

SA Jagters- en Wildbewaringsvereniging
SA Hunters and Game Conservation Association

Bewaring deur volhoubare benutting / Conservation through sustainable utilisation

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10 November 2023

The Director General
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Attention: Dr Tsepang Makholela

Dear Dr Makholela

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**COMMENTS ON THE DRAFT POLICY POSITION ON THE CONSERVATION AND
ECOLOGICALLY SUSTAINABLE USE OF ELEPHANT, LION, LEOPARD AND RHINOCEROS
– PUBLISHED 19 SEPTEMBER 2023**

This is the response of the SA Hunters and Game Conservation Association to the second version of the Draft Policy Position No 3889, on the Conservation and Sustainable Use of Elephant, Lion, Leopard and Rhinoceros as published on 19 September 2023 in Government Gazette No 49322 for comment.

We appreciate the opportunity to once again respond to and comment on the Draft Policy. Our comments represent the interests of our member base of more than 41 000 who will be directly affected by the proposed policy as wildlife custodians, responsible hunters, and citizens. We recognise the fact that through a democratic process, this role was entrusted to the State which should hold our common wildlife heritage in public trust for us and future generations. This should ensure the beneficial use of wildlife to serve the public interest.

We remain committed to the sustainable conservation of wildlife, responsible use thereof for the benefit of all South Africans, and inclusive growth of the wildlife sector that will serve the interest of people in RSA as well as of all wildlife.



Comments are provided below, in the following order: firstly, comments on the public participation process, followed by general comments, and lastly, particular comments on the specific content of parts of the Draft Policy.

I trust you will find these comments meaningful and reconsider the aspects identified.

Yours sincerely



Fred Camphor
CEO: SA Hunters

Public Participation Process

SA Hunters appreciates the opportunity to once again respond to the content of the Draft Policy. However, we want to express our grave concern about the manner in which DFFE is conducting its Public Participation Processes (PPP) for this proposed policy, as well as other proposed policies and legislative documents that have been circulated for consultation. We have the same concern about the PPP that was undertaken for the NEMLA Bill and the White Paper on Biodiversity. The process is most certainly not sufficient and does not comply with the guidance provided by the Constitution, NEMA and the National Policy Development Framework (NPDF)¹, approved by Cabinet in 2020. See Appendix A.

As an affected party, SA Hunters and as far as we know other stakeholders, have not been asked how we can meaningfully engage in this and other policy processes. Inputs regarding the process prior to the formulation of the draft have not been requested from stakeholders, despite our explicit request thereto on the Wildlife Forum – a communication platform established by DFFE for engagement with the wildlife sector.

Wildlife Forum members have also not been engaged officially in the early processes of the development of the policy as recommended by the NPDF. An official email requesting comment was only sent to members on 18 October 2023, while the Draft Policy was published for public comment in the Government Gazette on 19 September 2023. Therefore, the request for comment was done completely after the fact and after the policy had been drafted. The NPDF indicate that policy makers must follow a robust early consultation process with affected stakeholders that provides an opportunity to inform analysis and policy solutions, including exploring issues of self-regulation. No opportunity for the latter was provided.

The NPDF further state that stakeholders who had submitted their comments should be provided with timely feedback on the outcome of the consultation and the key issues considered during the decision-making process. It goes as far as stating that “effective stakeholder engagement also involves being prompt and responsive to comments raised via social media platforms.” Despite numerous requests to DFFE at Wildlife Forum meetings for a “Comments and Response Report” to reflect the inputs of various interested and affected parties and how their comments have been considered in public

¹ https://www.gov.za/sites/default/files/gcis_document/202101/national-policy-development-framework-2020.pdf

consultation processes, this was once again not provided to IAP after the first round of consultation on this Draft Policy. This is very important where a second round of consultations on the same draft policy is invited. Receiving a Comments and Response report after the adoption of the policy, does not serve the purpose of facilitating meaningful engagement in a policy development process.

It is stated in the Draft Policy on page eight, that all the comments received were considered in revising the draft Policy Position. How would we know if this is the case in the absence of a Comments and Response Report reflecting inputs of IAP and the response of DFFE on those inputs? Once again, we are just expected and required to comment on a second draft without feedback on the first round of consultation. According to guidelines developed by DFFE, Comments and Response Reports are required as part of the PPP for Environmental Impact Assessments that need authorization by the government, yet for national policy development processes, DFFE disregards their own standards for meaningful PPP as well as the guidance provided by the government's own NPDP.

In addition, the public roadshow that has been planned by DFFE – again without any engagement with members of the Wildlife Forum that are directly affected by the proposed policy – has been communicated at extremely short notice, with dates for meetings regularly changing a day or two before the meeting. In addition, the agenda is packed, with DFFE rushing public engagements on several regulations/draft policies in one day, including this Draft Policy, the proposed new TOPS regulations and lists, the draft policy on restriction on the registration of new facilities for keeping and captive breeding with lions. The program further states that the White Paper and Transformation will also be discussed on the day set aside for consultation on this Draft Policy. This further exacerbates the lack of opportunity for all IAP, including rural communities, to meaningfully engage with issues that can and will have a significant impact on the way people engage with wildlife, the sustainable growth of the wildlife economy, and its contribution to conservation of the wildlife heritage of the people of South Africa. This completely defeats the objective of thorough engagement on this, as well as other Draft Policy proposals and positions taken by DFFE. Some of the dates for public meetings scheduled are for dates that are later than the initial closing date stated in the government gazette for comments on the Draft Policy. Only after members of the Wildlife Forum enquired from DFFE to confirm the formal closing date for comments, did DFFE inform Wildlife Forum members that they (DFFE), had published two notices in newspapers inviting public comment on the same Draft Policy several weeks after the government gazette, which extended the date for public comments to be submitted with several weeks. This demonstrates that the Wildlife Forum that was established by DFFE for engagements with members of the wildlife sector, is not used to keep members sufficiently informed of policy development processes.

