



June 14, 2006

The Director-General
Department of Environmental Affairs and Tourism
Private Bag X447
PRETORIA 0001
South Africa

For Attention: Dr. Pieter Botha

Dear Dr. Botha:

I am writing on behalf of the Trophy Hunting Working Group of the Species Survival Network to provide comments on the draft National Environmental Management: Biodiversity Act, 2004: Threatened And Protected Species Regulations.

The Species Survival Network (SSN) is an international coalition of organizations committed to the promotion, enhancement and strict enforcement of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Through scientific and legal research, education and advocacy, the SSN is working to prevent over-exploitation of animals and plants due to international trade. The Network strongly believes that such trade can occur only when evidence positively demonstrates that survival of the species, subspecies or populations and their role in the ecosystems in which they occur will not be detrimentally affected by trade and when trade in live animals minimizes the risk of injury, damage to health or cruel treatment. The species must always receive the benefit of the doubt if available evidence is uncertain.

We commend the Department of Environmental Affairs and Tourism for preparing these draft regulations and thank you for providing an opportunity for the public to comment on them.

GENERAL COMMENTS

The draft regulations will not “close the loopholes that have allowed environmental thugs to get away with immoral activities like canned hunting,” as the intention was described by Mr. Marthinus van Schalkwyk, Minister of Environmental Affairs and Tourism, in a press statement dated 2 May 2006^[1]. Instead of stamping out canned hunting, the draft regulations provide a means for the registration of captive breeding operations for listed large predators, which would be able to supply

[1] http://www.environment.gov.za/NewsMedia/MedStat/2006May2_1/02052006.doc



and facilitate the canned hunt industry as it occurs on so-called extensive wildlife systems (which can be fenced and include human provision of food, water and medical care). Nothing in these regulations prevents the breeding, keeping and hunting of listed large predators, including captive-bred ones, on fenced “extensive wildlife systems”. It is contradictory to claim that these regulations will ban canned hunting when the hunting of large carnivores within fenced areas is allowed.

Minister van Schalkwyk also stated, “The days of captive breeding of listed species for any purposes except science and conservation, are over.” However, the draft regulations allow listed large predators to be funneled from captive-breeding operations, rehabilitation facilities, and even sanctuaries into “extensive wildlife systems” where they will be “rehabilitated” and can be hunted two years later. While this implies that these animals have returned to a wild state and are fair game for hunting, this is not the case. Although the period has been extended from six months in the earlier draft to two years in this draft it is doubtful such reversion is possible at all and will depend on a wide array of factors, including the species involved, the length of time in captivity and the nature of the captive conditions under which the animal was maintained. Two years will not restore these instincts to a point where the hunting of them could constitute “fair chase”. It is contradictory to claim that captive breeding of threatened and protected species for anything except science and conservation will be banned when nothing in the draft regulations prevents the breeding, keeping and hunting of listed large predators, including ones bred elsewhere, on fenced “extensive wildlife systems”.

The stated intention of these regulations is to “close the loopholes that have allowed environmental thugs to get away with immoral activities like canned hunting” and to end the “days of captive breeding of listed species for any purposes except science and conservation”. Yet, the majority of these regulations address only six species of listed large predators. We fail to see any reason to restrict the vast majority of these draft regulations to listed large predators only. There are no ethical or conservation-based reasons for having specific rules about the hunting of listed large predators that do not apply equally to other threatened and protected species. The captive breeding and canned hunting of all the other hundreds of listed threatened or protected species, will not be subject to these regulations. The regulations need to be expanded to address captive breeding and canned hunting of all threatened and protected species.

The draft regulations often revert to province-level legislation instead of establishing “... uniform national systems that will apply the same standards throughout the country,” as stated by Minister van Schalkwyk. Control needs to come from national level to enable uniformity of regulation and enforcement.

Finally, the draft regulations contain numerous terms that are not fully defined and are open to broad interpretation.

SPECIFIC COMMENTS

Chapter 1. Interpretation and purpose of regulations

Part 1. Definitions

Definition: Bred in captivity/ captive bred

This is defined as a “specimen bred in controlled environment”. This definition is unclear and

inconsistent with the definition of the same term in Resolution Conf. 10.16 (Rev.) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).[1] Considering that specimens covered by these draft regulations are likely to be CITES-listed species (such as lions and leopards), and that CITES is implemented in South Africa in part through these regulations, it is imperative that the definition is identical to the CITES definition of “bred in captivity”. The draft definition is also unclear because, firstly, the term ‘bred’ as used in the definition seems to imply the birth of the animal rather than the breeding process; the former is inconsistent with the CITES definition. Secondly, combining this definition with the related draft definitions of “controlled environment” and “extensive wildlife system” leaves open the possibility of animals being bred in a captive setting on an extensive wildlife system, where they may also be hunted. As noted below, the draft definitions of “controlled environment” and “extensive wildlife system” significantly overlap. Both terms allow for food, water, health care and fences. Yet, animals bred and born in captivity in an “extensive wildlife system” would not be considered “captive bred” under these definitions. Nor would such systems be considered to be “captive breeding operations” under the draft definition of that term.

Definition: Captive-breeding operation

This definition applies only to animals bred in a controlled environment. It does not apply to animals bred in an extensive wildlife system. If this definition is to remain as drafted, the terms “controlled environment” and “extensive wildlife system” need to be further distinguished from one another. Otherwise, this definition will open up a loophole for the continuation of breeding animals for canned hunting in extensive wildlife systems.

