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China's Revised Wildlife Protection Law: Concerns and Opportunities

Background

In July 2016, China's National People's Congress passed a new revision of the Wildlife Protection Law, China's primary piece of legislation relating to conservation of wildlife (EIA's translation of the final revised law is available here). EIA submitted comments twice during the official consultation period (our comments can be found in full here). The final revised law did not reflect many of the concerns submitted by several stakeholders, including EIA, during the revision process. The revised law officially came into effect on January 1, 2017.

In October 2016, the State Forestry Administration (SFA) – the main Government department responsible for protecting wildlife and thus enforcing the Wildlife Protection Law – published a set of draft regulations (unofficial translations available here) which provided more detail as to how the SFA intends to put the revised law into practice. EIA submitted comments on these regulations to the SFA in November 2016 (full comments can be found here). Crucially the various "lists" of wildlife species that would determine the protection status of individual wildlife species are yet to be published and the new law and the new regulations appear to have been developed without any consideration and consultation on its impact on specific species.

There are an estimated 5,000-6,000 captive tigers held in more than 200 facilities in China, many of which are linked to trade in tiger parts and derivatives (see EIA's map of facilities and summary of tiger farming and trade).In 2012, EIA documented how China had been experimenting with a licensed domestic trade in captive bred tiger skins under administrative regulations introduced in 2003 (see for example, 2013 report *Hidden in Plain Sight*). The existing licensing system has not been subject to any effective monitoring, and EIA investigations revealed the system to be wide open to abuse. In its reporting to CITES in 2015, China confirmed that the SFA does not have the capacity to monitor the total amount of legal trade and utilisation of Asian big cats, having stated, "it's beyond China's capacity to obtain the total trade volume data of the various species which includes the possession volume".

Key concerns

Although the revision process saw some positive changes made to the language of the Wildlife Protection Law, such as including provisions for protection of wildlife habitat, EIA is deeply concerned by a number of aspects of the final law.

Primary among EIA's concerns are provisions laid out in the Law and supplementary regulations that further enshrine and formalise a licensing system that allows commercial breeding, utilisation and trade in species under special state protection, a category which under the pre-2017 version includes tigers (a list of species under special state protection in China to date, can be found here; the list is understood to be undergoing revision). These provisions risk further entrenching a culture of commodification of endangered species, and risk the survival of wild populations by stimulating

demand for wildlife products, complicating law enforcement, undermining demand reduction efforts and presenting opportunities for laundering of wild-caught specimens and their derivatives.

Commercial trade and utilisation of endangered species is permitted and formalised
The revised law formalises an existing system under which wildlife under state protection may be traded and utilised, including for medicinal purposes, but further reduces capacity for monitoring and oversight. Moreover, new provisions enable fast-tracked utilisation of certain species under special state protection, stating that captive-bred specimens may be subject to the different protection measures from their wild counterparts.

Article 28 of the Law continues to allow the issuance of permits (termed a 'special marking') for captive-bred specimens of species under special state protection which are included on a list (hereafter termed the 'utilisation list') drawn up by the department of wildlife state protection under the State Council (i.e. the SFA). These specimens may then be sold and utilised. EIA is concerned that tigers and other species that are severely threatened by trade will once again be included on the utilisation list. Although it is not clear when the utilisation list will be published and whether this will be subject to public consultation, the list is rumoured to be in preparation to be released imminently. It is crucial to expeditiously make use of every possible opportunity to encourage the SFA and other relevant stakeholders to ensure that tigers are not included in the utilisation list.

The draft 'Implementation regulations for the administration of the special marking system for terrestrial wildlife under special state protection and the products thereof' released by the SFA in October 2016 provide detail on how the SFA intends to implement the 'special marking' permit system. These regulations impose no restrictions on the purposes for which such trade will be allowed, and as such the 'special marking' system laid out in these documents enshrines trade in captive-bred specimens of protected species for purely commercial purposes and offers no educational or conservation benefit.

The use of such protected species in production of medicine is not prohibited by the revised Law. This is of particular concern in the case of tigers: although domestic trade in tiger bones is currently prohibited by a 1993 State Council Notification, Zhai Yong, Director of the NPC Natural Resources Law Drafting Office stated in July 2016 that the use of tiger bones in medicine "is an issue that society should discuss" (news article available here).

Moreover, in February 2017, a senior SFA official (see translated article here) stated, "species under special state protection, with the exception of species for which there are established techniques for captive breeding (such as the sika deer), may not be consumed as food". The sika deer is a species under first-class special state protection in China – the same category as the tiger. Captive-bred Chinese giant salamander, a species under second-class special state protection, is also legally traded for consumption as food; a captive breeding facility is also registered under CITES to allow international trade of food products made from the salamander. These examples indicate that production and trade of food products made from captive populations of protected species included on 'utilisation lists' will not be prohibited. If tigers are included on this list, this would potentially open up legal trade in tiger meat and tonic wines made using tiger bone.

