



WILDLIFE ANIMAL PROTECTION FORUM SOUTH AFRICA

17 June 2019

BY ELECTRONIC MAIL ONLY

Minister Barbara Creecy

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cc. Malepo Phoshoko

CITES Policy Development and Implementation (DEFF)

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Dear Minister Creecy and DEFF

2019 LION BONE QUOTA SUBMISSION

Please find attached the submission from twenty-five wildlife NGOs for your attention.

Please acknowledge receipt.

Yours Sincerely,

Michele Pickover

On behalf of WAPFSA Members

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WILDLIFE ANIMAL PROTECTION FORUM SOUTH AFRICA

DETERMINATION OF THE 2019 LION BONE QUOTA

**SUBMISSION FROM TWENTY-FIVE NGOs
REPRESENTED BY THE WILDLIFE ANIMAL
PROTECTION FORUM SOUTH AFRICA**

TO

**MINISTER AND DEPARTMENT OF ENVIRONMENT
FORESTRY AND FISHERIES**

17 June 2019



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Please note that the three Annexures accompanying this submission are attached as separate documents:

Appendix 1: [Expert Opinion on the 2019 Lion Skeleton Export Quota](#)

Appendix 2: [The Extinction Business: South Africa's Lion Bone Trade](#)

<https://emsfoundation.org.za/wp-content/uploads/THE-EXTINCTION-BUSINESS-South-Africas-lion-bone-trade.pdf>

Appendix 3: [The Economics of Captive Predator Breeding in South Africa](#)

Introduction

The establishment of a lion bone export quota cannot be done without examining and understanding the context and major problems with this so-called 'industry' which are untenable, indefensible and unsustainable. **For more in-depth analysis and articulation of these issues refer to Appendix 2 (The Extinction Business: South Africa's Lion Bone Trade <https://emsfoundation.org.za/wp-content/uploads/THE-EXTINCTION-BUSINESS-South-Africas-lion-bone-trade.pdf> and Appendix 3.**

It is important to note that the issue of South Africa's highly controversial lion bone trade is a national policy issue which has enormous local and global opposition. As a country, if we no longer choose to trade in big cat bones, it will have no impact on our commitments to CITES. South Africa is under no obligation to CITES to trade in lion bones.

Of concern is that SANBI's advice to the Minister on the 2019 lion bone export quota is reliant on a single highly contestable, flawed, biased, incomplete and pro-trade piece of research commissioned by SANBI. It is unclear how SANBI went about selecting the two researchers for this purpose and the processes and procedures were not done in a publicly transparent manner. We have therefore also provided as **Appendix 1: Expert Opinion on the 2019 lion skeleton export quota** which contributes to the evidence base to be considered in establishing a lion export skeleton quota for South Africa.

The fact that the Minister is considering the quota for an 'industry' which it does not properly legislate¹ for, enforce or have oversight into is problematic and inconceivable, particularly given the strong links of this 'industry' to international criminal networks. There are gaps and loopholes that have been exploited, inconsistencies when such legislation exists, enforcement black holes and little accountability or transparency. Moreover the claim by DEFF that welfare is outside its scope despite the constitutional court ruling is not acceptable.²

Further jurisdictional issues and self-regulation have effectively insured the continuation of an activity which has led to wide-scale abuse of an African symbol. This has affected us as nation and continues to affect our position in the international community.

In brief, the key problematic issues that the Minister and DEFF face in relation to the lion bone trade are:

1. Jurisdictional issues³
 - a. between the DEFF and the Department of Agriculture, Rural Development and Land Reform (DARDLR) respectively);

¹ There is no legislation specifically relating to the keeping and breeding of lions, despite this industry having been in existence for many years. Rather, they are either grouped broadly into either animal criminal law, or environmental laws regulating biodiversity, or threatened or protected species.

² Justice Sisi Khampepe (with Nkabinde ADCJ, Cameron J, Froneman J, Jafta J, Madlanga J, Mhlantla J, Musi AJ and Zondo J concurring): National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another (CCT1/16). <http://www.saflii.org/za/cases/ZACC/2016/46.html>

³Note there is concurrent jurisdiction in the constitution

- b. between national Government and provincial government; and
 - c. between the provinces themselves.
2. Welfare
 3. Industry self-regulation
 4. Enforcement
 5. Permitting requirements
 6. Lack of requirements to start a business
 7. Failure to consider statements of the court
 8. Failure to follow PCEA recommendations
 9. Infringement on public rights and other constitutional rights and interests
 10. Facilitation of criminality by a government department
 11. High Level Panel as of yet unestablished and no correspondence on this matter (yet this kind of matter would fall within its purpose and scope)
 12. Public Participation
 13. Workers and safety concerns
 14. Slaughter, Safety and Health Requirements
 15. International obligations (and international relations)
 16. Current Court Proceedings
 17. Lack of transparency
 18. Emphasis and problems with property and commodification of wildlife generally

In response to the Minister's 'request for information to be considered for the determination of the 2019 lion bone export quota (closing date 18 June 2019) and invitation to attend stakeholder meeting on 4 June 2019, this submission coheres with sections 61 and 62 of the National Environmental Management: Biodiversity Act (Act No. 10 of 2004) NEMBA, in which the 'Scientific Authority is required to advise the Minister of the Department of Environmental Affairs [now Minister of Environment, Forestry and Fisheries] on the 2019 export quota for trade in the bones, bone pieces, bone produces, claws, skeletons, skulls and teeth of lion for commercial purposes, which have been derived from captive breeding operations in South Africa'.

We, the undersigned organisations, submit that, in light of the current lack of scientific, peer-reviewed and methodologically rigorous analyses to demonstrate beyond reasonable doubt that a non-zero export quota in derivative parts of captive bred lions will not imperil wild lion survival – especially beyond South Africa's geographic borders, as well as the multitude of other issues this matter raises – the quota should be set to zero. The risk, given that lion bones substitute for (illegal) tiger bones in Asian markets, is that a legal supply of lion bones could expand this demand, thus leading to increased tiger poaching and/or the illegal killing of wild lions across African range states.

Moreover, apropos evidence of poor governance and enforcement over the captive lion industry, and various ethical/welfare problems (which the Constitutional Court – in a unanimous 2016 judgement – linked to conservation)⁴, the continuation of a quota is not permissible.

⁴ Justice Sisi Khampepe (with Nkabinde ADCJ, Cameron J, Froneman J, Jafta J, Madlanga J, Mhlantla J, Musi AJ and Zondo J concurring): National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another (CCT1/16). <http://www.saflii.org/za/cases/ZACC/2016/46.html>

Our case against the quota is built on a number of key premises, substantiated below. Please also note that the appendix contains numerous reports that are referenced wherever relevant and attached for your perusal.

The Wild Animal Protection Forum of South Africa (WAPFSA) represents 25 diverse non-profit organisations and comprises a body of considerable expertise from scientific, conservation, legal, welfare, rights, social justice, faith and public advocacy sectors.

