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**13 May 2022**

Dear IPPHC Secretariat,

**PROPOSALS REGARDING THE RESOLUTIONS, DECISIONS, AND AGENDA ITEMS SOUTH AFRICA MAY SUBMIT TO THE CITES COP19**

Thank you for the opportunity to submit comments regarding the resolutions, decisions, and agenda items South Africa may submit to the 19th Conference of the Parties (“CoP19”) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”). These comments are submitted by the EMS Foundation (EMSF).

The EMSF is a South African social justice NGO. Our key purpose is to alleviate and end suffering, raise public awareness, empower, provide dignity and promote the interests of vulnerable groups, including wild animals. We support the five interrelated principles of social justice, namely: equity, access, diversity, participation and rights. The EMS Foundation is cognisant of the entanglements of oppression and we are committed to the promotion of inclusive justice, showing compassion across species and working to build a better future for all through campaigns, research, analysis, advocacy and holding government to account. The EMS Foundation sees access to information, openness, accountability and transparency as the ‘oxygen of democracy’.

We are in the midst of an extinction crisis that could unravel life as we know it. Wildlife exploitation is the leading driver of marine species loss and the secondary driver of terrestrial species loss.<sup>1</sup> The IPBES 2019 assessment – the most comprehensive assessment of its kind - showed that:

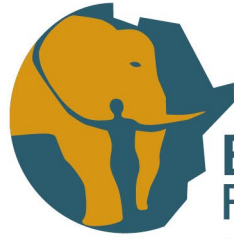
- Nature’s dangerous decline is unprecedented;
- Species extinction rates are accelerating at alarming rates;
- Current global response insufficient;
- Transformative changes is needed to restore and protect nature;
- Opposition from vested interests can be overcome for public good;
- 1,000,000 species are threatened with extinction.

It can no longer be business as usual and it is therefore compulsory for governments, on a national and international level, to urgently shift their policy base away from consumptive utilisation and extractivism and to redefine our relationship with wildlife to bring about transformative change, harmonious co-existence, respect, one health and welfare, justice and ubuntu.

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<sup>1</sup> IPBES (2019): Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES secretariat, Bonn, Germany

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Currently, CITES is the primary international tool for addressing wildlife and plant exploitation. As a result, bold action is required by all CITES Parties to ensure that CITES achieves its purpose of protecting threatened species that may be affected by trade.

Please find our comments and recommendations below, in no particular order.

Yours Sincerely,

**Michele Pickover**  
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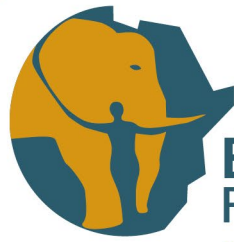
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## ELEPHANTS

Poaching and ivory trafficking is a continuing threat to elephants in both CITES Appendix I and Appendix II countries and any down-listing and/or CITES authorized ivory sales would only aggravate the situation. There is overwhelming evidence to show that previous CITES elephant down-listings and one-off ivory sales had a significant impact on stimulating demand for ivory in China and other Asian markets: they exacerbated elephant poaching and ivory trafficking, resulting in huge declines in some elephant populations particularly in Tanzania and Mozambique. Given the recent official recognition by IUCN of the existence of two species of elephant in Africa- the Savannah and Forest elephant- and the conclusion that both species are closer to extinction than previously assessed, the EMSF recommends that South Africa resist any future call to down-list elephant populations from Appendix I in recognition of their endangered and critically endangered conservation status.

The EMSF recommends that South Africa:

- Support the application of a precautionary approach and continue to maintain the ban on international ivory trade, including by rejecting any down-listing proposals.

## IVORY STOCKS AND STOCKPILE MANAGEMENT

The EMSF is concerned that 44 Parties identified by the Secretariat as likely holding ivory stockpiles, including Parties engaged in the NIAP process, have never reported on their inventories. Ivory stockpiles pose a serious threat to elephants by fuelling demand, perpetuating the perception of ivory as a marketable commodity, and contributing to illegal trade via theft. Since the thefts and illegal trade in ivory from stockpiles usually involves corruption and international criminal networks it is essential that stockpiles are accounted for in a transparent, secure and consistent manner.

