

MEMORANDUM TO MINISTER CREECY

RE MEASURES TO BE TAKEN IN RESPONSE TO BAT AND EMS FOUNDATION BREAKING POINT REPORT

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1. Introduction

- 1.1. As you will recall, during our on-line meeting on the morning of Friday 29 May 2020, in response to a request from Minister Creecy, we agreed to provide the Minister and the Department of Environmental Affairs, Forestry and Fisheries (“DEFF”) with this memorandum of recommendations about what could be done to rectify some of the deficiencies identified in our report *Breaking Point* (“the Report”).
- 1.2. This memorandum begins by explaining the context within which these recommendations are made, before making specific recommendations based on the findings in the Report, which we believe it would be reasonable and practicable to take urgently. However, we have not attempted to reproduce the information in the Report and accordingly this memorandum must be read in conjunction with the Report in order to gain a fuller understanding of the reasons for the recommendations.
- 1.3. Although this memorandum summarises our main concerns arising out of the Report, there are so many specific areas of concern that it cannot be comprehensive and we will supplement it by making further recommendations from time to time.
- 1.4. A credible, independent third party needs to be appointed to conduct and lead the investigations into the permitting system and the transgressions. Both BAT and EMS are willing to cooperate and work with this independent party.

2. Context

- 2.1. During the meeting Minister Creecy made it clear that she did want to discuss policy issues in that forum. Nevertheless, without going into a discussion of policy issues, we wish to communicate at the outset the wider context which informs the recommendations that we make in this memorandum.
- 2.2. First, in our view it is not practicable to manage a commercial trade in wild species without facilitating illegal trade, and consequently the current pro-trade policies of DEFF will have the effect of increasing illegal trade in wildlife. This is one of the reasons why the Report calls for a prohibition of the international commercial legal trade and sale of wildlife and their body parts, and bans on the live trade of wild animals, and captive breeding and farming of wildlife for trade (other than for *in situ* conservation purposes).
- 2.3. Secondly, the promotion of international trade in wildlife (other than for *in situ* conservation purposes) is inconsistent with the State’s role as custodian of the environment and of biological diversity, and with the environmental right in section 24 of the Constitution.
- 2.4. Thirdly, the international wildlife trade and the captive breeding and farming of wild animals for trade is dangerous because it increases opportunities for zoonotic spillover and of future pandemics like the Covid-19 pandemic, as well spreading animal diseases. (For example evidence

has emerged which suggests that zebras exported from South Africa via Thailand may have been the vectors for African Horse Sickness, which has devastated Thailand's horse racing sector).¹

- 2.5. Fourthly, the Convention on International Trade in Endangered Species ("CITES") establishes minimum conditions that must be complied with under international law but are insufficient to ensure an adequate level of protection for endangered species. The South African State's constitutional duty to take reasonable legislative and other measures to prevent ecological degradation and promote conservation, means that the State must meet a higher standard than required by CITES.
- 2.6. Finally, now that DEFF is aware that the existing regulatory system is facilitating trade in contravention of CITES, and of the potential dangers which this trade poses, a failure to impose a moratorium on wildlife trade until the regulatory deficiencies have been rectified amounts to condoning illegal trade.

3. Enhance transparency and access to information

- 3.1. We could not have prepared our report without having obtained access to some of the records relating to the wildlife trade held by the State (in particular, CITES export permits). However, we experienced enormous difficulties in accessing State-held information that should be in the public domain. We were only able to gain access to a small proportion of the records that we sought access to, and consequently the illegalities identified in the Report almost certainly only represent the tip of the iceberg.
- 3.2. In our experience, DEFF and all the provincial nature conservation agencies have a culture of secrecy in connection with the wildlife trade and do whatever they can to obstruct public access to information. Over the past few years we have made many request for access to records held by DEFF and the provincial nature conservation authorities. Since most of these organs of state provide this information on request as they should, we are forced to make formal applications for information under the Promotion of Access to Information Act ("PAIA"). Our requests are either ignored, or refused, often on the basis that the documents include confidential information of third parties (i.e. of the wildlife breeders and traders). This is unlawful.
- 3.3. We have taken legal advice from senior counsel which has confirmed that when an individual makes an application to government for a permit, the applicant is effectively stepping into the public sphere and cannot claim that the information submitted is confidential. The importance of this is particularly clear when one is dealing with indigenous wild animals, which the State must conserve in its capacity as trustee of biological diversity, and in order to give effect to section 24 of the Constitution. Furthermore, even if a record contains some information that PAIA permits the State to keep confidential, the record must still be provided with the confidential information redacted.
- 3.4. One of the most immediate and effective interventions that the Minister could make to strengthen the regulatory system would be to facilitate the external monitoring of the wildlife trade system by organizations such as ours by making the system transparent.

