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EMS FOUNDATION NPO COMMENTS ON

THE NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT (10/2004)- CONSULTATION ON THE INTENTION TO SET AND ALLOCATE ANNUAL EXPORT QUOTAS FOR ELEPHANT, BLACK RHINOCEROS AND LEOPARD HUNTING TROPHIES FOR THE 2024 AND 2025 CALENDAR YEARS PUBLISHED IN TERMS OF GN 5583 IN *GOVERNMENT GAZETTE 51644* OF 22 NOVEMBER 2024

1 Introduction

1.1 The EMS Foundation (EMSF) is a South African social justice NGO which is also a registered nonprofit organisation and public benefit organisation. The EMSF's key purpose is to alleviate and end suffering, raise public awareness, empower, provide dignity and promote the interests of vulnerable groups, including wild animals. The EMSF also has a special interest in biodiversity. It supports the five interrelated principles of social justice, namely: equity, access, diversity, participation and rights. It is cognisant of the entanglements of oppression and is committed to the promotion of inclusive justice, showing compassion across species and working to build a better future for all through campaigns, research, analysis, advocacy and holding government to account.

1.2 The EMSF has the right both to have the environment protected in terms of section 24 of the Constitution and to just administrative action in terms of section 33 of the Constitution.

1.3 We refer to the invitation for written representations or objections to the *Consultation on the Intention to Set and Allocate Annual Export Quotas for Elephant, Black Rhinoceros and Leopard Hunting Trophies for the 2024 and 2025 Calendar Years* published in terms of Gn 5583 in *Government Gazette 51644* of 22 November 2024.

1.4 This document constitutes the comments and objections s to the intention to set and allocate annual export quotas for elephant, black rhino and leopard hunting trophies as published in the Government Gazette 5583 on the 22nd November 2024.

1.5 The EMSF comments and objections are in two parts:

- **Part A:** Objection to the Processes followed for the Consultation on the Intention to set and allocate annual export quotas For Elephant, Black Rhinoceros and Leopard hunting trophies for the 2024 and 2025 calendar years.

- **Part B:** General Comments and Objection to the fundamental basis of the intention to set and allocate annual export quotas for elephant, black rhinoceros and leopard hunting trophies for the 2024 and 2025 calendar years.

2. PART A: Objection to the Processes Followed for the Consultation on the Intention to Set and Allocate Annual Export Quotas for Elephant, Black Rhinoceros and Leopard Hunting Trophies for the 2024 and 2025 Calendar Years

2.1 The Gazetted Notice is incoherent.

2.2 The Gazetted Notice lacks particularity.

2.3 The Gazetted Notice is ill-conceived.

2.4 The Gazetted Notice is unlawful.

2.5 It is incumbent on the Minister to provide substantive and motivating reasons *to* permit the trophy hunting and export of these TOPS listed species. However, the Gazetted Notice contains no information on, among other things: (i) how the trophy hunting of the three species fulfils the duty to protect the environment in terms of Section 24 of the Constitution; (ii) the rationale for selecting these three species for trophy hunting; (iii) how the quota quantities are determined and (iv) the distribution across the provinces; (v) the economic benefits of trophy hunting in relation to the three species concerned**,** and precisely how the local communities will be benefitting; (vi) the welfare implications of the animal being hunted and the impact on family members and populations that are left behind.

2.6 A calendar year is defined as the twelve-month period between January and /December of any given year.

2.7 It is of great concern that an informed public consultation regarding the hunting/export of elephant, leopard and black rhino trophies for the 2024 Calendar Year has been initiated on the 22nd day of the eleventh month of this 2024 calendar year. Thus, leaving only nine 9 days of the 2024 calendar year remaining after the closure of the public consultation period, after which the Minister is required to give "due consideration" to the public representations received.

2.8 No explanation for this choice of timing has been provided. This timing is out of step with the CITES recommendations[1] which provide that *"nationally established export quotas should as far as possible, be communicated at least 30 days before the start of the period to which the export relates"***.**[1]

2.9 The required public participation process for the calendar 2024 year and calendar 2025 year have not taken place.

2.10 There was no hunting quota for leopard, lion and elephant in 2024. The publication of a quota for the 2024 calendar year so late in the year is, in our view, unfair, unreasonable, and

[1] *Management of Nationally Determined Export Quotas,* https://cites.org/eng/res/14/14-07R15.php

irrational, and could well be grounds for the setting aside of the Gazetted Notice under sections 6(2)(h) and 6(2)(b) of the Promotion of Administrative Justice Act, 3 of 2000 (PAJA).

