

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES  
OF WILD FAUNA AND FLORA

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LEGAL CONTROLS ON DOMESTIC TRADE OF APPENDIX I-LISTED SPECIES

This document has been submitted by the Secretariat in relation to agenda item 39 on domestic markets for frequently illegally traded specimens.

# Legal Controls on Domestic Trade of Appendix I-Listed Species

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The analysis of this report was current as of July 2020, at which point some States were revising or otherwise changing their legislative and regulatory framework governing domestic trade in Appendix-I listed species. Any errors remaining herein are solely those of the authors.

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## Executive Summary

1. While the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) primarily focuses on regulating *international* trade in threatened species, its success is correlative to the legal controls that individual countries put in place on *domestic* trade of wildlife. In 2016, the CITES Conference of the Parties adopted decisions directing the Secretariat to examine domestic controls in consumer markets for specimens of CITES-listed species for which international trade is predominantly illegal, particularly where a consumer market is or may be supplied by illegal imports.
2. In response to this decision and under the supervision of the CITES Secretariat, the Environmental Law Institute (ELI) has prepared two reports exploring existing controls on domestic trade in Appendix I-listed species in a variety of countries for which trade in such species is known to occur. The first report, completed in 2018, focused on legal controls on domestic trade in elephant ivory. This report is the second report and identifies legal controls on domestic trade in Appendix I-listed species other than elephants. Trade in “Appendix I-listed species” is used as a proxy for “CITES-listed species for which international trade is predominantly illegal.” The information compiled, trends identified, and recommendations presented in these reports provide options for future resolutions or guidance that could support stronger regulation of domestic trade in CITES Appendix I-listed species to combat illegal trade in such species.
3. This report examines existing legal controls on domestic trade in Appendix I-listed species that have been adopted by ten Parties to the Convention: China (including Hong Kong SAR and Macao SAR); the European Union; India; Indonesia; Lao PDR, Malaysia; Nigeria; Thailand; the United States of America; and Viet Nam. These Parties were selected based on an evaluation of available seizure data and other information regarding illegal trade in specimens of Appendix I-listed species, including documents submitted to the CITES Conference of the Parties and CITES committees from 2015 to 2020.
4. Individual country profiles were prepared for each of the selected Parties. Each country profile briefly describes the domestic market for Appendix I-listed species in the country and any demand reduction measures related to the illegal wildlife trade that have been adopted. They provide an overview of relevant laws, regulations, rules, and policies regulating the possession and domestic trade of Appendix I-listed species and the legal controls they create, including the legality of breeding
5. there may be discrepancies in the legality of possession and domestic trade for different Appendix I-listed species depending on whether they are listed as protected within a given jurisdiction.
6. The controls that are imposed tend to be full or partial prohibitions on possession and domestic trade in protected species, often with exceptions or exemptions for certain uses, like scientific research, zoos, conservation efforts, or for trade in items that were acquired prior to the Convention applying to them. In some cases, the exceptions are granted and tracked through permit systems facilitated by the national or local governments. Permits and registers may also be accompanied by recordkeeping or inspection requirements.
7. Some countries prohibit the breeding of Appendix I-listed species in captivity for commercial purposes. Others implement different variations of permitting or registration systems. In certain countries, captive-bred specimens must be uniquely marked in order to be kept or traded.
8. In most countries, designated enforcement bodies are authorized to seize and confiscate, or require the forfeiture, of specimens and products of Appendix I-listed species when they have been or are suspected of having been traded illegally. Legal controls tend to be less clear or provide discretion, however, with regard to the management of specimens and products once they are seized. When live specimens are seized, they may be kept in rescue centers, released into the wild, or otherwise maintained alive or, when the condition of the animal so requires, euthanized, while dead specimens or parts or products thereof may be destroyed, stored by the government, sold, or otherwise managed at the discretion of the relevant authority; but in some cases, laws do not provide any guidance related to the management of these items.

9. Individuals who violate provisions of country-specific legislation related to possession or domestic trade in wildlife typically face penalties consisting of varying levels of fines, prison terms, or both. Penalties may be increased for repeat offenses, particularly egregious offenses, or if the violator is a corporation or group. Additional penalties may include permit revocation, job loss, or required education. Some countries also acknowledge individuals who aid in enforcement by publicly recognizing them and/or allocating a portion of collected fines as a monetary award and to cover any costs incurred.
10. Despite the prevalence of legal controls, few court cases were identified that interpreted or implemented these provisions. As such, this report's analysis of legal controls is predominantly based on the regulations in place and does not necessarily reflect how these controls are implemented or enforced.
11. Based on the legal controls examined, six recommendations were developed to improve regulation of domestic possession and trade in Appendix I-listed species, including:
  - a) streamlining and clarifying applicable legal controls and improve their accessibility;
  - b) extending protections to all CITES Appendix I-listed species;
  - c) explicitly regulating online trade;
  - d) requiring proof of legal origin for possession and domestic trade of Appendix I-listed species;
  - e) adopting higher penalties for violations by corporations to ensure sufficient deterrent effect; and
  - f) specifying procedures for management and disposal of seized, confiscated, and forfeited specimens.
12. Adopting these measures will ensure that threatened species are better protected and can help to close legal loopholes that enable individuals to possess or trade at the national level specimens and products that may have been traded in violation of the Convention. They may also create a stronger deterrent effect on specific violators and prevent confiscated or forfeited specimens from winding up back in the market. Ultimately, strengthening controls of possession and domestic trade in Appendix I-listed species is important to combat international illegal trade in these species.

## Introduction

13. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international agreement regulating *international* trade in endangered and threatened species. However, trade in wildlife, including in endangered species, also occurs within domestic markets, and there are concerns that such legal domestic trade in some markets may be supplied by products illegally imported. At the 17th meeting of the CITES Conference of the Parties (CoP17, Johannesburg, September–October 2016), the Parties adopted two decisions on domestic controls in consumer markets for specimens of CITES-listed species for which international trade is predominantly illegal. The decisions directed the Secretariat to undertake a study of such markets and prepare recommendations to the Standing Committee for the Committee to present its recommendations at the 18th meeting of the CITES Conference of Parties (CoP18, Geneva, August 2019).
14. In implementing the decisions, the Secretariat divided the work into two phases, focusing the first phase on domestic markets for elephant ivory and the second phase on domestic markets for other species frequently traded illegally. The results of the first phase were presented by the Secretariat to the Standing Committee at its 70th meeting,<sup>1</sup> and the study and individual country profiles were provided as information documents.<sup>2</sup> The study also contained an initial approach to the scoping of the second phase of the work. The Standing Committee submitted the recommendations of the Secretariat to the 18th meeting of the CITES Conference of the Parties (CoP18, Geneva, August 2019) for consideration.<sup>3</sup> The Conference adopted the recommendations of the Secretariat, including two decisions to complete the work by, *inter alia*, “undertak[ing] a study of the domestic controls in consumer markets for specimens of CITES-listed species for which international trade is predominantly illegal, other than elephant ivory.”<sup>4</sup>
15. Pursuant to Decision 17.87 (Rev. CoP18), the CITES Secretariat commissioned the Environmental Law Institute (ELI) to analyze existing regulatory frameworks for domestic controls in consumer markets for specimens of CITES-listed species for which international trade is predominantly illegal, particularly where a consumer market is or may be supplied by illegal imports. Given that international trade for commercial purposes of specimens of Appendix I-listed species is *generally* prohibited and therefore illegal, it was agreed that the study would focus on national controls regulating domestic trade in Appendix I-listed species.<sup>5</sup>
16. ELI selected ten Parties for inclusion in the study by updating and refining the scoping study conducted as part of first phase and in consultation with the CITES Secretariat. An explanation of the selection methodology is contained in paragraphs 24 to 26, below.
17. ELI partnered with the University of California, Los Angeles School of Law, the University of Maryland Francis King Carey School of Law, the Northwestern Law School of Lewis and Clark College, Vermont Law School, and the University of Virginia School of Law to examine the laws, regulations, orders, and other legal instruments, as well as cases before courts that govern domestic trade in wildlife, in the jurisdictions selected. The research produced ten country profile case studies, included as Annex II of this report.
18. To facilitate analysis, the country profiles followed a standard template and methodology. This methodology seeks to ensure that the analysis for each country addresses the key issues in a consistent manner, better facilitating the synthesis of findings across countries.
19. This report synthesizes the key findings across the ten markets. It starts with a brief summary of the status and regulation of the domestic trade in CITES Appendix I-listed species in each jurisdiction. The report then discusses the key trends in legal controls on domestic trade in CITES Appendix I-

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<sup>1</sup> SC70 Doc. 28.

<sup>2</sup> SC70 Inf. 18 and SC70 Inf 19.

<sup>3</sup> SC70 SR, pp. 39–40.

<sup>4</sup> Decision 17.87–17.88 (Rev. CoP18).

<sup>5</sup> According to paragraphs 4-5 of Article VII of the Convention, trade in captive-bred specimens of App. I-listed species is an important exemption to this general rule.



listed species, and concludes with a discussion of potential priorities for regulating domestic markets in order to combat illegal international trade in endangered species.

### Selection of Consumer Markets for the Study

20. In selecting the consumer markets to be covered by the study, the approach presented in the first phase of the study was used and is summarized in Annex I. There is limited robust quantitative data available regarding domestic markets for endangered species but a key global source of data is the seizures reported to the CITES Secretariat, which includes the importing country, exporting country, and country of origin of seized specimens and products. This data provides some indication of the nature and scale of domestic consumption in different locations, but it does not necessarily specify the specimens' ultimate destination. Moreover, this data only reflects seizures, and not unnoticed or unreported trafficking.
21. Given the limited availability and comprehensiveness of quantitative data, Parties were selected for this study through a literature review and in consultation with the CITES Secretariat. The literature review included documents related to selected species and prepared for meetings of the Conference of the Parties, Standing Committee, Animals Committee, and Plants Committee from 2015 to 2020, as well as the United Nations Office on Drugs and Crime 2016 *World Wildlife Crime Report*. Documents were reviewed for mention of Parties that might be home to domestic markets supplied by imported specimens of select Appendix-I listed species that could lead to a demand for illegal imports. The species chosen for the literature review were selected by ELI, based on consultations with the CITES Secretariat, from among the Appendix I-listed species often traded illegally at the international level: rhinoceros, Tibetan antelope, Asian big cats, turtles and tortoises, pangolins, great apes, birds (*Rhinoplax vigil*, *Psittacus erithacus*, and *Cyanopsitta spixii*), American crocodile, iguanas, snakes, and orchids.
22. Because the limited availability and robustness of data can make it difficult to precisely determine the domestic markets for trade in a given species, any Party mentioned in connection with illegal trade in a particular species was included as a potential major market, except where a Party was specifically referred to as a source but not a destination country. There may be additional domestic markets for each species. Table I.1 tallies the species for which each Party is potentially home to a major domestic market. Available resources meant that up to ten case studies could be selected. The selection sought to include Parties in different regions. From this review and based on consultations with the CITES Secretariat, the following ten Parties were selected for inclusion in the study: China (including Hong Kong and Macao Special Administrative Regions (SARs)), European Union, India, Indonesia, Lao PDR, Malaysia, Nigeria, Thailand, United States of America, and Viet Nam. While the ten markets studied were selected based on a survey of illegal trade data for certain species, the study itself examined all domestic market controls regulating trade in Appendix I-listed species—not just the species mentioned in the previous paragraph—within each of the selected markets.

### Summaries of Country Profiles

This section summarizes each of the ten country profiles developed for this report. The full profiles are provided in Annex II to this report.

#### China (including Hong Kong SAR and Macao SAR)

23. The People's Republic of China is one of the most biodiverse countries in the world, hosting ten per cent of the plant species and fourteen per cent of the animals living on Earth.<sup>6</sup> It is also home to the largest market for wildlife products.<sup>7</sup> Commonly traded CITES-species include snow leopards, tigers,

<sup>6</sup> United Nations, Development Programme, China, "Biodiversity Conservation", 2020. Available at [https://www.cn.undp.org/content/china/en/home/ourwork/environmentandenergy/in\\_depth/biodiversity-conservation-.html](https://www.cn.undp.org/content/china/en/home/ourwork/environmentandenergy/in_depth/biodiversity-conservation-.html).

<sup>7</sup> Suzanna Stephens and Matthew Southerland, "China's Role in Wildlife Trafficking and the Chinese Government's Response", U.S.-China Economic and Security Review Commission, Staff Research Report, 6 December 2018. Available at <https://www.uscc.gov/sites/default/files/Research/2018.12.06%20-%20Wildlife%20Trafficking%20-%20Final%20Version.pdf>.

rhinoceroses, pangolins, sharks, which are used as medicine, food, luxury goods, etc.<sup>8</sup> China, Hong Kong SAR, and Macao SAR each have wildlife laws in place that impose legal controls on domestic trade.

#### 24. People's Republic of China

- a) In February 2020, the Standing Committee of the National People's Congress adopted the "Decision on a Complete Ban on Illegal Wildlife Trade and the Elimination of the Unhealthy Habit of Indiscriminate Wild Animal Meat Consumption For the Protection of Human Life and Health as a Reaction to the Corona-pandemic."<sup>9</sup> The Decision expands existing prohibitions and escalates penalties for illegal wildlife trading.<sup>10</sup> It bans all trade in wild animals already prohibited under the Law on the Protection of Wildlife (WPL) and increases penalties for those that trade in them; it bans trade in meat from wild terrestrial animals and subjects violators to the penalties already contained in the law; and calls for public education and stronger enforcement.<sup>11</sup>
- b) It seems that the Decision will lead to amendments to the WPL, but in the meantime, the portions of the WPL not directly referenced in the Decision appear to still be in effect.
- c) The WPL is the primary law regulating possession and domestic trade of Appendix I-listed species in the People's Republic of China. Most recently updated in 2016, the law seeks to protect endangered and rare wildlife species, as well as "terrestrial species which are of important ecological, scientific and social value" by, among other things, regulating the domestic trade of specimens and parts thereof.<sup>12</sup> The law distinguishes between endangered and rare species that receive "special state protection" (which are protected nationwide) and those that receive "special local protection" (which are protected as determined by the specific provinces, regions, or municipalities in which they are listed).<sup>13</sup> Terrestrial species determined to be of important value by the state are listed separately.<sup>14</sup> The WPL seems to allow for the classification of Appendix I-listed species as wildlife under special state protection, so long as the state department of wildlife approves it.<sup>15</sup>
- d) The WPL prohibits the sale, purchase, or use of species, or products thereof, on the special state protection list.<sup>16</sup> Individuals and organizations may be exempted from this prohibition, however, if the sale, purchase, or use "is necessary for scientific research, captive breeding, public exhibition or performance, heritage conservation, or other special purposes."<sup>17</sup> Specimens or products exempted from the prohibition on trade and use must satisfy quarantine and marking requirements. However, specimens and parts thereof of species under special state protection can never be used or traded (sold or purchased) for purposes of consumption as food.<sup>18</sup>
- e) Species under special state protection can be bred in captivity by scientific research institutions for conservation purposes, as well as by any individuals or organizations who receive the appropriate permits from their respective province, region, or municipality-level department of wildlife protection, so long as the breeding operations support conservation efforts and do not

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<sup>8</sup> Lu Feng and others, "Towards a More Sustainable Human-Animal Relationship: The Legal Protection of Wildlife in China", *Sustainability*, vol. 11, No. 3112 (June 2019). Available at <https://www.mdpi.com/2071-1050/11/11/3112/pdf>.

<sup>9</sup> China, *Decision on a Complete Ban on Illegal Wildlife Trade and the Elimination of the Unhealthy Habit of Indiscriminate Wild Animal Meat Consumption for the Protection of Human Life and Health* (February 2020). Available at <http://www.npc.gov.cn/englishnpc/laws/202003/e31e4fac9a9b4df693d0e2340d016dcd.shtml>.

<sup>10</sup> *Ibid.*, sect. 1.

<sup>11</sup> *Ibid.*, sects. 1-2, 5-6.

<sup>12</sup> China, *Law of the People's Republic of China on the Protection of Wildlife*, arts. 1, 2, 4 (2018).

<sup>13</sup> *Ibid.*, arts. 10, 41.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, art. 35 (stating that "[l]ists of wildlife and products thereof the trade in which is prohibited or restricted by international conventions which China has concluded or to which China is a party shall be drawn up, revised and announced by the Chinese CITES Management Authority.... The wildlife included in [this list], subject to approval by the department of wildlife protection under the State Council, can be managed as wildlife under special state protection where this law applies").

<sup>16</sup> *Ibid.*, art. 27.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*, art. 30.

disturb wild populations.<sup>19</sup> The state maintains an updated list of special state protected species that can be bred in captivity, and specimens and parts of such species that are legally bred in captivity can be marked and used or sold.<sup>20</sup> Falsification or modification of permits or other documentation that allows for legal use or trade of species and products thereof is prohibited.<sup>21</sup>

- f) Species not under special state protection may be traded and used, including for consumption as food, so long as there is proof of legal sourcing or acquisition, subject to the recent decision concerning terrestrial animal species.<sup>22</sup> Offering specimens or products of any wildlife for trade or use, and providing a platform to facilitate illegal commercial activity is prohibited (including through online forums).<sup>23</sup>
- g) Local and state government officials are responsible for enforcing the WPL.<sup>24</sup> There are a range of penalties that apply to different violations: unpermitted breeding of species under special state protection shall result in seizure of specimens and a fine of one to five times the value of the seized specimens and products.<sup>25</sup> Improper use, trade, carrying, or transport of specimens or products from species under special state protection shall result in seizure of the products and a fine in the amount of two to ten times the value of the seized products, and may result in the revocation of permits and other approvals.<sup>26</sup> Improper use, trade, or transport of any other species shall result in seizure and a fine of one to five times the value of the products.<sup>27</sup> Improper use or trade of wildlife products as food warrants seizure of the products and illegally-derived income, as well as a fine of two to ten times the value of the seized goods.<sup>28</sup> Improper advertisements are penalized under the Advertising Law, but the facilitation of illegal trading, including through online platforms, warrants shutting down the illegal practices, seizing profits, and a fine of two to five times the amount of any improper profits, or between 10,000 and 50,000 yuan.<sup>29</sup> Falsifying or modifying permits or other documents shall result in seizure of the documents and any income derived from them, as well as a fine of 50,000 to 200,000 yuan.<sup>30</sup> Illegal sale of species under special state protection is also punishable by up to five years' imprisonment, five to 10 years' imprisonment for serious circumstances, and a minimum of 10 years' imprisonment for especially serious circumstances.<sup>31</sup> Under a recent decision of the Standing Committee, "trading...wild animals...as prohibited in the [WPL] and other relevant laws...shall be subject to severer penalties than those prescribed in existing laws," though it is not clear specifically what this means in practice.<sup>32</sup>
- h) Local and state government departments of wildlife protection are responsible for seized specimens and products.<sup>33</sup> When a department of wildlife protection determines that a specimen of a species under special state protection should be released into the wild to advance the conservation of the species, it has the authority to facilitate such action.<sup>34</sup>

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<sup>19</sup> *Ibid.*, arts. 25-26.

<sup>20</sup> *Ibid.*, art. 28.

<sup>21</sup> *Ibid.*, art. 39.

<sup>22</sup> *Ibid.*, arts. 27, 30.

<sup>23</sup> *Ibid.*, arts. 31-32.

<sup>24</sup> *Ibid.*, arts. 34, 36, 42.

<sup>25</sup> *Ibid.*, art. 47. *Valuation procedures related to seized goods are determined by the state department of wildlife protection (Ibid., sect. 57).*

<sup>26</sup> *Ibid.*, art. 48.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*, art. 49.

<sup>29</sup> *Ibid.*, arts. 50-51.

<sup>30</sup> *Ibid.*, art. 55.

<sup>31</sup> *China, Criminal Law of the People's Republic of China, art. 341 (1997). The law does not specify what makes the circumstances of a crime serious or especially serious.*

<sup>32</sup> *China, Decision on a Complete Ban of Illegal Wildlife Trade and the Elimination of the Unhealthy Habit of Indiscriminate Wild Animal Meat Consumption for the Protection of Human Life and Health, art. 1 (February 2020).*

<sup>33</sup> *China, Law of the People's Republic of China on the Protection of Wildlife, art. 56 (2018).*

<sup>34</sup> *Ibid.*, art. 26.

- i) In addition to penalizing individuals and organizations that violate wildlife protection laws and regulations, the WPL also allows for local or national governments to recognize individuals who have aided in the protection of wildlife.<sup>35</sup>
- j) The State Council has promulgated a number of implementing regulations under the WPL that expand upon prohibitions, outline exceptions, define terms, and more.
- k) The Regulations on Wild Plants Protection prohibit sale of wild plants under first-class special state protection.<sup>36</sup> The Regulations prohibit purchase and sale of second-class state protected plants without approval from the department of wild plants administration under the provincial, municipal, or regional autonomous government.<sup>37</sup>

## 25. Hong Kong Special Administrative Region (SAR)

- a) Domestic trade of Appendix I-listed species is primarily controlled by the Protection of Endangered Species of Animals and Plants Ordinance in Hong Kong SAR.<sup>38</sup> The Ordinance generally prohibits possession of specimens of Appendix I-listed species and subjects violators to a HK\$5 million fine (approximately US\$645,000 as of August 2020) and two years in prison or a HK\$10 million fine and 10 years in prison, depending on the nature of the violation.<sup>39</sup> The prohibition does not apply to: specimens of Appendix I-listed species that were imported before the Convention came into force in Hong Kong SAR in 1976 or before CITES applied to the species at issue; specimens of Appendix I-listed species which the owners have permission to transport; and specimens for which the Director of Agriculture, Fisheries and Conservation has granted a license to a designated individual.<sup>40</sup>
- b) The Ordinance allows for Appendix I-listed species to be bred in captivity or artificially propagated for commercial purposes so long as, for animal species, the facility is registered with the CITES Secretariat.<sup>41</sup> Offspring of Appendix I-listed species bred in captivity are regulated as Appendix II-listed species.<sup>42</sup> Individuals must hold licenses to possess Appendix I-listed species bred in captivity, unless the specimen falls under an exemption; violators are subject to a fine of HK\$500,000 and one year in prison, or HK\$1 million and seven years in prison depending on the nature of the conviction.<sup>43</sup> Individuals are prohibited from falsifying information, including for purposes of registration, qualifying for exemptions, or seeking licenses or other permissions.<sup>44</sup>
- c) In addition to penalizing violators, the Ordinance provides protections for individuals that report violations.<sup>45</sup> Further, when such individuals participate in successful cases, they receive a cash reward.<sup>46</sup>
- d) If an authorized officer has reason to believe that someone is holding an Appendix I-listed species in violation of any provision of the Ordinance, they may seize the specimen or product.<sup>47</sup> If an item is seized and ultimately found not to have been illegally possessed or traded, the seizing officer shall not face any penalties.<sup>48</sup> Once an item is seized, the Director may release, sell, or dispose of it if it is a live specimen that cannot be kept in captivity, a live plant that cannot

<sup>35</sup> *Ibid.*, art. 9.

<sup>36</sup> China, *Regulations on Wild Plants Protection*, art. 18 (2017).

<sup>37</sup> *Ibid.*

<sup>38</sup> Hong Kong SAR, *Protection of Endangered Species of Animals and Plants Ordinance*, Cap. 586 (1 December 2006).

<sup>39</sup> *Ibid.*, sect. 9.

<sup>40</sup> *Ibid.*, sects. 20, 22, 23.

<sup>41</sup> *Ibid.*, sect. 2(2).

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*, sect. 15.

<sup>44</sup> *Ibid.*, sect. 44.

<sup>45</sup> *Ibid.*, sect. 45.

<sup>46</sup> The Government of the Hong Kong Special Administrative Region, Agriculture, Fisheries and Conservation Department, "Reward Scheme". Available at [https://www.afcd.gov.hk/english/conservation/con\\_end/con\\_end\\_rew/con\\_end\\_rew.html](https://www.afcd.gov.hk/english/conservation/con_end/con_end_rew/con_end_rew.html).

<sup>47</sup> Hong Kong SAR, *Protection of Endangered Species of Animals and Plants Ordinance*, Cap. 586, sect. 34 (1 December 2006).

<sup>48</sup> *Ibid.*, sect. 34(3).

reasonably be detained, or a perishable item.<sup>49</sup> Any proceeds from such sales of seized Appendix I-listed species are general revenue.<sup>50</sup>

## 26. Macao Special Administrative Region (SAR)

- a) The 2017 Law implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora regulates domestic trade and possession of Appendix I-listed species in Macao SAR.<sup>51</sup> It only allows for “local trade,” possession, or transport of Appendix I-listed species “in exceptional circumstances, so as not to further endanger the survival of the respective species.”<sup>52</sup> The domestic sale, offering for sale, purchasing, offering to purchase, or use of Appendix I-listed species for commercial purposes is generally banned, as is the possession of any illegally acquired specimen or product of such species.<sup>53</sup>
- b) There are several exceptions to the ban, including for possession of pre-CITES specimens with proper documentation, taxidermy of pre-CITES specimens, or use for educational or research purposes.<sup>54</sup> Each of these uses must be registered, except for owners of pre-CITES specimens.<sup>55</sup> The law does not prohibit captive breeding of Appendix I-listed species, and requires facilities breeding specimens of any CITES-listed species to register with the Directorate of Economic Services (DSE).<sup>56</sup> Given the ban on domestic trade and possession of Appendix I-listed species, however, it seems the law would not allow for the breeding of these species in captivity for commercial purposes.
- c) Specimens involved in presumed violations may be seized temporarily or permanently, depending on the nature of the violation.<sup>57</sup> If the violator cures the problem within eight days, they may be able to get the specimen back; if not, the specimen may be taken permanently.<sup>58</sup>
- d) Individuals who violate any provisions of the law may face fines, confiscation of the relevant specimens, and loss of current certificates and eligibility for future certificates.<sup>59</sup> Furthermore, those that commit a subsequent offense within one year of the conclusion of the court case of a previous offence will face a 25 percent increase in the minimum fine for the corresponding violation.<sup>60</sup> Notably, an attempted violation may also be punished, although the law does not specify the precise penalties for these cases.<sup>61</sup>
- e) Those that violate the ban on domestic possession and trade of Appendix I-listed species for commercial purposes face fines of between MOP 200,000 and 500,000 and must turn over the associated specimens to the state.<sup>62</sup> Unlawful taxidermy of an Appendix I-listed species or the failure to register the lawful keeping or breeding of Appendix I-listed species in captivity shall result in fines ranging between MOP 4,000 and 60,000.<sup>63</sup> The failure to properly report captive breeding statistics, including the number of specimens held, can result in a fine of MOP 2,000 to 40,000. Further, failing to adhere to the revocation of a certificate or to return a null certificate to authorities in a timely manner can result in a fine of MOP 1,000.<sup>64</sup>

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<sup>49</sup> *Ibid.*, sect. 35.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Macao SAR, Law implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Law No. 2/2017.*

<sup>52</sup> *Ibid.*, art. 4.

<sup>53</sup> *Ibid.*, art. 21.

<sup>54</sup> *Ibid.*, arts. 22–23.

<sup>55</sup> *Ibid.*, art. 24.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*, art. 30.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*, art. 36.

<sup>60</sup> *Ibid.*, art. 37.

<sup>61</sup> *Ibid.*, arts. 31–32.

<sup>62</sup> *Ibid.*, art. 31.

<sup>63</sup> *Ibid.*, art. 32.

<sup>64</sup> *Ibid.*

## European Union

27. The European Union (EU), comprising 27 Member States,<sup>65</sup> is a transit or potential consumer market for rhinoceroses, pangolins, elephants, seahorses, Tibetan antelopes, and Asian big cats, among others. Numerous EU Member States have undertaken demand reduction campaigns, primarily focused on educating consumers about existing legislation and the consequences of illegal wildlife trade on species and the environment.<sup>66</sup> For purposes of this report and under the EU Wildlife Trade Regulations, because of the EU's Single Market, domestic trade within the EU encompasses trading within and among Member States.<sup>67</sup> Legal controls on domestic trade in Appendix I-listed species are in place both at the EU and Member State levels.
28. The European Commission has promulgated several regulations implementing CITES and outlining controls targeting both international and domestic trade in protected species, collectively known as the EU Wildlife Trade Regulations. The first, Council Regulation No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein, generally prohibits “the purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale” of Appendix I-listed species for which no reservation has been entered.<sup>68</sup> These same prohibitions apply to online markets as well.<sup>69</sup>
29. Member States may exempt certain types of specimens and items from this prohibition, for example those acquired or made before CITES applied to them, born and bred in captivity, or necessary for scientific study, by granting on a case-by-case basis transaction-specific or specimen-specific certificates.<sup>70</sup> In recent guidance discussing this provision in the context of rhinoceros horns, the Commission pointed out that Member States have discretion when issuing certificates allowing for otherwise prohibited commercial uses, and can refrain from doing so to advance the protection of species so long as it does not violate other EU law.<sup>71</sup>
30. Individual Member States may prohibit the possession of Appendix I-listed species as they see fit.<sup>72</sup> When live specimens of Appendix I-listed species are transported within the EU, they must be accompanied by the proper documentation.<sup>73</sup>
31. Specimens of Appendix I-listed species that were bred in captivity, artificially propagated, or are covered by other specific exemptions can be used in domestic trade so long as a certificate for

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<sup>65</sup> European Union, “Countries”, 28 July 2020. Available at [https://europa.eu/european-union/about-eu/countries\\_en#the-27-member-countries-of-the-eu](https://europa.eu/european-union/about-eu/countries_en#the-27-member-countries-of-the-eu).

<sup>66</sup> European Commission, *Analysis and Evidence in support of the EU Action Plan against Wildlife Trafficking* (European Commission, Brussels, 2016), sect. 4.2.3.

<sup>67</sup> European Union, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, art. 2(u).

<sup>68</sup> *Ibid.*, arts. 3, 8(1).

<sup>69</sup> TRAFFIC, *Reference Guide: European Union Wildlife Trade Regulations* (European Commission and TRAFFIC, Brussels, June 2017), p. 109; European Commission, *Analysis and Evidence in support of the EU Action Plan against Wildlife Trafficking* (European Commission, Brussels, 2016), sect. 1.1, Box 1), 1.1, Box 1 (suggesting that many EU countries have adopted restrictions specific to controlling online wildlife trade, like the Czech Republic, which requires that the appropriate CITES documentation be posted online with any products listed for sale).

<sup>70</sup> European Union, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, art. 3(3); European Union, Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, arts. 48, 59, 62.

<sup>71</sup> European Union, Commission Notice: *Guidance document on the export, re-export, import and intra-Union trade of rhinoceros horns*, 2019/C 386/04, sect. 3(b) (stating “[t]he use of the term ‘may’ in Article 8(3) implies that Member States are not generally obliged to grant a certificate for intra-EU trade even when those conditions are met, except if otherwise required by Union law. In other words, Article 8(3) cannot be considered as conferring the right to an applicant to obtain a certificate for intra-EU trade. Member States can refuse to grant a certificate if this is appropriate to protect the species or to guarantee its conservation, and if the refusal does not go beyond what is necessary to achieve that aim.”).

<sup>72</sup> European Union, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, art. 3(2).

<sup>73</sup> *Ibid.*, art. 9.



commercial use has been acquired.<sup>74</sup> Appendix I-listed live vertebrates bred in captivity for commercial purposes must first be “uniquely marked.”<sup>75</sup> Artificially propagated plants and animals listed in Annex X that are bred in captivity and appropriately marked may be used for commercial purposes without certificates.<sup>76</sup> Further, pre-issued certificates may be granted to captive breeding facilities that breed Appendix I-listed species for commercial purposes if they agree to keep records of their operations and make them available to the management authority upon request.<sup>77</sup>

32. Each Member State is tasked with adopting its own sanctions for violations of these provisions.<sup>78</sup> Penalties typically include fines, terms of imprisonment, or both.<sup>79</sup>
33. Courts in several EU countries have interpreted various provisions of the EU Wildlife Trade Regulations and related national legal controls in cases. A court in France, for example, determined that Regulation No. 338/97 allows Member States to prohibit all commercial uses of captive bred specimens of Appendix I-listed species within their territories.<sup>80</sup>

### India

34. India is primarily a source and transit market for certain Appendix I-listed species, including elephants, rhinoceroses, Tibetan antelope, Asian big cats, and pangolins.<sup>81</sup> In 2019, the India Wildlife Crime Control Bureau (WCCB) undertook an education campaign in partnership with the United Nations Environment Programme that sought to educate travelers passing through Chennai Airport about the harm caused by wildlife trafficking, particularly involving tigers, pangolins, star tortoises, and tokay geckos, and, ultimately, to reduce demand for these illegal products.<sup>82</sup>
35. Possession and domestic trade of select Appendix I-listed species of animals and plants in India is regulated under the Wildlife Protection Act of 1972 (WL(P)A), which is overseen and implemented by the Ministry of Environment, Forests and Climate Change and individual state governments.<sup>83</sup> The WL(P)A prohibits commercial trade in animal species listed in Schedule I or Part II of Schedule II under the Act, which encompass some (predominantly native) but not all Appendix I-listed species.<sup>84</sup> The WL(P)A also prohibits domestic trade in “specified plants” listed in Schedule VI of the Act, three of which are CITES Appendix I-listed species.<sup>85</sup> Under the WL(P)A, it is illegal to “possess, sell, offer for sale, or transfer by way of gift or otherwise, or transport any specified plant, whether alive or dead, or part or derivative thereof.”<sup>86</sup>
36. While the WL(P)A does not expressly regulate online trade, its provisions may be interpreted to prohibit commercial online trade in scheduled species. Further, the WCCB has requested through a formal advisory that the Chief Wildlife Warden, when issuing hunting permits and certificates of

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<sup>74</sup> *Ibid.*, art. 8(3); European Union, Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, art. 48(1)(c).

<sup>75</sup> European Union, Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, art. 62 (marking requirements are described in Articles 64 through 68).

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*, art. 63.

<sup>78</sup> European Union, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, art. 16.

<sup>79</sup> The EU country profile provides additional information about country-specific penalties.

<sup>80</sup> Court of Justice of the European Union (Sixth Chamber), Criminal proceedings against Xavier Tridon, Case C-510/99, Judgment of the Court, 23 October 2001.

<sup>81</sup> United Nations, Environment Programme, “Spotlight on India’s soaring wildlife crime”, story, 21 May 2019. Available at <https://www.unenvironment.org/news-and-stories/story/spotlight-indias-soaring-wildlife-crime>; Samir Sinha, Handbook on Wildlife Law Enforcement in India (New Delhi, TRAFFIC, 2010), p. 32.

<sup>82</sup> United Nations, Environment Programme, “Spotlight on India’s soaring wildlife crime”, story, 21 May 2019.

<sup>83</sup> India, Wildlife Protection Act, sect. 1 (1972).

<sup>84</sup> *Ibid.*, Schedule I and Schedule II, Part II.

<sup>85</sup> *Ibid.*, chap. I, sect. 2, Schedule VI.

<sup>86</sup> *Ibid.*, sect. 17A(b).

ownership, include provisions prohibiting the public display, including on social media, of scheduled specimens or products.<sup>87</sup>

37. Specimens of regulated species may be legally held or exchanged in domestic trade if the government has granted permission to do so in the particular instance at hand.<sup>88</sup> To legally possess scheduled animal specimens, individuals must be granted certificates of ownership by the Chief Wildlife Warden, which may require special marking of the specimen and proof of capacity to care for them.<sup>89</sup> For plant specimens, members of scheduled tribes are exempt from the prohibition on possession of specified plants so long as they are in their district of residence and holding the specified plant or part thereof for personal use.<sup>90</sup> Others may legally possess scheduled plants if they hold licenses that allow them to do so.<sup>91</sup>
38. Individuals may engage in domestic trade of scheduled animal species legally if they receive a license from the Chief Wildlife Warden allowing them to do so.<sup>92</sup> Such licenses may be granted to dealers in animals, animal parts, trophies, and captive animals after the Chief Wildlife Warden or authorized officer considers, among other things, the license applicant's experience and potential impacts on wildlife populations.<sup>93</sup> If a license is ultimately granted, it can only last for one year, is revocable by authorities, and cannot be transferred.<sup>94</sup>
39. The same is true for scheduled plants: licenses are required for cultivation and/or dealing in specimens, except when specimens will be used for purposes of "education, scientific research, collection, preservation, display in a herbarium of any scientific institution, or propagation by a person or an institution approved by the Central Government."<sup>95</sup> Once cultivated, specimens can only be held, sold, or offered for sale if the corresponding license allows (and specimens can only be purchased from licensed cultivators).<sup>96</sup>
40. There currently are no captive breeding facilities in India that have registered with CITES,<sup>97</sup> and the research team was unable to identify a country-level database of such facilities. When regulated specimens or products are transported between Indian states, the owner must alert the receiving state's authorities of the presence of the protected species in its state.<sup>98</sup>
41. Specimens of and products from protected species that were held for personal possession or for commercial purposes when the WL(P)A took effect (1972) had to be declared to the Chief Wildlife Warden, who could then require the marking of the specimens or products.<sup>99</sup> Any businesses engaged in domestic trade of scheduled species when the WL(P)A came into effect could apply for renewable licenses that would allow them to continue operating for one year, potentially with certain conditions imposed by the Chief Wildlife Warden.<sup>100</sup> Individuals granted licenses to continue operating also have to maintain and submit records of their operations to the Chief Wildlife Warden upon request.<sup>101</sup> It is not clear whether any of these records are made available to the public.
42. The Chief Wildlife Warden and other authorized officers can take various enforcement related actions, including seizing, freezing, or requiring the forfeiture of specimens of or products made from

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<sup>87</sup> India, Wildlife Crime Control Bureau, "Advisory on display of wild animal articles, trophies, etc. in social media-reg", memo, 30 December 2014. Available at <http://wccb.gov.in/WriteReadData/userfiles/file/Advisories/advisory.pdf>.

<sup>88</sup> India, Wildlife Protection Act, chap. IIIA, sects. 17A-17H, chap. V, sect. 44 (1972).

<sup>89</sup> *Ibid.*, chap. IIIA, sect. 17A, 17F, chap. V, sect. 42.

<sup>90</sup> *Ibid.*, sect. 17A(b).

<sup>91</sup> *Ibid.*, chap. IIA, sect. 17F.

<sup>92</sup> *Ibid.*, chap. V, sect. 44.

<sup>93</sup> *Ibid.*, chap. V, sects. 44-45, 49B.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*, sects. 17B-17D.

<sup>96</sup> *Ibid.*, sects. 17F-17G.

<sup>97</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, CITES registers. Available at <https://www.cites.org/eng/common/reg/cb/species.html> (accessed on 15 June 2020).

<sup>98</sup> *Ibid.*, sects. 43(2), 48A.

<sup>99</sup> *Ibid.*, sects. 41, 44(2).

<sup>100</sup> *Ibid.*, sect. 44. In the law, the officer is referred to as the "Chief Wild Life Warden," but the institution uses "Chief Wildlife Warden" in practice.

<sup>101</sup> *Ibid.*, sect. 47.



species protected under the WL(P)A when they suspect there has been a violation of the Act.<sup>102</sup> State governments then determine how to manage confiscated wildlife and wildlife products.<sup>103</sup> Should an authorized officer wrongfully seize something, however, they may be subject to a fine of 500 rupees, imprisonment for six months, or both.<sup>104</sup>

43. In addition, violators may also face penalties in the form of fines, imprisonment, or both. Depending on the nature of the violation, individuals may face up to seven years in prison (potentially more if a tiger reserve is involved), and/or up to 5,000,000 rupees in fines (approximately US\$68,500 as of August 2020).<sup>105</sup> Penalties may be higher for second- and subsequent-time offenders than for first offenses.<sup>106</sup> Any associated WL(P)A licenses or permits shall also be cancelled.<sup>107</sup> If a company is implicated in a violation, any employee that “was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company” can be held responsible.<sup>108</sup> Individuals suspected of violating the WL(P)A may avoid further proceedings and be released from custody by paying their fines early if they are suspected of having committed a violation that does not require a prison term, and for which a fine of less than 25,000 rupees is owed.<sup>109</sup> When a fine is collected, the court (or an authorized officer, for compounded offenses) may decide to give up to half of the amount collected to any individuals that helped with detection or apprehension in the case.<sup>110</sup> State Governments may also authorize awards of up to 10,000 rupees to individuals for helping to enforce the law.<sup>111</sup>
44. The WL(P)A has been interpreted by the courts in at least one case, where the Delhi High Court held that animal hair is considered an animal product for purposes of the Act.<sup>112</sup>

#### Indonesia

45. Indonesia is both a source and consumer country for CITES Appendix I-listed species, including species of songbirds, crocodiles, sun bears, pangolins, among others.<sup>113</sup> In a recent attempt to reduce demand for protected species and increase enforcement of wildlife trade laws, the Ministry of Marine Affairs and Fisheries and other government offices, together with non-governmental organizations (NGOs), religious leaders, and athletes, launched a campaign entitled “Indonesia Says No to Illegal Wildlife Trade,” as well as an online portal through which residents could report suspected violations.<sup>114</sup>
46. Indonesia has enacted several legal controls to regulate trade in Appendix I-listed species. Under the Conservation of Living Resources and their Ecosystem Act, most recently amended in 2018, protected species and parts thereof cannot generally be purchased, sold, kept, or transported.<sup>115</sup> Protected species are listed in government regulations, the most recent amendment of which expanded the list to include 921 native species.<sup>116</sup> The list includes notable Appendix I-listed species, such as the loggerhead and green turtles and Asian elephant, but excludes others like the Mindoro crocodile. Individuals who negligently violate the prohibition on domestic trade and possession may face fines of up to 50 million rupiah and confinement for up to one year, while those who intentionally

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<sup>102</sup> *Ibid.*, sects. 50(1)(c), 58C, 58F.

<sup>103</sup> *Ibid.*, sects. 50(4), 50(6), 58G.

<sup>104</sup> *Ibid.*, sect. 53.

<sup>105</sup> *Ibid.*, sect. 51.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*, sects. 51(2)–(3).

<sup>108</sup> *Ibid.*, sect. 58.

<sup>109</sup> *Ibid.*, sect. 54.

<sup>110</sup> *Ibid.*, sect. 60A.

<sup>111</sup> *Ibid.*, sect. 60B.

<sup>112</sup> *High Court of Delhi, Cottage Industries Exposition Ltd. & ANP. v. Union of India & Others, Judgement, 3 September 2007.*

<sup>113</sup> *Alice Latinne and others, “Characterizing and Quantifying the Wildlife Trade Network in Sulawesi, Indonesia”, Global Ecology and Conservation, vol. 21 (March 2020). Available at <https://www.sciencedirect.com/science/article/pii/S235198941930678X>.*

<sup>114</sup> *WWF-Indonesia, “Indonesia Says No to Illegal Wildlife Trade, Securing National Food Sustainability”, 5 November 2018. Available at [https://d2d2tb15kqhejt.cloudfront.net/downloads/\\_press\\_release\\_indonesia\\_says\\_no\\_to\\_illegal\\_wildlife\\_trade\\_securing\\_national\\_food\\_sust.pdf](https://d2d2tb15kqhejt.cloudfront.net/downloads/_press_release_indonesia_says_no_to_illegal_wildlife_trade_securing_national_food_sust.pdf).*

<sup>115</sup> *Indonesia, Conservation of Living Resources and their Ecosystems Act, No. 5 of 1990, art. 21.*

<sup>116</sup> *Ibid.*, art. 20; *Indonesia, Conservation of Living Resources and their Ecosystems Act No. 20 of 2018.*

violate the provisions may face fines of up to 100 million rupiah (approximately US\$6,835 as of August 2020) and imprisonment for up to five years.<sup>117</sup> The Conservation of Living Resources and their Ecosystems Act also authorizes officials to confiscate specimens involved in violations.<sup>118</sup>

47. Possession and domestic trade of certain species of fish and crocodiles are restricted under the Conservation of Fishery Resources Regulation and the Guidelines on Crocodile Management in Indonesia Decree, respectively.<sup>119</sup> Protected species of fish can only be traded when they are specimens or parts thereof that were bred in captivity, and violations of the regulation can result in fines and other penalties, such as permit freezing or revocation.<sup>120</sup> All native crocodile species also receive certain protections, but can be bred in captivity and traded if the appropriate license is secured.<sup>121</sup> Violations of this Decree can similarly result in fines and other penalties.<sup>122</sup>
48. Under Government Regulation No. 8/1999 on the Utilization of Wild Plants and Animal Species, individuals can breed protected species in captivity or artificially propagate them if they have secured the requisite permit from the Minister of Environment and Forestry and meet certain qualifications related to population size, rareness, and more.<sup>123</sup> Specimens must be of the second or later generation bred in captivity to be traded.<sup>124</sup> Violations of these provisions may result in fines of up to 100 million rupiah.<sup>125</sup> Fifty-four (54) captive breeding facilities in Indonesia are registered with CITES.<sup>126</sup>
49. When specimens are confiscated, they may be returned to their habitats or transferred to wildlife conservation institutions.<sup>127</sup> The Ministry of Forestry issued a directive outlining specific options for handling confiscated specimens: live specimens of Appendix I-listed species should be cared for in zoos, rescue centers, rehabilitation centers, or gardens, returned to their countries of origin or wild habitats, or, if they pose a danger of pests or disease, euthanized; and dead specimens of Appendix I-listed species should be kept in museums or destroyed.<sup>128</sup>
50. Specific court cases interpreting or applying controls on domestic trade could not be located. However, some sources discussing trends were identified. Between 2005 and 2009, an average of 100 wildlife trade enforcement cases were prosecuted each year. Between 2010 and 2019, an average of 10 cases were prosecuted each year. In 2018, eight cases were tried, of which more than half received two or fewer years' sentence (of the maximum five-year penalty for most wildlife crimes).<sup>129</sup>

### Lao PDR

51. Lao PDR is a source, transit, and consumer country for endangered wildlife species, including pangolins, Asian big cats including tigers, helmeted hornbills, Asian elephants, sun bears, Asiatic black bears, rhinoceros, turtles, etc.<sup>130</sup> Within Lao PDR, wildlife is consumed as food and medicine.<sup>131</sup> The government has undertaken several efforts to reduce demand for illegal wildlife trade, for

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<sup>117</sup> *Indonesia, Conservation of Living Resources and their Ecosystems Act, No. 5 of 1990, art. 40.*

<sup>118</sup> *Ibid.*, art. 24.

<sup>119</sup> *Indonesia, Government Regulation on the Conservation of Fishery Resources, No. 60/2007; Indonesia, Guidelines on Crocodile Management in Indonesia, No. 424/ 1994.*

<sup>120</sup> *Indonesia, Government Regulation on the Conservation of Fishery Resources, No. 60/2007, arts. 38, 48.*

<sup>121</sup> *Indonesia, Guidelines on Crocodile Management in Indonesia, No. 424/ 1994, arts. 1, 7.*

<sup>122</sup> *Ibid.*, art. 4.

<sup>123</sup> *Indonesia, The Utilization of Wild Plants and Animal Species Government Regulation No. 8/1999.*

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

<sup>126</sup> *Convention on International Trade in Endangered Species, CITES registers. Available at <https://cites.org/eng/cms/index.php/component/cp/country/ID/cites-registers/Captive-Breeding-Operations>.*

<sup>127</sup> *Indonesia, Conservation of Living Resources and their Ecosystems Act No. 5 of 1990.*

<sup>128</sup> *Indonesia, Administration Directive for the Harvest or Capture and Distribution of Specimen of Wild Plant and Animals, Ministry of Forestry Decree No. 447/ 2003, Art. 113.*

<sup>129</sup> *Indonesia PPAATK (2018), "Interview with Indonesia Financial Transactions Reports and Analysis Center (PPAATK)", 19 October 2018, retrieved from OECD, Illicit Trade: The Illegal Wildlife Trade in Southeast Asia (Paris, OECD Publishing, 2019).*

<sup>130</sup> *Kanitha Krishnasamy and Monica Zavagli, Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020).*

<sup>131</sup> *J. Schweikhard and others, "Investigations into the Illegal Wildlife Trade in Central Lao PDR", TRAFFIC Bulletin Vol. 31 No. 1 (2019).*

example, by designating an annual national Wildlife Day.<sup>132</sup> It also created a section within the Ministry of Justice dedicated to wildlife enforcement.<sup>133</sup>

52. In 2018, the Prime Minister issued PMOrder No. 05/PM strengthening protections for CITES-listed species and non-CITES-listed species listed under the Wildlife and Aquatic Law, No. 07/NA (WAL).<sup>134</sup> The order prohibits trade in Appendix I-listed species and parts thereof and the creation of new captive breeding facilities raising Appendix I-listed species for business purposes.<sup>135</sup> It encourages existing facilities breeding these species for business purposes to convert their operations to serve “conservation, tourism and scientific purposes only.”<sup>136</sup> Any business that continues to engage in trade of wildlife parts should be inspected and registered with the Ministry of Agriculture and Forestry.<sup>137</sup> Further, the order specifies that seized live specimens should be kept by the Ministry of Agriculture and Forestry, while seized dead specimens or products thereof should be destroyed.<sup>138</sup> Since the order states that it preempts existing laws and regulations, to the extent that its provisions are stricter than those of the WAL, the more strict provisions of the order govern.<sup>139</sup> The order also required agencies to educate the public about laws prohibiting wildlife trading and make efforts to prevent illegal trading in Appendix I-listed species.<sup>140</sup>
53. The overarching national law regulating domestic wildlife trade in Lao PDR is the Wildlife and Aquatic Law, No. 07/NA (WAL), which is still in effect and currently being updated. The national government, which issues laws and regulations through the Ministry of Agriculture and Forestry, is the lead authority on wildlife issues in Lao PDR.<sup>141</sup> The comparable authorities at the provincial and capital city levels translate laws and regulations into policies and other guidance materials to facilitate implementation, and monitor the progress of the district and municipality level offices in their implementation of the laws and regulations.<sup>142</sup>
54. The WAL divides terrestrial and aquatic species into three categories—prohibited, managed, and common or general—and regulates possession and domestic trade of species in each of these categories.<sup>143</sup> The lists of species contained within each of these categories are currently being amended. Possession or trade in these species is prohibited without the appropriate permission.<sup>144</sup> Permission is also required to transport list I (i.e. prohibited) species, and parties may only travel with specimens on designated roads, accompanied by the appropriate documentation to show the travel

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<sup>132</sup> ASEAN-WEN, *ASEAN Handbook on Legal Cooperation to Combat Wildlife Crime* (Bangkok, 2016).

<sup>133</sup> *Ibid.*

<sup>134</sup> Lao PDR, *Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora*, No. 05/PM (2018).

<sup>135</sup> *Ibid.*, sects. 2–3.

<sup>136</sup> *Ibid.*, sect. 3; A 2019 Order from the Ministry of Agriculture and Forestry seems to indicate that Appendix I-listed species can still be bred in captivity for non-business purposes so long as they are registered with the government and report the status of their stocks annually (Lao PDR, MAF Order No. 0188/2019, art. 12).

<sup>137</sup> Lao PDR, *Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora*, No. 05/PM, sect. 7 (2018).

<sup>138</sup> *Ibid.*, sect. 6.3.

<sup>139</sup> *Ibid.*, sect. 16.

<sup>140</sup> *Ibid.*, sects. 6.4, 9, 10 (2018).

<sup>141</sup> Lao PDR, *Wildlife and Aquatic Law*, No.07/NA, arts. 54-55 (2007).

<sup>142</sup> *Ibid.*, arts. 56–57.

<sup>143</sup> *Ibid.*, arts. 10–13, 25. The corresponding lists were provided separately in Prime Minister Order No. 81 from 2008, which could not be located. Under the Prime Minister’s 2018 order, the lists were amended such that the prohibited list now includes all Appendix I-listed species, the managed list contains all Appendix II-listed species, and the common or general list is comprised of Appendix III-listed species (Lao PDR, *Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora*, No. 05/PM, sects. 1–3 (2018)).

<sup>144</sup> Lao PDR, *Wildlife and Aquatic Law*, No.07/NA, art. 52 (2007). This appears to still be the rule for possession, since the MAF Decision No. 0188/2019 states in art. 22 that “[p]rivate persons, entities and organizations are prohibited for the following attitudes: ... 2. Hunt, smuggle, exchange, possess, import, export, repatriate and transit wildlife and flora on lists I, II and III without permission.”

was authorized.<sup>145</sup> Furthermore, a 2019 decision from the Ministry on Forestry and Agriculture prohibits any transit of Appendix I-listed species for commercial purposes.<sup>146</sup>

55. One recognized use of species covered by the WAL is “business,” which encompasses trade and captive breeding. Prior to using species for business purposes, parties must receive permission from and register with the level of government designated for the respective category of species at issue.<sup>147</sup> Parties that are trading or breeding category I (prohibited) species must receive permission from the government and register with local district or municipality and province or capital city forestry offices.<sup>148</sup> In addition to being granted by the government, rights to use category I-listed species for business purposes can be purchased, inherited, or otherwise transferred from a prior owner.<sup>149</sup> With this right of use comes several obligations, including ensuring the “[s]ustainable use of wildlife and aquatic without causing any harm to the environment as prescribed in the laws, regulations and international convention (CITES),” and “[t]aking measures to prevent illegal catching or hunting, trading and destruction of the animal’s habitats.”<sup>150</sup>
56. Notably, under the WAL, parties are encouraged to breed species in order to increase population sizes.<sup>151</sup> As such, list I (prohibited) species could be bred in captivity in registered facilities that had permission to use specimens for business purposes; the original breeding pair and its first generation of offspring could not be traded; and second and all future generations of offspring could be traded.<sup>152</sup> The same was true for management species, except that the first generation of offspring from the original breeding pair could also be traded.<sup>153</sup> However, the 2019 decision from the Minister of Agriculture and Forestry now prohibits the sale of any prohibited species, even if they are bred in captivity, and no longer allows for the sale of the first generation of management and general species that are bred in captivity (only the second generation and later).<sup>154</sup>
57. Parties that violate provisions of the WAL face penalties ranging from education and revocation of rights, to fines and imprisonment, depending on the severity of the violation.<sup>155</sup> When a non-criminal violation results in less than 200,000 Kip (approximately US\$22 as of August 2020) in damages, parties must forfeit the specimen or products at issue and undergo education, unless they are a civil servant, in which case they must forfeit any specimens or products and may lose their position or otherwise be penalized professionally.<sup>156</sup> If damages total or exceed 200,000 Kip and the violation involves a specimen or product from the prohibited list, the violator must pay a fine in the amount of double the damages incurred, or triple if they are a repeat offender.<sup>157</sup> Stealing a prohibited species for domestic possession or trade is a criminal offense, and is punishable by three months to five years of deprivation of liberty or imprisonment, in addition to incurring the corresponding fine.<sup>158</sup> In addition to imposing penalties upon violators, the WAL also rewards individuals that advance the law’s implementation with “relevant incentives such as flattery and rewards.”<sup>159</sup>

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<sup>145</sup> *Ibid.*, art. 41; Lao PDR, MAF Decision No. 0188/2019, art. 15 (stating that category I-listed species can only be transported once a request for permission has been filed by the Department of Forestry and permission has been secured from the Ministry of Agriculture and Forestry).

<sup>146</sup> Lao PDR, MAF Decision No. 0188/2019, art. 22(1) (stating “[p]rivate persons, entities and organization are prohibited for the following attitudes: (1) Trade, export, import and transit wildlife and flora on list I of CITES for commercial purposes...”).

<sup>147</sup> Lao PDR, Wildlife and Aquatic Law, No.07/NA, arts. 23, 33–36, 38 (2007).

<sup>148</sup> *Ibid.*, arts. 35–36. Further requirements for captive breeding facilities are outlined in the Decision of Minister of Ministry of Agriculture and Forestry on the Establishment and Management of Zoos, Wildlife Farms, Centers for Rehabilitation and Breeding of Wildlife and Wild Flora Farms, No. 0188/MAF, 08 February 2019.

<sup>149</sup> *Ibid.*, arts. 45–48.

<sup>150</sup> *Ibid.*, art. 50.

<sup>151</sup> *Ibid.*, arts. 20, 26 (stating “[t]he development is breeding or generating the prohibited, managed and common or general wildlife and aquatic categories in the nature for increasing the number of animals’ species by applying technology and science, it is also rehabilitation of habitats feeding resources and generating zones to ensure such animals living in the natural range. The local people are encouraged to participate in the development of wildlife and aquatic”).

<sup>152</sup> *Ibid.*, art. 40.

<sup>153</sup> *Ibid.*

<sup>154</sup> Lao PDR, MAF Order No. 0188/2019, art. 14.

<sup>155</sup> Lao PDR, Wildlife and Aquatic Law, No.07/NA, art. 67 (2007).

<sup>156</sup> *Ibid.*, arts. 68–69.

<sup>157</sup> *Ibid.*, art. 70.

<sup>158</sup> *Ibid.*, art. 71.

<sup>159</sup> *Ibid.*, art. 66.

58. The Lao PDR Fisheries Law prohibits the taking and transit of certain aquatic species, one of which (the Mekong giant catfish, *Pangasianodon gigas*) is listed in Appendix I.<sup>160</sup> The law also specifies corresponding penalties that vary depending on the value impacted, the number of offenses the violator has committed in the past, and whether the violator is a state official.<sup>161</sup>
59. The Lao PDR Penal Code, revised in 2017, deems possession or trade of list I (prohibited) species and parts thereof to be punishable by a range of penalties.<sup>162</sup> The illegal purchasing or transporting of endangered plants can result in fines of 1 to 2.5 million Kip and deprivation of liberty for three months to a year, but may be higher for repeat offenders or violations committed by organized groups.<sup>163</sup> Unlawful possession of endangered species may result in fines ranging from three to 10 million Kip and deprivation of liberty for three months to five years.<sup>164</sup> Unlawful trading or transporting of precious and rare wild animals or products made from said animals may result in fines ranging between 10 and 50 million Kip and six months to three years of deprivation of liberty or re-education.<sup>165</sup>
60. Further, illegal wildlife trade-related offenses may qualify as predicate offenses under the Law on Anti-Money Laundering and Counter-Financing of Terrorism.<sup>166</sup> Such violations may therefore result in additional penalties of 300 to 500 million Kip and three to seven years' imprisonment if the laundered amount is below 1 billion Kip, and a penalty of 500 to 700 million Kip and seven to ten years' imprisonment for laundering more than 1 billion Kip.<sup>167</sup> Organized groups and habitual offenders face higher fines and longer imprisonment terms.<sup>168</sup>
61. No specific court cases concerning the interpretation of domestic controls on trade in Appendix I-listed species in Lao PDR could be identified. However, since the issuance of the 2018 order by the Prime Minister, there has been a “dramatic reduction in open trading of illegal wildlife products,” accompanied by “complex investigations supporting prosecution [through which] the value of products seized [has] exceed[ed] US \$750,000 [as of August 2019].”<sup>169</sup>

## Malaysia

62. Malaysia is a consumer market for *inter alia* birds, bears, otters, slow lorises, tortoises, and turtles, some of which are consumed as bush meat and medicine, or kept as pets.<sup>170</sup> Malaysia is also a source of tigers, pangolins, bears, otters, turtles, and more, and a transit market for rhinoceros horns, ivory, African pangolins, birds, tortoises, and freshwater turtles.<sup>171</sup>
63. Malaysia comprises Peninsular Malaysia (sometimes referred to as West Malaysia), which has 11 states and two federal territories, and Borneo, or East Malaysia, comprising the states of Sabah and Sarawak. Because the Constitution grants concurrent authority to the federal government and states to adopt legislation related to wild animals and national parks,<sup>172</sup> there are federal and state laws that govern domestic trade in Appendix I-listed species, and the legal controls vary depending on geographic location.
64. The federal government promulgated the Wildlife Conservation Act (WCA), which applies to Peninsular Malaysia and the Federal Territory of Labuan, but not to Sabah or Sarawak.<sup>173</sup> The WCA

<sup>160</sup> Lao PDR, *Fisheries Law, No. 03/NA (2009), arts. 7, 38, List I.*

<sup>161</sup> *Ibid.*, arts. 64, 66.

<sup>162</sup> Lao PDR, *Decree of the President on the Promulgation of the Penal Code, No. 118/P, art. 334 (2017).*

<sup>163</sup> *Ibid.*, art. 327.

<sup>164</sup> *Ibid.*, art. 334.

<sup>165</sup> *Ibid.*, art. 337.

<sup>166</sup> Lao PDR, *Decree of the President on the Promulgation of the Law on Anti-Money Laundering and Counter-Financing of Terrorism, No. 012/PO (2015).*

<sup>167</sup> *Ibid.*, art. 66.

<sup>168</sup> *Ibid.*

<sup>169</sup> World Wildlife Fund for Nature in Laos, “Stop Wildlife Crime: It’s Dead Serious”, brochure, 2019.

<sup>170</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*, p. 62.

<sup>171</sup> United Nations Office on Drugs and Crime, *Criminal justice response to wildlife crime in Malaysia: A rapid assessment, October 2017*, p. 5.

<sup>172</sup> Malaysia, *Federal Constitution, Part VI, ch. 1, art. 74 (as amended through 2010); Ibid., Ninth Schedule, List III (2010).*

<sup>173</sup> Malaysia, *Wildlife Conservation Act 2010, Act 716.*

prohibits individuals from selling, re-selling, purchasing, purchasing for re-sale, holding, or breeding specimens of species listed as totally protected or protected under the Act in captivity, unless they have a special permit or license allowing them to do so.<sup>174</sup> Many Appendix I-listed species are included in these categories, but some are not—notably, all Appendix I-listed plant species.<sup>175</sup> Those who violate the WCA can face fines of up to 50,000 ringgit (approximately US\$12,000 as of August 2020), two years in prison, or both.<sup>176</sup> If the violation involves certain totally protected species, however, the resulting fine will be between 30,000 and 500,000 ringgit, the prison term up to ten years, or both, depending on the species, age, and sex involved.<sup>177</sup>

65. The International Trade in Endangered Species Act (INTESA), another federal law, prohibits the sale, offering for sale, exposing, or advertising for sale of any scheduled species brought into Malaysia illegally.<sup>178</sup> While the schedule of species protected by the Act does not directly reference CITES, it contains three appendices of species that mirror the CITES appendices, including listed plants.<sup>179</sup> Thus, if specimens of CITES-listed species are illegally imported into the country, INTESA would render their domestic trade illegal, even if the specimens are of a species not listed under (and whose trade is thus not rendered illegal by) the WCA. Violations by individuals may result in fines of up to 100,000 ringgit for each item up to a total of one million ringgit, imprisonment for seven years, or both; violations by corporations may result in fines of up to 200,000 ringgit per item up to two million ringgit in total.<sup>180</sup> Also under INTESA, all scheduled species must be accompanied by the proper paperwork demonstrating that they were properly acquired when in transit in Malaysia.<sup>181</sup> A violation of this provision may result in the same penalties discussed for the abovementioned violations.<sup>182</sup>
66. INTESA also requires that facilities breeding scheduled species for commercial purposes be registered with the Management Authority.<sup>183</sup> An individual in operation of an unregistered facility may face a fine of up to 100,000 ringgit for each specimen or product up to a maximum of one million ringgit, up to seven years in prison, or both, whereas a corporation may be fined 200,000 ringgit per animal up to two million ringgit in total.<sup>184</sup> If an individual or corporation possesses, keeps, sells, offers for sale, or displays a specimen bred in an unregistered facility, they may face the same fines, respectively.<sup>185</sup> If an individual or corporation holds a permit allowing them to operate such a facility, but violates the terms of their permit, they may also be required to pay fines, be imprisoned (individuals), or both.<sup>186</sup>
67. If parties violate the provisions of these laws that qualify as predicate offenses under the federal Anti-Money Laundering, Anti-Terrorism Financing, and Proceeds of Unlawful Activities Act, which includes various provisions of both the WCA and INTESA, they may face additional fines of up to five times the value of any illegal proceeds or five million ringgit and up to 15 years in prison.<sup>187</sup> The Fisheries (Control of Endangered Species of Fish) Regulations, promulgated at the federal level under the Fisheries Act, prohibit possession and domestic trade of scheduled species of fish without permission, some of which are Appendix I-listed species.<sup>188</sup> Violation of the Fisheries Regulations are punishable by a fine of up to 20,000 ringgit, imprisonment for up to two years, or both (or additional penalties if a foreign-flagged vessel is involved).<sup>189</sup>

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<sup>174</sup> *Ibid.*, sects. 9, 11.

<sup>175</sup> *Ibid.*, Schedule II.

<sup>176</sup> *Ibid.*, sect. 63.

<sup>177</sup> *Ibid.*, sects. 68–70.

<sup>178</sup> *Malaysia, International Trade in Endangered Species Act 2008, Act 686, sect. 12(b).*

<sup>179</sup> *Ibid.*, Third Schedule.

<sup>180</sup> *Ibid.*, sect. 12(aa)-(bb).

<sup>181</sup> *Ibid.*, sect. 13(1).

<sup>182</sup> *Ibid.*, sect. 13(2).

<sup>183</sup> *Ibid.*, sects. 14, 16.

<sup>184</sup> *Ibid.*, sect. 14.

<sup>185</sup> *Ibid.*

<sup>186</sup> *Ibid.*, sect. 16(4).

<sup>187</sup> *Malaysia, Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, Act 613.*

<sup>188</sup> *Malaysia, Fisheries (Control of Endangered Species of Fish) Regulations 1999, PU(A) 409/1999, sect. 2(1) and Schedule.*

<sup>189</sup> *Malaysia, Fisheries Act 1985 (No. 317 of 1985), sect. 25.*



68. The State of Sabah regulates wildlife possession and trade under its Wildlife Conservation Enactment (WCE).<sup>190</sup> The WCE prohibits the possession, sale, or purchase of Appendix I-listed animal and plant species without a valid permit, written authorization, or certificate of legal ownership, and imposes a variety of penalties including fines and imprisonment depending on the nature of the violation and the type of species involved.<sup>191</sup>
69. The State of Sarawak enacted the Wild Life Protection Ordinance (WLPO),<sup>192</sup> and subsequently the Wild Life Protection Rules,<sup>193</sup> which together form the regulatory landscape addressing domestic wildlife trade in Appendix I-listed species. Appendix I-listed species are considered protected under the WLPO (and some totally protected), and are prohibited from being possessed or used in domestic trade without a license, for protected species, and without written permission from the Controller allowing such actions for educational, scientific, or species conservation purposes for totally protected species.<sup>194</sup> Violators may face fines, imprisonment, or both, and the range of potential penalties is higher for certain species, including rhinoceroses, orangutans, and proboscis monkeys.<sup>195</sup>
70. Facilities are allowed to breed certain Appendix I-listed species in captivity for commercial purposes under INTESA, the WCA, the WCE, and the WLPO, so long as they have registered with the relevant authority and received permission to do so; and if registered under INTESA, they must keep records of their operations.<sup>196</sup> Under the WLPO and its regulations, Appendix I-listed species that are totally protected species cannot be bred in captivity for commercial purposes, but those that are considered protected species may be bred for commercial purposes so long as a permit has been secured to do so.<sup>197</sup> There are currently 61 captive breeding facilities in Malaysia that are registered with CITES.<sup>198</sup>
71. Enforcement officials are authorized to seize specimens or products they believe to have been used in violation of the provisions of INTESA,<sup>199</sup> the WCA,<sup>200</sup> the WCE,<sup>201</sup> and the WLPO.<sup>202</sup> In each case, the relevant Management Authority or court seems to have discretion in determining how to manage seized specimens and products, ranging from keeping them in wildlife rescue centers, to selling them, to disposing of them, or otherwise (though, according to the Management Authority Malaysia (Peninsular), in practice such specimens have never been sold). Under INTESA, the Management Authority has full discretion to dispose of seized specimens as they see fit.<sup>203</sup> In Peninsular Malaysia, under the WCA, seized specimens are considered government property and a Magistrate determines how each item should be managed.<sup>204</sup> In Sabah, under the WCE, seized live specimens are managed by the seizing officers, while the courts decide what should happen to dead seized specimens and products.<sup>205</sup> In neither case can the seized items become objects of trade.<sup>206</sup> In Sarawak, under the WLPO, the courts determine how to dispose of seized items.<sup>207</sup>
72. No court cases could be identified that discussed issues related to domestic wildlife trade. While a number of seizures take place, many fewer arrests are made and convictions secured.<sup>208</sup> Because of

<sup>190</sup> Sabah, *Wildlife Conservation Enactment 1997*, Sabah No. 6 of 1997.

<sup>191</sup> *Ibid.*, sects. 41, 48, 60, 62.

<sup>192</sup> Sarawak, *Wild Life Protection Ordinance 1998*.

<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*, sects. 29-30.

<sup>195</sup> *Ibid.*

<sup>196</sup> Malaysia, *International Trade in Endangered Species Act 2008*, Act 686, sects. 14, 16, 18; Malaysia, *Wildlife Conservation Act 2010*, Act 716, sects. 10, 11, 33; Sabah, *Wildlife Conservation Enactment 1997*, Sabah No. 6 of 1997, sects. 9, 78; Sarawak, *Wild Life Protection Ordinance 1998*, sect. 35(1).

<sup>197</sup> Sarawak, *Wild Life Protection Rules 1998*, sects. 14, 21.

<sup>198</sup> *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, "Malaysia", CITES registers. Available at <https://www.cites.org/eng/common/reg/cb/MY>.

<sup>199</sup> Malaysia, *International Trade in Endangered Species Act 2008*, Act 686, sect. 24.

<sup>200</sup> Malaysia, *Wildlife Conservation Act 2010*, Act 716, sects. 94, 95, 101.

<sup>201</sup> Sabah, *Wildlife Conservation Enactment 1997*, Sabah No. 6 of 1997, sect. 89(1).

<sup>202</sup> Sarawak, *Wild Life Protection Ordinance 1998*, sect. 48.

<sup>203</sup> Malaysia, *International Trade in Endangered Species Act 2008*, Act 686, sect. 34.

<sup>204</sup> Malaysia, *Wildlife Conservation Act 2010*, Act 716, sects. 105, 110–11.

<sup>205</sup> Sabah, *Wildlife Conservation Enactment 1997*, Sabah No. 6 of 1997, sect. 92-93.

<sup>206</sup> *Ibid.*

<sup>207</sup> Sarawak, *Wild Life Protection Ordinance 1998*, sect. 50.

<sup>208</sup> United Nations Office on Drugs and Crime, *Criminal justice response to wildlife crime in Malaysia: A rapid assessment*, October 2017, pp. 5-6.

the different legal controls that apply in different jurisdictions within Malaysia, there are multiple enforcement authorities. In 2019, a national task force was launched to target illegal wildlife crime.<sup>209</sup>

## Nigeria

73. Nigeria is a source, transit and consumer market for specimens of Appendix I-listed species, including pangolins and elephant ivory, which are traditionally consumed as food and medicine, used to make charms and souvenirs, and more.<sup>210</sup>
74. Nigeria regulates domestic and international trade in Appendix I-listed species under its national Endangered Species Act (ESA), as amended, and regulations promulgated thereunder. At the subnational level, several states, including Cross River and Lagos, also have wildlife protection laws that address domestic trade, but some such laws are obsolete, and each must be read in conjunction with CITES.
75. The ESA bans “the hunting or capture of or trade in, the animal species specified in the First Schedule of this Act (being animal species threatened with extinction).”<sup>211</sup> This provision does not apply, however, to specimens that are bred in captivity.<sup>212</sup> The ESA also prohibits hunting, capturing, trading, or dealing with animals listed in the Act’s Second Schedule, which includes “animals which, though not necessarily now threatened with extinction, may become so threatened unless trade in respect of such species is controlled,” unless a valid license covering the activity has been issued.<sup>213</sup> The Schedules do not reference the CITES Appendices expressly, instead listing a variety of species, some of which are included in the CITES lists and some of which are not. The First Schedule contains 99 Appendix I-listed species, while the Second Schedule contains 11, as well as all “exotic wild animals”; notably, the Schedules do not include plants.<sup>214</sup>
76. Violations of the ESA can result in fines or imprisonment. When an individual, “in contravention of the provisions of [the ESA], trades in, or is in possession of or otherwise deals with a specimen specified in the First and Second Schedules,” it constitutes an offense and will result in a fine, or, if the individual is a repeat offender, imprisonment for one year if the offense involved a First Schedule species, or six months if it involved a Second Schedule species.<sup>215</sup> A 2016 law amended the ESA to increase the fines for such offenses to better deter potential offenders.<sup>216</sup> Violators are now fined 5 million Naira (approximately US\$12,950 as of August 2020) for violations involving First Schedule species, and 1 million Naira for violations involving Second Schedule species.<sup>217</sup>
77. Upon conviction, specimens involved in such offenses may be required to be forfeited by order of the court.<sup>218</sup> If the specimen is alive, it shall be forfeited to the Ministry of the Environment,<sup>219</sup> which can arrange for it to move the specimen to a wildlife rescue center, determine an alternative method to hold the specimen, or to be returned to the country from which it was exported at that country’s

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<sup>209</sup> *Peninsular Malaysia, Department of Wildlife and National Parks (PERHILITAN), “Pelancaran Operasi Bersepadu Khazanah (OBK) Bersama PDRM Dan PERHILITAN”, 6 September 2019. Available at <https://www.wildlife.gov.my/index.php/en/mutakhir/349-pelancaran-operasi-bersepadu-khazanah-obk-bersama-pdrm-dan-perhilitan>.*

<sup>210</sup> *United Nations Office on Drugs and Crime, Criminal justice response to wildlife crime in Malaysia: A rapid assessment, October 2017, pp. 5-6.*

<sup>210</sup> *P. A. Anadu and others, “The Bushmeat Trade in Southwestern Nigeria: A Case Study”, Human Ecology, vol. 16. No. 2 (1988); Esmond Martin and Lucy Vigne, “Lagos, Nigeria: One of the Largest Retail Centres for Illegal Ivory Surveyed to Date”, TRAFFIC Bulletin, vol. 25, no. 1 (2013).*

<sup>211</sup> *Nigeria, Endangered Species (Control of International Trade and Traffic) Act (as amended 2004).*

<sup>212</sup> *Ibid.*, sect. 4(2).

