

# CITES COP17 REVIEW

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## I. CITES AND THE CONFERENCE OF THE PARTIES

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) held its 17th Meeting of the Conference of the Parties (CoP17) in Johannesburg, South Africa from September 24 to October 5, 2016. CoP17 was the largest meeting of its kind and “mark[ed] a major shift towards stronger protection for wild animals and plants from overexploitation and illegal trade.”<sup>1</sup> The two-week meeting consisted of 152 governments making decisions on sixty-two species-listing proposals offered by sixty-four separate countries.<sup>2</sup> At

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<sup>1</sup> Press Release, Convention on Int’l Trade in Endangered Species of Wild Fauna & Flora, Largest Ever World Wildlife Conference Hailed as a ‘Game Changer,’ (Oct. 4, 2016), [https://cites.org/eng/news/pr/Largest\\_ever\\_World\\_Wildlife\\_Conference\\_CoP17\\_hailed\\_as\\_a\\_game\\_changer\\_04102016](https://cites.org/eng/news/pr/Largest_ever_World_Wildlife_Conference_CoP17_hailed_as_a_game_changer_04102016) [<https://perma.cc/E883-DYVC>] (accessed Apr. 9, 2017) [hereinafter CoP17 Press Release].

<sup>2</sup> *Id.* “Parties” are “States and Regional Economic Integration Organizations that have agreed to be bound by the Convention (‘joined’ CITES). CITES is legally binding on the Parties and provides a framework to be respected by each Party, which has to adopt its own domestic legislation to ensure that CITES is fully implemented in all areas under its national jurisdiction.” CITES CoP17, CITES (2016), [https://cites.org/sites/default/files/eng/news/CoP17\\_press\\_corner/Background\\_on\\_CITES\\_and\\_CoP17.pdf](https://cites.org/sites/default/files/eng/news/CoP17_press_corner/Background_on_CITES_and_CoP17.pdf) [<https://perma.cc/C6VP-B4C>] (accessed Apr. 9, 2017). The Parties referenced throughout this Review are those Parties that participated in CoP17.

CoP17, the Parties considered issues and proposals including, among others, CITES National Ivory Plans; the interrelationship between the illegal elephant ivory trade and the legal mammoth ivory trade; scaling up efforts to counter cybercrime in relation to illegal wildlife trade; strategies to reduce demand for illegally traded wildlife; and wildlife products produced from a species' DNA, for example, synthetic rhinoceros horns.<sup>3</sup>

While many of the issues and proposals highlighted above were simply an expanded version of those reviewed and discussed at past conferences of the parties, CoP17 involved a number of new and original items. A number of new proposals covering various aspects of illegal trade were presented and voted on by the Parties at CoP17, including: cybercrime and wildlife crime; a resolution and multiple decisions on youth engagement to reduce demand and protect species; a resolution addressing corruption and wildlife crime; and resolutions on strategies to reduce the demand for illegally-traded wildlife.<sup>4</sup> Additionally, this is the first Conference of the Parties to include the European Union as a participating, voting party to the conference.<sup>5</sup> CoP17 ended one day early, resulted in fifty-one proposals accepted, five proposals rejected, and six proposals withdrawn. Hailed as a success, CITES Secretary-General John E. Scanlon called it a "game changer for the planet's most vulnerable wild animals and plants."<sup>6</sup>

## II. CONFERENCE OF THE PARTIES 2017

The Parties at CoP17 enacted changes to the appendices and discussed numerous proposals, resolutions, and decisions addressing both species-specific matters and those regarding interpretation and implementation of past resolutions and decisions. The Parties enacted appendix changes, additions, or subtractions of sixty-two different species,<sup>7</sup> while also reviewing proposals and issues pertaining to interpretation and implementation matters for existing resolutions and decisions, including: general compliance and enforcement, trade control and traceability, and species-specific matters.<sup>8</sup>

The CITES appendices list the species covered by CITES according to the level of protection they each need. These are broken into three separate appendices, which are updated at every Conference of the Parties. Appendix I includes species threatened with extinction, and trade in "these species is permitted only in exceptional circum-

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<sup>3</sup> *Id.*

<sup>4</sup> CoP17 Press Release, *supra* note 1.

<sup>5</sup> *Id.* (quoting John E. Scanlon, the Secretary-General of CITES).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See *Provisional Agenda and Working Documents*, CITES (2016), <https://cites.org/eng/cop/17/doc/index.php> [<https://perma.cc/79X8-EXER>] (accessed Apr. 9, 2017) (outlining the proposals and issues to be tackled during CoP17).

stances.”<sup>9</sup> Appendix II includes all species “not necessarily threatened with extinction.”<sup>10</sup> Trade in these species must be controlled to avoid over-utilization that is incompatible with preservation of the species.<sup>11</sup> Finally, Appendix III is only for species that are protected in a minimum of one country, where that country has “asked other CITES Parties for assistance in controlling the trade.”<sup>12</sup> Further, as will be shown in the sections to follow, a key concept to understand when considering trade of a species is the assessment of a non-detriment finding (NDF). An NDF is a “conclusion by a Scientific Authority that the export of specimens of a particular species will not impact negatively on the survival of that species in the wild.”<sup>13</sup> These NDFs are required before a permit or certificate of export or import may be granted for a specimen from Appendix I or Appendix II species.<sup>14</sup>

Specifically addressed in this Review are (1) issues falling within the convergence of technological advancements and the illegal wildlife trade, such as traceability and combating wildlife cybercrime, (2) decisions regarding combating and controlling hunting trophies, and (3) species-specific matters relating to sharks and rays, Asian big cats, tortoises and freshwater turtles, and the Saiga antelope.<sup>15</sup>

