

COMMENTS ON DRAFT POLICY POSITION ON THE CONSERVATION AND ECOLOGICALLY SUSTAINABLE USE OF ELEPHANT, LION, LEOPARD, AND RHINOCEROS

Submitted by:



WILD LAW | INSTITUTE
RIGHTS FOR EVERY MEMBER OF THE EARTH COMMUNITY

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EXECUTIVE SUMMARY

Support for Draft Policy

1. We are supportive of the preparation of the Draft Policy as a first step towards a reformed approach to biodiversity management in South Africa, and are in broad support of the vision and direction of the Draft Policy
2. Subject to the specific comments in this document, we are also broadly supportive of:
 - 2.1. the 3 proposed species management policy interventions;
 - 2.2. the 4 trade-related policy interventions (although we have concerns about the potential sale of ivory, rhino horn and lion bone stockpiles);
 - 2.3. 4 of the 5 priority conservation policy interventions (we oppose the hunting of the five iconic species);
 - 2.4. the 3 conservation transformation interventions; and
 - 2.5. the 2 conservation capacity policy interventions.

Need for transformative change

3. We are in broad support of the vision and direction of the Draft Policy, and are strongly supportive of the proposed national Policy on Biological Diversity as a means of promoting a transition towards eco-centric decision making in relation to wildlife and ecosystems generally. Many of the comments in this document relate to issues that affect all wildlife, not just the five species that are the subject of the Draft Policy. These include most of the comments in section 3 (Urgent necessity for transformational change), section 4 (New Eco-centric vision), section 5 (Implications of Harmonious Co-existence approach), section 6 (Ecologically sustainable use) and section 7 (Decision-making and conflict resolution). We request that those comments be taken into account in formulating the proposed national Policy on Biological Diversity and any other policies that may be formulated to implement the One Health and One Welfare Approaches.
4. The Draft Policy (and the proposed National Biodiversity Policy) should respond to the urgent need for transformational changes in order to achieve the vision of living in Harmony with Nature adopted by the Conference of the Parties to the Convention on Biological Diversity.
5. The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (“IPBES”) defines transformative change *“as a fundamental, system-wide reorganization across technological, economic and social factors, including paradigms, goals and values.”* Our primary point of departure is that a fundamental paradigm shift in human beings’ relationship with nature must occur if we are to reverse the catastrophic decline in biodiversity. The policy objectives and outcomes of the Draft Policy should be informed by this perspective.

- 5.1. Humanity has overstepped the planetary boundary in respect of biological diversity and consequently has entered a “danger zone” where it will be negatively affected by sudden events (e.g. pandemics) and irreversible changes. Part of the reason is that we have collectively failed to value the ecological systems (and the individuals that comprise them) on which our survival ultimately depends. Instead of conserving that which has been entrusted to us, we have over-exploited terrestrial and marine ecosystems.
- 5.2. The trade, sale and hunting of South Africa’s wild animals is driven by commodification, commercialisation and profit rather than by robust science, ethics or compassion and does not factor in the likely effects of climate change. The threats wild animals are facing are powerfully linked to South Africa’s current conservation policies of consumptive use and inadequate policing and enforcement measures.
6. We are of the view that a new approach to human beings’ relationship with Nature is not only warranted, but is absolutely critical. Current legal frameworks are not succeeding in stemming the tide of rapid biodiversity decline. What is required is a complete overhaul of the legal and administrative system, and a change in the relationship between people and Nature. There is now little value in developing biodiversity-related policies and laws that aim to achieve gradual, incremental changes because they will not achieve the rapid, transformational change that is needed to reverse biodiversity losses. Boldness is imperative and time is limited.

Harmonious co-existence and ecologically sustainable use

7. We appreciate and commend the Department on the significant progress reflected in the proposal in the Draft Policy for an expanded understanding of “sustainable use” that that is more aligned with the principle of ecologically sustainable use in section 24 of the Constitution. However, we believe that the Draft Policy (and the proposed National Biodiversity Policy) must go further. For example, in our view:
 - 7.1. elements of the definition of “sustainable use” and use of certain exploitative terminology still perpetuate a utilitarian perception of wildlife; and
 - 7.2. .despite the progress made regarding the proposed abolition of harmful and ecologically unsustainable practices, the application of “sustainable use” as envisaged by the Draft Policy, is inconsistent with the duty to promoted conservation in section 24 of the Constitution.
8. As long as “use” of wildlife is the overarching principle guiding how humans relate to other species, it will not be possible to achieve transformation change. What is necessary is a transition away from current principles of “sustainable use” which view wild animals in relation to their use value to humans.
9. The Draft Policy presents a critical opportunity to introduce the paradigm shift necessary to transition away from principles of “sustainable use” altogether, towards harmonious coexistence between people and Nature and to align it with an integrative interpretation of section 24 of the Constitution. It must be further developed with the need to achieve rapid, transformation change, in mind.

Elimination of trophy hunting

10. We oppose the proposed trophy hunting of leopards. Animals of the five species should not be killed without adequate justification (e.g. when there is no less harmful means of protecting the best interests of the group, or population). In our view, selecting individuals and killing them to gratify the ego of a hunter who wants a trophy, is not an adequate justification. It is not in the best interest of the animals concerned, the species, or the ecological communities within which they play important roles. It is contrary to the ethos of conservation, undermines efforts to enhance people's respect for Nature, and is inconsistent with indigenous African values that will be important in promoting the necessary transformation of human/ wildlife relationships in South Africa.

Additions to Policy

11. In section 8 of this document we have identified matters that are not addressed in the Draft Policy but which we believe should be included in the final version of the policy, namely: a transformative vision of harmonious co-existence, provision for a transparent, accountable, permitting system, provision for enhanced enforcement capacity, and provision for reducing domestic and international demand for the body parts of these species.

Amendments to Draft Policy

12. As we explained above, in our view, this means that the Draft Policy should be revised:
 - 12.1. by changing some of the definitions to align with an eco-centric approach;
 - 12.2. to include principles;
 - 12.3. to prohibit of all uses of the five species that cannot be justified as being the best interests of those species, the individual animals affected, and the ecosystems to which they belong, including trophy hunting, any trade in their body parts, and any trade in live animals (other than for conservation purposes);
 - 12.4. to include policy outcomes that facilitate greater enforcement of laws relevant to the conservation of the iconic species in general, and biodiversity in particular; and
 - 12.5. to include policy objectives that promote a transparent and accountable permitting system.
13. Our specific comments on sections of the Draft Policy are set out in sections 9 to 16.

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1. INTRODUCTION

The comments are submitted jointly by the EMS Foundation and by the Wild Law Institute.

We begin with our general comments on the Draft Policy (sections 3 to 7). Many of these comments relate to conservation as a whole and consequently should be addressed in the context of preparing the proposed national policy on the conservation and ecologically sustainable use of biological diversity.

We then identify matters that are not addressed in the Draft Policy but which we believe should be included in the final version of the policy (section 8) before making specific comments on sections of the Draft Policy (sections 9 to 16).

2. SUPPORT FOR THE DRAFT POLICY

We are wholly supportive of the preparation of the Draft Policy as a first step towards a reformed approach to biodiversity management in South Africa, and support:

- the finding of the Draft Policy that the absence of a national policy regarding the management of South Africa’s biodiversity has, amongst other things, resulted in unsustainable and unacceptable practices that compromise the species’ survival in the wild and place the broader tourism-based economy at risk;¹
- the Draft Policy’s aim to set out “policy objectives and outcomes towards achieving secured, restored, and rewilded natural landscapes with thriving populations of elephant, lion, rhino and leopard as indicators for a vibrant, responsible, inclusive, transformed, and sustainable wildlife sector”; and
- the desire reflected in the Draft Policy to redefine “sustainable use” in a manner that is consistent with section 24 of the Constitution (but also have make proposals in that regard).

2.1 Qualified support for proposed interventions

Subject to our specific comments below, we are also broadly supportive of:

- the 3 proposed species management policy interventions;²
- the 4 trade-related policy interventions (although we have concerns about the potential sale of ivory, rhino horn and lion bone stock-piles;³

¹ Draft Policy, page 12.

² Immediately halt domestication and exploitation of lion and close captive lion facilities; reverse domestication and intensification of management of rhino; to enhance the conservation and ecologically sustainable use of leopard.

³ No ivory trade under current conditions; no rhino horn trade under current conditions; prevent live export ex situ of the iconic species; coherent ivory and horn stockpile management and disposal.

- 4 of the 5 priority conservation policy interventions (we oppose the hunting of the five iconic species);⁴ and
- the 3 conservation transformation interventions;⁵ and
- the 2 conservation capacity policy interventions.⁶

2.2 Support for development of national conservation and ecologically sustainable use policy

The Draft Policy recognises that *“the lack of a clear vision for of the future of South Africa’s wildlife and associated wildlife sector, is impeding inclusive, integrated and synergistic growth of the wildlife economy and contributes to the building of tension and increasing incidents of litigation against government,”*⁷ and further that *“there is no overarching national policy on biodiversity nor one specific on wildlife conservation and sustainable use that guides a coherent and integrated approach by the different provinces and conservation agencies, especially in the light that conservation is a concurrent competence between provinces and national.”*⁸

We recognise that the Draft Policy has been developed to implement the recommendations contained in the report of the High-Level Panel that was appointed to review policies, regulatory measures, practices and policy positions that are related to hunting, trade, captive keeping, management and handling of elephant, lion, leopard and rhinoceros (“the HLP Report”). Consequently, it only applies to elephant, lion, leopard and the two species of rhinoceros (“the five species”). However, we agree with the conclusion reflected in the Draft Policy that there is an urgent need for such an overarching conservation policy in South Africa, which will promote a consistent approach and practices at the national and provincial levels (given that ‘conservation’ is a concurrent national and provincial competence). In this document we refer to this proposed national policy as the “proposed National Biodiversity Policy”.

Given the importance of the proposed National Biodiversity Policy, it is important the Department commence the process of developing it in parallel to the development of the Draft Policy.

The Draft Policy should be designed to be consistent with the proposed National Biodiversity Policy which will provide a framework for species-specific policies such as those regarding the five species. Consequently, in commenting on the Draft Policy we have also made a number of comments that are relevant to the proposed National Biodiversity Policy. In particular, we recommend that the proposed National Biodiversity Policy, and by implication, the Draft Policy:

- are explicitly oriented towards achieving the transformative change which the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (“IPBES”) and the Conference of

⁴ Increased wildness, naturalness and well-being of fauna; adopt One Welfare approach; reconceptualised protected areas.

⁵ Transformative African approach to conservation and ecologically sustainable use consistent with ubuntu; enhance ecologically sustainable use, especially ecotourism and its benefit flows; to promote and enhance human wildlife co-existence, while empowering and capacitating people living with or near wildlife.

⁶ Targeted capacity development; improve the evidence base for best practice.

⁷ Para 9.3.1.1, HLP Report.

⁸ Para 9.3.1.1, HLP Report.

the Parties (“COP”) to the Convention on Biological Diversity (“CBD”) have identified as being necessary to stop and reverse the catastrophic decline in biological diversity (much of which has occurred in the last 50 years); and

- initiate a process of transforming how decisions in relation to wild species and ecosystems are made from an approach that focusses on the short-term interests of people, (i.e. an “anthropocentric” approach) to a more inclusive approach that aims to make decisions on the basis of what is in the best interests of ecological communities as a whole, including the humans who are supported by those ecosystems (i.e. an “eco-centric” approach).

3. URGENT NECESSITY FOR TRANSFORMATIONAL CHANGE

Perhaps the most important point to take into account when developing biodiversity-related policies and laws at this time, is that policies that aim to achieve gradual, incremental changes have little value because they will not achieve the urgent, transformational change that is necessary. A new approach to human beings’ relationship with nature is not only warranted, it is absolutely critical. Boldness is imperative and time is limited.

The Draft Policy and proposed National Biodiversity Policy must reflect the global scientific consensus that:

- the dominant forms of civilizations in the world today are neither ecologically sustainable nor compatible with living in harmony with Nature;
- the consequence of current human activities continuing unchanged (referred to as “business as usual”) will be disastrous for humanity and well as for biodiversity; and
- reversing the catastrophic decline in biological diversity can only be achieved by rapid, fundamental, and systemic transformation of almost every aspect of these civilizations.

3.1 Catastrophic loss of wild species and habitats

It is difficult to overstate the threats to wildlife throughout the world. Humans have triggered the sixth period of mass extinction (the last occurred about 65 million years ago and was almost certainly caused by an asteroid colliding with Earth). According to WWF's 2018 Living Planet Report⁹ humans have destroyed 83% of all mammals and half of all plants and that, even if the destruction were to end now, it would take 4 to 7 million years for the natural world to recover.¹⁰

Africa is particularly rich in biodiversity and is the only remaining region to have significant numbers of large mammals. According to the WWF Living Plant Report 2020, between 1970 and 2016 the abundance of wild species in Africa fell on average by 65%. Overexploitation, particularly of fish and mammals, is a major threat (over 35% of the monitored populations for these two groups have declined) as are invasive

⁹ <https://www.worldwildlife.org/pages/living-planet-report-2018>

¹⁰ <https://www.theguardian.com/environment/2018/oct/15/humanity-is-cutting-down-the-tree-of-life-warn-scientists>.

species and diseases. The carnage is being driven primarily by human activities that cause the degradation and loss of habitats and by excessive killing of wildlife e.g. fishing and hunting. In many cases the loss is accelerating.

On 6 May 2019 the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (“IPBES”), released the most comprehensive assessment of global biodiversity ever undertaken.¹¹ It revealed that the global loss of species (including insects) is probably a greater threat to humanity than climate change¹² (although both issues are closely linked and must be dealt with simultaneously.)

In 2020 the CBD Secretariat published the [Global Biodiversity Outlook 5](#)¹³ (“GBO-5”) which revealed that the international community did not fully achieve any of the 20 biodiversity targets set in 2010 in Aichi in Japan.¹⁴ The following statements in GBO-5 are particularly significant and relevant to this vision.

- 1.1. *Biodiversity is declining at an unprecedented rate, and the pressures driving this decline are intensifying. (Overview)*
- 1.2. *Options are available to the global community that could simultaneously halt and ultimately reverse biodiversity loss, limit climate change and improve the capacity to adapt to it and meet other goals such as improved food security. These pathways to a sustainable future rely on recognizing that bold, interdependent actions are needed across a number of fronts, each of which is necessary and none of which is sufficient on its own. This mix of actions includes greatly stepping up efforts to conserve and restore biodiversity, addressing climate change in ways that limit global temperature rise without imposing unintended additional pressures on biodiversity, and transforming the way in which we produce, consume and trade goods and services, most particularly food, that rely on and have an impact on biodiversity.*
- 1.3. *Navigating the available pathways to the 2050 vision involves consideration of all the multiple aspects of our relationship with nature and the importance we attach to it. Solutions need to seek an integrated approach that simultaneously address the conservation of the planet’s genetic diversity, species and ecosystems, the capacity of nature to deliver material benefits to human societies, and the less tangible but highly-valued connections with nature that help to define our identities, cultures and beliefs.*
- 1.4. *Biodiversity is critical to both the 2030 Agenda for Sustainable Development and the Paris Agreement under the United Nations Framework Convention on Climate Change, each adopted in 2015.¹⁵*
- 1.5. *The conservation and sustainable use of biodiversity may therefore be regarded as foundational to the whole 2030 Agenda.*

¹¹ <https://www.ipbes.net/news/ipbes-global-assessment-summary-policymakers-pdf>

¹² <https://www.theguardian.com/commentisfree/2019/may/06/biodiversity-climate-change-mass-extinctions>

¹³ Secretariat of the Convention on Biological Diversity (2020) Global Biodiversity Outlook 5 – Summary for Policy Makers. Montréal.

¹⁴ Global Biodiversity Outlook 5 – Summary for Policy Makers, p.4. “At the global level none of the 20 targets have been fully achieved, though six targets have been partially achieved (Targets 9, 11, 16, 17, 19 and 20).”

¹⁵ Global Biodiversity Outlook 5 – Summary for Policy Makers, p.3

- 1.6. *Conversely, the achievement of the Sustainable Development Goals contributes to the conservation and sustainable use of biodiversity.*
2. The rapid and catastrophic decline in populations of wild species (including insects) has occurred despite the existence of international treaties,¹⁶ targets and action plans, regional treaties¹⁷ and protocols, and national law designed to protect wild species and their habitats. It is patently clear that conventional environmental laws and policies cannot stop, let alone reverse, this decline. A fundamental and decisive change of approach which addresses the roots of the problem.
3. The need for fundamental, systemic change has been recognised by IPBES. According to IPBES's Global Assessment Report, “[G]oals for 2030 and beyond may only be achieved through transformative changes across economic, social, political and technological factors” (IPBES 2019).

3.2 Meaning of “transformative change”

IPBES defines transformative change as: “a fundamental, system-wide reorganization across technological, economic and social factors, including paradigms, goals and values.”

