



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

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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.

### Article 1

EIA recommends reinstating reference to “protecting wildlife and their habitats” in this first Article.

### Article 2

Between Article 1 and 2, the definition of “wildlife” in the law may be read as referring to only terrestrial and aquatic species of wild animals, that are “rare or near extinction” and in the case of terrestrial species, have “important ecological, scientific and social value”. There are a number of aspects that are of concern, in part due to the ambiguity of the language:

- It is not clear if “value” is intended to have economic implications, it would be preferable to refer to species that are “ecologically, scientifically and socially important”
- Whether “wildlife” also refers to captive bred specimens of those species?
- Whether the term “rare or near extinction” refers to the status of national populations only, or if “rare or near extinction” equates to the endangered and critically endangered categories of the IUCN Red List of Threatened Species?
- Whether the intention is for the Law to protect terrestrial species that are “rare or near extinction” **and also have** “important ecological, scientific or social value”, or whether these are seen as two separate categories?
- Whether it is intentional to suggest that there are no aquatic species that have “important ecological, scientific and social value”?

EIA recommends inserting a clear definition of ‘wildlife’, which ensures in principle that all wildlife is afforded some degree of protection, e.g. “The wildlife protected under this Law refers to all terrestrial and aquatic species of wild animals, including specimens of those species in captivity”, in line with the claim in Article 1 that the law aims to protect biodiversity and ecological balance”.

Alternatively, if a tighter definition is required, EIA recommends rewording the second paragraph to read as: “The wildlife protected under this Law refers to wild and captive specimens of, both terrestrial and aquatic species of animals, which are rare or endangered (both in terms of national population status and globally as per the IUCN Red List), as well as those species which may not rare or endangered but are ecologically, scientifically and socially important.

### **Article 3**

A wildlife protection law should not encourage utilisation and commercial captive breeding of species under first-class state protection.

### **Article 4**

EIA commends the removal of wildlife breeding as a priority in protection policy, but notes with concern that commercial breeding of endangered species, such as tigers, bears etc., is still allowed by other provisions. EIA remains very concerned that there is still no definition for the term “rational utilisation” and yet it is listed as a priority in terms of protection policy, this would seem to be at odds with .

### **Article 5**

EIA commends the expansion of this article to include “all units and all individuals rather than only “citizens of the People’s Republic of China”

EIA recommends that provisions be added to ensure transparency, such as relevant information being accessible to the public for the purpose of monitoring violations, and to ensure public participation, such as through reporting and litigation. The fifth chapter of the revised Environmental Protection Law of China (2014) has set examples for such provisions.

### **Article 11**

This article proposes three levels of protection: 1) state, 2) local and 3) other species with important ecological, scientific and social value. The language is ambiguous however over what happens to species that fall under state level protection (first-class and second-class) due to the fact that they are rare or endangered, but are also species that are of ecological importance. It is not clear if the intention of the law is to remove such species and captive bred specimens thereof, from state level protection and lists and move them to the third category of listing, thereby reducing the level of protection.

This would be disastrous for species such as the tiger, classified as endangered by IUCN, but also a species of considerable ecological importance. Reading the law as it is written, this would continue to leave tigers vulnerable to commercial captive breeding and domestic trade in the parts and derivatives of captive bred specimens, which runs counter to the CITES resolution and associated decisions relating to tigers and other Asian big cats.

EIA recommends that criteria be specified to determine which species will fall under a certain level of protection, with far greater written clarity over the relationship between the lists, movement of species between lists and levels of protection for species on each list.

EIA would recommend that the criteria ensures that species such tigers, elephants, rhinos, leopards, snow leopards, clouded leopards, Asiatic lions, bears and helmeted hornbill, and other species on Appendix I of the Convention on International Trade in Endangered Species (CITES), should be afforded the highest level of state protection and included on the list of species under first-class state protection.

In addition to the inclusion of species on Appendix I of CITES, the committee responsible for drafting the first-class list should take into account current global threats faced by species on

Appendix II of CITES, and include species such as pangolins, and other bears species. The EU adopts a similar approach and the list affording the highest levels of protection under EU regulations includes species all species on CITES Appendix I and some species from CITES Appendix II.