2.11 The annual hunting-off take limit, in terms of Regulation 72 of the Threatened or Protected Species Regulations (TOPS) Promulgated on 14 December 2007 has not been prepared and published, i.e. the quota for hunting TOPS species cannot be issued without a hunting off-take limit being prepared and published.

2.12 There has not been compliance with sections 97, 99 and 100 of the Biodiversity Act in respect of the quotas to be published, which may include a quota of 'zero'.

2.13 Section 99 of the National Environmental Management: Biodiversity Act, 10 of 2004 (NEM:BA) states that: “sufficient information must be provided to enable members of the public to submit meaningful representations or objections.”

2.14 As stated in the Gazetted Notice, the invitation for the submission of representations on the proposed 2024 and 2025 quota was issued in terms of sections 99 and 100 of NEM:BA. These provisions set out the public consultation requirements for the Minister’s exercise of power under NEM:BA.

2.15 Section 100(2)(b) sets out that notice of a public participation process under section 99 of NEM:BA must contain “*sufficient information to enable members of the public to submit meaningful representations or objections”.*

2.16 The Gazetted Notice of consultation on the 2024 and 2025 proposed quota contains no quota information for example the number of black rhino, leopard or elephants that are going to be killed by hunters and their trophies exported.

2.17 There is an absence of valid, sufficiently consulted on, and approved non-detriment findings (NDFs) for these three species (section 62 of NEM:BA). There is also a lack of provision of any scientific rationale for the trophy hunting quota of black rhinoceros, leopard or elephant. It is therefore impossible for any member of the public to meaningfully interrogate or engage with the proposed 2024 or 2025 quota.

2.18 The Minister may not issue a quota for the exportation of the species concerned, nor any of the species listed under the TOPS Regulations, without valid non-detriment findings, (NDF's) which have been duly published in accordance with the provisions of the Biodiversity Act It is also, in our view, is also a material flaw in terms of section 100(2)(b) of NEM:BA and under PAJA.

2.19 Even if the quota numbers for the 3 species were provided in the Gazetted Notice there is no transparency, for example, exactly how were the so-called “off-take” numbers determined and how is it linked to the non-detriment findings process?

2.20 The non-detriment findings for black rhinoceros, leopard and elephant are not referred to nor provided in the Gazetted Notice. This is not in compliance with the CITES detriment requirements or in terms of Section 24 and NEMA.

2.21 In previous notices the Minister conjoined the export and the hunting together in one year and one quota, for example, 10 black rhinos for export, then that quota would allow the provinces to issue hunting permits for 10 black rhinos. The Gazetted Notice refers only to the trophy exports, thereby equating all trophy hunting with trophy exports. This is irrational and unscientific.

2.22 The Gazetted Notice ignores the fact that the critical revisions made to the 2007 TOPS (Threatened and Protected Species) Regulations and TOPS List[2] and promulgated in February 2023 were withdrawn a few month later, consequently: (i) the current legislative framework under the NEM:BA is currently not effective; (ii) the current regulatory regime is not responsive to the threatened and protected species in this country; (iii) the current regulatory regime does not accord with the CITES Regulations for the international trade in endangered species and South Africa is in breach of it international legal obligation for the export and transit of endangered species; (iv) the threatened or protected species are not aligned with scientific data; and (v) critical and effective management of our threatened and protected species is compromised.

2.23 A restricted activity in relation to a TOP species is defined in section 1 of the NEMBA to mean:

> "*(i) hunting, catching, capturing or killing any living specimen of a listed threatened or protected species by any means, method or device whatsoever, including searching, pursuing, driving, lying in wait, luring, alluring, discharging a missile or injuring with intent to hunt, catch, capture or kill any such specimen;*
>
> *(ii) gathering, collecting or plucking any specimen of a listed threatened or protected species;*
>
> *(iii) picking parts of, or cutting, chopping off, uprooting, damaging or destroying, any specimen of a listed threatened or protected species;*
>
> *(iv) importing into the Republic, including introducing from the sea, any specimen of a listed threatened or protected species;*
>
> *(v) exporting from the Republic, including reexporting from the Republic, any specimen of a listed threatened or protected species;*
>
> *(vi) having in possession or exercising physical control over any specimen of a listed threatened or protected species;*

[2] The TOPS Regulations and the TOPS List are foundational regulatory instruments under NEM:BA. The TOPS regulatory framework is critical to providing for the protection of species that are threatened or in need of protection to ensure their survival in the wild, to provide for the protection of ecosystems that are threatened or in need of protection to ensure maintenance of their ecological integrity, and to ensure that South Africa's diverse biodiversity in managed in an ecologically sustainable way.

