

Response to the EC Consultation on: ‘Wildlife trade – alignment of EU rules with recent decisions taken under the CITES convention on wildlife trade’

This consultation has been submitted by the Wildlife Conservation Society EU office (WCS EU), on behalf of the Wildlife Conservation Society (WCS), a global NGO with which we are affiliated. We welcome the opportunity to provide feedback on the *draft Commission Regulation amending Regulation (EC) No 865/2006 as regards developments in the framework of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the possibility to issue retrospective permits*.

Following the decisions and recommendations of the 77th meeting of the CITES Standing Committee (SC77) in November 2023 on the application of Article XIII in the European Union, we are pleased to see the EU taking important steps to ensure that its legislation better aligns with its commitments under the CITES Convention.¹

We broadly endorse the proposed Regulation. However, we have some concerns regarding the draft text, in particular the proposal to defer implementation of the requirement for specimens of Appendix I species bred in captivity for import or export to originate from facilities registered by the CITES Secretariat until after 31 December 2026.

WCS believes that the proposed delay is not justified, and we recommend it be reconsidered.

If the EU delays implementation of the registration requirement until after 31 December 2026, it will have been over three years since SC77 found the EU to be non-compliant with CITES requirements for specimens of Appendix I species bred in captivity for commercial purposes, and urged EU CITES Management Authorities “*to ensure that facilities that are breeding specimens of Appendix-I listed species for commercial purposes be registered with the CITES Secretariat in accordance with the procedures established in Resolution Conf 12.10 (Rev. CoP15) on Registration of operations that breed Appendix-I animal species in captivity for commercial purposes*”.

We note that several EU Member States have effectively been non-compliant for many years with the relevant provisions of the Convention, as well as relevant Resolutions of the Conference of the Parties (CoP) including Resolution Conf. 8.15 (adopted at CoP8 in 1992) and Resolution Conf. 11.14 (adopted at CoP11 in 2000). There is no reason to delay implementation and compliance for another 3 years. Instead, WCS recommends that the EU initiate the process to register facilities that breed Appendix I species commercially, and most importantly, that Member States stop issuing any permits for imports or exports from unregistered facilities.

We note that at SC77, the Commission, in its intervention in opposition to the requirement to comply with Resolution Conf. 12.10 (Rev. CoP15), said that there were not many facilities in the EU that would need to be registered with the Secretariat. If this is the case, the implementation of the necessary processes should not necessitate the proposed extended delay, but rather should be put in place far more expeditiously.

WCS notes that to be fully compliant with CITES, export permits should only be granted for exports from operations that are registered with the Secretariat.

It is important to note that Appendix I species are threatened with extinction, and “Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances” (CITES Convention, Article II.1). We strongly urge the EU and its Member States to restrict imports and exports for

¹ <https://cites.org/sites/default/files/eng/com/sc/77/E-SC77-SR.pdf>

commercial purposes of captive-bred specimens of Appendix-I species to those produced by operations included in the CITES Register and to reject any permit or certificate granted under Article VII, paragraph 4, if the specimens concerned do not originate from a registered facility and if the permit or certificate does not describe the specific identifying mark applied to each specimen.²

SC77 determined that the EU is not effectively implementing the Convention particularly regarding the primarily commercial nature of the operations breeding Appendix-I animal species in captivity. We note that this concern has not been addressed in the draft regulation. We therefore urge the Commission to include a reference to the definitions and principles in CITES Resolution Conf. 5.10 (Rev. CoP19)³ in the draft regulation and to require that the term commercial purposes is applied as broadly as possible.

When determining the commercial nature of transactions and facilities we also urge that Member States consider the CITES Secretariat's clarifications in SC77 Doc.33.8 that "the "hobby" aspect, the passion and the personal commitment of owners of facilities is not a determining factor to assess the actual degree of commerciality of the transactions and the commercial nature of the operations"; and "the existence of economic benefit does not depend on the purpose for which the economic benefit is derived."

² <https://cites.org/sites/default/files/eng/com/sc/77/E-S77-SR.pdf>

³ a) Trade in Appendix-I species must be subject to particularly strict regulation and authorized only in exceptional circumstances.

b) An activity can generally be described as 'commercial' if its purpose is to obtain economic benefit (whether in cash or otherwise), and is directed toward resale, exchange, provision of a service or any other form of economic use or benefit.

c) The term 'commercial purposes' should be defined by the country of import as broadly as possible so that any transaction which is not wholly 'non-commercial' will be regarded as 'commercial'. In transposing this principle to the term 'primarily commercial purposes', it is agreed that all uses whose non-commercial aspects do not clearly predominate shall be considered to be primarily commercial in nature The burden of proof for showing that the intended use of specimens of Appendix-I species is clearly non-commercial shall rest with the person or entity seeking to import such specimens.