Definition: Controlled environment

This definition is not consistent with the definition of the same term in CITES Resolution Conf. 10.16 (Rev.).[2] Considering that specimens covered by these draft regulations are likely to be CITES-listed species (such as lions), and that CITES is implemented in South Africa in part through these regulations, it is imperative that the definition is identical to the CITES definition of “bred in captivity”. As noted above, the draft definitions of the key terms “controlled environment” and “extensive wildlife system” significantly overlap and are indistinguishable. Both terms allow for food, water health care and fences. These are key definitions because wildlife can be considered “bred in captivity” or “captive bred” only when produced in a “controlled environment”, not an “extensive wildlife system”.

Definition: Culling

Definitions (a) and (b) of “culling” allows for a “person designated by” an official of the management authority of a protected area to kill animals. We recommend clarification that such a person should be a professional (not an amateur) marksman with demonstrated experience and skill in killing the species in question. Definition (b) states that animals that have escaped from a protected area may be killed “as a matter of last resort”. We recommend this term be clarified by adding the following words: “... as a matter of last resort after all other options have been carefully evaluated.” We also recommend that this language be included in definition (a).

Definition: Damage causing animal

The draft definition does not reflect the fact that assessment of damage is largely subjective; threshold estimates of damage should be required before an animal is considered to be damage-causing and becomes a target. In addition, it must be recognized that while individual animals may cause damage, this does not mean that the species as a whole should be considered ‘damage causing’. We recommend

that the clause ‘means a listed animal that...’ be changed to ‘means an individual of a listed animal that has been demonstrated to be the cause of the alleged unreasonable damage’.

Definition: Extensive wildlife system

As noted above, the draft definitions of the key terms “controlled environment” and “extensive wildlife system” significantly overlap and are indistinguishable. Both terms allow for food, water health care and fences. The definition of “controlled environment” includes a means of enclosure to prevent the animals from escaping. While the definition of “extensive wildlife system” does not state whether or not there can be any sort of enclosure or attempt to keep the animals in the system, the definition of “controlled environment” states that extensive wildlife systems can include fences. Although the definitions of these terms significantly overlap, animals bred and born in captivity in an “extensive wildlife system” would not be considered “captive bred” under these definitions. These are key definitions because wildlife can be considered “bred in captivity” only when produced in a “controlled environment”, not an “extensive wildlife system”. This means that animals born into a captive setting in an extensive wildlife system can be hunted there or elsewhere. The intention seems to be to distinguish the terms based on the level of human intervention (provision of food, etc.), the size of the land involved, and the ability of the wildlife population to be “self-sustaining”. Yet, in practice, there would be a sliding scale of such operations and it would be difficult to judge where to draw the line based on these definitions. More importantly, if the objectives are to eliminate hunting of captive-bred animals and canned hunting, the draft should be revised to explicitly prohibit the hunting of animals captive-bred or confined within any enclosure. It is contradictory to claim that the desired effect is to ban canned hunting when the draft regulations allow the hunting of large carnivores within fenced areas. It is also contradictory to claim that large carnivores will not be captive bred for hunting when the draft regulations allow the hunting of animals bred in captivity, including on fenced extensive wildlife systems.

Definition: Management plan

The term “management plan” is not defined in section 1 of the Protected Areas Act as stated in the draft.[\[3\]](#)

Definition: Put and take animal

This is defined as “a live specimen of a listed large predator species that is released on a property irrespective of the size of the property for the purpose of hunting the animal.” We recommend that this term not be confined only to “listed large predator species” but to all “listed species”. There are no sound ethical or conservation-based reasons that any threatened or protected species should be subject to “put and take”.

Definition: Rehabilitation facility

Three key terms—“rehabilitation facility”, “sanctuary”, and “captive breeding operation”—need to be further distinguished from one another. We recommend adding language to the definition of “rehabilitation facility” that prohibits captive breeding, in order to distinguish such facilities from captive breeding operations. We further recommend adding language to the definition of “rehabilitation facility” that prohibits the long-term care of individuals at the facility, in order to distinguish such facilities from sanctuaries. Definition (b) allows keeping protected animals for “rearing purposes, in the case of young orphaned specimens”. We recommend clarifying this by adding the words, “... for release into the wild.” Otherwise, “rearing” could also mean “keeping” them permanently in captivity and providing life-time care, which should be the work of a sanctuary.

Definition: Sanctuary

As noted above, three key terms—“rehabilitation facility”, “sanctuary”, and “captive breeding operation”—need to be further distinguished from one another. We recommend adding language to the definition of “sanctuary” that prohibits captive breeding, in order to further distinguish such facilities from captive breeding operations.

Purpose of these regulations

Clause 2 should include: “to ensure that CITES is regulated in a uniform way across the country.”

Chapter 2. Permit system for listed threatened or protected species

Part 2. Applications for new permits

Who may apply for new permits

Clause 5(2)(a) allows a management authority of a protected area to apply for a standing permit to conduct restricted activities involving listed threatened or protected species “necessary for their management”. We recommend against allowing hunting in protected areas, particularly of listed species. Clarification is needed on whether this would include hunting of “elderly”, “non-breeding”, or “surplus” stock.

Clause 5(2)(c) allows persons conducting a registered captive breeding operation to apply “for a standing permit to conduct restricted activities involving listed threatened or protected species kept or bred at that captive breeding operation that are necessary for the purpose for which that captive-breeding operation is registered”. Cross-referencing this sub-clause with clause 29(2) makes it clear that the regulations allow captive breeding operations to hunt, sell or export listed large predators for hunting purposes. We strongly oppose clauses 5(2)(c) and 29(2).

