Traditional Chinese Medicine is a significant step in wildlife protection. However, the Scope document does not clarify if the prohibition applies also to captive-bred specimens. Only by explicitly extending the

¹ http://www.gov.cn/zhengce/content/2016-12/30/content_5155017.htm

ban to captive-bred specimens will China be able to curb the demand and trade in tiger and rhino parts and eliminate the risk of illegally sourced wildlife products entering the legal trade. Noting that the Measures and Scope documents are in effect implementing regulations subordinate to the Wildlife Protection Law (WPL), an unequivocal ban on the use of tiger bone, rhino horn, and other body parts from wild and captive specimens needs to be enshrined in an amendment to the WPL, a new State Council order (such as the 2016 Ivory Trade Ban¹). This would indeed be a major step forward and demonstrate China's leadership in biodiversity protection.

我们记得 2018 年 11 月国务院常务副秘书长丁学东提到的“三个严禁”²，旨在“严禁犀牛、老虎及其副产品进出口；严禁出售、购买、运输、携带、邮寄犀牛、老虎及其副产品；并严格禁止在医药中使用犀角和虎骨”² 虽然专用标识的范围文件是重申“三个严禁”影响的好机会，但我们也注意到，“三个严禁”也不明确适用于人工繁育的标本，而就在 2019 年，中国政府重申，人工繁育的虎皮可以在获得适当许可的情况下合法交易。^{3, 4}

We recall the “three strict bans” referenced by State Council Executive Deputy Secretary-General Ding Xuedong from November 2018 which aim to “strictly ban the import and export of rhinos, tigers and their by-products; strictly ban the sale, purchase, transport, carrying and mailing of rhinos, tigers and their by-products; and strictly ban the use of rhino horns and tiger bones in medicine.”² Whilst the Scope document is a good opportunity to reiterate the impact of the “three strict bans”, we would note with concern that the “three strict bans” also do not explicitly apply to captive bred specimens and that as recently as 2019, the Government of China reiterated that the skins of captive-bred tigers could be legally traded with appropriate permits^{3,4}

我们仍深感忧虑的是，2018 年国务院令“需牛和虎及其制品经营利用活动的通知”⁵，允许在中药中使用人工繁育的虎骨和犀牛角，似乎仍然有效。此外，第 139 号通知（2005 年）明确允许用人工繁育的虎骨生产药物。因此，我们建议借此机会，明确扩大禁令范围，禁止人工繁育的老虎犀牛身体部件及制品的贸易，同时废止 2018 年国务院令以避免混淆。我们还担心文件 1 第 3 条允许企业和个人申请豁免处理老虎和犀牛（人工繁育和野生）。第三条“从事野生动物保护管理、执法监督、科学研究、人工繁育、经营利用、科普教育等活动的企业和个人，可以书面向国家林草局提出调整意见。专用标识的范围，并根据实际情况说明相关需求和要求。”我们强烈反对为企业和个人提供使用老虎和犀牛身体部位的豁免机会，因此建议修改第 3 条，明确禁止提交豁免特别标签制度范围的申请。

We remain deeply concerned that the 2018 State Council Order, titled “*Strictly Controlling the Operation and Utilization of Rhinoceros and Tigers and Their Products*”⁵ which permits the use of captive bred tiger bone and rhino horn in traditional Chinese medicine, appears to still be valid. Further, Notification No. 139 (2005) explicitly allows

² http://www.china.org.cn/china/Off_the_Wire/2018-11/12/content_71941870.htm

³ CITES (2019). A report on the management of Asian big cat captive facilities in China pursuant to Secretariat Notification 2018/002 from China CITES Management Authority

⁴ <https://eia-international.org/report/eia-briefing-cites-cop18/>

⁵ http://www.gov.cn/zhengce/content/2018-10/29/content_5335423.htm

the production of medicine from the bones of captive-bred tigers. We therefore recommend that this opportunity is taken to explicitly extend the scope of the prohibitions to forbid trade in parts and products of captive tiger and rhino too as well as to repeal the 2018 State Council Order to prevent contradictions. We are also concerned that Article 3 of Document 1 allows businesses and individuals to apply for exemptions to handle tigers and rhinos (both captive-bred and wild). According to Article 3: “Companies and individuals engaged in activities such as wildlife protection and management, law enforcement supervision, scientific research, artificial breeding, business utilization, and popular science education may submit written proposals to the National Forestry and Grassland Administration to adjust the scope of special signs and explain relevant needs and requirements according to the actual situation.” We strongly oppose providing opportunities for businesses and individuals to obtain exemptions for the use of tiger and rhino parts, and we therefore recommend Article 3 be amended to explicitly prohibit the submission of applications for exemption to the scope of the special marking system.

