



Comments on South Africa's Draft Regulations for the Domestic Trade in Rhinoceros Horn or a Part, Product or Derivative of Rhinoceros Horn

Rhino Working Group of the Species Survival Network (SSN)

Background

On February 8th 2017, South Africa's Department of Environmental Affairs (DEA) published draft regulations that would legitimise and regularise domestic trade in - and, under certain circumstances, export of - rhinoceros horn.¹ In addition, the DEA also published draft regulations that prohibit trade in powdered and shaved rhinoceros horn, but for a period of three years only.² Both proposals have been made available for public comment for 30 days.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) governs international trade in horn of both South African species of rhinoceros: the black rhinoceros (*Diceros bicornis*) and the white rhinoceros (*Ceratotherium simum*). The South African population of *D. bicornis* is listed on CITES Appendix I, while the South African and Swaziland populations of *C. simum simum* are listed on Appendix II, with an annotation allowing international trade in live animals to appropriate and acceptable destinations and hunting trophies. International trade in rhino horn from South African rhino populations for primarily commercial purposes is strictly prohibited. Any export of rhinoceros horn from South Africa for non-commercial purposes must be subject to the requirements for trade in specimens of species listed on Appendix I, as set out in Article III of the Convention.

The Species Survival Network strongly opposes these proposed regulations because:

- Rhino horn exported to consumer or transit countries will inevitably be used for commercial purposes, regardless of the supposed purpose of the export.
- The regulations undermine the efforts of CITES and of individual CITES Parties, including range States, to stop the international and domestic trade³ in rhino horn in order to prevent the poaching of rhinos.
- Legal domestic trade in rhino horn, which these regulations permit, provides a cover for illegal exports, as the DEA itself concluded in 2014.⁴

¹ http://www.gov.za/sites/www.gov.za/files/40601_gen74_0.pdf

² http://www.gov.za/sites/www.gov.za/files/40601_gen77.pdf

³ CITES Resolution Conf. 9.14 (Rev. CoP17)

⁴ *The viability of legalising trade in rhino horn in South Africa*. DEA South Africa, 2014.

https://www.environment.gov.za/sites/default/files/docs/rhinohorntrade_southafrica_legalisingreport.pdf

- The regulations will significantly increase the burden for enforcement authorities both within South Africa itself and in destination countries.
- The regulations will undermine the extensive demand-reduction work being carried out in destination countries.
- The regulations legitimise trade in, and use of, rhino horn. This will stimulate further demand, which will lead to increased poaching and illegal trade.

Global opposition to trade in rhino horn

These proposed regulations were published only months after a Committee of Inquiry, established by the DEA to determine whether or not South Africa should submit a rhino horn trade proposal to CITES CoP17, advised against such a move. The Committee's advice was adopted by the South African Cabinet.

Prior to CITES CoP17, the CITES Secretariat recommended the rejection of a proposal from Swaziland to allow rhinoceros horns to be exported, questioning (among other concerns) whether appropriate enforcement controls were in place and expressing concern about the likely impacts on demand.

At CITES CoP17, in October 2016, there was vociferous opposition to the Swazi proposal. It was rejected by the Parties by 100 votes to 26. Several rhino range States made interventions opposing the proposal.

Most rhino range States have been vocal in their opposition to any trade in rhino horn. The first Asian rhino range States meeting, which took place in Bandar Lampung, Indonesia in 2013, concluded that "The CITES ban on the international trade of all rhino products needs to be maintained and enforced, including by those countries where rhino products are used, any countries that act as intermediate points in the trade, and all rhino range States."⁵

Recent statements by DEA representatives have sought to make a distinction between "commercial" and "non-commercial" trade,⁶ but it is very likely that when South African rhino horns arrive in east and South-east Asian destination countries, they will be used for commercial purposes. To portray the exports contemplated under these draft regulations as being for "non-commercial purposes" is disingenuous and misleading.