The IPBES Global Assessment of Biodiversity and Ecosystem Services concluded that plausible pathways exist for achieving the 2050 Vision for Biodiversity in conjunction with key human development goals. Following these pathways will require fundamental changes in development paradigms and in society, including transforming governance systems, reducing inequality, using land, water, energy and materials sustainably, and changing consumption habits, food systems, and global value chains.

In essence, there is now a global consensus that:

- the dominant forms of civilizations in the world today are neither ecologically sustainable nor compatible with living in harmony with Nature;
- the consequence of current human activities continuing unchanged (referred to as “business as usual”) will be disastrous for humanity and well as for biodiversity; and
- reversing the catastrophic decline in biological diversity can only be achieved by rapid, fundamental, and systemic transformation of almost every aspect of these civilizations.

3.3 IPBES Pathways

48. The GBO-5 Summary for Policy Makers states that:

Each of the measures necessary to achieve the 2050 Vision for Biodiversity requires a significant shift away from ‘business as usual’ across a broad range of human activities. The shape and nature of such transformative change can already be identified through a series of transitions Each of these transition areas involves recognizing the value of biodiversity, and enhancing or restoring

¹⁶ These include the Convention on International Trade in Endangered Species (CITES), the Convention on Biological Diversity (CBD), the Bonn Convention on migratory species and the Ramsar Convention on wetlands of international significance.

¹⁷ For example the SADC Wildlife Protocol

the functionality of the ecosystems on which all aspects of human activity depend, and at the same time recognizing and reducing the negative impacts of human activity on biodiversity; thus enabling a virtuous cycle – reducing the loss and degradation of biodiversity and enhancing human wellbeing. The transitions will play out at a range of scales and are interdependent. (p.15)

The eight transitions that the report identifies concern: land and forests; sustainable freshwater; sustainable fisheries and oceans; sustainable agriculture; sustainable food systems; cities and infrastructure; sustainable climate action; and the transition to a “one health” approach which integrates efforts to enhance human, animal and ecosystem health.

4. NEW ECO-CENTRIC VISION

4.1 Need for a transformative vision for National Biodiversity Policy

Many past and current biodiversity -related policies reflect a perspective which conceives of wildlife and their habitats as economic assets in biodiversity sub-sector of the economy. This has resulted in the application of the logic of the market to decision-making in relation to wildlife (e.g. maximising the output of goods and services in order to maximize profit) and to defining wildlife as mere assets or commodities to be managed, bought and sold in order to contribute to gross domestic product (“GDP”). The proposed National Biodiversity Policy must have a very different vision if it is to contribute to transformative change.

4.2 Aspiration to live in harmony with Nature

The Conference of the Parties (COP) to the Convention on Biological Diversity have adopted a 2050 Vision titled “Living in harmony with nature” which states that “by 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people”. This was the vision used to guide the Strategic Plan for Biodiversity 2011-2020 and it has been recommended that it be r contains elements that could be translated into a long-term goal for biodiversity and provide context for discussions on possible biodiversity targets for 2030 as part of the post-2020 global biodiversity framework.¹⁸

This is similar to the statement in the 2024 Strategic Plan 2024 of the Department of Forestry, Fisheries which states: "A prosperous and equitable society living in harmony with our natural resources". However the Departments version perpetuates the strongly anthropocentric idea that Nature consists of natural resources for humans to use.

¹⁸ Decision X/2 of the Conference of the Parties to the Convention on Biological Diversity CBD/COP/DEC/14/230 November 2018

4.3 Harmonious co-existence

Instead of construing Nature as a commodity to be utilised for human benefit, we propose a vision of harmonious co-existence based on the belief that reorienting governance systems so that they seek to achieve harmonious co-existence with, instead of the sustainable use of, indigenous species is necessary to bring about the transformative changes necessary to reverse declines in wild populations and biological diversity and to achieve dramatic improvements in ecological health.

Harmonious co-existence is based on the understanding that wild animals cannot be effectively protected within legal frameworks based on the anthropocentric view that wild species are natural resources available to be used by humans. Effective long-term conservation will only be possible if societal attitudes to wildlife recognise the intrinsic value of wildlife and the roles that they play within ecosystems, and this is reflected in laws and governance systems. For example, recognising and enforcing a legal right for wildlife to be wild and free (i.e. a right of self-determination) is fundamental to restoring the ecological health of Earth and the wellbeing and dignity of individual animals.

Perhaps the most fundamental aspect of the proposed transition from sustainable use to harmonious co-existence is that it must reflect a transition from an anthropocentric approach to an eco-centric approach.

From an eco-centric approach it is clear that humans are but one species of animal among many and that the wellbeing of humanity is dependent on maintaining the integrity, health and vigour of the whole community of life we call “Earth”. From this perspective humans are part of Nature and it is fundamentally important that they act as responsible members of the Earth community and learn how to live well (i.e. meet their reasonable needs and aspirations) in ways that do not degrade that community. In other words, humans need to enhance their own wellbeing primarily by contributing to the ecological communities within which they exist, rather than at the expense of those communities. In other words we must live harmonious within Nature or Earth rather than understanding Nature / Earth as being separate from us and existing merely as the stage or environment on which human lives play out.

Anthropocentric governance systems cast humans and human institutions in the role of managers of the environment and “natural resources”. However, from the eco-centric perspective, the idea that humans are separate from, and superior to, the rest of the Earth community, and are responsible for and/or are capable of, managing the Earth community, is hubris.

From this perspective, each human, and humans collectively, have a duty to strive to act in ways that promote the good of the whole community of life, that respects the independence of other beings, that recognise the interdependence of all beings and to the extent that they fail to do so, to do whatever possible to remedy any harm and restore good relationships. This may be characterised as maintaining “right relationship”.

5. IMPLICATIONS OF HARMONIOUS CO-EXISTENCE APPROACH

5.1 Aspects of harmonious co-existence

In our view, applying harmonious co-existence as the overarching purpose guiding the governance of human interactions with indigenous species will, at a minimum require humans:

- to adopt an eco-centric perspective and to recognise that the other beings with whom we have co-evolved have intrinsic value that is not determined by how useful they are to humans;
- to respect the fact that other beings should have the freedom to play their ecological roles and to express their inherent qualities and characteristics, and in the case of wildlife, to make their own choices;
- to accept that humans have a duty to refrain from killing, or interfering with the freedom of other beings, without adequate justification;
- to strive to live in “right relationship” with other beings; and
- to restore any ecological degradation that they cause.

5.2 Governance implications

Shifting from a “sustainable use” paradigm to one of “harmonious co-existence” will necessarily require a transformed governance system. This should be addressed in the proposed National Biodiversity Policy but the Draft Policy should be drafted in a manner that is consistent with implementing this transformation.

A transformed governance system should include some or all of the elements listed below.

- A revised system for protecting animal welfare.
- A recognition of the rights of Nature in general, and in particular, the rights of wildlife to be wild and free (unless there are strong justifications for limiting those rights).
- Legal, administrative and financial means of promoting and supporting large-scale ecosystem restoration, “rewilding” and the re-establishment and enhancement of biodiversity corridors and migratory routes for wild species. Ecosystem restoration on a massive scale is a necessary in order to move out of the dangerous situation that we are now in as a consequence of transgressing the biodiversity “planetary boundary” and to address pressing environmental issues, including climate change.
- Legal, administrative and financial measures to enable communities to act as effective custodians of wildlife and as management authorities for protected natural environments and other forms of protected area.

- Innovative institutional arrangements and other measures to resolve human-wildlife conflicts and to limit and regulate human predation of other species.
- The incorporation of African philosophical understanding of the importance of maintaining respectful relationships with aspects of Nature and the role of customary law use in implementing the vision.
- Measures to mitigate the risk of zoonotic diseases and increase biosecurity security general by adopting the “One Health” approach that address environmental health, animal and human health in integrated ways.
- The development of economic opportunities based on non-consumptive relationships with wildlife.
- South Africa’s role within the region and internationally, and particularly how it will seek to implement key conventions such as CITES.

In order for the Draft Policy to reflect this approach it should provide, among other matters, that all individuals of the five species should remain wild and humans may not kill, harm or restrict the freedom of movement of any animals of the five species, without adequate justification (e.g. to achieve a conservation objective).

6. ECOLOGICALLY SUSTAINABLE USE

6.1 Moving beyond inappropriate reliance on “sustainable use”

We welcome the use of the term ‘ecologically sustainable use’ in the Draft Policy to emphasize that the priority is to sustain ecosystems rather than use. Furthermore, as the EMS Foundation and others have pointed out in many previous submissions, the ways in which “sustainable use” has been interpreted and used in the past as an over-arching principle, was inconsistent with section 24 of the Constitution, several judgements of the Constitutional Court, and with the attainment of conservation objectives.

The way in which “sustainable use” was employed as an overarching guiding principle entrenched the harmful idea that all relationships between humans and other species is one of user and used. Humans have always related to other beings in a many ways other than using them, and still do. It is important to place restrictions on human uses of other species to ensure that they do not cause unjustifiable harm, but defining all human interactions with wildlife (e.g. bird watching) as “use” is inaccurate and subsumes the rich variety of interactions to sub-categories of “resource use”.

Furthermore, it is important that the new approach reflects an integrative approach which that the individual animals that make up a species and the components of biodiversity, must be respected and projected. The integrative approach, as its name suggests, places greater emphasis on the relationships between individual animals and the environment.

Our reading of the Draft Policy suggests that the Department has accepted the general critique of “sustainable use” that the EMS Foundation and many other organizations have made in the past. Consequently we do wish to belabour the point. However to reinforce the importance of moving beyond “sustainable use” as the overarching principle, we have included a brief critique of this approach in **Annex A** and re-iterate below the importance of taking an integrative approach.

6.2 Integrative approach

Foundational to an integrative approach is the notion that an attitude of respect must be adopted towards individual animals that make up a species and the components of biodiversity. The integrative approach, as its name suggests, places greater emphasis on the relationships between individual animals and the environment.¹⁹ The goal is not simply to exploit nature for our economic benefit – it is to live within relationships of respect with other humans, animals and the environment. Instead of viewing wild animals as commodities from which some kind of short-term economic benefit can be derived, South Africa requires a policy that views wild animals as integrally connected to the country’s conservation and tourism reputation, possessing inherent value.

The concept of wildlife as individuals to be respected has gained recognition in the South African courts. As has been noted in previous submissions to the Department, in recent years the Constitutional Court, Supreme Court of Appeal and High Court have all provided guidance on the framework to be adopted in interpreting the environmental right in relation to wild animals. Specifically, the courts have recognised the ‘intrinsic value of animals as individuals’ as well as the relationship between conservation and animal welfare, and relating welfare and protection of biodiversity to the constitutional right to have the “*environment protected ... through legislative and other means*” in section 24 of the Constitution.²⁰

The Draft Policy has made great strides towards a more integrative approach to section 24, for which we commend the Department. It expressly recognises that a move to a systems-based approach to sustainability needs to be adopted, and that much stronger recognition of the primacy of ecological sustainability in line with the Constitution is required (including the suggestion from Muir that the environmental right be construed as fundamental, rather than a right requiring only progressive realization).²¹ The expanded definition of “sustainable use” no longer simply focuses on sustainability from the perspective of ensuring integrity of the ecosystem as a whole (as contained the in current definition in NEM:BAA), but also includes the express stipulation that use is sustainable if “(d) *it is humane, and does not compromise the wellbeing of any animal of a species of wild animal*” and “*ensures continued and future benefits that are fair, equitable and meet the needs and aspirations of present and future generations of people.*”

¹⁹ Bilchitz, David, Exploring the Relationship between the Environmental Right in the South African Constitution and Protection for the Interests of Animals (February 15, 2017). Available at SSRN: <https://ssrn.com/abstract=2942112> or <http://dx.doi.org/10.2139/ssrn.2942112>.

²⁰ *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* 2017 (4) BCLR 517 (CC); *Lemthongthai v S* 2015 (1) SACR 353 (SCA); *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* [2008] 4 All SA 225 (SCA) para 38.

²¹ Draft Policy, page 31.

6.3 Expanded definition of “sustainable use”

Section 24 places ecological sustainability at the centre of its approach to how environmental policy should be designed. Ecological sustainability is, therefore, the key to realising this right. Development projects should support this key concept and development considerations must be weighed against this criterion, with a further emphasis on inter-generational equity.

The Draft Policy proposes a definition of “sustainable use” that “*emphasises the need to secure ecological sustainability through ensuring ecological resilience, to consider economic, social and environmental factors collectively, and the welfare and wellbeing of animals, and that use is in the public interest, and is fair and equitable*”. We commend the Minister and the Department on this progressive approach and applaud the motivation behind the attempt to expand the definition of sustainable use of biological resources (e.g. at para 5.4.2.2 on pp. 32-33).

However, we believe that the Draft Policy should not attempt to define terms such as “ecologically sustainable use” with the precision that will be required for legislation, but should rather indicate what the terms should encompass, and how and when they should be applied.

For example, the Draft Policy (and in due course the proposed National Biodiversity Policy) should make it clear that the principle of ecologically sustainable use should only be applied where a particular use that is potentially harmful to biodiversity has been determined to be justifiable, in order to limit the degree of use in the interests of the whole community of life.

6.4 Inappropriate terminology

Despite the fact that the Draft Policy is moving in the right direction, it perpetuates the Department’s interpretation of section 24 of the Constitution to date, essentially focusing on “*sustainable utilisation...and development*” of biological resources and the concept of intergenerational equity is still construed from the perspective of only human beings, and does not consider the dignity and equality of other animal members of the ecosystem.²²

While we recognise that this terminology is extracted from existing legislation and regulations,²³ the Draft Policy states that its aim is “*to provide clarity of direction, signaling a clear policy intent to all stakeholders. This Policy Position will provide the basis for review of legislation relating to biodiversity and protected areas, and the regulations promulgated thereto, as well as providing a framework for Provinces to undertake review and possible amendment of their relevant legislation*”. The content of the Draft Policy and how it uses particular terminology is therefore critical, as it will influence how and to what extent existing legislation and regulations at a national and provincial level is reviewed and amended. Ensuring that terminology defined in the Draft Policy reflects a shift away from anthropocentric considerations of wild animals as resources, to animals as individual beings with intrinsic value, is critical. There needs to

²² Bilchitz, David. 2010. Does transformative constitutionalism require the recognition of animal rights? *Southern African Public Law* 25: 267–300.

²³ NEM:BA defines “**sustainable**”, in relation to the use of a biological resource, as “*the use of such resource in a way and at a rate that—*
(a) *would not lead to its long-term decline;*
(b) *would not disrupt the ecological integrity of the ecosystem in which it occurs; and*
(c) *would ensure its continued use to meet the needs and aspirations of present and future generations of people;*”

be a move away from terminology that promotes extraction and consumptive use to one of protection, interconnectedness and kindness.

The Draft Policy consistently uses terminology which reinforces the Department’s treatment of wild animals purely as resources, commodities whose use is defined in relation to their utility to humans, ignoring their own intrinsic value. For example, the definition of “sustainable use” itself in the Draft Policy refers to its being in relation to the use of “biological resources”, a term which is used repeatedly throughout the Draft Policy.

The current references to wildlife as “resources” and the “wildlife economy” ignores wild animals’ intrinsic value and compels that they are only valuable from an economic perspective as a commodity for human consumption. The wellbeing of that animal does not matter. Such terminology is not justifiable based on an eco-centric approach and is arguably inconsistent with the Department’s conservation mandate as contained in section 24 of the Constitution, a point we have addressed in the preceding section.

Given that Department’s primary mandate is conservation; it is obliged, first and foremost, to holistically protect by all means, our natural heritage and healthy biodiverse environment, before any economic development can ever be considered. The kind of utilitarian language used in the Draft Policy does not reflect the values of the constitution or sentiment expressed by the courts on this matter.²⁴ Use of language which describes wild animals simply as “resources” and part of an “economy” disregards the various courts’ interpretations of section 24 of the Constitution, and that wild animals should be valued as sentient individuals with intrinsic value, and not just as resources to be exploited for human benefit.

7. DECISION-MAKING AND CONFLICT RESOLUTION

Almost all decisions that affect human-wildlife relationships are made from an anthropocentric perspective with limited (if any) attempt to determine what is in the best interests of the affected individual animals, species and ecosystems, and in the long-term best interests of the community of life as a whole.

Implementing a harmonious co-existence approach with a view to living in harmony with Nature will inevitably require fundamental changes to how decisions are made in every sector and level of a human society. This will require innovative changes to institutions and decision-making principles and processes to ensure that that which is conducive to life is prioritised over economic considerations. For example it will be necessary to gather new kinds of information to inform decisions, to involve people who have intimate relationships with the affected places and beings and can help interpret their needs, and monitor the effects of decisions and make corrections where necessary.

²⁴ *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* 2017 (4) BCLR 517 (CC); *Lemthongthai v S* 2015 (1) SACR 353 (SCA); *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* [2008] 4 All SA 225 (SCA) para 38.

7.1 Guiding principles

One of the ways of affecting change in how decisions are made is to prescribe principles that decision maker must take into account in making decisions.