<sup>213</sup> *Ibid.*, sect. 1(2) (the Arrangement of Sections that precedes the provisions of the ESA states that the Second Schedule contains “[a]nimals in relation to which international trade may only be conducted under license” [emphasis added]).

<sup>214</sup> *Ibid.*

<sup>215</sup> *Ibid.*, sect. 5(1).

<sup>216</sup> *Nigeria, Endangered Species (Control of International Trade and Traffic) (Amendment) Act, 2016.*

<sup>217</sup> *Ibid.*, sects. 3–4.

<sup>218</sup> *Nigeria, Endangered Species (Control of International Trade and Traffic) Act, sect. 5 (2004).*

<sup>219</sup> *Nigeria, National Environmental (Protection of Endangered Species in International Trade) Regulations 2011, sect. 2 (designating the CITES Management Authority, Scientific Authorities, and enforcement agency for Nigeria).*



expense.<sup>220</sup> The party convicted of the offense may be ordered by the court to pay for the care of the specimen.<sup>221</sup>

78. In 2011, the Minister promulgated regulations under authority granted by the ESA<sup>222</sup> that outlined legal controls applicable to all CITES-listed species (in addition to the species listed in the ESA's First and Second Schedules), including plants.<sup>223</sup> The regulations require that parties register with the Minister before engaging in trade of Appendix I-listed species or breeding them in captivity for commercial purposes.<sup>224</sup> No captive breeding facilities are registered with CITES, and a national list of facilities registered with the Management Authority could not be identified.
79. The regulations also make it an offense for parties to "have in [their] possession or under [their] control, or to offer or expose for sale or display to the public" any CITES- or ESA-listed species illegally acquired (i.e. in violation of CITES, the ESA, or the regulations).<sup>225</sup> As such, possession and trade in protected species is prohibited if they are sourced illegally, whether through international trade or domestic channels. Individuals convicted of this offense may be fined up to 5 million Naira and/or sentenced to prison for up to three years,<sup>226</sup> while corporations or representatives thereof that are convicted of such an offense may be fined up to 20 million Naira and/or their principal officers may be sentenced to prison for up to seven years.<sup>227</sup>
80. While neither the ESA or the regulations expressly discuss online wildlife trade, it seems that the offering or exposing of scheduled or CITES-listed species online would violate the regulations, and that individuals would be required to register with the Minister before trading Appendix I-listed species online as is required for in-person trading. Further, the ESA prohibits trade in those Appendix I-listed species contained in Nigeria's First and Second Schedules (unless a license has been secured), and this would seem to extend to trade occurring via the internet as well.
81. Under the regulations, officers can seize specimens involved in potential violations so long as there is sufficient evidence to support their suspicion that an offense has been committed, and once a trial is pending, any specimens not already seized must be.<sup>228</sup> All seized and confiscated specimens are recorded and held in designated wildlife rescue centers (if specific centers are not designated, National Park Service and Forestry Research Institute of Nigeria facilities will be used) until the National Environmental Standards and Regulations Enforcement Agency (NESREA) (the CITES enforcement authority in Nigeria), in the case of dead specimens, and the CITES Scientific Authorities for Nigeria, in the case of live specimens, determine what should be done with them.<sup>229</sup> Trophies and other products made from dead specimens are held by NESREA or the Ministry of the Environment, while live specimens are held in wildlife rescue centers or returned to their country of export.<sup>230</sup> Any costs incurred from the processing of seized specimens may be required to be paid by the party that committed the offense.<sup>231</sup>
82. The ESA does not expressly regulate domestic trade in species that resemble Appendix I-listed species, but the regulations do make it an offense to report false information when registering or

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<sup>220</sup> Nigeria, *Endangered Species (Control of International Trade and Traffic) Act*, sect. 5(3) (2004).

<sup>221</sup> *Ibid.*, sect. 5(2)(b).

<sup>222</sup> *Ibid.*, sect. 7(a)-(i).

<sup>223</sup> Nigeria, *National Environmental (Protection of Endangered Species in International Trade) Regulations 2011*, sect. 1.

<sup>224</sup> *Ibid.*, sect. 6 (If a party is properly registered to breed Appendix I-listed species in captivity for commercial purposes, they must record the details of their operations and make them available to the Minister upon request and may be subject to random inspections).

<sup>225</sup> *Ibid.*, sect. 7(3).

<sup>226</sup> *Ibid.*, sect. 7(4).

<sup>227</sup> *Ibid.*, sect. 7(11) (Corporations charged with any offense under the regulations will be charged with penalties within this range. The regulations state: "When a body corporate is found guilty of contravening any of the provisions of these regulations, such body corporate, or any person who purporting to act in any such capacity, shall on conviction be liable to a fine not exceeding 20 million Naira (N20m) and its principal officers liable to a term of imprisonment not exceeding 7 years, or to both such fine and imprisonment."). Per conversation with a Nigerian government official, violators are typically penalized with either a fine or imprisonment, not both (Interview, May 8, 2020).

<sup>228</sup> *Ibid.*, sect. 8(1)-(3).

<sup>229</sup> *Ibid.*, sects. 8-9.

<sup>230</sup> *Ibid.*

<sup>231</sup> *Ibid.*, sect. 7(12).

applying for permits and certificates.<sup>232</sup> Since registration is required to trade Appendix I-listed or scheduled species, or to breed them in captivity or artificially propagate them for commercial purposes, reporting false information regarding the number or type of specimens being traded or bred, the nature of their origin, or otherwise, is an offense.<sup>233</sup> A violation of this prohibition is punishable with a fine of up to three million Naira, a prison sentence of up to three years, or both for individuals.<sup>234</sup> Further, should somebody alter or remove any markings made by the Minister to identify a specimen, they may be fined up to two million Naira, imprisoned for up to two years, or both.<sup>235</sup> Therefore, if someone changed or removed identifying markings on a specimen of an Appendix I-listed species, and held it in possession or tried to trade it claiming it was a specimen of a different, non-Appendix I-listed species, they could be penalized.

83. No court cases dealing with domestic trade violations or interpretations of legal controls on domestic trade were identified. Most identified wildlife trade-related court cases in Nigeria address international trade violations.<sup>236</sup>

### Thailand

84. Thailand has an active domestic market in a variety of CITES-listed species and products, serving as a transit country for pangolins, birds, turtles, and others, and a consumer country for tigers, bears, primates, turtles, orchids, and more.<sup>237</sup> Much of this domestic trade occurs in open markets and online.<sup>238</sup> Some protected species, like tigers, are also kept and bred in captivity.<sup>239</sup>
85. The Wild Animal Reservation and Protection Act (WARPA), last amended in 2019, is the primary source of legal controls on domestic trade of Appendix I-listed animal species in Thailand.<sup>240</sup> Some, but not all, Appendix I-listed species are protected under WARPA; all native CITES-listed species are classified as “controlled” species, as are 50 non-native CITES-listed species.<sup>241</sup> Under WARPA, the domestic trade (which includes purchasing, selling, exchanging, distributing, or otherwise transferring ownership),<sup>242</sup> possession,<sup>243</sup> and captive breeding<sup>244</sup> of controlled species, regardless of their source, is prohibited without permission.<sup>245</sup> If a captive breeding facility has been granted permission to operate by the Director General of the National Park, Wildlife and Plant Conservation Department or Department of Fisheries, depending on the species, it may engage in domestic trade with bred specimens without securing an additional license so long as the licensing requirements are still met.<sup>246</sup> Online trade is also explicitly prohibited under the Act, but may be allowed with prior permission from the Director-General.<sup>247</sup>
86. Engaging in domestic trade of controlled species in Thailand without permission can result in fines of up to 400,000 baht (approximately US\$12,715 as of August 2020), imprisonment for up to four years, or both.<sup>248</sup> Unlawful possession of controlled species may result in fines of up to 100,000 baht, up to one year in prison, or both.<sup>249</sup> Finally, penalties for unlawful captive breeding of controlled specimens

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<sup>232</sup> *Ibid.*, sect. 7(5)–(6).

<sup>233</sup> *Ibid.*, sect. 6.

<sup>234</sup> *Ibid.*

<sup>235</sup> *Ibid.*, sect. 7(9)–(10) (Corporations that violate this provision may be fined up to 20 million Naira, and their principal officers may be sentenced to prison for up to seven years, or both).

<sup>236</sup> Interview with Nigerian government official, 8 May 2020.

<sup>237</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*, p. 78.

<sup>238</sup> *Ibid.*, p. 79.

<sup>239</sup> *Ibid.*

<sup>240</sup> *Thailand, Wild Animal Reservation and Protection Act, B.E. 2562 (2019)*.

<sup>241</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*.

<sup>242</sup> *Thailand, Wild Animal Reservation and Protection Act, B.E. 2562, sect. 30 (2019)*; Tilleke & Gibbins International Ltd., “Updates to Thailand’s Environmental Laws”, 17 July 2019.

<sup>243</sup> *Ibid.*, sect. 19.

<sup>244</sup> *Ibid.*, sects. 8, 9, 28.

<sup>245</sup> *Ibid.*, sects. 4 (definition of “trading”), 14 (possession), 29 (trade).

<sup>246</sup> *Ibid.*, sect. 30.

<sup>247</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*, p. 79.

<sup>248</sup> *Thailand, Wild Animal Reservation and Protection Act, B.E. 2562, sect. 94 (2019)*.

<sup>249</sup> *Ibid.*, sect. 90.

may include fines of up to 300,000 baht, imprisonment for up to three years, or both.<sup>250</sup> Since certain violations of WARPA may also qualify as predicate offenses under Thailand's Anti-Money Laundering Act, individuals may face additional penalties, including fines of between 20,000 and 200,000 baht, one to 10 years imprisonment, or both, under that law.<sup>251</sup>

87. CITES-listed plants are protected under the Plants Act.<sup>252</sup> This Act prohibits import, export, or transit of "conserved plants," explicitly defined as plants listed in the CITES appendices, without prior permission.<sup>253</sup> It allows for the artificial propagation of protected plants in registered facilities, and the sale of plants grown in registered facilities, so long as prior permission is granted.<sup>254</sup> Such facilities may be subject to inspection by the Minister of Agriculture and Cooperatives.<sup>255</sup> Those that operate such facilities for trade purposes without the requisite permission may face penalties including fines of up to 3,000 baht (approximately US\$95 as of August 2020), imprisonment for up to three months, or both.<sup>256</sup> Individuals that refuse to cooperate with officials during inspections or other proceedings may face fines of up to 1,000 baht, imprisonment for up to one month, or both.<sup>257</sup> As with WARPA, violations of the Plants Act appear to serve as predicate offenses under the Anti-Money Laundering Act, suggesting that violators may face additional penalties, including fines of between 20,000 and 200,000 baht, one to 10 years imprisonment, or both.<sup>258</sup>
88. The National Parks Act, amended in 2019, prohibits actions that cause harm to natural resources in forests, gardens, and arboretums.<sup>259</sup> As it could be argued that taking protected animals or plants from these areas negatively impacts natural resources, the Act could be interpreted to prohibit the possession of or domestic trade in Appendix I-listed species living in or sourced from protected areas, even if those species are not listed under WARPA.<sup>260</sup> Violations can result in fines of 400,000 to two million baht, between five and 20 years in prison, or both.<sup>261</sup> If such violations qualify as predicate offenses under the Anti-Money Laundering Act, as it appears they may, violators may face additional fines of 20,000 to 200,000 baht, additional terms of imprisonment between one to 10 years, or both.<sup>262</sup>
89. To prevent the involvement of government officials in the illegal domestic wildlife trade, Thailand also has provisions in its Penal Code that penalize officials that accept bribes or otherwise participate in or facilitate wildlife crimes with fines of between 2,000 and 40,000 baht, one to 20 years in prison, or both.<sup>263</sup> Those that offer bribes or otherwise try to involve officers in their illegal wildlife activities may also face fines of up to 10,000 baht, one to five years in prison, or both.<sup>264</sup>
90. The research team was unable to identify legal cases related to domestic wildlife trade violations. One source indicated that while Thailand has many seizures of wildlife, it does not have many prosecutions.<sup>265</sup>

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<sup>250</sup> *Ibid.*, sect. 95.

<sup>251</sup> Patricia Moore, Chanokporn Prompinchompoo and Claire A. Beastall, *CITES Implementation in Thailand: A Review of the Legal Regime Governing the Trade in Great Apes and Gibbons and Other CITES-Listed Species* (Petaling Jaya, TRAFFIC, 2016); Thailand, *Anti-Money Laundering Act*, B.E. 2542 (1999), as amended by B.E. 2558, sect. 60 (2015).

<sup>252</sup> Thailand, *Plants Act*, B.E. 2518, sect. 29 *ter.* (1975) as amended by B.E. 2550 (2007).

<sup>253</sup> *Ibid.*, sect. 29 *tetra.*

<sup>254</sup> *Ibid.*,

<sup>255</sup> *Ibid.*, sect. 39.

<sup>256</sup> *Ibid.*, sect. 61 *bis.*

<sup>257</sup> *Ibid.*, sect. 66.

<sup>258</sup> Thailand, *Anti-Money Laundering Act*, B.E. 2542 (1999), as amended by B.E. 2558, sect. 60 (2015).

<sup>259</sup> *Ibid.*

<sup>260</sup> Thailand, *National Park Act*, B.E. 2562 (2019).

<sup>261</sup> *Ibid.*

<sup>262</sup> Thailand, *Anti-Money Laundering Act*, B.E. 2542 (1999), as amended by B.E. 2558, sect. 60 (2015).

<sup>263</sup> Thailand, *Penal Code* 1861.

<sup>264</sup> *Ibid.*

<sup>265</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade* (Petaling Jaya, TRAFFIC, 2020), p. 70.

## United States of America

91. The United States is a source, transit, and consumer country for a variety of Appendix I-listed species; 136 such species are native to the United States.<sup>266</sup> At least 12 Appendix I-listed species, ranging from rhinoceros, to iguanas, to orchids, are traded domestically.<sup>267</sup> In 2014, the U.S. Government issued the National Strategy for Combating Wildlife Trafficking, which was to involve undertaking demand reduction efforts domestically and abroad.<sup>268</sup> The Department of the Interior then developed a plan to implement the Strategy.<sup>269</sup>
92. Under the federal Endangered Species Act (ESA), parties are prohibited from carrying, transporting, selling, or offering for sale any species listed as endangered under the terms of the Act (whether sourced from the United States or another country) in interstate (meaning between US states) or foreign commerce.<sup>270</sup> Almost all CITES Appendix I-listed species native to the United States appear to be listed, or in the process of being considered for listing, under the ESA, in addition to many non-native species (especially ones known to be involved in illegal international trade, such as species of pangolin and rhinoceros). Researchers identified one Appendix I-listed species native to the United States, the red-crowned parrot (*Amazona viridigenalis*), that is not listed or being considered for listing under the ESA.<sup>271</sup> Further, it is prohibited to sell or offer for sale in interstate commerce any endangered plant species taken from within the United States, or to possess any specimens taken contrary to the ESA.<sup>272</sup>
93. Under the ESA, the United States Fish and Wildlife Service (USFWS) may issue permits for otherwise prohibited activities, under statutory requirements and regulations that vary depending on whether the species is listed as endangered or threatened under the ESA. For endangered species, allowed reasons are scientific research, enhancement of propagation or survival, and take that is incidental to an otherwise lawful activity.<sup>273</sup> For threatened species, allowed reasons also include zoological, horticultural, or botanical exhibition and educational use.<sup>274</sup>
94. USFWS may also register persons subject to the jurisdiction of the United States through its captive-bred-wildlife (CBW) program if certain established requirements are met under the CBW regulations.<sup>275</sup> The CBW program is available for ESA-listed wildlife species having a natural geographic distribution not including any part of the United States and other species that the Director has determined to be eligible by regulation.<sup>276</sup> The individual specimens must have been born in captivity in the United States.<sup>277</sup> Through a CBW registration, USFWS may allow a registrant to conduct certain otherwise prohibited activities under certain circumstances to enhance the propagation or survival of the affected species: take; export or re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce.<sup>278</sup> A CBW registration may authorize interstate purchase and sale only between entities that both hold a registration for the taxon concerned and is issued only to authorize conduct that

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<sup>266</sup> United States, United States Fish and Wildlife Service, "How CITES Works".

<sup>267</sup> For references, see Introduction of the United States Country Profile.

<sup>268</sup> United States, The White House, "National Strategy for Combating Wildlife Trafficking" (2014), p. 9. Available at: <https://obamawhitehouse.archives.gov/sites/default/files/docs/nationalstrategywildlifetrafficking.pdf>.

<sup>269</sup> United States, Department of the Interior, "Presidential Taskforce Releases Implementation Plan for the National Strategy for Combating Wildlife Trafficking", press release, 11 February 2015. Available at: <https://www.doi.gov/news/pressreleases/presidential-taskforce-releases-implementation-plan-for-the-national-strategy-for-combating-wildlife-trafficking> (accessed on 14 May 2020).

<sup>270</sup> United States, Endangered Species Act of 1973, 16 U.S.C. sects. 1531–1544, sect. 9(a)(1)(B)-(F).

<sup>271</sup> United States, United States Fish and Wildlife Service, "Species Profile: Red-crowned parrot". Available at <https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=B0GO>.

<sup>272</sup> United States, Endangered Species Act of 1973, 16 U.S.C. sect. 1538(a)(2)(B)-(D).

<sup>273</sup> United States, Endangered Species Act of 1973, 16 U.S.C. sect. 1539(a), (c), (d); United States, 50 C.F.R. sects. 17.22, 17.62.

<sup>274</sup> United States, 16 U.S.C. sect. 1533(d); United States, 50 C.F.R. sects. 17.32, 17.72.

<sup>275</sup> United States, 50 C.F.R. sect. 17.21(g).

<sup>276</sup> *Ibid.*

<sup>277</sup> *Ibid.*

<sup>278</sup> *Ibid.*

facilitates breeding for conservation purposes. Captive-bred wildlife permits are not issued, however, for keeping or breeding pets, since that is inconsistent with the aims of the ESA to support conservation of species and recovery of wild populations.<sup>279</sup>

95. Violations of the ESA or certain implementing regulations (including the prohibition on sale) by any person engaged in business as an importer or exporter of fish, wildlife, or plants, and knowing violations by any other person can result in civil penalties of up to \$25,000, depending on which provisions are violated, for each violation.<sup>280</sup> Knowing violations can also result in criminal prosecution, carrying a fine of up to \$50,000, imprisonment for up to a year, or both.<sup>281</sup> The provisions of the ESA can also be enforced through citizen suits,<sup>282</sup> which may be used to enjoin natural and legal persons, including the government, who are allegedly violating the ESA or a regulation issued under it; or to compel the Secretary to enforce prohibitions of the ESA; or against the Secretary when they fail to perform their listing and other duties under section 1533 of the ESA.<sup>283</sup> Specimens used in contravention of the ESA or its regulations, including those that are unlawfully traded, as well as equipment and vehicles used to violate the ESA or its regulations, may be subject to forfeiture.<sup>284</sup> The USFWS Office of Law Enforcement is also authorized to pay rewards to individuals who provide information or assistance that may lead to a criminal conviction, civil penalty assessment, arrest, or forfeiture of seized property.<sup>285</sup>
96. Some states have adopted similar restrictions that apply to intrastate trade in Appendix I-listed species. State laws cannot interfere with the requirements of the federal ESA and may be no less restrictive, but they can be more protective.<sup>286</sup>
97. Violators of the Lacey Act provisions controlling illegally taken fish and wildlife may be assessed civil penalties by the Secretary of up to \$10,000 for each violation.<sup>287</sup> However, when the specimen's market value is less than \$350, and the violation only involves transportation, acquisition, or receipt contrary to the provisions of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty may not exceed the maximum provided for in said law, treaty, or regulation, or \$10,000, whichever is less.<sup>288</sup> Violations involving specimens with market values of over \$350 may be fined up to \$20,000, imprisoned for up to five years, or both, and each violation is a separate offense deemed to have been committed both in the district where the violation first occurred and any district in which the defendant may have taken or possessed the fish or wildlife.<sup>289</sup> Illegally traded wildlife, fish and plants as well as any vessel, vehicle, aircraft, or other equipment used in such trafficking, are subject to forfeiture.<sup>290</sup>
98. Additional restrictions are imposed on the keeping and sale of certain types of species under the Migratory Bird Treaty Act, the Marine Mammal Protection Act, the Wild Bird Conservation Act, and more.<sup>291</sup>

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<sup>279</sup> *Ibid.*

<sup>280</sup> *United States, Endangered Species Act of 1973, 16 U.S.C. sect. 1540(a)(1).*

<sup>281</sup> *Ibid.*, sect. 1540(b)(1).

<sup>282</sup> *In this context, a citizen suit refers to a lawsuit by a private citizen to enforce a statute.*

<sup>283</sup> *United States, Endangered Species Act of 1973, 16 U.S.C. sect. 1540(g).*

<sup>284</sup> *Ibid.*, sect 1540(e)(4).

<sup>285</sup> *United States, United States Fish and Wildlife Service, "Office of Law Enforcement: Rewards Program". Available at <https://www.fws.gov/le/index.html> (accessed on 14 May 2020).*

<sup>286</sup> *Ibid.*, sect. 1535(f); *United States Fish and Wildlife Service, "ESA Basics: 40 Years of Conserving Endangered Species", 2013. Available at [https://www.fws.gov/endangered/esa-library/pdf/ESA\\_basics.pdf](https://www.fws.gov/endangered/esa-library/pdf/ESA_basics.pdf).*

<sup>287</sup> *Ibid.*, sect. 3373(a).

<sup>288</sup> *Ibid.*

<sup>289</sup> *Ibid.*, sect. 3373(d).

<sup>290</sup> *Ibid.*, sect. 3374.

<sup>291</sup> *See the United States country profile for more information about these provisions.*

99. There have been many prosecutions in which the ESA and Lacey Act provisions that limit domestic possession and trade in Appendix I-listed species were interpreted and enforced by courts.<sup>292</sup>

#### Viet Nam

100. Viet Nam is a source, transit, and consumer country for multiple Appendix I-listed species, including rhinoceros, tigers, pangolins, turtles, tortoises, gibbons, and orchids.<sup>293</sup> In partnership with civil society groups and non-governmental organizations, the government has initiated several campaigns to reduce demand for illegal wildlife trade, including of Appendix I-listed species.<sup>294</sup>
101. In July 2020, the Prime Minister issued a Directive ordering the prohibition of domestic advertising, sale, and possession of protected wildlife, the closure of markets known to host illegal wildlife trading, the creation of a database to better track captive breeding facilities, monitoring of online trade, increased enforcement and public awareness surrounding the illegal wildlife trade, and more.<sup>295</sup> Nevertheless, until these actions are carried out, a number of existing regulations regulating domestic wildlife trade in protected species seem still to be in effect.
102. Viet Nam generally prohibits possessing, purchasing, selling, consuming, transporting, and more of species included in its list of endangered, precious and rare species.<sup>296</sup> Possession of these species, however, is allowed for purposes of conservation, research, or ecotourism, or if a specimen is being held temporarily while being transported to a rescue center.<sup>297</sup> To transport these species, proper documentation and licensing must be secured.<sup>298</sup>
103. The list of endangered, precious and rare species is primarily composed of endangered species native to Viet Nam, some of which are also Appendix I-listed species.<sup>299</sup> Not all Appendix I-listed species are included, however. Several non-native Appendix I-listed species are protected under a separate species-specific law, which prohibits domestic trade of white rhinoceros, black rhinoceros, and African elephants, unless required for a legitimate purpose, such as scientific research.<sup>300</sup>
104. The breeding of endangered, precious, and rare species in captivity is allowed, generally to promote biodiversity conservation, support scientific research, or foster ecotourism, but sometimes also for commercial purposes.<sup>301</sup> The same is true for endangered, precious, and rare plants; however, in these cases, artificial propagation facilities must hold Certificates of Origin.<sup>302</sup> Facilities breeding endangered, precious, and rare species in captivity or artificially propagating them must be registered with the specific agency determined by the Ministry of Agriculture and Rural Development.<sup>303</sup> Further, endangered, precious, and rare species bred in captivity or artificially propagated must be

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<sup>292</sup> *Ibid.*

<sup>293</sup> See section on “Markets by Species” above.

<sup>294</sup> USAID Wildlife Asia, “Vietnam Consumer Demand Reduction.”

<sup>295</sup> [TRAFFIC, Viet Nam Issues Ban on Wildlife Imports & Announces Closure of Illegal Wildlife Markets, 24 July 2020.](#)

<sup>296</sup> Viet Nam, Biodiversity Law, Law No. 20/2008/QH12, arts. 7, 37-40. Available at <http://extwprlegs1.fao.org/docs/pdf/vie88471.pdf>; Viet Nam, Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species, art. 5. Available at [https://www.unodc.org/res/cld/document/decree-no--32-on-management-of-endangered-precious-and-rare-forest-plants-and-animals.html/Decree No. 32 On Management of Endangered Precious and Rare Forest Plants and Animals.pdf](https://www.unodc.org/res/cld/document/decree-no--32-on-management-of-endangered-precious-and-rare-forest-plants-and-animals.html/Decree%20No.%2032%20On%20Management%20of%20Endangered%20Precious%20and%20Rare%20Forest%20Plants%20and%20Animals.pdf) (also prohibiting possession of endangered species).

<sup>297</sup> Viet Nam, Biodiversity Law, Law No. 20/2008/QH12, arts. 46-47.

<sup>298</sup> Viet Nam, Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species, art. 7.

<sup>299</sup> Viet Nam, Government Decree No. 48/2002/ND-CP Amending and Supplementing the List of Precious and Rare Wild Plants and Animals, Issued Together with Decree No. 18/HDBT of January 17, 1992 of the Council of Ministers Prescribing the List of Precious and Rare Forest Plants and Animals and the Regime of Management and Protection Thereof. Available at <http://extwprlegs1.fao.org/docs/pdf/vie35281.pdf>.

<sup>300</sup> Viet Nam, Decision No. 11/2013/QD-TTg of January 24, 2013, Banning the Import and Export of, and Trade in, Specimens of a Number of Wild Fauna Species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, arts. 1–2. Available at <http://extwprlegs1.fao.org/docs/pdf/vie164683.pdf>.

<sup>301</sup> Viet Nam, Biodiversity Law, Law No. 20/2008/QH12, art. 45.

<sup>302</sup> Viet Nam, Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species, art. 8.

<sup>303</sup> *Ibid.*



accompanied by trading licenses and logs recording their imports and exports if they are traded commercially.<sup>304</sup>

105. CITES-listed species may be bred in captivity or artificially propagated, and subsequently traded commercially, as long as the facilities are registered with the Viet Nam CITES Management and Scientific Authorities.<sup>305</sup> Facilities breeding bears in captivity cannot engage in commercial activities, and must adhere to a number of registration and record keeping requirements.<sup>306</sup>
106. Individuals that violate any of these prohibitions may face penalties, including fines of 50 to 500 million dong (approximately US\$2,160 to US\$21,600 as of August 2020), non-custodial reform for up to three years, or imprisonment for six months to three years (or up to seven years under certain circumstances).<sup>307</sup> Violators may also be prohibited from holding certain professional positions or performing specific jobs for a limited or permanent term.<sup>308</sup> Violations of the Anti-Money Laundering provisions in relation to illegal wildlife trade may result in additional penalties of up to 15 years in prison and fines in the value of the property at issue.<sup>309</sup>
107. A 2014 study revealed that of 4,099 wildlife farms in operation in Viet Nam, roughly 50 percent were breeding species listed by CITES or considered to be endangered, precious and rare in Viet Nam.<sup>310</sup> While 85 per cent of facilities were registered with the respective agencies, it is estimated that 600 farms are operating that are not registered with the national government.<sup>311</sup> Meanwhile, 10 facilities are registered with CITES, all of which are breeding crocodiles.<sup>312</sup>
108. No court cases interpreting or implementing these provisions were identified.

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<sup>304</sup> *Ibid.*, art. 9.

<sup>305</sup> Viet Nam, Government Decree 82/2006/ND-CP on Management of Export, Import, Re-export, Introduction from the Sea, Transit, Breeding, Rearing and Artificial Propagation of Endangered Species of Precious and Rare Wild Fauna and Flora, arts. 10-12. Available at <http://extwprlegs1.fao.org/docs/pdf/vie68031.pdf>.; Viet Nam, Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species, art. 9.

<sup>306</sup> Viet Nam, Decision No. 95/2008/QD-BNN of September 29, 2008, Promulgating the Regulation on Management of Raised Bears, arts. 2–7, 15. Available at <http://extwprlegs1.fao.org/docs/pdf/vie83868.pdf>.

<sup>307</sup> Viet Nam, Penal Code, Law No. 15/1999/QH10, art. 190. Available at <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn017en.pdf> (unofficial translation); Viet Nam, Law Amending and Supplementing a Number of Articles of the Penal Code, Law No. 37/2009/QH12, art. 1. Available at [https://www.unodc.org/res/cld/document/penal-code-amendment-act.html/2014\\_update\\_on\\_Penal\\_Code.pdf](https://www.unodc.org/res/cld/document/penal-code-amendment-act.html/2014_update_on_Penal_Code.pdf) (unofficial translation).

<sup>308</sup> Viet Nam, Penal Code, Law No. 15/1999/QH10, art. 190.

<sup>309</sup> *Ibid.*, art. 251.

<sup>310</sup> Food and Agriculture Organization of the United Nations, *Wildlife Farming in Viet Nam: Southern Viet Nam's wildlife farm survey report in a glance*. Available at <http://www.fao.org/3/a-az118e.pdf>.

<sup>311</sup> *Ibid.*

<sup>312</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, "Viet Nam", CITES registers. Available at <https://www.cites.org/eng/common/reg/cb/VN> (accessed on June 1, 2020).

**Table 1: Overview of National Controls**

	Quick overview of elements covered by the national controls on domestic trade in CITES App. I species											
	China	Hong Kong SAR	Macao SAR	European Union	India	Indonesia	Lao PDR	Malaysia	Nigeria	Thailand	United States	Viet Nam
<b>Regulation of possession and domestic trade in wildlife</b>	Possession not regulated	Yes	Yes	Possession regulated at discretion of each Member State	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Does it cover all species included in Appendix I?	Unknown	Yes	Yes	Yes	No	No	Yes	Yes in Sabah and Sarawak; not in Peninsular Malaysia	Yes	No	No	No
Does it cover native and non-native species?	Unknown	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Does it cover captive-bred specimens?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Does it cover look-alike, non-protected species?	No	No	No	No	No	No	No	No	No	No	Yes	No
Is online trade expressly regulated?	Yes	Yes	Unclear	Unclear (yes in select Member States)	Unclear	Unclear	Unclear	Unclear	Unclear	Yes	Unclear	Yes
Is proof of legal origin expressly required for possession or domestic trade?	No	No	Maybe	Maybe	Maybe	No	No	Maybe	Maybe	Maybe	No	No
<b>Seizure</b>												
Are officials authorized to seize specimens illegally traded domestically - or illegally possessed?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes (for bears, otherwise unknown)
Are there guidelines for managing seized and confiscated specimens to prevent leakage (i.e., expressly discussing preventing leakage)?	No	No	No	No	No	No (but sale of seized App. I-listed species prohibited)	No (but live specimens to be managed consistently with CITES)	Yes (in Sabah)	No	No	No (but sale of seized App. I-listed species prohibited)	No
<b>Penalties and adjudication</b>												
Are penalties higher for corporations?	No	No	No	Maybe	No	No	No	Sometimes	Sometimes	No	Sometimes	No
Are penalties higher for members of organized criminal groups?	No	No	No	Maybe	No	No	Yes	No	No	No	No	Sometimes
Are there rewards for enforcement assistance?	Yes	Yes	No	Unknown	No	No	Yes	No	No	No	Yes	No
Can the public or enforcement officials to access information on previously concluded cases?	Unknown	Yes	Unknown	Yes	Yes	Yes	No	No	No	Yes	Yes	No



## Trends in Legal Controls on Domestic Trade of Appendix I-Listed Species

109. An analysis of the legal frameworks that govern wildlife possession and domestic trade of Appendix I-listed species in ten countries yields a variety of approaches, while also highlighting opportunities to improve endangered species protections at the national level. The Parties included in this study were primarily selected based on trends observed in seizure data indicating their importance as source, transit, and/or consumer countries for Appendix I-listed species. Country profiles explored the nature of the domestic markets, legality of and controls on possessing, trading, and breeding Appendix I-listed species in captivity, seizure procedures, registration requirements, and legal interpretations in each of these countries. A table summarizing key findings is included in the previous section and indicates the presence or absence in national controls of different elements in each of the ten countries studied. This section surveys key trends and notable practices observed in each of these areas of domestic regulation across the ten Parties in greater detail.

### Key aspects of domestic markets

110. As the literature review that informed Party selection for this study revealed, Appendix I-listed species are seized in different markets. While the literature points to countries that are affected by illegal trade in Appendix I-listed species and that may be home to domestic markets, it is uncertain exactly how these countries are affected—that is, whether there is demand for illegal specimens and products within each country itself, or whether a certain species is captured in or trafficked through the countries to feed demand elsewhere. Most of the countries examined in this study are potential source, transit, and consumer markets for different Appendix I-listed species (with the exception of the European Union, which is predominantly a transit and consumer market<sup>313</sup>). Endangered species or products thereof come from, travel through, and are used in each country, although the same types of species are not necessarily implicated in each way within a single country. For example, Indonesia is a source, transit, and consumer market for freshwater turtle and tortoise species, but is primarily a source country for frogs, and a transit country for ivory and African pangolins.
111. The Appendix I-listed species and products thereof have a wide range of uses. Depending on the species and the market, they may ultimately be consumed as food or medicine, kept as pets, displayed as trophies or decorations, worn as clothes or jewelry, collected as souvenirs, or used to fulfill other purposes.<sup>314</sup>

### Strategies to reduce demand for illegal wildlife products

112. Various governments—often in partnership with bilateral aid agencies, intergovernmental bodies, and NGOs—have implemented demand reduction programmes to complement legal and regulatory approaches to the illegal wildlife trade. A Resolution adopted at the 17th meeting of the Conference of Parties (CoP17, Johannesburg, September 2016) encouraged the adoption of effective demand reduction measures related to illegal wildlife trade, stating that “enforcement interventions play a critical role in stemming illegal trade in specimens of species included in CITES Appendices, but bearing in mind that, without a complementary effort to address the persistent market demand that drives this trade, enforcement action alone may not be sufficient to eliminate this threat.”<sup>315</sup> According to the resolution, demand-reduction efforts should entail studying the market at issue and the drivers of demand, developing well-tailored approaches to engage consumers of illegal wildlife products, and educating them about existing laws and the negative impacts of illegal wildlife trading in order to encourage them to change their behavior.

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<sup>313</sup> European Commission, “The EU Approach to Combat Wildlife Trafficking”, 7 August 2019. Available at [https://ec.europa.eu/environment/cites/traf\\_steps\\_en.htm](https://ec.europa.eu/environment/cites/traf_steps_en.htm).

<sup>314</sup> United States, United States Fish and Wildlife Service, “Illegal Wildlife Trade”. Available at <https://www.fws.gov/international/travel-and-trade/illegal-wildlife-trade.html> (accessed on 14 May 2020); TRAFFIC, *An Overview of Seizures of CITES-Listed Wildlife in the European Union, January to December 2018* (TRAFFIC, Cambridge, 2020).

<sup>315</sup> *Resolution Conf. 17.4 – Demand Reduction Strategies to Combat Illegal Trade in CITES-Listed Species (2016)*. Available at [https://www.cites.org/sites/default/files/document/E-Res-17-04\\_0.pdf](https://www.cites.org/sites/default/files/document/E-Res-17-04_0.pdf).

113. Demand-reduction interventions can take different forms. The Conference of Parties identified several options, including amending legislation, developing informative education campaigns targeting consumers, and generally increasing awareness of key restrictions, penalties, and the necessity of these measures for species protections and sustainable development more broadly.<sup>316</sup> Several approaches have been adopted and implemented by the countries studied.
114. In Lao PDR, a 2018 order from the Prime Minister that tightened controls on international and domestic trade of protected species required, among other measures, that the Ministry of Agriculture and Forestry, local governments, and associated sectors provide more information to the public about wildlife laws to improve awareness of applicable restrictions.<sup>317</sup> Once consumers are aware of the prohibitions and the potential penalties associated with violations, they may be less inclined to purchase specimens of and products derived from endangered species illegally.
115. In 2014, the United States adopted a National Strategy for Combating Wildlife Trafficking that, along with other initiatives, sought to reduce demand for illegal wildlife both nationally and internationally by increasing public awareness about the consequences of the trade on people and animals through partnerships with NGOs, industries, communities, and others.<sup>318</sup> Although the policy may no longer be in effect, one of the initiatives it promoted, the sale of “Save the Vanishing Species” postal stamps to raise funds for species conservation efforts under the United States’ Multinational Species Conservation Acts, continues to this day.<sup>319</sup> Through this initiative, members of the public can demonstrate their support for the conservation of endangered African and Asian elephants, rhinoceros, tigers, great apes, and marine turtles by purchasing these stamps from the United States Postal Service.<sup>320</sup>
116. Other Parties have adopted programs to increase public involvement in the enforcement of wildlife crimes. When these efforts successfully increase the level of enforcement in a particular market, they may reduce demand for illegal wildlife. Illegal wildlife trade-related crimes are often regarded as low risk and high reward given the typically low chances of being caught and the potentially high profits to be earned.<sup>321</sup> Increasing enforcement efforts means that these crimes—which often include the possession or purchasing of illegal wildlife products, not just their sale—are no longer low risk, Parties may be able to change the calculus that otherwise leads individuals to purchase wildlife products with little fear of being penalized for doing so.
117. One such effort to increase the scope of enforcement of domestic wildlife laws was undertaken in Indonesia in 2018, where a program mobilized citizens to help identify violations. The National Police collaborated with other government offices, including the Ministry of Marine Affairs and Fisheries and the Attorney General, as well as NGOs like the World Wildlife Fund, and religious and athletic leaders, to create an online portal through which members of the public are encouraged to report wildlife crimes in a campaign called “Indonesia Says No to Illegal Wildlife Trade.”<sup>322</sup> By involving the

<sup>316</sup> *Ibid.*

<sup>317</sup> Lao PDR, Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora, No. 05/PM (2018).

<sup>318</sup> United States, The White House, “National Strategy for Combating Wildlife Trafficking” (2014), p. 9. Available at: <https://obamawhitehouse.archives.gov/sites/default/files/docs/nationalstrategywildlifetrafficking.pdf>.

<sup>319</sup> *Ibid.*

<sup>320</sup> United States, United States Fish and Wildlife Service, “Multinational Species Conservation Acts”. Available at: <https://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/multinational-species-conservation-acts.html> (accessed on 14 May 2020) (“The Multinational Species Conservation fund Semipostal Stamp Act of 2009 was enacted as a way to provide the general public with a convenient way to contribute to the Multinational Species Conservation Funds. The Save the Vanishing Species Stamp was released in spring of 2011 and has generated over \$1.3 million in proceeds that are equally divided among the five Conservation Funds.”).

<sup>321</sup> Simon Robertson, “Why Law Enforcement is Essential to Stopping Illegal Wildlife Trade”, World Bank Blogs, 27 July 2017. Available at <https://blogs.worldbank.org/voices/why-law-enforcement-essential-stopping-illegal-wildlife-trade>.

<sup>322</sup> Antara News, Masyarakat dapat melaporkan perdagangan satwa dilindungi melalui e-Pelaporan [Communities Can Report Protected Animal Trade through e-Reporting] (5 Nov. 2018). Available at <https://www.antaraneews.com/berita/765379/masyarakat-dapat-melaporkan-perdagangan-satwa-dilindungi-melalui-e-pelaporan>; WWF-Indonesia, “Indonesia Says No to Illegal Wildlife Trade, Securing National Food Sustainability”, 5 November 2018. Available at [https://d2d2tb15kqhejt.cloudfront.net/downloads/\\_press\\_release\\_indonesia\\_says\\_no\\_to\\_illegal\\_wildlife\\_trade\\_securing\\_national\\_food\\_sust.pdf](https://d2d2tb15kqhejt.cloudfront.net/downloads/_press_release_indonesia_says_no_to_illegal_wildlife_trade_securing_national_food_sust.pdf).

public in the enforcement of wildlife crimes, the government is not only encouraging individuals not to be involved in illegal wildlife trading themselves, but is also allowing them to participate in enforcement by identifying and reporting violations. This measure and others like it may expand enforcement capacity and outcomes, increase the risk of being caught when engaging in the domestic wildlife trade, and lead to reduced demand for these products.

118. Many but not all countries studied have adopted measures that they define as, or that seem to fit the Conference of Parties' description of, demand-reduction strategies. The strategies identified in the process of preparing this report tended to focus on increasing public awareness of existing legal controls and harm caused by trade in endangered species, and on engaging the public in the enforcement of existing laws.
119. When TRAFFIC reported on the status of the implementation of the Conference of Parties' resolution encouraging the adoption of demand reduction measures in 2018, it distinguished between more general education campaigns and targeted efforts driving behavioral change.<sup>323</sup> The consultants argued: "It is critical that Parties understand the difference between well-targeted demand reduction strategies through behavior change and mass campaigns to raise awareness of the plight of endangered species and the various negative impacts of poaching and wildlife trafficking. Although both approaches have their merits, the former is more imperative in order to address the urgent needs."<sup>324</sup> While many Parties seem to be taking steps to reduce consumer demand for illegal wildlife through various initiatives, these measures could be strengthened by continuing to adapt them to their particular markets and designing them in such a way that they lead to concrete behavioral changes.

#### Approach to domestic laws and regulations

120. Each Party examined has a unique regulatory framework in place to regulate domestic markets in Appendix I-listed species, but certain trends were identified in their broad approaches. As depicted in table 1, above, each country regulates both possession and domestic trade in wildlife—with the exception of mainland China—despite the fact that they have made no express international commitment to do so.
121. In some countries, there is one primary law focused on the management and preservation of wildlife, and additional regulations, rules, or orders may supplement it. In China, for example, the Law on the Protection of Wildlife is the primary legal authority regulating and limiting domestic trade in Appendix I-listed species. The law prohibits the sale, purchase, or use of species under special state protection, unless certain exceptions apply, and allows local governments to place additional species under special local protection.<sup>325</sup> Since its original adoption in 1988, it has been implemented through a variety of decrees, regulations, and more.
122. In other countries, different aspects of the wildlife trade are regulated in separate laws, often resulting in a more complex regulatory framework. Malaysia, for example, has both federal and state laws regulating different aspects of domestic wildlife trade. As a result, controls vary depending on the state and species at issue in a particular case.<sup>326</sup> Indonesia similarly has separate authorities and varying controls for different types of species.<sup>327</sup>
123. Meanwhile, some countries have updated their laws through orders and decrees from implementing ministries and others without repealing or amending previous versions, thereby requiring regulated parties and enforcement officials to interpret what provisions are still in effect. This is the situation in Lao PDR, for example, where the Prime Minister issued an order in 2018 that explicitly preempts any

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<sup>323</sup> CoP18 Inf. 4. Available at <https://cites.org/sites/default/files/eng/cop/18/inf/E-CoP18-Inf-004.pdf>.

<sup>324</sup> *Ibid.*, p. 2.

<sup>325</sup> China, *Law of the People's Republic of China on the Protection of Wildlife*, arts. 1, 2, 4, 10, 27, 41 (2018).

<sup>326</sup> *INTESA and the WCA are federal laws, although the WCA does not apply to Sabah and Sarawak. Meanwhile, the WCE and WLPO apply solely in the states of Sabah and Sarawak, respectively.*

<sup>327</sup> *The Conservation of Living Resources and their Ecosystem Act applies to 921 different species. Meanwhile, the Conservation of Fishery Resources Regulation, as well as the Guidelines on Crocodile Management in Indonesia Decree, each regulate domestic trade in different fish and crocodile species. Controls and penalties therefore vary depending on the species.*

conflicting provisions, but does not specify what instruments and provisions are replaced or repealed as a result.<sup>328</sup>

#### Legality of domestic trade of Appendix I-listed species

124. Some domestic trade in Appendix I-listed species is legal under existing laws in each of the countries examined in this study, despite their being predominantly illegal to trade internationally.
125. The regulatory frameworks in seven of the ten countries studied limit domestic trade in certain Appendix I-listed species but not in others, leaving trade in those species not covered subject to more lenient controls, or unregulated altogether.<sup>329</sup> Under the Wildlife Conservation Act in Peninsular Malaysia, many Appendix I-listed species are categorized as protected or totally protected, with those that are totally protected receiving stronger protections than those that are considered protected.<sup>330</sup> Meanwhile, some Appendix I-listed species, including all protected plant species, are not listed under this law, but are still protected from certain types of domestic trade under another law that prohibits domestic trade of Appendix I-listed species that were imported illegally.<sup>331</sup> In Thailand, on the other hand, domestic possession and trade of all native and 50 non-native Appendix I-listed species is prohibited under the primary CITES-implementing law, but possession and trade of non-native species not listed thereunder is largely unregulated.<sup>332</sup>
126. Other countries have broad prohibitions on domestic trade in all Appendix I-listed species, but make exceptions for certain uses or through permit systems that ultimately allow for some amount of domestic trade to continue, albeit limited in scope. The primary wildlife protection regulation in the European Union, for example, prohibits domestic trade in Annex A species, which include all CITES Appendix I-listed species except those for which the Member States have filed reservations.<sup>333</sup> However, Member States have discretion to grant trade certificates for a variety of reasons, authorizing the holder of the certificate to engage in domestic trade.<sup>334</sup>
127. Some Parties that generally prohibit domestic trade in Appendix I-listed species make exceptions for specimens, parts, or products of Appendix I-listed species that were held before CITES or the particular Party's national legislation became applicable to the species.<sup>335</sup> Exemptions are also sometimes made for domestic trade in Appendix I-listed species for scientific research, medicine, species conservation, or other purposes deemed not to threaten the survival of the species.<sup>336</sup>
128. Several Parties, including the European Union,<sup>337</sup> also allow for domestic trade of Appendix I-listed species that are bred in captivity or artificially propagated.
129. The legality of trading captive-bred specimens of Appendix I-listed species may allow for illegal trade of wild specimens, disguised as captive bred specimens, to go undetected by enforcement officials. For example, TRAFFIC recently reported that in Indonesia “[a] quota [which typically refers either to the maximum quantity of specimens of a certain species that can be harvested or exported] of 4.2 million specimens for captive breeding by just 13 companies was allowed for 129 species of mammals, reptiles and amphibians in 2016. Many of these exceeded the quantities that can be

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<sup>328</sup> Lao PDR, Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora, No. 05/PM, sect. 16 (2018).

<sup>329</sup> See above table 1, which shows that three of the countries studied regulate domestic possession and trade in all Appendix I-listed species, as do Hong Kong SAR, Macao SAR, and the states of Sabah and Sarawak in Malaysia.

<sup>330</sup> Malaysia, Wildlife Conservation Act 2010, Act 716, sects. 9–11.

<sup>331</sup> *Ibid.*, Schedule II; Malaysia, International Trade in Endangered Species Act 2008, Act 686, sect. 12(b).

<sup>332</sup> Thailand, Wild Animal Reservation and Protection Act, B.E. 2562 (2019).

<sup>333</sup> European Union, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, arts. 3, 8 (“The purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale of specimens of the species listed in Annex A shall be prohibited.”).

<sup>334</sup> *Ibid.*, art. 8(3) (stating “exemption from the prohibition [] may be granted by issuance of a certificate to that effect by a management authority of the Member State in which the specimens are located, on a case-by-case basis,” [emphasis added]).

<sup>335</sup> European Union, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, art. 8(3)(a).

<sup>336</sup> *Ibid.*, art. 8(3).

<sup>337</sup> *Ibid.*, art. 8(3)(d).

biologically bred, highlighting a flaw in the system that permits laundering of wild-caught animals.”<sup>338</sup> This is presumably less of an issue in countries where domestic trade in a certain species, regardless of whether it is a wild specimen or bred in captivity, is unlawful and subject to penalties.

130. Another way in which illegal trade may be disguised as legal is through misrepresenting an Appendix I-listed or otherwise protected species as an unprotected species for which domestic trade is legal. Some countries have adopted controls to limit this type of trade; several approaches are discussed in the following section.

#### Regulation of domestic trade of Appendix I-listed species

131. Parties have chosen different approaches to regulate domestic trade of Appendix I-listed species, both in terms of the scope of species covered and the severity of the regulation adopted.
132. Some Parties have adopted species-specific regulations that apply only to those species contained in their country-specific lists. The Wildlife Protection Law in India, for example, contains two schedules of species for which domestic possession and trade is prohibited.<sup>339</sup> These schedules contain most, but not all, Appendix I-listed species.
133. Meanwhile, other Parties make their regulations expressly applicable to CITES Appendix I-listed species by referencing the Convention directly. The wildlife trade regulations in the European Union, for example, explicitly refer to the CITES Appendices when describing what species are contained within each Annex under the regulations (with all Appendix I-listed species for which reservations have not been entered falling within Annex A).<sup>340</sup> The wildlife protection laws in Hong Kong SAR, Macao SAR, Lao PDR, the states of Sabah and Sarawak in Malaysia, and Nigeria also reference and incorporate the species listed in Appendix I.
134. Others have adopted a combination of these approaches, either by referencing Appendix I or listing the species that are included, as well as additional species that are protected under the specific regulations. In Nigeria, for example, the endangered species law initially applied solely to the country’s list of protected species, which contained some, but not all, Appendix I-listed species.<sup>341</sup> Regulations promulgated under the law expanded its coverage to include all Appendix I-listed species, through a reference to CITES, in addition to those non-CITES-listed species listed under the original act.<sup>342</sup>
135. Many countries either prohibit the domestic trade of specimens and products of those protected species, allow limited trade through a permit system, or some combination thereof. Lao PDR, for example, prohibits all domestic trade in Appendix I-listed species.<sup>343</sup> India also generally prohibits the domestic trade of those Appendix I-listed species to which its wildlife protection law applies, as well as the development of businesses related to dealing in these species, including manufacturing, cooking and serving, taxidermy, meat or trophy dealing, or captive breeding, but allows trade when individuals or businesses have secured the appropriate licenses.<sup>344</sup>
136. Regulations in some countries distinguish between native and non-native species in the listing of species that are covered by the particular legal controls, but do not otherwise seem to differentiate based on the origin of the species in terms of how trade in that species is regulated.

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<sup>338</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*, p. 54.

<sup>339</sup> India, *Wildlife Protection Act (1972), Schedule I and Schedule II, Part II*.

<sup>340</sup> European Union, *Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein*, art. 3.

<sup>341</sup> Nigeria, *Endangered Species (Control of International Trade and Traffic) Act (2004), First and Second Schedules*.

<sup>342</sup> Nigeria, *National Environmental (Protection of Endangered Species in International Trade) Regulations 2011*, sect. 1.

<sup>343</sup> Lao PDR, *Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora*, No. 05/PM, sect. (2018).

<sup>344</sup> India, *Wildlife Protection Act (1972)*, sect. 43, 49B, 49C (under sect. 49B(3), the Central Government may be exempted from the prohibition on starting businesses under certain circumstances).



137. In Viet Nam, for example, the Biodiversity Law prohibits or limits domestic trade in endangered, precious, and rare species (depending on the Group in which the species is listed),<sup>345</sup> and Viet Nam's list of endangered, precious, and rare species contains solely native species—some of which are Appendix I-listed species, others of which are not.<sup>346</sup> A decree describing what species should be included stated: “plant varieties, livestock breeds, microorganisms and fungi on the list of endangered precious and rare species prioritized for protection are those meeting the following criteria: a/ Being in danger of extinction; b/ Being endemic or having special scientific, ecological, landscape, environmental or cultural-historical values.”<sup>347</sup> As such, domestic trade in Appendix I-listed species that are not native to Viet Nam, and that are not covered under a handful of species-specific laws is not regulated.<sup>348</sup>
138. Some Parties have also developed different categories of lists, like CITES, each of which receive different levels of protections or have varying legal controls related to their use in domestic trade. It is possible that native and non-native species may be listed in different categories, and thus be subject to different legal controls. In Peninsular Malaysia, many (but not all) Appendix I-listed species are considered either “totally protected” or “protected” under the Wildlife Conservation Act.<sup>349</sup> Totally protected species can be possessed if a special permit has been granted, while protected species can be possessed or used in domestic trade so long as a license has been granted.<sup>350</sup> Totally protected wildlife cannot be sold,<sup>351</sup> while protected wildlife may be purchased by or from licensed dealers.<sup>352</sup> China, India, and Nigeria also created multiple lists of species for which different legal controls apply.
139. Other legal controls extend protections to some non-native Appendix I-listed species, but not to others. Thailand, for example, prohibits domestic trade in species listed as protected under its wildlife protection law (WARPA).<sup>353</sup> Many of the species on its list are native to Thailand, but 50 non-native CITES-listed species were added in 2019.<sup>354</sup> Domestic trade of non-native, Appendix I-listed species that are not listed as protected under the Act, however, appears to be legal.
140. Controls on domestic trade in Appendix I-listed species do not tend to vary based on the nature of a specific transaction. For example, the same controls typically apply to a transaction between businesses, as to a transaction between consumers, and a transaction between a business and a consumer. In Nigeria and several other countries, corporations are subject to the same prohibitions on domestic trade of protected species as individual consumers, but may face higher penalties for violations.<sup>355</sup>
141. Since trade, including domestic trade, of Appendix I-listed species is increasingly moving online, some Parties have adopted provisions or amended their regulations to expressly extend existing restrictions to online trade, or to introduce controls specific to online marketplaces. For example, China has taken steps to expressly prohibit the offering for sale or purchasing of protected species online by making it illegal to facilitate online marketplaces for these products.<sup>356</sup> Meanwhile Thailand

<sup>345</sup> Viet Nam, *Biodiversity Law*, Law No. 20/2008/QH12, art. 7(4)-(5).

<sup>346</sup> Viet Nam, *Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species*, art. 2.

<sup>347</sup> Viet Nam, *Government Decree 65/2010/ND-CP detailing and guiding a number of articles of the Biodiversity Law*, art. 12(1).

<sup>348</sup> Viet Nam, *Government Decree No. 48/2002/ND-CP Amending and Supplementing the List of Precious and Rare Wild Plants and Animals, Issued Together with Decree No. 18/HDBT of January 17, 1992 of the Council of Ministers Prescribing the List of Precious and Rare Forest Plants and Animals and the Regime of Management and Protection Thereof*.

<sup>349</sup> Malaysia, *Wildlife Conservation Act 2010, Act 716, Schedules I and II*.

<sup>350</sup> *Ibid.*, sects. 9–11.

<sup>351</sup> *Ibid.*, sect. 87.

<sup>352</sup> *Ibid.*, sect. 120.

<sup>353</sup> Thailand, *Wild Animal Reservation and Protection Act*, B.E. 2562, sects. 19, 28, 30 (2019).

<sup>354</sup> Connor T. Panter and Rachel L. White, “Insights from Social Media into the Illegal Trade of Wild Raptors in Thailand”, *TRAFFIC Bulletin*, vol. 32, No. 1 (2020). Available at <https://www.traffic.org/site/assets/files/12779/bulletin-32-1-thai-raptors.pdf>.

<sup>355</sup> Nigeria, *National Environmental (Protection of Endangered Species in International Trade) Regulations 2011*, sect. 7(11).

<sup>356</sup> China, *Law of the People's Republic of China on the Protection of Wildlife*, art. 32 (2018).

adopted a provision in its Wild Animal Reservation and Protection Act that explicitly extends its prohibition on domestic possession and trade of protected species to online forums.<sup>357</sup>

142. Other Parties have used existing controls to regulate online markets. In Viet Nam, for example, the legal controls imposed on the use of the internet more generally prohibit the “[a]dvertising, propagating and trading in banned goods or services,” which may be interpreted to preclude the online offering for sale or sale of species that are prohibited from being sold under wildlife protection laws.<sup>358</sup> In the European Union, the wildlife trade regulations do not expressly discuss online trade, but their prohibition on the domestic trade of Appendix I-listed species has been interpreted to extend to transactions in online markets as well.
143. Parties might also prohibit or restrict trade in non-Appendix I-listed species that resemble listed species. In the United States, the Endangered Species Act allows for the regulation of possession and trade in species that so closely resemble endangered species that enforcement personnel may not be able to tell them apart, thereby further threatening the survival of the listed species.<sup>359</sup> Further, under the Lacey Act, individuals may not falsely identify or label protected species being traded domestically in interstate commerce.<sup>360</sup> As such, if someone were to label a specimen or product of an Appendix I-listed species as another species, they would violate the Lacey Act and be subject to the applicable penalties.

#### Regulating possession of Appendix I-listed species

144. Possession is typically regulated similarly to domestic trade, with many Parties examined for this study prohibiting possession of protected species generally, but allowing it in certain cases. Others regulate transit or transport of protected species, effectively restricting possession of species when they are being moved from place to place.
145. Thailand prohibits the possession of Appendix I-listed species that are listed as protected under its wildlife protection law, unless permission has been granted allowing otherwise.<sup>361</sup> India similarly prohibits possession of those Appendix I-listed species covered by its wildlife protection law, but makes exceptions for protected specimens or products that were either held prior to when the law took effect and were timely and properly registered with the government afterward, or were inherited.<sup>362</sup> Lao PDR also prohibits possession, while allowing it for certain exceptions, including for individuals who have received permission to possess the particular species.<sup>363</sup> Hong Kong SAR similarly prohibits possession of Appendix I-listed species unless the holder has been granted a license or certificate, or is in possession of a specimen imported before CITES took effect.<sup>364</sup> Nigeria prohibits the possession of any Appendix I-listed species that was acquired illegally.<sup>365</sup>
146. In the European Union, each Member State is given discretion to prohibit possession of CITES-listed species, but is not required to do so.<sup>366</sup> In some European Union Member States, individuals are

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<sup>357</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade* (Petaling Jaya, TRAFFIC, 2020), p. 79; Thailand, *Wild Animal Reservation and Protection Act*, B.E. 2562.

<sup>358</sup> Viet Nam, Decree No. 72/2013/ND-CP of July 15, 2013, *On the Management, Provision, and Use of Internet Services and Online Information*, art. 5(dd). Available at <https://vnnic.vn/sites/default/files/vanban/Decree%20No72-2013-ND-CP.PDF>.

<sup>359</sup> United States, *Endangered Species Act of 1973*, sect. 4(e).

<sup>360</sup> United States, *Lacey Act*, sect. 3372(d).

<sup>361</sup> Thailand, *Wild Animal Reservation and Protection Act*, B.E. 2562, sect. 19 (2019).

<sup>362</sup> India, *Wildlife Protection Act*, sect. 40(2) (1972) (prohibiting possession of those Appendix I-listed species covered by the Act unless they were held prior to the WPA taking effect and were timely and properly registered afterward, or inherited).

<sup>363</sup> Lao PDR, *Wildlife and Aquatic Law*, No.07/NA, art. 52 (2007); Lao PDR, Ministry of Agriculture and Forestry Order No. 0188/2019, art. 22 (stating “[p]rivate persons, entities and organizations are prohibited for the following attitudes: ... 2. Hunt, smuggle, exchange, possess, import, export, repatriate and transit wildlife and flora on lists I, II and III without permission.”).

<sup>364</sup> Hong Kong SAR, *Protection of Endangered Species of Animals and Plants Ordinance*, Cap. 586, sect. 9.1 (1 December 2006).

<sup>365</sup> Nigeria, *National Environmental (Protection of Endangered Species in International Trade) Regulations 2011*, sect. 7(3).

<sup>366</sup> European Union, *Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein*, art. 8(2).

required to secure internal trade certificates to legally possess Annex A (Appendix I-listed) species, similarly to as if they were planning to trade them internally.<sup>367</sup>

147. Countries can also specifically restrict possession during transit. For example, Lao PDR prohibits transit of wild Appendix I-listed species, Appendix I-listed species that will be used for commercial purposes (seemingly without exceptions), and non-wild Appendix I-listed species that will be used for non-commercial purposes without prior permission.<sup>368</sup>
148. Some countries do not prohibit possession of Appendix I-listed species, but require individuals to report information about the specimen or product they are holding to the government, acquire a permit, uniquely mark the specimen, keep records, or a combination thereof. In India, possession of protected species is only allowed under specific circumstances, and the owner must hold a certificate of ownership granted by the Chief Wildlife Warden, who may require that the specimen or product be marked.<sup>369</sup> Similarly, in Lao PDR, individuals are prohibited from possessing Appendix I-listed species (referred to as prohibited species under the Wildlife and Aquatic Law) if they do not have prior permission to do so.<sup>370</sup> Further, when breeding protected species in captivity, facilities in Lao PDR must be authorized by the Ministry of Agriculture and Forestry prior to engaging in domestic trade involving captive bred specimens<sup>371</sup> (new captive breeding facilities of Appendix I-listed species are no longer approved for commercial purposes, but older facilities may be grandfathered<sup>372</sup>), and if they are not breeding animals for commercial purposes, they must still provide records to their village agriculture and forestry units.<sup>373</sup>

#### Authority to seize Appendix I-listed species

149. Enforcement officials in the countries examined for this study are generally authorized by existing laws and regulations to seize specimens or products of Appendix I-listed species when the officials

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<sup>367</sup> European Commission, "Permits, Certificates and Notifications", 7 August 2019. Available at [https://ec.europa.eu/environment/cites/info\\_permits\\_en.htm#\\_Toc223858327](https://ec.europa.eu/environment/cites/info_permits_en.htm#_Toc223858327).

<sup>368</sup> Lao PDR, Ministry of Agriculture and Forestry Order No. 0188/2019, art. 22(1) (stating "[p]rivate persons, entities and organization are prohibited for the following attitudes: (1) Trade, export, import and transit wildlife and flora on list I of CITES for commercial purposes; (2) Hunt, smuggle, exchange, possess, import, export, repatriate and transit wildlife and flora on lists I, II and III without permission;"); Lao PDR, Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora, No. 05/PM, sect. 2 (2018) ("The Prime Minister has issued the following order: ... 2. Stop the hunting of all wild animals listed in the prohibited list (Appendix I), stop the import, transit, export, trade of alive or lifeless wild fauna and flora. These include parts of the body and products from prohibited list (Appendix I) stated in the Law on Wildlife and Aquatic Animals of the Lao PDR and CITES."); but see Lao PDR, Wildlife and Aquatic Law, No.07/NA, art. 41 (2007) ("The transportation of wildlife and aquatic in the prohibition and management categories from one place to another within the country is permissible for transportation on the defined roads and shall declare the documents to officials at the checkpoint which is comprising of transportation permission issued by the agriculture and forestry authorities, this also includes information and documentation such as health certification, origin of such wildlife and aquatic, and a completed registration sheet.)

<sup>369</sup> India, Wildlife Protection Act, sects. 41-42 (1972).

<sup>370</sup> Lao PDR, MAF Order No. 0188/2019, art. 22 ("Private persons, entities and organization[s] are prohibited for the following attitudes: ... 2. Hunt, smuggle, exchange, possess, import, export, repatriate and transit wildlife and flora on lists I, II and III without permission;"); Lao PDR, Wildlife and Aquatic Law, No.07/NA, arts. 36 ("The permission to hold captive wildlife and aquatic requires the following considerations: 1. The wildlife and aquatic in the first (I) category of prohibition list, the government authorizes and permits individuals or organizations to hold wildlife and aquatic for breeding and for business purposes."); 52(3) (To prohibit individuals, local organizations and international organizations are in the Lao PDR taking any of the following actions: ... 3. Illegal catching, hunting, trading and possession of the wildlife and/or aquatic life without the required permission.") (2007).

<sup>371</sup> Lao PDR, Wildlife and Aquatic Law, No.07/NA, arts. 23 ("The prohibition [Appendix I] and management category of wildlife and aquatic that are in captivity shall be registered and declared as follows: 1. To captive wildlife and aquatic for business purposes shall register with the district or the Municipality at the agriculture and forestry office and then report to the agriculture and forestry office of the province or capital city."), 36 (2007).

<sup>372</sup> Lao PDR, Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora, No. 05/PM, sect. 3 (2007) ("Stop the establishment of prohibited wildlife farm (Appendix I) for business purpose and promote the existing farms to transform into safari or zoo environment for the purpose of conservation, tourism and scientific purposes only.")

<sup>373</sup> Lao PDR, Ministry of Agriculture and Forestry Decision No. 0188/2019, arts. 12, 14; Lao PDR, Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora, No. 05/PM, at paras. 3, 6, 7 (2019); Lao PDR, Wildlife and Aquatic Law, No.07/NA, arts. 23, 36 (2007).



reasonably suspect that the relevant wildlife law has been violated.<sup>374</sup> For example, local and state governments in China are authorized by the primary wildlife protection law to seize specimens and products from special state protected species that are implicated in actions that violate the law.<sup>375</sup>

150. In those countries that authorize seizure under reasonable suspicion of a violation, but prior to a conviction, there is a chance that some items will be seized for suspected violations that are ultimately dismissed without prosecution or penalty. Acknowledging the possibility of such an outcome, some countries have provisions in place to address wrongful seizures.
151. For example, authorized officers in India can seize specimens or products they believe to have been used in violation of the country's primary wildlife protection law, but if an authorized officer "vexatiously and unnecessarily" seizes an item on the pretense of seizing it for legitimate reasons, they may be subject to a fine of 500 rupees, imprisonment for six months, or both.<sup>376</sup> In Hong Kong SAR, officers are authorized to seize specimens or products they suspect to have been used in a way that violates existing endangered species laws; they are subject to penalties for intentional wrongful seizure; but, should they wrongfully seize something in good faith, they are expressly not subject to any penalties.<sup>377</sup>

#### Handling of seized or forfeited specimens and products

152. After seizing protected species, countries handle them in different ways. When specimens are alive, some legal instruments designate a management authority to care for them.
153. In Lao PDR, for example, the Ministry of Agriculture and Forestry is tasked with caring for live seized specimens.<sup>378</sup> In Nigeria, in addition to being cared for by the national CITES Scientific Authority,<sup>379</sup> seized live specimens may be kept in wildlife rescue centers or returned to the country of export, if the specimen concerned is imported and the country of export is known.<sup>380</sup> In China, seized live specimens may ultimately be released into the wild if that is determined to be the best solution for the conservation of the species.<sup>381</sup> Live specimens seized in Hong Kong SAR that are not suitable for keeping in captivity may also be released, or can be sold or disposed of.<sup>382</sup> India allows for disposal of seized specimens, including plants and live animals, but leaves the selection of a method for disposal up to the Chief Wild Life Warden.<sup>383</sup>
154. When specimens or products thereof are dead, the legislation of some countries, like Lao PDR, requires them to be destroyed.<sup>384</sup> Others, like Nigeria, designate an authority to receive and record seized dead specimens or products.<sup>385</sup>

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<sup>374</sup> As shown in table 1, above, each country studied allows for a designated authority to seize Appendix I-listed species illegally held in possession or used in domestic trade in some capacity.

<sup>375</sup> China, *Law of the People's Republic of China on the Protection of Wildlife*, art. 48 (2018)

<sup>376</sup> India, *Wildlife Protection Act*, sect. 53 (1972).

<sup>377</sup> Hong Kong SAR, *Protection of Endangered Species of Animals and Plants Ordinance*, Cap. 586, sect. 6–43(3) (2006).

<sup>378</sup> Lao PDR, *Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora*, No. 05/PM, sect. 6.3 (2018).

<sup>379</sup> Nigeria, *National Environmental (Protection of Endangered Species in International Trade) Regulations 2011*, sect. 8 ("The specimens confiscated according to the provisions of these Regulations, (except living specimens which shall be entrusted to the Scientific Authority) remain the property of the Enforcement Authority, which in consultation with the Authority and Scientific Authority shall decide upon their final disposal.").

<sup>380</sup> Nigeria, *Endangered Species (Control of International Trade and Traffic) Act (2004)*, sect. 5(2)(b)(3) ("Where a person is convicted of an offence under subsection (1) of this section, the court may- ... (3) Without prejudice to subsection (1) of this section, where a living specimen is forfeited pursuant to this section, the specimen shall be entrusted to the Minister who may, after consultation with the country of export, return the specimen either to that country at the expense of that country or to a wild life rescue centre or to such other place as the Minister may deem appropriate.").

<sup>381</sup> China, *Law of the People's Republic of China on the Protection of Wildlife*, sect. 26 (2018).

<sup>382</sup> Hong Kong SAR, *Protection of Endangered Species of Animals and Plants Ordinance*, Cap. 586, sect. 35 (2006). The law does not specify where live animals, including live animals not native to Hong Kong SAR, would be released, and makes no mention of returning live animals to their native countries.

<sup>383</sup> India, *Wildlife Protection Act*, sects. 50(4), 50(6), 58G (1972).

<sup>384</sup> Lao PDR, *Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora*, No. 05/PM, sect. 6.3 (2018)

<sup>385</sup> Nigeria, *National Environmental (Protection of Endangered Species in International Trade) Regulations 2011*, sects. 8–9.

## Penalties

155. Penalties for violations of laws related to possession and domestic trade of Appendix I-listed species include, most commonly, monetary fines, imprisonment, or both. The size of potential fines and lengths of potential imprisonment vary widely by country, as shown in Table 2, below. The laws in some of the countries studied also allow officials to impose other penalties, such as revoking permit privileges or limiting professional advancement.

*Table 2: Potential penalties for violations related to possession of and domestic trade in Appendix I-listed species according to legal controls studied*

Country	Penalties for possession of Appendix I-listed species	Penalties for domestic trade of Appendix I-listed species	Related violations, conditions that may increase penalties, and other notable provisions
China (excluding Hong Kong SAR and Macao SAR) <sup>386</sup>	<i>For improper carrying or transport</i> – Fine of 2 – 10 times the value of the seized products; and/or imprisonment for up to 5 years (unless serious circumstances, then 5 – 10 years; especially serious circumstances, then 10+ years); revocation of permits and other approvals (optional)	Fine of 2 – 10 times the value of the seized products; and/or imprisonment for up to 5 years (unless serious circumstances, then 5 – 10 years; especially serious circumstances, then 10+ years); revocation of permits and other approvals (optional)	For Appendix I-listed species illegally used or traded as food, any illegally-derived income may be forfeited. For the facilitation of illegal trade, illegal behavior must cease and the individual must “make corrections within a prescribed time limit”; profits may be seized; and a fine of 2 – 5 times the amount of improper profits, or 10,000 – 50,000 yuan (if no unlawful profits were made) may be required.
Hong Kong SAR	Fine of HK\$5,000,000 on summary conviction; HK\$10,000,000 on conviction on indictment; and/or imprisonment for 2 years on summary conviction; or 10 years on conviction on indictment.	N/A <sup>387</sup>	Members of the public that report wildlife crimes will have their identities protected, and may receive cash if their tips lead to successful convictions. <sup>388</sup>
Macao SAR <sup>389</sup>	Fine of 200,000 – 500,000 MOP and forfeiture of the associated specimens to the state.	Fine of 200,000 – 500,000 MOP and forfeiture of the associated specimens to the state.	Repeat offenses (within one year of conclusion of proceedings for prior offense): 25 per cent

<sup>386</sup> China, *Decision on a Complete Ban of Illegal Wildlife Trade and the Elimination of the Unhealthy Habit of Indiscriminate Wild Animal Meat Consumption for the Protection of Human Life and Health (February 2020)* bans domestic trade in wild animals protected under the existing law, and increases penalties for violations by an unspecified amount. The penalties listed here are those found in the Law on the Protection of Wildlife.