The members of WAPFSA are:

Animal Law Reform South Africa

Baboon Matters

Ban Animal Trading

Beauty Without Cruelty (South Africa)

Captured in Africa Foundation

Centre for Animal Rehabilitation and Education

Elephant Reintegration Trust

EMS Foundation

Elephant Specialist Advisory Group

Four Paws (SA)

Future 4 Wildlife

Global March for Elephants and Rhinos

Global White Lion Trust

Green Girls in Africa

Humane Society International (Africa)

Institute for Critical Animal Studies (Africa)

Landmark Foundation

National Council of SPCAs

Outraged SA Citizens against Rhino Poaching (OSCAP)

Southern African Faith Communities Environment Institute (SAFCEI)

Southern African Fight for Rhinos

Vervet Monkey Foundation

Voice for Lions

WildAid Southern Africa

Wild Law Institute

1 Approach to be adopted in relation to determination of detriment

The Convention on International Trade in Endangered Species ("CITES") provides that an export permit for a specimen of a species included in Appendix II cannot be granted unless *inter alia* the Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species⁵. Notably "An export permit may be issued only if the specimen was legally obtained" – given the reports it is the case that not all of them are "legally obtained". Species are included in the Appendices to CITES if they are, or may be, detrimentally affected by international trade. Consequently, it must be assumed that international trade has a detrimental effect on any listed species unless the Scientific Authority determine that it will not, by making a so-called "non-detrimental finding" ("NDF").

In other words an NDF is an exception to the general rule that prohibits trade in CITES Appendix II-listed species and the Scientific Authority may only make an NDF if there is clear scientific evidence that trade will not have any detrimental effect. If the available evidence is not conclusive in this regard, the Scientific Authority cannot, and must not, make an NDF. This is consistent with the principle in the National Environmental Management Act ("NEMA") which requires that the decision maker must apply "a risk averse and cautious approach ... which takes into account the limits of current knowledge about the consequences of decisions and actions" (NEMA, section 2 (4)(a)(vii)). Put differently, in the absence of sound scientific justification for a specific quota, the Scientific Authority must not set a quota.

Proposals to establish or amend an NDF must evidence-based and include details of the scientific basis for any quota that may be proposed. CITES does not specify precisely what scientific evidence is required but the CITES conference of the parties has adopted guidelines in relation to species such as sharks. In 2002 the IUCN published a checklist to assist scientific authorities in making non-detriment findings for Appendix II exports⁶. The checklist helps Scientific Authorities to identify the factors that need to be taken into account when making an NDF and the strengths and weaknesses of the available information. (At a minimum the Scientific Authority should consider information such as: species distribution, population status, population trends, threats, utilization and trade, actual or potential trade impacts, population monitoring, management and control measures.)

2 South African Scientific Authority must take account of all relevant information

Despite the existence of these (non-binding) guidelines, when deciding whether or not to make a NDF, the Scientific Authority must act both in a manner that is not contrary to CITES and in accordance with the law that governs it (in this case South African law). As explained below, South African law requires the Scientific Authority to take account of all relevant information, not just information from peer-reviewed scientific studies or from scientists.

⁵ CITES defines "species" as "any species, subspecies, or geographically separate population thereof".

⁶ IUCN (Rosser and Haywood, 2002) Guidance for CITES scientific authorities : checklist to assist in making non-detriment findings for Appendix II exports

The decision by the South African Scientific Authority about whether or not international trade may be detrimental to lions, is a decision that may significantly affect the environment. Consequently in making that decision the Scientific Authority must be guided by the environmental right in section 24 of the Constitution⁷ and by the national environmental management principles in section 2 of the National Environmental Management Act ("NEMA").

The following principles are particularly relevant to this decision:

2(4)(a)(vii) 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; and

(b) Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option.

(g) Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge.

(o) The environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage."

A decision to establish or amend a quota for the export of lion bone would also be "administrative action" for the purposes of the Promotion of Administrative Justice Act ("PAJA"). Consequently the decision-making process must be procedurally fair and the decision-maker must, among other matters, take all relevant considerations into account, and disregard irrelevant considerations.

3 Consideration of the effect of a lion bone export quota on the survival of all wild lions

It is important to note that the Scientific Authority must consider the impact of a lion bone export quota on lions both within South Africa and in other range states. Although CITES defines "species" as "any species, subspecies, or geographically separate population thereof", the 10th meeting of the Conference of the Parties to CITES adopted a resolution on the Designation and role of the Scientific Authorities (resolution Conf. 10.3) which recommends that:

⁷ 24. Everyone has the right —

(a) to an environment that is not harmful to their health or well-being; and
(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that —
(i) prevent pollution and ecological degradation;
(ii) promote conservation; and
(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."

"the appropriate Scientific Authority monitor the status of native Appendix-II species and export data, and recommend, if necessary, suitable remedial measures to limit the export of specimens in order to maintain each species throughout its range at a level consistent with its role in the ecosystem and well above the level at which the species might become eligible for inclusion in Appendix I;"(2 j – emphasis added)

This means that in order to make an NDF the decision-maker must not only have adequate scientific evidence that trade in lion bones is not resulting in, and will not result in, higher mortalities among wild lions in South Africa, it must also have adequate scientific evidence to exclude the risk that permitting a legal trade in lion bones will not be detrimental to the prospects of maintaining appropriate lion populations in all range states. In our view, the available evidence indicates that both the demand for lion bones and the commodification and maltreatment of captive lions in intensive rearing facilities, are detrimental to the long-term survival of the species in the wild. Legalising trade in lion bones will exacerbate both of these and is consequently also detrimental. The Scientific Authority cannot make a NDF in order to set a quota for the export of lion bones unless it has the evidence to prove the contrary.

4 Demand for tiger and lion bone is detrimental to the species

Large numbers of lions are being killed annually to satisfy the demand in Asia for tiger bones (the lion bones are used as a substitute for tiger bones). Some of the lions killed are wild (i.e. there is a direct detrimental impact on wild populations) but the majority are from intensive rearing facilities. This demand for lion bone is detrimental to the prospects of sustaining wild lion populations throughout Africa because it creates an incentive to poach and to remove lions from the wild to add genetic diversity to the gene pool of captive lions. This demand must be reduced if lions are to be effectively conserved. This has been recognised by several Asian countries⁸ which are taking measures to reduce domestic demand. Permitting the export of lion bones from South Africa will undermine those efforts and the international co-operation that is fundamental to the effectiveness of CITES.

5 Exporting lion bones will stimulate not decrease demand

There is no evidence that allowing the export of lion bones from South Africa will reduce the demand for tiger or lion bones in Asia. On the contrary it is highly probable that it will increase that demand. Legalisation removes the stigma of illegality and legitimises the cruel and exploitative practices that are used to supply that demand. It also reduces the risks associated with purchasing lion/ tiger products, which will increase the number of willing consumers.

⁸ China, Thailand and Vietnam

The pro-trade argument that a legal trade will protect wild lion populations from poaching is based on a number of fallacious assumptions, including that it is possible to "satisfy" virtually all the global demand from lion farms in South Africa.