Although other examples can also be raised to further demonstrate the inadequacies of DFFE's PPP, the above demonstrates a disregard for the values and principles for meaningful public participation as outlined in the Constitution, by parliament, NEMA and the National Policy Development Framework.

An example of how these rushed and inconsiderate approaches already affect the public, and the wildlife sector in particular, is the manner in which a definition of animal well-being has been dealt with in the NEMLA consultation process. The public was neither given the opportunity to comment on the final definition, nor provided with the reasons for changing the consulted version of well-being during the parliamentary process. (See Appendix B for a detailed explanation). The Wildlife Forum members were also not informed of the changes of the definition of well-being proposed by DFFE in

the National Council of Provinces (NCOP), that IAP never had the opportunity to comment on, despite the significant impact this would have on the wildlife sector.

In the media statement by DFFE on 29 September 2023, when the draft notice prohibiting certain activities involving African lion (*Panthera leo*), was published for public comment, minister Creecy stated “The consideration of the well-being of animals in the management, conservation and sustainable use thereof is now one of the objectives of the National Environmental Management: Biodiversity Act, 2004. Well-being is defined in section 1 of the Act as “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.” This definition of well-being, in addition to other arguments, is used to substantiate the reasons for the new policy approach, demonstrating the implications of the definition of well-being.

As a bill progresses through different stages, the public must be informed and consulted. When deciding whether the final version of a bill is a material amendment of previous versions or not, the two versions must be compared within the scope of the act being amended. The materiality of the proposed changes can trigger the need for further participation. In this case, the government did not call for further submissions from the public after changing the definition of well-being, despite it being a material difference.

The standard for adequate participation is one of reasonableness. A reasonable opportunity must be offered to members of the public and all interested and affected parties (IAP) to know about the issues and to comment, especially, where this would impact them directly. In the present matter, there was no evidence of any measures taken by the government to bring the public’s attention to this proposed amendment of the definition of well-being. The public and provincial conservation agencies’ views and concerns raised regarding the definition of well-being were simply brushed aside and ignored.

The same was done with the definition of “waste” in the same PPP of NEMLA. In the court case, *South African Iron and Steel Institute and Others v Speaker of the National Assembly and Others [2023] ZACC 18*², an amendment to the definition of “waste” in the National Environmental Management: Waste Act 2008, resulting from the same consultative process through the National Environmental Laws Amendment Act 2022, was declared invalid and unconstitutional because the State had failed to comply with its constitutional obligations to facilitate public involvement in the legislation as far as the definition of “waste” was concerned. The court indicated that in considering whether the final version of the Bill introduced a material amendment or not, the starting point is the examination of the definition before and after the amendments and the regulatory scope of the Act.

The two versions which require comparison are the “D” version on the one hand and the “F” (and enacted) version on the other. See Appendix B for full details of how the definition of well-being was changed. Despite public consultation prior to the “D” version, there was a lack of participation thereafter. This is the same process where the definition of animal “well-being” was changed to refer to an animal’s mental health³, without affected parties having had the opportunity to comment

² <https://www.saflii.org/za/cases/ZACC/2023/18.pdf>

³ <https://www.financialinstitutionslegalsnapshot.com/2023/08/south-africas-consultative-democracy-requires-proper-public-involvement-in-law-making/>

on the impact this may have on their practices.

In the court ruling of *South African Iron and Steel Institute and Others v Speaker of the National Assembly and Others [2023] ZACC 18*, the judge indicate that “Public participation standards must be consistent with constitutional prescripts and legal requirements which include informing, educating and creating meaningful opportunities for the public to participate in decision making on issues that affect them. Reporting, feedback, monitoring and evaluation are pivotal for the process of tracking outcomes of a given public participation opportunity thereby ensuring effective public participation. It is important that as a bill progresses through different stages, the public must be informed and consulted. Information is therefore an absolute prerequisite for effective public participation. Public participation processes should provide for stages of participation that are commensurate with the level of public interest.” It has been demonstrated that this is not the case for several of the PPP run by DFFE in the last couple of years, including the NEMLA process, the Biodiversity White Paper and this Draft Policy.

Transformation in Biodiversity Conservation and Sustainable Use is important. The White Paper gives effect to the environmental right as contained in Section 24 of the Constitution which facilitates redress and promotes transformation. However, transformation is not an outcome, it is a process that should lead to environmental justice as an outcome. This applies both to who gets benefits and how decisions about the management of resources are made, including in how policies are developed. This PPP for this Draft Policy was lacking in the way it allowed all groups in society, including communities, to meaningfully participate as many are not well versed in the wildlife economy and aspects covered in this Draft Policy. If the formal wildlife sector has serious concerns about the level of engagement in the policy development process, one can only wonder about how communities were educated and empowered to actively and meaningfully participate in the development of the Draft Policy, and how the Policy will affect them going forward.

Lastly, on page 8 it is indicated that “eight thousand three hundred (8300) comments and two online petitions with 75,857 signatures were received during this period.” SA Hunters alone represents the interests of close to 42,000 members. Does the 83,000 mentioned in the Draft Policy include the members that SA Hunters represent and the actual membership represented by various other organisations? In addition, as part of meaningful consultation, it is important to indicate which stakeholder groups held certain viewpoints, as there are clear differences between comments received from the scientific community, wildlife sector members that are directly affected and that contribute to conservation, provincial conservation agencies and for example organisations that have no significant member-base in South Africa but that have specific strong ideological views. We do have a mandate from members to comment and represent their interests. DFFE has a responsibility to provide clarity on how the member base of organisations is represented and reflected and comments should be grouped by stakeholder groups in a comprehensive Comments and Response Report to ensure meaningful and transparent public participation in law reform and policy development processes.

| Issue | Key issues, concerns and comments | Recommendations and proposals |
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| GENERAL | | |
| Title of the policy | This Draft Policy does not deal with the conservation of the species per se and is more focused on the utilization of the species. | We recommend deleting the word “conservation” from the title of the policy. This is a “utilisation / management” policy. |