For species under the first class special state protection, EIA recommends that protection measures be specified, such as the prohibition of private possession and commercial breeding of these species. By way of example, as a consequence of its strong laws, India continues to be world's most significant range state for tigers (with over two-thirds of the global wild tiger population), Asian elephants and Asian rhinos. India's Wild Life (Protection) Act, 1972 (WLPA) strictly prohibits the import, export, hunting, possession, and trade in a wide range of wildlife such as tigers, leopards, snow leopards, clouded leopards and Asiatic lions, all of which are listed in Schedule I of the WLPA, giving them the highest degree of protection.

The current language of the first paragraph in this article is also ambiguous, and EIA recommends that changes be made to ensure that the third level of protection includes both terrestrial and aquatic species and those species that are not already listed under the previous two levels of protection.

EIA recommends that provisions be added to specify which authorities are specifically responsible for ensuring various levels of protections are carried out, and recommends that national agencies be explicitly responsible for species under special state protection.

EIA recommends publishing the aforementioned lists as soon as possible, so they can be reviewed by wider society.

### **Articles 12**

EIA commends the inclusion of survey, monitoring and assessment of captive breeding activities of wildlife.

### **Article 13**

EIA recommends that the results of "surveys, monitoring and evaluation of wildlife and their habitats" be released publicly, which provides an important foundation for obligations and rights set out in Article 5 as part of the general principles.

### **Article 14**

EIA notes with concern that "fencing (or nets)" is no longer included on the list of construction projects that may affect wildlife migration routes. EIA recommends reinstating this language.

### **Article 16**

EIA commends the inclusion of the specific prohibition of "trading in wildlife and products thereof under the guise of wildlife shelter and rescue". In 2012, during EIA investigation, staff of the Qinhuangdao wildlife rescue centre claimed that they sold five tiger skin rugs to private collectors. Various other taxidermies products were offered to investigators and their

brochure states that the use of taxidermy as luxury home décor is an increasingly fashionable way to demonstrate status.

### **Article 18**

EIA recommends that language be added to this article to ensure that “capturing genetic information on endangered wildlife” is conducted in a scientific manner, in collaboration with biologists, to ensure that this cannot be used as a cover for hunting or for commercial breeding of endangered wildlife.

### **Article 21**

EIA recommends removing reference to “other special purposes” in discussion of hunting or catching of wildlife under special state protection.

EIA commends the amendment made to this Article to transfer responsibility for licences to hunt or catch wildlife under special state protection to the department of wildlife protection under the State Council. EIA recommends that responsibility for all state-level protected species, including those under second class state protection and including specimens of captive bred state-level protected species, be similarly transferred to central authorities.

### **Article 26**

EIA commends the provision that only conservation breeding of wildlife under special state protection by “scientific research institutions” will be supported. However, EIA recommends that language be added to ensure such institutions are affiliated to internationally recognised conservation breeding programmes, for example those coordinated under the IUCN Captive Breeding Specialist Group. EIA notes that facilities such as Siberian Tiger Park in Harbin and Hengdaohezi, though considered to be scientific institutions, are offering products marketed as derived from tigers and/or lions, and are keeping tigers in conditions that are inconsistent with conservation breeding.

According to experts of the Zoological Society of London, conservation breeding 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>1</sup>.

Similarly, while EIA commends the specification that the state shall support captive breeding “for the purposes of protection of the species”, breeding operations claiming to be scientific institutions for conservation breeding must provide a plan detailing how the operation supports protection of the species in the wild in consultation with national and international conservation experts. The law should stipulate a means by which such operations would be subject to external expert monitoring.