### A. *The Convergence of Technology and Animal Protection*

#### 1. *Traceability*

While CITES has yet to adopt a universal definition for “traceability,” adopted definitions often refer to, or use as a framework, the definition from the International Organization for Standardization (ISO).<sup>16</sup> ISO defines “traceability” as the “ability to trace the history, application or location of an object.”<sup>17</sup> When assessing how to transform the ISO definition into individualized traceability definitions, governments and organizations should consider including a few key elements:

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<sup>9</sup> *How CITES Works*, CITES (2016), <https://cites.org/eng/disc/how.php> [https://perma.cc/XXT6-NN5H] (accessed Apr. 9, 2017).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *CITES Glossary*, CITES (Aug. 10, 2013), <https://www.cites.org/eng/resources/terms/glossary.php> [https://perma.cc/U7X4-6Z2D] (accessed Apr. 9, 2017).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* While only four species have been chosen for in-depth exposure in this Review, there were numerous other species discussed at CoP17 that would benefit from further research and exposure, such as elephants, snakes, the totoaba, and pangolins. To learn more about these species and the discussion surrounding each at CoP17, see *infra* note 31 for a list of all decisions made at CoP17.

<sup>16</sup> CITES, *Interpretation and Implementation of the Convention: Trade Control and Traceability*, at 2, CITES SC66 Doc. 34.1 (Rev.1) (Jan. 11–15, 2016), <https://cites.org/sites/default/files/eng/com/sc/66/E-SC66-34-01-Rev1x.pdf> [https://perma.cc/FX8A-J37R] (accessed Apr. 9, 2017) [hereinafter CITES Interpretation and Implementation].

<sup>17</sup> *Id.* at 3.

[(1)] a unique identifier so that any traced specimen can be uniquely identified; [(2)] information exchange standards, preferably open standards, to capture and manage information related to any transformation to the specimen at a specific locale; and [(3)] the levels of communication among the various stakeholders throughout the CITES supply chain.<sup>18</sup>

There are numerous reasons why traceability is an essential component for protecting traded species. Traceability helps CITES and other organizations determine whether a species was obtained legally, and aids scientific authorities in the non-detriment finding process by linking the species to its geographical origin without the burden of undue research.<sup>19</sup> Additionally, traceability allows for authorities to confirm the origin of the traded animals and easily identify the species, enhances authorities' ability to track and trace species, reduces the amount of fraud and smuggling of species, better controls species export quotas, and improves the data used to confirm the sustainability of the species being traded.<sup>20</sup>

CITES currently employs a traceability system of permits and certificates. CITES traceability is maintained through five mechanisms: "[1] issuance of appropriate permits and certificates; [2] submission of relevant permit trade data in national annual reports . . . ; [3] identification / verification of transactions and specimens when entering / leaving countries; [4] compulsory marking of certain specimens in trade; and, [5] collaboration between national CITES authorities and other agencies and enforcement authorities."<sup>21</sup> There is some variance in the traceability requirements amongst species listed in the appendices, usually in the form of Conference of the Parties resolutions, to provide additional measures for certain species designed to facilitate "identification of source/origin as well as trade monitoring and control."<sup>22</sup>

With the constant development of new technologies, new traceability mechanisms and solutions are continually emerging in the form of devices, software, and technologies—such as forensics—all of which are providing improved tracking and identification services.<sup>23</sup> Mexico, Colombia, Indonesia, and Italy are currently conducting pilot testing of a global traceability information system for reptile skins in conjunction with the Responsible Ecosystems Sourcing Platform (RESP).<sup>24</sup> The

<sup>18</sup> *Id.*

<sup>19</sup> VICTORIA MUNDY & GLENN SANT, TRACEABILITY SYSTEMS IN THE CITES CONTEXT: A REVIEW OF EXPERIENCES, BEST PRACTICES AND LESSONS LEARNED FOR THE TRACEABILITY OF COMMODITIES OF CITES-LISTED SHARK SPECIES 9 (2015).

<sup>20</sup> CITES Interpretation and Implementation, *supra* note 16.

<sup>21</sup> MUNDY & SANT, *supra* note 19, at 10.

<sup>22</sup> *Id.*

<sup>23</sup> CITES Interpretation and Implementation, *supra* note 16, at 1, 14.

<sup>24</sup> Stefan van As & Gerry Swan, *CITES CoP17: Traceability Information System to Ensure Sustainable and Legal Trade*, U. PRETORIA (Oct. 14, 2016), [http://www.up.ac.za/en/exotic-leather-research-centre/news/post\\_2370784-cites-cop17-traceability-information-system-to-ensure-sustainable-and-legal-trade-](http://www.up.ac.za/en/exotic-leather-research-centre/news/post_2370784-cites-cop17-traceability-information-system-to-ensure-sustainable-and-legal-trade-) [https://perma.cc/CE5Z-C9X8] (accessed Apr. 9, 2017).

RESP's International Working Group of Reptile Skins (IWG-RS) developed the application of biometric image recognition to tracing reptile skins. The identification carrier used in this application is created through the acquisition of the image "of a determined area of the reptile skin[,] . . . [which is] then analy[z]ed by an algorithm to establish[] a Unique Fingerprint Identifier."<sup>25</sup> Despite promising results from the pilot testing for tracing reptile skins, the Parties at CoP17 were not generally supportive of global traceability information systems because they fear the system to be too species-oriented.<sup>26</sup> The Parties stated the system "should be complementary, mutually supportive and standardized across all CITES listed species,"<sup>27</sup> and because this system only applies to tracing reptile skins, leaving other species to CITES's current tag and permit system, this will not achieve that end.

