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Consultation on proposals to use powers under Article 8.2 (EC 338/97)- regulating the keeping of CITES specimens

Summary of Responses



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Introduction

1. In July 2005, Defra sought views amongst a range of stakeholders in a consultation exercise on proposals to use the powers available under Article 8.2 of Council Regulation (EC) No 338/97 to prohibit the keeping of certain species of wild fauna and flora.

2. This consultation package consisted of a discussion paper setting out the key issues under consideration and seeks the views of key stakeholders on a number of options to address whether further domestic conservation measures are needed for certain CITES species.

3 In particular respondents were asked to comment whether there are any:

- individuals or small businesses that are likely to be adversely affected;
- potential conservation benefits from introducing possession controls for the types of specimens identified below;
- disadvantages in introducing such controls;
- resource implications either for Defra or other affected bodies; and
- any other potential uses that could be made of this power.

In addition comments were also invited on the initial Regulatory Impact Assessment appended to the discussion paper.

Background

4. There is reported to be a flourishing trade in exotic animals within the UK that is said to include many that are very rare in captivity and consequently attract very high prices, increasing the incentive to obtain them illegally. The principal purpose of a pre-consultation exercise in 2004 was to gather evidence on whether there was enough being done to:

- prevent individuals acquiring illegally imported specimens of endangered species, or
- to distinguish these from those specimens that have been captive bred or otherwise lawfully acquired, and
- to canvass the views of key stakeholders on the introduction of controls and to seek views as to the issues that should be covered in any further consultations that might follow.

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Summary of measures proposed in the consultation

5. A three tier system of controls for the keeping of CITES specimens is proposed, as follows:

Level 1 - proposal to impose a general prohibition on the keeping of CITES specimens that have been acquired unlawfully. It would be an offence to keep such specimens, which would be liable to confiscation.

Level 2 – proposal to develop a list of CITES species and specimens at greatest risk of illegal or unsustainable trade, which it would be prohibited to keep without prior notification to the Secretary of State. Keepers would also be required to be able to show that their specimens were lawfully acquired and to make this evidence available for examination if requested to do so by the Secretary of State, or an authorised person. Failure to comply with either of these requirements would be an offence and the specimens concerned would be liable to confiscation.

Level 3 - proposal to develop a list of highly threatened CITES species the keeping of which is prohibited in all but the most exceptional circumstances. It would be an offence to keep specimens of any of these species and specimens kept contrary to this prohibition would be confiscated.

Number and range of responses

6. From the 171 consultation packs sent out, Defra received 56 formal responses to this consultation exercise. Of these, 8 responses were from organisations and individuals who either requested confidentiality or were not aware of Defra's openness policy. Of the 48 remaining responses, 12 were from organisations and individuals not originally sent the consultation pack. Comments from all responders are contained in this summary, though some cannot be directly attributed to specific organisations or persons for confidentiality reasons.

7. Responses reflected a wide range of views and respondents included individual keepers of CITES specimens, representative organisations, professional bodies and NGOs. A list of respondents is at Annex A and copies of their responses are available in the Defra Information and Resource Centre.

8. In addition to these responses, a post card campaign initiated by IFAW generated more than 4500 postcards, and a further 950 emails and letters. A further 100 letters calling for a ban on the keeping of primates as pets were also received. Two petitions were received, one from Monkey World in Dorset with 56 000 signatures and an online petition with more than 500 names. All these campaign responses supported phasing out the private keeping of primates. A small number of other letters were received about specific topics raised in the consultation e.g. exotic pet trade and trophy hunting

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Respondent profile

9. Of the 48 responses, 2 statutory conservation agencies and 3 enforcement agencies responded. Of the remaining 43 responses, 3 were from professional bodies representing zoos and vets, 14 were from bodies representing traders and keepers of fauna and flora, 16 were from Non Governmental Organisations (NGOs), 3 were from businesses directly related to the keeping of primates, 1 was from an academic institution and 6 from private individuals or hobbyists. Of the 16 non-governmental organisations that responded, 13 were concerned with conservation and/or welfare issues, 2 were environmental NGOs and 1 concerned with rural affairs.

Main issues arising

The summaries provided below deal first with the headings outlined in the Defra consultation letter.

10. Individuals or small businesses that are likely to be adversely affected

Relatively few respondents sought to address this issue and those that did came mainly from specialist keepers or their representative organisations. In the main their views are summarised as follows:

- The Federation of British Herpetologists (FBH) considers that many small businesses and individuals involved in the breeding of Annex A species would be adversely affected. The cost of licensing would be unreasonable and would set a dangerous precedent in having to pay for the right to even keep an animal.
- A number of private primate keepers responded reporting that many individuals would be affected by an outright ban on primates.
- Heythrop Zoological Gardens believe the proposals would have a considerable negative impact on companies that supply the media industry with CITES Appendix 1 listed animals.
- If proposals were extended to include all Appendix II Orchids (as well as Appendix I), a number of orchid grower/trader representatives reported that many small businesses and private land owners would be adversely affected since native orchids would be included. Orchids may be destroyed by private land owners unwilling to pay for registration and monitoring.
- The British Orchid Council asked whether the burden of notification would fall on the buyer or the seller? If it were the latter, and if it were a trade rather than private seller, this would place another burden on small businesses already labouring under excessive regulation.
- The Horticultural Trades Association consider that it is highly unlikely that any of their small business members or individuals will be affected by the proposals.

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- The International Primate Protection League (IPPL) comment that unlike zoos, rescue centres do not 'earn money', and because they provide a public service should not incur charges from Defra.

11. Potential conservation benefits from introducing possession controls for the types of specimens identified.

Most conservation NGOs believe that the proposals would have a positive impact on conservation, because they will have a major effect on public education and perception. Specific comments relating to the positive impact on conservation are as follows:

- Many respondents, which included representative bodies of animal keepers supported the proposal that highly threatened species should not be kept if they are taken from the wild.
- One orchid trader commented that there would be some conservation benefits if only Appendix I listed Orchids were included in the proposals.
- The International Wildlife Consultants heavily criticised Defra generally for the proposals not following conservation objectives.
- The London Chapter of Safari Club International (SCI) added that the conservation of hunting as a sustainable use has always been part of the CITES framework, and as such the proposals should be framed to exclude hunting trophies from the list of unilaterally regulated species.
- The Pet Care Trust (PCT) report that of the 25 most endangered species of primates (presented in an update list for 2004-2005), all but one are virtually unknown in private captivity (Mittermeier *et al* 2005¹). In addition Mittermeier *et al* report that the "capture of monkeys for the pet trade.... Is no longer an engine of potential extinction". The Pet Care Trust also provide a literature review which highlights threats other than the pet trade as being responsible for primate's population status around the world. Namely hunting for food (bushmeat) and culling for crop protection.
- The Captive Animals Preservation Society (CAPS) highlight findings of the Second Neotropical Congress on Wildlife Rescue which emphasise the necessity of implementing programmes (of education and reform) in developed countries, who are the final purchasers and therefore the promoters of illegal traffic. The greatest education programme will be one which is realised in developed countries, who produce the demand for wildlife in order to demonstrate to people that they should not buy wild animals.

In contrast however, many representatives of animal keepers expressed concerns that the proposed controls would have a negative impact on conservation. These comments are given in the next section on 'Disadvantages of introducing the proposed controls'.

¹ Mittermeier, R et al. Lemur News. 10 2005: 3-6

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12. Disadvantages in introducing such controls

Of greatest concern to animal keepers is the impact the proposals would have on captive breeding and ex-situ conservation of endangered species:

- The Federation of British Herpetologists (FBH) believe the proposals to extend powers under Article 8.2 would have a negative effect on conservation through captive-breeding of the worlds most vulnerable species. A number of representatives of orchid growers/traders also shared this view that private fauna and flora keepers/growers currently hold vital reservoirs of endangered species which must be maintained if conservation of these species is to be effective. Furthermore a number of organisations commented that the proposals failed to take account of the value of ex-situ conservation.
- One orchid trade representative commented that at present there is increasing interest among amateur orchid growers in the cultivation of species as opposed to hybrids. This trend in wider possession of species can be seen as a valuable aid to those engaged in ex-situ conservation. If further regulation was introduced, the cultivation of species would decline.
- Several respondents commented that individuals that keep species of reptiles and primates do not do so as pets, rather as animals for study and propagation, and therefore wish to breed their animals successfully.
- If the proposals are extended to prohibit or severely restrict the keeping and breeding of reptiles and amphibians the proposals have great potential to damage/end many hundreds if not thousands of legitimate breeding projects.