¹ The risks associated with zoonotic diseases are addressed in the Report for example at: p 14 where the impossibility of having a pathogen-free trade is explained, and at pp. 114 - 116.

Recommendations

- 3.5. We recommend that the Minister:
- 3.5.1. direct the DEFF 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) 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;
 - 3.5.2. establish an on-line system to enable the public to access this information over the internet; and
 - 3.5.3. require DEFF and all provincial conservation authorities to implement procedures that enable and facilitate public participation in decision-making processes concerning the international trade in wildlife (e.g. giving interested or affected organizations and individuals an opportunity to make submissions to the decision-maker before a final decision is made).

4. Ban all trade that does not benefit conservation and protect animal welfare.

- 4.1. It is difficult to overstate the importance of reversing the catastrophic decline in populations of wild species which is now underway. We are now in the Sixth Period of Mass Extinction (the Fifth such period occurred approximately 65 million years ago). Globally, populations of vertebrate species declined by 60% between 1970 and 2014.² The planetary boundary or threshold for biodiversity loss has been exceeded by a huge margin, meaning that humanity is at risk of experiencing non-linear, abrupt environmental change within continental to planetary-scale, which are likely to have catastrophic impacts on human civilizations.³ Wildlife trade is exacerbating the decline in healthy and viable wild populations of many species.
- 4.2. The international wildlife trade and the captive breeding and farming of wild animals for trade is dangerous because it is increasing opportunities for zoonotic spillover. Trading, slaughtering and consuming wild animals (particularly in cruel and the unhygienic conditions found in China's "wet markets") is a major vector for the transmission of diseases from animals to humans (i.e. zoonotic diseases) and the means by which novel infectious diseases arise which can cause pandemics like the current Covid-19 pandemic.
- 4.3. In these circumstances, as the Report states: "the trade in wild animals is inappropriate, counter-productive, unethical and fundamentally unsustainable." Furthermore, as the Report shows, oversight by CITES is so lax that it is almost non-existent and the welfare of the animals being traded is ignored. Wild animals are being subjected to cruel and degrading conditions when captured, bred, transported, displayed in Chinese 'theme parks' or used in scientific experiments.

² WWF. 2018. *Living Planet Report - 2018: Aiming Higher*. Grooten, M. and Almond, R.E.A.(Eds). WWF, Gland, Switzerland.

³ Resilience Alliance, J Rockström, W Steffen and others: *Planetary Boundaries: Exploring Safe Operating Space for Humanity*, 2009. In the seminal article, Johan Rockström and his colleagues identified nine planetary thresholds or boundaries within which humanity can operate safely, one of which was climate change and another biodiversity loss. Exceeding one or more of the planetary boundaries can trigger abrupt non-linear, environmental change with catastrophic impacts.

- 4.4. It is inherently difficult and costly (and probably impossible) to regulate the international trade in endangered wildlife and wildlife body parts that is permitted by CITES sufficiently well to prevent illegal trade and animal welfare abuses. Further, the trade (with the limited exception of the translocation of animals to promote *in situ* conservation) does not benefit conservation and usually increases the demand that drives the illegal trade and on-going ecological harm. A ban on this international trade (with a limited exception to enable the movement of wild animals for *in situ* conservation purposes) would yield the best conservation outcomes at the lowest cost because it is easier and more effective to enforce a ban than regulate a permitting system.

Recommendations

- 4.5. Ban the live trade of wild animals, including captive-bred animals, except in the case of translocations that benefit conservation in the wild (i.e. *in situ* conservation).
- 4.6. Ban the captive breeding and farming of wild animals for trade.
- 4.7. Ban the international trade in wildlife body parts.
- 4.8. Ban all consumption of wildlife body parts (for food or medicine) where there is a risk of the transmission of zoonotic diseases and strictly regulated the production, trade and consumption of meat from wild animals to ensure that animal welfare and food safety are not compromised.
- 4.9. At the international level advocate for the revision or replacement of CITES with a treaty that bans the international wildlife trade and ensures that the welfare of wild animals being translocated for *in situ* conservation purposes, is protected.

5. Screen out illegal traders and questionable buyers

- 5.1. The Report shows that many of the participants in the so-called legal wildlife trade are also active in the illegal markets. Allowing such parties to participate in the legal trade is simply facilitating illegal trade. It is important that the regulatory system be upgraded to identify and exclude persons with a history of involvement in the illegal commercial trade (i.e. non-conservation related) in live wildlife or wildlife body parts.
- 5.2. For example, the Report identifies a number of brokering and wholesale companies and zoos that are implicated in the trafficking of wild-caught CITES Appendix I-listed species. These businesses should be blacklisted and no permits should be issued if any of these parties are involved in any aspect of the transaction.

