

**COMMENTS ON DRAFT NORMS AND STANDARDS
FOR THE MANAGEMENT OF
ELEPHANTS IN SOUTH AFRICA**



A Joint Submission By:

Animal Law Reform South Africa, The EMS Foundation and Ban Animal Trading



1 December 2018

To: The Director -General
Department of Environmental Affairs
Attention: Mr Khuthadzo Mahamba

Via email: elephantnorms@environment.gov.za

RE: COMMENTS ON DRAFT NORMS AND STANDARDS FOR THE MANGEMENT OF ELEPHANTS IN SOUTH AFRICA

Dear Recipient

We refer to the draft National Norms and Standards for the Management of Elephants in South Africa (the “**Norms and Standards**”) published in Government Gazette No. 42015 (Notice No. 1208) on 2 November 2018.

Please find attached the consolidated comments of the EMS Foundation, Animal Law Reform South Africa and Ban Animal Trading on the Norms and Standards.

We look forward to engaging with you further on these issues and trust you will consider our comments. We are available to discuss, should you require or provide you with any additional information or sources.

Yours sincerely,

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SECTION I: EXECUTIVE SUMMARY

Due to the length of our comments, we have included an Executive Summary herein, with our detailed comments and submissions contained thereafter. Please refer to our entire draft as this contains important comments. This Executive Summary does not contain all of our main points, but rather indicate the spirit of our comments generally.

As we are aware, elephants are highly intelligent, sensitive and social creatures that have their own intrinsic worth, a worth that needs to be protected. They further have immeasurable value to our country, its people, our heritage and future generations. They have complex social systems and qualities beyond our understanding. There is various scientific research in this regard.

The two highest courts in our country have both recognised the importance of animals. Our Constitutional Court indicated that animals have intrinsic value as individuals.¹ They further affirmed the fact that animal welfare and animal conservation together reflect two intertwined values.²

The Supreme Court of Appeal has made it clear that ‘constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general’. We do not believe the approach of these courts is not adequately recognized in the Norms and Standards.

In addition, the scientific knowledge about elephants and ethical approaches to their treatment clearly indicate that one cannot accept forms of exploitation such as hunting, elephant-backed safaris and the like. As the Constitutional Court has held, any utilization must be married with respect for the intrinsic value and welfare of elephants. Certain uses of elephants are only abuses and cannot be squared with these holdings.

Accordingly, based on this, we assert that certain practices with regard to elephants need to and must be outright prohibited. For example, on the issue of culling (please see detailed comments below) any decision must go through a committee made up of relevant stakeholders and such decision cannot be pre-approved through a Management Plan that only needs to be updated every ten years. This is contrary to public morals and ethics, science, and others. This issue has been heavily debated. It will be damaging to our brand as a country and affects all those who live in South Africa

Other practices that must be prohibited outright as a matter of urgency (this is not the complete list, which is set out below), is the use of elephants in circuses. We do not need to reiterate the various problems with this. Many countries and jurisdictions around the world have banned this. South Africa continues to allow this as well as the export of our elephants to a similar fate in other countries, or for purposes of captivity. How can we treat one of the quintessential symbols of our country in this way? We further allow these animals to be kept in tiny enclosures in zoos, where they face a lifetime of misery and continue to allow this practice and

¹ *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development* 2017 (1) SACR 284 (CC) at para 57.

² *Ibid.* at para 58.



again, export animals out of South Africa for this purpose. Regularly, elephants are put in “free contact” situations for the purposes of economic benefit and for giving rides. This must be stopped.

In addition, we allow rich foreigners to come to our country and hunt these animals, on the basis of holding a permit.

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.

In respect of other issues regarding elephant management, out of necessity:

1. there must be complete transparency in all regards;
2. consultation with all relevant stakeholders must occur, particularly communities;
3. there should be mandatory reporting on issues;
4. enforcement must be done properly and uniformly, with the relevant oversight and sanctions for non-compliance and deviations;
5. all involved in elephant decisions must take into account the relevant factors and use the most humane methods possible;
6. accountability is crucial.

The Norms and Standards must take the opportunity to provide a robust, coherent and strategic blueprint. Workable, doable and practical alternatives exist to enable the protection and long-term viability of Africa’s and Asia’s remaining elephants. A long-term, integrated global strategy on elephant conservation is needed so as to produce a productive and enlightened way forward.



SECTION II: GENERAL COMMENTS

1. Introduction

a. The Importance of Elephants to South Africa

- i. Elephants are extremely important to South Africa, not only to our tourism industry and the economic benefits they bring (through eco-tourism and other non-consumptive uses) but to the people of our country, our heritage and the various cultures represented in our rainbow nation.
- ii. In addition to this, they are highly intelligent, sensitive and social creatures that have their own intrinsic worth, a worth that needs to be protected.
- iii. They are also a major component of biodiversity, in their own right and as change agents.
- iv. Elephants face a multitude of threats including but not limited to poaching and habitat loss, but also are targets for trophy hunters and can be classified in law as “damage causing animals” which status removes various protections for them.
- v. Recently, South Africa has received a large amount of negative attention and scrutiny due to its wildlife policies. For example, in respect of the lion bone trade which has received international criticism. We have seen how these policies have had negative effects on “Brand South Africa”³ and will still need to see how these negative effects will materialize in the coming years. In addition, we have received a large amount of criticism for our policies relating to rhinos.
- vi. These Norms and Standards present an opportunity to our Government and Department of Environmental Affairs to:
 1. show both the South African people and international community that wildlife and particularly, elephants deserve our consideration and protection;
 2. fortify consideration of communities and future generations; and
 3. become a world leader in elephant protection and conservation.

b. International and Foreign Efforts

- i. Internationally and in foreign jurisdictions, there have been and are ongoing major efforts to protect elephants. These efforts include but are not limited to advocacy as well as legal efforts.
- ii. Examples of legal efforts include but are not limited to:
 1. banning the use of elephants in entertainment;⁴

³ <https://conservationaction.co.za/wp-content/uploads/2018/08/CACH-Brand-SA-Review-August-2018.pdf>

⁴ <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-protect-elephants>



2. banning the use of cruel training methods for elephants such as the use of bull hooks;⁵
 3. banning the use of any wild animals in circuses (including elephants);⁶
 4. the introduction and implementation of domestic bans on ivory within their borders⁷ (including countries that previously had huge markets for these products and which have important cultural significance for their people such as China⁸ and Hong Kong⁹);
 5. burning ivory stockpiles;¹⁰
 6. introducing harsh punishment for poaching;
 7. advocating and litigating to elevate the status of elephants to legal persons in order to grant them specified legal rights (in this regard, the first habeas corpus (court order to free an individual from captivity) was recently issued by a court in the United States on behalf of an elephant);¹¹
 8. and many, many more.
- iii. If countries that have neither the population, relationships with, nor cultural reliance on these iconic species can make such efforts, we submit that South Africa should be doing so, and more. Instead, we are constantly in international news for various failures to protect our wildlife or allowing them to suffer.¹²
- iv. South Africa, however, is not part of the African Elephant Coalition¹³ and our efforts and actions display a disregard for these creatures¹⁴ (by constantly focusing on their utilisation) as well as other iconic species, such as rhinos.¹⁵

c. Intersectional Approach

- i. We note and understand that there are various social, political, cultural, economic, ethical and other decisions that play a role in elephant management. Accordingly, there is a need to take an intersectional approach. Such an approach should attempt to minimize any conflicts between the interests of elephants and other creatures and people who interact with them.

⁵ <https://www.humanesociety.org/news/california-bans-use-bullhooks-handling-captive-elephants>

⁶ <http://www.stopcircussuffering.com/circus-bans/>

⁷ <https://news.nationalgeographic.com/2018/04/wildlife-watch-uk-elephant-ivory-ban/>

⁸ <https://www.bbc.com/news/world-asia-china-42532017>

⁹ <https://www.bbc.com/news/world-asia-china-42891204>

¹⁰ <https://www.africanelephantcoalition.org/drc-burns-ivory-stockpile-to-highlight-poaching-crisis/>

¹¹ <https://www.nonhumanrights.org/blog/first-habeas-corpus-order-happy/> and <https://www.nonhumanrights.org/clients-beulah-karen-minnie/>

¹² See most recently article about drunk hunters slowly killing an elephant <https://conservationaction.co.za/recent-news/drunkards-allow-elephant-to-suffer/>

¹³ <https://www.africanelephantcoalition.org/>

¹⁴ <https://news.nationalgeographic.com/2016/08/wildlife-Namibia-Zimbabwe-ivory-trade-elephants-cites/>

¹⁵ <https://phys.org/news/2017-07-south-africa-domestic-rhino-horn.html>



- ii. Furthermore, it is critical that communities need to have a say on these issues, particularly when they live in close proximity to these animals.
- iii. We also need to consider the impact on the environment and other fauna and flora.
- iv. In addition, when proceeds are to be made from certain activities, a portion of these should go to such communities as well as to education.

d. Need for change

- i. In South Africa, elephants have received a lot of attention in the South African media recently. For example, there has been a huge outcry about Lammie, the elephant at the Johannesburg Zoo¹⁶ with thousands of people speaking out against this, signing petitions and taking other actions. Various organisations in South Africa, including the NSPCA have spoken out against Lammie and the intention of the Johannesburg Zoo to bring another elephant to be held in captivity.¹⁷ In this regard, we attach with our submission, an opinion of Dr. Gay Bradshaw in respect of Lammie. Just the other day, reports indicated that drunk men killed a young elephant after shooting him multiple times and allowing him to suffer.¹⁸
- ii. We would like to see the end of the abuse and exploitation of elephants for profit. This includes (but is not limited to) elephants as the subject of trophy hunts; in zoos; in circuses; as ivory (or any other products) and in other human-elephant interactions (such as elephant back riding, feeding and walking with elephants, etc.). Of course, this does not preclude marketing South Africa as a prime destination to view elephants in a respectful manner.
- iii. South Africa needs to support international efforts to reduce the demand for ivory, support proposals to prohibit ivory sales and close its domestic ivory markets. It should also destroy the stockpiles it currently holds.

e. Other concerns

- i. We have not dealt with our various concerns in respect of trophy hunting herein. We support the comments made by Future 4 Wildlife in this regard¹⁹: “Trophy Hunting does not connect to the African culture and the division between the indigenous

¹⁶ <https://conservationaction.co.za/media-articles/johannesburg-zoo-ignores-calls-to-free-lammie-the-lonely-elephant/>

¹⁷ <https://www.timeslive.co.za/news/south-africa/2018-11-28-johannesburg-zoo-may-get-a-new-elephant-nsPCA-appalled/> and <https://www.news24.com/SouthAfrica/News/joburg-zoo-faces-mounting-pressure-to-free-widowed-elephant-20181109> [There are various other articles on this]

¹⁸ <https://conservationaction.co.za/recent-news/drunks-allow-elephant-to-suffer/>

¹⁹ [Unless contradictory to any of our own comments herein, in which case our comments prevail]: <https://www.future4wildlife.org/2018/11/30/object-to-norms-for-elephant-management-south-africa/?fbclid=IwAR3OgzO050NQzHQVLWTZ3hCHvkrTvmXKn4rz3ZawmhwkMovBIzV7PlrYJM8>



culture of hunting for food and, on the other side, the colonial heritage and culture of hunting for power and supremacy has been indicated as one of the major factors fueling poaching of iconic animals in South Africa. African communities feel depredated of their heritage and resources for the good of a few rich foreigners. The revenues generated by such hunts don't effectively reach these communities, nor any other benefit. The South African government should finally address this issue which has been increasingly exposed by researchers and conservationists.”