Other disadvantages (that the proposals would negatively impact on conservation were also highlighted:

- A number of organisations reported that the proposals would have no bearing on improving conservation of wild populations because there is currently no UK trade in wild caught Annex A species (although captive bred specimens are involved in trade). Instead, attention should be given to combating habitat loss, rather than illegal trade which is insignificant in comparison and has the potential to affect many more species.
- A number of animal keeping organisations highlighted that it has been proven to be of benefit to conservation to allow controlled trade in endangered species. Some reptile keepers add that wild caught specimens of reptiles hold little interest to herpetologists due to the potential health problems, and the associated costs with caring and treating that specimen. The London Chapter of Safari Club International also believe that any ban on importing or possession of parts of certain species which are to be listed will impact negatively on the conservation of those endangered species.
- The World Pheasant Association, which has a Memorandum of Understanding with the IUCN Species Survival Commission gave details of a number of re-introduction programmes for species to return to the wild in their native countries. If galliformes were included in any

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part of the proposals, conservation is likely to be detrimentally effected, because the proposals will sufficiently increase costs to the point that breeders will discontinue their hobby, with the associated negative impact on conservation.

- Using the example of the snake, Dumeril's Boa, one animal keeping representative commented that if the law prevents a captive breeder from keeping and breeding then these species will go up in value again, to the point where it is worth trying to smuggle wild specimens in for sale to persons who would keep them regardless of legality.

Other highlighted disadvantages are as follows:

- If private keepers were prevented from owning some animals it would greatly affect the media industry, including educational films, natural history documentaries, feature films, commercials etc.
- Introducing possession controls may actually create a market that someone else will be prepared to supply.
- Wide scale destruction of native orchids may result if Appendix II listed specimens are included in the proposals.
- The Royal College of Veterinary Surgeons commented that further regulation is likely to exacerbate the current situation that CITES regulations holds up transit of specimens for pathology testing, which puts more endangered species at risk of death in the absence of a timely diagnosis.
- CAPS believe if breeding of privately owned primates is still allowed, and the circle of primate owners is reduced, then sought after 'new blood' will be harder to find, increasing the incentive to buy zoo surplus animals or smuggle from the wild.

13. Resource implications either for Defra or other affected bodies

Enforcement agencies

Tayside Police welcome Defra's comments in the partial RIA that enforcement is to be carried out by the police. In addition the Association of Chief Police Officers and Tayside Police asks that police officers are included as an 'authorised person', in the context of keepers of specimens being able to demonstrate to authorised persons that the specimen was lawfully acquired.

The Association of Chief Police Officers and the Wildlife Crime Unit of the Metropolitan Police anticipate that the introduction of the proposals will have little impact on Police resources and may in fact reduce the length of time spent on particular enquiries. The introduction of powers as suggested would enable constables to quickly establish legal or illegal possession.

Representative organisations of fauna and flora keepers and breeders/growers.

- The Federation of British Herpetologists however believe implementation of this proposal would use up resources needed to support other enforcement functions by increasing the amount of red tape involved.

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- Concern was expressed from orchid growers/traders that there would not be enough resources to cope should Appendix II listed orchids be included in the proposals. Additionally as flaked orchid specimens are exempt from CITES and are therefore legally saleable, large scale traders may try to circumvent CITES by using flasks, which would place an unreasonable burden on small traders who are not able to afford additional overheads.
- A number of orchid growing representative organisations commented that most non-tropical orchids cannot be tagged and tracked because each year most native orchids replace all of their vegetative parts, which could impose an impossible burden on businesses, private individuals and CITES authorities.
- Any attempt at banning either the keeping or breeding of red eared terrapins would be a huge and very costly task given the current numbers (possibly hundreds of thousands) in the UK. Any kind of enforced euthanasia would likely cause a public outcry.
- Allowing some keepers to keep primates in private ownership creates a problem of policing those owners as CAPS believe it is unlikely many primate keepers will come forward and notify themselves to the Secretary of State about their primates. Policing specialised keepers would take away scarce resources from other conservation priorities.

14. Other potential uses that could be made of this power

- That powers be extended to include hunting trophies from all Annex A listed species.
- Consider whether one route for tackling the non-native species problem might be to widen the list of species included at Annex B of the EU CITES Regulations and then to use powers under Article 8.2 to prohibit the keeping of these also.
- The Wildlife and Countryside LINK have asked for clarification as to why the scope of the regulation relates only to private keepers.
- The Wildlife and Countryside LINK asked that consideration be given to widen the proposals to include a wider range of taxa, such as cetaceans, certain reptile and bird species and elephant ivory. Concern was expressed by a number of animal keeping representative bodies that the powers under Article 8.2 would be extended to a much wider range of species.

Specific Responses

There were, in addition, a number of high level themes which emerged as follows:

Application of the Powers under Article 8.2

15. Many representatives of animal keeping organisations, including the Sustainable Users Network see the proposals as a transparent abuse of legislation that attempts to misuse Article 8.2 for the purposes of animals welfare in direct contravention of the aims of the Article, which should be used exclusively for conservation purposes. The British and Irish Association of Zoos and Aquariums (BIAZA) commented that the Animal Welfare Bill would

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seem to have greater potential in eventually operating more effectively than the proposed controls under CITES.

16. It is further argued by the Pet Care Trust that domestic keeping is an entirely separate practice having no direct connection with any commercial cross-border transaction, with animal keepers having no involvement in, or responsibility for such transactions.

17. Conservation NGOs and the Royal Society for the Prevention of Cruelty to Animals (RSPCA) however broadly support the proposals to introduce powers under Article 8.2 and to develop a three tier system, but would like to see the proposals going further. Many advocate a precautionary approach when dealing with CITES and wildlife trade issues, particularly when information regarding the population status or illegal trade in a species is not fully available.

18. The RSPB believe, based on experience with the registration service under Section 7 of the Wildlife and Countryside Act (1981) that the introduction of possession controls will act as a strong deterrent against the illegal keeping of specimens. In addition it will dramatically improve the ability of enforcement agencies to investigate and prosecute offences.

19. There was some concern that the title of the consultation implied that the proposals were to include all CITES specimens. It was suggested that part of the title "prohibit the keeping of CITES specimens" be changed to "prohibit the keeping of certain CITES specimens".

20. Representatives of animal keepers are wholly opposed to the implementation of this regulation in relation to all CITES listed species. There is some support for further control of Annex A listed species, but it is believed that captive breeding programmes by private individuals provide some security against further species loss in the wild and should therefore be seen as beneficial to conservation.

21. The Cyclamen Society and the British Cacti and Succulent Society highlighted concerns about the way in which CITES is applied to flora. In addition, if the provisions of Article 8.2 are to be extended to include plants they would ask that a full treatment of their differing needs is required, including a proper RIA.

22. The Monkey Sanctuary Trust and IFAW asked that within this consultation process, key stakeholders (eg enforcement officers, CITES Management Authorities, NGOs and other relevant groups) in primate range states should also be involved. Although the current consultation did not extend to range states, some organisations involved with primate conservation in range states did respond. Notably the Pan African Sanctuary Alliance, which represents primate sanctuaries in 12 African countries adds support to the campaign against private ownership of primates. It's support for this campaign arises out of its concerns that the message of allowing the

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private pet trade sends to poachers, smugglers and black-marketeers still decimate wild populations in Africa..

23. The International Wildlife Consultants ask that any targeted controls on wildlife are viewed within the proper context of global threats to wildlife and develop solutions that really show benefit.

