

## PERSONAL AND HOUSEHOLD EFFECTS DEROGATION IN THE EU WILDLIFE TRADE REGULATIONS

- RE: EU consultation in view of a potential revision of EU rules governing trade in hunting trophies in species included in Annex B of Regulation 338/97.

2 AUGUST 2013

### INTRODUCTION

For **FACE**, representing the collective interest of 7 million European hunters and citizens, it is important that no amendments of the EU ‘personal and household effects’ derogation in relation to hunting trophies should be tabled without clear evidence indicating that there are *demonstrable* conservation concerns warranting such restrictions, as this would otherwise put an unjustified and disproportionate extra burden - which is not required by the CITES Convention - on hunters participating in a conservation activity. Such a move could have major detrimental impacts on efforts to use hunting as a conservation/livelihoods tool in range states.

In respect of hunting trophies, it should be noted at the outset that they have a particular status<sup>1</sup> under CITES compared with other types of trade, including other personal and household effects, on account of the conservation benefits delivered by trophy hunting. These benefits have been illustrated through numerous case studies for species such as the African lion (*Panthera leo*), the Black rhino (*Diceros bicornis*) and the African elephant (*Loxodonta africana*), for example in the recent account on *Trophy hunting in Namibian communal Conservancies*, published in the 2012 IUCN SSC Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives.<sup>2</sup> It should also be noted that the Convention text itself stipulates that a less restrictive regime be applied to hunting trophies as ‘personal and household effects’ under Article VII of the Convention.

This treatment is natural as the trophies become the property of the hunter as a result of participation in a conservation-based hunting programme. Furthermore, in the light of Article 1 of the *Convention of Biological Diversity* from which it appears that one of the objectives of the Convention is the “*sustainable use of [biodiversity] components*”, which includes specimens of all hunted animals, it is important that trophy hunting, which is permissible under CITES, should not be unduly impeded without clear and scientifically-proven reasons as to why such action is necessary.

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<sup>1</sup> For example, hunting trophies of Black rhino (included in Appendix I of the CITES Convention) are the only trade permitted in this species; and, with the exception of the ivory stockpile sales, hunting trophies are the only trade permitted in the African elephant (included in Appendix II of the CITES Convention for these purposes for Botswana, Namibia, South Africa and Zimbabwe; all other elephant populations are included in Appendix I.)

<sup>2</sup> IUCN SSC Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives Ver. 1.0 (09 August 2012), pp. 8:

[https://cmsdata.iucn.org/downloads/iucn\\_ssc\\_guiding\\_principles\\_on\\_trophy\\_hunting\\_ver1\\_09aug2012.pdf](https://cmsdata.iucn.org/downloads/iucn_ssc_guiding_principles_on_trophy_hunting_ver1_09aug2012.pdf)



Before commenting on the substance of the personal and household effects derogation, it ought to be pointed out that CITES seeks to *regulate* - not ban - international trade in specimens of wild animals and plants at sustainable levels to ensure that this trade does not threaten their survival.

With reference to the European Commission's Information document<sup>3</sup>, dated 10 July 2013, FACE would like to stress that the species listed in the four Annexes (A to D) of Regulation 338/97 are not strictly or generally "protected" but rather "protected against *over-exploitation* through international trade" and thereby that their trade is *regulated*. We would therefore encourage the Commission to avoid a simplistic terminology which is prone to misinterpretation, and instead use the terminology of the Convention.

## **EFFECT OF CURRENT STRICTER EU MEASURES APPLIED TO HUNTING TROPHIES AND THE PRINCIPLE OF PROPORTIONALITY**

It should be noted that the current provisions of the EU wildlife trade regulations<sup>4</sup> concerning the import of hunting trophies of Annex B species (roughly corresponding to Appendix II of CITES) that are personal and household effects are different and already more strict than those of CITES.

The EU provisions always require the presentation to customs of a CITES (re-)export permit issued by a third country for the first introduction into the Union of Annex B species – regardless of whether they are personal and household effects or form part of commercial trade. The Convention requires export permits in some cases and waives the requirement in others. Therefore, EU hunters importing trophies into the Union as personal and household effects are already subject to stricter measures compared to what is required under the Convention rules.

