



20 October 2018

To: The Director -General
Department of Environmental Affairs
Attention: Ms Magdel Boshoff (Deputy Director: Threatened or Protected Species Policy
Development)
Email: rhinohornregulations@environment.gov.za

**RE: COMMENTS ON VARIOUS RHINO HORN REGULATIONS AND NOTICES
RELEASED FOR COMMENT ON 21 SEPTEMBER 2018**

We refer to the following:

1. Norms and standards for the marking of rhinoceros and rhinoceros horn and hunting of rhinoceros for trophy hunting purposes published and GN 304 in GG 35248 of 10 April 2012 withdrawn (GN 961 in GG 41913 of 21 September 2018) (p255) (“**Norms and Standards**”)
2. Draft Regulations relating to domestic trade in rhinoceros horn, 2018 published for comment (GN 986 in GG 41919 of 21 September 2018) (p4) (“**Trade Regulations**”)
3. Draft notice prohibiting the carrying out of certain restricted activities involving rhinoceros horn published for comment (GN 987 in GG 41919 of 21 September 2018) (p24) (“**Restricted Activities Regulations**”)
4. Draft notice amending the alien and invasive species list and the lists of critically endangered, endangered, vulnerable and protected species published for comment (GN 988 in GG 41919 of 21 September 2018) (p29) (“**Alien and Invasive Species Notice**”)
(collectively, the “**Documents**”).

The EMS Foundation and Ban Animal Trading submitted detailed comments on 10 March 2017 on “DEA Notice 74 of 2017 On Draft Regulations for the Domestic Trade in Rhinoceros Horn, or Part, Product or Derivative of Rhinoceros Horn” (“**2017 Draft Regulations**”). Animal Law Reform South Africa supports these submissions.

We have not re-iterated all of the concerns and comments relating to the 2017 Draft Regulations herein but wish to affirm our stance relating to these regulations insofar as they apply to the Documents. For purposes of this submission, we have only focused on the Documents.

Please find attached our consolidated comments on the Documents. We look forward to engaging with you further on these issues and hope you will include our comments. We are available to discuss, should you require.

Yours sincerely,



Michele Pickover
Director
Chairperson
EMS Foundation



Amy P. Wilson
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Animal Law Reform SA



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SECTION I: GENERAL COMMENTS

Consolidation

- a. We are of the view that having the provisions relating to rhino horn trade, restricted activities, trophy hunting, invasive species, etc. scattered over various regulations and notices makes it extremely difficult to determine the current status.
- b. The Documents should be consolidated into one single comprehensive document insofar as possible in order to make it easier to determine the status quo.

2017 Regulations and Documents

- a. We found it extremely difficult to determine how the 2017 Regulations fit in with the Documents and particularly the Trade Regulations.
- b. In the Trade Regulations, it states (our emphasis): “The draft regulations in respect of domestic trade rhinoceros horn were published in the Government Gazette, No. 40601, Notice No. 74, on 08 February 2017, for public comment for a period of 30 days. The provisions of **regulations 3(1)(a), 3(3), 4(1), 7(3), 10(2)(b), 12(2) and (3) and 13(1)** in the Schedule below were not included in the afore- mentioned Government Notice....Members of the public are therefore invited to submit written representations or objections to regulations 3(1)(a), 3(3), 4(1), 7(3), 10(2)(b), 12(2) and (3) and 13(1), within 30 days after the publication of this notice in the Gazette...”
- c. However, when one reads the 2017 Regulations and the Trade Regulations, the aforementioned sections are not the only new sections, nor the only amendments made. The table of contents in the 2017 Regulations differs greatly from the Documents. It is therefore extremely hard to determine.
- d. Is the intention that the Trade Regulations will replace the 2017 Regulations? If that is the case, the draft 2017 Regulations should be withdrawn and this recorded in the preamble.
- e. If the intention is that they are to be read together, a consolidated draft should be prepared in order that it is easier to determine the status quo.

Permitting

- a. The National Database needs to include details of all persons involved in the permitting process.
- b. The permitting needs to be open and transparent and close all legal loopholes. There should be no exemptions to who requires a permit, including the State.