EIA recommends removing reference to “captive breeding of wildlife under special state protection for reasons other than [protection of the species]” and removing reference to a

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<sup>1</sup> SSN/ENV, July 2014, *Caged assets: tiger farming and trade*, accessible on: <https://eia-international.org/wp-content/uploads/Caged-Assets-revised.pdf>

permit system for such breeding operations. Breeding of protected species should only be allowed for conservation purposes by accredited conservation institutions. For example, the “Big Cat Public Safety Act” (September 17, 2015), recently introduced for enactment in the legislature of the United States of America, prohibits the keeping and breeding of captive tigers in the United States, restricting private possession only to the limited extent needed by approved legitimate zoos and conservation breeding programs. In addition, the Wild Life Protection Act of India, 1972 (WLPA) stipulates that tigers and other Asian big cats cannot be bred for commercial purposes, nor on a commercial scale for trade in their parts and derivatives. Live Asian big cats can only be possessed and bred by recognised zoos for conservation purposes. The law also prohibits all trade of Asian big cat specimens including specimens sourced from captive animals.

EIA recommends that breeding of species under special state protection for any reason other than protection of the species and by any institution other than an accredited conservation organization be stopped, and an action plan developed to phase out existing facilities that do not comply with this provision. For example, Wildlife Protection Act of Taiwan adopts specific requirements to phase out most commercial breeding operations. Given Article 27, it is contradictory for the draft law to sanction captive breeding of wildlife under special state protection for any other purposes.

#### **Article 27**

EIA commends the addition of this provision, although notes that no penalties are listed in the draft for violations of this Article.

EIA also recommends insertion of language to ensure that any captive breeding of wildlife is conducted in accordance with IUCN Conservation Breeding Specialist Group standards for conservation breeding.

#### **Articles 28**

EIA recommends that the first paragraph of Article 28 also prohibit private possession.

In keeping with the “precautionary principle”, EIA recommends removing reference to the “sale, purchase or utilisation of wildlife under special state protection or the products thereof for ... public exhibition (or performances), heritage conservation or other special purposes”.

With regard to the exemptions in paragraph 2 of Article 28, EIA recommends that the only exemption for the utilization of parts and derivatives of species of special state protection be solely for the purpose of training law enforcement officers. In the context of parts and products / derivatives of tigers and other Asian big cats, including of captive bred specimens, there is no other form of utilization that can be justified. The same should apply to other CITES Appendix I species and Appendix II species threatened by domestic and international trade in their parts and products / derivatives.

EIA recommends the insertion in Article 28 of a clause equivalent to the first clause of Article 27, to ensure that any exemptions for utilisation of live wildlife under special state protection is only permitted in instances that will demonstrably benefit the protection of the species in the wild and scientific research (as determined by conservation experts). The onus of responsibility of proof of non-detriment to the species in the wild will rest with the proponent

("unit" / individual / company), and must be submitted in writing as part of the application process and evaluated in a transparent manner.

EIA recommends that provisions be inserted here, or a separate Article drafted to address the disposal of confiscated specimens of wildlife and specimens of deceased captive-bred wildlife, in relation to prevention of trade in parts and products of species under state and local protection.

For example, India's National Tiger Conservation Authority of India (NTCA) has issued a Standard Operating Procedure for Disposing Tiger/Leopard Carcass/Body Parts which requires that seized tiger and leopard specimens that are not required for court purposes be destroyed in the presence of specified authorities. The transparent and routine destruction ensures that such specimens cannot enter trade, reinforces applicable laws that prohibit commercial trade and strengthens enforcement efforts. It also sends a clear message that big cat specimens are not available for commercial purposes.

Under India's legislation governing zoos, every animal which dies in a zoo is required to be subjected to a detailed post mortem examination by a registered veterinarian to determine the cause of death.<sup>2</sup> In the case of large cats, the carcasses are required to be disposed of by burning in the presence of the Director of the Zoo.<sup>3</sup> The Central Zoo Authority guidelines on the disposal of animal carcasses in zoos emphasize that special care has to be taken in the case of leopards, lions, and tigers, and that the burning should occur in the presence of zoo directors "so that the possibilities of skeleton/trophies being smuggled into illegal trade can totally be ruled out."<sup>4</sup>