We recommend the addition of a new clause stating, “A person convicted of an offense in terms of regulation 78 must not apply for or receive a permit.”

Documents to be submitted with application involving listed large predators

Clauses 9 through 49 pertain exclusively to listed large predators. The stated intention of these regulations is to “close the loopholes that have allowed environmental thugs to get away with immoral activities like canned hunting” and to end the “days of captive breeding of listed species for any purposes except science and conservation”. Yet, the majority of these regulations address only six species of listed large predators. The captive breeding and canned hunting of all the other hundreds of listed threatened or protected species, will not be subject to these regulations. We fail to see any reason to restrict the vast majority of these draft regulations to listed large predators only. There are no ethical or conservation-based reasons for having specific rules about the hunting of listed large predators that do not apply equally to other threatened and protected species. The regulations need to be expanded to address captive breeding and canned hunting of all threatened and protected species.

Clause 9(1)(a)(i) states that a permit application for the hunting of a listed large predator may not be considered by the issuing authority unless the owner of the land on which the animal is to be hunted provides an affidavit or other written proof indicating “the period for which the predator to be hunted has been on that property, if that predator was not born on that property.” First, clarification is needed on what other form of “written proof” would be acceptable. Second, the clause should make it clear

that in the likely event that a land owner states in an affidavit that he is uncertain of how long the animal has been on the property and does not know if the animal was born on the property, then an application should not be considered.

Clause 9(1)(b), (c) and (d) state that breeders and people who sell, supply, and export the animal must provide a “written undertaking” (for breeders) or an “affidavit or other written proof” (for sellers, suppliers, exporters, purchasers, or those who acquire) that the predator will not be bred (in the case of breeders), “sold, supplied or exported” or “purchased or acquired” “for hunting purposes”. Unfortunately, this does not address the final disposition of the animal, only that the purpose of the breeding, selling, supplying, exporting, purchasing, or acquiring cannot be for hunting. This clause should make it clear that the breeder, seller, supplier, exporter, purchaser or those who acquire live listed large predators will be held responsible if the animal concerned is used for hunting purposes (for example, if a listed large predator that is bred for the purpose of public display later is used for hunting, the breeder should be held responsible as should all other people in the chain).

We recommend the addition of a new sub-clause 9(1)(e) stating that an issuing authority may not consider an permit application for “the habituating of listed large predators to humans for any purpose including, but not limited to, public handling or taking photographs of members of the public with predators”.

Clause 9(2)(b) explicitly allows for the hunting of rehabilitated listed large predators, including those that have been captive-bred, that have been living in an extensive wildlife system—which can include being fenced in, being supplied with food, water and medical treatment—provided that the animal has been “fending for itself in the wild” for at least two years. Wild mammals that have been kept in captivity for any period of time, particularly those bred in captivity, are unlikely to behave like animals that did not have that experience. The related Draft National Norms and Standards for the Regulation of the Hunting Industry in South Africa call for hunters to exhibit ethical conduct and to provide the animal with a “fair chance” of evading the hunter. We fail to see how hunting an animal that has been kept or bred in captivity, and that has had a closer than normal (even benevolent) relationship, with humans is ethical or provides a “fair chance” to escape. Furthermore, we do not see how it will be possible for an applicant to know that an animal “has been fending for itself in the wild for at least two years”. We strongly recommend that Clause 9(2)(b) be deleted in its entirety.

Applications affecting the rights of other persons

Clause 10(1) states that if approval of the application is likely to affect the “rights” of a “specific person” the applicant must give notice of the application to that other person. Clarification is needed as to the term “rights” (does this refer to legal rights?) and “specific person” (would this include a member of the public or a non-governmental organization?). We recommend that all permit applications be subject to notice and public comment, preferably by posting on a website.

Part 3. Consideration and decision of applications by issuing authorities

Factors to be taken into account by issuing authorities when considering permit applications

Clause 13(c)(vii) states that objections to the application should be taken into consideration. As noted above, we recommend that all permit applications be subject to notice and public comment, preferably by posting on a website.

Additional factors to be taken into account by issuing authorities when considering applications for hunting permits

Clause 15(a) states that issuing authorities take into account the “impact of the hunt of specimens of the species to which the application relates on the conservation status of that species”. Clarification is needed to ensure that these are scientifically-based assessments that include behavioral (including social and territorial) impacts.

Clause 15(b) allows consideration of annual hunting off-take limits set by the province in which the hunt is to take place. However, hunting off-take limits set at the province level will differ in terms of the basis of the limit and enforcement. The setting of limits will not be consistent from province to province, which would not ensure that activities with threatened and protected species are regulated in a uniform way across the country.

Part 4. Permits and permit conditions

Issuing of permits

Clause 19(3) states that a CITES permit may be issued retrospectively, but only in exceptional circumstances. This text is inconsistent with CITES Resolution Conf. 12.3 (Rev. CoP13) which recommends against issuing CITES permits retrospectively.^[4] The Resolution states that exceptions are not to be made for Appendix I specimens. Exceptions can be made for Appendix II and III specimens after the fulfillment of numerous conditions including an investigation, involving consultations between importing and exporting Parties, wherein it has been determined that it was a genuine error and there was no attempt to deceive.