24. The Association of Chief Police Officers highlighted the need to ensure that penalties for possession of specified species are identical to those available for offences under COTES. The RSPCA add that it is vital that alongside proposals outlines there are sufficient powers of enforcement. Namely to include:

- The ability of the police (or other unauthorised person) to enter premises to search for and seize evidence of an offence.
- Any power to seize a specimen should extend to retaining it, placing it in a place of safe care and if necessary on veterinary advice, humanely destroying it.
- Upon conviction the Court should have the ability to make a confiscation order and consider whether the defendant is fit and proper person to keep such animals in future.

Parts and Derivatives

25. The Association of Chief Police Officers and the Wildlife Crime Unit of the Metropolitan Police advise that any such controls must include not only restrictions on live specimens but also on parts and derivatives. The imposition of controls on possession of parts and derivatives of Annex A specimens commonly used in traditional medicines will do much to assist the enforcement process, especially where trade is suspected but required evidence is not available to pursue the matter further. The inclusion of parts and derivatives was broadly welcomed by most other respondents.

26. The Pet Care trust comment that the consultation documents fail to reflect the illegal trade in live animals being very small when compared with trade in animal parts and derivatives.

27. TRAFFIC added that the list of high risk species should be kept as simple as possible to aid the implementation by enforcement officers. Listing of some species' parts but not others could lead to confusion amongst law enforcers.

Preventing Illegal Trade in CITES Specimens

28. Two main opposing arguments about whether these proposals would have a positive effect on preventing illegal trade became apparent. There was widespread support for the proposal in principle from both opposing sides, however differences centred on issues such as evidence for illegal trade and the value of captive breeding programmes to conservation.

Representative organisations of animal keepers

29. Respondents argue that in practice illegal trade in Annex A specimens is insignificant, with the legal trade already being subject to control.

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Furthermore there is no evidence to suggest that traders are taking advantage of gaps in knowledge to evade strict controls on the commercial trade in wild caught Annex A animals. The only trade (and by implication conservation) which would suffer a negative impact would be the legitimate trade in captive bred animals. Stopping the legitimate and CITES regulated trade in any species is more likely to raise the value of specimens making them more desirable to those with a desire for the rare and unobtainable. If prohibition was placed on the keeping of any existing captive animals, the perceived value would be increased further which would encourage illegal trading in them further. A UK ban is unlikely to have any effect on illegal trapping in countries of origin, as illegal traders will just find another market.

Conservation NGOs

30. All strongly support the proposals to introduce an outright offence for the illegal possession of CITES-listed specimens. Animal Defenders International believe that this mechanism especially would be a key tool to help reduce the appeal of illegally traded animals to the customers of illegal traders. TRAFFIC is also strongly supportive of practical possession controls where their application has the potential to deter illegal trade in species of conservation concern.

31. Overall there was agreement from most respondents that these specific proposals would aid enforcement authorities, where they have reasonable grounds to believe specimens to have been imported or held illegally. A number of police authorities and the RSPCA commented that the objectives of the proposals will make enforcement more effective and efficient. The Metropolitan Police commented that the prohibition should apply to the person who has illegally acquired the specimen. In addition, the Metropolitan Police asked that certain exemptions (rehomers, educational establishments and enforcement agencies by way of exhibitions to increase awareness) should apply.

Identification of High Risk Species

32. The CITES Scientific Authority, Joint Nature Conservation Committee advises against applying the notification requirement to all CITES specimens, as it would be disproportionate to any conservation gain. JNCC would support targeting the notification requirement at Annex A species, which are known, or believed, to be threatened by illegal trade and where such trade is likely to be detrimental to their survival.

33. If the controls are to be workable, the Wildlife Crime Unit of the Metropolitan Police add that species subject to controls would need to be carefully identified. They agree that registration would effectively prevent one means of circumventing existing controls, e.g. gifting.

34. Various comments from animal keepers showed that there was some uncertainty about which species would be identified as those most vulnerable to illegal trade as living specimens. Some respondents thought that this needed clarifying. Some organisations were concerned that the term

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'vulnerable' could include all those species currently listed on Appendix I, while others believed that all Annex A species, plus any other CITES listed species thought of as being of a high risk should be included within the notification requirement. SUN highlighted that any such list will only work and will only receive support from those it seeks to control if it is highly focused and scientifically valid.

35. Most conservation NGOs support the proposal to regulate the possession of (dead and/or alive) CITES specimens which are at greatest risk of illegal or unsustainable trade, but do not agree that controls should be restricted to species at greatest risk from illegal trade, non native invasive species, primates and dead specimens of certain animals. Other factors or criteria should be considered.

36. The British Orchid Council support and see value with applying the notification scheme to newly discovered orchid species. Until seed grown plants come on to the commercial market, any traded plant is going to be illegal. The scheme is only useful if there is an automatic removal of this species from the scheme when enough proper notifications have taken place, indicating that the species is in good and legitimate supply. If a plant has a restricted distribution in the wild, this should be a reason to encourage the cultivation of legitimately acquired specimens as widely as possible, without excessive bureaucratic interference. Furthermore if a case is made to prohibit the private keeping of a specimen, this should be accompanied by a controlled programme of propagation and distribution by authorised botanical gardens and/or commercial nurseries with a view to eventual abandonment of the prohibition.

37. Although there was support for stricter controls, there was concern over methods of implementation, and enforcement of the notification procedure. The RSPB suggested that it would be essential for the Management Authority to implement a strict regime of vetting applications and of undertaking inspections to verify statements made during the application process. Specific comments on how the obligation to notify be communicated to keepers/growers was also raised.

38. The Marine Connection outlined a case for including certain Cetaceans (particularly bottlenose dolphins, orca and beluga whales) in the list of species at greatest risk of unsustainable trade. Although cetaceans are not imported into the UK, either illegally or legally the introduction of the proposals would no doubt make the importation of any species much harder, if the situation changed in the future.

39. Animal Defenders International would like to see the notification requirement being widened to other animals, rather than targeting species at highest risk. Like some conservation NGOs recommended for primates, ADI would recommend a passport-style set of documents and micro-chipping, which both lend themselves well to a licensing system.

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Listing criteria

40. JNCC advise that a workshop of interested stakeholders would help develop the criteria for inclusion of species on the schedule, as it may help create greater ownership and transparency of the process. TRAFFIC added that ranking or listing criteria should be kept to the bare minimum and a degree of subjectivity based on experience and knowledge of wildlife trade and enforcement should be allowed.

41. BIAZA suggested that 'difficult to keep in captivity' should be included in the risk factors that would help identify those at greatest risk of illegal or unsustainable trade. In order of priority the risk factors should be listed as follows; subject to high levels of trade (genus/family level as well as species), high commercial value, looks like a more endangered species, subject to import quota, banned from import into the EU. The RSPB however suggest that the risk factors should be weighted as follows; IUCN red data listing, Annex A listing, subject to high levels of actual or potential illegal trade, rare in the wild and rarely bred in captivity, high commercial value, has restricted distribution in the wild. In contrast the RSPCA advocate a broad holistic approach when assessing whether a species is sensitive.

42. The Born Free Foundation and others NGOs would advocate that when determining the criteria for listing species in consultation with others, Defra should:

- review the listing criteria used in determining the species listed on Appendix I when drawing up a list of criteria for Article 8.2.
- review UK legal and illegal trade, and highlight any difficulties in enforcing existing controls.

43. SUN contend the inclusion of all primates for control under Article 8.2 because in the case of Annex B primates none of the listing criteria mentioned in the proposals apply.

44. The Monkey Sanctuary Trust add that the potential for illegally-acquired specimens to enter a legal trade in the UK and the fact that people in primate range states often do not distinguish one primate from another should also be considered when determining the listing criteria. A number of conservation NGOs also argue that perceived markets should also factor in the criteria, as whether or not the primate ever actually reaches the UK is irrelevant. Traders/hunters in range states believe foreign markets exist, however once the primate has been taken from the wild in its own country, the damage is done.