Conversely, the continued stockpiling of tiger parts and products by the breeding industry is not currently prohibited in China and this facilitates a perception that trade is or will soon be legal. For example, in two tiger breeding facilities alone, namely the Hengdao hezi Siberian tiger park and Xiongsen Bear and Tiger Village, approximately 150 and 200 carcasses respectively have been stockpiled in freezers. A member of the National People's Political Consultative Conference stated that there is over 100 tonnes of tiger bone stockpiled in China<sup>5</sup>

In addition, EIA recommends that in Chapter 4, penalties be specified for violation in relation to the "disposal of confiscated specimens of wildlife and specimens of deceased captive bred wildlife"

### **Articles 29 and 34**

Of considerable concern to EIA is Article 29. If adopted as written, it could potentially revoke the special protection status for captive specimens of species such as tigers, further entrenching the domestic trade in parts and products of captive bred tigers.

Species such as tigers that are severely threatened by trade should not be allowed to be included on any list of wildlife under special state protection that may be commercially utilised. There is absolutely no conservation benefit of commercial utilisation for these

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<sup>2</sup> Rule 7(1) of the Recognition of Zoo Rules 2009.

<sup>3</sup> Rule 7(4) of the Recognition of Zoo Rules 2009

<sup>4</sup> Available at <http://www.cza.nic.in/guidelines1.html>.

<sup>5</sup> Xinhua net, March 15 2016, *Wen Jianmin and 13 other NPPCC members: beware of the West attacking TCM under the name of wildlife protection*, lfeng.com

species. The existence of such a list also contradicts Article 27. EIA's investigation findings illustrate how the labelling system that implements domestic trade in the skins of captive bred tigers is flawed and allows for laundering of illegally traded specimens and derivatives. More details can be found in Annex 1.

EIA reiterates that decisions relating to wildlife under special state protection should lie with central authorities. EIA has documented examples of the abuse of the system that may arise when licensing is conducted at the provincial level. The issue of supervision and oversight by the state at the central level was illustrated when the China CITES Management Authority reported that they did not know the scale of the trade in skins of captive bred tigers.

EIA also notes with concern the final clause of this Article, which allows for "different protection measures" for captive populations of wildlife under special state protection. The criteria for such decisions are not laid out in this Article, and would be based on population surveys, the results of which (as mentioned above in relation to Article 13) would not necessarily be released publicly according to this draft of the law. This potentially allows arbitrary amendments to relevant lists without consultation with conservation experts.

It is also of great concern that the above "differentiation" may decriminalise the illegal captive breeding and utilisation of products of specimens thereof, while the illegal hunting and killing of rare and endangered species and the smuggling of precious animals and the products thereof are criminal offenses.

EIA recommends that both wild and captive populations of protected species such as tigers, elephants, bears, rhinos, pangolins be afforded the highest level of state protection, and that measures be taken to address issues of transparency of decision-making relating to Article 13.

### **Articles 30**

EIA commends the removal of references to "healthcare products".

### **Article 31**

EIA commends the addition of Article 31, which explicitly prohibits the production and trade of foodstuffs containing wildlife under special state protection. EIA recommends that this prohibition be expanded to cover production, trade *and consumption* of wildlife under special state protection, whether wild or captive, for the purposes of use as medicine, healthcare products or food. The prohibition should be expanded to explicitly cover products such as tiger bone wine; EIA has previously documented tiger bone wine marketed as a healthcare product despite the relevant permit listing it as a food product.

EIA also recommends that the word "illegal" be removed from the second clause of Article 31, to reflect the first clause in prohibiting all purchase of foodstuffs containing wildlife under special state protection, including those derived from captive specimens.

### **Article 36**

EIA recommends that the first clause of this Article (Article 32 in the first draft) be reinstated, explicitly separating out species for which import and export is prohibited from those for which import and export is restricted, removing any ambiguity from the wording and

intention. The language in the second draft of the proposed revisions to this article does not explicitly state that import and export of CITES Appendix I-listed species would be prohibited by this Law. If China were to go ahead with this revision, it may risk losing its status as a party with legislation under Category 1 under CITES.