Reasons for rejecting the draft regulations

1. The DEA has itself admitted that a legal domestic rhino horn trade provides a laundering system for illegal exports. This is why it imposed the 2009 domestic trade moratorium in the first place. In a 2014 report,⁷ the DEA concluded that "*If the moratorium were lifted, and a legal domestic trade in rhino horn re-established, opportunities for laundering illegal horn into the*

⁵ https://cmsdata.iucn.org/downloads/arrsm_bandar_lampung_declaration_final.pdf

⁶ <http://www.timeslive.co.za/sundaytimes/opinion/2017/02/19/So-many-questions-on-legalising-rhino-horn-trade1>

⁷ *The viability of legalising trade in rhino horn in South Africa*. DEA South Africa, 2014.

https://www.environment.gov.za/sites/default/files/docs/rhinohorntrade_southafrica_legalisingreport.pdf

legal system would reopen, and there would be strong financial incentives for legal (registered) horn to be smuggled out of the country again."

2. In its 2014 report, the DEA stated that an imperative condition for legalising domestic trade was the development of "a secure, centralised, national, electronic permitting system and database. This must be done before any trade is legalised to remove the possibility of illegal horn being traded."⁸ Despite almost a decade of promises, this system is still not fully functional. Indeed, there is little, if anything, in place to instil confidence that the proposed regulations will prevent widespread abuse. Instead, legalising domestic trade will greatly increase the risk of illegal exports – which the government has no means of preventing – and thus poaching.
3. Legal export of horns and their "parts, products and derivatives" will make enforcement extremely difficult, if not impossible, both in South Africa and in destination countries. Microchips, as required in the draft regulations, will be useless once horns are cut up or powdered. No destination country has an effective system for tracking imported horns, particularly when they have been broken down into parts, products or derivatives. For example, Viet Nam's legislation makes no provision for rhinoceros horns that are donated or disposed of as gifts. Some of the pseudo-hunters who brought trophies back to Viet Nam cut the horns into pieces to give away to family members or friends. Others made artefacts such as table lamps and bowls. Trophies are classified as personal effects, as would any horns imported under these draft regulations. There are currently no sanctions in Viet Nam for individuals who are no longer in possession of a trophy, and no regulation in place that makes it compulsory to keep the horn intact and not be disposed of without prior authorisation.⁹
4. In South Africa, significant discrepancies exist in the way different provinces implement and enforce the law. Several provincial authorities are under-resourced. It is unreasonable to expect that the proposed legal framework would be implemented in a manner that would prevent illegal trade.
5. Legislation in importing countries is meaningless if not properly enforced, and CITES Management Authorities cannot guarantee that imported horn will not be subsequently sold commercially simply by declaring, as the proposal requires, that legislation exists to regulate trade. In this light, for South Africa to permit the export of horns would, in our view, be highly irresponsible.
6. CITES has recognised the urgent need for demand reduction efforts to be implemented in respect of rhino horn.¹⁰ Intensive efforts have been made by governments and NGOs to educate consumers, and to persuade them not to buy or use rhino horn, in key consumer countries including Viet Nam and China. These efforts have been greatly enhanced by the fact that commercial international trade in rhino horn is illegal. There is now some evidence that

⁸ *The viability of legalising trade in rhino horn in South Africa*. DEA South Africa, 2014.

https://www.environment.gov.za/sites/default/files/docs/rhinohorntrade_southafrica_legalisingreport.pdf

⁹ CITES CoP16 Doc 54.2

<https://www.cites.org/sites/default/files/eng/cop/16/doc/E-CoP16-54-02.pdf>

¹⁰ Decision 16.85; Resolution Conf. 17.4

demand reduction programmes are starting to have an impact, including credible reports of a decrease in rhino horn prices of more than 50% between 2013 and 2015.¹¹ Further evidence of the effectiveness of these campaigns is the fact that the number of rhinos poached in South Africa has apparently now decreased for the second year in a row¹² (although the number poached is still high and of concern).

However, if rhino horn is legally sold within South Africa and imported into destination countries and illegally sold on the domestic market, perceptions will change and these efforts will be completely undermined. Demand will almost certainly be driven up because of the mixed message that legal imports will give buyers and consumers about the conservation status of rhinos, and the legitimacy of rhino horn as a commodity. Initiating further demand reduction programmes will be far more difficult, putting the world's remaining rhinos at even greater risk.