Contents of permits

Clause 20(1)(d) states that permits reflect “the scientific and common name of the species involved”. We recommend including the parenthetical phrase “(genus, species and subspecies)” following the word “scientific”; it may be important to consider the subspecies in order to determine the conservation impact of the activity.

Clause 20(1)(f) states that permits reflect “the number of specimens involved, and its gender”. First, because ‘specimens’ is plural, ‘its gender’ should be changed to ‘their gender’. Second, the age of the specimens should be included; like gender, the age of animals removed from a population has an effect on the conservation impact of the activity.

Clause 20(1)(g)(i) states that permits reflect “the location and other particulars of the place where the restricted activity is to be carried out”. We recommend including the parenthetical phrase “(area, region or ranch and nearest city)” after the word “place”. These specifics are needed to determine the conservation impact of the activity.

Clause 20(1)(g)(vi) states that permits authorizing possession of elephant ivory or rhino horn contain the weight and description of markings. We recommend adding the source of the ivory or horn (i.e. natural mortality, poached, damage-causing animal, etc.).

Suggested additional contents of permits

- Certification by the applicant: I hereby certify that I have read and am familiar with the regulations contained in [insert relevant regulations official titles and numbers], and I certify that the information

submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of [insert relevant enforcement regulations]. Signature of the applicant _____. Date _____.

- Date the activities are to be conducted. This is needed to determine the conservation impact of the activity (due to seasonality of breeding / births or nesting, for example).

Compulsory conditions subject to which hunting permits must be issued

Clause 21(1)(a)(vi) disallows hunting by bow and arrow “except where specifically permitted by provincial legislation”. This means that allowance of this type of hunting will not be consistent from province to province, which would not ensure that activities with threatened and protected species are regulated in a uniform way across the country. The types of animals that may be bow hunted in each province are not publicly known, making evaluation of this draft clause impossible. We recommend not allowing exceptions to the prohibition on hunting by bow and arrow.

Recommended new sub-clause 21(1)(a)(...) “nets” (such as with birds).

Recommended new sub-clause 21(1)(a)(...) “sling shots” (such as with birds).

Clause 21(1)(a)(x) states that permits authorizing the hunting of listed animals are subject to conditions which include that the animal may not be hunted by means of “any other device which use would result in injuring or killing an animal in a way that is not humane”. Humane is not defined in the draft text. Regarding the definition of “humane”, many organizations that seek to prevent cruelty to animals consider hunting, generally, to be cruel. The reason for this is that it is that animals that are hunted often do not lose consciousness and die instantaneously; that is, they are not killed humanely. While some wounded animals are sought and eventually killed by the responsible hunter, many are never recovered and suffer and/or die from their wounds minutes, hours, or even days or weeks later. In addition, causing an “injury” to an animal is obviously inhumane because the animal is wounded and in undoubtedly suffering. The use of the word “humane” is also misleading and may be seen by some as an indication that hunting that is permitted under the draft regulations is ‘humane’. We recommend changing this sentence to read, “any other device which might not result in the instantaneous killing of an animal”.

Clause 21(1)(b)(i) allows leopards and lions to be hunted by luring the animal by means of bait, provided that the use of dead bait is allowed by provincial legislation. First, we do not understand how hunting leopards and lions over bait can be considered to be ethical conduct or provides the animal with a “fair chance” of evading the hunter, which are qualifications stipulated in the related Draft National Norms and Standards for the Regulation of the Hunting Industry in South Africa. Second, provincial legislation regarding hunting of leopards and lions over bait varies from province to province; deferring to provincial legislation on this key issue will not ensure that these regulations are applied in uniform way across the country. Third, it is inconsistent and inexplicable to provide an exemption for leopard and lion hunting from the general rule that prohibits hunting animals by means of bait.

Clause 21(1)(b) (iii) states that animals may not be hunted by luring the animal by means of “smell”. While we agree that this is a useful sub-clause, we wonder how it can be practically enforced.

Clause 21(1)(d)(i) does not allow an animal to be hunted if it is -- “under the influence of tranquilizing or narcotic immobilizing or similar agent”. Animals should not be given any drug at any dose to ensure that they would be able to evade the hunter (“fair chance”). However, the draft clause implies that some level of drugging with some types of drugs would be acceptable. We recommend changing this clause to read, “... hunted if it has -- received any drugs, including but not limited to tranquilizers, narcotics or immobilizing agents.”

Clause 21(1)(e) requires the permit holder to have all relevant documentation authorizing the hunt “on him or her” during the hunt. The term “on him or her” could be misconstrued (leaving it in a vehicle, for example). We recommend clarifying this clause to read “...authorizing the hunt on the body of the permit holder during the hunt”.

Clause 21(1)(f)(ii) requires the permit holder to, within 21 days of the hunt, return information to the authorities, including the “species, gender and number of animals hunted”. We also recommend that the information include the estimated age of the animal and any evidence that, in the case of a female, she had young (i.e. lactating). This information is important to consider when determining the conservation impact of the hunt.

Clause 21(2)(a) allows the use of dogs to track a wounded animal. This is subjective and unenforceable. Further elaboration is needed regarding evidence needed to demonstrate that dogs were used to track an animal and did not participate in the hunt.

Clause 21(2)(d)(ii) prohibits hunting of animals in a “small enclosure where the animal does not have a fair chance of evading the hunter”. The term “small enclosure” is subjective, unenforceable, and requires further elaboration; this term would, at any rate, need to be defined on a species-specific basis (what is large for one species may be small for another). Even fairly large enclosures have corners where animals can be baited and/or trapped. We recommend replacing the word “small” with “any”. The term “fair chance” is a key phrase that is highly subjective; either an objective, enforceable definition of “fair chance” is needed or the term should be eliminated from the draft text. We recommend replacing it with “...animal cannot evade the hunter.”