Recommendations

- 5.3. We recommend that background checks on the small number of large animal traders in South Africa (which we estimate to be less than 30 individuals) be undertaken as a matter of urgency in order to identify undesirable participants. The Report identifies a number of such individuals.
- 5.4. The Ministry, in collaboration with CITES enforcement agencies in other countries, should compile a “black list” of individuals and organizations where there is strong evidence that they have been, or are, involved in illegal wildlife trade or animal welfare abuses. No permits should be issued for transactions involving any of blacklisted organizations and individuals.

- 5.5. If there is reason to believe, but not strong evidence, that an individual or organization may be involved in illegal wildlife trade or animal welfare abuses, they should be included on a “grey list”. Any transactions involving parties listed on the grey list must be subjected to more intense scrutiny and additional verification of information.

6. Enhance the security of permit system

- 6.1. As the Report reveals, the permitting system is extremely vulnerable to fraud and abuse because it is paper-based, administered by many different institutions with poor inter-agency coordination (e.g. DEFF and the provincial conservation organizations), and is not subject to systemic oversight and auditing to identify discrepancies.
- 6.2. For example, the Report (and other information made available to us) identified that some permits are used multiple times to export either the same species as indicated on the original permit, or to export different species to countries not stated on the original permit.
- 6.3. The opportunities for circumventing or abusing the permitting systems must be eliminated as far as possible and as a matter of urgency.

Recommendations

- 6.4. A unified, digital permitting system must be established for all wildlife permitting (i.e. national and provincial governments must use the same system) to reduce the risk of forging documents, to enhance security and to facilitate monitoring and auditing.
- 6.5. The permit system must make it impossible to issue a CITES export permit unless mandatory pre-conditions have been met. For example, it should not be possible to issue a permit unless:
 - 6.5.1. the parties to the transaction (i.e. breeder, broker, exporter, importer, recipient) have been screened to ensure that they are not involved in illegal activities
 - 6.5.2. a valid import permit from the country of destination has been uploaded;
 - 6.5.3. the existence and suitability of the destination facility has been verified;
 - 6.5.4. the identity of the animals has been verified (e.g. by DNA testing or micro-chip verification); and
 - 6.5.5. the transaction is for the purpose of *in situ* conservation.

7. Improve decision-making processes

- 7.1. One of the most obvious short-comings of the current system is that decisions to grant CITES export permits are made without adequate information and without proper consideration of welfare issues, by a range of decision-makers who are not required to adhere to detailed national guidelines in order to ensure consistent decision making, and are not held accountable for bad decisions.
- 7.2. For example, the Report found that CITES export permits are issued despite the fact that the CITES import permits from the country of destination are not signed or dated.

Recommendations

- 7.3. All decision-makers must be required to make decisions in a manner that meets minimum national standards established in regulations or guidelines. These standards must be detailed. For example, they must not only specify that no CITES export permit may be approved unless the decision-maker is satisfied that the destination is suitable, but they must also provide detailed criteria for determining whether or not a particular destination is suitable.
- 7.4. Animal welfare and protection standards must be established through consultation with the animal protection sector and decision-makers and officials must be provided with clear guidance to determine whether or not welfare standards have been met.
- 7.5. Officials that do not comply with these standards and guidelines must be sanctioned. The key performance indicators (“KPIs”) of senior officials must ensure that decisions are made correctly and that officials who do not meet the standards must be investigated and subjected to internal disciplinary action.

8. Verification information submitted by traders

- 8.1. The Report reveals that very little, if any, verification of the information submitted by applicants for permits is done and the norm is for the information submitted to be simply accepted. This means that that it is extremely easy to circumvent and legal requirements by simply submitting false or misleading information.⁴
- 8.2. The Report identifies a number of possible unlawful activities that could have been prevented had information been verified. For example, the export of chimpanzees to facilities that had not yet been built, the export of heavily pregnant chimpanzees, the export of cheetahs where the import permit was issued after the export permit, the export of CITES I-listed species from breeders and zoos that are not registered with CITES, etc.