EIA also recommends that provisions be added to ensure that illegal import or export in wildlife and the products thereof in which trade is prohibited or restricted by international conventions to which China is a Party shall be treated as a criminal offense

EIA recommends that for species such as tigers, other Asian big cats, rhinos and elephants, for which CITES has adopted stricter domestic measures including trade prohibitions, a clause should be added to ensure that these are implemented under this Law.

#### **Chapter 4**

EIA recommends that Chapter 4 explicitly state which violations of this Law constitute a criminal offence as per earlier versions, which stated whether a perpetrator “shall be prosecuted for criminal responsibility in accordance with the relevant regulations of the Criminal Law of the People’s Republic of China.”

For violations that are considered criminal offences under the Criminal Law, EIA suggests a separate article giving detailed requirements for investigation, which includes e.g. crime scene investigation, forensic examination of specimens recovered for the purpose of determining origin in the case of illegally traded / bred specimens, investigation of national and transnational criminal network, and illicit financial flows.

#### **Articles 42-59**

EIA notes that the draft does not specify penalties for violating the following provisions:

- Article 13: “Human activities that disturb or threaten wildlife, such as cultivating monocultures, introducing non-native species or excessive use of agricultural chemicals shall be prohibited or restricted in nature reserves and other protected areas.”
- Article 14, third paragraph: “The selection of sites and routes for construction projects such as airports, railways, roads, irrigation and hydroelectricity projects, cofferdams and land reclamation shall avoid nature reserve and other protected areas and wildlife migration routes. If they cannot be avoided, infrastructure to allow for wildlife migration shall be constructed, such as tunnels and fish passes, to eliminate or reduce adverse impacts on wildlife.”
- Article 27: “Captive breeding of wildlife under special state protection shall benefit the protection of the species and scientific research, and may not damage wild populations. Anyone intending to breed wildlife 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 that the wildlife is not abused.”
- Article 30: “Anyone utilising wildlife and the products thereof shall abide by laws,



regulations and relevant national statutes, and shall not violate public order and good morals. The production and utilisation of wildlife and the products thereof as medicine shall abide by relevant laws and regulations relating to administration of medicines.”

EIA recommends that additional provisions be added to specify penalties for violations of these Articles.

#### **Article 42**

This article does not specify the conditions / criteria that departments should follow in order to make decisions over the issuing of permits. EIA suggests that relevant provisions be added and that a mechanism be developed for public scrutiny.

#### **Article 54**

EIA recommends that provision is made for the repatriation of both live non-native Chinese wildlife specimens that have been confiscated, in the event they may be returned to the wild, and of parts and products of deceased specimens where they are required for criminal prosecution in the country of export.

#### **Article 59**

EIA notes with concern that unlike previous versions of the law, 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 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. Also EIA recommends the law explicitly reference China’s Criminal Law for prosecution for criminal responsibility.

EIA notes with concern that captive specimens of some species under special state protection will no longer be treated as species under special state protection, if Article 29 is adopted as written. EIA objects to the language of Article 29 in principle, in light of the risks it presents to tigers. With regards to the impact on other species, we are further concerned that it is not clear if violations of Article 29 as it relates to captive specimens would still constitute criminal offences. This should be amended so that illegal captive breeding and internal trade as well as the smuggling of products thereof are also considered criminal offences.

### **Annex 1:**

#### **EIA investigation findings**

EIA has obtained strong video evidence that demonstrates that the permit system that currently exists under the 1989 Wildlife Law is ineffective and indeed provides an opportunity for criminals to abuse and launder illegal specimens, and for provincial authorities to operate in contravention of State Council Orders (issued at the central level).

