

9th April 2014

TRAFFIC's reponse to the European Commission Communication on the EU Approach against Wildlife Trafficking

TRAFFIC, the wildlife trade monitoring network, is the leading non-governmental organization working globally on trade in wild animals and plants in the context of both biodiversity conservation and sustainable development.

TRAFFIC is a strategic alliance between WWF and IUCN, and was established in 1976 in what remains a unique role as a global specialist, leading and supporting efforts to identify conservation challenges and support solutions linked to trade in wild animals and plants. Assisting and encouraging the development of CITES as a focus for international efforts to prevent unsustainable wildlife trade has from the start been a central component of TRAFFIC's work. However, TRAFFIC has also developed a strong and recognized role in addressing wider wildlife trade issues, including a greater emphasis on the impacts of demand at a local scale and increased attention to trade involving major natural resource sectors such as forestry and fisheries.

TRAFFIC commends the European Commission for launching this consultation process on the EU's approach against wildlife trafficking which also includes timber trafficking and the fight against illegal, unreported and unregulated (IUU) fishing.

TRAFFIC considers there is considerable complexity in addressing wildlife trafficking issues in the EU and at globally and the co-operation of a multitude of agencies is needed for effective wildlife trade enforcement. This is an issue that cannot be dealt with purely by the environmental sector alone but requires substantial cross-sectoral co-operation between relevant Commission Services and other EU institutions as well as the expertise of other agencies dealing with criminal activities. Nevertheless, mindful of the scarcity of available resources, co-ordinated action needs to focus on mutually agreed priority issues.

TRAFFIC is pleased to have the opportunity to comment on the Commissions Communication and is offering the following response to the 10 questions. In addition we have prepared a briefing on wildlife trade in the EU to accompany our response, which is available at: http://www.traffic.org/general-reports/traffic_pub_gen56.pdf.

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Responses to the questions:

1. *Is the policy and legislative framework currently in place in the EU against wildlife trafficking adequate?*

The 28 Member States of the European Union (EU) form one of largest consumer markets for wildlife and wildlife products in the world, ranking first as a consumer of fisheries products and second as an importer of timber and timber products in 2011. The EU is also a prominent consumer market for animal and plant species regulated through the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Therefore, the EU plays a crucial role in ensuring that this trade is both legal and sustainable and takes into account the needs of local communities in source countries.

Accordingly, the EU has adopted different sets of regulations to control this trade, the most relevant in this regard are:

- The EU Wildlife Trade Regulations (EU WTR)
- The EU IUU Regulation (EU IUUR)
- The FLEGT Action Plan and EU Timber Regulation (EU TR)
- Habitats and Birds Directive
- Directive on the protection of the environment through criminal law

The EU legislative framework that is currently in place in these fields provides a good basis for ensuring that wildlife trade to the EU is both legal and sustainable. However, there are some areas that need to be addressed including the following.

- There does not appear to be an over-arching vision/strategy that embraces the above-mentioned pieces of EU legislation. These regulations targeting various aspects of wildlife trade also deploy different approaches. For instance, the EU WTR regulates trade via a system of permits and certificates, which is primarily linked to controls at external borders whereas the EU TR is not a border measure but is based on a due diligence system by operators.
- As various agencies under different ministries are responsible nationally for the implementation of these regulations, their cooperation and coordination is essential for effective implementation and enforcement. However, such co-operation appears to be insufficient in several Member States.
- In addition to cooperation and coordination at the national level, similar mechanisms need to take place at the EU level so that competent authorities coordinate with their counterparts in other Member States allowing for a consistent application of rules across the EU. Although the EU WTR establishes various EU coordination bodies (e.g. Enforcement Group), the work of some of these could be more effective or further

improved. The information exchange and coordination that appears to have started among the relevant Commission Services and other relevant bodies in preparation for this communication and the related conference is commendable and should be maintained to ensure coordination and coherency at the highest level.