(vii) growing, breeding or in any other way propagating any specimen of a listed threatened or protected species, or causing it to multiply;

(viii) conveying, moving or otherwise translocating any specimen of a listed threatened or protected species;

(ix) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of a listed threatened or protected species; or

(x) any other prescribed activity which involves a specimen of a listed threatened or protected species …"

2.24 The EMS Foundation, as a member of WAPFSA, supports the lawyers letter sent to DFFE in regards to DFFE's unreasonable request to submit written scientific information in only 60 days on non-detrimental findings for over one thousand species, including black rhinos, elephants and leopards.

2.25 Findings should first be scientifically confirmed as non-detrimental in relation to CITES Appendix I or Appendix II species. In other words, NDFs should assert that a restricted activity (such as trophy hunting and export) of these species will not be detrimental to the survival of the species in question.

2.26 Leopards and Black Rhinoceros are listed under CITES Appendix I while African Elephant populations in South Africa are listed under CITES Appendix II. All three species are also listed in the TOPS Lists of under the Threatened and Protected Species Regulations published in terms of section 56 of NEM:BA (with leopards being listed as "vulnerable"; black rhinoceros as "endangered" and African Elephant as "protected".

2.27 Section 62 of NEM:BA which refers[2] to the publication of "Annual non-detriment findings" which must be published in the Government Gazette applies to all three of these species. This is in line with the CITES recommendation that "a non-detriment finding should be made whenever an export quota is established for the first time or revised, and reviewed annually."

2.28 A decision by the Scientific Authority to make an NDF is, in our view, administrative action which, in terms of the Constitution and the PAJA Act, must be procedurally fair. DFFE and its Scientific Authority's current approach with regards to NDFs, and the publication thereof, are deficient and open to judicial review. There are: (i) procedural flaws in the consultation process; (ii) legal inadequacies in the development and implementation of NDFs under NEM:BA; (iii) methodological shortcomings in assessing species; (iv) the lack of consideration of key legal principles, such as the precautionary approach; and (v) the failure to consider species well-being, as required under South African law.

2.29 NDFs in relation to these three species have not been properly published in a Government Gazette and the necessary consultation has not taken place. What has

been published in a Government Gazette in 2024 were not the NDFs for these 3 species but merely an unclickable link (i.e. not a hyperlink) to a website that contains some NDFs. It is not good practice to include links in Gazette Notices since there is no record of what information was published on what dates and in fact our instructions are that the linked information has changed during the comment period, leading to confusion.

2.30 Our understanding in relation to the necessary public consultation requirements is that, when NDFs are gazetted, each and every detailed NDF must be appended to the gazette as a schedule. At the very least, to ensure complete transparency, and accountability these detailed NDFs should have been included in the gazette in accordance with NEM:BA section 62.

2.31 It is of material concern that hunting/export quotas for elephant, leopard and rhinos have been set in the absence of a current gazetted non-detriment finding and informed scientific data in relation to these species in the current or preceding calendar year.

2.32 Biodiversity Management Plans for Black Rhinos and Leopards have not yet been developed.

2.33 Given the considerations set out above, the EMS Foundation is of the view that this consultation process constitutes unlawful, procedurally unfair, unreasonable, and irrational administrative action in terms of PAJA.

2.34 The Courts have established that public participation is not merely a formality but must reflect a process which allows for meaningful participation. In other words, public participation involves more than formalistic processes which complies with black letter law, the process followed needs to be substantively fair and effective.

2.35 As the protection of South Africa's wildlife is a matter of public interest, the Minister's exercise of initiating a flawed public consultation process could constitute a breach of the South African public's right to adequate public participation in matters that affect them, the right to just administrative action in terms of section 33 of the Constitution and the right to have the environment protected through legislative and other means in terms of section 24 of the Constitution.