The Parties can benefit in many ways if traceability systems are adopted to strengthen the supply chain of CITES-listed species. For example, it would help prevent "the laundering of illegally harvested species into the legal supply chain"<sup>28</sup> and allow CITES to track and trace specimens throughout the entire CITES supply chain, which would "increase[] confidence in the supply chain by the CITES community."<sup>29</sup> It was discussed by the CITES Standing Committee at its 66th meeting that a universal CITES definition for traceability must be put in place to ensure cohesion between Parties' implementation of traceability systems.<sup>30</sup>

The Parties adopted four decisions regarding traceability. These four decisions direct the Standing Committee, at its 68th meeting, to "establish a working group on traceability" to "recommend a working definition of 'traceability,'" "encourage Parties that are developing traceability systems to ensure they are complementary, mutually supportive and standardized," provide general guidance on how to coordinate development of these systems, and "draft a resolution on traceability" that will be proposed "for consideration at the 18th Meeting of the Conference of the Parties" (CoP18).<sup>31</sup> In addition, the Parties adopted Decision 17.155, which directs the CITES Secretariat<sup>32</sup> to "de-

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> CITES Interpretation and Implementation, *supra* note 16, at 1.

<sup>29</sup> *Id.* at 2.

<sup>30</sup> *Id.*

<sup>31</sup> CITES, DECISIONS OF THE CONFERENCE OF THE PARTIES TO CITES IN EFFECT AFTER ITS 17TH MEETING 34 (2017), <https://cites.org/sites/default/files/eng/dec/valid17/E17-Dec.pdf> [<https://perma.cc/3L65-Z5ER>] (accessed Apr. 9, 2017) [hereinafter CoP17 DECISIONS].

<sup>32</sup> The Secretariat is a body created by Article XII of the text of the Convention. Convention on International Trade in Endangered Species of Wild Fauna and Flora art. XII, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243. It "distributes information to the Parties mostly through meeting documents and Notifications." *The CITES Secretariat*, CITES, <https://www.cites.org/eng/disc/sec/index.php> [<https://perma.cc/ZCS7-FCUG>] (accessed Apr. 9, 2017).

velop a portal on the CITES website on traceability[] to make available” the decisions and results from the working group on traceability.<sup>33</sup>

## 2. *Combating Wildlife Cybercrime*

At the 16th Meeting of the Conference of the Parties (CoP16) in 2013, in response to studies conducted by the International Fund for Animal Welfare (IFAW), INTERPOL launched Project Web “to provide an initial snapshot and insight from a law enforcement perspective into the drivers, scale, nature, and involved entities of the illegal trade in ivory over the Internet.”<sup>34</sup> Project Web found that, during a two-week period, 660 advertisements of ivory items valued at approximately €1,450,000 were posted across sixty-one different Internet auction sites in nine different European countries.<sup>35</sup> In November 2014—a year after CoP16—IFAW’s report, “Wanted—Dead or Alive: Exposing Online Wildlife Trade,” was published, and it discussed the results of an investigation into 280 online markets in sixteen different countries.<sup>36</sup> It found that, during one six-week period, “33,006 endangered animals and wildlife products were available for sale in 9,482 advertisements estimated to be worth a minimum of US \$10,708,137.”<sup>37</sup> This report further identified that of the nearly 10,000 advertisements, 54% involved live animals while 46% involved animal parts and products.<sup>38</sup> Further, enforcement investigations into wildlife cybercrime have demonstrated that live animals, in addition to their parts and derivatives, are available online across the globe.<sup>39</sup> It is becoming apparent from these investigations that criminal networks linked to multiple online traders are emerging, and provisional links are being made between consumers’ demand for, and the killing, capturing, and selling of, endangered wildlife over the Internet.<sup>40</sup> These reports and investigations into the current online sale and advertisement of wildlife illustrate a need for “further investigations by enforcement officials combined with a centralized database of prosecutions . . . in order

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<sup>33</sup> CoP17 DECISIONS, *supra* note 31, at 35.

<sup>34</sup> INTERPOL, PROJECT WEB: AN INVESTIGATION INTO THE IVORY TRADE OVER THE INTERNET WITHIN THE EUROPEAN UNION 3 (2013), <http://www.ifaw.org/sites/default/files/Project%20Web%20-%20PUBLIC.pdf> [https://perma.cc/LR3A-WWEV] (accessed Apr. 9, 2017).

<sup>35</sup> CITES, *General Compliance and Enforcement: Combating Wildlife Cybercrime*, at 2, CoP17 Doc. 29, (Sept. 24–Oct. 5, 2016), <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-29.pdf> [https://perma.cc/A55S-9ES5] (accessed Apr. 9, 2017) [hereinafter CoP17 Doc. 29].

<sup>36</sup> IFAW, WANTED—DEAD OR ALIVE: EXPOSING ONLINE WILDLIFE TRADE 4 (2014), <http://www.ifaw.org/sites/default/files/IFAW-Wanted-Dead-or-Alive-Exposing-Online-Wildlife-Trade-2014.pdf> [https://perma.cc/M98P-98R9] (accessed Apr. 9, 2017).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

to be able to more clearly ascertain cause and effect and quantify how much of a driver online trade may be to poaching on the ground.”<sup>41</sup>

In response to these investigations and post-CoP16 reports, the Parties at CoP17 adopted five decisions and continued implementation of a decision from the 15th Meeting of the Conference of the Parties (CoP15). The decisions instituted a workshop on wildlife cybercrime that will occur prior to each meeting of the Conference of the Parties going forward.<sup>42</sup> Additionally, the Parties are advised to provide the Secretariat with any changes to domestic legislation pertaining to wildlife cybercrime and share any best practices pertaining to online marketplace and social media platform regulation.<sup>43</sup> While these decisions are slow steps toward monitoring the online wildlife trade, they are steps in the right direction, which will continue to be built on by future Conferences of the Parties as the Internet continues to expand and evolve as a forum for illicit trade in wildlife and wildlife products.