45. The Cyclamen Society believe that any weighted indicators for the identification of high risk species, should include positive criteria, such as ease and volume of propagation in cultivation.

46. The RSPCA support the 3 tier system of controls as long as welfare implications are also considered when assessing which animals are at greatest risk (sensitive) when kept in captivity.

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Restricting the Keeping of Non-Native Invasive Species

47. There was widespread support for proposals, which restrict the keeping of non-native invasive species, namely the ruddy duck and American bullfrog. The impact of climate change was noted as potentially having a detrimental effect on UK native wildlife as more alien invasive species are able to survive in the UK.

48. JNCC and the RSPCA advise that it would be desirable for these proposals to be considered by the Programme board on Non-Native Species, so that they can be considered in the wider policy and legislative context. This is supported by comments from English Nature which question whether the use of Article 8.2 is the most appropriate mechanism to restrict the keeping of some problematic non-native species.

49. In addition, the RSPB urge Defra to develop, publish and implement a strategy on non-native species that supports the proposal to prohibit the keeping of the North American ruddy duck and the American Bullfrog. In addition all invasive non-native species currently subject to an import ban on the grounds that they present a clear ecological threat to indigenous species should be subject to a ban on their keeping in the UK.

50. In particular BIAZA welcomed the derogations for licensed zoological gardens, but added that a licensing system would ensure that private individuals who keep animals well in certain breeding programmes (under the rules of BIAZA these have to be Accredited Associate Members of the organisation) could continue to do so. It is felt that a process of 'random' inspections is unlikely to work, some form of licensing system will be required.

51. Two organisations, the Sustainable Users Network and the International Wildlife Consultants disagree that the proposals should seek to ban possession of the highlighted species. The latter felt that focus should be on preventing release into the wild, rather than possession, and asked what is being done to prevent these species being released into the wild.

52. SUN believe that the proposals to use retrospective powers to ban the keeping of either American bullfrogs or ruddy ducks that are currently in captive collections will attract negligible compliance at best. They consider that it would be far better for Defra to fund an education programme to ensure that species are kept only under appropriate circumstances. In the case of the ruddy duck, SUN contend that if owners were required to pinion their birds this would fulfil the conservation concern, while not adversely impacting on the rights of individuals to enjoy their property. SUN consider that anything more is unduly draconian and disproportionate to the perceived problem.

53. ADI recommend a licensing system for non-native species, where licences are flagged to indicate that the species is being kept on the list of non-native invasive species.

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54. JNCC ask that greater consideration be given to 'sunset' clauses and how ownership is to be phased out, including issues such as re-homing, disposal and compensation for keepers. TRAFFIC add that the prohibition should be extended to breeding and possession of all specimens, not just as replacement stock. Phasing out of possession of any specimens could be specified by assuming the longest life expectancy and then taking entry into law as day 1.

Ruddy Duck

55. The RSPB and Wildfowl and Wetland Trust concur that there should be a ban on the keeping of ruddy ducks, but accept that those currently held in captivity in the UK should be allowed to live out their natural lives in captivity subject to the following conditions:

- All birds should be rendered flightless and kept in secure enclosure
- Any clutches of eggs laid should be destroyed before they hatch
- All birds should be ringed and registered.

American Bullfrog

56. The Federation of British Herpetologists (FBH) believe that it is highly improbable that the American Bullfrog would reproduce in the UK, and is consequently not a significant threat to native species. FBH are aware of experienced amphibian breeders that have tried to reproduce species under natural UK conditions without success. The American Bullfrog is not particularly common in private collections, and given the existing ban on the importation are unlikely to become so.

Red-eared terrapins

57. The FBH consider the claims that they impact local wildlife are unsubstantiated, since they are predominantly vegetarian. There are no substantiated reports of these species breeding successfully in the wild in the UK and a viable and sustainable population is thus not tenable.

58. The red-eared terrapin and the painted terrapin are popular pets. With the current import ban in place, their numbers will naturally dwindle and their value increase as demand outstrips supply. It is unlikely that anyone will dump them once they become more valuable and their slow reproductive cycle is unlikely to cause any flood of babies onto the market in the future. A number of representative bodies of animal keepers questioned in what way species that cannot reproduce in the UK are considered invasive? In their view Defra should provide the referenced sources that both terrapin species proposed are capable of reproduction in the wild in the UK.

59. Owing to the sheer weight of numbers held in captivity SUN argue that both species of terrapin should not be included in the restrictions.

60. BIAZA felt the red-eared terrapin should be added to the list of prohibited species, while the Wildlife Trusts recommend Defra to commission:

- research on the ecological damage caused by red-eared and painted terrapins in the UK.

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- expert advice on the ability of these animals to breed successfully in the wild in the UK (and how far into the future this might be possible given climatic predictions).

Keeping of Sensitive Species

61. The RSPCA does not support the proposal to leave the assessment of the welfare implications of trade to the CITES Scientific Review Group, but would instead support a review under Article 8.2.

62. The Federation of British Herpetologists (FBH) consider that it will be extremely difficult to establish which species would be classed as sensitive as the term is inevitably used emotively and has little or no scientific basis. Many of the animals frequently quoted as being sensitive actually thrive in captive situations and are bred in large numbers. This would include large numbers of reptile species, such as chameleons, pythons, boas and many amphibians. Some tortoise species which are subject to import bans under Article 4.6c of Council Regulation (EC) No. 338/97 on the grounds they do not survive well in captivity have very healthy and viable captive bred populations in the UK.

63. Many reptile keepers do not feel any species warrants a ban based on its sensitivity. Many species considered difficult to keep in the past now live and breed happily in captivity now that their needs have been worked out with the improvements in modern technology used in animal husbandry. The International Wildlife Consultants add that the proposals are making an unproven assumption that institutions are better for animals, both physically and mentally, than private care. In their view, dedicated private individuals have been the ones who have pioneered the breeding of sensitive species and should be seen as a very important resource.

64. One orchid trader/grower representative commented that there is no way to distinguish between illegal newly imported orchids (and other plants) and legal old ones. In addition, if certain plants were to be included as a sensitive species who would judge survival expectations. It should be noted that a plant which may be impossible for one grower, can present no difficulty to another.

65. JNCC agree that where import into the Community is already suspended under Article 4.6, it is unnecessary and inappropriate to apply the powers under Article 8.2. The Ornamental Aquatic Trade Association asked that if the SRG is involved in determining which species are sensitive, the process must be made clearer, and more accountable. In addition the science should be published from which they make their decisions.

66. One respondent was concerned about the confidentiality of animal keepers addresses in relation to animal rights activists and any potential campaigns that they could be exposed to if addresses were made public.

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67. LINK believes that an assessment of competence should be extended to all individuals keeping any sensitive species, rather than be limited to the keeping of high risk Annex A species.

68. A number of conservation NGO's point out that although CITES is a conservation and trade agreement it does not ignore issues of freedom from harm and suitable accommodation for individual animals. As such Animal Defenders International recommend that psychological as well as physical factors should be taken into consideration.

Keeping of Primates

69. JNCC feel that it is difficult to justify introducing additional possession controls for many of the more common Annex B primates, particularly those which are bred and traded in large numbers within the Community without detriment to the wild populations. If there are any perceived gaps in the current legislation relating to care and husbandry of captive primates, then JNCC suggest that it might be better to address such issues through other, possibly more appropriate mechanisms.

70. Most conservation based NGOs however recommend that the private possession of all primates be phased out. Many urge the UK government to adopt a precautionary approach and give priority to phasing out the keeping of all primates. In the absence of a phase out of all primates species in private ownership, conservation NGOs would broadly support all primates being included in the notification requirement, with all Annex A primates being phased out under Level 3. Rationale for this decision should be based on that Annex A primates are at greatest risk of over exploitation through international trade, as defined by CITES. The Captive Animals Protection Society argue that keeping, breeding and trade in Annex B primates in the UK masks a trade in Annex A species, including Cotton-topped tamarins and lemurs, and therefore should be included in any prohibition.