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| | <p>The title of the Policy further implies a focus on conservation and sustainable use of five iconic mammal species (including both black and white rhinoceros). However, in contradiction to this, the background focuses largely on reputational risks that South Africa may carry in terms of use of the species.</p> | |
| <p>Consideration of broader impacts</p> | <p>This draft policy aims to change the direction of conservation within South Africa in so far as the four species are concerned. As part of the policy development process, the social and economic impacts of the policy objectives have not been shared and sufficiently discussed with affected parties. How can IAP be expected to give an informed view of the desirability of the proposed policy objectives and associated actions?</p> | <p>Rigorous engagement in the proposed policy direction is required, especially with affected wildlife custodians, with due consideration of intended and unintended social, economic and conservation implications. This would require a series of in-depth consultative sessions with relevant stakeholders with clear reporting on expected impacts, mitigation measures and management of adverse risks.</p> |
| <p>Drafting P6</p> | <p>The Draft Policy gives a list of policy objectives and the two policy positions, with actions following later. Some actions are written as outcomes. In addition, there is no clear policy statement that should precede the objectives hierarchy. Policies typically do not include actions.</p> | <p>The way it is framed and articulated should be improved. Clear policy statements/positions should be given, then objectives – preferably an objectives hierarchy. A policy is a policy, not an implementation plan with actions.</p> <p>Examples of policy statements:</p> <ol style="list-style-type: none"> 1. South Africa does not support the keeping and breeding of lion, leopard, elephant or rhinoceros in captivity for commercial purposes. 2. All use and trade must demonstrate a duty of care to the species and environment. |
| <p>Unilateral selection of priority issues to be addressed in the policy</p> | <p>The HLP report has eighteen different goals with key recommendations, many of which have been omitted in the Draft Policy or have been written in a way that it loses key aspects. It would be very informative to understand why some key recommendations were brought forward to the Draft Policy and others not and whether or not this should be interpreted as a shift in policy direction.</p> <p>In addition, the challenges that the sector experience in building on its successes, are not discussed or addressed. Attention is only given to very specific “challenges” selected by DFFE without consulting affected wildlife custodians on their priorities. A specific case in point, that was highlighted as a priority by the High-Level Panel, but ignored in this policy, is the specific attention</p> | <p>Provide context as to why some recommendations have been brought forward and others have not.</p> <p>Engage wildlife custodians managing the specific species, to get their inputs on areas they prioritize in addition to those identified by DFFE.</p> |

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| | <p>required to address increasing densities of elephants in small, fenced reserves. It was identified as an immediate priority, yet it is not addressed.</p> <p>Why only these species? Out of the five species, only black rhino is endangered, while other endangered species are not featured.</p> <p>Various global environmental change drivers threaten the conservation of biological diversity, including climate change, habitat destruction and alteration, emergent diseases, pollution, and overharvesting, all of which require a range of responses to address. The Draft Policy focus on one potential threat (i.e., non-sustainable use), diluting focus from other possibly more important key requirements for the effective conservation of these five iconic species.</p> | |
| <p>Contribution of private sector/communities and sustainable use</p> | <p>We acknowledge that there is an improvement in referring to the positive contributions the private sector has made in securing wildlife habitats, stimulating rural economies and improving the conservation status of some species. It is, however, important to better capture the role that ownership and commercial trade play in sustainable financing of conservation and recovery of all the species, and to indicate what the removal of incentives will lead to.</p> <p>Sustainable use of the five species should be framed within the broader concept of sustainable use for all elements of biodiversity - there should be no fundamental disconnects or conflicts.</p> | <p>Better capture the role that ownership and commercial trade play in sustainable financing of the conservation and recovery of all the species and indicate what the removal of incentives will lead to.</p> <p>Frame sustainable use of the five species within the broader concept of sustainable use for all elements of biodiversity.</p> <p>By removing some of the flexibility within which landowners, communities and conservation agencies can make choices with regards to how their wildlife is managed, as would be the result of implementing the directives of this Policy, would be in contradiction to the basic principles of environmental justice, which in essence is the desired outcome from transformation of the sector.</p> |
| <p>Policy Clarity</p> | <p>Although some progress has been made in terms of policy clarity, the reason why those specific policy objectives were selected despite the HLP report also highlighting other priorities, is not provided.</p> <p>The use of the definition of wellbeing as referred to in the Draft Policy, does not provide policy clarity.</p> | <p>Reasons for the selection of specific policy objectives to be clarified as well as why other priority interventions highlighted by the HLP, like the increasing densities of elephants in small, fenced reserves, are not addressed even though it has a significant impact on affected elephant populations, the associated habitat and the operations and viability of affected wildlife enterprises.</p> |