During SC74, the Committee reiterated requests to Parties to step up their efforts to comply with stockpile reporting obligations and agreed to propose the renewal of Decisions 18.184 and 18.185 to CoP19 to direct the Secretariat to provide annual updated summary data on ivory stockpiles and identify Parties that have not provided information on ivory stockpiles for consideration by the Standing Committee.

The EMSF recommends that South Africa support the renewal of Decisions 18.184 and 18.185 and support decisions calling for Parties to comply with ivory stockpile reporting as a matter of urgency in accordance with Resolution Conf. 10.10 (Rev. CoP18)

## NATIONAL IVORY ACTION PLANS (NIAPS)

The EMSF is concerned that Resolution Conf. 10.10 (Rev. CoP18) contains no provisions for a scheduled review of the NIAP process despite the process having been initiated nearly 10 years ago. Nearly a

decade on, the EMSF urgently recommends that South Africa call for/support a robust review of the process to ensure it is still fit for purpose.

This is especially critical given that several countries are currently required to report against completely outdated action plans which may no longer be accurate or proportional to their evolving roles in ivory trafficking. Furthermore, in light of persistent non-reporting and compliance issues by a number of Parties, it is clear the process needs to be reviewed to encourage Parties to comply. In order to promote compliance and reporting, we would suggest addressing the significant duplication of effort under the NIAP process and other mechanisms that already address matters relating to tackling ivory trafficking. These include Article XIII, annual illegal trade report and ETIS.

The EMSF calls on South Africa to support a review of the process to ensure a complementary and non-duplicative approach. As part of the review, we would encourage greater use of existing tools and sources of data such as the ICCWC Indicator Framework for Combating Wildlife and Forest Crime, the Wildlife and Forest Analytic Toolkit. Without a review, the NIAP process risks straying from its original purpose, becoming burdensome for Parties and the Secretariat.

The EMSF continues to be gravely concerned that NIAP Parties are still not reporting on progress made against specific indicators such as elephant poaching levels; number of ivory seizures; successful prosecutions; impact of demand-reduction initiatives; changes to legislation; and any relevant indicators from the ICCWC Indicator Framework for Combating Wildlife and Forest Crime. Reporting against specific indicators is enshrined in the CITES CoP18 amendment to the NIAP Guidelines and it is essential to ensure that Parties demonstrate progress against these indicators to ensure impact of NIAP activities is captured. A review of the NIAP process should promote impact and outcome of NIAP activities to prevent the process becoming a “tick-box” exercise. Another key challenge which is undermining the efficacy of the NIAP process is that the Secretariat, which plays the lead role in evaluating progress of CITES Parties, is almost entirely reliant on self-assessments presented in Party NIAP reports.

At Standing Committee meetings, the NIAP agenda item is often forwarded to an in-session working group which largely consists of the NIAP Parties themselves, further undermining any meaningful and non-subjective assessment of progress made by NIAP Parties which in turn undermines any meaningful response by CITES to tackle elephant poaching and ivory trafficking. Amendments adopted to the NIAP Guidelines at CoP18 encourage the Secretariat to consult relevant experts at every step of the NIAP process including Step 1 (identification of NIAP Parties), Step 3 (assessing adequacy of NIAPs), Step 4 (monitoring NIAP progress) and Step 5 (exit from the NIAP process). The EMSF urges South Africa to ensure that the NIAP process is transparent and fit-for-purpose by encouraging the Secretariat to proactively engage relevant experts including non-government organisations with expertise about ivory trafficking in relevant NIAP countries.

The EMSF recommends that South Africa support the adoption of a Decision at CoP19 directing the Secretariat to review the process in cooperation with external independent experts on the effectiveness and impact of the NIAP process and to provide the findings of the review at SC77.

## STOCKPILE GUIDANCE AND DESTRUCTION

We welcome that CITES has finally adopted guidance for the inventorying and management of ivory stockpiles and that this guidance will continue to be updated. We hope that South Africa will help ensure that any updates to the guidance take place through a transparent process that is open to all CITES stakeholders.