<sup>387</sup> The Hong Kong Protection of Endangered Species of Animals and Plants Ordinance does not regulate domestic trade in Appendix I-listed species, nor does it prescribe penalties for violations of controls on domestic trade. Hong Kong SAR, *Protection of Endangered Species of Animals and Plants Ordinance, Cap. 586 (1 December 2006)*.

<sup>388</sup> Government of the Hong Kong SAR, Agriculture, Fisheries and Conservation Department, “Reward scheme for endangered species protection”, 8 July 1999. Available at [https://www.afcd.gov.hk/english/publications/publications\\_press/pr66.html](https://www.afcd.gov.hk/english/publications/publications_press/pr66.html).

<sup>389</sup> Attempted violations are also punishable in Macao SAR; however, the specific penalties are not listed in Law No. 2/2017.

Country	Penalties for possession of Appendix I-listed species	Penalties for domestic trade of Appendix I-listed species	Related violations, conditions that may increase penalties, and other notable provisions
			increase in minimum penalties.
European Union <sup>390</sup>	-	-	-
India	Fine of up to 5,000,000 rupees; and/or imprisonment for up to 7 years (potentially more if a tiger reserve is involved).	Fine of up to 5,000,000 rupees; and/or imprisonment for up to 7 years (potentially more if a tiger reserve is involved).	Penalties may be higher for second- and subsequent-time offenders. Members of the public that report violations may be awarded up to half of any fines collected.
Indonesia	Negligent violations: Fine of up to 50 million rupiah and/or imprisonment for up to one year. Intentional violations: Fine of up to 100 million rupiah and/or imprisonment for up to 5 years.	Negligent violations: Fine of up to 50 million rupiah and/or imprisonment for up to one year. Intentional violations: Fine of up to 100 million rupiah and/or imprisonment for up to 5 years.	
Lao PDR	<p><i>Violations resulting in less than 200,000 Kip in damages</i> – Forfeiture of specimen or product; and undergo education if member of the public, or lose position or receive professional penalties if public servant.</p> <p><i>Violations resulting in 200,000 Kip or more in damages</i> – Fine of double the damages incurred or 3—10 million Kip;<sup>391</sup> and/or imprisonment for 3 months – 5 years; and forfeiture of specimen or product.</p>	<p><i>Violations resulting in less than 200,000 Kip in damages</i> – Forfeiture of specimen or product; and undergo education if member of the public, or lose position or receive professional penalties if public servant.</p> <p><i>Violations resulting in 200,000 Kip or more in damages</i> – Fine of double the damages incurred or 3—10 million Kip; and/or imprisonment for 3 months – 5 years; and forfeiture of specimen or product.</p>	<p>Repeat offenses (related to possession): Fine increased to triple the damages incurred.</p> <p>Members of the public that assist in enforcement may receive public recognition and rewards.</p> <p>Offenses may qualify as predicate offenses under the Law on Anti-Money Laundering and Counter-Financing of Terrorism, resulting in additional penalties.</p>

<sup>390</sup> Each Member State of the European Union develops its own penalties. A breakdown of the penalties adopted by each Member State is included in the European Union country profile in Annex 2.

<sup>391</sup> The Wildlife and Aquatic Law prescribes a fine of double the damages incurred (Article 70), but the Penal Code (Article 334) prescribes a fine of 3–10 million Kip.

Country	Penalties for possession of Appendix I-listed species	Penalties for domestic trade of Appendix I-listed species	Related violations, conditions that may increase penalties, and other notable provisions
Malaysia	<p><i>For illegally imported species</i> – Fine of up to 1 million ringgit; and/or imprisonment for up to 7 years.</p> <p><i>In Peninsular Malaysia</i> – For protected wildlife (depending on the species, age, gender, and quantity): Fine of up to 100,000 ringgit; and/or imprisonment for up to 5 years. For totally protected wildlife (depending on the species, age, gender, and quantity): Fine of up to 500,000 ringgit; and/or imprisonment for up to 10 years</p> <p><i>In Sabah</i> – Animal species: Fine of 50,000 to 250,000 ringgit; and/or imprisonment for 1 to 5 years. Plant species: Fine of 50,000 to 250,000 ringgit; and/or <u>imprisonment for 1 to 5 years.</u></p> <p><i>In Sarawak</i> – Fine of 25,000 ringgit (50,000 for rhinoceros, 30,000 for orangutans or proboscis monkeys); and/or imprisonment for 2 years (5 years for rhinoceros).</p>	<p><i>For illegally imported species</i> – Fine of up to 1 million ringgit; and/or imprisonment for up to 7 years.</p> <p><i>In Peninsular Malaysia</i> – Fine of up to 50,000 ringgit; and/or imprisonment for up to 2 years.</p> <p><i>In Sabah</i> – Animal species: Fine of 5,000 – 50,000 ringgit; and/or imprisonment for up to 3 years. Plant species: Fine of up to 50,000 ringgit; and/or imprisonment for up to 3 years.</p> <p><i>In Sarawak</i> – Fine of 25,000 ringgit (50,000 for rhinoceros, 30,000 for orangutans or proboscis monkeys); and/or imprisonment for 2 years (5 years for rhinoceros).</p>	<p>Corporations face a fine of up to 2 million ringgit for violations related to possessing or trading imported species under INTESA.</p> <p>Under the WCA, penalties for possession vary depending on the species and quantity involved in the violation (certain species require minimum penalties and higher maximums).</p> <p>Money laundering charges related to violations in Peninsular Malaysia, or involving imported species, can result in fines of up to 5 million ringgit and imprisonment for up to 15 years.</p>
Nigeria	Fine of up to 5 million Naira (First Schedule species); up to 1 million Naira (Second Schedule species); and/or	Fine of up to 5 million Naira (First Schedule species); up to 1 million Naira (Second Schedule species); and/or	Corporations face fines of up to 20 million Naira, and their principal officers may face up to 7 years in prison.

Country	Penalties for possession of Appendix I-listed species	Penalties for domestic trade of Appendix I-listed species	Related violations, conditions that may increase penalties, and other notable provisions
	imprisonment for up to 3 years.	imprisonment for up to 3 years.	
Thailand	Fine of up to 100,000 baht; and/or imprisonment for up to one year.	Fine of up to 400,000 baht and/or imprisonment for up to 4 years.	Money laundering charges related to these violations can result in additional fines of 20,000 – 200,000 baht, 1 – 10 years in prison, or both.
United States of America	<p><i>Knowing violation</i> – Fine of up to US\$25,000 (civil penalty)/US\$50,000 (criminal penalty); and/or imprisonment for up to 1 year (criminal penalty).</p> <p><i>Other violation</i> – Fine of up to US\$500.</p>	<p><i>Specimens or products with market value of less than US\$350</i> – Fine of up to US\$10,000 (under the Lacey Act) and up to US\$50,000 (under the ESA); and/or imprisonment for up to 1 year (if a criminal penalty is warranted under the ESA); and suspension, modification, or cancellation of permits (under the Lacey Act).</p> <p><i>Specimens or products with market value of more than US\$350</i> – Fine of up to US\$20,000 (under the Lacey Act) and up to US\$50,000 (under the ESA); and/or imprisonment for up to 5 years (under the Lacey Act) and up to 1 year (under the ESA); and suspension, modification, or cancellation of permits (under the Lacey Act).</p>	<p>Each individual violation may result in the penalties listed; if multiple violations are committed, the cumulative fines and prison sentences may exceed the maximums that can be incurred for individual violations.</p> <p>Members of the public that report violations which lead to arrests, convictions, or otherwise under the ESA or the Lacey Act will be awarded a portion of the penalties collected and will be reimbursed any costs incurred for species care.</p>
Viet Nam	Fine of 50 – 500 million dong; or non-custodial reform for up to 3 years OR prison for 6 months – 3 years (or up to 7 years under certain circumstances); and/or a limit or ban on holding certain professional	Fine of 50 – 500 million dong; or non-custodial reform for up to 3 years OR prison for 6 months – 3 years (or up to 7 years under certain circumstances); and/or a limit or ban on holding certain professional	Organized crime, abuse of power, or violations that are particularly serious can result in imprisonment for 2 – 7 years. Violations of the Anti-Money Laundering provisions may result in additional penalties of up to 15 years in prison and fines in the

Country	Penalties for possession of Appendix I-listed species	Penalties for domestic trade of Appendix I-listed species	Related violations, conditions that may increase penalties, and other notable provisions
	positions for a limited or permanent term.	positions for a limited or permanent term.	value of the property at issue.

156. In many countries, the penalties for possession of and domestic trade in Appendix I-listed species are the same or similar. Notably, however, ranges of penalties tend to be articulated, allowing each country’s respective enforcing agencies or judges some discretion in selecting the appropriate penalty, whether it be a fine, imprisonment, an administrative penalty, or a combination.
157. Some countries provide for compounding of penalties for multiple or particularly serious violations, or those violations that also result in charges under anti-money laundering laws. In Malaysia, for example, proceeds from illegal trade in wildlife are considered to have come from criminal activity, so their movement within the financial system may be treated as money laundering offenses punishable with imprisonment for up to 15 years and a fine of up to 5 million ringgit—more than the otherwise maximum amounts of up to 10 years in prison and one million ringgit.<sup>392</sup>
158. Where members of the public are successful in assisting enforcement officials in identifying violations, a portion of the penalties collected may be returned to them as a reward or to cover any costs they incurred. In Hong Kong SAR, rewards of up to HK\$20,000 can be paid to informants who provide information leading to a conviction, and rewards of up to HK\$5,000 can be paid to informants who provide information leading only to seizures of endangered species or derivatives.<sup>393</sup> In India, courts imposing fines may order that up to 50 percent of the fine be paid as a reward to “a person who renders assistance in the detection of the offence or the apprehension of the offenders.”<sup>394</sup> In the United States, the Secretary of the relevant authority or the Secretary of the Treasury “shall pay, from sums received as penalties, fines, or forfeitures of property for any violation of [the Endangered Species Act] ... a reward to any person who furnishes information” leading to an arrest, criminal conviction, civil penalty assessment, or forfeiture of property for violations of the act, as well as “reasonable and necessary costs” incurred by any person who provides temporary care for fish, wildlife, or plants while proceedings related to that specimen are pending.<sup>395</sup> In Lao PDR, individuals who demonstrate “outstanding achievement” in implementing the Wildlife and Aquatic Law and protecting species and habitat can receive “relevant incentives such as flattery and rewards” in accordance with regulations.<sup>396</sup>

#### Registration and regulation of captive breeding facilities

159. The Parties studied have adopted varying controls related to the legality and regulation of breeding Appendix I-listed species in captivity for commercial purposes. While some countries prohibit captive breeding in these species altogether, others allow it for limited, non-commercial purposes. Still others allow captive breeding of Appendix I-listed species for commercial purposes, but impose a variety of registration, recordkeeping, licensing, and other requirements on the facilities.
160. Lao PDR prohibits the development of new facilities breeding Appendix I-listed species in captivity for commercial purposes.<sup>397</sup> Such species are permitted to be bred in captivity for non-commercial

<sup>392</sup> Malaysia, *Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, Act 613, sect. 4 and Second Schedule.*

<sup>393</sup> Government of the Hong Kong SAR, Agriculture, Fisheries and Conservation Department, “Reward scheme for endangered species protection”, 8 July 1999.

<sup>394</sup> India, *Wildlife Protection Act, sect. 60A (1972).*

<sup>395</sup> United States, *Endangered Species Act, sect. 11(d).*

<sup>396</sup> Lao PDR, *Wildlife and Aquatic Law, art. 66 (2007).*

<sup>397</sup> Lao PDR, *Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora, No. 05/PM, sect. 3 (2018).*



purposes, including in zoos, wildlife farms, rehabilitation centers, but they should serve purposes like conservation, tourism, and science.<sup>398</sup> Further, these facilities are required to be registered with the forestry offices at each level of government.<sup>399</sup> Existing facilities that were breeding these species for commercial purposes at the time the prohibition was issued were allowed to continue to do so, but are encouraged to convert to non-commercial uses, and are required to be registered with the national government.<sup>400</sup>

161. Hong Kong SAR allows Appendix I-listed species to be bred in captivity for commercial purposes, but requires that facilities raising animals for this purpose be registered with the CITES Secretariat.<sup>401</sup> It does not appear that any such facilities had been registered as of July 2020.
162. The European Union, on the other hand, does not require captive breeding facilities to register with the CITES Secretariat, instead allowing Appendix I-listed species to be bred in captivity for trade within the European Union so long as facilities have been granted “sale exemption certificates” by the Member State’s Management Authority.<sup>402</sup> In addition to requiring official certificates, the European Union wildlife trade regulations mandate that live vertebrates bred in captivity be “uniquely marked” before they are sold.<sup>403</sup> Eight facilities from four different European Union Member States (the Czech Republic, Denmark, Germany, and Spain) had nevertheless registered with CITES as of July 2020, potentially to be able to export specimens outside of the EU, since CITES requires that captive bred specimens bred and imported for primarily commercial purposes come from registered facilities.<sup>404</sup>
163. Nigeria allows breeding of Appendix I-listed species in captivity for commercial purposes, so long as facilities register with the national government.<sup>405</sup> They are also required to keep records of their operations, and may be subject to random inspections.<sup>406</sup> No such facilities in Nigeria are registered with CITES (as of July 2020) and no publicly viewable national register could be identified.
164. In other countries, it is less clear whether facilities engaging in captive breeding of Appendix I-listed species can legally sell their specimens. In Macao SAR, for example, facilities can legally breed Appendix I-listed species in captivity so long as they are registered.<sup>407</sup> The law does not specify whether commercial use of specimens bred in captivity is prohibited, but it does prohibit all possession and domestic trade in Appendix I-listed species, which would seem to prevent the sale of even specimens bred in captivity.

#### Implementation and judicial interpretation of legal controls

165. Few cases were located that revealed how the legal controls of domestic markets in Appendix I-listed species are implemented in practice, or have been interpreted by courts.<sup>408</sup>
166. In the handful of cases that were examined, courts clarified points of ambiguity in existing laws. A court in India held that animal hair should be counted as an animal part and was thus regulated under the Wildlife Protection Act.<sup>409</sup> In France, a court held that the national legislation could go further than

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<sup>398</sup> *Ibid.*

<sup>399</sup> Lao PDR, *Wildlife and Aquatic Law*, art. 23 (2007).

<sup>400</sup> Lao PDR, *Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora*, No. 05/PM, sect. 3 (2018).

<sup>401</sup> Hong Kong SAR, *Protection of Endangered Species of Animals and Plants Ordinance*, Cap. 586, sect. 2.2 (1 December 2006).

<sup>402</sup> European Commission, “Captive Breeding and Artificial Propagation”, 7 August 2019. Available at [https://ec.europa.eu/environment/cites/info\\_captive\\_en.htm](https://ec.europa.eu/environment/cites/info_captive_en.htm).

<sup>403</sup> European Commission, “Marking and Labelling”, 7 August 2019. Available at [https://ec.europa.eu/environment/cites/info\\_marking\\_en.htm](https://ec.europa.eu/environment/cites/info_marking_en.htm).

<sup>404</sup> *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, “Summary list”, CITES registers. Available at <https://www.cites.org/eng/common/reg/cb/summary.html>; Res. Conf. 12.10 (Rev. CoP15), para. 8. Available at <https://cites.org/sites/default/files/document/E-Res-12-10-R15.pdf>.

<sup>405</sup> Nigeria, *National Environmental (Protection of Endangered Species in International Trade) Regulations 2011*, sect. 6.

<sup>406</sup> *Ibid.*

<sup>407</sup> Macao SAR, *Law implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, Law No. 2/2017, art. 24.

<sup>408</sup> Cases were only identified in half of the jurisdictions included in this study (see table 1, above).

<sup>409</sup> High Court of Delhi, *Cottage Industries Exposition Ltd. & ANP. v. Union of India & Others*, Judgement, 3 September 2007.

the European Union wildlife trade regulations and prohibit all commercial use of Annex A species bred in captivity.<sup>410</sup>

167. In the United States, there have been a number of cases enforcing controls on domestic wildlife trade where violators have been sentenced to varying terms of imprisonment and/or issued fines.<sup>411</sup>

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<sup>410</sup> Court of Justice of the European Union (Sixth Chamber), *Criminal proceedings against Xavier Tridon*, Case C-510/99, Judgment of the Court, 23 October 2001.

<sup>411</sup> United States, Department of Justice, Office of Public Affairs, "California Man Sentenced to 27 Months in Prison for the Sale of Black Rhinoceros Horns", 23 March 2018. Available at <https://www.justice.gov/opa/pr/california-man-sentenced-27-months-prison-sale-black-rhinoceros-horns>.

## Recommendations

168. Based on trends observed through an examination of the current approaches used to regulate domestic trade of Appendix I-listed species in the ten Parties included in this study, six recommendations have been identified to make national legal frameworks clearer and more effective to address illegal international trade in App. I-listed species. Where they have not already done so, Parties may consider adopting the following approaches to better regulate domestic trade in Appendix I-listed species:
- a) Streamline and clarify applicable legal controls and improve their accessibility;
  - b) Extend protections to all CITES Appendix I-listed species;
  - c) Explicitly regulate online trade;
  - d) Require proof of legal origin for possession and domestic trade of Appendix I-listed species;
  - e) Adopt higher penalties for violations by corporations to ensure sufficient deterrent effect; and
  - f) Specify procedures for management and disposal of seized, confiscated, and forfeited specimens.
169. Prior to adopting the recommendations discussed here or elsewhere, individual Parties could undertake a legal framework assessment in order to better understand the relevant controls that are already in place in their country and determine whether the recommended approach is appropriate in their specific context. Varied governance structures and legal systems prevent the declaration of universal solutions to common challenges. Legal reforms that may result in productive or beneficial outcomes in one context may be less effective or cause unintended detrimental effects in another.
170. Implementation of each of the recommendations for individual Parties should be tailored to the particular country in which it is being implemented and carefully integrated within the existing, overarching regulatory framework, taking into account the needs of and impacts on stakeholders and species, as well as governmental and societal capacities. Developing legal reforms based on the unique challenges faced by and the existing controls in place within a particular jurisdiction may increase the likelihood that they lead to positive results.

### Streamline and clarify applicable legal controls and improve their accessibility

171. In some countries, legal controls related to possession and domestic trade of endangered species are divided among laws that each focus exclusively on terrestrial, marine, or plant species. In these instances, implementation and enforcement authority may similarly be divided across different ministries or agencies, each of which may have separate offices, websites, and procedures. In other countries, a central law or two may regulate these issues, but subsequent orders, decrees, regulations, and rules, may amend or supplement earlier provisions without expressly repealing them. As a result, regulated parties, enforcement officials, and impacted stakeholders may be required to navigate multiple instruments and piece together provisions to determine what is or is not allowed in a particular jurisdiction. In fact, only one Party included in this study, plus Hong Kong and Macao SARs of China, were considered to have streamlined, centralized controls regulating domestic wildlife trade in Appendix I-listed species.<sup>412</sup>
172. Individual countries may undertake efforts to increase readability and comprehensibility of their legal controls on possession and trade in endangered species by expressly repealing out-of-date provisions. In cases where regulations are contained in multiple legal instruments, compliance and enforcement can be assisted by developing “rapid reference guides” for law enforcement officers and members of the judiciary. Such guides can also accompany awareness-raising efforts targeting the general public.

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<sup>412</sup> See table 1, above, which suggests that Hong Kong SAR, Macao SAR, and India have consolidated, streamlined controls regulating the domestic wildlife trade in Appendix I-listed species.

173. Applicable legal instruments could also be made more accessible by being made available in a centralized location. If multiple agencies are involved in implementation or enforcement, each could reference the related provisions, rules, or procedures of the other agencies on their websites (for example, by providing a brief description of other applicable provisions and linking to the relevant agency pages or documents discussing them).
174. In addition to making wildlife laws more comprehensible and accessible, management authorities may establish secure national data management systems that allow enforcement officials and members of the public alike to access information about violations and ongoing cases in real time. Such a system could track cases from arrest and seizure to conviction and enforcement of sentences as well as contain information on repeat offenders. Some of this information may be sensitive or confidential (e.g., names of people who have been accused of crimes, but have not had a chance to defend themselves). Other information may be sensitive if made publicly available (e.g., information that relates to enforcement strategies and techniques that might provide potential offenders with information that they could use to avoid being detected or caught). Some countries already have publicly available databases that contain cases and other legal resources, but others do not seem to make information about illegal domestic wildlife trade enforcement publicly available. Doing so would allow enforcement officials to have better access to past cases and could result in more consistent management of similar violations. It would also allow members of the public to observe trends in illegal wildlife trade and enforcement, which may further increase awareness of wildlife laws. Once created, these databases should be regularly updated and maintained.
175. Furthermore, access to and understanding of relevant wildlife laws and their enforcement could be improved through public information campaigns and other awareness raising initiatives. Such campaigns could focus on the interpretation and digestion of new laws or provisions and inform the public about and encourage people to access new publicly available wildlife protection resources. Efforts could also target specific high-risk markets or regions known for higher rates of illegal domestic wildlife trade in order to better reach intended audiences. National data management systems may be useful to help guide public awareness campaigns by allowing for an assessment of trends in types and geographic locations of violations.
176. Ultimately, clearer and more accessible laws and regulations can support increased compliance among traders and consumers, as well as more consistent enforcement by officials and courts.

#### [Extend protections to all CITES Appendix I-listed species](#)

177. In some countries, the current controls on domestic wildlife trade apply only to those protected species expressly listed in country-specific annexes or appendices. In many instances, these lists do not include all Appendix I-listed species. CITES guidance states that “[i]t is essential for effective implementation of CITES that the taking and possession of and domestic trade in all indigenous species listed in the CITES appendices be regulated by national legislation,” to ensure that they are subject to the regulation of international trade should they later be exported.<sup>413</sup>
178. In order to more effectively implement CITES, legal controls on domestic wildlife trade should cover all Appendix I-listed species, whether native or non-native to the concerned country. Should a country want to regulate possession and domestic trade in additional species that are not listed in Appendix I, such species could be included as well.
179. One option is to incorporate the CITES appendices by reference into the national legislation. The CITES Secretariat has developed a model law to facilitate the adoption of these provisions into national laws that includes sample provisions for incorporating the appendices by reference in the national legislation for the implementation of the Convention.<sup>414</sup> The method of ensuring the coverage of all Appendix I-listed species is not as important as the coverage itself.

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<sup>413</sup> CITES, “Legislation Checklist: A Checklist for Reviewing CITES Legislation”, pp. 3, 7.

<sup>414</sup> CITES Secretariat, “Model Law on International Trade in Wild Fauna and Flora”, Part 2, pp. 9-10 (noting that “[i]n order to be legally binding, the lists of species covered by CITES must usually be published in the Government Gazette or equivalent official publication of the Party concerned. Because the CITES Appendices are regularly amended, however, Parties should

## Explicitly regulate online trade

180. Parties may consider adopting provisions in their national laws that explicitly regulate online trade in Appendix I-listed species. Online trade in Appendix I-listed species is potentially a major loophole in the legislation of many countries. This is true for species sold domestically and internationally, although it may be difficult to distinguish between domestic and international sales when they occur online. As internet usage has increased over the years, so has its use as a market for illegal trade, including for wildlife.<sup>415</sup> Some existing legal controls may prohibit domestic possession and trade in Appendix I-listed species broadly enough that they can be interpreted to apply to online transactions as well. In these cases, Parties could explicitly state how online trade is regulated and ensure that the legislation in place is applied and enforced with regard to online trade. Enacting specific provisions related to online trade that account for the unique characteristics of online marketplaces, which might require different regulatory approaches, can allow for the more effective restriction of illegal online behavior. In this study, five of the ten Parties surveyed had adopted provisions expressly regulating online markets.<sup>416</sup>
181. At the 17th meeting of the Conference of Parties (CoP17, Johannesburg, 2016), the CoP directed the CITES Secretariat to work with INTERPOL to develop guidance for Parties on the regulation of international trade taking place on the internet.<sup>417</sup> The 18th meeting of the CoP adopted a decision encouraging Parties to adopt INTERPOL's guidance on regulating illegal wildlife trade on the internet.<sup>418</sup> In late 2019, INTERPOL finalized its *Wildlife Crime Linked to the Internet: Practical Guidelines for Law Enforcement Practitioners*.<sup>419</sup> These guidelines are not available to the public, but are available to any wildlife trade enforcement authority that requests them.<sup>420</sup>
182. Drawing upon INTERPOL's guidance, Parties could review and adopt provisions regulating domestic trade in Appendix I-listed species that occurs online. As more countries adopt or clarify legal controls governing internet trade, it may be beneficial to have consistency between national legal frameworks to allow for greater collaboration in enforcement. Provisions should account for the unique nature of online enforcement and provide for sufficient personnel, technology, and other resources.<sup>421</sup> National CITES authorities could also collaborate with companies that facilitate online marketplaces and social media websites in order to ensure that company policies adhere to national law, and to further expand enforcement capacity.<sup>422</sup> In addition to adopting the abovementioned approaches, which primarily serve to reduce online supplies of illegal wildlife, Parties should adopt demand-reduction measures specifically related to online trafficking, including programs that educate potential buyers about the potential illegality and risks of purchasing animal and plant species on the internet.<sup>423</sup>

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develop a procedure to ensure that subsequent amendments are formally published. Countries might add other schedules with native species at the condition they make the difference with the CITES documents.”). Available at <https://cites.org/sites/default/files/eng/prog/Legislation/E-Model%20law-updated-clean.pdf>.

<sup>415</sup> Coalition to End Wildlife Trafficking Online. Available at <https://www.endwildlifetraffickingonline.org/> (last accessed 19 May 2020).

<sup>416</sup> See table 1, above.

<sup>417</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, “Wildlife crime linked to the Internet”, notification to the parties, 8 August 2019. Available at <https://cites.org/sites/default/files/notif/E-Notif-2019-042.pdf>.

<sup>418</sup> Decisions 18.81 – 18.85 on Wildlife Crime Linked to the Internet (CoP18, Geneva, 2019). Available at <https://cites.org/eng/dec/valid17/82150>.

<sup>419</sup> Ivonne Higuero, “Remarks at the Event to Celebrate the Second Anniversary of the Coalition to End Wildlife Trafficking Online”, CITES Secretary-General, 2 March 2020. Available at [https://www.cites.org/eng/CITES\\_SG\\_Remarks\\_at\\_the\\_reception\\_of\\_the\\_Coalition\\_to\\_End\\_Wildlife\\_Trafficking\\_Online\\_0303\\_2020](https://www.cites.org/eng/CITES_SG_Remarks_at_the_reception_of_the_Coalition_to_End_Wildlife_Trafficking_Online_0303_2020); Tania McCrea-Steele, “Hot on the Trail of Cyber-Enabled Wildlife Traffickers”, IFAW, 22 November 2019. Available at <https://www.ifaw.org/journal/hot-on-the-trail-of-cyber-enabled-wildlife-traffickers>.

<sup>420</sup> Tania McCrea-Steele, “Hot on the Trail of Cyber-Enabled Wildlife Traffickers”, IFAW, 22 November 2019.

<sup>421</sup> See, for instance, European Union, European Commission, *EU Action Plan against Wildlife Trafficking* (Luxembourg, 2016), Objective 2.2., p. 18.

<sup>422</sup> Many companies have already made commitments to take action to reduce illegal online wildlife trading through their platforms, including by regulating illegal activity (Coalition to End Wildlife Trafficking Online, “Coalition Prohibited Wildlife Policy Framework: Why Do Companies Need This Framework?”, 2019–2020. Available at <https://www.endwildlifetraffickingonline.org/coalition-prohibited-wildlife-policy>).

<sup>423</sup> IFAW, “Wildlife Crime is a Matter of Supply and Demand”. Available at <https://www.endwildlifetraffickingonline.org/coalition-prohibited-wildlife-policy>.

### Require proof of legal origin for possession and domestic trade

183. Some of the countries studied prohibit possession and domestic trade of any specimens or products of Appendix I-listed species that were acquired illegally, whether through illegal import, poaching, illegal local purchase, or otherwise. For example, in India, the WL(P)A, 1972 requires individuals to have a certificate of ownership issued by the Chief Wildlife Warden in order to possess any scheduled animal species or product.<sup>424</sup> And in Peninsular Malaysia, the keeping of any totally protected wildlife or any parts or derivatives thereof requires a special permit.<sup>425</sup> This approach of prohibiting possession without a permit could be more widely adopted in order to prevent specimens that illegally enter a domestic market from continuing to be traded or consumed. One way of achieving this is to prohibit possession of specimens of species included in Appendix I, unless the owner can prove that they were acquired legally (for instance because they originate from registered captive breeding facilities). In other words, anyone holding a specimen of an Appendix I-listed species (whether dead or alive) may be required by an enforcement officer to prove that the specimen was acquired legally and that the possession is legal. Shifting the burden of proof to the possessor could make it easier to enforce prohibitions on illegally obtained specimens as well as the Convention's requirement that Parties take measures to penalize the possession of specimens traded in violation of the Convention.<sup>426</sup> Additionally, because a potential buyer could be forced to forfeit specimens or products for which they do not have proper documentation and would risk facing other penalties, such a requirement could reduce illegal trade by providing incentives for buyers to exercise due diligence in ensuring that their purchases are legal.
184. When designing these requirements, Parties should consider existing documentation requirements and the nature of wildlife trade in their jurisdictions to develop reasonable expectations of those in legal possession of Appendix I-listed species. Parties should avoid making it overly challenging, cost-prohibitive, or otherwise inaccessible to secure documentation to demonstrate legal acquisition and possession.

### Adopt higher penalties for violations by corporations to ensure sufficient deterrent effect

185. Among the legal controls examined, several allowed for businesses and corporations to face higher penalties than individuals for committing the same violations.<sup>427</sup> Countries may provide higher penalties for corporations, as well as imprisonment for responsible corporate officers, as a way to provide penalties that will sufficiently deter corporate actors that may have more resources and not incur as much hardship when forced to pay fines that might be sufficient to deter many individuals. Another approach that could provide a stronger deterrent than fines is the creation of additional penalties, such as closing businesses and prohibiting their owners from owning or operating similar businesses in the future.
186. In Malaysia, for example, one law allows for corporations to face up to double the fines that individuals would face for the same violations related to possessing or trading endangered species. In Nigeria, companies may be fined up to four times more than individuals for the same violations (corporations can be fined up to 20 million Naira, while individuals may be fined up to 5 million), and responsible representatives of the corporations may also face terms of imprisonment that are more than double the maximum possible sentence for individuals (corporation representatives may be sentenced to prison for up to 7 years, while individuals face up to 3 years).
187. To provide additional deterrent effect, countries can adopt wildlife crimes as predicate offenses under their anti-money laundering legislation. These measures can be informed by experiences in other countries, such as Malaysia and Thailand.

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<sup>424</sup> India, *Wildlife Protection Act (1972)*, chap. IIIA, sect. 17A, 17F, chap. V, sect. 42.

<sup>425</sup> Malaysia, *Wildlife Conservation Act 2010*, Act 716, sect. 9.

<sup>426</sup> *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, art. VIII, para. 1(a).

<sup>427</sup> See table 1, above.



### Specify procedures for management and disposal of seized, confiscated, and forfeited specimens

188. While many countries have adopted provisions that allow enforcement officials to seize and confiscate specimens or products of Appendix I-listed species when violations occur or are suspected to have occurred, or require suspected violators to forfeit them, the provisions do not always specify how to manage items after they are seized. Those that do specify procedures or give options generally allow for live specimens to be kept in wildlife rescue centers, returned to the wild, or managed under the discretion of the relevant authority. Some allow dead specimens or products and parts to be sold, destroyed, kept by the government, or otherwise.
189. Some management approaches may interfere with efforts to prevent illegal trade and ultimately to conserve species.<sup>428</sup> Selling specimens that cannot be legally held or domestically traded, for example, may continue to drive demand for illegal wildlife products. Some Parties, as noted in Resolution Conf. 17.8 on this topic, “do not allow the sale of confiscated specimens because of the message this transmits to the public and in order to exclude illegally traded specimens from entering commercial trade.”<sup>429</sup>
190. Where countries do not specify procedures for managing and disposing of live or dead seized specimens or where procedures are misaligned with CITES Resolution Conf. 17.8 on the “Disposal of Illegally Traded and Confiscated Specimens of CITES-listed species,” they may consider amending relevant legislation or regulations to provide an explicit mandate and procedures. This might involve identifying specific disposal methods for certain scenarios or offering a range of suitable options in order to prevent potentially harmful disposal methods from being adopted in individual wildlife trade enforcement cases. The permitted approaches can be selected based upon international best practices. Countries should refer to the recommendations in CITES Resolution Conf. 17.8 as well as up-to-date studies about how to optimize conservation outcomes, for guidance on how best to dispose of different specimens and products of Appendix I-listed species, and to manage these specimens before disposal, when developing their laws, regulations, and policies.<sup>430</sup>
191. Further, these provisions could apply to all seized or forfeited specimens and products, not just those confiscated from international trade. Those Parties that have already adopted provisions related to managing specimens and products seized in international trade but not for domestic trade could consider expanding the application of the requirements to cover all seized specimens (in addition to ensuring the methods are consistent with the aforementioned resolution), regardless of the nature of trade from which they originated. Meanwhile, those Parties that have not yet incorporated the recommendations of Resolution 17.8 could adopt formal management procedures that adhere to the CITES guidance, not only for managing specimens seized in international trade violations, but also for those used in illegal domestic trade.

### Conclusions

192. Countries that are Parties to CITES have adopted a variety of legal controls on possession and domestic trade of Appendix I-listed species to complement restrictions that apply to international wildlife trade. This study of the legal controls adopted by ten Parties with ongoing trade in a variety of protected species—China (including Hong Kong SAR and Macao SAR), the European Union, India, Indonesia, Lao PDR, Malaysia, Nigeria, Thailand, the United States, and Viet Nam—has revealed a diversity of approaches to regulating domestic wildlife trade.
193. The study highlighted trends related to species coverage, demand reduction, strategies for regulating possession and trade, common exceptions, regulation and registration of captive breeding facilities, seizures, penalties, implementation, and enforcement. In certain instances, these trends revealed promising practices that, if adopted more widely, could strengthen protections for Appendix I-listed

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<sup>428</sup> Resolution Conf. 17.8, *Disposal of illegally traded and confiscated specimens of CITES-listed species, Annex I* (“The lack of specific guidelines has resulted in confiscated animals being disposed of in a variety of ways, many inconsistent with conservation objectives.”). Available at <https://www.cites.org/sites/default/files/document/E-Res-17-08.pdf>.

<sup>429</sup> *Ibid.*

<sup>430</sup> *Ibid.*

species which could contribute to reducing illegal trade. In other cases, the trends helped identify common exceptions and exemptions from legal controls that allow illegal wildlife trade to continue.

194. An analysis of these trends yielded six recommendations for strengthening domestic legal controls that Parties can consider applying at the national level, or that the CITES CoP may recommend that Parties adopt through resolutions or otherwise.
195. To improve awareness and understanding of existing legal controls, countries can streamline their laws and regulations and make them easily accessible to the public and law enforcement officials. Countries can ensure that legal controls on domestic trade apply to all Appendix I-listed species.
196. Since much of the illegal wildlife trade takes place in online markets and social media sites today, Parties can adopt provisions specifically controlling online trade, or clarify that and how existing controls apply to online trade, ensure they have the enforcement capacity to monitor and regulate online trade, and partner with companies involved in various aspects of online trade, from advertising, to exchanging funds, to shipping specimens and products, and beyond, to adopt consistent policies and increase enforcement efforts. Moreover, countries may explicitly ban online trading of Appendix I-listed species.
197. To prevent Appendix I-listed species from being illegally possessed or traded, countries could require that anyone in possession of or trading specimens of such species be able to prove that they were acquired legally.
198. In order to effectively deter all potential violators from illegally possessing or trading Appendix I-listed species, countries could increase their penalties for corporations relative to penalties imposed on individuals.
199. When specimens or products are seized due to a suspected or confirmed violation, management authorities should have procedures in place, based on best practices, to handle the items so they do not end up back in the illegal wildlife trade.
200. Strengthening legal controls on possession of and domestic trade in Appendix I-listed species in these ways may complement the strict regulation of international trade and further advance the objectives of CITES.

## Annex I: Selection of Case Studies

1. This Annex highlights how the ten case studies were selected. For each of the Appendix-I listed species (or group of species) analyzed, a review of the literature highlighted potential domestic markets.

### Rhinoceros

2. Potential domestic markets in rhinoceros were identified as Cambodia, China, Ethiopia, European Union, India, Indonesia, Kenya, Lao PDR, Malawi, Malaysia, Mozambique, Myanmar, Namibia, Nepal, Nigeria, Qatar, Singapore, South Africa, Thailand, Turkey, United Arab Emirates, Uganda, United States, Viet Nam, Zambia, and Zimbabwe.
3. South Africa, China (including Hong Kong SAR), Viet Nam and Mozambique all had seizures totaling over 500 kg of rhino specimens between 2014 and 2018.<sup>431</sup> Malaysia, Kenya, Qatar, Thailand, Malawi, Singapore, Namibia, Cambodia, Uganda, Zambia, Ethiopia, Nigeria, Lao PDR, the European Union, Turkey, and the United Arab Emirates all had seizures totaling between 50 and 500 kg of rhino specimens, and the United Kingdom, India, the United States, and Zimbabwe had seizures totaling less than 50 kg.<sup>432</sup>
4. India, Indonesia, Myanmar, Nepal, Taiwan Province of China, and Viet Nam were all affected by, or the site of, seizures of Asian rhino specimens between 2014 and 2018.<sup>433</sup> Investigations in South and Southeast Asia have increasingly indicated that Myanmar is a key transit country for horns of poached greater one horn rhino, and that horns move through Myanmar before being moved on to China and other end-user countries.<sup>434</sup>
5. UNODC identified Viet Nam, China, the European Union, and Thailand as the top destinations for seized rhino horns from 2006 to 2015.<sup>435</sup>

### Tibetan antelope

6. Potential domestic markets were identified as China, European Union, Switzerland, United Kingdom of Great Britain and Northern Ireland, and United States.
7. From CoP17 to 9 March 2017, Switzerland made 22 seizures involving 69 shawls made from the wool of Tibetan antelope.<sup>436</sup> The shawls were seized from individuals mainly from the European Union and the United Kingdom, but individuals from the United States were involved in one seizure.<sup>437</sup>
8. In 2014, a seizure of 25 bags of skins and five bags of horn was made in China, potentially indicating a demand for skins and horns of Tibetan antelope.<sup>438</sup>

### Asian big cats (including tigers, snow leopard, clouded leopard, Asiatic cheetah, and caracal)

9. Potential domestic markets were identified as Afghanistan, Bangladesh, Cambodia, China, Cote d'Ivoire, European Union, India, Indonesia, Iran (Islamic Republic of), Japan, Kazakhstan, Lao PDR, Malawi, Malaysia, Mexico, Mongolia, Myanmar, Namibia, Nepal, New Zealand, Pakistan, Russian Federation, South Africa, Switzerland, Tajikistan, Thailand, Turkey, United Arab Emirates, United States, Uzbekistan, and Viet Nam.

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<sup>431</sup> CoP18 Doc. 83.1, Annex 2, pp. 10, 13.

<sup>432</sup> *Ibid.*

<sup>433</sup> CoP18 Doc. 83.1, Annex 2, p. 24.

<sup>434</sup> *Ibid.*

<sup>435</sup> United Nations Office on Drugs and Crime, *World Wildlife Crime Report: Trafficking in protected species (Vienna, 2016)*, p. 71.

<sup>436</sup> CoP18 Doc. 78, pp. 1–2.

<sup>437</sup> *Ibid.*

<sup>438</sup> SC69 Doc. 59, p. 2 (“However, a seizure of 25 bags of skins and 5 bags of horn of Tibetan antelope was made in China in 2014, which raises questions whether there may be a demand for skins and horns of Tibetan antelopes.”).

10. A report on the conservation status of and illegal trade threats to Asian big cats focused on China, India, Indonesia, Lao PDR, Malaysia, Myanmar, Nepal, and Thailand as consumer and range states most affected by illegal trade in Asian big cats, and also identified Afghanistan, Bangladesh, Cambodia, Iran (Islamic Republic of), Kazakhstan, Mongolia, Pakistan, Russian Federation, Tajikistan, Turkey, the United Arab Emirates, the United States, Uzbekistan, and Viet Nam as states affected by illegal trade in Asian big cats.<sup>439</sup>
11. A review of the implementation of Resolution Conf. 12.5 (Rev. CoP16) presented to CoP17 found that a large percentage of the tiger specimens confiscated in Southeast Asia from 2010 to 2012 were confiscated in Lao PDR, Thailand, and Viet Nam; that significant illegal wildlife markets are alleged to exist in Myanmar near its borders with China and Thailand; and that seven border towns in China, India, and Nepal were reported to be “primary sources of illegal trade in Asian big cats.”<sup>440</sup>
12. In 2016, China, the European Union, Malaysia, Mexico, Mongolia, Nepal, New Zealand, and the United States reported seizures of Asian big cat specimens.<sup>441</sup> In 2017, Cote d’Ivoire, the European Union, India, Japan, Malawi, Mongolia, Myanmar, Namibia, Nepal, South Africa, Switzerland, the United Arab Emirates, and the United States reported seizures of Asian big cat specimens.<sup>442</sup>
13. China, the European Union, Lao PDR, Thailand, South Africa, the United States, and Viet Nam have facilities that keep tigers and may be of concern.<sup>443</sup> Afghanistan, Cambodia, China, India, Lao PDR, Myanmar, and Nepal have illegal trade in leopard parts and derivatives that is of “particular concern.”<sup>444</sup>

#### Pangolins

14. Potential domestic markets were identified as Cameroon, Côte d’Ivoire, China, European Union, Gabon, Indonesia, Lao PDR, Malaysia, Myanmar, Nigeria, Philippines, Singapore, Thailand, United States, and Viet Nam.
15. “Very large” quantities of pangolin scales were seized in Thailand, China (including Hong Kong SAR; one seizure of pangolin bodies also occurred in mainland China), and Nigeria in 2017 and 2018,<sup>445</sup> and in Hong Kong SAR, Malaysia, and Côte d’Ivoire between 2014 and 2017.<sup>446</sup>
16. An information document submitted before the 17th meeting of the Conference of the Parties on the status, trade, and conservation of pangolins identified China (including Hong Kong SAR), Viet Nam, Thailand, Singapore, Myanmar, and Philippines as destinations for “[p]angolin trafficking routes along which more than 1,000 pangolins were trafficked between July 2000 and July 2016 (based on available information on export and destination from seizure data).”<sup>447</sup> The report noted that, between 2000 and 2013, “[t]rade was destined primarily to China and Vietnam.”<sup>448</sup>
17. Parties identified as importers of live or dead pangolins or pangolin products between 1999 and 2017 include China (including Hong Kong SAR), the Congo, the European Union, Gabon, Indonesia, Lao PDR, Nigeria, the Philippines, Thailand, the United States, and Viet Nam.<sup>449</sup>
18. Based on seizure data from 1999 to 2017, the illegal pangolin trade “involves, or at least implicates, 55 Parties.”<sup>450</sup>

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<sup>439</sup> CoP18 Doc. 71.1, p. 4.

<sup>440</sup> CoP17 Doc. 60.1, p. 3.

<sup>441</sup> CoP18 Doc. 71.1, p. 7.

<sup>442</sup> *Ibid.*

<sup>443</sup> SC71 Doc. 19, p. 2.

<sup>444</sup> CoP18 Doc. 71.1, p. 9.

<sup>445</sup> CoP18 Doc. 75, p. 6.

<sup>446</sup> SC69 Doc. 57, p. 6.

<sup>447</sup> CoP17 Inf. 59, p. 9.

<sup>448</sup> *Ibid.*, p. 15.

<sup>449</sup> SC69 Doc. 57A, p. 47 (identifying importers of live or dead pangolins), 50 (identifying importers of pangolin scales), 54 (identifying importers of pangolin meat).

<sup>450</sup> SC69 Doc 57, p. 6. (“Belgium, Benin, Cambodia, Cameroon, Central African Republic, China (including Hong Kong SAR), Congo, Côte d’Ivoire, Democratic Republic of the Congo, Equatorial Guinea, Ethiopia, France, Gabon, Ghana, Germany,

## Great apes

19. Potential domestic markets were identified as Cameroon, China, Democratic Republic of the Congo, Equatorial Guinea, European Union, Gabon, Guinea, Kuwait, Malaysia, and Thailand.
20. Democratic Republic of the Congo, Cameroon, and Equatorial Guinea have been identified as major destinations for subregional international trade in bushmeat, including great ape meat.<sup>451</sup> Studies have also indicated an active international trade from West and Central Africa to Paris, from which specimens are potentially traded to other European countries.<sup>452</sup>
21. In 2017, great ape traffickers were arrested and specimens seized in Cameroon, Gabon, and Guinea.<sup>453</sup>

## Turtles and tortoises

22. Potential domestic markets were identified as Bangladesh, China (including Hong Kong SAR and Taiwan Province of China), Colombia, Ecuador, Egypt, El Salvador, European Union, Guyana, Honduras, India, Indonesia, Japan, Madagascar, Malaysia, Mexico, Mozambique, Myanmar, Nicaragua, Panama, Philippines, Republic of Korea, Russian Federation, Singapore, Suriname, Sri Lanka, Thailand, United Republic of Tanzania, United States, Venezuela (Bolivarian Republic of), and Viet Nam.
23. A study commissioned by the CITES Secretariat pursuant to CITES Decision 17.222 found that Colombia, Indonesia, Madagascar, Malaysia, Mozambique, Nicaragua, Panama, and Viet Nam are “significantly implicated in illegal trade markets for marine turtle specimens.”<sup>454</sup> The study also noted that Egypt “may potentially hold the last major illegal marine turtle market in the Mediterranean basin.”<sup>455</sup> In addition to the above countries (which are discussed as both potential origins and destinations of turtle specimens), the report also suggests that there may be demand for turtle specimens in the United Republic of Tanzania, Ecuador, Guyana, Suriname, Venezuela, El Salvador, Honduras, Costa Rica, Mexico, Malaysia, China, Viet Nam, Philippines, Hong Kong SAR, Singapore, Republic of Korea, and additionally refers to seizures in Taiwan Province of China and Japan.<sup>456</sup>
24. In 2018, live tortoises were seized in Madagascar; in 2017, live tortoises were seized in Malaysia, Singapore, and Sri Lanka.<sup>457</sup>
25. China (including Hong Kong SAR), Bangladesh, Malaysia, Singapore, Thailand, the European Union, the United States, India, Japan, Indonesia, Myanmar, and Russian Federation were reported as destination countries for shipments of live turtles and tortoises seized between 2000 and 2015.<sup>458</sup>

## Birds (helmeted hornbill, Spix’s macaw, and grey parrot)

26. Potential domestic markets were identified as Bahrain, China (including Hong Kong SAR), Kuwait, Lao PDR, Mexico, Nigeria, Serbia, Singapore, and United Arab Emirates.
27. A 2018 report on the conservation status of the helmeted hornbill identified China (including Hong Kong SAR) and Lao PDR as current consumer states.<sup>459</sup>

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*Guinea, India, Indonesia, Japan, Italy, Kenya, Lao PDR, Liberia, Lichtenstein, Malaysia, Malta, Mexico, Morocco, Myanmar, Namibia, the Netherlands, Nepal, New Zealand, Nigeria, Norway, Pakistan, the Philippines, Qatar, Sierra Leone, Singapore, Spain, South Africa, Sudan, Switzerland, Thailand, Togo, Turkey Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Viet Nam, Zambia and Zimbabwe.”*

<sup>451</sup> AC30 Doc. 26, p. 20.

<sup>452</sup> *Ibid.*; United Nations Office on Drugs and Crime, *World Wildlife Crime Report: Trafficking in protected species* (Vienna, 2016), p. 74.

<sup>453</sup> AC30 Doc. 26, p. 20.

<sup>454</sup> CoP18 Inf. 18, Annex, p. 9.

<sup>455</sup> *Ibid.*, p. 11.

<sup>456</sup> *Ibid.*, pp. 31-32, 39, 45, 46, 54, 63, 64, 70, 75.

<sup>457</sup> CoP18 Doc. 88, p. 4; SC69, Doc. 64, p. 8.

<sup>458</sup> CoP17 Doc. 73, p. 35.

<sup>459</sup> SC70 Doc. 57, Annex, p. 14; CoP17 Com. I. 6, p. 1 (*identifying hornbill ivory as a luxury item in China*).

28. Destination countries for trade in African grey parrots between 2007 and 2014 included Bahrain, Kuwait, Nigeria, Singapore, the United Arab Emirates, Mexico, and Serbia.<sup>460</sup>
29. Because Spix's macaw is listed as "extinct in the wild" by the IUCN Red List, it is unlikely that there are any large markets for birds sourced in the wild and illegally traded. The only imports and exports of the Spix's macaw recorded in the CITES Trade Database between 2009 and 2019 were for breeding, educational, scientific, zoo, or medical purposes.<sup>461</sup> Most of the recorded imports and exports involved species born or bred in captivity,<sup>462</sup> and most were imported to or exported from Germany, Brazil, Qatar, and Spain,<sup>463</sup> the four countries home to facilities that participate in the captive breeding program for Spix's macaw.<sup>464</sup>

### Snakes

30. Potential domestic markets were identified as China, Indonesia, Malaysia, Thailand, and Viet Nam.
31. A report from the Secretariat identified China, Indonesia, Malaysia, Thailand, and Viet Nam as "the most important Asian Parties" for trade in snakes.<sup>465</sup>

### Orchids

32. Potential domestic markets were identified as China, Thailand, and Viet Nam.
33. A report submitted by IUCN and TRAFFIC to the Plants Committee found that there is "evidence of a large and expanding trade in wild orchids from Myanmar and Lao PDR to satisfy demand in China and Viet Nam."<sup>466</sup> The same report identified "significant illegal, international trade from Lao PDR and Myanmar into Thailand for domestic consumers[.]"<sup>467</sup>

### Selection of Case Studies

34. Table I.1 shows the potential major domestic markets for trade in selected Appendix I-listed species. Parties are sorted by the number of species groups for which they are a major domestic market. Available financial resources enabled the researchers select up to ten case studies. In consultation with the CITES Secretariat, ten parties were chosen based on a combination of significant markets and geographic diversity. Parties in green were selected for inclusion in the final study. Parties with significant domestic trade in fewer than three Appendix-I species are not included.

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<sup>460</sup> United Nations Office on Drugs and Crime, *World Wildlife Crime Report: Trafficking in protected species* (Vienna, 2016), p. 81.

<sup>461</sup> Of the 67 imports and exports of Spix's macaw recorded in the CITES Trade Database for 2010–2019, one was for educational purposes, four were for medical purposes, three were for zoo purposes, 22 were for scientific purposes, and 37 were for breeding purposes.

<sup>462</sup> Of the 67 recorded imports and exports, five involved specimens taken from the wild, one involved pre-Convention specimens, and 61 involved specimens born or bred in captivity.

<sup>463</sup> Of the 67 recorded imports and exports, 56 are between these four countries. An additional seven are exports from one of these countries to another country, and the last four are exports from Singapore for medical purposes.

<sup>464</sup> Al Wabra Wildlife Preservation, "Spix's Macaw Fact File 2010", 2014. Available at <http://awwp.alwabra.com/?p=1054>.

<sup>465</sup> SC69 Doc. 62, pp. 2, 8 (discussing demand for protected snakes in Cambodia), 12–13 (discussing demand for protected snakes in China), 15–16 (discussing domestic trade in protected snakes in Indonesia), 28 (discussing domestic trade in protected snakes in Thailand).

<sup>466</sup> PC 23 Inf. 14, Annex, p. 18.

<sup>467</sup> *Ibid.*, p. iv.



<u>Party</u>	<u>Rhinoceros</u>	<u>Tibetan antelope</u>	<u>Asian big cats</u>	<u>Pangolins</u>	<u>Great apes</u>	<u>Turtles</u>	<u>Birds</u>	<u>Snakes</u>	<u>Orchids</u>	<u>Total</u>
<b>China</b>	1	1	1	1	1	1	1	1	1	9
<b>Thailand</b>	1		1	1	1	1		1	1	7
<b>European Union</b>	1	1	1	1	1	1				6
<b>Malaysia</b>	1		1	1	1	1		1		6
<b>Viet Nam</b>	1		1	1		1		1	1	6
<b>Indonesia</b>	1		1	1		1		1		5
<b>United States</b>	1	1	1	1		1				5
<b>Lao PDR</b>	1		1	1			1			4
<b>Myanmar</b>	1		1	1		1				4
<b>Singapore</b>	1			1		1	1			4
<b>India</b>	1		1			1				3
<b>Mexico</b>			1			1	1			3
<b>Nigeria</b>	1			1			1			3
<b>UAE</b>	1		1				1			3

*Table I.1: Potential major domestic markets for trade in selected App. I-listed species. Parties are sorted by the number of species groups for which they are a major domestic market; Parties in green were selected for inclusion in the final study. Parties with significant domestic trade in fewer than three Appendix-I species are not included.*

## Annex II: Country Profiles

Following are the detailed profiles conducted of the following jurisdictions:

- China
  - o Hong Kong SAR
  - o Macao SAR
- European Union
- India
- Indonesia
- Lao PDR
- Malaysia
- Nigeria
- Thailand
- United States
- Viet Nam

## China

### Introduction

1. The People's Republic of China ("China" or "PRC") is the world's largest market for wildlife products.<sup>1</sup> A significant portion of Chinese wildlife is endangered or threatened.<sup>2</sup> Several rare and endangered species—including snow leopards,<sup>3</sup> tigers,<sup>4</sup> rhinoceroses,<sup>5</sup> Asian elephants,<sup>6</sup> pangolins,<sup>7</sup> and various shark species<sup>8</sup>—and products derived from such species are commonly traded in domestic markets and consumed as medicine,<sup>9</sup> food,<sup>10</sup> and luxury goods<sup>11</sup>. Use of these endangered animals contributes to international illegal trade and threatens the endangered species' survival.<sup>12</sup>
2. The PRC exercises jurisdiction over 22 provinces, five autonomous regions, and four municipalities, which are collectively known as mainland China. The PRC also consists of the two special administrative regions (SARs) of Hong Kong and Macao. The SARs regulate domestic trade of endangered species independently. Domestic control and regulation within the borders of the PRC is complicated by the quasi-independent legal status and different legal standards afforded to the SARs.
3. At the broadest level, China's regulation of the domestic endangered species trade begins with the PRC Constitution. The National People's Congress (NPC) promulgated and passed the PRC Constitution on December 4, 1982.<sup>13</sup> It was later amended in 1988, 1993, 1999, 2004, and most recently in 2018.<sup>14</sup> One of the directives issued in the text of Chapter 1 of the PRC Constitution tasks the State with ensuring the rational exploitation of natural resources, protecting rare animals and plants, and prohibiting any organization or individual from seizing or destroying natural resources by any means; Article 9 of the PRC Constitution specifically states that all natural resources are owned by the state.<sup>15</sup>
4. The PRC regulates the domestic markets for endangered flora and fauna separately. The Law of the PRC on the Protection of Wildlife (WPL) is mainland China's main legislation controlling the domestic protection, trade, possession, and use of endangered animal species.<sup>16</sup> The WPL and its implementing regulations establish two classes of species that fall under "special State protection" and therefore heavier regulation than other species. Separately, the State Council promulgated the

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<sup>1</sup> Suzanna Stephens, *China's Role in Wildlife Trafficking and the Chinese Government's Response*, U.S.-China Economic and Security Review Commission (2018). Available at [https://www.uscc.gov/sites/default/files/Research/2018\\_12\\_06%20-%20Wildlife%20Trafficking%20-%20Final%20Version.pdf](https://www.uscc.gov/sites/default/files/Research/2018_12_06%20-%20Wildlife%20Trafficking%20-%20Final%20Version.pdf).

<sup>2</sup> Lu Feng, Wenjie Lao, and Junhua Hu, "Towards a More Sustainable Human-Animal Relationship: The Legal Protection of Wildlife in China", *Sustainability*, vol. 11, No. 3112 (June 2019).

<sup>3</sup> Juan Li and Zhi Lu, "Snow leopard poaching and trade in China 2000–2013", *Biological Conservation*, vol. 176 (August 2014); "China calls for better protection of snow leopards", *Xinhua*, 5 September 2018.

<sup>4</sup> Rachael Bale, "Exclusive: Illegal Tiger Trade Fed by 'Tiger Farms,' New Evidence Reveals", *National Geographic*, 29 July 2018; Farah Master and Joyce Zhou, "Profit-Hungry Tiger Breeders behind Push to Lift China's Trading Ban", *Reuters*, 7 January 2019.

<sup>5</sup> Yufang Gao and others, "Rhino Horn Trade in China: An Analysis of the Art and Antiques Market", *Biological Conservation*, vol. 201 (September 2016).

<sup>6</sup> Kawewit Kaewjinda, "Asian Elephants Said at Risk from Chinese Demand for Skin", *Associated Press*, 24 April 2018.

<sup>7</sup> Elizabeth Claire Alberts, "Did China Really Ban the Pangolin Trade? Not Quite, Investigators Say", *Mongabay*, 24 June 2020; Xu Jiaming, "The Pangolin Trade Explained: Situation in China", *The Pangolin Reports*, 2 May 2019.

<sup>8</sup> Though demand for shark fin soup has dropped in mainland China following a demand reduction campaign, it continues in Hong Kong and Macau Special Administrative Regions of China. Saeed Kamali Dehghan, "Marine 'Gold Rush': Demand for Shark Fin Soup Drives Decimation of Fish", *The Guardian*, 4 June 2019.

<sup>9</sup> Brook Larmer, "China's Mixed Messages on the Global Trade in Endangered-Animal Parts", *New York Times Magazine*, 27 November 2018. See also notes 3–8.

<sup>10</sup> Simon O'Reilly, "Four Animals Being Eaten into Extinction in China and around the World", *South China Morning Post*, 5 July 2018. See also notes 3–8.

<sup>11</sup> Sharon Guynup, "Industrial-Scale Tiger Farms: Feeding China's Thirst for Luxury Tiger Products", *National Geographic*, 21 October 2014. See also notes 3–8.

<sup>12</sup> Lu Feng, Wenjie Lao, and Junhua Hu, "Towards a More Sustainable Human-Animal Relationship: The Legal Protection of Wildlife in China", *Sustainability*, vol. 11, No. 3112 (June 2019).

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

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

<sup>16</sup> *China, Law of the People's Republic of China on the Protection of Wildlife (8 November 1988) (amended 5 November 2018)*.

Regulations of the PRC on Wild Plants Protection to implement controls on the domestic market for protected plant species.<sup>17</sup>

5. Hong Kong SAR and Macao SAR each independently regulate domestic wildlife trade—Hong Kong SAR through the Protection of Endangered Species of Animals and Plants Ordinance, and Macao SAR through Law 2/2017. In Hong Kong SAR, domestic trade in Appendix I-listed species is prohibited, and licenses are required to possess Appendix I-listed species.<sup>18</sup> Appendix I-listed species can be bred in captivity, and since specimens of Appendix I-listed species bred in captivity are regulated as Appendix II-listed species, they can be legally traded if a license is secured. In Macao SAR, domestic trade in Appendix I-listed species is similarly prohibited.<sup>19</sup> Possession or detention for commercial purposes of Appendix I-listed species that were illegally acquired is also banned, but properly registered specimens may be possessed. Further, captive breeding of Appendix I-listed species for commercial purposes is not allowed.<sup>20</sup>
6. China has an active domestic market for rare and endangered species for consumption and medicinal purposes.<sup>21</sup> For example, as of 2017, there were an estimated 5,000 to 6,000 captive tigers held in more than 200 facilities in China, many of which are linked to trade in tiger parts and derivatives.<sup>22</sup> The popular domestic trade in tiger bones and skins was completely prohibited with hardly any exceptions by a 1993 State Council Notification.<sup>23</sup> In October 2018, the State Council released a “notification regarding strict control of management and utilization of rhinoceroses, tigers and the products thereof” that changed China’s policies.<sup>24</sup> Though the Notification discusses cracking down on the illegal trade of tigers and rhinos, it changed policy to allow for the purchase, sale, utilization, import, and export of rhinos, tigers, and products thereof in “special circumstances,” including for scientific research, taxidermy for public exhibitions “at relevant institutions, such as for publicizing conservation and scientific education,” medicinal research, and “activities for the purposes of cultural artefact preservation, public exhibition and cultural exchange.”<sup>25</sup> It is unclear whether this Notification has gone into effect: China announced in November 2018 that it was “not chang[ing] its stance on wildlife protection and not eas[ing] the crackdown on illegal trafficking and trade of rhinos, tigers, and their byproducts,”<sup>26</sup> a move that was interpreted by some as entailing a delay of the implementation of the Notification.<sup>27</sup> However, Shaanxi Province has claimed that permits authorizing trade in the above-listed special circumstances can be applied for, and some government websites post the notification as if it is valid policy.<sup>28</sup>

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<sup>17</sup> China, *Regulations of the People’s Republic of China on Wild Plants Protection*, art. 1 (7 October 2017).

<sup>18</sup> Hong Kong SAR of China, *Protection of Endangered Species of Animals and Plants Ordinance*, sect. 9 (1 December 2006).

<sup>19</sup> Macao SAR, *Law implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, Law No. 2/2017, art. 21.

<sup>20</sup> *Ibid.*, art. 24.

<sup>21</sup> See notes 1–12.

<sup>22</sup> Environmental Investigation Agency, “China’s Wildlife Protection Law: tigers are still not safe,” *Earth Touch News Network*, 20 June 2017.

<sup>23</sup> China, State Council, *Circular of the State Council on Banning the Trade of Rhinoceros Horns and Tiger Bones*, (29 May 1993).

<sup>24</sup> China, State Council, *State Council Notification Concerning the Strict Control of Rhinoceros and Tigers and Operations Utilizing Their Products*, October 29, 2018. Unofficial translation. Available at [http://www.gov.cn/zhengce/content/2018-10/29/content\\_5335423.htm](http://www.gov.cn/zhengce/content/2018-10/29/content_5335423.htm); China, State Forestry Administration, *China in Action: Protecting Wildlife and Combating Illegal Trade* (Beijing, 2014); China, State Council, *State Council Notification regarding strict control of management and utilization of rhinoceroses, tigers and the products thereof*, State Council Notification No. 36 (October 2018). Available at <https://eia-international.org/wp-content/uploads/State-Council-Notification-regarding-strict-control-of-management-and-utilisation-of-rhinoceroses-tigers-and-the-products-thereof.pdf>.

<sup>25</sup> China, State Council, *State Council Notification regarding strict control of management and utilization of rhinoceroses, tigers and the products thereof*, State Council Notification No. 36 (October 2018). Available at <https://eia-international.org/wp-content/uploads/State-Council-Notification-regarding-strict-control-of-management-and-utilisation-of-rhinoceroses-tigers-and-the-products-thereof.pdf>.

<sup>26</sup> Xinhua, “Full transcript: State Council Executive Deputy Secretary-General Ding Xuedong Answers Media Questions”, 12 November 2018.

<sup>27</sup> Javier C. Hernandez, “China, After Outcry, Reinstates Ban on Rhino and Tiger Parts in Medicine”, *New York Times*, 12 November 2018; Environmental Investigation Agency, “Chinese Government document signals decision to open tiger trade is quietly going ahead”, 4 April 2019.

<sup>28</sup> Environmental Investigation Agency, “Chinese Government document signals decision to open tiger trade is quietly going ahead”, 4 April 2019.

7. In a 2015 effort to address ongoing illegal trade, China signed an agreement with courier companies together responsible for 95 per cent of the Chinese market in accordance with CITES involving “Zero Tolerance” courier pledges.<sup>29</sup> CITES commended the Chinese government’s pledge as a step in the right direction in preventing the illicit trade of species listed in Appendix I. Holding seventeen courier services to the terms of the pledge shed light on the underlying issues within the transit sector: the level of scrutiny exercised when moving wildlife and wildlife products, when and how reporting is to take place, who is responsible, and what couriers can do to raise awareness to prevent the trade in general.

## **Legislation**

### **Domestic wildlife trade and protection**

8. The NPC promulgated the Law of the PRC on the Protection of Wildlife (WPL) in 1989. The law contains several provisions key to the PRC’s regulation of the domestic trade of endangered species in mainland China. The stated purpose of the WPL is “to protect wildlife, save rare and endangered wildlife, maintain biodiversity and ecological balance, and promote the construction of ecological civilization.”<sup>30</sup> The WPL protects “rare and endangered terrestrial and aquatic wildlife” as well as terrestrial wildlife of “important ecological, scientific and social value.”<sup>31</sup> Further, the law regulates derived products, which includes “the whole or any part of wildlife (including eggs) as well as products derived from them.”<sup>32</sup> Article 3 of the WPL establishes state ownership of all domestic wildlife.
9. In 1992, the State Council approved and the Ministry of Forestry promulgated the Regulation for the Implementation of PRC on the Protection of Terrestrial Wildlife (“the Regulation”) in order to implement the WPL and its controls on domestic trade of specially protected species. Pursuant to the WPL, the regulation defines “terrestrial wildlife” that fall within state control as “species of terrestrial wildlife which are precious or being endangered and the species which are beneficial or of important economic and scientific research value.”<sup>33</sup>
10. The Departments of Forestry Administration under the PRC’s provincial governments, autonomous regions, and municipalities directly under the Central Government are responsible for the administration of the terrestrial wildlife in their respective administrative areas.<sup>34</sup> The departments cover the general protection, hunting and catching, domestication and breeding, and business operations or utilization of wildlife.
11. Chapter 2 of the WPL outlines the PRC’s wildlife protection program. Article 10 of the WPL defines the classification system of protected wildlife under the State’s wildlife protection program. It provides that:
  - a) *The state shall carry out wildlife protection according to grading and classification.*
  - b) *The state shall give special protection to the species of wildlife which are rare or near extinction. The wildlife under special state protection shall consist of two classes: wildlife under first class protection and wildlife under second class protection. Lists of wildlife under special state protection shall be drawn up by the department of wildlife protection under the State Council following scientific evaluation, shall be revised every five years according to the results of evaluation, and shall be announced after being submitted to and approved by the State Council.*
  - c) *The wildlife under special local protection, being different from the wildlife under special state protection, refers to the wildlife specially protected by provinces, autonomous regions or municipalities. Lists of wildlife under special local protection and amendments thereto shall be*

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<sup>29</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, “CITES commends leading Chinese courier companies’ zero tolerance towards illegal wildlife trade”, 2015.

<sup>30</sup> China, Law of the People’s Republic of China on the Protection of Wildlife, art. 1 (2018).

<sup>31</sup> *Ibid.*, art. 10.

<sup>32</sup> *Ibid.*, art. 2.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

*drawn up, revised and announced by the people's governments of provinces, autonomous regions or municipalities following scientific evaluation organised by these local governments.*<sup>35</sup>

12. In other words, under the WPL, the PRC gives special state protection to rare or endangered terrestrial species based on a catalogue system. First-class species are more heavily regulated—for example, it is prohibited to hunt or capture first-class species unless necessary for certain purposes. Article 21 allows for the capture of first-class protected species for “scientific research, population regulation, monitoring of epidemic disease or other special reasons” and where the relevant wildlife department under the State Council issues a license.<sup>36</sup> Second-class species may be hunted or captured with a special license from the province, autonomous region, or municipality (instead of the State Council).<sup>37</sup>
13. The Regulation echoes the WPL’s ban on the hunting, catching, or killing of species under special state protection, but provides more exceptions to the WPL’s general prohibition. For any of the following seven reasons, an organization can apply for a special hunting and catching license:
  - a) Where the wildlife has to be hunted and caught for the *purpose of scientific exploration and survey of resources*;
  - b) Where the origin of the wildlife has to be obtained from nature for the purpose of *domestication and breeding thereof under special protection by the State*;
  - c) Where the wildlife under special protection by the State has to be obtained from nature for the purpose of undertaking *scientific research above the provincial level or the production of medicine by the State*;
  - d) Where the wildlife under special protection by the State has to be obtained from nature for the *purpose of popularization of knowledge about wildlife or for the purpose of education or exhibition*;
  - e) Where the wildlife under special protection by the State has to be obtained from nature for the purpose of the *requirement of State affairs*;
  - f) Where, on the basis of sound judgement, the wildlife has to be hunted or caught for the purpose of *adjusting or controlling the population or structure of wildlife under special protection by the State*;
  - g) Where the wildlife under special protection by the State has to be caught or hunted for *other special reasons*.<sup>38</sup>
14. Article 25 of the WPL expressly allows the domestication and breeding of wildlife.<sup>39</sup> If the species is under special state protection, the breeder or domesticator must obtain a license.<sup>40</sup> Chapter IV of the Regulation outlines in more detail the PRC’s policies regarding the possession of endangered species.<sup>41</sup> The Regulation specifically permits domestication and breeding of wildlife under special state protection where “production and economic results are the major objectives,” in which case an application must be made to the administrative authorities for industry and commerce for record and registration.<sup>42</sup>

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<sup>35</sup> *Ibid.*, art. 10.

<sup>36</sup> *Ibid.*, art. 21.

<sup>37</sup> *Ibid.*

<sup>38</sup> China, *Regulations of the People’s Republic of China on the Administration of the Import and Export of Endangered Wild Animals and Plants*, art. 33–44 (12 February 1992).

<sup>39</sup> China, *Law of the People’s Republic of China on the Protection of Wildlife*, art. 25.

<sup>40</sup> *Ibid.*

<sup>41</sup> China, *Regulations for the Implementation of the People’s Republic of China on the Protection of Terrestrial Wildlife*, art. 21–23 (1992).

<sup>42</sup> *Ibid.*

15. Generally, the purchase, use, or sale of a special state protected species or its derived products is prohibited.<sup>43</sup> However, there are exceptions for “scientific research, captive breeding, public exhibitions and performances, cultural relics protection, or other special circumstances.”<sup>44</sup> In these cases, the user or seller need only obtain a permit from the department of wildlife for the appropriate province, autonomous region, or municipality, not from the central government.<sup>45</sup>
  - a) Moreover, according to Article 24 of the Regulation, “any unit purchasing wildlife of *domestication and breeding* under special protection by the State or the products thereof” must “be proposed” by the provincial, municipal or autonomous regional level of the department of forestry.<sup>46</sup> However, a unit approved to purchase specially protected species may not purchase species which are not permitted to be sold. Article 26 prohibits the purchase and sale of wildlife under special protection by the State, or products thereof, “in the market place.”<sup>47</sup> Further, the Regulation allows for the transport of wildlife under special protection between provinces and counties with approval from the relevant county government.<sup>48</sup>
16. Article 35 of the WPL addresses international trade of CITES-listed species and requires the publication of the list of Appendix I-listed species along with special state protected species.<sup>49</sup> While this report focuses on domestic trade, the overlap between Appendix-I listed species and special state protection program species is relevant to both domestic and international trade. Article 35’s mandate to publish the list of special state protected species allows for the comparison of state-protected species and Appendix I-listed species.<sup>50</sup>
17. Chapter 4 of the WPL establishes legal liability for violations. Those who illegally catch or kill any wildlife under special state protection may face criminal liability, and those who violate any of the other provisions, including by illegally importing, exporting, catching, trading, selling, or purchasing protected species, may face fines, confiscation of the wildlife or product, and potential criminal prosecution.<sup>51</sup> There is no discussion of what happens to the seized wildlife or its product in Chapter 4.
18. The Departments of Forestry and other authorized administering authorities penalize violations with different degrees of severity. The type of animal possessed, the amount and duration of possession, and other factors impact the class to which activities are assigned.<sup>52</sup> These various classes of animals and activities dictate how serious of a penalty a violator of the WPL or the Regulation will receive. Some promulgated provisions work to directly regulate the illegal/endangered animal market, while others focus on regulating other areas that impact animal trade.
19. Articles 32 through 43 of the Regulation lay out the specific penalties for violations involving the capture, sale, and purchase of wildlife under special state protection.<sup>53</sup> These articles outline the fines and potential prison sentences for violating different aspects of the Regulation. Many penalties involve paying a fine that ranges in price depending on the severity of the violation. The quantity of specimens or products and the duration of the illegal activity can substantially increase the fine. More serious violations may also result in various lengths of imprisonment. The relevant penalties are as follows:

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<sup>43</sup> China, *Law of the People’s Republic of China on the Protection of Wildlife*, art. 27 (2018).