We are of the view that the Draft Policy's objective of defining policy objectives and outcomes towards achieving its vision would be better achieved through articulating a set of principles to guide and inform the development and review of legislation and policy, Norms and Standards, and practices in relation to wildlife going forward. Having a set of principles in place will go a long way in achieving policy certainty and cohesion.

We propose the following principles for consideration.

Duty to strive for harmonious co-existence

Human beings must strive to live in harmony within the community of life and to respect and defend the rights of all beings to fulfil their role within that community. This means that humans must take proactive steps to contribute to the integrity and health of ecological communities.

This is the central principle and the following principles can be understood as means of ensuring that humans move towards, rather than away from, harmonious co-existence within ecological communities.

The Draft Policy should state clearly that humans co-evolved in Africa with elephants, lions, leopards and rhinos, our past, present and futures are intertwined and that it is our responsibility to seek to live in harmony with our ancestral compatriots, and to resolve any conflicts in the best interests of the whole community of life to which we all belong.

Sustain life

Decision-making should prioritise the conservation, protection and restoration of the ecological communities, processes and functions which sustain life. In order to have any realistic prospect of reversing the catastrophic global decline in wild species and restoring ecological health we have to transform our approach by adopting an eco-centric approach that recognises that human wellbeing is derived from Nature and sustaining human wellbeing requires restoring ecological health. Seeking economic growth at the expense of life is counter-productive. We need to sustain life in all its diversity, not the use and exploitation of living beings.

The decisions to eliminate the farming of lions, to end the trade in their body parts and to reverse the process of domesticating rhinos, is consistent with this principle.

Protect life at every level

Respect for individual animals (which requires protecting their wellbeing) must be integrated with conserving the species and the environment. The current division between protecting the wellbeing of individual animals and conserving the species (which is an aggregation of individuals) is unhelpful and misplaced.

One of the ways of giving effect to this principle is to require that decisions that affect elephants, lions, leopards and rhinos must involve a holistic consideration of the wellbeing of the individual, group, population and species in order to determine what is in their best interest and in the long-term best interest of the community of life. In this regard see the principle below, titled “Prioritise the collective interests of the whole community.”

It also means that the Draft Policy should address the importance of landscape level interventions to restore some of the habitats, ranges, territories and migration routes of the five species.

Value other beings

This will involve recognising the intrinsic value of individual wild animals, wild species, ecosystems and of Nature as whole. Humanity does not exist in a vacuum, we have come into being, and continue to exist, by virtue of our on-going relationships with Nature and we cannot hope to continue to exist without valuing the other members of the community of life and upholding their rights to exist.²⁵

Giving effect to this principle will require explicitly requiring that consideration must be given to the wellbeing of other beings.

It will also require changing the language we use in relation to Nature and other aspects of Nature from terminology that frames them as economic assets without agency to relational language that recognises the subjectivity and inherent value of individuals as well as collectives. For example references to indigenous wildlife as “natural resources” or “indigenous biological resource” should be replaced with more neutral terms such a “indigenous wildlife” or “African animals”.

Using language that accurately identifies the five species as indigenous Africans with claims to ancestral territories and migration routes is important to change how they are perceived by humans and to encourage humans to value them as beings rather than assets.

Respect the rights of other beings to co-exist with humans

People must respect the rights of all the other members of the ecological communities to which we belong so that all may live well in harmony with one another. In order for humans to co-exist harmoniously with the other beings with which we have co-evolved, we must recognise that every being or aspect of Nature (including people) have, at a minimum, the right to exist, the right to occupy a physical place and the right to interact with other beings in a manner that allows it to fulfil its unique role in ecological and evolutionary processes.²⁶

²⁵ The sustainable use approach is based on the misplaced belief that the value of wildlife and wild habitats is determined by their use value to humans. This is a deeply flawed anthropocentric approach which only sees Nature through the eyes of the market and approaches conservation and wildlife as a sector of the economy. One of the core reasons why conservation is failing is because we value wildlife and Nature only as commodities. In fact other species and ecological communities are far more valuable because they are essential to all that really matters to humanity including our continued existence.

²⁶ Nature rights, like human rights, are conceived of as inherent, inalienable rights that arise from the mere existence of the rights holder. Recognising the rights of Nature has a number of important advantages. For example: (a) it facilitates a transition away from strongly anthropocentric worldviews by requiring the recognition of the other-than-human beings with whom humans co-evolved (“ecological beings”) as subjects with the capacity to be rights-holders, rather than objects or resources; (b) it enables the machinery of

The Draft Policy should explicitly recognise that elephants, lions, leopards and rhinos have the rights to exist, and to live wild in a habitat that is conducive to their long-term wellbeing, and that humans have a duty to ensure that those rights are protected.

Enacting legislation that recognised these right and the corresponding human duties to respect those rights would be the most effective way of achieving the transformative changes that is necessary and would make South Africa a world leader in conservation.

Protect the freedom to be wild

Conservation efforts tend to be focussed on how to manage wildlife rather than people. Wildlife do not require management to thrive in their natural habitats, although some management interventions may be necessary to mitigate the impacts of human activities (e.g. the consequence of fencing a protected area). It is more important to protect their right to be wild and free of unjustifiable human intervention, and to manage humans to ensure that they respect this right.

The decisions to end lion farming and to reverse the domestication of rhinos are consistent with this principle.

Act in the best interests of animals in our care or custody

If humans assume any degree of control over the lives of wild species (e.g. by confining them within an area) they must simultaneously accept a corresponding degree of responsibility for the wellbeing of those animals (as well as other species like plants). Any person (including juristic persons like companies) that assume the role of custodian of wildlife must simultaneously assume responsibilities in relation to that wildlife.

In relation to this Draft Policy, any person who assumes a degree of control over one or more elephants, lions, leopards or rhinos must be subject to a “duty of care” which includes the duty to take measures to ensure their long-term wellbeing and to take any decisions that affect them, in their best interests. The degree of responsibility (i.e. the measure that must be taken in the interests of the animals) must be proportional to the degree of control or power exercised over the animals. The greater the degree of control, the greater the degree of responsibility.

This duty must also apply to people owners and occupiers of land who control all or part of the habitat or territories essential to those animals. For example, the owners and occupiers of land on which elephants, lions, leopards or rhinoceros live should have a duty to take reasonable measures ensure that they have sufficient habitat, food and protection from being harmed by humans.

the State (e.g. government officials, the police and courts) to be used (albeit in an adapted form) to regulate how humans and juristic persons relate to ecological beings; and (c) this approach is being driven through-out the world by a fast-growing social movement

Prevent unjustifiable killings and other harm

The State, and owners and occupiers of land on which elephants, lions, leopards or rhinoceros live, must be responsible for taking measures to ensure that no animal is killed or harmed by humans without adequate justification (and except in emergencies, with prior written authority.)

This principle raises the question of what would constitute “adequate justification”. In South Africa, humans killing of individuals of the five species is authorised for two main reasons: (a) because the individual in question is regarded as a “damage-causing animal”; and (b) for trophies. As we explain in section # [Discontinue Trophy Hunting] in our view, the desire to have a trophy does not constitute an adequate justification, regardless of whether or not the trophy hunting generates economic benefits. The killing of “damage-causing animals” is discussed under the following principle.

Restrictions on the rights of wild animals must be justifiable and proportional

In situations in which a company, organ of state or other group of human beings will want to do something that will restrict the rights or freedom of other beings (in this case, of one or more elephants, lions, leopards or rhinos) it will be necessary to determine whether or not the proposed actions are justifiable. That question should be answered by considering simultaneously and holistically, what is in the best interests of humanity, the other beings affected (at the individual, group, population and species levels) and most importantly, the community of life or ecosystem to which they all belong. In other words, the Draft Policy should require that when considering any action that would have the effect of restricting the freedoms of one or more elephants, lions, leopards or rhinos, the impact on the long-term wellbeing of the affected individual, group (e.g. herd), population and species must be taken into account in order to determine what is in their best interests.

The process of making such decisions is analogous to a situation in which a court is required to consider whether or not a provision in legislation, or some government action, constitutes a justifiable limitation of one or more of the human rights in the Bill of Rights in the Constitution. The Constitution requires that these fundamental rights may only be limited “to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom ...” taking into account all relevant factors (section 36(1)). Those factors require a consideration of issues such as proportionality (e.g. is the restriction reasonable in relation to the objective that it seeks to achieve and could the objective have been achieved by a less drastic restriction).

For example, in certain circumstances some restrictions on the freedoms of rhinos may be justifiable in order to protect them from poaching. However the intensive farming of rhinos would not be justifiable because it involves dramatically restricting their freedoms beyond what is necessary to conserve them, and the additional restrictions (such as keeping them in feedlots) are imposed primarily to achieve farming objectives. In other words, if it is possible to protect the rhinos using less drastic restrictions on their freedoms, then that should be done.

Prioritise the collective interests of the whole community

One of the implications of seeing the reality that humans participate in the functioning of ecological communities, and depend on them, is that the wellbeing of the whole community of life must be prioritised over the interests of any particular members (human or otherwise) because the wellbeing of each member is derived from the wellbeing being of the whole.

The National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008 (“NEM:ICMA”) already provides an example of how this inclusive perspective can be applied. NEM:ICMA provides that coastal public property (which includes land below the highwater mark and the marine environment within South Africa’s territorial waters and exclusive economic zone) must be conserved and managed “in the interests of the whole community, and states that:

“interests of the whole community” means the collective interests of the community determined by—

(a) prioritising the collective interests in coastal public property of all persons living in the Republic over the interests of a particular group or sector of society;

(b) adopting a long-term perspective that takes into account the interests of future generations in inheriting coastal public property and a coastal environment characterised by healthy and productive ecosystems and economic activities that are ecologically and socially sustainable; and

(c) taking into account the interests of other living organisms that are dependent on the coastal environment;

Promote health and wellbeing in an integral manner

The One Welfare approach (discussed in sections 10.4 and 13.2) and the One Health approach (discussed in section 10.5 read with Annex B) both reflect the understanding the humans are one mammal species among many and that human health and wellbeing cannot be adequately protected without simultaneously protecting the health and wellbeing of the other species with which we co-exist and the ecological communities that sustain us.

Resolve human-wildlife conflicts to restore harmonious co-existence

One of the implications of seeing the reality that humans participate in the functioning of ecological communities, and depend on them, is that if there is a conflict between the interests of some humans and other members of an ecological community, the conflict should be resolved with reference to what is in the best interests of the ecological community as a whole. Promoting harmonious co-existence requires that perceived conflicts between humans and other species must be addressed with the objective of restore harmonious co-existence where possible, and in event, in a way that is in the long-term best interests of the whole ecological community to which those humans and other animals belong.

Individual animals (particularly leopards) are often lawfully killed on the grounds that they are “damage causing animals”. This term is defined in the draft *Norms and Standards for the management of damage-*

causing animals in South Africa²⁷ published under the National Environmental Management: Biodiversity Act (“NEM:BA”) as follows:

“damage-causing animal” means an individual animal or group of animals, as the case may be, that, when in conflict with human activities, there is proof that it –

- (a) causes substantial loss to livestock or to wild animals,*
- (b) causes substantial damage to cultivated trees, crops or other property; or*
- (c) presents an imminent threat to human life.* already contain elements of this approach²⁸

Applying this principle means that if a leopard has preyed on a sheep, the conflict should not be framed simply as a conflict between the farmer and the leopard. In deciding how best to resolve the conflict, the wellbeing of both the farmer and the leopard must be considered within the wider context of the groups, populations and species to which they belong. The objective must be to seek to restore harmonious co-existence between humans and leopards and the priority must be to achieve the best possible outcome for the ecological community within which the farmer and leopard co-exist.

Redress past harms

Human beings have already impinged too much on the fundamental rights of other species to exist and flourish. This means that in order to achieve harmonious co-existence it will be necessary to redress some of the damage that has already occurred.

In order to apply this principle the Draft Policy should make specific provision for restoring at least some of the historic territories, ranges and migratory routes of elephants, lions, leopards and rhinos.

Policy objectives and interventions should address individuals, species and ecosystems

Historically most conservation policies have been directed at the conservation of species (particularly those that are threatened or subject to special protection) and of particular areas. However it is important that policies operate simultaneously at different levels. For example, to achieve objectives for individuals (e.g. welfare standards), species, and at the level of ecosystems and biomes.

²⁷ GN 512 in GG 40236 of 30 August 2016.

²⁸ For example, para 5(4) requires that proposed measures for the management of a damage-causing animal should be aimed at minimizing damage and be ecologically acceptable.

8. PROPOSED ADDITIONS TO DRAFT POLICY

8.1 What the Draft Policy aims to achieve

The Draft Policy aims:

- to provide the basis for review of legislation relating to biodiversity and protected areas, and to provide the framework within which the Provinces may do the same;
- to provide the basis for Norms and Standards to inform evidence-based implementation;
- to require the various issuing authorities to align their policies and procedures with the Draft Policy; and
- to provide the basis for engagement by the Department across affected sectors to promote effective intergovernmental co-operative governance.

While we applaud the aims of the Draft Policy, we are concerned that it firstly does not go far enough in seeking to achieve these aims, and secondly that it could achieve these objectives more effectively if the issues discussed below were addressed in the Draft Policy.

8.2 Transformative vision of harmonious co-existence

The Draft Policy should explicitly state that it is intended to promote harmonious co-existence with the five species, and to promote their wellbeing, in order to promote harmonious co-existence with Nature and explain why this is necessary and appropriate with reference to the need for transformative change.

8.3 Provision for a transparent, accountable, permitting system

The Draft Policy identifies challenges relating to the structuring and implementation of the permit system as one of the issues with legislation and mandate, as well as inconsistencies between national and provincial legislation, among provinces, and in implementation.²⁹ However, despite this recognition, no policy objective is provided in the Draft Policy to deal with rectifying these problems through the development of an accountable and transparent permitting system.

The public has a legitimate interest in knowing whether or not the State is complying with its Constitutional obligations to take reasonable measures to protect the environment and conserve wildlife for the benefit of present and future generations.

Section 32(1) of the Constitution guarantees the right to any information held by the State. Section 32(2) of the Constitution mandates the enactment of national legislation to give effect to the right in section 32(1). PAIA has been enacted in compliance with this section. Access to information serves as a gateway for civil society organisations and communities to access information relating to a range of rights and

²⁹ Page 18, Draft Policy.

issues. Furthermore, the realisation of section 24 of the Constitution is dependent on the ability of individuals, communities, civil society organisations and others to access information about the state of the environment.

The objects of PAIA expressly include that procedures and mechanisms must be developed to allow the public to obtain access to records of public bodies as “swiftly, inexpensively and effortlessly as reasonably possible” as well as “generally, to promote transparency, accountability and effective governance of all public ...bodies”.³⁰

Despite these fundamental rights, biodiversity permits are overwhelmingly treated as protected information by conservation authorities, where there is no sound legal basis for doing so. It is also anachronistic that biodiversity permits are regarded as protected information while other environmental management authorisations are made public as a matter of course. See for example, the South African Waste Information System (SAWIS) and the South African Air Quality Information System (SAAQIS). In a landmark judgement in the United States in March 2021, a federal judge in the District of Columbia held that the U.S. Fish and Wildlife Service can no longer withhold from the public valuable wildlife trade data such as tracking the imports of at-risk species killed by trophy hunters into the U.S.

The HLP Report notes that “*permitting processes for restricted activities and management plans are cumbersome, inefficient, duplicated, and hinder effective, flexible, innovative, and beneficial (to animal and people) actions,*” and that goals for management of the iconic species should include “*Responsible, adaptive, transparent, and accountable management, which secures thriving and sustainable populations of the five species and their habitats, for the benefit of all components: wildlife, wildlife custodians, and society at large.*”³¹ (our emphasis).

We are of the view that the Draft Policy must make provision for a policy objective of “*improving access to records relating to activities involving wildlife.*” This would be in line with the recommended goal of the HLP Report. The expected output for such a policy objective would be for the Department and all provincial Nature Conservation departments to ensure that their information officers give immediate access, on request, to all records relevant to all international trade in wildlife (i.e. CITES and non-CITES trade), as well as access to records relevant to restricted activities involving a listed Threatened or Protected Species (“TOPS”), including applications for permits, permits and permit conditions, records of decision-making processes, and reasons for the decisions, and amend their PAIA information manuals accordingly.

Further, we recommend that a further policy output should be the establishment of an on-line system as part of the NBIS or otherwise to enable the public to access this information over the internet (this is necessary for the public to have oversight over biodiversity protection and to be able to participate in environmental decision-making which is part of every South African’s right to have the environment protected in the manner envisaged in section 24 and to have access to information held by the State).

³⁰ PAIA, section 9.

³¹ Para 9.3.10.2, HLP Report.

8.4 Provision for enhanced enforcement capacity

The Draft Policy sets out various policy objectives relating to conservation capacity development aimed at empowering traditional communities, ensuring implementation of wellbeing standards in relation to the iconic species, and improving the evidence-base through research. However, no express mention is made of enforcement of laws relating to the iconic species.