For CoP19 we urge South Africa to:

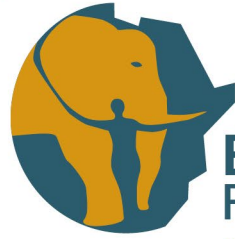
- Direct the Secretariat to identify and compile available templates or guidance on model legislation and/or regulations or standard operating procedures that have worked for Parties with large stockpiles of seized ivory.
- Prepare and submit, or cosponsor, a document that would amend Resolution Conf. 10.10 (Rev. CoP18) to encourage the destruction of ivory stockpiles. It was disturbing that the initial draft of the “Review of elephant destruction methods” supported the commodification of powdered ivory. It is important that a strong signal be sent that any commercial use of ivory –and particularly of seized ivory–not take place. Agreement to destroy stockpiles is the best route to ensuring that these specimens are not commodified, leaked into trade, or trafficked.
- Ensure that the process for updating the guidance on ivory stockpile management is open and transparent and engages all CITES stakeholders.

## MIKE & ETIS AND THE NEED FOR ANALYSIS OF SEIZED IVORY

We welcomed the EU’s suggestion at SC74 that the MIKE and ETIS TAG determine whether it can provide an analysis of seized ivory connected to countries with legal commercial domestic markets and include such an analysis if feasible for CoP19. This information is crucial to implementation of Resolution Conf. 10.10 (Rev. CoP18).

We ask that South Africa ensure at CoP19 that:

- Going forward the MIKE and ETIS TAG provide an analysis of seized ivory that is tied to countries with legal commercial ivory markets.
- The Secretariat publish and maintain a list of countries that have made large-scale ivory seizures and whether the Parties have conducted forensic analysis and shared the results of that analysis.
- That CITES stakeholders provide technical and financial support for conducting forensic analysis of large-scale ivory seizures.



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## ELEPHANTS AND APPROPRIATE AND ACCEPTABLE DESTINATIONS

At the 31st meeting of the Animals Committee, the Committee agreed to put forward recommendations to SC74 that include nonbinding best-practice guidance on how to determine whether “the trade would promote *in situ* conservation.” This guidance should be binding instead of nonbinding. These guidelines are important especially since they pertain to trade in species listed in the CITES Appendices and their Annotations.

Res. Conf. 11.20 (2) states that “where the term ‘appropriate and acceptable destinations’ appears in an annotation to the listing of a species in Appendix II of the Convention with reference to the trade in all live animals, this term shall be defined to mean destinations where . . . the Management and Scientific Authorities of the State of import and the State of export are satisfied that the trade would promote *in situ* conservation.”<sup>2</sup> Specific trade rules regarding listed species constitute substantive annotations and are integral to CITES appendices.<sup>3</sup> Substantive annotations must follow the provisions of Article XV and the appropriate listing guidelines found in Resolution Conf.9.24 (Rev. CoP15) because substantive annotations alter the scope of a species’ listing. Under Article XV, substantive annotations that define a CITES listing are binding unless a Party has formally submitted a Reservation. Thus, the guidance regarding *in situ* conservation should be binding.<sup>4</sup>

The EMSF urges South Africa to propose and/or support proposals for a unified legal framework to restrict exports of all live wild-caught African elephants to *in situ* conservation programmes only. This would be consistent with the statements of the IUCN African Elephant Specialist Group regarding its refusal to endorse the removal of African elephants from the wild for any captive use given no direct benefit for *in situ* conservation of the species, and the compelling and a growing body of scientific literature documenting the physical and psychological impacts of captivity on elephants.

## RHINOCEROS HORN

The primary threat to the survival of both black and white rhinos in South Africa is the illegal international trade in rhino horn. Rhinos are poached because of the extraordinarily high prices paid for rhino horn in Asia, and rhinos will be under threat until it is no longer profitable for criminal syndicates to trade in it. The EMS Foundation and many other organizations believe that this must be addressed by demand-reduction strategies (to reduce the black-market price of rhino horn) coupled with strong local and international enforcement that increase the difficulty, risk and cost incurred by crime syndicates engaged in this illicit trade.

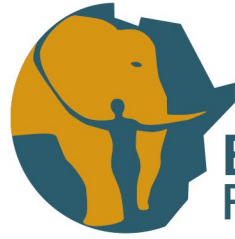
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<sup>2</sup> Conf. 11.20 (2), *Definition of the term ‘appropriate and acceptable destinations’*, available at: <https://cites.org/sites/default/files/document/E-Res-11-20-R18.pdf>

<sup>3</sup> Conf. 11.21 (1)(b), *Use of annotations in Appendices I and II*, available at: <https://cites.org/sites/default/files/document/E-Res-11-21-R18.pdf>.