- Mechanisms also need to be put in place to provide for the sharing of relevant best practices between the competent authorities designated under the various wildlife trade regulations (i.e. between competent authorities under the EU IUU, EU TR and EU WTR).
- The measures currently in place do not take sufficient account of the role of organized crime in the escalating wildlife crime crisis. Consequently, EU-level actions to combat organized crime have not been sufficiently utilized in the fight against wildlife trafficking.
- A year after the entry into force of the EU TR, the majority of EU Member States still have not adopted national implementation legislation and there is a lack of appropriate information sharing and co-ordination among Member States.
- With regard to the Regulation to prevent Illegal, Unreported and Unregulated (IUU) derived products from entering the EU market, there have been relatively very few reported seizures of fish products since its adoption, which could indicate insufficient controls are in place or that this information is not being shared among relevant institutions.
- Overall, while comprehensive wildlife trade regulations are in place in the EU, their effectiveness is hampered by inadequate, uncoordinated and/or inconsistent implementation and enforcement in some Member States. An illustrative example of this is the lack of implementation of the 2007 EU Enforcement Plan that sets out a series of actions to combat illegal wildlife trade. Lack of resources, lack of specialist expertise, poor levels of cooperation and communication between relevant enforcement agencies, and a lack of appreciation of the gravity of the issue all contribute to this situation.

2. Should the EU enhance its approach to wildlife trafficking by developing a new EU Action Plan, as called for by the European Parliament?

Wildlife crime should be treated like other types of crime, especially when there are indications of the involvement of organized criminal groups. In order to focus attention on this type of crime and to ensure a coordinated response from Member States, an EU Strategy with an associated Action Plan, like those already in existence to counter drugs and human trafficking, would be welcome. Such a Strategy should provide a common policy framework to tackle wildlife trafficking at the EU, Member State and international levels. It should envisage a key role for DG HOME as well as DG ENV (and beyond, as relevant) to ensure full participation by Member States' enforcement authorities. The Action Plan should set out defined priorities, objectives, actions and mechanisms for regular evaluation of progress and

effectiveness. Learning from the experiences of the 2007 EU Action Plan, it is also essential that the new Strategy/Action plan is fully operational with clear timelines and responsibilities defined and sets and regularly reviews priorities (to reflect likely shifts in trade trends). To support the implementation of the Action Plan, financial resources should be made available, including via relevant Commission funding lines.

Given that effective implementation of the Strategy in the fight against illegal wildlife trade will need to draw from many different policy fields, such as police and judicial cooperation, environment, marine issues, trade and external relations, the establishment of an EU Coordinator role, ensuring coherence between all these policy fields, should also be considered.

3. *How could the EU increase political commitment at all levels against wildlife trafficking? What diplomatic tools would be best suited to ensure coherence between different international initiatives?*

As previously noted, in order to secure high level political commitment it is essential that wildlife crime is accorded the same level of priority, both at the EU and international levels, as other types of organized crime so that a response to it is integrated into all existing and planned initiatives directed at such crime.

As indicated above, the failure by some Member States to enact adequate penalties is a major stumbling block in this regard. In addition, the lack of sufficient powers and resources for competent authorities hinders the proper enforcement of existing laws. Furthermore, this failure undermines the outward-facing actions that are discussed below. In order to have credibility in its external advocacy and actions, the EU and its Member States must address their shortcomings at home.

The Commission should prioritize efforts to ensure that EU Member States are fully compliant with Directive on the protection of the environment through criminal law.

Increased visibility for the issue could be secured through the European Council adopting Conclusions on wildlife crime, which in turn would render Member States and Community institutions more accountable for their actions in addressing it.

At the international level, a UN Resolution on the issue and the appointment of a UN Special representative would be important steps towards achieving better coordination of existing initiatives.

4. *What tools at international level should the EU focus on to enhance enforcement against wildlife trafficking and strengthen governance?*

The European External Action Service (EEAS) and EU delegations, thanks to their global outreach and diplomatic roles, have an important part to play in promoting joint international efforts and tools identified to strengthen governance and enforcement efforts.