Concerns with the trade

- a. The proposed regulations establish a system for permits to be issued for a person to “sell, give, donate, buy, receive, accept as a gift or donate, or in any similar way dispose of or acquire, a rhinoceros horn”. While this system appears to be targeting so-called ‘domestic’ trade in rhino horn within the borders of South Africa, it is highly likely that such legal trade will be exploited to smuggle rhino horn to the key Asian markets where consumers are willing to pay ‘top dollar’ for it.
- b. According to the proposed regulations, rhino horn can now also be sold by auction to the highest bidder, emphasizing the commercial value of rhino horn rather than encouraging the public to value live rhinos in the wild.
- c. Overall, the regulations establish a complicated and confusing regulatory mechanism with layers of bureaucracy and paperwork again raising concerns as to how criminal syndicates may exploit this system, particularly given the lack of resources among provincial authorities to enforce current wildlife laws and rampant corruption entrenched in the existing institutional framework.
- d. While the regulations envisage reciprocal permits being issued by countries of import, this could prove to be a slippery slope because main demand countries for rhino horn – Vietnam and China – currently prohibit trade in rhino horn. If South Africa is intending to encourage these massive wildlife destinations to open up trade in rhino horn, this would have serious ramifications for the survival of the last remaining wild rhinos in Africa and Asia.
- e. In taking decisions as to whether or not to issue permits for the sale and possession of rhino horn the decision-makers must adopt a cautious and risk averse approach that upholds the environmental right in section 24 of the Constitution.
- f. The proposed regulations and other legislative measures currently in place are insufficient to ensure that rhinos will be protected for the benefit of current and future generations, and that any use of rhinos as required by section 24 of the Constitution.

- g. Farming rhinos to supply rhino horns to the market is not conservation and does not constitute an ecological sustainable use of natural resources as required by section 24.
- h. The international trade in rhino horn is unlawful and is the reason why rhinos are being poached and are at risk of extinction.
- i. The domestic trade in rhino horn will ultimately result in increased international trade which will be detrimental to rhino conservation.
- j. We are concerned that the regulations proposed by South Africa undermine the CITES international trade prohibitions which protect rhino populations globally. A legal domestic trade in rhino horn provides an avenue for laundering illegal rhino horn, thereby increasing the burden of law enforcement authorities responsible for combatting rhino horn trafficking.
- k. Further, the proposed regulations also seriously undermine campaigns to reduce demand for rhino horn and instead legitimize its consumption as a commodity.
- l. South Africa has a huge poaching problem. Legalising trade and export is likely to collapse international attempts to protect rhinos. If these draft regulations become law, the decline and possible extinction in the wild of rhinos will be in the interest of rhino breeders, who will then control the world market.
- m. There is a demonstrable link between the sale of farmed wildlife and poaching. Lifting the trade ban would serve to stimulate almost limitless Asian markets through the sale of limited goods which would not take long to bleed into illegal procurement through poaching.
- n. The Regulations are contrary to South Africa's international obligations. For example, the State Parties to CITES have identified international trade in rhino horn as being detrimental to the conservation status/ survival of rhinos. The draft Regulations will legalise a (limited) trade in rhino horn which the parties to CITES are seeking to prevent. Furthermore, as a contracting party to the Convention on Biological Diversity, South Africa is required, as far as possible and as appropriate, to adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity (article 10). Farming rhinos for their horns and trading in horns have an adverse impact on the conservation status of rhinos and hence on biological diversity.
- o. In order to ensure the long-term protection of wild rhinos it will be necessary to reduce the demand for rhino horn and so the price of rhino horn in order to eliminate or

substantially reduce the incentive to poach. This has been recognized by the parties to CITES, the CITES Secretariat and INTERPOL. Furthermore, it effectively opens international and commercial trade and will open the door to widespread laundering of rhino horns.

- p. The illegal trade in rhino horn in China and Vietnam is well-documented. Indeed, at the request of the CITES Parties, major consumer countries like Vietnam have been making progress in lowering the demand for rhino horn in their countries including by raising awareness of their citizens, and strengthening their country's law enforcement and legislation; thus this move by our country will send the wrong message to the international community in general, and to the government and people of these consumer countries in particular. Efforts to protect rhinos from poachers and reduce demand for rhino horn in consumer countries such as China and Vietnam are beginning to show good signs of progress. South Africa's proposals would undermine these efforts. South Africa needs to work side by side with these countries to reduce the demand for rhino horn, not to undermine their efforts by encouraging consumption of rhino horn.
- q. Allowing any domestic trade in rhino horn or the export of rhino horn for whatever purpose will stimulate demand for rhino horn, make enforcement much more difficult and consequently have an adverse impact on rhino populations because poachers will continue to have access to lucrative markets. Consequently it is unreasonable and contrary to the State's role as trustee of biological diversity to pass legislation that legalizes such trade.
- r. Legalising trade in rhino horn is extremely risky, is not based on sound science or sound economics, and is contrary to the recommendations made by the advisory group appointed by the Minister to advise her on this issue. It is also contrary to the principle in section 2(4)(a)(vii) of NEMA which states that sustainable development requires the consideration of all relevant factors including: "that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions;"
- s. Confining rhinos in small areas to farm them for their horn removes their ecological relationships and prevents them from playing their specific roles and functions within ecosystems. This means that commercial rhino farming in confined spaces (as opposed to game farms) results in a degradation of the ecosystems from which the rhinos have been removed which will have a negative impact on biological diversity and ecosystem functioning (i.e. disrupt the ecological integrity of the ecosystem in which rhinos occur)

and cause significant environmental degradation. This means that farming rhinos for their horns is not ecologically sustainable.