<sup>4</sup> CITES, art. XV





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Other organisations (and particularly those who own large numbers of captive rhino) advocate the legalisation of international trade in horn from captive rhino in order to over-supply the Asian market so that the price drops low enough to disincentivise poaching but not so low that it is unprofitable to farm rhino. The EMS Foundation believes that this strategy cannot work for many reasons. These include: the fact that it relies on incorrect assumptions (e.g. that South Africa can sustain the production of enough horn to oversupply those markets, and that commercial rhino farmers can out-compete criminal syndicates on price) and because experience (particularly with ivory) shows that the existence of a legal trade increases and facilitates illegal trade.

If any international trade in rhino horn is legalized it will dramatically reduce the effectiveness of enforcement measures by South African and foreign governments and will create opportunities for laundering illegally obtained horn. Instead of customs officials being able to search for and seize any horn in the knowledge that it must be illegal, they will be required to verify the validity of documents (which experience has shown can, and are, easily falsified) and the DNA of the horns. Securing convictions will also be very much more difficult. Consequently, it is important to consider not only whether or not international trade in rhino horn is permissible under CITES, but also whether or not it is desirable.

Proponents of international trade in rhino horn argue that CITES permits international trade in horns cut from captive bred rhinos in South Africa. They also argue that this trade is desirable in order to oversupply the Asian market and to provide funding to conserve captive populations of rhinos.<sup>5</sup>

In our view, the overriding concern must be to act in the best long-term interests of rhinos, as individual animals, as members of ecosystems, and a species that is (or should be) present in many ecosystems both within and outside South Africa. In our view it is demonstrably not in the best interest of rhinos to be either farmed for their horns or shot as trophies which are then exported. In our view this approach is also consistent with the upholding of core values and human rights in the Constitution, particularly in section 24 which explicitly refers to the duty to reasonable legislative and other measures to promote conservation, and of the rights of future generations.

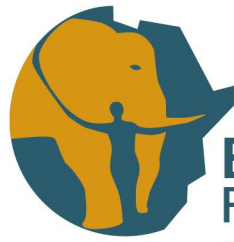
It is also important to appreciate that humanity co-evolved and *homo sapiens* (and other hominids) have coexisted with rhinos in Southern Africa for many thousands of years. Consequently, rhinos are an important presence within human cultures, and ensuring their continued existence in the wild is also a question of preserving both tangible and intangible cultural heritage.

CITES exists to ensure that international trade does not exacerbate the conservation status of endangered species. It provides for bans and restrictions to be imposed on international trade in on various species and their body parts in situations where it is apparent that international trade is

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<sup>5</sup> The existence of significant populations of ex situ farmed wildlife leads in time to undesirable genetic consequences and the creation of a captive population that diverges further and further from wild populations.





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harmful. The fact that a particular type of trade in wildlife of their body parts may be permissible under CITES does not establish any obligation on a state that is a party to CITES to permit that trade. In other words, even if some international trade in rhino horn from South Africa were permissible under CITES, this does not mean that the South African government is under an obligation to permit such a trade.<sup>6</sup>

In recognition of the threat which international trade poses to rhinos, all rhinos are listed in Appendix 1 of CITES, other than Eswatini's and South Africa's populations of White rhinos which are listed on Appendix II but subject to the annotation that they may be traded "for the exclusive purpose of allowing international trade in live animals to appropriate and acceptable destinations and hunting trophies. All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly."

If South Africa were to advocate a legal trade in rhino horn it would undermine the efforts by other countries to conserve other species and populations of rhino.

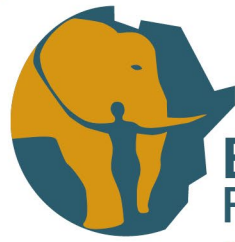
A decision to permit even a limited international trade in rhino horn (whether as trophies or otherwise) is highly likely to be challenged in court. Such a decision would be susceptible of being reviewed on various grounds. These might include:

- a failure to take reasonable measures to promote conservation in breach of section 24 of the Constitution and the duties of the State under NEMA and that National Environmental Management: Biodiversity Act to act as trustee of the environmental and biological diversity;
- irrationality and unreasonableness;
- a failure to apply the principles in section 2 of NEMA, in particular the principle in section 2(4)(a)(vii) "that a risk averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions".