The EU is already carrying out some action through its contributions to the CITES Secretariat and to the other agency partners of the International Consortium on Combating Wildlife Crime (ICWC), as well as through much of its bilateral aid. Nevertheless, funding alone, however generous, is only part of the solution in terms of addressing the increasing role of organized crime, especially in countries where governance is weak and corruption is commonplace. The EU Strategy must therefore include tools that can be used effectively where there is evidence that either individuals or countries are complicit in wildlife trafficking. Measures to investigate credible allegations to this effect should be put in place, which could ultimately lead to sanctions at the EU and wider international levels.

As the main funder of ICWC, the EU should do everything it can to promote the ICWC Wildlife and Forest Crime toolkit and to ensure its roll-out in key countries.

Additionally, we would encourage the EU to look into analysing gaps of current and forthcoming Free Trade Agreements (FTAs) regarding their relevance to trade in wild fauna and flora, including fisheries and forest governance, aimed at detecting loopholes and potential perverse incentives that (could) support illegal, unreported, unregulated and/or unsustainable harvest and trade. In negotiating such agreements, the EU should seek to strengthen existing provisions and, above all, not to undermine existing controls. Furthermore, the EU should seek to collaborate with regional and national fora and entities that have established collaboration fora, protocols or Action Plans to support the sustainable utilization of wild fauna and flora and to combat illegal trade. Examples include NICE-CG; COMIFAC/ECCAS: PAPECALF; ASEAN-WEN; SACEP/SAARC; SA-WEN; SADC: WEN-SA. The EU should aim to:

- a) Enhance their effectiveness
- b) Support collaboration between the entities and the EU.

In cases, where such collaboration fora, protocols or Action Plans do not yet exist, for example the Eurasian Customs Union of Belarus, Kazakhstan and Russia (see article in *TRAFFIC Bulletin* 2012 24(2): 51–52), the EU should encourage collaboration within such fora and the EU to create working mechanisms to support the sustainable utilization of wild fauna and flora while effectively combatting wildlife crime and illegal wildlife trade.

5. *What tools are most suitable for EU action to address international and EU demand for illegal wildlife products? What role could civil society and the private sector play in this regard?*

Overall, TRAFFIC shares the EU's view that sustainable utilization of wild fauna and flora should be supported and rewarded where it is not detrimental to wild populations and where it is based on legality, regulation, reporting and regular monitoring. In providing support to these aims, TRAFFIC has co-developed and continues to support and promote several tools jointly with governments and the private sector including:

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- The Common Framework for Assessing Legality of Forestry Operations, Timber Processing and Trade (developed with WWF/GFTN) – also known as the Common Legality Framework, and
- the FairWild Standard (developed with IUCN and other partners) ensuring that wild plants (mostly for medicinal, food, cosmetic, and aromatic purposes) are managed, harvested and traded legally, and in a way that maintains populations in the wild and benefits rural producers;

Both these examples contribute to the implementation of existing regulatory frameworks provided by national resource management systems as well as by international conventions demanded under CITES and the Convention on Biological Diversity (CBD)'s Global Strategy for Plant Conservation (GSPC). The Common Legality Framework further responds to recommendations stemming from the International Tropical Timber Trade Organization (ITTO), and the FairWild Standard also to the forthcoming WHO/IUCN/WWF/TRAFFIC 'Guidelines on the Conservation of Medicinal Plants' (*in prep*).

Essential programmes and activities aimed at reducing demand for illegal wildlife products should be designed on a case by case basis and consider the following factors:

- The trade chain of a particular commodity, its source, transit and end-use markets need to be well researched, analysed and understood;
- Interest groups, stakeholder groups, potential and current buyer groups need to be well researched, analysed and understood, including their motivation and the key market drivers, and then mapped to their consumption and/or impact levels;
- Behaviour change messaging to reduce consumption needs to be directed at identified (and sometimes selected) target groups in relevant markets and transit countries;
- Messaging will often necessarily need to be commodity-specific; language and messaging must be understood and supported by target groups;
- Language and messaging will have to be unambiguous and tested prior to any launch;
- Impact measuring against an established baseline and after-action-review would have to happen around any demand reduction programmes;
- Where the primary market is outside EU territory, the EU should encourage governments in identified key consumer countries to adopt behaviour change strategies to reduce consumption that follow best practice guidelines, address real consumer motivations and bring about measurable changes in consumer behaviour. See, for example, the principles outlined in the strategy for reducing the consumption of rhino horn products of illegal origin outlined in the Annex to CITES CoP16 Doc 54.1.
- The private sector within the EU should also be encouraged to act as a role model for their non-EU counterparts, for example through the establishment of a Code of Conduct condemning the consumption of illegal wildlife products.

