



EIA BRIEFING REPORT: 16TH MEETING OF THE CONFERENCE OF PARTIES (COP16) TO THE U. N. CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES) (BANGKOK, MARCH 2013)

EIA's comments on specific CoP16 Working Documents are as follows:

WORKING DOCUMENTS

1. CoP16 Doc. 15, International Consortium on Combating Wildlife Crime (ICCWC)

The Secretariat has reported that ICCWC is in the process of developing indicators to assess effective enforcement and it will make them available to the Parties when they are finalized.

EIA strongly supports the development of indicators of effective enforcement because such **indicators are critical to ensuring that enforcement actions are delivering the required results** and present the best possible deterrent through meaningful sentences, fines and the recovery of assets and proceeds of crime. Measuring enforcement actions against appropriate indicators which focus on international communication and cooperation will encourage the intelligence-led approach necessary to disrupt transnational criminal networks. Reporting under these indicators would identify existing enforcement gaps and enable the development of appropriate strategies to address them. In addition, by providing a focused, standardized framework for reporting, enforcement indicators may relieve some of the reporting burden on Parties who often report on a wide range of activities under CITES, and would also streamline reporting to ensure the burden on Parties is minimised.

EIA *recommends* that the Parties propose a decision:

- instructing the Secretariat to work with ICCWC to ensure that the indicators of effective enforcement are finalized as soon as possible so that the indicators can be adopted latest by the 65th meeting of the CITES Standing Committee (SC65), and
- directing the Secretariat and the Working Group on Special Reporting Requirements to incorporate the ICCWC indicators of effective enforcement in revising the annual report format.

2. CoP16 Doc. 26, Draft revision of Res. Conf. 10.10 (Rev. CoP15) on Trade in elephant specimens

Pursuant to Decision 15.74, the Secretariat has proposed certain amendments to Res. Conf. 10.10 (Rev. CoP15). EIA is concerned that the amendments do not clarify the status of "*Parties designated as ivory importing countries*". Further, EIA is concerned that the proposed amendments direct the Secretariat to use its resources to support "the security and registration of government-held ivory stockpiles".

a. Status of ivory trading partners

Regarding the status of "*Parties designated as ivory importing countries*" (as referenced in Res. Conf. 10.10) or "*[ivory] trading partners that have been verified by the Secretariat*" (as referenced in the annotation to the listing of *Loxodonta Africana* in Appendix II), EIA believes that China and Japan's designation as ivory trading partners is no longer valid. However, CITES has never clarified this position which has created some confusion about the status of China and Japan as ivory trading partners and misled the CITES community to believe that their designation as ivory trading partners continues to be valid. For example, the Panel of Experts report on Tanzania and Zambia's down-listing and sale proposals submitted to CoP15 assumed that China and Japan's ivory trading partner status continued to be valid with regard to those proposals despite

the fact that the second sale was long completed.¹ In addition, more recently in the proposal filed by Tanzania for CoP16 to downlist its elephant population and for trading in ivory, CoP16 Prop. 11 (withdrawn on December 18, 2012), Tanzania proposed to sell its ivory to China and Japan because these Parties were “trading partners that have been already designated by the Standing Committee”.

Further, the Standing Committee directed the Secretariat to consult China and Japan “as trading partners” on developing the decision-making mechanism for a process of trade in ivory² and in its perfunctory comments on this issue, China has called for a regular international trade “by supplying 200 tons raw ivory every year” sourced from both legally obtained ivory as well as “confiscated ivory”.³ **This issue of a decision-making mechanism for ivory trade is on the agenda for CoP16⁴ and EIA would urge the Parties to ensure that this discussion takes place independently with the clear understanding that the designation of China and Japan as ivory trading partners is no longer valid.**

EIA believes that the status of **China and Japan as designated ivory trading partners applied only to the one-off sale** of registered ivory from Botswana, Namibia, South Africa and Zimbabwe that was completed in 2008, and that **both Parties would need to be reassessed for any future sale**. China and Japan were designated as ivory trading partners under the annotation to the listing of *Loxodonta africana* in Appendix II. That annotation adopted by the Conference of the Parties specifically limits its applicability to “the **exclusive purpose of allowingtrade in registered raw ivory**” (emphasis added) from Botswana, Namibia, South Africa and Zimbabwe.⁵ Thus the decision of the Conference of the Parties enabling the “designation” of China and Japan is embodied in the annotation which was valid only for the sale of registered ivory from those specified populations and that sale was completed in 2008.

In addition, at CoP12 (2002) when the down-listing of certain African elephant populations and trade in ivory was approved, the Conference of the Parties retained Decision 10.2 with the following condition: “It is understood that **this decision provides for a one-off purchase** for non-commercial purposes of government stocks declared by African elephant range States to the CITES Secretariat within the 90-day period before the transfer to Appendix II of certain populations of the African elephant takes effect.”⁶ (emphasis added).

Further, under the annotation, China and Japan were approved as ivory trading partners when the Secretariat and the Standing Committee concluded that both Parties “have sufficient national legislation and domestic trade controls to ensure that the imported ivory will not be re-exported and will be managed in accordance with all requirements of Resolution Conf. 10.10 (Rev. CoP14) concerning domestic manufacturing and trade”. Thus, **China and Japan are required to ensure continued compliance with Res. Conf. 10.10** which requires both Parties to have “**comprehensive internal legislative, regulatory and enforcement measures**” (emphasis added) to *inter alia*, monitor the flow of ivory within the State particularly by means of compulsory trade controls over raw ivory. However, it is clear that China’s domestic ivory trade control system has failed and is in non-compliance with the requirements of Res. Conf. 10.10:

- Investigations by EIA in Guangzhou, China in November 2010 documented a thriving and growing illegal trade in ivory where the perception of both legal and illegal traders was that up to 90% of the ivory available on the market came from illegal sources.⁷ The findings have also been supported by

¹ See CoP15 Doc. 68 A6a (“The proposed countries of destination [i.e. China and Japan] have already been certified by the Standing Committee and the Secretariat as having adequate national legislation and domestic trade controls to ensure that the ivory imported would not be re-exported. ... As they were thus approved by the Parties as potential importing countries, the Panel considered that this question was already dealt with.”); see also CoP15 Doc. 68 A6b.