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> China, *Regulations for the Implementation of the People’s Republic of China on the Protection of Terrestrial Wildlife*, art. 24 (1992).

<sup>47</sup> *Ibid.*, art. 26.

<sup>48</sup> *Ibid.*, art. 28.

<sup>49</sup> China, *Law of the People’s Republic of China on the Protection of Wildlife*, art. 35.

<sup>50</sup> See China, *State Forestry and Grassland Administration, National Key Wildlife List* (2018). Available at <http://www.forestry.gov.cn/main/3954/20180104/1063883.html>.

<sup>51</sup> *Ibid.*, arts. 42–57.

<sup>52</sup> China, *Regulations for the Implementation of the People’s Republic of China on the Protection of Terrestrial Wildlife*, chap. VI (1992).

<sup>53</sup> *Ibid.*, arts. 32–43.



**Article 36** *Where anyone in violation of the provisions of the laws and regulations on wildlife protection, sells, purchases, transports or carries wildlife under special protection by the State or local authorities or the products thereof, such wildlife and products and his unlawful income obtained therefrom shall be confiscated by the administrative authorities for industry and commerce or by the competent department of wildlife administration authorized thereby, and a fine below ten times the value thereof shall be imposed.*

**Article 38** *Where anyone, in violation of the provisions of the laws and regulations on wildlife protection, domesticates or breeds wildlife under special protection by the State without domestication or breeding license or domesticates or breeds the wildlife under special protection by the State beyond those specified in the domestication or breeding license, his unlawful income shall be confiscated by the competent department of wildlife administration, and a fine below 3,000 yuan (RMB) [approximately US\$430 as of July 2020] shall be imposed; besides, the species of wildlife may be concurrently confiscated and the domestication and breeding license may be revoked.<sup>54</sup>*

20. Additionally, Article 31 states that rewards will be provided to organizations or individuals who: 1) make contributions to wildlife resource investigation, protection, and management; 2) implement wildlife protection laws and regulations and make outstanding achievements; 3) rescue, protect, and domesticate rare and endangered wildlife and achieve remarkable results; 4) give reports that help stop violations of wildlife protection laws; 5) contribute to enforcement of violations of wildlife protection laws; 6) obtain significant results in scientific research of wildlife or obtain significant benefits in applying results of scientific research; or 7) are engaged in grassroots-level wildlife protection and management for more than five years and have achieved remarkable results.<sup>55</sup>

#### Criminal liability

21. Article 341 of the Criminal Law imposes penalties for criminal acts regarding the domestic trade, capture, and destruction of endangered and protected wildlife in mainland China. It states:

*Whoever illegally catches or kills precious and endangered species of wildlife under special State protection or illegally purchases, transports or sells such species of wildlife as well as the products thereof shall be sentenced to fixed-term imprisonment of not more than five years of criminal detention and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years and shall also be fined or be sentenced to confiscation of property.<sup>56</sup>*

22. There are no definitions or interpretation guides laid out in the Criminal Law that specify what makes the circumstances of a crime “serious” or “especially serious.”
23. According to Article 59 of the Criminal Law, “[c]onfiscation of property is the confiscation of part or all of the property personally owned by the criminal element.”<sup>57</sup> However, this does not apply to property owned by the family of the criminal element.<sup>58</sup>
24. Article 312 provides that “whoever knowingly conceals, transfers, purchases or helps to sell illegally acquired goods shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined.”<sup>59</sup>

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<sup>54</sup> *Ibid.*, arts. 36, 38.

<sup>55</sup> *Ibid.*, art. 31.

<sup>56</sup> *China, Criminal Law of the People’s Republic of China*, art. 341 (14 March 1997).

<sup>57</sup> *Ibid.*, art. 59.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*, art. 312.

25. In 2014, following difficulties in judicial practice applying the Criminal Law to species under special state protection, the Standing Committee of the NPC adopted an interpretation of Articles 341 and 312. The Standing Committee of the NPC explained that:

*Where anyone illegally purchase[s] the wildlife and products thereof for edible or other purpose[s] while the person knows or should know that such wildlife falls within the precious and endangered species of wildlife under special State protection, such [an] act constitutes illegal purchase of the precious and endangered species of wildlife under special state protection as well as the products thereof as prescribed in paragraph 1 of Article 341 of the Criminal Law.*

*Where anyone purchases wildlife while the person knows or should know that the wildlife is illegally hunted wildlife as prescribed in paragraph 2 of Article 341 of the Criminal Law, such act constitutes the act of knowingly purchasing illegally acquired goods as prescribed in paragraph 1 of Article 312 of the Criminal Law.<sup>60</sup>*

26. In 1998, the Standing Committee of the NPC passed the criminal law *Supplementary Provisions of the SCNPC Concerning the Punishment of Crimes of Catching or Killing Precious and Endangered Species of Wildlife under State Protection*. This law provided that “anyone who illegally catches or kills precious and endangered species of wildlife under special state protection shall be sentenced to fixed-term imprisonment of not more than seven years of criminal detention, may concurrently or exclusively be fined; anyone who sells or resells or smuggles precious and endangered species of wildlife under special state protection shall be punished for crimes of speculation or smuggling.” However, this law appears to have expired and does not appear to have been readopted.
27. In the wake of the global COVID-19 pandemic, the PRC has stated its intent to modify existing controls on the trade and consumption of wildlife.<sup>61</sup> The root of COVID-19 has been linked to the wildlife market in Wuhan, China.<sup>62</sup> On January 26, 2020, China implemented a temporary ban on the domestic trade of all wild animals.<sup>63</sup> The PRC established a hotline for citizen enforcement of the ban, and the media has been publicizing its tougher enforcement of the WPL on television and the internet. However, China is hoping to export some wild animals to discourage domestic consumption in the wake of COVID-19 and its transmission.<sup>64</sup>
28. On February 24, 2020, the Standing Committee of the NPC issued a Decision on a “Complete Ban of Illegal Wildlife Trade and the Elimination of the Unhealthy Habit of Indiscriminate Wild Animal Meat Consumption for the Protection of Human Life and Health.”<sup>65</sup> Article 1 of the Decision “strictly prohibits” the “hunting, trade, transport, or consumption of wild animals prohibited by the [WPL] of the People’s Republic of China or any other relevant law.”<sup>66</sup> Adhering to China’s CITES agreement is at the discretion of the Chinese government. Some laws confer official determination capabilities for Chinese officials which should protect Appendix I-listed species.<sup>67</sup> As such, Article 1 provides that any violation will be punished in an “aggravated manner.”<sup>68</sup> Article 2 states that the consumption of:

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<sup>60</sup> China, *Standing Committee of the National People’s Congress, Interpretation of the Standing Committee of the National People’s Congress regarding Article 341 and Article 312 of the Criminal Law of the People’s Republic of China*, 24 April 2014.

<sup>61</sup> Xinhua, “China Focus: Stay away from wild animals, China takes sustained action against illegal wildlife trade”, 2 February 2020.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> Kate O’Keeffe and Eva Xiao, “Amid Coronavirus Pandemic, China Bans Domestic Trade of Wild Animals, but Offers Tax Breaks for Exports”, *Wall Street Journal* 12, April 2020.

<sup>65</sup> China, *Decision of the Standing Committee of the National People’s Congress to Comprehensively Prohibit the Illegal Trade of Wild Animals, Break the Bad Habit of Excessive Consumption of Wild Animals, and Effectively Secure the Life and Health of the People* (February 2020).

<sup>66</sup> *Ibid.*

<sup>67</sup> China, *Notice of the Supreme People’s Court, the Supreme People’s Procuratorate, the State Forestry Administration, the Ministry of Public Security and the General Administration of Customs on Issues Relating to the Value Assessment of Products of Terrestrial Wild Animals Listed in Appendix I and Appendix II of CITES Involved in Criminal Cases Involving Destruction of Wildlife Resources*, Lin Bin Fa, No. 239 (2012).

<sup>68</sup> China, *Decision of the Standing Committee of the National People’s Congress to Comprehensively Prohibit the Illegal Trade of Wild Animals, Break the Bad Habit of Excessive Consumption of Wild Animals, and Effectively Secure the Life and Health of the People* (February 2020).

*terrestrial wild animals of important ecological, scientific and social value and other terrestrial wild animals protected by the state, including terrestrial wild animals bred and raised in captivity, shall be comprehensively prohibited. The hunting, trade, and transportation of terrestrial wild animals that grow and reproduce naturally in the wild, for the purpose of consumption, shall be comprehensively prohibited. Any violation of the provisions of the preceding two paragraphs shall be punished with reference to the relevant provisions of the existing laws.*<sup>69</sup>

29. The contents of the decision have yet to be officially incorporated within the WPL.

#### Domestic wild plant trade and protection

30. In 1996 the State Council first promulgated regulations, later amended in 2017, for “protecting, developing, and rationally utilizing wild plant resources retaining the biodiversity and maintaining ecological balances.”<sup>70</sup> Specifically, the Regulations on Wild Plants Protection protect wild plants “which are rare or near extinction and of important economic, scientific or cultural value.”<sup>71</sup> The main goals of these regulations are to encourage scientific research into medicinal properties of rare plants, maintain “rational” use of these plants, educate the public, and protect the survival of rare plants.<sup>72</sup> To this end, Article 9 of the regulations states that “all units and individuals shall be forbidden to illegally collect wild plants or damage the environment for their survival.”<sup>73</sup> Like endangered animals under the WPL, endangered plants fall either under special state protection or special local protection, and those under special state protection receive either first or second class protection.<sup>74</sup>
31. Under Article 16 of the regulations, the collection of special first class state protected plants is prohibited, unless for scientific research, cultivation, and cultural exchange with permission from State Council or local administering body. Article 18 prohibits the sale of wild plants under first-class special state protection, seemingly without exception. The purchase and sale of second-class special state protected wild plants is permissible with approval from the department of wild plants administration under the provincial, municipal, or regional autonomous government.

#### Hong Kong and Macao SAR Law

32. Hong Kong and Macao, two Special Administrative Regions (SARs) of the PRC, have their own legislation that implements CITES and regulates wildlife protection.

#### Hong Kong SAR

33. The Protection of Endangered Species of Animals and Plants Ordinance, Chapter 586, gives effect to CITES in Hong Kong SAR.<sup>75</sup> The Ordinance requires that all import, introduction from the sea, export, re-export, or possession of specimens of scheduled species, whether alive, dead, or parts or derivatives thereof (including medicines), be licensed by the Agriculture, Fisheries and Conservation Department (AFCD). According to Section 9 of the Ordinance, “a person shall not have in his possession or under his control a specimen of an Appendix I species” without a license from the AFCD, except in limited circumstances, including if the owner holds a pre-Convention certificate for the specimen or can otherwise prove it was lawfully imported prior to 1976 or in accordance with regulations, or if the specimen is being transported and the owner has proper documentation

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<sup>69</sup> *Ibid.*, art. 2.

<sup>70</sup> China, *Regulations of the People’s Republic of China on Wild Plants Protection*, art. 1 (October 2017).

<sup>71</sup> *Ibid.*, art. 2.

<sup>72</sup> *Ibid.*, arts. 3–8.

<sup>73</sup> *Ibid.*, art. 9.

<sup>74</sup> *Ibid.*, art. 10; see China, *List of National Key Protected Wild Plants (First Batch)* (August 1999). Available at <http://www.forestry.gov.cn/yemian/minglu1.htm>.

<sup>75</sup> Hong Kong SAR, *Protection of Endangered Species of Animals and Plants Ordinance*, Cap. 586 (1 December 2006).

certifying its legality.<sup>76</sup> The Ordinance describes the circumstances under which the AFCD may issue a license for the import, export, and possession of scheduled species.<sup>77</sup>

34. Hong Kong SAR does not permit the commercial trade of Appendix I-listed species, and the AFCD will issue no licenses for such trade.<sup>78</sup> For purposes of regulation, Hong Kong SAR treats Appendix I-listed species bred in captivity or artificially propagated for commercial purposes as Appendix II-listed species.<sup>79</sup> Trade of Appendix II-listed species is allowed, but subject to licensing.
35. The AFCD maintains an up-to-date list of all scheduled species, which includes all Appendix I-listed species (as well as all species listed in CITES Appendices II and III).<sup>80</sup> Tigers, elephants, cheetahs, rhinos, sulphur-crested cockatoos, slipper orchids, sea turtles, Asiatic bony tongues, and pangolins are among the listed species.
36. Individuals that violate the Ordinance may be held liable for fines of up to 10 million HKD (approximately \$1.29 million US as of July 2020), and face imprisonment for up to 10 years.<sup>81</sup> The penalty for domestic possession or control of an Appendix I-listed species without a valid license is, on summary conviction, a fine of up to 5 million HKD (approximately \$645,000 US as of July 2020) and imprisonment for 2 years, or, on indictment, a fine of up to 10 million HKD (approximately \$1.29 million US as of July 2020) and imprisonment for 10 years.<sup>82</sup>
37. The Ordinance also gives authorized officers the power to seize, remove, and detain anything related to a violation of the Ordinance, including a specimen itself, anything it is contained within, and any food or drink accompanying the specimen.<sup>83</sup> It also creates a reward system that compensates individuals that help enforce the Ordinance.<sup>84</sup> People that submit tips that lead to successful seizures or convictions receive a cash reward.<sup>85</sup>
38. A 2018 amendment, among other things, imposed higher penalties for smuggling and illegal trade of endangered species and sought to tighten controls on the ivory trade.<sup>86</sup> As ivory is beyond the scope of the present report, it will not be further described here.
39. Hong Kong SAR also enacted the Wild Animals Protection Ordinance in 1976 to protect local wildlife and their habitats.<sup>87</sup> The Wild Animals Protection Ordinance prohibits the hunting, possession, sale or export of protected species or their derivative parts for a commercial purpose without a permit.<sup>88</sup> The sale of nests and eggs of protected species is also prohibited without a license. The Director of the AFCD may grant permits to hunt, possess, or trade protected species “upon such conditions as he sees fit.” Violations of this ordinance may result in imprisonment for up to one year and varying levels of fines.<sup>89</sup>

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<sup>76</sup> *Ibid.*, sects. 9, 20-22.

<sup>77</sup> *Ibid.*, sects. 23-26.

<sup>78</sup> Hong Kong SAR, Agriculture, Fisheries and Conservation Department, “Licensing and Inspection Requirements”.

<sup>79</sup> Hong Kong SAR, Protection of Endangered Species of Animals and Plants Ordinance, Cap. 586, sect. 2(2)(i) (2006).

<sup>80</sup> *Ibid.*, sch. 1.

<sup>81</sup> Hong Kong SAR, “Protection of Endangered Species”, December 2019. Available at <https://www.gov.hk/en/residents/environment/conservation/protectendangerspecies.htm>.

<sup>82</sup> Hong Kong SAR, Protection of Endangered Species of Animals and Plants Ordinance, Cap. 586, sect. 9 (2006) (The penalty was increased in 2018 with a series of Ordinance Amendments to address illegal trade of endangered species, specifically ivory and elephant trophies.).

<sup>83</sup> *Ibid.*, sect. 34.

<sup>84</sup> Hong Kong SAR, Agriculture, Fisheries and Conservation Department, “Reward Scheme.” Available at [https://www.afcd.gov.hk/english/conservation/con\\_end/con\\_end\\_rew/con\\_end\\_rew.html](https://www.afcd.gov.hk/english/conservation/con_end/con_end_rew/con_end_rew.html).

<sup>85</sup> *Ibid.*

<sup>86</sup> Hong Kong SAR, “Protection of Endangered Species”, December 2019. Available at <https://www.gov.hk/en/residents/environment/conservation/protectendangerspecies.htm>.

<sup>87</sup> Hong Kong SAR, Wild Animals Protection Ordinance, Cap. 170 (23 January 1976).

<sup>88</sup> *Ibid.*, sects. 4–13. This includes trade over the internet.

<sup>89</sup> *Ibid.*, sect. 18.

40. The Wild Animals Protection Ordinance protects wild animals listed under Schedule 2.<sup>90</sup> The list does not include all Appendix I-listed species.<sup>91</sup>

### Macao SAR

41. Macao SAR transitioned from Portuguese to Chinese sovereignty in 1999. Portugal joined CITES in 1981, and Macao joined in 1986.<sup>92</sup> In 1986, Macao enacted Decree Law 45/86/M, which regulated wildlife trade in Macao. Decree Law 45/86/M was later replaced with Law 2/2017 in order to achieve Category 1 classification, which refers to legislation that is believed generally to meet the requirements for the full implementation of CITES.<sup>93</sup> The 2017 law regulates foreign and domestic trade, possession, detention, and transportation of specimens of CITES-listed species.
42. Chapter III of Law 2/2017 addresses the local endangered species market in Macao SAR. Article 21 implements a general ban on “local trade in specimens of the species included in Appendix I” for commercial purposes or use for profit. It also prohibits the possession or detention of Appendix I-listed species for commercial purposes when illegally obtained.
43. Article 24(1) states that importers and exporters, breeders and nursery owners, and scientific organizations owning or holding specimens of any CITES-listed species must be registered with the Directorate of Economic Services. Registrants must report the types and quantities of specimens held, the number of parents used in reproduction, and annual deaths and births by species.<sup>94</sup>
44. Article 30 authorizes temporary, definitive, and emergency seizure of specimens involved in violations of the law.<sup>95</sup> The 2017 amendment imposes maximum fines for wildlife penalties of MOP 62,025 (approximately \$7,770 US as of July 2020).<sup>96</sup> Unlike wildlife laws in mainland China and Hong Kong SAR, the law does not penalize any violations with imprisonment.<sup>97</sup>

### Analysis

#### Legal status of the domestic market

45. There is an open and legal, though regulated, domestic market for specimens of Appendix I-listed species in China—not including Hong Kong and Macao SARs, where commercial trade in Appendix I-listed species is prohibited with limited exceptions. Most Appendix I-listed terrestrial species fall under the wildlife protection program of the WPL, mainland China’s central law governing trade in animal species.<sup>98</sup> The WPL explicitly acknowledges and permits ongoing trade in products derived from protected species and the specimens themselves.<sup>99</sup>
46. Though the WPL generally prohibits trade in special state and local protected species and derived products, it also grants exceptions for a broad range of purposes. When the government approves the sale or purchase of a protected species or derived product, it will provide a special label to allow for legal sale.<sup>100</sup>
47. Additionally, the WPL allows for categorical exceptions.<sup>101</sup> A species can be broadly approved for captive breeding when the State has determined that the breeding practice is not harmful to the

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<sup>90</sup> *Ibid.*, sch. 2.

<sup>91</sup> *Ibid.* The list includes all primates, bats, pangolin, porcupine, all cetaceans, the common red fox, civet, otters, Chinese ferret badgers, leopard cat, dugongs, barking deer, all wild birds, all chelonians, Burmese python, water monitors, Hong Kong newt, Hong Kong cascade frog, Roemer’s tree frog, and the Burmese Butterfly.

<sup>92</sup> Wilson Lau and Royce To, *The State of Wildlife Trade in Macau* (Cambridge, TRAFFIC, 2019).

<sup>93</sup> *Ibid.*; Macao SAR, *Law implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Law No. 2/2017*.

<sup>94</sup> Macao SAR, *Law implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Law No. 2/2017*, art. 24(2).

<sup>95</sup> *Ibid.*, art. 30

<sup>96</sup> *Ibid.*, art. 24

<sup>97</sup> *Ibid.*, art. 30.

<sup>98</sup> China, *Law of the People’s Republic of China on the Protection of Wildlife*, art. 35 (2018).

<sup>99</sup> *Ibid.*, art. 29.

<sup>100</sup> *Ibid.*, art. 27.

<sup>101</sup> *Ibid.*, art. 29.

species.<sup>102</sup> For these species, those seeking to trade can directly acquire labels for legal trade using their breeding licenses.<sup>103</sup> Other provisions of the WPL, like those that limit sale and possession, may no longer apply to captive-bred animals of these species. The requirement of proof of permit for those transporting protected species between counties provides an additional means to control illegal trade while facilitating legal trade with effective enforcement.<sup>104</sup>

48. Under the Regulations on Wild Plants Protection, plants may similarly be designated for special state or local protection, and the special state protection species are divided into a first and second class.<sup>105</sup> First-class special state protected plant species are prohibited from being sold in domestic trade, but those in the second class may legally be sold so long as the sale is approved by the relevant local government authority.
49. Legal domestic trade of Appendix I-listed species in Hong Kong SAR appears to be more limited. Under the Protection of Endangered Species of Animals and Plants Ordinance, Appendix I-listed species can be held in possession if the owner holds the relevant license. Appendix I-listed species can only be legally traded domestically, however, if they were bred in captivity and the breeder has a license to do so.
50. Domestic trade is similarly limited in Macao SAR, where Decree Law 2/2017 prohibits the sale of Appendix I-listed species for commercial purposes or to be used for profit. Possession of Appendix I-listed species, so long as they are legally obtained, as well as captive breeding, are legal so long as the owners have properly registered the specimens and operations.

#### Regulation of trade

51. In February 2020, the NPC emphasized the prohibitions of the WPL and other laws on trade in wild animals, and required that, going forward, violators face higher penalties than have previously been prescribed.<sup>106</sup> This decision also banned the consumption of meat from “terrestrial wild animals of significant ecological, scientific, or social value,” thereby also prohibiting the purchase or sale of captive bred specimens of specially protected species or otherwise for consumption.<sup>107</sup> The Congress also called for stricter controls, including inspection and quarantine requirements, on trade in specimens of wild animals for other purposes, including science, medicine, displays, or otherwise.<sup>108</sup> Further, the decision incorporated a demand reduction component focused on increasing public education and encouraging people to “break away from the undesirable habit of indiscriminate wildlife consumption.”<sup>109</sup>
52. Since the decision did not amend the WPL, nor preempt it in its entirety, the WPL is still applicable and serves as the main wildlife trade regulation for terrestrial species in mainland China. The WPL generally regulates the trade of special state protected species, which are divided into a first and second class, and include most Appendix I-listed species. Notably, pangolins were recently granted first-class special state protection status and made illegal to use in traditional medicine.<sup>110</sup> Other species, such as the red panda, the lynx, and some otter and whale species, have lesser, second-class state protection. However, these and other non-first-class-listed species can be selected for special *local* protection. Domestic trade in specially protected species and derived products is highly regulated on the local and state level—the purchase and sale of specially protected species is prohibited except when local governments issue permits allowing domestic trade for scientific

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<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*, art. 33.

<sup>105</sup> China, *Regulations of the People’s Republic of China on Wild Plants Protection* (7 October 2017).

<sup>106</sup> China, *Decision of the Standing Committee of the National People’s Congress to Comprehensively Prohibit the Illegal Trade of Wild Animals, Break the Bad Habit of Excessive Consumption of Wild Animals, and Effectively Secure the Life and Health of the People*, sect. 1 (February 2020).

<sup>107</sup> *Ibid.*, sect. 2.

<sup>108</sup> *Ibid.*, sect. 4.

<sup>109</sup> *Ibid.*, sect. 5.

<sup>110</sup> *Xinhua*, “China upgrades protection levels for pangolins”, 5 June 2020; Elizabeth Claire Alberts, “Banned: No more pangolin scales in traditional medicine, China declares”, *Mongabay*, 10 June 2020.

purposes, captive breeding, public exhibitions, performances, cultural relic protection, or other special circumstances.

53. Elephants, rhinos, and tigers have also been specially regulated under laws other than the WPL. Non-native or exotic Appendix I-listed species face their own set of stricter controls separate from those that apply to native species.<sup>111</sup>
54. Protected plants, on the other hand, are regulated separately under the Regulations on Wild Plants Protection, which prohibits trade in first-class special state protected species and limits trade in second-class special state protected species.
55. In Hong Kong SAR and Macao SAR, the respective wildlife protection laws prohibit domestic trade in Appendix I-listed species for commercial purposes (and, in Macao SAR, also for use for profit).
56. It does not appear that there are different controls for different types of trade (e.g., business to business and business to individual) in any of the jurisdictions discussed.
57. In some instances, the government approves licensing for the breeding, sale, purchase and use of CITES-listed species categorically, or based on the type of species involved, rather than the details of a specific permit application. For example, in 2017, the State Forestry Administration approved 10 terrestrial and nine aquatic species for captive breeding and sale, purchase, and use pursuant to Articles 25 and 27 of the WPL.<sup>112</sup> The terrestrial species include the giant panda, crested ibis, tiger, leopard, elephant, golden monkey, gibbon, rhino, orangutan, and tadpoles. The aquatic species include Chinese white dolphins, dugongs, red corals, white magpies, and tadpoles.<sup>113</sup>
58. Article 32 of the WPL, which was added in 2017, addresses online trade of wildlife and provides that “the provision of trading platforms for the illegal sale, purchase or utilization of wildlife and the products thereof or prohibited hunting equipment by internet trading platforms, goods exchange markets or other trading space is prohibited.”<sup>114</sup> According to a recent TRAFFIC report, this provision has likely contributed to a decline in illegal online wildlife trade advertisements.<sup>115</sup> No equivalent provisions could be identified in the laws in Hong Kong SAR or Macao SAR, but the AFCD in Hong Kong SAR made clear that the prohibitions on possession and trading of Appendix I-listed species imposed by the Protection of Endangered Species of Animals and Plants Ordinance apply online as well.<sup>116</sup>

### Registration

59. Captive breeding of specially protected species in mainland China is allowed and regulated under the WPL.<sup>117</sup> Under this law, the breeders must obtain a license to domesticate or breed wildlife under special state protection. Article 25 provides that “the state shall support relevant scientific research institutions in conducting captive breeding of wildlife under special state protection for the purposes of protection of the species.”<sup>118</sup> However, for captive breeding for any other reason the State must develop a permit system through which any captive breeding request must be made.

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<sup>111</sup> China, *Regulation of the People's Republic of China on the Administration of the Import and Export of Endangered Wild Fauna and Flora* (2019). Available at <http://en.pkulaw.cn/display.aspx?cgid=30fb6b2d0b89b296bdfb&lib=law>.

<sup>112</sup> China, Ministry, State Forestry Administration, *Announcement of the State Forestry Administration* (2017 No. 14) (*The State Forestry Administration accepts 10 types (classes) of terrestrial wildlife related administrative license matters*), 23 August 2017. Available at <http://en.pkulaw.cn/display.aspx?cgid=30fb6b2d0b89b296bdfb&lib=law>.

<sup>113</sup> *The regulation is not precise with regards to species. Therefore, it is likely whether each of these species is listed in Appendix I is unclear.*

<sup>114</sup> China, *Law of the People's Republic of China on the Protection of Wildlife*, art. 32 (2018).

<sup>115</sup> Weihua Xin and Yu Xiao, *Wildlife Cyber Crime Trends in China: Online Monitoring Results 2017–2018*, (Cambridge, TRAFFIC, 2019).

<sup>116</sup> Hong Kong SAR, Agriculture, Fisheries and Conservation Department, “*Trading in Endangered Species on the Internet*.”

<sup>117</sup> China, *Law of the People's Republic of China on the Protection of Wildlife*, art. 25 (2018).

<sup>118</sup> *Ibid.*, art. 25; Weihua Xin and Yu Xiao, *Wildlife Cyber Crime Trends in China: Online Monitoring Results 2017–2018*, (Cambridge, TRAFFIC, 2019).



60. In Hong Kong SAR, Appendix I-listed species can be bred in captivity and artificially propagated for commercial purposes so long as facilities are registered with CITES.<sup>119</sup> Specimens of Appendix I-listed species that are bred in captivity must be marked as such.<sup>120</sup> In Macao SAR, captive breeding and artificial propagation of Appendix I-listed species are similarly allowed, but require registration.<sup>121</sup>
61. The WPL does not regulate the possession of any protected species, including Appendix I-listed species, in mainland China. The Protection of Endangered Species of Animals and Plants Ordinance in Hong Kong SAR does regulate possession of Appendix I-listed species. In Hong Kong SAR, individuals must secure 'Licenses to Possess' Appendix I-listed species or live specimens of wild Appendix II-listed species (including those that are bred in captivity or artificially propagated) being used for commercial purposes from the AFCD.<sup>122</sup> A single permit may be secured for each location, regardless of how many species or specimens are held there.<sup>123</sup> In Macao SAR, registration may be required to lawfully possess Appendix I-listed (and other CITES-listed species), depending on the entity in possession of the specimen and the reason for which it is being held.<sup>124</sup> In addition to captive breeding and artificial propagation facilities, importers, exporters, taxidermists working with Appendix I-listed species, and scientific institutions must also register their possession of CITES-listed species.<sup>125</sup> According to the CITES Register, there are three registered captive-breeding operators in China. Two of the facilities breed *Alligator sinensis*, and one breeds *Andria Devidianus*.<sup>126</sup>

#### Interpretation by courts

62. Judicial interpretation in the PRC does not hold binding precedent.<sup>127</sup> Thus, where domestic controls have been tried in court cases, the rulings remain binding only to the case, though cases tend to be decided consistently. The Supreme People's Court does have the authority to set national precedent by issuing Judicial Interpretations, however, which courts must then adhere to nationwide.<sup>128</sup>
63. In Hong Kong SAR, however, which is a common law jurisdiction, court cases can set binding precedent. In 2017, two individuals were convicted of possessing and selling illegally-acquired elephant ivory in violation of the Protection of Endangered Species of Animals and Plants Ordinance.<sup>129</sup> While such violations may be penalized with fines of up to 500,000 HKD per violator and up to two years in prison, the two individuals were fined 14,000 HKD in total between them (approximately \$1,800 US as of July 2020).<sup>130</sup>

#### Additional note

64. The laws and regulations of Taiwan Province of China were not analyzed for this report.

<sup>119</sup> Hong Kong SAR, Agriculture, Fisheries and Conservation Department, "Licensing and Inspection Requirements".

<sup>120</sup> Hong Kong SAR, Protection of Endangered Species of Animals and Plants Ordinance, schedule 3, part 1-IV, sect. 4 (2006).

<sup>121</sup> Macao SAR, Law No. 2/2017, art. 24(1).

<sup>122</sup> Hong Kong SAR, Agriculture, Fisheries and Conservation Department, Endangered Species Advisory Leaflet No. 2 (Revised): Protection of Endangered Species of Animals and Plants Ordinance, Cap. 586: Guidelines on Possession of Endangered Species (May 2018). Available at [https://www.afcd.gov.hk/english/conservation/con\\_end/con\\_end\\_lc/con\\_end\\_lc\\_guide/files/2\\_possession\\_Cap586e\\_18.pdf](https://www.afcd.gov.hk/english/conservation/con_end/con_end_lc/con_end_lc_guide/files/2_possession_Cap586e_18.pdf).

<sup>123</sup> *Ibid.*

<sup>124</sup> Macao SAR, Law No. 2/2017, art. 24(1).

<sup>125</sup> *Ibid.*

<sup>126</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, "China", CITES registers. Available at <https://www.cites.org/eng/common/reg/cb/CN>.

<sup>127</sup> United States, Library of Congress, Legal Research Guide: China. Available at <https://www.loc.gov/law/help/legal-research-guide/china.php>.

<sup>128</sup> *Ibid.*

<sup>129</sup> TRAFFIC, "Two convicted after forensic evidence proves 'new' ivory illegally on sale in Hong Kong," (28 March 2017). Available at <https://www.traffic.org/news/two-convicted-after-forensic-evidence-proves-new-ivory-illegally-on-sale-in-hong-kong/>.

<sup>130</sup> *Ibid.*

## European Union

### Introduction

1. Internal trade in the European Union<sup>1</sup> (EU) differs from domestic trade in a singular country because the EU comprises 27 individual Member States. Internal trade within the EU includes trade within one EU Member State or trade between individual EU Member States. Seizures are especially prevalent in countries with large trading volumes, including Germany, the Netherlands, Spain, and France.<sup>2</sup> However, the high number of seizures could also be due to strictly implemented enforcement measures in those countries. The species most commonly seized include live reptiles—tortoises in particular, but also lizards, chameleons, snakes, iguanas, and geckos; reptile bodies and parts, mostly from snakes, crocodiles, and lizards; mammal bodies and parts, including big cats; and live birds and eggs, mostly parrots.<sup>3</sup>
2. The EU is an end market for specimens of many species.<sup>4</sup> Most notably, the EU is an important end market for exotic pets with a high price tag on the black market, especially reptiles and birds.<sup>5</sup> The EU is also a key transit region through which significant volumes of specimens—particularly of African mammals—pass, usually between Africa and Asia.<sup>6</sup> Wildlife specimens are moved through the EU via its ports, airports, and increasingly, mail centers.<sup>7</sup> Mail centers can be used to mail dead specimens within the EU, or internationally. In 2018, 6,012 total seizure records were reported by 28 Member States, as compared to 5,644 in 2017.<sup>8</sup> The United Kingdom,<sup>9</sup> France, the Netherlands, Germany, and Spain reported 79 per cent of all seizure records reported in 2018.<sup>10</sup> Among those, 580 total internal seizure records were reported by 13 Member States, with Spain, Belgium, and Portugal reporting 73 per cent of these records.<sup>11</sup> The main commodity types seized were live birds, particularly parrots (e.g., grey parrots, *Psittacus erithacus* [Appendix I]),<sup>12</sup> followed by live plants, bird bodies, and mammal bodies.<sup>13</sup>
3. The EU has adopted strict rules and is working to increase enforcement efforts regarding both the EU as a final destination and as a transit region.<sup>14</sup> The EU enacted Wildlife Trade Regulations that are directly binding on each Member State and are enforced by national authorities. Some Member States go beyond the EU legislation in certain respects, adopting stricter measures in regard to categories like possession of wildlife products or registration of breeders. The national legislation in most Member States allows for both criminal and administrative penalties for violations of EU wildlife regulations.

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<sup>1</sup> The Member States of the EU as of February 2020 are Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden. European Union, “Countries”, 4 May 2020.

<sup>2</sup> Ragnhild Sollund and Jennifer Maher, *The Illegal Wildlife Trade: A Case Study report on the Illegal Wildlife Trade in the United Kingdom, Norway, Colombia, and Brazil* (European Union Action to Fight Environmental Crime (EFFACE), 2015).

<sup>3</sup> European Commission, “Questions and answers on the EU Action Plan Against Wildlife Trafficking”, 26 February 2016.

Available at [https://ec.europa.eu/commission/presscorner/detail/es/MEMO\\_16\\_388](https://ec.europa.eu/commission/presscorner/detail/es/MEMO_16_388).

<sup>4</sup> European Parliament, “BRIEFING: Wildlife Crime”, leaflet, June 2016.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> TRAFFIC, *An Overview of Seizures of CITES-Listed Wildlife in the European Union, January to December 2018* (TRAFFIC, Cambridge, 2020).

<sup>9</sup> The United Kingdom left the EU on January 31, 2020 but remains subject to EU law until the end of the transition period, which will last until December 31, 2020. European Commission, “Questions and Answers on the United Kingdom’s withdrawal from the European Union on 31 January 2020”, 24 January 2020. Available at [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_104](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_104).

<sup>10</sup> TRAFFIC, *An Overview of Seizures of CITES-Listed Wildlife in the European Union, January to December 2018* (TRAFFIC, Cambridge, 2020).

<sup>11</sup> *Ibid.*

<sup>12</sup> Many seizures related to African grey parrots involve specimens for which legal origin could not be sufficiently proven because the specimens were acquired a long time ago—not necessarily specimens that were illegally sourced from the wild.

<sup>13</sup> *Ibid.*

<sup>14</sup> European Commission, “The EU Approach to Combat Wildlife Trafficking”, 7 August 2019. Available at [https://ec.europa.eu/environment/cites/traf\\_steps\\_en.htm](https://ec.europa.eu/environment/cites/traf_steps_en.htm).

4. Several Member States have also adopted demand reduction strategies in recent years, including Austria, Belgium, Czech Republic, Estonia, France, Germany, Latvia, Lithuania, Netherlands, Portugal, Romania, Spain, and Sweden.<sup>15</sup>

## **Legislation**

### **Regulations**

5. Due in part to the EU single market,<sup>16</sup> the EU's CITES-implementing provisions must be applied in each Member State. The EU Wildlife Trade Regulations were originally developed for this purpose.<sup>17</sup> The regulations constitute the legal framework for all EU governments and regulate international and internal trade in endangered wild animals and plants in the EU. These regulations are directly applicable in each Member State, but each Member State must transpose the enforcement provisions into national legislation (e.g., with regard to the nature and level of sanctions).<sup>18</sup> These regulations are binding—Member States are required to implement legislation in accordance with these regulations.
6. If a Member State fails to properly implement these regulations, the European Commission may begin a formal infringement procedure. If the issue is not resolved, the Commission may refer the case to the European Court of Justice.<sup>19</sup> It is the responsibility of Member States to ensure that infractions are punished.<sup>20</sup> Member States are also free to adopt national legislation that is more stringent than is required by the EU regulations, but not less stringent.<sup>21</sup> As of November 2019, the EU and each EU Member State had legislation in place that sufficiently satisfied the requirements of CITES.<sup>22</sup>
7. *Council Regulation (EC) No 338/97:*<sup>23</sup> *The Basic Regulation*
  - a) This regulation provides the general legal framework for **internal EU trade**, as well as import, export, and re-export of species listed in the four Annexes (A, B, C, D) of the Regulation. Annexes A, B, and C largely correspond to Appendix I, II, and III of CITES, respectively, but also contain some non-CITES-listed species that are protected under EU internal legislation.<sup>24</sup> Annex D, frequently referred to as the “monitoring list,” has no CITES equivalent and includes species that might be eligible for listing in one of the other Annexes and for which EU import levels are monitored. This is one way in which the EU has expanded its scope of protected species beyond the CITES Appendices. For consistency with other EU regulations, such as the Habitats Directive<sup>25</sup> and the Birds Directive,<sup>26</sup> some species are listed in “higher” Annexes than they otherwise would be (i.e., they are listed in a more restrictive Annex than that corresponding to their CITES Appendix). This report will focus on species in Annex A because of the

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<sup>15</sup> TRAFFIC, *Compilation of EU Member State CITES Implementation Reports 2015–2017* (TRAFFIC, Brussels, 2019).

<sup>16</sup> The EU is referred to as a “single market” because there are no internal borders or other regulatory prohibitions on the free movement of goods and services between Member States.

<sup>17</sup> European Commission, “The European Union and Trade in Wild Fauna and Flora”, 14 May 2020. Available at [https://ec.europa.eu/environment/cites/legislation\\_en.htm#chapter2](https://ec.europa.eu/environment/cites/legislation_en.htm#chapter2).

<sup>18</sup> *Ibid.*

<sup>19</sup> European Commission, “Infringement Procedure”, 2019. Available at [https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure\\_en](https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en).

<sup>20</sup> European Commission, “The European Union and Trade in Wild Fauna and Flora”, 14 May 2020.

<sup>21</sup> European Union, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein.

<sup>22</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, “National Laws for Implementing the Convention: Updated Legislative Status Table”, November 2019. Available at <https://cites.org/sites/default/files/projects/NLP/Legislative%20status%20table%20November%202019%20for%20web.docx>.

<sup>23</sup> European Union, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein.

<sup>24</sup> Such as under the Habitats Directive and the Birds Directive. European Union, Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora; European Union, Directive 2009/147/EC of 30 November 2009 on the conservation of wild birds.

<sup>25</sup> European Union, Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

<sup>26</sup> European Union, Directive 2009/147/EC of 30 November 2009 on the conservation of wild birds.

correspondence to those species listed in Appendix I, which are predominantly illegal to trade internationally.

- b) This Regulation also establishes four main bodies at the EU level: the Committee on Trade in Wild Fauna and Flora,<sup>27</sup> the Scientific Review Group,<sup>28</sup> the Enforcement Group, and the Group of Experts of the competent CITES Management Authorities,<sup>29</sup> each of which consists of representatives of Member States.<sup>30</sup> The Committee on Trade in Wild Fauna and Flora, established under Article 18, advises the European Commission on certain relevant actions, including draft implementing acts. The Committee usually meets three to four times a year in Brussels.<sup>31</sup> The Scientific Review Group (SRG), established under Article 17, usually meets four times a year in Brussels and examines all scientific questions related to the application of the Regulations, most notably whether imports comply with the conservation requirements of 338/97.<sup>32</sup> The Enforcement Group (EG), established under Article 14(3), meets twice a year to monitor enforcement policy in the Member States and make recommendations to improve enforcement. It also facilitates sharing of best practices among Member States, including the creation and maintenance of databases and other sharing of intelligence information.<sup>33</sup> The Group of Experts of the competent CITES Management Authorities provides “advice and expertise to the European Commission and its services in relation to issues related to the EU roles on trade in species of wild fauna and flora which do not fall under the competence of the Committee on Trade in Wild Fauna and Flora.”<sup>34</sup>
- c) This Regulation focuses on trade both within the EU and outside the EU; in addition, it contains several provisions that focus on internal trade. Article 8 generally prohibits commercial activities involving Annex A species and outlines certain reasons for which Member States can make exceptions to this prohibition. The issuance of a certificate by the Management Authority of a Member State, on a case-by-case basis, is needed to grant such exceptions and to authorize commercial activities. It also allows each Member State to decide if it wants to regulate possession of Annex A species. Article 9 requires prior authorization from a Management Authority for any movement within the EU of a live specimen of a species listed in Annex A, except for specimens bred in captivity, where such prior authorization is not required. Article 16 governs sanctions Member States may impose for illegal intra-EU trade. Additional articles discuss corresponding penalties and enforcement.

#### 8. Commission Regulation (EC) No. 865/2006:<sup>35</sup> *The Implementing Regulation*

- a) While Regulation (EC) No 338/97 lays out the general framework for regulating wildlife trade, this regulation addresses implementation of the Basic Regulation. The Commission *inter alia* laid out detailed rules relating to the issuance, validity, and use of the specific documents and forms necessary for intra-EU trade in species listed in Annex A. The specific forms that must be used for permits or certificates are contained in Commission Implementing Regulation (EU) No 797/2012. The implementing regulation also expands upon the exceptions to the general prohibition on internal trade in Annex A species for commercial use provided in Article 8 of Council Regulation 338/97. Member States may allow trade in Annex A species if any of the following are true:

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<sup>27</sup> European Commission, “The Committee on Trade in Wild Fauna and Flora”, 7 August 2019. Available at [https://ec.europa.eu/environment/cites/ctwff\\_en.htm](https://ec.europa.eu/environment/cites/ctwff_en.htm).

<sup>28</sup> European Commission, “Scientific Review Group”, 7 August 2019. Available at [https://ec.europa.eu/environment/cites/srg\\_en.htm](https://ec.europa.eu/environment/cites/srg_en.htm).

<sup>29</sup> European Commission, “Group of Experts of the competent CITES Management Authorities”, 31 December 2019. Available at [https://ec.europa.eu/environment/cites/experts\\_group\\_en.htm](https://ec.europa.eu/environment/cites/experts_group_en.htm).

<sup>30</sup> European Commission, “Enforcement Group”, 7 August 2019. Available at [https://ec.europa.eu/environment/cites/eg\\_en.htm](https://ec.europa.eu/environment/cites/eg_en.htm).

<sup>31</sup> European Commission, “The Committee on Trade in Wild Fauna and Flora”, 7 August 2019.

<sup>32</sup> European Commission, “Scientific Review Group”, 7 August 2019.

<sup>33</sup> European Commission, “Enforcement Group”, 7 August 2019.

<sup>34</sup> *Ibid.*

<sup>35</sup> Most recently amended by Commission Regulation (EU) 2019/220 of 6 February 2019.

- i) The specimen was “acquired in, or introduced into, the [EU] before the provisions relating to species listed in Annex A ... or in Appendix I ... became applicable to them”;
  - ii) The specimen “originate[d] in a Member State and were taken from the wild in accordance with the legislation of that Member State”;
  - iii) The specimen “[is], or are parts of, or are derived from animals born and bred in captivity”;
  - iv) The specimen is “authorized to be used for one of the purposes referred to in Article 8(3)(c) and (e) to (g) of Regulation (EC) No 338/97.”<sup>36</sup>
- b) The implementing regulation is regularly amended. The latest amendment was adopted on 6 February 2019, and another amendment is expected by early 2021.<sup>37</sup>

#### Implementation of regulations

9. A variety of players in each Member State implement and enforce the rules for internal wildlife trade, including customs and police services, CITES Management and Scientific Authorities, environmental inspection agencies, and wildlife, environmental crime, veterinary, and phytosanitary specialists. Often times, these individuals work in different ministries or agencies.

#### Policy priorities

##### 10. *EU Action Plan against Wildlife Trafficking*

- a) In February 2016, the EU Action Plan against Wildlife Trafficking (“Action Plan”) was established.<sup>38</sup> Although not legally binding, the Action Plan created a comprehensive strategy to fight wildlife trafficking within the EU and strengthen the EU’s ability to combat wildlife crime worldwide.<sup>39</sup> The plan, which generated considerable political attention and support at the EU level, outlines three main priorities:
  - i) Preventing wildlife trafficking and addressing its root causes;<sup>40</sup>
  - ii) Implementing and enforcing existing rules and combating organized wildlife crime more effectively;<sup>41</sup> and
  - iii) Strengthening the global partnership of source, consumer, and transit countries against wildlife trafficking.<sup>42</sup>
- b) A mid-term report on implementation of the Action Plan in October 2018 reinforced the necessity for Member States to work together in fighting against the illegal trade of wildlife.<sup>43</sup> It

<sup>36</sup> European Union, Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein.

<sup>37</sup> European Union, Commission Regulation (EU) 2019/220 of 6 February 2019 amending Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein.

<sup>38</sup> European Commission, *EU Action Plan against Wildlife Trafficking* (COM (2016) 87).

<sup>39</sup> *Ibid.*

<sup>40</sup> For example, Objective 1.1 of the Action Plan led to Commission guidance which recommends that Member States issue intra-EU trade certificates for antique ivory items only under particularly strict conditions. *Ibid.*

<sup>41</sup> For example, Objective 2.1 strives to ensure more even implementation of EU rules on wildlife trade which is geared at curbing shortcomings in implementing the EU wildlife trade regulations in each Member State. Objective 2.1 also called for the improvement of detecting illegal activities within the EU. Objective 2.2 highlights the need to improve cooperation, coordination, and data flow between each enforcement agency responsible in each Member State. *Ibid.*

<sup>42</sup> For example, Objective 3.2 asks Member States to improve coordination and data with key transit countries. *Ibid.*

<sup>43</sup> European Union, European Commission, *Progress report on the implementation of the EU Action Plan against Wildlife Trafficking* (2018).

acknowledged that some progress had been made<sup>44</sup> and outlined additional actions to be taken moving forward.<sup>45</sup> The updated Action Plan covered 2016 to 2020, and a revision is scheduled for 2021.<sup>46</sup>

### Guidance documents

11. The Commission has also developed guidance documents on the interpretation of some specific provisions of the EU Wildlife Trade Regulations.<sup>47</sup> Though not legally binding, these documents provide recommendations and best practices for how Member States should implement the regulations. For example, the Commission released one guidance document, amended in January 2019, addressing the export, re-export, import, and intra-EU trade of rhinoceros horns and encouraging actions be taken to ensure that the EU is not a destination, transit, or source region for illegal trade in rhino horns.<sup>48</sup>

### Directives

12. Certain EU directives may also impact internal wildlife trade. While regulations are binding legislative acts applied directly and uniformly across all EU Member States, directives are legislative acts that identify a goal or result that Member States must devise their own approaches to achieve.<sup>49</sup> Member States then adopt and implement national legislation to facilitate the achievement of those goals.<sup>50</sup>
13. Directive 2008/99/EC on the protection of the environment through criminal law requires Member States to consider illegal wildlife trading involving protected species as a criminal offence, unless the amount that is traded is so small it will not negatively impact the survival of the species.<sup>51</sup> It does not establish common forms or levels of sanction, but requires “proportionate, effective, and dissuasive” criminal sanctions.<sup>52</sup> This Directive is currently undergoing evaluation and revision.<sup>53</sup>

### Sanctions

14. The EU Wildlife Trade Regulations give discretion to Member States to determine appropriate sanctions. Article 16 of Regulation No 338/97 contains a list of violations and notes that Member States must take “appropriate measures” and adopt national legislation to ensure the imposition of adequate sanctions in response to these violations. Sanctions must reflect the “nature and gravity of infringements and involve seizure and, where appropriate, confiscation of the specimens concerned.”<sup>54</sup> This discretion results in somewhat different approaches to enforcement among the 27 Member States.

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<sup>44</sup> Noting that many Member States have undertaken information campaigns to educate citizens on the harms of wildlife trafficking, the EU has extended the scope of CITES-listed species to include other species affected by illegal trade; some Member States have created inter-agency cooperation platforms or other task forces on intra-EU wildlife trade. *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> European Union, European Commission, *EU Action Plan against Wildlife Trafficking* (Luxembourg, 2016); European Union, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Biodiversity Strategy for 2030* (Brussels, 2020), sect. 4.2.2.

<sup>47</sup> European Commission, “The European Union and Trade in Wild Fauna and Flora”, 14 May 2020.

<sup>48</sup> European Union, *Commission Notice: Guidance Document on the Export, Re-export, Import and Intra-Union Trade of Rhinoceros Horns*, 2019/C 386/04.

<sup>49</sup> European Union, “Regulations, Directives, and Other Acts”, 7 March 2019. Available at [https://europa.eu/european-union/eu-law/legal-acts\\_en](https://europa.eu/european-union/eu-law/legal-acts_en).

<sup>50</sup> *Ibid.*

<sup>51</sup> European Union, *Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the Protection of the Environment through Criminal Law*.

<sup>52</sup> *Ibid.*, art. 7.

<sup>53</sup> European Commission, “Environmental Crime – Reviewing the EU Rules”. Available at <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1930-Environmental-Crime-Directive-Evaluation>.

<sup>54</sup> European Union, *Council Regulation (EC) No 338/97 of 9 December 1996 on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein*, art. 16(2).



## Seizure of specimens

15. The EU Wildlife Trade Regulations grant Member States discretion to adopt provisions related to seizure and confiscation of specimens.<sup>55</sup> Regulation 338/97 allows Member States to seize specimens if permits or certificates, including the permits required for moving Appendix I-listed species within the EU, are invalid or were granted based on false information.<sup>56</sup> The Regulation states that Member States “may” seize the specimens, indicating the Member States are not required to seize specimens even when permits or certificates are found to be invalid.
16. Further, the Regulation grants discretion to the Member States to determine how to handle specimens after seizure—noting that each Member State “shall place or otherwise dispose of the specimen under conditions which it deems to be appropriate and consistent with the purposes and provisions of the Convention and this Regulation.”<sup>57</sup> Self-reported information gathered from different Member States regarding how they managed seized specimens between 2015 and 2017, both from domestic and international trade violations, revealed that a variety of approaches are being used throughout the EU. Many countries arrange for the return of specimens to their country of export, place them in public zoos, transfer them to designated rescue centers or approved private facilities, allow euthanasia, or some combination of these and other management strategies.<sup>58</sup> Some countries reported facing challenges placing seized live specimens due to the high expenses associated with housing and caring for specimens, threats of disease, and the lack of availability of facilities and personnel to properly care for them.<sup>59</sup> The Management Authority for the Netherlands suggested addressing the cost concern by adopting legal provisions allowing for cost recovery from offenders to cover the cost of appropriate disposal of specimens.<sup>60</sup>

## Analysis

### Legal status of the domestic/internal market

17. Domestic/internal trade of Annex A species, which encompass all Appendix I-listed species, for commercial use is generally prohibited.<sup>61</sup> Each EU Member State may also establish restrictions on the possession of Annex A species.<sup>62</sup> It is legal, however, to trade captive-bred or artificially propagated specimens, including of Annex A-listed species, within the EU on the basis of case-by-case exemptions.<sup>63</sup>

### Regulation of trade

18. The regulation of domestic/internal wildlife trade under the EU Wildlife Trade Regulations is not species-specific. All species listed in Annex A are subject to the same restrictions, regardless of whether they are native or non-native. Species listed in Annex A are generally not allowed to be used for commercial purposes and their movement inside the EU is also regulated.<sup>64</sup>

### Movement of Appendix I-listed species within the EU

19. The EU Wildlife Trade Regulations also regulate the movement of Appendix I-listed species within the EU, which is an essential component of intra-EU trade. Any movement of *live* specimens of species listed in Annex A requires prior authorization from, and issuance of a certificate by, a Management

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<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*, art. 11(2)(b).

<sup>57</sup> *Ibid.*, art. 16(3)(a).

<sup>58</sup> TRAFFIC, *Compilation of EU Member State CITES Implementation Reports 2015–2017* (TRAFFIC, Brussels, 2019).

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*, p. 25.

<sup>61</sup> European Union, Council Regulation (EC) No 338/97 of 9 December 1996 on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein, art. 8. Certain Appendix I-listed species are not listed in Annex A where Member States have entered reservations.

<sup>62</sup> *Ibid.*, art. 8(2).

<sup>63</sup> *Ibid.*, art. 8(3)(d).

<sup>64</sup> *Ibid.* arts. 8–9.



Authority of the Member State where the specimen is located.<sup>65</sup> The certificate will only be granted when the “authority is satisfied that the intended accommodation for a live specimen at the destination is adequately equipped to conserve and care for it properly.”<sup>66</sup> However, a certificate is not required for the non-commercial intra-EU movement of captive-bred or artificially propagated specimens.<sup>67</sup>

### Commercial use

20. The commercial use of specimens of Annex A species is generally forbidden with some exceptions detailed below.<sup>68</sup> Commercial use includes “the purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale.”<sup>69</sup> This prohibition applies to live and dead specimens, including all parts or derivatives thereof, as well as hybrid animals, meaning only one of the parents is a species listed in Annex A.<sup>70</sup>

### Internal trade certificates

21. The commercial use of certain Annex A species may be authorized, however, if certain conditions are met.<sup>71</sup> The respective Management Authorities in each Member State are authorized to issue certificates that allow for the commercial use of specimens for which it would otherwise be prohibited if one of the following conditions is satisfied:

- a) The specimens “were acquired in or introduced into the EU before the provisions relating to species listed in App. I ... or in Annex A became applicable...”;
- b) The specimens “are worked specimens that were acquired more than 50 years [ago]”;
- c) The specimens were introduced into the EU in compliance with this Regulation and are used for “purposes which are not detrimental to the survival of the species concerned”;
- d) The specimens “are captive-born and bred specimens of an animal species ... or are parts or derivatives of such specimens”;
- e) The specimens “are required under exceptional circumstances for the advancement of science ... where the species in question proves to be the only one suitable for those purposes and where there are no specimens of the species that have been born or bred in captivity”;
- f) The specimens “are intended for breeding ... purposes from which conservation benefits will accrue to the species concerned”;
- g) The specimens “are intended for research or education aimed at the preservation or conservation of the species”; or
- h) The specimens “originate in a Member State and were taken from the wild in accordance with the legislation in force in that Member State.”<sup>72</sup>

22. If one or more of these conditions apply, the Member State’s CITES Management Authority “may” grant an internal trade certificate, which a person must hold in order to legally use specimens listed in Annex A for commercial purposes.<sup>73</sup> Internal trade certificates are usually only mandatory if specimens will be used commercially. However, some Member States also require internal trade

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<sup>65</sup> *Ibid.*, art. 9.

<sup>66</sup> *Ibid.*, art. 9(2)(a).

<sup>67</sup> *Ibid.*, arts. 7(1)(a), 8.

<sup>68</sup> *Ibid.*, art. 8(1).

<sup>69</sup> *Ibid.*, art. 8(1).

<sup>70</sup> *Ibid.*, art. 2(t).

<sup>71</sup> *Ibid.*, art. 8(3)(a)–(h).

<sup>72</sup> *Ibid.*, art. 8(3).

<sup>73</sup> *Ibid.*, art. 8(3).

certificates for legal possession of Annex A species.<sup>74</sup> Internal trade certificates are valid throughout the EU once granted, unless specified otherwise on the certificate. However, any Member State can seize an animal for which someone secured an internal trade certificate under false pretenses.<sup>75</sup>

23. The use of the term “may” in the Regulation implies that Member States are not obligated to grant certificates for intra-EU trade just because these conditions are met.<sup>76</sup> Instead, Member States can refuse to grant “internal trade certificates” for intra-EU trade when doing so is appropriate to protect a species. Ultimately, Member States have discretion in deciding whether or not to grant certificates.<sup>77</sup> Highlighting this discretion, the Commission released a guidance document in 2019 to assist national authorities in the application of Regulation 338/97 in the context of intra-EU trade in rhinoceros horns due to increased demand.<sup>78</sup> Because Member States are not obligated to grant internal trade certificates for Annex A-listed species, the Commission suggested that Member States refrain from granting any internal trade certificates for rhinoceros horns.<sup>79</sup>

#### Exemptions allowing commercial trade

24. Article 62 of Regulation No 865/2006 outlines exemptions for which no certificate is required to be able to internally trade Annex A specimens for commercial purposes. Commercial trade in Annex A species is allowed for:
- a) “Specimens of captive born and bred animals of the species listed in Annex X to this Regulation ...”;
  - b) “Artificially propagated specimens of plant species”;
  - c) Worked specimens that were acquired more than 50 years previously as defined in Article 2(w) of Regulation (EC) No 338/97”;
  - d) “Dead specimens of *Crocodylia* species included in Annex A ...” under certain conditions; and
  - e) Caviar of *Acipenser brevirostrum* and its hybrid...” under certain conditions.<sup>80</sup>

#### Transit

25. For Appendix I-listed species only passing through the EU (i.e., a Member State in the EU is not the end destination) no permits or certificates are required.<sup>81</sup> Only a valid CITES (re)-export permit or certificate granted by the exporting country that states the ultimate destination of the Appendix I-listed specimen is required.<sup>82</sup> However, the shipment and accompanying CITES documentation may be inspected by EU Member States while in transit, and the shipment may be seized if it lacks the required documentation.<sup>83</sup>

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<sup>74</sup> European Commission, “Permits, Certificates and Notifications”, 7 August 2019. Available at [https://ec.europa.eu/environment/cites/info\\_permits\\_en.htm#\\_Toc223858327](https://ec.europa.eu/environment/cites/info_permits_en.htm#_Toc223858327).

<sup>75</sup> European Union, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, art. 11(2).

<sup>76</sup> European Union, Commission Notice: Guidance Document: EU regime governing intra-EU trade and re-export of ivory (2017/C 154/06).

<sup>77</sup> *Ibid.*

<sup>78</sup> European Union, Commission Notice: Guidance document on the export, re-export, import and intra-Union trade of rhinoceros horns (2019/C 386/04).

<sup>79</sup> *Ibid.*

<sup>80</sup> European Union, Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, art. 62

<sup>81</sup> European Union, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, art. 7(2).

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

## Regulation of online trade

26. The general prohibition on commercial use of Annex A-listed species also applies to online commercial activity. Thus, Annex A specimens bought or sold over the internet must still be accompanied by valid internal trade certificates.<sup>84</sup>
27. The 2018 progress report on the EU Action Plan also called for greater monitoring and enforcement emphasis to be placed on online trade—both legal and illegal.<sup>85</sup> Many Member States have recognized the need for better monitoring and enforcement of both legal and illegal internet wildlife trade.<sup>86</sup> Some have already adopted actions to reduce illegal online domestic trade in their countries, including:
  - a) Austria: Has developed a “more structured strategy” to detect illicit online trade.<sup>87</sup>
  - b) Czech Republic: Has national legislation that specifically addresses online trading and requires a “CITES-obligatory document” be presented to sell any CITES listed specimen online.<sup>88</sup>
  - c) Estonia: Has cooperated with online stores to develop and establish systems to forbid the advertisement and sale of illegal CITES specimens on the internet.<sup>89</sup>
  - d) France: Customs have enhanced internet monitoring to detect ads for wildlife products.<sup>90</sup>
  - e) Hungary: Dedicated extra resources to investigate online auction sites.<sup>91</sup>
  - f) Spain: Has increased enforcement operations against internet trade of protected species.<sup>92</sup>

## Registration

28. An internal trade certificate is required for any internal EU trade in species listed in Annex A (unless one of several exemptions, discussed above, applies). Additionally, personal ownership certificates must be obtained in order to travel with a live, legally acquired specimen of an Annex A-listed species, which is only allowed if those specimens are held for personal, non-commercial purposes.<sup>93</sup> The Management Authority of the Member State where the specimen is located is responsible for issuing the personal ownership certificate, which is valid for up to three years.<sup>94</sup>
29. The EU has its own system for regulating commercial activities involving Appendix I-listed species bred in captivity. The system is based on internal trade certificates for the particular species at issue. Facilities with the proper internal trade certificates, discussed above, can breed Annex A-listed species in captivity for commercial purposes in the EU. The EU has so far not implemented CITES Resolution 12.10 (Rev. CoP15)<sup>95</sup> on the *Registration of operations that breed Appendix I animal species in captivity for commercial purposes*. This Resolution recommends that facilities that breed

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<sup>84</sup> TRAFFIC, *Reference Guide: European Union Wildlife Trade Regulations* (European Commission and TRAFFIC, Brussels, June 2017).

<sup>85</sup> European Union, European Commission, *Progress Report on the Implementation of the EU Action Plan against Wildlife Trafficking* (2018).

<sup>86</sup> European Commission, “EU Action Plan against Wildlife Trafficking: EU Countries’ Contributions”, 7 August 2019. Available at [https://ec.europa.eu/environment/cites/pdf/Member\\_States\\_contribution\\_progress\\_EU\\_action\\_plan\\_wildlife\\_trafficking.zip](https://ec.europa.eu/environment/cites/pdf/Member_States_contribution_progress_EU_action_plan_wildlife_trafficking.zip).

<sup>87</sup> *Ibid.*, “Member State: Austria”, p. 7.

<sup>88</sup> European Commission, *Analysis and Evidence in Support of the EU Action Plan against Wildlife Trafficking* (European Commission, Brussels, 2016).

<sup>89</sup> European Commission, “EU Action Plan against Wildlife Trafficking: EU Countries’ Contributions”, “Member State: Estonia”, p. 2.

<sup>90</sup> *Ibid.*, “Member State: France”, p. 11.

<sup>91</sup> *Ibid.*, “Member State: Hungary”, p. 8.

<sup>92</sup> *Ibid.*, “Member State: Spain”, p. 2.

<sup>93</sup> European Union, Commission Regulation (EC) No 865/2006 of 4 May 2006 Laying down Detailed Rules Concerning the Implementation of Council Regulation (EC) No 338/97 on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein, arts. 37–44.

<sup>94</sup> *Ibid.*, art. 10(3).

<sup>95</sup> European Commission, “Captive Breeding and Artificial Propagation”, 7 August 2019. Available at [https://ec.europa.eu/environment/cites/info\\_captive\\_en.htm](https://ec.europa.eu/environment/cites/info_captive_en.htm).

Appendix I animal species for commercial purposes be registered with CITES if they wish to export under Article VII, paragraph 4, of the Convention. However, some facilities in the EU that are breeding Appendix I-listed species in captivity for commercial purposes have registered with CITES in order to ensure that importing Parties will accept the imports. These facilities are located in the Czech Republic, Denmark, Germany, and Spain.<sup>96</sup> Implementation of Res. 12.10 is currently being reconsidered within the EU.

30. If Annex A-listed live vertebrates are used for commercial purposes, they must first be “uniquely marked.”<sup>97</sup> Certain EU Member States have adopted more stringent marking requirements than those that are outlined in the EU regulations.<sup>98</sup>

#### Determination of penalties by Member States

31. Penalties vary among Member States—some have no penalties in place for specific offenses, while others have adopted robust administrative and criminal penalty frameworks.<sup>99</sup> Many laws allow for fines, imprisonment, or a combination thereof.<sup>100</sup> Some laws outline ranges of potential fines and terms of imprisonment, while others only define maximums. In most Member States, the fines are the same for natural and legal person offenders, but in several countries the fines may be higher for legal persons. Intentionality also plays a role in determining the maximum possible term of imprisonment in some countries. Other factors may lead to increased fines as well, such as the type of species involved, the number of specimens or products involved, whether the violation was committed by a group, and more.<sup>101</sup>

#### Interpretation by courts

32. According to settled case law of the European Court of Justice, it is the responsibility of the Member States to ensure that penalties for infringements are appropriate for the nature and gravity of the violation.<sup>102</sup> Some Member States reported general information concerning specific prosecutions in their latest CITES implementation reports. However, it is unclear whether these cases were related to international or domestic trade, or which Appendices of species were involved.<sup>103</sup> Below are described a few examples of cases in which controls on trade of Appendix I-listed species were interpreted.

#### Belgium

33. *Nationale Raad van Dierenkwekers en Liefhebbers VZM and Andibel VZW v. Belgische Staat*<sup>104</sup>

- a) Belgium enacted national legislation prohibiting possession of certain mammals. This legislation included animals that were not on the Annex A list in Community Regulation 338/97 – animals in Annexes B, C, and D.<sup>105</sup> Opponents argued the Belgian national legislation would effectively result in an absolute prohibition on trading those mammals from Annexes B, C, and D from other

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<sup>96</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, Register of Captive-Breeding Operations. Available at [https://www.cites.org/common/reg/e\\_cb.html](https://www.cites.org/common/reg/e_cb.html).

<sup>97</sup> European Commission, “Marking and Labelling”, 7 August 2019. Available at [https://ec.europa.eu/environment/cites/info\\_marking\\_en.htm](https://ec.europa.eu/environment/cites/info_marking_en.htm).

<sup>98</sup> Amelie Knapp and Alexandre Affre, *A Briefing Paper on Marking Techniques Used in the Control of Wildlife in the European Union*, (TRAFFIC, Brussels, 2007).

<sup>99</sup> Louisa Musing and Hiromi Shiraishi, *Analysis of EU Member State CITES Implementation Reports 2015–2017* (TRAFFIC, 2019), Annex 6.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> European Commission, “The European Union and Trade in Wild Fauna and Flora”, 14 May 2020. Available at [https://ec.europa.eu/environment/cites/legislation\\_en.htm](https://ec.europa.eu/environment/cites/legislation_en.htm). (Council Regulation (EC) No 338/97 “sets out specific requirements for Member States to ensure compliance with the Regulation and to impose adequate sanctions for infringements.”)

<sup>103</sup> For further information, see Question 1.7.5 for each Member State in *TRAFFIC, Compilation of EU Member State CITES Implementation Reports 2015–2017* (TRAFFIC, Brussels, 2019).

<sup>104</sup> Court of Justice of the European Union (Third Chamber), *Nationale Raad van Dierenkwekers en Liefhebbers VZW and Andibel VZW v. Belgische Staat*, Case C-219/07, Judgment of the Court, 19 June 2008.

<sup>105</sup> *Ibid.*

Member States and that this was contrary to Regulation No 338/97 because there is no general prohibition on trading in, species included in Annexes B, C, and D—only in Annex A.

- b) The Court held that the legislation pursued a legitimate objective—the welfare of live animals held in captivity—and therefore was justified in the interests of the protection of the health and life of the animals concerned. The Court noted that other measures may not obstruct intra-Community trade as much, but those measures would not be adequate to protect animal welfare.
- c) This holding established that Member States may restrict possession and trade—possibly including domestic trade—or import in species beyond those that are restricted in Council Regulation No 338/97. As stated in the preamble to Regulation No 338/97:
  - i) “[T]he provisions of this Regulation do not prejudice any stricter measures which may be taken or maintained by Member States, in compliance with the Treaty, in particular with regard to the holding of specimens of species covered by this Regulation.”

34. In a 2014 case, the Criminal Court of First Instance of East Flanders, affirmed by the Court of Cassation, found four defendants guilty of participating in an international crime organization operating across Europe.<sup>106</sup> The organization illegally took eggs and chicks from the wild in France and Spain, and then sold them in commercial markets with forged breeding declarations and CITES documentation. The species targeted by the defendants included the imperial eagle (*Aquila heliaca*) and the peregrine falcon (*Falco peregrinus*), both CITES Appendix I-listed species, as well as multiple Appendix II-listed species. The defendants each received prison sentences ranging from one to four years, in addition to fines ranging from 12,000 to 90,000 Euros (approximately \$14,000 to \$106,000 US as of July 2020). Additionally, 838,800 Euros (approximately \$988,000 US as of July 2020) of illegal gains from the trade were confiscated. This was the first time in Belgium that the assets obtained from criminal activities were taken into account when determining sentences. This was also the first illegal wildlife trade involving “organized crime” that was sanctioned.

#### France

35. *Criminal Proceedings Against Xavier Tridon*<sup>107</sup>

- a) The Court held that Regulation No 338/97 does not preclude Member States from prohibiting all commercial uses of captive born and bred specimens of Appendix I-listed species and Annex A-listed species in their territories.

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<sup>106</sup> *Louisa Musing and Hiromi Shiraishi, Analysis of EU Member State CITES Implementation Reports 2015–2017 (TRAFFIC, 2019), sect. 1.7.3f.*

<sup>107</sup> *Court of Justice of the European Union (Sixth Chamber), Criminal proceedings against Xavier Tridon, Case C-510/99, Judgment of the Court, 23 October 2001.*

## India

### Introduction

1. India is home to a number of CITES-listed species and has been implicated in seizures of Appendix I-listed fauna including rhinoceros,<sup>1</sup> Asian big cats,<sup>2</sup> pangolins,<sup>3</sup> and turtles and tortoises.<sup>4</sup> There is also demand in India for the hair of the Tibetan antelope, which is used to make highly prized and expensive scarves,<sup>5</sup> and for exotic pets, particularly birds.<sup>6</sup>
2. India's Wildlife Crime Control Bureau (WCCB) worked with the United Nations Environment Programme to organize an education campaign focused on illegal wildlife trafficking in order to reduce demand for commonly traded species.<sup>7</sup> The campaign was implemented in Chennai Airport and educated travelers about harms caused to tigers, pangolins, star tortoises, and tokay geckos by the illegal wildlife trade.<sup>8</sup>

### Legislation

3. India is a signatory to CITES and the provisions of the Convention are implemented through the Customs Act of 1962, the Foreign Trade (Development Regulation) Act of 1992, and the Wildlife Protection Act (WL(P)A) of 1972.<sup>9</sup> The Customs Act of 1962 and the Foreign Trade Act of 1992 concern international trade of wildlife and wildlife products.<sup>10</sup> Domestic wildlife crime enforcement is overseen by the WCCB, under the Ministry of Environment, Forests and Climate Change and the State Governments, in accordance with the WL(P)A, 1972.<sup>11</sup>

### Wildlife Protection Act (WPA) of 1972

4. The main statutory mechanism used to control domestic trade of endangered species of animals and plants in India is the WL(P)A, 1972.<sup>12</sup> The WL(P)A, 1972 is the “umbrella” legislation concerning wildlife protection.
5. In India, it is illegal to own or sell any animal listed in Schedule I or Part II of Schedule II of the WL(P)A, 1972 without permission. Commercial trade in Scheduled animals (Schedule I and Part II of Schedule II) is not permissible.<sup>13</sup>
6. Animal species are listed in these schedules based on the level of threat they face, with a Schedule I classification providing the highest degree of protection.<sup>14</sup> Several of the CITES Appendix I-listed

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<sup>1</sup> CoP18 Doc. 83.1, Annex 2, at 10, 13.

<sup>2</sup> CoP17 Doc. 60.1, at 3. *Trade in leopard parts and derivatives in India is “of particular concern”*. CoP18 Doc. 71.1, at 9.