### B. Hunting Trophies

Discussion of the regulation of hunting trophies typically concerns hunting Appendix I and II species. CITES defines “hunting trophy” as:

[A] whole animal, or a readily recognizable part or derivative of an animal, specified on any accompanying CITES permit or certificate, that: (i) is raw, processed or manufactured; (ii) was legally obtained by the hunter through hunting for the hunter’s personal use; and (iii) is being imported, exported or re-exported by or on behalf of the hunter, as part of the transfer from its country of origin, ultimately to the hunter’s State of usual residence.<sup>44</sup>

Trophy hunting is under more intense scrutiny due to the incidence of poorly conducted or regulated hunting,<sup>45</sup> such as the highly publicized Cecil the Lion incident from 2016.<sup>46</sup> This increased scrutiny has “sparked campaigns and discussions . . . regarding ending or limiting trophy hunting . . . by restricting the national level licensing of hunting, the import of hunting trophies (through CITES or unilateral measures), or their transport by aviation or shipping companies.”<sup>47</sup> However, none of these actions were adopted at CoP17, where the Par-

<sup>41</sup> CoP17 Doc. 29, *supra* note 35.

<sup>42</sup> CoP17 DECISIONS, *supra* note 31, at 25.

<sup>43</sup> *Id.* at 25–26.

<sup>44</sup> CITES, Res. Conf. 12.3 (Rev. CoP15), *Permits and Certificates*, at 4 (2010), <https://cites.org/eng/res/all/12/E12-03R15.pdf> [<https://perma.cc/VM6C-P42W>] (accessed Apr. 9, 2017).

<sup>45</sup> CITES, *Informing Decisions on Trophy Hunting*, at 3, CoP17 Inf. 60 (Sept. 24–Oct. 5, 2016), <https://cites.org/sites/default/files/eng/cop/17/InfDocs/E-CoP17-Inf-60.pdf> [<https://perma.cc/3S2G-867A>] (accessed Apr. 9, 2017).

<sup>46</sup> See generally Don Melvin, *Zimbabwean Officials: American Man Wanted in Killing of Cecil the Lion*, CNN, (July 28, 2015) <http://www.cnn.com/2015/07/28/africa/zimbabwe-lion-killed/> [<https://perma.cc/9P7K-FV85>] (accessed Apr. 9, 2017) (reporting on the shooting of Cecil the Lion, a prized lion from Hwange National Park in Zimbabwe, who was shot by a tourist).

<sup>47</sup> *Id.*

ties focused more on how to utilize trophy hunting as a means to improve conservation financing and to secure socioeconomic benefits for rural communities.<sup>48</sup>

At CoP17, the Parties acknowledged that trophy hunting is actually consistent with species conservation when it is well-managed, “as it provides both livelihood opportunities for rural communities and incentives for habitat conservation,” which in turn “generates benefits that can be reinvested for conservation purposes.”<sup>49</sup> With this acknowledged, the Parties’ lack of updating to the trophy quotas set out in previous Conferences is the main problem when accurately monitoring hunting trophies.<sup>50</sup> This is particularly true with regard to the hunting trophy quotas set out in Resolution Conf. 10.14 concerning leopards.<sup>51</sup>

While the issue of trophy hunting impacts numerous species currently being traded across the globe, CoP17 only adopted decisions related to leopard trophy hunting quotas.<sup>52</sup> These decisions requested that each Party assigned a leopard quota in Resolution Conf. 10.14<sup>53</sup> (1) revisit those quotas and determine if they are still valid for the survival of the species, (2) have the Secretariat support these reviews, and (3) have the Standing Committee consider any recommendations made by the Animals Committee,<sup>54</sup> and then the Standing Committee will make its own recommendations for CoP18.<sup>55</sup> The purpose of these

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<sup>48</sup> See CITES, Res. Conf. 17.9, *Trade in Hunting Trophies of Species Listed in Appendix I or II*, at 1 (2016), <https://cites.org/sites/default/files/document/E-Res-17-09.pdf> [<https://perma.cc/6QZC-VHDZ>] (accessed Apr. 9, 2017) (discussing the positive socioeconomic implications of trophy hunting on rural communities).

<sup>49</sup> *Id.*

<sup>50</sup> See *id.* (urging Parties to “apply the *Guidelines for the preparation and submission of CITES annual reports* in order to assess adherence to quotas . . .”). Quotas establish “the maximum number of specimens of a species that may be exported over the course of a year without having a detrimental effect on its survival.” *The CITES Export Quotas*, CITES, <https://www.cites.org/eng/resources/quotas/index.php> [<https://perma.cc/XR4B-HMQH>] (accessed May 19, 2017). Setting and monitoring these quotas is the responsibility of the Parties, unless set by the Conference of the Parties. *Id.* Therefore, Parties should periodically be updating the quotas for each listed species in their region to ensure the numbers being traded are not detrimental to the survival and sustainability of the species. *Id.*

<sup>51</sup> CITES, *Hunting Trophies of Species Listed in Appendix I or II*, at 3, CoP17 Doc. 39.1 (Sept. 24–Oct. 5, 2016), <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-39-01.pdf> [<https://perma.cc/WNL8-P75Y>] (accessed Apr. 9, 2017).