As laudable as the policy objectives set out in the Draft Policy are, particularly relating to species management, trade and conservation, such objectives will be likely not be achieved if capacity in the enforcement sector is not also developed. The Draft Policy makes provision for “*capacitate[ing] Environmental Monitoring Inspectors for ensuring compliance with animal wellbeing.*” However, provision for the capacitation of EMIs should not only be limited to wellbeing (although we fully endorse the inclusion of capacity development on this issue).

Express provision should be made for greater enforcement capacity across all policy interventions.

8.5 Measures to reduce demand

The Draft Policy should include measures to decrease local and international demand for the body parts of the five species in order to reduce the incentives for illegal poaching in the long-term.

For example, significant numbers of leopards are killed illegally for their skins and none of the Provinces have the capacity to prevent this illegal off-take. Most illegal off-takes are not reported or accounted for when determining hunting quotas.³²

According to Panthera as many as [800 leopards are killed each year](#) for their furs. Many of these furs are used by the Nazareth Baptist Church during their ceremonies. According to Panthera there are more than 15,000 illegal leopard furs being used by members of this church.

The Humane Society International submission on the 2019 quota to SANBI stated.

It is estimated that between 4,500 and 7,000 leopards are taken annually to feed the demand for leopard skins for ceremonial use by followers of the Nazareth Baptist (Shembe) Church (Balme unpub. data in Stein et al. 2020). A lower but still alarming number suggests that between 1,500 to 2,500 leopards are illegally taken annually to meet the demand for skins by this church based on South Africa’s submission to the 30th meeting of the CITES Animals Committee in July 2018 (AC 30. Doc.15 Annex 3)... (Stein et al. 2016, at 53).³³

Panthera created a high-quality affordable synthetic leopard fur known as amambatha. More than 18,500 capes have been donated to the Shembe with the support of the Peace Parks Foundation and Cartier. According to Panthera the Shembe leaders are growing to accept the synthetic furs as an alternative to

³² Stein, A.B., Athreya, V., Gerngross, P., Balme, G., Henschel, P., Karanth, U., Miquelle, D., Rostro-Garcia, S., Kamler, J.F., Laguardia, A., Khorozyan, I. & Ghoddousi, A. 2020. *Panthera pardus* (amended version of 2019 assessment). The IUCN Red List of Threatened Species <https://dx.doi.org/10.2305/IUCN.UK.2020-1.RLTS.T15954A163991139.en>

³³ Stein, A.B., Athreya, V., Gerngross, P., Balme, G., Henschel, P., Karanth, U., Miquelle, D., Rostro, S., Kamler, J.F. and Laguardia, A. (2016). *Panthera pardus*. The IUCN Red List of Threatened Species 2016: e.T15954A50659089. Downloaded on 11 July 2016.

real leopard fur. This program is called [Furs for Life](#). We are of the view that the Department should continue to work with communities to foster acceptance of synthetic furs, and shifting perspectives away from detrimental consumptive use practices. The Department should also focus on the Conservation Transformation policy interventions proposed by the Draft Policy insofar as they promote participation of communities in the conservation of the iconic species and the economic benefits derived therefrom. A database and permits for the owners of leopard skins for traditional could be considered.

Measures aimed at reducing demand, such as the provision of artificial leopards skins for ceremonial use, have the potential to reduce illegal killings and should be prioritised, particularly where enforcement is ineffective.

9. VISION OF THE DRAFT POLICY

The Draft Policy aims to set out “policy objectives and outcomes towards achieving secured, restored, and rewilded natural landscapes with thriving populations of elephant, lion, rhino and leopard as indicators for a vibrant, responsible, inclusive, transformed, and sustainable wildlife sector.” (our underlining).

We support the first part of this vision but in our view the underlined text still reflects the perspective that the primary rationale of conserving the five species is to have a flourish wildlife sector of the economy. We suggest that it be amended to read:

“policy objectives and outcomes towards achieving secured, restored, and rewilded natural landscapes with thriving populations of elephant, lion, rhino and leopard as indicators that people are living harmoniously with them, and a vibrant, responsible, inclusive, transformed, and sustainable wildlife sector.” (Underlined words added.)

The Draft Policy states that:

“...in deciding upon controversial wildlife policy issues that concern competing interests between humans with differing values, humans and animals, and between individual animals and the environment, South Africa must take into account the nature and extent to which these competing interests are represented and defined by international interest groups and other national governments, in relation to the country’s own national provisions and positions and obligations in terms of ratified international agreements.”³⁴

This statement suggests that South Africa’s position on controversial wildlife policy issues should be determined based on an analysis of the agendas of the parties advocating various positions. In our view these determinations should be guided by what best promotes harmonious co-existence, and not on ideological or political grounds which frequently change.

As has been noted in previous submissions to the Department, in recent years the Constitutional Court, Supreme Court of Appeal and High Court have provided guidance on the framework to be adopted in interpreting the environmental right in relation to wild animals. Specifically, the courts have recognised the ‘intrinsic value of animals as individuals’ as well as the relationship between conservation and animal

³⁴ Draft Policy, section 4 Problem Statement, p. 17.

welfare, and relating welfare and protection of biodiversity to the constitutional right to have the “environment protected ... through legislative and other means” in section 24 of the Constitution.

The Draft Policy should be focusing purely on means of facilitating conservation of the iconic species in order to achieve the vision of “secured, restored, and rewilded natural landscapes with thriving populations of elephant, lion, rhino and leopard ... “

10. DEFINITIONS

10.1 Intensively managed rhinos

There appears to be some overlap and therefore potential for confusion between the definitions of “controlled environment” and “intensively managed rhino” insofar as both definitions refer to the size of the area the animals occupy and whether human intervention is implemented.

However, while “intensively-managed rhinos” are defined as “rhinos kept in a small area, in or out of the historic range of the taxon, where deliberate husbandry, food supplementation and intensive management are routinely undertaken,” “intensive management” is not defined, and it is therefore unclear what this entails in relation to rhino specifically (beyond deliberate husbandry and food supplementation referred to in the definition). We submit that this overlap should be rectified by through the application of only one definition (we submit this should be “controlled environment” with the associated application to rhino), alternatively, “intensive management” must be defined.

10.2 Sustainable use

We have already addressed why the definition of “sustainable use” contemplated in the policy is problematic. Please refer to sections 6.1, 6.2 and 6.3 above as read with Annex A for a comprehensive discussion of this issue.

Given the fact that this term is already defined in legislation (which will require amendment) we recommend that the Draft Policy does not attempt to define terms such as “ecologically sustainable use” with the precision that will be required for legislation. Instead the Draft Policy should rather indicate what the terms should encompass (to guide future law reform) and how and when they should be applied.

For example, the Draft Policy (and in due course the proposed National Biodiversity Policy) should make it clear that the principle of ecologically sustainable use should only be applied where a particular use that is potentially harmful to biodiversity has been determined to be justifiable, in order to limit the degree of use in the interests of the whole community of life.

10.3 Ubuntu

We support the proposal that policies that affect how people relate to wildlife should take into account traditional African values. This will be important in enhancing the role of communities in wildlife

conservation. The principle of harmonious co-existence which we advocate is closely aligned with traditional African philosophies that emphasised the vital importance of respecting other beings in Nature and maintaining harmonious relationships with them.

The definition of “ubuntu” in the Draft Policy indicates that it “*refers to a unifying vision of community built upon compassionate, respectful, interdependent relationships and that it serves as ‘a rule of conduct, a social ethic, which underpins the moral and spiritual foundation for African societies.’*” The focus appears to be on interrelatedness between humans. The philosophy of ubuntu, however, encompasses more than respect and compassion between members of human societies.

It is important to appreciate that the concept of “community” in relation to ubuntu extends far beyond the living human beings which a particular individual may have relationships with during his or her lifetime. It embraces both ancestors and generations to come as well as other-than-human beings since all are bound together by living forces to create the unified whole that is the universe. The individual and the community are inseparable and co-create one another. Further, the idea of community extends to all life.

“Not merely material, not purely spiritual, the forces that make the universe are seen instead as life, living energy, forces of life. The African conception of life includes both the physical and the spiritual. It applies to everything; stones are alive as well as animals. The difference is that animals have more life force than stones, and people more than animals.”(Schutte, 2009: 90)

The concept of respect is fundamental to African society and mutual respect is understood as being essential both to maintain the cohesiveness of the community and harmony within it. Furthermore, as the following quote from Ramose makes clear, maintaining the harmony necessary to ensure that humans coexist peacefully within the community of life requires constant balancing of human interests with those of the other members of the community.

“The concept of harmony in African thought is comprehensive in the sense that it conceives of balance in terms of the totality of the relations that can be maintained between and among human beings, as well as between human beings and physical nature. The quest for harmony is thus the striving to maintain a comprehensive but specific relational condition among organisms and entities. It is the constant striving to strike, and then maintain, a balance between human beings and physical nature.” (Ramose, 2009: 309)

Harmony, connectedness and respect as encompassed by ubuntu therefore extend beyond human relationships, but to the whole living world. This is consistent with the harmonious co-existence approach which we advocate.

While the definition in the Draft Policy mentions “*consolidating human, nature and spiritual tripartite*”, it does not go far enough in emphasising the relatedness between humans and Nature. A definition that encompasses this would be incompatible with the notion of iconic species as “resources.”

10.4 One Welfare

The Draft Policy refers to “the One Welfare” approach, but no definition of what this approach entails is provided. The HLP Report notes that:

“One Welfare highlights the interconnections between animal welfare, human well-being, and the environment. It fosters interdisciplinary collaboration to improve human and animal welfare internationally. One Welfare also helps to promote key global objectives such as supporting food security, sustainability, reducing human suffering, and improving productivity within the farming sector through a better understanding of the value of high welfare standards

(<https://www.onewelfareworld.org/about.html>).”

We are broadly supportive of the more integral approach inherent to the One Welfare approach. However neither the HLP Report nor the Draft Policy define the One Welfare approach in relation to its implementation to the issues under discussion. This must be addressed.

We also recommend that the Draft Policy and the proposed National Biodiversity Policy be consistent with the “One Health Approach” discussed below.

10.5 One health approach

The One Health approach is based on the recognition that the health of people is closely connected to the health of animals, plants and our shared habitats, and that achieving optimal health outcomes requires taking an integrated approach. Successfully preventing and responding to the disease challenges of the 21st Century while ensuring the biological integrity of the Earth for future generations will require interdisciplinary and cross-sectoral approaches to disease prevention, surveillance, monitoring, control and mitigation as well as to ecological conservation. The “Manhattan Principle” (see **Annex B**) explain what this approach involves.

The COVID-19 pandemic—which is likely to have emerged as a result of exploitation of wild animals—has had a devastating impact on human health and the economy at global, national, and local levels, and has also had significant negative consequences for biodiversity and sustainable development.

Emerging zoonotic diseases are posing a threat to human and animal health. Over [70% of new and emerging infectious diseases in humans are zoonotic, with a large proportion originating from wildlife](#). The destruction, conversion and fragmentation of habitats bring people and wildlife into ever closer contact. The Guidelines for Wildlife Disease Risk Analysis, a joint publication by the IUCN and the World Organisation for Animal Health (OIE), states that the domestic and international commercial trade in live and freshly slaughtered/butchered wildlife poses a significant risk of pathogen spillover and disease of zoonotic origin. The risk of emergence of further zoonotic diseases is increased through the increase in the human/wildlife interface and the capture, housing, breeding, shipping, slaughter, processing, storage, sale and consumption of wild animals.

There is a critical need to prevent and mitigate health risks that originate at the interface between humans, animals and their environments, to promote a multi (cross) sectoral and collaborative approach

to human and animal health, and to enhance the management of risk. There is now global support for the [One Health](#) approach and its objectives to fully integrate human, animal, and ecosystem health and wellbeing and to help protect the health and survival of wild populations. Associated with this is the emerging [One Welfare](#) concept as a multidisciplinary approach that analyses and leverages the synergies between human wellbeing, animal welfare and environmental health to produce stronger, more resilient systems.

The One Health and One Welfare Approaches obviously have implications far beyond the five species that are the subject of the Draft Policy and should be incorporated into the proposed National Biodiversity Policy and in a policy that brings together all relevant organs of State with responsibilities for the health and wellbeing of humans, domestic animals, wild animals, those responsible for protecting ecosystems and those responsible for regulating human activities that threaten the integrity and health of ecosystems and the wellbeing of domestic and wild animals.

The proposed Biodiversity Policy must:

- promote the adoption of a One Health approach and incorporate this approach into criteria designed to guide biodiversity financing mechanisms, and the removal of perverse financial subsidies for activities that damage biodiversity and increase human and animal health risks;
- promote the development of economic recovery and stimulus packages that incentivise sustainable and nature-positive activities, in line with the recent Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) expert guest article “COVID-19 stimulus measures must save lives, protect livelihoods, and safeguard nature to reduce the risk of future pandemics”;
- discourage activities which destroy or disrupt wildlife, habitats and ecosystems, in view of their potential harmful impacts on human and animal health and the wider environment;
- promote the protection and retention of functional ecosystems, in order to help prevent pathogen spill-over, in addition to benefiting the conservation of biodiversity;
- encourage the adoption of a precautionary approach to the domestic and international commercial trade in wildlife through national and multilateral legislative and regulatory mechanisms, prioritising the transition away from commercial trade and markets in live animals, ex-situ trade, and inessential uses of wildlife such as for the fashion industry, luxury food markets, global exotic pet trade, trinkets and ornaments, scientifically unproven medicinal products, and recreation and entertainment, in order to better protect human and animal health and significantly increase the chance of preventing the next pandemic of zoonotic origin;
- support the need for the review and amendment of the practice of commercial farming of and trade in wild animals, given the significant associated risks to human and animal health, welfare and wellbeing through farming practices and associated trade chains; and
- encourage support for those who currently rely on legal wildlife exploitation for their subsistence or livelihood, so that they can transition to safer and more sustainable practices, with due recognition of and support for their rights and needs.

Once this policy has been formulated the Policy on Elephants, Lions, Leopards and Rhinos must be reviewed to ensure consistency with this policy and be revised if necessary.

10.6 Wellbeing

We propose that the Draft Policy include a definition of “wellbeing” that encompasses the concept of animal “welfare” rather than defining wellbeing and welfare as separate. Well-being must always include welfare. The requirement to protect the wellbeing of animals must apply not only to captive animals but also to any anthropogenic influence that effects an animal directly in the wild or indirectly via changes in its environment (or to other influencing variables may contribute to comprised animal welfare).³⁵

We support the NSPCA’s views that:

- “wellbeing” should be defined to mean the holistic circumstances and conditions of an animal, which are conducive to its physical, physiological, and mental health and quality of life, and ability to cope with its environment;
- wellbeing must be applied to captive animals (including those in intensive-and-extensive wildlife systems) and in relation to wild populations as well (which requires considering issues such as ecological integrity and the inter-relationships between animals and with their habitats);
- a concept of welfare which is assessed solely by scientific evidence as to whether or not the animal is healthy, comfortable, well-nourished, safe, able to express innate behaviour and free of unpleasant states such as pain, fear, and distress, determined, is too limited and is insufficient to protect the best interests of animals, and the mental state of the animal must be taken into account;³⁶ and
- this requirement can be applied and interpreted to suite different situations and circumstances, and it can be applied on a species-specific basis.

³⁵ For example, the management of various habitats and its associated inhabitants are crucial to maintaining balanced ecological processes. Mismanagement and lack thereof, including negligence in the management of natural areas can lead to negative impacts both from a conservation and animal welfare perspective, as animal welfare in general is not only just about whether an animal can experience pain or not, but involves the state and attempts of an animal to cope with its environment under changing human-induced wild conditions. Any anthropogenic activity affecting the environment, or any species may directly and indirectly impact on the well-being of an animal if it’s upper and lower tolerance thresholds leads to compromised animal welfare, thus affecting survivability and ultimately threatens biodiversity. The practical inclusion of the concept of welfare/well-being within wild populations simply means increased responsibility and stewardship within wildlife management practices and conservation policy for both the state and the private sector. Animal well-being/welfare considerations must be placed separate from evolutionary and ecological based natural stressors and processes, except where stipulated that human intervention is required in the interest of the species or receiving environment/habitat.

³⁶ Science has shown that an animal’s mental well-being is an important aspects of its welfare. The Five Domains Model for example, recognizes four physical domains namely nutrition, health, behaviour, and environment, with the fifth domain being the mental state. Ultimately, the model illustrates how compromises in an animal’s nutrition, environment, health and behavior can all impact upon its mental state. Each domain may overlap and have combined effects on the overall welfare status of an individual animal and serve as a framework for the broad assessment of animal welfare. Animal welfare therefore deals with how an animal copes within its environment that it finds itself in, including all separate and integrated influencing components that may have an influence over its physical, physiological, behavioral, and mental health and wellbeing.

10.7 Sanctuary

A definition of “sanctuary” should be included to mean “a place of security and permanent care in which an animal can express his or her natural physical, social and cognitive behaviour to the maximum extent possible, while benefiting from best possible care. Sanctuaries should provide animals with a home for life or until it can be reintegrated back to the wild or be relocated as part of a recognised conservation programme.

