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Department of Forestry, Fisheries and the Environment (DFFE)

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**RE: Comments by the Environmental Lawyers Association of South Africa (ELA): Draft Policy Position on the conservation and ecologically sustainable use of Elephant, Lion, Leopard and Rhino**

We write on behalf of the Environmental Law Association of South Africa as an NPO concerned with the future of wildlife in the country and the protection and fulfilment of the right to an environment not harmful to health or wellbeing provided for in section 24 of the Constitution of the Republic of South Africa, 1996.

Below, we make our submissions on the Draft Policy Position on the conservation and ecologically sustainable use of Elephant, Lion, Leopard and Rhino (“the Draft Policy”). We align ourselves with the position of Animal Law Reform South Africa, and are grateful for their assistance with these submissions.

1. We applaud the actions by the DFFE to deal with various problematic practices in relation to key species as these impact on our guaranteed constitutional rights, affect the long term survival of non-human and human animals and harm our country's international reputation. There are a number of positive provisions in the Draft Policy that *must* be implemented.
2. We wish to place on record as part of the public comment process on the Draft Policy the following **general** comments:
  - a. We strenuously agree that South Africa ought not to support the trade in elephants, ivory, rhinos and their horns at an international level.
  - b. We support a complete ban on trophy hunting which is inconsistent with our heritage and our values as a nation. The incentives that drive trophy hunting (including selecting the strongest and best specimen) are fundamentally at odds with the Constitution's conservation imperative (preserving the strongest specimen). Trophy hunting is an extractive practice that only benefits a few. Importantly, the hunting sector itself recognises that it “lack[s] the data to back up the conservation and economic

arguments”<sup>1</sup> in support of trophy hunting and how hunting benefit local communities. While revenue may be forthcoming in the short term from such species extraction, the longer-term effects are that population growth dynamics are negatively affected and ecological sustainability is undermined.

- c. We support the promotion of non-harmful *ecologically* sustainable eco-tourism that as a means to stimulate *justifiable* economic growth in South Africa in line with section 24 of the Constitution. It is established that eco-tourism has the potential to unlock more economic benefits for communities than does trophy hunting.<sup>2</sup>
  - d. We support the adoption of a definition of “animal welfare” that includes both physical and psychological harm to a non-human animal and that these must be considered as relevant factors in all non-human animal use and matters that impact on them.
  - e. We support the inclusion in the Draft Policy of the explicit recognition of non-human animal sentience as a relevant factor in decision-making.
  - f. We support the establishment of an animal welfare consultation group with which the Minister and DFFE must consult on all relevant matters to include non-human animal protection groups that support non-human animal protection, non-human animal welfare and non-human animal rights.
  - g. Wildlife is part of the common heritage of all South Africans, both present and future generations, and all South Africans owe duties of custodianship to wildlife. Moreover the Minister holds biodiversity, including wildlife, in public trust for the benefit of all South Africans. A minority who gain profit from exploiting and using our wildlife should not be the loudest voice, but rather the interests of the broader South African public.
3. We wish to place on record as part of the public comment process on the Draft Policy the following **specific** comments:
- a. Enforcement: The Draft Policy should make greater provision for development of enforcement capacity in relation to conservation of the iconic species in particular, and biodiversity in general.
  - b. Permitting system: The Draft Policy identifies challenges relating to the structuring and implementation of the permit system as one of the issues with legislation and mandate, as well as inconsistencies between national and provincial legislation, among provinces, and in implementation.<sup>3</sup> However, despite this recognition, no policy objective is provided in the Draft Policy to deal with rectifying these problems through the development of an accountable and transparent permitting system. Increased enforcement of existing environmental laws (and the revision thereof as envisaged by the Draft Policy) should be included in the Draft Policy.
  - c. Lion:

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<sup>1</sup> African Wildlife Economy Institute, What’s Next for South Africa’s Wildlife Economy? 20 July 2021 .

<sup>2</sup> [Wildlife tourism more profitable than hunting | Canadian Geographic](#); [EMS-Foundation-presentation-notes-re-Community-benefits-from-trophy-hunting-realities-vs-pretence-final.pdf \(emsfoundation.org.za\)](#).

<sup>3</sup> Page 18, Draft Policy.

- i. We support an immediate shut down of the captive lion industry as well as a ban on canned lion hunting and other consumptive use of lions and other big cats.
  - ii. The Draft Policy does not address what will be done with the existing stockpiles of lion bone,<sup>4</sup> the carcasses of the roughly 12 000 lion currently in captivity that will be euthanised in implementation of the Draft Policy,<sup>5</sup> and other lion parts that have the potential to enter the market from time to time. (If the Department proceeds with its proposal to develop and implement a national hunting standard for the five iconic species, which we are of the view it must not, there will be an on-going supply of legally acquired body parts from these non-human animals). The HLP Report includes as a recommendation that the “*Minister puts in place policy decisions for an immediate halt to (1) the sale of captive lion derivatives, including the appropriate disposal of existing lion bone stockpiles and lion bone from euthanised lions.*”<sup>6</sup> However, this recommendation has not been carried through in the Draft Policy. We recommend that an additional policy objective be included that requires the disposal, through destruction of, existing lion bone stockpiles, and for the handling and management of lion derivatives that may arise in the future (if trophy hunting is not phased out).
- d. Rhino:
- i. We agree with the finding of the Draft Policy that the sustained use of intensive management practices compromises the potential conservation value for replenishing depleted wild populations (per the findings of the African Rhino Specialist Group), and that it is desirable to move them out of captive breeding situations and back into accepted wild managed or wild conditions as soon as practically possible.
  - ii. Regarding trade in rhino horn, the Draft Policy proposes that trade in captive rhino horn (and other CITES-related activities) will not be supported until the recommendations of Option 3 of the Commission of Inquiry are addressed.<sup>7</sup> We strongly disagree with policy output that in any way paves the way for future trade in rhino horn, either domestically or internationally. First, we disagree with any policy position that provides for consumptive use of the iconic species and ignores its sentience. Secondly, trade in any form whatsoever is detrimental to the survival of the species. This was acknowledged by the erstwhile Minister of Environmental Affairs in the reasons for her decision to impose a moratorium on