In this regard, it should be noted that the EU rules are thus already in line with the decision by Parties at CoP16, as expressed in Resolution Conf. 13.7 (Rev. CoP16)<sup>5</sup>, to tighten the regime applying to the export of rhino horn or elephant ivory contained in hunting trophies, by requiring an export permit or re-export certificate for the importation into the EU of these special categories of trophies. Consequently, an opening of the personal and household effects derogation for hunting trophies in Article 57 of Commission Regulation (EC) No 865/2006 could therefore not be justified on these grounds. (See further below for some additional comments on the rhino and elephant issue.)

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<sup>3</sup> Information document in view of a potential revision of EU rules governing trade in hunting trophies in species included in Annex B of Regulation 338/97: <http://ec.europa.eu/environment/cites/pdf/EU%20information-hunting-trophies.pdf>

<sup>4</sup> Notably Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, and Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97.

<sup>5</sup> <http://www.cites.org/eng/res/13/13-07R16.php>



The *de facto* effect of the EU personal and household effects derogation, for a person normally residing in the Union, is to remove yet another stricter EU measure compared to CITES, namely the EU requirement of an import permit delivered by the importing country for Annex B species.

The current stricter nature of the EU regime must be taken into account when assessing the proportionality and burden of proof of any proposal to further restrict the regime applicable to the import into the Union of hunting trophies, as we have already moved far away from what is required, and perhaps desired, under CITES.

## NEGATIVE OPINIONS OF THE EU SCIENTIFIC REVIEW GROUP

In the review process of the effectiveness of the EU wildlife trade regulations, which was launched by the European Commission in 2007, concerns were raised by some stakeholders that even when the EU Scientific Review Group (SRG) gives a negative opinion for an Annex B species, it only effectively prohibits the import of that species for commercial purposes, and not import from trade considered as personal and household effects. Trade in hunting trophies of lions (*Panthera leo*) from Ethiopia was cited as an example, but there was no clarification given of the importance of the scale of this trade, nor any evidence provided that such trade would constitute a problem from a conservation or enforcement point of view. It is clear that these concerns were raised in the nature of open questions for reflection rather than constituting substantiated claims.<sup>6</sup>

FACE would like to reiterate its comment made at the time – which still holds validity – that negative opinions<sup>7</sup> from the SRG on big game species are not common and that the impact of their import appears very limited. Moreover, it should not be forgotten that for these species, quotas are utilised by exporting states where there is a need to limit the number of specimens that are shipped internationally in a particular year. Furthermore, international trade is overseen by CITES mechanisms, such as the Significant Trade Review process.

It is not surprising that some ideological interest groups, who are opposed to trophy hunting on principle, would favour exclusion of such specimens from the scope of the personal effects

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<sup>6</sup> WWF International wrote in its contribution to the Commission in relation to concerns expressed by some stakeholders: “*Before considering the other issues in detail, we would suggest that the Commission ask UNEP-WCMC to profile the reported trade in personal and household effects - find out how much of it really does pose a problem. For instance, does the extra flexibility regarding hunting trophies lead to scores of lion trophies coming back from Ethiopia - and what is the scale of abuse of the loopholes regarding narwhal, caviar etc.? Such information would inform us as to the need for any revision and the real conservation risks if nothing is done.*” Another stakeholder suggested to the Commission that UNEP-WCMC could review trade to EC in Annex B species as reported by exporters with purpose code P to clarify scale of this trade, and prioritise species to review where there are negative opinions (esp. trophy imports and other species of concern e.g. Narwhal). These and other written contributions are included in Annex III to the Summary Report of the EC Wildlife Trade Regulations – Stakeholder Meeting of 29 September 2008: [http://ec.europa.eu/environment/cites/pdf/summary\\_record.pdf](http://ec.europa.eu/environment/cites/pdf/summary_record.pdf) See also Chapter 4.5 – Personal and Household Effects – in the 2007 Study on the Effectiveness of the EC Wildlife Trade Regulations, carried out by TRAFFIC and IUCN: <http://ec.europa.eu/environment/cites/pdf/effectiveness.pdf>

<sup>7</sup> Negative Opinions can be consulted via the EU Wildlife Trade Regulation Database: <http://www.unep-wcmc-apps.org/eu/taxonomy/>



derogation entirely. However, no scientific evidence or even the slightest indications have been presented to support such draconian, far-reaching measures, which would result in subjecting EU hunters to the same stricter domestic measures that currently apply to the larger-scale commercial trade in Annex B species.