总体而言，我们欢迎国家林业和草原局重申禁止在中药中使用老虎和犀牛以及禁止动物皮、动物标本和其他身体部位贸易的努力，但呼吁国家林草局和国务院：1) 借此机会确保禁令的专用标识范围明确扩展到人工繁育的标本 2) 废止 2018 年国务院令 3) 采取新的法律措施来确保禁令。我们希望我们的反馈有所帮助。

Overall, we welcome NFGA's efforts to reiterate the prohibition on the use of tiger and rhino in Traditional Chinese Medicine, and the prohibition on trade in skins, taxidermy specimens and other body parts, but appeal to the NFGA and the State Council to 1) take this opportunity to ensure the scope of the prohibitions explicitly extends to captive bred specimens 2) repeal the State Council order of 2018 and 3) adopt new legal measures to secure the prohibitions. We hope that our comments can be helpful.

其他建议：

Other recommendations:

1. 禁止在中药中使用某些动物还应扩大到其他被高度贩卖的物种，包括豹、穿山甲和大象。我们欢迎国家林草局为保护中药所用动物所做的努力。我们仍然担心，尽管没有明确记录的合法来源，但对用于药用和观赏目的的豹骨和穿山甲鳞片及其产品贸易的持续容忍将对世界范围内这些物种产生灾难性影响。^{6, 7}因此，我们建议增加进一步的规范，说明不得为这些物种或其产品的使用或贸易发放专用标识。

1. Prohibiting the use of certain species in TCM should also extend to other highly trafficked species, including leopards, pangolins, and elephants. We welcome NFGA's efforts to protect animals used in TCM. However, we are concerned that the ongoing tolerance of trade in leopard bone and pangolin scales and products thereof for medicinal and ornamental purposes despite the absence of a clearly documented legal source will have catastrophic impacts on these populations worldwide.^{6,7} As such, we

⁶ <https://eia-international.org/wp-content/uploads/EIA-Report-Smoke-and-Mirrors-Spreads-Chinese.pdf>

⁷ <https://eia-international.org/wp-content/uploads/EIA-report-Bitter-Pill-to-Swallow-Chinese-spreads.pdf>

recommend adding further specifications to state that special labels may not be issued for use or trade of these species or the products thereof.

2. 如果通过，实施条例将使企业能够自我监管。在这方面，我们想强调行业利益相关者如何滥用许可证和标识系统以及如何不能依靠行业来防止腐败和欺诈风险的例子。例如，北京野生动物和自然保护区办公室原负责人王民中因将野生动物产品登记为合法库存及批准贸易许可证而被逮捕。他收受贿赂以获得行政许可和保护物种的贸易。2020年10月，他以贪污罪名被判处有期徒刑13年，并处罚金80万元。⁸与王民中有关联的是北京同仁堂集团原总经理高振坤，他因涉嫌在2021年获得穿山甲鳞片和赛加羚羊角销售许可证而被开除党籍、入狱和罚款。⁹根据参与该行业的动物标本剥制师和贸易商的证词，现有的人工繁育虎皮许可证制度已被滥用并导致非法获取标本及其他身体部位的无证贸易。¹⁰因此，我们不鼓励任何依赖行业利益相关者自我监管的标识系统，并希望国家林草局严格检查使用专用标识许可证的单位和个人。

2. If adopted, the implementing regulations would enable businesses to self-regulate. In this regard, we would like to highlight examples of how industry stakeholders have abused permit and marking systems and how the industry cannot be relied upon to prevent corruption and fraud risks. For example, Wang Minzhong, the former head of the Beijing wildlife and nature reserve office was caught registering wild animal products as legal stockpiles, including approving trade permits. He accepted bribes to obtain administrative approvals and trade in protected species. In October 2020 he was charged with corruption, sentenced to 13 years in prison, and fined 800,000 RMB.⁸ Linked to Wang Minzhong is Gao Zhenkun, the former general manager of Beijing Tong Ren Tang Group who was fired from the Party, jailed, and fined for corruption linked to obtaining sale permits for pangolin scales and saiga horn in 2021.⁹ There are multiple ways in which the existing permit system for the skins of captive bred tigers has been abused to enable the trade in illegally acquired specimens and unlicensed trade in other body parts, as per the testimony of the taxidermists and traders involved in the industry.¹⁰ We therefore discourage any marking system that is reliant on industry stakeholders to self-police and encourage NFGA to strictly inspect the companies and individuals using the marking permits.