<sup>3</sup> United Nations, Environment Programme, “Spotlight on India’s soaring wildlife crime”, story, 21 May 2019. Available at <https://www.unenvironment.org/news-and-stories/story/spotlight-indias-soaring-wildlife-crime>; Samir Sinha, *Handbook on Wildlife Law Enforcement in India* (New Delhi, TRAFFIC, 2010), at 32. Available at <https://www.traffic.org/site/assets/files/6284/handbook-wildlife-law-enforcement-india.pdf>.

<sup>4</sup> CoP17 Doc. 73, at 35.

<sup>5</sup> TRAFFIC, “Fashion Statement Spells Death for Tibetan Antelope”, fact sheet. Available at [https://www.traffic.org/site/assets/files/4196/fashion\\_statement\\_spells\\_death\\_for\\_tibetan\\_antelope.pdf](https://www.traffic.org/site/assets/files/4196/fashion_statement_spells_death_for_tibetan_antelope.pdf).

<sup>6</sup> Samir Sinha, *Handbook on Wildlife Law Enforcement in India* (New Delhi, TRAFFIC, 2010), at 171. Available at <https://www.traffic.org/site/assets/files/6284/handbook-wildlife-law-enforcement-india.pdf>.

<sup>7</sup> United Nations, Environment Programme, “Spotlight on India’s soaring wildlife crime”, story, 21 May 2019. Available at <https://www.unenvironment.org/news-and-stories/story/spotlight-indias-soaring-wildlife-crime>.

<sup>8</sup> *Ibid.*

<sup>9</sup> India, Wildlife Crime Control Bureau, *Legal Framework for International Trade in Fauna & Flora* (New Delhi). Available at [http://wccb.gov.in/WriteReadData/userfiles/file/Trade%20Facilitation/Legal%20framework%20ITC%20HS\(1\).pdf](http://wccb.gov.in/WriteReadData/userfiles/file/Trade%20Facilitation/Legal%20framework%20ITC%20HS(1).pdf).

<sup>10</sup> *Ibid.*

<sup>11</sup> India, Wildlife Crime Control Bureau, “Creation of Wildlife Crime Control Bureau”. Available at <http://wccb.gov.in/Content/Creationofwccb.aspx> (accessed on 15 June 2020).

<sup>12</sup> India, Wildlife Protection Act (1972).

<sup>13</sup> *Ibid.*, chap. VA, sects. 49A-B.

<sup>14</sup> India, Wildlife Crime Control Bureau, *A Manual on Wildlife Species in trade* (New Delhi, 2011). Available at <http://wccb.gov.in/WriteReadData/userfiles/file/A%20Manual%20on%20Wildlife%20Species%20in%20trade.pdf>.

species that are native to India are listed in Schedules of the Act, while many non-native Appendix I-listed species are not scheduled under the WL(P)A, 1972.<sup>15</sup>

7. The WL(P)A, 1972 also regulates domestic trade in “specified plants,” listed in Schedule VI of the Act, three of which are Appendix I-listed species.<sup>16</sup> Under the Act, it is illegal to “possess, sell, offer for sale, or transfer by way of gift or otherwise, or transport any specified plant, whether alive or dead, or part or derivative thereof.”<sup>17</sup> Members of scheduled tribes are exempt from the prohibition on picking, collecting, or possessing specified plants so long as they are in their district of residence and holding the specified plant or part thereof for their *bona fide* personal use.<sup>18</sup>
8. The Act also outlines penalties of varying amounts for different violations, typically allowing for a fine, imprisonment, or a combination thereof.<sup>19</sup> Upon conviction, Courts may award individuals who assisted with enforcement in particular cases with up to fifty per cent of the fine amount collected.<sup>20</sup> State governments are also authorized to allow the Chief Wildlife Warden to pay individuals who assist with enforcement monetary awards of up to 10,000 rupees from designated funds.<sup>21</sup>

### Licensing

9. Licensing under the WL(P)A, 1972 is available only for limited purposes.<sup>22</sup> The WL(P)A, 1972 allows the Chief Wildlife Warden to issue licenses to those conducting business with animals, including dealers in animals and animal parts, trophy dealers, and captive animal dealers.<sup>23</sup> These licenses are valid for one year, are non-transferrable, and are revocable by the Chief Wildlife Warden.<sup>24</sup> The Chief Wildlife Warden may not issue a license unless the “Chief Wildlife Warden or the authorised officer having regard to the antecedents and previous experience of the applicant, the implication which the grant of such license would have on the status of wild life and to such other matters as may be prescribed in this behalf and after making such inquiry in respect of those matters as he may think fit, is satisfied that the license should be granted.”<sup>25</sup>
10. Licenses allowing cultivation of or dealing in specified plants, both of which are otherwise prohibited, may also be granted under the WL(P)A, 1972.<sup>26</sup> Applications for licenses to cultivate or deal in specified plants are secured in the same way, and subject to the same process and terms, as licenses for breeding and dealing in protected animals.<sup>27</sup> Further, the granting authority, whether it is the Chief Wildlife Warden or a state officer, may place certain conditions on the licenses.<sup>28</sup> Licensees may only possess, sell, and offer for sale specimens of specified plants if allowed to do so by the terms of their individual licenses, and buyers may only purchase such specimens from dealers that are licensed to sell them.<sup>29</sup> This, however, does not apply when plants are used for purposes of “education, scientific research, collection, preservation, display in a herbarium of any scientific institution, or propagation by a person or an institution approved by the Central Government.”<sup>30</sup>

### Enforcement authorities

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<sup>15</sup> *Ibid.*  
<sup>16</sup> *India, Wildlife Protection Act, chap. I, sect. 2, Schedule VI (1972).*  
<sup>17</sup> *Ibid., sect. 17A(b).*  
<sup>18</sup> *Ibid.*  
<sup>19</sup> *Ibid., chap. VI., sect. 51.*  
<sup>20</sup> *Ibid., chap. VII, sect. 60A.*  
<sup>21</sup> *Ibid., chap. VII, sect. 60B.*  
<sup>22</sup> *Ibid., chap. III, sects. 10-11.*  
<sup>23</sup> *Ibid., chap. V, sect. 44.*  
<sup>24</sup> *Ibid., chap. V, sects. 44-45.*  
<sup>25</sup> *Ibid.*  
<sup>26</sup> *Ibid., sects. 17C-17D.*  
<sup>27</sup> *Ibid.*  
<sup>28</sup> *Ibid.*  
<sup>29</sup> *Ibid., sects. 17F-17G.*  
<sup>30</sup> *Ibid., sect. 17B.*



11. The WL(P)A, 1972 applies to the entire country. The Act previously did not apply to the territory of Jammu and Kashmir, but was amended to include the state in its jurisdiction following the passage of the Jammu and Kashmir Reorganisation Act of 2019.<sup>31</sup>
12. What is now India's Ministry of Environment, Forests and Climate Change created a committee on the "prevention of illegal trade in wildlife and wildlife products" in 1994.<sup>32</sup> The Ministry then established a "Tiger Task Force" in response to reports of dwindling numbers of tigers in India.<sup>33</sup> The task force ultimately recommended the creation of a wildlife crime bureau.<sup>34</sup> Shortly thereafter, in 2006, a provision creating the WCCB under the Ministry was added as an amendment to the WL(P)A, 1972.<sup>35</sup>
13. Under the WL(P)A, 1972, the WCCB shall:
  - a) *collect and collate intelligence related to organized wildlife crime activities and [] disseminate the same to State and other enforcement agencies for immediate action, so as to apprehend the criminals and to establish a centralized wildlife crime data bank;*
  - b) *co-ordinat[e] actions by various officers, State Governments and other authorities in connection with the enforcement of the provisions of this Act, either directly or through regional and border units set up by the Bureau;*
  - c) *implement[] obligations under the various international Conventions and protocols that are in force at present or which may be ratified or acceded to by India in [the] future;*
  - d) *assist[] concerned authorities in foreign countries and concerned international organizations to facilitate co-ordination and universal action for wildlife crime control;*
  - e) *develop infrastructure and capacity building for scientific and professional investigation into wildlife crimes and assist State Governments to ensure success in prosecutions related to wildlife crimes; [and]*
  - f) *adv[i]s[e] the Government of India on issues relating to wildlife crimes having national and international ramifications, and suggest changes required in relevant policy and laws from time to time.*<sup>36</sup>

#### Controls on domestic wildlife trade

14. The WL(P)A, 1972 explicitly deems all illegally hunted wildlife and wildlife products to be the property of either the central or state government.<sup>37</sup> Any animal that is hunted or killed by mistake or otherwise found dead, and that is believed to have been killed in violation of the WL(P)A, 1972, is considered the property of the state government, as are all animals, trophies, animal parts, and weapons used to kill an animal.<sup>38</sup> However, if the animal is hunted in a Sanctuary or National Park that was declared by the central government, the animal, animal articles, and weapons are the property of the central government.<sup>39</sup> The WL(P)A, 1972 prohibits anyone from acquiring, transferring to another's possession, or destroying animals or animal articles deemed property of the government.<sup>40</sup>
15. The same is true for specified plants—those specimens utilized in violation of the WL(P)A, 1972 become property of the state government, unless the violation relates to a Sanctuary or National

<sup>31</sup> *Ibid.*, chap. I, sect. 1; India, Jammu and Kashmir Reorganisation Act (2019).

<sup>32</sup> India, Wildlife Crime Control Bureau, "Creation of Wildlife Crime Control Bureau". Available at <http://wccb.gov.in/Content/Creationofwccb.aspx> (accessed on 15 June 2020).

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> India, Wildlife Protection Act, chap. IVC, sect. 38Z (1972).

<sup>37</sup> *Ibid.*, chap. V, sect. 39.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

Park declared by the central government, in which case the specimen becomes the property of the central government.<sup>41</sup>

16. The WL(P)A, 1972 also requires that all persons having possession or control of an animal or animal product of a species listed under Schedule I or Part II of Schedule II, or a specified plant listed in Schedule VI, before the commencement of the WL(P)A, 1972, declare such animals, plants, or products.<sup>42</sup>
17. Further, the WL(P)A, 1972 prohibits any person from acquiring such animals or animal products after the commencement of the Act unless the individual has a certificate of ownership granted by the Chief Wildlife Warden.<sup>43</sup> The Act also prohibits the commercial sale and trading of animals or animal parts that have valid certificates of ownership by only allowing individuals to acquire such items through inheritance.<sup>44</sup> Specified plants may only be held in possession, acquired, sold, or offered for sale if legally acquired and if the terms of the corresponding license allow for the particular action.<sup>45</sup> Further, specified plants can only be purchased from licensed dealers.<sup>46</sup>
18. The WL(P)A, 1972 provides that no person shall:
  - a) *commence or carry on the business as—*
    - i) *a manufacturer of, or dealer in, scheduled animal articles; or*
      - A. *[a dealer in ivory imported into India or articles made therefrom or a manufacturer of such articles; or]*
    - ii) *a taxidermist with respect to any scheduled animals or any parts of such animals; or*
    - iii) *a dealer in troph[ies] or uncured troph[ies] derived from any scheduled animal; or*
    - iv) *a dealer in any captive animals being scheduled animals; or*
    - v) *a dealer in meat derived from any scheduled animals; or*
  - b) *cook or serve meat derived from any scheduled animal in any eating-house.*<sup>47</sup>
19. These acts are permissible, however, if the business owner has a license.<sup>48</sup>
20. Similarly for specified plants, individuals cultivating or dealing in scheduled specimens when the schedule of specified plants was added to the WL(P)A, 1972 in 1991 were required to report their stocks to an authorized officer and apply for licenses to be able to continue operating long-term.<sup>49</sup>

#### Implementation and enforcement

21. The WL(P)A, 1972 authorizes the Chief Wildlife Warden and specific other officers to detain individuals they believe have violated the Act.<sup>50</sup> The Chief Wildlife Warden or any other authorized officer can require individuals to produce animals or specified plants or products, and can stop vehicles if the officer has a suspicion that an individual is violating the WL(P)A, 1972.<sup>51</sup> Officers are also authorized to seize animals, specified plants, or parts thereof if they suspect an offense has

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<sup>41</sup> *Ibid.*, chap. IIIA, sect. 17H.

<sup>42</sup> *Ibid.*, chap. IIIA, sect. 17E, chap. V, sect. 40.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*, chap. IIIA, sect. 17F.

<sup>46</sup> *Ibid.*, chap. IIIA, sect. 17G.

<sup>47</sup> *Ibid.*, chap. VA, sect. 49B (an "eating-house" is defined as "a hotel, restaurant or any other place where any eatable is served on payment, whether or not such payment is separately made for such eatable or is included in the amount charged for board and lodging.").

<sup>48</sup> *Ibid.*, chap. V, sect. 44.

<sup>49</sup> *Ibid.*, chap. IIIA, sects. 17C-17E.

<sup>50</sup> *Ibid.*, chap. VI, sect. 50.

<sup>51</sup> *Ibid.*

been committed.<sup>52</sup> Should an authorized officer wrongfully seize something, however, they may be subject to a fine of 500 rupees, imprisonment for six months, or both.<sup>53</sup>

22. Any illegally held or acquired animal or animal product, or specified plant or product, as defined by the WL(P)A, 1972, may be subject to seizure, freezing, or forfeiture.<sup>54</sup> If officers believe that a specimen or product will be used, hid, or transferred if it is not seized, they may seize it.<sup>55</sup> If these issues are of concern but seizure is infeasible, officers may instead issue a freezing order, which prohibits the holder from doing certain things with the specimen or product without prior authorization.<sup>56</sup> If there is no risk presented that requires preemptive seizure or freezing, the item may be subject to forfeiture after the state proves its illegal acquisition.<sup>57</sup>
23. State governments may appoint officers to serve as administrators that are responsible for managing seized wildlife and wildlife products.<sup>58</sup> Administrators may receive direction from state governments regarding how to dispose of property forfeited to them.
24. The WL(P)A, 1972 also provides that:
  - a) *Where the competent authority makes a declaration that any property stands forfeited to the State Government under Section 58-1 and it is a case where the source of only a part of the illegally acquired property has not been proved to the satisfaction of the competent authority, it shall make an order giving option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part.*
  - b) *Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.*
  - c) *Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf, the competent authority may, by order revoke the declaration of forfeiture under section 58-1 and thereupon such property shall stand released.*<sup>59</sup>

#### Penalties

25. The WL(P)A, 1972 specifies the penalties that may result from violations of the Act.<sup>60</sup> Anyone convicted of a crime under the WL(P)A, 1972 may face imprisonment for up to three years, a fine of up to 25,000 rupees (approximately \$335 US as of August 2020), or both.<sup>61</sup> Repeat offenders may face imprisonment for a minimum of three years (and a maximum of seven), as well as a minimum fine of 25,000 rupees.<sup>62</sup> Any individual that commits an offence involving a Schedule I or II species may face imprisonment for between three and seven years, along with a minimum fine of 10,000 rupees (approximately \$135 US as of August 2020).<sup>63</sup>
26. The WL(P)A, 1972 outlines the applicable penalties as follows:
  - a) *Any person who contravenes any provision [] or any rule or order made [under this Act] [...] shall, on conviction, be punishable with imprisonment for a term which may extend to three years, or with [a] fine which may extend to 25,000 rupees, or with both;*
  - b) *Offence[s] committed [] in relation to any animal specified in Schedule I or Part II of Schedule II or [the] meat of such animal or animal article, trophy or uncured trophy derived from such animal*

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<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*, sect. 53.

<sup>54</sup> *Ibid.*, chap. VI, sects. 58C, 58F.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*, chap. VI, sect. 58C.

<sup>58</sup> *Ibid.*, chap. VI, sect. 58G.

<sup>59</sup> *Ibid.*, chap. VI, sect. 58K.

<sup>60</sup> *Ibid.*, chap. VI, sect. 51.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

or [ ] hunting in a sanctuary or a National Park [ ] shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and also with [a] fine which shall not be less than 10,000 rupees. Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section, the term of the imprisonment shall not be less than three years but may extend to seven years and also with [a] fine which shall not be less than 25,000 rupees;

- c) Any person who contravenes any provisions of Chapter VA [Prohibition of Trade or Commerce in Trophies, Animal Articles, etc. derived from Certain Animals] shall be punishable for a term [of imprisonment] which shall not be less than three years but which may extend to seven years and also with a fine which shall not be less than 10,000 rupees;
- d) Any person who contravenes the provisions of section 38J, shall be punishable with imprisonment for a term which may extend to six months, or with a fine which may extend to 2,000 rupees, or with both. Provided that in the case of a second or subsequent offence the term of imprisonment may extend to one year or the fine may extend to 5,000 rupees;<sup>64</sup>
- e) Any person, who commits an offence in relation to the core area of a tiger reserve or where the offence relate[s] to hunting in a tiger reserve or altering the boundaries of the tiger reserve, such offence shall be punishable on first conviction with imprisonment for a term which shall not be less than three years but may extend to seven years, and also with [a] fine which shall not be less than fifty thousand rupees but may extend to two lakh [200,000] rupees; and in the event of a second or subsequent conviction with imprisonment for a term of not less than seven years and also with [a] fine which shall not be less than five lakh [500,000] rupees but may extend to fifty lakh [5,000,000] rupees.<sup>65</sup>

27. If a company is implicated in a violation, any employee that “was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company” can be held responsible.<sup>66</sup> In addition, individuals may avoid further proceedings under the WL(P)A if they are suspected of having committed a violation that does not require a minimum prison term, owe a fine of less than 25,000 rupees, and pay the fine in advance.<sup>67</sup>

28. In addition, any “illegally obtained property,” including specimens of animals, specified plants, or parts thereof, is also subject to forfeiture to the state government.<sup>68</sup> Licenses may also be invalidated.<sup>69</sup> As per Sub-Section (6) of Section 50 of the WL(P)A, 1972, “where any meat, uncured trophy, specified plant or part or derivative thereof is seized under the provisions of [Section 50], [...] the authorised officer may arrange for the disposal of the same in such manner as may be prescribed.”<sup>70</sup>

## **Analysis**

### **Legal status of the domestic market**

29. There currently is a regulated, legal domestic market for specimens of native Appendix I-listed animals and plants in India.<sup>71</sup> Commercial trade in Scheduled animals (Schedule I and Part II of Schedule II) is not permissible. The WL(P)A, 1972 does, however, allow trade in listed species if the trading business has a permit or license, leaving room for the possibility of a limited legal market.<sup>72</sup>

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<sup>64</sup> *Ibid.*

<sup>65</sup> *India, Wildlife (Protection) Amendment Act, 2006, sect. 3 (amendment to section 51 of the WL(P)A, 1972).*

<sup>66</sup> *Ibid.*, sect. 58.

<sup>67</sup> *Ibid.*

<sup>68</sup> *India, Wildlife Protection Act, chap. VIA, sect. 58F.*

<sup>69</sup> *Ibid.*, chap. VI, sect. 51.

<sup>70</sup> *Ibid.*, chap. VI, sect. 50(6).

<sup>71</sup> *Ibid.*, chap. VA, sect. 49B; Samir Sinha, *Handbook on Wildlife Law Enforcement in India* (New Delhi, TRAFFIC, 2010). Available at <https://www.traffic.org/site/assets/files/6284/handbook-wildlife-law-enforcement-india.pdf>.

<sup>72</sup> *India, Wildlife Protection Act, chap. IIIA, sects. 17A-17H, chap. V, sect. 44 (1972).*

Additionally, trade in species not listed under the WL(P)A, 1972, including many non-native Appendix I-listed species, is legal.

### Regulation of trade

30. Individual species are regulated based on the WL(P)A, 1972 schedule under which they are listed, but regulation is not otherwise species specific.<sup>73</sup>
31. Domestic trade in species listed in Schedule I or Part II of Schedule II is banned in India, but not all Appendix I-listed species are included in these Schedules.<sup>74</sup> The controls and regulations on domestic trade in species in India do not differ as to native and non-native species, but more native species are listed than non-native species.<sup>75</sup> There are not different controls for different types of trade either (e.g., business to business or business to consumer).<sup>76</sup> The WL(P)A, 1972 prohibits all trade, business, and possession of scheduled species unless a permit has been granted that allows otherwise.<sup>77</sup>
32. Individuals in India sometimes use social media to display illegal wildlife trophies as a symbol of wealth, or for other reasons.<sup>78</sup> The WCCB requests that, when issuing a permit for hunting or a certificate of ownership of a wild animal article, the Chief Wildlife Warden prohibit individuals from publicly displaying the animals or products.<sup>79</sup> Further, the WL(P)A, 1972 provides that no such item for which ownership certificates are issued are to be kept in any commercial premises.<sup>80</sup> There is also concern over the use of online platforms for selling illegal wildlife products in India.<sup>81</sup> While the WL(P)A, 1972 does not explicitly address online trade, it could be interpreted to apply to such trade.

### Registration

33. There are no facilities in India listed in the CITES Register as breeding Appendix I-listed species in captivity for commercial purposes.<sup>82</sup>
34. Possession of specimens of Appendix I-listed species is regulated by the WL(P)A, 1972.<sup>83</sup> The Act requires individuals to have a certificate of ownership issued by the Chief Wildlife Warden in order to possess any scheduled animal species or product.<sup>84</sup> The WL(P)A states:
  - a) *The Chief Wild Life Warden may, for the purposes of section 40,<sup>85</sup> issue a certificate of ownership in such form, as may be prescribed to any person who, in his opinion, is in lawful possession of any wild animal or any animal article, trophy, uncured trophy and may, where possible, mark, in the prescribed manner, such animal article, trophy or uncured trophy for purposes of identification. [Provided that before issuing the certificate of ownership in respect of any captive animal, the Chief Wild Life Warden shall ensure that the applicant has adequate facilities for housing, maintenance and upkeep of the animal.]<sup>86</sup>*

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<sup>73</sup> *Ibid.*, schedule I.

<sup>74</sup> *Ibid.*, chap. V, sect. 44.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> India, Wildlife Crime Control Bureau, "Advisory on display of wild animal articles, trophies, etc. in social media-reg", memo, 30 December 2014. Available at <http://wccb.gov.in/WriteReadData/userfiles/file/Advisories/advisory.pdf>.

<sup>79</sup> *Ibid.*

<sup>80</sup> India, Wildlife Protection Act, chap. V, sect. 49C (1972).

<sup>81</sup> Samir Sinha, Handbook on Wildlife Law Enforcement in India (New Delhi, TRAFFIC, 2010), at 51–53. Available at <https://www.traffic.org/site/assets/files/6284/handbook-wildlife-law-enforcement-india.pdf>.

<sup>82</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, CITES registers. Available at <https://www.cites.org/eng/common/reg/cb/species.html> (accessed on 15 June 2020).

<sup>83</sup> India, Wildlife Protection Act, chap. IIIA, sect. 17F, chap. V, sect. 39 (1972).

<sup>84</sup> *Ibid.*, chap. IIIA, sect. 17A, 17F, chap. V, sect. 42. In the case of specified plants, members of any scheduled tribes may pick, collect, or possess specified plants in their districts of residence for personal use (*Ibid.*, chap. IIIA, sect. 17A).

<sup>85</sup> Section 40 of the WPA requires that all persons having possession or control of an animal or animal product of a species listed under Schedule I or Part II of Schedule II before the commencement of the WPA declare such animals or products.

<sup>86</sup> India, Wildlife Protection Act, chap. V, sect. 42 (1972).

35. Those in possession of specimens of or products from specified species of plants must be authorized to do so by the conditions of their licenses.<sup>87</sup> Otherwise, unless someone is a member of a scheduled tribe and possesses a specified plant in their district of residence for personal use, possession of specified plants is prohibited.<sup>88</sup>

#### Interpretation by courts

36. The WL(P)A, 1972 has been challenged in a few court cases.<sup>89</sup> In one such case, a court interpreted the WL(P)A prohibition on the trade of listed animal products to include animal hair. In *Cottage Industries Exposition v Union Of India And Ors.*, two individuals were caught smuggling shahtoosh wool and material to England for petitioner company.<sup>90</sup> The items were seized pursuant to the WL(P)A, 1972 and the Customs Act.<sup>91</sup> The petitioners challenged the seizure and raised the issue of “whether the phrase ‘animal article’ excludes ‘animal hair.’”<sup>92</sup> Petitioners contended that animal hair is not a part of the definition of the term “animal article” as used in the WL(P)A, 1972.<sup>93</sup> The Delhi High Court found the petitioners’ reading of the statute was improper, reasoning that “accepting the petitioners’ interpretation of the Wildlife Protection Act, 1972, would defeat the legislative intent and indeed lead to an untenable result contrary to the clear legislative intent of preservation of wildlife.”<sup>94</sup> As trade in the hair of the shahtoosh is of particular concern in India, the ruling’s affirmation of the prohibition of this trade is significant for domestic and international trade alike.

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<sup>87</sup> *Ibid.*, chap. IIA, sect. 17F.

<sup>88</sup> *Ibid.*, chap. IIA, sect. 17A.

<sup>89</sup> India, Wildlife Crime Control Bureau, “Important Judgments Under the Wild Life (Protection) Act”, Court Judgments. Available at <http://wccb.gov.in/Content/CourtJudgements.aspx> (accessed on 15 June 2020).

<sup>90</sup> High Court of Delhi, *Cottage Industries Exposition Ltd. & ANP. v. Union of India & Others*, Judgment, 3 September 2007.

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

## Indonesia

### Introduction

1. A number of Appendix I-listed species are traded domestically in Indonesia. For many of these species, hunting and trading have been part of community culture for decades. The widespread and deeply rooted cultural ties of these activities make lawmakers reluctant to create strict regulatory schemes.<sup>1</sup> Appendix I-listed species commonly traded domestically include the sun bear, various species of crocodiles, pangolins, and slow loris.<sup>2</sup>
2. The government has enacted measures aiming to regulate the domestic wildlife trade, such as the Conservation of Living Resources and their Ecosystems Act of 1990 and Guidelines on Crocodile Management in Indonesia. The former prohibits catching, keeping, possessing, caring, transporting, and trading live or dead protected animals or their parts, including nests and eggs of protected animals.<sup>3</sup> However, technological advances, including the growth of internet marketplaces such as Facebook and eBay, have created complications for enforcing these regulations.<sup>4</sup> The internet serves an increasing number of users each year and social media platforms designed to encourage communication provide additional spaces to facilitate wildlife trade.<sup>5</sup> One NGO recorded more than 27 species of protected wildlife being traded on the internet in Indonesia, through local online shopping websites as well as large internet platforms such as Facebook, eBay, PayPal, and WhatsApp, in 2012.<sup>6</sup>
3. The Indonesian government has recently taken steps to attempt to reduce demand for illegal wildlife within its borders. In addition to updating existing regulations,<sup>7</sup> one strategy implemented to streamline enforcement and reduce demand for illegally traded species was a public campaign entitled “Indonesia Says No to Illegal Wildlife Trade.”<sup>8</sup> The campaign was backed by governmental organizations such as the Ministry of Marine Affairs and Fisheries, the National Army and Police Force, the Attorney General's Office, and the House of Representatives, and supported by several NGOs, religious leaders, and prominent athletes.<sup>9</sup> Its goal was to reduce illegal wildlife trade by increasing public participation in reporting wildlife trade violations through an online site and corresponding mobile app created by the Indonesian Police Criminal Investigation Agency (BARESKRIM POLRI) called the E-Reporting of Protected Animals Application. It is available on computers and mobile devices and allows any member of the public to report illegal activity related to wildlife trade.<sup>10</sup>
4. Additionally, while government controls of online trafficking are limited, several private institutions have taken measures to reduce the illegal online wildlife trade, including banning advertisements of

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<sup>1</sup> Alice Latinne and others, “Characterizing and Quantifying the Wildlife Trade Network in Sulawesi, Indonesia”, *Global Ecology and Conservation*, vol. 21 (March 2020). Available at <https://www.sciencedirect.com/science/article/pii/S235198941930678X>.

<sup>2</sup> ProFauna, “The Internet Trade of Rare Wildlife Species”, 28 December 2012. Available at <https://profauna.net/en/wildlife-trade/2012/profauna-indonesias-notes-2012-internet-trade-rare-wildlife-increases#.XoGJkZnKhQJ>; In addition, trade in songbirds is widespread, with an estimated average of 614,180 native songbirds trapped and traded annually. However, data regarding exactly what species of songbirds are traded is limited, and it is unclear whether any Appendix I-listed species are included in this trade. Richard L. Jodie, Paul Jepson, *Bird Keeping in Indonesia: Conservation Impacts and the Potential for Substitution-Based Conservation Responses*, 39, *Oryx* (2005); Alice Latinne and others, *Characterizing and Quantifying the Wildlife Trade Network in Sulawesi, Indonesia*, 21, *Global Ecology and Conservation* (2020).

<sup>3</sup> Indonesia, *Conservation of Living Resources and their Ecosystems Act No. 5 of 1990*.

<sup>4</sup> United Nations, *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, “Wildlife Trade on the Internet”, *Official Newsletter of the Parties Issue 19, February 2010*. Available at <https://www.cites.org/eng/news/world/19/6.php>.

<sup>5</sup> *Ibid.*

<sup>6</sup> ProFauna, “The Internet Trade of Rare Wildlife Species”, 28 December 2012. Available at <https://profauna.net/en/wildlife-trade/2012/profauna-indonesias-notes-2012-internet-trade-rare-wildlife-increases#.XoGJkZnKhQJ>.

<sup>7</sup> Indonesia, *Conservation of Living Resources and their Ecosystems Act No. 20 of 2018*. This law amended Act No. 5/ 1990 to include more protected species. Available only in Indonesian, unofficial translation used.

<sup>8</sup> WWF-Indonesia, “Indonesia Says No to Illegal Wildlife Trade, Securing National Food Sustainability”, 5 November 2018. Available at

[https://d2d2tb15kqhejt.cloudfront.net/downloads/\\_press\\_release\\_indonesia\\_says\\_no\\_to\\_illegal\\_wildlife\\_trade\\_securing\\_national\\_food\\_sust.pdf](https://d2d2tb15kqhejt.cloudfront.net/downloads/_press_release_indonesia_says_no_to_illegal_wildlife_trade_securing_national_food_sust.pdf).

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*



such on their sites.<sup>11</sup> IBM supplied the Indonesian police force with new investigative technologies that help gather evidence from seized mobile devices, which can then be used to track down wider networks of wildlife trafficking actors and attack the problem as an issue of organized crime, as opposed to one-off violations.<sup>12</sup> So far, however, data is not available on the success of either of the above-mentioned initiatives.

## **Legislation**

### 5. *Conservation of Living Resources and their Ecosystems Act No. 5/1990*<sup>13</sup>

- a) The Act states that “Any person must not: a) Capture, harm, kill, keep, collect, raise, transport, and engage in business of protected species in a live state; b) Keep, collect, raise, transport, and engage in business of protected species in a dead state; c) Transport protected species from any area in Indonesia to another area inside or outside of Indonesia; d) Engage in business of, or keep or collect skin, body, or any other parts of protected species, or items made out of those parts, or transport it from any area of Indonesia to another area inside or outside of Indonesia; or e) Capture, harm, kill, engage in business of, keep or collect the egg and/or nest of a protected species.”<sup>14</sup>
- b) The Act creates sanctions for any intentional violation (felony status) of this law including up to five years imprisonment and monetary fines up to 100 million rupiah (approximately \$6,800 US as of July 2020).<sup>15</sup> Any person charged with negligent violation (misdemeanor status) of this law shall be confined for up to one year and fined up to 50 million rupiah (approximately \$3,400 US as of July 2020).<sup>16</sup>
- c) The Act states that “a designated Civil Servant whose duty is related to the management of conservation of living resources and their ecosystems, in addition to the police investigator of the Republic of Indonesia,” is allowed to investigate criminal action regarding conservation of wildlife and ecosystems.<sup>17</sup> This includes examining and confirming reports of allegedly criminal activity, investigating persons allegedly involved in such criminal activity, and searching for and confiscating evidence related to criminal action. They also have the discretion to stop an investigation should there not be enough evidence to prove the criminal case.<sup>18</sup>
- d) The Act allows the government to confiscate individual specimens of any protected wild species held or used in violation of Article 21 [summarized in subsection (a) above] and to return confiscated specimens to their habitats or transfer them to institutions dealing with wildlife conservation.<sup>19</sup>

### 6. *Conservation of Living Resources and their Ecosystems Act No. 20/2018*

- a) The Act amends Indonesia’s protected species law (Conservation of Living Resources and their Ecosystems Act No. 5 of 1990) to include protections for an additional 244 species, resulting in a total of 921 protected native species, 562 of which are birds.<sup>20</sup>

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<sup>11</sup> ProFauna, “The Internet Trade of Rare Wildlife Species”, 28 December 2012. Available at <https://profauna.net/en/wildlife-trade/2012/profauna-indonesias-notes-2012-internet-trade-rare-wildlife-increases#.XoGJkZnKhQJ>.

<sup>12</sup> OECD, *Illicit Trade: The Illegal Wildlife Trade in Southeast Asia: Institutional Capacities in Indonesia, Singapore, Thailand, and Viet Nam* (Paris, OECD Publishing, 2019), at 40. Available at [https://www.oecd-ilibrary.org/governance/the-illegal-wildlife-trade-in-southeast-asia\\_14fe3297-en](https://www.oecd-ilibrary.org/governance/the-illegal-wildlife-trade-in-southeast-asia_14fe3297-en).

<sup>13</sup> Indonesia, *Conservation of Living Resources and their Ecosystems Act No. 5 of 1990*.

<sup>14</sup> *Ibid.*, art. 21.

<sup>15</sup> *Ibid.*, art. 40 sect. 2.

<sup>16</sup> In Indonesia, imprisonment is used in relation to felony sentences, and describes any sentence from one day to life.

Confinement is used in relation to misdemeanor offenses and describes shorter sentences from one day to two years, and has a lighter obligatory work load than imprisonment sentences.

<sup>17</sup> Indonesia, *Conservation of Living Resources and their Ecosystems Act No. 5 of 1990*.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> Indonesia, *Conservation of Living Resources and their Ecosystems Act No. 20 of 2018*.

- b) The list includes notable Appendix I-listed species, such as the loggerhead and green turtles and Asian elephant, but excludes others like the Mindoro crocodile.<sup>21</sup>
7. *The Utilization of Wild Plants and Animal Species, Government Regulation No. 8/1999*
- a) The Regulation allows for breeding of both protected and non-protected species of wild fauna and the artificial propagation and cultivation of species of wild flora upon receipt of a permit from the Minister of Environment and Forestry.<sup>22</sup>
- b) After receiving a permit, in order to sell specimens bred in captivity or artificially propagated, one must meet designated qualification standards which take into consideration the population and rareness of the species and professionalism of the activity.<sup>23</sup> Additionally, specimens of protected wild fauna that are bred in captivity can only be used in trade if they are of second or subsequent further generations.<sup>24</sup>
- c) The Regulation clarifies that any breeder conducting trade without meeting the qualification standards will be considered a smuggler, and may be subject to a 100 million rupiah (approximately \$6,800 US as of July 2020) fine in accordance with Act No. 5/1990.<sup>25</sup>
8. *Administration Directive for the Harvest or Capture and Distribution of Specimen of Wild Plant and Animals, Ministry of Forestry Decree No. 447/2003*
- a) The Decree establishes parameters for handling confiscated wildlife specimens through the course of a criminal investigation. For live specimens of animals or plants, the options include: a) transferring specimens to care facilities, such as zoos, rescue centers, animal rehabilitation centers, or botanic gardens; b) returning them to their countries of origin, if the specimens are imported; c) returning animal specimens to their wild habitats; d) auctioning specimens, provided they are unprotected species and species not included in Appendix I; or e) euthanizing specimens that pose dangers of pests or disease.<sup>26</sup>
- b) If dead Appendix I-listed or other protected plants or animals are seized, they may be transferred to museums if they have scientific or educational value, or destroyed.<sup>27</sup> Dead specimens or parts of non-Appendix I-listed or protected species may be auctioned.<sup>28</sup>
9. *Hunting and Game Regulations re: Game Hunting Affairs*<sup>29</sup>
- a) The Regulations allow the Minister of Forestry Affairs to stipulate protected animals (those covered under Act No. 5/1990) as game in the framework of “controlling pests, nurturing population, developing the habitat, conducting genetic research and development and genetic engineering, obtaining animals specifically intended for breeding, and utilizing breeding output.”<sup>30</sup>
- b) The Regulations define “hunting ground” to specifically include protected forests.<sup>31</sup>
10. *Guidelines on Crocodile Management in Indonesia: Decree No. 424/1994*<sup>32</sup>

<sup>21</sup> *Ibid.*

<sup>22</sup> *Indonesia, The Utilization of Wild Plants and Animal Species Government Regulation No. 8/1999.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Indonesia, Administration Directive for the Harvest or Capture and Distribution of Specimen of Wild Plant and Animals, Ministry of Forestry Decree No. 447/2003, Art. 113.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Indonesia, Hunting and Game Regulations re: Game Hunting Affairs No. 13/1994.*

<sup>30</sup> *Ibid., art. 3.*

<sup>31</sup> *Indonesia, The Elucidation on Government Regulation No. 13/1994, art. 1, sect. 8.*

<sup>32</sup> *Indonesia, Guidelines on Crocodile Management in Indonesia No. 424/1994.*

- a) The Guidelines declare that all native crocodile species<sup>33</sup> in Indonesia are protected and must be conserved. However, they also authorize utilization of crocodiles as long as a license is obtained and the monitoring and management procedures set forth in subsection (c) below are followed.<sup>34</sup> The licensing requirements are to be detailed through subsequent legislation, as decreed by the Minister.<sup>35</sup>
- b) The Guidelines permit a number of types of utilization of crocodiles by individuals, corporate bodies, and scientific institutions:<sup>36</sup> “Crocodile utilization are all activities relating to the collection of seeds, growing, breeding, harvesting and processing of produce, constituting meat, hide and other parts, as well as trade and other purposes.”<sup>37</sup>
- c) The Guidelines require the Department of Forestry to create a Crocodile Management Plan and a Crocodile Management Unit (UPB) for approval by the local Territorial Office of the Department of Forestry.<sup>38</sup> The Guidelines establish processes for the UPB to monitor crocodile populations and manage them accordingly, including possibly by determining what utilization is allowable.<sup>39</sup>

#### 11. *Amendments Concerning Customs Law No. 10/1995 and Act No. 17/2006*<sup>40</sup>

- a) The Amendments state that any person who “stores, keeps, possesses, purchases, sells, exchanges, obtains, or provides imported goods as the result of the crime as referred to in article 102 [prohibiting illegal imports and exports] shall be punished with imprisonment for two to eight years, a fine of between 100 million and 5 billion rupiah (approximately \$6,800 to \$340,000 US as of July 2020), or both.”<sup>41</sup>

#### 12. *Conservation of Fishery Resources, Government Regulation No. 60/2007*<sup>42</sup>

- a) The Regulation restricts the possession and domestic trade of certain species of fish. The Regulation provides that specimens and parts thereof of protected species can only be traded if bred in captivity.<sup>43</sup> Violations of the Regulation can result in fines and other penalties, such as freezing or revocation of permits.<sup>44</sup>

## **Analysis**

### Legal status of the domestic market

<sup>33</sup> Though the Guidelines note that “[c]rocodiles are all crocodile species of Indonesia,” they also list four specific species: saltwater crocodiles (referred to in the Guidelines as “river mouth crocodiles”) (*Crocodylus porosus*), New Guinea crocodiles (referred to in the Guidelines as “sweet water crocodiles”) (*Crocodylus novaeguinae*), Siamese crocodiles (*Crocodylus siamensis*), and the false gharial (referred to in the Guidelines as “supit sinyulong” crocodiles”) (*Tomistoma schlegelii*). *Ibid.* Not expressly mentioned are the recently discovered Hall’s New Guinea crocodile (*Crocodylus halli*) and the Mindoro or Philippine crocodile (*Crocodylus mindorensis*), which according to some sources is also endemic to Indonesia, and it is unclear whether the Guidelines cover these species. Francesca Edralin, “From New Guinea to Florida, one of these crocs is not like the others”, *Mongabay*, 1 July 2020; *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, “*Crocodylus mindorensis*”, *Checklist of CITES Species (listing Mindoro crocodile as native to Indonesia)*. Available at [https://checklist.cites.org/#/en/search/output\\_layout=alphabetical&level\\_of\\_listing=0&show\\_synonyms=1&show\\_author=1&show\\_english=1&show\\_spanish=1&show\\_french=1&scientific\\_name=Crocodylus+mindorensis&page=1&per\\_page=20](https://checklist.cites.org/#/en/search/output_layout=alphabetical&level_of_listing=0&show_synonyms=1&show_author=1&show_english=1&show_spanish=1&show_french=1&scientific_name=Crocodylus+mindorensis&page=1&per_page=20). Other sources refer to the Philippine crocodile as being native only to the Philippines. Brian Clark Howard, “Philippine Freshwater Crocodiles: Freshwater Species of the Week”, *National Geographic*, 29 March 2013 (stating that the Mindoro crocodile is found only in the Philippines). Available at <https://blog.nationalgeographic.org/2013/03/29/philippine-freshwater-crocodiles-freshwater-species-of-the-week/>.

<sup>34</sup> *Ibid.*, art. 1.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*, art. 7.

<sup>37</sup> *Ibid.*, art. 1.

<sup>38</sup> *Ibid.*, art. 3–4

<sup>39</sup> *Ibid.*

<sup>40</sup> *Indonesia, Amendments Concerning Customs Law No. 10 of 1995, Act No. 17/2006.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Indonesia, Government Regulation on the Conservation of Fishery Resources, No. 60/2007.*

<sup>43</sup> *Ibid.*, art. 38. Trade is allowed in species for which international trade is allowed (i.e., under CITES). *Ibid.*

<sup>44</sup> *Ibid.*, art. 48.

13. In Indonesia, there is currently an open and legal domestic market for all species not protected by the abovementioned legal controls, which includes several Appendix I-listed species both native and non-native to Indonesia. There is also an open and legal domestic market for some species that are protected by the abovementioned legislation under certain legislated exceptions—for example, trade in crocodile specimens in accordance with the Guidelines on Crocodile Management in Indonesia.<sup>45</sup> Wildlife markets in which native and non-native wildlife are traded without regard for endangered species status also exist.<sup>46</sup> Currently, there are no marking requirements to differentiate between species for which trade is and is not legal.

#### Regulation of trade

14. Current legal controls do not regulate domestic trade in all CITES Appendix I-listed species. Domestic trade in endangered wildlife in Indonesia is primarily regulated under Act No. 5/1990, the Conservation of Living Resources Act.<sup>47</sup> Moreover, it appears that at least one CITES Appendix I-listed species might not be covered by this Act: the Mindoro crocodile.<sup>48</sup> As summarized above, this law prohibits the capture, harm, possession, collection, raising, transportation, trade (domestic or international), or other business activity involving any protected species, whether dead or alive, whether whole or in parts, and penalizes violators with up to five years of imprisonment and a fine of 100 million rupiah (approximately \$6,800 US as of July 2020).<sup>49</sup> The prohibition and penalties apply equally to individuals and businesses.<sup>50</sup>
15. In its current form, the Conservation of Living Resources and their Ecosystems Act also does not differentiate among wildlife trafficking crimes of different levels of severity, leaving sanctions up to the discretion of the enforcement officers. As with the 1990 version of the law, the law only applies to native species.<sup>51</sup> Review of all legal controls listed above reveals that current controls only regulate native Indonesian species, and thus do not regulate domestic trade in members of non-native species that have already entered Indonesia's borders. However, it seems that this is covered by Customs Law No. 10/1995, which provides that anyone who buys, sells, or exchanges goods in Indonesia that were imported illegally may be punished through imprisonment, fines, or both.<sup>52</sup>
16. Unlike the original version, which classified animals based on families or genera, the updated Conservation of Living Resources and their Ecosystems Act (2018) is species-specific and requires law enforcement officers to differentiate among different species, including over 900 of which are protected in Indonesia, while in the field.<sup>53</sup> There is presently no system for marking protected and unprotected species.<sup>54</sup> No provisions were identified in this law or other legal instruments that discuss how to properly identify species in the field or remedies for false seizures.

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<sup>45</sup> Indonesia, *The Elucidation on Government Regulation No. 13/1994*, art. 1, sect. 8.

<sup>46</sup> John Morgan, *Slow and Steady: The Global Footprint of Jakarta's Tortoise and Freshwater Turtle Trade (Petaling Jaya, Malaysia, TRAFFIC Southeast Asia Regional Office, 2018)*. Available at <https://www.traffic.org/site/assets/files/9341/jakartas-tortoise-and-freshwater-turtle-trade.pdf>. The study found that 65 different tortoise and freshwater turtle species were on display for sale at animal markets in Jakarta, and only 15 of the species were native to Indonesia. Eight of the turtle species are CITES Appendix I-listed species.

<sup>47</sup> Indonesia, *Conservation of Living Resources and their Ecosystems Act No. 20 of 2018*.

<sup>48</sup> The Act covers many native species, but there appears to be some uncertainty regarding whether the Mindoro crocodile is native to Indonesia. For example, the Mindoro crocodile is unlisted in the Guidelines on Crocodile Management. *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, "Crocodylus mindorensis", Checklist of CITES Species (listing Mindoro crocodile as native to Indonesia). Available at [https://checklist.cites.org/#/en/search/output\\_layout=alphabetical&level\\_of\\_listing=0&show\\_synonyms=1&show\\_author=1&show\\_english=1&show\\_spanish=1&show\\_french=1&scientific\\_name=Crocodylus+mindorensis&page=1&per\\_page=20](https://checklist.cites.org/#/en/search/output_layout=alphabetical&level_of_listing=0&show_synonyms=1&show_author=1&show_english=1&show_spanish=1&show_french=1&scientific_name=Crocodylus+mindorensis&page=1&per_page=20); Brian Clark Howard, "Philippine Freshwater Crocodiles: Freshwater Species of the Week", *National Geographic*, 29 March 2013 (stating that the Mindoro crocodile is found only in the Philippines). Available at <https://blog.nationalgeographic.org/2013/03/29/philippine-freshwater-crocodiles-freshwater-species-of-the-week/>.

<sup>49</sup> Indonesia, *Conservation of Living Resources and their Ecosystems Act No. 20 of 2018*.

<sup>50</sup> *Ibid.*

<sup>51</sup> Indonesia, *Conservation of Living Resources and their Ecosystems Act No. 5 of 1990*.

<sup>52</sup> Indonesia, *The Elucidation on Government Regulation No. 13/1994*, art. 1, sect. 8.

<sup>53</sup> Indonesia, *Conservation of Living Resources and their Ecosystems Act No. 20 of 2018*.

<sup>54</sup> Alice Latinne and others, "Characterizing and Quantifying the Wildlife Trade Network in Sulawesi, Indonesia", *Global Ecology and Conservation*, vol. 21 (March 2020).

17. In addition to the overarching Conservation of Living Resources and their Ecosystems Act, several supporting regulations also contain controls related to domestic trade in Appendix I-listed species, including the Guidelines on Crocodile Management in Indonesia.<sup>55</sup> There are 17 CITES Appendix I-listed crocodile species, three of which are native to Indonesia.<sup>56</sup> The Guidelines on Crocodile Management in Indonesia specifically apply to all species of native crocodiles in Indonesia, thus regulating domestic trade of the two CITES-listed species of crocodiles that are not covered in the Conservation of Living Resources and their Ecosystems Act protected species list. The Guidelines regulate the possession and trade of crocodiles, but do not ban it entirely.<sup>57</sup>
18. None of the existing legal controls regulating domestic trade in protected species in Indonesia, including Act No. 5/ 1990, contain specific provisions related to online wildlife trade. However, the broad language of these controls may support the assumption that their restrictions apply to online trade as well.<sup>58</sup>

#### Registration

19. There are 54 captive breeding facilities in Indonesia that are registered with the CITES Secretariat.<sup>59</sup> Upon examining the “Origin of Stock,” many of the facilities’ stocks were derived from farms and other captive breeding programs not registered with CITES, implying that there are other active facilities not included in the register.<sup>60</sup> Domestic requirements for captive breeding are discussed in Act No. 8/1999, which allows for any person, legal body, cooperative, or conservation institution to conduct breeding upon receipt of a permit from the Minister.<sup>61</sup> Additionally, specimens of protected wild fauna bred in captivity can be used for trade as long as they are of the second or a further generation.<sup>62</sup> However, the law does not provide specifications on what documentation or reporting is required to prove trade in protected species is of the second or a further generation.

#### Interpretation by courts

20. In 2018, the Indonesia Ministry of Environment prosecuted eight wildlife trade cases for alleged violations of Act No. 5/1990.<sup>63</sup> Of those eight cases, over half resulted in convictions with sentences of imprisonment for less than two years.<sup>64</sup>
21. In recent years, the court has created an online tracking system where all cases are reported for the public. Aside from constitutional cases, which are also made available in English, all cases are reported in Indonesian. Because Indonesia is a civil law country, however, case law is not considered a source of law and has no precedential value.

#### Other notes

22. Because the 2018 amendment to Act No. 5/1990 was so recent, it is unclear how the addition of new protected species and the change from protecting broad classes of species to individual species will affect enforcement.

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<sup>55</sup> *Indonesia, Hunting and Game Regulations re: Game Hunting Affairs No. 13/1994, art. 3.*

<sup>56</sup> *See the discussion of the Mindoro crocodile in notes 33 and 44.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid. The law refers to “all activities” involving crocodile utilization, which would incorporate internet trade as well.*

<sup>59</sup> *Convention on International Trade in Endangered Species, CITES registers. Available at <https://cites.org/eng/cms/index.php/component/cp/country/ID/cites-registers/Captive-Breeding-Operations>.*

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *OECD, Illicit Trade: The Illegal Wildlife Trade in Southeast Asia: Institutional Capacities in Indonesia, Singapore, Thailand, and Viet Nam (Paris, OECD Publishing, 2019), at 39.*

<sup>64</sup> *Ibid.*

## Lao People's Democratic Republic

### Introduction

1. The Lao People's Democratic Republic (Lao PDR) is home to approximately 5.7 million people, many of whom depend on its natural resources for survival.<sup>1</sup> It is also home to an abundance of rare flora and fauna, including many species listed under Appendix I of the Convention on International Trade in Endangered Species (CITES). Dependence on illegal animal products for food and traditional medicine drives demand.<sup>2</sup> Pangolins,<sup>3</sup> helmeted hornbills,<sup>4</sup> bears (including the Asiatic black bear)<sup>5</sup> and Asian big cats<sup>6</sup> including tigers<sup>7</sup> are among the Appendix I-listed species traded domestically in Lao PDR.<sup>8</sup>
2. As of 8 May 2018, the hunting, import, export, transit, and domestic trade of all species listed in CITES Appendix I is prohibited in Lao PDR.<sup>9</sup> The ban also extends to the establishment of wildlife farms of Appendix I-listed species, but grandfathered in existing farms with a recommendation that they become safaris or zoos intended for purposes of conservation, tourism, and science.<sup>10</sup> This order seems to take precedence over other laws, which do not list most non-native CITES-listed species.<sup>11</sup> Since the issue of this order, "there has been a dramatic reduction in open trading of illegal wildlife products."<sup>12</sup>
3. Lao PDR has two other relevant pieces of national legislation that protect Appendix I-listed species: the Wildlife and Aquatic Law No.07/NA, 2007, and the Penal Law No. 12/NA, 2005 (last updated in 2017). These laws outline the powers and responsibilities of relevant authorities and provide a list of illegal activities and their corresponding penalties. There are also a number of other orders and decrees in place to promote the protection of listed species. However, given the preemption language included in the Prime Minister's 2018 order,<sup>13</sup> which invalidates all existing provisions that are inconsistent with provisions in the order, the order seems to take precedence where its provisions differ from those in other laws, orders, and decrees.
4. In conjunction with these legal protections, the Lao PDR government has also implemented several strategies to reduce illegal trade in wildlife, including by reducing demand for illegally traded Appendix I-listed wildlife specimens. It has called for an increase in research initiatives, educational outreach to the public regarding the benefits of protecting wildlife, and general mindfulness of duty in protecting wildlife in the country.<sup>14</sup> For example, an annual national Wildlife Day has been in effect since 1996.<sup>15</sup> Other efforts include the creation of the Lao-Wildlife Enforcement Network, which operates under the Ministry of Justice.<sup>16</sup>

### Legislation

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<sup>1</sup> United Nations Office on Drugs and Crime, *Criminal justice response to wildlife and forest crime in Lao PDR*, October 2014.

<sup>2</sup> J. Schweikhard and others, *Investigations into the illegal wildlife trade in central Lao PDR*, TRAFFIC Bulletin Vol. 31 No. 1 (2019).

<sup>3</sup> SC69 Doc. 57A, p. 47 (identifying importers of live or dead pangolins), 50 (identifying importers of pangolin scales), 54 (identifying importers of pangolin meat).

<sup>4</sup> CoP18 Doc. 88, p. 4; SC69, Doc. 64, p. 8. CoP18 Doc. 71.1, p. 9.

<sup>5</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*.

<sup>6</sup> CoP18 Doc. 71.1, p. 4.

<sup>7</sup> CoP17 Doc. 60.1, p. 3.

<sup>8</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*.

<sup>9</sup> Lao PDR, *Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora*, No. 05/PM, sect. 16 (2018).

<sup>10</sup> *Ibid.*

<sup>11</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*.

<sup>12</sup> World Wildlife Fund for Nature in Laos, "Stop Wildlife Crime: It's Dead Serious", brochure, 2019. Available at [http://d2ouvy59p0dg6k.cloudfront.net/downloads/brochure\\_stop\\_illegal\\_wildlife\\_trade\\_project\\_eng.pdf](http://d2ouvy59p0dg6k.cloudfront.net/downloads/brochure_stop_illegal_wildlife_trade_project_eng.pdf).

<sup>13</sup> Lao PDR, *Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora*, No. 05/PM, sect. 16 (2018). Available at [http://d2ouvy59p0dg6k.cloudfront.net/downloads/new\\_wildlife\\_order\\_pm\\_o5\\_unofficial\\_eng\\_translation.pdf](http://d2ouvy59p0dg6k.cloudfront.net/downloads/new_wildlife_order_pm_o5_unofficial_eng_translation.pdf).

<sup>14</sup> *Ibid.*

<sup>15</sup> ASEAN-WEN, *ASEAN handbook on legal cooperation to combat wildlife crime (Bangkok, 2016)*.

<sup>16</sup> *Ibid.*



5. *Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora No. 05/PM, 8 May 2018 (hereinafter “the order,” “the 2018 order,” or “the 2018 prime minister order”)*<sup>17</sup>
- a) This order strictly prohibits hunting and trade of Appendix I-listed species and species contained in the prohibited list of the Wildlife and Aquatic Law (WAL), and trade in their related parts and products, “to bring [management of endangered species] in line with the laws and regulations of the Government and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).”<sup>18</sup> It also bans the establishment of wildlife farms, but allows existing farms to continue operating and encourages that they be converted and used for scientific, zoological, or tourist purposes.
  - b) The Ministry of Agriculture and Forestry (MAF) is in charge of implementation and dissemination of the order, leading efforts to coordinate with various authorities throughout the country in ensuring compliance.<sup>19</sup> The order requires that the MAF “take [the] lead [] in cooperation with ministries, concerned sectors and local authorities” in the confiscation of illegal animal products.<sup>20</sup>
  - c) The order also mandates that, if seized live animals or animal products in question can “be conserved after the case is closed,” they “should be handed over to the authorities of Agriculture and Forestry (CITES division) to be conserved (in accordance with Article 8 and Article 13 of CITES).”<sup>21</sup> However, “if the seized wildlife is dead or consists of animal parts that cannot be conserved (for instance, if they are rotten), it should be destroyed.” Inspections and patrols in “vulnerable border area[s], points of arrival and departure, [and] special economic zones” are also required to be strengthened.
6. *Wildlife and Aquatic Law, 2007*<sup>22</sup>
- a) This legislation provides the primary basis for implementing CITES wildlife protections in Lao PDR and falls under the purview of the MAF. Generally, its purpose is to establish principles and legal controls to protect wildlife and aquatic life in nature, to encourage sustainable management and use of wildlife and aquatic life that does not adversely impact natural resources, and to prevent the extinction of wildlife and aquatic life through public outreach.
  - b) The law divides protected wildlife into three categories, listed as follows from most to least protected: prohibition, management, and common or general wildlife. While the WAL provides several examples of species in the prohibition category, the full list of protected species was promulgated separately as the Decree on list of prohibited species, No. 81/PM, 2008.<sup>23</sup> An English translation of the full text of the Decree could not be located, but from the taxa that were identified through other sources, it seems the majority of Appendix I-listed species present in Lao PDR are listed as prohibition species, while some are designated as management species.<sup>24</sup>

<sup>17</sup> Lao PDR, *Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora, No. 05/PM (2018)*.

<sup>18</sup> *Ibid.*, introductory paragraph.

<sup>19</sup> *Ibid.*, sect. 6.

<sup>20</sup> *Ibid.*

<sup>21</sup> Article VIII, part 4 of CITES states: “Where a living specimen is confiscated as a result of measures referred to in paragraph 1 of this Article: (a) the specimen shall be entrusted to a Management Authority of the State of confiscation; (b) the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention; and (c) the Management Authority may obtain the advice of a Scientific Authority, or may, whenever it considers it desirable, consult the Secretariat in order to facilitate the decision under sub-paragraph (b) of this paragraph, including the choice of a rescue centre or other place.”

<sup>22</sup> Lao PDR, *Wildlife and Aquatic Law, No.07/NA (2007)*. Available at [laotradeportal.gov.la/kcfinder/upload/files/Wildlife\\_and\\_Aquatic\\_Resources\\_Law\\_\(2008\)\\_Eng.pdf](http://laotradeportal.gov.la/kcfinder/upload/files/Wildlife_and_Aquatic_Resources_Law_(2008)_Eng.pdf).

<sup>23</sup> *Ibid.*, art. 71 (The examples given are the following: dolphin, elephant, tiger, rhinoceros, saola, bear, gaur, and kouprey.)

<sup>24</sup> The list is excerpted in a consultant report that was commissioned by the Departments of Forestry and Forest Inspection and published in January 2019. It is unclear whether the entire list is included in that report’s analysis, but of the taxa that are



- c) Species in the prohibition category are to be “managed, protected, and preserved,” but their utilization can be permitted by the government.<sup>25</sup> The law defines the species contained in the prohibition category as those that are “rare, near extinct, high value and... of special importance in the development of social-economic, environmental, educational, [and] scientific research.”<sup>26</sup> The catching, hunting, stealing, and transit of species in the prohibition category is prohibited, and violations may be penalized with imprisonment for between three months and five years. It is unclear whether the government can make exceptions to these prohibitions.
- d) The management category of wildlife is defined as “beneficial in terms of national economic, social, environmental interests, and [...] important for [the] livelihoods of multi-ethnic people and educational scientific research.”<sup>27</sup> Management species are to be “managed, inspected, preserved, [and] protected,” with control over utilization. These terms are not further explained.
- e) The general wildlife category consists of “wildlife and aquatic [life] that are able to reproduce widely [in] nature, and are very important for social - economic development, and educational scientific research. The animals in this category can be used in accordance with the law and shall guarantee the use not threaten species numbers or adversely impact the ecological environment system.”<sup>28</sup>
- f) Members of species in the prohibited category can be traded if of the second or later generation of captive breeding stock.<sup>29</sup> Members of species in the managed category can be traded if of the first or later generation of captive breeding stock.<sup>30</sup> Members of species in the common or general category can be traded “as prescribed in the laws and regulations.”<sup>31</sup> Elsewhere, the law notes that trade in wildlife constitutes “business from wildlife,” and requires that businesses using wildlife in the prohibited, managed, and common or general categories get permission from the “government”; Ministry of Agriculture and Forestry; or “provincial and Capital city agriculture and forestry Divisions,” respectively.<sup>32</sup> The WAL encourages the breeding of species in order to increase population sizes.<sup>33</sup> In addition to being granted by the government, rights to use category I-listed species for business purposes can be purchased, inherited, or otherwise transferred from a prior owner.<sup>34</sup> With this right of use comes several obligations, including ensuring the “[s]ustainable use of wildlife and aquatic without causing any harm to the environment as prescribed in the laws, regulations and international convention (CITES),” and “[t]aking measures to prevent illegal catching or hunting, trading and destruction of the animal’s habitats.”<sup>35</sup>
- g) Parties that violate provisions of the WAL face penalties ranging from education and revocation of rights, to fines and imprisonment, depending on the severity of the violation.<sup>36</sup> When a non-criminal violation results in less than 200,000 Kip in damages, parties must forfeit the specimen or products at issue and undergo education, unless they are a civil servant, in which case they must forfeit any specimens or products and may lose their position or otherwise be penalized

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*included, the majority of Appendix I-listed species present in Lao PDR are prohibition species, with some designated as management species. Hilary Smith and Detsada Soukhaseum, Wildlife legality compendium project part 2: report and recommendations, Lao PDR Department of Forest Inspection (Vientiane, 2019).*

<sup>25</sup> Lao PDR, *Wildlife and Aquatic Law, No.07/NA, art. 11 (2007)*.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, art. 12.

<sup>28</sup> *Ibid.*, art. 13.

<sup>29</sup> *Ibid.*, art. 40.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*, arts. 34–35.

<sup>33</sup> *Ibid.*, arts. 20, 26 (stating “[t]he development is breeding or generating the prohibited, managed and common or general wildlife and aquatic categories in the nature for increasing the number of animals’ species by applying technology and science, it is also rehabilitation of habitats feeding resources and generating zones to ensure such animals living in the natural range. The local people are encouraged to participate in the development of wildlife and aquatic”).

<sup>34</sup> *Ibid.*, arts. 45–48.

<sup>35</sup> *Ibid.*, art. 50.

<sup>36</sup> *Ibid.*, art. 67.

professionally.<sup>37</sup> If damages total or exceed 200,000 Kip and the violation involves a specimen or product from the prohibited list, the violator must pay a fine in the amount of double the damages incurred, or triple if they are a repeat offender.<sup>38</sup> Stealing a prohibited species for domestic possession or trade is a criminal offense, and is punishable by three months to five years of deprivation of liberty or imprisonment, in addition to incurring the corresponding fine.<sup>39</sup> In addition to imposing penalties upon violators, the WAL also rewards individuals that advance the law's implementation with "relevant incentives such as flattery and rewards."<sup>40</sup>

- h) The law also establishes basic principles for the protection, development, and use of wildlife.<sup>41</sup> It encourages the public to partake in conservation activities and obliges individuals and organizations to prevent adverse impacts on wildlife.<sup>42</sup> Biodiversity should be maintained in "sustainable abundance," including through, but not limited to, habitat protection and disaster prevention.<sup>43</sup>

#### 7. Penal Code, 2017<sup>44</sup>

- a) This legislation revises the 2005 penal law.<sup>45</sup> The Ministry of Justice is the enforcement authority for the new 2017 legislation, which contains multiple articles governing the sale and possession of Appendix I-listed species within the country.<sup>46</sup>
- b) The law bans "[i]llegally cutting, purchasing or transport[ing] [] prohibited timbers and stumps and endangered plant [species]."<sup>47</sup> It penalizes those who engage in those activities and who account for damages of more than 5,000,000 LAK (approximately US\$550 as of August 2020) with "deprivation of liberty for a term of three months to one year and with a fine in [the] amount of from 1,000,000 [LAK] to 2,500,000 [LAK]". However, the penalty increases if an organized group or habitual offender commits the crime, in which case the penalty is a two- to five-year prison sentence, a fine of double the amount of damages, and repayment of damages.
- c) The law also prohibits the possession of endangered wildlife or aquatic species.<sup>48</sup> This extends to part or the entire body of a live or dead specimen. Violations are "punishable by deprivation of liberty for a term of three months to five years and with a fine in amount of from 3,000,000 [LAK] to 10,000,000 [LAK]"
- d) Anyone who illegally hunts, catches, kills, transports or trades in precious and rare wild animals or products made from said animals "shall be punish[ed] by deprivation of liberty for a term of six months to three years or re-education without deprivation of liberty and with a fine in [the] amount of from 10,000,000 [LAK] to 50,000,000 [LAK]."<sup>49</sup> "Precious and rare wild animals" are not defined, and it is unclear if this includes any or all Appendix I-listed species of fauna, given that CITES is not referenced in this Code.

#### 8. Decision of Minister of Ministry of Agriculture and Forestry On the establishment and management of zoos, wildlife farms, centers for rehabilitation and breeding of wildlife and wild flora farms, No. 0188/MAF, 8 February 2019.

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<sup>37</sup> *Ibid.*, arts. 68–69.

<sup>38</sup> *Ibid.*, art. 70.

<sup>39</sup> *Ibid.*, art. 71.

<sup>40</sup> *Ibid.*, art. 66.

<sup>41</sup> *Ibid.*, art. 6.

<sup>42</sup> *Ibid.*, art. 7.

<sup>43</sup> *Ibid.*, art. 2525.

<sup>44</sup> Lao PDR, Decree of the President on the Promulgation of the Penal Code, No. 118/P (2017).

<sup>45</sup> International Labor Organization, NATLEX, Lao People's Democratic Republic Penal Code (No. 13/2017). Available at [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=107516&p\\_country=LAO&p\\_count=54&p\\_classification=01&p\\_classcount=24](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=107516&p_country=LAO&p_count=54&p_classification=01&p_classcount=24).

<sup>46</sup> Lao PDR, Decree of the President on the Promulgation of the Penal Code, No. 118/P (2017).

<sup>47</sup> *Ibid.*, art. 327.

<sup>48</sup> *Ibid.*, art. 334.

<sup>49</sup> *Ibid.*, art. 337.

- a) This decision prohibits the sale of “wildlife and flora” of any prohibited species, even if bred in captivity, and no longer allows for the sale of the first generation of management and general species that are bred in captivity (only the second generation and later), formerly allowed under the WAL.<sup>50</sup>
  - b) The decision prohibits private persons from “trade, export, import, and transit [of] wildlife and flora on list I of CITES for commercial purposes.”<sup>51</sup>
9. *Fisheries Law, 2009*<sup>52</sup>
- a) This law criminalizes the taking and transit of protected, management, and general aquatic species (listed in the law) by imposing a fine of double the loss of value if the value impacted exceeds 200,000 LAK, and triple for repeat offenders.<sup>53</sup> For infractions with damages valued at less than 200,000 LAK, violators receive a warning and reeducation.<sup>54</sup> If the damaged value is less than 200,000 LAK and the violator is a state official, they may face professional consequences, such as notes in their employment records, ineligibility for promotions, and demotion. A variety of aquatic species are protected, only one of which (*Pangasianodon gigas*) is an Appendix I-listed species.<sup>55</sup>
10. *Instruction re: Strengthening the Administration of Aquatic Animal and Wildlife Nationwide 2806/MONRE, 30 May 2016*<sup>56</sup>
- a) This instruction from the Ministry of Natural Resources and Environment to the Director of Provincial and Vientiane Capital Department of Natural Resources and Environment, and the Head of Natural Resources and Environment District office nationwide, was issued pursuant to the WAL. It calls on local authorities to educate the public on the law and promote wildlife conservation.<sup>57</sup> It also provides for the monitoring of villagers and encouraging them to comply with the law. The instrument does not make specific reference to CITES, but seems to be a precursor to the 2018 prime minister order based on the similarities in language and protections. For example, the instruction prohibited the sale, offering to sell, or trading of all prohibited aquatic animals and wildlife, a prohibition that the 2018 order later expanded to apply to all Appendix I-listed species as well.<sup>58</sup>
11. *Decree on Implementing the Law on Plant Protection No.229/GoL, 31 May 2012*<sup>59</sup>
- a) This decree was intended to “ensure uniform application of the [Law on Plant Protection] throughout the country and shall ensure the accuracy, clarity, correctness, effectiveness and understanding of the Law in a manner that is in line with international treaties and agreements.”<sup>60</sup> It authorizes the seizure of plants or related products when they have illegally entered Lao PDR.<sup>61</sup> However, it does not specify at which point, nor does it list any species specifically beyond the initial reference to international agreements.

<sup>50</sup> Lao PDR, MAF Order No. 0188/2019, art. 14.

<sup>51</sup> *Ibid.*, art. 22(1).

<sup>52</sup> Lao PDR, Fisheries Law, No. 03/NA (2009).

<sup>53</sup> *Ibid.*, art. 66.

<sup>54</sup> *Ibid.*, art. 64.

<sup>55</sup> *Ibid.*, arts. 7, 38, List I.

<sup>56</sup> Lao PDR, *Instruction re: Strengthening the Administration of Aquatic Animal and Wildlife Nationwide*, Ref. no. 2806/MONRE (2016). Available at [http://www.laotradeportal.gov.la/kcfinder/upload/files/Instruction\\_2806.MONRE\\_2016.pdf](http://www.laotradeportal.gov.la/kcfinder/upload/files/Instruction_2806.MONRE_2016.pdf).

<sup>57</sup> *Ibid.*, sects. 1–5.

<sup>58</sup> *Ibid.*, sects. 6–9.

<sup>59</sup> Lao PDR, *Decree Implementing the Law on Plant Protection*, No. 229/GoL (2012). Available at <http://extwprlegs1.fao.org/docs/pdf/lao141136.pdf>.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*, art. 33.

12. *Decree on Natural Resources for Medicines No. 155/PM, 30 September 2003*<sup>62</sup>

- a) This decree pertains to traditional medicines made of products derived from plants and animals. Appendix I-listed animals covered by the decree include *Panthera tigris*, *Panthera pardus*, and *Pangasianodon gigas*.<sup>63</sup> Public organizations<sup>64</sup> related to the field are obliged “to supervise, direct, manage, [and] promote the protection of pharmaceutical natural resources, plant medicinal plants and animal husbandry for medicine.”<sup>65</sup> This is to be accomplished through informational campaigns and educational outreach about the benefits of protecting pharmaceutical natural resources. Further, for those who are permitted to conduct pharmaceutical business in the country, there is still an obligation to protect natural resources and to plant replacements to compensate for the utilized resources.
- b) The decree also establishes a general duty to protect the country’s resources and a requirement that exploitation of pharmaceutical natural resources be efficient, sustainable, and limited to research and medicinal purposes.<sup>66</sup>
- c) It also institutes a permitting requirement to gain authorization for any activities that may impact protected animals or medicinal natural resources, with permits issued by the Ministry of Health and related agencies.<sup>67</sup> Lao PDR has also started a broad initiative to reduce illegal practices related to opium and wanton deforestation by encouraging its citizens to plant and raise medicinal plants and animals.
- d) The decree also establishes a broad framework for punishing violators, including through education, fines, compensation, and prosecution, depending on the severity of the transgression.<sup>68</sup>

13. *Declaration of the President on the Forestry Law No. 125/PO, 11 October 1996*<sup>69</sup>

- a) This declaration authorizes state ownership and management of wildlife. It expressly bans possession of wildlife without permission, hunting during closed season [unspecified], hunting via “mass destruction,” and the hunting of and trade in protected species.<sup>70</sup> Further, it requires that guns and hunting equipment be registered with certificates. It also establishes an annual Wildlife Day on 13 July.<sup>71</sup>

14. *Decree No. 1074/MAF, 11 September 1996*<sup>72</sup>

- a) This decree bans the hunting of protected species such as the Asian elephant, banteng, saola, and douc langur.<sup>73</sup> It also prohibits hunting of CITES Appendix I-listed species, hunting during closed season and breeding season, hunting by “dangerous methods,” hunting with weapons, and hunting in protected areas, towns, and National Biodiversity Conservation Areas.<sup>74</sup> The decree also prohibits wildlife trade, except when species are used for research or conservation purposes.

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<sup>62</sup> Lao PDR, *Decree on Natural resource for medicines (Pharmaceutical Natural resource)*, No. 155/PM (2003). Available at <http://extwprlegs1.fao.org/docs/pdf/lao141201.pdf>.

<sup>63</sup> The law includes several species listed in Appendix I, most but not all of which are listed in the law’s Group I, for which harvesting or hunting must be permitted. The law does not appear to include any Appendix I-listed species not also listed under the WAL list.

<sup>64</sup> The decree does not define what qualifies as a public organization.

<sup>65</sup> Lao PDR, *Decree on Natural resource for medicines (Pharmaceutical Natural resource)*, No. 155/PM, sect. I, art. 3 (2003).

<sup>66</sup> *Ibid.*, sect. I, art. 4.