- ii. We have not dealt herein with our various concerns regarding South Africa's position on elephants with other African or international states (including but not limited to the proposals to down-list elephants at CITES and the unbanning of the ivory trade).
- iii. South Africa must refrain from supporting any proposals submitted to CITES COP 18 in Singapore if these proposals are potentially harmful to individual elephants in Africa and because the norms and standards for elephant management in South Africa cannot possibly be finalised before the upcoming CITES COP.
- iv. We have further not dealt with issues relating to poaching or the international wildlife trade.

2. Issues with current Norms and Standards

- a. It is important to recognize that the Norms and Standards of 2008 were a ground-breaking set of regulations in South Africa which improved the position of elephants in the country. Given the Norms and Standards have been in place since 2008, there is a need for adaptation. However, the changes should advance the protection of elephants rather than reduce them and build on the ground-breaking nature of the original Norms and Standards (rather than undermine them). We are concerned that a number of the amendments undermine some of the achievements of the original Norms and Standards.
- b. The Supreme Court of Appeal has made it clear that ‘constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general’.²⁰
- c. The Constitutional Court has subsequently approved of this statement and clearly indicated that animals have intrinsic value as individuals.²¹ The Court also, in this judgment, affirmed the fact that animal welfare and animal conservation together reflect two intertwined values.²² The approach of these courts is not adequately recognized in the Norms and Standard. The scientific knowledge about elephants and ethical approaches to their treatment clearly indicate that one cannot accept forms of exploitation such as hunting, elephant-backed safaris and the like. As the Constitutional Court has held, any utilization must be married with respect for the

²⁰ *S v Lemthongthai* 2015(1) SACR 353 (SCA) at para 20.

²¹ *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development* 2017 (1) SACR 284 (CC) at para 57.

²² *Ibid.* at para 58.



- intrinsic value and welfare of elephants. Certain uses of elephants are only abuses and cannot be squared with these holdings.
- d. Although elephants are considered by many to be the quintessential symbol of the African continent and ecotourism plays an important role in the South African ecotourism economy, the general tone of the Norms and Standards (particularly when referencing the Norms and Standards for Damage Causing Animals²³ and references to “damage causing elephants and the like) reinforces the treatment of elephants as nuisances to be “controlled,” marketed, and profited from. These extremely intelligent and crucially keystone species are merely being viewed as commodities that can be ‘harvested’ for profit.
 - e. Of concern is that the Norms and Standards document fails to take into account the bigger picture. We need to look at the whole of Africa – and cannot look at South Africa in isolation. African elephants (*Loxodonta africana*) and Asian elephants (*Elephas maximus*) are subjected to a variety of threats across their range: they are poached for their ivory and their meat, hunted, ‘culled,’ slaughtered after conflict with humans, and they have their habitats consistently fragmented. They are also captured live and sold internationally for captive display in zoos and entertainment in circuses.
 - f. The Norms and Standards must take the opportunity to provide a robust, coherent and strategic blueprint.
 - g. Workable, doable and practical alternatives exist to enable the protection and long-term viability of Africa’s and Asia’s remaining elephants. A long-term, integrated global strategy on elephant conservation is needed so as to produce a productive and enlightened way forward.

3. Prohibition of certain practices

- a. What we would like to see in the draft is the prohibition of certain practices relating to elephants as sentient, intelligent and social creatures, which qualities have been scientifically proven over and over through various peer-reviewed research.
- b. The Guiding Principles in Regulation 3 of the Norms and Standards expressly acknowledges both the intelligence and sentience of animals and states that “**every effort must be made to safeguard elephants from abuse and neglect.**”
- c. However, elephants are still being kept in captivity all around South Africa including in zoos and used in circuses. It is alleged that captive elephants live only half as long as their wild counterparts.²⁴ In addition, they are also being trained and handled using bull hooks.

²³

https://www.environment.gov.za/sites/default/files/gazetted_notices/nemba10of2004_managementofdamagecausinganimalsinsa_gn40412_0.pdf

²⁴ <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-protect-elephants>



- d. We therefore propose that the Department of Environmental Affairs (together with the Department of Agriculture, Forestry and Fisheries (and any other relevant organs of State) implement and enforce legislation that:
- i. Prohibits the use of bull hooks and similar cruel training and handling methods of elephants (including ankuses; chains and cables, straps, shock-sticks and ear hooks, sleep deprivation and other negative reinforcement mechanisms);
 - ii. Prohibits the use of any elephants in circuses (broadly defined to include traveling acts, and the like) in South Africa as well as the export of elephants out of South Africa for this purpose;
 - iii. Prohibits any circuses from coming into South Africa that use elephants;
 - iv. Prohibits the keeping the elephants in zoos;
 - v. Prohibits any further elephants being added to zoos;
 - vi. Prohibits trophy hunting;
 - vii. Prohibits culling;
 - viii. Prohibits the capture from the wild for captivity;
 - ix. Prohibits the import and export of elephants (although if elephants are being imported for the purposes of reintroduction into the wild, this is permissible);
 - x. Prohibition of taking orphans into captivity unless this is for temporary rehabilitation;
 - xi. Prohibits the captive breeding of elephants;
 - xii. Prohibits all “free contact” situations where captive elephants and trainers/tourists are in the same space (no protective barriers) and in direct contact;
 - xiii. Prohibits all training for “free contact” interactions with elephants; and
 - xiv. Takes any other legislative effects necessary to protect the abuse of elephants.
- e. In addition:
- i. There should be an audit all existing captive elephants to assess their situation and, wherever possible, return them to the wild or semi-wild. Options for providing semi-wild sanctuary for many of the existing captive elephants were confirmed, and there is a real possibility of reducing the number of elephants that are in captivity.
 - ii. There should not be self-regulation of use and management, of captive elephants;
 - iii. Detailed standards for the care and welfare, and permissible activities with and uses, of existing captive elephants must be set and enforced. There is insufficient provision in the Norms and Standards for monitoring and inspection of elephants currently in captivity. Owners and operators should not be allowed to operate and deal with elephants “out of sight”, and there must be provision for removal (confiscation) of elephants where permits have been granted by an issuing authority without it having applied its mind sufficiently to the issues involved, where permit conditions are not met or where the welfare of the elephants is compromised;
 - iv. Effective independent monitoring of all captive elephants must be done; and



- v. The system of allowing certain cruel and inhumane practices simply because one holds a permit needs to end.
- f. We note that the prevention of use of captive elephants for circuses and elephant-back safaris will not have a significant economic or a negative tourism impact. Further, to allow elephants to continue to be captured, trained and used in “free-contact” interactions (e.g. in elephant-back safaris and in circuses) would mean to ignore scientific truths, to condone inhumane treatment of elephants and to ignore the growing trend away from this sort of practice
- g. Our comments above stand, regardless of whether we have provided for regulation of the above activities. In providing suggested wording relating to any of these activities herein, we are not accepting or condoning these practices in anyway, we are simply working within the framework provided to us.

4. The issue of welfare

- a. We know that there has been much debate about the Norms and Standards and particularly the fact that these include “welfare” provisions. The claim has been that this falls outside the scope of the Department of Environmental Affairs and should rather be dealt with by Department of Agriculture, Forestries and Fisheries.
- b. As we indicated above, the Constitutional Court has made it quite clear that environmental regulation and animal welfare must go hand in hand.²⁵As such, animal welfare concerns fall squarely within the remit of the Department of Environmental Affairs when they have a bearing on an issue that it must regulate. Clearly, elephant management is one where welfare concerns must be included. Consequently, this concern has no merit and goes against the position put forward by the SA Constitutional Court. DEA not only should consider these issues, but is under an obligation to consider these issues.
- c. An integrative view should and in fact needs to be adopted according to the Constitutional Court. The contours of such a view in the current context where explained by Professor David Bilchitz in a recent SA Law Journal Article:²⁶

“It is absurd to suggest that norms and standards regulating the management of elephants can exist without considering their nature, welfare, social character and much else which cannot be simply or neatly unbundled from other matters relating to their management. To attempt to regulate elephants without considering these aspects would be like attempting to regulate tobacco without considering its effect on human health. It is well established in law that if something is incidental to – or necessarily accompanies – the proper performance of an authorised legal power, then it, too, is legally authorised. The Norms

²⁵ See references to NSPCA case at note 19 above.

²⁶ Exploring the Relationship between the Environmental Right in the South African Constitution and Protection for the Interests of Animals – David Bilchitz (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2942112)



and Standards must, therefore, take account of these matters. To avoid doing so, would risk a legal challenge of these regulations being found to be irrational.....”