The following activities must be prohibited at a sanctuary:

- breeding;
- trading;
- public performances; and
- public activities that involve touching the animals (walking, riding, touching, feeding).

10.8 Rehabilitation Facility

A definition of “rehabilitation facility” should also be included. It should be permissible to keep animals at such facilities for the purposes of treating sick or injured wildlife (including from rescue, donation, capture from the wild and/or abandonment) until they recover; rearing young or orphaned wildlife; quarantine, and relocation, provided that the overall intent is to release the animal.

A rehabilitation facility should be defined as a registered facility:

- for the reintegration and re-wilding of wildlife - where possible to semi-wild (such as sanctuaries) or wild environments, to natural habitats and wildlife societies;
- where rehabilitation is done by persons with species specific care and rehabilitation expertise in facilities equipped for the temporary keeping of wildlife, in order to professionally care for and eventually rehabilitate the wild animals into a semi or fully wild environment.

11. SPECIES MANAGEMENT POLICY INTERVENTIONS

11.1 Discontinuing trophy hunting

Trophy hunting is the killing of wild animals for recreation with the purpose of collecting trophies (which are expressions of secondary sexual characteristics such as horns, antlers, skulls, skins, tusks or teeth) for display.³⁷ Trophy hunting, like poaching, artificially selects the biggest and strongest animals (largest tusks

³⁷ Sheikh Pervaze and Bermejo F Lucas, “International Trophy Hunting,” *Congressional Research Service* (Congressional Research Service, 2019), <https://crsreports.congress.gov>.

and thickest manes), weakening populations' genetic health and variation.³⁸ Therefore, while revenue may be forthcoming in the short term from such extraction, the longer-term effects are that population growth dynamics are negatively affected.

Humane Society International-Africa recently undertook a market survey in South Africa in relation to trophy hunting and one of the outcomes was that 68% of those polled were against trophy hunting.³⁹

Moreover, trophy hunting may be having negative genetic impacts. In this regard, some elephants are now being born without tusks, demonstrative of a destructive genetic adaptation.⁴⁰ Elephants are also increasingly reproductively successful with age, with older bulls suppressing musth⁴¹ onset in younger bulls and preventing delinquent behaviour associated with early musth onset.⁴² When trophy hunters eliminate these older bulls, they destroy elephant family integrity (through trauma and removal of the discipline and knowledge transfer functions executed by patriarchs) and force matriarchs to mate with younger bulls they would otherwise not have selected, thereby skewing reproduction patterns.⁴³ Elephants are also irreplaceable ecosystem engineers; their removal negatively impacts ecosystem integrity and biodiversity preservation.⁴⁴

The idea that trophy hunters only eliminate 'surplus' animals is patently untrue. Repeatedly in southern Africa, the biggest and strongest male lions (in their reproductive prime) are shot.⁴⁵ Younger lions entering the pride often execute infanticide on their predecessor's cubs, thus reducing numbers and further weakening the gene pool.⁴⁶

The incentives that drive trophy hunting (selecting the strongest) are fundamentally at odds with the conservation imperative (preserving the strongest). Beyond the negative ecological effects, the practice

³⁸ Patrick I. Chiyo, Vincent Obanda, and David K. Korir, "Illegal Tusk Harvest and the Decline of Tusk Size in the African Elephant," *Ecology and Evolution* 5, no. 22 (2015): 5216–29, <https://doi.org/10.1002/ece3.1769>; Tim Coulson et al., "Predicting the Evolutionary Consequences of Trophy Hunting on a Quantitative Trait," *Journal of Wildlife Management* 82, no. 1 (2018): 46–56, <https://doi.org/10.1002/jwmg.21261>.

³⁹ This was discussed in a presentation given by HSI-Africa's Wildlife Director, Audrey Delsink at this Webinar entitled *Trophy Hunting: Conservation tool, or a threat to wildlife?* - <https://www.animalwelfareintergroup.eu/news/event-trophy-hunting-conservation-tool-or-threat-wildlife> and <https://www.facebook.com/HSIEurope/videos/trophy-hunting-conservation-tool-or-a-threat-to-wildlife/491593022137133/?extid=SEO--->

⁴⁰ Chiyo, Obanda, and Korir, "Illegal Tusk Harvest and the Decline of Tusk Size in the African Elephant."

⁴¹ Musth is a physiological and behavioural condition exclusive to elephants, which is manifested by bouts of elevated testosterone and aggression and heightened sexual activity; see Julie A Hollister-Smith et al., "Age, Musth and Paternity Success in Wild Male African Elephants, *Loxodonta Africana*," *Animal Behaviour* 74, no. 2 (2007): 287–96, <https://doi.org/10.1016/j.anbehav.2006.12.008>.

⁴² Lucy A. Taylor et al., "Movement Reveals Reproductive Tactics in Male Elephants," *Journal of Animal Ecology*, no. September 2018 (2019): 1–11, <https://doi.org/10.1111/1365-2656.13035>; R. Slotow and G. Van Dyk, "Role of Delinquent Young 'Orphan' Male Elephants in High Mortality of White Rhinoceros in Pilanesberg National Park, South Africa," *Koedoe* 44, no. 1 (2001): 85–94, <https://doi.org/10.4102/koedoe.v44i1.188>.

⁴³ H B Rasmussen et al., "Age- and Tactic-Related Paternity Success in Male African Elephants," *Behavioral Ecology* 19, no. 1 (2008): 9–15, <https://doi.org/10.1093/beheco/arm093>; G. A. Bradshaw et al., "Elephant Breakdown," *Nature* 433, no. 7028 (2005): 807–807, <https://doi.org/10.1038/433807a>.

⁴⁴ Katherine Bunney, William J. Bond, and Michelle Henley, "Seed Dispersal Kernel of the Largest Surviving Megaherbivore—the African Savanna Elephant," *Biotropica* 49, no. 3 (May 1, 2017): 395–401, <https://doi.org/10.1111/btp.12423>; Michelle D Henley and Robert Cook, "The Management Dilemma: Removing Elephants to Save Large Trees," *Koedoe*, 2019, 1–12.

⁴⁵ Mucha Mkono, "Neo-Colonialism and Greed: Africans' Views on Trophy Hunting in Social Media," *Journal of Sustainable Tourism* 27, no. 5 (2019): 689–704, <https://doi.org/10.1080/09669582.2019.1604719>.

⁴⁶ T M Caro et al., "Animal Breeding Systems and Big Game Hunting: Models and Application," *Biological Conservation* 142, no. 4 (2009): 909–29, <https://doi.org/10.1016/j.biocon.2008.12.018>.

remains rooted in colonial modes of extraction.⁴⁷ In exchange for repatriating an African trophy, wealthy (mostly white western male) hunters pay large sums of cash to wealthy tour operators. In the process, especially in open ecological systems, hunters are extracting the very same creatures that photographic tourists are paying to see. In the long run, sustainable photographic tourism, a major employer in otherwise slow-growing and non-labour-absorptive economies (most of sub-Saharan Africa), will be undermined by the continuation of trophy hunting.

Excessive recreational hunting during the colonial era rendered a number of species on the verge of extinction across the continent.⁴⁸ A public relations campaign, mostly conducted by SCI, has attempted to rebrand trophy hunting as a conservation tool. This view is hard to reconcile with the fact that over 100,000 African elephants were illegally killed between 2011 and 2013, mostly for their ivory.⁴⁹ A large portion of these elephants were slaughtered in the Selous ecosystem in Tanzania, and the majority of the killing was attributable to hunting. Due to habitat fragmentation, destruction and prey base depletion, African lions are also dwindling in number – an estimated 32,000 remain in the wild. Poaching for body parts is emerging as a new threat.⁵⁰ Hunting, far from providing counter-poaching presence, appears to have additive negative effects on population survival probability.

[Hunting lobbying groups](#) accuse ‘western’ NGOs of unduly influencing conservation policies in African countries. But the very western [SCI Foundation](#) (SCIF) – that carries out the second arm of the SCI’s mission – has long sought to influence African conservation policy formation. Anti-hunting sentiment has successfully been brandished as ‘Western’ and the SCI has managed to [paint itself](#) as a messiah for Africa’s rural communities, suggesting trophy hunting is ‘African’. This despite evidence of trophy hunting perpetuating a neo-colonial chauvinism and the flow of resources from the South to the North. Alternative [conservation](#) activities exist that eschew a colonial practice of extraction in favour of more ecologically sustainable and dignifying activities.⁵¹

Importantly the hunting fraternity itself recognises that they “lack the data to back up the conservation and economic arguments”⁵² and how they benefit local communities.

Trophy hunting is therefore fundamentally extractive and is rooted in colonialism. It inflicts and perpetuates notions of abuse, subjugation and control. These themes have been recently picked up in academic literature. In the [Journal of Sustainable Tourism](#), Dr Muchazondida Mkonzo concludes that Zimbabwean citizens essentially see trophy hunting as ‘the product of complicity between white men and greedy African leaders’. There is evidence of resentment towards the neo-colonial character of trophy hunting in the way that it privileges western elites in accessing Africa’s wild resources. In [Conservation Letters](#), Chelsea Batavia and her co-authors make the moral case, similarly, that supporting trophy hunting

⁴⁷ Batavia et al., “The Elephant (Head) in the Room: A Critical Look at Trophy Hunting”; Mkonzo, “Neo-Colonialism and Greed: Africans’ Views on Trophy Hunting in Social Media.”

⁴⁸ PA Lindsey, PA Roulet, and SS Románach, “Economic and Conservation Significance of the Trophy Hunting Industry in Sub-Saharan Africa,” *Biological Conservation* 134, no. 4 (2007): 455–69, <https://doi.org/10.1016/j.biocon.2006.09.005>.

⁴⁹ G. Wittemyer et al., “Illegal Killing for Ivory Drives Global Decline in African Elephants,” *Proceedings of the National Academy of Sciences* 111, no. 36 (2014): 13117–21, <https://doi.org/10.1073/pnas.1403984111>.

⁵⁰ K. T. Everatt, R. Kokes, and C. Lopez Pereira, “Evidence of a Further Emerging Threat to Lion Conservation; Targeted Poaching for Body Parts,” *Biodiversity and Conservation* 28, no. 14 (2019): 4099–4114, <https://doi.org/10.1007/s10531-019-01866-w>.

⁵¹ Katarzyna Nowak et al., “Trophy Hunting: Bans Create Opening for Change,” *Science* 6464 (2019): 434–35, <https://doi.org/10.1126/science.aaz40>

⁵² African Wildlife Economy Institute, What’s Next for South Africa’s Wildlife Economy? 20 July 2021

‘does not befit us as moral, rational beings, and it is time for the conservation community to wake up and face up to the chauvinistic, colonialist and utilitarian anthropocentric undertones of the practice... Continuing complicity by conservationists without fully exhausting the other options is not now, nor has it ever been, appropriate.’ Some of these ‘other options’ are explored in a [response letter](#) to a pro-hunting letter [published recently](#) in *Science*: ‘Sustainable alternatives [to trophy hunting] exist and could reduce reliance on a small and narrowing cohort of wealthy Western “donors”.’

Regarding employment, trophy hunting fails to provide high quality jobs and perpetuates negative historical socio-economic relationships that sub-Saharan African countries are trying to shed. Job security, for instance, has evidentially diminished in South Africa’s evolution of conversion from other forms of agriculture to wildlife ranching. “*Trophy-hunting farms can be seen as non-state spaces where farmers re-assert their authority and sovereignty over land and natural resources... State making through enclosure and settlement is a violent process, and privatisation of wildlife intensifies this violence as it concentrates power in the hands of land and wildlife owners*”⁵³, the very opposite of the transformation agenda articulated when South Africa entered democracy in 1994. Further wealth concentration in the hands of the already privileged entrenches inequality and simultaneously contributes to local communities’ negative attitude towards wildlife, as it can symbolise oppression associated with white privilege.

Trophy hunting extraction in sub-Saharan Africa is unsustainable. In the context of the sixth extinction, policies that support the extraction of wildlife as a means of ‘conservation’ must be exposed for the contradictions that they are. Most importantly, it has been demonstrated that the jobs (rural livelihoods) purportedly supported by hunting could be more than compensated for by non-consumptive ecotourism, a fundamentally more ecologically sustainable practice that provides more jobs with higher quality and greater security. While it remains true that some areas currently allocated to trophy hunting may not be conducive to photographic tourism, this does not constitute an argument in favour of hunting. Rather, it constitutes a call for the rapid implementation of alternatives, including conservation subsidisation from international governments to ensure that entire ecosystems remain intact and functional. It is also critical to note that some areas previously considered ‘marginal’ and unamenable to photographic tourism have been remarkably successful with the latter.⁵⁴

Trophy hunting is a morally repugnant activity that cannot be reconciled with science. The data is also unequivocal that hunting supports relatively few jobs per hectare when compared with non-consumptive ecotourism. The labour absorption figure for the latter is likely five times larger than that of trophy hunting. For South Africa alone, this means that land currently allocated to hunting could provide 193,000 jobs instead of only 17,000 (excluding multiplier effects). Moreover, the quality of hunting jobs is highly questionable, and the evidence suggests that South Africa’s conversion of agricultural land to wildlife ranching has worsened job security and deepened inequalities. This is the very opposite of community empowerment, which non-consumptive tourism is better able to accomplish.⁵⁵

⁵³ Femke Brandt, “Power Battles on South African Trophy-Hunting Farms: Farm Workers, Resistance and Mobility in the Karoo,” *Journal of Contemporary African Studies* 34, no. 1 (2016): 178–79, <https://doi.org/10.1080/02589001.2016.1200244>.

⁵⁴ See <https://www.andbeyond.com/places-to-stay/africa/botswana/makgadikgadi-pans/jacks-camp/>, accessed 7 January 2020.

⁵⁵ Mucha Mkono et al., “Diversifying Approaches to Conserving Nature,” *The Conversation*, January 7, 2020, <https://theconversation.com/diversifying-approaches-to-conserving-nature-126526>.

We therefore are of the view that the Draft Policy must expressly provide for the termination of trophy hunting practices in relation to the iconic species.

11.2 Halt domestication and exploitation of lion

Support for ending captive breeding and exploitation of lion

In numerous submissions to the Department⁵⁶ over the years, the EMS Foundation has consistently argued that the captive breeding and canned hunting of lion are abhorrent practices that serve absolutely no conservation or socio-economic value. In fact, the captive breeding industry has itself been a risk to wild lion population conservation and broader biodiversity conservation efforts. We are therefore fully supportive of the Department's findings in this regard, particularly that:

"The captive lion industry does not represent ecologically sustainable use, providing very little economic activity or jobs, while benefiting a few relative to the other components of the sector. There are major concerns over work conditions and safety of workers and tourists, and zoonotic risks including from COVID 19. The captive lion industry does not contribute meaningfully to transformation, or to the conservation of wild lions, and trade in lion derivatives poses major risks to wild lion populations, and to stimulating illegal trade."

We wholly support the immediate halting of domestication and exploitation of lion, and the closure of captive lion breeding facilities. We further agree with the outputs proposed and outcomes anticipated in the Draft Policy.

Lion bone trade – responding to persistent market demand

The Draft Policy does not address what will be done with the existing stockpiles of lion bone,⁵⁷ the carcasses of the roughly 12 000 lion currently in captivity that will be euthanised in implementation of the Draft Policy,⁵⁸ and other lion parts that have the potential to enter the market from time to time. (If the Department proceeds with its proposal to develop and implement a national hunting standard for the five iconic species, which we are of the view it must not, there will be an on-going supply of legally acquired body parts from these animals).

The HLP Report includes as a recommendation that the *"Minister puts in place policy decisions for an immediate halt to (1) the sale of captive lion derivatives, including the appropriate disposal of existing lion*

⁵⁶ https://emsfoundation.org.za/wp-content/uploads/EMSF-letter-to-Minister-Creecy-re-Captive-Lion-Industry_What-Next_Final_190721.docx.pdf and https://emsfoundation.org.za/wp-content/uploads/EMS-letter-to-Minister-Creecy-re-health-risks-lion-bone-and-wildlife-markets_3022020.pdf and <https://emsfoundation.org.za/earth-day-2021-how-many-asian-tigers-are-in-captivity-in-south-africa/> and <https://emsfoundation.org.za/the-captive-lion-industry-what-to-do-next/> and https://emsfoundation.org.za/is-south-africas-lion-bone-trade-creating-health-risks-for-workers-and-consumers-covid_19/ and <https://emsfoundation.org.za/ems-presentation-to-the-parliament-portfolio-committee-on-environmental-affairs/> and <https://emsfoundation.org.za/wp-content/uploads/THE-EXTINCTION-BUSINESS-South-Africas-lion-bone-trade.pdf>

⁵⁷ The HLP Report records that there is an existing stockpile of lion bones registered with the Department (para. 9.3.19.1, HLP Report)

⁵⁸ We agree that captive bred lions should not be released into the wild.