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| | <p>This Draft Policy builds on the NEMLA and Biodiversity White Paper documents that have been approved without meaningful public consultation on key issues as highlighted above.</p> | <p>We request DFFE to explain how the use of the definition of animal wellbeing as indicated in the Draft Policy, provides clarity for operational decision-making if there is no sound scientific or tested measure to assess the mental health of the affected species in different circumstances.</p> |
| <p>Building on the HLP Report P9</p> | <p>It is stated that the Draft Policy builds on the HLP report. The policy was however withheld so that it could be aligned to the White Paper and yet the references are still to the HLP report.</p> | <p>The White Paper was developed taking into consideration the HLP report, and therefore the basis for this policy should be the White Paper, with the HLP as a reference document.</p> |
| <p>Sustainable use</p> | <p>The sustainable use of biodiversity aims to enhance thriving living land- and seascapes and ecosystems, livelihoods, and human well-being. The Draft Policy carries significant risks of not fully supporting the sustainable use objectives of the White Paper.</p> <p>While South Africa's biodiversity is experiencing pressures from various threats including unsustainable use, large mammals have in many cases benefited from South Africa's sustainable use model, in particular, rhinos. The benefits of giving value to wildlife through use is totally understated.</p> <p>The Draft Policy as is, will provide severe constraints on the decisions that people can make regarding the suite of responsible use options and benefit from biodiversity. This in turn is likely to result in negative outcomes for society and nature alike.</p> | <p>Address the positive contributions of sustainable use within the Draft Policy and adopt an approach focussed on an enabling environment, building on successes and not the prohibitive approach put forward.</p> |
| <p>Biodiversity- or wildlife-based tourism and ecotourism</p> | <p>Several references are made to ecotourism in the Draft Policy. This completely excludes hunting. Reference to biodiversity-based, wildlife-based, or tourism, typically should include responsible hunting. The terms are however used without providing clarity on whether or not, this includes hunting tourism.</p> <p>Any attempt to promote ecotourism as the preferred landuse for the wildlife sector is fatally flawed. In addition, assuming that closing down captive breeding practices will intentionally improve international ecotourism,</p> | <p>Promoting a diversified portfolio of different income streams (all responsible and sustainable) that can adapt to different environmental and economic circumstances, is the most robust and sustainable policy direction. The importance hereof is emphasized by the COVID-19 pandemic and lock-down restrictions that impacted severely on many ecotourism destinations that were solely focused on international photo-tourism. Many rural and community areas are also not best suited for ecotourism, as they may not be very pristine, often a requirement for photo-tourism. Hunting</p> |

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| | <p>is speculative at best.</p> <p>Linked to this, reference is still made in the Draft Policy to consumptive and non-consumptive use, while the HLP report highlighted that full cost accounting must be done for all forms of wildlife use. Ecotourism or photo-tourism also uses environmental resources consumptively. It all depends on which resources are referred to.</p> | <p>tourism may be a more viable option.</p> <p>The HLP further recommended that we have to move towards full cost accounting for wildlife-based business models to ensure that we are truly sustainable in utilising wildlife, irrespective of the preferred wildlife use options taken by any one enterprise. This would strategically move the wildlife industry towards greater responsibility, will provide clear guidance to the government as to where incentives should be targeted and can assist with addressing reputational risks and deciding best practice options.</p> <p>All options that are socially responsible, economically efficient and ecologically/ environmentally sustainable should be considered as potential utilisation options. Full cost accounting should be done for all.</p> |
| Species focussed | <p>Enhanced biodiversity conservation - All biological diversity and its components are conserved, is supported. The draft policy position in its current form does however not specifically support this objective, and many of the policy objectives are focussed on the species in isolation of the fact that they form part of a broader functioning ecosystem with other important components.</p> <p>As an example, if we do not address the challenges of increasing elephant density in smaller enclosed reserves, this will continue to have significant impacts on the ecosystems and other species, including threatened vultures.</p> | |
| DEFINITIONS | | |
| P7 | <p>Our comments as expressed in the previous consultation process and the comments submitted on the Draft Biodiversity White Paper remain as these have not been addressed and no comments and response report has been provided indicating substantiation of the recommended definitions. This policy refers to the definition of well-being, which we pointed out was changed in the Council of Provinces without</p> | <p>Please address</p> |

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| | <p>the public having had the opportunity to comment. We are in particular concerned about the definitions of well-being, conservation and sustainable use.</p> <p>Several terms are used interchangeably leading to confusion re. captive breeding/ captivity and controlled environment.</p> | |
| Ease of use | It is difficult to follow this policy when it is required to go backwards and forwards to the Biodiversity White Paper for all definitions. | The definitions most used can be included in the policy for ease of users. |
| Iconic species/status | <p>It looks like DFFE is attempting to give greater status or importance to the five species covered in this Draft Policy.</p> <p>Why are these more important than other and why is DFFE using this phrase?</p> | All species are important from a conservation perspective and without bees, there would be major implications for the agricultural sector and food security. Are bees not also iconic? |
| POLICY CONTENT | | |
| P6 | Agree that for commercial trade, trade should be focused on range states, but for conservation purposes, it may be beneficial to move animals out of range, including out of Africa. We need to retain the flexibility to translocate animals to other destinations for conservation purposes and even commercial purposes. | <p>The Policy Position also proposes three commercial trade-related policy objectives:</p> <p>(1) To end the keeping and breeding of [large predators, including] lion [and leopard] in controlled environments for commercial purposes and to phase out such facilities;</p> <p>(2) To phase out intensive management captive breeding operations of rhinoceros for [pure] commercial purposes including through enhancing incentives to maintain wild populations; and</p> <p>(3) To enhance the conservation [and ensure that the use of leopard is sustainable and incentivises and enhances the conservation of leopard in the wild] use of leopard.</p> <p>(4) To promote the export of live animals of the five species to suitable and appropriate destinations in Africa [and elsewhere] in a manner to improve the conservation of the species;</p> <p>(5) To support [domestic and] international commercial trade in rhinoceros' horn and [elephant ivory] for meaningful long-term conservation and community benefit while ensuring a net positive impact of trade on wild populations.</p> |
| Policy Objective 1 P12 | It is deducted that the intent here is to end the captive breeding of lion for purely commercial | Reference should be made to the court decisions on reversing the listing of indigenous |

