October 19, 2018

The Director-General
Department of Environmental Affairs
Attention: Ms. Magdel Boshoff
Deputy Director: Threatened or Protected Species Policy Development
Private Bag X447
Pretoria
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RE: Draft Regulations Relating to Domestic Trade in Rhinoceros Horn

Dear Director-General:

The Environmental Investigation Agency (EIA) is writing in response to the invitation to submit representations or objections to draft regulations relating to domestic trade in rhinoceros horn (Government Gazette, No. 41919, Notice No. 986, dated 21 September 2018).

EIA is an international campaigning organization committed to investigating and exposing environmental crime and campaigning to protect endangered species and the natural world. EIA has worked to protect rhinos from poaching and the in their horn for nearly 30 years.

EIA opposes all trade in rhinoceros horn and any other rhino derivatives, except for legitimate scientific and law enforcement purposes. We have serious concerns about the potential impacts South Africa's reinstituted legal domestic market for rhino horn will have on the country's white and black rhinos. Rather than develop a regulatory system to enable trade, South Africa should permanently ban all domestic and international trade of rhino horn. However, acknowledging that rhino horn trade is currently legal in South Africa, it is imperative that a comprehensive, airtight regulatory framework be implemented to minimize to the greatest extent possible any resulting negative impacts of legal trade to South Africa's rhinos.

General
South Africa is home to the vast majority of Africa's white rhinos and a significant proportion of its black rhinos. Until recently, South Africa could boast a mostly successful rhino conservation record. South Africa was largely insulated from the rhino poaching crisis that ravaged the rest of the African continent in the latter half of the 20th century, and during that time managed to consistently increase its white rhino population.

Today, South Africa is ground zero for the current rhino poaching crisis being fueled by demand for rhino horn in Asia. Since 2007, South Africa has lost more than 7,650 rhinos to poaching, with more than 1,000 rhinos killed every year since 2013. As rhino poaching rages on throughout southern Africa, it is irresponsible for the Government of South Africa to open up trade in rhino horn, especially with insufficient regulatory safeguards.

South Africa's legal rhino horn market threatens to undo years of progress made to save the rhino. Parallel markets for products of endangered wildlife species offer opportunities for laundering

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illegal products onto the legal market, increase demand, send mixed messages to the public, complicate enforcement efforts, and weaken international and domestic protections.

At the international level, Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) have repeatedly taken steps to uphold the international trade ban in rhino horn. Most recently, CITES Parties rejected a proposal made by Swaziland at the 17th CITES Conference of the Parties in 2016 to allow international commercial rhino horn trade.[1] To enhance the ban's effectiveness, CITES Parties have consistently promoted international cooperation on demand reduction and law enforcement efforts to combat rhino poaching and the illegal trade in their horn.

EIA supports the comments submitted by the Species Survival Network in 2017 in response to the Draft Regulations for the Domestic Trade in Rhinoceros Horn or a Part, Product or Derivative of Rhinoceros (Government Gazette, No. 40601, Notice No. 74 of 2017, dated 8 February 2017). Many of the points raised in the Species Survival Network submission remain applicable to the revised draft regulations. Below, we have provided additional comments pertaining to the new provisions published in Government Gazette, No. 41919, Notice No. 986, dated 21 September 2018.

Export and re-export of rhinoceros horn

As acknowledged by the Department of Environmental Affairs in 2014, allowing the export and re-export of rhino horn will provide opportunities for criminals to once again smuggle illegal rhino horn out of the country.[2] It is concerning that the draft regulations not only allow export and re-export of rhino horn, but place no restrictions whatsoever on the number of horns that may be exported by an individual. Even if exports are limited only to primarily non-commercial purposes these regulations still leave the system vulnerable to abuse.

With no apparent demand for rhino horn within South Africa, the likely destination for South African rhino horn will be Asia. Indeed, those who have advocated for legalizing rhino horn trade in South Africa have made no secret their intent to sell rhino horn to potential consumers in Asia, irrespective of the national legislation concerning rhino horn in many Asian countries.

Rhino horn trade is illegal in many of the transit and destination countries found along the rhino horn trade chain. Countries like Vietnam have revised their domestic legislation to tighten restrictions and strengthen penalties for illegal trade and even possession of rhino horn. The governments of many rhino horn consumer countries have spent valuable time and resources engaging in demand reduction initiatives and building law enforcement capacity to eliminate the trade in rhino horn. Permitting rhino horn exports will encourage criminals to flout the laws of importing nations, place an added burden on their law enforcement sectors, and promote corruption.

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[1] CITES CoP17 Com. 1 Rec. 14 (Rev. 2) https://cites.org/sites/default/files/eng/cop/17/Com_I/SR/E-CoP17-Com-I-Rec-14-R2.pdf

[2] South Africa Department of Environmental Affairs. 2014. The Viability of Legalizing Trade in Rhino Horn in South Africa. https://www.environment.gov.za/sites/default/files/docs/rhinohorntrade_southafrica_legalisingreport.pdf

Even if an exporter and importer complied with all regulations, there is no way to adequately track a rhino horn once it has been imported and thus no way to ensure it will not be used for commercial purposes in violation of CITES regulations or used in contravention of the laws of the country to which it has been imported.

To prevent laundering of illegal rhino horn onto the international market, rhino horn export and re-export must be totally prohibited, except for legitimate scientific or enforcement purposes.

Buying, selling, exporting, or re-exporting rhino horn less than 5cm in length
The new provisions that prohibit the buying, selling, or export of rhino horn that is less than 5cm in length provide minimal improvement to the regulations. Furthermore, we are strongly opposed to regulation 2(7) of the *Draft Notice Prohibiting the Carrying Out of Certain Restricted Activities Involving Rhinoceros Horn* which stipulates that the restrictions on buying, selling, or export of rhino horn that is less than 5cm, along with similar restrictions for rhino horn powder, offcuts, and related rhino horn derivatives, are only applicable for three years after which the Minister will re-consider these prohibitions.

Trade in powdered, shaved, or otherwise worked rhino horn that is less than 5cm in length will be nearly impossible to control, a fact that will not change after the regulations have been implemented for three years. By providing a finite timescale for these restrictions, the regulations encourage speculation and stockpiling of rhino horn for eventual sale. We urge South Africa to permanently ban all domestic trade and export of powdered, shaved, or otherwise worked rhino horn less than 5cm in length.

10(2)(b) A person who buys a rhino horn on behalf of another person
It appears there is an error in regulation 10(2)(b)(iv). In order to have the same regulatory effect as (i), (ii), and (iii) of 10(2)(b), the text of (iv) should read:

"a trust of which **all** of the trustees authorised in terms of the Trust Property Control Act, 1988, (Act No. 57 of 1988) to administer the trust, **are citizens** of the Republic, or **have been** granted a permanent residency permit in terms of the Immigration Act, 2002 (Act No. 13 of 2002)."

Notwithstanding the replacement of 10(2)(b)(iv) with the corrected text above, allowing an individual to buy or sell rhino horn on behalf of another individual provides significant opportunities for defrauding the regulatory system. Buying and selling rhino horn should be limited only to those named on the relevant permits.

Conclusion
EIA appreciates the opportunity to submit these comments and would welcome any opportunity to engage in further discussion on this issue.

Sincerely,

Taylor Tench
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Environmental Investigation Agency