“Animal welfare and environmental considerations are integrated and cannot neatly be separated”

5. The issue of culling

- a. In regard to culling, we refer to a quote from Cynthia Moss, who has worked with elephants in the field for many years:

“I feel sick when I think of a team of marksmen, skinner, and butchers...slaughtering whole families along with all their knowledge, their traditions and their memories...Killing the elephant seems the simplest and most direct solution, but only to people who have not watched individuals over 14 years; have not seen elephants greet one another with trumpets of joy; seen elephants, adults and calves alike, running and playing across an open pan in the moonlight; seen elephants trying to lift and hold up a stricken companion; seen a female stand by her dead baby for four days; or seen a seven-year-old calf gently fondle and stroke and feel the jaw of his dead mother. Elephants are not...to be exterminated; they deserve something better than that and I am not afraid to say that ethics and morality should be essential considerations in our decisions for their future.”²⁷

- b. Elephant culling zones in protected areas should not be considered. It is more effective, less costly and less contentious to establish a spatial template. Management should be spatially differentiated, and may involve zoning some areas as ‘elephant sanctuaries’ and others as ‘tree sanctuaries’ with clearly specified objectives.
- c. The Norms and Standards does not deal with the very real issue of the traumatic effects of culling on elephants nor does it include the long-term, social, physiological and emotional impacts on elephants of culling and hunting. These should specifically be recorded. All of these should be recorded as considerations.
- d. In addition, if culling is to be included, this cannot be approved up front by an official. At the time when it is being considered, there needs to be a consultative process with all relevant stakeholders where all relevant factors are considered (including short- and long-term effects) and only then can a decision be made. Due to the sensitivity of the issue and the public interest, the high profile of elephants on the African Continent and the international attention that is focused on the issue of culling, the development of policy in relation to the elephant management issue is one which needs to be as consultative, open and accountable as possible.
- e. Culling stimulates population growth and intra population migration and holding elephant densities at constant levels through “culling” is not only detrimental to ecosystem diversity but

²⁷ C. Moss. 1988. Elephant Memories. New York: William Morrow and Company, Inc quoted in G. Varner 2003 (op cit).



- would maximize the rate of increase of an elephant population – this means that the practice of “culling” is essentially an ivory harvesting programme operating at maximum sustainable yield.
- f. The mass killing operations of culling tear apart elephant families and leave the survivors permanently scarred. Between 1967 and 1995, 14,562 elephants in South Africa’s Kruger National Park were culled. Terrified elephants were herded into groups with helicopters while people on the ground and in the air opened fire with high-powered weapons. Elephants are capable of communicating over long distances, and their death screams were heard by other elephants miles away. Innumerable orphaned calves, who were regarded as valuable collateral, were sold to zoos and circuses, where many were beaten into submission, chained, and confined and had their precious freedom taken and their spirits broken. Scientists are now determining that these individuals were left with lifelong emotional trauma from witnessing the violent executions of their families.
 - g. The moral onus is therefore on us if we wish to take their lives or expose them to conditions which negatively affect their immediate and/or long-term welfare and there should be a legal onus on those proposing this as a tool as well to satisfy a high condition of justification.
 - h. **There should accordingly be a legal presumption against culling recorded in the Norms and Standards.** The way the issue is currently construed is not satisfactory (including that approval for this can be sought upfront in terms of a management plan that is valid for ten years).

6. The issue of damage-causing elephants

- a. The Norms and Standards characterisation of elephants as “damage causing” i.e. “marauders” is extremely problematic as it legitimises and leaves the door wide open for their exploitation by those who wish to kill elephants for profit, recreation, or fun.
- b. The definition of “damage causing animal” creates the potential for mass killing of elephants accused of causing or threatening to cause losses to “other wild specimens” or “natural fauna and flora”. Elephants naturally affect the environment around them. This can be used as the basis of efforts to restart culling in areas such as the Kruger National Park.
- c. Decisions to “destroy” or “cause to be destroyed” any elephant considered a threat to ‘stock’ property or human life are delegated to provinces in such a broad context that unscrupulous hunters and suspected corrupt conservation officials will be allowed to justify the destruction and hunting of any elephants they wish. The Norms and Standards should adequately and clearly prescribe the processes (uniform) by which provinces and other wildlife managers must comply with.
- d. There is no peer-reviewed support that elephants are giving rise to increased threats to people’s livelihoods.
- e. Hunting should be prohibited in this context. Particularly because many of these animals are lured/chased out of protected areas and reserves, conveniently labelled as “damage causing”



- and then ‘legally’ hunted. The status of ‘damage-causing’ thus opens the door to hunting animals who would not ordinarily be allowed to be hunted. Hunting should not be an option to address an issue of animal-human conflict.
- f. Other non-lethal intervention methods and non-consumptive solutions need to be strongly promoted and encouraged. Compassionate human/elephant conflict resolution measures, which assist local communities in ways which bring real, lasting benefits to people without killing elephants must be pursued. Many of these exist.
 - g. The Norms and Standards does not deal adequately with the growing scientific movement which proposes innovative and effective elephant aversion solutions to alleviate potential suffering by dissuading elephants from coming into conflict with farmlands.
 - h. Humane alternatives to conflict exist in abundance and can be implemented in widespread fashion. Unfortunately, in terms of the Norms and Standards, killing elephants is permissible as a first response to such conflict. Instead, if we respect elephants, such an approach could only ever be adopted as a last resort where other measures were all exhausted. That should be the position in the Norms and Standards.
 - i. We support the comments made by Future 4 Wildlife:²⁸ “Damage-causing exemplars must cause repeated and documented damages and must represent an immediate threat to the ecosystem or to humans. The non-commercial removal of such damage-causing exemplar must be permitted only after all other management strategies have been unsuccessfully applied and documented. Regular hunting permits and the identity of each hunted animal should be verified at the end of each hunt by a veterinarian on site. Permits and compulsory hunt reports, being public documents, should not be considered confidential.”

7. Lack of stakeholder input – particularly communities

- a. In many instances in the proposed Norms and Standards, we see a lack of requirement to consult with all relevant stakeholders. Particularly, with regards to surrounding communities. This should be a mandatory obligation where communities interests are affected and needs to be provided for where relevant in the Norms and Standards.
- b. Communities should also be able to share in the benefits that are brought by elephants, and not only the “responsible persons”.
- c. Following on from this, in many instances in the proposals, there is too much discretion left up to the owners of elephants. Although private ownership rights need to be respected, issues of elephant management are of national concern.

²⁸ [Unless contradictory to any of our own comments herein, in which case our comments prevail]:
<https://www.future4wildlife.org/2018/11/30/object-to-norms-for-elephant-management-south-africa/?fbclid=IwAR3OgzO050NQzHQVLWTZ3hCHvkrTvmXKn4rz3ZawmhkMovBIzV7PlrYJM8>



8. Decisions

- a. Decisions with regards to elephant management need to take all factors into account. For example, as we have recently seen with the lion bone trade from South Africa, this has had a huge negative impact on Brand South Africa and consequently our tourism industry.
- b. Elephants are a huge part of the South African brand and tourism industry and therefore, we believe that this needs to form part of the decision-making process. Ideally, this should be recorded in the “Guiding Principles” however, if it is not recorded therein, it should be recorded in the relevant sections (for example in the section dealing with elephant culling).
- c. In addition, we see a few instances where reference to the “best available science” has been removed. It is unclear why this has been done. Where uncertainty exists, we need to exercise the **precautionary principle** (as a recognised principle of international law as well as our own law).
- d. There should also be information sharing on best practices where there have been conservation successes.
- e. In some instances, our lack of scientific knowledge has prohibited us from commenting on specific issues. However, this does not mean we accept these provisions and the spirit of our comments holds.

9. Issuing Authority Requirements

- a. There needs to be complete transparency in issues where the public is affected.
- b. When discretion is exercised by the issuing authority or otherwise, this needs to be reasonable and proportionate.
- c. Clearly, all the principles of decent decision-making by officials need to be complied with as are contained within the Promotion of Administrative Justice Act 3 of 2000. This includes procedural fairness, taking into account all relevant considerations and a duty to provide reasons for decisions. Relevant considerations include taking into account the welfare of the animals concerned and respect for their intrinsic value.
Ecologists, animal ethologists, ethicists, communities and managers need effective dialogue. Government conservation structures who are responsible for monitoring and implementing policy need to take the new paradigm seriously and work imaginatively with consultative processes, leaving “Command and Control” behind.
- d. We further understand that there are various permitting issues currently regarding elephants as well as implementation across the provinces. These need to be effectively addressed.

10. Technical Issues

- a. It is very difficult to determine what is being removed, amended, or added based on the manner in which the updated Norms and Standards have been drafted. In future, we would



request that deletions also be indicated by a “strikethrough” as the square brackets and bolded are sometimes hard to distinguish when read with the underline.

- b. In addition, we would request that the PDF be searchable. This would make it easier to identify where new terms are used, etc. Currently, it all needs to be done manually, which is not beneficial and takes a lot of time.

11. Inconsistencies

- a. There are certain inconsistencies in the Norms and Standards, including in the use of terms.
- b. For example, sometimes “TOPS Regulations” are referred to and sometimes “Threatened or Protected Species Regulations”.
- c. In addition, aside from the defined term “wild elephant” the term “wild” is sometimes still used. However, there appears to have been a general move throughout the Norms and Standards to refer to an “extensive wildlife system” when talking about the wild. It is therefore confusing and inconsistent to sometimes refer to this “extensive wildlife system” and then also to the “wild”. A search should be done throughout, and consistent approach applied, unless there is a clear distinction between the two words, in which case “wild” should be clearly defined and deliberately used.
- d. Wherever reference to a “management plan” is made it must be to an “approved management plan”, unless it is not applicable.
- e. Wherever reference to “issuing authority” is made, it should be to the relevant issuing authority.

12. Precedence of and operation with other legislation

- a. There should be a recordal as to which piece of legislation prevails in the event of a conflict. The Norms and Standards should record that where there is a conflict, the provisions which are the most protective of elephants should prevail.
- b. For example, these Norms and Standards operate together with various pieces of legislation, including but not limited to:
 - i. the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);
 - ii. the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);
 - iii. legislation and instruments mentioned in section 88(3) of the Biodiversity Act, 2004;
 - iv. any regulations issued in terms of section 97 of the Biodiversity Act, 2004, or referred to in section 49 of the Protected Areas Act which apply to the implementation of these norms and standards;



- v. the Norms and Standards themselves and annexures thereto;
- vi. the Animals Protection Act, 1962 (Act No. 71 of 1962);
- vii. the Performing Animals Protection Act, 1935 (Act No. 24 of 1935);
- viii. the Animal Matters Amendment Act, 1993 (Act No. 42 of 1993);
- ix. the Animal Health Act, 2002 (Act No. 7 of 2002);
- x. the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
- xi. the Animals Diseases Act, 1984 (Act No. 35 of 1984);
- xii. the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983);
- xiii. the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965);
- xiv. the Meat Safety Act, 2000 (Act No. 40 of 2000); and
- xv. the Veterinary and Para-Veterinary Professions Act, 1982 (Act No. 19 of 1982);
- xvi. the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972)
- xvii. the Animal Improvement Act, 1998 (Act No. 62 of 1998)
- xviii. [NEW] the Constitution of the Republic of South Africa and particularly, the right to environment contained in section 24 thereof (see comments below in this regard).
- xix. [NEW] the CITES Regulations and other legislation where CITES is implemented;
- xx. [NEW] the relevant provincial legislation dealing with environmental, biodiversity and wildlife issues.