² See SC61 Summ. Rec. at 25, available at <http://www.cites.org/eng/com/sc/61/sum/E61-SumRec.pdf>.

³ See CoP16 Inf. 5, Comments from specified stakeholders on ‘Decision-making mechanisms and necessary conditions for a future trade in African elephant ivory’ (prepared by the Secretariat) (comments by China) at 5.

⁴ See CoP16 Doc. 36.

⁵ See Annotation to the listing of *Loxodonta Africana* in CITES Appendix II.

⁶ See Dec. 10.2 (Rev. CoP11), Elephants – Conditions for the disposal of ivory stocks and generating resources for conservation in African elephant range States, <http://www.cites.org/eng/dec/valid12/index.shtml>

⁷ EIA Briefing Document for the 61st Meeting of the CITES Standing Committee – *Elephants* (Aug. 2011); EIA, *Blood Ivory: Exposing the Myth of a Regulated Market* (March 2012).

subsequent surveys and reports that also show that prices have escalated as much as tenfold since 2005.⁸

- The Secretariat has reported to CoP16 that China is “*heavily implicated*” as a destination for illicit ivory.⁹
- TRAFFIC has reported to CoP16 that “*China remains the single most important contemporary player in the illicit trade in ivory*” and that China’s failure to regulate its legal ivory market has exacerbated the presence of ivory products of illicit origin in the Chinese market.¹⁰

EIA strongly *recommends* that the Parties propose a decision or an amendment to Res. Conf. 10.10 clarifying that the designation of China and Japan as ivory trading partners was for the “*exclusive purpose*”¹¹ of the 2008 sale.

b. Proposed amendment concerning security of ivory stockpiles

The Secretariat has proposed new language to be added to Res. Conf. 10.10 which directs the Secretariat to “*support, where requested, the security and registration of government-held ivory stockpiles*” using available resources. EIA (and indeed several Parties and NGOs) strongly support the permanent disposal of ivory stockpiles to ensure that such ivory does not enter trade, particularly in light of several reports of thefts from government-owned ivory stockpiles – stolen ivory that has likely entered illegal trade. Moreover, range States often rely on the costs associated with storage of ivory stockpiles as a rationale for petitioning the Conference of the Parties for trade in ivory.¹² Thus, the **Secretariat’s involvement in storage and security of government-owned ivory stockpiles is a dangerous development** in that it may discourage Parties from permanently disposing of their ivory stockpiles – which is clearly the most cost-effective, simple and risk-free alternative that will not exacerbate illicit trade. Thus, EIA strongly recommends that the Parties oppose this proposed language.

EIA *recommends* that the Parties seek to delete the text “*support, where requested, the security and registration of government-held ivory stockpiles*” as a proposed amendment to Res. Conf. 10.10.

3. CoP16 Doc. 30, National reports

A number of changes to CITES reporting requirements have been recommended by the Standing Committee Working Group on Special Reporting Requirements and the Secretariat in CoP16 Doc. 30, including extensive changes to the biennial report format.

EIA is concerned that the revised biennial report format has removed key reporting requirements on illegal trade and enforcement activity, including reporting seizures. We understand that this was done with the intention of collecting such information through annual reports (instead of biennial reports) by amending the annual report format to allow for the capturing of such information on illegal trade. The work on revising the annual report format is expected to be conducted after CoP16, so that a proposal can be submitted to SC65. EIA, as a member of the Working Group, raised the concern that for the period between the adoption of the revised version of the biennial report format at CoP16 and the adoption of the revised annual report format at SC65, there would be a hiatus with no requirements for Parties to report on illegal trade and enforcement. This would mean that no information whatsoever on illegal trade, not even on seizures, would be captured by CITES for over a year. In order to address this concern, the Working Group after consultation with the Secretariat has recommended a draft Decision (in Annex 4) which directs Parties to “[*s*]ubmit a

⁸ Esmond Martin and Lucy Vigne, *The Ivory Dynasty: A Report on the Soaring Demand for Elephant and Mammoth Ivory in Southern China* (2011); IFAW, *Making a Killing: A 2011 Survey of Ivory Markets in China* (2012).

⁹ See CoP16 Doc. 53.2.1, ¶ 34.

¹⁰ See CoP16 Doc. 53.2.2 at 14, 19.

¹¹ See Annotation to the listing of *Loxodonta africana* in CITES Appendix II.

¹² See, e.g., CoP16 Prop. 11, Proposal to transfer the population of the African elephant, *Loxodonta africana* of the United Republic of Tanzania from Appendix I to Appendix II at 5.

special report by 30 June 2014, using a format provided by the Secretariat, which provides statistical information for the calendar year 2013 on: administrative measures (e.g. fines, bans, suspensions) imposed for CITES-related violations; significant seizures, confiscations and forfeitures of CITES specimens; criminal prosecutions or other court actions; and disposal of confiscated specimens.” EIA supports this draft Decision as it **enables Parties to continue to report on illegal trade and enforcement.**

EIA recommends that the Parties:

- support the draft Decision recommended in CoP16 Doc. 30 - Annex 4 for a “special report” seeking information on illegal trade in the absence of a revised annual report format, and
- propose a decision directing the Secretariat and the Working Group on Special Reporting Requirements to incorporate the ICCWC indicators of effective enforcement in revising the annual report format.

4. CoP16 Doc. 31, Disposal of illegally-traded and confiscated specimens of Appendix-II and -III species (Indonesia)

Indonesia has proposed certain amendments to Res. Conf. 9.10 (Rev. CoP15) on *Disposal of confiscated and accumulated specimens*. The proposal seeks to establish a mechanism under which the authority in an importing country that confiscates illegally shipped specimens can “immediately auction” specimens. It should be noted that while the title of the proposal only refers to specimens of Appendix II and III species, the proposal seeks to amend the CITES requirements under Res. Conf. 9.10 concerning disposal of illegally traded and confiscated specimens of Appendix I species as well.