Given the above and the continued high levels of rhino poaching and illegal trade in rhino horn, any proposal to harvest rhino horn for international trade runs the risk of exacerbating the ongoing poaching crisis. The EMSF recommends that South Africa reject any proposals that would allow international trade in rhino horn, including through attempts to exploit CITES exemptions for specimens bred in captivity.

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<sup>6</sup> This is supported by the environmental management principle in section 2(4)(n) of the National Environmental Management Act ("NEMA") which states that "Global and international responsibilities relating to the environment must be discharged in the national interest."



## RHINOCEROS–BOTSWANA

The EMSF is extremely concerned about the significant and sustained poaching in the Okavango Delta that has decimated Botswana’s wild white and black rhinos. The government has relied largely on reactionary approaches to address this poaching catastrophe that have failed to stop the killing.<sup>7</sup>

At CoP18 the Report of the Standing Committee and Secretariat on Rhinoceroses encouraged Botswana “to keep this matter [rhino poaching] under review to ensure that measures implemented to prevent and combat rhinoceros poaching remain effective and are quickly adapted to respond to any new trends.”<sup>8</sup> The situation has worsened since CoP18.

Botswana did not voluntarily provide any information to the Secretariat on measures and activities it is implementing to address poaching and illegal rhino horn trade in accordance with Decision 18.110 in advance of SC74, and as a result Botswana was not mentioned in the SC74 agenda item on rhinos (SC74 Doc. 37) nor during Parties’ discussion of the agenda item. The poaching situation in Botswana will likely be addressed in the IUCN/TRAFFIC report on the status, conservation, and trade of African and Asian rhinoceroses prepared for CoP19 in accordance with Resolution Conf. 9.14 (Rev. CoP17).

The EMSF recommends that South Africa submit a decision at CoP19 directing Botswana to report on any measures and activities it is implementing to address rhino poaching and illegal trade, including any intelligence led joint investigations into organized criminal networks, to the Secretariat in time for review by SC77.

The EMSF also recommends that South Africa support a decision to reconvene the CITES Rhinoceros Enforcement Task Force and consider providing funding for this meeting to take place.

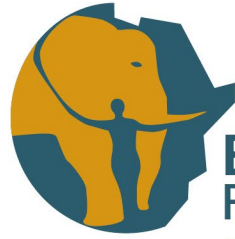
## LEOPARDS

We remain disappointed with the process used to review the CoP approved leopard trophy quotas and continue to believe the process failed to ensure that trade is not detrimental to the survival of the species. While Resolution Conf. 9.21 (Rev. CoP18) at least calls for review every nine years – a period of review longer than a typical leopard lifespan – that may not be sufficient going forward given concerns raised about these big cats by IUCN in the Red List assessment.

The EMSF remains concerned that Resolution Conf. 10.14 (Rev. CoP16) does not require a regular review of quotas. Despite text in the Resolution directing the Secretariat to “report...specific instances of concern to the Standing Committee and the relevant Parties”, we note that at the time of CoP17,

<sup>7</sup> <https://eia-global.org/reports/20220301-the-rise-of-rhinoceros-poaching-in-botswana>

<sup>8</sup> <https://cites.org/sites/default/files/eng/cop/18/doc/E-CoP18-083-01.pdf>



some of the quotas had not been reviewed for almost 20 years.<sup>9</sup> For example, Mozambique had not reviewed their leopard quota since CoP14 in 2007, Namibia and South Africa since CoP13 in 2004, Tanzania since CoP12 in 2002, and for other countries since CoP10 in 1997. While the related decisions adopted at CoP17 did result in a review, we urge South Africa to seek/support an amendment to Resolution Conf. 10.14 (Rev. CoP16), directing the CITES Animals Committee to undertake regular timely reviews of these quotas going forward and provide its recommendations to the CITES Standing Committee.