71. Although some conservation NGOs accept that the majority of animals for the UK pet trade are bred in the UK, this trade has a significant impact on conservation efforts in range states. The International Federation for Animal Welfare (IFAW) in particular ask that Germany's implementation of the phasing out of primate ownership through "The Federal Nature Conservation Act, 2002" be considered. Although IFAW concede that the evidence required to support a ban on primates is not currently available, CAPS point out that this compounded because no recognised body records numbers of primates in private ownership, and the uptake of licenses under the Dangerous Wild Animals Act is less than 5%.

72. Following on, many respondents accept that it is not known how many primates are currently held in private collections. Animal keepers point out that the introduction of possession controls would have a serious deleterious effect on legitimate breeders and traders currently supplying the domestic market. SUN argue as do many animal keepers that there is no evidence that any significant level of illegal trade is taking place in primates in the UK. In

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contrast, conservation NGOs argue that this situation needs to be addressed by recording and monitoring primate keepers. IFAW and the Monkey Sanctuary Trust recommends that a nationwide survey is conducted to accurately identify the number and species of primates kept in private ownership (including breeders) is conducted. Without this information IFAW consider that the proposed system of notification and licensing will be difficult to enforce.

73. RSPCA agrees with the recommendation to control the keeping of primates in light of the strong welfare and conservation case in support of primates not being suitable for the general pet trade. The RSPCA add that documentation requirements should not be limited to Annex A species, but also any Annex B species identified as sensitive and requiring controls under Article 8.2.

74. SUN consider that this section on the keeping of primates contains the most blatant misuse of quotes and statements seemingly culled from the extremist agenda. Furthermore the Federation of British Herpetologists and other private primate keepers consider that primates are not particularly difficult to keep in captivity and specialist private keepers are as qualified and/or suitable to work with these species as zoos and other institutions. Like most non-domestic species some private primate keepers expressed the view that most do not make good house pets, but consider that this is not a CITES issue.

75. Some other animal keepers expressed concern that from a conservation point of view, banning the private ownership of, or severely restricting ownership of these species would inevitably lead to a down turn in the captive breeding of primates by private keepers. Private breeders are highly knowledgeable and dedicated and are actually far more successful in breeding programmes and animal husbandry than zoos, particularly with the smaller species. SUN question why some of the welfare and rescue organisations have not been prosecuted by the RSPCA of being in default of one of the most fundamental of the Five Freedoms, namely the right encapsulated in the term a “full behavioural repertoire” since they contend that there is nothing more imperative than an animals opportunity to procreate.

76. Some animal keepers point out that primates are already covered by the DWA Act, for which an annual inspection is already carried out. Smaller species not on the Schedule, or due for removal are no more difficult to maintain in captivity than other mammalian species for which no inspection regime is deemed necessary.

77. The British Herpetological Society asked what verifiable evidence:

- shows that some primates end up in the hands of persons who lack the appropriate accommodation or expertise to care for them in the UK.
- Shows that rarer primate species are being imported or sold illegally in the UK.

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78. Private keepers could not be expected to provide the same standards as zoos in areas such as enclosure dimension, but breeders have clearly proved that they can provide standards of care which are more than adequate for successful husbandry and breeding.

79. BIAZA agree with importation restrictions on primates and with some sort of licensing and control system. The Animal Welfare Bill should be considered as a control measure regarding welfare. Only properly qualified experts, such as zoo professionals with appropriate expertise should make such assessments and issue certificates.

80. Some conservation NGOs including the Born Free Foundation recommend that all primates are accompanied by documentation (e.g. full life history) or an 'animal passport'. This information should also be held by the Secretary of State, or another centralised body, and used as part of the required evidence that all specimens have been acquired lawfully. Many conservation NGOs urge for the notification requirement to be carried out centrally, or if this is not possible for suitably qualified persons in regional local authorities.

81. The Born Free Foundation ask that tighter controls are brought in to address the trade between captive institutions both within the UK and between the UK and EU. At the very least The Monkey Sanctuary Trust asked that movement of primates should occur only between specialist keepers and/or establishments licensed under the Zoo Licensing Act 1981 and/or sanctuaries.

82. In the presence of a ban on the private keeping of primates, the International Wildlife Consultants add that where a species is falling to low numbers in the wild and suffering an irreversible loss of habitat, we should be looking at ways of maintaining alternative secure gene banks.

83. TRAFFIC are unsure why the proposals are specifically targeted at primates as they believe the logic behind making the case for primates could be extended to the keeping of many other specimens of endangered species.

Keeping of parts and derivatives of certain species.

84. The WCU of the Metropolitan Police strongly support the proposal to prohibit the keeping of these items, adding that the proposed controls should be strengthened to specifically prevent those who could legally keep tiger specimens from passing them on to anybody except an organisation that would use them for education. Otherwise the WCU believe a loophole would be created by gifting.

85. A number of enforcement agencies also commented that the onus should be on the keeper or owner to show that their possession is lawful.

86. The London Chapter of Safari Club International commented that any measures introduced should be framed to exclude hunting trophies from the

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list of unilaterally regulated species because given the high level of regulation and limited quotas applying to sport and trophy hunting internationally and in particular, the existing regulatory framework in the UK, further measures are entirely unnecessary and unjustifiable.

87. General queries relating to the keeping of tiger, bear and rhino parts and derivatives were raised. Namely:

- In what way could a private individual legally keep tiger, bear or rhino parts for research or educational purposes?
- What proof will the owners of exempt pre-ban specimens of tiger, bear and rhino be expected to provide.

88. LINK, RSPCA and BFF recommend that ivory be considered to be included in these powers. BFF also recommends that musk deer also be afforded level 3 protection and requests that it additionally includes the restriction of non-commercial trade, for all purposes.

89. LINK suggests a more proactive approach, with an amnesty/grandfather clause to encourage those in possession of any parts and derivatives of particular species to come forward. Declared specimens could subsequently be affixed with an identification mark and only passed onto another person through inheritance.

90. Rather than ban the possession of parts and derivatives of tiger, bear, rhino and Tibetan antelope parts, the International Wildlife Consultants would rather try and tackle this issue in the range countries. One way in which the UK could do this would be to satiate the market with alternative products – either western medicines or sustainable captive bred supplies. The UK administration should have a policy that facilitates this production and trade of sustainable captive-bred specimens, rather than making it more difficult and quoting unrealistic ‘prices which exacerbate the problem.

Exceptions

91. JNCC ask that the consultation should address what is meant by the terms ‘research’ and ‘educational’ purposes, and that this definition should be linked to a conservation benefit (in Article 8.3). The Born Free Foundation argue that including an exception for “those kept for research and educational purposes” could provide a loophole exploited by those illegally importing and ultimately commercialising bear and rhino parts. Alternative language is suggested, which would be strictly for law enforcement purposes, as follows:

“Exception allowing keeping or trade in [bear bile, paws or gallbladders]/[rhino] if such activity is solely for the purpose of enforcing laws relating to the protection of wildlife, is undertaken by a representative of the Government of the United Kingdom, and is authorised by a valid permit issued under Appendix I or II of CITES”

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92. The Born Free Foundation raised the issue of pre-ban specimens which are proposed to be exempt. The BFF support the proposal that pre-ban specimens may be subject to control under Level 1 if the owner is not able to show that the specimen has been acquired lawfully.

The Keeping of Tiger Parts & Derivatives

93. There is widespread support to prohibit the keeping of tiger parts and derivatives for non-commercial purposes. However TRAFFIC ask for further information on whether the proposal to not allow tiger parts/derivatives to be passed on to someone else will cover inheritance after the death of a keeper.

94. JNCC questioned whether the prohibition would apply to worked specimens from before 1947, adding that many pre-convention tiger specimens are legally held in private hands. If owners are not able to pass these on, further guidance is needed on how they should be disposed of. In addition JNCC asked whether the use of dead legally held live captive bred tiger as a taxidermy specimen would be prohibited under the proposals, arguing that this use does serve a conservation benefit (providing the legal origin of the specimen can be demonstrated). As an alternative to a proposed blanket prohibition, JNCC suggests registration, supported by photographic documentation to identify individual specimens.