EIA opposes the proposal submitted by Indonesia, CoP16 Doc. 31, on the disposal of illegally traded and confiscated specimens of species listed in *all* three Appendixes. EIA is concerned that this **proposal will facilitate laundering** of illegally obtained wildlife products by promoting a mechanism under which the confiscating country can “auction” confiscated specimens. In addition such a mechanism will **stimulate demand for illegal wildlife products** by returning seized specimens to the marketplace.

EIA recommends that the Parties:

- oppose CoP16 Doc. 31, and
- urge Indonesia to withdraw its proposal.

5. CoP16 Doc. 36, Decision-Making Mechanism For A Process Of Trade In Ivory

EIA supports a complete ban on all international commercial trade in ivory. EIA believes that any further discussion of ‘legal’ trade in ivory or a decision-making mechanism for future ivory trade will further stimulate the market, supporting the perception that international trade has legally resumed, increase demand for illegal ivory and provide an opportunity to launder illegal ivory into the legal markets. In addition, the availability of ivory from both legal and illegal sources further challenges law enforcement agencies in their efforts to tackle the criminal networks behind the trade. EIA is concerned that a **complete ban on international commercial ivory trade has never been meaningfully implemented for an extended period of time** because CITES itself has authorized and undermined such a ban twice when it approved two major ivory sales.

Further, since CoP12, at every Conference of the Parties, there has been a petition to open up trade in ivory and/or a discussion of legal ivory sales. For example, at CoP12 (2002), Botswana, Namibia, South Africa, Zambia and Zimbabwe, filed proposals to down-list their elephant populations and open up trade in ivory. At CoP13 (2004), Namibia sought amendment of the annotation regarding the population of Namibia to include an annual export quota of 2,000 kg of raw ivory. At CoP14 (2007), Botswana and Namibia proposed amending the relevant annotation and Tanzania filed a proposal (subsequently withdrawn) to down-list its elephant population and trade in ivory. At CoP15 (2010), Tanzania and Zambia filed proposals to down-list their elephant populations and open up trade in ivory.

Thus, the ban on ivory trade has been repeatedly undermined by authorizing two “*experimental*” and “*one-off*” sales of ivory and by recurring discussions of opening up the trade in ivory. This has not only **led to perceptions that trade is open or will resume**, but at the same time **contradicts important work being undertaken by governments and NGOs for reducing demand for ivory**. Indeed, it is noteworthy that at CoP12 (2002), China stated that a main reason for China’s growing ivory-smuggling problem was the first experimental 1999 stockpile sale and that the Chinese public misunderstood the decision and thought that the international trade in ivory had been resumed.

Moreover **Decision 14.77** (which directs the Standing Committee, assisted by the Secretariat to “*propose for approval at the latest at the 16th meeting of the Conference of the Parties a decision-making mechanism...*”) **was adopted prior to the completion of the 2008 ivory sale** and since then new data suggests that the 2008 sale did not reduce poaching or illegal trade and that the legal ivory markets are exacerbating the presence of illegal ivory in Chinese markets. Moreover, MIKE and ETIS have reported unprecedented levels of illegal killing and trade.

Thus, in light of the fact that the legal sales have clearly failed to reduce poaching and illegal trade, and the unprecedented levels of poaching of African elephants and illegal trade in ivory reported after the adoption of Decision 14.77, EIA urges the Parties to propose deferral of any further discussion on a future international trade in ivory. CITES must recognize that unless poor enforcement, failure of political will, corruption and rising demand are tackled, there is no likelihood that any form of regulated ivory trade is workable. Thus, CITES must first and foremost review the failure of existing trade mechanisms before devising new trade mechanisms that will likely be plagued by the same problems and enforcement challenges.

EIA *recommends* that no further action is taken on the ‘Decision-Making Mechanism for a Process of Trade in Ivory’.

6. CoP16 Doc. 50, Asian big cats

a. Lack of reporting by Asian big cat range States

Res. Conf. 12.5 (Rev. CoP15) instructs the Secretariat to report to the Standing Committee and the Conference of the Parties on Asian big cats “*using information provided by the range States on measures taken to comply with this Resolution and related relevant Decisions*”. Further, the Secretariat issued Notification 2012/054 in September 2012, requesting reports from range States with regard to “*all measures taken to comply with Res. Conf. 12.5 in relation to **all species of Asian big cats***”; stockpiles of captive-bred or confiscated tiger body parts and derivatives; and any actions proposed to deal with the stockpiles.

At the time of writing, Thailand and China are the only range States to have reported under Res. Conf. 12.5.¹³ While it is encouraging that these States have submitted reports, it should be noted that the reports do not provide complete information as required under that Resolution and related Decisions. In order to address this problem of under-reporting by range States, **EIA has prepared a guidance for improving reporting on Asian big cats which is enclosed as an annex to this document**. EIA’s guidance provides examples of certain reporting items in relation to specific paragraphs under Res. Conf. 12.5 and relevant Decisions that may be of assistance to Parties suffering from reporting fatigue. These suggested reporting items may facilitate improved reporting and thereby assist the Secretariat in providing a comprehensive and meaningful assessment and recommendations to future meetings of Standing Committee and Conference of the Parties on Asian big cats.