3. 为确保严格执法，法规应尽可能明确。我们担心由于实用性问题，专用标识的系统未涵盖野生动物的非包装原材料，并且没有包含描述如何控制非包装原材料贸易的信息。在少量交易中成药成分的情况下，这可能会使执法复杂化。因此，我们建议在措施范围内明确禁止非包装野生动物原材料的贸易。

3. To ensure strict law enforcement, the regulations should be as explicit as possible. We are concerned that non-packaged raw materials of wildlife are not covered by the special marking system due to practicality issues and that no information is included that describes how the trade in non-packaged raw materials is to be controlled. This could

⁸ <https://eia-international.org/report/rotten-to-the-core-how-to-tackle-the-corrupt-networks-facilitating-wildlife-and-forest-crime/>

⁹ <http://www.cb.com.cn/index/show/zj/cv/cv135140381268>

¹⁰ <https://eia-international.org/wp-content/uploads/EIA-Hidden-in-Plain-Sight-Chinese-lang-version-FINAL1.pdf>

complicate law enforcement in cases where TCM ingredients are traded in small amounts. We therefore recommend that an explicit prohibition on trade in non-packaged raw materials of wildlife is included within the Scope of the Measures.

4. 除了上述评论外，我们还对范围内的鹦鹉物种（鹦鹉形目）和爬行动物的拟议清单感到担忧。我们不明白制定这些清单的实际标准。我们注意到，鹦鹉物种的名单包括红领绿鹦鹉及和尚鹦鹉等物种，它们是一些国家已建立的引入种群的常见物种，另外也包括被列 CITES 附录 I 的非洲灰鹦鹉，已被国际自然保护联盟 (IUCN)¹¹ 评估为濒危物种，并受到一些国家洗钱和出售野外捕获物并人工繁育非法贸易的持续压力。¹²

4. In addition to the foregoing comments, we have concerns about the proposed lists of parrot species (Psittaciformes) and reptiles under the Scope. We do not understand what criteria were used to develop these lists.

We note that the list of parrot species includes species such as *Psittacula krameri* and *Myiopsittaca monachus*, which are common species with established introduced populations in many countries, but also includes *Psittacus erithacus*, which is listed on CITES Appendix I, has been assessed as Endangered by the International Union for Conservation of Nature (IUCN)¹¹ and is the subject of intense ongoing pressure from illegal trade including laundering of specimens through a number of countries and sale of wild-caught specimens as captive bred.¹²

此外，最近分类学修订了名单上的另一个物种折衷鹦鹉，将其分为四个物种，其中一个桑巴岛折衷鹦鹉已被列为濒危物种，“由于宠物贸易的诱捕和选择性伐木造成的栖息地退化加上数量本来稀少，情况正在恶化”¹³

In addition, *Eclectus roratus*, another species on the list, has recently been subject to taxonomic revision dividing it into four species, one of which, the Sumba Eclectus (*Eclectus cornelia*), has already been classified as Endangered “due to its small population size which is believed to be declining due to trapping for the pet trade and habitat degradation caused by selective logging”¹³

同样，爬行动物的名单包括辐纹陆龟，它也被列入 CITES 附录 I，并被 IUCN 评估为极度濒危。对该物种的威胁包括收集国际野生动物贸易。^{14, 15}

Similarly, the list of reptiles includes *Astrochelys radiata*, which is also listed on CITES Appendix I and has been assessed as Critically Endangered by the IUCN. Threats to the species include collection for the international wildlife trade.^{14, 15}

如果这些物种的商业使用和贸易在中国合法化，中国对在野外捕获的繁殖物种巨大需求可能会危及野生种群，并鼓励野生抓捕的非法和不可持续贸易。

¹¹ <https://www.iucnredlist.org/species/22724813/154428817>

¹² <https://cites.org/sites/default/files/eng/cop/17/prop/060216/E-CoP17-Prop-19.pdf>

¹³ <https://www.iucnredlist.org/species/155072216/155087823#assessment-information>

¹⁴ <https://www.iucnredlist.org/species/9014/12950491>

¹⁵ <https://turtlesurvival.org/massive-radiated-tortoise-seizure/>

If commercial use and trade of these species is legalised in China, the significant demand for wild-caught breeding stock within China could endanger wild populations and encourage illegal and/or unsustainable trade in wild-caught specimens.

我们敦促中国根据标准重新制定这些和任何其他此类清单，充分考虑野生动物的状况、物种非法贸易的程度以及放宽这些物种饲养或繁殖条件的可能性。人工繁育可能只会刺激非法贸易或提供洗钱机会。所以当务之急是从这些清单中删除以上所提到的物种。

We urge China to reformulate these and any other such lists under criteria giving full consideration to the status of the species in the wild, the extent of illegal trade in the species and the likelihood that relaxing the conditions under which these species are kept or bred in captivity could stimulate illegal trade or provide opportunities for laundering. In particular, we urge that the species mentioned be removed from these lists.