7. The recent series of prosecutions involving pseudo-hunting of rhinoceros^{13,14} – the spurious use of hunting permits to facilitate smuggling of rhino horns out of the country by foreign nationals¹⁵ – should stand as a warning that criminal gangs are ready and willing to take advantage of any new opportunities for exporting horn from the country, are ingenious at coming up with ways to do so, and in many cases are connected with well-funded foreign syndicates able to take advantage of corrupt officials in exporting and importing countries. The proposed limit on the number of horns each purchaser may export will not prevent syndicates from employing proxy buyers, whether visitors to the country or, as happened with pseudo-hunting, resident foreign nationals.
8. The CITES Parties made their views on international rhino horn trade extremely clear at CoP17 during discussion of Swaziland's proposal to trade internationally in rhino horn for commercial purposes. Although private rhinoceros owners in South Africa had lobbied the government to submit a similar proposal, it decided not to do so, a decision applauded by many other rhino range States and CITES Parties. It is unfortunate that South Africa has now announced its intention to promulgate international trade in rhinoceros horn through a back-door mechanism without consulting the international community, particularly other rhino range States and consumer countries which stand to be negatively affected by this policy. In effect South Africa, the host country of CoP17, appears to have misled the Parties as to its intentions.
9. The proposed regulations appear designed to regulate trade rather than to promote it. However, CITES trade figures demonstrate that the legal export of rhino horn for personal purposes from South Africa has been small for many years. The CITES trade database

¹¹ SWARA Magazine, July-September 2016 p. 42

¹² <http://www.traffic.org/home/2017/2/27/south-africa-annual-rhino-poaching-toll-falls-for-second-yea.html>

¹³ See, e.g. Rademeyer, Julian (2013). *Killing for Profit: Exposing the Illegal Rhino Horn Trade*. Struik Publishers, Cape Town.

¹⁴ *African and Asian Rhinoceroses – Status, Conservation and Trade A report from the IUCN Species Survival Commission (IUCN SSC) African and Asian Rhino Specialist Groups and TRAFFIC to the CITES Secretariat pursuant to Resolution Conf. 9.14 (Rev. CoP15)*. <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-68-A5.pdf>

¹⁵ See, e.g. Rademeyer, Julian (2013). *Killing for Profit: Exposing the Illegal Rhino Horn Trade*. Struik Publishers, Cape Town.

records the export of just 31 horns for personal purposes in the years 2007-2016, with only 6 of these in the last five years and none in the last two¹⁶ (though we note that the latter figure may be a reflection of a time-lag in reporting to the CITES database). If exports were to continue at a comparably minimal level, South Africa would arguably have no need to pass regulations controlling the outflow of horn from the country. We believe it is only the prospect of a greatly increased export trade that has prompted the South African authorities to propose these regulations, in order to make extensive trade appear more acceptable.

10. Since 2010 at least four censuses have been carried out in the Kruger National Park. In 2010, the estimated size of the southern white rhino population was in the range 8,767–12,682.¹⁷ By 2016 this had fallen to 6,649 - 7,830.¹⁸ While the DEA has provided data on rhino poaching in the park, no information has been given on the number of rhinos that have succumbed to drought in recent years. While this is unrelated to illegal trade, the existence of a second severe threat to rhinos in the park should prompt a highly precautionary approach.

We therefore oppose the passage of the draft regulations, and urge the government instead to draft new regulations prohibiting all domestic trade and export of rhinoceros horn for any but bona fide enforcement, scientific or forensic purposes.

Problems relating to technical, legal and implementation issues

In addition to the extremely negative impacts that we believe the adoption of these regulations would have on the conservation status of the world's rhinos, the way in which the document has been drafted raises numerous questions relating to specific technical, legal and implementation issues.

The following comments address these problems. However, these comments are in no way intended to depart from our general opposition to the draft proposals. Aside from our reservations about the need for - and intent of - these regulations, we are disturbed by the fact that the draft appears to have been hastily put together. The text is confusing and contains many internal inconsistencies, and, if adopted in its current form, would create serious implementation problems.