Official information obtained by the EMSF from the South African Department of Forestry, Fisheries and the Environment via the Promotion of Access to Information Act (PAIA) pertaining to leopard exports from one South African port of exit revealed that:

- 20 live leopards were exported for 2016, 2018 and 2019.
- Between 2016 to May 2021, at least 260 export, import and re-export permits were issued by South African authorities for trophy hunted leopards. These included permits for the export and re-export of 380 leopard body part (including full bodies, skulls, skins and bones) to 205 hunters/individuals as follows:
  - 109 “full mounts”/bodies (37 exports and 72 re-exports);
  - 171 skulls (59 exports and 112 re-exports)
  - 78 skins (33 exports and 45 re-exports)
  - 8 rug-mounts (4 exports and 4 re-exports)
  - 14 ‘floating’ bones (8 exports and 6 re-exports)
- An analysis of the permit data from 2016 to May 2021 from this single South African port of exit, also shows that:
  - The United States of America was the biggest importer of leopard trophies from and through South Africa, accounting for 231 trophy parts—over 60% of the exports and re-exports from South Africa.
  - Countries South Africa imported leopard body parts from—largely for presumed re-export include: Mozambique, Tanzania, Zambia and Zimbabwe.
  - South Africa is a major gateway in the trade in leopard body parts by the trophy hunting industry.

While Resolution Conf. 9.21 (Rev. CoP18) on Interpretation and application of quotas for species included in Appendix I instructs the Standing Committee and the Animals Committee to keep under regular review (every nine years or sooner if determined necessary) quotas for species included in Appendix I, the timeframe (up to three intersessional periods) is too long considering that these are species with the highest level of protection under the Convention. In addition, the Resolution only allows interim measures if “new scientific or management data have emerged to indicate that the

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<sup>9</sup> <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-39-01.pdf>

population of the species in the range State concerned can no longer sustain the agreed quota” rather than in response to problems relating to the implementation of Article III 2) a). In either case, the Resolution should be amended to recommend that, in the interim, should the Animals Committee be provided with new scientific or management data that indicate that the established quota may not be based on a valid non-detriment finding, it should review the available information and develop recommendations as appropriate.

A thorough, science-based review of the quotas in Resolution Conf. 10.14 (Rev. CoP16) is required. If such review is not possible, which is unlikely given the prior “review”, then these CoP set quotas and the Resolution Conf. 10.14 are no longer fit for purpose and a more scientifically based system should be adopted for permitting trade in these Appendix I cats.

## ASIAN BIG CATS

The EMSF is concerned that there was no opportunity at SC74 to discuss the adoption of specific time-bound, country-specific recommendations to China, Lao PDR and Viet Nam towards the phase-out of tiger farming and an end to the trade in tiger parts and derivatives.

In addition, the EMSF is concerned by the number of tiger (*Panthera tigris*) specimens exported from South Africa from 2017-2020 with purpose code “P”; including four bodies, ten rugs, five skins and twenty-two trophies, all traded with source code “C”.<sup>10</sup> We are concerned that while it appears that range States have applied strict controls on trade in tigers and their parts and products, South Africa is reported to allow exports of tiger parts and products from commercial facilities.<sup>11</sup>

## PANGOLINS

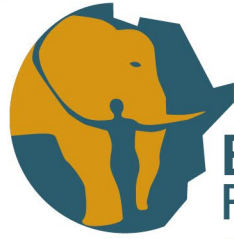
Widespread demand in China and the Chinese government’s failure to adopt and fully enforce bans on pangolin trade, possession, and use is driving illegal trade and, in turn, pushing pangolins toward extinction.

The IUCN report on Implementation of CITES Decision 18.240 paragraph c) on Pangolins (*Manis* spp.), submitted as SC74 Doc. 73.2 A2, only heightens our concern for pangolins’ future. The report concluded that, while data and population estimates remain lacking, available information show pangolin populations in most range States are declining and remain threatened. The report documented continued, significant illegal trade, with China, Lao People’s Democratic Republic, and Viet Nam as the primary destination countries. Indeed, the report found “there is weak evidence that

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<sup>10</sup> Gross exports from the CITES Trade Database

<sup>11</sup> <https://africageographic.com/wp-content/uploads/2022/03/FOUR-PAWS-Year-of-the-Tiger-Report>



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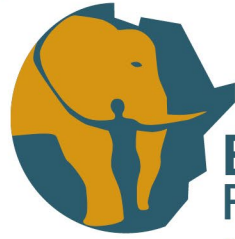
demand reduction efforts for pangolin products in key consumer countries are proving effective.” Finally, the report raised concerns regarding stockpile management, noting few range States have Standard Operating Procedures in place and thus may not ensure specimens do not enter illegal trade. Unlike other nations, China was unable or unwilling to document the quantity of its stockpiles and apparently did not provide details regarding stockpile recording systems, adequacy of its control measures, or disposal. China also claimed “it does not face any law enforcement challenges with regard to preventing poaching, illegal trade, and other illegal activities concerning pangolins.”