EIA is very concerned about the **consistent lack of proper reporting on Asian big cats** by range States. The failure of Asian big cat range States to comply with CITES resolutions and decisions is particularly shocking

¹³ CoP16 Doc. 50 ¶ 6. While Russia has provided certain information on poaching and seizures, this contained limited information and is not considered by the Secretariat to satisfy the reporting requirements under Res. Conf. 12.5.

because poaching of Asian big cats for trade in their parts and derivatives continues unabated, posing a serious threat to these imperilled species. **Around 5390 Asian big cat skins and carcasses have entered trade since the year 2000**, including at least 1016 tigers, 4180 leopards, 152 snow leopards, 25 clouded leopards and 17 Asiatic lions.¹⁴ In addition to this figure, EIA, the Wildlife Protection Society of India (WPSI), TRAFFIC and other NGOs have documented at least 887 Asian big cat skins for sale.¹⁵ Further, at least 274 big cats (comprising both carcasses and live big cats with the majority (239) representing tigers) appear to have originated from captive bred sources in Thailand, Laos, Vietnam and Malaysia. In its report, China has stated that the illegal trade in Asian big cats in Tibet, Qinghai, Gansu, Sichuan and Yunnan “has been effectively deterred”.¹⁶ However investigations carried out by EIA – confidential briefings of which have been provided to INTERPOL – show that illegal trade in Tibet, Qinghai, Gansu and Sichuan continues through persistent as well as new illegal traders.¹⁷ While the *open* illegal trade in big cat skins may have declined, illegal trade does continue to take place albeit in a more covert manner. Further, available seizure data from China indicates that there has been no recent enforcement action in Tibet.

In light of the recurring failure of range States to submit adequate and timely reports under Res. Conf. 12.5 and relevant decisions, such as Decision 14.69 and Decision 15.46, **the Secretariat has been unable to provide Parties with a meaningful assessment of the status of Asian big cats as required under Res. Conf. 12.5.** EIA, the CITES Secretariat and a handful of Parties have previously expressed concern over this lack of reporting on species specific matters, given that it makes assessment of progress and implementation impossible. Whilst some Asian big cat range States are reporting on tiger conservation matters in general to the Global Tiger Initiative, these reports do not reflect the information required by CITES. Allowing such non-compliance to continue undermines CITES and poses a serious threat to the continued survival of Asian big cats. EIA therefore recommends that the Parties call for urgent action that will enable the collection and analysis of relevant information regarding Asian big cats, so that the Standing Committee can assess implementation and compliance, and take necessary measures to ensure progress in addressing trade in Asian big cat parts and derivatives.

EIA believes that there is an **urgent need to commission an independent third party to review and prepare a report on implementation of Res. Conf. 12.5 and relevant Decisions such as Decision 14.69.** The report should be prepared by liaising with range States and relevant national and international authorities.

EIA *recommends* that the Parties propose a decision:

- directing the CITES Secretariat to commission an independent third party, such as the Senior Experts Group of ICCWC, to conduct an independent review of implementation of Res. Conf. 12.5 in relation to all Asian big cats, and relevant Decisions relating to tigers such as Decision 14.69, and
- specifying that the identified third party prepare a report providing its findings and recommendations to the Secretariat, in sufficient time for the Secretariat to make recommendations to SC65. The report should be prepared by liaising with range States and relevant national authorities such as the CITES Management Authorities, INTERPOL National Central Bureaus, customs authorities, as well UNODC regional offices and national and international NGOs.

¹⁴ At the time of writing, this figure does not include skins documented for sale by NGOs like EIA, but is based on reported seizures and similar incidents from information from NGOs, governments etc. In order to minimise the risk of double-counting the number of animals entering trade, these figures do not include bone as representative of big cats in trade, however given this it is possible that the total number of animals entering trade is far higher.

¹⁵ This is comprised of whole skins and does not include clothing decorated with skin (*chupa*) which represent further big cats killed for trade.

¹⁶ See CoP16 Doc. 50, Annex 3 b, ¶ 23.

¹⁷ See e.g., EIA, *Briefing on snow leopards in illegal trade – Asia’s forgotten cats* (Oct. 2012) (explaining that since 2005 EIA investigators researching the tiger trade in China have been offered 100 whole snow leopard skins, including in Gansu, Tibet, Qinghai and Sichuan); EIA, *Enforcement not Extinction: Zero tolerance on tiger trade* (Nov. 2010); EIA, *A deadly game of cat and mouse – how tiger criminals give China the run-around* (2009).

b. Compliance with Decision 14.69

Parties to whom Decision 14.69 applies have failed to demonstrate compliance. Decision 14.69 requires “Parties with intensive operations breeding tigers on a commercial scale” to “implement measures to restrict the captive population to a level supportive only to conserving wild tigers” and to ensure that tigers are not “bred for trade in their parts and derivatives.”

In this regard, it is pertinent to note that **Res. Conf. 12.5** (Rev. CoP15) also similarly requires Parties and non-Parties in whose territory tigers and other Asian big cat species are bred in captivity “to ensure that adequate management practices and controls are in place to **prevent parts and derivatives from entering illegal trade from or through such facilities.**”¹⁸ Further, Res. Conf. 12.5 requires “Parties and non-Parties in whose countries there exist stocks of parts and derivatives of tiger and other Asian big cat species (such as tiger bone stocks)” to “consolidate and ensure adequate control of such stocks, and where possible destroy the same”.¹⁹

In Notification No. 2008/059, the Secretariat provides guidance on actions that Parties can report on to indicate progress with implementation of Decision 14.69 including: the establishment of a national individual animal registration process, incorporating a marking system using, for example, microchips or DNA profiling; the segregation of sexes to prevent further breeding; the development of a strategic plan, incorporating deadlines, for the phasing-out of intensive breeding operations on a commercial scale or their conversion to operations devoted solely to the conservation of tigers; and the development of a policy with regard to what will happen to tigers currently in intensive breeding operations. **No Party has provided a report to this effect in response to Notification No. 2008/059.**

In addition, most recently in Notification 2012/054, Parties to whom Decision 14.69 applies were requested to “fully implement Decision 14.69” and report to the Secretariat on the measures implemented to comply with that Decision. **No Party has adequately reported on compliance with Decision 14.69 in response to Notification 2012/054.** While Thailand and China have submitted some information on captive bred tigers to CoP16, this is quite limited. For example, Thailand has reported on the number of tigers and leopards in captivity (1174), and on trade incidents, but the report does not indicate if there have been any convictions associated with those incidents, nor specified which of these incidents relate to illegal trade in captive bred specimens. Thailand’s response is also not specifically in relation to Notification 2012/054 and compliance with Decision 14.69.