- t. The environmental right in section 24 of the Constitution imposes a duty on the State (and indeed everyone in South Africa) to protect the environment (including wildlife) for the benefit of present and future generations, by taking reasonable legislative and other measures that (a) prevent ecological degradation; (b) promote conservation and (c) ensure that if natural resources are required for the purposes of justifiable economic and social development, then that use and development is undertaken in a manner that is ecologically sustainable.
- u. This means that the Constitution: (a) does not establish either a duty or a right to use wildlife; and (b) does not prohibit the use of wildlife but imposes a duty on both the user and the State to take reasonable measures to ensure that no ecologically unsustainable use occurs.
- v. Consequently, the State is not under a duty to promote the use of wildlife (e.g. by facilitating the farming of rhinos for horn and trade in rhino horn), only to ensure that any use that does occur is ecologically sustainable, humane and otherwise lawful.
- w. The draft Regulations are inconsistent with the environmental right in section 24, among other reasons because (i) they will result in detrimental impacts on biological diversity and the environment and do not: a. secure the ecological sustainable use of natural resources (wildlife); (ii) protect the environment for the benefit of current and future generations; or (iii) promote conservation.
- x. If there is any legal rhino horn in circulation, enforcement (both in South Africa and internationally) becomes much more difficult. Passing these Regulations will undermine the efforts of other countries to combat illegal trade in rhino horn and the illegal activities that it funds, and harm South Africa's relationships with the international community which is against rhino horn trade. (For example the Minister proposes banning the powdering of rhino horn in South Africa to prevent the draft Regulations from being unenforceable but since a similar ban does not exist in countries to which the horn will be exported, it will render enforcement in such countries virtually impossible). At a time when the future survival of rhinos is at stake it is irrational to undermine and weaken national and international law enforcement initiatives to prevent illegal trade in rhino horn.
- y. South Africa is unable to ensure that the horns will not enter the illegal international markets.

- z. South Africa's ability to regulate domestic trade in rhino horn is in doubt. The recent series of prosecutions involving the spurious use of hunting permits to facilitate smuggling of rhino horns out of South Africa by foreign nationals demonstrate that unscrupulous people are ready and willing to take advantage of any new options for removing horn from the country, are ingenious at coming up with ways to do so, and in many cases are connected with well-funded foreign syndicates able to deal with corrupt officials in end-market countries. It is almost certain that such people will try to take advantage of the export mechanisms in the draft regulations, and highly likely that they will succeed in doing so despite any mechanisms the draft regulations may contain. Horn from poached rhinos might be offered at the same or even lower prices than horn from 'farmed' rhinos, and the 'legal' market might consist mostly of illegal horn.
- aa. South Africa does not have the enforcement capacity to ensure that illegally obtained rhino horn will not be exported as legally obtained rhino horn (e.g. using forged documents). The South African government does not have the ability to police the legal and illegal trade simultaneously. Re-opening of a domestic trade in rhino horn would make it even harder for already overstretched law enforcement agents to tackle trafficking of rhino horn. How will an already stretched and under-funded regulatory and policing force cope with monitoring internal trade?
- bb. There are serious concerns about the challenges that law enforcement and permitting officers would face in trying to manage parallel legal and illegal trade. The South African government needs to retain the moratorium and focus its efforts on disrupting the organized criminal syndicates involved in rhino horn trafficking.
- cc. For many years African rhinos have been poached increasingly to a current rate of three per day, and their horns smuggled out of the country. In this scenario, we oppose any permit to export rhino horn in any form, from South Africa.
- dd. We also strongly support, for the same reasons, a total ban in any domestic trading and believe that rhino horn trade should not be legalized at all, not until there is convincing and solid evidence indicating that legalization would enhance wild rhino conservation efforts, instead of trying to meet the demand, in particular by Asian consumers, including illegal traders and criminal syndicates.
- ee. Worryingly, the impacts of legalising trade are unknown and may have a negative impact on rhino conservation, putting more vulnerable Asian rhino populations even more at risk.

- ff. Indications from research on other high-value wildlife products has shown that legalising trade has not stopped the black market illegal trade which is also associated with organized crime including drugs, weapons and human trafficking.
- gg. Furthermore, we question ourselves on who is going to benefit from a South African domestic trading system in rhino horn, since South Africans are generally not interested in owning rhino horn. We fear that this domestic trading might help facilitate the smuggling and illegal export of rhino horn to consumers, specifically, in Asia.
- hh. While global cooperation is essential and law enforcement across implicated borders is crucial to control poaching, South Africa remains the main source country for illegally traded horns, often illegally exported to consumer markets via Mozambique. South Africa, Mozambique, Viet Nam, China, Zimbabwe and recently also Namibia, are identified as countries of huge concern for rhino horn poaching and their significant illegal market.