In the face of these facts, we believe the Secretariat’s originally proposed Decision text was inadequate to address the threats facing pangolins. See SC74 Doc. 73.

Particularly concerning, the proposed text for CoP19 largely only addressed identification of confiscated specimen and identification materials, not the ongoing illegal trade or stockpile management concerns. Due to several Parties’ suggestions the Decision text was strengthened. The SC agreed to recommend renewing Dec. 18.238’s directive that all range States develop and implement in situ pangolin management plans and report on implementation to the Secretariat. The SC further agreed to recommending urging Parties with stockpiles to establish and apply strict control measures.

While we are grateful these substantive measures will be proposed to the Parties at CoP19, we strongly feel they remain inadequate to address the ongoing, illegal trade in pangolins and demand in China. Therefore, we urge South Africa to ensure the following directives are included in the suite of pangolin decisions at CoP19:

- Urge Parties to eliminate supply and demand for pangolin parts through comprehensive enforcement and novel demand reduction activities, as existing demand reduction strategies are not proving effective;
- Encourage all Parties with legal domestic markets for pangolins to take all necessary legislative, regulatory, and enforcement measures to close their markets;
- Encourage Parties to increase law enforcement capacity and improve enforcement through international cooperation, financial, and intelligence-led overt and covert investigations, and collaboration with the private sector;
- Encourage Parties to submit biannual reports to the Secretariat on their pangolin stockpiles specifying quantity, sources, specimen types, management (including loss or sale), and current or planned use of specimens, including destruction, which should be encouraged;
- Direct the SC at SC77 to identify Parties (range, transit, and consumer countries) requiring attention in order to address illegal trade in pangolins; request these Parties to provide information on markets, seizures, stockpiles, trade, and breeding operations; and if not satisfied with the responses, develop recommendations, including possible compliance measures in accordance with Article XIII and RC 14.3, if appropriate, at SC78.



## NON-DETRIMENT FINDINGS (NDFS)

Compliance with Article IV lies at the very heart of the Convention's effectiveness. The danger that Appendix II species may become threatened if their trade is not regulated appropriately is the driving force behind their CITES listings. Consequently, the NDF forms the foundation upon which CITES trade decisions should be made and its proper implementation is essential to the success of the Convention.

Despite the formal requirement for an NDF, many species continue to be traded in the absence of information about the impact of such exploitation on the wild population. According to Resolution Conf. 16.7 (Rev CoP17) on Non-detriment findings, Parties are "encouraged" to provide the Secretariat written records of the science-based rationales and scientific information used for non-detriment finding assessments to be published on the CITES website. Publicly available written NDFs would allow Parties to easily determine whether robust and scientifically-based NDFs are being issued for CITES-listed species and provide a source of scientific information that may be useful for other Parties to reference when formulating their own NDFs.

The EMSF recommends that South Africa submit a document on compliance considerations to CoP19 that addresses timeframes for taking action, the repeated failure by Parties to make scientifically robust NDFs, and advising and assisting Parties in the handling of compliance matters.

## RESOLUTION CONF. 17.8 ON DISPOSAL OF ILLEGALLY TRADED AND CONFISCATED SPECIMENS OF CITES-LISTED SPECIES

The EMSF requests DFFE to sponsor a proposal to revise CITES Resolution Conf. 17.8, "Disposal of illegally traded and confiscated specimens of CITES-listed species," so that its text complies with the requirements of the text of the Convention. The EMSF recommends that DFFE sponsor a proposal that includes the following revisions.

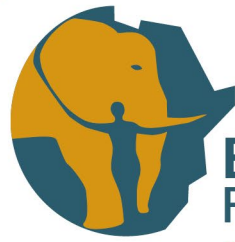
The word "Disposal" in the title of CITES Res. Conf. 17.8 should be changed to "custody" or "care" because the words custody and care carry the existence of responsibilities. Government agencies have responsibilities for anything in their custody or care. CITES Article VIII clearly requires the Management Authority to do more than merely "dispose" of a confiscated animal. Instead, CITES "entrusts" the Management Authority with the confiscated animal and requires the Management Authority to, after consultation, return the animal to the State of export or to a rescue centre, which CITES defines as "an institution designated by a Management Authority to look after the welfare of living specimens, particularly those that have been confiscated."<sup>12</sup>