Reg.1. The definition of “rhinoceros horn” should be divided into separate definitions for whole horns, cut pieces, and powdered or shaved horn (as in Reg. 2(3)), particularly in the light of the Minister’s proposed Schedule on powdered and shaved horn. As presently drafted, the definition is difficult to understand when read in connection with later regulations requiring that horns be photographed and measured. While we oppose unreservedly any export of rhino horn (unless it is for genuine scientific, forensic or enforcement purposes), if it is to occur it should certainly be restricted to whole horns only.

¹⁶ 2007: 1 *Diceros bicornis*; 2008: 3 *Ceratotherium simum*; 2009: 2 *Diceros bicornis*; 2010: 1 *Diceros bicornis*, 6 *Ceratotherium simum*; 2011: 2 *Diceros bicornis*, 10 *Ceratotherium simum*; 2012: 3 *Diceros bicornis*; 2013: 2 *Ceratotherium simum*; 2014: 1 *Ceratotherium simum*; 2015: 0; 2016: 0

Source: Gross Imports Report (searches of CITES Trade Database for exports of *Diceros bicornis* and *Ceratotherium simum* from South Africa for personal purposes)

¹⁷ *Anthropogenic Influences on Conservation Values of White Rhinoceros*. Sam M. Ferreira , Judith M. Botha, Megan C. Emmett. <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0045989>

¹⁸ https://www.environment.gov.za/mediarelease/molewa_progressionintegrated_strategicmanagement_ofrhinoceros

For further clarity, the term “rhinoceros horn” should also be restricted to whole horns only, in order to minimize the risk that pieces from other horns could be exported under permits for a specific horn (a trick repeatedly used by ivory smugglers before the 1989 CITES ban on the ivory trade).

Reg. 2(1). The term “the export of rhinoceros horn for personal purposes” is confusing with respect to the proposed rules governing export of horn. The term “personal purposes” is not defined. In CITES the term is only used with respect to the purpose code P (personal) to be used on export permits in accordance with Resolution Conf. 12.3 (Rev. CoP17) on Permits and Certificates. This is not related to the exemption available for trade in “personal and household effects” in Article VII of the Convention, which has been further defined in Resolution Conf. 13.7 (Rev. CoP17). However, South Africa’s CITES Regulations appear to confuse the two by citing the wrong CITES resolution with respect to personal and household effects:

“14. Provisions foreseen in Part 4 shall not apply to dead specimens, parts and derivatives of species listed in Appendix I, II or III, which are personal effects being introduced into the Republic, or exported or re-exported therefrom for a period not exceeding three months or for personal effects exempted in terms of Resolution Conference 12.3 (Revised), provided that it is done in compliance with Article VII of the Convention.”

This confusion has been carried forward into the draft regulations, with potentially serious consequences for the regulation of trade in horn. CITES Article VII par. 3 creates an exemption from the requirements of Article III for personal or household effects provided that they were not acquired by the owner outside his State of usual residence. This exemption would therefore not be available for foreigners owning rhinos in the sense of Reg. 6(1) or foreign visitors in the sense of Reg. 6(2), who would be required to obtain import and export permits as required by CITES Article III.

However, the regulations are silent on whether South African citizens or permanent residents will be able to export horn, and if so whether they could rely on the exemption; the wording in regulation 3(8), though it refers to export permits, does not clarify this matter sufficiently. As the exemption removes the need for any permits at all, it would therefore allow trade in horn for non-commercial purposes without even minimal CITES controls. Further, as CITES Resolution Conf. 13.7 (Rev. CoP17) is not cited in the South African CITES Regulations, and Reg. 1(3) of those regulations states only that CITES resolutions are only “recommendations” that “can serve as a source of interpretation of the provisions in these regulations”, we have no assurance that South Africa would observe the provision in Annex 1 to Resolution Conf. 13.7 (Rev. CoP17) stating that personal and household effects are not to be used “for commercial gain, sale, and display for commercial purposes, keeping for sale, offering for sale or transport for sale.”

We therefore urge the government to define the term “personal purposes” to clearly and specifically exclude the use of the personal and household effects exemption for any export of rhino horn, including export by South African citizens and residents.