Studies show that farming tigers has had a detrimental effect on wild populations of tigers and given that lion bones are used as a substitute for tiger bones, there is no reason to believe that the same will not apply to lions. In the absence of conclusive evidence that exporting lion bones from South Africa will not increase the global demand for lion bones that threatens this species, the Scientific Authority cannot make an NDF.

6 Setting a quota will incentivise investment in detrimental lion-farming practices

The intensive breeding and rearing of lions to supply the lion bone trade is undoubtedly detrimental to those captive lions, promotes an exploitative attitude towards lions, and legitimises cruel practices. Setting a lion bone export quota creates an incentive for greater investments in this unsavoury industry and increases the number of lion being exploited. This creates an expanding industry that has a direct financial interest in promoting the consumption of lion-bone products and thereby increasing the demand which creates the threat to wild lions.

In the past the welfare of captive lions has been regarded as irrelevant to the setting of a quota for lion bone export but that position is no longer tenable in the light of the 2016 judgement of the Constitutional Court in the NSPCA case⁹ which recognised that animals have intrinsic value (i.e. are not just worthy of protection because of their usefulness as "resources"), are sentient beings and that the environmental right in section 24 of the Constitution encompasses both conservation and animal welfare considerations which are "intertwined".

In a unanimous judgement the Court stated the following (our emphasis).

[56] More recently, Cameron JA's minority judgment in Openshaw recognised that animals are worthy of protection not only because of the reflection that this has on human values, but because animals "are sentient beings that are capable of suffering and of experiencing pain" ¹⁰. The High Court in South African Predator Breeders Association championed this view.[86] A unanimous Full Bench found that canned hunting of lions is "abhorrent and repulsive" due to the animals' suffering.[87] On appeal, the Supreme Court of Appeal did not dispute this finding.[88]

[57] The Supreme Court of Appeal in Lemthongthai explained in the context of rhino poaching, that "[c]onstitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general".[89] The Court concluded further

⁹ National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another (CCT1/16) [2016] ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) (8 December 2016)

¹⁰ National Council of Societies for the Prevention of Cruelty to Animals v Openshaw [2008] ZASCA 78; 2008 (5) SA 339 (SCA) (Openshaw) at para 38.

that this obligation was especially pertinent because of our history.[90] Therefore, the rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on animals as individuals.

[58] Lemthongthai is also notable because it relates animal welfare to questions of biodiversity. Animal welfare is connected with the constitutional right to have the “environment protected . . . through legislative and other means”. [91] This integrative approach correctly links the suffering of individual animals to conservation, and illustrates the extent to which showing respect and concern for individual animals reinforces broader environmental protection efforts. Animal welfare and animal conservation together reflect two intertwined values.

The "integrative approach" set out by the Constitutional Court means that the suffering of captive lions being bred for the lion bone trade and the lack of respect and concern for lions which the trade exemplifies and encourages, is relevant to an assessment of whether setting a lion bone export quota is detrimental to the conservation of the species.¹¹ In our view it is clearly detrimental and there is no sound evidence to the contrary.

7 A legal trade in lion bones facilitates the illegal trade

The illegal trade in lion bones and body parts undoubtedly has a detrimental effect on wild lion populations and plays a significant role in sustaining illegal wildlife trade syndicates that also traffic in other products such as ivory. Anything that facilitates this illegal trade is self-evidently also detrimental.

Permitting the export of lion skeletons from South Africa facilitates the laundering of illegally sourced lion skeletons and will consequently be detrimental to the survival of the species. For example, the 2017 export quota was 800 lion skeletons but research indicates that more skeletons were actually exported and that many of those participating in the legal export are also involved in the illegal trade in lion bones and rhino horns. The DEA set and allocated the 2017 quota at 800 lion skeletons. But research and analysis of the CITES export data shows that despite DEA authorisation, it is likely that at least twice or three times as many lion skeletons were exported than what was declared and it could also mean that tiger bones could have been included in the consignment. Many lion breeders conduct their businesses illegally and recent research indicates that many of them are quite prepared to export lion bones illegally if they are not given export permits. The best way of reducing these detrimental practices is to prohibit them and thereby dramatically increase the risk and cost of conducting them.

¹¹ Originally coined by Professor David Bilchitz: “Can the Environmental Rights in the South African Constitution Offer Protection for the Interests of Animals?”

<https://www.uj.ac.za/faculties/law/saifac/PublishingImages/Pages/default/The%20Environmental%20Rights%20and%20Animal%20Interests.pdf> and “‘Exploring the Relationship Between the Environmental Right in the South African Constitution and the Protection of Animals’ Interests’ (2017) 134 South African Law Journal 740-777.”

8 The 2017 quota was not established on scientific grounds

- 8.1 As the call for submissions rightly points out, the Scientific Authority is required to make recommendations to the Minister ‘based on a scientific and professional review of all available information.’
- 8.2 We submit that this was in fact not complied with when the quota was first set in June 2017.
- 8.3 Such a review would have revealed that no non-detriment finding (NDF) pertaining to the trade in captive-bred lions (an Appendix II-listed species according to the Convention on International Trade in Endangered Wild Species of Fauna and Flora (CITES)) and its potential impact on wild lions yet existed.
- 8.4 The 2015 NDF¹² carried out to assess whether a trade in lion bones was detrimental to wild lions in South Africa did not address the relationship between captive bred lions and wild lion survival.
- 8.5 The 2018 NDF¹³, which did so, was only published in the government gazette after the 2017 quota had been communicated to the CITES secretariat. While it is true that the 17th Conference of the Parties (CoP17) for CITES, held in September 2016, crafted an annotation to Appendix II lions and allowed South Africa to establish a quota, South Africa was not permitted to violate Article IV (2) in the process of doing so. This article only permits a legal trade if a relevant NDF has been conducted. Moreover, CITES itself has expressed that ‘the significant increase in trade in produced animals has given rise to some concerns related to the control of the production and trade, including false or incorrect declarations of the source of the animals’.¹⁴
- 8.6 It would therefore appear to us to have been prudent to set the quota to zero until such time as, at a minimum, a relevant NDF had been conducted.
- 8.7 In justifying the quota in 2017, the Department of Environment Affairs (DEA at the time, now renamed Department of Environment, Forestry and Fisheries (DEFF)) drew on a 2015 TRAFFIC study¹⁵ and expressed concern that poaching for wild lions would escalate if South Africa did not permit a legal channel for satisfying demand for tiger

¹² Scientific Authority of South Africa, “Non-Detriment Finding Assessment for Panthera Leo (African Lion)” (2015), <http://www.stichtingspots.nl/deposit/files/3591.pdf>

¹³ Scientific Authority of South Africa, “Non-Detriment Finding Assessment for Panthera Leo (African Lion),” Pub. L. No. 1682–5843, 631 Government Gazette 1 (2018), https://www.environment.gov.za/sites/default/files/gazetted_notices/nemba10of2004_nondetrimentfindings_GN41393.pdf

¹⁴ CITES, ‘Captive-produced animals and artificially propagated plants’, <https://cites.org/eng/prog/captive-breeding>, accessed 12 June 2019.