6. *How can the EU best add value to address the peace and security implications of wildlife trafficking?*

It is vital that the EU first establish the degree to which activities such as international terrorism and regional conflicts are interlinked; presently there is a great deal of speculation about the existences of such links but little substantive evidence. Should such links become apparent, there would be clear security implications such as those outlined by a recent Chatham House report¹.

Also needed is increased capacity to investigate credible allegations of complicity at the government level in wildlife crime. Here, the services of a UN Special Representative would be invaluable.

7. *How could the EU cooperation instruments better support the reinforcement of the capacities of developing countries for wildlife conservation and action against wildlife trafficking?*

The EU has a key role in helping build the capacity of developing countries to support the conservation of wildlife and to counter wildlife trafficking activities. Such support should be in alignment with existing EU development aims. This requires a coordinated approach through existing EU development policies and coherence among individual Member States providing support to build such capacity, with particular attention paid to the close links between biological diversity and livelihoods, security issues, economic and infrastructure development and other areas. It is also essential to secure the full buy-in of recipient nations in line with national development priorities.

8. *What measures could be taken to improve data on wildlife crime in the EU so as to ensure that policy-making can be more effectively targeted?*

An existing and widely acknowledged mechanism for data gathering and sharing on wildlife trade crime within Europe is the European Union Trade in Wildlife Information eXchange (EU-TWIX). It comprises a mailing-list connecting some 750 European enforcement officers and a secure access on-line database of (currently) around 37 000 seizure records from 26 European countries. Although the system has regularly proved its worth and has been in service with EU enforcement officers since 2005, the longer-term funding status of EU-TWIX still needs to be secured. The EU Member States and the European Commission should take responsibility for the long-term funding of EU-TWIX and help promote its functions more widely.

Member States should also be encouraged to make better use of other existing communications channels when conducting their investigations. The adoption of a EU Strategy on wildlife trafficking would certainly help in this regard. The establishment of an

¹ *Global Impacts of the Illegal Wildlife Trade: the costs of crime, insecurity and institutional erosion*. Katherine Lawson and Alex Vines, February 2014

enforcement focal point position (ideally filled by an expert seconded by Member States) in the Commission's CITES Team could greatly contribute to ensuring that more serious wildlife crime cases are investigated jointly by Member States, if relevant, and that data on such cases are collected centrally. This person could also be mandated to represent the EU Enforcement Group externally (for example at meetings of wildlife enforcement networks).

Regular analysis of collected data also needs to be carried out, along the lines of those currently carried out by Europol, which should be maintained to assist policy making. Ideally data on all aspects of wildlife crime in the EU, regardless of the species or nature of the offence committed should be collated, to enable a comprehensive overview of crime in the EU to be generated. Improvements in data collection on illegal fisheries products would be enhanced through full trade-chain traceability. Not sure better take out. Furthermore, data should also be collected at EU level on the penalties issued in successful prosecutions of wildlife crime offences.

9. What measures could be taken to strengthen enforcement against wildlife trafficking by environmental authorities, police, customs and prosecution services in the Member States and to reinforce cooperation between those authorities? How could awareness of the judiciary be raised?

The previously mentioned EU Strategy and associated Action Plan on wildlife trafficking should require Member States to set up specialized units comprising different enforcement bodies (police, Customs, inspection officers, etc.) tasked with combatting wildlife trafficking. These units need to be equipped and resourced appropriately. The EU Strategy Plan should include full report back mechanisms to ensure that enforcement authorities in Member States afford priority to this issue. The Strategy should also recommend that national prosecution services designate prosecutors who specialize in wildlife crime cases because this issue requires specialist legal and technical knowledge. Currently, light sentences and fines act as a disincentive for increased effort and cooperation, with other types of crime given priority in the workloads of police, Customs and prosecution services. Light penalties also facilitate trafficking, by lowering the level of risk for certain countries that might be used as entry points to the EU. There is also a widespread lack of awareness of the monetary value of some of the products traded, which might otherwise alert the awareness of fiscal authorities.