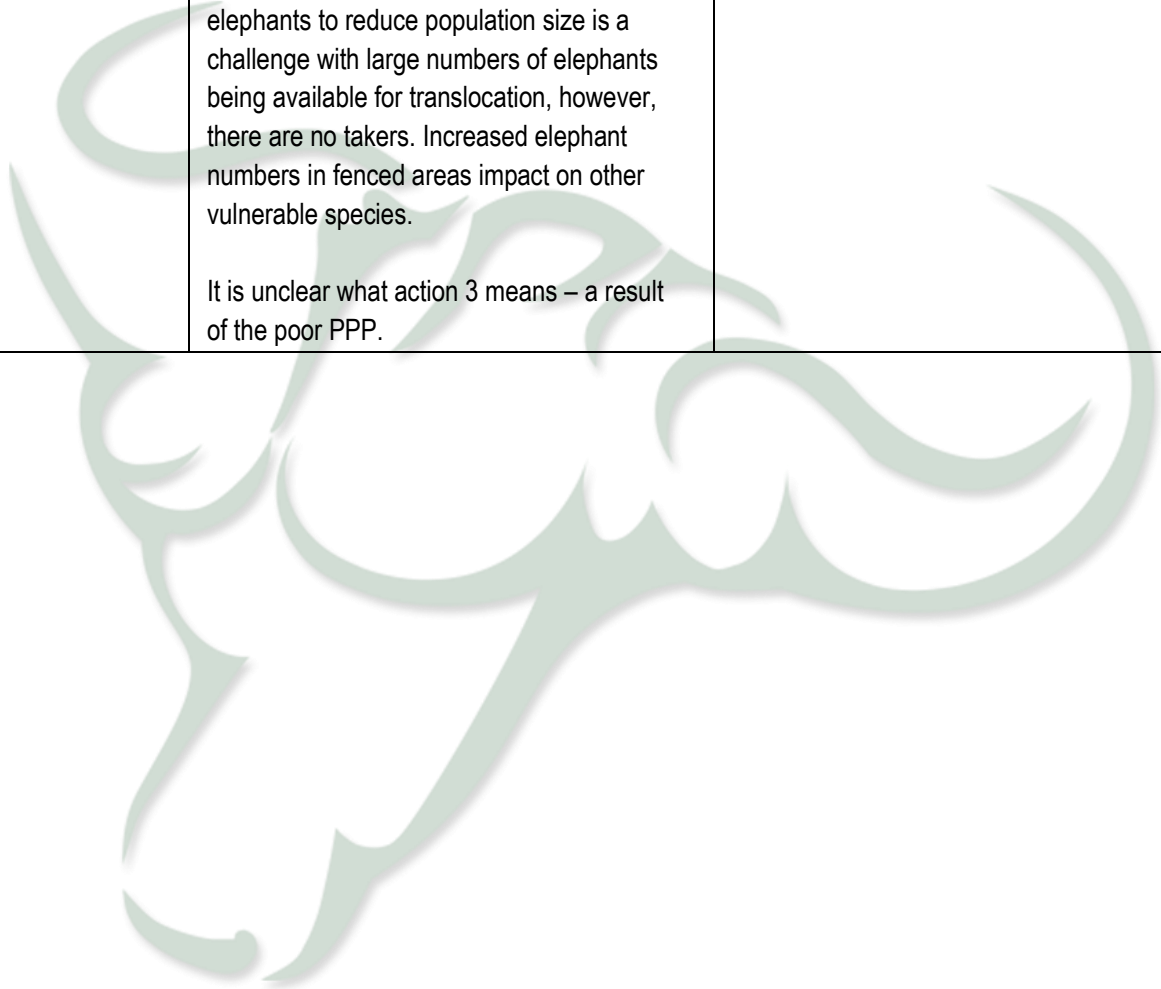
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| | <p>purposes. Various reasons are given for this. When compared to policy objective 2 for rhino there are conflicting statements such as “this policy seeks to ensure that regulated ex-situ propagation and breeding of rhinoceros for commercial purposes should also have a demonstrable conservation benefit, or must at the least, advance sustainable use”.</p> <p>If reference was made to semi-intensive breeding for conservation purposes or as an intervention for poaching pressure, it would have made sense, but reference is made to commercial purposes. Does DFFE therefore condone captive breeding for rhinos – and how does this relate to the policy objective?</p> <p>There are two specific issues for which the Policy Position relies on questionable assertions of fact. The first is the alleged threat to wild lion populations from legal trade in lion derivatives currently supplied from captive sources. The second concerns the implied extent of rhino ‘domestication’, reasons for the trend toward more intensive management of white rhinos, and the impact of this trend on rhino conservation.</p> <p>In so far as the lion issue is concerned, this matter has already been considered by the South African Constitutional Court in the case NSPCA vs Minister of Environmental Affairs, in which the learned judge, after reviewing the evidence, ruled that the conclusion that export trade in lion bone would not impact upon the wild lion population ‘appears to be unassailable’. It is therefore unclear how the Policy Position can justify the claim that ending the legal trade in captive lion parts and derivatives will enhance the survival and conservation of wild lions and a stimulated biodiversity-based tourism industry (see comments above on tourism).</p> | <p>game species, including lion, in terms of the Animal Improvement Act.</p> <p>Policies and strategies of DFFE dealing with lion, leopard, rhino and other species should align. Arguments used in the Draft Policy to stop the intensive breeding of lion for commercial purposes, cannot be contradicted when reference is made to rhino, or other game animals when referred to in the Game Meat Strategy.</p> <p>This creates a dilemma as CITES promotes captive breeding for trade, while the Draft Policy seems to promote responsible wild harvest of species in support of a responsible wildlife economy and conservation. What measure will DFFE be taking to communicate this policy approach to CITES in an attempt to promote trade in responsibly harvested wild species, including for the five species listed? These matters have not been discussed, making it difficult to provide meaningful comments on the proposed policy objectives and actions.</p> |
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| <p>Policy Objective 2 P13</p> | <p>See comments on Policy Objective 1. It is unclear how the policy interventions for rhino will prevent the extinction of white rhino in the wild.</p> <p>It should be made clear that the drive towards intensification of rhino was predominantly a result of a conservation threat, poaching, that still exists. The captive breeding of lions is a very different scenario as the wild and managed wild lion population in SA is stable and healthy.</p> <p>As there is no proof of the current domestication of rhino through intensification, it is suggested that the term be dropped from the policy objective.</p> <p>The Scientific Authority report on the intensive and selective breeding of game, however, highlights the risks associated with intensive and selective breeding and emphasizes the importance of nature, extent and scale of the practice.</p> <p>Specific incentives to support custodians of wild rhino populations are not receiving sufficient attention in the draft policy as the main thrust should be towards optimising conservation success for wild rhino populations. How do we show conservation benefit – this must be clarified.</p> <p>As far as action 6 is concerned: This is misleading and can be interpreted as closing opportunities to trade in the future – when are the conditions of option 3 of the COI met? There is no metric.</p> <p>The NDF for white rhino concluded that in the absence of trade in rhino horn, poaching will continue, and the species will continue to be at a high risk of extinction. Without trade, the funds needed to conserve rhino and curb poaching cannot be generated.</p> | <p>Threats to species survival and interventions to mitigate these, should be considered different from intensive and selective breeding for pure commercial purposes where the latter may have substantive conservation, social and economic risks (Scientific Authority Report).</p> <p>The policy objective for all the species should focus on creating an enabling framework for government, private sector and communities to improve successes in the conservation of wild rhino populations.</p> <p>Opportunities and risks should be identified, as was done with the Rhino Lab and specific policy interventions identified to improve opportunities and reduce risks.</p> <p>Clarity was provided by the Committee of Inquiry (COI) and Rhino Lab that laid out a relatively clear path towards achieving the circumstances under which trade could become a realistic proposition. See the COI conditions. These are however extremely vague, and it should be clarified, and measurable targets set that allow us to clearly monitor progress towards trade. Hurdles to progress should be identified and addressed.</p> <p>Specific incentives should be developed to support custodians of wild rhino populations that contribute to our wildlife heritage.</p> <p>Although the ultimate goal should be to have stable or growing wild rhino populations, private sector and communities should be supported in mitigating national and international threats that are not of their own making. As long as the poaching pressure on rhinos remains, rhinos are safer from poaching under innovative managed interventions as anti-poaching measures are less expensive and more effective. If semi-intensive systems are a necessity to mitigate the poaching threat, management guidelines that can ensure the maintenance of evolutionary processes and improved potential for re-</p> |
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| | <p>Lastly, illegal trade in rhino horn leads to animals dying, with additional losses in revenue that could have supported conservation of the species. Legal trade in rhino horn can however generate revenue without an animal being killed, supporting conservation efforts.</p> | <p>introduction into the wild when the risk situation changes, is a step in the right direction. (The Scientific Authority has recommended guidelines for mitigating the risk of keeping and breeding rhinos in semi-intensive facilities.) This allows for improved mitigation of risks, whilst also managing for long-term evolutionary adaptability and survival.</p> <p>The policy objectives/actions should include the following: “Incentivise rhinoceros’ owners to invest in extensive wildlife systems for white rhinoceros, including (1) supporting and promoting responsible hunting, (2) establishing mechanisms to enhance partnerships that expand and support extensive wildlife areas, for rhinoceros’ conservation and sustainable use; and (3) providing rhinoceroses on a custodian basis to willing landowners.</p> |
| <p>Policy Objective 3 P14</p> | <p>No reference is made here to the capacity challenges conservation agencies are faced with in dealing with human-wildlife conflict and damage caused by leopards. In addition, the government does not have the capacity to monitor leopards and the existing approach is complex and not conducive to innovative solutions. There is a lot of mistrust and without a quota serving as an incentive to absorb the impact of leopards, they are currently persecuted. These are realities that should be reflected.</p> <p>Stating that implementation of the proposed measures “will ensure that leopards are protected...” is overreaching, especially given the lack of detail of how these proposals will be operationalised.</p> | <p>The following objectives/actions are proposed:</p> <ol style="list-style-type: none"> 1. Develop and implement a Biodiversity Management Plan and other strategies to facilitate an integrated strategic approach to leopard conservation, management and sustainable use which provides innovative mechanisms to incentivise leopard conservation; 2. Develop and implement a fair, transparent and scientifically based mechanism to allocate leopard hunting quotas in a manner that incentivises and promotes the conservation of leopard in the wild – the current leopard monitoring system is biased towards more formal protected areas and productive landscapes that can have increased prey populations, even if livestock, are not sufficiently covered while the requirements for private landowners and communities to participate are very difficult to follow; 3. Develop an innovative systems approach to prevent, reduce or mitigate conflict between leopards and people, wildlife custodians and livestock farmers focusing on mechanisms of self-administration as part of an integrated landuse plan; and |