Dehorning

- a. We support the comments made to you in the *Future for Wildlife* Submission relating to dehorning:
 - i. Dehorning and legalising the trade in rhino horn are being considered as possible deterrents to poaching. More research and a better understanding of all the components are necessary to make ethical, informed and responsible decisions. Rhinos use their horns for self-, calf-, and territorial defence, foraging, digging and displays. The effects of dehorning on behaviour and thus welfare and survivability have not been well researched. From the ethical point of view, it has been reported that dehorning, even when done with the best procedures results in being very traumatic and has been described as an invasive and cruel operation.
 - ii. Dehorning procedures should be limited, monitored, recorded and scrutinized by animal welfare officials.
 - iii. Dehorning rhino as a deterrent to poaching has limitations. A stub of horn remains and regrows in about 12, 18 months and sufficient horn remains to have 'poaching' value. Revenge killing and killing to reduce 'need to track' have been reported on dehorned rhino. Dehorning transfers instead of eliminating poaching risks, and in some scenarios may, in fact, push poaching into areas where rhino are not dehorned.

Rhino Welfare

- a. We support the comments made to you in the *Future for Wildlife* Submission on rhino welfare:
 - i. We are very concerned by the total lack of mention in this or other normative, over the need to control and monitor the welfare of rhinos kept on private land and during the procedures of dehorning when this is applied on wild, semi-wild or captive rhinos. Rhinos are also legally bred in South Africa on breeding farms.
 - ii. Unlike any typical farmed animal, wild animals bred in captivity in South Africa are not protected by any specific law and despite the Animal Protection Act, can easily fall victims of major cruelty.

SECTION II: NORMS AND STANDARDS COMMENTS

General

We are confused about the procedural and time lag issues relating to the publication of these Norms and Standards as well as the lack of sufficient public consultation on these Norms and Standards.

Regulation 1

“environmental management inspector” has not been defined.

Regulation 2

Reference should be made to the CITES Regulations and other applicable legislation.

Regulation 3

- a. Sub regulation (3) does not read properly and appears to be missing words.

Regulation 4

- a. Sub regulation (3)(a):
 - i. the words “if applicable” must be removed.
 - ii. There needs to be requirements for the hunting organisation itself. These need to be legitimate organisations recognized by the country of origin and have been well established for a number of years.
 - iii. It is unclear what would constitute “proof” in this instance;
 - iv. Such person must have been a member of such organisation for at least 1 year.

- b. Sub regulation (6): in addition to “adequate legislation” reference should be to “and enforcement.
- c. Sub regulation (8): no similar restriction is made in respect of black rhinos or other subspecies. This should include any subspecies of rhino.
- d. Sub regulation (12): there should be no hunting of rhinos that have not been marked by means of a microchip.

SECTION III: TRADE REGULATIONS COMMENTS

General

- a. Throughout these regulations, when reference is made to buying, selling, giving, donating, disposing or acquiring, reference should also include “trade”. This was included in the 2017 Regulations but not in the latest regulations.

Regulation 1 Comments

- a. The regulations do not apply to the export and re-export of horn for “primarily non-commercial purpose”
 - i. The term “may include the following purposes” is extremely broad. These need to be restricted to specific purposes only.
 - ii. The following sub-categories are not defined. It is not clear what these terms mean and potentially create a legal loophole to be exploited:
 - 1. “purely own or private use”
 - 2. “enforcement purpose”
 - 3. “education or training”
 - iii. These exceptions need to line up with the exemptions in CITES and be in compliance with South Africa’s obligations in respect thereof.
- b. The term “scientific purposes” is defined too broadly. Anyone can be said to be practicing science or conducting research”. This needs to be restricted as follows:
 - i. Only by bodies accredited as scientific institution;
 - ii. Only as approved by the Scientific Management Authority of South Africa;
 - iii. Only for approved research projects
- c. The term “selling” or “sell” should have a similar construction to that of “consideration” as utilized in the Companies Act 71 of 2008.

Regulation 2 Comments

- a. The word “Trading” should be included in the Purpose and Application as it was in the 2017 Regulations in order to make this broader.
- b. In Sub regulation (3):
 - i. after the words “the provisions of” should read “and read together with any regulations, norms and standards and other applicable notices in terms of”
 - ii. The “AIS” regulations should be included in this list of legislation that should be read in conjunction with these Regulations
 - iii. It mentions that these Regulations must be read and applied alongside the other legislation, however, except from Sub regulation (4) no mention is made of what to do if there are conflicting provisions and which legislation would prevail
- c. Sub regulation (4) indicates that these Regulations will prevail if in conflict of the TOPS regulations or the CITES Regulations. The CITES Regulations incorporate South Africa’s international obligations in terms of the CITES Treaty and should prevail in the event of a conflict.