In addition, China has reported that there are “over” 5000 captive bred tigers in China without providing any further details on this ambiguous population estimate.²⁰ Although CITES requirements call for China to restrict its captive bred tiger population and phase-out tiger farms, it is apparent that China has not adopted effective measures to do so. Indeed it is clear that **China’s captive bred tiger population has increased exponentially since the 1980s.** From a mere 13 captive tigers in 1986,²¹ to 3000 captive tigers in 2005 (as reported by China at SC53)²² – and *after* the adoption of Decision 14.69 in 2007 requiring it to restrict its captive tiger population, China’s captive tigers *increased* significantly – in 2010 it was reported that China’s captive bred tiger population had increased to 6000.²³ China’s increasing captive tiger population also raises **serious concerns about the likely burgeoning stockpiles of tiger bones and tiger skins** in China – confirmed by the fact that in its report China has made no reference to permanently disposing of such stockpiles, instead it has stated that it is “sealing” tiger bones and is “labelling” tiger skins and destroying other tiger

¹⁸ Res. Conf. 12.5 (Rev. CoP15), Urges (g).

¹⁹ Res. Conf. 12.5 (Rev. CoP15), Urges (h).

²⁰ See CoP16 Doc. 50, Annex 3 b, ¶ 13.

²¹ See Kirsten Conrad, *Safety in Numbers: Review of the Breeding Center for Felidae at Hengdaohezi* (Feb. 2000) at 4.

²² See SC53 Summ. Rec. (Rev. 1)(2005) at 12.

²³ AFP, *China says it has 6,000 captive tigers* (Feb 9, 2010),

<http://www.google.com/hostednews/afp/article/ALeqM5iowjbaPC4NntlrGjBPnc1YDXCTkg>

parts.²⁴ Overall, there is clearly a lot more that Parties should be doing to comply with Decision 14.69 particularly China, Thailand, Laos, Vietnam and Malaysia.

EIA strongly *recommends* that the Parties ensure that Decision 14.69 is retained until there is demonstrable evidence of compliance with that Decision.

EIA strongly *recommends* that the Parties impose punitive measures against Parties found to be in non-compliance with paragraphs g) and h) of Res. Conf. 12.5 (Rev CoP15) and Decision 14.69, in relation to trade in parts and products of captive bred tigers.

c. Implementation of Decision 15.46

Decision 15.46 was directed at all Parties, but particularly tiger range States, to submit, by June 30, 2010, information relating to incidents of poaching of and illegal trade in tigers that have occurred within their territory since the beginning of 2007. Such information was required to be submitted in the format of Ecomessages to the CITES Secretariat or to the General Secretariat of ICPO-INTERPOL via INTERPOL National Central Bureaus.

Reporting by Parties under Decision 15.46 has been inadequate.²⁵ EIA notes that INTERPOL's Project Predator and series of Operation Prey is gaining momentum, and while Parties may have reported some basic information under Decision 15.46, there continue to be certain information gaps that can be addressed through face to face information exchange and intelligence sharing. Such intelligence sharing is crucial for national and international operations to disrupt the transnational criminal networks engaged in the Asian big cat trade.

Because of the poor reporting under Decision 15.46 and in light of the serious levels of poaching and illegal trade in tigers, EIA would advise caution in deleting this Decision (as recommended by the Secretariat in CoP16 Doc. 50), without an alternative process established for the collection and analysis of information concerning poaching of and illegal trade in tigers. In this regard, EIA recommends **convening the CITES Tiger Enforcement Task Force and relevant ICCWC experts to specifically review available intelligence** on known and suspected wildlife criminals engaged in Asian big cat trade.

EIA *recommends* that the Parties propose a decision directing the Secretariat to convene a meeting of the CITES Tiger Enforcement Task Force and relevant law enforcement professionals from ICCWC to specifically review available intelligence on known and suspected wildlife criminals engaged in Asian big cat trade, with a view to facilitating targeted national and transnational operations under INTERPOL's Project Predator.

d. Proposed amendments to Res. Conf. 12.5 (Rev. CoP15)

The Secretariat has in its report proposed certain amendments to Res. Conf. 12.5 (Rev. CoP15) and related Decisions. EIA generally supports the proposed revisions by the Secretariat, in particular the attention drawn to the role of ICCWC and the need for more effective international enforcement cooperation.

Regarding the amendment proposed by the Secretariat to delete the Annexes to Res. Conf. 12.5 and instead incorporate these Annexes and any revisions thereof under Res. Conf. 11.3 (Rev. CoP15) on *Enforcement and Compliance*, EIA supports this amendment, however EIA would recommend that the deletion of the Annexes should take place only after they have been incorporated in Res. Conf. 11.3.

Further, EIA recommends that the relevant language in Urges (e) be revised to retain reference within Res. Conf. 12.5 to the guidance available in Res. Conf. 11.3 to read "*and in doing so may wish to consider the guidance provided at Annex [X] of Resolution Conf. 11.3 (Rev. CoP15) (Enforcement and compliance)*". This

²⁴ See CoP16 Doc. 50, Annex 3 b, ¶ 16.

²⁵ See e.g., CoP16 Doc. 50 ¶ 9; SC61 Doc. 41 ¶ 5.

suggested language would ensure that Asian big cat range States are reminded to continue to refer to the guidance in Res. Conf. 11.3, even though the Annexes are deleted from Res. Conf. 12.5.

EIA *recommends* that the Parties:

- support the Secretariat’s proposed decisions and the proposed amendments to Res. Conf. 12.5 with the exception of the deletion of reporting requirements and Annexes until such time that they are incorporated into Res. Conf. 11.3 (Rev. CoP15), and
- propose an amendment to proposed revision to Urges (e), to read instead “*and in doing so may wish to consider the guidance provided at Annex [X] of Resolution Conf. 11.3 (Rev. CoP15) (Enforcement and compliance)*”.