Clause 21(4) allows the use of a motorized vehicle to track animals in areas where the hunt takes place over “long ranges” provided that the animal is not shot from the vehicle “except in the case of a wounded animal”. First, we do not understand how hunting with vehicles can be considered ethical conduct or provides the animal with a “fair chance” of evading the hunter, particularly with larger animals. Second, the term “long ranges” requires further elaboration on a species-specific basis. Third, the fact that a wounded animal can be shot from a vehicle is an unenforceable loophole that would allow hunting from vehicles.

Cancelled permits to be returned to issuing authority

Clause 25(1) states that cancelled permits must be returned to the issuing authority within 30 days of the date of cancellation. Paragraph (2) states any failure by a permit holder to return a cancelled permit in accordance with sub-regulation (1) “may be taken into account by an issuing authority when considering any future application from that person...” We recommend, as an incentive, that if permits are not returned, future applications by that permit holder should not be considered. At the very least, we recommend that failure to return cancelled permits must (replace “may”) be considered by the issuing authority when considering future applications.

Part 5. Circumstances in which permit applications must be refused

Applications for hunting of listed threatened or protected animals if hunting off-take limits are exhausted

Clause 26 states that an issuing authority must refuse an application for a permit to hunt if the annual off-take limit for hunting that species has been met. We recommend that the text state that the impact of hunts on wild populations be examined routinely over the course of the year where annual off-take limits apply. We further recommend that the text state that the annual off-take limit must be immediately lowered in the event that routine examination of the hunting impact on the wild population causes any concern about the biological sustainability of the annual off-take limit.

Applications for translocating listed threatened or protected animals to extensive wildlife systems

Clause 27(a) states that an issuing authority must refuse a permit application for the transfer, transport or translocation of a specimen to an extensive wildlife system if “such extensive wildlife system falls outside the natural distribution of that animal species”. The term “natural distribution range” requires clarification about whether this is the current, recent or historical natural distribution range.

Clause 27(b)(ii) states that an issuing authority must refuse a permit application for the transfer, transport or translocation of a specimen to an extensive wildlife system if there is a risk of “genetic mixing with other species in that extensive wildlife system”. We recommend adding the following, “with other species or subspecies in that ...”

Clause 27(b)(iii) states that an issuing authority must refuse a permit application for the transfer, transport or translocation of a specimen to an extensive wildlife system if there is a risk of “introducing inferior specimens that may affect the genetic traits of the species of that animal in that extensive wildlife system”. Individuals that may affect the genetic traits of the population may not always be “inferior”; for example, hybrids may show increased survivability compared to ancestral population or may be inferior in one trait but not in another. We recommend deleting the term “inferior”.

Applications for captive breeding and keeping of listed predators

Clause 28(1)(a) states that an issuing authority must refuse an application for a permit for the captive breeding or keeping of specimens of a listed large predator species except if the purpose of such breeding is for “the conservation of the species”. Further elaboration is needed on the term “conservation of the species”. Captive breeding and keeping of listed predators has very limited conservation value and those situations must be anticipated and specifically listed in this clause. The IUCN statement on captive breeding^[5] states, “Captive populations need to be founded and managed according to sound scientific principles for the primary purpose of securing the survival of species through stable, self-sustaining captive populations.” The statement further notes, “Captive programmes involving species at risk should be conducted primarily for the benefit of the species and without commercial transactions. Acquisition of animals for such programmed should not encourage commercial ventures or trade. Whenever possible, captive programmed should be carried out in parallel with field studies and conservation efforts aimed at the species in its natural environment.” We recommend amending the sub-clause to read, “... conservation of the species where, founded and managed according to sound scientific principles, the primary purpose is for the benefit of the species by securing the survival through stable, self-sustaining captive populations and without commercial transactions.”

Clause 28(2) states that an issuing authority must refuse an application for a permit for the captive breeding or keeping of specimens of a listed large predator species if the purpose of such breeding is for hunting or the sale or supply of such animals to other persons for hunting purposes. Unfortunately, this does not address the final disposition of the animal, only that the purpose of the breeding and keeping. This clause should make it clear that the breeder or keeper who receives a permit will be held responsible if the animal concerned is used for hunting purposes (for example, if a listed large predator that is bred for the purpose of public display later is used for hunting, the breeder should be held responsible as should all other links in the chain).

Recommended new clause: “An issuing authority must refuse an application for a permit for the captive breeding or keeping of specimens of a listed large predator species if such breeding involves commercial transactions or encouragement of commercial ventures or trade.” This is consistent with the IUCN statement on captive breeding.

Applications for hunting of captive bred or kept listed predators

This key clause (29) of the regulations does not refer to scientific institutions (defined, in part, as zoos and aquaria). By not including registered scientific institutions, this means that permits may be granted to hunt a large predator bred or kept at the institution, and to sell and export a large predator for hunting purposes. We strongly recommend that scientific institutions be included in Clause 29.