13. Research

- a. Reference is made to an Institute but no explanation or definition or detail is given about it. Neither is there any information on it.
- b. Permission should not be given for any research that may involve killing elephants. There is much data on culling and its effects as it was practiced for decades.
- c. The immediate research questions should, for example, focus on: the factors governing elephant movements and recruitment processes in savanna woodlands; how elephants distribute their effects over space; and the local conditions allowing tree regeneration to occur.
- d. Research should always be non-invasive and should allow for continuation of elephants living in their natural environments. There is no reason to take them out of those environments to conduct research.

14. Disclaimer

- a. Should we not have dealt with an issue herein, it does not indicate acceptance of it should it cause harm to elephants, people, the environment or other fauna or flora. We aim for the highest protection and may not have considered all of the potential effects.
- b. We reserve the right to raise further comments/issues in the future with these Norms and Standards.



- c. Should new information and/or better or more reliable science and/or practices become available, the Norms and Standards should be revisited or should be flexible enough to provide for this.

Please note that we are happy to provide you with scientific evidence and/or academic papers in support of the averments made herein, particularly with regard to the sentience of animals and the negative effects that certain activities provided for in the Norms and Standards have on these nonhuman animals.



SECTION III: SPECIFIC COMMENTS

1. Regulation 1 Comments

- a. Amendment to definition of “adaptive management”
 - i. Essentially the definition has changed from one of using integrated research, planning and consideration in order to better define and achieve objectives, to one that speaks of implementing actions in order to better define and achieve objectives. It appears to allow for the action to be the decisive factor and the cautious approach is removed. This is indicated by the removal of the word “learning” and the removal of the assumptions. It is unclear why these words have been removed along with the assumptions.
 - ii. It appears to take the approach of “do first and see later” rather than “research and consider consequences first and then do”. Accordingly, we are concerned about how this may be interpreted – potentially it leaves a lot of discretion and could be open to abuse.
 - iii. Our suggestion is that the precautionary principle out of necessity must be included in this definition.
 - iv. In addition, there should be an absolute requirement that scientific data is collected and properly analysed before any action is taken, particularly invasive action.
- b. Removal of definition of “applicable legislation”
 - i. Although this term was not used, we suggest a number of provisions herein that would require reference to all applicable legislation (see comments throughout this document). In many places, reference to only certain legislation is made and this is a gap that should be closed.
 - ii. The definition should therefore be reinserted and should include all relevant legislation. [See comments above]
- c. Deletion of the definition of “biodiversity”
 - i. It is unclear why this term has been removed from the definitions.
 - ii. This term is used throughout the Norms and Standards and should be kept in. Biodiversity is a fundamental component of wildlife management.
- d. Our proposal to amend the definition of “Biodiversity Act”
 - i. The definition should include reference to the TOPS Regulations, where applicable.
- e. Amendment to definition of “captive facility”
 - i. These facilities need to be registered in terms of the TOPS Regulations. See comments throughout.
 - ii. Reference to Regulation 27 of the TOPS Regulations is incorrect.
 - iii. The new provisions leave gaps wide open for institutions that are not properly registered to keep elephants.



- iv. “quarantine facility” is not defined. Furthermore, it is unclear what “any other similar facility means”. This recordal should be removed.
- v. The term “registered” must be included in front of all of these institutions and “registered” shall have the meaning as set out in the TOPS Regulations.
- f. Amendment to definition of “capture”
 - i. The new definition removes the terms chart, catch, sedate and exercising physical control. The should all be reinserted.
 - ii. In terms of Regulation 25 – these actions would require a permit and therefore must be as broad as possible in order to ensure elephants are protected.
 - iii. In addition, we suggest the following actions should also be included (looking at the United States Endangered Species Act²⁹ and its definition of “take” (in relation to endangered species:
 - 1. **Take** - From Section 3(18) of the Federal Endangered Species Act: "The term 'take' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."
- g. Insertion of “commercial exhibition facility”
 - i. Again, this definition needs to include the word “registered” in front of each facility mentioned.
 - ii. Please see our comments in Section 1, Paragraph 11 regarding the keeping of elephants in zoos, circuses and traveling exhibitions.
- h. Amendment to definition of “damage causing elephant”
 - i. The definition refers to the definition of “damage causing elephant” in the TOPS Regulations, but the TOPS Regulations only define “damage causing animal”. This should be corrected or properly defined.
- i. Amendment to definition of “extensive wildlife system”
 - i. We suggest from a drafting perspective for consistency and clarity the following:

"extensive wildlife system" means a natural environment, irrespective of whether it is adequately enclosed or not, that is suitable and of sufficient size for the management of self-sustaining populations of listed threatened or protected species, where no or minimal human intervention is required in the form of-

 - (a) the provision and supplementation of food and/or water, except in times of natural disasters or war including but not limited to drought;
 - ~~(b) the supplementation of food, except in times of drought;~~
 - (c) the control of parasites or diseases; or
 - (d) the provision of ~~health~~-veterinary care;
- j. Deletion of definition of “genuine orphan calf”

²⁹ 16 U.S. Code Chapter 35 – Endangered Species: <https://www.law.cornell.edu/uscode/text/16/chapter-35>



- i. This definition has been replaced by the definition of “orphan calf”.
 - ii. In terms of orphans, they should be rehabilitated back to the wild. Orphans should only go into temporary captivity, and the length of time should be specified: we suggest a maximum of three years. This would prevent them being used in industry and exploited. After this time, they must be released back into extensive wildlife systems.
- k. Amendment to definition of “handler”
 - i. We disagree that a person who cleans the enclosure of a captive elephant should be referred to as a “handler”.
 - ii. In any event, the term is not used in the Norms and Standards and should therefore be deleted altogether.
 - iii. If it is to be included, the requirements of who qualifies as a “handler” must be specifically set out. It cannot be someone who cleans the cage. Anyone who is a handler needs to be suitably qualified by the relevant authorities (e.g. SAQA or otherwise).
- l. Insertion of definition of “hunting client”
 - i. We note that recently (on 21 September 2018 in terms of Government Gazette No. 41913), the Department of Environmental Affairs released for comment Norms and Standards regarding the hunting of rhinoceros (“**Rhino Norms and Standards**”). In particular, Regulation 4 thereof provided very detailed requirements for hunting rhinoceros.
 - ii. These provisions included the fact that hunters needed to meet very specific requirements – and particularly hunting clients from outside the Republic. Whilst we are against all forms of hunting, if this is to be allowed, these provisions should similarly apply to the hunting of elephants and should therefore be incorporated into these Norms and Standards and amended as applicable for elephants. Our comments submitted to the Department of Environmental Affairs on the Rhino Norms and Standards (sent on 20 October 2018)³⁰ should likewise apply where relevant to the provisions to be incorporated.
 - iii. In addition, as the proposed new definition stands, it provides for someone who merely “pays or rewards another person for or in connection with the hunting of an elephant”. This is extremely vague and open to abuse - as was the case with the rhino “pseudo hunters”. This loophole must be closed.
- m. Deletion of the definition of “institute”
 - i. This should be reinserted.
 - ii. See comments re proposed amendments to Regulation 8.
- n. Amendment to definition of “management plan”

³⁰ <https://emsfoundation.org.za/wp-content/uploads/Comments-on-Rhino-Horn-Regulations-2018-ALR-EMS-BAT.pdf>



- i. It should be made clear in the relevant paragraphs to an “approved management plan” vs. just a “management plan” when actions are being taken. Actions should only be taken which are being done in terms of an approved management plan.
 - o. Deletion of definition of “range manipulation”
 - i. This definition should be reinserted as it is used throughout the Norms and Standards. It is unclear why it was deleted. The whole of Regulation 18 is about range manipulation.
 - p. Amendment to definition of “rehabilitation facility”
 - i. Rehabilitation facilities need to be registered to ensure that they are genuine facilities.
 - ii. In addition, in the relevant place in the Norms and Standards, there should be other requirements set out, including (and assuming all suggestions for rehabilitation are included therein):
 - 1. the facility provides all necessary care to an elephant based on its individual needs;
 - 2. the facility must be registered to ensure that it is a genuine facility, and in order to be registered, certain minimum requirements need to be met, including:
 - (a) no physical interaction shall be allowed with these animals by any members of the public or anyone else, other than those providing the necessary veterinary care or other actions necessary for rehabilitation or care (such as the provision of food, water and facility cleaning);
 - (b) only qualified personnel can work at these facilities (particularly, any that handle the animals);
 - (c) no animals may be used for breeding;
 - (d) no animals may be used for entertainment purposes nor research;
 - 3. animals in the rehabilitation facility may not be sold to anyone and may only be transferred to other registered, genuine sanctuaries that meet the above requirements
 - iii. These facilities need to report on all the animals through their doors as well as mandatory reporting regarding other welfare issues.
 - iv. We suggest the following:

“a rehabilitation facility means a registered facility equipped for rehabilitation by qualified personal with the overall intent to release such elephant back into the wild, or if not possible, an extensive wildlife system as soon as possible”.
 - v. We suggest that these regulations, or if necessary, the TOPS Regulations include the requirements for this.
 - q. Amendment to definition of “rehabilitation”
 - i. Reference needs to be made to the fact that rehabilitation is temporary.