Recommendations

- 8.3. Prior to making a decision as to whether or not to issue a CITES export permit and the conditions subject to which that permit is issued, as a minimum there must be independent verification of:
 - 8.3.1. the identity of each animal to be exported (e.g. by conducting DNA testing or microchipping the animals so that it is possible to verify that the animals being exported are in fact those referred to in the permits and veterinary documents;
 - 8.3.2. the health status of the animals;
 - 8.3.3. the source of each animal and whether or not the animal was captive-bred;

⁴ For example the CITES Regulations require that an export permit may only be granted if the Management Authority is satisfied that certain conditions have been met but these conditions can be circumvented if the Management Authority does not diligently investigate and verify the information given to it. (For example, an export permit for any specimen of CITES-listed species may only be granted if the Management Authority is satisfied that: (a) the specimen concerned has been legally acquired; (b) any living specimen will be prepared and shipped in accordance with the most recent edition of the Live Animals Regulations of the International Air Transport Association, regardless of the mode of transport, so as to minimize the risk of injury, damage to health or cruel treatment; (c) in the case of a specimen of a species listed in Appendix I or II, the Scientific Authority has made a non-detriment finding and (d) In the case of specimens of species listed in Appendix I, an import permit has been granted by the competent authority of the country of destination.

- 8.3.4. the final destination of each animal; and
- 8.3.5. the nature of the activities carried out by the purchaser at the place of final destination (i.e. the is almost impossible and once animals leave South Africa and it is similarly impossible to identify where they end up.

9. **Revise CITES and TOPS Regulations**

- 9.1. As you will be aware, the main legal instrument for implementing CITES in South Africa are the CITES Regulations⁵ which are applies in conjunction with the Threatened or Protected Species Regulations, 2007⁶ (“TOPS Regulations”). Both sets of regulations are made under the National Environmental: Biodiversity Act (“NEM:BA”).

Recommendations

- 9.2. The CITES Regulations and the TOPS Regulations should be revised to give effect to the recommendations in this memorandum. A detailed analysis of these Regulations and how they should be amended is beyond the scope of this memorandum. However, by way of example, these regulations should be amended to provide that:
 - 9.2.1. permits may only be issued to parties that meet specified “fit and proper person” criteria in order to facilitate the exclusion of undesirable individuals and organizations; and
 - 9.2.2. applicants for permits may be required to provide financial security for the repatriation of animals that are exported on the basis of false information or to unsuitable destinations.

10. **Enhance enforcement capacity**

- 10.1. The findings in the Report make it clear that the authorities are not detecting irregularities (e.g. in the documents submitted, or discrepancies between the number of animals reported as being exported from South Africa and the number which China reports as being imported), are not conducting adequate checks on consignments leaving the country and do not take strong enforcement action when there is clear evidence of illegal activity.
- 10.2. In our view the so-called “Green Scorpions” and customs officials do not have sufficient training or adequate resources to enforce compliance, and to monitor implementation by the provinces.
- 10.3. Given the transgressions we found it may be that DEFF enforcement is complicit—a case of the fox guarding the henhouse.

Recommendations

- 10.4. Appoint a credible, independent third party to conduct and lead the investigations into the permitting system and the transgressions. Both BAT and EMS are willing to cooperate and work with this independent party.

⁵ GNR 173 of 5 March 2010.

⁶ GNR.152 of 23 February 2007.

- 10.5. The investigation should also include a comprehensive forensic audit by a credible, independent third party of all CITES and other permits relating to the trade in wildlife over say the last five years.
- 10.6. Prosecute any person who is found to have contravened the law (e.g. by furnishing false or misleading information in permit applications) and take disciplinary action actions officials who did not discharge their duties correctly.
- 10.7. Establish a regular audit programme to identify irregularities on an on-going basis.
- 10.8. Establish an independent investigatory unit with sufficient power and resources (or mandate the Hawks) to conduct a comprehensive investigation into the individuals and organizations suspected of being involved in illegal wildlife trade (including abuses of the CITES and TOPs permitting systems) with a view to disrupting and stopping the criminal syndicates involved.

11. Correct institutional bias

- 11.1. As we explained at the meeting, our experience over the last several years (i.e. commencing before Minister Creecy took office) has been that our carefully researched and argued submissions on a wide-range of topics are simply ignored. We often don't even receive an acknowledgement of receipt and when we see the outcome of consultation processes, there is no evidence that our submissions, or those of other similar non-governmental organizations, have been taken into consideration.
- 11.2. It is apparent to us that an institutional bias has become entrenched within DEFF, the Ministry, the South African National Biodiversity Institute ("SANBI") and some provincial conservation authorities. These bodies exhibit a consistent bias is in favour of those who promote and profit from consumptive uses of wildlife (e.g. farmers of wildlife such as lions and hunters) and the trade in live wild animals or body parts, and against organizations and individuals who advocate for the welfare of animals and human-wildlife interactions that are not detrimental to the animals. Organizations that promote consumptive uses of wildlife for commercial purposes (under the misleading rubric of "sustainable use") are given privileged access to government (e.g. through DEFF's Consultative Wildlife Forum). On the other hand, representations from organizations such as ours are ignored.
- 11.3. The composition of the High Level Panel appointed to advise the Minister is a clear example of this institutional bias. It is clear from the composition of the panel that the Minister wishes to be advised on how to promote consumptive uses of wildlife, and trade in wildlife and wildlife body parts (e.g. rhino horn and lion bones) and it is a foregone conclusion that that panel will make strongly pro-trade recommendations.