The language should be deleted in Recommendation 8 (b)-(c) that allows seized and confiscated specimens to be deemed to have been imported or obtained in accordance with the provisions of the

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<sup>12</sup> CITES, art. VII





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Convention for purposes of export permits, re-export certificates, and investigatory or judicial purposes. Seizure and confiscation are prima facie cause to assume illegal elements in either the acquisition, transport, care, or some other aspect of the histories of these animals and plants. Enforcement does not seize specimens without probable cause and confiscation does not occur without due process. Deeming these seized and confiscated specimens to be of legal origin allows the animals to be put back into international trade. This conflicts with the explicit text of CITES because trade in specimens with illegal histories is prohibited under CITES.<sup>13</sup>

Deeming the seized and confiscated specimens as having been legally obtained makes it difficult to track the custody of confiscated animals. Many seized and confiscated animals end up back into the hands of traffickers or end up in inhumane and unregulated facilities. CITES does not currently require nations to track the custody of animals after they are seized or confiscated, which makes it difficult to work out where to direct resources and difficult to hold countries accountable if seized animals end up in places they should not. Deeming these specimens to be from legal origin and allowing them to be exported and re-exported makes it even more challenging to track the animals because nothing indicates that the animals were originally obtained through illegal actions. Instead, there should be some mechanism that categorizes the specimen as illegally obtained and only allows the animal to be exported and re-exported to their country of origin or genuine designated rescue centres.

Article VIII states that when a living specimen is confiscated, the specimen shall be returned to the country from which they were exported, or the specimen shall be returned “to a rescue center or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention.” Article VIII defines a “rescue center” as “an institution designated by a Management Authority to look after the welfare of living specimens, particularly those that have been confiscated.” This necessarily excludes any commercial solution, as well as any transfers of the specimens involved to facilities, such as vivisection laboratories, that do not look after the wellbeing of the animals.

The broadness and lack of clarification of Res. Conf. 17.8 renders Article VIII meaningless and opens the door for exploitation.<sup>14</sup> Res. Conf. 17.8 allows management authorities to avoid sending confiscated animals to designated rescue centers and in turn allows confiscated animals to be used in commercial schemes such as vivisection laboratories and zoos. Further, “[t]he broad guidelines on facilities that qualify as acceptable for housing confiscated wildlife, oftentimes valuable animals, may put those animals at risk of exploitation. The lack of formal mechanisms coupled with other challenges increase the chance for confiscated animals to be exploited even after recovery.”<sup>15</sup>

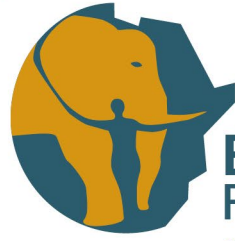
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<sup>13</sup> CITES, art. III, 2(b); art. IV, 2(b); art. V, 2(a)

<sup>14</sup> Shannon N. Rivera et al, *Surviving the Wildlife Trade in Southeast Asia: Reforming the ‘Disposal’ of Confiscated Live Animals under CITES*, 11 *Animals* 1, 10 (Feb. 8, 2021), <https://www.mdpi.com/2076-2615/11/2/439>.

<sup>15</sup> *Ibid.*





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Thus, DFFE should sponsor a proposal that creates strict guidelines on what constitutes a rescue centre, including a registry of rescue centres, with licensing, oversight, and inspections. There should also be a requirement that designated rescue centres work towards rehabilitating and reintroducing the animals back into the wild when it is safe to do so.

South Africa should sponsor a proposal to begin remedying these issues by deleting and changing the problematic language contained in Res. Con. 17.8 discussed above. Further, any care centre must follow strict guidelines to ensure they are “genuine sanctuaries and lifetime care facilities.”<sup>16</sup> South Africa should propose creating a registry of rescue centres, with licensing, oversight, and inspections. There should also be a requirement that designated rescue centres work towards rehabilitating and reintroducing the animals back into the wild when it is safe to do so.

Implementing these necessary changes will make Res. Conf. 17.8 more compliant with the text and purpose of CITES by decreasing the likelihood that confiscated animals will be exploited or end up back in the hands of wildlife traffickers, and by improving the welfare of confiscated animals.

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<sup>16</sup> Danielle Beurteaux, *Life After Wildlife Trafficking: What Happens to Rescued Animals?*