¹⁵ Vivienne L Williams et al., “Bones of Contention: An Assessment of the South African Trade in African Lion Panthera Leo Bones and Other Body Parts,” 2015, https://www.wildcru.org/wp-content/uploads/2015/07/Bones_of_contention.pdf

bone in Asian markets.¹⁶ This in itself constituted an implicit recognition that lion bones substitute for tiger bones in those markets, given that the trade in tiger bones has been banned. But the study on which the DEA drew at no point suggested that unless a legal channel remained open that demand for illicit products would increase. Nor did it argue that it was scientifically legitimate to establish a legal quota on the above premise per se (even though legal trade was totally unregulated at the time). In fact, not a single recommendation of that report pointed to the need for a legal quota. If anything, it alerted the Scientific Authority to the links between South African bone traders and international criminal syndicates, a point further expounded under premise four below.

8.8 In order for a decision to have been based on a *scientific* review of all available information, some form of objective, peer-reviewed evidence must have been submitted that at least attempted to establish what the impact of a quota might be on demand for tiger and lion bones in Asian markets,¹⁷ and how that in turn might affect wild tiger populations and wild lions not only in South Africa but also beyond its borders, given that lions are classified as a migratory species.¹⁸ A key component of science is hypothesis-testing and result replicability. Experimentation is not always possible, but the fact that an existing legal lion derivative part trade (from captive bred lions) had been in existence since 2007, correlated with a 43% decline in wild lions across their range states (predominantly in Africa),¹⁹ should have been cause for concern. While the decline may be accounted for by intervening variables – other threats to wild lion survival such as habitat destruction and fragmentation – the fact that the Scientific Authority did not consider what the impact of a quota might be on the demand function in consumer markets, and therefore on wild lions *across* African range states, is evidence of a lack of *scientific* review.

8.9 The scientific evidence suggests that the interaction between supply and demand in the illegal wildlife trade is complex,²⁰ especially when a ban is technically incomplete²¹ – in this case, tiger bone sales are banned but lion bones are legally exported with the latter being sold as the former.

¹⁶ Department of Environmental Affairs, “Lion Export Quota for 2017 Communicated to the CITES Secretariat in Line with CITES Requirements,” Government Press Release, June 28, 2017, https://www.environment.gov.za/mediarelease/lionexportquota_communicatedtocitessecretariat

¹⁷ Environmental Investigation Agency, “The Lion’s Share: South Africa’s Trade Exacerbates Demand for Tiger Parts and Derivatives” (London, 2017), <https://eia-international.org/wp-content/uploads/The-Lions-Share-FINAL.pdf>

¹⁸ Timothy Hodgetts et al., “Improving the Role of Global Conservation Treaties in Addressing Contemporary Threats to Lions,” *Biodiversity and Conservation* 27, no. 10 (2018): 2747–65, <https://doi.org/10.1007/s10531-018-1567-1>.

¹⁹ Hans Bauer et al., “Panthera Leo,” *The IUCN Red List of Threatened Species*, 2016, <http://www.iucnredlist.org/details/15951/0>

²⁰ Carolyn Fischer, “The Complex Interactions of Markets for Endangered Species Products,” *Journal of Environmental Economics and Management* 48 (2004): 926–53, <https://doi.org/10.1016/j.jeem.2003.12.003>.

²¹ Annecoos Wiersema, “Incomplete Bans and Uncertain Markets in Wildlife Trade,” *University of Pennsylvania Asian Law Review* 12, no. 1 (2016): 65–87, <https://doi.org/10.1525/sp.2007.54.1.23>

- 8.10 It is plausible, given the correlation between the 2008 one-off ivory sale and a subsequent spike in elephant poaching, that the signal of legally available supply may ignite demand that had previously remained dormant.²² It may also undermine stigma effects – the reduction of consumption in response to legal prohibition.²³ The argument espoused in the Scientific Authority’s defence of the quota, along with the argument present in the latest paper cited in support of that quota, is that price shocks are to be avoided, as an upward shock would lead to increased poaching.²⁴ But that logic needs to be interrogated.
- 8.11 Theoretically, a ban – limiting legal supply – would move the supply curve to the left, which would push equilibrium prices higher. This would result in a decrease in *quantity* demanded. The second-round effect may well be that the entire demand curve shifts downward, as the ivory demand curve empirically shifted down in Japan after the international ivory trade ban was imposed.²⁵ This would result in lower equilibrium prices and even lower quantity demanded, the most optimal outcome for wild lions.
- 8.12 Defenders of the trade argue that there is overwhelming evidence that bans increase demand (shifting the entire curve upwards and therefore raising prices and poaching), but there is little evidence to support this view. Wherever there has been a shift in demand for illicit products it has been attributable to a change in consumer preferences combined with an increase in disposable income. And, in fact, the latest evidence shows that elephant poaching has decreased significantly since its peak in 2011 *in the presence of a global ban on the trade in ivory*²⁶, and the Chinese domestic ban can only complement that trajectory.²⁷ The argument that bans lead to increased demand and poaching spikes is simply not supported unequivocally by the evidence.²⁸ Therefore, it is entirely plausible that banning the supply of captive-bred South African lion parts will *not* lead to increased poaching of wild species, and that a stigma effect may bolster the conservation effect of the international ban on trading in tiger parts.

²² Solomon Hsiang and Nitin Sekar, “Does Legalization Reduce Black Market Activity? Evidence from a Global Ivory Experiment and Elephant Poaching Data,” NBER Working Paper (Cambridge, MA, June 2, 2016), <http://www.nber.org/papers/w22314.pdf>.

²³ Fischer, “The Complex Interactions of Markets for Endangered Species Products.”

²⁴ Vivienne L. Williams and Michael J. ‘t Sas-Rolfes, “Born Captive: A Survey of the Lion Breeding, Keeping and Hunting Industries in South Africa,” *PLOS ONE* 14, no. 5 (2019): e0217409, <https://doi.org/10.1371/journal.pone.0217409>.

²⁵ Lucy Vigne and Esmond Martin, “Consumer Demand for Ivory in Japan Declines,” *Pachyderm* 47, no. 1 (2010): 45–54, <http://pachydermjournal.org/index.php/pachy/article/view/173>.

²⁶ Severin Hauenstein et al., “African Elephant Poaching Rates Correlate with Local Poverty, National Corruption and Global Ivory Price,” *Nature Communications* 10, no. 1 (2019): 2242, <https://doi.org/10.1038/s41467-019-09993-2>.

²⁷ Xuehong Zhou et al., “Elephant Poaching and the Ivory Trade: The Impact of Demand Reduction and Enforcement Efforts by China from 2005 – 2017,” *Global Ecology and Conservation* 16 (2018): e00486, <https://doi.org/10.1016/j.gecco.2018.e00486>.

²⁸ Wiersema, “Incomplete Bans and Uncertain Markets in Wildlife Trade.”