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| | | 4. Enhance partnerships with traditional leaders, spiritual leaders and traditional health practitioners to ensure a sustainable and legal supply of skins. |
| Policy Objective 4 P15 | References to animal well-being are challenged for reasons described above. See comments under Objective 2. | |
| Policy Objective 5 P 15 | <p>Policy Objective 5 on international rhino horn trade needs a point on a professional and funded communication strategy.</p> <p>The use of the wording “To promote international commercial trade in rhinoceros’ horn when conditions are favourable” is a concern. When will conditions be favourable?</p> <p>Both human and elephant populations are increasing in many parts of the region, leading to potential ecological damage and conflict. Populations of both rhino species remain threatened by poaching and are becoming increasingly fragmented and dependent on expensive security and intensive management interventions, creating conflict and challenges for metapopulation management.</p> <p>Financing to address the above issues for these species is constrained by trade restrictions and (undesirable) dependence on (often inadequate) external financial aid.</p> <p>Policy to tackle these issues is somewhat inconsistent within the region.</p> | <p>Linked to Policy Objective 2, the policy needs to speak to collaboration in SADC.</p> <ul style="list-style-type: none"> - SADC regional meeting to start addressing specific issues - Start with technical issues, move to the political level, over several years - Ask SADC Secretariat to act as an ongoing convenor |
| Policy Objective 6 P17 | There is a complete lack of attention to the challenges the country, protected areas and private landowners face with increasing elephant numbers in fenced areas. The successful introduction of elephants to smaller fenced areas resulted in approximately 80 properties with elephant, many of which have either exceeded their initial preferred stocking densities or will soon do so. Management options for these areas are limited as the Elephant Norms and Standards dictate that wildlife custodians must demonstrate that the full | <p>Incentivising and facilitating adaptive management of elephant in a responsible manner, including evaluating the elephant Norms and Standard and legislation to reduce over-regulation and improve adaptive management.</p> <p>In so far as the stated actions are concerned, it is proposed that action 1, add reference to the habitat of elephants to ensure that there is not only a focus on the animals, but also their associated habitat. “Develop a national strategy for international trade in elephant</p> |