Regulation 3 Comments

- a. Notably in the 2017 Regulations, this Regulation was phrased in the negative in that a person could not undertake the restricted activities unless they had a permit. In terms of the new regulations, a person may undertake activities if three conditions are met. This wording indicates that there is a positive right to do so provided the conditions are met. This compared with the previous regulations is concerning.
- b. The lead in wording should indicate that this applies within the borders of South Africa only.
- c. We would like some further information as to what the rationale is for including the 5cm size restriction.
- d. Sub regulation (1)(c) should indicate that the permit should be issued to that specific person and for that specific horn.
- e. Sub regulation (2):
 - i. should include “Trade”
 - ii. the word “proof” is not sufficient. The standard of proof is not clear. The CITES provisions regarding pre-convention specimens needs to be included here.
- f. Sub regulation (3):
 - i. should include “Trade”

- ii. although we understand the rationale for including these provisions, they may potentially be problematic from a Constitutional perspective.
 - iii. in addition to the entities already included, there are other forms of business enterprises other than Companies and Trusts. All potential entities that fall outside the “person” requirement in (3)(a) should be included in this list in addition to natural persons (including but not limited to associations not for gain; non-profit organisations and other entities outside of natural persons).
- g. We support the comments made by Future for Wildlife on Regulation 3(1):¹
- i. In addition to the length of the rhino horn removed, we would like these Normative to take into account the length of the front and back stub left on the animal after any dehorning procedure. Any safe removal must, in fact, leave at least 7 cm stub on the front and back horn.
 - ii. Considering the consistent poaching crisis relative to this item, we are deeply concerned about the normative not requesting any regulation referring to a documented origin for each piece of rhino horn traded.
 - iii. A Certificate of Origin and Identity Number, maybe through the microchip and /or other electronic devices permanently implanted into the rhino horn, once harvested, could be a very appropriate solution to stop the smuggling of rhino horn out of the country.
 - iv. A database should keep a record of all details relating to each horn or couple of all horns. We suggest the following:
 1. Samples of DNA taken from each animal.
 2. Stated whether it is a front horn or a back horn.
 3. Stated whether the horn is harvested from a wild or captive bred rhino.
 4. Stated the sex of the rhino that the horn was harvested from,
 5. Stated the age of the rhino.
 6. Stated the owner’s personal details and the name of his/her farm, and district.
 7. Stated whether it is a full horn or stub. (Measurements)
 8. Details of the number of times the rhino has been dehorned.
 9. Stated whether it was a recorded hunt of a rhino.
 10. Recorded date and measurement of the stub remaining.

¹ <https://www.future4wildlife.org/2018/10/16/public-comment-opposing-rhino-horn-trade/?fbclid=IwAR2Ly21CMWyiHv6S4kUDdRrdJtRIKRkqy4sifXxqbE39hWeVdbgTXd3p2il>

11. Name and practice number of the attending veterinarian.
- v. We insist that an item of such value be clearly and undoubtedly identified with all details and certified with a system that prevents fraud, alteration and / or duplication.
 - vi. Perhaps the government should consider Bio-Metric cards, which are tamper proof as an identification of particular details pertaining to specific purchases.
- h. We support the comments made by Future for Wildlife on Regulation 3(3)(a); (b); (c) and (d):²
- i. Multiple researches, investigations and official data indicate how Asia is the dominant illegal market for rhinoceros horn. It is quite unacceptable that with a simple permanent residency in South Africa, any private individual or company/organization with origins in the countries listed as huge concerns, would be allowed to trade in rhino horn, domestically, in South Africa. The system is simply not safely implementable and the government does not have the capacity to control and monitor infractions. Any horn harvested legally could illegally and very easily be smuggled to Asia.
 - ii. We request the ban in domestic trading. If a domestic trade is permitted for very limited personal use, it should be imperative that each owner is a South African citizen who is strictly limited on how many horns he/she is allowed to purchase / sell / donate / exchange / per lifetime, with each transaction being imperatively registered in a database.

Regulation 4 Comments

- a. We note that a number of exceptions relate to the end user being the State. There should be conditions as to what the State may do with the rhino horn. There needs to be transparency in this regard. The State should similarly be required to disclose on the National Database when horns are transferred to them.
- b. In Sub regulation (2)(d), the State exception should only apply to when the State receives rhinoceros horn. By including the words “gives” and “donates” it is essentially giving the State free reign to do anything with this horn. The State should not be exempted from the prohibition for giving and donating.
- c. Sub regulation (3) instead of “him or her” it should read “such person or entity as the case may be”.

² <https://www.future4wildlife.org/2018/10/16/public-comment-opposing-rhino-horn-trade/?fbclid=IwAR2Ly21CMWyiHv6S4kUDdRrdJtRIKRkqy4sifXxqbE39hWeVdbgTXd3p2il>

- d. Sub regulation (4) and (5) restrict the requirements of who needs a permit. Any person including the State should have a permit and this should be registered on the national database. Furthermore, it should not be limited in (5) to giving, donating, receiving or accepting but should include “trading, selling, buying...Etc.)
- e. Sub regulation (6) should similarly not be restricted to sub-regulations (4) and (5) but rather any permit issued in terms of the Regulations.
- f. We refer to our comments made in relation to Regulation 3(1) above and these should equally apply to paragraph 4(1).