### Tiger trade in China

For example, EIA investigations into the operations of a company called Xiaofeng Animal Specimen Factory, in Chaohu, Anhui Province, which has been issued a permit by the State Forestry Administration (SFA) to sell captive-tiger skins legally, found that this company regularly processed captive tiger skins to produce expensive luxury rugs which it then sells legally for commercial purposes with a permit issued by the SFA, and is also engaged in illegal tiger trade.<sup>i</sup> The owner of Xiaofeng described ways in which he could re-use the permits and falsify the origin of the skins, and also claimed that he had illegally processed two skins from wild tigers originally from India. Further, the provincial authorities have permitted the owner of Xiaofeng to take delivery of the entire tiger carcass from the zoos with which he has an agreement; in doing so he can also sell the tiger bones in the black market since the authorities do not effectively monitor this trade. Trade in tiger bone has been prohibited by law in China since 1993 under a State Council notification on “Banning the Trade of Tiger Bone and Rhino Horn”.

#### **Extract from EIA Investigation Transcript**

2012 (Xiaofeng Animal Specimen Factory, in Chaohu, Anhui Province):

*EIA: If you are to estimate, legal and illegal skins, what is the percentage in the market?*

*Trader: I would say half and half. ... But even if you don't have a certificate, you can keep it at home, and claim you inherited it...*

*Trader: The certificate is here, and you don't need to know more. It's like you ask a child trafficker, who does the child belong to? (in response to EIA asking about who owns the tiger that was being offered for sale with a permit).*

Despite the 1993 State Council Notification banning the trade in tiger bone, EIA investigations have found ongoing commercial use of tiger bone sourced from captive-bred tigers for manufacturing products such as wine.<sup>ii</sup> For example, in 2013, EIA investigated the Hunan Sanhong Biotechnology Company, which is apparently manufacturing tiger bone wine on a commercial scale. A Company representative told EIA that the Company along with two other facilities are authorised by the government to use tiger bone from captive animals to manufacture and sell tiger bone wine so long as the product does not list “tiger bone” as its ingredient on its packaging. Further, the Company representative told EIA that the bones for manufacturing the wine are sourced from its own tiger breeding facility as well as zoos and other breeding facilities across China. The Company representative told EIA that the use of bone from captive tigers for producing wine is a business activity that is ongoing in almost every province across China, mostly in zoos, and that such activities are carried out in a discreet manner because of the 1993 State Council ban prohibiting tiger bone trade.

#### **Extract from EIA Investigation Transcript**

2013 (Hunan Sanhong Biotechnology Company in Changsha, Hunan Province):

*EIA: You said that selling tiger bone is not allowed, but at the same time you are selling this with permission from the government?*

*Trader: The product is official so long as it is not labeled as "tiger bone". Official products can be sold in the market.*

*EIA: How about the Siberian Tiger Park and the Xiongsen Bear and Tiger Village?*

*Trader: It's the same. Everyone involved in this business know this, no one dares to label the product as "tiger bone".*

*EIA: It is not labeled as such, but it is actually made with tiger bones?*

*Trader: Yes.*

Additionally, past EIA investigations as well as exposés by media and other non-governmental organizations have documented the use of tiger bone from captive tigers in tiger farms across China to produce wine.<sup>iii</sup>

Tigers and other Asian big cats are listed in CITES Appendix I, triggering the strictest prohibitions on international trade in parts and products of these species under CITES. A legal trade in parts and products from tigers, whether sourced from wild or captive tigers, violates CITES, with limited exceptions such as trade in antiques. Given the highly endangered status of tigers and the significant trade threat, CITES Parties have called for ending trade in parts and products sourced from captive tigers and stopping intensive commercial tiger breeding operations. A CITES Decision adopted in 2007 states that "*tigers should not be bred for trade*".<sup>iv</sup>

#### Trade in ivory in China

Historically, as a consequence of the adoption of the international ban on trade in ivory in 1989 under CITES, elephant populations in several parts of Africa recovered and the Chinese ivory industry dwindled as supply dried up and sales fell dramatically.<sup>v</sup> However the ban was lifted in 1999 when Botswana, Namibia and Zimbabwe sold several tonnes of ivory to Japan. This led to perceptions among traders in China that the ivory ban would soon be lifted, making trade in ivory a profitable venture. In 2002, China itself reported to CITES that: "*Many Chinese people misunderstand the decision [to sell to Japan] and believe that the international trade in ivory has been resumed.*"<sup>vi</sup> However, by 2005 China had decided that it too wanted to join Japan and purchase ivory from Africa and such a transaction was authorised by CITES in 2008.