Farming wild species to supply demand cannot be shown to be universally welfare-enhancing or reducing the illegal trade in such species.²⁹

8.13 While some forms of prohibition are not sensible (especially where physiologically addictive substances are concerned that can easily be grown sustainably), it is not scientifically justifiable to allow a legal trade in a vulnerable species (lion) if the result may plausibly be a demand expansion for tiger (endangered) bones in consumer markets.³⁰ Expanded demand drives prices upwards, which tends to trigger poaching of wild (and even farmed) animals.

8.14 Clearly, little scientific effort was made in 2017 to understand what the economic and ecological consequences of a legal quota might be, especially one that simply reflected the status quo. The 2018 NDF speculated that captive bred lions may serve as a buffer against wild lion exploitation, but speculation is not science. Publishing speculative statements in scientific journals does not make them scientific. How science is done is not value-free either and the process is as political as it is 'scientific'. Moreover, speculation that a particular outcome will obtain, without considering that the converse outcome might well occur, constitutes a form of selection bias. For example, the 2012 academic paper³¹ from which the speculation is drawn expresses the converse concern in the same paragraph, namely that the legal availability of captive bred lions may fuel demand for large felid bones.

8.15 A recent survey of the captive lion breeding industry, which the Scientific Authority is drawing on to justify a quota, acknowledges that the 'exact relationship between captive and wild populations remains evidentially unclear'.³² Despite acknowledging that commercial breeding operations may 'at least in the case of tigers, even constitute a threat to wild populations',³³ the authors of the survey report write that it is also plausible that captive lions 'may provide a buffer effect against over-exploitation' of wild lions – interestingly, the same language that appeared in the 2018 NDF. But this speculation still has no basis in science or in fact and therefore remains a matter of opinion. Its mere presence in a scientific journal does not render it scientific.

²⁹ R. Craig Kirkpatrick and Lucy Emerton, "Killing Tigers to Save Them: Fallacies of the Farming Argument," *Conservation Biology* 24, no. 3 (2010): 655–59, <https://doi.org/10.1111/j.1523-1739.2010.01468.x>; Laura Tensen, "Under What Circumstances Can Wildlife Farming Benefit Species Conservation?," *Global Ecology and Conservation* 6 (2016): 286–98, <https://doi.org/10.1016/j.gecco.2016.03.007>.

³⁰ Environmental Investigation Agency, "The Lion's Share: South Africa's Trade Exacerbates Demand for Tiger Parts and Derivatives" (London, 2017), <https://eia-international.org/wp-content/uploads/The-Lions-Share-FINAL.pdf>.

³¹ Paul Lindsey et al., "Possible Relationships between the South African Captive-Bred Lion Hunting Industry and the Hunting and Conservation of Lions Elsewhere in Africa," *South African Journal of Wildlife Research* 42, no. 1 (2012): 11–22, <https://doi.org/10.3957/056.042.0103>.

³² Vivienne L. Williams and Michael J. 't Sas-Rolfes, "Born Captive: A Survey of the Lion Breeding, Keeping and Hunting Industries in South Africa," *PLOS ONE* 14, no. 5 (2019): 2, <https://doi.org/10.1371/journal.pone.0217409>.

³³ Williams and 't Sas-Rolfes, 2.

8.16 The precautionary principle appears to require that the burden of proof is on the proposer of an action to demonstrate that it will have no harmful or irreversible effect.³⁴ Speculating that the industry may serve as a buffer against wild lion exploitation and finding that there is little to no risk of South African wild lions being imperilled by the presence of captive bred lions, does not conform to the precautionary principle.³⁵

8.17 The bottom line is that a *scientific* review would likely have concluded that sufficient warning signs were present to suggest that a quota should *not* be established until more scientific research was available.

9 The 2017 quota and its subsequent iterations are not justified under Section 24 of the Constitution

9.1 At the 2018 parliamentary colloquium, the late Minister Edna Molewa opened her address with an assertion that public representations on the question of the lion bone trade were awash with slanted information.³⁶ The Minister said that Threatened or Protected Species (TOPS) regulations were designed to prevent ‘all malpractices including canned hunting’ but justified lion hunting as ‘part of South Africa’s policy of sustainable utilisation of natural resources contained in the 24th section of the Constitution’.³⁷

9.2 Aside from the fact that there is no distinction in the eyes of the law³⁸ between ‘canned hunting’ and the hunting of captive-bred lions, section 24 of the Constitution does not support the late Minister’s contention. The relevant clause states that everyone has the right to ‘have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that ... promote conservation and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.’

³⁴ Annecoos Wiersema, “Uncertainty, Precaution, and Adaptive Management in Wildlife Trade,” *Michigan Journal of International Law* 36, no. 3 (2015): 375–425, <http://search.proquest.com/docview/1726782679?accountid=12763>.

³⁵ Annecoos Wiersema, “Uncertainty, Precaution, and Adaptive Management in Wildlife Trade,” *Michigan Journal of International Law* 36, no. 3 (2015): 375–425, <http://search.proquest.com/docview/1726782679?accountid=12763>.

³⁶ Portfolio Committee on Environmental Affairs, “Report of the Portfolio Committee on Environmental Affairs on the Colloquium on Captive Lion Breeding for Hunting in South Africa: Harming or Promoting the Conservation Image of the Country, Held on 21 and 22 August 2018, Dated 8 November 2018” (Cape Town: Parliamentary Monitoring Group, 2018), <https://pmg.org.za/tailed-committee-report/3595/>.

³⁷ Portfolio Committee on Environmental Affairs.

³⁸ Supreme Court of Appeal, *SA Predator Breeders Association v Minister of Environmental Affairs* (72/10) ZASCA 151 (29 November 2010) (2010).

9.3 Captive lion breeding and the trophy hunting of captive lions does not promote conservation. Even though SAPA³⁹ and others⁴⁰ have attempted to make the case that captive lions can be reintroduced to the wild, no peer-reviewed science supports this.⁴¹ The 2018 NDF, on which captive lion breeding continues to be justified, did not attempt to make its case in that respect on conservation grounds. SAPA's own lion management plan recognises problems of inbreeding in the industry,⁴² which further undermines the case for direct conservation value.

9.4 The 2018 NDF's assertion that the captive lion breeding industry may serve as a buffer against wild lion exploitation⁴³ - arguably an indirect conservation benefit - also remains speculative at best and ignores the converse warning in the journal article⁴⁴ from which it appears to be derived. Section 24, b (ii), of the Constitution therefore does not support the captive lion breeding industry.