2.36 With regards to the 3 species, and under Section 57(2) of the National Environmental Management: Biodiversity Act, 10 of 2004 (NEM:BA), the Minister may prohibit the carrying out of any activity specified in the Gazetted Notice "which is of a nature that may negatively impact on the survival of a listed threatened or protected species"

2.37 The proposed export quota of hunting trophies for the three species must therefore be withdrawn.

3. Part B: General Comments and Objection to the Fundamental Basis of the Intention to Set and Allocate Annual Export Quotas for Elephant, Black Rhinoceros and Leopard Hunting Trophies for the 2024 and 2025 Calendar Years

3.1 Trophy hunting is the killing of wild animals for recreation with the purpose of collecting trophies (secondary sexual characteristics) such as horns, antlers, skulls, skins, tusks or teeth for display.[3]

3.2 Killing wild animals for fun, especially those that are long-lived, intelligent, and self-aware, such as elephants for example is reprehensible.

3.3 More ecologically sustainable and dignifying activities exist.[4]

3.4 Trophy hunting is rooted in colonial modes of extraction that perpetuate notions of abuse, subjugation, control and inequality, including gender inequality.

3.5 Trophy hunting, like poaching, artificially selects the biggest and strongest animals (largest tusks and thickest manes), weakening populations' genetic health and variation.[5]

3.6 A recently published survey indicated that opposition to trophy hunting in South Africa has increased from 64% in 2020 to 68% in 2022. The survey included data sourced from a diverse South African demographic across all provinces. The key findings from the IPSOS survey showed that:

- 68% of South Africans fully oppose or oppose to some extent the practice of trophy hunting - an increase from 56% in a similar 2018 survey.
- 65% of South Africans fully oppose or oppose to some extent the practice of canned lion hunting - an increase from 60% in a similar 2018 survey.
- 64% of South Africans disagree with the trophy hunting of elephants, rhinos, and leopards.
- 63% of South Africans disagree with the trophy hunting of lions. 66% of South Africans disagree with the trophy hunting of hippos.
- 60% of South Africans disagree with the trophy hunting of giraffes.
- In relation to the DFFE 2022 hunting and export quotas: 63% oppose the quota for 150 elephants, 62% oppose the quota for 10 black rhinos, and 61% oppose the quota for 10 leopards.

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[3] A Sheikh Pervaze and Bermejo F Lucas, "International Trophy Hunting," *Congressional Research Service* (Congressional Research Service, 2019), https://crsreports.congress.gov.

[4] Katarzyna Nowak et al., "Trophy Hunting: Bans Create Opening for Change," *Science* 6464 (2019): 434–35, https://doi.org/10.1126/science.aaz4023.

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

3.7 The intention to set and allocate annual export quotas for elephant, black rhinos and leopard hunting trophies for the 2024 and 2025 calendar years as gazetted does not take well-being into account. The EMSF urges the Minister to exercise his powers in terms of section 9A of NEM:BA to prohibit more practices that are clearly detrimental to the well-being of TOPS animals

3.8 On 30 June 2023 30 June 2023, by Proclamation Notice 125 of 2023, most of the sections of the National Environmental Laws Amendment Act, 2022 were brought into effect. Among the sections which came into effect were sections:

- inserting a definition of "well-being" into section 1 of NEM:BA;
- making it an object of NEM:BA to provide for "the consideration of the well-being of animals in the management, conservation and sustainable use thereof";
- allowing the Minister by Notice in the Gazette to prohibit activities that may negatively impact on the well-being of an animal, subject to such conditions as the Minister may specify. (Section 9A)

3.9 Well-being is now defined in the NEM:BA to mean "*the holistic circumstances and conditions of an animal, which are conducive to its physical, physiological and mental health and quality of life, including the ability to cope with its environment."*

3.10 The amendments to NEM:BA (see 3.q) are in line with the changing approach of the Courts to questions of animal welfare. In *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others ("the second NSPCA case"),*[6] the Gauteng High Court considered whether welfare considerations relating to lions in captivity were relevant in the determination of the annual export quotas for lion bone. In doing so, it approved of the stance taken by the Constitutional Court in *National Society for Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another*[7] that conservation and welfare represent "two intertwined values". It found that "These unambiguous and compelling sentiments require careful consideration in that not only do they provide guidance in terms of the legal conduct that is expected of us but rather that it also speaks to the kind of custodial care we are enjoined to show to the environment for the benefit of this and future generations."[8]