Recommendations

- 11.4. A forum or other channel to enable organizations that favour ethical, humane and non-consumptive interactions with wildlife and a transition to ecologically viable forms of society to communicate regularly with policy makers must be established as a matter of urgency to rectify the imbalanced manner in which government sources and considers information. By ignoring well-founded criticisms of current policies, government is shutting the door to feed back that would enable it to remedy defects in current policies and regulatory systems.

12. Impose a moratorium

- 12.1. Given the systemic deficiencies in the system for regulating the export of wildlife and wildlife body parts from South Africa that are documented in the Report, and the very significant ecological, human health, economic and crime-related dangers associated with the trade, a moratorium should be imposed as matter of urgency in order to prevent further criminal activity.

Recommendations

- 12.2. A moratorium on the export of all wildlife and wildlife body parts from South Africa should be imposed with immediate effect and should be maintained until either this trade is banned, or a regulatory system capable of preventing abuses of the kind identified in the Report, has been put in place.
- 12.3. At a minimum, before the moratorium is lifted, the following elements of the regulatory system must be in place.
- 12.3.1. A secure, digital permitting system that prevents permits being issued unless all preconditions have been fulfilled, prevents documents being forged, and enables cross referencing and verification of information so that discrepancies can be identified.
 - 12.3.2. An effective system for screening and vetting wildlife breeders, brokers and traders.
 - 12.3.3. Decision-making standards and guidelines have been established and decision-makers trained to ensure a correct and uniform approach to decision-making.
 - 12.3.4. An internal auditing programme has been established.

13. Conclusions

- 13.1. The Report contains extensive evidence that the international wildlife trade and the captive breeding and farming of wild animals has nothing to do with conservation and everything to do with commercialisation, commodification and profit. The primary beneficiaries of the trade are organized crime syndicates and a small sector of wildlife breeders, traders and exhibitors. Yet this trade creates huge health, ecological and economic hazards for humanity. The trade accelerates ecological destruction, facilitates the emergence of new zoonotic disease like the Corona virus that causes Covid-19, and helps promote and finance international criminal syndicates who use the ostensible legal trade as a cover and a means of laundering illegally acquired endangered animals and their body parts. It does not make sense to allow this to continue, let alone promote it as DEFF has been doing.
- 13.2. We have incurred expenses, and taken time to prepare this report as an act of good faith in the hope that it will help to initiate a more productive and collaborative relationship between ourselves and the Ministry and DEFF.
- 13.3. The mandate of the Ministry, DEFF, SANBI and the provincial conservation departments and agencies is to promote conservation and prevent ecological degradation, and to fulfil the State's role of trustee of biological diversity. There could hardly be a more important role given the catastrophic decline of ecosystem functioning and loss of biodiversity globally which must be reversed in order to maintain human wellbeing and rights, prevent pandemics, maintain food

security and mitigate climate change. Yet the critical role of maintaining and enhancing the ecological systems that sustain life is now secondary to the objectives of creating income and employment for a very small sector of society who rely on the consumptive uses of wildlife.

- 13.4. We obviously accept that reasonable people can differ on what policies are best to achieve a particular objective. However we are very concerned that organs of State most responsible for conservation are pursuing objectives and policies that are harmful to humanity, other species and ecosystems, and are deaf to rational appeals to reconsider their policies. The current “sustainable use” policy trajectory will be ecologically, socially and economically disastrous, highly prejudicial to young people and future generations, and damage on South Africa’s international standing.
- 13.5. Remedying the many defects in South Africa’s CITES regulatory system identified in the Report will help to eliminate some of the most egregious abuses of the wildlife trading system but will not address the more fundamental problem that Government policies are driving and facilitating ecologically-damaging and cruel practices. We hope that this good faith engagement with you will open the door to future engagement between government and advocates of non-consumptive and ethical interactions with wildlife (which includes most people in the substantial wildlife tourism sector) so that we can present our arguments and supporting evidence.
- 13.6. Although we have attempted to list all the issues in the current system that support the illegal trade, the list is not exhaustive and more consultation will be needed.