Clause 29(2) explicitly allows for the hunting of listed large predators from captive-breeding operations, rehabilitation facilities or sanctuaries as long as they have been living in an “extensive wildlife system”—which can include being fenced in, being supplied with food, water and medical treatment—and the animal has been “fending for itself in the wild” for at least two years. Wild mammals that have been kept in captivity for any period of time, particularly those bred in captivity, are unlikely to behave like animals that did not have that experience. The related Draft National Norms and Standards for the Regulation of the Hunting Industry in South Africa call for hunters to exhibit ethical conduct and to provide the animal with a “fair chance” of evading the hunter. We fail to see how hunting an animal that has been kept or bred in captivity, and that has had a closer than normal (even benevolent) relationship, with humans is ethical or provides a “fair chance” to escape. Furthermore, we do not see how it will be possible for an applicant to know that an animal “has been fending for itself in the wild for at least two years”. In fact, nothing in these regulations prevents the breeding, keeping and hunting of listed large predators on “extensive wildlife systems”. Finally, this text is inconsistent with the definition of “sanctuary” which states that a sanctuary is to provide a “permanent captive home”. We strongly recommend that Clause 21(2) be deleted in its entirety.

Part 7. Register and Reporting

Register of applications and decisions

Clause 34 states that issuing authorities must keep a register of all applications received and permits issued by that authority. We recommend that this register be made available to the public, preferably on a website.

Chapter 3: Registration of captive breeding operations, nurseries, sanctuaries and rehabilitation facilities

Part 1. Authority responsible for registration

Factors to be taken into account by Director-General

Clause 42 should include a sub-clause stating, “whether the proposed recipient of a living specimen is suitably equipped to house and care for it.”[\[6\]](#)

New registrations

Clause 43 states that a person intending to conduct a captive breeding operation, nursery, scientific institution or rehabilitation facility must ...” We recommend adding a sub-clause that states, “not have been convicted of an offense in terms of regulation 78.”

Part 2. New registrations

Applications affecting the rights of other persons

Clause 44(1) states that if approval of the application is likely to affect the “rights” of a “specific person” the applicant must give notice of the application to that other person. Clarification is needed as to the term “rights” (does this refer to legal rights?) and “specific person” (would this include a member of the public or a non-governmental organization?). We recommend that all permit applications be subject to notice and public comment, preferably by posting on a website.

Consideration and decision of new applicants

Clause 45(1)(a) states, “on receipt of an application, the head of the provincial department responsible for the conservation of biodiversity in the relevant province must instruct an official in that department to inspect the premises in respect of which the application has been lodged.” We are concerned that inspection standards and resources will vary between provinces and that this will encourage “province shopping”: seeking to establish operations in provinces with the lowest standards and least capacity. We recommend that text be inserted regarding making national training sessions for inspectors mandatory; that a checklist for inspectors be prepared and provided to guide the inspections; and that funding for inspections be made a priority. If inspections cannot be standardized throughout South Africa and fully funded, then permits must not be issued. We also recommend that a representative from a national animal protection organization authorized to enforce the South Africa Animals Protection Act, participate in such inspections.

Contents of registration certificates

Clause 47(1)(c) states that certificates reflect “the scientific and common name of the species involved”. We recommend including the parenthetical phrase “(genus, species and subspecies)” following the word “scientific”; it may be important to consider the subspecies in order to determine the conservation impact of the activity.

Compulsory conditions for registration of captive breeding operations, sanctuaries and rehabilitation facilities involving specimens of listed large predators

This key clause (48) of the regulations does not refer to scientific institutions (defined, in part, as zoos and aquaria). By not including registered scientific institutions, this means that they may sell or supply any large predator kept at the institution for hunting purposes, to the owner of a property that allows hunting, and to a person who trades in large predators for hunting purposes. It also means that registered scientific institutions do not have to micro-chip specimens, keep breeding records, or provide

details of each specimen to the issuing authority. We strongly recommend that scientific institutions be included in Clause 48.

Clause 48(a) states that captive breeding operations, sanctuaries or rehabilitation facilities may not sell or supply any large predator bred or kept at that facility for hunting purposes. However, it does not expressly prohibit sale to the owner of an “extensive wildlife system” where the captive-bred predator may be “rehabilitated” and hunted in terms of clauses 9(2)(b) and 29(2). In fact, sub-clause 48(a)(iv) states that captive-bred predators may not be sent for “rehabilitation in an extensive wildlife system outside the natural distribution range of the species ...” This directly implies that it is acceptable to send a captive-bred large predator to an extensive wildlife system inside the natural area of distribution, where they may be hunted. In addition to our recommendation to delete clauses 9(2)(b) and 29(2), we further recommend that clause 48(a)(iv) be amended to read, “...system inside or outside the natural ...”

Clause 48(c) states that registration is conditional upon micro-chipping each specimen of a listed large predator species bred or kept at that captive breeding operation, sanctuary or rehabilitation facility. This is unenforceable without regular inspections of such operations and facilities. We recommend a new sub-clause 48(e) stating, “must submit to regular, unannounced inspections by an official in the department responsible for the conservation of biodiversity in the relevant province who will determine if all of the conditions for registration continue to be met.” To ensure standardization of inspections, we recommend that national training for inspectors be mandatory; that a checklist for inspectors be prepared and provided to guide the inspections; and that funding for inspections be made a priority. If inspections cannot be standardized throughout South Africa and fully funded, then registrations must be cancelled. We also recommend that a representative from a national animal protection organization authorized to enforce the South Africa Animals Protection Act, participate in such inspections. We also strongly recommend that these regulations include standards for housing and care of animals in captive breeding operations, sanctuaries and rehabilitation facilities that include provision of normal social settings (keeping lions in a pride, for instance).