The Court ultimately found that the welfare of lions held captive to feed the lion bone quota was a relevant factor which the Minister ought to have considered in setting the annual quotas, whether or not "animal welfare" falls within the mandate of the Minister. It said:

"*It cannot be correct to assert that such signalling can occur at the same time as indicating to the world at large and to the same industry that the manner in which lions in captivity are kept will remain an irrelevant consideration in how the quota is set. It is*

[6] 2020 (1) SA 249 (GP).
[7] 2017 (4) BCLR 517 (CC).
[88] Paragraph 65.

illogical, irrational and against the spirit of Section 24 and how our courts have included animal welfare concerns in the interpretation of Section 24. Simply put if as a country we have decided to engage in trade in lion bone, which appears to be the case for now, then at the very least our constitutional and legal obligations that arise from Section 24, NEM:BA and the Plan require the consideration of animal welfare issues."[9]

In our view, the *NSPCA* case sets a clear precedent for the view that considerations of animal welfare are relevant to any decision taken in terms of NEM:BA, the TOPS Regulations, the CITES Regulations, 2010 and any other biodiversity legislation.

3.11 The EMSF is disappointed that the framework of this Notice remains firmly within the "sustainable use" policy paradigm, rather than promoting a "harmonious co-existence' model. We do not support the hunting of TOPS animals under any circumstances, other than when euthanasia is necessary for the welfare of the animal concerned, and as a last resort. We also do not support captive breeding, commercial exhibition or any trade in TOPS animals or any other animals. Therefore, we strongly object to the Notice of Intention s to the extent that it perpetuates a policy of animals as commodities and continues to permit the hunting of these animals.

3.12 The Gazetted Notice also ignores the concept of "harmonious co-existence within nature". This concept already enjoys wide acceptance at the international level as is evidenced by the United Nation's (UN) Harmony with Nature programme. It involves adopting a "non-anthropocentric paradigm in which the fundamental basis for right and wrong action concerning the environment is not grounded solely in human concerns."[10] The right of individual indigenous animals to exist and thrive within the ecosystems in which they evolved must be given proper weight in all human/animal conflict resolution. In South African jurisprudence, the Constitutional Court of South Africa's statement that "the rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on animals as individuals" [11]also reflects this approach.

3.13 In 2022, DFFE allowed the hunting of 10 vulnerable leopard, 150 endangered elephant and 10 critically endangered black rhino. According to the 2022 quota setting, DFFE stated that "this is aligned with the best available scientific information on their conservation status." However, no such scientific information has been presented. From our analysis of available scientific information on the conservation status of the three species, it is clear that any hunting quota will be detrimental to the population status, welfare and social dynamics of all three species.

[9] Paragraph 74.
[10] http://www.harmonywithnatureun.org.
[11] *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another (CCT1/16) [2016] ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) (8 December 2016).*

3.14 According to the CITES Trade Database, around 1,700 elephant, 753 leopard and 43 black rhino trophies were exported from South Africa between 2014 and 2022. This is not ecologically sustainable and ignores well-being.

3.15 Elephants are sentient beings who live socially complex lives through relationships which radiate out from a mother-offspring bond through families, clans, and subpopulations. Independent males form long-term friendships.[12] Elephants communicate through more than 300 gestures, complex speech and glandular secretions. They contemplate, negotiate, collaborate, plan and are aware of death. They care about their lives.

3.16 Older elephant bulls are most targeted by trophy hunters, mainly because they have the largest tusks. Research has shown that the removal of older mature bulls removes individuals with a central role in the male society, particularly in the context of their role in leading younger naïve males between critical resources. Research has shown that such selective hunting would not be sustainable, and removal of older mature bulls from the population could disrupt the wider bull society and the inter-generational flow of information concerning decades of accumulated ecological knowledge, such as effective navigation and location of critical resources. Mature bulls occupy a similar role in male elephant society as old female matriarchs in breeding herds and require equal protection.[13]

3.17 Scientists have further noted that since it takes about 35 years for a male elephant to attain the size and experience to breed annually, the majority of calves are fathered by the same few older males sought by trophy hunters. The research has concluded that the removal of just a handful of older males will have detrimental consequences on the reproductive capabilities of elephants.[14]

3.18 When trophy hunters eliminate these older bulls, they destroy elephant family integrity (through trauma and removal of the discipline and knowledge transfer functions executed by patriarchs) and force matriarchs to mate with younger bulls they would otherwise not have selected, thereby skewing reproduction patterns.[15]

3.19 Rather than politically motivated consumptive use policies such as trophy hunting, what is urgently needed in South Africa is the practice of “longevity conservation” – which would mean targeted policies and careful management to protect old individuals.