Regulation 5 Comments

- a. Reference in Sub regulation (1) should include trade.
- b. Sub regulation (2):
 - i. (a) should similarly include registration documentation in the case of a person who is not a natural person;
 - ii. (f) should include:
 - 1. (i) serial number (ZA number) of each rhinoceros horn;
 - 2. (ii) Microchip number of each rhinoceros horn.
 - iii. We submit that the application should also include the name of the person who will be buying, receiving or otherwise acquiring the rhino horn. This is to ensure there is transparency and a link is created between the two parties.

Regulation 6 Comments

- a. We submit that the application should also include the name of the person who will be selling, donating or in any way disposing of the rhino horn. This is to ensure there is transparency and a link is created between the two parties.

Regulation 7 Comments

- a. Reference in Sub regulation (1) should include trade.
- b. Sub regulation (1)
 - i. (b)(ii) should be reference to verify both the information and the documentation and should also include the whole of regulation 5 and not just certain paragraphs as contemplated therein.
 - ii. (e), to the extent that there are provincial databases, this should also be included there.

- c. Sub regulation (2) should also include reference to the proposed destination and not just the place of safekeeping.
- d. Sub regulation (3):
 - i. should include “Trade”
 - ii. although we understand the rationale for including these provisions, they may potentially be problematic from a Constitutional perspective.
 - iii. in addition to the entities already included, there are other forms of business enterprises other than Companies and Trusts. All potential entities that fall outside the “person” requirement in (3)(a) should be included in this list in addition to natural persons (including but not limited to associations not for gain; non-profit organisations and other entities outside of natural persons).
- e. We refer to our comments made in relation to Regulation 3(3)(i); (b); (c) and (d) above and these should equally apply to paragraph 7(3).

Regulation 8 Comments

- a. Sub regulation (1) should include the word “only” after “must”.
- b. Sub regulation (1)(d):
 - i. should include the word “immediately” before the word “of”
 - ii. should include any intention to dispose of the horn, not only by auction.
- c. Sub regulation (3)(a) should include “traded”.

Regulation 9 Comments

Sub regulation (1) should include the word “only” after “must”.

Regulation 10 Comments

- a. Reference in Sub regulation (1) should include trade.
- b. This section is problematic for a number of reasons.
- c. It needs to be very clear that both the person buying on behalf of a person as well as the person him/her/itself will meet all necessary requirements in terms of the Regulations.
- d. It needs to be clear that such person is buying on behalf of someone else.
- e. In both the “disposer’s”³ permit as well as the “acquirer’s”⁴ permit, it should state that someone else will be acquiring it on behalf of someone else and those persons details need

³ This term is used loosely to include anyone selling, giving donating, or otherwise disposing of a horn or portion thereof

⁴ This term is used loosely to include anyone buying, receiving or otherwise acquiring a horn or portion thereof

to be captured, both in the application process (for both of the permits required) as well as the final permits themselves. There needs to be a complete paper trail of all persons involved in any “transaction”. The person also needs to indicate in what capacity they are acting on behalf of someone else and why.

- f. We refer to our comments made in relation to Regulation 3(3)(i); (b); (c) and (d) above and these should equally apply to paragraph 10(2)(b).

Regulation 11 Comments

- a. Sub regulation (1) should include at the beginning “In addition to the other relevant requirements contemplated in these regulations and the relevant legislation.... A person may sell.
- b. When applying for the permit of both the “disposer” and “acquirer”.

Regulation 12 Comments

- a. Sub regulation (1) should include “buy” and “acquire”.
- b. Sub regulation (3)(b):
 - i. (i) should include any trade names in the case of a non-natural person;
 - ii. (ii) should include registration number for non-natural persons;
 - iii. a new (iv) should be included with proof of such bidder’s submission to the Department;
- c. Sub regulation 3(c):
 - i. (i) should include any trade names in the case of a non-natural person;
 - ii. (ii) should include registration number for non-natural persons.

Regulation 13 Comments

- a. There are numerous problems with this section.
- b. The wording is positively phrased, i.e. that someone may export rhino horn if”. Instead, due to the fact that the international rhino horn trade is not permitted, this should be negatively phrased, i.e. “A person may not export or re-export rhinoceros horn unless...”
- c. Sub regulation (1):
 - iii. a new provision should be included: if it is in compliance with CITES and the CITES Regulations;
- d. Sub regulation (6):
 - i. Copies of the export permit as well as the export permit must be included;
 - ii. All details of the recipient of the rhino horn.