9.5 Neither can the industry be justified under 'ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.' Captive lions are essentially treated as domesticated cattle, which does not secure ecologically sustainable development.⁴⁵ The small private holdings that secure the cats constitute a form of habitat fragmentation that would be resolved if that land were connected to other farms where economically and geographically feasible. This land could then be converted to nature reserves that may be able to support wild-managed or wild lion populations. Such conversion may serve conservation purposes *and* create sustainable wildlife-orientated jobs on a significantly larger scale than the captive breeding industry⁴⁶, which supports a maximum of 1,162 jobs.⁴⁷ Captive lion breeding in no way resembles ecologically sustainable

³⁹ SAPA, "9 Myths about Captive-Bred Lions," South African Predator Association, accessed March 28, 2018, <http://www.sapredators.co.za/p37/fag/9-myths-about-captive-bred-lions.html>

⁴⁰ Jacqueline Abell and David Youldon, "Attending to the 'biological, Technical, Financial and Sociological Factors' of Lion Conservation: A Response to Hunter et Al.," *ORYX* 47, no. 1 (2013): 25–26, <https://doi.org/10.1017/S0030605312001548>.

⁴¹ Luke TB Hunter et al., "Walking with Lions: Why There Is No Role for Captive-Origin Lions Panthera Leo in Species Restoration," *ORYX* 47, no. 1 (2013): 19–24, <https://doi.org/10.1017/S0030605312000695>; Luke TB Hunter et al., "No Science, No Success and Still No Need for Captive-Origin Lion Reintroduction: A Reply to Abell & Youldon," *ORYX* 47, no. 1 (2013): 27–28, <https://doi.org/10.1017/S003060531200155X>.

⁴² SAPA, "Management Plan for Captive Lions: A National Strategy for the Captive Lion (Panthera Leo) Industry in South Africa," 2017, <http://www.sapredators.co.za/images/photos/SAPA-FINAL-MANAGEMENT-PLAN-FOR-CAPTIVE-LIONS-Oct2017.pdf>

⁴³ Scientific Authority of South Africa, Non-detriment finding assessment for Panthera leo (African lion), 2018.

⁴⁴ Lindsey et al., "Possible Relationships between the South African Captive-Bred Lion Hunting Industry and the Hunting and Conservation of Lions Elsewhere in Africa."

⁴⁵ It is important to note an assumption here that simply because land is given over to various activities associated with captive lion breeding, it somehow constitutes ecological sustainability. That may be true in the case of hunting farms, but to say that the conservation of the land is *necessarily* dependent on hunting captive-bred lions is untested and may prove untrue.

⁴⁶ Ross Harvey, "The Economics of Captive Predator Breeding in South Africa" (Cape Town, 2018), https://saiia.org.za/wp-content/uploads/2018/08/Harvey_180818_WorkingPaper_PredatorBreedingSA.pdf.

⁴⁷ Peet Van Der Merwe et al., "The Economic Significance of Lion Breeding Operations in the South African Wildlife Industry," *International Journal of Biodiversity and Conservation* 9, no. 11 (2017): 314–22, <https://doi.org/10.5897/IJBC2017.1103>.

development or conservation advancement. It therefore cannot pass muster under Section 24 of the Constitution.

9.6 As the chairperson of the parliamentary portfolio committee remarked at the 2018 colloquium, it was increasingly dubitable that South Africa could justify its captive lion breeding industry under the doctrine of 'sustainable use' despite the country's general support of that principle. This was especially the case if Safari Club International, the Dallas Safari Club, the IUCN,⁴⁸ the Council for Game and Wildlife Conservation, and the Custodians of Professional Hunting in Southern Africa – all organisations which subscribe to sustainable use – condemned the industry.⁴⁹

9.7 A further consideration in this respect is that the right expounded in section 24 has been interpreted by the Constitutional Court as being connected to animal welfare. Based on the integrative approach, the ruling 'correctly links the suffering of individual animals to conservation and illustrates the extent to which showing respect and concern for individual animals reinforces broader environmental protection efforts.'⁵⁰ The abuses of animal welfare in the industry are well documented, and numerous charges have recently been laid that attest to this reality.⁵¹

9.8 It is inconceivable that, in light of the above argument and the Constitutional Court ruling, the Minister, the Scientific Authority and the DEFF would continue to justify the industry under the principles enshrined in Section 24 of our Constitution.

9.9 In addition the captive big cat industry infringes on other constitutional rights and is also negatively impacting on tourism and the many people who are reliant on the tourism industry as a means to survive.

10 Procedural and substantive problems with the consultation process

10.1 The last point mentioned above is reinforced by the fact that no due process appears to have been followed in expanding the quota from 800 in 2017 to 1,500 in 2018. At the 2019 public stakeholder consultation meeting held on 4 June 2019, Mr Mpho Tjiane explained that while the 800 skeleton quota was meant to reflect available supply, the department had underestimated and it turned out that the volume which left the

⁴⁸ International Union for the Conservation of Nature, "Motion 009: Terminating the Hunting of Captive-Bred Lions (*Panthera Leo*) and Other Predators and Captive Breeding for Commercial, Non-Conservation Purposes," 2016, <https://portals.iucn.org/congress/motion/009>.

⁴⁹ Portfolio Committee on Environmental Affairs, "Report of the Portfolio Committee on Environmental Affairs on the Colloquium on Captive Lion Breeding for Hunting in South Africa: Harming or Promoting the Conservation Image of the Country, held on 21 and 22 August 2018, Dated 8 November 2018."

⁵⁰ J Khampepe, "National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another [2016] ZACC 46," 2016, http://www.saflii.org/za/cases/ZACC/2016/46.html#_ftn91.

⁵¹ Amy P Wilson, "South Africa's Fallen Pride: How Law and Government Fail to Protect Lions," *The Revelator*, May 23, 2019, <https://therevelator.org/lion-hunting-south-africa/>

country in 2016 was closer to 1,800 than 800, hence the expansion in 2018. He also explained that only 798 skeletons were actually exported, all to Vietnam, in 2018.

10.2 The 2018 quota of 1,500 was eventually reduced back to 800 after a public outcry and the 2018 parliamentary colloquium, the outcome of which was a parliamentary report⁵² that explicitly resolved that the department should revise the quota. But both the 1,500 figure and the revision back to 800 were determined without public consultation or the requisite procedural processes as required.

10.3 The determination of a 2019 quota appears to be a foregone conclusion. The department is continuing discussions on the matter as if the parliamentary report did not explicitly call for a review of legislation *with a view to shutting the industry down*. A continued non-zero quota is incompatible with that particular instruction. Moreover, the pending NSPCA court case against the government, which argues that the proliferation of the industry, actively supported by the state through a non-zero quota, is causing serious harm to captive lions, which, according to the Constitutional Court ruling of 2017, is a *conservation* issue, as welfare is inviolably linked to conservation.

10.4 Perhaps of greatest concern is the explicit and unjustified rejection of a number of reports that have been produced.