3.20 Researchers who analyzed more than 9,000 peer-reviewed papers have warned in a November 2024 paper published in Science, that earth’s old, wise and large animals

[12] G. A. Bradshaw and Allan N. Schore, “How Elephants Are Opening Doors: Developmental Neuroethology, Attachment and Social Context,” *Ethology* 113, no. 5 (2007): 426–36, https://doi.org/10.1111/j.1439- 0310.2007.01333.x.

[13] Allen, et al (2020) *Importance of old bulls: leaders and followers in collective movements of all-male groups in African savannah elephants (Loxodonta africana)*. *Sci Rep* 10, 13996

[14] Poole, et al. (2024) *Stop elephant hunting in Tanzania borderlands* Science: Press Release

[15] Allen, et al (2020) *Importance of old bulls: leaders and followers in collective movements of all-male groups in African savannah elephants (Loxodonta africana)*. *Sci Rep* 10, 13996

are in decline and longevity conservation is needed to protect the important ecological roles an ecosystem services provided by old animals. These are the very animals that trophy hunting targets. Few animals make it to old age, and the ones that do are vulnerable to being hunted or harvested by humans, because they are the biggest or have, for example, the largest antlers, horns or tusks. Old individuals who carry vital cultural knowledge and maintain social structures. This research clearly shows that removing older individuals results in populations becoming more volatile over time, sometimes eventually collapsing. The paper refers to the importance of "cultural transmission" that not only recognizes that animals have culture, but that these individuals transmit their social learning to other individuals. Older individuals tend to have accumulated the most knowledge, such as how to locate water during dry periods, find safe places to shelter and find new foods during times of scarcity. The loss of old individuals can be a driving factor for many species threatened with extinction.

3.20 Elephants are also irreplaceable ecosystem engineers; their removal negatively impacts ecosystem integrity and biodiversity preservation.[16] Elephants, are natural ecosystem landscapers that help prevent wildfires by clearing excess vegetation, creating firebreaks through their movement, and dispersing seeds through their dung that grow into carbon-absorbing trees. Their activity even helps cool the planet's surface by trampling dense vegetation to reflect sunlight off the newly exposed ground. Conservationists doing critical work on the ground witness firsthand how threats to wildlife like trophy hunting, poaching, conflict, and climate change itself, disrupts these natural processes which act to mitigate climate change, driving droughts, fires, and other disruptions that make it harder for both wildlife and local communities to thrive.

3.21 Research reveals that approximately 20% of South Africa is considered suitable leopard habitat, with only one third of this habitat falling within protected areas.[17] Their distribution is highly fragmented and current models suggest that the national leopard population is declining, particularly outside protected areas where leopards are at risk due to trophy hunting and other anthropogenic factors.[18]

3.22 Noting that the 2017 NDF for leopards recommended that a zero quota be established and that that is the latest NDF for leopards, a zero quota on leopard trophy exports still needs to be in place for 2024 and 2025.

[16] Katherine Bunney, William J. Bond, and Michelle Henley, "Seed Dispersal Kernel of the Largest Surviving Megaherbivore—the African Savanna Elephant," *Biotropica* 49, no. 3 (May 1, 2017): 395–401, https://doi.org/10.1111/btp.12423; Michelle D Henley and Robert Cook, "The Management Dilemma: Removing Elephants to Save Large Trees," *Koedoe*, 2019, 1–12.
Removing Elephants to Save Large Trees," *Koedoe*, 2019, 1–12.
[17] Swanepoel et al. (2013) *Population size, density, and ranging behaviour in a key leopard population in the Western Cape, South Africa*. Researchgate
[18] *Ibid*.

3.23 Hunting organisations argue that individuals must be removed from the population in order to reduce density and stimulate population growth, although there is also no evidence that manipulation of age or sex structures stimulates population growth.[19]

3.24 Black rhinos exhibit similar birth rates at different population densities.[20] Further, rhinos are poor dispersers and are unlikely to colonize recently vacated home ranges. Following the removal of a neighbour for translocation purposes, rhinos are slow to recolonize the habitat that was occupied by their former neighbour.[21] Female and male rhinos form breeding relationships that influence habitat use; therefore, removal of an individual results in the loss of a breeding relationship that is not immediately replaced.