<sup>52</sup> CoP17 DECISIONS, *supra* note 31, at 29.

<sup>53</sup> CITES, Res. Conf. 10.14 (Rev. CoP16), *Quotas for Leopard Hunting Trophies and Skins for Personal Use*, <https://cites.org/eng/res/10/10-14R16.php> [<https://perma.cc/MK6E-2PGX>] (accessed Apr. 9, 2017). The Parties assigned quotas under this resolution are Botswana, Central African Republic, Ethiopia, Kenya, Malawi, Mozambique, Namibia, South Africa, Uganda, United Republic of Tanzania, Zambia, and Zimbabwe. *Id.*

<sup>54</sup> The Animals Committee is “[a] committee of experts established by the Conference of the Parties, responsible for providing scientific and technical advice in relation to species of animals that are, or might become, subject to the provisions of CITES.” *CITES Glossary*, *supra* note 13.

<sup>55</sup> CoP17 DECISIONS, *supra* note 31, at 29.



decisions is to enable the leopards' range State representatives<sup>56</sup> to assess the current leopard trophy hunting quotas and ensure they are still accurate, since the quotas in Resolution Conf. 10.14 were instituted at the 10th Meeting of the Conference of the Parties in 1997.<sup>57</sup> After assessment of the range States' reviews, if the Animals Committee determines that the quotas are no longer accurate they may make any recommendations they see fit to both the range States and the Standing Committee.<sup>58</sup>

At CoP17, the Parties also adopted Resolution Conf. 17.9, titled *Trade in Hunting Trophies of Species Listed in Appendix I or II*.<sup>59</sup> Resolution Conf. 17.9 states that the Parties agree that exporting hunting trophies of Appendix I or II species "should be conditional upon issuance of an export permit."<sup>60</sup> Further, Resolution Conf. 17.9 recommends that trophy hunting of Appendix I species "should produce conservation benefits for the species concerned and thus may benefit from having a benefit sharing or incentive system in place to ensure that harvesting contributes to the offsetting of the cost of living with certain species."<sup>61</sup> Finally, when trading hunting trophies, Parties should consider the role hunting plays "in providing incentives to conserve wildlife" and its contribution "to conservation and socio-economic benefits."<sup>62</sup> The decisions and Resolution Conf. 17.9 illustrate that the Parties acknowledge a basic need for trophy hunting at a socio-economic and conservation level, but that it also has to be closely monitored to create a balance between those benefits and preserving the survival of each species.

### C. Animal Protections Beyond the Appendices

#### 1. Sharks and Rays

Sharks, specifically basking and whale sharks, were first added to Appendix II in February 2003, because, while sharks were not threatened with extinction, their trade needed to be "controlled to avoid utilization incompatible with their survival."<sup>63</sup> Since initially adding basking sharks and whale sharks at the 12th Meeting of the Conference of the Parties (CoP12) in 2003, the Parties have added six shark species to Appendix II, for a total of eight, along with all manta rays and sawfishes belonging to the *Elasmobranchii* subclass.<sup>64</sup> Under

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<sup>56</sup> A "range State" is "a State whose territory is within the natural range of distribution of a species." *CITES Glossary*, *supra* note 13.

<sup>57</sup> See Res. Conf. 10.14 (Rev. CoP16), *supra* note 53 (establishing set quotas in specific countries).

<sup>58</sup> CoP17 DECISIONS, *supra* note 31, at 29.

<sup>59</sup> Res. Conf. 17.9, *supra* note 48.

<sup>60</sup> *Id.* at 2.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 3.

<sup>63</sup> *Sharks and Manta Rays*, CITES, <https://www.cites.org/eng/prog/shark/more.php> [<https://perma.cc/CMD5-J7FP>] (accessed Apr. 9, 2017).

<sup>64</sup> *Id.*

Resolution Conf. 12.6, entitled *Conservation and Management of Sharks*, the Animals Committee “examine[s] new information provided by range States on trade[,] . . . report[s] their analyses at meetings of the Conference of the Parties,” and makes “species-specific recommendations at meetings of the Conference of the Parties if necessary.”<sup>65</sup>

At CoP17, the Parties made eight decisions relating to sharks and rays: Decisions 17.209 through 17.216.<sup>66</sup> Decision 17.209 encourages the Parties to participate in national consultations concerning CITES trade provisions of the *Elasmobranchii* species, strengthen the efforts of Parties in developing NDFs for CITES-listed sharks and rays, provide funding for a dedicated marine officer position in the CITES Secretariat, and continue “improving the collection of fisheries and trade data at the species level.”<sup>67</sup>

Decisions 17.210 to 17.213 are all directed to the Secretariat.<sup>68</sup> Decision 17.210 illustrates two duties for the Secretariat. First, the Secretariat must make all guidance materials “available for the identification of CITES-listed sharks and rays.”<sup>69</sup> Second, it must pay close attention to the Food and Agriculture Organization of the United Nations (FAO)’s Voluntary Guidelines on Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication, because the *Elasmobranchii* subclass of manta rays can be found in some small-scale fisheries.<sup>70</sup> Decision 17.211 instructs the Secretariat to request the Parties to provide new information on their sharks and rays conservation activities and provide a summary of trade to the CITES trade database, in addition to Decision 17.212, which directs the Secretariat to look for additional funding to address unmet needs raised at numerous regional implementation meetings.<sup>71</sup>