- iii. This information must be verified by the Department.
- e. There are no restrictions on the number of rhinoceros horns a person may export. The number needs to be limited to one.
- f. “Duly authorized freight agent” is not defined and it is not clear who this would be.
- g. We support the comments made by *Future for Wildlife* on Regulation 13(1):⁵
 - i. According to these Draft Normative, any person in contact with countries where there is a huge demand for legal and illegal rhino horn, once obtained a permanent residency in the Republic would be allowed to own rhino horn for unlimited “personal use” and also to export it with permits which can also be illegally duplicated. This simply cannot be supported.

Regulation 14 Comments

- a. These provisions appear to be in contravention of CITES obligations.
- b. In Sub regulation (2):
 - ii. (a): only if this is in compliance with CITES obligations
 - iii. (b): only if this is in compliance with CITES obligations
 - iv. (c): The State should not receive a blanket exception from complying with these requirements. If the State is exempted it should be for specific reasons and circumstances only. In addition, there should be transparency as to who the State is exporting this to and for what purpose. This is a legal loophole that needs to be closed as it gives the State full autonomy to export or re-export horn without limiting to who the horn goes to; for what purpose the horn is for; how many horns; etc. Furthermore, it does not go further as to what happens to the horn after receipt – it can then be passed on to traders.

Regulation 15 Comments

- a. Sub regulation (1) this needs to be done also in terms of the CITES Regulations and South Africa’s CITES obligations.
- b. Sub regulation (2)
 - i. (e) This requirement puts an obligation on the Management Authority of the country of import and places the onus on them to show they have domestic legislation in place. This is problematic as not all countries have sufficient domestic

⁵ <https://www.future4wildlife.org/2018/10/16/public-comment-opposing-rhino-horn-trade/?fbclid=IwAR2Ly21CMWyiHv6S4kUDdRrdJtRIKRkqy4sifXxqbE39hWeVdbgTXd3p2il>

legislation in place, or alternatively, may be of the view that they do have domestic legislative provisions in place but these are insufficient or not enforced properly.

- ii. There should be requirements setting out to whom the horn or portion thereof is going to and the intended purpose of such horn.
- iii. There should accompany the application that the proposed recipient will not sell, donate, give, trade or otherwise dispose of the horn or portion thereof.

Regulation 16 Comments

If a rhino horn is stolen, this needs to be immediately reported to the Department once such person becomes aware of same.

Regulation 17 Comments

- a. Offences are created by more than the regulations listed in this section.
- b. For example, there may be an offence created in terms of Regulations 5; 6; 7 and 8. It would be better to indicate that any person who fails to comply with these Regulations is guilty of an offence.
- c. In addition, we are of the view that additional provisions could be included to include a person who was aware of someone not complying with these Regulations and failed to disclose it; or assisted in any way that led to non-compliance.

Regulation 18 Comments

If higher penalties are specified in the CITES Regulations; or TOPS Regulations or other legislation that could apply, these must be the penalties.

Regulation 19 Comments

Reference in Sub regulation (1) should in

SECTION III: RESTRICTED ACTIVITIES REGULATIONS COMMENTS

Regulation 2 Comments

- a. Sub regulation (2)(d)(iii):
 - i. the State's exception is limitless. This should be restricted.

- ii. For what purposes would the state be undertaking the activities in Sub regulation 1?
 - iii. This needs to be limited in accordance with specific purposes.
- b. Sub regulation (3) “trade” should be included.
- c. Sub regulation (4):
 - i. Should include unless it is compliance with CITES Regulations and South Africa’s CITES obligations;
 - ii. (a): should include for “scientific purposes”
 - iii. (d): By including the words “gives” and “donates” it is essentially giving the State free reign to do anything with this horn. The State should not be exempted from the prohibition for giving and donating.
- d. Sub regulation (5):
 - i. This is repetitive of Regulation 14 of the Trade Regulations.
 - ii. These provisions appear to be in contravention of CITES obligations.
 - iii. In Sub regulation (2):
 - 1. (a): only if this is in compliance with CITES obligations
 - 2. (b): only if this is in compliance with CITES obligations
 - 3. (c): The State should not receive a blanket exception from complying with these requirements. If the State is exempted it should be for specific reasons and circumstances only. In addition, there should be transparency as to who the State is exporting this to and for what purpose. This is a legal loophole that needs to be closed as it gives the State full autonomy to export or re-export horn without limiting to who the horn goes to; for what purpose the horn is for; how many horns; etc. Furthermore, it does not go further as to what happens to the horn after receipt – it can then be passed on to traders.