- ii. Rehabilitation can also occur for younger elephants that are not orphaned but need to be reared for other purposes such as injury.
- iii. There must be no interaction with any members of the public in any rehabilitation facility.
- iv. The definition must state that after the rehabilitation, wild elephants must be returned to the extensive wildlife system
- r. Insertion of the definition of “research elephant”
 - i. We understand that the intention here is to avoid killing an elephant, if there is an opportunity to use such elephant for potential research.
 - ii. In this regard, we do not disagree with the intention (not to kill an elephant), however, there would need to be very specific requirements for what research may be done in this regard as there are also various ethical issues with this.
 - iii. A new section should be included to set out what exactly these requirements would be, and it should not be as open ended as it is currently wording, namely “becomes the subject of a research project for the purpose of monitoring its biology”.
 - iv. Another potential way is to include the definition of what a “research project” could be and set out the legal confines of this definition.
- s. Amendment to the definition of “sanctuary”
 - i. There should be specific requirements as to what constitutes a sanctuary. There are various institutions that refer to themselves as “sanctuaries” but allow for interaction with the animals and are actually commercial facilities that exploit animals.
 - ii. We suggest that sanctuary be defined to include the following requirements (or such requirements be included in the relevant section or new section of the Norms and Standards):
 1. the facility provides all necessary care to an elephant based on its individual needs;
 2. the facility must be registered to ensure that it is a genuine facility, and in order to be registered, certain minimum requirements need to be met, including:
 - (a) no physical interaction shall be allowed with these animals by any members of the public or anyone else, other than those providing the necessary veterinary care or other actions necessary for care (such as the provision of food, water and facility cleaning);
 - (b) only qualified personnel can work at these facilities (particularly, any that handle the animals);
 - (c) no animals may be used for breeding;
 - (d) no animals may be used for entertainment purposes nor research;



- (e) animals in the sanctuary may not be sold to anyone and may only be transferred to other registered, genuine sanctuaries that meet the above requirements;
- t. Amendment to the definition of “temporary captivity”
 - i. Rehabilitation sets out clearly what the requirements are for these elephants and the additional recordals are not required in this definition.
 - ii. “Any other similar purpose” – this is open to abuse. It should be deleted; the conditions are clearly set out. If the recordal is to stay in, it should be qualified by “provided it is in the best interests of the elephant or is required for its safety”
 - iii. It must be specifically stated in the definition that temporary captivity should not exceed the necessary period for its purpose (i.e. if it is for rehabilitation, once complete, the elephant must be released).
- u. Amendment to definition of “wild elephant”
 - i. The definition should provide for an elephant that may be born in captivity from a wild elephant that is in temporary captivity.
- v. Amendment to definition of “veterinarian”
 - i. The definition should refer to both being registered with the South African Veterinary Council as well as a person registered in accordance with the relevant legislation.
- w. Omission of definition
 - i. “Training”
 1. To the extent that the Norms and Standards require or provide for the training of elephants, this term is not defined.
 2. If captive elephants are to be allowed to be used as working animals (in safaris, circuses and zoos) and “training” is to be allowed, there should be listed prohibited activities, apparatus and methods. (Please see our comments above in this regard).
 3. These prohibited apparatus and methods should be identified in consultation with elephant rehabilitators, behavioural specialists. There should be a set of “indicators” to be used to detect use of prohibited apparatus and abusive domination techniques and these should be applied by independent inspectors.
 4. There is no evidence that elephants that are used for “on demand” commercial safaris can be trained without domination techniques. Only interactions with elephants that do not need them to do things on demand should be allowed. The science suggests at this stage that this is impossible.



2. Regulation 2 Comments

- a. Amendment to Regulation 2(2)[new (1)](vi)
 - i. The terms “is ethical and humane” should remain in and should not be deleted. This recordal is critical as one of the purposes of the Norms and Standards. The new proposed wording does not offer the same consideration.
 - ii. The new proposed words can be included in a new paragraph “recognises the necessary and persistent interplay between ethics, the well-being of elephants and conservation”.
 - iii. Moreover, the Constitutional Court’s recognition of the intertwining of welfare and conservation should be expressly indicated.
- b. Amendment to Regulations 2(5)[new(4)]
 - i. This recordal should not only make reference to the TOPS Regulations. It is of the utmost necessity that these Regulations be read in the context of all applicable legislation.
 - ii. For example, South Africa’s international obligations such as the Convention of International Trade in Endangered Species of Fauna and Flora (“**CITES**”) and the local laws implementing this, being the CITES Regulations.
 - iii. In addition, reference needs to be made to the Animal Protection Act, the Performing Animals Protection Act and others.
 - iv. See our additional comments in Section 1, Paragraph [3] above.

3. Regulation 3 Comments

- a. Regulation 3(b)
 - i. “or” should be replaced with “and”
- b. Regulation 3(d)
 - i. The words “and continues to be” should be included after the words “has been”.
 - ii. The words “direct and/or indirect” should be included after the words “disrupted by”.
- c. Regulation 3(f)
 - i. We suggest “must be humane and must endeavour to limit these threats”.
- d. Regulation 3(g)
 - i. We suggest the current wording be maintained re “informed by the best available scientific information”.
 - ii. It is unclear why this has been removed as the term clearly relates to what is available.
- e. Regulation 3(h)
 - i. We suggest referring to the Guiding Principles as the first sub-point. Then the other two recordals may be made.
 - ii. The deletion of the words “wherever practicable, be based on scientific knowledge or management experience regarding elephant populations and must” should be



reinserted. This recordal ensures that actions are based on the knowledge that we have with regard to elephants. By excluding this, we are allowing for too much discretion.

- f. Regulation 3(m)
 - i. It appears that the reference to “wild” has been replaced throughout by “extensive wildlife management system”. In order to be consistent, same term should be used herein.
- g. General
 - i. Reference should be included that all actions must be done in accordance with all applicable legislation. In addition, that the most protective and least invasive methods (in relation to elephants) should be used in all instances.

4. Regulation 4 Comments

- a. “restricted activities” are not defined in the Norms and Standards. These should be defined with reference to the TOPS Regulations.
- b. This section should refer back to the TOPS Regulations as these set out the necessary requirements. For example, it is not correct that all “restricted activities” require a permit and there are also various types of permits. The blanket statement as it is contained here is not correct.
- c. The wording should read: “No restricted activities involving elephants shall be carried out unless there is full compliance with the relevant applicable legislation, including but not limited to the TOPS Regulations.”

5. Regulation 5 Comments

- a. Regulation 5(1)
 - i. Reference to paragraph 11(3) is not correct as there is no paragraph 11(3).
 - ii. Reference to paragraph 11(3) [or 11(1)] should be deleted altogether and the only reason that an elephant may be introduced for the purpose of keeping it in a controlled environment should be “if the introduction is necessary for the purpose of temporary captivity”. [See our comments on this below]
- b. Regulation 5(2)
 - i. The wording should revert to being negatively phrased instead of positively phrased i.e. the assumption must be that a person should **not** keep an elephant unless certain criteria are met. The additional wording introduced on this point should be removed.
 - ii. Due to the proposed changes, we have suggested wording and indicated our changes below:
 - “(5)(2) An elephant may not be kept unless it is:
 - (a) a wild elephant kept in an extensive wildlife system; or
 - (b) a captive elephant in a captive facility; and



in compliance with the all applicable legislation”

iii. The above satisfies the necessary requirements as:

1. There are only two distinct groups of elephants provided for in the Norms and Standards, being wild elephants and captive elephants. These definitions and the terms encompassed in such definitions already make provision for what is allowed of them. By adding additional recordals (such as paragraphs (c) to (f) this confuses the requirements. By way of an example:

(a) The definition of “wild elephant” already makes provision for temporary captivity. Therefore (c) is unnecessary.

(b) The definition of “rehabilitation” includes reference to ill and injured elephants as well as orphan elephants. Therefore (d) is unnecessary.

(c) Paragraph (e) is better suited as a separate recordal. In addition, elephants in sanctuaries are recorded in the definition of “captive elephants”.

(d) The new proposed paragraph 5(3) already states that an elephant may only be kept if it is in terms of an approved management plan. Therefore, including it in 5(1) as well [now (2)](f) and 5[now (3)](a) is tautologous.

c. Regulation 5(4) [previously (3)]

i. It is unclear if the proposal is to delete subparagraphs (a), (b) or (c) or all from the way it is drafted.

ii. The requirement to fit microchips and transponders for captive elephants should be reinserted. This requirement is not contained in the TOPS Regulations and should be reinserted.

iii. Additionally, this requirement is later referred to in the [new] Regulation 5(6): “.....microchips or transponders referred to in subparagraph (5)(a)....”

d. Regulation 5(6)

i. Regulation 5(6)(a) refers to subparagraph 5(a) which does not exist. It should be 5(1)(a) – if this is to remain.

ii. The cross referencing will need to be updated.

6. Regulation 6 Comments

a. Regulation 6(1)

i. We would suggest that input also be received from a veterinarian and/or an animal welfare specialist.

b. Regulation 6(2):

i. The current wording requires the Issuing Authority to approve the plan: i.e. “must approve the plan”. This means that even if the plan is wholly inadequate, it must be



- approved. There should be a recordal that the Issuing Authority may approve the plan provided it is sufficient to take into account all relevant factors but has discretion either to (i) reject the plan; (ii) make suggestions to the plan or (iii) request additional information.
- ii. The only “must” requirement on the Issuing Authority should be in terms of the time requirements to respond to a submitted plan.
 - iii. There needs to be additional requirements based on what the responsible person has received to submit a new or updated plan. It then can potentially be approved, if it meets the requirements.
- c. Regulation 6(6)
- i. This should be deleted. This provision opens up for abuse and is against the provisions of the TOPS Regulations. All interventions in respect of elephants should take place in relation to a management plan. Any emergency intervention, if needed, needs to be strictly controlled in a much stronger way than this section does as otherwise it negates the need for a proper management plan.
 - ii. The Issuing Authority should provide permits in accordance with the provisions of TOPS Regulations as and when requested by the relevant person. This blanket provision is concerning and should be removed in its entirety.
- d. Regulation 6(7)
- i. See our detailed comments on culling in Regulation 19.
 - ii. Reference should be made to “and all the requirements of Regulation 19 have been met” (in relation to the culling plan).
- e. Regulation 6(8)
- i. The plan must be reviewed, at a minimum, every **five** years and not ten years as the latter is too long and various aspects relating to elephants (and science, laws, etc.) may change.
 - ii. In addition, the “review” of such plan should indicate:
 1. compliance with the plan;
 2. any deviation from the plan and the reasons therefore;
 3. how the deviations affected elephants;
 4. averments that there is compliance with all applicable legislation;
 5. details of any deviations therefrom and how same affected elephants..
- f. Regulation 6(9)
- i. If the plan is reviewed and subsequently updated, the responsible person needs to submit such updated plan to the relevant issuing authority to have it re-approved.
- g. Regulation 6(10)
- i. There should include a representative of the animal welfare community.
 - ii. If any communities may be affected by the plan, a person representing such community.