Some have put forward the argument that further restrictions, notwithstanding their scientific basis, could appease interest groups and/or individual government officials who are critical to trophy hunting. This is not compelling. Our experience and firm view is that the driving force among the restriction supporters will never be appeased or satisfied by further stricter measures until those measures result in trophy hunting being severely restricted or stopped altogether. The appeasement argument is therefore an illusory one.

We must stick to the facts and fundamental principles of law-making (notably the principle of proportionality, science-based and democratic legislation, avoiding red-tape for citizens and businesses)<sup>8</sup>. FACE holds the view that, given the apparent limited impact of hunting trophy imports of Annex B species subject to a negative opinion as well as the aforementioned recognition by CITES and the large international conservation organisations of the particular status of hunting trophies on account of the conservation benefits delivered by trophy hunting, the EU legislator was right in affording this category of trade a less restrictive regime relative to commercial trade.

In case a future thorough scientific review by the Commission would show that there are *demonstrable* conservation concerns in relation to certain Annex B species being imported as hunting trophies under the personal effects derogation, one possible solution, which could be implemented via the Commission Regulation, would be to make a provision excluding species of conservation concern from the derogation. It would not be warranted to do this for species that are merely the subject of a negative SRG opinion (which are not legally binding, even though *de facto* adhered to by the Member States) but it could be possible to do it for species/countries that are the subjects of formal import suspensions through the so called EU Suspensions Regulation.

This would represent a far less unreasonable and disproportionate solution than introducing a mandatory import permitting system for all hunting trophies of Annex B species. The latter would be unacceptable in that it unjustifiably increases red-tape for perfectly legitimate sustainable use and imposes burdens/obstacles on good hunting operations, in order to address a very limited issue.

## HUNTING TROPHIES CONTAINING RHINO HORN OR ELEPHANT IVORY

For the sake of comprehensiveness, we would like to say something about the current situation regarding rhino horns and elephant ivory entering into the illegal market, as we have understood that some NGOs have attempted to use “pseudo-hunting” (i.e. engaging in trophy hunts for the

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<sup>8</sup> These principles are inscribed in the EU Treaties and advocated in Commission initiatives, such as the EU Simplification Initiative: [http://ec.europa.eu/dgs/secretariat\\_general/simplification/](http://ec.europa.eu/dgs/secretariat_general/simplification/)



purposes of obtaining horns or tusks to trade commercially) to criticise the personal and household effects derogation.

It is indeed important to recognise that there is worrying poaching of rhinoceros and elephants and illegal trade in these species, in particular driven by demand from Asia.

The 16<sup>th</sup> Conference of the Parties (CoP16) to CITES took new steps to end the poaching without harming the species' conservation by eliminating the important revenues derived from legitimate trophy hunting.

As already mentioned, CoP16 decided that rhino horn or elephant ivory contained in hunting trophies were to be excluded from the special exemption from an export permit or re-export certificate for Appendix II species, and Article 57 of Commission Regulation (EC) No 865/2006 is already in line with this decision. Regarding the re-export from the Union, it should be investigated whether Article 58 of that regulation would need to be amended on the substance for hunting trophies containing rhino horn or elephant ivory, or whether the documents listed in paragraph 3, points a-b, can be deemed to be equivalent to/act as a re-export certificate.