10.5 The EMS/BAT report⁵³, which provides hard evidence of connections between South African lion bone traders and international criminal syndicates, was dismissed as not being of significant concern. We urgently appeal that the criminal connections would be recognised as fact. The idea that a legal quota will prevent such connections is naïve in the extreme. A parallel illegal market for lion bones already exists, and a quota only serves to offer a laundering channel for illegal supply to enter the market more easily. [See Appendix 2: The Extinction Business: South Africa's Lion Bone Trade.](#)

10.6 A report produced by the South African Institute of International Affairs⁵⁴ that quantifies the opportunity costs associated with the industry was similarly not referenced on 4 June 2019, though it and the EMS/BAT report carried significant weight in Parliament's resolutions to terminate the industry. [See Appendix 3: The Economics of Captive Predator Breeding in South Africa](#)

10.7 The department appears committed to the view that establishing a High-Level Panel will address the parliamentary report's resolutions, but the terms of reference for this panel have not yet been made publicly available and the process of appointment is not

⁵² Portfolio Committee on Environmental Affairs, "Report of the Portfolio Committee on Environmental Affairs on the Colloquium on Captive Lion Breeding for Hunting in South Africa: Harming or Promoting the Conservation Image of the Country, Held on 21 and 22 August 2018, Dated 8 November 2018" (Cape Town: Parliamentary Monitoring Group, 2018), <https://pmg.org.za/taled-committee-report/3595/>.

⁵³ EMS Foundation and Ban Animal Trading, "The Extinction Business: South Africa's Lion Bone Trade," 2018, <https://emsfoundation.org.za/wp-content/uploads/THE-EXTINCTION-BUSINESS-South-Africas-lion-bone-trade.pdf>

⁵⁴ Ross Harvey, "The Economics of Captive Predator Breeding in South Africa" (Cape Town, 2018), https://saiia.org.za/wp-content/uploads/2018/08/Harvey_180818_WorkingPaper_PredatorBreedingSA.pdf.

transparent. Qualifying criteria of being committed to ‘sustainable use’ is a smokescreen, as that term is highly contested, undefined and the interpretation of which by DEFF is highly problematic.

10.8 This raises a further process point that the SANBI/DEFF is only going to consider what it deems to count as *scientific* information or articles that have appeared in peer-reviewed journals as their gold standard for determining a quota. Most peer-reviewed articles in this domain rely on reports⁵⁵ that do not appear in the published academic literature per se. These reports also inform CITES. Moreover, if the SANBI/DEFF is going to consider peer-reviewed papers, then we urge all members to read the articles⁵⁶ that caution against trying to farm one’s way out of a trade-induced problem. Others strongly caution against the continuation of captive lion breeding specifically.⁵⁷

10.9 NGOs and civil society play a pivotal role in informing public policy decisions and these cannot merely be dismissed on the grounds that the information does not appear in peer-reviewed journals. Scientific decision-making considers all the available information. DEFF and SANBI need to provide further information as to where they derive the criteria from by which they will evaluate public submissions on this question.

10.10 This is especially urgent because determining a quota is not merely a CITES undertaking that occurs in a vacuum. It is a national policy issue, and as such must follow the principles outlined in NEMBA, especially Chapter 3, section 39, 1(a) which states that the Biodiversity framework must: ‘provide for an integrated, co-ordinated and uniform approach to biodiversity management by organs of state in all spheres of government, non-governmental organisations, the private sector, local communities, and other stakeholders.’⁵⁸ Therefore all inputs are to be taken seriously. While it is

⁵⁵ Vivienne L Williams et al., “Bones of Contention: An Assessment of the South African Trade in African Lion Panthera Leo Bones and Other Body Parts,” 2015, https://www.wildcru.org/wp-content/uploads/2015/07/Bones_of_contention.pdf; Willow Outhwaite, “The Legal and Illegal Trade in African Lions: A Study in Support of Decision 17.241 E” (Geneva, 2018), <https://cites.org/sites/default/files/eng/com/ac/30/Inf/E-AC30-Inf-15x.pdf>.

⁵⁶ Laura Tensen, “Under What Circumstances Can Wildlife Farming Benefit Species Conservation?,” *Global Ecology and Conservation* 6 (2016): 286–98, <https://doi.org/10.1016/j.gecco.2016.03.007>; Richard Damania and Erwin H. Bulte, “The Economics of Wildlife Farming and Endangered Species Conservation,” *Ecological Economics* 62, no. 3–4 (2007): 461–72, <https://doi.org/10.1016/j.ecolecon.2006.07.007>; Brant Abbott and G. Cornelis van Kooten, “Can Domestication of Wildlife Lead to Conservation? The Economics of Tiger Farming in China,” *Ecological Economics* 70, no. 4 (February 2011): 721–28, <https://doi.org/10.1016/j.ecolecon.2010.11.006>; Brian Gratwicke et al., “The World Can’t Have Wild Tigers and Eat Them, Too,” *Conservation Biology* 22, no. 1 (2008): 222–23, <https://doi.org/10.1111/j.1523-1739.2007.00802.x>; Ross T. Pitman et al., “The Conservation Costs of Game Ranching,” *Conservation Letters* 10, no. 4 (2017): 402–12, <https://doi.org/10.1111/conl.12276>.

⁵⁷ Richard A Schroeder, “Moving Targets: The ‘Canned’ Hunting of Captive-Bred Lions in South Africa,” *African Studies Review*, 2018, 1–25, <https://doi.org/10.1017/asr.2017.94>; Hans Bauer et al., “Lions in the Modern Arena of CITES,” ed. Daniel Miller, *Conservation Letters*, no. January (2018): 1–8, <https://doi.org/10.1111/conl.12444>; Hodgetts et al., “Improving the Role of Global Conservation Treaties in Addressing Contemporary Threats to Lions.”

⁵⁸ Republic of South Africa, “National Environmental Management: Biodiversity Act of 2004,” Pub. L. No. 10, National Environmental Management: Biodiversity Act (2004), 42, <https://www.sanbi.org/wp-content/uploads/2018/04/biodiversityact2004pdf.pdf>

clear from NEMBA that the state must enact policy that is consistent with the international treaties that it is a signatory to, it must not do this in a narrow way. It is explicitly required to reflect regional cooperation. The fact that the 2018 NDF gives no consideration to the potential impact of South Africa's captive lion industry on endangered lions in the region appears to be at odds with this requirement.

10.11 The position taken by DEFF/SANBI towards stakeholder input is evidently biased, exclusive (non-integrative) and instrumentalist. NEMBA's own definition of 'sustainable' is the 'use of such resource in a way and at a rate that would not lead to its long-term decline; would not disrupt the ecological integrity of the ecosystem in which it occurs; and would ensure its continued use to meet the needs and aspirations of present and future generations of people'.⁵⁹ The underlying ideology is utilitarian, willing to sacrifice welfare and ecological integrity in the broader system on the altar of vested commercial interests. Ignoring the constitutional court's ruling that welfare and conservation are inextricably linked shows the SANBI/DEFF approach to privilege dominant and powerful interests, such as those of traders and hunters, thereby excluding and marginalising other stakeholders, non-human wild animals and the ethics and duty of care. DEFF's unsustainable and harmful policies are ensuring that our wildlife heritage is being prostituted instead of being protected. This is leading to ecosystem decline. Not only wild animals, but all South Africans will have to deal with the consequences thereof.

11 The 2018 report compiled by the Parliamentary Portfolio Committee on Environmental Affairs (PCEA) explicitly calls for a review of all policy and legislation pertaining to captive predator breeding with a view to shutting the industry down, and a legal export quota for derivative parts is incompatible with such a view.