*bone stockpiles and lion bone from euthanised lions.*⁵⁹ However, this recommendation has not been carried through in the Draft Policy. We recommend that an additional policy objective be included that requires the disposal, through destruction of, existing lion bone stockpiles.

We recognise that phasing out the captive lion breeding industry and concomitant trade in lion parts is a significant step towards protecting wild populations. However, the legal quota of lion bone traded has for years created and promoted parallel illegal markets for illegally obtained body parts to be laundered through “legal” markets. The legal export of bones from farm-bred caged lions has allowed the illegal export of wild lion bones to continue and allows the market to thrive. There is consequently an existing market and demand for lion parts that will not simply disappear with the closure of the captive breeding industry.

For the reasons we have already set out in section 11.1 above, we are strongly of the view that any trophy hunting of lion must be discontinued.

Wild lions are under severe threat, having disappeared from 94% of their historic range. There are only half as many as there were 25 years ago, with fewer than 25,000 estimated. Poaching is one of the primary threats and is increasing to satisfy the growing demand for skin, teeth, paws, claws and bones.⁶⁰ Consequently, as long as a market exists or potentially exists, the Department must have very clear policy objectives around what will happen with any lion parts or derivatives that have the potential to supply the market.

In addition (and this is perhaps more appropriately addressed as a priority conservation policy objective), enforcement of existing laws to protect wild lion⁶¹ must be bolstered (pending the review and amendment of existing biodiversity legislation as contemplated by the Draft Policy).

11.3 Reverse domestication and intensive management of rhino

Support for reversal of domestication and intensive management of rhino

We agree with the finding of the Draft Policy that the sustained use of intensive management practices compromises the potential conservation value for replenishing depleted wild populations (per the findings of the African Rhino Specialist Group), and that it is desirable to move them out of captive breeding situations and back into accepted wild managed or wild conditions as soon as practically possible.⁶² We therefore support the policy objective of reversing domestication and intensification of rhino management. We are strongly of the view that the Draft Policy should make provision for the phasing out of both intensive management and semi-intensive management of rhino (except where keeping rhino in a semi-intensively managed situation is necessary for their imminent reintroduction to the wild).

⁵⁹ Para 9.3.19.2, HLP Report.

⁶⁰ Hans Bauer et al., “Lions in the Modern Arena of CITES,” ed. Daniel Miller, *Conservation Letters*, no. January (2018): 1–8, <https://doi.org/10.1111/conl.12444>; Hans Bauer et al., “Lion (*Panthera Leo*) Populations Are Declining Rapidly across Africa, except in Intensively Managed Areas,” *Proceedings of the National Academy of Sciences* 112, no. 48 (2015): 14894–99, <https://doi.org/10.1073/pnas.1500664112>.

⁶¹ Including the National Environmental Management: Biodiversity Act and TOPS Regulations and various provincial legislation.

⁶² Page 22, Draft Policy.

Despite the proclamations made by some South African rhino owners, whose intention is to intensively breed and manage rhinos specifically for their horns, that their rhinos enjoy a wild natural environment, published images taken over the years of John Hume’s farm do not indicate a natural or wild environment. John Hume, the owner of largest amount of rhino in South Africa⁶³, intensively breeds rhino and harvests their horns. The published images clearly illustrate intensively managed rhino who are forced to live in an unnatural, controlled environment where they have to be fed by humans at certain times of the day.⁶⁴

A decision by South Africa’s government to include more than 30 wild species including rhinos, on a list of animals that can be improved by breeding and genetic research could cause considerable damage to their genetic diversity, scientists warn.⁶⁵

The cost to breed rhinos, feed rhinos and maintain their safety is unsustainable. John Hume has published numerous articles about his current financial predicament.⁶⁶

The fragmentation of natural habitats by fences and human settlements is threatening the survival of the white rhinoceros. Intensive farming practice will prevent dispersal from the family group and will lead to mating among close relatives. Additionally, female rhinoceros favor individual males for mating over others and sire several offspring with the same partner over consecutive breeding periods. These factors will lead to a high degree of inbreeding. These facts are published, they are the results from the largest scientific study to date on the sexual preferences of white rhinos, published in the peer-reviewed journal *Evolutionary Applications*.⁶⁷

The South African rhino breeders have publicly mentioned that word domestication used in the Draft Policy Position Document is incorrect.⁶⁸ However, the farming of wild animals leads to the domestication of such. Domestication is scientifically explained as restriction of habitat use, changes in health and behaviour and the resulting problems with inbreeding.⁶⁹

The process of dehorning a rhino is completely unnatural and stressful. It involves chemically immobilizing the rhino using powerful medication which poses risk to the rhino. In order not to cause unnecessary pain, injury and possible death the horn is cut off horizontally with a chainsaw without cutting too close to the germinal layer. This means that there is a remaining stump, rhino poaches have killed rhino for the stump. The dehorning process is expensive and can only be carried out by an experienced veterinarian, this process is repeated because the horn grows back.

No scientific studies have been carried out regarding the long-term medical effects, effects on rhino behaviour and reproductive fitness of repeated immobilization.⁷⁰

As noted in section 10.1 above, there appears to be some overlap and therefore potential for confusion between the definitions of “controlled environment” and “intensively managed rhino” insofar as both definitions refer to the size of the area the animals occupy and whether human intervention is

⁶³ <https://www.savetherhino.org/thorny-issues/rhino-farm-at-risk-of-collapse/>

⁶⁴ <https://www.nationalgeographic.com/animals/article/160122-Hume-South-Africa-rhino-farm>

⁶⁵ <https://www.sciencemag.org/news/2020/01/south-africa-s-move-allow-farming-lions-and-other-wildlife-bad-idea-scientists-say>

⁶⁶ <https://lowvelder.co.za/504792/hume-auction-nature-estate-save-white-rhinos/>

⁶⁷ <https://www.sciencedaily.com/releases/2019/12/191216110135.htm>

⁶⁸ Leveraging the value of rhinos in South Africa, An AWEI Fireside Chat, 22 July 2021

⁶⁹ <https://www.nationalgeographic.com/pages/article/150106-rhino-poaching-south-africa-animals-conservation>

⁷⁰ <https://www.ewt.org.za/wp-content/uploads/2019/04/EWT-Perspective-on-the-Dehorning-of-Rhino-October-2012.pdf>

implemented. However, “intensive management” is not defined, and it is therefore unclear what this entails in relation to rhino specifically (beyond deliberate husbandry and food supplementation referred to in the definition). We submit that this overlap should be rectified by through the application of only one definition (we submit this should be “controlled environment” with the associated application to rhino), alternatively, “intensive management” must be defined.

We further agree with and support the policy output of crafting and implementing a plan to continue protection of privately-owned rhino (provided this is intended to be on a temporary basis only, and pending reintroduction of rhino to the wild) and the expansion of extensive wildlife areas for conservation. Insofar as such areas are extended for the purpose of sustainable use of rhino, we disagree for the reasons already set out in this comment and recommend that extensive wildlife areas should be secured so that populations of rhino may thrive without the purpose for this being anthropocentric use.

Trade in rhino horn

The Draft Policy proposes that trade in captive rhino horn (and other CITES-related activities) will not be supported until the recommendations of Option 3 of the Commission of Inquiry are addressed.

Option 3 provides for: “*Application of current policy (limited international trade in hunting trophies and live rhino to appropriate and acceptable destinations), with no immediate intention to trade in rhino horn, but maintaining the option to re-consider regulated legal international trade in rhino horn when requirements are met.*”⁷¹

In 2011, 73.5% of the world’s rhino lived in South Africa⁷², the most significant population of rhino in South Africa lived in the Kruger National Park. In February 2021, SANParks announced that rhino populations in the Kruger National Park had declined by 70% in the past decade.⁷³ This means that, at most, there are approximately 3500 white rhino and 260 black rhinos in the Kruger National Park.

There should be an immediate moratorium on the trophy hunting of black and white rhino and the domestic trade in rhino horn.

We strongly disagree with policy output that in any way paves the way for future trade in rhino horn, either domestically or internationally. Firstly, the trade in rhino horn is inimical to an interpretation of “sustainable use” that is consistent with section 24 of the Constitution. Secondly, trade in any form whatsoever is detrimental to the survival of the species.⁷⁴ This was acknowledged by the then Minister of Environmental Affairs in the reasons for her decision to impose a moratorium on domestic horn trade,

⁷¹ Summary report of the Committee of Inquiry (CoI) appointed by the Minister of Environmental Affairs to advise on the possibility of proposing legal international trade in rhino horn to the 17TH Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), or not.

⁷² https://www.environment.gov.za/sites/default/files/docs/background_rhinoconservation_southafrica.pdf

⁷³ <https://www.gov.za/speeches/environment-forestry-and-fisheries-rhino-poaching-south-africa-2020-1-feb-2021-0000>

⁷⁴ <https://www.sciencedirect.com/science/article/pii/S2351989420306867>; <https://www.sciencealert.com/south-africa-just-lifted-the-ban-on-rhino-horn-trade>; <https://www.dailymaverick.co.za/opinionista/2015-12-01-lifting-the-ban-on-rhino-horn-trade-is-no-victory-for-rhino-owners/>

namely “to stem the flow of rhino horn into the international market and indirectly to curb the demand for horn and horn products.”⁷⁵

It is a well-documented fact that the illegal killing of rhino and the illegal trade in rhino horn continues unabated across Africa and Asia. 668 rhino were poached in South Africa in 2012, rising to 1215 in 2014, 1054 in 2016, 769 in 2018 and 594 in 2019.⁷⁶ The rate of killing in parts of Africa has continued to increase dramatically over the past decade and this has threatened the continued survival of the rhino species and negatively impacted the ecosystems in which they live⁷⁷

The scale of the rhino poaching crisis poses a threat to the national security of our country and to the other range states. rhino poaching fuels conflict and unrest, it destroys livelihoods, it promotes corruption and negatively impacts wildlife-based economies and all conservation efforts.⁷⁸

Despite the overwhelming support for protecting rhino by not allowing trade, South Africa has continued to promote the domestic trade in Rhino horn, as evidenced by the Draft Policy which appears to pave the way for future trade upon implementation of the “Option 3” recommendations.

The domestic trade in rhino horn weakens the international trade ban under CITES. The international trade in rhino horn is unlawful and is directly linked to the poaching of rhino and why they are at risk of extinction. The domestic trade in rhino horn will ultimately result in increased international trade which will be detrimental to rhino conservation.⁷⁹

South Africa does not have the enforcement capacity to ensure that illegally obtained rhino horn will not be exported as legally obtained rhino horn (e.g. by using forged documents). Legalising trade will not stop the black market, illegal trade which is also associated with organized crime including drugs, weapons and human trafficking. Furthermore, it can be argued that legalising rhino horn trade will threaten wild populations, simply because it creates incentives for new players to enter the market. To a greater extent, this is because inseparability of legal and illegal horn is patently a genuine possibility.⁸⁰

The Draft Policy should support the continued international ban in rhino horn trade (undertaking that no rhino horn trade proposal will be submitted to CITES at all) and make provision for reinstating the moratorium on domestic trade in rhino horn set aside in *Kruger and another v Minister of Water and Environmental Affairs and others*.⁸¹

⁷⁵ ‘Moratorium on the trade of individual rhinoceros horns and any derivatives or products of the horns’ published under Government Notice 148 in Government Gazette 31899, 13 February 2009; and *Kruger v Minister of Water and Environmental Affairs* [2016] 1 All SA 565 (GP).

⁷⁶ Table 9.1, Department of Forestry, Fisheries and the Environment *National Environmental Compliance and Enforcement Report 2019-20*.

⁷⁷ <https://www.smithsonianmag.com/articles/heres-what-might-happen-local-ecosystems-if-all-rhinos-disappear-180949896/>

⁷⁸ <https://www.chathamhouse.org/sites/default/files/public/Research/Africa/0214Wildlife.pdf>

⁷⁹ <https://eia-international.org/blog/history-repeating-the-illegal-trade-in-rhino-horn/>

⁸⁰ Collins, Cox, Marire “The judicial annulment of the ‘domestic’ trade moratorium in South African Rhinoceros horn: a law and economics perspective”(2020) *European Journal of Law and Economics*.

⁸¹ [2016] 1 All SA 565 (GP). The Constitutional Court ultimately dismissed the then Minister’s application for leave to appeal the judgment.

11.4 To enhance conservation and sustainable use of leopard

Support for leopard conservation

Conserving leopards successfully requires tracking population numbers and trends. However, leopards are notoriously elusive and occur at low densities, which makes monitoring difficult. Despite every effort by the EMS Foundation using the Promotion of Access to Information Act, it has been unable to ascertain the current leopard population and population trends in South Africa, particularly in the two provinces, Limpopo and North West, where trophy hunting of leopards has been permitted.⁸² In addition, it is unclear how many leopards have been killed in all nine provinces, including those referred to as so-called Damage Causing Animals (DCAs).

[The South African Scientific Authority](#) has stated that the number of leopards in South Africa is unknown, they have also stated that the hunting of leopards poses a risk to the survival of the species.

Leopards are “free-ranging” and do not stay within the boundaries of protected areas. Research suggests that 62% of leopard range is found outside of formal protected areas.⁸³ We consequently support the proposed policy output of developing and implementing a shared, integrated and strategic approach to leopard conservation and management.

In previous submissions⁸⁴ we have noted that Government policies should be driving the recovery of leopard numbers in historically exploited protected areas to safeguarding unprotected leopard range from loss, and that such policies should also be promoting movement between reserves to encourage gene flow. Suitable wildlife corridors for leopards, even through already transformed land. We consequently wholly support the development of incentives to promote leopard conservation through *leopard conservation zones*, which must include the creation of ecological corridors (where feasible) to mitigate existing fragmentation as a result of agriculture and urban development.

Prohibition on hunting of leopard

Animals of the five species should not be killed without adequate justification. In our view, selecting particularly magnificent individuals and killing them to gratify the ego of a hunter who wants a trophy, is not an adequate justification. It is not in the best interest of the animals concerned, the species, or the ecological communities within which they play important roles. It is contrary to the ethos of conservation, undermines efforts to enhance people’s respect for Nature, and is inconsistent with indigenous African values that will be important in promoting the necessary transformation of human/ wildlife relationships in South Africa.

⁸² <https://emsfoundation.org.za/trophy-hunting-of-leopards-in-south-africa/>
<https://emsfoundation.org.za/wp-content/uploads/EMS-Letter-to-Minister-re-Leopard-Trophy-Hunting-2021.pdf>

⁸³ Jacobson AP, Gerngross P, Lemeris Jr. JR, Schoonover RF, Anco C, Breitenmoser-Würsten C, Durant SM, Farhadinia MS, Henschel P, Kamler JF, Laguardia A, Rostro-García S, Stein AB, Dollar L. 2016. Leopard (*Panthera pardus*) status, distribution, and the research efforts across its range.

⁸⁴ EMS Foundation and Animal Law Reform South Africa Joint Submission to the High Level Panel, 15th June 2020.
<https://emsfoundation.org.za/submission-in-respect-of-deff-high-level-panel-the-ems-foundation-and-animal-law-reform-south-africa/>

The trophy hunting of leopard is based on current consumptive use policies which need to change urgently. Insofar as the setting of a hunting quota for leopard is concerned, [biologists](#) continue to question the scientific basis of this quota. The current leopard conservation status is of a population in decline and facing numerous threats, with increasingly disappearing and fragmented habitat. They are included in 3 of 5 categories of species most vulnerable to extinction. We therefore do not support the development of Norms and Standards for the hunting of leopard, or the revision of quotas to enhance the hunting industry.

We also do not support “evidence-based sustainable harvesting of leopard” as a means of mitigating leopards as damage causing animals (“DCA”).

Leopard are elusive and monitoring their populations is difficult.⁸⁵ Evidence however suggests that leopard numbers are persistently declining, contracting at 11% per annum (1) and a further 8% decline assessed in 2018.⁸⁶

The exploitation of leopards as proposed by the Draft Policy will have severe ecological and evolutionary costs to the leopard population. Sport/trophy hunting of endangered and threatened species such as leopards is not a legitimate conservation tool. Further, permitting the hunting of leopard in circumstances where their notoriously elusive nature makes them difficult to monitor and manage (and when credible data regarding leopard numbers, and how many leopards are actually killed on the basis that they are DCA are largely unknown) is inconsistent with constitutional conservation imperatives and the precautionary principle contained in section 2(4)(a)(vii) of NEMA, particularly given leopard’s listing on Appendix I of CITES.

Trophy hunting of leopard should also not be permitted because in general, both nationally and in the provinces, there are valid concerns about the monitoring and enforcement systems, the negative effects of decentralised systems and practices.⁸⁷ This includes the absence of a transparent and accessible permitting system, which we have addressed above.