SECTION IV: ALIEN AND INVASIVE SPECIES NOTICE COMMENTS

We support any actions that offer the Eastern black rhinoceros, *Diceros bicornis michaeli*, and/or any rhino sub-species and species that are classified as exotics or aliens in South Africa, more protection in South Africa. And while we understand that the purpose of the proposed change is to remove the Eastern black rhinoceros, *Diceros bicornis michaeli*, from the Alien and Invasive Species

List, and to add it to the list of critically endangered, endangered, vulnerable and protected species, in order to confer on the species the protections afforded under such a listing, we urge the authorities to acknowledge the Critically Endangered status of the species on the globally recognised IUCN Red List, and categorise South Africa's populations accordingly in national legislation. In this regard what is needed is an amendment to section 56 of the Biodiversity Act to allow non-indigenous rhinos (and other species) to be listed as critically endangered. The objects of the Biodiversity Act are wide enough to encompass the effective protection of non-indigenous species.

SECTION V: CONCLUSION

1. The Documents are problematic as they still allow legal loopholes in both the domestic trade and regulation of rhino horn as well as across borders.
2. In some instances, the provisions are contrary to South Africa's CITES obligations and believe these can be exploited by persons involved in the trade. These loopholes need to be closed prior to being promulgated.
3. Furthermore, we reiterate our problems in allowing the legal domestic trade of rhino horn.
4. The Documents make exemptions for the State which appear to be limitless in their application. This grants Government too much leeway with no transparency as to what is done with these horns. There needs to be complete transparency and accountability of government and any other institutions that receive exemptions from the general application.
5. Permitting needs to be transparent and the national database accessible.
6. We strongly support the need for job creation and the redress of apartheid-era injustices. However, in the efforts to create a more equal society the State should not be supporting a transfer of wealth from the poor to the rich or confuse wealth extraction with wealth creation which is a likely outcome of its market-based operationalisation of sustainable development and 'sustainable use'.
7. Section 24(b)(ii) requires reasonable legislative and other measures to 'promote conservation'. The Oxford English Dictionary defines conservation as involving the 'preservation, protection or restoration of the natural environment and of wildlife'. South African constitutional law and human rights expert, Professor David Bilchitz recently argued that an integrative perspective needs to be taken in relation to the interpretation of "sustainable use" and that that as a concept it should not be understood in a manner that excludes the interests of animals.

8. An effective conservation strategy involves developing an understanding of the worth of and respect owed to individual animals. This is important, not only because morally animals are deserving of such respect in their own right, but also because respect for individual animals is essential to preserving the species as a whole. The one cannot be divorced from the other.”
9. Sustainable development is said to require a consideration of a range of factors. In relation to the utilisation of non-renewable resources, it is required to be ‘responsible and equitable’ and must take into account ‘the consequences of the depletion of the resource’. In relation to renewable resources and the ecosystems of which they are part, use must not exceed a level ‘beyond which their integrity is jeopardised’. These goals within a purely instrumental frame towards animals is unlikely and renders their protection precarious: only a respect-based integrative view can help achieve these goals.
10. In the context of the ‘sustainable use’ principle, there is a major question as to whether animals should be regarded as ‘natural resources’ at all given that this may be understood to reduce them to mere ‘things’. Much of the work on animal ethics in recent years suggests that any such reduction is mistaken morally and that animals are different in that they need consideration for their interests in their own right.
11. Respect for animal lives and interests are centrally connected to the achievement of environmental goals such as conservation and sustainability. Conceiving of animals as lacking any serious moral worth and promoting practices based on this understanding ultimately places the very future survival and flourishing of the species in jeopardy; and it will undermine the attempt to conserve the biodiversity of the environment and its holistic integrity.
12. The Department of Environmental Affairs is increasingly veering in the direction of a contradictory and exploitative ethic which only sees wild animals as a commodity. Those who poach simply take these ideas to their logical conclusions. If animals are just things to be exploited for our self-interest, then why not kill them when there are large profits to be gained? Why should poor individuals in Mozambique refrain from killing rhinos to support their families when wealthy Americans are granted permits to shoot them on the ‘game’ farms of wealthy South Africans? An ethic that simply reduces animals to instruments for human ends will inevitably have a hard time convincing people that animals should be conserved at all. If their short-term needs are pressing, or there’s an economic crisis, there is little reason to think about the long term.
13. An ethic of pure monetarization and short-term self-interest around the use of animals is ultimately not sustainable and fails to conserve them for future generations. The self-interested ethic fails to offer any protection and rampant exploitation becomes the name of the game.

14. By 2050 it is thought that Africa's population will have doubled, and with a growing population comes increased demands. Considering this, as well as the negative effects of climate change, it is necessary to find other ways to sustain communities other than through an unsustainable and untenable dependence on wildlife which will not be able to meet the needs of the deprived majority.
15. A Report done by Economists at Large showed that community development and improving the lives of communities cannot be based on activities which involve killing wild animals but will be better served by broader development efforts and sustainable tourism.
16. The Economists at Large Report shows that studies that estimate the revenue of the trophy hunting industry are generally based on weak data and should be used with caution.

Thank you for considering these comments. We look forward to your feedback. Kindly confirm receipt.

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

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