Today, China is the world's largest destination market for illegal ivory.<sup>vii</sup> A primary factor for the surge in illegal ivory trading in China was the creation of a parallel legal domestic market for ivory in China in 2008. The demand for ivory in China and the smuggling of thousands of tonnes of illegal ivory from Africa to China to meet this demand has resulted in the significant decline of elephants in the wild in Africa. EIA investigations have found that China's large domestic legal trade in ivory provides a cover for laundering illegal ivory, stimulates demand for ivory products and undermines enforcement efforts to combat ivory trafficking.<sup>viii</sup> In addition, there is overwhelming evidence from other sources as well that prove that the domestic ivory trade system under the 1989 Wildlife Law and the labelling and permitting scheme is flawed.<sup>ix</sup>

The Draft Revision also conflicts with the high level commitments made by President Xi Jinping and President Obama during their recent high-level bilateral where both heads of

state committed to “take significant and timely steps to halt the domestic commercial trade of ivory.”<sup>x</sup>

### Legal trade stimulates demand

The parallel legal trade in captive tiger skins as well as in elephant ivory in China stimulates demand and undermines demand-reduction campaigns. The legal trade is sustaining, and indeed promoting, a perception that such products are valuable, thereby stimulating demand. It is pertinent to note that recent surveys conducted in China show that an unequivocal ban would discourage consumers from buying the product. For example, a survey conducted by National Geographic found that consumers stated that a complete ban would stop them from buying ivory.<sup>xi</sup> Other recent surveys also confirm overwhelming support for a complete ban on domestic trade in ivory in China.<sup>xii</sup>

In 2004, the SFA included various endangered species in a “special marking system” for the utilisation of wildlife, effectively establishing a legal framework for the trade and utilisation of wildlife. This stimulated development of the wildlife product market, including taxidermy specimens, deer antler, wine, frozen crocodile meat, skin products, musk, bear bile powder, Chinese medicine products, snakeskin erhus (a traditional musical instrument), pangolin scales, etc. Even mass-produced ‘tonic wines’ containing tiger bone such as those from Siberian Tiger Park and Xiongsen Bear and Tiger Village in Guilin are covered under this “special marking system”, and may be legally sold. For this system to be enshrined in the Wildlife Protection Law would be a step backwards.

In February 2015, the head of a Public Security Bureau in Shenzhen invited officials to attend a feast at a hotel, where they would be served giant salamander allegedly sourced from a captive breeding facility. The commercial breeding of wildlife has developed into an industry, and this industry has pushed critically endangered species such as the giant salamander to the brink of extinction. Recent research into the giant salamander breeding industry by the Zoological Society of London found that the animals are often taken from the wild. Many other species are facing similar threats, including the tiger, Asiatic black bear, sika deer, and various snakes, turtles and tortoises – a rapidly expanding wildlife breeding industry has changed tactics in seeking commercial opportunities, and is stimulating demand for wildlife products among the public. Such wildlife products are generally consumed as luxury goods, or even as a way to exert personal influence and curry favour with those in positions of power. Encouragement of such an industry is at direct odds with the current mood of fighting corruption in China.

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<sup>i</sup> EIA (2013), *Hidden in Plain Sight: China’s Clandestine Tiger Trade*, <https://eia-international.org/wp-content/uploads/EIA-Hidden-in-Plain-Sight-Chinese-lang-version-FINAL1.pdf>

<sup>ii</sup> EIA (2014), *Briefing on the manufacture of tiger bone wine in China*, <https://eia-international.org/report/briefing-on-the-manufacture-of-tiger-bone-wine-in-china>; EIA (2013), *Hidden in Plain Sight: China’s Clandestine Tiger Trade*, <https://eia-international.org/wp-content/uploads/EIA-Hidden-in-Plain-Sight-Chinese-lang-version-FINAL1.pdf>; EIA’s online library: <http://eia-international.org/eia-online-library-for-hidden-in-plain-sight-report>.