We also strongly disagree with the conflation of human wildlife conflict situations into trophy hunting events, as an incentive will be created to label leopards as problem animals.⁸⁸ No provision should be made for the hunting of leopards designated as DCA. Translocation should rather be considered, if leopards are to be removed from the area in question at all. Translocation has been established as a useful tool to reintroduce species to areas where they have been driven to extinction.⁸⁹

We therefore recommend policy outputs which put in place (with appropriate stakeholder consultation) a moratorium on both the determination of an annual leopard quota, and the hunting of leopard for trophy or sport purposes. Instead, management and conservation of leopard must be promoted through

⁸⁵ <https://wildlifeact.com/blog/monitoring-the-invisible-on-the-leopard-survey/>

⁸⁶ Mann, G., Pitman, R., Broadfield, J., Taylor, J., Whittington-Jones, G., Rogan, M., Dubay, S., Balme, G.2018. South African Leopard Monitoring Project: Annual report for the South African National Biodiversity Institute (SANBI/Panthera Report)

⁸⁷ https://emsfoundation.org.za/wp-content/uploads/BreakingPoint_FINAL_15052020_web.pdf;
<https://emsfoundation.org.za/wp-content/uploads/THE-EXTINCTION-BUSINESS-South-Africas-lion-bone-trade.pdf>;
https://emsfoundation.org.za/wp-content/uploads/Plundered_SA-Reptile-Trade_BAT_EMS_for-web.pdf

⁸⁸ Pitman, R.T., Fattebert, J., Williams, S.T., Williams, K.S., Hill, R.A., Hunter, L.T.B., Slotow, R., and Blame, G.A., 2016.

The conservation costs of game ranching. *Conservation Letters*; doi:10.1111/conl.12276;

& <https://www.landmarkfoundation.org.za/past-and-present-projects/species-conservation/>

⁸⁹ IUCN/SSC, 2013.

proposed leopard conservation zones and translocation (rather than trophy hunting) to deal with human wildlife conflict where strictly necessary.

12. TRADE-RELATED POLICY INTERVENTIONS

12.1 No ivory trade under current conditions

We agree with the position that South Africa will not submit a trade proposal to CITES for ivory. However, “*while certain circumstances prevail*” suggests that this position is not definitive, and that the Department is open to considering trade in ivory and submitting the necessary proposals to CITES in the longer term. This is confirmed by the policy outcome “*in long-term, global consensus to allow international trade in ivory.*” We strongly disagree that any trade in ivory should even be contemplated, and we are unable to meaningfully comment on the circumstances under which this would be considered by South Africa, as the Draft Policy contains no description or definition of what “*certain circumstances*” entail.

In the absence of a definition of the circumstances under which trade in ivory would be considered, this policy position is meaningless and inoperable.

Illegal killing of elephant for commercial trade in ivory remains one of the biggest threats to wild elephant. There has been a well-documented, marked increase of elephant poaching in South Africa. In 2012 two elephants were killed for their ivory in South Africa’s flagship Kruger National Park. In 2015 twenty-four elephants were killed for their ivory. In 2016 forty-six elephants were killed for their ivory. In 2017 sixty-seven elephants were killed for their ivory. In 2018 seventy-one Elephants were killed for their ivory, and according to Minister Creecy the Minister for the Environment, Forestry and Fisheries, thirty-one elephants were killed in the Kruger National Park in 2019. These figures demonstrate the intentional targeting by organised criminal syndicates of elephants in eastern South Africa, specifically in the region bordering Mozambique.⁹⁰

The Elephant Trade Information System (“ETIS”)⁹¹ was established to monitor the illegal trade in ivory in collaboration with the CITES Secretariat. South Africa has been listed as a Category C Country, its being a country that exhibits particular characteristics which merit careful tracking going forward. The ETIS Report highlights the fact that South Africa is possibly being targeted because authorities are not able to control the illegal flow of wildlife parts from its air transport hub.

Illegal trade in ivory continues to fuel poaching of elephant, posing a significant threat to wild populations. This threat would only be exacerbated by legalizing domestic and / or international trade in ivory.⁹²There

⁹⁰ [Elephant Poaching Statistics | PoachingFacts](#).

⁹¹ CoP18 Doc. 69.3, CITES Report on the Elephant Trade Information System.

⁹² <https://conbio.onlinelibrary.wiley.com/doi/abs/10.1111/cobi.12377>

<https://www.sciencedirect.com/science/article/abs/pii/S0921800916311181>

<https://www.tandfonline.com/doi/abs/10.1080/02589346.2016.1201378>

https://www.researchgate.net/profile/Lucy-Vigne/publication/351747464_The_rhino_horn_and_ivory_trade_1980-2020/links/60a777be92851ca9ded3a26c/The-rhino-horn-and-ivory-trade-1980-2020.pdf

is consequently no justification for a policy position that seeks to pave the way for reversal of a trade ban that has been in place with CITES since 1989.

Insofar as stockpiles are concerned, a 2016 study conducted by the National Bureau of Economic Research⁹³ found that there had been a spike in elephant poaching as a result of the one-off sales of ivory took place in South Africa in 1997 and 2008. At CITES CoP18 held in Geneva in August 2019, a proposal by South Africa, Botswana, Namibia and Zimbabwe that they be allowed to lift restrictions on Appendix II listings to allow trade of registered government-owned stockpiles of so called “clean ivory” was overwhelmingly defeated with only 23 countries in support.

There is consequently no basis for any other approach to stockpiles other than their destruction. We support the Draft Policy insofar as it makes provision for policy facilitating the destruction of stockpiles, after consultation with interested and affected parties.

Insofar as promoting the sustainable use of elephant is concerned, the commodification of these nonhuman animals must end and we need to focus on their intrinsic worth, their value to the people of our country and the country itself, their value to ecosystem and other animals. If we need to look at their monetary value, let us consider this in light of eco-tourism and the benefit they bring to the country alive, in their natural habitats, living their lives as they choose.

12.2 Prevent live export ex situ of iconic species

The *Breaking Point Report* released by the EMS Foundation and Ban Animal Trading South Africa⁹⁴ has exposed the inadequacies of the legal live wildlife trade permitting system in South Africa as well the processes supposedly overseen by CITES and nature conservation representatives. It has been proposed that a moratorium is placed on all trade of wildlife and wildlife parts until an investigation can be completed.

We are therefore wholly supportive of the Department’s proposed policy output of promulgating prohibitions to prevent the taking of wild specimens of the five iconic species into captivity and preventing their export other than for the purposes of reintroduction to the wild. We commend the Department for its proposals in this regard.

12.3 No rhino horn trade under current conditions

We agree with the position that South Africa will not submit a trade proposal to CITES for horn. However, the policy outcome “*in long-term, global consensus to allow international trade in ivory*” suggests that this position is not definitive, and that the Department is open to considering trade in horn and submitting the necessary proposals to CITES in the longer term. We strongly disagree that any trade in rhino horn should even be contemplated and suggest that this confusion between the Draft Policy’s policy output

⁹³ https://www.nber.org/system/files/working_papers/w22314/w22314.pdf

⁹⁴ [THE BREAKING POINT - UNCOVERING SOUTH AFRICA'S SHAMEFUL LIVE WILDLIFE TRADE WITH CHINA - EMS Foundation.](#)

(no proposal to CITES) and policy outcome (trade in horn in the long-term) be eliminated by the removal of the latter policy outcome.

We have already addressed above why rhino horn trade should not be condoned or provided for in any manner by the Draft Policy.

Insofar as stockpiles of horn are concerned, we support the proposed output that stockpiles are adequately accounted for and secured, provided this is pending their destruction. In this regard, we also support the development of a stockpile management and disposal policy (with consultation with interested and affected parties).

13. PRIORITY CONSERVATION POLICY INTERVENTIONS

13.1 Increased wildness, naturalness and wellbeing of fauna

The HLP Report made several findings in relation to “wildness”, representing an important shift in perceptions of wild animals in Nature. The HLP Report also recognises that *“wildness, near natural areas and wilderness are the foundation of the ecosystem goods and services that sustain human health, fuel the economy, prevent environmental degradation, promote conservation of our wildlife heritage, and provide a competitive advantage for wildlife-based tourism and the wildlife economy”*⁹⁵ and that *“domestication of wildlife poses a direct risk to the conservation of wildlife and its [above-mentioned] value propositions.”*⁹⁶

Wild species are living beings that each play a unique role within the communities of life (e.g. ecosystems) to which they belong. Their freedom to be able to determine their own actions within the habitats within which their species evolved (i.e. to be wild) is an essential aspect of their ecological roles.

The Draft Policy proposes interventions towards the expansion of protected areas and creation of corridors, the development of Norms and Standards which include reducing the need for management of iconic species, and the development of a systems approach to elephant management, which are conducive to fostering “wildness”, and which we wholly support.

However, as long as South African law defines wild animals as un-owned things (*res nullius*) which a legal subject (a human or juristic person) may acquire ownership of by exercising physical control over the animal with the intention of owning it (typically by capturing or killing it) rather than wild species as individual beings with fundamental rights such as: the right to dignity, life, freedom (e.g. i.e. the right to remain free and wild and not to be deprived of freedom without just cause), or security of person and bodily integrity (e.g. the right to be free of violence and the right not to be treated in cruel ways), true “wildness” will not be possible.

⁹⁵ Para 9.3.1.1, HLP Report.

⁹⁶ Para 9.3.1.1, HLP Report.

The HLP Report also finds that “*wildness is an important component of African wildlife landscapes, and its importance as part of the branding of a globally competitive hunting and photo-tourism destination.*”⁹⁷ Hunting thus remains an objective of the Draft Policy. True “wildness” of iconic species thus continues to be compromised by pervasive perceptions of wild animals as things to be used for the benefit of people. Even if developing policy which facilitates conferring fundamental rights on wild animals such that they cannot be deprived of their freedom or ‘wildness’ without just cause, at the very least hunting should be categorically excluded, as it represents the greatest infringement on wild species.

13.2 The One Welfare approach

We have already discussed in section 10.4 above that this concept has not been defined, and that a definition of what it entails in the context of biodiversity in general and the iconic species in particular is necessary.

13.3 Reconceptualized protected areas

We support the policy interventions proposed under this objective. However, we do not support the unlocking of a “bio-economy” to the extent that it involves continued exploitation of iconic species, particularly hunting. Any economic activities in relation to the species under consideration should be limited to eco-tourism and associated economic opportunities.

14. LIVELIHOODS AND SOCIAL JUSTICE

Despite the fundamental contradiction between growth and sustainability inherent in the “sustainable use” approach, the current Biodiversity Economy strategy remains growth through the commodification of biodiversity and the killing of wildlife — redressed as “sustainable”, “green”, or “inclusive” – but first and foremost, growth. It appears that the current position is that because South Africa is considered one of the most biologically diverse countries in the world, our biodiversity can simply be translated and equated into is an economic asset that can be utilised and it is linked to growth, escalating demand and employment. However, this is a very simplistic view that not only ignores, but exacerbates, alarming biodiversity loss and degradation which imperils ecosystem functionality and consequently is an existential threat to ALL South Africans.

At present, most of the biodiversity-related employment in South Africa is extractive, i.e. 61%. 21.5% of the jobs relate to biodiversity-based tourism, only 14% are classed as protecting biodiversity and restoring ecological infrastructure and 3.5% are within research and professional services.⁹⁸ This is of concern because South African biodiversity is not infinite and is in fact greatly endangered. National Red List assessments indicate that:

⁹⁷ Para 9.3.10.1, HLP Report.

⁹⁸http://www.dpru.uct.ac.za/sites/default/files/image_tool/images/36/Publications/Biodiversity%20Employment%20Factsheet%202019.pdf

- Nearly 25% of the South African flora is considered either [threatened with extinction](#) or of [conservation concern](#).
- Mammals - of the 331 taxa assessed over 17% are threatened and 10% Near Threatened. This indicates a net worsening conservation status for mammals from the previous assessments.
- Almost 50% of the 1 021 ecosystem types assessed in the NBA 2018 are categorised as threatened. Overall estuaries and inland wetlands have the highest proportion of threatened ecosystem types. Over two-thirds of ecosystem types are represented in the current protected area network, leaving 31% in the Not Protected category. 56% of wetland ecosystems are critically endangered. Wetland and river ecosystem types have the lowest levels of protection overall. 60% of coastal ecosystem types are threatened.
- More than 70% of the South African marine and coastal area is threatened (2011) and the DFFE does not assess 90% of the more than 770 marine populations killed for consumption in South African waters.
- Current measures of fragmentation are highest in the US, Europe, **South Africa**, India and China. Many of South Africa's ecosystems are fragmented. For example, development (agricultural and urban expansion) has fragmented and transformed 80% of the Cape Floral Kingdom.⁹⁹ Habitat fragmentation reduces biodiversity by impairing important ecosystem functions and altering nutrient cycles. Fragmentation exposes species to harsh environmental conditions, including fires, diseases, and invasive species. That amounts to a reduction in an ecosystem's ability to withstand disturbances without breaking down – it becomes less resilient. Paleo-biologists have found fragmentation of natural habitats to be a good early-warning sign of biodiversity loss and ecosystem collapse. Fragmentation can prevent migratory populations from conforming to their behaviour over the life cycle. That translates into species extinction.

Over the past five decades, scientists have been documenting negative anthropogenic environmental change, expressing increasing alarm and urging dramatic socioecological transformation in response to this “Sixth Extinction”. The decline of Earth's living systems is undergoing what environmental historians and scientists aptly term the “great acceleration” and despite decades of world summits on environment and development, repeated warnings by scientists and the emergence of ‘sustainable development’, global society continues its drive toward ecological disaster and geopolitical chaos. In addition, the global outbreak of COVID-19 has raised questions about human relationships with nature vis-à-vis development models that are currently and largely followed worldwide.

It is in the context of the acknowledged biodiversity crisis that the Department needs to consider its proposed new deal for people and nature. It is abundantly obvious that the Department cannot continue on the anthropocentric trajectory which has led us to this crisis in the first place, namely, that nonhuman

⁹⁹ The Cape Floral Kingdom is the most threatened of the world's six floral kingdoms. 37 plant species have gone extinct since 1900, making it one of the hot spots for plant extinction on the planet, with 1,850 of its plant species (over 20%) now threatened with extinction. Though the Cape floral kingdom accounts for only 0.6% of Africa's land area and 6% of the land area of South Africa, one in five of Africa's plant species and about half of South Africa's occur here, of these, two-thirds of the species occur nowhere else on Earth. These species are the barometer of ecosystem health, and the high number of threatened species is a clarion call that we are heading for a serious environmental crisis.

life-forms are portrayed instrumentally as “natural resources” for “economic and social development” - setting aside any doubts that economic growth, not biodiversity conservation, was the priority. If South Africa is to develop environmentally sustainable and equitable societies, profound worldview remediation is essential. These values must become central to the development of concrete implementation plans that will turn these values into policies.

Our current economy is an economic system that is extractive, unsustainable, unfair, unstable, toxic, inhumane and unhappy. Society and nature are on their collective knees as a result. And the root cause of this is how the economy is currently designed. The argument the trophy hunting sector is making is one based on growth and trickle-down economics which mostly does not necessarily accrue to the actors themselves and is associated with socio-economically unsustainable dynamics. And we know that globally, in the resource-intensive classical economic models, further economic growth is not even possible and that economic growth tends to be progressively less connected with job creation and securing income and wellbeing for a broader population.

What we need is a more humane and sustainable economy. A distributive restorative, regenerative, eco and ethically based economy that focuses on quality of life and kindness over GDP, that emphasizes environmental sustainability and requires the principles of ecology to establish the framework for the formulation of economic policy.

What is important to advance, for both social and ecological justice, is the ability to determine how environmental and human values overlap, conflict, and where the opportunity for reconciliation lies. To reconcile social and ecological justice, a number of conditions need to be met. First, we need recognition that humans and nature are interdependent, and that disruption for any of the participants has potentially major impacts on the others, as exploitative systems are functionally unsustainable. Second, there needs to be empathy with a disenfranchised silent nonhuman majority as living agents worthy of moral consideration and legal protection.

Our conservation policies need to be based on ecologically sustainable solutions, biodiversity protection and the protection of non-human animals and organisms. A short-term focus on immediate human interests has longer-term detrimental effects on humans and non-humans alike. What is needed is a new ‘convivial conservation’ approach that goes beyond protected areas and faith in neoliberal economics to incorporate the needs of humans and nonhumans within integrated and Just landscapes. What is required is the recognition of the intrinsic value of both humans and nature, and the need for the entwining of eco-justice and social justice.

The Department should emphasize values that support the protection of nature for its own sake as prerequisites to successful conservation and values that are *inclusive* and acknowledge the intrinsic value of non-human nature as well as the benefits that humans can derive from non-human nature. This guarantees true plurality and democracy. The Department needs to take an approach that extends compassion and caring to the entire living community. There needs to be an understanding that the non-human world (including not just organisms but ecosystems and geodiversity) should have rights (but not necessarily the same ones) as should humans, and that humans and any other moral creatures, beyond their ‘rights’, should also have *responsibilities* or ‘duties’ to the rest of nature – the system of life from which all life evolved.

There is a need to challenge the economic growth paradigm. What is needed is the creation of an ecologically sustainable world and a move toward a steady-state economy. This will require an ecologically sustainable population, low resource use, greater equity and rapid transition towards a circular economy.