7. Regulation 7 Comments

- a. Regulation 7(b)
 - i. A new proposed paragraph (v) should be included: “the potential impact on surrounding communities”.
 - ii. A new proposed paragraph (vi) should be included: “the interests and welfare of the proposed elephants to be introduced and the existing elephants.
- b. Regulation 7(d)
 - i. The words “and will be able to continue to provide” should be inserted after the words “can provide”.
 - ii. The words “psychological and other” should be inserted after the words “physiological, social”.

8. Regulation 8 Comments

- a. Regulation 8(1)(c) and (d)
 - i. This paragraph should be reinserted or included in the new paragraph 8(3). There should be an obligation on the responsible person to submit the documentation and information mentioned.
 - ii. Only with a database of all relevant information can we begin to determine best practices.
- b. Regulation 8(f) [now (d)]
 - i. The wording leaves a gap that needs to be closed. The words “abuse nor” must be added after the word “not” and before the word “neglect”.
- c. Regulation 8(2)c
 - i. It is entirely unclear what it means to say the elephants are ‘altering the habitat beyond acceptable limits’. There need to be clear scientific principles utilized to determine this and guidance if this is kept in. We recommend it be deleted as it is open to abuse and entirely unclear what it means. We also doubt any specificity scientifically can be attained in relation to it.
 - ii. If same is not deleted it must be clearly set out and the relevant steps and principles applied.
- d. Suggested new paragraph to be added
 - i. The responsible person must “ensure he/she is aware of all applicable laws relating to elephants and is in compliance therewith at all times. Should the responsible person become aware of a breach of any applicable legislation, including these Norms and Standards, he or she shall immediately report it to the relevant issuing authority and other authorities, if necessary”.



9. Regulation 9 Comments

- a. Regulation 9(2) [now (1)]
 - i. “perimeter fence” should be defined with reference to the section and compliance with the necessary requirements of the Norms and Standards. This is required as regulation 9(1) has a deeming provision that adequately enclosed requires only a perimeter fence to be erected, without cross-referencing back to the requirements.
 - ii. Accordingly, the deeming provision should only apply if the perimeter fence meets the requirements.
- b. Regulation 9(4) [now (3)]
 - i. Insertion of the words “at all times” should follow the word “must”.
 - ii. There should be a recordal that any issue should be immediately fixed by the responsible person. This provision could potentially save lives and will protect the communities that live around these areas.
- c. Regulation 9(5)
 - i. It is unclear why this was removed. These provisions would not apply to these elephants.

10. Regulation 10 Comments

- a. Regulation 10(1)
 - i. There should be reference to the Animal Protection Act and other applicable legislation.
- b. Regulation 10(2)
 - i. The recordal that immobilization or sedation of an elephant should only be “as an extraordinary measure” should be retained. The remainder of the provisions will set out what these extraordinary measures are.
 - ii. There should be a recordal under regulation 10(2) that would apply to both immobilization and sedation that:
“and only temporarily by qualified persons”.
 - iii. In terms of scientific procedures, we support Future 4 Wildlife Comments regarding Scientific Research³¹ (although we submit research should not be done, but if it is):
 1. Every scientific project should be designed and approved by the competent authority. Also it is very important to clarify in legislation the limits of non-invasive research on elephants, avoiding vague definitions which leave space to free interpretation. For example it should be clearly stated which strategies and devices are:
 - (a) Permitted,

³¹ [Unless contradictory to any of our own comments herein, in which case our comments prevail]:
<https://www.future4wildlife.org/2018/11/30/object-to-norms-for-elephant-management-south-africa/?fbclid=IwAR3OgzO050NQzHQVLWTZ3hCHvkrTvmXKn4rz3ZawmhwkMovBIzV7PrYJM8>



- (b) Restricted,
 - (c) Prohibited.
- 2. Other issues to be considered for both captive and wild elephants, include:
 - (a) The capture procedures
 - (b) The minimizing of the handling
 - (c) The competent use of drugs and anaesthetics to prevent distress
 - (d) The limited application of suitable and non-invasive temporary devices which must not interfere with the animal lifestyle, movability and agility and, except specific cases, must have a functional drop-off, tear-off system.
 - (e) The implementation of the most suitable transportation non-invasive techniques, when necessary.
 - (f) The housing.
 - (g) The publishing of non-technical summaries and experiences. This is crucial to avoid study repetition; sharing data and resources and results, preferably in free access format should be compulsory.
 - (h) Samples should be taken with no invasive strategies, including hair/ saliva/ dropping analysis, while the use of body-part samples should be prohibited and the removal of specific parts only permitted to save the life of the animal when injured or sick.
- c. Regulation 10(3)
 - i. There should be reference to the Animal Protection Act and other applicable legislation.

11. Regulation 11 Comments

- a. Please see our comments above regarding capturing and keeping of elephants and wild elephants in captivity.
- b. Regulation 11(1)
 - i. The word “only” should follow the words “following circumstances”.
 - ii. Regulation 11(1)(a)
 - 1. any introduction into another extensive wildlife system must also comply with the proposed Regulation 12(2) requirements.
 - iii. Regulation 11(1)(b)
 - 1. We reject taking wild elephants and introducing them into captivity.
 - 2. We further reject the use of wild elephants to be used for scientific and research purposes in captive facilities. Accordingly, we reject Regulation 11(1)(b)(i).



3. If Regulation 11(b)(i) is to be retained, in addition to the approval of the Minister, there should be other requirements that need to be met. We should not be introducing further elephants into captivity.
- iv. Regulation 11(1)(b) – should be 11(1)(c)
 1. Numbering to be fixed.
 2. Instead of listing the reasons why a wild elephant may be introduced, the definition of “rehabilitation” already includes these. Accordingly, all that is required is “...for introduction into a rehabilitation facility for the purposes of rehabilitation for subsequent release into an extensive wildlife system”.
 3. Further, the use of “an extensive wildlife system” should be amended to refer to the extensive wildlife system from where the elephant came. The current wording appears to allow a loophole for a wild elephant to be introduced into another extensive wildlife system after rehabilitation.
- c. Regulation 11(2)(d) [New]
 - i. A new paragraph should be included “and all other applicable legislation”.

12. Regulation 12 Comments

- a. Regulation 12(1)
 - i. Regulation 12(1)(a)
 1. Please see comments regarding elephants in captivity.
 2. Reference should also be made to the requirements in Regulation 12(2) in this context. Note as aforementioned that we reject the introduction of wild elephants into captivity.
 - ii. Regulation 12(1)(b)
 1. This is a contradictory provision. All elephants should be capable of translocation and such elephants should be moved to places where they pose no risk to human beings.
 - iii. Regulation 12(1)(d)
 1. We are concerned about this point, which is problematic for various reasons. Sometimes elephant “break fences” because fences have been erected unfairly and where they used to range. This would mean that these elephants would be classified as Damage-causing animals’ and shot even if other reserves would be willing to take them.
 - iv. Regulation 12(1)(d) [new]
 1. A new paragraph should be inserted “in compliance with the remainder of this paragraph 12 and the other Norms and Standards”.
- b. Regulation 12 (2)
 - i. Provision should be made for elephants that cross borders and can be translocated back to their original range or allowed to roam in a new extensive wildlife system.



- c. Regulation 12(3)
 - i. Regulation 12(3)(c)
 - 1. Reference must be made to “and all other applicable legislation”.
 - ii. Regulation 12(3)(e)
 - 1. Reference must be made to “and in accordance with the requirements of paragraph 13”.
- d. Regulation 12(4)
 - i. We are of the view that elephants should not be exported or imported for captivity. Please see case in respect of Boswell in this regard.
 - ii. Given the huge profits involved in the sale of African elephants to overseas destinations, growing pressure is currently put on officials administering CITES in South Africa to allow such transactions by exploiting loopholes and unclear interpretations of CITES regulations. The Norms and Standards must adequately address this.
 - iii. There is reference to Regulation 11(3), which does not exist (unless incorrectly numbered) and so this should be deleted.
- e. Regulation 12(5)
 - 1. This should be deleted.
 - 2. We should not be keeping elephants in circuses at all – let alone importing or exporting them for this purpose. This goes against developments in the world against keeping animals such as elephants in circuses. There is huge stress as well on such animals to be transported for a limited period into the Republic. Consequently, this should not be allowed. A wider prohibition on circus elephants should be introduced.
 - 3. In addition, all references to this Regulation should be deleted throughout the Norms and Standards.

13. Regulation 13 Comments

- a. “release camp” has not been defined. Accordingly, it is not clear from the document in which circumstances this would be required. This should be clearly set out.

14. Regulation 14 Comments

- a. The heading of Part 2 refers to “Management of Elephants in the Wild”. Reference should be either to “wild elephants” or “management of elephants in extensive wildlife systems” or both as required as “wild” is not defined.

15. Regulation 15 Comments

- a. Regulation 15(1)



- i. Lead-in wording
 1. The current wording is too broad. The term “should it become necessary” is open to interpretation. Who needs to deem it necessary? Does this necessity have a standard? Does it need to be corroborated?
 2. In addition, the wording seems to set out that only the objectives of the management plan need to prescribe for this. Reference should be to the approved management plan and not the objectives of the management plan.
 3. Reference is made to “management plan” and not “approved management plan”
 - ii. Regulation 15(1)(b)
 1. The list of management options should set out the order of preference in which these methods must be used. For example, all other methods should be considered before culling and hunting. This needs to be reflected adequately in Annexure VI.
 2. We suggest that the order be as follows (and that it be very clearly stated that the options need to be considered and used in this order):
 - (a) Contraception;
 - (b) Range manipulation;
 - (c) Translocation;
 - (d) As aforementioned we do not agree with hunting or culling but hunting should occur before culling if our comments are not accepted.
 3. In addition, we are of the view that in the future there could potentially be other options other than those set out 15(1)(b). In this instance, other alternatives should be considered, particularly if these potential options are readily available and in addition, may need to be inserted after translocation and before hunting and culling respectively in the aforementioned list.
 - iii. The reference to “combination of approaches” should still be done with reference to the list of preference as aforesaid.
- b. Regulation 15(2)
- i. The same comments made in respect of the lead in wording as well as Regulation 15(1)(b) apply *mutatis mutandis*.
- c. Regulation 15(4): this should be added:
- i. Any actions taken in terms of Regulation 15 shall be done:
 1. in compliance with all applicable laws, and where there is a conflict, in accordance with the provisions that offer elephants the most protection;
 2. in accordance with the requirements of the relevant sections of the Norms and Standards;
 3. in accordance with the Guiding Principles;
 4. utilizing the best available science;
 5. considering all alternatives; and



6. in consultation with the necessary stakeholders, which shall include any nearby communities.