Commercial captive breeding of endangered species is permitted
The revised Law continues to enshrine a captive breeding permit system that allows commercial breeding for the purposes of trade and utilisation of endangered species. EIA is very concerned by this provision, which could allow the continued breeding of tigers for commercial purposes, in contravention of a CITES Decision which states that "tigers should not be bred for trade in their parts and derivatives." Parties specifically voted to stress that "trade" in this context applies not only to international trade, but also to domestic trade. In addition, the revised Law does not prohibit the capture from the wild of wildlife under special state protection for commercial purposes such as commercial captive breeding.

Captive-bred populations of protected species may be subject to different protection measures
Article 28 of the revised Law states that captive populations of those protected species included on the aforementioned utilisation list may be subject to different protection measures from wild populations. This could severely undermine enforcement and present opportunities for the laundering of wild-caught specimens.

Trade in protected species is permitted for the purposes of 'performance'
The permit system enshrined in the revised Law allows the sale and utilisation of protected species for the purposes of "public exhibition or performance", and does not specify that permits allowing trade for such purposes would be restricted to captive-bred specimens. Wildlife performances, such as the use of tigers in circuses as frequently documented in China, serve no educational or conservation purpose, and are often linked with both trade in wildlife parts and products and welfare issues and animal abuse.

Management of wildlife under special state protection is de-centralised
The revised Law passes most responsibility for implementation of the Wildlife Protection Law to provincial-level government departments, but stipulates little requirement relating to planning, supervisory or accountability mechanisms. This is a significant loophole, which could be exploited to the detriment of wildlife and impedes China's ability to report on obligations under CITES. The revised Law and regulations state that forestry departments at the provincial level shall be responsible for the issuing of production quotas and special markings. Given that in 2015, the SFA confirmed they were not able to monitor the legal trade in captive-bred tiger parts, the revised Law risks increasing the opportunities for a more poorly-regulated legal trade in tigers and other species threatened by trade.

Lack of transparency and formal mechanisms for public participation
Article 6 stipulates that "all organisations and individuals have a duty to protect wildlife" and the right to report activities violating the law. However, detail is lacking 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.

Possession of illegally-sourced wildlife and wildlife products is not criminalised
The revised Law and regulations do not specifically prohibit the possession of illegally-sourced wildlife and protected wildlife products, which limits opportunities for enforcement to combat illegal wildlife trade.

Implementation regulations allow the auction of seized wildlife items
The draft 'Implementation regulations for the management and disposal of seized terrestrial wildlife and wildlife products' released by the SFA in October 2016 state that seized live wildlife and wildlife products may be auctioned, providing any one of four conditions are met: that the specimen is included on a 'List of captive-bred wildlife under special state protection'; the product was in existence before March 1, 1989; that the item "has relatively high utilisation value and means of utilisation conforms with laws and regulations"; or "other circumstances stipulated by laws or regulations".

The regulations do not specify what species are considered to have 'utilisation value', or which bodies are responsible for such designation. The regulations could create a mechanism to legalise illegally acquired specimens such as tiger skins for auction, which may encourage illegal activity. This would be in contravention of CITES Resolution 9.10 (Rev. CoP15), which does not allow sale of dead specimens of CITES Appendix-I species (such as tigers).

Remaining opportunities

- The list of species of which captive-bred specimens may be commercially traded through 'special marking' permit system and of which captive populations may be subject to different protection measures has not yet been published, although it is rumoured to be in preparation for imminent release. There is therefore a narrow window of **opportunity for the Chinese**

Government to demonstrate conservation leadership and state that tigers and other Asian big cats, elephants, rhinos, pangolins, bears, helmeted hornbill and other species threatened by trade shall be kept off this list. EIA strongly recommends that at the very least, any species listed on CITES Appendix I be kept off the utilisation list. With the December 2016 announcement from the State Council that ivory processing and retail activities will cease by the end of 2017, China has demonstrated that it is willing to take action to prevent the extinction of a species threatened by trade. The current situation with regard to 'utilisation lists' provides China with a clear opportunity to build on this momentum to definitively prohibit trade in other species that are seriously threatened by trade, including tigers.

- Implementation regulations regarding disposal of seized wildlife items allow the auction of seized items which meet any one of four conditions, some of which are poorly defined. An opportunity remains for China to announce that in accordance with CITES Resolution 9.10 (Rev. CoP15), the sale or auction of seized CITES Appendix I-listed specimens shall be prohibited. The same document also states that "Where a terrestrial wildlife item definitely has no utilization value, it may be disposed of in a supervised destruction." **An opportunity exists for the Chinese Government to announce a list of species that have no utilisation value**, which should include CITES Appendix I-listed species, and thus ensure that seized items of such species are routinely destroyed when no longer required for judicial processes and following a full audit, inventory and collection of relevant forensic information.

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