<sup>67</sup> *Ibid.*, sect. II, art. 8.

<sup>68</sup> *Ibid.*, sect. IV, art. 12.

<sup>69</sup> Food and Agriculture Organization of the United Nations, “The care and management of domesticated Asian elephants in Lao PDR - Bounleuam Norachack”, Table 3. Available at <http://www.fao.org/3/ad031e/ad031e0j.htm>.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

15. *Decree of the President on the Promulgation of the Law on Anti-Money Laundering and Counter-Financing of Terrorism, No. 012/PO, 4 February 2015*<sup>75</sup>

- a) This decree, which promulgates the Law on Anti-Money Laundering and Counter-Financing of Terrorism, establishes environmental crime as a predicate offense for money laundering. It defines “environmental crime” to mean “an offence that causes a severe damage to the environment,” including “illegal trading of protected wildlife and aquatic animals.” The decree also establishes requirements for reporting and recordkeeping of transactions.

## Analysis

### Legal status of the domestic market

16. Pursuant to the 2018 order of the Prime Minister, domestic trade in Appendix I-listed species is prohibited. However, according to law enforcement reports, there seems to be an open but illegal market for both non-native and native Appendix I-listed products, including bear, rhino, and pangolin parts, especially in the Golden Triangle Special Economic Zone, but also in other major markets in Vientiane, Luang Prabang, Boten, Muang Sing, Luang Namtha, Vang Vieng, and Savannakhet.<sup>76</sup>
17. Special Economic Zones (SEZs) like the Golden Triangle are not subject to strict law enforcement, resulting in ongoing illegal trade of listed species by Chinese nationals, among other groups.<sup>77</sup> While open trade of products derived from Appendix I-listed species is not promoted and other Lao PDR laws, including those regulating trade in wildlife, apply in the SEZs, the primary focus of the SEZ order is bolstering economic growth, and the level of law enforcement working in the SEZs to prevent illegal trade is “unclear.”<sup>78</sup> The SEZ order mandates that the “SEZ Administration Committee or the Economic Executive Board is charged with defining the rules and regulations concerning the management and protection of the environment and natural resources in compliance with the laws of the Lao PDR and to ensure sustainable development,” but SEZs do not explicitly prohibit trade in protected wildlife or parts thereof.<sup>79</sup>
18. None of the breeding facilities in Lao PDR are registered with the CITES Secretariat.

### Regulation of trade

19. The 2018 prime minister order was the first legal instrument to explicitly regulate trade in all CITES Appendix I-listed species in Lao PDR, which it did by broadly banning possession, transit, hunting, and domestic and international trade of these species and their corresponding products.<sup>80</sup> Further changes are possible, as Lao PDR is in the process of revising its national legislation—including and in particular the WAL—and is working on a draft decree for the implementation of CITES. The order does not draw a distinction between native and non-native species, and accordingly, any related markets for body parts and products from such banned activities are illegal in their entirety.
20. As indicated above, the WAL does not provide a full list of the species contained in its different categories, although it does provide some broad examples.<sup>81</sup> The subsequent Decree on list of prohibited species No. 81/PM, 2008, listed the relevant species intended for protection; as explained above, a full English version of the Decree could not be obtained, so the degree to which the Decree

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<sup>75</sup> Lao PDR, *Decree of the President on the Promulgation of the Law on Anti-Money Laundering and Counter-Financing of Terrorism, No. 012/PO (2015)*.

<sup>76</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*, p. 59.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*; Lao PDR, *Decree on Special Economic Zone and Specific Economic Zone in the Lao PDR, No. 443/PM (2010)*. Available at [https://www.wto.org/english/thewto\\_e/acc\\_e/lao\\_e/WTACCLAO20A1\\_LEG\\_3.pdf](https://www.wto.org/english/thewto_e/acc_e/lao_e/WTACCLAO20A1_LEG_3.pdf).

<sup>79</sup> Lao PDR, *Decree on Special Economic Zone and Specific Economic Zone in the Lao PDR, No. 443/PM (2010)*; Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*.

<sup>80</sup> Lao PDR, *Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora, No. 05/PM (2018)*.

<sup>81</sup> Lao PDR, *Wildlife and Aquatic Law, No.07/NA (2007)*.

lists non-native Appendix I-listed species is unclear.<sup>82</sup> As previously stated, the updated Penal Code provides a set of accompanying penalties for wildlife crimes, including possession and domestic trade, for up to ten years' imprisonment and 50,000,000 LAK (approximately \$5,500 US as of August 2020) (or triple damages) in fines.<sup>83</sup>

21. All trade—including business to business, business to consumer, and consumer to consumer—is subject to the same overarching prohibitions. Online trade appears to be prominent in the country, with social media, private chatrooms, and online commercial portals like Facebook, WhatsApp, and Alibaba serving as platforms for those dealing in illegal parts.<sup>84</sup> While it does not appear that Lao PDR has legal instruments that explicitly regulate online trade, the general regulations on trade would presumably apply.
22. The Decree of the President on the Promulgation of the Law on Anti-Money Laundering and Counter-Financing of Terrorism establishes environmental crime, including illegal trade of protected wildlife, as a predicate offense for money laundering. The Decree also establishes a penalty of 300,000,000 to 500,000,000 LAK (approximately \$33,000 to \$55,000 US as of August 2020) and three to seven years' imprisonment for money laundering below the amount of 1,000,000,000 LAK, and a penalty of 500,000,000 to 700,000,000 LAK and seven to ten years' imprisonment for money laundering above the amount of 1,000,000,000 LAK.<sup>85</sup> For offences committed by organized groups or habitual offenders, the penalty is between 700,000,000 and 900,000,000 LAK, as well as 10 to 12 years' imprisonment.<sup>86</sup> The Decree also reiterates that any natural person who commits environmental crimes will be punished according to the Penal Code and other relevant laws.<sup>87</sup>

#### Registration

23. The 2018 prime minister order bans the establishment of wildlife farms, but allows existing wildlife farms to be grandfathered in and encourages that they be converted to serve scientific, zoological, or tourist purposes.<sup>88</sup> Appendix I-listed species and parts thereof that are bred in captivity or possessed are to be registered by the MAF.<sup>89</sup> It could not be determined whether any such facilities have been registered.
24. Possession of specimens of Appendix I-listed species is regulated via several provisions of the aforementioned legislation. The WAL requires that all owners of captive species for business purposes must register their possession with the municipality at the agriculture and forestry office, and then those owners must subsequently report to that office in the province.<sup>90</sup> Under the 2018 prime minister order, the MAF oversees all of these processes, but must work “in cooperation with other relevant Ministries and sectors in the enforcement.”<sup>91</sup> The WAL also specifically references captured wild animals, and states that they must be kept in captivity “in accordance with the laws and regulations,” although it does not state what those are.<sup>92</sup> The WAL also references facilities used for breeding purposes, and requires they receive authorization from the MAF.<sup>93</sup> For use of wildlife for public benefit (including scientific, zoological, and tourism) purposes, owners must get permission from the government, MAF, or local division of agriculture and forestry, depending on the category of

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<sup>82</sup> Hilary Smith and Detsada Soukhaseum, *Wildlife legality compendium project part 2: report and recommendations*, Lao PDR Department of Forest Inspection (Vientiane, 2019).

<sup>83</sup> Lao PDR, *Decree of the President on the Promulgation of the Penal Code*, No. 118/P (2017).

<sup>84</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*.

<sup>85</sup> Lao PDR, *Decree of the President on the Promulgation of the Law on Anti-Money Laundering and Counter-Financing of Terrorism*, No. 12/PO, art. 66 (2015).

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*, art. 71.

<sup>88</sup> Lao PDR, *Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora*, No. 05/PM (2018).

<sup>89</sup> *Ibid.*, sect. 6.

<sup>90</sup> Lao PDR, *Wildlife and Aquatic Law*, No.07/NA (2007).

<sup>91</sup> *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, “Application of Article XIII in the Lao People’s Democratic Republic”, notification to the parties, 1 November 2018. Available at <https://www.cites.org/sites/default/files/notif/E-Notif-2018-083.pdf>.

<sup>92</sup> Lao PDR, *Wildlife and Aquatic Law*, No.07/NA, art. 21 (2007).

<sup>93</sup> *Ibid.*, art. 38.

species.<sup>94</sup> To establish a zoo for businesses purposes, owners must receive authorization from the agriculture and forestry authorities and follow other relevant laws.<sup>95</sup> Moreover, under the 2018 order from the Prime Minister, the MAF is required to develop a registry of all wildlife bred in captivity.<sup>96</sup> The research team could not locate or access this registry.

#### Interpretation by courts

25. No specific court cases concerning the interpretation of domestic controls on trade of Appendix I-listed species in Lao PDR could be identified.
26. However, since the issuance of the 2018 prime minister order, there has been a “dramatic reduction in open trading of illegal wildlife products,” accompanied by “complex investigations supporting prosecution [through which] the value of products seized [has] exceed[ed] US\$750,000.”<sup>97</sup> From June 2018 to August 2019, the Department of Forestry Inspection and the Environmental Police carried out 15 specific enforcement actions, resulting in seizures of “specimens of various species, including elephant, rhinoceros, pangolin, bear, turtles, snakes, and, in one instance, tiger.”<sup>98</sup> The reporting of these seizures indicated that most of these incidents involved domestic “transport and offer for sale.”<sup>99</sup>

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<sup>94</sup> *Ibid.*, art. 30.

<sup>95</sup> *Ibid.*, art. 37.

<sup>96</sup> Lao PDR, Prime Minister Order on Strengthening Strictness of the Management and Inspection of Prohibited Wild Fauna and Flora, No. 05/PM (2018).

<sup>97</sup> World Wildlife Fund for Nature in Laos, “Stop Wildlife Crime: It’s Dead Serious”, brochure, 2019.

<sup>98</sup> SC71, Doc. 10.1, p. 6.

<sup>99</sup> *Ibid.*



## Malaysia

### Introduction

1. Malaysia is a country comprising 13 states and three federal territories. Of these, 11 states and two federal territories are located on Peninsular Malaysia (West Malaysia) while the other two states, Sabah and Sarawak, are located on Borneo (East Malaysia). The division of power between the states and the federal government is outlined in the Constitution of Malaysia (Ninth Schedule).<sup>1</sup> The states of Sabah and Sarawak have, for historical reasons, some additional legislative powers compared to the other states located on Peninsular Malaysia. If there is inconsistency between state law and federal law, the federal law prevails.<sup>2</sup> The relevant acts and regulations examined herein and the areas of Malaysia to which they apply are summarized in Table 1 below. For the protection of wild animals, birds, and national parks, the federal government and the states have concurrent legislative authority.<sup>3</sup> Maritime and estuarine fishing and fisheries, excluding turtles, fall under federal jurisdiction (except in Sabah and Sarawak, where the states and federal government have concurrent legislative authority over maritime and estuarine fishing and fisheries),<sup>4</sup> while turtles, riverine fishing, forestry and land are regulated by the states.<sup>5</sup>
2. Wildlife trafficking, both domestic and international, is a problem in Malaysia. It is a lucrative criminal activity. The Malaysian authorities have been successful in seizing many illegally traded and possessed parts from Appendix I-listed species, including pangolins, elephants, rhinos, and testudines. The amounts and quantities of the seizures of wildlife products have been described as “enormous.”<sup>6</sup> For example, 30,000 kilograms of pangolins were seized in Sabah in February 2019.<sup>7</sup> Moreover, Malaysia is a nexus for international trade in illegal wildlife and is a transit country for wildlife smuggling.<sup>8</sup> Few high-level individuals connected with the crimes are arrested, allowing the illegal activity to continue.<sup>9</sup>
3. Malaysia is a source country for tigers, pangolins, bears, otters, slow lorises, tortoises and freshwater turtles, amongst other species; a consumer country for birds, bears, otters, slow lorises, tortoises and turtles, amongst others; and a transit country for rhino horn, ivory, African pangolins, birds, tortoises and freshwater turtles.<sup>10</sup> The domestic market for Appendix I-listed species in Malaysia is driven by demand for wildlife products for traditional medicine, pets and bushmeat.<sup>11</sup> For example, the sun bear (*Helarctos malayanus*), which is an Appendix I-listed species native to Malaysia, is poached and illegally domestically traded for its bile and gall bladder, which are used in traditional Chinese medicine.<sup>12</sup>

### Legislation

#### Federal authorities

4. *Laws of Malaysia, Act 716: Wildlife Conservation Act of 2010 (WCA)*<sup>13</sup>

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<sup>1</sup> Malaysia, *Federal Constitution, Part VI, ch. 1, art. 74 (as amended through 2010)*; *Ibid.*, *Ninth Schedule, List III (2010)*.

<sup>2</sup> *Ibid.*, *Part VI, ch. 1, art. 75*.

<sup>3</sup> *Ibid.*, *Ninth Schedule, List III*.

<sup>4</sup> *Ibid.*, *Ninth Schedule, List I*.

<sup>5</sup> *Ibid.*, *Ninth Schedule, List II*.

<sup>6</sup> *United Nations Office on Drugs and Crime, Criminal justice response to wildlife crime in Malaysia: A rapid assessment, October 2017, p. 5*.

<sup>7</sup> *Kanitha Krishnasamy and Monica Zavagli, Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020), p. 62*.

<sup>8</sup> *United Nations Office on Drugs and Crime, Criminal justice response to wildlife crime in Malaysia: A rapid assessment, October 2017, p. 8*.

<sup>9</sup> *Ibid.*, *p. 5*.

<sup>10</sup> *Kanitha Krishnasamy and Monica Zavagli, Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020), p. 62*.

<sup>11</sup> *United Nations Office on Drugs and Crime, Criminal justice response to wildlife crime in Malaysia: A rapid assessment, October 2017, p. 8*.

<sup>12</sup> *Lalita Gomez, An Update on the Bear Bile Trade in Peninsular Malaysia (Petaling Jaya, TRAFFIC, 2019), p. 1*.

<sup>13</sup> *Malaysia, Wildlife Conservation Act 2010, Act 716*. Available at <http://www.agc.gov.my/agcportal/uploads/files/Act%20716%20-%208%2010%202014.pdf>.

- a) The Act applies to Peninsular Malaysia and the Federal Territory of Labuan.<sup>14</sup>
  - b) The Act regulates, amongst other things, the hunting, keeping, importing, exporting, re-exporting and selling of wildlife. It divides protected species into *protected wildlife* (listed in schedule 1) and *totally protected wildlife* (listed in schedule 2).<sup>15</sup> Most Appendix I-listed animal species are covered by the Act, but it does not apply to plants.
5. *Wildlife Conservation (Commercial Captive Breeding) Regulations 2013*<sup>16</sup>
- a) The Regulations were adopted exercising the power conferred by the WCA and apply to Peninsular Malaysia and the Federal Territory of Labuan.
  - b) The Regulations regulate, amongst other actions, the sale of parent stock used for commercial breeding.
6. *Fisheries (Control of Endangered Species of Fish) Regulations 1999 (Fisheries Regulation)*<sup>17</sup>
- a) The Regulations were promulgated under the authority of the Fisheries Act 1985,<sup>18</sup> which applies to all Malaysian fisheries and riverine waters (although, provisions related to turtles and riverine fishing must be adopted by each state in order to be applicable there), including Peninsular Malaysia, Sabah and Sarawak, and the Federal Territory of Labuan.<sup>19</sup>
  - b) The Regulations address the treatment of endangered fish species, including several Appendix I-listed species, and prohibit the possession, sale, or purchase of specific species without the permission of the Director-General.<sup>20</sup>
7. *Laws of Malaysia, Act 686: International Trade in Endangered Species Act 2008 (INTESA)*<sup>21</sup>
- a) This Act applies to all regions of Malaysia.<sup>22</sup>
  - b) The Act implements CITES and regulates import and export of scheduled species and the possession and commercial exchange of imported scheduled species.
  - c) Should inconsistencies arise between INTESA and existing laws addressing “import and export, conservation of plants, forests and animals and trade in scheduled species,” INTESA prevails.<sup>23</sup>
8. *International Trade in Endangered Species (Permit, Certificate, Registration and Fees) Regulations 2009*<sup>24</sup>
- a) The Regulations provide procedural rules for applications, fees, documentation, and more, for permits required by INTESA.
9. *International Trade in Endangered Species (Rescue Centre) Regulations 2009*<sup>25</sup>

<sup>14</sup> *Ibid.*, sect. 2(1).

<sup>15</sup> *Ibid.*, sect. 3.

<sup>16</sup> Malaysia, *Wildlife Conservation (Commercial Captive Breeding) Regulations 2013*. Available at [http://www.federalgazette.agc.gov.my/output/pua\\_20130228\\_peraturan-peraturan%20pemuliharaan%20hidupan%20liar%20\(pembiakbakaan%20dalam%20kurungan%20komersial\)%202013.pdf](http://www.federalgazette.agc.gov.my/output/pua_20130228_peraturan-peraturan%20pemuliharaan%20hidupan%20liar%20(pembiakbakaan%20dalam%20kurungan%20komersial)%202013.pdf).

<sup>17</sup> Malaysia, *Fisheries (Control of Endangered Species of Fish) Regulations 1999*, PU(A) 409/1999. Available at <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC033459>.

<sup>18</sup> Malaysia, *Fisheries Act 1985* (No. 317 of 1985). Available at <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC001869>.

<sup>19</sup> *Ibid.*, sect. 1(1). Part IX, dealing with marine parks and reserves, does not apply to Sabah.

<sup>20</sup> Malaysia, *Fisheries (Control of Endangered Species of Fish) Regulations 1999*, PU(A) 409/1999, sect. 2(1).

<sup>21</sup> Malaysia, *International Trade in Endangered Species Act 2008*, Act 686. Available at <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20686.pdf>.

<sup>22</sup> *Ibid.*, First Schedule.

<sup>23</sup> *Ibid.*, sect. 2.

<sup>24</sup> Malaysia, *International Trade in Endangered Species (Permit, Certificate, Registration and Fees) Regulations 2009*. Available at <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC099055/>.

<sup>25</sup> Malaysia, *International Trade in Endangered Species (Rescue Centre) Regulations 2009*. Available at <http://www.fao.org/faolex/results/details/en/?details=LEX-FAOC099056>.

- a) The Regulations provide procedural rules for the care and handling of wildlife seized or forfeited under INTESA.
10. *Laws of Malaysia, Act 613, Anti-Money Laundering, Anti-Terrorism Financing, and Proceeds of Unlawful Activities Act 2001 (ALAMFTA)*<sup>26</sup>
- a) The Act, which is applicable to all regions of the country, allows for the prosecution of money laundering offences resulting from violations of the WCA (select provisions between sections 60–120) and INTESA (section 10–14), including offenses related to domestic trade.
11. *Laws of Malaysia, Act 588, Communications and Multimedia Act 1998*<sup>27</sup>
- a) The Act regulates communications and multimedia platforms including social media. Wildlife crime taking place online, e.g. through marketing online, is covered by the Act.

#### State authorities

##### Sabah

12. *State of Sabah, Wildlife Conservation Enactment 1997 (WCE)*<sup>28</sup>
- a) The Act applies to the State of Sabah.
  - b) The Act regulates, amongst other things, the hunting, keeping, and trading of protected wildlife. The Act distinguishes between *totally protected species* (listed in Schedule 1) and *protected species* (listed in Schedule 2).<sup>29</sup> The Act regulates all Appendix I-listed species.

##### Sarawak

13. *Laws of Sarawak, Wild Life Protection Ordinance 1998 (WLPO)*<sup>30</sup>
- a) The Act applies to the State of Sarawak.
  - b) The Act regulates, amongst other actions, the hunting, keeping, importing, exporting, re-exporting and selling of protected wildlife. The Act distinguishes between *totally protected animals* (listed in Schedule 1 Part I), *totally protected plants* (listed in Schedule 2 Part I), *protected animals* (listed in Schedule 1 Part II) and *protected plants* (listed in Schedule 2 Part II). The Act regulates all Appendix I-listed species.
14. *Wild Life Protection Rules 1998*<sup>31</sup>
- a) The Rules were adopted exercising the power conferred by the WLPO.
  - b) The Rules provide more detailed provisions related to some of the areas regulated by the WLPO.

<sup>26</sup> Malaysia, Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, Act 613. Available at <http://www.agc.gov.my/agcportal/uploads/files/ACT%20613%20diluluskan%20TPPUJ%20Dis%202015.pdf>.

<sup>27</sup> Malaysia, Communications and Multimedia Act 1998, Act 588. Available at <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20588.pdf>.

<sup>28</sup> Sabah, Wildlife Conservation Enactment 1997, Sabah No. 6 of 1997. Available at <https://sagc.sabah.gov.my/sites/default/files/law/WildlifeConservationEnactment1997.pdf>.

<sup>29</sup> *Ibid.*, sect. 2.

<sup>30</sup> Sarawak, Wild Life Protection Ordinance 1998. Available at [https://forestry.sarawak.gov.my/upload/file\\_folder/Policy%20and%20Legislation/WILD%20LIFE%20PROTECTION%20ORDINANCE%201998\\_CAP.%2026.pdf](https://forestry.sarawak.gov.my/upload/file_folder/Policy%20and%20Legislation/WILD%20LIFE%20PROTECTION%20ORDINANCE%201998_CAP.%2026.pdf).

<sup>31</sup> Sarawak, Wild Life Protection Rules 1998. Available at [https://www.sarawakforestry.com/pdf/laws/wildLife\\_protection\\_rules\\_1998.pdf](https://www.sarawakforestry.com/pdf/laws/wildLife_protection_rules_1998.pdf).

Table 1. Laws of Malaysia Regulating Domestic Wildlife Trade and their Regional Scope of Application

	Peninsular Malaysia	Federal Territory of Labuan	State of Sabah	State of Sarawak
Wildlife Conservation Act (WCA)	X	X		
Wildlife Conservation (Captive Breeding) Regulations	X	X		
Fisheries Regulations	X	X	X (except Part IX)	X
International Trade in Endangered Species Act (INTESA)	X	X	X	X
International Trade in Endangered Species (Permit, Certificate, Registration and Fees) Regulations	X	X	X	X
International Trade in Endangered Species (Rescue Centre) Regulations	X	X	X	X
Anti-Money Laundering, Anti-Terrorism Financing, and Proceeds of Unlawful Activities Act (ALAMFTA)	X	X	X	X
Communications and Multimedia Act	X	X	X	X
Wildlife Conservation Enactment (WCE)			X	
Wild Life Protection Ordinance (WLPO)				X
Wild Life Protection Rules				X

## Analysis

### Legal status of the domestic market

#### Generally

15. Some domestic trade in Appendix I-listed species is legal in Malaysia. In Peninsular Malaysia, some states allow trade in turtle eggs, including from Appendix I-listed turtle species, which are purchased for consumption.<sup>32</sup> In addition, trade in Appendix I-listed species bred in captivity for commercial purposes is allowed in Peninsular Malaysia and the States of Sabah and Sarawak with permission or a license.<sup>33</sup> As of January 2020, there were 61 facilities breeding Appendix I-listed species in Malaysia registered with CITES.<sup>34</sup>
16. In the following, legal controls addressing domestic trade in Appendix I-listed species are presented, focusing on rules allowing for legal domestic trade in such species. However, no information about whether these limited possibilities to conduct legal trade in Appendix I-listed species are actually used in practice could be identified.

#### Nationally

17. INTESA allows captive breeding and artificial propagation of scheduled species for commercial purposes so long as facilities are registered with the Management Authority and adhere to any conditions imposed on their registration by the Management Authority.<sup>35</sup> Possessing, advertising or offering for sale, or selling scheduled species is prohibited when species are illegally imported or introduced from the sea, but these actions are not expressly prohibited for those species that are legally imported or introduced.<sup>36</sup>
18. The Fisheries Regulations provide that selling, buying or possessing endangered species listed<sup>37</sup> in the regulations (including several Appendix I-listed species) anywhere in Malaysia is prohibited. It is, however, possible to be granted a written permit to undertake these activities for non-commercial purposes, such as education and scientific research, by the Director-General.<sup>38</sup> and therefore it is possible that a controlled legal market for domestic trade in these species exists. It could not be identified if or how many such permits have been granted. Further, there may be additional state-specific restrictions on trade in some fish. For example, the WCA covers additional specific fish in Peninsular Malaysia, while the WCE and WLPO in Sabah and Sarawak, respectively, apply to all CITES-listed fish species.

### Peninsular Malaysia and Labuan

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<sup>32</sup> Lalita Gomez and Kanitha Krishnasamy, *A Rapid Assessment on the Trade in Marine Turtles in Indonesia, Malaysia and Viet Nam (Petaling Jaya, TRAFFIC, 2019)*, p. 15. Each state in Peninsular Malaysia, with the exception of Perlis and Selangor, has legislation specifically addressing marine turtles. Most of these states, with the exception of Perak or Melaka, allow trade in all marine turtle eggs. Terengganu and Pahang prohibit trade in Leatherback turtle eggs, but allow trade in eggs from other species. *Ibid.*

<sup>33</sup> Commercial captive breeding with App. I-listed species is also allowed under INTESA if registered at the responsible authority in Peninsular Malaysia, Sabah or Sarawak. Malaysia, *International Trade in Endangered Species Act 2008, Act 686*, sects. 14, 16.

<sup>34</sup> *Convention on International Trade in Endangered Species of Wild Fauna and Flora, "Malaysia", CITES registers. Available at <https://www.cites.org/eng/common/reg/cb/MY>.*

<sup>35</sup> Malaysia, *International Trade in Endangered Species Act 2008, Act 686*, sects. 14–16.

<sup>36</sup> *Ibid.*, sects. 10–12.

<sup>37</sup> The following species are listed in the Fisheries Regulations: *Dugong dugon*, *Balaenoptera edeni*, *Balaenoptera borealis*, *Balaenoptera musculus*, *Balaenoptera physalus*, *Balaenoptera acutorostrata*, *Megaptera novaeangliae*, *Orcaella brevirostris*, *Sousa chinensis*, *Orcinus orca*, *Tursiops truncatus*, *Lagenodelphis hosei*, *Stenella longirostris*, *Globicephala macrorhynchus*, *Grampus griseus*, *Kogia breviceps*, *Neophocaena phocaenoides*, *Delphinus delphis*, *Pseudorca crassidens*, *Physeter catodon*, *Rhinocodon typus* Smith, *Tridacna gigas*, *Tridacna squamosa*, *Tridacna maxima*, *Tridacna crocea*. Malaysia, *Fisheries (Control of Endangered Species of Fish) Regulations 1999, PU(A) 409/1999*.

<sup>38</sup> Malaysia, *Fisheries (Control of Endangered Species of Fish) Regulations 1999, PU(A) 409/1999*, sect. 2(1)–(2).

19. The WCA lists many<sup>39</sup> native and non-native Appendix I-listed animal species as *totally protected wildlife* or *protected wildlife*.<sup>40</sup> Plant species are not regulated under the WCA. They are, however, covered by INTESA which regulates the possession and domestic trade of imported wildlife (both plants and animals).<sup>41</sup> As a main rule under the WCA, there is no legal domestic market for trade in totally protected wildlife and it is an offence to sell anything containing any derivative of totally protected wildlife.<sup>42</sup> There is, however, a very narrow possibility to, under special circumstances, legally buy totally protected wildlife from the Director,<sup>43</sup> if he finds it appropriate. For the exception to apply, the wildlife must have been taken care of by the Director after being hunted in contravention of the WCA, lawfully killed (with permission) to protect agriculture or humans, or found dead.<sup>44</sup> The money from such a transaction shall be placed in a Consolidated Fund of the State.<sup>45</sup> In practice, however, this option is never pursued.
20. Another exception to the WCA's prohibition on selling totally protected wildlife or parts or derivatives thereof exists for animals born in captivity. Keeping or using totally protected wildlife for commercial captive breeding requires a special permit.<sup>46</sup> Offspring of totally protected wildlife bred in captivity for commercial reasons are regarded as *protected wildlife*. Hence, the rules for protected wildlife apply to such animals (including Appendix I-listed species).<sup>47</sup>
21. Protected wildlife included in schedule 1 generally cannot be traded. It is, however, possible to apply for a license to conduct trade in protected wildlife (to become a licensed hunter, seller, dealer, or taxidermist).<sup>48</sup> Licensed hunters may only sell protected wildlife to purchasers with licenses.<sup>49</sup> Licensed dealers may only sell protected wildlife (or totally protected wildlife born in captivity) as specified in their license, and a separate license is required for each activity of dealing (i.e., if a licensee owns both a pet shop and a traditional medicine shop, separate licenses would be required for each enterprise). The dealer must keep a record of the number and species of all wildlife or parts or articles manufactured thereof that are sold or purchased. The dealer must also keep a record of the personal details of the persons with whom they trade.<sup>50</sup> A person without a license may only purchase protected wildlife from a licensed dealer, licensed taxidermist, or a Director.<sup>51</sup>
22. In conclusion, domestic trade in Appendix I-listed species is legal under the WCA in some circumstances in Peninsular Malaysia, but the market is controlled by the authorities through licenses, permits and record-keeping.

### Sabah

23. The WCE explicitly refers to Appendix I of CITES. All Appendix I-listed species are regarded as *protected species* under the WCE.<sup>52</sup> A few<sup>53</sup> Appendix I-listed species are also listed separately in

<sup>39</sup> Most of the main groups of App. I-listed animal species are listed in Schedule 2 of the WCA. However, the following groups could not be identified in the WCA: fur seals, seals, *Polymita* (terrestrial snails), manatees, sea turtles, leatherback turtles, Andean water frogs, sawfishes, sturgeons, freshwater mussels, *Pangasiidae* (shark catfish), and *Latimeriidae* (coelacanth). Malaysia, Wildlife Conservation Act 2010, Act 716. Some species—for example, some whales and dolphins—are protected by the Fisheries Regulation instead. Malaysia, Fisheries (Control of Endangered Species of Fish) Regulations 1999, PU(A) 409/1999. However, some dolphin and whale species are neither covered by the WCA nor by the Fisheries Regulation.

<sup>40</sup> Malaysia, Wildlife Conservation Act 2010, Act 716, Schedule 2.

<sup>41</sup> Malaysia, International Trade in Endangered Species Act 2008, Act 686., sects. 3, 10, 11, and 12.

<sup>42</sup> Malaysia, Wildlife Conservation Act 2010, Act 716, sect. 87.

<sup>43</sup> 'Director' refers to the Director for Wildlife and National Parks. *Ibid.*, sect. 3.

<sup>44</sup> *Ibid.*, sect. 121(1).

<sup>45</sup> *Ibid.*, sect. 121(2).

<sup>46</sup> *Ibid.*, sects. 11 and 72.

<sup>47</sup> *Ibid.*, sect. 30.

<sup>48</sup> *Ibid.*, sects. 11, 35, 40, 42, and 43.

<sup>49</sup> *Ibid.*, sect. 40.

<sup>50</sup> *Ibid.*, sect. 37.

<sup>51</sup> *Ibid.*, sect. 120.

<sup>52</sup> Sabah, Wildlife Conservation Enactment 1997, Sabah No. 6 of 1997, sect. 2.

<sup>53</sup> The totally protected species are: *Dicerorhinus sumatrensis*, *Pongo pygmaeus*, *Helarctos malayanus*, *Dugong dugon*, *Nasalis larvatus*, *Neofelis diardi*, *Tomistoma schlegeli*, *Chelonia mydas*, *Eretmochelys imbricate*, *Bosjaranicus*, *Elephas maximus borneensis*, *Lepidochelys olivacea* and *Manis javanica*. These species are all native to Malaysia except for the *Dicerorhinus sumatrensis* (*Sumatra Rhinoceros*) which has been extinct in Malaysia since 2019. Sabah, Wildlife Conservation Enactment 1997, Sabah No. 6 of 1997.

Schedule 1 as *totally protected* species. Totally protected species are covered by the same rules that apply to *protected* species unless they are explicitly regulated separately.<sup>54</sup>

24. Selling protected animals is generally prohibited in the State of Sabah. Selling protected animals (including all Appendix I-listed species) or animal products is allowed, however, if the seller has a certificate of legal ownership for the animal or product, is authorized by an animal dealer's permit to do so, or has an animal farming permit.<sup>55</sup> It is legal to purchase protected animals or animal products from a person that is permitted to sell protected animals for the above mentioned reasons or from the Government.<sup>56</sup> Dealer's permits are granted by the Director.<sup>57</sup> Farming permits for commercial breeding or keeping protected animals for sale are also granted by the Director.<sup>58</sup> Furthermore, the WCE empowers the Minister<sup>59</sup> to publish orders that prohibit the sale or any other form of transfer of protected animals,<sup>60</sup> but this power has never been exercised.
25. The same rules apply to Appendix I-listed species classified as totally protected species; however, legal possession of such specimens requires a written authorization,<sup>61</sup> which hence is a precondition for all forms of trade in such species. In practice, this authorization has never been granted.
26. Protected plants (including all Appendix I-listed plant species) can be sold if the seller is authorized by a plant dealer's permit, a plant cultivation permit, a commercial plant collection license (so long as the purchaser has a plant dealer or cultivation permit), or a temporary sale or transfer permit to do so, or if the plant is sold to the Government.<sup>62</sup> The Director may, if he considers it appropriate, grant any person a temporary sale or transfer permit or a dealer's permit.<sup>63</sup> Protected plants may similarly be purchased from anyone holding the above mentioned permits, or from the Government.<sup>64</sup>
27. In conclusion, there is a limited legal domestic market for trade in Appendix I-listed species in the State of Sabah. However, permits are needed for all trade. It could not be identified if and how many permits for trade in Appendix I-listed have been granted.

#### Sarawak

28. The Wild Life Protection Ordinance (WLPO) explicitly refers to Appendix I of CITES. All Appendix I-listed species are regarded as *protected species* under the WLPO,<sup>65</sup> except for Appendix I-listed species that are already listed as *totally protected* species.<sup>66</sup>
29. It is generally prohibited to sell, offer for sale or claim to be offering for sale, or possess protected or totally protected animals or recognizable parts or derivative thereof.<sup>67</sup> The sale or possession of protected animals requires a valid license issued by the Controller.<sup>68</sup> Meanwhile, for totally protected animals, hunting, capturing, selling, or possessing specimens is only allowed with written permission from the Controller, and only for scientific, educational, or species conservation purposes.<sup>69</sup> Trade in any other wild mammal, bird, reptile, or amphibian taken from the wild is banned.<sup>70</sup>

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<sup>54</sup> Sabah, *Wildlife Conservation Enactment 1997*, Sabah No. 6 of 1997, sect. 2 (definition of 'protected animal' and 'protected plant,' which refer to both Schedule 1 and 2 of WCE as well as App. I and II of CITES).

<sup>55</sup> *Ibid.*, sect. 48(1).

<sup>56</sup> *Ibid.*, sect. 48(2).

<sup>57</sup> 'Director' refers to the director of wildlife (*Ibid.*, sect. 2); *Ibid.*, sect. 51.

<sup>58</sup> *Ibid.*, sect. 78(1).

<sup>59</sup> 'Minister' refers to the Minister that for the time being is responsible for wildlife. *Ibid.*, sect. 2.

<sup>60</sup> *Ibid.*, sect. 49.

<sup>61</sup> *Ibid.*, sect. 41.

<sup>62</sup> *Ibid.*, sect. 60(1).

<sup>63</sup> *Ibid.*, sects. 60(3) and 61(1).

<sup>64</sup> *Ibid.*, sects. 60(2).

<sup>65</sup> Sarawak, *Wild Life Protection Ordinance 1998*, First Schedule, letter F.

<sup>66</sup> Twenty-one mammal species (including *Nycticebus coucang* (slow loris), *Pongo pygmaeus* (orang utan), *Neofelis nebulosa* (clouded leopard)), 26 bird species, 5 reptile species (including all species of marine turtles) and 2 plant species. Sarawak, *Wild Life Protection Ordinance 1998*, First Schedule.

<sup>67</sup> *Ibid.*, sect. 29.

<sup>68</sup> *Ibid.*, sects. 29(2), 33. Controller' refers to the Controller of Wild Life and includes a Deputy Controller (WLPO, section 2).

<sup>69</sup> Sarawak, *Wild Life Protection Ordinance 1998*, sect. 29(1).

<sup>70</sup> *Ibid.*, sects. 33–34.



30. A narrow possibility for domestic trade in Appendix I-listed animals under the WLPO still exists, however. The Controller of Wild Life or Chief Wild Life Officer may direct that wild animals (wild animal refers to any species of an animal occurring in the wild in Sarawak or anywhere else in the world, including but not limited to species listed as protected or totally protected)<sup>71</sup> or parts thereof that are killed or captured in contravention of the WLPO, or whose unclaimed carcasses are found in Sarawak, be sold or otherwise disposed of (though such specimens have never been sold).<sup>72</sup>
31. Plants are regulated similarly to animals. Protected plants and parts thereof may be sold, offered for sale, or possessed with a license.<sup>73</sup> Totally protected plants and parts thereof may be sold, offered for sale, or possessed with written permission from the Controller for scientific, educational or protection and conservation purposes.<sup>74</sup> According to the Wildlife Protection Rules, no licenses shall be issued by the Controller for growing or cultivating totally protected plants in wildlife farms.<sup>75</sup>
32. In conclusion, there is effectively no legal domestic market for trade in Appendix I-listed animal species in Sarawak since the responsible parties do not currently exercise their authority to grant licenses, and because permission for trade in totally protected species is only granted for non-commercial purposes.<sup>76</sup> However, there are certain provisions in Sarawak's law that allow for the sale and possession of Appendix I-listed species in specific instances when permission or licenses are granted. Domestic sale and possession of Appendix I-listed plant species is also allowed if permission or a license is granted. It could not be determined, however, if or how many such licenses have been issued.

## Regulation of trade

### Totally protected and protected species

33. The wildlife protection laws in all three parts of Malaysia (the WCA in the Peninsular Malaysia region, the WCE in the state of Sabah, and the WLPO in the state of Sarawak) contain lists of protected species. INTESA and the Fisheries Regulations, which apply throughout Malaysia, also contain lists. INTESA's Third Schedule contains three appendices which generally correspond to the CITES appendices, although they do not expressly reference the CITES appendices by name.<sup>77</sup> The Minister of Natural Resources and Environment may, however, after consulting with the Management Authority,<sup>78</sup> amend this Schedule.<sup>79</sup> The Fisheries Regulations protect the species scheduled in the regulations, some of which are Appendix I-listed species.<sup>80</sup> The laws referenced here differentiate among the species included in the various lists but are not otherwise species specific (i.e., the same controls apply to all species within a particular list).
34. The WCA of Peninsular Malaysia does not refer to the appendices of CITES, but lists each species for which its protections apply. This list does not cover all Appendix I-listed animal species, and does not contain any plant species.<sup>81</sup> The government is currently in the process of amending the WCA and its subsidiary legislation to include all CITES-listed species.
35. In the States of Sabah and Sarawak, the WCE and WLPO apply to all protected species, which are defined to include all CITES Appendix I-listed species, including amendments. The laws also list some Appendix I-listed species separately as totally protected species, which receive, in some aspects, stronger protections than other Appendix I-listed species.

<sup>71</sup> *Ibid.*, sect. 2.

<sup>72</sup> *Ibid.*, sect. 42C.

<sup>73</sup> *Ibid.*, sect. 30(2).

<sup>74</sup> *Ibid.*, sect. 30(1).

<sup>75</sup> *Sarawak, Wild Life Protection Rules 1998, sects. 14 and 21.*

<sup>76</sup> *Ibid.*, sect. 29.

<sup>77</sup> *Malaysia, International Trade in Endangered Species Act 2008, Act 686, Third Schedule.*

<sup>78</sup> 'Management Authority' refers to the authorities specified in the First Schedule of INTESA. There are different authorities in different regions of Malaysia with responsibility for different kinds of wildlife for example marine wildlife, timber, animals and plants. *Ibid.*, sect. 3 and First Schedule.

<sup>79</sup> *Ibid.*, sect. 53.

<sup>80</sup> *Malaysia, Fisheries (Control of Endangered Species of Fish) Regulations 1999, PU(A) 409/1999, sect. 2(1) and Schedule.*

<sup>81</sup> *Malaysia, Wildlife Conservation Act 2010, Act 716, Schedule 2.*

## Controls and penalties

### Nationally

36. Since Malaysia has certain laws that govern the entire country, while others only apply in certain states, violators may face different penalties for similar violations depending on where the violations occur. INTESA regulates the import, export and re-export of species scheduled in the Act,<sup>82</sup> and therefore has a narrower scope than the above-mentioned acts in relation to domestic trade. Under INTESA, nevertheless, it is an offence to sell or offer, or expose or advertise for sale any scheduled species that has been illegally imported or introduced from the sea to Malaysia.<sup>83</sup> It is also an offence under INTESA to sell or offer for sale any scheduled animal or plant that has been bred in captivity or artificially propagated for commercial trade without being registered with a Management Authority.<sup>84</sup>
37. The penalties for domestic trade offences under INTESA differ for individuals and bodies corporate. Individuals may be required to pay fines of up to one million ringgit (approximately US\$235,000 as of August 2020), or may be imprisoned for up to seven years, or both. Bodies corporate can be fined up to 200,000 ringgit per item, up to two million ringgit.<sup>85</sup>
38. Under the Fisheries Regulations, domestic trade in fish species listed in the schedules of the Fisheries Regulations is banned unless prior permission has been granted, and counteracting these rules is an offence.<sup>86</sup> Under the Fisheries Act Amendment of 2019, the penalty for violating this prohibit is a fine of up to 6 million ringgit for noncitizens and 20,000 ringgit for Malaysian citizens, imprisonment for up to two years, or both.<sup>87</sup> The Fisheries Act, under which the regulations were promulgated, allows for fines of up to 20,000 ringgit, imprisonment for up to two years, or both, for violations.<sup>88</sup>
39. Additionally, under INTESA, the Management Authority may order “such rewards as it thinks fit to be paid” to individuals who assist in the detection of offences, or in seizures of specimens, under INTESA.<sup>89</sup>

### Peninsular Malaysia

40. In general, trade in most Appendix I-listed animal species is banned under the WCA.<sup>90</sup> The penalty for carrying out a business of dealing without a license is a fine of up to 50,000 ringgit, imprisonment for up to two years, or both.<sup>91</sup> Carrying out a business of dealing refers to the following activities: selling; selling or purchasing for resale any protected wildlife or part or derivate thereof for food or medicinal purposes or housing; or confining or breeding wildlife for sale.<sup>92</sup> A person who sells anything containing any derivative of totally protected wildlife may be held liable for a maximum fine of 20,000 ringgit, face a maximum of one year in prison, or both.<sup>93</sup>
41. Trade in Appendix I-listed plant species is not regulated under the WCA. However, INTESA's provisions covers plants and international trade throughout Malaysia, so domestic trade in imported Appendix I-listed plant species in Peninsular Malaysia is regulated under INTESA. As such, the penalties described in subpart B above would be applicable in Peninsular Malaysia as well, including for violations involving protected plants.

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<sup>82</sup> Malaysia, *International Trade in Endangered Species Act 2008*, Act 686, sects. 10-11.

<sup>83</sup> *Ibid.*, sect. 12(b).

<sup>84</sup> *Ibid.*, sect. 14(2).

<sup>85</sup> *Ibid.*, sects. 12(aa)-(bb), 14(aa)-(bb).

<sup>86</sup> Malaysia, *Fisheries (Control of Endangered Species of Fish) Regulations 1999*, PU(A) 409/1999, sect. 3.

<sup>87</sup> Malaysia, *Fisheries Act (Amendment) 2019*.

<sup>88</sup> Malaysia, *Fisheries Act 1985 (No. 317 of 1985)*, sect. 25.

<sup>89</sup> Malaysia, *International Trade in Endangered Species Act 2008*, Act 686, sect. 51.

<sup>90</sup> Compare paragraph 2(a)(i)(C) above.

<sup>91</sup> Malaysia, *Wildlife Conservation Act 2010*, Act 716, sect. 63.

<sup>92</sup> *Ibid.*, sect. 3.

<sup>93</sup> *Ibid.*, sect. 87.

42. Under the WCA, the Director General for Wildlife and National Parks may order “such rewards as he thinks fit to be paid” to individuals who assist in the detection of offences under the WCA or its “subsidiary legislation” or who provide services in connection with seizures made under the WCA.<sup>94</sup>

#### Sabah

43. Under the WCE, it is an offence to sell or purchase protected animal species (including all Appendix I-listed species) without a valid permit or certificate of legal ownership in the State of Sabah. The penalty for doing so is a fine of between 5,000 and 50,000 ringgit, up to three years in prison, or both.<sup>95</sup>
44. Similar penalties may be imposed on those that sell or purchase protected plant species without permission. Violating the plant provisions can result in a fine of up to 50,000 ringgit, up to three years in prison, or both.<sup>96</sup>
45. Under the WCE, the Director of Wildlife may order “such reward as he may deem fit to be paid to any informer for services rendered in connection with any offence or seizure” made under the WCE.<sup>97</sup> Courts overseeing actions must also take steps to protect informers’ identities.<sup>98</sup>

#### Sarawak

46. Under the WLPO, possessing, offering for sale, or selling a totally protected animal (including any Appendix I-listed species) is an offence with a penalty of imprisonment for two years and a fine of 25,000 ringgit. Individuals caught trading or offering to trade rhinoceros, orangutan, or proboscis monkeys may incur higher penalties, depending on the species, including up to five years in prison and a fine of 50,000 ringgit.<sup>99</sup> Violations involving protected animals may result in fines of 10,000 ringgit and imprisonment for one year.<sup>100</sup>
47. The WLPO also prohibits the possession, offering for sale, or sale of totally protected and protected species of plants.<sup>101</sup> Violations involving totally protected plants may result in fines of 20,000 ringgit and imprisonment for two years, while violations involving protected species of plants may result in fines of 10,000 ringgit and imprisonment for one year.<sup>102</sup> These penalties may be doubled if the offense is committed between sunset and sunrise, or by a repeat offender.<sup>103</sup>
48. Under the WLPO, courts overseeing actions may award a sum or sums “not exceeding one-half the total fine collected” to “any informer or informers” (not including government wildlife officers).<sup>104</sup> The WLPO also provides that witnesses shall not be required or permitted to disclose the identities of informers or otherwise lead to their discovery.<sup>105</sup>

#### Money laundering offenses

49. Under the Anti-Money Laundering Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (ALAMFTA), proceeds from illegal trade in species protected under INTESA or WCA is regarded as money from criminal activity under ALAMFTA and moving such illegal money into the financial system is thus a money laundering offence. The penalty for such an offence is imprisonment for a maximum of 15 years and a fine in the amount of five times the value of any illegal proceeds or five

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<sup>94</sup> *Ibid.*, sect. 131.

<sup>95</sup> *Sabah, Wildlife Conservation Enactment 1997, Sabah No. 6 of 1997, sect. 48(3).*

<sup>96</sup> *Ibid.*, sect. 60.

<sup>97</sup> *Ibid.*, sect. 97(3).

<sup>98</sup> *Ibid.*, sects. 97(1)–(2).

<sup>99</sup> *Sarawak, Wild Life Protection Ordinance 1998, sect. 29(1).*

<sup>100</sup> *Ibid.*, sect. 29(2).

<sup>101</sup> *Ibid.*, sect. 30.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*, sect. 51.

<sup>104</sup> *Ibid.*, sect. 54.

<sup>105</sup> *Ibid.*, sect. 53.

million ringgit, whichever is greater.<sup>106</sup> The penalties for money laundering crimes committed in connection with wildlife crimes are hence often higher than the penalties for the actual wildlife crime.

#### With regard to native and non-native species

50. The species listed as protected and totally protected in the different conservation acts include species that are both native and non-native to Malaysia.

#### With regard to different types of trade

51. Different types of trade, such as business to business and business to consumer, are regulated in the same way.

#### With regard to online trade

52. Communications and multimedia platforms, including social media, are regulated under the Communications and Multimedia Act of 1998. Investigations under the Act may be initiated for any violation against the Act, which applies to online trade throughout the entire country, or its subsidiary legislation.<sup>107</sup> No subsidiary legislation to the Communications and Multimedia Act regulating illegal online marketing of protected wildlife could be identified, but such rules could be developed in the future.
53. In Peninsular Malaysia, offering protected wildlife for sale online is not specifically regulated under the WCA. As of August 2019, efforts were underway to amend the WCA to, among other things, address online trade in endangered species and advertising thereof, but it is unclear whether and when the amendments will be finalized.<sup>108</sup> According to TRAFFIC, the Department of Wildlife and National Parks of Peninsular Malaysia started a “Cybercrime Unit,” which joined forces with the Malaysian Communications and Multimedia Commission to monitor illegal online trade.<sup>109</sup>
54. In Sabah and Sarawak, online trade in endangered species is not specifically regulated by the WCE or WLPO. However, both the WCE and WLPO prohibit the “offering for sale” of protected animals, which can be interpreted to apply to online advertisement.<sup>110</sup> Though the WLPO has to date never been used to prosecute online domestic trade, its prohibition on the “offering for sale” of protected species can be applied to online trade.<sup>111</sup> While there is currently no provision in the WCE that addresses illegal online trade or advertising, efforts are underway to amend the definitions of “sell” and “offer for sale” under the WCE to cover online trade, including on social media platforms.

#### Seizure of specimens

##### Nationally

55. Under INTESA, illegally possessed or traded specimens of scheduled species may be seized by enforcement officers.<sup>112</sup> Also, specimens of scheduled species that an authorized officer reasonably

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<sup>106</sup> Malaysia, *Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001*, Act 613, sect. 4 and Second Schedule.

<sup>107</sup> Malaysia, *Communications and Multimedia Act 1998*, Act 588, sect. 68; Kanitha Krishnasamy and Sarah Stoner, *Trading Faces: A Rapid Assessment on the use of Facebook to Trade Wildlife in Peninsular Malaysia* (Petaling Jaya, TRAFFIC, 2016), p. 6.

<sup>108</sup> United Nations Office on Drugs and Crime, *Criminal justice response to wildlife crime in Malaysia: A rapid assessment, October 2017*, p. 25; Clarissa Chung, “All out to protect the exotic animals”, *The Star*, 9 June 2019; John C. Cannon, “Social media enables the illegal wildlife pet trade in Malaysia”, *Mongabay*, 9 May 2019; Teoh Pei Ying, “Govt decision to amend Wildlife Conservation Act lauded”, *New Straits Times*, 19 May 2019.

<sup>109</sup> Kanitha Krishnasamy and Sarah Stoner, *Trading Faces: A Rapid Assessment on the use of Facebook to Trade Wildlife in Peninsular Malaysia* (Petaling Jaya, TRAFFIC, 2016), p. v.

<sup>110</sup> Sarawak, *Wild Life Protection Ordinance 1998*, sect., 30; Sabah, *Wildlife Conservation Enactment 1997*, Sabah No. 6 of 1997, sects. 2 and 48.

<sup>111</sup> Sarawak, *Wild Life Protection Ordinance 1998*, sect., 30.

<sup>112</sup> Malaysia, *International Trade in Endangered Species Act 2008*, Act 686, sect. 24. *Ibid.*, sect. 23 (for the conditions for seizure with a warrant).

suspects have been used or will be used in the commission of an offence under the Act may be seized and detained by the enforcement officer.<sup>113</sup>

56. Seized specimens of scheduled species shall be liable to forfeiture upon conviction.<sup>114</sup> Once forfeited, the specimen of scheduled species becomes the property of the relevant Management Authority<sup>115</sup> and shall be disposed of in such a manner as the Management Authority thinks fit.<sup>116</sup> The specimen(s) may also be subject to repatriation or, if the Management Authority thinks fit, be released to the person from whose possession, custody or control they were seized.<sup>117</sup> Seized specimens are also returned to the person from whose possession, custody or control they were seized if it cannot be proven that the specimen was “the subject-matter of or was used in the commission of” an offence.<sup>118</sup> Seized animals may also be placed in rescue centers established by the Management Authority.<sup>119</sup>
57. While the Fisheries Regulations themselves do not address seizure, the Fisheries Act authorizes enforcement officials to seize fish caught in violation of the Act.<sup>120</sup>

### Peninsular Malaysia

58. Any wildlife or part or derivative thereof that reasonably is believed to furnish evidence of the commission of an offence under the WCA may be seized, with or without a warrant depending on the circumstances.<sup>121</sup> A list of any seized wildlife or parts or derivatives thereof shall be prepared by the enforcement officer making the seizure.<sup>122</sup> The Magistrate then decides if the wildlife should be released to the owner, or how it or any parts or derivatives of it should be disposed of.<sup>123</sup> Wildlife or parts or derivatives thereof that are seized are liable to forfeiture upon decision by a court and become the property of the Government.<sup>124</sup>

### Sabah

59. An authorized officer may seize any animal, animal product (including meat), or plant that he or she believes is held in violation of the WCE.<sup>125</sup> Seized, dead animals and plants or perishable parts thereof may be sold or discarded with Director approval. If a live animal is seized, it is at the discretion of the seizing officer to determine whether it will be released or destroyed to prevent undue suffering.<sup>126</sup> However, seized totally protected, perishable, live animals, meat or plants may not be disposed of in such a way that they become objects of trade.<sup>127</sup> For seized non-perishable products, the Court decides if they should be forfeited and, if necessary, how they should be disposed of. They may however not be disposed of so that they become objects of trade.<sup>128</sup>

### Sarawak

60. It is an offence under the WLPO to import a totally protected animal or plant without permission, or a protected animal or plant without a license.<sup>129</sup> If there is reason to believe that totally protected or protected specimens or parts thereof have been improperly imported in violation of the Ordinance,

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<sup>113</sup> *Ibid.*, sect. 27.

<sup>114</sup> *Ibid.*, sect. 34(1-3)

<sup>115</sup> *The relevant Management Authority is determined by the region of Malaysia in which the seizure takes place and the type of species that is seized. Ibid.*, First Schedule.

<sup>116</sup> *Ibid.*, sects. 35 and 34(8).

<sup>117</sup> *Ibid.*, sects. 34(8) and 36.

<sup>118</sup> *Ibid.*, sect. 34(7).

<sup>119</sup> *Malaysia, International Trade in Endangered Species (Rescue Centre) Regulations 2009*, sect. 4.

<sup>120</sup> *Malaysia, Fisheries Act 1985 (No. 317 of 1985)*, sect. 47.

<sup>121</sup> *Malaysia, Wildlife Conservation Act 2010, Act 716*, sects. 89, 94, 95, and 101.

<sup>122</sup> *Ibid.*, sect. 103.

<sup>123</sup> *Ibid.*, sect. 105.

<sup>124</sup> *Ibid.*, sects. 110 and 111.

<sup>125</sup> *Sabah, Wildlife Conservation Enactment 1997, Sabah No. 6 of 1997*, sect. 89(1).

<sup>126</sup> *Ibid.*, sect. 92(3).

<sup>127</sup> *Ibid.*, sect. 92(4).

<sup>128</sup> *Ibid.*, sect. 93.

<sup>129</sup> *Sarawak, Wild Life Protection Ordinance 1998*, sects. 29-30.

any animal, plant or recognizable part or derivative may be seized by a wild life officer, police officer, or customs officer.<sup>130</sup> The court then decides how the seized property should be disposed of.<sup>131</sup>

#### Registration of commercial breeding facilities:

##### Nationally

61. There are 61 captive breeding facilities in Malaysia included in the CITES Register. Of these facilities, one breeds Nicobar pigeon (*Caloenas nicobarica*) and 60 breed Asian arowana (*Scleropages formosus*).<sup>132</sup> Under INTESA, it is an offence to breed animals or propagate plants from scheduled species for commercial trade or to sell such specimens without prior registration with a Management Authority.<sup>133</sup> A permit to conduct commercial captive breeding or propagating of plants granted by a Management Authority may be restricted.<sup>134</sup> Registered facilities with a breeding or propagating permit must keep a record of their stock and transactions.<sup>135</sup> Violations of these terms by individuals may result in fines of up to 100,000 ringgit per specimen or product (up to one million ringgit total), imprisonment for up to seven years, or both.<sup>136</sup> If the violator is a corporation, it will face a fine of up to 200,000 ringgit per specimen or product, up to two million ringgit in total.<sup>137</sup>

##### Peninsular Malaysia

62. Commercial captive breeding requires a permit under the WCA.<sup>138</sup> Commercial captive breeding of *totally protected wildlife* requires a *special permit* under the WCA.<sup>139</sup> The Director General is required to keep a register of all permits that are granted under the WCA.<sup>140</sup> As this register is not publicly available, it could not be identified whether there are any such permits registered in Peninsular Malaysia that are not also registered in the CITES Register. Operating a commercial facility breeding totally protected animals in captivity without the proper permit may result in a fine of up to 100,000 ringgit, a prison term of up to five years, or both, depending on the species.<sup>141</sup> Doing the same but with species of protected animals may result in a fine of up to 70,000 ringgit, a prison term of up to three years, or both.<sup>142</sup>

##### Sabah

63. Commercial captive breeding requires a permit under the WCE.<sup>143</sup> There is no explicit mentioning of a register for breeding facilities in the Enactment, but the Sabah Wildlife Department maintains a register of permitted facilities. Because this register is not publicly available, it could not be identified whether there are any breeding facilities in the State of Sabah that are not also registered in the CITES Register. Parties that unlawfully breed species in captivity for commercial purposes may face fines of 20,000 to 50,000 ringgit, imprisonment for up to two years, or both.<sup>144</sup>

##### Sarawak

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<sup>130</sup> *Ibid.*, sect. 48.

<sup>131</sup> *Ibid.*, sect. 50.

<sup>132</sup> *Convention on International Trade in Endangered Species of Wild Fauna and Flora, "Malaysia", CITES registers. Available at <https://www.cites.org/eng/common/reg/cb/MY>.*

<sup>133</sup> *Malaysia, International Trade in Endangered Species Act 2008, Act 686, sect. 14.*

<sup>134</sup> *Ibid.*, sect. 16.

<sup>135</sup> *Ibid.*, sect. 18.

<sup>136</sup> *Ibid.*, sect. 14.

<sup>137</sup> *Ibid.*

<sup>138</sup> *Malaysia, Wildlife Conservation Act 2010, Act 716, sect. 10.*

<sup>139</sup> *Ibid.*, sect. 11.

<sup>140</sup> *Ibid.*, sect. 33.

<sup>141</sup> *Ibid.*, sect. 72.

<sup>142</sup> *Ibid.*, sect. 66.

<sup>143</sup> *Sabah, Wildlife Conservation Enactment 1997, Sabah No. 6 of 1997, sects. 9 and 78.*

<sup>144</sup> *Ibid.*, sect. 78.

64. Breeding, rearing, or keeping wild animals<sup>145</sup> for the purpose of trade, sale, or commercial usage is allowed under the WLPO so long as a valid license has been granted.<sup>146</sup> However, according to the Wildlife Protection Rules, no such licenses can be issued for breeding, rearing, or keeping totally protected animals in wild animal farms.<sup>147</sup> Since not all Appendix I-listed species are totally protected under the WLPO, licenses may be granted to allow captive breeding of certain Appendix I-listed species for commercial purposes. It could not be identified whether there are any breeding facilities with Appendix I-listed species that are not also registered in the CITES Register. Violating these provisions and breeding Appendix I-listed animal species in captivity for commercial purposes without permission can result in a fine of 10,000 ringgit and one year in prison.<sup>148</sup>

#### Registration of possession

##### Nationally

65. The possession of Appendix I-listed species is regulated both on a federal level and on a state level in Malaysia. In some cases, permission from the relevant authorities is required for legal possession, and in others the specimen of the protected species or product thereof need not be registered but must have been obtained in a legal way.
66. Under INTESA, it is an offence to possess any specimens of scheduled species (including Appendix I-listed species) that were illegally imported or illegally introduced from the sea to Malaysia, or that were produced for commercial purposes in an unregistered captive breeding facility in Malaysia.<sup>149</sup> Violating this provision may result in a fine of up to 100,000 ringgit per specimen or product (up to one million ringgit total), seven years in prison, or both for individuals, and up to 200,000 ringgit per specimen or product (up to two million ringgit total) for corporations.<sup>150</sup>
67. The Management Authority in each region of Malaysia has the power to require that any owner, importer, exporter or re-exporter labels, brands or otherwise marks specimens of scheduled species.<sup>151</sup> Individuals that violate this provision, either by failing to comply or by altering markings, may face fines of up to 100,000 ringgit, imprisonment for up to seven years, or both, while corporations may face fines of up to 200,000 ringgit.<sup>152</sup>
68. Under the Fisheries Regulations, it is an offence to possess any of the listed species, which include some of the Appendix I-listed marine species.<sup>153</sup> Violation of this provision is punishable by a fine of up to 20,000 ringgit, imprisonment for up to two years, or both.<sup>154</sup>

##### Peninsular Malaysia

69. Under the WCA, the keeping of any totally protected wildlife or any parts or derivatives thereof requires a special permit.<sup>155</sup> The keeping of any protected wildlife or any parts or derivatives thereof also requires a license.<sup>156</sup> The Director General shall keep a register of licenses and special permits granted under the WCA.<sup>157</sup> Keeping protected or totally protected wildlife (including female or immature specimens), or parts or derivatives thereof, without a license or special permit is an offence.<sup>158</sup> Violations involving totally protected species may result in fines of up to 500,000 ringgit, prison terms of up to ten years, or both, depending on the type, age, and gender of the species and

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<sup>145</sup> "Wild animal" refers to any species of an animal that exists or occurs in the wild in Sarawak or elsewhere in the world. Sarawak, *Wild Life Protection Ordinance 1998*, sect. 3.

<sup>146</sup> *Ibid.*, sect. 35(1).

<sup>147</sup> Sarawak, *Wild Life Protection Rules 1998*, sects. 14 and 21.

<sup>148</sup> *Wild Life Protection Ordinance 1998*, sect. 35(2).

<sup>149</sup> Malaysia, *International Trade in Endangered Species Act 2008*, Act 686, sects. 12 and 14.

<sup>150</sup> *Ibid.*, sect. 14.

<sup>151</sup> *Ibid.*, sect. 15.

<sup>152</sup> *Ibid.*, sect. 15.

<sup>153</sup> Malaysia, *Fisheries (Control of Endangered Species of Fish) Regulations 1999*, PU(A) 409/1999, sect. 2(1) and Schedule.

<sup>154</sup> Malaysia, *Fisheries Act 1985* (No. 317 of 1985), sect. 25.

<sup>155</sup> Malaysia, *Wildlife Conservation Act 2010*, Act 716, sect. 11.

<sup>156</sup> *Ibid.*, sect. 9.

<sup>157</sup> *Ibid.*, sect. 33.

<sup>158</sup> *Ibid.*, sects. 60–62 and 68–70.



the number of specimens involved.<sup>159</sup> Violations involving protected species may result in fines of up to 100,000 ringgit, prison terms of up to five years, or both, also depending on the type, age, and gender of the species, and the number of specimens involved.<sup>160</sup>

### Sabah

70. The definition of “sell” under the WCE includes keeping and possessing for purposes of sale.<sup>161</sup> The WCE also provides that no person shall possess specimens of species listed in Part I of Schedule I without written authorization from the Minister,<sup>162</sup> acting on the advice of the Director.<sup>163</sup> Possession of protected animals (including Appendix I-listed species that are not totally protected) or products thereof is permitted if they have been lawfully imported or obtained with a valid license or permit.<sup>164</sup> It is an offence to illegally possess a protected animal or animal product and such products should be handed over to the nearest authorized officer.<sup>165</sup> A person who legally acquires an animal product must present it to the Director within thirty days of the purchase for registration.<sup>166</sup> Possessing and failing to turn over a live protected animal that is considered to be government property to the government may result in a fine of up to 50,000 ringgit, imprisonment for up to two years, or both.<sup>167</sup> Unlawful possession of an Appendix I-listed animal or animal product may result in a fine of between 50,000 and 250,000 ringgit and imprisonment for one to five years.<sup>168</sup> Additionally, the “burden of proving lawful possession of” covered animals and animal products is on the possessor.<sup>169</sup>
71. Possession of totally protected plants also requires a permit. Possession of protected plants (including all Appendix I-listed species that are not totally protected) is also allowed if they are acquired in a legal way. Plants are legally acquired when they are purchased from authorized plant dealers, inherited, received as gifts, or acquired through another form of transfer pursuant to a temporary plant sale.<sup>170</sup> Unlawful possession of Appendix I-listed plant specimens or products thereof may face a fine of between 50,000 and 250,000 ringgit and imprisonment for one to five years.<sup>171</sup>

### Sarawak

72. Under the WLPO, it is an offence to possess any totally protected animals or plants, or recognizable parts or derivatives thereof, without written permission from the Controller. Protected animals (including all Appendix I-listed species that are not totally protected) may only be possessed under the authorization of a license.<sup>172</sup> According to the Wild Life Protection Rules, totally protected animals may be kept in public zoos if permitted by the Controller. If the Controller is of the view that it would be better for the animal to be cared for by a person instead, he or she can permit this and give guidelines for how this should take place.<sup>173</sup> Unlawful possession of totally protected animals or plants may result in up to five years imprisonment and a fine of up to 50,000 ringgit, depending on the species involved.<sup>174</sup> If someone unlawfully possesses protected animals or plants, they may be penalized with one year in prison and a 10,000 ringgit fine.<sup>175</sup>
73. The possession of wild animals, that is any species of animal existing in the wild, is also regulated by the WLPO. Possession of a wild animal or part thereof requires a license, unless the person

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<sup>159</sup> *Ibid.*, sects. 68–70.

<sup>160</sup> *Ibid.*, sects. 60–62.

<sup>161</sup> *Sabah, Wildlife Conservation Enactment 1997, Sabah No. 6 of 1997, sect. 2.*

<sup>162</sup> ‘Minister’ refers to the Minister for the time being responsible for matters relation to wildlife. *Ibid.*, sect. 2.

<sup>163</sup> *Ibid.*, sect. 41(1). ‘Director’ refers to the Director of Wildlife who administrates the Enactment. *Ibid.*, sect. 2.

<sup>164</sup> *Ibid.*, sect. 41.

<sup>165</sup> *Ibid.*, sect. 40.

<sup>166</sup> *Ibid.*, sect. 50.

<sup>167</sup> *Ibid.*, sect. 40.

<sup>168</sup> *Ibid.*, sect. 41.

<sup>169</sup> *Ibid.*, sect. 41(3).

<sup>170</sup> *Ibid.*, sect. 62.

<sup>171</sup> *Ibid.*, sect. 62.

<sup>172</sup> *Sarawak, Wild Life Protection Ordinance 1998, sects. 29 and 30.*

<sup>173</sup> *Sarawak, Wild Life Protection Rules 1998, sect. 12.*

<sup>174</sup> *Sarawak, Wild Life Protection Ordinance 1998, sects. 29 and 30.*

<sup>175</sup> *Ibid.*

possessing the wild animal is a native residing within a Native Area Land or Native Customary Land who consumes the animal or has it for personal use. Other people may also have up to five kilograms of wild animal without a license if they are consuming it themselves.<sup>176</sup> However, if the wild animal belongs to a totally protected or protected species, the above described rules for protected species still apply. Individuals that violate these provisions with wild animals that are totally protected or protected species may face the corresponding penalties listed above. If not totally protected or protected, the violator may be penalized with a fine of 2,000 ringgit and one year in prison for each specimen or product in their possession.<sup>177</sup>

#### Interpretation by courts

74. No relevant court cases could be identified.
75. According to UNODC, many seizures of illegal wildlife take place in Malaysia; however, there are fewer arrests and convictions in connection with the seizures.<sup>178</sup> The people that are arrested are usually couriers and other people on the ground who only play a minor part in the crime chain. High-level individuals who control the illegal trade are not often brought to justice.<sup>179</sup> However, when arrests do occur, many of them lead to conviction and imprisonment, especially in Peninsular Malaysia.<sup>180</sup>

#### Other relevant notes

76. The enforcement of wildlife crime in Malaysia is divided among authorities in each of three regions. In Peninsular Malaysia, the Department of Wildlife and National Parks (PERHILITAN) is responsible; in the State of Sabah, the Sabah Wildlife Department is responsible; and in the State of Sarawak, the Sarawak Forestry Corporation is responsible.<sup>181</sup>
77. In September 2019, *Operasi Bersepadu Khazanah* was launched.<sup>182</sup> This is a national enforcement task force led by the Royal Malaysian Police and PERHILITAN to fight illegal wildlife crime. Between September and December 2019, 83 people were arrested for different kinds of wildlife crimes.<sup>183</sup>

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<sup>176</sup> *Ibid.*, sect. 37(1).

<sup>177</sup> *Ibid.*, sect. 37.

<sup>178</sup> United Nations Office on Drugs and Crime, *Criminal justice response to wildlife crime in Malaysia: A rapid assessment*, October 2017, p. 5.

<sup>179</sup> *Ibid.*

<sup>180</sup> *Ibid.*, p. 6.

<sup>181</sup> *Ibid.*

<sup>182</sup> TRAFFIC, "Malaysia's newly launched enforcement operation showing promising results to protect wildlife", 29 November 2019.

<sup>183</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*, p. 64.

## Nigeria

### Introduction

1. Nigeria is home to many endangered species, including, in particular, several species of pangolin and the Cross River gorilla (subspecies of *Gorilla gorilla*). Pangolins, gorillas, and other endangered species are hunted and traded domestically for food (bushmeat), as well as for indigenous medicines and charms.<sup>1</sup> A wide variety of Appendix I-listed species and specimens thereof can be found in markets in Lagos State, including living African grey parrots,<sup>2</sup> bushmeat from chimpanzees, drill (*Mandrillus leucophaeus*), and dwarf crocodiles,<sup>3</sup> and elephant ivory souvenirs,<sup>4</sup> and various gorilla body parts.<sup>5</sup> Lagos is not the only state with markets selling these kinds of products. Trade in various Appendix I-listed species occurs in Cross River State, Rivers State,<sup>6</sup> Enugu State and even as far north as Kano State.<sup>7</sup> In an effort to reduce illegal domestic and international wildlife trade, the Federal Ministry of Environment stated in 2019 that Nigeria and China are set to strengthen bilateral relations.<sup>8</sup> No further details were provided about how this increased cooperation would reduce the amount of illegal trade, beyond that the Ministry “will continue to put measures in place to make sure that enforcement, compliance and implementation measures are strengthened in the country.”<sup>9</sup>
2. Nigeria has a federal government with a presidential system. Below the federal level, there is both state and local government. Nigeria is currently divided into 36 states and the Federal Capital Territory. The Constitution makes it an objective of the states to improve and protect wildlife,<sup>10</sup> and the federal government enacted legal controls regulating domestic trade in certain species at the national level.<sup>11</sup>

### Legislation

3. *Endangered Species (Control of International Trade and Traffic) Act (2004)*
  - a) The Endangered Species (Control of International Trade and Traffic) Act (ESA) is the only federal law that places restrictions on the trade of endangered species, and it does so in order to conserve and manage Nigeria’s wildlife. The ESA seeks to conserve wildlife by creating two separate schedules of species, each of which is subject to different restrictions related to domestic and international trade. However, neither of these schedules include any flora; only fauna is protected under the ESA.
  - b) The species listed in both schedules are native, except where family and genus groups that also encompass non-native species are listed, in which case those non-native species are regulated in accordance with the controls for the corresponding schedule as well. The First Schedule covers 99 CITES Appendix I-listed species, along with some Appendix II-, Appendix III-, and non-listed species. Nile crocodiles, pangolins, and gorillas are among the Appendix I-listed species in the First Schedule. Species listed in the First Schedule are subject to the strictest regulation: hunting, capture, and trade in these species is absolutely prohibited except in certain not primarily commercial circumstances (for example, for scientific, educational, or training

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<sup>1</sup> P. A. Anadu and others, “The bushmeat trade in southwestern Nigeria: A case study”, *Human Ecology*, vol. 16. No. 2 (1988).

<sup>2</sup> Edem A. Eniang and others, “A Survey of African Grey Parrots (*Psittacus Erithacus*) Trade and Trafficking in Ekonganaku Area of Ikpan Forest Block, Nigeria”, *Ethiopian Journal of Environmental Studies and Management*, vol. 1, no. 2 (2008), p.68.

<sup>3</sup> *Ibid.*

<sup>4</sup> Esmond Martin and Lucy Vigne, “Lagos, Nigeria: One of the Largest Retail Centres for Illegal Ivory Surveyed to Date”, *TRAFFIC Bulletin*, vol. 25, no. 1 (2013).