7. CoP16 Doc. 53.1, Monitoring the Illegal Killing of Elephants (MIKE)

The Secretariat’s report on the MIKE data on poaching of elephants shows that elephant populations across Africa are facing a serious threat due to illegal trade. The MIKE data suggests an ongoing increase in levels of illegal killing of elephants since 2006, with 2011 displaying the highest levels of poaching since MIKE records began in 2002. PIKE levels were above 0.5 in all four African sub-regions in 2011, i.e., “*a PIKE level of 0.5 or higher means that the **elephant population is very likely to be in net decline.***”²⁶ Further, the report’s analysis is limited to African elephants because of the lack of reporting by Asian elephant range states.

The report concludes that the MIKE analysis found no evidence to suggest that the 2008 legal sale of ivory had any discernible impact on the trend in levels of illegal killing of elephants because the increase in illegal killing of elephants began in 2006 (before the 2008 sale) and because for a proper analysis on this there is a need for “*different ivory sales at different points in time*”.²⁷ EIA believes available evidence suggests that elephant poaching and illegal ivory trade began to increase in 1996 due to market signals from Japan and southern African nations seeking down-listing of their elephant populations and the resumption of international ivory trade; further, that this pattern continued throughout the 2000’s, encouraged by continuing market signals from Parties seeking additional CITES approved ivory sales. EIA strongly urges the Parties to reject the assertion of the MIKE analysis that the 2008 decision to allow a second CITES approved ivory auction was not responsible for stimulating increased demand for ivory. Further, in light of the serious levels of poaching of elephants and of illegal ivory trade, **EIA urges adoption of a highly precautionary approach** in analyzing the MIKE data.

In addition, EIA would also recommend that the Parties propose a decision directed towards addressing the serious lack of reporting by Asian elephant range States.

EIA *recommends* that the Parties:

- acknowledge that African elephant populations are facing a serious crisis due to poaching,
- adopt a highly precautionary approach regarding CITES decisions related to elephants, and
- propose a decision directing the Secretariat to issue a notification to all Asian elephant range States to submit timely reports to MIKE and ETIS.

8. CoP16 Docs. 53.2.1 and 53.2.2, Monitoring of illegal trade in ivory and other elephant specimens - Reports of the Secretariat and TRAFFIC

The Secretariat’s report on illegal trade in ivory recognizes that “*demand for ivory is widely recognized to be the key factor driving the illegal killing of elephants*”²⁸ and that “*current levels of illegal killing of African elephants for their ivory may drive certain African elephant populations to extinction.*”²⁹ The report also

²⁶ CoP16 Doc. 53.1 ¶ 14.

²⁷ CoP16 Doc. 53.1 ¶ 29.

²⁸ CoP16 Doc. 53.2.1 ¶ 20.

²⁹ CoP16 Doc. 53.2.1 ¶ 47.

confirms the involvement of organized criminal syndicates in the illegal ivory trade³⁰ and recognizes eastern Africa, particularly Kenya, Tanzania and Uganda, as main exit points for illicit ivory. In addition, South Africa is also recognized as a significant exit point for illegal ivory. Hong Kong SAR, Malaysia, the Philippines and Viet Nam are recognized as major transit countries for large quantities of ivory. **Two countries most heavily implicated as destinations for illicit trade in ivory are China and Thailand.** The report indicates that the Secretariat is working with implicated countries at the diplomatic level in Geneva and will evaluate the reports submitted in compliance with the SC62 recommendations and convey its findings and recommendations to SC63.³¹ Similarly TRAFFIC's report on illegal trade also discusses the serious threat posed by illegal ivory trade. EIA notes that **these reports provide a mere snapshot of the elephant crisis** and that "not all illegal ivory transactions in a country result in seizures" and not all seizures are reported to ETIS.³² CITES must take urgent measures to respond to the crisis facing elephants, and apply the precautionary principle when considering decisions related to elephants.

a. Non-compliance with CITES by China and Thailand

While the reports heavily implicate China and Thailand as key destinations for illicit ivory, little is being recommended in terms of measures to secure compliance by these States despite the fact that China and Thailand have been *consistently* identified as key players in the illegal trade. While under the annotation to the listing of *Loxodonta Africana* in Appendix II, the Secretariat may propose to the Standing Committee to cause the legal trade to cease partially or completely in the event of non-compliance by importing countries, or in the case of proven detrimental impacts of the trade on other elephant populations,³³ despite both these conditions being valid, the Secretariat has not recommended trade prohibitions against China.

EIA strongly recommends that in light of the growing evidence confirming that China and Thailand have failed to regulate the ivory trade within their territories and the resulting non-compliance by these Parties with relevant CITES resolutions and decisions such as Res. Conf. 10.10, CoP16 must consider adoption of strict measures against China and Thailand, including trade suspensions.

EIA *recommends* that the Parties:

- propose strict and effective measures, including trade suspensions, against China and Thailand to secure compliance from these States with Res. Conf. 10.10, and
- propose a decision requiring China (and any other domestic ivory markets that are not in compliance with Res. Conf. 10.10) to shut down all ivory markets, including legal ivory markets, within its territory until it demonstrates compliance with CITES.

b. Impact of the CITES authorized "one-off" ivory sale

CITES needs to move beyond a discussion of "*causality*"³⁴ and the impact of the one-off sale; a precautionary approach must be adopted focusing on implementing urgent and effective measures to curb poaching and the illegal ivory trade. Further, CITES must acknowledge that approval of the one-off sale has provided an avenue for laundering of illegal ivory and has in this manner certainly exacerbated the illegal trade – an aspect that is inevitably a clear impact of the down-listing and the one-off sale. For example, at SC62, the Secretariat reported that:

"Because China allows internal ivory trade under a control system that was previously vetted through a CITES process, the ongoing flow of large volumes of illegal ivory to China suggests that such ivory may be moving into legal ivory trade channels. At the same time, failure to implement key regulatory features in China's legal control system,

³⁰ CoP16 Doc. 53.2.1 ¶ 32.

³¹ CoP16 Doc. 53.2.1 ¶ 38.

³² CoP16 Doc. 53.2.2 at 4.

³³ See Annotation to the listing of *Loxodonta Africana* in CITES Appendix II.