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| | <p>hierarchy of management options, including contraception, range expansion and translocation, are exhausted before consideration of culling as a management option may be considered. Hunting is also seen as problematic. About 26 properties in South Africa are already implementing contraception, which is just reducing the population growth rate, but does not prevent over-population in fenced areas. Finding new destinations for translocation of elephants to reduce population size is a challenge with large numbers of elephants being available for translocation, however, there are no takers. Increased elephant numbers in fenced areas impact on other vulnerable species.</p> <p>It is unclear what action 3 means – a result of the poor PPP.</p> | <p>ivory that promotes the conservation of elephants and their habitat, sustainable use, and equitable socio-economic transformation, while mitigating factors precluding international commercial trade”</p> |
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APPENDIX A

Constitution: The intention of public participation and involvement in democratic processes as provided for in the Constitution, is primarily to allow the people of South Africa, a fair opportunity to influence decision-making processes (in this case law and policy), to ensure that it reflects ‘the will of the people’. Sections 59(1)(a), 72(1)(a) and 118(1)(a)¹³ introduce a constitutional duty on the various tiers of government, to facilitate public participation when executing their legislative processes.

The values and principles that guide public consultation by parliament and its committees are the following⁴:

Core values guiding the public involvement:

- Constitutional premised on the will of the people;
- Those affected by a decision, have a right and responsibility to be involved in the decision-making process;
- Public involvement includes the implicit undertaking that the public’s contribution will be considered for decisions to be taken and for public inputs to be acknowledged;
- Inclusive public involvement promotes sustainable decisions by recognising and communicating the needs and interests of all participants, including those of decision-makers;
- Seeks out and facilitates the involvement of those potentially affected by, or interested in a decision;
- Seeks input from participants in designing how they participate;
- Provide participants with the information they need to participate in a meaningful way;
- Reciprocity – Responsibility to communicate to participants how their inputs and participation affected a decision taken; and
- Decision-makers to take all relevant perspectives into account when arriving at a decision.

Core principles guiding public involvement:

- Promote active and representative participation towards enabling all community members to meaningfully influence the decisions that affect their lives;
- Engage community members in learning and understanding community issues, and the economic, social, environmental, political, psychological and other impacts associated with a particular cause of action or decision;
- Incorporate the diverse interests and cultures of the community in the development process, in particular those affecting disadvantaged communities;
- Utilise a community’s diversity to deepen a shared understanding of issues prevailing in that community and to produce outcomes of long-term benefit for the whole community and society; and
- “Active citizenry”

NEMA: The National Environmental Management Act (NEMA) is very clear in its principles on how relevant factors should be considered in aspects affecting the environment, and how participation of all interested and affected parties in environmental governance should be

⁴ https://www.parliament.gov.za/storage/app/media/Pages/2023/26-01-2023_NCOP_Members_Training/Day2/Ms_Ressida_K_Begg.pdf

ensured. In particular, according to Section (2)(4)(f), (i) and (j) of NEMA:

- (f) the participation of all interested and affected parties (IAPs) in environmental governance must be promoted and all people *must have the opportunity to develop the understanding*, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured,
- (i) the social, economic and environmental impacts of activities, including disadvantages and benefits, *must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment*,
- (j) global and international responsibilities relating to the environment *must be discharged in the national interest*

National Policy Development Framework (NPDF): The NPDF clearly states that policy makers must:

- Follow a robust early consultation process with affected stakeholders that provides an opportunity to inform analysis and policy solutions, including among others, exploring *issues of self-regulation*;
- Inform and engage stakeholders on the *nature and magnitude of a policy issue, impacts and risks*, which must be informed by the best available evidence, data or knowledge;
- Provide stakeholders who submitted their comments, timely feedback on the outcome of the consultation, and key issues considered during the decision-making - it goes as far as stating that “effective stakeholder engagement also involves being prompt and responsive to comments raised via social media platforms”;
- Give effect to the requirement for procedural fairness of administrative action as contained in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- Report in the SEIAS (final impact assessment: Consultation Section):
 - i. The results of their early engagement with stakeholders;
 - ii. What stakeholders viewed as possible solutions, benefits and costs and how these have influenced the selection of the proposed policy solution; and,
 - iii. Mechanisms for managing potential policy disputes.

The NPDF further states that “policy makers should avoid creating an impression that the consultation process is staged managed, cosmetic, token and a mere compliance issue. Where there are conflictual policy positions or views, it is incumbent upon policy makers and stakeholders to agree on setting up a Mediation Committee that would bring all the parties together and strive to produce an outcome based on bargaining, negotiation and compromise.”

OBJECTION TO THE DEFINITION OF WELL-BEING INCLUDED IN NEMBA AND THE BIODIVERSITY WHITE PAPER AND GUIDING FURTHER POLICY DEVELOPMENT

Introduction

This submission to the Wildlife Forum serves to formally place on record our concerns and the lack of consultation on the existing definition of well-being used in NEMBA and the Biodiversity White Paper and its expected negative implication for biodiversity conservation and the inclusive and sustainable growth of the wildlife economy.

Consultation prior to bill introduction in parliament

The NEMLA Bill was approved by Cabinet on 16 September 2015 and published for public comment on 13 October 2015. SA Hunters commented on the draft NEMLA Bill, which at that time did not include a definition for **“well-being”** in relation to animals or living organisms.