Reg. 2(4)(d). With respect to South Africa’s CITES Regulations: Reg. 6(3)(d) of these regulations follows the Convention by stating that an export permit can only be issued for Appendix I specimens “if an import permit has been granted.” However, Reg. 5(2), 6(1) and 6(2) of the draft regulations state that it will be sufficient to produce “a letter from such Management Authority, confirming that it will

issue the import." As accepting a letter of intent in lieu of an import permit is both contrary to CITES and to South Africa's own CITES regulations, the reference to a letter should be deleted and no export permit should be issued until an import permit has been granted (see comments on these regulations below).

Chapeau to Reg. 3. The text "Carrying out of certain restricted activities involving rhinoceros horn without a permit" confusingly implies that there are activities involving horn that do not require a permit. The regulation, however, seems to make clear that a permit is required for any of the activities contemplated by the regulation.

Reg. 3(2). Confusion arises with reference to whether the regulations and permitting system apply to rhino horn powder or shavings. The schedule in Notice 77 states that the trade in and export of rhino horn powder or shavings is prohibited and the provisions in Notice 74 will not apply, in which case it should clearly state this here, especially as the Schedule in Notice 77 is to be reviewed in three years (see comments below).

Reg. 3(3). Although this regulation establishes a limit of two horns per person, we are concerned that it applies only to foreign visitors as contemplated under Reg. 6(2). There is apparently no limit in the regulations governing any other exporter, including citizens, residents or foreigners owning rhinos in South Africa, implying that such persons can export an unlimited number of horns. We believe that if any horns are to be allowed for export at all (which, as stated above, we oppose), the same limit of two per person should apply to all exporters. Further, it is not clear from this regulation whether the limit of two horns per person is per shipment, for life, or for some other period. We urge the government to state clearly that the limit is for life. However, as no justification is given for the two-horn limit, and as a foreign visitor could simply avoid it by purchasing a rhino in South Africa, we believe that the limit serves more to create an illusion of control over the horn trade rather than to restrict horn exports in any meaningful way. We repeat our belief that export of horn for personal purposes should be banned.

Reg. 3(5). The term "hand baggage" is not defined. It is unclear whether this refers only to baggage carried onto an airliner by a passenger (the usual meaning of the term), or whether it includes checked luggage as well (in which case it could not qualify as a personal effect in terms of CITES Article VII, as it would not accompany the exporter). This needs to be clarified, especially in the context of Regulation 3(6). Further, rather than simply stating that horn may not be carried as hand baggage, this regulation should be expanded to set out precise conditions under which the horn should be shipped, including label and container requirements. Horns should be sealed and labelled in order to prevent removal of horn material from a specimen while in transit. See also comments on Reg. 2(1) above.

Reg. 3(3-6). These regulations are internally inconsistent. Regulations 3-5 refer to the person exporting a horn in language that implies this person is the purchaser of the horn. Regulation (3) specifically refers to "a person contemplated in regulation 6(2)" as the exporter, meaning "a person from a foreign state who visits the Republic of South Africa." However, regulation (6) states that only "a duly authorized freight agent" may export a horn. Assuming that a visitor to South Africa cannot be a duly authorized freight agent, these regulations contradict each other. The government needs to clarify the specific meaning of the term "export" in terms of who the exporter actually is meant to be

within the meaning of the regulations. In addition, the mechanisms by which a freight agent is to be authorised, by whom, and how this is to be controlled and regulated, need to be clearly set out.

Reg. 3(7)(f). The physical address of the recipient should be that of the person holding the permit. It should not be legal for horn to be exported unless it is to be delivered to the original purchaser.

Reg. 3(8). The conditions under which an environmental management director or other official may endorse an export permit are not set out; at present it appears that the endorsing official can do so with no restrictions at all. There should be clearly set out conditions that must be confirmed by the endorsing official before any endorsement is granted.

Reg. 4(1). We very strongly urge that the government, in addition to recording information about horns in trade, include all persons who have been granted permission to export rhinoceros horn under these regulations in a publicly available database including photographic and other identification information. We feel that this is absolutely necessary to limit the possibility that persons will act as couriers for overseas syndicates. It should be mandatory for immigration officials to use the information in the database to confirm that the person exporting horn is indeed the person that has purchased it and has acquired the necessary permits.