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<sup>4</sup> The HLP Report records that there is an existing stockpile of lion bones registered with the Department (para. 9.3.19.1, HLP Report).

<sup>5</sup> We agree that captive bred lions should not be released into the wild.

<sup>6</sup> Para 9.3.19.2, HLP Report.

<sup>7</sup> Option 3 provides for: “*Application of current policy (limited international trade in hunting trophies and live rhino to appropriate and acceptable destinations), with no immediate intention to trade in rhino horn, but maintaining the option to re-consider regulated legal international trade in rhino horn when requirements are met.*” Summary report of the Committee of Inquiry (CoI) appointed by the Minister of Environmental Affairs to advise on the possibility of proposing legal international trade in rhino horn to the 17TH Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), or not.

domestic horn trade, namely “to stem the flow of rhino horn into the international market and indirectly to curb the demand for horn and horn products.”<sup>8</sup>

e. Leopard:

- i. Leopards are “free-ranging” and are difficult to monitor and manage. They do not stay within the boundaries of protected areas. Research suggests that 62% of leopard range is found outside of formal protected areas.<sup>9</sup> We consequently support the proposed policy output of developing and implementing a shared, integrated and strategic approach to leopard conservation and management.
- ii. We do not support the Draft Policy insofar as it paves the way for continued trophy hunting of leopard.
- iii. We also strongly disagree with the conflation of so-called human-wildlife conflict situations into trophy hunting events, as an incentive will be created to label leopards as “problem animals”.<sup>10</sup> No provision should be made for the hunting of leopards designated as “damage causing non-human animals”. Translocation should rather be considered, if leopards are to be removed from the area in question at all. Translocation has been established as a useful tool to reintroduce species to areas where they have been driven to extinction.<sup>11</sup>

f. Elephant:

- i. We agree with the position that South Africa will not submit a trade proposal to CITES for ivory. However, the statement “*while certain circumstances prevail*” suggests that this position is not definitive, and that the DFFE is open to considering trade in ivory and submitting the necessary proposals to CITES in the longer term. This is confirmed by the policy outcome “*in long-term, global consensus to allow international trade in ivory.*” We strongly disagree that any trade in ivory should be contemplated. We are unable to comment further on the circumstances under which this would be considered by South Africa, as the Draft Policy contains no description or definition of “*certain circumstances*”.
  - ii. We propose that elephants be included in the Draft Policy, including a ban on elephant back riding, and their use as entertainment in facilities such as circuses and zoos.
- g. Export of live species: We are wholly supportive of the Department’s proposed policy output of promulgating prohibitions to prevent the taking of wild specimens of the five

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<sup>8</sup> “Moratorium on the trade of individual rhinoceros horns and any derivatives or products of the horns” published under Government Notice 148 in Government Gazette 31899, 13 February 2009; and *Kruger v Minister of Water and Environmental Affairs* [2016] 1 All SA 565 (GP).

<sup>9</sup> Jacobson AP, Gerngross P, Lemeris Jr. JR, Schoonover RF, Anco C, Breitenmoser-Würsten C, Durant SM, Farhadinia MS, Henschel P, Kamler JF, Laguardia A, Rostro-García S, Stein AB, Dollar L. 2016. Leopard (*Panthera pardus*) status, distribution, and the research efforts across its range.

<sup>10</sup> Pitman, R.T., Fattebert, J., Williams, S.T., Williams, K.S., Hill, R.A., Hunter, L.T.B., Slotow, R., and Blame, G.A., 2016. The conservation costs of game ranching. *Conservation Letters*; doi:10.1111/conl.12276;

& <https://www.landmarkfoundation.org.za/past-and-present-projects/species-conservation/>.

<sup>11</sup> IUCN/SSC, 2013.

iconic species into captivity and preventing their export *other* than for the purposes of reintroduction to the wild. We commend the Department for its proposals in this regard.

- h. Conservation transformation: We support the policy interventions proposed under this objective. However, we do not support policies that perpetuate a sustainable use paradigm, particularly where such use involves hunting.

These comments constitute our views on the most salient aspects of the Draft Policy. They are by no means exhaustive, and we look forward to future opportunities to engage in processes regarding the conservation and governance of these iconic species.

Yours sincerely

**The Parliamentary Submissions Sub-Committee**

**ENVIRONMENTAL LAW ASSOCIATION OF SOUTH AFRICA**

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