Admittedly, the issue of pseudo-hunting is currently not an identified problem throughout the EU. Although there have been some reported illegal attempts to use Czech and Polish nationals to obtain Southern white rhinoceros horns (*Ceratotherium simum simum*), declared as personal and household effects, the horns were seized by the authorities on import, proving that the enforcement systems in place actually work.<sup>9</sup>

Moreover, the problem of non-*bona fide* "hunters" seems to be solved by the fact that South Africa has put measures in place to check hunters. The IUCN/TRAFFIC Analyses of the Proposals to amend the CITES Appendices, submitted to CoP16 by Germany and the United Kingdom, establishes:

"In South Africa compulsory attendance by an official is now legally required at all hunts, and hunting *curricula vitae* from applicants which show their hunting experience in their country of origin and with African game are now required before permits can be granted. DNA sampling of horns is now mandatory. Implementation of these measures has resulted in a marked decline in rhino hunting applications by citizens from Southeast Asia, the Czech Republic and Poland, and a reduction of over 60% in total number of rhino hunting applications in South Africa in 2012 compared to 2011."<sup>10</sup>

Whilst so-called pseudo-hunting may have been a contributing factor to the current crisis, it is firstly, no longer the main driver<sup>11</sup>; secondly, not an identified problem throughout the EU.

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<sup>9</sup> See for example: <http://ec.europa.eu/environment/cites/pdf/Overview%20significant%20seizures.pdf>

<sup>10</sup> See pp. 45 in CoP16 Inf. 14 (Rev. 1): <http://www.cites.org/common/cop/16/inf/E-CoP16i-14.pdf>

<sup>11</sup> Support for this thesis can be found in the Summary of WWF's positions on priority agenda items for CITES CoP16, p. 2: [http://awsassets.panda.org/downloads/cites\\_cop16\\_proposals\\_digital\\_version.pdf](http://awsassets.panda.org/downloads/cites_cop16_proposals_digital_version.pdf)

Although there may be a good case for additional oversight of trophies containing rhino horn and elephant ivory, it would at this stage be too premature to suggest any restrictions on the personal and household effects derogation for these hunting trophies in the EU wildlife trade regulations, more than, possibly, what has been stated above about re-export certificates in Article 58 of Commission Regulation (EC) No 865/2006.

**In any case, it would be neither justifiable nor proportionate to, based on concerns over rhino horns and elephant ivory, eliminate or generally render the personal and household effects derogation more restrictive for all trophies of all species from all countries, as this would put an extra burden - which is not required by the CITES Convention - on conservation-based hunting operations.**

## **CONCLUSION**

**In light of all the foregoing, no restrictive amendments of the EU personal and household effects derogation in relation to hunting trophies should be tabled without clear evidence indicating that there are *demonstrable* conservation concerns warranting such restrictions, as this would otherwise put an unjustified and disproportionate extra burden - which is not required by the CITES Convention - on hunters participating in a conservation activity. Such a move could have major detrimental impacts on efforts to use hunting as a conservation/livelihoods tool in range states.**

**In case a future thorough scientific review by the Commission would show that such *demonstrable* conservation concerns exist, the least possible restrictive solution should be opted for, definitely avoiding the introduction of a mandatory import permitting system for all hunting trophies of Annex B species. A possible solution - if deemed necessary - which could be implemented via the Commission Regulation, would be to make a provision excluding species of conservation concern that are the subjects of formal import suspensions through the so called EU Suspensions Regulation from the derogation.**

### **FOR FURTHER INFORMATION OR QUESTIONS PLEASE CONTACT:**

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## **BACKGROUND INFORMATION**

### **FACE - EUROPEAN FEDERATION FOR HUNTING AND CONSERVATION**

Established in 1977, it represents the interests of Europe's 7 million hunters as an international non-profit-making non-governmental organisation (INGO).

This makes FACE the largest democratically representative body for hunters in the world and is probably one of the largest European civil society organisations.

FACE is made up of its Members: national hunters' associations from 36 European countries including the EU-28. FACE also has 4 Associate Members and has its Secretariat in Brussels.

FACE upholds the principle of sustainable use, has been a member of the International Union for Conservation of Nature (IUCN) since 1987, and more recently of Wetlands International.

FACE works with its partners on a range of hunting-related issues, from international conservation agreements to local implementations.