When assessing the shark and ray decisions from CoP17, one of the most influential is Decision 17.213, as it focuses on the continued collaboration between CITES and FAO, broadening the reach of both organizations and expanding protection of species. Decision 17.213 mandates that both the CITES and FAO Secretariats “continue and expand their collaboration concerning the conservation of and trade in sharks and rays.”<sup>72</sup> Particularly, the CITES and FAO Secretariats are encouraged to explore options for using the iSharkFin tool,<sup>73</sup> updating

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<sup>65</sup> CITES, Res. Conf. 12.6 (Rev. CoP17), *Conservation and Management of Sharks*, at 2, <https://cites.org/eng/res/12/12-06R16.php> [<https://perma.cc/RHY3-NE8Z>] (accessed Apr. 9, 2017).

<sup>66</sup> CoP17 DECISIONS, *supra* note 31, at 51–54.

<sup>67</sup> *Id.* at 51–52.

<sup>68</sup> *Id.* at 52.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* The iSharkFin tool is an expert software system for the identification of shark fins by their shape. iSharkFin can help individuals identify thirty-five different shark species from dorsal fins and seven species from pectoral fins. *New Shark Fin Identifica-*

the CITES sharks and rays portal, and maintaining the CITES sharks and rays database.<sup>74</sup> The purpose of Decisions 17.210 through 17.213 is to continue the protection of sharks and rays through issuing notifications with new information about shark and ray conservation efforts and making identification materials available to assist in the identification of listed sharks and rays.<sup>75</sup> Additionally, CITES will provide the Parties a means for improving the protections against the trade of both sharks and rays by seeking additional funding to assist the Parties in implementing the new Appendix II listings, continuing their collaboration with the FAO and supporting the development of guidance tools used for tracking the species.<sup>76</sup>

## 2. Asian Big Cats

Asian big cats<sup>77</sup> are considered either endangered or critically endangered and, as such, are included in Appendix I. This classification indicates that they are threatened with extinction and CITES “prohibits international trade in specimens of these species except when the purpose of the import is not commercial.”<sup>78</sup> All Asian big cats included in Appendix I come from the *Felidae* cats classification,<sup>79</sup> which includes the Asiatic cheetah, Amur leopard, Sunda clouded leopard, clouded leopard, Asiatic lion, Asian Tiger, and snow leopard.<sup>80</sup> Sixty-two of these felines were seized between 2000 and 2009; however, between just 2010 and 2012, sixty-one were seized, demonstrating a significant increase in seizures per year.<sup>81</sup> Further, approximately 74% of the tigers confiscated in Southeast Asia were confiscated from only three countries: Lao People’s Democratic Republic, Thailand, and Viet Nam.<sup>82</sup> This raises concerns for the Parties about the source of the

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*tion Tool Released*, CITES (Jan. 29, 2015), [https://cites.org/eng/new\\_shark\\_fin\\_identification\\_tool\\_released](https://cites.org/eng/new_shark_fin_identification_tool_released) [<https://perma.cc/V95G-FCFS>] (accessed Apr. 9, 2017).

<sup>74</sup> CoP17 DECISIONS, *supra* note 31, at 52.

<sup>75</sup> *Id.* at 52–53.

<sup>76</sup> *Id.*

<sup>77</sup> Species recognized by CITES as Asian big cats include: tigers, “snow leopard, *Uncia uncia*, clouded leopard, *Neofelis nebulosa*, all species of leopard *Panthera pardus* within its Asian range, and Asiatic lion, *Panthera leo persica*.” CITES, Res. Conf. 12.5 (Rev. CoP15), *Conservation of and Trade in Tigers and Other Appendix-I Asian Big Cat Species*, at 1 (2010), <https://cites.org/eng/res/all/12/E12-05R15.pdf> [<https://perma.cc/92JT-BTZY>] (accessed Apr. 9, 2017).

<sup>78</sup> *The CITES Appendices*, CITES, <https://cites.org/eng/app/index.php> [<https://perma.cc/6U2T-DKPW>] (accessed Apr. 9, 2017).

<sup>79</sup> *Appendices I, II and III*, CITES, <https://cites.org/eng/app/appendices.php> [<https://perma.cc/WNA4-KPXR>] (accessed Apr. 9, 2017).

<sup>80</sup> *Endangered Wild Cats*, BIG CATS WILD CATS, <http://bigcatswildcats.com/endangered-wild-cats/> [<https://perma.cc/G3Y4-4YC4>] (accessed Apr. 9, 2017); *List of Big Cats*, BIG CATS WILD CATS, <http://bigcatswildcats.com/list-of-big-cats> [<https://perma.cc/SL2V-MHG8>] (accessed Apr. 9, 2017).

<sup>81</sup> CITES, *Species Specific Matters: Asian Big Cats* (Felidae spp.), at 3, CoP17 Doc. 60.1 (2016), <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-60-01.pdf> [<https://perma.cc/G53K-XZV6>] (accessed Apr. 9, 2017).

<sup>82</sup> *Id.*

illegal trade, as there are just a small number of wild tigers actually in those countries, while each houses tiger breeding facilities.<sup>83</sup> Considering the small number of wild tigers and the presence of tiger breeding facilities, it leads one to wonder whether the illegal trade from those countries is stemming from the breeding facilities, not poaching of the wild population. It became clear from review of the implementation of Resolution Conf. 12.5 (Rev. CoP16) that “out of 28 Asian big cat range States assessed under the CITES National Legislation Project, more than half still require legislative improvements.”<sup>84</sup> The emergence of these trends in Southeast Asia, in addition to the results of this review, illustrates that CITES and the Parties needed to address these and find a solution.