After considering comments, a revised draft Bill was provided at the end of 2016 after certification of the Bill by the Chief State Law Advisor in November 2016. The National Environmental Laws Amendment Bill [B14-2017] was introduced to Parliament in May 2017.

According to DFFE, the main purpose of the Bill was to provide clarity on certain matters; to address the competencies and powers of the various competent authorities/ licensing authorities; address operational and implementation challenges; make textual and consequential amendments and provide for matters not previously catered for in the legislation, e.g., the “well-being” of animals. One of the objectives for NEMBA has been amended to provide for the use of indigenous biological resources in a manner that is ecologically sustainable, including considering the well-being of any faunal biological resource involved. **No definition for well-being was included yet in the Bill at that stage.**

Consultation on tabled NEMLA Bill

DFFE briefed the Portfolio Committee (PC) during the latter half of 2017 on the content and intended purpose of the Bill. The PC considered the Bill between mid-2017 and mid-2018 and invited comments on the Bill, held public hearings where comments and representations were made various stakeholders, including industry, business and non-government organisations.

The PC then prepared a B version of the Bill to include, for the first time, a definition for “well-being” that reads as follows: **“well-being means a state where the living conditions of a faunal biological resource are conducive to its health”**.

On 8 November 2018, the Portfolio Committee on Environmental Affairs (National Assembly) considered and adopted the National Environmental Management Laws Amendment Bill as amended. The amendments resulted in the Bill becoming a D-version Bill. This version still contained the same definition of well-being as provided above.

The NCOP Process

The NEMLA Bill was referred to the National Council of Provinces (NCOP) to deal with the Bill in terms of section 76 of the Constitution. However, the NCOP did not deal with the NEMLA Bill, because of the expiry of the 5th term of Parliament at that time. In October 2019 the NCOP, on advice

of Parliamentary Legal Advisors, decided to revive certain bills which were not finalised when the previous term of the 5th Parliament ended. This included the NEMLA Bill.

This period also coincided with the COVID-19 pandemic and national lockdown at various alert levels in 2020 and 2021. The NCOP through the Select Committee on Land Reform, Environment, Mineral Resources and Energy did engage on the Bill, held public hearings in certain provinces and engaged with the DFFE.

During this process, SA Hunters submitted comments on the Bill to the PC on 18 September 2020. As part of the comments submitted by SA Hunters, it was clearly stated that:

The amendments made regarding the inclusion of well-being considerations, should not further conflate the overlapping mandates between DALRRD and DEFF, seeing that welfare is a mandate of DALLRD. The different approaches required when dealing with wild populations and those populations in captive operations should also receive attention. The five freedoms as applied in welfare assessments of captive animals do not apply to wild animals that are part of well-functioning ecosystems, where natural environmental drivers such as drought, should continue to persist to maintain ecological processes and natural selection. In addition, it was recommended that specific attention should be given to the alignment of the principles of sustainable and responsible use of faunal biological resources and the construct or principle of animal well-being. It was stated that the inclusion of well-being considerations and the definitions thereof “**SHOULD NOT BE USED AS AN EXCUSE TO STOP SUSTAINABLE USE PRACTICES SUCH AS RESPONSIBLE HUNTING.**”

It must be clearly understood that at this point, the definition of well-being in documents of this version of the NEMLA Bill was still: “**well-being means a state where the living conditions of a faunal biological resource are conducive to its health.**” This definition was acceptable to SA Hunters although we preferred to focus on duty of care.

This process of review of the Bill was halted in 2021 as a result of the announcement of municipal elections which were delayed by Covid 19. The process was reconvened in November 2021.

During the NCOP process, after provincial legislatures provided negotiating mandates, a list of amendments was produced by State and Parliamentary Law Advisors in collaboration with DFFE and the final mandates resulted in the F version of the Bill being adopted by the Select Committee.

The adopted F version of the Bill was referred back to the National Assembly (Portfolio Committee) in December 2021. It was during this process that the definition of well-being included in the Bill was amended to read as follows: ‘**well-being’ means 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.**’

Conclusion

In response to our concerns raised with Minister Creecy on the use of the definition of well-being, as mentioned above, we were told that the same definition used in NEMBA will now be used in the White Paper to ensure policy consistency. However, SA Hunters and the public never had the opportunity to comment on this new definition of well-being, which is now included in both NEMBA and the Biodiversity White Paper, despite raising our concerns in both processes as well as the far-reaching implications it could have for the conservation, management and sustainable utilisation of biodiversity.

Using a definition similar to human well-being (which has debateable interpretations), that refers to the physiological and mental health of all animals, is clearly problematic. There is no scientific measure to assess the physiological and mental health of wild animals, yet, the Biodiversity White Paper, which will guide future policies and legislation relating to biodiversity, and that is supposed to provide clarity on policy, requires that this unmeasurable well-being of animals be considered in all management decisions.

This would include the entire agricultural sector, which would have to fulfil the same requirements. Simply put, the problem is the following: “How do you consider the well-being of a swarm of locusts when intending to spray it with pesticides (a management decision) because it destroys a crop?” Alternatively, “How do you consider the well-being as defined, inclusive of the physiological health and well-being of ticks or any other parasites when deciding to do parasite control in stock farming? As a last example: how do you consider the well-being of a problem-causing animal when deciding to destroy it?”

There is no practical guidance in the Biodiversity White Paper nor in the amended Act. Without a definition that provides clarity and that can be applied in practice, the consideration of the well-being of animals and biodiversity as defined, will affect every management decision on protected areas and will have a significant impact on the ability of the government and private sector to conserve and responsibly utilise any biodiversity to the benefit of South Africa’s people.

It is expected to result in constant legal battles as it creates confusion, rather than providing clarity, on what is required in considering all animals’ physiological and mental health. Herewith, SA Hunters officially place on record our objection and concerns regarding the lack of consultation on the existing definition of well-being as explained above, and its implication for biodiversity conservation and the inclusive and sustainable growth of the wildlife economy.