Reg. 4(3). The information (including photographs and details) on individual horns, with the possible exception of genetic profiling data, will only be useful as long as the horns remain whole and intact (see comments to Reg. 1 above). It is for this reason that we urge that if export of horns is to be permitted (again, we oppose this) only whole, intact horns be allowed to be exported.

Reg. 4(5). This regulation refers to the marking of “a rhinoceros” rather than a rhinoceros horn. As the regulations otherwise deal only with horn the relevance of this regulation is unclear.

Reg. 4(6). In this regulation, and elsewhere in the draft, the term “permit” appears, confusingly, to be used to refer to several different documents, issued by different authorities for differing purposes. Each type of permit should be specifically named and defined to clarify which permits are actually required, by whom they may be issued, and under what circumstances, in order to allow enforcement officers to determine whether the permits being presented or applied for are indeed the appropriate ones.

Reg. 5(1). It is unclear whether this regulation is referring to domestic trade, international export, or both. The regulations should also be much more specific as to which authorities can receive applications, and for which purpose. We would strongly urge that there be only one central authority responsible for issuing permits.

Reg. 5(1)(d). Although the official report by the inspecting official is supposed to include “a confirmation that the information of the owner of the rhinoceros horn in the national database is correct,” there is no indication as to how this confirmation is to be made or what sort of information needs to be presented to do so.

Reg. 5(2). This regulation appears to be substantially the same as Reg. 6(1), except that it refers to acquisition of a horn rather than export. It is difficult to understand why, if the horn is not to be

exported, it should be subject only (with the exception of the requirement in Reg. 5(2)(c)) to conditions that relate specifically to export and will have to be fulfilled anyway before the purchaser leaves under the terms of Reg. 6. We are disturbed that there are no requirements in this regulation that the purchaser must in any way demonstrate his or her bona fides (such as a requirement that a prospective purchaser prove that he or she does not have a criminal record or has not been charged with a wildlife-related offence).

Reg. 5(3)(a). The requirement that “the information of the buyer or receiver, as well as the detail of the rhinoceros horn, has been verified by an official from the relevant issuing authority” is not accompanied by any detail, or reference to other parts of these or other regulations, stating what this information and details are supposed to include or how the verification is to be made.

Reg. 6(1-2). Regulation 6 refers only to persons that are neither citizens nor permanent residents of South Africa. It is not made clear anywhere in the regulations whether persons who are citizens or permanent residents of South Africa are to be permitted to export horn and, if so, what they must do before they can do so; if this is not the case (which we would prefer) then that fact should be clearly stated.

The requirements for both Reg. 6(1), referring to persons who own a rhinoceros and intend to export its horn, and Reg. 6(2), referring to foreign visitors who have acquired horn that they wish to export, are identical. The only difference between the two categories of exporter seems to be the limit set out in Regulation 3(3), which we believe should apply to all exporters (see comments above).

In Reg. 6(1) it is not clear what is meant by a person “who owns a rhinoceros.” Is this intended to refer only to owners of living rhinoceroses, and if so must the person own 100% of the animal rather than a share in it? Does the reference to “the horn of such rhinoceros” refer only to the horn currently being carried by the animal rather than the offtake from a dehorning operation that has been maintained with other horns in a stockpile? If the latter is intended, is any proof (such as genetic data) required to establish that the horn being exported actually came from the rhinoceros owned by the exporter, and that it was removed from the animal only after the rhinoceros came into his or her possession (so that a person could not purchase a rhinoceros and therefore acquire the rights to all horns removed from that animal prior to purchase)?

We are concerned that this regulation could be used to allow a foreign buyer, without even entering the country, to purchase a share interest in a large number of rhinos shortly before export, claim ownership to all horns removed from these rhinos in the past, avoid the limit of two horns per person applying to exporters under Reg. 6(2), and thereby acquire the right to import large numbers of rhino horns. The ability to do this would almost certainly guarantee that this regulation will be exploited by foreign syndicates to further illegal trade in horn. Strict limits should be placed on the number of horns any exporter, including rhino owners, can remove from the country.