To begin tackling these troubling trends, the Parties adopted eight decisions at CoP17, Decisions 17.224 to 17.231.<sup>85</sup> Due to Decision 17.228, the Secretariat, subject to available funds, shall continue to review the implementation of Resolution Conf. 12.5 (Rev. CoP17) and prepare a report.<sup>86</sup> Additionally, under Decision 17.229, the Secretariat must conduct a review of the number “of facilities keeping Asian big cats in captivity in the territories of Parties and the number of Asian big cats kept in these facilities,” and report the results of the review to the Standing Committee.<sup>87</sup> Finally, Decision 17.230 encourages the Secretariat to work with the International Consortium on Combating Wildlife Crime (ICWC), INTERPOL, and the associated range States.<sup>88</sup> The Secretariat’s review of facilities currently housing Asian big cats and cooperation among several international organizations will hopefully increase the survival of the remaining species.

### 3. *Tortoises and Freshwater Turtles*

CITES addresses both the legal and illegal trade of tortoises and freshwater turtles. This trade involves not only that of live specimens, but also the trade of mostly illegal parts and derivatives of tortoises and freshwater turtles.<sup>89</sup> Based on a study conducted at the direction of decisions made at CoP16, between January 1, 2011, and December 31, 2014, a total of 3,457,703 live tortoises and freshwater turtles were legally traded, the majority originating from ranching and captive-breeding facilities.<sup>90</sup> This legal trading involved sixty-four genera tortoises and freshwater turtles, including “584 specimens of Appendix-I species . . . ; 2,213,729 specimens of Appendix-II species; and 1,243,390

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> CoP17 DECISIONS, *supra* note 31, at 56.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 57.

<sup>88</sup> *Id.* at 56–57.

<sup>89</sup> CITES, *Species Specific Matters: Tortoises and Freshwater Turtles* (Testudines spp.), at 7–8, CoP17 Doc. 73 (2016), <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-73.pdf> [<https://perma.cc/B33W-UAEQ>] (accessed Apr. 9, 2017).

<sup>90</sup> *Id.* at 7.

specimens of Appendix-III species.”<sup>91</sup> Significantly, according to the Secretariat’s study, while not all illegally traded specimens are detected, the number of seized illegally traded tortoises and freshwater turtles “equates to approximately 19% of the volume of legally traded wild-sourced tortoises and freshwater turtles.”<sup>92</sup> These illegally traded animals primarily originate in the wild, which creates a high possibility of negatively impacting wild populations, while the legal trade focuses on trading specimens that were bred in captivity.<sup>93</sup>

There are numerous trends emerging in the illegal trade of tortoises and freshwater turtles. While these trends vary across geographic regions, it is apparent that traffickers intentionally transport illegal specimens through indirect routes.<sup>94</sup> The current trends indicate “illegal shipments are intentionally routed through the widest possible range of different routes, drawing upon airline, shipping and road networks, often involving extensive detours and deliberate transits through several countries.”<sup>95</sup> Further, the Internet has become an essential outlet to advertise and arrange both legal and illegal sales of tortoises and freshwater turtles.<sup>96</sup> Finally, effective enforcement against illegal trading is constrained by a number of factors, including the ability to identify specimens in trade and determine their status under protective legislation; placement of seized live specimens; perceived minimal significance of illegally trading tortoises and freshwater turtles as compared to other species; lack of accurate or complete recording of both legal and illegal trade; and the scope and extent of “domestic conservation legislation to implement CITES” across the range States.<sup>97</sup>

At CoP17, the Parties adopted eight decisions regarding the creation, implementation, and purpose of the CITES Tortoises and Freshwater Turtles Task Force (Task Force).<sup>98</sup> Under Decision 17.296, the Task Force must:

- (a) as it deems appropriate, exchange intelligence and other information on the illegal trade in tortoises and freshwater and terrestrial turtles; (b) discuss enforcement and implementation issues related to the illegal trade in tortoises and freshwater and terrestrial turtles . . . and (c) deliver findings and recommendations, through the Secretariat, to the 69th meeting of [the] Standing Committee to strengthen the enforcement and implementation of the Convention for these species by the Parties.<sup>99</sup>

The implementation of Decision 17.296 and the other seven decisions, through the creation of the Task Force, acknowledgment of current il-

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 8.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 14.

<sup>98</sup> CoP17 DECISIONS, *supra* note 31, at 71–73.

<sup>99</sup> *Id.* at 72.

legal trading trends, and efforts to address those trends, allows for CITES to more efficiently and accurately detect both illegal and legal tortoise and freshwater turtle trade, and help ensure that proper measures are being taken to protect the species from extinction.