<sup>iii</sup> See, e.g., EIA (2013), *Hidden in Plain Sight: China’s Clandestine Tiger Trade*, <https://eia-international.org/wp-content/uploads/EIA-Hidden-in-Plain-Sight-Chinese-lang-version-FINAL1.pdf>; EIA (2007), *Availability of Tiger Bone Wine at Wild Animal Parks in China*, <http://www.eia-international.org/availability-of-tiger-bone-wine-at-wild-animal-parks-in-china>; EIA (2012), *Tiger Bone Wine Auctions in China*, <http://www.eia-international.org/tiger-bone-wine-auctions-in-china>.

<sup>iv</sup> CITES Decision 14.69, <https://cites.org/eng/dec/valid16/212>

<sup>v</sup> Yufang Gao and Susan G. Clark (2014), *Elephant ivory trade in China: Trends and drivers*, Biological Conservation 180 (2014) 23–30, 24.

<sup>vi</sup> CITES Management Authority of China (2002), *A preliminary review of the management of trade in elephant products in China*, CoP12 Inf. Doc 15.

<sup>vii</sup> UNEP et al. (2013), *Elephants in the Dust – The African Elephant Crisis. A Rapid Response Assessment* at 40,

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67 [http://www.unep.org/publications/contents/pub\\_details\\_search.asp?ID=6303](http://www.unep.org/publications/contents/pub_details_search.asp?ID=6303); World Customs Organisation (2013), *Illicit Trade Report 2012* at pg. 49; TRAFFIC (2014), *Status of elephant populations, levels of illegal killing and the trade in ivory: a report to the CITES Standing Committee*, SC65 Doc. 42.1.

<sup>viii</sup> EIA (Nov. 2014), *Vanishing Point - Criminality, Corruption and the Devastation of Tanzania's Elephants*, <http://eia-international.org/vanishing-point-criminality-corruption-and-the-devastation-of-tanzanias-elephants>; EIA (March 2012), *Blood Ivory: Exposing the Myth of a Regulated Market*, <http://eia-international.org/bloodivory-exposing-the-myth-of-a-regulated-market>; EIA (Aug. 2011), Briefing Document for the 61st Meeting of the CITES Standing Committee – *Elephants*, <http://eia-international.org/briefing-document-for-the-61stmeeting-of-the-cites-standing-committee-elephants>

<sup>ix</sup> See, for example, Elephant Action League (2015), *Blending Ivory: China's old loopholes, new hopes*; Save the Elephants (2014), *China faces a conservation challenge: The expanding elephant and mammoth ivory trade in Beijing and Shanghai*; TRAFFIC (2014), *ETIS report of TRAFFIC*, CoP16 Doc. 53.2.2 at 14, 19; CITES Secretariat (2013), *Report of the Secretariat: Monitoring of illegal trade in ivory and other elephant specimens*, CoP16 Doc. 53.2.1, ¶ 34; Esmond Martin and Lucy Vigne (2011), *The Ivory Dynasty: A Report on the Soaring Demand for Elephant and Mammoth Ivory in Southern China*; IFAW (2012), *Making a Killing: A 2011 Survey of Ivory Markets in China*.

<sup>x</sup> <https://www.whitehouse.gov/the-press-office/2015/09/25/fact-sheet-president-xi-jinpings-state-visit-united-states>

<sup>xi</sup> John Bredar (2013), *The Ivory Trade: Thinking Like a Businessman to Stop the Business*, <http://newswatch.nationalgeographic.com/2013/02/26/the-ivory-trade-thinking-like-a-businessman-to-stop-the-business/> (“Nearly 60 percent of respondents believe that making ivory ‘illegal to purchase under any circumstances’ or ‘the strong recommendation of a government leader’ would be the most effective way to stop ivory trading”).

<sup>xii</sup> WildAid (2015), *Ivory demand in China, 2012-2014*; National Geographic and Globescan (2015), *Reducing demand for ivory: an international study*.