Resource extraction and consumption is listed as one of five principal causes of extinction by the Convention on Biological Diversity (2014), along with habitat change, pollution, invasive alien species and climate change. So, setting aside more habitat for other species will not be sufficient to preserve them if we continue to misbehave in the other half: over-consuming, generating excessive pollution, and so forth. It is all ‘one Earth’ after all, and habitat may be degraded by actions outside it (climate change being an obvious case). Similarly, it is correct to insist that any significant changes in land use must be made with due consideration for the wellbeing of societies’ marginalized citizens.

At present, leading international agencies such as the United Nations Environment Programme are largely focused on what they claim to be win–win scenarios of ‘sustainable development’ rhetoric. These combine social, economic and environmental objectives. However, as noted in the World Scientists’ Warning to Humanity, environmental integrity is essential for the healthy functioning of social and economic systems, and thus environmental protection needs to be prioritized in policy and practice. It is essential to advance moral arguments for biodiversity conservation and a broader array of moral rationales for biodiversity conservation, would be more likely to lead to effective plans, adopted and enforced by government, designed to conserve biological diversity. A good place to start in this regard would be to explicitly incorporate values into the transformation policies which benefit both communities and wildlife. What we need to follow are more encompassing and advanced models – regenerative, rewilding, sustainable, wellbeing and collaborative models.

For a truly new deal with Nature, and to truly achieve the Conservation Transformation policy objectives that the Draft Policy seeks to achieve, the Draft Policy should aim to achieve the following goals.

1. **More investment in Protected Areas.** The funds required are small. It has been estimated that to protect 30% of the world’s land and ocean and managing the areas effectively by 2030 would require an average investment of US\$140 billion annually, equivalent to only 0.16% of global GDP and less than one-third of the global government subsidies currently supporting activities that destroy Nature. The benefits, even when confined to financial benefits, of such levels of protection are estimated to exceed the costs significantly. But there are wider benefits, including lowering the risks of societal catastrophes in relation to human health – not least the risks of the emergence and spread of infectious diseases. It has been estimated that the associated costs over a 10-year period of efforts to monitor and prevent disease spillover (which is driven by wildlife trade and by loss and fragmentation of tropical forests) would represent just 2% of the estimated costs of COVID-19.¹⁰⁰
2. **Nature protection and protected areas are treated as matters of national or international security.** The money is there. A recent study by globally respected conservation experts estimates that it would cost \$26 billion (£18 billion) a year to mitigate earth’s vulnerability to extinctions

¹⁰⁰ Andrew P. Dobson, *et al*, Ecology and economics for pandemic prevention, *Science* 24 Jul 2020: Vol. 369, Issue 6502, pp. 379-38. DOI: 10.1126/science.abc3189

and pandemics. That's an average of \$133 million (£94 million) per country in the world. Or \$3.48 (£2.47) per person.

3. **Wildlife conservation is disengaged from the embedded colonial and apartheid narrative.** This is necessary to achieve transformative changes and alleviate poverty in South Africa. Massive philanthropic funds are available to government who are willing to replace the current trophy hunting, colonial-based, extractive mode with alternative models that protect wildlife areas, and are regenerative, restorative and community based.
4. **Look beyond the urban-rural divide.** Very often in the development literature, rural poverty is framed as if it is a distinct phenomenon, one that can be understood separately from the dynamic of economic growth more generally. In addition, the Department cannot address rural poverty or transform the sector by advocating trickle-down economics from consumptive and extractive use of wildlife.
5. **Reskilling and upskilling individuals** through education and learning into more ecologically sustainable, humane, future-fit and meaningful work, including emerging professions between humans and machines.

15. CONSERVATION TRANSFORMATION POLICY INTERVENTIONS

We support the policy interventions proposed under this objective. However, we do not support policies that perpetuate a sustainable use paradigm, particularly where such use involves hunting. This point has been extensively discussed in these comments.

It is established that eco-tourism has the potential to unlock more economic benefits for communities than does trophy hunting.¹⁰¹

Insofar as a National Human Wildlife Coexistence Strategy is concerned, we are of the view that such a strategy is imperative. However, it should not simply propose a systems approach to human wildlife conflict. In other words, the premise should not be tolerance between humans and wild animals, but rather harmonious co-existence. If such a Strategy is to be developed, it presents an invaluable opportunity to reorient human relationships with nature and begin to foster the paradigm shift we have discussed in sections 3 to 5 of these comments.

16. CONSERVATION CAPACITY POLICY INTERVENTIONS

We support the policy interventions proposed under this objective. However, as discussed in section 8.4 of these comments, the Draft Policy should make greater provision for development of enforcement capacity in relation to conservation of the iconic species in particular, and biodiversity in general.

¹⁰¹ [Wildlife tourism more profitable than hunting | Canadian Geographic; EMS-Foundation-presentation-notes-re-Community-benefits-from-trophy-hunting-realities-vs-pretence-final.pdf \(emsfoundation.org.za\).](#)

17. CONCLUDING COMMENTS

Humanity has overstepped the planetary boundary in respect of biological diversity and consequently has entered a “danger zone” where it will be negatively affected by sudden events (e.g. pandemics) and irreversible changes. Part of the reason is that we have collectively failed to value the ecological systems (and the individuals that comprise them) on which our survival ultimately depends. Instead of conserving that which has been entrusted to us, we have over-exploited terrestrial and marine ecosystems. The trade, sale and hunting of South Africa’s wild animals is driven by commodification, commercialisation and profit rather than by robust science, ethics or compassion. The threats wild animals are facing are powerfully linked to South Africa’s current conservation policies of consumptive use and inadequate policing and enforcement measures. A fundamental paradigm shift is required if we are to stem the rapid decline in biodiversity.

We are of the view that a new approach to human beings’ relationship with nature is not only warranted, but is absolutely critical. Current legal frameworks are not succeeding in stemming the tide of rapid biodiversity decline. What is required is a complete overhaul of the legal and administrative system, and a change in the relationship between people and Nature. It is with this paradigm shift in mind that the Draft Policy must be developed.

The Department has made significant strides in the Draft Policy towards a more eco-centric conception of human beings’ relationship with wildlife and proposing a definition of “sustainable use” that is more aligned with the principle of ecologically sustainable use as prescribed by section 24 of the Constitution.

However, we believe that the Draft Policy presents a critical opportunity to introduce the paradigm shift necessary to transition away from principles of “sustainable use” altogether, towards harmonious coexistence between people and Nature and to align it with an integrative interpretation of section 24 of the Constitution.

As we explained above, in our view, this means that the Draft Policy should be revised:

- by changing some of the definitions to align with an eco-centric approach;
- to include principles;
- to prohibit of all uses of the five species that cannot be justified as being the best interests of those species, the individual animals affected, and the ecosystems to which they belong, including trophy hunting, any trade in their body parts, and any trade in live animals (other than for conservation purposes);
- to include policy outcomes that facilitate greater enforcement of laws relevant to the conservation of the iconic species in general, and biodiversity in particular; and
- to include policy objectives that promote a transparent and accountable permitting system.

ANNEX A: CRITIQUE OF SUSTAINABLE USE

Flaws in sustainable use approach

The sustainable use approach suffers from several logical and practical flaws, including those listed below.

Using “sustainable use” as an overarching guiding principle entrenches the harmful idea that all relationships between humans and other species is one of user and used. Humans have always related to other beings in a many ways other than using them, and still do. It is important to place restrictions on human uses of other species to ensure that they do not cause unjustifiable harm, but defining all human interactions with wildlife (e.g. bird watching) as “use” is inaccurate and subsumes the rich variety of interactions to sub-categories of “resource use”.

It fails to recognise that other species are beings with their own volition and ecological roles to play and with inherent value, irrespective of their usefulness to humans. Wild species are living beings that each play a unique roles within the communities of life (e.g. ecosystems) to which they belong. Their freedom to be able to determine their own actions within the habitats within which their species evolved (i.e. to be wild) is an essential aspect of their ecological roles. However South African law defines wild animals as un-owned things (*res nullius*) which a legal subject (a human or juristic person) may acquire ownership of by exercising physical control over the animal with the intention of owning it (typically by capturing or killing it.) Indigenous plants are owned by the owner of the land on which they grow. As a consequence of the law defining indigenous species as objects, it does not recognize that they have any legally-protected rights or freedoms (only legal subjects may have rights). This means that despite the fact that legislation imposes many restrictions on what humans may do to wild species (particularly if they are threatened with extinction or otherwise protected), wild species do not have fundamental rights such as: the right to dignity, life, freedom (e.g. i.e. the right to remain free and wild and not to be deprived of freedom without just cause), or security of person and bodily integrity (e.g. the right to be free of violence and the right not to treated in cruel ways.)

It disregards the extent to which the use is in the interests of the affected individual, species, or ecosystem. Since wild species are defined as resources (i.e. objects), the question of what is in their best interests, is not considered. For example, it is clear that lion farming is not in the interests of the individual animals being farmed, the species (since it supports a growing demand for lion body parts), the ecosystems from which the lions were removed. It also encourages humans to relate to lions in disrespectful, exploitive and cruel ways with are the antithesis of harmonious co-existence.

It mischaracterises other species as a class of economic assets. South African legislation classifies indigenous species as “natural resources” or “indigenous biological resources” and Government policies refer to biological diversity itself as a “natural capital asset”.¹⁰² Valuing wild species as economic assets, rather than as subjects with inherent value and rights, has resulted in a policy focus on increasing the revenues generated from “the wildlife Economy”. The fact that many (consumptive and non-consumptive) uses of indigenous species are economic activities that contribute to GDP does not mean

¹⁰² See for example the “Biodiversity Economy” page on the Department’s website which states that: “South Africa is the third most biologically diverse country in the world, and therefore has one of the largest natural capital assets”.
<https://www.environment.gov.za/projectsprogrammes/biodiversityeconomy>

that wild species should be classified as economic assets any more than humans should be classified as resources because human labour and ingenuity contribute to the economy.

It encourages humans to exploit Nature instead of contributing to ecological health. Once wild species are seen primarily as economic assets within a Wildlife Economy, the focus on economic growth will inevitably intensify the uses made of indigenous species. The term “sustainable use” in the context of wildlife was originally used as a means of distinguishing between those uses that can be continued indefinitely without causing ecological degradation (i.e. ecologically sustainable uses) and those that should not be permitted because they do.¹⁰³

It undervalues wildlife and wild habitats. Wild animals (including insects), plants, fungi and micro-organisms are living beings that each play a unique roles within the communities of life (e.g. ecosystems) to which they belong. Valuing a wild organism on the basis that it is a discrete material object (e.g. valuing a kudu on the basis of the market value of its body parts) fails to recognise that its true value is as a protagonist in a complex web of ecological relationships, through which life flows, and regenerates itself. It is the web of relationships between beings that creates the ecological systems that sustain specific life forms such as human beings. (Given our very limited understanding of these relationships and of the dynamics of ecosystems, it is clearly prudent to protect all indigenous species and to minimise human disruptions of ecosystem functioning.)

It diminishes the source of wellbeing. Human beings are a species of mammal that are members of the living community we refer to as “Earth” or “Nature” and our wellbeing is derived from Nature. In the long-term, harming Nature in the pursuit of human wellbeing is a losing strategy because it progressively diminishes the capacity of Nature to provide what humans and other species need to live well and flourish, and consequently is unsustainable in the long term. This means that societies with governance systems that permit humans to cause long-term ecologically degradation, cannot be sustained, and that no matter how much money is generated in the short-term, humankind will inevitable suffer because the diminishing capacity of ecosystems to support life will ultimately diminish human wellbeing.

¹⁰³ This is consistent with the reference to “ecologically sustainable” in section 24 of the Constitution.

ANNEX B: ONE HEALTH PRINCIPLES

Manhattan Principles

29th September 2004,
The Rockefeller University, Caspary Auditorium

Conference Summary

One World, One Health: Building Interdisciplinary Bridges to Health in a Globalized World

Health experts from around the world met on September 29, 2004 for a symposium focused on the current and potential movements of diseases among human, domestic animal, and wildlife populations organized by the Wildlife Conservation Society and hosted by The Rockefeller University. Using case studies on Ebola, Avian Influenza, and Chronic Wasting Disease as examples, the assembled expert panelists delineated priorities for an international, interdisciplinary approach for combating threats to the health of life on Earth. The product—called the “Manhattan Principles” by the organizers of the “One World, One Health” event, lists 12 recommendations (see below) for establishing a more holistic approach to preventing epidemic / epizootic disease and for maintaining ecosystem integrity for the benefit of humans, their domesticated animals, and the foundational biodiversity that supports us all.

Representatives from the World Health Organization; the UN Food and Agriculture Organization; the Centers for Disease Control and Prevention; the United States Geological Survey National Wildlife Health Center; the United States Department of Agriculture; the Canadian Cooperative Wildlife Health Centre; the Laboratoire Nationale de Sante Publique of Brazzaville, Republic of Congo; the IUCN Commission on Environmental Law; and the Wildlife Conservation Society were among the many participants.

The Manhattan Principles on “One World, One Health”

Recent outbreaks of West Nile Virus, Ebola Hemorrhagic Fever, SARS, Monkeypox, Mad Cow Disease and Avian Influenza remind us that human and animal health are intimately connected. A broader understanding of health and disease demands a unity of approach achievable only through a consilience of human, domestic animal and wildlife health - **One Health**. Phenomena such as species loss, habitat degradation, pollution, invasive alien species, and global climate change are fundamentally altering life on our planet from terrestrial wilderness and ocean depths to the most densely populated cities. The rise of emerging and resurging infectious diseases threatens not only humans (and their food supplies and economies), but also the fauna and flora comprising the critically needed biodiversity that supports the living infrastructure of our world. The earnestness and effectiveness of humankind’s environmental stewardship and our future health have never been more clearly linked. To win the disease battles of the 21st Century while ensuring the biological integrity of the Earth for future generations requires interdisciplinary and cross-sectoral approaches to disease prevention, surveillance, monitoring, control and mitigation as well as to environmental conservation more broadly.

We urge the world's leaders, civil society, the global health community and institutions of science to:

1. Recognize the essential link between human, domestic animal and wildlife health and the threat disease poses to people, their food supplies and economies, and the biodiversity essential to maintaining the healthy environments and functioning ecosystems we all require.
2. Recognize that decisions regarding land and water use have real implications for health. Alterations in the resilience of ecosystems and shifts in patterns of disease emergence and spread manifest themselves when we fail to recognize this relationship.
3. Include wildlife health science as an essential component of global disease prevention, surveillance, monitoring, control and mitigation.
4. Recognize that human health programs can greatly contribute to conservation efforts.
5. Devise adaptive, holistic and forward-looking approaches to the prevention, surveillance, monitoring, control and mitigation of emerging and resurging diseases that take the complex interconnections among species into full account.
6. Seek opportunities to fully integrate biodiversity conservation perspectives and human needs (including those related to domestic animal health) when developing solutions to infectious disease threats.
7. Reduce the demand for and better regulate the international live wildlife and bushmeat trade not only to protect wildlife populations but to lessen the risks of disease movement, cross-species transmission, and the development of novel pathogen-host relationships. The costs of this worldwide trade in terms of impacts on public health, agriculture and conservation are enormous, and the global community must address this trade as the real threat it is to global socioeconomic security.
8. Restrict the mass culling of free-ranging wildlife species for disease control to situations where there is a multidisciplinary, international scientific consensus that a wildlife population poses an urgent, significant threat to human health, food security, or wildlife health more broadly.
9. Increase investment in the global human and animal health infrastructure commensurate with the serious nature of emerging and resurging disease threats to people, domestic animals and wildlife. Enhanced capacity for global human and animal health surveillance and for clear, timely information-sharing (that takes language barriers into account) can only help improve coordination of responses among governmental and nongovernmental agencies, public and animal health institutions, vaccine / pharmaceutical manufacturers, and other stakeholders.
10. Form collaborative relationships among governments, local people, and the private and public (i.e.- non-profit) sectors to meet the challenges of global health and biodiversity conservation.
11. Provide adequate resources and support for global wildlife health surveillance networks that exchange disease information with the public health and agricultural animal health communities as part of early warning systems for the emergence and resurgence of disease threats.

12. Invest in educating and raising awareness among the world's people and in influencing the policy process to increase recognition that we must better understand the relationships between health and ecosystem integrity to succeed in improving prospects for a healthier planet.

It is clear that no one discipline or sector of society has enough knowledge and resources to prevent the emergence or resurgence of diseases in today's globalized world. No one nation can reverse the patterns of habitat loss and extinction that can and do undermine the health of people and animals. Only by breaking down the barriers among agencies, individuals, specialties and sectors can we unleash the innovation and expertise needed to meet the many serious challenges to the health of people, domestic animals, and wildlife and to the integrity of ecosystems. Solving today's threats and tomorrow's problems cannot be accomplished with yesterday's approaches. We are in an era of "One World, One Health" and we must devise adaptive, forward-looking and multidisciplinary solutions to the challenges that undoubtedly lie ahead.