#### 4. *Saiga Antelope*

The Saiga antelope is a species located in Southeast Europe and Central Asia, namely in Kazakhstan, Mongolia, Russia, Turkmenistan, and Uzbekistan.<sup>100</sup> Over the years, these antelopes have become critically endangered due to illegal hunting and habitat loss.<sup>101</sup> Saiga antelopes are hunted primarily for the perceived medicinal benefits of their horns in Chinese medicine, which skewed the male-female ratio, leading to an exponential drop in birth rates among Saiga antelopes.<sup>102</sup> Additionally, the fall of the Soviet Union in 1991 enabled Saiga antelope poaching to go unrestricted and run rampant, almost causing a complete extinction of the species.<sup>103</sup> Between the collapse of the Soviet Union in 1991 and early 2010, Saiga antelopes made an astonishing comeback, with their population rebounding from near extinction to more than 250,000.<sup>104</sup> Devastatingly, in May 2015, approximately 200,000 Saiga antelopes died due to a bacterial infection linked to the bacterium *Pasteurella multocida*, a “pathogen [that] caused hemorrhagic septicemia in the Saiga population.”<sup>105</sup> This mass die-off has again brought the Saiga antelope close to extinction, only leaving approximately 50,000 alive.<sup>106</sup> Despite their near eradication, Saiga antelopes remain on CITES’s Appendix II, illustrating that they are not necessarily “now threatened with extinction [but] may become so unless trade is [closely controlled],”<sup>107</sup> which makes the Parties’ minimal response at CoP17 confusing given the pathogen has left only about 50,000 Saiga antelopes left on the planet. This lack of action by the Parties leads one to question why the Parties did not react to the deaths by listing the Saiga antelopes as an Appendix I species and

<sup>100</sup> *Saiga Antelope*, WWF GLOBAL (2016), [http://wwf.panda.org/what\\_we\\_do/endangered\\_species/saiga\\_antelope/](http://wwf.panda.org/what_we_do/endangered_species/saiga_antelope/) [https://perma.cc/2Q58-MUGF] (accessed Apr. 9, 2017).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Jeremy Hance, *After Declining 95% in 15 Years, Saiga Antelope Begins to Rebound with Help from Conservationists*, MONGABAY (Sept. 20, 2009), <https://news.mongabay.com/2009/09/after-declining-95-in-15-years-saiga-antelope-begins-to-rebound-with-help-from-conservationists/> [https://perma.cc/MF92-2DTU] (accessed Apr. 9, 2017).

<sup>104</sup> *Saiga Antelope*, *supra* note 100; see John R. Platt, *70 Percent of the World’s Saiga Antelopes Mysteriously Wiped Out*, SCI. AM.: EXTINCTION COUNTDOWN (Nov. 3, 2015), <https://blogs.scientificamerican.com/extinction-countdown/Saiga-antelopes-mystery> [https://perma.cc/U9EH-A2VB] (accessed Apr. 9, 2017) (describing the mass die-off of Saiga antelopes in 2015).

<sup>105</sup> *Mass Deaths of Saiga Antelopes in Kazakhstan Linked to Bacteria*, CNN (Apr. 15, 2016), <http://www.cnn.com/2016/04/15/world/saiga-antelope-mass-deaths-irpt/> [https://perma.cc/DF4G-LTCZ] (accessed Apr. 9, 2017).

<sup>106</sup> *Id.*

<sup>107</sup> *CITES Glossary*, *supra* note 13.

whether they believe their decisions below would achieve the same end.

Informational documents presented to the Parties for CoP17 indicate that, during the near eradication in 2015, “emergency diagnostic specimens were subject to delays in obtaining import and/or export permits because they were considered by a number of Parties to be regular trade products.”<sup>108</sup> This delay in obtaining specimens has hindered both the “identification and implementation of control measures to prevent further disease spread and to inform national authorities on potential disease risk to wildlife, livestock or humans.”<sup>109</sup> In CoP17 Document 70, the Secretariat reminded the Parties that, in emergencies, there are simplified permit and certificate issuing procedures enacted under Resolution Conf. 12.3,<sup>110</sup> which are specifically intended to alleviate this kind of problem.<sup>111</sup> Utilizing these procedures requires planning ahead though. For example, a Party must identify in advance the facilities to which expedited permitting would apply.<sup>112</sup> For the Parties to avoid similar situations in the future—regarding Saiga antelopes or any other species suddenly struck by a devastating stochastic event—they will need to heed the Secretariat’s reminder and review and implement Resolution Conf. 12.3. Hopefully, the decisions adopted at CoP17 will help protect the Saiga antelope from future extinction.

By CoP17’s completion, the Parties adopted eight decisions regarding Saiga antelopes, almost all of which pertain to the range States of the Saiga antelope.<sup>113</sup> These eight decisions predominantly focus on inducing collaboration between the range States in pursuing conservation of Saiga antelopes and protecting the species through monitoring and “carefully manag[ing] the trade in, and consumption of Saiga products and derivatives.”<sup>114</sup> Range States are instructed to fully implement the Medium-Term International Work Programme for the Saiga Antelope (MTIWP), and then report to the Secretariat the measures and activities taken to implement the MTIWP.<sup>115</sup> These range States are also encouraged to address any challenges they may have in controlling the illicit trade of Saiga antelope horns and products, and to collaborate in addressing those challenges.<sup>116</sup> While collaboration amongst range States is an essential step in helping preserve Saiga antelopes, only future developments will determine

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<sup>108</sup> CITES, *Species-Specific Matters: Saiga Antelope* (Saiga spp.), at 5, CoP17 Doc. 70 (2016), <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-70.pdf> [<https://perma.cc/4N4F-DT8S>] (accessed Apr. 9, 2017) [hereinafter CoP17 Doc. 70].

<sup>109</sup> *Id.*

<sup>110</sup> CITES, Res. Conf. 12.3 (Rev. CoP16), *supra* note 44, at 10–11.

<sup>111</sup> CoP17 Doc. 70, *supra* note 108, at 5.

<sup>112</sup> CITES, Res. Conf. 12.3 (Rev. CoP16), *supra* note 44, at 6.

<sup>113</sup> CoP17 DECISIONS, *supra* note 31, at 65–66.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

how CITES and the Parties can decelerate the Saiga antelope's population decline and work to prevent another bacterial epidemic.