95. ADI commented that all captive/bred tigers should be subject to a comprehensive microchipping/passport style registration scheme as more needs to be done to control animals moving across borders with circuses.

The Keeping of Bear Parts and Derivatives

96. Though welcomed, some concern was expressed by LACS that the prohibition of bear parts is limited to specimens of bile, paws and gall bladders. The Born Free Foundation specifically calls for the prohibition to be extended to any products that contain bear viscera or are labelled or advertised as containing bear viscera.

97. In addition the BFF recommends that the prohibition be expanded to all bear species, including those on Appendix I and II. Species on both Appendices are traded internationally, and as bear bile from different bear species is visually indistinguishable and sometimes difficult to forensically analyse, proving that a derivative contains ingredients from a certain species of bear (let alone the origin of the bear) may be impossible.

98. The British Herpetological Society requested written confirmation that bear paws, if attached to a skin, would be specifically exempt from the proposed ban on possession of bear paws.

99. JNCC recommend that the proposals only extend to detached bear paws, with respect to hunting trophies. JNCC do not believe it is necessary to

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register all bear parts and derivatives, as not all bear species are threatened by illegal trade.

100. TRAFFIC comment that the import of and trade in parts and derivatives for certain Annex B bear species is legal and on-going. Recognition should be given to the conservation value of hunting, under an approved quota system. TRAFFIC suggests that the UK might wish to allow imports and possession of trophies and/or parts and derivatives of Annex B bear species if hunting under an approved quota system was approved by source countries.

The Keeping of Rhino Parts and Derivatives

101. There is widespread support to prohibit the keeping rhino trophies, though one respondent was concerned that the proposed ban would not apply to keepers of licensed 'hunting trophies'. JNCC commented that the issue of hunting trophies needs to be addressed given that hunting for some rhino populations has had some demonstrable conservation benefit. Like tigers, JNCC recommend a simple registration of parts and derivatives enabling legal acquisition to be checked by enforcement officials.

102. BFF indicate that "keeping" should include any aspect of rhino parts' commercialisation or possession such as the import into or export from the UK as well as the domestic sale, barter, offer for sale or barter, purchase, transport, possession, or delivery of bear parts.

103. Furthermore the BFF argue the prohibition should additionally refer to all products that contain rhino horn, as well strongly urge the UK government to enforce stricter domestic measures with regard to the import of licensed rhino trophy hunting specimens.

The Keeping of Tibetan Antelope Parts and Derivatives

104. All comments relating to the keeping of Tibetan antelope parts welcomed this proposal.

105. Again JNCC would recommend the registration of parts and derivatives of Tibetan antelope, rather than a blanket ban. This would not place an unreasonable burden on both Defra and legitimate owners of such specimens.

106. The WCU of the Metropolitan Police ask that the prohibition extend to the include the horns of the male antelope.

Impact on Partial Regulatory Impact Assessment

107. The Cyclamen Society feels that the partial RIA should be re-written following further research, to include the impact upon flora-related businesses and organisations including the horticultural trade. Furthermore SUN believe that the partial RIA is unbalanced and demonstrates a lack of understanding

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of the private keeping and trade in proposed species, and therefore suggest that it be rewritten.

108. The Monkey Sanctuary Trust highlighted the need for further research to determine the effect the UK pet trade has on wild primate populations, to include;

- An analysis of the number and species of primates kept in the UK
- The scale, nature and routes of the primate pet trade within and into the UK
- The number of primates taken from the wild compared to the number reaching markets
- The number and origin of surplus zoo primates entering the pet trade
- In consultation with stakeholders in primate range states, the actual numbers of primates taken from the wild for the international pet trade and to obtain their opinion on the way forward.

109. Some private animal keepers asked to see the evidence that primates are being imported or sold illegally.

110. OATA asked that the views from industry and conservation groups must be given equal weight, and that biased research should not be used in justifying the current proposals e.g. RSPCA research because it has already been criticised by the (CITES) scientific community and is strongly biased against the sale of animals from shops.

111. Few comments specifically outlined which Option was preferred. Of the four Options, only 2 were apparently preferred. Option 1 – do nothing was favoured by many animal keepers and representative bodies, whereas most other comments indicated that they preferred Option 2 – which laid out the three tiered system, and included controls on restricting non native invasive species, primates and the keeping of parts and derivatives of tigers, bears, rhinos and Tibetan antelopes.

Responses and Outcomes

There was widespread support for the system of levels of control, with the following specific comments:

Level 1

112. Most respondents supported the principle of imposing a general prohibition on the keeping of CITES specimens that have been acquired unlawfully. JNCC highlighted the issue of the EC CITES regulations not currently requiring parts and derivatives of Annex A to be uniquely and individually marked. Without a permanent and unique mark, JNCC contend that it may be difficult to establish that the item held is the same as the specimen that has been registered. Other concerns were raised about implementation, namely proving legality of pre-acquired specimens and confiscations.

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113. While enforcement agencies support the burden of proof resting with the keeper of the specimen, the Pet Care Trust contend that legal changes of ownership by sale, exchange or gift have long been undertaken free from any marking or documentation. These transactions should not now be subject to retrospectively presuming that they were illegal.

Level 2

114. Many respondents requested that the lists of CITES species would have to be updated on a regular basis as our knowledge of the trade and the trade itself changes. A re-evaluation period of 2 to 3 years was suggested by one conservation NGO.

115. LINK outlined a process of what information they consider should be held under the notification requirement. The details of the permanent marking, including origin should be recorded by the Secretary of State, or another suitably qualified centralised body. Additionally other conservation NGOs ask that all transactions of that specimen be reported to and recorded by that same body. Any person in the possession of a specimen without the required marking would thus be subject to the penalties of this system, and risk seizure of the item/animal.

116. The Born Free Foundation felt that the notification requirement should go further and include the purpose for which the species/specimen is kept and details by which the species/specimen was obtained. In addition the Born Free Foundation requested that penalties for non-compliance of Article 8.2 will be much stricter and vigorously enforced than penalties for non compliance with the Dangerous Wild Animals Act.

117. The Monkey Sanctuary Trust and Animal Defenders International recommend that all primates be identified as being “at greatest risk of illegal or unsustainable trade”. CAPS see no benefit of affording primates level 2 protection and anticipate that if this course of action is followed the current situation will change little, perpetuating confusion and underground trade in the UK, and send a confusing conservation message to range states.

118. The RSPCA would add that the keeper of the threatened animals should also be required to register the keeping of such animal, no matter whether the animal is going to be sold.

Level 3

119. Many respondents asked that considerable care and consultation are taken in the preparation of a list of prohibited species.

120. The Sustainable User Network gave a number of examples claiming that bans and prohibitions on ownership do not work. Namely, with the result being:

- Legislation being almost universally ignored and despite all the efforts of the enforcement agencies and protectionist groups the rate of detection for these transgressions is virtually zero.

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- Detrimental to animal welfare; if animals are not registered under the relevant legislation it cannot be taken to a veterinary surgeon when ill for fear of being reported to the authorities. If species were not so listed and controlled the animal could be treated appropriately and its welfare not compromised.
- Lead to the activity being driven underground and therefore removing any possibility to peer pressure helping to regulate the quality of care for the species concerned.

121. With regards the keeping of live CITES specimens under level 3 protection, the BFF recommend:

- that in conjunction with the prohibition on the keeping of some dead specimens of tiger, bear, rhino and hunting trophies, the keeping of live Annex A specimens of these species should also be afforded to Level 3 protection.
- The proposals present a good opportunity to prevent the import and keeping of any live (wild animals listed on Annex A/Appendix I and also under Level 3, for non commercial purposes.

122. Many conservation NGOs highlight that the phasing out of the keeping of primates as pets and a prohibition on the trading of primates for primate ownership would send a positive and clear conservation message to governments and hunters/traders in range states.