³⁴ CoP16 Doc. 53.2.2 at 25.

such as the visible display of product identification certificates with legal ivory products at the retail level, has been noted in recent published reports (Martin and Vigne, 2011; EIA, 2011). Such transgressions seem to have **seriously compromised the integrity of the system and need to be addressed**. It is also not clear whether China is regularly analysing the information in their ivory database system to assess levels of production and trade of the manufacturing and retail sectors to prevent the possibility of laundering of ivory from illegal sources into the legal system. As these issues are of broad concern, there is a need for China to formally reassess its internal ivory trade system to ensure that it is preventing the laundering of elephant ivory from illegal sources.” (Emphases added).³⁵

Thus, CITES must acknowledge that the 2008 “one-off” ivory sale authorized by CITES and leading to the establishment of ‘legal’ ivory markets in China, has exacerbated the illicit ivory trade.

At the same time, CITES must also acknowledge that the 2008 CITES-authorized ivory sale did not reduce the illegal ivory trade or illegal killing of elephants for ivory. Indeed, at SC62, the Secretariat specifically concluded that: “the [MIKE] data also suggest that the **sale did not have the effect of reducing levels of elephant poaching or levels of illegal trade.**”³⁶ (Emphasis added).

EIA *recommends* that the Parties acknowledge that:

- demand for ivory is the key factor driving the illegal killing of elephants and that demand cannot be reduced and consequently eliminated so long as a legal trade is authorized by CITES,
- the 2008 “one-off sale” did not reduce levels of elephant poaching, and
- the 2008 “one-off sale” did not reduce levels of illegal ivory trade; on the contrary, the 2008 one-off sale and the establishment of CITES authorized ivory legal markets in China is exacerbating the presence of illegal ivory in Chinese ivory markets and is providing an opportunity to launder illegal ivory into the ‘legal’ markets.

c. CITES Ivory Enforcement Task Force

EIA supports the decision proposed by the Secretariat to convene a CITES Ivory Enforcement Task Force. However EIA urges the Parties to ensure that all range States are invited to take part in the Task Force. Further, the Secretariat has proposed that the Task Force review existing strategies and develop new strategies to combat illegal trade in ivory. EIA recommends that the scope of the review of the Task Force must include a review of the fundamental reasons for the failure of the current legal ivory trade systems and controls, the enforcement failures, corruption and criminality factors and rising demand impacting the illegal ivory trade.

EIA *recommends* that the Parties:

- support the decision proposed by the Secretariat on convening the CITES Ivory Enforcement Task Force, and
- propose an amendment to that decision to ensure that all range States are represented in the Task Force, and to specify that the Task Force’s review include a review and analysis of the fundamental reasons for the failure of the current legal ivory trade systems and controls, the enforcement failures, corruption and criminality factors and rising demand impacting the illegal ivory trade.

9. CoP16 Docs. 54.1 and 54.2, Rhinoceroses: Reports of the Working Group and the Secretariat

EIA supports the comments put forth by the Species Survival Network in response to these two documents. In regard to rhinos, we would particularly like to highlight the role of Vietnam. Available evidence shows that nationals of Vietnam are diminishing the effectiveness of CITES, by failing to effectively control trade in rhino

³⁵ SC62 Doc. 46.1 at 21.

³⁶ SC62 Doc. 46.1 at 24 (emphasis added).

horn. Vietnam has become the major destination for both legal and illegal rhino horn. Vietnamese nationals located in South Africa and elsewhere are engaged in poaching of rhinos, and illegal trade in rhino horn parts.³⁷ Despite this demand, Vietnamese officials have taken few, if any, steps to develop and implement strategies and programs to reduce demand and consumption of rhino horn and other rhino horn parts and derivatives. In fact, statements by Vietnamese government officials may be encouraging demand for rhino horn rather than discouraging it. Vietnam is also failing to prosecute those engaged in illegal international trade, as required by CITES.

The demand for rhino horn in Vietnam threatens to reverse the significant conservation gains for rhinos and has clearly undermined CITES' efforts to control illegal trade. Moreover, it is failing to restrict domestic trade in rhino horn and to sufficiently develop programs to significantly reduce demand for rhino horn, as agreed by the CITES Parties in Res. Conf. 9.14 (Rev. CoP15).

Further, EIA is also concerned that the Lao People's Democratic Republic is a significant destination for illegal rhino horn. EIA recommends that the proposed decision in CoP16 Doc. 54.2 directed to the Secretariat, requiring it to examine progress with curtailing illegal rhino trade in implicated States, be amended to also include in its review progress made by the Lao People's Democratic Republic.

EIA *urges* the Parties to:

- support actions that go beyond the recommendations of the Secretariat in CoP16 Doc. 54.2 to hold Vietnam accountable for the lack of action to comply with CITES requirements pertaining to rhinos, and
- amend the proposed decision in CoP16 Doc. 54.2 directed to the Secretariat, requiring it to examine progress with curtailing illegal rhino trade in implicated States, to also include in its review progress made by the Lao People's Democratic Republic.

³⁷ MILLIKEN & SHAW, THE SOUTH AFRICA-VIET NAM RHINO HORN TRADE NEXUS at 14 (2012) (stating that "for nearly a decade the country has been the paramount destination for a resurgent illegal commerce out of Africa, especially from South Africa, where Vietnamese criminal operatives have become firmly embedded in the trade").

ANNEX

IMPROVING REPORTING BY RANGE STATES UNDER RES. CONF. 12.5 (Rev. CoP 15) AND RELATED DECISIONS

Set out below are recommendations for items of reporting under certain paragraphs of Res. Conf. 12.5 (Rev. CoP15). These recommendations merely provide suggestions for a more focused reporting under Res. Conf. 12.5 to facilitate a proper assessment of the status of Asian big cats (ABCs). These recommendations do not in any way diminish the existing CITES requirements under Res. Conf. 12.5.