<sup>5</sup> Orji Sunday, “What is magic without ape parts? Inside the illicit trade devastating Nigeria’s apes”, *Mongabay*, 29 May 2019.

<sup>6</sup> Edem A. Eniang and others, “A Survey of African Grey Parrots (*Psittacus Erithacus*) Trade and Trafficking in Ekonganaku Area of Ikpan Forest Block, Nigeria”, *Ethiopian Journal of Environmental Studies and Management*, vol. 1, no. 2 (2008), p.68.

<sup>7</sup> Orji Sunday, “What is magic without ape parts? Inside the illicit trade devastating Nigeria’s apes”, *Mongabay*, 29 May 2019.

<sup>8</sup> Samuel Lamai, “Nigeria and China To Strengthen Bilateral Relation To Curb Illegal Wildlife Trade”, *Nigeria Federal Ministry of Information & Culture*, 11 September 2019.

<sup>9</sup> *Ibid.*

<sup>10</sup> Nigeria, *Constitution of the Federal Republic of Nigeria 1999*, chap. 2, sect. 20. This profile focuses primarily on federal controls on domestic trade in endangered species; only some state-level controls could be identified, and it was not in all cases clear whether identified controls are still in effect.

<sup>11</sup> Nigeria, *Endangered Species (Control of International Trade and Traffic) Act (as amended 2004)*.

purposes, captive breeding programs, private use, exhibitions, or circuses, so long as the requisite conditions are met).<sup>12</sup> However, if the First Schedule specimen in question was bred in captivity, the prohibition does not apply.<sup>13</sup> The penalty for trading in, being in possession of, or otherwise dealing in a First Schedule species in contravention of the ESA is a fine of 5 million naira (approximately \$12,900 US as of July 2020)<sup>14</sup> for a first offence, and imprisonment for one year without the option of a fine for a second and all subsequent offences.<sup>15</sup> The penalties appear to be the same regardless of the nature of the violations.

- c) The Second Schedule, which contains threatened species, explicitly covers 11 CITES Appendix I-listed species as well as “[a]ll exotic wild animals.”<sup>16</sup> Trade is regulated in Second Schedule species; the ESA prohibits hunting, capturing, trading, or otherwise dealing in Second Schedule species without a license.<sup>17</sup> Specimens of Second Schedule species bred in captivity, similar to First Schedule species, are exempt from the prohibition on hunting, capture, and trade.<sup>18</sup> No trade in a Second Schedule species shall be allowed, however, if the specimen was not legally imported, taken from the sea, or otherwise acquired.<sup>19</sup> The penalty for a first time offence involving a specimen of a Second Schedule species is a fine of 1 million naira (approximately \$2,600 US as of July 2020).<sup>15</sup> The second and all subsequent offences may result in imprisonment for six months without the option of a fine.<sup>20</sup> As with First Schedule species, the penalties appear to be the same regardless of the nature of the violations.
  - d) The ESA does not define trade; although the Act contains the phrase “international trade” in reference to the schedules, the Act’s articles refer to and prohibit all trade of First Schedule species, be it international or domestic.<sup>21</sup>
  - e) The ESA does not authorize seizure; instead, it grants the court authority to order the forfeiture of any specimen that was the subject of prosecution if the owner is convicted of an offence.<sup>22</sup>
  - f) The Act also authorizes the Ministry of the Environment to promulgate regulations, which it did in 2011. The ESA itself was also amended in 2016 to increase the fines levied against first-time offenders.
4. *Endangered Species (Control of International Trade and Traffic) (Amendment) Act (2016)*
- a) The ESA Amendment Act increased the fines that can be imposed under the ESA so they would have a stronger deterrent effect and reflect current economic realities.<sup>23</sup>
  - b) The fine for violating the ESA with respect to a First Schedule species was increased from 1,000 to 5 million naira (from approximately US\$2.60 US to US\$12,900 as of July 2020).<sup>24</sup>

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<sup>12</sup> *Ibid.*, sect. 1(1).

<sup>13</sup> *Ibid.*, sect. 4(2).

<sup>14</sup> Before the 2016 amendment to the ESA which increased penalties, the fine for a First Schedule violation was 1,000 naira (approximately \$2.60 US as of July 2020) and the fine for a Second Schedule violation was 500 naira (approximately \$1.29 US as of July 2020).

<sup>15</sup> Nigeria, *Endangered Species (Control of International Trade and Traffic) Act*, sect. 5(1)(a) (2004).

<sup>16</sup> No definition for exotic animal is provided in either the ESA or the Regulations. However, the Wild Animals Law of 1963 which also regulated the possession of endangered species defined it as “any feral animal which is not indigenous to the North-Eastern State of Nigeria.” The North-Eastern State is no longer in existence, but the definitions they provided may help to clarify the definition intended in the current Endangered Species Act. The phrase “exotic wild animals” may be meant to include all wild animals not indigenous to Nigeria.

<sup>17</sup> Nigeria, *Endangered Species (Control of International Trade and Traffic) Act*, sect. 1(2) (2004).

<sup>18</sup> *Ibid.*, sect. 4(2).

<sup>19</sup> *Ibid.*, sect. 2(1).

<sup>20</sup> *Ibid.*, sect. 5(1)(b).

<sup>21</sup> *Ibid.*, sect. 1–2.

<sup>22</sup> *Ibid.*, sect. 5(2).

<sup>23</sup> Nigeria, *Endangered Species (Control of International Trade and Traffic) (Amendment) Act*, 2016.

<sup>24</sup> *Ibid.*, sect. 3.

- c) The fine for violating the ESA with respect to a Second Schedule species was increased from 500 to 1 million naira.<sup>25</sup>
5. *National Environmental (Protection of Endangered Species in International Trade) Regulations (2011)*
- a) The National Environmental (Protection of Endangered Species in International Trade) Regulations (the ESA Regulations) cover the species listed in both the First and Second Schedules of the ESA, as well as all species listed in CITES Appendices I, II, and III.<sup>26</sup> Unlike the ESA, the ESA Regulations regulate domestic possession and trade in both fauna *and* flora, as they include “any undomesticated or cultivated plants or animals” within the definition of wildlife.<sup>27</sup>
- b) The ESA Regulations designate the Federal Ministry of Environment as the CITES Management Authority and the National Environmental Standards and Regulations Enforcement Agency (NESREA) as the CITES Enforcement Agency.<sup>28</sup>
- c) Under the ESA Regulations, it is an offence for any person to have in his possession or under his control, or to offer or expose for sale or display to the public, any specimen of an Appendix I-listed species if it was acquired in contravention of the ESA, the ESA Regulations, or CITES.<sup>29</sup> For unscheduled Appendix I-listed species, there is no full prohibition on domestic trade in either the ESA or the ESA Regulations, so some domestic trade in certain Appendix I-listed species may be allowed, subject to certain restrictions such as obtaining a license or registering with the Management Authority.<sup>30</sup>
- d) Further, people must register with the Management Authority prior to engaging in trade (of specimens or products legally acquired or unscheduled under the ESA), captive breeding, or artificial propagation of Appendix I-listed species.<sup>31</sup> Records of stocks and transactions from captive breeding and artificial propagation operations must be submitted to both the Management and Enforcement Authorities twice a year, and the Management Authority may inspect operational premises and records at any time.<sup>32</sup>
- e) The ESA Regulations also assign different penalties than the ESA depending upon the nature of the violation. The penalty for possessing, selling, or displaying a specimen in violation of the ESA, the ESA Regulations, or CITES is a fine of up to 5 million naira, imprisonment for up to three years, or both.<sup>33</sup> If a corporate body is found to have violated the ESA Regulations, the corporate body or any person acting in its capacity may be fined up to 20 million naira, its principal officers imprisoned for up to 7 years, or both.<sup>34</sup> The ESA Regulations also contain penalties for making misleading statements, obstructing an officer’s performance of their duties, and defacing or erasing a mark used by the Management Authority to identify specimens.<sup>35</sup>
- f) NESREA is designated as the Enforcement Authority in the ESA Regulations and is thus granted the authority to seize any items related to suspected violations and care for specimens before the government decides what to do with them.<sup>36</sup> An authorized officer has the power to not only seize anything reasonably suspected of being the object or evidence of an offence under the ESA Regulations, but also to enter premises and vehicles under reasonable suspicion

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<sup>25</sup> *Ibid.*, sect. 4.

<sup>26</sup> Nigeria, *National Environmental (Protection of Endangered Species in International Trade) Regulations 2011*, sect. 1.

<sup>27</sup> *Ibid.*, sect. 10.

<sup>28</sup> *Ibid.*, sect. 2.

<sup>29</sup> *Ibid.*, sects. 3, 7(3).

<sup>30</sup> *Ibid.*, sect. 6(1).

<sup>31</sup> *Ibid.*, sects. 6(1)-(2).

<sup>32</sup> *Ibid.*, sect. 6(3).

<sup>33</sup> *Ibid.*, sects. 7(3)-(4).

<sup>34</sup> *Ibid.*, sect. 7(11).

<sup>35</sup> *Ibid.*, sect. 7(4)-(10).

<sup>36</sup> *Ibid.*, sect. 8(1).

and seize specimens located within.<sup>37</sup> Once a specimen is seized and confiscated, it becomes the property of the government. For dead specimens, the government, in consultation with the Management and Scientific Authorities, will decide upon the proper method of final disposal. When a live specimen is seized and confiscated, the specimen is entrusted to the Scientific Authority and placed under the care of a rescue center.<sup>38</sup>

## **Analysis**

### **Legal status of the domestic market**

6. For the 99 Appendix I-listed species in the First Schedule of the ESA, any domestic trade is illegal unless the specimens being traded were bred in captivity. While this only applies to a fraction of Appendix I-listed species, it does protect wild specimens of some of the most vulnerable animal species in Nigeria, including pangolins and Cross River gorillas, from illegal domestic trade. For the Appendix I-listed species contained in the Second Schedule under the ESA, domestic trade is only allowed if the proper license is obtained.<sup>39</sup>
7. The Second Schedule lists “[a]nimals in relation to which international trade may only be conducted under [a] license,” potentially indicating that licenses are related to import and export permits rather than domestic trade.<sup>40</sup> While the requirements for obtaining a license are somewhat unclear, if domestic trade in Second Schedule species is permitted with a license, it is possible that some legal trade in Appendix I-listed species included in the Second Schedule occurs.
8. The ESA also regulates domestic trade in Second Schedule-listed aquatic species captured in Nigeria. Certificates are required to remove any Second Schedule species from Nigerian waters, and certificates may only be issued if the specimen at issue will not be used for primarily commercial purposes (and if its capture will not harm the survival of its species and the holder of the certificate can properly care for the specimen).<sup>41</sup> For aquatic species residing within Nigeria, there would only be limited legal domestic trade, and specimens could not be traded for predominantly commercial purposes. The ESA Regulations also discuss the need for a certificate for all Appendix I-listed species taken in the marine environment, but specify that it must be a marine environment not under the jurisdiction of any country and do not mention a prohibition on use for commercial purposes.<sup>42</sup>
9. The ESA Regulations also seem to allow for limited legal domestic wildlife trade. For the Appendix I-listed species not contained in the First Schedule of the ESA, domestic trade is allowed as long as the person engaged in the trading is registered with the Management Authority.<sup>43</sup> However, trade in Appendix I-listed specimens is only permitted in exceptional circumstances, such as for research purposes or for specimens bred in captivity.<sup>44</sup>
10. A 2012 study conducted on the ivory trade in Lagos State provides potentially valuable insights into the trade of species similar to Appendix I-listed species. The report revealed that there is a market for ivory substitutes, like cow bone and hippopotamus tusk.<sup>45</sup> The report seemed to indicate that there are no restrictions on trade in similar species, such as cow bone used in place of ivory, or practices in place to ensure that the trade of similar species is free from specimens of Appendix I-listed species.<sup>46</sup>
11. The ESA Regulations do make it an offence to make or attempt to make false or misleading statements in connection with an application for a permit, certificate, or registration.<sup>47</sup> A violation of

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<sup>37</sup> *Ibid.*, sect. 8(2).

<sup>38</sup> *Ibid.*, sect. 8(5); *ibid.*, sect. 9(1).

<sup>39</sup> *Nigeria, Endangered Species (Control of International Trade and Traffic) Act*, sect. 1(2).

<sup>40</sup> *Nigeria, Endangered Species (Control of International Trade and Traffic) Act*, Second Schedule.

<sup>41</sup> *Nigeria, Endangered Species (Control of International Trade and Traffic) Act*, sect. 2(5)(c).

<sup>42</sup> *Nigeria, National Environmental (Protection of Endangered Species in International Trade) Regulations 2011*, sect. 3(2)(b).

<sup>43</sup> *Ibid.*, sect. 6(1).

<sup>44</sup> *Nigeria National Environmental Standards And Regulations Enforcement Agency, “NESREA’s CITES Enforcement”*.

<sup>45</sup> *Esmond Martin and Lucy Vigne, “Lagos, Nigeria: One of the Largest Retail Centres for Illegal Ivory Surveyed to Date”, TRAFFIC Bulletin*, vol. 25, no. 1 (2013), p. 38.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Nigeria, National Environmental (Protection of Endangered Species in International Trade) Regulations 2011*, sect. 7(5).

this prohibition is punishable with a fine of up to three million naira, a prison sentence of up to three years, or both for individuals.<sup>48</sup> It is also an offence for an unauthorized person to alter, deface, or erase a mark used by the Management Authority to identify specimens.<sup>49</sup> Violators of this provision may be fined up to two million naira, imprisoned for up to two years, or both.<sup>50</sup>

### Regulation of trade

12. Species are regulated differently depending on the schedule in which they are listed. For Appendix I-listed species listed in the First Schedule of the ESA, all domestic trade is banned unless the specimen in question was bred in captivity. For those listed in the Second Schedule, trade is allowed but limited, and regulated through the issuance of licenses and certificates.<sup>51</sup> The same exception for captive-bred First Schedule species also applies to the Second Schedule, so specimens of Second Schedule species that are bred in captivity may be traded. The schedules enumerated in the ESA only include animals, meaning that hunting, capture, and trade are fully prohibited only for Appendix I-listed fauna listed in the First Schedule under the ESA. All Appendix I-listed species, however, including all Appendix I-listed plant species, are covered by the ESA Regulations, which only allow trade in Appendix I-listed species for exceptional circumstances and require registration.<sup>52</sup>
13. Nigeria's legal controls do not expressly regulate domestic trade in native and non-native species differently. However, the First Schedule of the ESA, for which hunting, capture, and trade are fully prohibited, is composed predominantly of native animals. Some native Appendix I-listed species are also listed in the Second Schedule, however. "All exotic wild animals,"<sup>17</sup> which may encompass all wild, non-native, Appendix I-listed species, are also listed in the Second Schedule of the ESA. While trade in Second Schedule species is regulated, exceptions are allowed with a license or proper registration.
14. The ESA and ESA Regulations do not differentiate between trade between businesses, between consumers, or between business and consumers. That said, corporations that are found guilty of violating the ESA Regulations face higher possible fines and longer terms of imprisonment. Individuals face maximum fines, depending on the nature of the violation, of between 1 and 5 million naira (approximately \$2,500 and \$12,900 US as of July 2020) and terms of imprisonment lasting between 1 and 5 years. In comparison, a violation committed by a corporation carries a maximum fine of 20 million naira and up to 7 years of imprisonment.<sup>53</sup>
15. Neither the ESA nor the ESA Regulations explicitly address online wildlife trade. However, it seems that online trade should be covered under the general prohibitions in the ESA Regulations. Although the ESA does not provide a definition of "trade," the ESA Regulations define "domestic trade" as "commercial activity, including the sale and purchase, within a territory under Nigerian jurisdiction."<sup>54</sup> "Sale" is defined to include any form of sale, including barter and exchange, and any related expressions are to be similarly interpreted.<sup>55</sup> Using that definition of "sale," online expressions and exchanges would likely be interpreted to be sales, and if that online sale is happening within Nigeria, it may be regulated under Nigeria's general prohibition on domestic wildlife trading in Appendix I-listed species (unless registered). The term "offering for sale" is also defined in the ESA Regulations, and includes advertising or causing to be advertised; thus, online advertising, whether or not it leads to an in-person sale, would likely also be a violation.

### Registration

16. There are no facilities breeding Appendix I-listed species in captivity in Nigeria that are registered with CITES. The ESA Regulations require that any person desiring to either breed captive animals or

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<sup>48</sup> *Ibid.*, sect. 6.

<sup>49</sup> *Ibid.*, sect. 7(9).

<sup>50</sup> *Ibid.*, sect. 7(9)–(10) (Corporations that violate this provision may be fined up to 20 million Naira, and their principal officers may be sentenced to prison for up to seven years, or both).

<sup>51</sup> Nigeria, *Endangered Species (Control of International Trade and Traffic) Act*, sect. 1(2); *ibid.*, sect. 2(5).

<sup>52</sup> Nigeria, *National Environmental (Protection of Endangered Species in International Trade) Regulations 2011*, sect. 6(1).

<sup>53</sup> *Ibid.*, sect. 7.

<sup>54</sup> *Ibid.*, sect. 10.

<sup>55</sup> Nigeria, *Endangered Species (Control of International Trade and Traffic) Act*, sect. 10.



artificially propagate plants register with the Management Authority.<sup>56</sup> If any facilities have so registered, there does not seem to be a publicly available database of national registrations. A few reports have been written on the success of captive breeding facilities in Nigeria, but it seems the breeding programs studied are operated for purposes of conservation and reintroduction of the species, and not for commercial purposes.<sup>57</sup> Any Appendix I-listed species that are lawfully bred in captivity or artificially propagated for commercial purposes are treated as if they are listed in the Second Schedule of the ESA,<sup>58</sup> and thus they are not subject to the same trade prohibitions as First Schedule species.<sup>59</sup> However, no such commercial breeding facilities could be identified.

#### Interpretation by courts

17. No federal court decisions relating to domestic trade in Appendix I-listed species could be identified.<sup>60</sup>
18. Several cases involving export violations of the ESA Regulations were found. Although the cases do not discuss domestic trade violations and involved ivory, they do provide some insight into how penalties are applied. In each case, the maximum applicable penalties under the ESA Regulations were a fine of up to 5 million naira, imprisonment for up to three years, or both. In each case examined, violators were sentenced to six months of imprisonment for each count but had the option of paying a fine of 100,000 naira for each count instead.<sup>61</sup>

#### Other notes

19. There are also state wildlife laws in Nigeria that address domestic wildlife trade. Some of these laws are obsolete, however, and any remaining laws must be read in conjunction with the ESA, as amended, so as to adhere to CITES.
20. The Cross River State Forestry Commission Law provides protection for some Appendix I-listed species. The law creates two schedules of species, but only the Second Schedule was found. Several Appendix I-listed species are included in the Second Schedule. The law makes it illegal to possess, purchase, sell, or transfer any existing wildlife artifact or manufacture anything from any wildlife listed in either schedule without written permission from the Forestry Commission.<sup>62</sup> It also lists circumstances under which the Commission may give this permission. However, it is unclear if artifacts can or cannot be used for commercial purposes. The law also makes it unlawful to hunt, kill, capture, trade, or be in possession of any animal listed in the Second Schedule, whether alive or dead, if it is immature, pregnant, or nursing a young animal, or if it is a female accompanied by her young (though the hunting of a female accompanied by her young is allowed with the proper permit).<sup>63</sup> Lastly, the law also makes it illegal to take the egg of a protected animal unless the animal is kept in a domesticated state.<sup>64</sup>
21. Meanwhile, the Lagos State prevents the hunting, killing, and capturing (without a special license) of all animals and birds listed in the First Schedule of its Wildlife Preservation Law of Lagos State.<sup>65</sup> Special licenses may only be granted in exceptional circumstances.<sup>66</sup> Unfortunately, neither the first

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<sup>56</sup> *Ibid.*, sect. 6(2).

<sup>57</sup> Heny Mmaduabuchi Ijeomah and Onyinye P. Choko, "Challenges of captive breeding and re-introduction of selected primate species into their natural habitat in Cross River State, Nigeria", *Ethiopian Journal of Environmental Studies and Management*, vol. 7, no. 3 (May 2014); John Ogunsola and others, "Audit of Captive Breeding in a University Zoo Facility in Nigeria: Challenges and Prospects", *Veterinary Sciences: Research and Reviews*, vol. 5, no. 1 (June 2019).

<sup>58</sup> Nigeria, *National Environmental (Protection of Endangered Species in International Trade) Regulations 2011*, sect. 5(2).

<sup>59</sup> Nigeria, *Endangered Species (Control of International Trade and Traffic) Act*, sect. 4(2).

<sup>60</sup> *It is unclear whether or how often both imprisonment and fines are levied in the same case.*

<sup>61</sup> *Federal High Court, Lagos, Attorney General of the Federation (AGF) v. LIANG ZULI; Federal High Court, Lagos, Attorney General of the Federation v. Diarra Fousseyni.*

<sup>62</sup> Nigeria, *Cross River State, A Law to make provisions for the establishment of the State Forestry Commission, Law no. 3, 2010*, sect. 75.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*, sect. 72.

<sup>65</sup> Nigeria, *Lagos State, Wildlife Preservation Law of Lagos State*, sect. 1(1)(a).

<sup>66</sup> *Ibid.*, sect. 16(1)(b).

nor second schedules of this law could be found, so it is unclear if any Appendix I-listed species are regulated at the state level in Lagos State.

## Thailand

### Introduction

1. In the last ten years, Thailand has been affected by seizures of specimens of rhinoceros,<sup>1</sup> Asian big cats including tigers,<sup>2</sup> pangolins,<sup>3</sup> and snakes.<sup>4</sup> There is also evidence of consumer demand for live turtles and tortoises (for which Thailand was listed as the destination country for over 8,000 specimens confiscated between 2000 and 2015)<sup>5</sup> and wild orchids (for which “significant, illegal international trade from Lao PDR and Myanmar into Thailand for domestic consumers” has been identified in market surveys),<sup>6</sup> potentially including CITES Appendix I-listed species of these taxa, in Thailand.
2. In 2019, Thailand amended its legislation regulating wildlife trade, including domestic trade in Appendix I-listed species. The previous version of the primary law regulating this trade, the Wild Animal Reservation and Protection Act (WARPA), regulated trade in fewer than half of all CITES-listed taxa, including only 12 non-native CITES-listed species, and allowed Thai citizens to possess and breed specimens of non-nationally-protected, non-native, CITES-listed species illegally imported into Thailand.<sup>7</sup>
3. Since 2015, in addition to revising key laws, the government has also worked with non-governmental organizations to promote demand reduction campaigns that encourage consumers of illegally traded endangered species to seek alternatives.<sup>8</sup>

### Legislation

4. *Wild Animal Reservation and Protection Act (WARPA), B.E. 2562 (2019)*<sup>9</sup>
  - a) WARPA was first passed in 1992, amended in 2014, and redrafted in 2019. The law prohibits the import, export, transport, trade, and possession of certain species, including some CITES-listed species, without permission.<sup>10</sup> “Trading” in the context of the WARPA is defined as “buying, selling, exchanging, distributing...or transferring ownership for commercial benefit,” and in the following this is used to refer to domestic trade as opposed to export and import, from which “trading” is separately defined in WARPA.<sup>11</sup>
  - b) WARPA protects five categories of wildlife—preserved, protected, controlled, dangerous, and carcasses.<sup>12</sup> The “controlled wildlife” list includes 50 non-native CITES-listed species<sup>13</sup> for which possession, [domestic] trade, and breeding is regulated.<sup>14</sup> Possession of wild specimens of

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<sup>1</sup> CoP18 Doc. 83.1, Annex 2, 10, 13; United Nations Office on Drugs and Crime, *World Wildlife Crime Report: Trafficking in protected species* (Vienna, 2016), p. 71.

<sup>2</sup> CoP17 Doc. 60.1, 3; CoP18 Doc. 71.1, 4 (noting that Thailand is one of eight consumer and range states “most affected by illegal trade in Asian big cats”).

<sup>3</sup> CoP18 Doc. 75, 6; CoP17 Inf. 59, 9; SC69 Doc. 57A, 47 (identifying importers of live or dead pangolins), 50 (identifying importers of pangolin scales), 54 (identifying importers of pangolin meat).

<sup>4</sup> SC69 Doc. 62, 2, Annex 1, 28.

<sup>5</sup> CoP17 Doc. 73, 35.

<sup>6</sup> PC 23 Inf. 14, Annex, iv.

<sup>7</sup> United Nations Office on Drugs and Crime, *Criminal justice response to wildlife crime in Thailand: A Rapid Assessment*, June 2017.

<sup>8</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade* (Petaling Jaya, TRAFFIC, 2020), p. 80.

<sup>9</sup> Thailand, *Wild Animal Reservation and Protection Act*, B.E. 2535 (1992).

<sup>10</sup> Thailand, *Wild Animal Reservation and Protection Act*, B.E. 2562, sects. 19, 28, 30 (2019); Thailand, *Wild Animal Reservation and Protection Act*, B.E. 2535, sects. 23–25 (1992, as amended 2014).

<sup>11</sup> Thailand, *Wild Animal Reservation and Protection Act*, B.E. 2562, sect. 4 (2019).

<sup>12</sup> Tilleke & Gibbins International Ltd., “Updates to Thailand’s Environmental Laws”, 17 July 2019. Available at <https://www.tilleke.com/resources/updates-thailand%E2%80%99s-environmental-laws>; Thailand, *Wild Animal Reservation and Protection Act*, B.E. 2562, sect. 6 (2019) (explaining the list of protected wildlife will be promulgated through Ministerial Regulation).

<sup>13</sup> Connor T. Panter and Rachel L. White, “Insights from Social Media into the Illegal Trade of Wild Raptors in Thailand”, *TRAFFIC Bulletin*, vol. 32, No. 1 (2020). The full list of protected wildlife could not be identified.

<sup>14</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade* (Petaling Jaya, TRAFFIC, 2020).

controlled and preserved species;<sup>15</sup> and trade in preserved, protected, and controlled species;<sup>16</sup> is prohibited without proper licensure or registration. While licenses are not required for trade in captive-bred specimens of protected or controlled species, individuals engaging in that trade must still meet the licensure requirements.<sup>17</sup> The licensure requirements are set out in Ministerial Regulations.<sup>18</sup>

- c) Individuals found to be in unlawful possession of wild specimens of species of controlled wildlife may face fines of up to 100,000 Baht (approximately \$3,200 US, as of July 2020), up to one year in prison, or both.<sup>19</sup> Other violations may result in fines of up to 50,000 Baht (approximately \$1,600 US, as of July 2020), up to six months in prison, or both.<sup>20</sup> And individuals that unlawfully trade in specimens or products derived from protected or controlled species may face fines of up to 400,000 Baht (approximately \$12,800 US, as of July 2020), imprisonment for up to four years, or both.<sup>21</sup>
- d) WARPA allows for some protected and controlled wildlife species to be bred in captivity at licensed facilities.<sup>22</sup> The requirements to obtain or transfer a license are specified in Ministerial Regulations.<sup>23</sup> Individuals that unlawfully breed protected or controlled specimens in captivity without the appropriate license may face fines of up to 300,000 Baht (approximately US\$9,600, as of July 2020), imprisonment for up to three years, or both.<sup>24</sup>

5. *Plants Act B.E. 2518 [as amended by B.E. 2535 (1992) and B.E. 2550 (2007)]*<sup>25</sup>

- a) Anyone who operates a business in artificial propagation of conserved plants for trade purposes must apply for and register with the Department of Agriculture at least once every five years.<sup>26</sup> Anyone who violates the above-mentioned provisions may face imprisonment for up to three months, a fine of up to 3,000 Baht, or both.<sup>27</sup>
- b) When there is reasonable suspicion of wrongdoing under this Act, the authorized official, the Minister of Agriculture and Cooperatives,<sup>28</sup> has the power to visit storage facilities used in trade or nurseries propagating conserved plants, or search the conveyances which contain the conserved plants, to examine the plants, containers, labels, account books, or any records related to the plants; to collect a reasonable quantity of any suspicious substance to use for testing, examination, or analysis; and to search, confiscate, or hold the plants, containers, labels, account books, or any other document related to the plant.<sup>29</sup>
- c) The authorized official shall confiscate or re-export any unlawfully imported conserved plant, including plants that were previously imported and are being offered for sale on the domestic market.<sup>30</sup> This seized plant will be held by the Department of Agriculture.<sup>31</sup> Further, individuals that refuse to cooperate in any investigation or proceedings may be penalized with a term of imprisonment of up to one month, a fine of up to 1,000 Baht, or both.<sup>32</sup>

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<sup>15</sup> Thailand, *Wild Animal Reservation and Protection Act, B.E. 2562, sect. 19 (2019)*; Tilleke & Gibbins International Ltd., "Updates to Thailand's Environmental Laws", 17 July 2019.

<sup>16</sup> Thailand, *Wild Animal Reservation and Protection Act, B.E. 2562, sect. 30 (2019)*; Tilleke & Gibbins International Ltd., "Updates to Thailand's Environmental Laws", 17 July 2019.

<sup>17</sup> Thailand, *Wild Animal Reservation and Protection Act, B.E. 2562, sect. 30 (2019)*.

<sup>18</sup> *Ibid.* The licensure requirements could not be located.

<sup>19</sup> Thailand, *Wild Animal Reservation and Protection Act, B.E. 2562, sect. 90 (2019)*.

<sup>20</sup> *Ibid.*, sect. 91.

<sup>21</sup> *Ibid.*, sect. 94.

<sup>22</sup> *Ibid.*, sects. 8, 9, 28.

<sup>23</sup> *Ibid.*, sect. 28.

<sup>24</sup> *Ibid.*, sect. 95.

<sup>25</sup> Thailand, *Plants Act, B.E. 2518 (1975) as amended by B.E. 2550 (2007)*.

<sup>26</sup> *Ibid.*, sect. 29 *tetra*.

<sup>27</sup> *Ibid.*, sect. 61 *bis*.

<sup>28</sup> *Ibid.*, sects. 3, 5.

<sup>29</sup> *Ibid.*, sect. 39.

<sup>30</sup> *Ibid.*, sect. 39 *ter*.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*, sect. 66.

6. *Anti-Money Laundering Act B.E. 2542 (1999) [as amended up to B.E. 2558 (2015)]*<sup>33</sup>

- a) Under the Act, money laundering includes: “[k]nowingly obtaining, possessing, or using an asset that is committed with the commission of a predicate offense; [t]ransferring, accepting a transfer, or converting any asset connected with the commission of a predicate offense to assist another person to evade criminal liability or to be liable for a lesser penalty; and [d]oing anything to conceal or disguise the true nature, acquisition, source, location, distribution or transfer of an asset connected with the commission of a predicate offense.”<sup>34</sup> Predicate offenses include offenses “related to smuggling under the Customs Act; related to participating in an organized criminal group; and related to the unlawful use, holding or possessing of natural resources or a process for illegal exploitation of natural resources for commercial purposes.”<sup>35</sup>
- b) Individuals that violate the Anti-Money Laundering Act may face imprisonment for one to 10 years, a fine of between 20,000 and 200,000 Baht, or both.<sup>36</sup>

7. *National Park Act B.E. 2562 (2019)*

- a) The National Park Act was originally passed in 1961,<sup>37</sup> and was most recently amended in 2019.<sup>38</sup> The Act aims to protect ecology, biodiversity, natural resources, and the environment in regulated areas.<sup>39</sup> The revised law extends protections to forest parks, botanical gardens, and arboretums and prohibits any action harmful to the existing natural resources or that affects the ecosystem of regulated areas.<sup>40</sup>
- b) The 2019 revisions also amended the penalties for different violations. Penalties may include up to 20 years of imprisonment, fines of between 400,000 and 2,000,000 Baht, or both.<sup>41</sup> Individuals charged with luring protected wild animals out of or threatening wild animals in protected areas, however, may face up to five years in prison, fines of up to 5,000 Baht, or both.<sup>42</sup>
- c) This act may be interpreted to prohibit trade in species of wildlife taken from Thailand’s national parks, since removing them from their habitat may alter or harm their behavior.<sup>43</sup>

8. *Penal Code 1861 [as amended 1948]*

- a) Violators who bribe officials are subject to penalties including one to five years of imprisonment, a fine not exceeding 10,000 Baht, or both.<sup>44</sup>
- b) The Penal Code also sets out punishments for persons or officials involved in illegal actions involving regulated species. This code is used as a preventive means against corruption related to wildlife.<sup>45</sup> Officials involved in wildlife crime are subject to penalties ranging from one to 20 years or life in prison, fines of 2,000 to 40,000 Baht, or both, depending on the severity of the crime.<sup>46</sup>

<sup>33</sup> Thailand, *Anti-Money Laundering Act, B.E. 2542 (1999), as amended by B.E. 2558 (2015)*.

<sup>34</sup> Patricia Moore, Chanokporn Prompinchompoo and Claire A. Beastall, *CITES Implementation in Thailand: A review of the legal regime governing the trade in great apes and gibbons and other CITES-listed species* (Petaling Jaya, TRAFFIC, 2016); Thailand, *Anti-Money Laundering Act, B.E. 2542 (1999), as amended by B.E. 2558, sect. 5 (2015)*.

<sup>35</sup> Patricia Moore, Chanokporn Prompinchompoo and Claire A. Beastall, *CITES Implementation in Thailand: A review of the legal regime governing the trade in great apes and gibbons and other CITES-listed species* (Petaling Jaya, TRAFFIC, 2016); Thailand, *Anti-Money Laundering Act, B.E. 2542 (1999), as amended by B.E. 2558, sects. 3, 7, 10, 14 (2015)*.

<sup>36</sup> Patricia Moore, Chanokporn Prompinchompoo and Claire A. Beastall, *CITES Implementation in Thailand: A review of the legal regime governing the trade in great apes and gibbons and other CITES-listed species* (Petaling Jaya, TRAFFIC, 2016); Thailand, *Anti-Money Laundering Act, B.E. 2542 (1999), as amended by B.E. 2558, sect. 60 (2015)*.

<sup>37</sup> Thailand, *National Park Act, B.E. 2504 (1961)*.

<sup>38</sup> Thailand, *National Park Act, B.E. 2562 (2019)*.

<sup>39</sup> Thailand, *National Park Act, B.E. 2560 (2018)*.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*, sects. 41-42.

<sup>42</sup> *Ibid.*, sect. 43.

<sup>43</sup> Tilleke & Gibbins International Ltd., “Updates to Thailand’s Environmental Laws”, 17 July 2019.

<sup>44</sup> Thailand, *Penal Code, B.E. 2499 (1965), as amended by B.E. 2547 (2003)*.

<sup>45</sup> *Ibid.* (quoting Penal Code 1861 (as amended 1948), sect. 148).

<sup>46</sup> *Ibid.*

## Other relevant instruments

### 9. *Thailand Tiger Action Plan 2010-2022*<sup>47</sup>

- a) The Thailand Tiger Action Plan 2010-2022 is a national sectoral policy produced by the Department of National Parks, Wildlife and Plant Conservation to continue to advance conservation efforts nationwide. The document reviews tigers' current status and discusses issues the government is having preserving tiger populations.
- b) Since tigers are threatened by extinction, the government of Thailand is aiming to strengthen its monitoring of tigers and reduce hunting and illegal trade of tigers and tiger products. Ultimately, the government is seeking to grow its wild tiger populations by 50 per cent by 2022.<sup>48</sup>
- c) The plan outlines different approaches the government will take to reach its goal, including focusing on: "strengthening direct conservation action and enforcement; building capacity based on successful models; strengthening monitoring research, and information management; promoting education, awareness, and public participation; and strategic financing for tiger conservation."<sup>49</sup>
- d) The plan also intends to foster demand reduction, both for tigers themselves and species that tigers rely upon for food.<sup>50</sup> Tigers and their parts are typically used in traditional medicine and as amulets, while their prey is typically consumed as food.<sup>51</sup> The policy discusses strengthening enforcement related to illegal wildlife trade in particular, and frames this as a demand-reduction approach.<sup>52</sup> It also discusses creating a database to monitor captive tigers to ensure places holding tigers in captivity are doing so legally and are not facilitating illegal trade.<sup>53</sup> It is unclear if this extends to captive breeding facilities as well.

## Analysis

### Legal status of the domestic market

10. Under WARPA, all trade (including domestic trade) of WARPA-protected animal species (except crocodiles), acquired through any channel, is prohibited unless permission has been granted.<sup>54</sup> WARPA-listed species, including protected and controlled animal species, may be held in possession, bred in captivity, or traded if the appropriate licenses have been secured in accordance with Ministerial Regulations.<sup>55</sup> As such, trade in captive-bred specimens of Appendix I-listed species is legal when authorized.
  - a) Facilities that are permitted to breed WARPA-listed species are also allowed to trade specimens they have bred, without an additional license, but must still satisfy the requirements for securing a trading license before doing so.<sup>56</sup> For example, there are several crocodile farms licensed to breed and trade Siamese crocodile and saltwater crocodile, which are CITES Appendix I-listed species.<sup>57</sup>
11. Under the Plants Act, artificially propagating, importing, exporting, and/or transporting (which could encompass possession and/or trading) protected species is similarly prohibited.<sup>58</sup> However,

<sup>47</sup> Thailand, Department of National Parks, Wildlife and Plant Conservation, Ministry of Natural Resources and Environment, *Thailand Tiger Action Plan 2010-2022* (Bangkok, 2010).

<sup>48</sup> *Ibid.*, Preface and Forwards.

<sup>49</sup> *Ibid.*, Executive Summary and Best Practices for Tiger Conservation, p. 16, 34.

<sup>50</sup> *Ibid.*, p. 2.

<sup>51</sup> *Ibid.*, p. 10.

<sup>52</sup> *Ibid.*, pp. 24, 28.

<sup>53</sup> *Ibid.*, p. 29.

<sup>54</sup> Thailand, Wild Animal Reservation and Protection Act, B.E. 2562, sects. 19, 28, 30 (2019); Thailand, Wild Animal Reservation and Protection Act, B.E. 2535, sects. 23–25 (1992, as amended 2014).

<sup>55</sup> Thailand, Wild Animal Reservation and Protection Act, B.E. 2562, sect. 30.

<sup>56</sup> *Ibid.*, sects. 8, 9, 28, 30.

<sup>57</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, "Thailand", CITES registers. Available at <https://www.cites.org/eng/common/reg/cb/TH> (accessed on June 15, 2020).

<sup>58</sup> Thailand, Plants Act, B.E. 2518, sect. 29 ter. (1975) as amended by B.E. 2550 (2007).

individuals that register with the Minister may be permitted to artificially propagate and/or trade protected species of plants.<sup>59</sup>

### Regulation of domestic trade

12. The legal controls imposed on trade by WARPA and the Plants Act apply broadly to all species listed under these acts. While possession, trade, and breeding is regulated for these listed species, it is possible to possess, trade, and/or breed a specimen of or product derived from a species listed under one of these acts with the requisite permission.
13. Much of Thailand's trade in Appendix I-listed species occurs online.<sup>60</sup> Facebook groups are commonly used to buy and sell wildlife.<sup>61</sup> Between October 2018 and April 2019, at least 546 hornbill parts, mostly from helmeted hornbills, and products thereof were offered for sale across 32 of 40 Facebook groups that were observed.<sup>62</sup> A 2018 report found that over half of the species offered for sale online were regulated under WARPA.<sup>63</sup> Online trade is prohibited under WARPA;<sup>64</sup> online traders must follow regulations and must register with the Director-General in order to trade protected species online.
14. Currently, trade in all native CITES-listed species and 50 non-native CITES-listed species, included in the "controlled wildlife" category, is banned under WARPA unless a license has been secured that allows otherwise.<sup>65</sup>
  - a) Controls for both native and non-native Appendix I-listed species are the same for all species listed in the respective categories under WARPA.
15. Different types of trade (e.g., business to business, business to consumer, consumer to consumer) are not treated differently under WARPA and other relevant laws.

### Registration

16. In order to breed species deemed protected or controlled under WARPA, facility owners must secure the appropriate license from the Director-General.<sup>66</sup> The Ministerial Regulations describe the requirements for securing such a license.<sup>67</sup> Those that violate these provisions and breed species without the requisite license may face fines of up to 300,000 Baht (approximately \$9,600 US, as of July 2020), imprisonment for up to three years, or both.<sup>68</sup>
  - a) There are 32 captive-breeding facilities in Thailand included in the CITES register.<sup>69</sup> They all breed crocodiles (saltwater crocodiles, Siamese crocodiles, and/or hybrids thereof), three breed Mekong giant catfish (*Pangasianodon gigas*), and two also breed Asian arowana (*Scleropages formosus*), all of which are included in CITES Appendix I.<sup>70</sup>

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<sup>59</sup> *Ibid.*, sect. 29 tetra.

<sup>60</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*.

<sup>61</sup> Maethinee Phassaraudomsak and Kanitha Krishnasamy, *Trading Faces: A Rapid Assessment on the use of Facebook to trade wildlife in Thailand, (Petaling Jaya, TRAFFIC, 2018)*.

<sup>62</sup> Maethinee Phassaraudomsak, Kanitha Krishnasamy and Serene C. L. Chng, *Trading Faces: Online trade of Helmeted and other hornbill species on Facebook in Thailand (Petaling Jaya, TRAFFIC, 2019)*.

<sup>63</sup> Maethinee Phassaraudomsak and Kanitha Krishnasamy, *Trading Faces: A Rapid Assessment on the use of Facebook to trade wildlife in Thailand, (Petaling Jaya, TRAFFIC, 2018)*.

<sup>64</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*, p. 79.

<sup>65</sup> Connor T. Panter and Rachel L. White, "Insights from Social Media Into The Illegal Trade of Wild Raptors in Thailand", *TRAFFIC Bulletin*, vol. 32, No. 1 (2020); Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*.

<sup>66</sup> Thailand, *Wild Animal Reservation and Protection Act, B.E. 2562, sects. 8, 9, 28 (2019)*.

<sup>67</sup> *Ibid.*, 28.

<sup>68</sup> *Ibid.*, 95.

<sup>69</sup> *Convention on International Trade in Endangered Species of Wild Fauna and Flora, "Thailand", CITES registers. Available at <https://www.cites.org/eng/common/reg/cb/TH> (accessed on June 15, 2020).*

<sup>70</sup> *Ibid.*



17. Under the Plants Act, individuals seeking to artificially propagate conserved plants for use in trade are required to register with the Department of Agriculture, and to re-register at least every five years.<sup>71</sup> Individuals that propagate conserved plants for commercial purposes without properly registering may face imprisonment for up to three months, a fine of up to 3,000 Baht, or both.<sup>72</sup>

#### Registration of possession

18. WARPA prohibits the possession of controlled wildlife and preserved wildlife that can be captively bred and products thereof without permission.<sup>73</sup> In order to lawfully possess a specimen or product from a controlled species of wildlife, an individual must register with the authorities.<sup>74</sup> Lawful possession of preserved species of wildlife that can be bred or products thereof requires a certificate.<sup>75</sup> Those that unlawfully hold species of controlled wildlife may face fines of up to 100,000 Baht, up to one year in prison, or both.<sup>76</sup>
19. The Plants Act does not expressly address possession, but does prohibit the movement of conserved plants and their debris without prior permission.<sup>77</sup> Further, facilities engaging in artificial propagation of protected species must register their facilities in order to lawfully hold specimens on-site.<sup>78</sup>

#### Interpretation by courts

20. Between 2008 and 2013, however, when the prior version of WARPA was in effect, Thai officials made more than 50 seizures of tortoises and turtles, but only successfully prosecuted a handful of those cases.<sup>79</sup>
21. There are several tiger breeding facilities in Thailand, often called “tiger farms” to distinguish them from zoos.<sup>80</sup> Possession of tigers without permission, however, even if they are not being traded, is a violation under WARPA.

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<sup>71</sup> *Ibid.*, sect. 29 tetra.

<sup>72</sup> *Ibid.*, sect. 61 bis.

<sup>73</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*.

<sup>74</sup> Thailand, *Wild Animal Reservation and Protection Act, B.E. 2562, sect. 19 (2019)*.

<sup>75</sup> Tilleke & Gibbins International Ltd., “Updates to Thailand’s Environmental Laws”, 17 July 2019.

<sup>76</sup> Thailand, *Wild Animal Reservation and Protection Act, B.E. 2562, sect. 90 (2019)*.

<sup>77</sup> Thailand, *Plants Act, B.E. 2518, sect. 29 ter. (1975) as amended by B.E. 2550 (2007)*.

<sup>78</sup> *Ibid.*, sect. 29 tetra.

<sup>79</sup> Kanitha Krishnasamy and Monica Zavagli, *Southeast Asia: At the Heart of Wildlife Trade (Petaling Jaya, TRAFFIC, 2020)*, p. 70.

<sup>80</sup> WWF, “Thailand’s Tiger Temple Raid Highlights Need to Close Tiger Farms in Asia”, 29 July 2016.

## United States

### Introduction

1. This survey of existing legal controls in select domestic markets for CITES Appendix I-listed species is called for under CITES Decision 17.87 (Rev. CoP18) on *Domestic markets for frequently illegally traded specimens*,<sup>1</sup> which states, in relevant part: “The Secretariat, subject to external funding and in consultation with relevant Parties, is requested to: a) undertake a study of the domestic controls in consumer markets for specimens of CITES-listed species for which international trade is predominantly illegal, other than elephant ivory . . . .”
2. In the scoping exercise presented in Document SC70 Inf. 18 on *Controls on domestic trade in selected Appendix-I listed species*, which informed adoption of Decision 17.87 (Rev. CoP18), a number of Appendix-I species were identified as known to be of particular concern because of international trade and it was suggested that the potential study should focus on domestic markets that are primarily supplied by imported specimens. Based on the criteria used to determine focus countries and species of concern, the United States was identified as a “significant market” for the following Appendix-I taxa: rhinoceros, pangolins, American crocodiles, iguanas, snakes, and orchids; and was therefore identified for this current survey.
3. However, in addition to CITES implementation,<sup>2</sup> this survey is focused on all Appendix-I species other than African elephants, and considers certain Federal laws in the United States (stricter domestic measures) that are administered at the national level that may also regulate domestic activities with Appendix-I species separately from and in addition to their status under CITES, focusing on domestic trade and commercial use. As described further below, separate from their Appendix-I status under CITES, species may be regulated to varying degrees in the United States based on their status under other Federal laws, such as the Endangered Species Act (ESA)<sup>3</sup> (if an endangered or threatened species<sup>4</sup>), the Marine Mammal Protection Act (MMPA)<sup>5</sup> (if a marine mammal<sup>6</sup>), the Migratory Bird Treaty Act (MBTA)<sup>7</sup> (if a listed migratory bird<sup>8</sup>), the injurious species provisions of the Lacey Act<sup>9</sup> (if listed as injurious wildlife<sup>10</sup>), the Captive Wildlife Safety Act (CWSA)<sup>11</sup> (if one of eight prohibited wildlife species or hybrids thereof<sup>12</sup>), or the Rhinoceros and Tiger Conservation Act (RTCA),<sup>13</sup> and other laws discussed below. There may be other applicable laws that have not been considered by this survey that may regulate activities with Appendix-I species at the Federal or subnational level in the United States (e.g., other laws at the Federal, State, Tribal, or local level).<sup>14</sup>
4. There are presently 136 species included in CITES Appendix I and native to the United States of America.<sup>15</sup> There is demand for both native and non-native Appendix I-listed species and parts thereof

<sup>1</sup> Decision 17.87 (Rev. CoP18).

<sup>2</sup> United States, Endangered Species Act of 1973, 16 U.S.C. sects. 1537a, 1538(c), (g), 1540; United States, 50 C.F.R. part 23.

<sup>3</sup> United States, Endangered Species Act of 1973, 16 U.S.C. sect. 1531 et seq. Available at <https://www.govinfo.gov/content/pkg/USCODE-2018-title16/pdf/USCODE-2018-title16-chap35.pdf>.

<sup>4</sup> Ibid.; United States, 50 C.F.R. sects. 17.11(h), 17.12(h).

<sup>5</sup> United States, Marine Mammal Protection Act, 16 U.S.C. sects. 1361 et seq. (1972). Available at <https://www.govinfo.gov/content/pkg/USCODE-2018-title16/pdf/USCODE-2018-title16-chap31.pdf>.

<sup>6</sup> Ibid.; United States, 50 C.F.R. sects. 18.3, 216.3.

<sup>7</sup> United States, Migratory Bird Treaty Act, 16 U.S.C. sects. 703 et seq. (1918) Available at <https://www.govinfo.gov/content/pkg/USCODE-2018-title16/pdf/USCODE-2018-title16-chap7.pdf>.

<sup>8</sup> Ibid.; United States, 50 C.F.R. sect. 10.13.

<sup>9</sup> United States, Lacey Act of 1900, 18 U.S.C. sect. 42(a)-(b). Available at <https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-part1-chap3-sec42.pdf>.

<sup>10</sup> Ibid.; United States, 50 C.F.R. part 16.

<sup>11</sup> United States, Captive Wildlife Safety Act, 16 U.S.C. sects. 3371(g); 3372(a)(2)(C), (e). (2003). Available at <https://www.govinfo.gov/content/pkg/USCODE-2018-title16/pdf/USCODE-2018-title16-chap53.pdf>.

<sup>12</sup> Ibid.; United States, 50 C.F.R. sect. 14.252.

<sup>13</sup> United States, Rhinoceros and Tiger Conservation Act of 1994, 16 U.S.C. sects. 5301 et seq. Available at <https://www.govinfo.gov/content/pkg/USCODE-2018-title16/pdf/USCODE-2018-title16-chap73.pdf>.

<sup>14</sup> United States, 50 C.F.R. sect. 23.3.

<sup>15</sup> United States, United States Fish and Wildlife Service, “How CITES Works”.

in the United States, including, among others, the following: rhinoceros (*Rhinocerotidae spp.*);<sup>16</sup> pangolins;<sup>17</sup> American crocodile (*Crocodylus actus*);<sup>18</sup> clouded leopard (*Neofelis nebulosus*);<sup>19</sup> snakes; Indian rock python (*Python molurus molurus*);<sup>20</sup> iguanas; Bahamian rock iguana (*Cyclura rileyi spp.*);<sup>21</sup> Fiji banded iguana (*Brachylophus bulabula*);<sup>22</sup> San Esteban chuckwalla (*Sauromalus varius*);<sup>23</sup> orchids;<sup>24</sup> and costus (*Saussurea costus*).<sup>25</sup> Many Appendix I-listed species traded domestically are kept as pets, used for research, used for their skins or fur, or consumed as food or traditional medicine.<sup>26</sup> There is, however, little information available reporting the volume of Appendix I-listed species exchanged in domestic trade in the United States.<sup>27</sup>

5. The Endangered Species Act (ESA) of 1973, as amended,<sup>28</sup> is a United States Federal law that *inter alia* regulates domestic and international trade in species listed under the ESA as endangered or threatened species. Through the ESA, the United States also implements CITES and regulates international trade in species included in the CITES Appendices.<sup>29</sup> Under the ESA, the U.S. Secretary of the Interior is designated as the CITES Management Authority and Scientific Authority, and the functions of each shall be carried out by the U.S. Fish and Wildlife Service (USFWS).<sup>30</sup> USFWS is responsible for making the required CITES determinations and issuing CITES documents.<sup>31</sup> USFWS carries out the provisions of CITES through the Division of Management Authority (DMA) and the Division of Scientific Authority (DSA) and enforcement through the USFWS Office of Law Enforcement.<sup>32</sup>
6. USFWS works with partners including federal and state agencies, industry groups, and conservation organizations to fully implement CITES.<sup>33</sup> Federal agencies involved in CITES enforcement and supporting CITES implementation include the following:

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<sup>16</sup> United Nations Office on Drugs and Crime, *World Wildlife Crime Report: Trafficking in protected species* (Vienna, 2016), p. 71.  
<sup>17</sup> SC69 Doc. 57 A.

<sup>18</sup> Alejandra Goyenechea and Rosa A. Indenbaum, *Combating Wildlife Trafficking from Latin America to the United States: The illegal trade from Mexico, the Caribbean, Central America and South America and what we can do to address it* (Defenders of Wildlife, Washington, DC, 2015).

<sup>19</sup> SC65 Doc. 38, p. 18, Table 6.

<sup>20</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora CITES Trade Database. Available at <https://trade.cites.org/> (accessed on 14 February 2020).

<sup>21</sup> SC65 Inf. 4.

<sup>22</sup> Mark Auliya and others, "Trade in live reptiles, its impact on wild populations, and the role of the European Market", *Biological Conservation*, vol. 204, part A (December 2016); Alejandra Goyenechea and Rosa A. Indenbaum, *Combating Wildlife Trafficking from Latin America to the United States: The illegal trade from Mexico, the Caribbean, Central America and South America and what we can do to address it* (Defenders of Wildlife, Washington, D.C., 2015), p. 59.

<sup>23</sup> United States, United States Fish and Wildlife Service, "Status Review of the San Esteban Chuckwalla", news release, 7 March 1979. Available at <https://www.fws.gov/news/Historic/NewsReleases/1979/19790306c.pdf>; United States, United States Fish and Wildlife Service, "Listing with Endangered Status for Five Species of Foreign Reptiles", 20 March 1980. Available at [https://ecos.fws.gov/docs/federal\\_register/fr388.pdf](https://ecos.fws.gov/docs/federal_register/fr388.pdf).

<sup>24</sup> Amy Hinsley and others, "A review of the trade in orchids and its implications for conservation", *Botanical Journal of the Linnean Society*, vol. 186, No. 4 (April 2018).

<sup>25</sup> American Herbal Products Association, *Primer on importing and exporting of CITES-listed species* (Silver Spring, 2020).

<sup>26</sup> United States, United States Fish and Wildlife Service, "Illegal Wildlife Trade". Available at <https://www.fws.gov/international/travel-and-trade/illegal-wildlife-trade.html> (accessed on 14 May 2020); Animal Welfare Institute, "Domestic Trade", Available at <https://awionline.org/content/domestic-trade> (accessed on 14 May 2020).

<sup>27</sup> United States, United States House of Representatives, Committee on Natural Resources, "Impacts of U.S. Consumer Demand on the Illegal and Unsustainable Trade of Wildlife Products", Oversight hearing before the Subcommittee on Fisheries, Wildlife, and Oceans of the Committee on Natural Resources U.S. House of Representatives 110<sup>th</sup> Congress 2<sup>nd</sup> Session 2008, Washington, D.C., Sept. 16, 2008. Available at <https://www.govinfo.gov/content/pkg/CHRG-110hhrg44484/html/CHRG-110hhrg44484.htm>.

<sup>28</sup> United States, 16 U.S.C. sects. 1531 et seq.

<sup>29</sup> United States, 16 U.S.C. sects. 1531, 1532, 1537a, 1538(c), (g), 1540; see also 50 C.F.R. part 23.

<sup>30</sup> United States, 16 U.S.C. sect. 1537a.

<sup>31</sup> *Ibid.*; see also 50 C.F.R. sect. 23.6.

<sup>32</sup> United States, 50 C.F.R. sect. 23.6.

<sup>33</sup> United States, United States Fish and Wildlife Service "CITES". Available at: <https://www.fws.gov/international/cites/> (accessed on 14 May 2020).

- a) U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) and Department of Homeland Security, U.S. Customs and Border Protection (CBP) enforce CITES requirements and clearance procedures for plants.<sup>34</sup>
  - b) U.S. Department of Justice brings CITES enforcement actions in Federal court on behalf of the U.S. Government.
  - c) The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) supports USFWS in the implementation of CITES with scientific expertise and guidance on marine issues.<sup>35</sup> Additionally, NMFS is responsible for management of marine species listed as endangered or threatened under the ESA.<sup>36</sup>
7. USFWS has developed methods to combat illegal domestic wildlife trade, including increasing consumer awareness through outreach to domestic consumers of illegal exotic wildlife.<sup>37</sup> The USFWS Office of Law Enforcement is also authorized to pay rewards to individuals who provide information or assistance that may lead to a criminal conviction, civil penalty assessment, arrest, or forfeiture of seized property.<sup>38</sup> Through the rewards program, USFWS is able to investigate consumers of illegal wildlife products.
  8. The President of the United States has also issued executive orders on wildlife trade. In 2013, then-President Obama issued an Executive Order to set up an Advisory Council on Wildlife Trafficking.<sup>39</sup> In 2014, he issued a National Strategy for Combating Wildlife Trafficking, calling for strengthening enforcement, reducing domestic demand for illegally traded wildlife by increasing public awareness, changing behavior, building partnerships, and promoting demand reduction efforts globally.<sup>40</sup> In 2015, the United States Department of the Interior (DOI) released a plan to implement the Strategy.<sup>41</sup>

## **Legislation**

### Applicable laws, regulations, and other legally binding instruments

9. *Endangered Species Act (ESA) of 1973 (most recently amended 2004)*<sup>42</sup>
  - a) The ESA is the primary Federal legislation regulating the use and protection of endangered and threatened species and species included in the CITES Appendices. While the statute itself lays out certain requirements, USFWS and NMFS have developed implementing regulations and guidance documents to further specify how the provisions of the statute are to be implemented and enforced.<sup>43</sup>

<sup>34</sup> United States, 16 U.S.C. sect. 1532(15); 50 C.F.R. sects. 23.3(c), 23.6(k), 23.7(d)-(e).

<sup>35</sup> United States, National Oceanic and Atmospheric Administration, "Convention on International Trade in Endangered Species of Wild Fauna and Flora". Available at <https://www.fisheries.noaa.gov/national/international-affairs/convention-international-trade-endangered-species-wild-fauna-and> (accessed on 14 May 2020).

<sup>36</sup> United States, 16 U.S.C. 1533(a)(2); United States, Reorganization Plan No. 4 of 1970; United States, National Oceanic and Atmospheric Administration, "What is the Endangered Species Act?" Available at <https://www.fisheries.noaa.gov/node/1221>.

<sup>37</sup> United States, United States Fish and Wildlife Service, "Illegal Wildlife Trade". Available at <https://www.fws.gov/international/travel-and-trade/illegal-wildlife-trade.html> (accessed on 14 May 2020).

<sup>38</sup> United States, United States Fish and Wildlife Service, "Office of Law Enforcement: Rewards Program". Available at <https://www.fws.gov/le/index.html> (accessed on 14 May 2020).

<sup>39</sup> United States, Executive Order — Combating Wildlife Trafficking, No. 13648 (1 July 2013).

<sup>40</sup> United States, The White House, "National Strategy for Combating Wildlife Trafficking" (2014). Available at: <https://obamawhitehouse.archives.gov/sites/default/files/docs/nationalstrategywildlifetrafficking.pdf>.

<sup>41</sup> United States, Department of the Interior, "Presidential Taskforce Releases Implementation Plan for the National Strategy for Combating Wildlife Trafficking", press release, 11 February 2015. Available at: <https://www.doi.gov/news/pressreleases/presidential-taskforce-releases-implementation-plan-for-the-national-strategy-for-combating-wildlife-trafficking> (accessed on 14 May 2020).

<sup>42</sup> United States, Endangered Species Act of 1973, 16 U.S.C. sects. 1531–1544.

<sup>43</sup> United States, Fish and Wildlife Service, "Laws and Policies—Regulations and Policies". Available at <https://www.fws.gov/endangered/laws-policies/regulations-and-policies.html>.

- b) Separate and apart from their listing status under CITES, Appendix I-listed species may be listed as endangered or threatened under the ESA. For example, several species of pangolin are under review for ESA listing as of July 2020.<sup>44</sup> Others are neither listed nor under review for listing.<sup>45</sup> At least one CITES Appendix I-listed species native to the United States is not listed under the ESA.<sup>46</sup>
- c) A species is listed under the ESA if it is determined through a rulemaking process based on the “best scientific and commercial data available” to be endangered or threatened.<sup>47</sup> A species is “endangered” if it is “in danger of extinction throughout all or a significant portion of its range.”<sup>48</sup> A species is listed as “threatened” if it is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.”<sup>49</sup> A species is determined to be endangered or threatened because of any of the statutory factors provided in the ESA: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.<sup>50</sup>
- d) The ESA establishes prohibitions for activities with endangered species by statute, which may be extended to threatened species by regulation.<sup>51</sup> Threatened species receive protections by regulation as are “deem[ed] necessary and advisable to provide for the conservation<sup>[52]</sup> of such species.”<sup>53</sup> Additionally, with respect to any threatened species, any act prohibited under the ESA in the case of endangered species may be prohibited by regulation.<sup>54</sup> Prohibited activities with endangered fish and wildlife vary from those for endangered plants. Prohibited activities under the ESA with endangered fish, wildlife, or plants include: import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce.<sup>55</sup> Prohibited activities under the ESA with endangered fish or wildlife also include: take<sup>56</sup> within the United States, within the territorial sea of the United States, or upon the high seas; possess, sell,

<sup>44</sup> United States, Fish and Wildlife Service Federal Register: 81 Fed. Reg. 14058 (Washington, DC, March 16, 2016). Available at <https://www.federalregister.gov/documents/2016/03/16/2016-05699/endangered-and-threatened-wildlife-and-plants-90-day-findings-on-29-petitions>. See also United States, United States Fish and Wildlife Service, “Species Profile: Giant pangolin”. Available at <https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=A0L2> (accessed on 15 June 2020).

<sup>45</sup> For example, a 2017 review of listed plant species found that, at that time, only three foreign plant species were listed under the ESA, but 314 were listed on CITES Appendix I. Catherine M. Foley and others, “Listing Foreign Species under the Endangered Species Act: A Primer for Conservation Biologists”, *BioScience*, vol. 67, No. 7 (July 2017). Available at <https://academic.oup.com/bioscience/article/67/7/627/3091617>.

<sup>46</sup> As of June 2020, the Appendix I-listed red-crowned parrot (*Amazona viridigenalis*), part of whose range is in southern Texas, is not listed under the ESA. United States, United States Fish and Wildlife Service, “Species Profile: Red-crowned parrot”. Available at <https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=B0GO>.

<sup>47</sup> United States Endangered Species Act of 1973, 16 U.S.C. sect. 1533.

<sup>48</sup> *Ibid.*, sect. 1532(6).

<sup>49</sup> *Ibid.*, sect. 1532(20).

<sup>50</sup> *Ibid.*, sect. 1533(a)(1).

<sup>51</sup> United States, Endangered Species Act of 1973, 16 U.S.C. sect. 1538 (a); 1533(d); see also 50 C.F.R. sects. 17.21(a)-(f), 17.31, 17.40-17.48, 17.61, 17.71, 17.73-17.78.

<sup>52</sup> “Conservation” is defined in the ESA to mean “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.” *Ibid.*, sect. 1532(3).

<sup>53</sup> *Ibid.*, sect. 1533(d). All species listed by USFWS as threatened on or before 29 September 2019 receive the same protections as species listed as endangered (unless species-specific regulations were issued for the particular species). United States, 50 C.F.R. sects. 17.31, 17.71 (2019).

<sup>54</sup> United States, Endangered Species Act of 1973, 16 U.S.C. sect. 1533(d).

<sup>55</sup> *Ibid.*, sects. 1538(a)(1)(A), (E), (F), (a)(2)(A), (C), (D); see also United States, 50 C.F.R. sects. 17.21(b), (e), (f), 17.61(b), (d), (e).

<sup>56</sup> United States, 16 U.S.C. sect. 1532(19) (“The term ‘take’ means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”)



deliver, carry, transport, or ship, by any means whatsoever, any endangered fish or wildlife which was taken in violation of the ESA.<sup>57</sup> Prohibited activities under the ESA with endangered plants also include: remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law.<sup>58</sup> It is also unlawful to violate any regulation pertaining to endangered or threatened species,<sup>59</sup> or to attempt to commit, solicit another to commit, or cause to be committed, any of these offenses.<sup>60</sup> The ESA contains certain exceptions and permitting authorities for otherwise prohibited activities with ESA-listed species.<sup>61</sup>

- e) Some states have enacted their own laws prohibiting intrastate trade in certain endangered or threatened species or parts thereof (often ivory and rhinoceros horn).<sup>62</sup>
- f) Violations of the ESA or certain of its regulations (including the prohibition on sale) by any person engaged in business as an importer or exporter of fish, wildlife, or plants, and knowing violations by any other person can result in civil penalties of up to \$25,000, depending on which provisions are violated, for each violation.<sup>63</sup> Knowing violations can also result in criminal prosecution, carrying a fine of up to \$50,000, imprisonment for up to a year, or both.<sup>64</sup> The provisions of the ESA can also be enforced through citizen suits,<sup>65</sup> which may be used to enjoin persons, including the government, who are allegedly violating the ESA or a regulation issued under it; or to compel the Secretary to enforce prohibitions of the ESA; or against the Secretary when they fail to perform their listing and other duties under section 1533 of the ESA.<sup>66</sup> Specimens used in contravention of the ESA or its regulations, including those that are unlawfully traded, as well as equipment and vehicles used to violate the ESA or its regulations, may be subject to forfeiture.<sup>67</sup>
- g) The Eliminate, Neutralize, and Disrupt Wildlife Trafficking Act (END Act)<sup>68</sup> also applies provisions of the federal criminal code concerning money laundering to certain criminal violations of the ESA, the African Elephant Conservation Act (AfECA), and the Rhinoceros and Tiger Conservation Act (RTCA), if the endangered or threatened species of fish or wildlife, products, items, or substances involved in the violation and relevant conduct have a total value of more than \$10,000, thereby providing heightened penalties for these violations.<sup>69</sup>
- h) The Secretaries of Commerce and the Interior may by regulation deem and treat any species as endangered or threatened—even though they are not listed pursuant to section 1533—if they

<sup>57</sup> *Ibid.*, sects. 1538(a)(1)(B), (C); see also *United States*, 50 C.F.R. sects. 17.21(c), (d).

<sup>58</sup> *United States, Endangered Species Act of 1973*, 16 U.S.C. sects. 1538(a)(2)(B); see also *United States*, 50 C.F.R. sects. 17.61(c).

<sup>59</sup> *United States, Endangered Species Act of 1973*, 16 U.S.C. sects. 1538(a)(1)(G), (a)(2)(E).

<sup>60</sup> *Ibid.*, sect. 1538(g); see also *United States*, 50 C.F.R. sects. 17.21(a), 17.61(a).

<sup>61</sup> See, e.g., *United States, Endangered Species Act of 1973*, 16 U.S.C. sects. 1538(b), (c)(2), 1539, 1533(d); see also *United States*, 50 C.F.R. sects. 17.4, 17.5, 17.7, 17.8, 17.22-17.23, 17.32, 17.62-17.63, 17.72.

<sup>62</sup> *New Jersey, C.23:2A-13.1 (2014)*; *California, Animal Parts and Products: Importation or Sale of Ivory and Rhinoceros Horn, AB96 (2015)*; *United States, Endangered Species Act of 1973*, 16 U.S.C. sect. 1532(6)(f). “This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this Act or in any regulation which implements this Act but not less restrictive than the prohibitions so defined.”

<sup>63</sup> *United States, Endangered Species Act of 1973*, 16 U.S.C. sect. 1540(a)(1).

<sup>64</sup> *Ibid.*, sect. 11(b)(1).

<sup>65</sup> In this context, a citizen suit refers to a lawsuit by a private citizen to enforce a statute.

<sup>66</sup> *United States, Endangered Species Act of 1973*, 16 U.S.C. sect. 1540(g).

<sup>67</sup> *Ibid.*, sect. 1540(e)(4).

<sup>68</sup> *United States, Eliminate, Neutralize, and Disrupt Wildlife Trafficking Act of 2016*. Available at <https://www.congress.gov/114/plaws/publ231/PLAW-114publ231.pdf>.

<sup>69</sup> *Ibid.*, 18 U.S.C. sect. 1956(c)(7)(G).

find that they closely resemble a listed species in appearance.<sup>70</sup> Criteria considered in making such a determination include the degree of difficulty enforcement personnel would have in differentiating between the listed and unlisted species, the additional threat posed to an endangered or threatened species by this difficulty, and the probability such treatment of an unlisted species will substantially facilitate ESA enforcement and further the purposes and policies of the ESA.<sup>71</sup> The ESA prohibitions for ESA-listed species, including on import, export, interstate and foreign commerce, take, and activities with illegally taken specimens may be extended to the similarity-of-appearance species as well, and permits may be issued to conduct otherwise prohibited activities.<sup>72</sup>

#### 10. CITES implementing regulations<sup>73</sup>

- a) The U.S. CITES implementing regulations, as amended 27 May 2014,<sup>74</sup> clarify that specimens of species included in Appendix I may only be used for non-commercial purposes following import into the United States except when imported under a CITES exemption document as follows: U.S.-issued certificate for personally owned wildlife; Pre-Convention certificate; export permit or re-export certificate for wildlife from a registered commercial breeding operation with a source code of "D;" export permit or re-export certificate for a plant from a registered nursery or under a permit with a source code of "D;" certificate for artificially propagated plants with a source code of "A" for artificially propagated hybrid specimens derived from one or more unannotated Appendix-I species or other taxa; or U.S.-issued traveling-exhibition certificate.<sup>75</sup> The ESA and CITES implementing regulations also make it unlawful to possess any CITES specimen traded contrary to CITES.<sup>76</sup>
- b) The U.S. regulations provide options for disposing of forfeited and abandoned live and dead wildlife and plants, including maintenance in captivity either in the United States or in the country of export, return to the wild under limited circumstances, and sale of certain Appendix-II or -III specimens. Under some conditions, euthanasia or destruction may be necessary.<sup>77</sup> Decisions regarding the disposition of seized wildlife and plants may be made in consultation with the CITES Management Authority of the country of export.<sup>78</sup>

#### 11. Migratory Bird Treaty Act (MBTA)<sup>79</sup>

- a) The Migratory Bird Treaty Act (MBTA) implements Conventions between the United States and four neighboring countries (Canada, Mexico, Japan, and Russia) for the protection of migratory birds.<sup>80</sup> Migratory bird species protected by the MBTA are listed in Federal regulations.<sup>81</sup> The

<sup>70</sup> United States, *Endangered Species Act of 1973*, 16 U.S.C. sect. 1533(e); United States, 50 C.F.R. sects. 17.50-52.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> United States, 50 C.F.R. part 23 (2014).

<sup>74</sup> United States, United States Fish and Wildlife Service, "Revision of Regulations Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Updates Following the Fifteenth Meeting of the Conference of the Parties to CITES", *Federal Register*, 27 May 2014. Available at <https://www.fws.gov/policy/library/2014/2014-11329.pdf>. United States, Congressional Research Service, *Restrictions on Trade in Elephant Ivory* (Washington, 2015). Available at [https://www.everycrsreport.com/files/20150922\\_R43700\\_ee2d651fd877999ec4b6dd5c12588e15fc3b9795.pdf](https://www.everycrsreport.com/files/20150922_R43700_ee2d651fd877999ec4b6dd5c12588e15fc3b9795.pdf).

<sup>75</sup> United States, 50 C.F.R. sect. 23.55 (2014).

<sup>76</sup> United States, *Endangered Species Act of 1973* 16 U.S.C. sect. 1538(c)(1); United States, 50 C.F.R. sect. 23.13(c).

<sup>77</sup> United States, 50 C.F.R. sect. 23.78 (2014).

<sup>78</sup> *Ibid.*

<sup>79</sup> United States, *Migratory Bird Treaty Act of 1918*, 16 U.S.C. sects. 703-712.

<sup>80</sup> *Convention between the United States and Great Britain [on behalf of Canada] for the Protection of Migratory Birds*, August 16, 1916, 39 Stat. 1702 (T.S. No. 628), as amended; *Convention between the United States and Mexico for the Protection of Migratory Birds and Game Mammals*, February 7, 1936, 50 Stat. 1311 (T.S. No. 912), as amended; *Convention between the Government of the United States of America and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment*, March 4, 1972, 25 U.S.T. 3329 (T.I.A.S. No. 7990); and *Convention between the United States of America and the Union of Soviet Socialist Republics Concerning the Conservation of Migratory Birds and Their Environment*, November 19, 1976, 20 U.S.T. 4647 (T.I.A.S. No. 9073).

<sup>81</sup> United States, 50 C.F.R. sect. 10.13.