Overview of three tiered system

123. On the whole organisations preferred options for control rather than prohibition, although many NGOs campaigned strongly to phase out the keeping of primates. There was support for some form of licensing from animal keeping organisations, but it was felt that this should be done through the Animal Welfare Bill to ensure that those private individuals with sufficient expertise and suitable accommodation to care for primates are allowed to keep them.

124. Most supported a similar approach to the control of non native invasive species. There was less support for the proposals to include the red-eared and painted terrapin, because of the current lack of evidence that they are able to breed in the wild in the UK.

125. Most agreed that any list of species should be reviewed regularly to accommodate fluctuating circumstances in wildlife trade. In addition many respondents asked that a further consultation be held with regards the criteria and species that are listed under Level 2 and 3 of the proposal. The RSPCA would additionally advocate that a similar consultation is needed to review to determine which species are suitable as pets or for only being kept by specialist keepers.

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There were a number of specific concerns on a number of common themes:

The right for an individual to enjoy their property

126. SUN argue that keepers have the absolute right to gain continued employment from their legally acquired property both under the Treaty of Rome and under a raft of human rights legislations and that these legislative requirements far outweigh those of the EU CITES. In addition Sun argue the proposals are discriminatory against one sector of society *vis à vis* another. Demanding that private keepers have large naturalistic enclosures for species such as marmosets and squirrel monkeys whilst research institutes retain the right to house in much smaller enclosures would be by definition a contravention of the Human Rights Act and thereby challengeable in law.

127. As many individuals in the UK have orchids (Appendix II) growing on their property, the proposals would place unreasonable restrictions on the right of individuals to use and enjoy their property. Some orchid traders highlight the evident restriction on the right of individuals to the enjoyment of their property could face challenge under Article 1 of Part 2 of the Human Rights Act 1998.

128. NGOs believe that the effect on any rights of individuals as defined under Human Rights legislation is proportionate and concurs with Defra's statement in the partial RIA that "such rights have to be weighed against the wider conservation interest".

Proving legality of pre-acquired specimens

129. Many comments centred on the difficulties for small traders to prove the legality of some specimens. Of greatest concern in implementing the proposed Level 1 of control was that for a number of species with specific problems meant that it would be very difficult to obtain documentation to prove they own the animals or plants legitimately. This may be because specimens were acquired many years ago, they propagate easily from seed which may be distributed by insects or the wind, or that they are progeny of progeny that have bred in captivity. There were a number of comments that there should be a period of grace to register historical possession without evidence, after which evidence would be necessary.

130. TRAFFIC highlights that the requirements for proof of legal acquisition must be addressed if a surge in illegal trade is to be avoided. TRAFFIC suggests that a signed affidavit stating that the specimens are legal, and that proof will be provided at a later date, upon request and after registration would be a practical way of avoiding significant loopholes. Guidance will also be needed from Defra if proof of legal acquisition is subsequently "lost".

131. Although registering (and obtaining a certificate) **all** newly imported specimens and all new offspring would enable Defra to know what species were circulating within the UK, the considerable costs of setting everything up

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and maintaining it plus the man hours to maintain and enforce would be better served elsewhere, as the current trade does not have a significant impact on conservation, given that most trade is of captive bred specimens, rather than those taken from the wild.

132. As a compromise comments mostly support the registration of all captive bred specimens of species most at risk, making sure that all further imports adhere strictly to CITES regulations and encourage keepers to produce enough captive bred, Defra registered offspring to supply demand. This would keep the value of such species at such a level that would deter illegal trade, while maintaining a captive population.

133. The International Wildlife Consultants view a retrospective burden of proof as unworkable and a waste of resources. The proposals need to have a start date and an identification system. Rather than pursue these proposals the International Wildlife Consultants would rather see the UK promoting sustainable breeding by implementing the CITES Registered Breeders system.

134. The RSPB ask that the UK Management Authority insist that only UK issued Article 10 certificates were suitable for compliance with any Regulation made under Article 8.2. All imported specimens would therefore have to be notified to the UK Management Authority, and the difficulty of establishing the validity of Article 10 certificates would be overcome. RSPB add that special consideration should be given to keepers in possession of Annex A specimens, and those in possession of unmarked sick and injured wild birds of species at the time possession controls were introduced would be needed.

135. IPPL consider that a 'good character' reference based upon past history as a monkey keeper from an organisation such as themselves may aid situations where existing owners of primates are unable to prove legitimate acquisition from years ago.

Confiscations

136. In the case of plants, confiscation is only appropriate if they can be kept alive. Confiscated plants should be passed to experts in growing that genus in order to ensure that rare and endangered specimens survive. It is important that confiscated specimens are not sent to Kew to avoid allegations that Kew recommended confiscation in order to acquire new specimens. If specimens cannot be returned to their origin then they should be used as breeding stock and sold in order to reduce pressure on the remaining wild populations.

137. One reptile representative body expressed concern over the well being of any animals which might be confiscated, and urged Defra to make sure that being CITES listed confiscated specimens are placed with suitable owners where they can form part of breeding groups to aid conservation.

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138. One private aviculturist commented that the welfare of live specimens seized under any future regulation should be a high priority.

139. JNCC and IPPL strongly advise that the practical issue of confiscations be considered, as potential confiscations and closures will increase pressures on surviving sanctuaries.

Financing Article 8.2

140. Most conservation NGOs recommends that all additional costs (e.g. inspections, certification accreditation, animal identification/marketing, production of standards of care) associated with the implementation of Article 8.2 be met by the keepers/holders of such specimens as may be affected. In addition the Monkey Sanctuary Trust added that the view should be taken that if the keeper of the animal is not able to afford such a fee, then nor is he/she able to afford the cost of caring for that animal, for the duration of its life.

141. However representatives of animal keepers, said that further cost implications may cause many to either abandon their hobby (and lead to loss in captive breeding programmes) or be driven underground (and increase illegal trade).

142. If the keeper is unable or unwilling to meet the cost on the inspection regime, then in the case of the ruddy ducks the Wildfowl and Wetland Trust would be prepared to re-house ruddy ducks from private collections and allow them to live out their natural lives in WWT facilities.

Marking of Specimens

143. The general consensus was that marking the majority of registered animals would not be a problem as many already are with rings or implants. Many respondents asked that marking was done using an approved humane technique. Generally very small specimens, were highlighted as being more difficult to permanently mark, but other problems were highlighted from a number of specialist representative bodies;

144. Two representative bodies of orchid growers/trader commented that any scheme that relied upon the permanent marking of orchids would be unworkable.

145. Photo-identification and micro-transponders were also suggested as ways of identifying specimens on entry into the UK. The International Herpetological Society detailed the concerns that intra-muscular implantation can have a very adverse effect to reptiles and amphibians, affecting the use of limbs or limiting movement. Alternative methods for these specimens should therefore be considered. The costs could be covered in the licence fee relating to the importation.

146. The Cyclamen Society argued against the suitability of any invasive method which breaches the outer surface of the tuber for permanent marking

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of cyclamen. In addition, although permanent dye may be a way of resolving this problem, the chemical composition of the solution would be critical in view of the wide range of taxa under CITES, and a dye acceptable for one taxa may be fatal if applied to another.

147. The RSPB highlight the need for tamper proof marking, in order that wild specimens are not passed off as captive bred. Guidance on what constitutes a uniquely marked ring or band should be issued urgently, though at the very least the RSPB believe that there should be a requirement to ensure that rings or micro-chips are date stamped.

148. Some enforcement agencies highlight the need for flexibility in permanently marking some specimens. Markings invisible to the eye (e.g. Smartwater) would be necessary to be acceptable to the owner of a Shahtoosh.

149. CAPS ask whether Defra will be proposing DNA blood tests from primates in the UK to establish parentage? If not, how will Defra determine whether it is UK bred or if it has been imported or acquired from a zoo.

The definition of 'Specialist keeper'

150. Many respondents including the Zoo Forum and LINK were concerned about the lack of clarity of the definition of specialist keeper, in relation to the keeping of primates, and welcomed further information on this. TRAFFIC commented that the certificate of competence regarding housing and care should be issued by competent and experienced vets.