Ref. to Res. Conf. 12.5 / Decisions	Requirement under Res. Conf. 12.5	Suggested items for reporting
URGES (a) Res. Conf. 12.5	All Parties to report on the responsibilities of concerned government agencies for regulating trade within and outside of protected areas and in outlets for parts and derivatives, such as in wildlife markets and shops, etc	<ul style="list-style-type: none"> • List the government agencies responsible for regulating trade • Briefly describe the jurisdiction and functions of the agencies in regulating trade in ABCs
URGES (b) Res. Conf. 12.5	All Parties to report on legislation prohibiting international commercial trade in products labelled as, or claiming to contain the parts /derivatives of ABCs	<ul style="list-style-type: none"> • List the products that the government allows to be labelled as containing parts/derivatives of ABCs • Describe the rules concerning advertising of products containing or labelled as or claiming to contain parts / derivatives of ABCs • How does the government enforce these rules • Whether labelling/advertising/marketing of any products lead consumers to wrongly believe that they contain parts/derivatives of ABCs
URGES (b) Res. Conf. 12.5	All Parties to report on penalties prescribed under its legislation to adequately deter illegal wildlife trade	<ul style="list-style-type: none"> • Whether legislation for proceeds of crime and asset seizures has been enacted • Appropriate penalty and/or value of assets or proceeds of crime recovered
URGES (b) Res. Conf. 12.5	All Parties to report on national measures to facilitate implementation of CITES, such as voluntarily prohibiting internal trade in such parts, derivatives and products	<ul style="list-style-type: none"> • Does the government permit an internal trade in any parts/derivatives/products of any ABC
URGES (c) Res. Conf. 12.5	All Parties, especially range and consumer States, to report on innovative enforcement methods and efforts to strengthen enforcement in key border regions, improve implementation of regional enforcement networks and the sharing of information relating to illegal trade in Asian big cats for coordinated investigations and enforcement	<ul style="list-style-type: none"> • Number of investigations in which specialised investigation techniques such as controlled deliveries and covert operations, were applied • Existence of multi-agency operational enforcement units / National Environmental Security Task Forces affiliated to the INTERPOL National Central Bureau (national police agency) • Number of joint investigations involving different enforcement authorities • Number of ECOMESSAGES completed and submitted to INTERPOL

Ref. to Res. Conf. 12.5 / Decisions	Requirement under Res. Conf. 12.5	Suggested items for reporting
URGES (d) Res. Conf. 12.5	All range States and other relevant Parties to report on the recording of information relating to illegal trade in Asian big cats	<ul style="list-style-type: none"> • Existence of a national database for collation of intelligence • Number of crimes recorded (for example, possession, trafficking etc.) in relation to number of criminals arrested and successfully prosecuted • Number of criminal cases which are under judicial/prosecutorial process and number of cases that have led to convictions
URGES (e) Res. Conf. 12.5	All range States to report on support provided to enforcement units and personnel in anti-poaching operations; the gathering and use of intelligence; targeting offenders; wildlife crime investigative techniques; collecting evidence; inter-agency liaison and cooperation; and preparing cases for prosecution	<ul style="list-style-type: none"> • Number of wildlife investigators trained in the use of specialised investigation techniques • Number of enforcement authorities trained with regard to identification of suspicious financial transactions and the use of anti money laundering legislation
URGES (g) Res. Conf. 12.5	All Parties in whose territory tigers and other ABCs are bred in captivity to report on management practices and controls regarding trade in parts and derivatives from or through such facilities	<ul style="list-style-type: none"> • whether any internal trade, use, consumption or circulation of parts/derivatives/products sourced from captive-bred ABCs is authorized by the government
URGES (h) Res. Conf. 12.5	All Parties in whose countries there exist stocks of parts and derivatives of tiger and other Asian big cat species, but not including pre-Convention specimens, to report on such stocks	<ul style="list-style-type: none"> • the extent of stock-piles of such parts and derivatives including tiger bone stocks, tiger skin stocks, leopard bone stocks and leopard skin stocks • the extent of stocks that have been destroyed • the extent of new stock, if any, that is added each year to the existing stock-piles • the treatment of stocks that have not been destroyed, if any. In this regard, Parties are urged to report on any use, procedures and mechanisms that have been authorized for such parts and derivatives sourced from captive-bred Asian big cats and that have not been destroyed
RECOMMENDS (a) Res. Conf. 12.5	Consumer States to report on working with traditional medicine communities and industries for reducing and eventually eliminating the use of Asian big cat parts and derivatives	<ul style="list-style-type: none"> • the extent to which use of tiger and other ABC parts and derivatives continue to be used by traditional medicine communities and industries • the extent to which use of tiger and other ABC parts and derivatives for medicinal purposes are authorized / permitted by the government • description of campaigns and strategies implemented and planned for

Ref. to Res. Conf. 12.5 / Decisions	Requirement under Res. Conf. 12.5	Suggested items for reporting
		eliminating use of ABC parts and derivatives
RECOMMENDS (c) Res. Conf. 12.5	Consumer States to report on education and awareness campaigns for eliminating the use of Asian big cat skins	<ul style="list-style-type: none"> • the extent to which ABC skins continued to be used or traded • the extent to which domestic use or trade of ABC skins are authorized / permitted by the government • description of campaigns implemented and planned for eliminating use of ABC skins
Decision 14.69 and Notification No. 2008/059	Parties with intensive operations breeding tigers on a commercial scale to report on implementation of measures to restrict the captive population to a level supportive only to conserving wild tigers,	<ul style="list-style-type: none"> • the establishment of a national individual animal registration process, incorporating a marking system using, for example, microchips or DNA profiling • the segregation of sexes to prevent further breeding • the development of a strategic plan, incorporating deadlines, for the phasing-out of intensive breeding operations on a commercial scale or their conversion to operations devoted solely to the conservation of tigers • the development of a policy with regard to what will happen to tigers currently in intensive breeding operations
Decision 15.46	Tiger range States to submit information in the Ecomessage format relating to incidents of poaching of and illegal trade in tigers that have occurred within their territory since the beginning of 2007.	<ul style="list-style-type: none"> • information on all tiger poaching incidents since the beginning of 2007 • information on all illegal trade in tigers and tiger parts/derivatives/products since the beginning of 2007



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