MBTA prohibits the taking, killing, possession, transportation, selling, offering for sale, purchasing, or bartering for any migratory birds, parts, eggs, or nests, except where authorized by a valid permit. The Secretary of the Interior may promulgate regulations to permit otherwise prohibited activities under the MBTA.<sup>82</sup> Federal regulations cover most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds protected under the MBTA, including issuance of permits.<sup>83</sup> A number of birds covered by the MBTA are included in CITES Appendix I.<sup>84</sup>

- b) Violations of the MBTA, the four treaties addressed within it, or regulations promulgated pursuant to it, are considered misdemeanors and, if convicted, violators may be fined up to \$15,000, imprisoned for up to six months, or both.<sup>85</sup> Whoever knowingly takes a migratory bird intending to sell, offer to sell, barter, or offer to barter the bird, and whoever knowingly sells, offers for sale, barter, or offers to barter any migratory bird, may be found guilty of a felony and fined up to \$2,000, imprisoned for up to two years, or both.<sup>86</sup> MBTA specimens captured, killed, taken, sold or offered for sale, bartered or offered for barter, purchased, shipped, transported, carried, imported, exported, or possessed in violation of the MBTA or implementing regulations are subject to seizure, forfeiture to the United States, and disposal at the discretion of the Secretary of the Interior.<sup>87</sup>
- c) Under the MBTA, states also have the authority to enact and implement laws or regulations with greater protections for migratory birds, provided that such laws do not extend open hunting seasons beyond those established at the national level.<sup>88</sup>

## 12. *Marine Mammal Protection Act (MMPA)*<sup>89</sup>

- a) The Marine Mammal Protection Act (MMPA) protects all marine mammals. The jurisdiction for MMPA is shared by USFWS and NMFS. NMFS has jurisdiction for the following marine mammals under the MMPA: whales, dolphins, porpoises, seals, and sea lions.<sup>90</sup> USFWS has jurisdiction for the following marine mammals under the MMPA: walrus, polar bear, sea otters, dugongs, and manatees.<sup>91</sup> NMFS and USFWS have promulgated implementing regulations for the MMPA.<sup>92</sup> The MMPA prohibits take and import of marine mammals and their parts and products, for any purpose other than public display, scientific research, or enhancing the survival of a species or stock, and also makes it unlawful to transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal and its parts and products.<sup>93</sup> There are certain exceptions, such as for specimens taken before the MMPA was enacted (December 21, 1972) and take by Alaska natives for subsistence, or for purposes of creating and selling authentic native articles of handicraft and clothing, and in each case, not accomplished in a wasteful manner.<sup>94</sup> Permits may also be issued for scientific research, public display, or enhancing the survival or recovery of a species.<sup>95</sup>

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<sup>82</sup> *United States, Migratory Bird Treaty Act*, 16 U.S.C. sect. 704(a) (1918).

<sup>83</sup> *United States*, 50 C.F.R. parts 10, 21, 22.

<sup>84</sup> *Compare Convention on International Trade in Endangered Species of Wild Fauna and Flora*, "Appendices". Available at <https://www.cites.org/eng/app/appendices.php> (accessed 14 May 2020) with *United States*, 50 C.F.R. sect. 10.13.

<sup>85</sup> *United States, Migratory Bird Treaty Act*, 16 U.S.C. sect. 707(a) (1918).

<sup>86</sup> *Ibid.*, sect. 707(b).

<sup>87</sup> *United States, Migratory Bird Treaty Act*, 16 U.S.C. sect. 706 (1918).

<sup>88</sup> *Ibid.*, sect. 708.

<sup>89</sup> *United States, Marine Mammal Protection Act*, 16 U.S.C. sect. 1361, et seq. (2018). Available at <https://www.govinfo.gov/content/pkg/USCODE-2018-title16/pdf/USCODE-2018-title16-chap31.pdf>.

<sup>90</sup> *United States*, 50 C.F.R. sect. 216.3.

<sup>91</sup> *Ibid.*, sect. 18.3.

<sup>92</sup> *Ibid.*, parts 18, 216-219, 403.

<sup>93</sup> *United States, Endangered Species Act of 1973*, 16 U.S.C. sects. 1371-1372.

<sup>94</sup> *United States*, 50 C.F.R. sects. 18.23, 18.25, 216.23, 216.25.

<sup>95</sup> *United States, Endangered Species Act of 1973*, 16 U.S.C. sect. 1374.

- b) Dead marine mammals or parts thereof that are found in or around the ocean may be possessed if registered and may not be purchased, sold, or otherwise traded for commercial purposes.<sup>96</sup>
- c) Violations of the MMPA, its regulations, or permit conditions, are punishable by civil penalties of not more than \$10,000 for each violation, as well as by criminal prosecution carrying a maximum penalty of \$20,000 for each violation, imprisonment for up to a year, or both.

13. *Lacey Act Amendments of 1981*<sup>97</sup>

- a) The Lacey Act prohibits trade in illegally obtained wildlife and authorizes civil and criminal penalties that reinforce the effectiveness of other federal, state, tribal and foreign wildlife protection laws and treaties by addressing the subsequent trade in illegally harvested fish, wildlife and plants. The Lacey Act makes it an offense to import, export, transport, sell,<sup>98</sup> receive, acquire, or purchase any fish or wildlife taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law,<sup>99</sup> or to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish, wildlife or plant taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law.<sup>100</sup> The Lacey Act prohibits the possession, within the special maritime and territorial jurisdiction of the United States,<sup>101</sup> of any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign or Indian tribal law.<sup>102</sup> The Act includes similar prohibitions related to trafficking in plants.<sup>103</sup> The Lacey Act also makes it an offense to attempt to commit any of these prohibited acts.<sup>104</sup> The Lacey Act provides broad enforcement authority to inspect shipments, and accompanying documents, at the U.S. border to determine compliance with the Act.<sup>105</sup> In addition, the Lacey Act requires all packages containing fish or wildlife to be marked in accordance with regulations promulgated under the Act and prohibits making or submitting any false record, account, or label for, or any false identification of, any fish, wildlife, or plant which has been, or is intended to be traded in interstate or foreign commerce.<sup>106</sup>
- b) Violators of the Lacey Act provisions controlling illegally taken fish and wildlife may be assessed civil penalties by the Secretary of up to \$10,000 for each violation.<sup>107</sup> However, when the specimen's market value is less than \$350, and the violation only involves transportation, acquisition, or receipt contrary to the provisions of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty may not exceed the maximum provided for in said law, treaty, or regulation, or \$10,000, whichever is less.<sup>108</sup> Violations involving specimens with market values of over \$350 may be fined up to \$20,000, imprisoned for up to five years, or both, and each violation is a separate offense deemed to have been committed both in the district where the violation first occurred and any district in which the defendant may have taken or possessed the fish or wildlife.<sup>109</sup>

<sup>96</sup> *United States, 50 C.F.R. sects. 18.26, 216.26.*

<sup>97</sup> *United States, Lacey Act Amendments of 1981, 16 U.S.C. sects. 3371-3378.*

<sup>98</sup> *For example, it is deemed to be a sale of fish or wildlife in violation of the Lacey Act for a person for money or other consideration, to offer or provide—(A) guiding, outfitting, or other services; or (B) a hunting or fishing license or permit; for the illegal taking, acquiring, receiving, transporting, or possessing of fish or wildlife. Ibid., sect. 3372(c)(1).*

<sup>99</sup> *Ibid., sect. 3372(a)(1).*

<sup>100</sup> *Ibid., sect. 3372(a)(2)(A).*

<sup>101</sup> *United States, 18 U.S.C. sect. 7.*

<sup>102</sup> *United States, Lacey Act Amendments of 1981, 16 U.S.C. sect. 3372(a)(3)(A).*

<sup>103</sup> *Ibid., sects. 3372(a)(1), (a)(2)(B), (a)(3)(B).*

<sup>104</sup> *Ibid., sect. 3372(a)(4).*

<sup>105</sup> *Ibid., sect. 3375.*

<sup>106</sup> *Ibid., sect. 3372(b), (d).*

<sup>107</sup> *Ibid., sect. 3373(a).*

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid., sect. 3373(d).*

Illegally traded wildlife, fish and plants as well as any vessel, vehicle, aircraft, or other equipment used in such trafficking, are subject to forfeiture.<sup>110</sup>

14. *Lacey Act injurious species provisions*<sup>111</sup>

- a) The Lacey Act also prohibits the import of injurious wildlife into the United States and shipment of injurious wildlife between the continental United States and Hawaii, Puerto Rico, the District of Columbia, and other United States possessions (but, as of 2017, not between states located within the continental United States).<sup>112</sup> There are certain statutory and permitting exceptions to these prohibitions.<sup>113</sup> Injurious wildlife are species of mammals, birds, fish (including mollusks and crustacea), amphibians, or reptiles, including offspring and eggs, designated through statute or regulation to be injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States.<sup>114</sup> The Act specifically identifies some injurious wildlife, including all members of the genus *Pteropus* (several of which are included in Appendix I), and provides that other species of wildlife can be designated as “injurious” by the Secretary of the Interior.<sup>115</sup>
- b) Violators of the provisions regulating the import or shipment of injurious species, or any regulation issued pursuant to them, are to be fined or imprisoned for up to six months, or both.<sup>116</sup> Fines for violation of these provisions may be up to \$5,000 for individuals and \$10,000 for organizations.<sup>117</sup>

15. *Captive Wildlife Safety Act*<sup>118</sup>

- a) The Captive Wildlife Safety Act (CWSA) amended the Lacey Act Amendments of 1981 (16 U.S.C. 3371, et seq.),<sup>119</sup> making it illegal to move certain types of live big cats across State lines or United States borders unless the mover qualifies as exempt. The Act applies to lion (*Panthera leo*), tiger (*Panthera tigris*), leopard (*Panthera pardus*), snow leopard (*Uncia uncia*), clouded leopard (*Neofelis nebulosa*), jaguar (*Panthera onca*), cheetah (*Acinonyx jubatus*), and cougar (*Puma concolor*) or any hybrids resulting from the breeding of any combination of any of these species—for example, a liger (a male lion and a female tiger) or a tiglon (a male tiger and a female lion)—whether naturally or artificially produced, and thus covers any Appendix I-listed species contained in those taxa.<sup>120</sup>
- b) Interstate sale and purchase, as well as simple movement across state borders, of covered big cat species is prohibited under the CWSA, unless an exemption is granted.<sup>121</sup> Exemptions may

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<sup>110</sup> *Ibid.*, sect. 3374.

<sup>111</sup> *United States, Lacey Act of 1900*, 18 U.S.C. sect. 42(a)-(b); see also *United States*, 50 C.F.R. part 16.

<sup>112</sup> *United States, Lacey Act of 1900*, 18 U.S.C. sect. 42(a)-(b); *United States, United States Fish and Wildlife Service, “Implementation of the D.C. Circuit Court Decision in United States Association of Reptile Keepers, Inc. v. Zinke, No. 15-5199 (D.C. Cir. April 7, 2017)”*. Available at [https://www.fws.gov/injuriouswildlife/pdf\\_files/USARK\\_ruling\\_talking\\_points\\_and\\_Q\\_A\\_final.pdf](https://www.fws.gov/injuriouswildlife/pdf_files/USARK_ruling_talking_points_and_Q_A_final.pdf); *United States, United States Fish and Wildlife Service, “Injurious Wildlife”*, 15 January 2020.

<sup>113</sup> *United States, Lacey Act of 1900*, 18 U.S.C. sect. 42(a)(3)-(a)(4); see also *United States*, 50 C.F.R. part 16.

<sup>114</sup> *United States, Lacey Act of 1900*, 18 U.S.C. sect 42(a)(1)-(a)(2); see also *United States*, 50 C.F.R. part 16.

<sup>115</sup> *Ibid.*

<sup>116</sup> 18 U.S.C. sect. 42(b); *United States Fish and Wildlife Service, Injurious Wildlife: A Summary of the Injurious Provisions of the Lacey Act (18 U.S.C. 42; 50 C.F.R. 16)*. Available at [https://www.fws.gov/injuriouswildlife/pdf\\_files/InjuriousWildlifeFactSheet2017.pdf](https://www.fws.gov/injuriouswildlife/pdf_files/InjuriousWildlifeFactSheet2017.pdf).

<sup>117</sup> *Ibid.*

<sup>118</sup> *United States, Captive Wildlife Safety Act*, 16 U.S.C. sects. 3371-72 (2018); 50 C.F.R. sects. 14.250-14.255.

<sup>119</sup> *Ibid.*

<sup>120</sup> *United States, Captive Wildlife Safety Act*, 16 U.S.C. sects 3371-72 (2018); 50 C.F.R. sects. 14.250-14.255. Appendix I-listed big cat species covered by the CWSA include tiger (*Panthera tigris*), leopard (*Panthera pardus*), cheetah (*Acinonyx jubatus*), and the listed populations of cougar (*Puma concolor*) and lion (*Panthera leo*). *Convention on International Trade in Endangered Species of Wild Fauna and Flora, “Appendices”*. Available at <https://www.cites.org/eng/app/appendices.php> (accessed 14 May 2020).

<sup>121</sup> *United States, United States Fish and Wildlife Service, “Captive Wildlife Safety Act: What Big Cat Owners Need to Know”*; *United States, Captive Wildlife Safety Act*, 16 U.S.C. sects. 3371-72 (2003).

be given to “persons, facilities, or other entities licensed by the United States Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS) under the Animal Welfare Act to possess [or transport] big cats,” including some zoos and research facilities, state colleges, state agencies, and state-licensed wildlife rehabilitators.

- c) The unlawful purchase or sale of a big cat valued at more than \$350 across State lines is a felony and may result in a fine of up to \$250,000 for an individual, or up to \$500,000 for an organization, and up to five years in prison.<sup>122</sup>

#### 16. *Wildlife and Fisheries Seizure and Forfeiture Procedures*<sup>123</sup>

- a) The USFWS promulgated regulations to guide the seizure and forfeiture of specimens and items that is sometimes required under numerous wildlife laws, including the ESA, MBTA, MMPA, the Lacey Act, and the Captive Wildlife Safety Act.<sup>124</sup> In addition to outlining the administrative requirements behind seizure and forfeiture under the various wildlife laws, the regulations also outline how forfeited or abandoned wildlife specimens, parts, or products should be properly disposed of.<sup>125</sup>
- b) Forfeited wildlife products must be properly recorded prior to disposal.<sup>126</sup> Items may then be disposed of by being: returned to the wild; used by a government agency; donated or loaned (i.e., to an educational or research institution); sold;<sup>127</sup> or destroyed.<sup>128</sup> Agency officials are to prioritize disposal options in the order in which they are listed here, taking into consideration the particular condition of the item and any additional case-specific restrictions when making their selection.<sup>129</sup> The regulations provide additional guidance for each disposal method,<sup>130</sup> including that Appendix I specimens may not be sold.<sup>131</sup>

#### 17. *Rhinoceros and Tiger Conservation Act (RTCA)*<sup>132</sup>

- a) The Rhinoceros and Tiger Conservation Act, as amended in 1998, makes it a violation to sell, import, or export, or attempt to sell, import, or export, any product, item, or substance intended for human consumption or application containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger.”<sup>133</sup> Violations may result in civil and/or criminal penalties, ranging from a civil fine of up to \$12,000 per knowing violation, to up to six months in prison, or both.<sup>134</sup> Funds collected may be used, in part, to reward any individual who provided information leading to an arrest, conviction, or forfeiture and to cover any costs they incurred in doing so.<sup>135</sup> Any specimen or product involved in a violation of the RTCA is subject to seizure and forfeiture.<sup>136</sup>

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<sup>122</sup> United States, Fish and Wildlife Service, “Captive Wildlife Safety Act: What Big Cat Owners Need to Know”.

<sup>123</sup> United States, 50 C.F.R. part 12.

<sup>124</sup> United States, 50 C.F.R. sect. 12.2.

<sup>125</sup> United States, 50 C.F.R. part 12, subpart D.

<sup>126</sup> United States, 50 C.F.R. sect. 12.31.

<sup>127</sup> The following species may not be sold or offered for sale: (1) listed in 50 C.F.R. sect. 10.13 as a migratory bird protected by the MBTA; (2) protected under the Eagle Protection Act (16 U.S.C. 668-668d); (3) listed in CITES Appendix I; (4) listed under the ESA as “endangered” or “threatened”, unless the item or species may be lawfully traded in interstate commerce; or (5) protected under the MMPA, unless the item or species may be lawfully traded in interstate commerce. 50 C.F.R. sect. 12.37.

<sup>128</sup> United States, 50 C.F.R. sect. 12.33.

<sup>129</sup> *Ibid.*

<sup>130</sup> United States, 50 C.F.R. sects. 12.34-12.38.

<sup>131</sup> United States, 50 C.F.R. sect. 12.37.

<sup>132</sup> United States, United States Fish and Wildlife Service, “Multinational Species Conservation Acts”. Available at: <https://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/multinational-species-conservation-acts.html> (accessed on 14 May 2020).

<sup>133</sup> United States, Rhinoceros and Tiger Conservation Act, 16 U.S.C. sect. 5305a (1998).

<sup>134</sup> *Ibid.*, sect. 5305a(b).

<sup>135</sup> United States, 16 U.S.C. sect. 3375(d).

<sup>136</sup> United States, Rhinoceros and Tiger conservation Act, 16 U.S.C. sect. 5305a(c) (1998).

Political statements/declarations, policy documents, and strategies from government bodies that have yet to be translated into legally binding instruments

18. *Director's Order No. 210: Administrative Actions to Strengthen United States Trade Controls for Elephant Ivory, Rhinoceros Horn, and Parts and Products of Other Species Listed Under the Endangered Species Act (ESA)*<sup>137</sup>
  - a) The USFWS issued this order in 2014 to establish ways to implement the National Strategy for Combating Wildlife Trafficking. Among other things, the Order requires USFWS employees to strictly enforce all criteria under the ESA exception for antiques.
  - b) The order was implemented 25 February 2014, and last revised 18 July 2016.
19. *National Strategy for Combating Wildlife Trafficking*<sup>138</sup>
  - a) This strategy “establishes guiding principles and strategic priorities for United States efforts to stem illegal trade in wildlife.” The strategy outlines three priorities, two of which are relevant to domestic trade. One is to strengthen enforcement by improving “efforts in the United States to stop illegal trade in wildlife and to enforce laws prohibiting wildlife trafficking.” The second priority is to reduce demand for illegally traded wildlife by raising public awareness of the harms done by wildlife trafficking through outreach in the United States.

## **Analysis**

### Legal status of the domestic market

20. There exists a limited legal domestic market for certain Appendix I-listed species. Under the U.S. CITES implementing regulations, intrastate and interstate domestic trade in specimens imported in contravention of CITES is prohibited.<sup>139</sup> The ESA prohibits certain activities in interstate commerce with species listed as endangered or threatened (with a 4(d) rule) under the ESA, including many native and non-native Appendix I-listed species, without an interstate commerce permit; interstate commerce permits are only granted for activities that enhance the propagation or survival of the species in the wild.<sup>140</sup> The MMPA and MBTA also prohibit interstate trade in marine mammals and migratory birds, respectively. A variety of permits that provide exceptions from prohibitions of the MMPA<sup>141</sup> and MBTA<sup>142</sup> are available, but there do not appear to be permits that would allow domestic trade for commercial purposes. The Captive Wildlife Safety Act prohibits interstate trade of certain big cat species without an exemption,<sup>143</sup> and the Rhinoceros and Tiger Conservation Act prohibits sales of products containing, or purporting to contain, substances derived from any species of rhinoceros or tiger intended for human consumption or application.<sup>144</sup>
21. Thus, commercial domestic trade in Appendix I-listed species is also subject to a number of stricter domestic wildlife laws, which may have bearing on the legality of certain activities depending on the

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<sup>137</sup> United States, Department of the Interior, *Director's Order No. 210 (25 February 2014)*. Available at <https://www.fws.gov/policy/do210.html> (accessed on 14 May 2020).

<sup>138</sup> United States, The White House, “*National Strategy for Combating Wildlife Trafficking*” (2014).

<sup>139</sup> United States, United States Fish and Wildlife Service, “*Revision of Regulations Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Updates Following the Fifteenth Meeting of the Conference of the Parties to CITES*”, *Federal Register*, 27 May 2014. United States, Congressional Research Service, *Restrictions on Trade in Elephant Ivory* (Washington, 2015). Such specimens are contraband, and possession of such specimens is prohibited under ESA 9(c)(1) and 50 CFR sect. 23.13(c).

<sup>140</sup> Only species regulated by USFWS are eligible for these permits; NMFS does not issue interstate or intrastate commerce permits.

<sup>141</sup> United States, United States Fish and Wildlife Service, “*Permits by Species: Marine Mammals*”. Available at <https://www.fws.gov/international/permits/by-species/marine-mammals.html>.

<sup>142</sup> United States, United States Fish and Wildlife Service, “*Permit Applications and Report Forms*”, 27 November 2019. Available at <https://www.fws.gov/birds/policies-and-regulations/permits/need-a-permit.php>.

<sup>143</sup> United States, *Captive Wildlife Safety Act*, 16 U.S.C. sects. 3371-72 (2003).

<sup>144</sup> United States, *Rhinoceros and Tiger Conservation Act*, 16 U.S.C. sects. 5305a (1998).



status of the species under those laws. Indicators that a species might be subject to legal trade domestically include (1) the species is native to the United States and not listed under the ESA; (2) the species is native to the United States and listed under the ESA, involves no unlawful taking of the specimen, and the trade is solely intrastate (unless the concerned State has adopted controls on intrastate trade); or (3) the specimen is specifically excepted under relevant CITES provisions (e.g., if it is a pre-Convention or imported in accordance with CITES requirements from a CITES-registered facility authorized to export Appendix-I animals bred in captivity for commercial purposes). There is at least one Appendix I-listed species that is native to the United States but not listed under the ESA or the other relevant acts.<sup>145</sup>

#### With regard to native and non-native species

22. The ESA, MMPA, CWSA, and the Lacey Act regulate domestic trade in both native and non-native species. Further, under these laws, native and non-native species are subject to the same controls. The MBTA, however, applies only to native and listed Treaty species.<sup>146</sup>

#### With regard to different types of trade

23. The Lacey Act's controls on the shipment of injurious wildlife (which apply to a relatively small number of species and do not apply to domestic trade within the continental United States) allow for organizations to be fined more than individuals for violations.<sup>147</sup> Organizations may also face higher penalties than individuals for certain violations of the Captive Wildlife Safety Act.<sup>148</sup> Besides potential differences in penalties under these two laws, however, controls are generally the same for different types of trade (e.g., business to business vs. business to consumer) in the United States.

#### With regard to online trade

24. The aforementioned statutes do not exclude online trade, and apply with equal force where the activity in question meets the elements of a prohibition under the statute, regardless of whether the transaction is facilitated through online platforms.

#### Registration

##### CITES Registration of facilities breeding Appendix I-listed wildlife in captivity for commercial purposes

25. Facilities breeding in captivity Appendix I-listed specimens for commercial purposes must be included in the register of the CITES Secretariat, in order for qualifying progeny that are bred in captivity for commercial purposes to be traded under the special provisions of CITES Article VII(4).<sup>149</sup> There are 30 U.S. facilities included in the CITES register that breed Appendix I-listed species in captivity for commercial purposes.<sup>150</sup> These facilities have origin of stock both from the wild and captive breeding. All U.S. facilities registered with the Secretariat breed Appendix-I listed falcon species. Most commonly bred are *Falco peregrinus* and *Falco rusticolus* or a hybrid of the two species; though both species are

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<sup>145</sup> See note 46 above.

<sup>146</sup> United States, 50 C.F.R. sect. 10.13. United States, United States Fish and Wildlife Service, "General Provisions; Revised List of Migratory Birds", Federal Register, 18 May 2020. Available at: <https://www.federalregister.gov/documents/2020/04/16/2020-06779/general-provisions-revised-list-of-migratory-birds>.

<sup>147</sup> The current penalty for violation of the injurious wildlife provisions of the Lacey Act is a maximum fine of \$5,000 for individuals and \$10,000 for organizations. United States, Lacey Act, 18 U.S.C. sect. 42(b) (establishing a penalty of up to six months' imprisonment for violating the injurious wildlife provisions) (2018); United States, 18 U.S.C. sect. 3559(a)(7) (classifying crimes carrying sentences of between 30 days and six months as Class B misdemeanors); United States, 18. U.S.C. sect. 3571(b)(6)–(c)(6) (establishing fines for Class B misdemeanors).

<sup>148</sup> United States, Lacey Act, 16 U.S.C. sect. 3373(d) (establishing penalties for violations of the wildlife trafficking provisions of the Lacey Act) (2008); United States, 18 U.S.C. sect. 3559(a) (classifying crimes carrying sentences of between a year and 10 years' imprisonment as felonies); United States, 18 U.S.C. sect. 3571(b)–(c) (establishing fines for felonies). See also Fish and Wildlife Service, "Captive Wildlife Safety Act: What Big Cat Owners Need to Know". United States, 50 C.F.R. sect. 23.46.

<sup>150</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, "United States of America", CITES registers. Available at <https://www.cites.org/eng/common/reg/cb/US> (accessed on 2 March 2020).

protected by the MBTA, it is likely that they are being bred under raptor propagation permits issued pursuant to the MBTA.<sup>151</sup>

26. Facilities breeding Appendix I-listed species in captivity for commercial purposes must register with the United States CITES Management Authority.<sup>152</sup> Once registered, facilities must agree to mark their specimens in the particular way established when registering, report information about their breeding stock to the Management Authority annually, and allow the Management Authority to inspect their premises and records at any reasonable time.<sup>153</sup>

#### Non-CITES permitting and registration of ESA endangered and threatened species

27. Under the ESA, the USFWS may issue permits for otherwise prohibited activities, under statutory requirements and regulations that vary depending on whether the species is listed as endangered or threatened under the ESA. For endangered species, allowed reasons are scientific research, enhancement of propagation or survival, and take that is incidental to an otherwise lawful activity.<sup>154</sup> For threatened species, allowed reasons also include zoological, horticultural, or botanical exhibition and educational use.<sup>155</sup>
28. USFWS may also register persons subject to the jurisdiction of the United States through its captive-bred-wildlife (CBW) program if certain established requirements are met under the CBW regulations.<sup>156</sup> The CBW program is available for ESA-listed wildlife species having a natural geographic distribution not including any part of the United States and other species that the Director has determined to be eligible by regulation.<sup>157</sup> The individual specimens must have been born in captivity in the United States.<sup>158</sup> Through a CBW registration, USFWS may allow a registrant to conduct certain otherwise prohibited activities under certain circumstances to enhance the propagation or survival of the affected species: take; export or re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce.<sup>159</sup> A CBW registration may authorize interstate purchase and sale only between entities that both hold a registration for the taxon concerned and is issued only to authorize conduct that facilitates breeding for conservation purposes. Captive-bred wildlife permits are not issued, however, for keeping or breeding pets, since that is inconsistent with the aims of the ESA to support conservation of species and recovery of wild populations.<sup>160</sup>

#### Regulation of possession of Appendix I-listed species

29. Possession of species listed under the MBTA is generally prohibited,<sup>161</sup> but is allowed for captive-bred mallard ducks and other waterfowl (subject to certain restrictions),<sup>162</sup> and for specimens possessed in accordance with an appropriate permit.<sup>163</sup> The MMPA prohibits the possession of marine mammals taken contrary to the MMPA, but allows permits for “scientific research, public display, or enhancement of the species.”<sup>164</sup> The ESA makes it unlawful to possess ESA-listed fish and wildlife taken contrary to

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<sup>151</sup> *Ibid.*; *United States, Raptor propagation permits*, 50 C.F.R. sect. 21.30.

<sup>152</sup> *United States*, 50 C.F.R. sects. 23.46(c)-(e).

<sup>153</sup> *Ibid.*

<sup>154</sup> *United States, Endangered Species Act of 1973*, 16 U.S.C. sect. 1539(a), (c), (d); *United States*, 50 C.F.R. sects. 17.22, 17.62.

<sup>155</sup> *United States*, 16 U.S.C. sect. 1533(d); *United States*, 50 C.F.R. sects. 17.32, 17.72.

<sup>156</sup> *United States*, 50 C.F.R. sect. 17.21(g).

<sup>157</sup> *Ibid.*

<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.*

<sup>160</sup> *Ibid.*

<sup>161</sup> *United States, Migratory Bird Treaty Act*, 16 U.S.C. sect. 703(a) (1918).

<sup>162</sup> *United States*, 50 C.F.R. sects. 21.13–21.14.

<sup>163</sup> *United States, United States Fish and Wildlife Service, “Migratory Bird Permits”*, 6 August 2003. Available at <https://www.fws.gov/policy/724fw2.html>.

<sup>164</sup> *United States, United States Fish and Wildlife Service, “Marine Mammal Permits”*. available at <https://www.fws.gov/international/permits/by-species/marine-mammals.html>.



the ESA, as well as to remove and reduce to possession ESA-listed plants from areas under Federal jurisdiction.<sup>165</sup> The ESA also makes it unlawful to possess any CITES specimen traded contrary to CITES.<sup>166</sup>

30. Thus, as with domestic trade, possession of Appendix I-listed species may be legal for native Appendix I-listed species that are not protected under the MBTA, or that have not been unlawfully taken under the ESA or MMPA, as well as for specimens for which a valid permit, license, or certification has been obtained, or that predate CITES or the law under which their possession would otherwise be prohibited.

#### Registration of possession of specimens of Appendix I-listed species

31. Beyond the permit systems previously discussed, there do not appear to be any mechanisms in place for the registration of possession of specimens. Information about previously granted permits was unavailable online.

#### Interpretation by courts

32. U.S. courts have heard numerous cases involving violations of the wildlife laws discussed above. The U.S. Department of Justice handles these cases for the U.S. government.<sup>167</sup> Following are a sampling of the cases:

- a) *United States v. Barkman, No. 3:19-cr-0052-RCJ-WGC (D.N.V. Feb. 6, 2020)*

A man plead guilty to the interstate sale and trafficking of lion and leopard parts in violation of the ESA. He was sentenced to 60 days of intermittent confinement in one year.<sup>168</sup>

- b) *United States v. Edward Levine (2018)*<sup>169</sup>

During an undercover operation conducted by the USFWS as part of “Operation Crash,” a United States effort to identify illegal trading of rhinoceros horns, officials caught Levine illegally selling two black rhinoceros horns in Las Vegas in violation of the Lacey Act.<sup>170</sup> He was also found to have conspired to violate the ESA.<sup>171</sup> Levine received a sentence of 27 months imprisonment, as well as three years of supervised release.<sup>172</sup> His co-defendant will serve 367 days in prison and pay a \$10,000 fine.<sup>173</sup>

- c) *United States v. Seibert, 695 Fed. Appx. 746 (2017)*

The court held that there was sufficient evidence to convict the defendant for transporting, selling, and labeling African leopards.

- d) *United States v. Kapp, 419 F.3d 666 (2005)*

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<sup>165</sup> *United States, Endangered Species Act of 1973, 16 U.S.C. sects. 1538(a)(1)(D), 1538(a)(2)(B).*

<sup>166</sup> *Ibid, sect. 1538(c)(1); United States, 50 C.F.R. sect. 23.13(c).*

<sup>167</sup> *United States, Department of Justice, Environment and Natural Resources Division, “Summary of Recent Wildlife Trafficking Enforcement Cases”, October 2018. Available at <https://www.justice.gov/enrd/page/file/1103756/download>.*

<sup>168</sup> *United States, United States Attorney’s Office—District of Nevada, “Reno Man Sentenced For Trafficking Endangered Lion and Leopard Parts”, 22 January 2020. Available at <https://www.justice.gov/usao-nv/pr/reno-man-sentenced-trafficking-endangered-lion-and-leopard-parts>.*

<sup>169</sup> *United States, Department of Justice, Office of Public Affairs, “California Man Sentenced to 27 Months in Prison for the Sale of Black Rhinoceros Horns”, 23 March 2018. Available at <https://www.justice.gov/opa/pr/california-man-sentenced-27-months-prison-sale-black-rhinoceros-horns>.*

<sup>170</sup> *United States, Department of Justice, Environment and Natural Resources Division, “Summary of Recent Wildlife Trafficking Enforcement Cases”, October 2018.*

<sup>171</sup> *United States, United States Attorney’s Office—District of Nevada, “Reno Man Sentenced For Trafficking Endangered Lion and Leopard Parts”, 22 January 2020.*

<sup>172</sup> *United States, Department of Justice, Environment and Natural Resources Division, “Summary of Recent Wildlife Trafficking Enforcement Cases”, October 2018.*

<sup>173</sup> *United States, United States Attorney’s Office—District of Nevada, “Reno Man Sentenced For Trafficking Endangered Lion and Leopard Parts”, 22 January 2020.*

The court determined that there was enough evidence to show that the defendant violated the ESA and the Lacey Act when he traded endangered tiger and leopard parts in interstate commerce. The defendant was sentenced to prison for 51 months.

- e) *Cayman Turtle Farm, Ltd. V. Andrus, 478 F.Supp. 125 (1979)*

The court determined that domestic trade regulation under the ESA for Appendix I-listed species may be stricter than those controls set out in CITES for captive-bred specimens.

## Viet Nam

### Introduction

1. Viet Nam is host to domestic trade in endangered species.<sup>1</sup> It serves as a hub for black market exchange of both native and exotic species.<sup>2</sup> Although Viet Nam was historically a source country for illegal trade, over the last two decades it has increasingly become a consumer market.<sup>3</sup> The most widely trafficked Appendix I-listed species in the country are African rhinoceros, tigers, pangolins, turtles and tortoises, and gibbons.<sup>4</sup> The African rhinoceros is the only one of these species that is not native to Viet Nam.
2. In July 2020, the Prime Minister issued Directive 29/CT-TTg, which, among other things, requires various ministries to: amend regulations and create new controls that make the possession, advertisement, or trade of protected wildlife illegal; close physical markets involved in illegal wildlife trading; create a database of captive breeding facilities; monitor online wildlife trading; increase enforcement efforts; and improve public awareness of wildlife issues and regulations.<sup>5</sup> Given the recent timing of the directive, these changes have not yet been implemented.
3. There are a number of controls already in place, however, which restrict domestic trade in native Appendix I-listed species. Additionally, Viet Nam requires registration of all breeding or propagation facilities for Appendix I-listed species.<sup>6</sup> Although the primary focus of Viet Nam's domestic trade regulation is on native species, Viet Nam also has one instrument regulating the trade of the most commonly imported exotic Appendix I-listed species.<sup>7</sup>
4. Outside of putting these controls in place, the Viet Nam government has worked with civil society groups on a number of different strategies to reduce demand for illegal wildlife trade.<sup>8</sup> For example, the Viet Nam CITES Management Authority partnered with Humane Society International on demand reduction campaigns for "parts and products of rhinoceros, elephant, tiger and pangolin."<sup>9</sup> Freeland, an international NGO, is also working in tandem with the Vietnamese government to conduct social behavior change campaigns targeting consumption of key endangered species.<sup>10</sup>

### Legislation

5. Viet Nam has a number of legal controls regulating domestic wildlife trade, and while certain aspects may be amended to ensure consistency with the recent Directive of the Prime Minister, their provisions appear to be binding in the interim. The two foundational instruments, the Biodiversity Law and Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species, overlap significantly in their banning of possession and trade of certain species of wildlife.<sup>11</sup>

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<sup>1</sup> Kanitha Krishnasamy and Monica Zavagli, *TRAFFIC, Southeast Asia: At the Heart of Wildlife Trade*, (2020), pp. 82-84. Available at <https://www.traffic.org/site/assets/files/12648/sea-traps-february-2020.pdf>.

<sup>2</sup> *Ibid.*

<sup>3</sup> *United Nations Office on Drugs and Crime, Wildlife and Forest Crime Analytic Toolkit*, (Vienna, 2015), p. 89.

<sup>4</sup> *Environmental Law Institute, Legal Controls in Domestic Markets for Appendix I-Listed Species*, forthcoming research report, 2020, p. 39; *Endangered Primate Rescue Center, "Gibbons"*, 2020.

<sup>5</sup> *TRAFFIC, Viet Nam issues ban on wildlife imports & announces closure of illegal wildlife markets*, (24 July 2020). Available at <https://www.traffic.org/news/viet-nam-issues-ban-on-wildlife-imports-announces-closure-of-illegal-wildlife-markets/#:~:text=24th%20July%202020->

[.Viet%20Nam%20issues%20ban%20on%20wildlife%20imports.closure%20of%20illegal%20wildlife%20markets&text=No%20citizens%2C%20especially%20government%20officers,wildlife%20or%20illegal%20wildlife%20products.](https://www.traffic.org/news/viet-nam-issues-ban-on-wildlife-imports-announces-closure-of-illegal-wildlife-markets/#:~:text=24th%20July%202020-.Viet%20Nam%20issues%20ban%20on%20wildlife%20imports.closure%20of%20illegal%20wildlife%20markets&text=No%20citizens%2C%20especially%20government%20officers,wildlife%20or%20illegal%20wildlife%20products.)

<sup>6</sup> *Viet Nam, Government Decree 82/2006/ND-CP on Management of Export, Import, Re-export, Introduction from the Sea, Transit, Breeding, Rearing and Artificial Propagation of Endangered Species of Precious and Rare Wild Fauna and Flora*, arts. 10-11. Available at <http://extwprlegs1.fao.org/docs/pdf/vie68031.pdf>.

<sup>7</sup> *Viet Nam, Decision No. 11/2013/QD-TTg of January 24, 2013, Banning the Import and Export of, and Trade in, Specimens of a Number of Wild Fauna Species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora*. Available at <http://extwprlegs1.fao.org/docs/pdf/vie164683.pdf>.

<sup>8</sup> *USAID Wildlife Asia, "Vietnam consumer demand reduction."*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Viet Nam, Biodiversity Law, Law No. 20/2008/QH12*. Available at <http://extwprlegs1.fao.org/docs/pdf/vie88471.pdf>; *Viet Nam, Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species*. Available at

Additionally, Government Decree 82/2006/ND-CP on Management of Export, Import, Re-export, Introduction from the Sea, Transit, Breeding, Rearing and Artificial Propagation of Endangered Species of Precious and Rare Wild Fauna and Flora, which regulates the registration of all captive breeding facilities, renders Decision No. 95/2008/QD-BNN of September 29, 2008, Promulgating the Regulation on Management of Raised Bears somewhat redundant.<sup>12</sup> Finally, Decision No. 11/2013/QD-TTg of January 24, 2013, Banning the Import and Export of, and Trade in, Specimens of a Number of Wild Fauna Species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, provides minimal coverage for trade in exotic Appendix I-listed species, leaving trade in a large proportion of Appendix I-listed species unregulated in Viet Nam.<sup>13</sup> The Penal Code provides the authority for punishing violators of all domestic trade regulations.<sup>14</sup>

#### 6. *Directive 29/CT-TTg Regarding a number of urgent solutions for wildlife management*

- a) In response to the coronavirus pandemic and growing concerns surrounding potential threats to human health posed by the wildlife trade, Viet Nam's Prime Minister issued Directive 29/CT-TTg Regarding a number of urgent solutions for wildlife management on 23 July 2020.<sup>15</sup>
- b) The Directive instructs a variety of governmental ministries to take action to further restrict trade of protected species, increase enforcement and prosecution of wildlife crimes, and better monitor ongoing legal wildlife trading. Notably, the Prime Minister ordered the closure of all markets where wildlife products are illegally sold.<sup>16</sup> The Directive also makes it illegal to possess, advertise, or trade any protected or illegally acquired wildlife.<sup>17</sup> It calls for the increased monitoring of facilities breeding wildlife in captivity, including through the creation of a database compiling all existing facilities.
- c) Monitoring of the wildlife trade more generally, and the online trade in particular, should also be expanded. Wildlife regulations should be amended accordingly, and the Prime Minister called for enhanced enforcement efforts and more prosecutions.<sup>18</sup> Finally, the Directive encourages the use of national media to increase public awareness surrounding wildlife trade-related challenges and controls.<sup>19</sup>

#### 7. *Biodiversity Law*

- a) The foundational Viet Nam law regulating wildlife trade is the Biodiversity Law of 2008, which focuses on biodiversity conservation and sustainable development within Viet Nam.<sup>20</sup> This law prohibits the possession, hunting, fishing, exploiting bodily parts of, illegally killing, transporting, purchasing, selling, illegally advertising, marketing, rearing, growing, planting, culturing of, and consuming products originating from species on the Viet Nam list of endangered, precious and rare species prioritized for protection.<sup>21</sup>

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[https://www.unodc.org/res/cld/document/decreo-no--32-on-management-of-endangered-precious-and-rare-forest-plants-and-animals.html/Decree No. 32 On Management of Endangered Precious and Rare Forest Plants and Animals.pdf](https://www.unodc.org/res/cld/document/decreo-no--32-on-management-of-endangered-precious-and-rare-forest-plants-and-animals.html/Decree%20No.%2032%20On%20Management%20of%20Endangered%20Precious%20and%20Rare%20Forest%20Plants%20and%20Animals.pdf).

<sup>12</sup> Viet Nam, Government Decree 82/2006/ND-CP on Management of Export, Import, Re-export, Introduction from the Sea, Transit, Breeding, Rearing and Artificial Propagation of Endangered Species of Precious and Rare Wild Fauna and Flora.

<sup>13</sup> Viet Nam, Decision No. 11/2013/QD-TTg of January 24, 2013, Banning the Import and Export of, and Trade in, Specimens of a Number of Wild Fauna Species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

<sup>14</sup> Viet Nam, Penal Code, Law No. 15/1999/QH10, art. 190. Available at <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn017en.pdf> (unofficial translation).

<sup>15</sup> Viet Nam, Prime Minister, Directive 29/CT-TTg Regarding a number of urgent solutions for wildlife management, (Hanoi, 23 July 2020) (based on English translation via Google). Original directive available at <http://www.monre.gov.vn/VanBan/Lists/VanBanChiDao/Attachments/2506/29.signed.pdf>.

<sup>16</sup> Huong Giang, *The Socialist Republic of Viet Nam, Online Newspaper of the Government, Gov't bans wildlife imports, closes illegal wildlife markets*, (23 July 2020). Available at <http://news.chinhphu.vn/Home/Govt-bans-wildlife-imports-closes-illegal-wildlife-markets/20207/40872.vgp>.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> TRAFFIC, *Viet Nam issues ban on wildlife imports & announces closure of illegal wildlife markets*, (24 July 2020).

<sup>20</sup> Viet Nam, *Biodiversity Law* (2008).

<sup>21</sup> *Ibid.*, art. 7.

- b) It also sets out the types of species that may be included on the Viet Nam list of endangered, precious, and rare species prioritized for protection.<sup>22</sup> These species may include wild flora and fauna, crop varieties, domestic animal breeds, microorganisms, and fungi.<sup>23</sup> The government shall specify criteria for defining and regulating the management of species included in the list.<sup>24</sup> The law does not specify which government office is tasked with defining criteria. The Act further details the procedure for the evaluation and inclusion of species on the list.<sup>25</sup>
- c) It allows for the rearing or planting of endangered, precious, and rare species in biodiversity conservation facilities for the purpose of conservation, scientific research, or ecotourism.<sup>26</sup> It also creates an exception that allows for possession of endangered species for the purpose of biodiversity conservation, scientific research, or ecotourism.<sup>27</sup> The Biodiversity Law also allows for the temporary possession of individuals of species included on the list via the rescue of lost, injured, or diseased animals, but requires that specimens be promptly brought to a rescue center for treatment and eventual release.<sup>28</sup>

8. *Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species*

- a) Government Decree 32/2006/ND-CP focuses on the management of endangered, precious and rare species of wild plants and animals.<sup>29</sup> The exploitation, hunting, shooting, trapping, capturing, keeping, slaughtering, transporting, processing, advertising, trading, using, exporting, and importing of endangered, precious and rare animals is prohibited.<sup>30</sup> The Decree classifies native species into Group I, for which exploitation and use for commercial purposes is strictly prohibited, and Group II, for which it is only restricted, essentially following the classifications of species under Appendices I and II of CITES.<sup>31</sup>
- b) However, exploitation of Group I and II species is allowed for purposes of science and international cooperation.<sup>32</sup> When transporting these species, individuals must possess proper documentation and a transport license.<sup>33</sup> In addition, all artificial propagation operations for endangered, precious, and rare species must possess Certificates of Origin in compliance with all applicable laws.<sup>34</sup> The processing and trade of endangered, precious, and rare species for commercial purposes is prohibited unless they originate from captive breeding/artificial propagation or have been confiscated from the wildlife trade.<sup>35</sup> Under these circumstances, individuals must possess a trading license and a log to record the import and export of these species.<sup>36</sup> For domestic trade, individuals must still possess a trading license authorized by the local authorities.<sup>37</sup>

9. *Government Decree 82/2006/ND-CP on Management of Export, Import, Re-export, Introduction from the Sea, Transit, Breeding, Rearing and Artificial Propagation of Endangered Species of Precious and Rare Wild Fauna and Flora*<sup>38</sup>

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<sup>22</sup> *Ibid.*, art. 37.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, arts. 38-40.

<sup>26</sup> *Ibid.*, art. 45.

<sup>27</sup> *Ibid.*, art. 46.

<sup>28</sup> *Ibid.*, art. 47.

<sup>29</sup> Viet Nam, *Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species*.

<sup>30</sup> *Ibid.*, art. 5.

<sup>31</sup> *Ibid.*, art. 2.

<sup>32</sup> *Ibid.*, art. 6.

<sup>33</sup> *Ibid.*, art. 7.

<sup>34</sup> *Ibid.*, art. 8.

<sup>35</sup> *Ibid.*, art. 9.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> Viet Nam, *Government Decree 82/2006/ND-CP on Management of Export, Import, Re-export, Introduction from the Sea, Transit, Breeding, Rearing and Artificial Propagation of Endangered Species of Precious and Rare Wild Fauna and Flora*, arts. 10-11.

- a) Government Decree 82/2006/ND-CP mandates that artificial propagation and captive breeding facilities breeding flora or fauna listed in CITES Appendix I must register with the Viet Nam CITES Management Authority.<sup>39</sup> Facilities are required to register even if the species being propagated/bred are not included in any CITES Appendices if the species are included on the Viet Nam list of endangered, precious, and rare plants and animals.<sup>40</sup>
10. *Decision No. 11/2013/QD-TTg, Banning the Import and Export of, and Trade in, Specimens of a Number of Wild Fauna Species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora*
- a) Decision No. 11/2013/QD-TTg bans trade in particular exotic species.<sup>41</sup> It establishes a ban on the import, export, and trade of specimens of white rhinoceros, black rhinoceros, and African elephant, all of which are listed in CITES Appendix I.<sup>42</sup> However, exceptions are automatically granted for specimens used for foreign affairs, scientific research, biodiversity conservation facilities, and displays at zoos, or for which people hold valid CITES import permits.<sup>43</sup>
11. *Decision No. 95/2008/QD-BNN of September 29, 2008, Promulgating the Regulation on Management of Raised Bears*
- a) Government Decision 95/2008/QD-BNN regulates the raising of bears in captivity.<sup>44</sup> The Decision does not specify whether it refers to a specific species of bear, exclusively native bears, or all bears.<sup>45</sup> There are two Appendix I-listed bear species native to Viet Nam—the sun bear and the Asiatic black bear<sup>46</sup>—and four other species of bears found in Appendix I that are not native to Viet Nam.<sup>47</sup>
- b) The Decision prohibits the trapping, purchasing, selling, transporting, and advertising of bears, raising bears without keeping management records or microchipping them, and the raising of bears outside of a breeding facility or farm.<sup>48</sup> Facilities must adhere to specific guidelines, including for cage dimensions, veterinary care, and waste disposal.<sup>49</sup> The Decision also establishes the conditions for bear farm registration and lists information that must be presented.<sup>50</sup>
- c) Should bears be seized because individuals violate the Decision, the bears must be handled according to the Ministry of Agriculture and Rural Development’s regulations guiding the post-confiscation handling of material evidence.<sup>51</sup> The Viet Nam Administration of Forestry signed a Memorandum of Understanding in 2017 agreeing to work towards an end to bear bile farming in Viet Nam.<sup>52</sup>
12. *Penal Code*
- a) Article 190 of the Viet Nam Penal Code states that those who illegally hunt, catch, kill, transport or trade in animals and are banned from doing so under any of the relevant wildlife-related

<sup>39</sup> *Ibid.*, art. 11.

<sup>40</sup> *Ibid.*, art. 12.

<sup>41</sup> Viet Nam, *Decision No. 11/2013/QD-TTg of January 24, 2013, Banning the Import and Export of, and Trade in, Specimens of a Number of Wild Fauna Species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora*.

<sup>42</sup> *Ibid.*, art. 1.

<sup>43</sup> *Ibid.*, art. 2.

<sup>44</sup> Viet Nam, *Decision No. 95/2008/QD-BNN of September 29, 2008, Promulgating the Regulation on Management of Raised Bears*. Available at <http://extwprlegs1.fao.org/docs/pdf/vie83868.pdf>.

<sup>45</sup> *Ibid.*.

<sup>46</sup> *Convention on International Trade in Endangered Species of Wild Fauna and Flora, Checklist of CITES Species*. Available at <https://checklist.cites.org/#/en>.

<sup>47</sup> Viet Nam, *Decision No. 95/2008/QD-BNN of September 29, 2008, Promulgating the Regulation on Management of Raised Bears*.

<sup>48</sup> *Ibid.*, art. 2.

<sup>49</sup> *Ibid.*, arts. 3-6.

<sup>50</sup> *Ibid.*, art. 7.

<sup>51</sup> *Ibid.*, art. 15.

<sup>52</sup> *AnimalsAsia*, “BREAKING NEWS: Vietnam agrees plan to close all bear bile farms”, 19 July 2017.



government regulations shall be subject to a fine of between 50 million and 500 million dong (between approximately US\$2,160 and US\$21,600, as of July 2020), non-custodial reform for up to three years (individuals are supervised and remain in the workforce, with a percentage of their incomes deducted for remittance),<sup>53</sup> or a prison term of between six months and three years.<sup>54</sup>

- b) If the crime is committed in an organized manner or the criminal abuses a position of power, is using banned hunting tools or means, is in prohibited areas or during prohibited times, or causes very serious or particularly serious consequences, the perpetrator must be sentenced to prison for two to seven years.<sup>55</sup> The terms “very serious” and “particularly serious” are not defined in the Penal Code.
- c) All offenders may also be subject to an additional fine of between two million dong and 20 million dong and a ban from holding certain posts, practicing certain occupations, or doing certain jobs for one to five years.<sup>56</sup> Additionally, there is an Anti-Money Laundering provision that allows violators to receive three to 15 years in prison and fines in the value of the property in question.<sup>57</sup>

## **Analysis**

### **Legal status of the domestic market**

13. As of July 2020, the Prime Minister of Viet Nam ordered all markets in which illegal wildlife trade takes place to be closed, all online advertisements for illegal wildlife trading to be taken down, and for increased monitoring of wildlife trade, enforcement of wildlife regulations, and prosecution of violators.<sup>58</sup>
14. Viet Nam is home to 115 species listed in Appendix I of CITES.<sup>59</sup> Viet Nam also has its own list of endangered, precious, and rare species.<sup>60</sup> This list is less comprehensive than Appendix I, as it contains fewer species, but still includes approximately 70 species of animals and 25 species of plants for which commercial uses are banned.<sup>61</sup> Plants and animals included in Group I of the Viet Nam list cannot be exploited or used.<sup>62</sup> Plants and animals listed in Group II are restricted in their exploitation and use.<sup>63</sup> The Viet Nam legal instruments primarily address only the Viet Nam list of endangered, precious, and rare species, rather than Appendix I. The Decree regulating artificial propagation and captive breeding facilities is the only instrument to mention the CITES Appendices by name.<sup>64</sup> As a result, the domestic market for some Appendix I-listed species is not regulated under the law of Viet Nam.
15. Artificial propagation/captive breeding facilities are allowed for CITES Appendix I-listed species and species included on the Viet Nam list of endangered, precious, and rare species, but they are regulated. The Biodiversity Law allows for artificial propagation and captive breeding of endangered,

<sup>53</sup> Viet Nam, *Penal Code* (1999).

<sup>54</sup> *Ibid.*, art. 190; Viet Nam, *Law Amending and Supplementing a Number of Articles of the Penal Code*, Law No. 37/2009/QH12, art. 1. Available at [https://www.unodc.org/res/cld/document/penal-code-amendment-act\\_html/2014\\_update\\_on\\_Penal\\_Code.pdf](https://www.unodc.org/res/cld/document/penal-code-amendment-act_html/2014_update_on_Penal_Code.pdf) (unofficial translation).

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*, art. 251.

<sup>58</sup> Viet Nam, Prime Minister, *Directive 29/CT-TTg Regarding a number of urgent solutions for wildlife management*, (Hanoi, 23 July 2020) (based on English translation via Google).

<sup>59</sup> *Convention on International Trade in Endangered Species of Wild Fauna and Flora, Checklist of CITES Species*. Available at <https://checklist.cites.org/#/en>.

<sup>60</sup> Viet Nam, *Biodiversity Law* (2008).

<sup>61</sup> Viet Nam, *Government Decree No. 48/2002/ND-CP Amending and Supplementing the List of Precious and Rare Wild Plants and Animals, Issued Together with Decree No. 18/HDBT of January 17, 1992 of the Council of Ministers Prescribing the List of Precious and Rare Forest Plants and Animals and the Regime of Management and Protection Thereof*. Available at <http://extwprlegs1.fao.org/docs/pdf/vie35281.pdf>.

<sup>62</sup> Viet Nam, *Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species*, art. 2.

<sup>63</sup> *Ibid.*

<sup>64</sup> Viet Nam, *Government Decree 82/2006/ND-CP on Management of Export, Import, Re-export, Introduction from the Sea, Transit, Breeding, Rearing and Artificial Propagation of Endangered Species of Precious and Rare Wild Fauna and Flora*, arts. 11, 13.



precious, and rare species for conservation, research, and tourism purposes in biodiversity conservation facilities, as well as for commercial purposes, so long as regulatory requirements are followed.<sup>65</sup> Government Decree 32/2006/ND-CP allows for commercial trade in “[e]ndangered, precious and rare forest animal species originating from artificial breeding and products thereof” and in “endangered, precious and rare forest plants of Group II A...originating from artificial culture.”<sup>66</sup> The Decree also specifies that captive breeding must be done in compliance with Government Decree 82/2006/ND-CP;<sup>67</sup> as Government Decree 82/2006/ND-CP allows for captive breeding of Appendix I-listed species with proper registration, and some Appendix I-listed animals are Viet Nam Group I species, this presumably allows for commercial trade in certain specimens of Appendix I-listed species if they are bred by properly registered facilities.<sup>68</sup>

16. Government Decree 82/2006/ND-CP, which references artificial propagation and captive breeding in its title and requires the registration of these facilities in a variety of cases, does not expressly distinguish between breeding for commercial and noncommercial purposes, except to note that permission must be acquired in order to “exploit” broods or eggs (of species listed in any CITES appendix) from the wild when breeding for commercial purposes.<sup>69</sup> Animals may only be exported with the proper documentation (including CITES permits and approval from the CITES Secretariat, and the Viet Nam CITES Management Authority and CITES Scientific Authority) and a legitimate purpose.<sup>70</sup> Similarly, transport of species is highly regulated and requires a license.<sup>71</sup> Finally, placing specimens on the domestic market that have been captive bred or seized from the wildlife trade requires a trading license granted by the proper authority.<sup>72</sup> The Decree does not define what constitutes a “proper authority.”
17. The Prime Minister’s recent Directive 29/CT-TTg emphasizes the importance of monitoring these facilities and enforcing penalties for those that violate existing controls.<sup>73</sup> Further, it requires the Ministry of Agriculture and Rural Development to create and maintain a publicly accessible database of facilities breeding endangered, precious, and rare and CITES Appendix I or II-listed species to facilitate official and public enforcement.<sup>74</sup>
18. No evidence could be found that illegally imported specimens are offered for sale on the domestic market as non-listed species. Based upon research, there is no publicly available evidence that there are any species that are legal to trade in Viet Nam that are similar enough in characteristics that they could be used as a cover.

## Regulation of trade

### Generally

19. The legal regime in Viet Nam that regulates exploitation and commercial use of endangered species is focused on a national list of endangered, precious, and rare species.<sup>75</sup> Although there is much

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<sup>65</sup> Viet Nam, *Biodiversity Law (2008)*, arts. 7, 42, 45.

<sup>66</sup> Viet Nam, *Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species*, art. 9.

<sup>67</sup> *Ibid.*, art. 8.

<sup>68</sup> Viet Nam, *Government Decree 82/2006/ND-CP on Management of Export, Import, Re-export, Introduction from the Sea, Transit, Breeding, Rearing and Artificial Propagation of Endangered Species of Precious and Rare Wild Fauna and Flora*, art. 11.

<sup>69</sup> Viet Nam, *Government Decree 82/2006/ND-CP on Management of Export, Import, Re-export, Introduction from the Sea, Transit, Breeding, Rearing and Artificial Propagation of Endangered Species of Precious and Rare Wild Fauna and Flora*, Ch. III, art. 10(1)(f).

<sup>70</sup> Viet Nam, *Government Decree 82/2006/ND-CP on Management of Export, Import, Re-export, Introduction from the Sea, Transit, Breeding, Rearing and Artificial Propagation of Endangered Species of Precious and Rare Wild Fauna and Flora*, arts. 4–5, 10–12; Viet Nam, *Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species*, arts. 8–9.

<sup>71</sup> Viet Nam, *Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species*, art. 7.

<sup>72</sup> *Ibid.*, art. 9.

<sup>73</sup> Viet Nam, *Prime Minister, Directive 29/CT-TTg Regarding a number of urgent solutions for wildlife management*, para. 2 (Hanoi, 23 July 2020) (based on English translation via Google).

<sup>74</sup> *Ibid.*

<sup>75</sup> Viet Nam, *Biodiversity Law (2008)*.

overlap with the species listed in Appendix I, not all Appendix I-listed species are included in Group I of the Viet Nam list.<sup>76</sup> Those species that are included in Group I enjoy full protection from commercial exploitation unless they are being used to advance biodiversity conservation, scientific research, or ecotourism.<sup>77</sup> Species listed in Group II of the Viet Nam list, which includes a number of Appendix I-listed species, receive restrictions on commercial exploitation.<sup>78</sup> The primary difference between Groups I and II is that plants and animals in Group II may be exploited in special use forests for scientific purposes and international cooperation.<sup>79</sup>

20. Domestic trade in specimens of nearly all native Appendix I-listed species is therefore either banned or regulated in Viet Nam. Trade in three exotic Appendix I-listed species is also banned in Viet Nam:<sup>80</sup> domestic trade in specimens of black and white rhinoceros and African elephants is prohibited absent a legitimate purpose, such as scientific research or display in a zoo.<sup>81</sup>
21. Trade regulation in Viet Nam is typically general in focus, rather than species-specific. The majority of the legislation directed at controlling the domestic wildlife markets refers to the Viet Nam list of endangered, precious, and rare species of plants and animals.<sup>82</sup> Additionally, Government Decree 82/2006/ND-CP focuses specifically on the artificial propagation of CITES-listed species, requiring registration with the Viet Nam CITES Scientific Agency and Management Authority.<sup>83</sup>
22. Government Decree 11/2013/QD-TT, on the other hand, regulates three specific non-native species. None of the targeted species are native to Viet Nam. In contrast to the other discussed legislation, this Decree seeks to target the trade of imported specimens. Unless a specimen of one of the regulated species is being used for a legitimate purpose, such as scientific research, the Decree bans domestic trade in white rhinoceros, black rhinoceros, and African elephant specimens.<sup>84</sup> These are the only three non-native species covered by this Decree, leaving domestic trade of the remaining exotic Appendix I-listed species unregulated in Viet Nam (as Viet Nam Groups I and II only include species native to Viet Nam).
23. Government Decree 95/2008/QD-BNN focuses specifically on the captive rearing of bears. The Decree outlines facility specifications and registration requirements.<sup>85</sup> The Decree regarding bears seem to include stricter requirements, indicating that this Decree preempts other breeding facility laws where bears are concerned.
24. Finally, Prime Minister Directive 29/CT-TTg seems to reinforce all of the existing controls on domestic trade in endangered, precious, and rare species, as well as CITES Appendix I and II-listed species protected under Vietnamese law, by encouraging strict regulation of advertising and trading

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<sup>76</sup> *Convention on International Trade in Endangered Species of Wild Fauna and Flora, Checklist of CITES Species; Viet Nam, Government Decree No. 48/2002/ND-CP Amending and Supplementing the List of Precious and Rare Wild Plants and Animals, Issued Together with Decree No. 18/HDBT of January 17, 1992 of the Council of Ministers Prescribing the List of Precious and Rare Forest Plants and Animals and the Regime of Management and Protection Thereof.*

<sup>77</sup> *Viet Nam, Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species, art. 2.*

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*, art. 6.

<sup>80</sup> *Viet Nam, Decision No. 11/2013/QD-TTg of January 24, 2013, Banning the Import and Export of, and Trade in, Specimens of a Number of Wild Fauna Species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, art. 1.*

<sup>81</sup> *Ibid.*, art. 2.

<sup>82</sup> *Viet Nam, Biodiversity Law (2008); Viet Nam, Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species; Viet Nam, Government Decree 82/2006/ND-CP on Management of Export, Import, Re-export, Introduction from the Sea, Transit, Breeding, Rearing and Artificial Propagation of Endangered Species of Precious and Rare Wild Fauna and Flora, art. 12.*

<sup>83</sup> *Viet Nam, Government Decree 82/2006/ND-CP on Management of Export, Import, Re-export, Introduction from the Sea, Transit, Breeding, Rearing and Artificial Propagation of Endangered Species of Precious and Rare Wild Fauna and Flora.*

<sup>84</sup> *Viet Nam, Decision No. 11/2013/QD-TTg of January 24, 2013, Banning the Import and Export of, and Trade in, Specimens of a Number of Wild Fauna Species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, arts. 1-2.*

<sup>85</sup> *Viet Nam, Decision No. 95/2008/QD-BNN of September 29, 2008, Promulgating the Regulation on Management of Raised Bears, arts. 3-8.*

in protected species.<sup>86</sup> Further, it orders the closure of all markets in which illegal wildlife trading takes place.<sup>87</sup>

#### With regard to native and non-native species

25. As discussed previously, the regulations center around Groups I and II of the Viet Nam list of endangered, precious, and rare species.<sup>88</sup> There are no exotic species included in Groups I or II of the list.<sup>89</sup> However, Government Decree 82/2006/ND-CP states that all artificial propagation/captive breeding operations for CITES Appendix-listed species must register with the Viet Nam CITES Scientific Agency and Management Authority, regardless of whether the species being bred or cultivated are native or non-native.<sup>90</sup> Additionally, Government Decree 11/2013/QD-TT focuses exclusively on trade in white rhinoceros, black rhinoceros, and African elephant specimens, and is the only legal instrument that explicitly addresses trade in non-native species.<sup>91</sup>

#### With regard to different types of trade

26. All commercial trade for native endangered species is either banned or restricted based upon the classification of the species, regardless of who is buying or selling the specimen.<sup>92</sup> There are exceptions to the prohibitions and restrictions when specimens are used for scientific or conservation purposes.<sup>93</sup>

#### With regard to online trade

27. Viet Nam prohibits the online trade of banned goods.<sup>94</sup> There is evidence that, despite this ban, illegal online trade persists.<sup>95</sup> Directive 29/CT-TTg directs the Ministry of Public Security, with assistance from the Ministry of Information and Communications, to increase monitoring and enforcement efforts, however, including of online trade.<sup>96</sup>

### Registration

#### Of artificial propagation/captive breeding facilities

28. Government Decree 82/2006/ND-CP controls the registration of artificial propagation/captive breeding facilities in Viet Nam.<sup>97</sup> Under this regulation, artificial propagation/captive breeding facilities for species regulated in the CITES Appendices must register with the Viet Nam CITES Scientific Agency.<sup>98</sup> Additionally, the Decree requires registration with the Viet Nam CITES Management Authority.<sup>99</sup> If the species is not included in a CITES appendix but is included on the Viet Nam list of

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<sup>86</sup> Viet Nam, Prime Minister, Directive 29/CT-TTg Regarding a number of urgent solutions for wildlife management, para. 1 (Hanoi, 23 July 2020) (based on English translation via Google).

<sup>87</sup> *Ibid.*

<sup>88</sup> Viet Nam, Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species, art. 2.

<sup>89</sup> Viet Nam, Government Decree No. 48/2002/ND-CP Amending and Supplementing the List of Precious and Rare Wild Plants and Animals, Issued Together with Decree No. 18/HDBT of January 17, 1992 of the Council of Ministers Prescribing the List of Precious and Rare Forest Plants and Animals and the Regime of Management and Protection Thereof.

<sup>90</sup> Viet Nam, Government Decree 82/2006/ND-CP on Management of Export, Import, Re-export, Introduction from the Sea, Transit, Breeding, Rearing and Artificial Propagation of Endangered Species of Precious and Rare Wild Fauna and Flora, arts. 10-11.

<sup>91</sup> Viet Nam, Decision No. 11/2013/QD-TTg of January 24, 2013, Banning the Import and Export of, and Trade in, Specimens of a Number of Wild Fauna Species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, art. 1.

<sup>92</sup> Viet Nam, Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species, art. 2.

<sup>93</sup> *Ibid.*, art. 6.

<sup>94</sup> Viet Nam, Decree No. 72/2013/ND-CP of July 15, 2013, On the Management, Provision, and Use of Internet Services and Online Information, art. 5(dd). Available at <https://vnnic.vn/sites/default/files/vanban/Decree%20No72-2013-ND-CP.PDF>.

<sup>95</sup> Rosa A. Indenbaum, TRAFFIC, Viet Nam Online: A rapid assessment of e-commerce wildlife trade in Viet Nam 2017, (2018). Available at <https://www.traffic.org/site/assets/files/10509/viet-nam-online-e-commerce-assessment-en-vfinal-web.pdf>.

<sup>96</sup> Viet Nam, Prime Minister, Directive 29/CT-TTg Regarding a number of urgent solutions for wildlife management, paras. 3, 9 (Hanoi, 23 July 2020) (based on English translation via Google).

<sup>97</sup> Viet Nam, Government Decree 82/2006/ND-CP on Management of Export, Import, Re-export, Introduction from the Sea, Transit, Breeding, Rearing and Artificial Propagation of Endangered Species of Precious and Rare Wild Fauna and Flora.

<sup>98</sup> *Ibid.*, art. 10.

<sup>99</sup> *Ibid.*, art. 11.

rare, endangered, and precious plants and animals, the facility must register with the appropriate agency appointed by the Ministry of Agriculture and Rural Development.<sup>100</sup>

29. There is a separate instrument focused specifically on the registration of captive bear farms. Government Decree 95/2008/QĐ-BNN outlines conditions for facilities, available veterinary care, and other factors necessary for registration of bear farms.<sup>101</sup> These registration applications must be submitted to a Viet Nam Forest Protection Sub-Department.<sup>102</sup>
30. There are 10 crocodile farms in Viet Nam that are included in the CITES Register.<sup>103</sup> There are also 13 unregistered tiger farms in Viet Nam.<sup>104</sup> According to the Food and Agriculture Organization, there are 4,099 wildlife farms operating in Viet Nam, many of which are captive breeding facilities.<sup>105</sup> More than 50 per cent of these facilities contain either a species listed in the CITES Appendices or the Viet Nam list of endangered, precious, and rare species.<sup>106</sup> Nearly 85 per cent of the surveyed wildlife farms are registered with the Viet Nam Forests, leaving approximately 600 farms unregistered.<sup>107</sup> All captive breeding facilities are supposed to register with the Viet Nam CITES Management Authority.<sup>108</sup> The relevant instrument does not indicate whether registration leads to any additional controls being imposed on these facilities.
31. Under the Prime Minister's July 2020 Directive, captive breeding facilities are to be more closely monitored to ensure their breeding stocks are acquired legally and that certain safety and hygiene protocols are followed.<sup>109</sup> Further, the facilities are to be entered into a database, which will be made publicly available and used for monitoring and management purposes.<sup>110</sup>

#### With regard to possession

32. Possession of specimens of most but not all Appendix I-listed species is regulated in Viet Nam. Government Decree 32/2006/ND-CP prohibits the possession of specimens on the Viet Nam list of endangered, precious, and rare species.<sup>111</sup> If a person is found to illegally possess one of these specimens, they may be subject to penalties including fines of up to 500 million dong (approximately \$21,600 US as of July 2020) and a potential jail sentence of up to seven years.<sup>112</sup> It should be noted that there is evidence that the upper limit of the penalties is rarely applied.<sup>113</sup>
33. Although possession of specimens of Appendix I-listed species is generally prohibited for species that are also included on the Viet Nam list of endangered, precious, and rare species, there are certain exceptions in place. For example, the Biodiversity Law allows for possession of otherwise banned specimens if they are being used for purposes of biodiversity conservation, scientific research, or ecotourism.<sup>114</sup> The law does not, however, specify whether there are any requirements for establishing one of these purposes.

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<sup>100</sup> *Ibid.*, art. 12.

<sup>101</sup> Viet Nam, Decision No. 95/2008/QĐ-BNN of September 29, 2008, Promulgating the Regulation on Management of Raised Bears, arts. 3-6.

<sup>102</sup> *Ibid.*, art. 9.

<sup>103</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, "Viet Nam", CITES registers. Available at <https://www.cites.org/eng/common/reg/cb/VN> (accessed on June 1, 2020).

<sup>104</sup> SC70 Doc. 51, Annex 2, 6.

<sup>105</sup> Food and Agriculture Organization of the United Nations, Wildlife Farming in Viet Nam: Southern Viet Nam's wildlife farm survey report in a glance. Available at <http://www.fao.org/3/a-az118e.pdf>.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*

<sup>108</sup> Viet Nam, Government Decree 82/2006/ND-CP on Management of Export, Import, Re-export, Introduction from the Sea, Transit, Breeding, Rearing and Artificial Propagation of Endangered Species of Precious and Rare Wild Fauna and Flora, art. 11.

<sup>109</sup> Viet Nam, Prime Minister, Directive 29/CT-TTg Regarding a number of urgent solutions for wildlife management, para. 2 (Hanoi, 23 July 2020) (based on English translation via Google).

<sup>110</sup> *Ibid.*

<sup>111</sup> Viet Nam, Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species, art. 5.

<sup>112</sup> Viet Nam, Penal Code, art. 190 (1999).

<sup>113</sup> United Nations Office on Drugs and Crime, Wildlife and Forest Crime Analytic Toolkit, (Vienna, 2015), p. 28.

<sup>114</sup> Viet Nam, Biodiversity Law, art. 46 (2008).

34. Additionally, Government Decree 32/2006/ND-CP allows for the exploitation of Group I and II species for scientific purposes and international cooperation.<sup>115</sup> If transporting these species, an individual must possess proper documentation and a transport license.<sup>116</sup> Finally, the Decree prohibits processing and trade of endangered, rare, and precious species for commercial purposes unless they originate from captive breeding or have been confiscated from the wildlife trade.<sup>117</sup> Under these circumstances, individuals must possess a trading license and a log to record the import and export of these species.<sup>118</sup>

#### Interpretation by courts

35. Relevant court cases focused on domestic control of wildlife trade could not be identified. There is no consolidated source of wildlife crime-related court cases, and the Provincial People's Court at Quang Binh has not heard a case on illegal trade in wildlife since 2010.<sup>119</sup> However, cases may exist but not be publicly available or available in English.
36. The Prime Minister's Directive 29/CT-TTg instructs the Supreme People's Procuracy and the Supreme People's Court to thoroughly investigate and prosecute cases involving violations of wildlife laws and issue strict penalties, especially for government officials who use their authority improperly and violate these laws in the process of doing so, or for those that interfere with the protection of wild species listed as endangered, precious, and rare.<sup>120</sup> As such, there may be more precedent set by courts related to wildlife laws in the future.

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<sup>115</sup> Viet Nam, Government Decree 32/2006/ND-CP on Management of Endangered, Precious and Rare Species, art. 6.

<sup>116</sup> *Ibid.*, art. 7.

<sup>117</sup> *Ibid.*, art. 9.

<sup>118</sup> *Ibid.*

<sup>119</sup> United Nations Office on Drugs and Crime, *Wildlife and Forest Crime Analytic Toolkit*, (Vienna, 2015), p. 78–79.

<sup>120</sup> Viet Nam, Prime Minister, Directive 29/CT-TTg Regarding a number of urgent solutions for wildlife management, para. 11 (Hanoi, 23 July 2020) (based on English translation via Google).