3.25 Decreased home range overlap also reduces interactions between the sexes, which is especially concerning in populations with low density. Scientists argue that social behaviour of black rhino must be considered when removing individuals from a population; otherwise, an unbalanced social structure could shift home ranges and reduce reproductive rates because rhinos are expending more energy on establishing new home ranges rather than on reproduction.[22]

3.26 Trophy hunting random individuals in the population does not consider these impacts and can further slow population growth.

3.27 Hunting organisations argue that "excess" older males can be removed as they no longer contribute to reproduction; however, there is no evidence that males stop reproducing in old age.

3.28 Hunting organisations argue that removing males from a population decreases injury or death due to male-male fighting. Yet, scientists say social disruption that is not specifically planned based on rhino social networks will increase conflict.[23]

3.29 Scientists are concerned that lower population densities will result in fewer breeding opportunities and higher calf predation.[24] Thus, trophy hunting can, in fact, have the opposite effect of what the hunting industry claims. Genetic diversity is the most important predictor of male reproductive success; therefore, every individual is important to the population.

3.30 Trophy hunters are likely targeting the most important males given their preference for large horns, which belong to the most dominant males. According to experts, "[c]urrent

[19] Balfour D. et al. (2019) Concise best practice guidelines for the biological management of African rhino. WWF-SA. 123pp.
[20] Ferreira S.M. et al. (2019) Species-specific drought impacts on black and white rhinoceroses. PLoS One 14, 1–11.
[21] Linklater W.L. & Hutcheson I.R. (2010) Black rhinoceros are slow to colonize a harvested neighbour's range. African J. Wildl. Res. 40, 58–63.
[22] Reid C. et al. (2007) Habitat changes reduce the carrying capacity of Hluhluwe-Umfolozi Park, South Africa, for Critically Endangered black rhinoceros Diceros bicornis. Oryx 41, 247–254.
[23] *Ibid*.
[24] Le Roex N. & Ferreira S.M. (2020) Age structure changes indicate direct and indirect population impacts in illegally harvested black rhino. PLoS One 15, e0236790.

understanding of black rhinoceros (Diceros bicornis) demography and population dynamics remains poor."[25]

3.31 Allowing trophy hunting without adequate evidence and understanding of how offtake will affect the species could be detrimental to future survival. Due to their rarity, black rhino trophies fetch one of the highest prices of any species.[26] However, considering the small population size and potential negative impacts, there are serious concerns about whether such a rare and Critically Endangered species should be hunted as a trophy.

3.32 DFFE has previously said it "aims to (1) promote the expansion of the species' range in South Africa through incentivizing the keeping and protection of viable populations of black rhinoceroses and to (2) increase/maintain productive population growth rates through the offtake of surplus males." However, the rarity of the black rhino, and the high trophy fees, may incentivize unsustainable trophy hunting. Rhinoceroses in South Africa tend to be 'farmed' in highly managed areas for the sole purpose of being immediately shot and then restocked again. This often occurs in very unnatural settings where wildlife production units are too small to support self-sustaining wildlife populations.[27]

3.33 'Offtake' from 'farming' is excessive and feeds into illegal trade.[28] This process threatens biodiversity due to disease transmission, genetic mixing, and releasing sub-par individuals.[29]

3.34 By way of pseudo-hunting, this can also provide an avenue for illegal trade, as has happened often in the past.[30]

3.35 The DFFE claim is that income generated by trophy hunting is especially critical for marginalised and impoverished rural communities. There is no evidence of this. In South Africa, almost all trophy hunting takes place on private reserves, which means there are few proceeds, if any, paid to local communities. The top-down approach ensures that the intended recipients receive a minuscule if any of the capital generated from trophy hunting. Furthermore, a study has shown that in some cases, farm