The document requirements in Reg. 6(1)(a) and (b) (as well as identical requirements in Regs. 5(2) and 6(2)) raise other serious concerns. As noted above, the government appears to be applying the CITES rules set out for specimens on Appendix I in Article III of the Convention rather than the personal effects exemption in Article VII. Under these rules, and under South Africa’s own CITES

Regulations (see above), an import permit must be presented before an export permit can be granted. Article III.2 of the Convention states in part:

“2. The export of any specimen of a species included in Appendix I shall require the prior grant and presentation of an export permit. An export permit **shall only be granted** when the following conditions have been met:

...

(d) a Management Authority of the State of export is satisfied that **an import permit has been granted** for the specimen.”

A “letter from such Management Authority, confirming that it will issue the import,” as contemplated in Reg. 6(1)(a), is not acceptable under CITES in lieu of an import permit. Granting an export permit without having received proof that the import permit has been issued would amount to a violation of the Convention. We strongly urge that no export permit be granted for any export of rhino horn unless the import permit has been granted first, as required by the Convention text.

The requirement in Reg. 6(1)(b) that written confirmation be received from the Management Authority of the importing country “that domestic legislative provisions are in place to ensure that the imported rhinoceros horn will not be used in manner that is in contravention with the provisions of CITES” is wholly inadequate to ensure that any horn exported will not subsequently be misused on import. The word of a Management Authority, particularly in countries that lack comprehensive CITES implementing legislation or have a history of government corruption, should not be regarded as a sufficient assurance that exported horn will not be able to enter the commercial market.

Further, the mere existence of legislative provisions does not ensure that they are adequately implemented or enforced, even in countries with Category 1 legislation (such as Cambodia, Thailand and Viet Nam). For example, we note that Viet Nam, although it has Category 1 legislation, apparently has no legislation preventing rhinoceros hunting trophies from being cut up and sold after import, and we are concerned that a similar situation may apply for horns imported under these regulations. Also, despite having Category 1 legislation, Viet Nam has been identified as the main destination for poached rhino horn and is known to have an illegal rhino horn trade.

We believe very strongly that the perilous condition of the world’s rhinoceroses requires, if exports are to occur at all (and again, we are opposed to such exports), that the Government of South Africa subject any country issuing an import permit for rhinoceros horn to scrutiny, in concert with international bodies such as the International Consortium on Combating Wildlife Crime, before any exports are permitted. This scrutiny should be thorough enough to determine that both the existence of legislation and its level of implementation and enforcement are sufficient to provide the necessary level of confidence.

Reg. 7(1). Data on any powdered or shaved rhinoceros horn, including on its destruction or transfer to the government, should be maintained in a government database.

Reg. 8(2). See comments to Reg. 6 above. Under the terms of Article III of CITES and South Africa’s own CITES regulations, a letter of intent cannot be used in place of an import permit as a condition for the grant of an export permit.

Specific Comments on the Schedule on Prohibition of the Powdering or Shaving of Rhinoceros Horn (Notice 77)

Reg. 1. See comments to Reg. 1 of the draft regulations (above) on the definition of “rhinoceros horn.”

Reg. 2(5). We are alarmed that the prohibition in this schedule will only “remain in place for a period of three years, after which it will be assessed and re-considered.” We believe that trade in powdered or shaved horn will be difficult or impossible to control, and see no reason why this is likely to change in three years’ time. Further, the prospect that the prohibition may be lifted in only three years will provide a strong incentive for unscrupulous persons to stockpile illegally-acquired powdered or shaved horn in the expectation that it will soon be possible to launder into a legal supply. We strongly urge that the prohibition be made permanent. The schedule seems to be anticipating that the CITES ban on trade in rhino horn will be overturned in three years’ time (the date of the next CITES CoP). Paving the way for international trade in rhino horn derivatives is irresponsible and ignores the advice by the Committee of Inquiry and the strong global opposition to such a move voiced at CITES CoP17.

The SSN Rhinoceros Working Group appreciates the opportunity to submit these comments to the DEA, and would appreciate the opportunity for further input into the consulting process.

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