Amendment on initiative of Director-General

Clause 52(a) allows the Director-General to amend a registration certificate if it is necessary for the more effective protection of the listed threatened or protected species to which the registration relates. The term “more effective protection of species” is subjective and requires elaboration. For example, permitting hunting of certain older, non-reproductive animals that are held in captivity in an “extensive wildlife system”, in order that the funds raised from hunting could be used to breed more animals may be seen as more effective protection by some, but canned hunting of tame animals by others.

Part 4. Cancellation of registrations

Circumstances in which registrations may be cancelled

Clause 55 (a) states that the Director-General may cancel the registration of a captive breeding operation, nursery, scientific institution, sanctuary or rehabilitation facility in accordance with regulation 56 if the registration holder has breached a condition subject to which the registration was registered and other reasons. This clause needs to be directly linked to regular, unannounced inspections by an official in the department responsible for the conservation of biodiversity in the relevant province who will determine if all of the conditions for registration continue to be met. To ensure standardization of inspections, we recommend that national training for inspectors be

mandatory; that a checklist for inspectors be prepared and provided to guide the inspections; and that funding for inspections be made a priority. If inspections cannot be standardized throughout South Africa and fully funded, then registrations must be cancelled. We also recommend that a representative from a national animal protection organization authorized to enforce the South Africa Animals Protection Act, participate in such inspections.

Clause 55(b)(i) states that permits may be cancelled if a captive breeding operation, nursery, scientific institution, sanctuary or rehabilitation facility is managed in a manner that is “contrary to any applicable legal requirements or CITES requirements”. We recommend a specific mention of the South Africa Animals Protection Act in this subclause.

Certificates of registration to be returned after cancellation of registration

Clause 57 states that the holder of a registration must immediately return the registration certificate to the Director-General if the registration is cancelled. We recommend including a subparagraph such as that concerning cancelled permits (Clause 25(b)): “Failure by a registration holder to return a registration certificate must be taken into account by the Director-General when considering any future application from that holder.”

New Recommendation: *Certificates of registration may not be transferred*

We recommend adding a new clause, similar to Clause 23 regarding permits, stating, “No certificate of registration may be transferred to any other person.”

Chapter 4. Implementation of CITES

Part 2. Functions of issuing authorities in relation to the implementation of CITES

Functions of issuing authorities in relation to the implementation of CITES

Clause 62(c) states that the issuing authorities have the function of “inspecting captive breeding operations, nurseries, scientific institutions, sanctuaries and rehabilitation facilities and making recommendations to the Director-General regarding applications for registration”. Facilities that have been registered should be subjected to regular, unannounced inspections to determine if all of the conditions for registration continue to be met. Therefore, we recommend adding to the end of the clause, “...registration and, through regular, unannounced inspections of registered entities, whether applicable laws, regulations and the terms and conditions of registration continue to be met”. In addition, to ensure standardization of inspections, we recommend that national training for inspectors be mandatory; that a checklist for inspectors be prepared and provided to guide the inspections; and that funding for inspections be made a priority. If inspections cannot be standardized throughout South Africa and fully funded, then registrations must be cancelled.

Marking of elephant ivory and rhino horn

Clause 75 discusses how elephant ivory and rhino horns should be marked to record the country of origin, the serial number for the date and the weight. We also recommend that they be marked as to source (i.e. poached, damage-causing animal, natural mortality, etc.).

Chapter 6: Miscellaneous

Setting of annual hunting off-take limits

Clause 76(2) states that hunting off-take limits must be determined only after an appropriate

consultation process has been conducted involving the Department; provincial departments responsible for biodiversity management; the organized hunting industry; and other relevant role players. We recommend a new sub-clause that opens the draft limits and the reasoning behind them to public comment, such as, “the public, through an open comment period on draft limits and the reasoning in support of the draft limits.” We also recommend that, in order to balance the views of the “organized hunting industry”, a representative from a national animal welfare organization charged with enforcing the Animals Protection Act be included in the consultation.

Clause 76(3) states that hunting off-take limits do not apply to culling in protected areas in accordance with the management plans of the respective areas. We recommend that this clause be expanded to state, “Where both hunting and culling take place in the same area, the effect of culling on the relevant population should be taken into account when setting hunting off-take limits.”

Penalties

Clause 79 states that a person convicted of an offense in terms of regulation 78 is liable to a fine or imprisonment ...” We recommend addition of another sub-clause, “A person convicted of an offense in terms of regulation 78 must not receive a permit or certificate of registration”.

Annexure 1. Application for permit authorizing restricted activity with listed threatened or protected species

This application should contain all of the information in Clause 20(1), for the reasons given regarding that clause, including our recommendations of adding:

- Certification by the applicant: I hereby certify that I have read and am familiar with the regulations contained in [insert relevant regulations official titles and numbers], and I certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of [insert relevant enforcement regulations]. Signature of the applicant _____. Date _____.
- Date the activities are to be conducted. This is needed to determine the conservation impact of the activity (due to seasonality of breeding / births or nesting, for example).
- Permit applications include the scientific name of the species, including genus, species and subspecies.”
- Permit applications include the age of the specimen.

Annexure 2. Application for registration of captive breeding operations, nurseries, scientific institutions, sanctuaries and rehabilitation facilities

We recommend adding, “Certification by the applicant: I hereby certify that I have read and am familiar with the regulations contained in [insert relevant regulations official titles and numbers], and I certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of [insert relevant enforcement regulations]. Signature of the applicant _____. Date _____.”