16. Regulation 16 Comments

- a. Regulation 16(1)
 - i. Reference is made to “population” and not “elephant population”.
- b. Regulation 16(2)
 - i. Regulation 16(2)(b)
 1. Consideration should be given to communities surrounding the area;
 2. Consideration should also be given to elephants that may already be existing in this area.
 3. In addition, reference to “most of the other ecological requirements” is concerning. At least the basic ecological requirements such as food and water should be included.
 - ii. Regulation 16(2)(e)
 1. The wording of this section requires only notification to the aforementioned parties but does not require that any comments submitted by these parties need to be carefully considered.
 2. This requirement accordingly offers such stakeholders little protection should they raise any comments or concerns. There should be a requirement to carefully consider these comments and to the extent possible, respond to these as to why they have or have not been incorporated.
 - iii. Regulation 16(2)(f)
 1. There is a technical error. The first “authority” should be removed.

17. Regulation 17 Comments

- a. Regulation 17(1)
 - i. Reference should be made to the fact that although it is not effective in providing immediate reduction, it is the most preferable ethically and will have the least long-term effects on elephants.
 - ii. All the relevant factors should be included and not only that it is not the most desirable short-term method.
- b. Regulation 17(8)
 - i. Reference should be to “elephant populations” and not only “populations”.

18. Regulation 18 Comments

- a. Regulation 18(b)



- i. Management of water supply should be able to be used provided it does not lead to elephants dying from thirst. This method cannot be used as a method to kill elephants through deprivation.
 - ii. Management of the feed supply should be retained in addition to the provision of artificial feed as both methods could potentially be used. Again, the management of food supply should not be used as a means of killing elephants through starvation. These points need to be made explicitly.
 - iii. The definition of “range manipulation” has been proposed to be deleted. We have suggested that this be retained, however if it is to be deleted, the additional methods provided for in the definition should be include in this section, namely:
 1. Alteration of the natural range of an elephant population;
 2. Limitation, extension or expansion using fires;
 3. Provision or opening or closure of:
 - (a) Watering points;
 - (b) Feed;
 - (c) Fencing
 - (d) Driving
 - (e) Other non-invasive or physical human activity which does not cause harm to the elephants.”
- b. Regulation 18(h)
- i. There should be reference to “any other non-legal methods that may become available from time to time provided that these do not cause harm to an elephant” or similar wording as new techniques may be developed, either through the use of technology, other animals, or otherwise.

19. Regulation 19 Comments

- a. Please refer to our general comments above regarding culling.
- b. Regulation 19(1)
 - i. Regulation 19(1)(a)
 1. We submit that these other methods should not only have been considered, evaluated and rejected but also implemented.
 2. For example, the responsible person should not just consider the management of water supply (without seeking to kill elephants through thirst) but actively take steps. If these are not successful, the next management method should be implemented and so on and so forth.
 3. Culling should be an absolute last resort.
 - ii. Regulation 19(1)(b)
 1. The phrase “culling plan” is not defined. If this term is used, it needs to be defined and, in such definition, reference needs to be made to the fact that

such plan must be approved in accordance with all relevant provisions of the Norms and Standards.

2. The requirement of “adequate knowledge and experience relating to elephant matters” is extremely vague. Previously, this section required the assistance of an ecologist who is a recognised elephant management specialist”. The previous requirement was more protective than the new proposal as adequate knowledge and experience is not clear and open to abuse. The previous wording should be reinserted.
 3. In addition, we submit that any decision to cull needs to be taking in conjunction with an animal welfare specialist, representing the elephants’ needs. In fact, we suggest that a committee is constituted to consider any cull. In addition, there needs to be a notice to the public of the intended culling to take place and the reasons therefor.
 4. In consideration of culling, the following needs to be considered and rendered necessary as part of any plan:
 - (a) the effect of elephants not being culled that may witness the action (including the psychological effects such as post-traumatic stress disorder³²);
 - (b) the effect of elephant populations in the future including their social structure³³;
 - (c) the effect that the culling may have on other species (for example rhinos³⁴);
 - (d) the effect that this has on the South African public, including their right to environment and other potential rights that may be infringed;
 - (e) the potential effect on South Africa, including tourism and Brand South Africa; its international relationships and reputation; and
 - (f) all other relevant effects and factors.
- iii. Regulation 19(1)(c)
1. Paragraph (i):
 - (a) the evidence should be peer-reviewed;
 - (b) reference should only be to current numbers and not projected numbers. Culling should not be done with reference to projected numbers.
 2. Paragraph (ii):
 - (a) See comments above regarding ecologist and welfare specialist.
 - (b) Further see comments re “culling committee”.

³² <https://news.mongabay.com/2014/05/culling-elephants-leaves-an-impact-on-their-social-structure-decades-later/>

³³ Ibid.

³⁴ <https://www.kotafoundation.org/the-delinquents-in-pilanesberg/>



- (c) See comment above regarding evidence requirements.
- 3. Paragraph (vii)
 - (a) The use of any “products” from a cull must be strictly regulated.
 - (b) We submit that:
 - i. a portion should go to the communities surrounding the operations and activities relating to community upliftment;
 - ii. a portion should go to registered elephant charities;
 - iii. a portion should go to education initiatives regarding elephants.
 - iv. A portion could go to initiatives to avoid culling in future.
- iv. Regulation 19(1)(d)
 - 1. It must be noted that any elephants left as part of a culling operation may not be introduced into captivity, whether in the Republic or outside of it.
- v. Regulation 19(1)(e)
 - 1. Paragraph (i)
 - (a) The word “only” should be inserted.
 - (b) This should be amended to say “the **quickest** and **most** humane methods...”
 - 2. Paragraph (ii)
 - (a) The most humane methods must be utilized.
 - (b) If rifles are used, they should be such that killing takes place as immediately as possible.
 - (c) There are clear issues (both ethical and environmental) with using lead bullets for example.
 - (d) The use of any poison should be prohibited or any method that is not immediate or as close to immediate as possible.
 - (e) If there is a best time of day to do this, based on scientific information and the best interests of the elephants, this should be provided for.
 - (f) “only in accordance with the culling plan”;
 - (g) “in accordance with all applicable legislation”;
 - (h) To the extent there is any deviation from anything in the culling plan, this needs to be recorded in writing and immediately reported to the issuing authority.
 - 3. After the cull, a report must be submitted to the issuing authority on the exercise and all relevant facts included therein.
 - 4. In addition, during the cull, there should be an independent person present that should add to the aforementioned report. Such person should ensure that the cull is carried out in accordance with the plan and in particular, ensure that the most humane and quickest methods are employed.
- c. Regulation 19(2)



- i. See all comments above in relation to the culling plan and the implementation thereof.
- ii. In addition, it is submitted that a culling plan should be re-submitted immediately in advance of the proposed culling. The current dispensation allows for a plan that has been approved nine years earlier in terms of a management plan to be implemented.

20. Regulation 20 Comments

a. General

- i. Please refer to our general comments above regarding the hunting of elephants.³⁵We do not believe that this should be allowed.
- ii. We note that recently (on 21 September 2018 in terms of Government Gazette No. 41913), the Department of Environmental Affairs released for comment Norms and Standards regarding the hunting of rhinoceros (“**Rhino Norms and Standards**”). In particular, Regulation 4 thereof provided very detailed requirements for hunting rhinoceros.
- iii. These provisions included the fact that hunters needed to meet very specific requirements. These provisions should similarly apply to the hunting of elephants and should therefore be incorporated into these Norms and Standards and amended as applicable for elephants.
- iv. Our comments submitted to the Department of Environmental Affairs on the Rhino Norms and Standards (sent on 20 October 2018)³⁶should likewise apply where relevant to the provisions to be incorporated. We have attached these to our covering email for your reference.

b. Regulation 20(1)

- i. We have various issues with the provisions and regulations dealing with damage causing animals and have not raised these all herein.
- ii. As mentioned previously “damage causing elephants” are not defined in TOPS Regulations.
- iii. If elephants are to be hunted, we are of the view that only solitary males can be hunted and not the other categories of animals provided for. Furthermore, even referring to a “solitary male” is not specific enough. This needs to be more clearly defined– just because an elephant is alone does not mean it does not play an important role in its group and clan. Also, what age can the elephant be? As these issues are difficult to determine, no hunting should in our view be allowed.

c. Regulation 20(2)

³⁵

https://www.environment.gov.za/sites/default/files/gazetted_notices/nemba10of2004_normsandstandards_markingofrhinoceros_gn41913.pdf

³⁶ <https://emsfoundation.org.za/wp-content/uploads/Comments-on-Rhino-Horn-Regulations-2018-ALR-EMS-BAT.pdf>



- i. This provision should apply to all elephants, even those referred to in paragraph 1. There are various negative psychological effects experienced by elephants that witness other elephants being killed.
- d. Regulation 20(3)
 - i. Please see comment above regarding the requirements that must out of necessity be met by hunting clients as contained in the Rhino Norms and Standards. To hunt an elephant, clearly there is a need for experience in being able to kill the animal in one shot as quickly as possible.
- e. Regulation 20(4)
 - i. Any hunt must be carried out in accordance with all applicable legislation as well as any permit conditions that may be applicable.

21. Regulation 21 Comments

- a. We are of the view that if this is allowed, only the most “humane” methods must be allowed.
- b. Lead bullets should not be allowed to be used or any other “weapons” that are detrimental to the environment and other animals, unless these are the most humane methods taking into account all relevant factors. (A good basis would be to prohibit methods that have been prohibited in other jurisdictions).
- c. The following methods of hunting should also be prohibited: using a bow and arrow or any method that does not lead to the immediate death of the animal.

22. Regulation 22 Comments

- a. See general comments above regarding the keeping of elephants in captivity and in particular for use in circuses and other entertainment as well as training and handling methods. We are opposed to these practices.
- b. Any promulgations would need to be done together with DAFF as the mentioned acts fall within their jurisdiction.