The role of EU Enforcement Group (EG) should be re-examined and would benefit from a seconded national expert with enforcement expertise, analogous to the scientific expert role that currently exists on the CITES team. The EG would also benefit from increased collaboration with Europol and other EU entities including Cepol, Eurojust and Frontex.

Adequate financial support to develop effective enforcement initiatives, such as the routine use of forensic testing, should be made available through relevant funding mechanisms. This would allow Member States to share knowledge and expertise best targeted at addressing wildlife crime.

The Commission should consider funding targeted campaigns to help raise awareness among the judiciary about the seriousness of about illegal wildlife trade. Wildlife crime could also be introduced as a topic under the DG ENV's service contract on "Co-operation with national judges in the field of environmental law".

There should be more exchanges between different bodies working on to wildlife crime, including lessons learned, cross-fertilization and development of common principles for enforcement across different wildlife products.

10. How could existing tools against organised crime at EU and Member States level be better used to address wildlife trafficking? What additional measures should be envisaged, e.g. regarding sanctions? What contribution could Europol and Eurojust make in that regard?

In some cases, legal provisions already exist at the EU level and could be better used by the enforcement community to tackle organized wildlife trafficking, however implementation by Member States and other relevant parties is sometimes inadequate, in some cases because addressing wildlife crime is currently not considered a priority.

A crucial first step is for all EU Member States to institute credible maximum penalties of four years or more as called for under the UN Convention against Transnational Organized Crime (UNTOC). This will ensure that relevant measures against organized crime can be invoked and existing instruments applied at the national as well as international levels. Currently, this sanction threshold is not met in all Member States for wildlife trafficking (including trafficking in timber and wood based products and fisheries products) and this needs to be addressed as a matter of urgency. Also the added value of additional tools such as e.g. a protocol to UNTOC should be explored

Europol needs to operationalize its commitment to wildlife and other environmental crime by instituting a specialized unit, similar to that which exists in Interpol. This unit should focus on coordinating enforcement efforts across the EU and providing analytical and practical support to authorities especially when dealing with cross border cases. Cooperation with Eurojust needs to be encouraged to assist the investigation and prosecution of cross-border organized wildlife crime. In addition, as noted earlier, information on sentencing and enforcement of wildlife crime cases should be centrally collected, publicized and made available in order to encourage strong sentencing across all Member States.

The development of guidelines on "due diligence" with regard to wildlife trafficking concerning financial transactions is another measure the EU should consider, while the EU should also examine how the United Nations Convention against Corruption (UNCAC) could be better invoked to fight wildlife trafficking.

A further opportunity to is to extend the scope of regulatory and voluntary private sector initiatives aimed to halt money laundering and intercept the proceeds of crime so that they address serious criminality associated with illegal wildlife trade.

Summary of key points

- The EU should enhance its approach to wildlife trafficking by developing an EU Strategy and Action Plan (similar to those Strategies that exist for drugs or human trafficking).
- The EU's efforts against wildlife crime can only be successful when they are the result of genuine and willing cross sectoral co-operation between all relevant areas of Government (Environment, Interior, External, Development, Foreign Aid, etc.), both at the EU and at the Member State level.
- There needs to be full recognition – both at the political and the executive level – that any measures aimed at tackling organised crime in the EU should include organised wildlife crime as part of their focus.
- EU Member States that have not already done so, institute maximum penalties of four years or more imprisonment, so that national and international measures against organised crime can be invoked. Penalties and sanctions should be harmonized across the EU as far as possible.
- The European Commission should take appropriate legal action against those EU Member States that do not implement EU regulations.
- Given the seriousness of wildlife crime, its association with other forms of crime and its capacity to erode governance, diplomatic efforts to address it must be taken to a higher level. The adoption of a UN Resolution on the issue and the appointment of a Special Representative to the Secretary General would be crucial steps, which should be advocated by the EU.

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