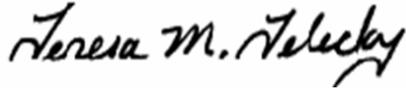
Annexure 3. Application for amendment of registration of captive breeding operations, nurseries, scientific institutions, sanctuaries and rehabilitation facilities

We recommend adding, “Certification by the applicant: I hereby certify that I have read and am familiar with the regulations contained in [insert relevant regulations official titles and numbers], and I

certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of [insert relevant enforcement regulations]. Signature of the applicant _____ . Date _____.”

Thank you for considering the comments of the Trophy Hunting Working Group of the Species Survival Network.

Sincerely,



Teresa M. Telecky, Ph.D.
Chair, Trophy Hunting Working Group
Species Survival Network

On behalf of the following organizations:

Animal Alliance of Canada
Animals Asia Foundation
Animal Protection Institute
Born Free Foundation
Born Free USA
Care for the Wild International
Centre for Marine Mammals Research – Leviathan
Cetacean Society International
David Shepherd Wildlife Foundation
Environmental Investigation Agency
Franz Weber Foundation, Switzerland
Humane Society of the United States
Humane Society International
International Fund for Animal Welfare
Life Conservationist Association Taiwan
Pan African Sanctuary Alliance
Pro Wildlife
World Society for the Protection of Animals
Zoocheck Canada

[1] Regarding the term ‘bred in captivity’: a) the definition provided below shall apply to the specimens bred in captivity of species included in Appendix I, II or III, whether or not they were bred for commercial purposes; and b) the term ‘bred in captivity’ shall be interpreted to refer only to specimens, as defined in Article I, paragraph (b), of the Convention, born or otherwise produced in a controlled environment, and shall apply only if: i) the parents mated or gametes were otherwise transferred in a controlled environment, if reproduction is

sexual, or the parents were in a controlled environment when development of the offspring began, if reproduction is asexual; and ii) the breeding stock, to the satisfaction of the competent government authorities of the exporting country: A. was established in accordance with the provisions of CITES and relevant national laws and in a manner not detrimental to the survival of the species in the wild; B. is maintained without the introduction of specimens from the wild, except for the occasional addition of animals, eggs or gametes, in accordance with the provisions of CITES and relevant national laws and in a manner not detrimental to the survival of the species in the wild as advised by the Scientific Authority: 1. to prevent or alleviate deleterious inbreeding, with the magnitude of such addition determined by the need for new genetic material; or 2. to dispose of confiscated animals in accordance with Resolution Conf. 10.7; or 3. exceptionally, for use as breeding stock; and C. 1. has produced offspring of second generation (F2) or subsequent generation (F3, F4, etc.) in a controlled environment; or 2. is managed in a manner that has been demonstrated to be capable of reliably producing second-generation offspring in a controlled environment. www.cites.org/eng/res/10/10-16.shtml

[2] "a controlled environment" is an environment that is manipulated for the purpose of producing animals of a particular species, that has boundaries designed to prevent animals, eggs or gametes of the species from entering or leaving the controlled environment, and the general characteristics of which may include but are not limited to: artificial housing; waste removal; health care; protection from predators; and artificially supplied food.

[3] www.sanparks.org/about/acts/ProtectAreasAct.pdf

[4] RECOMMENDS that: a) a Management Authority of an exporting or re-exporting country: i) not issue CITES permits and certificates retrospectively; ii) not provide exporters, re-exporters and/or consignees in importing countries with declarations about the legality of exports or re-exports of specimens having left its country without the required CITES documents; and iii) not provide exporters, re-exporters and/or consignees in importing countries with declarations about the legality of permits or certificates which at the time of export, re-export or import did not meet the requirements of the Convention; b) a Management Authority of an importing country, or of a country of transit or transshipment, not accept permits or certificates that were issued retrospectively; c) exceptions from the recommendations under a) and b) above not be made with regard to Appendix-I specimens, and be made with regard to Appendix-II and -III specimens only where the Management Authorities of both the exporting (or re-exporting) and the importing countries are, after a prompt and thorough investigation in both countries and in close consultation with each other, satisfied: i) that the irregularities that have occurred are not attributable to the (re-)exporter or the importer or, in the case of specimens imported or (re-)exported as personal or household effects (for the purposes of the present Resolution this includes live pets travelling with their owner), the Management Authority, in consultation with the relevant enforcement authority, is satisfied that there is evidence that a genuine error has been made, and that there was no attempt to deceive; and ii) that the export (or re-export) and import of the specimens concerned are otherwise in compliance with the Convention and with the relevant legislation of the countries of export (or re-export) and import; d) whenever exceptions are made: i) the permit or certificate clearly indicate that it is issued retrospectively; and ii) the reasons for the relaxation, which should come within the purview of paragraph c) above, are specified in the conditions on the permit or certificate and a copy sent to the Secretariat and also these be listed in the biennial report to the Secretariat; e) in cases where retrospective permits are issued for personal or household effects as referred to in subparagraph c) i) above, Parties make provision for penalties and restrictions on subsequent sales within the following six months to be imposed where appropriate to ensure that the power to grant exemptions from the general prohibition on the issue of retrospective permits is not abused; and f) the above discretion to issue permits and certificates retrospectively not be afforded to benefit repeat offenders.

www.cites.org/eng/res/12/12-03R13.shtml

[5] www.iucn.org/themes/ssc/publications/policy/captive_breeding.htm

[6] Language from CITES Article III (3)(b), for example.