[25] Law P.R. et al. (2019) Intriguing density dependence but problematic birth rates in Greaver et al.'s study of a black-rhinoceros population. bioRxiv 039453.
[26] Palazy L. et al. (2012) Rarity, trophy hunting and ungulates. Anim. Conserv. 15, 4–11.
[27] Report to the Minister of Environmental Affairs © 2021 Humane Society International 8and Tourism. (2005). Panel of experts on professional and recreational hunting in South Africa.
[28] Hübschle A. (2016) A Game of Horns: Transnational Flows of Rhino Horn. (Doctoral Thesis). Universität Köln.
[29] Report to the Minister of Environmental Affairs © 2021 Humane Society International 8and Tourism. (2005). Panel of experts on professional and recreational hunting in South Africa
[30] Ceballos G. & Ehrlich P.R. (2002) Mammal population losses and the extinction crisis. Science. 296, 904–907.

workers who have traditionally lived on and worked the land, have been removed and are without access to meaningful employment.[31]

3.35 The fixation with trophy hunting as a means to expand the rural economy also comes at a time when trophy hunting is in a state of decline and is no longer able to pay for

its ecological footprint. Foreign hunters coming to South Africa have declined by 62.4% in 14 years, from 16,594 in 2008 to 6,242 in 2022.[32] The number of hunters in countries that provide trophy hunters to Africa has dropped significantly, with a decline in the US of 18.5% between 1991 and 2016, and in France a drop of 50% in 40 years.[33]

4. Conclusion

4.1 We hope that our comments will be constructively considered.

4.2 We request that once the DFFE has reviewed all comments, that a comments and responses table be made publicly available, evidencing the manner in which all Stakeholders' comments were evaluated and analysed by the DFFE.

4.3 We have crossed the ecological ceiling where nature is declining. Biodiversity is being lost at an unprecedented rate and our extractive, wasteful, and polluting linear economy is increasingly recognised as one of the main underlying causes of this crisis. Today, more than 90% of biodiversity loss is due to the extraction and processing of so-called "natural resources".

4.4 The intersection of climate change and wildlife conservation is a crucial space where the most urgent global issues converge These interconnected challenges affecting water quality, soil erosion, and even the spread of diseases highlight the inextricable link between climate change, wildlife conservation, and the well-being of wild animal and human communities. These issues cannot be separated in the fight against the negative effects of climate change.

4.5 In the context of the sixth extinction, policies that support the extraction of wildlife as a means of 'conservation' is a contradiction. As Professor Klaus Bosselmann, chair of the IUCN Ethics Specialist Group in a recent letter to the German government, noted, "Trophy hunting unnecessarily threatens the survival and genetic integrity of protected species in the midst of the current crisis of the sixth mass species extinction. It is overdue that Germany, as the largest importer of hunting trophies in the EU, takes action."

[31] Femke Brandt & Marja Spierenburg (2014) Game fences in the Karoo: reconfiguring spatial and social relations, Journal of Contemporary African Studies, 32:2, 220-237
[32] Cruise, A. (2024) *New National Biodiversity Strategy is a curate's egg – only good in parts* Daily Maverick
[33] Chardonnet, B. (2019) *Africa is changing: Should its Protected Areas evolve? Reconfiguring the Protected Areas in Africa* ResearchGate

4.6 To halt and reverse biodiversity loss, we need to fundamentally transform the way we produce, use, and consume. This is not only a practical necessity, but embedded in the constitutional obligation on the State to secure ecologically sustainable use of natural resources, and everyone's concomitant right to have natural resources used only in an ecologically sustainable manner for purposes of fulfilling the right to have the environment protected for the benefit of present and future generations.

4.7 The Constitutional Court has confirmed that no developmental activity can be built, or survive, on a "deteriorating environmental base".[34] Biodiversity is critical to this base, and has risen to the top of the global agenda as the planet faces its sixth mass extinction. The IPBES has argued that global biodiversity loss can only be tackled through transformative economic, social, political, and technological changes.

4.8 As we have demonstrated, the Gazetted Notice falls short of such transformational approaches – including those which promote inclusivity, equity and societal wellbeing. Moreover, it fails to satisfy the constitutional obligation to "secure ecologically sustainable use of natural resources" and is inconsistent with existing biodiversity legislation and PAJA.

4.9 Critically, the Gazetted Notice is removed from South Africa's legal understanding of the interrelationship between environmental protection, animal well-being, conservation and the values of dignity, compassion and humaneness which are foundational to our constitutional democracy.

4.10 Accordingly, we request that the Gazetted Notice is withdrawn.

Yours faithfully,

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[34] See Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others 2007 (6) SA 4 (CC) para 44.