151. The Born Free Foundation asks that individuals who own primates, display them and profit by such possession and exhibition are not considered to be a specialist, or with a person with expertise in the species, by Defra. Any restriction on lawful specialist primate keepers should be drastically more rigorous than a 5 year competency certificate.

152. The BBF and the Monkey Sanctuary Trust ask that specialist keepers must be able to prove that their reasons for keeping CITES listed species should be, in order to deliver a verifiable conservation, educational or scientific benefit. The Trust also recommends that the specialist keepers be subject to the regulations, guidelines and standards based on the Zoo Licensing Act 1981 and the Secretary of States Standards of Modern Zoo Practice, and the Balai Directive, and that specialist keepers of primates should be accredited (monitored and mentored) by a recognised zoological/conservation body.

153. ADI specifically ask that high standards are set for keepers with certificates of competence being an indicator of real competence, not just a document that keepers can support. Furthermore, educational background, financial resources and proven ability to care for the animal for the whole of its life, suitable space and accommodation is available and number of primates to be kept should all be taken into account when applications for a licence is

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made. ADI believe that the above standards for specialised keepers should exclude hobbyists and restrict the private keeping of primates.

154. SUN questioned who would justifiably inspect private keepers since it is they who are the experts in private primate husbandry.

Guidance on Standards of Care

155. Amongst conservation NGOs there was widespread support for appropriate species – specific standards of care to be drawn up by the Secretary of State, in consultation with a group of suitably qualified experts. In addition the Monkey Sanctuary Trust recommend that a further umbrella group of qualified experts be set up, empowered (as a collective) to inspect and if appropriate grant the certificate of competence. This group should be impartial, so that there could be no perceives conflict of interest or hint of differential treatment /approval. Therefore the Monkey Sanctuary Trust further recommend that this group be independent from and draw no sponsorship from nor represent/promote the concerns or interests of any individual, trade association or body or group of 'specialist keepers'. The International Wildlife Consultants add that such a panel would have to consider all the personnel involved as well as the facilities provided.

156. IPPL add that currently published works on husbandry and welfare are more appropriate from funded institutions (e.g. zoos and scientific institutions). As a result IPPL are preparing new guidelines particularly addresses to sanctuaries and individual owners.

157. The Born Free Foundation argues that the term 'suitably equipped to house and care for' primates is insufficient as it does not protect the primates or the public. Likewise, the Monkey Sanctuary Trust ask that care be given to ensure that standards are for the use of licensed keepers, and not to encourage further keeping, and that they be prescriptive enough to be effective. CAPS do not believe that it will be possible to write guidelines that are detailed or prescriptive enough to be effective.

Hunting Trophies

158. Concerns were also raised on why hunting trophies of all endangered species were not included in the proposal. Opposing arguments on the value of hunting as a means to giving wildlife an economic value were presented. On the one hand the hunting lobby argue that giving wildlife an economic value ensures that species otherwise regarded as a nuisance in the country of origin are sustainably managed. The value of hunting (and the amount that actually helps local people and was disputed, with the value of eco-tourism (which avoids the killing pf wildlife) being presented as an alternative means to giving value to wildlife and circumventing the end result – the hunting trophy.

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Additional requests

159. Some asked that there could be some assurance that the changes introduced reflected was commonplace amongst CITES signatories and that the citizens of the UK were not being subjected to more onerous regulations than anyone else.

160. In addition the Monkey Sanctuary Trust and CAPS asked the Government to address the issue of disposal/sale of surplus stock from zoos and to look to prohibit the disposal of animals to the general public and animal dealers.

161. Further detail and clarity was requested on the following:

- the exceptions for research or educational establishments. Is this just for recognised institutes or does it cover the independent scientist and charitable organisations.
- Under what exceptional circumstances would the reserve powers of the Secretary of State be invoked to exempt keepers from having to provide evidence of lawful acquisition or other factors normally required under the general prohibitions. Others request that a list of predicted 'exceptional circumstances' be drawn up. One private aviculturalist contends that recognised breeding programmes should be included in exceptional circumstances.
- In what way does the current controls on trade in Annex A specimens not adequate to protect highly threatened species.
- By what requirements and suitable means by which individuals can demonstrate they have acquired the animal legally.
- At what point are persons selling pet animals and their offspring required to be licensed as commercial dealers under the Pet Animals Act 1951 and/or their premises to be approved under the Balai Directive.

Integration with existing legislation

Dangerous Wild Animals Act

162. The RSPCA would advocate that any keepers of DWAA animals are not unreasonably affected by any additional charges necessary to issue competence certificates for keeping identified sensitive or high risk species proposed under Article 8.2.

163. TRAFFIC add that keepers should be required to notify the Secretary of State, in addition to the local authority when holding a specimen under the Dangerous Wild Animals Act.

Wildlife and Countryside Act

164. The RSPB is concerned that the proposals only make a passing reference to the potential overlap between Section 7 of the WCA (registration of birds) and the proposals under Article 8.2. the RSPB contend that a

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number of live Annex A species should be listed in Schedule 4 of the WCA, and that Article 8.2 controls should complement, and not replace this requirement. As overlap is likely to occur the RSPB suggests that one system of possession controls be used to cover all relevant species.

Animal Welfare Bill

165. Concern was expressed by Zoo Forum members over duplication of controls with the proposed Animal Welfare Bill, with regards raising the standards of care of animals.

166. IFAW asked that under the Animal Welfare Bill, a system for the licensing of sanctuaries caring for primates be given top priority for introduction to ensure that those primates kept illegally under Article 8.2 and which are seized by the Inspectorate are assured a new home, with the necessary standards of welfare and care for the duration of their lives.

167. As an alternative, CAPS suggest that a 'grandfather' clause be introduced requiring that all primates in private possession be registered and micro-chipped for identification. A "cut off" date should be set, by which all primates should be identified and after which breeding is prohibited. Primates discovered after the cut off date would be known to be illegally held. Primates in private ownership would then die out, without the need for confiscations.

168. In the case of primate sanctuaries, a distinction should be made between true sanctuaries which have the high standards and do not allow breeding and primates collectors/hobbyists who call themselves 'sanctuaries' as a free way to expand their pet collections.

Balai Directive

169. The Zoo Forum were concerned that the proposals do not take sufficient account of other existing legislation such as the Balai Directive which effectively prohibit import of primates for or by non-Balai institutions.

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ANNEX A

Responses to the consultation

Statutory Conservation Agencies

Joint Nature Conservation Committee
English Nature (via JNCC)

Others

Wildlife Crime Officer contacts:
Tayside Police
Wildlife Crime Unit – Metropolitan Police
Association of Chief Police Officers (England, Wales and Northern Ireland)

NGOs

Animal Defenders International
Ark Reptile Group

Bornfree Foundation
British Cactus and Succulent Society
British Herpetological Society
British and Irish Association of Zoos and Aquariums (BIAZA)
British Orchid Council
British Trust for Ornithology
British Waterfowl Association

Captive Animals Preservation Society
Country Land and Business Association
The Cyclamen Society

FACE-UK
Federation of British Herpetologists
Foreign Bird League

Hardy Orchid Society
Heythrop Zoological Gardens
Horticultural Trades Association

International Fund for Animal Welfare
International Herpetological Society
International Primate Protection League
International Wildlife Consultants Ltd

League Against Cruel Sports

Marine Connection
Monkey Sanctuary Trust

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Pet Care Trust

Royal College of Veterinary Surgeons
Royal Society for the Prevention of Cruelty to Animals
Royal Society for the Protection of Birds

Safari Club International – London Chapter
Sustainable Users Network

TRAFFIC International

University of Vienna

Wildlife and Countryside Link (individual members)
Wildlife Trusts
World Pheasant Association

Zoo Forum

Individuals

David Anderson
Filomena Baldowski
John May
Nigel Hewston
Rauf Hanif
Seb Miller