23. Regulation 23 Comments

- a. See general comments above regarding the keeping of elephants in captivity.
- b. The date should be the date of the original Norms and Standards and not these updated Norms and Standards. This should be made clear.
- c. In addition, we submit that the wording should be negatively phrased, i.e. “an elephant may not be kept in a captive facility unless”, instead of the positive phrasing currently provided for.
- d. The word “or introduced” should be included (i.e. one cannot keep nor introduce an elephant into captivity”).
- e. Overall, we agree that no animals should be introduced from the wild into captivity and that these provisions are ultimately a positive development.



24. Regulation 24 Comments

- a. Lead in wording
 - i. Reference could be to “owner” or “responsible person” as this term is defined in the Norms and Standards.
- b. Paragraph (a)
 - i. We submit that all facilities that keep elephants must register these elephants and themselves must be registered (not just in the case that compulsory registration is required) and meet all the relevant requirements we have specified in our previous comments.
- c. Paragraph (b)
 - i. The actions do not end with submitting the management plan, but getting this approved and complying with this at all times. Further, any deviations therefrom must be notified to the relevant issuing authority.
- d. Paragraph (c)
 - i. Compliance should be with all applicable legislation, as well as any permitting conditions that may apply.

25. Regulation 25 Comments

- a. Regulation 25(1)
 - i. It is unclear why a distinction between a protected area and non-protected areas has been made if the responsibility is the same.
- b. Regulation 25(2)
 - i. When does this need to be done? Only once an elephant has escaped?
- c. Regulation 25(3)
 - i. Paragraph (a)
 1. The wording “and return it to its normal range” should follow after the words “or arrange for it to be captured”.
 - ii. Paragraph (b)
 1. This paragraph should be deleted. An elephant who has escaped should be captured and returned and not just hunted because it has escaped, particularly as it is the responsibility of the responsible person to ensure it doesn’t escape. This also allows for a loophole for hunting operations to hunt animals which would not otherwise have been permitted.
 2. We strongly object to paragraph (ii) and furthermore to the use of the words “destroy” and “destroyed”. This is not in the spirit of the Norms and Standards. If this is to be maintained, the words “euthanise” and similar should be used. That should take place only in cases where no other options may be used to protect people.
- d. Regulation 25(4)



5. Body parts of destroyed animals should not be sold or used for commercial purposes but rather used in research.
6. A migrating elephant must not be prevented from naturally roaming back into its original area.

26. Regulation 26 Comments

a. General

- i. We refer to the 2018 Article entitled “Who owns and is responsible for the elephant in the room? Management plans for free-roaming elephant in South Africa”.³⁸
- ii. This document sets out in detail the provisions that should be incorporated in respect of free-roaming elephants. We have not repeated these herein, but wish for the legalities and all applicable international law and principles to be included in this regulation.

b. Regulation 26(3)

- i. See comments above regarding hunting and use of the word “destroy”.

c. Regulation 26(5)

- i. It should be recognized that elephants do cross borders. That should not be a reason for killing them. The regulations should require a plan to be developed for animals that cross unexpectedly: this can involve allowing them to stay where they are or using non-lethal methods to encourage them to return to their original range (perhaps in another country).
- ii. Please see concerns regarding “research elephant”.
- iii. Paragraph (b) should be “authorising” and not “authorise”.

27. Regulation 27 Comments

a. Regulation 27(a)

- i. The wording “or is not permissible in terms of these Norms and Standards” is concerning. For example, this provision could mean that culling is acceptable if it is for a “scientific research project”. We submit that this should be removed, or exceptions specified.
- ii. The research must not involve any cruel or invasive procedures to be performed on the elephant.
- iii. There should be additional restrictions, such as that it may not affect the well-being of the elephant, including psychologically.

³⁸ Andrew C. Blackmore and Arie Trouwborst Bothalia - African Biodiversity & Conservation ISSN: (Online) 2311-9284, (Print) 0006-8241. Article can be accessed here:

https://www.researchgate.net/publication/316473055_WHO_OWNS_AND_IS_RESPONSIBLE_FOR_THE_ELEPHANT_IN_THE_ROOM_MANAGEMENT_PLANS_FOR_FREE-ROAMING_ELEPHANT_IN_SOUTH_AFRICA



- iv. Only non-invasive research should be allowed which allows elephants to remain in their natural habitats.
- b. Regulation 27(b)
 - i. “and all other applicable legislation”.

28. Regulation 29 Comments

- a. Exception must be made for Regulation 23 – as the date should be that of the 2008 Norms and Standards.

29. Regulation 30 Comments

- a. See above comment.

30. Annexure I Comments

- a. Section B:
 - i. In Section 4 in general, there is very little said about the welfare of elephants. It is necessary for this to be a specific point to ensure their physical, psychological and social welfare is taken account of in any management plan.
 - ii. Point 4.5
 - 1. See comments above regarding management methods as well as culling.
 - 2. Any culling plan needs to be re-submitted at the time to be re-approved.
 - iii. Point 4.9
 - 1. In terms of paragraph (c) we submit that the preferable option should be to a sanctuary or other extensive wildlife system.
 - iv. Approved plans should be made publicly available for the purposes of transparency with any specific information that could potentially endanger elephants being left out. A register could be created for this purpose.

31. Annexure II Comments

- a. We are of the view that this is inadequate and does not protect the welfare of the captive elephants at all, without detailed norms and standards and specified permissible activities with captive elephants. If there are going to be permits issued for keeping of elephants in captivity, then there should be detailed norms and standards for the care of the elephants in captivity and permissible activities involving the elephants.
- b. Please see comments regarding the keeping of elephants in captivity.
- c. An additional point in section B should involve the source of the elephants and where they come from.



- d. Point 2.12: this should refer to “prevention” of stress and trauma first and only if prevention is not possible, then minimising.
- e. Point 2.18 see comment above regarding the preferable options.
- f. Please see comment regarding approved management plans.
 - i. We support Future 4 Wildlife’s comments on Management Plans for captive elephants:³⁹
 - ii. It is a global trend to consider more and more ethically unacceptable the trading of highly intelligent animals like elephants. The implications in separating individuals from the herd and their consequent long term trauma, the difficulty to breed elephants in captivity, the poaching associated to legal trading of elephant parts, makes trading a very controversial practice. Neither wild or captive elephants, nor their body parts, should ever be sold/traded, in any circumstance.
 - iii. In addition, in all sort of captive facilities, specific regulation should be applied for the well-being of such complex animals. Such parameters should be clearly be indicated and included in any captive elephant management plan, including:
 - iv. Permanent form of enrichment must be provided including solid structures for elephants to scratch onto, thereby maintaining healthy skin. Other structures must be introduced for pushing, pulling, shoving, throwing, climbing, rubbing, and manipulating. To facilitate frequent replacement of natural furniture and make other repairs easier, the enclosure must be accessible to trucks, skid loaders, backhoes, and other large pieces of equipment.
 - v. A list of such enrichment must be included in the plan and approved.
 - vi. Regular check of structures must be planned to prevent injuries caused by broken structures
 - vii. Security pits and fences must not represent a hazard for adult elephants and babies
 - viii. The enclosure must include water features (pools – minimum size to specify including depth which must not be dangerous for calves and large enough for comfortable bathing/skin care, thermoregulation/ and sprinklers/misters, also for thermoregulation).
 - ix. The enclosure must include a sand pit for sand bathing
 - x. The enclosure must include shade structures
 - xi. The captive facility must include in its Management Plan a detail Evacuation Plan to apply in case of fire, flood or emergency or natural disaster.
 - xii. Every Management Plan must contain an emergency Sedation and/ or Capture strategy.

³⁹ [Unless contradictory to any of our own comments herein, in which case our comments prevail]:
<https://www.future4wildlife.org/2018/11/30/object-to-norms-for-elephant-management-south-africa/?fbclid=IwAR3OgzO050NQzHQVLWTZ3hCHvkrTvmXKn4rz3ZawmhwkMovBIzV7PlrYJM8>



- xiii. No programmed breeding should be allowed for elephants in captivity. Only rescued exemplars which are permanently damaged and cannot return to the wild should be kept in captivity.
- xiv. For such intelligent and complex animals, captivity should be considered an emergency measure only and this should be specified in wording in these N&S.
- xv. Due to the complex social structure of elephants, in the wild as well as in captivity, the presence of other elephants is one of the most effective forms of enrichment possible. No solitary elephants should remain in captivity. Elephants should be kept in groups and in case of death of members, solitary survivors should be retired to a sanctuary. Furthermore, all captive elephants should retire to a sanctuary with suitable social environment and away from human vicinity or interaction, at least once reached the age of 40 or earlier, if their state of health declines for whatever reason or if the elephant displays visible sign of suffering and stress, like repeating movements or rocking.
- xvi. The plan must include euthanasia only in case of incurable disease or injury or to interrupt inevitable suffering.
- xvii. A dietary plan, approved by a veterinary, must be presented. This must include food to be manipulated, moved and stripped off the bark.
- xviii. Enclosures must be regularly maintained and kept clean from dirt and faeces.
- xix. The Enclosure should be far from disturbances.
- xx. The facility should be inspected by an external recognized authority (NSPCA) non less that every two years, in order to verify the continuity of standards of maintenance.
- xxi. Any elephant owner should have an insurance which also covers any possible damage caused by the elephants.
- xxii. Any application for keeping captive elephants should include a detailed project for the positive, constructive and continuous involvement of members of at least one local community surrounding the area. Such project should be promoting education, the economic growth and develop of such community, should aim at increasing skills and knowledge about eco-tourism opportunities and businesses.
- xxiii.

32. Annexure III Comments

- a. Point 2: reference should also be to “responsible persons” as a defined term.
- b. It is important to place emphasis on responsibility of all those interacting with elephants to understand them and respect them.

33. Annexure V Comments

- a. Point 6: minimum time requirements for fence inspection should be set out.



- b. References to “fence” must be replaced with “perimeter fence” as a defined term.

34. Annexure VI Comments

- a. Please see all comments above regarding management options, their precedence, their applicability, limitations, exceptions, etc.



SECTION IV: CONCLUDING REMARKS

Thank you for considering these comments. We look forward to your feedback and seeing that these issues have been properly considered and addressed in an open and transparent way and that our comments are reflected in the final published amendments.

Kindly confirm receipt.

We are happy to assist with the updating of the Norms and Standards, if required and to provide any additional information you may need, including the scientific and/or evidence of averments made.

If you have any questions or comments, please direct them to us using the information listed below.

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