11.1 The DEA was instructed to report quarterly to Parliament on its progress in respect of the above resolution. In its first report of January 2019, it revealed that the industry is still thriving. The department attempted to defend the industry by arguing that it contributes to fulfilling its mandate to conserve biodiversity, enforce international agreements and protect whole ecosystems. This is a flimsy defence, as shown above.

11.2 The DEA also failed to mention, in January 2019, that the explicit resolution from parliament instructed it to conduct a review of legislation with a view to *shutting the industry down*. It further seems to have conveniently overlooked the IUCN's explicit 2016 motion⁶⁰ to compel the South African government to terminate the industry. But it has at least proposed an amendment to regulations covering threatened or protected species that would see issuing authorities – the Provincial Environmental Departments – refusing to grant a permit for breeding listed large predators unless they could 'demonstrate

⁵⁹ Ibid., 22.

⁶⁰ International Union for the Conservation of Nature, "Motion 009: Terminating the Hunting of Captive-Bred Lions (*Panthera Leo*) and Other Predators and Captive Breeding for Commercial, Non-Conservation Purposes."

conservation value'. What's unclear, though, is how such value will be identified or verified.

11.3 In respect of the audit it was instructed to carry out, the Department admitted that it still does not know exactly how many breeding facilities there are, or how many big cats are being held in captivity. It inspected a total of 227 facilities between 2015 and 2018, 88 of which (38%) were found to have violated existing regulations. But the department has re-issued permits for most of these facilities. It did not provide reasons for doing so, which provides further evidence of the lack of governance oversight of the industry.⁶¹ As a case in point of the institutional black hole in which the industry operates, with no government department apparently willing to take responsibility for welfare issues, the NSPCA had to lay charges against a member of the South African Predator Association (SAPA) Council, Jan Steinman, for the deplorable neglect of 108 lions on his farm.⁶² SAPA purportedly works to maintain a 'healthy and sustainable predator breeding and hunting industry in South Africa.'

11.4 For the above reason alone, a quota should not have been established. You cannot regulate quantities that are unknown and clearly misgoverned. A quota is typically established on the premise of a 'maximum sustainable yield' (MSY), which requires quantities to be known and future survival probability to be considered before a relevant 'total allowable off-take' can be determined. If this yield cannot be accurately and reliably measured, then the precautionary principle suggests that no quota should be established.

11.5 The department is in the process of establishing a high-level panel to conduct a more comprehensive legislative and policy review of the industry, though its operating terms have not yet been established. The bottom line is that establishing a new quota is fundamentally incompatible with moving towards terminating the industry, which – in light of the extensive evidence provided at the parliamentary hearing – is the only feasible governance option for South Africa.

12 The rule of law is being flouted

12.1 The 2018 *Extinction Business* Report highlighted that the premises on which a quota was established (in 2017) were dubitable, especially given the documented, verified links between South African lion bone traders and known criminal syndicates.

⁶¹ Ross Harvey, "South Africa Kicks the Can down the Road on Captive Predator Breeding," *The Conversation*, 2019, <https://theconversation.com/south-africa-kicks-the-can-down-the-road-on-captive-predator-breeding-113853>.

⁶² Brigit Katz, '108 Neglected Lions Found on South African Breeding Farm', *Smithsonian*, 10 May 2019, <https://www.smithsonianmag.com/smart-news/108-neglected-lions-found-south-african-breeding-farm-180972146/>, accessed 11 June 2019.

12.2 The links between lion bone traders and known criminal syndicates and illicit value chains are a major source of concern and suggest that the quota should be abandoned.

12.3 Part of the logic for allowing and maintaining a quota was to avoid the development of a parallel illegal market. This argument was reiterated at the consultation meeting on 4 June 2019. One part of the research commissioned by SANBI, recently published, notes that some interviewees (members of the captive lion breeding industry) had ‘expressed concerns that some frustrated aspiring sellers might resort to other (potentially illegal) trade channels. All these factors point to a distinct threat of the development of a parallel illegal market.’⁶³ It further states that some respondents had at some stage sold skeletons directly via non-South African traders in Southeast Asia. The authors took this as an indication ‘of the potential for parallel illegal markets to evolve and the potential to ‘launder’ illegal products.’⁶⁴ They write further: ‘The fact that a large proportion of respondents have stated that they will seek ‘other markets’ for lion bones and other body parts signals the potential for a parallel illegal market to develop if quotas are viewed by industry participants as excessively restrictive.’⁶⁵ The authors are clearly suggesting that closing the legal trade or narrowing the quota will precipitate the development of a parallel illegal market.

12.4 There are two serious problems with this line of argument. First, it implies that the quota should remain as some form of insurance in case industry members carry out the threat of resorting to illegality. This is not science, but rather a case of being held to ransom by the vested interests of a handful of lion breeders who seem willing to engage in illegal activity and bring South Africa’s conservation reputation into further disrepute. Second, it ignores the very obvious links to parallel illegal markets that already exist, of serious concern given that South Africa’s (legal) lion bones are invariably being sold as tiger bones in an illegal market.

12.5 As mentioned above, in the initial communication of the quota decision submitted to the CITES secretariat in June 2017, the DEA cited a 2015 TRAFFIC paper⁶⁶ in support of establishing the quota. That paper recognised that illegal activities were already present in the midst of legal sales of lion bone from South Africa. It noted that since it was unlikely that the trade in lion bones would be banned in South Africa, or ‘that syndicates, traders and Southeast Asian consumers will cease consumptive practices involving lions and tigers, the pragmatic blanket recommendation is that measures currently in place to impede opportunities for illegal activities are strengthened across the entire supply chain from lion breeding to skeleton exports.’⁶⁷ That paper stated that its authors had not clearly established what happens to lion bones once they reached Asia, and that this was worthy of further investigation. It did, however, explicitly state that the lion bone trade in South

⁶³ Williams and ‘t Sas-Rolfes, “Born Captive: A Survey of the Lion Breeding, Keeping and Hunting Industries in South Africa,” 16.

⁶⁴ Williams and ‘t Sas-Rolfes, 19.

⁶⁵ Williams and ‘t Sas-Rolfes, 29.

⁶⁶ Williams et al., “Bones of Contention: An Assessment of the South African Trade in African Lion Panthera Leo Bones and Other Body Parts.”

⁶⁷ Williams et al., “Bones of Contention : An Assessment of the South African Trade in African Lion Panthera Leo Bones and Other Body Parts,” xii.

Africa was located within a network of syndicates that operate ‘both illegally and legally’.⁶⁸ ‘The illegal trade in Lions in South Africa usually involves restricted activities for which offenders are not in possession of permits to breed, keep, hunt, catch, sell, convey or export live animals or parts thereof.’⁶⁹ It was therefore already patently clear that a parallel illegal trade existed *before* the quota was established in 2017, while the trade in lion bones in South Africa was legal, and the establishment of a restrictive quota (or even an expansive quota) was not likely to change this. The laundering mechanisms were already well established, and it appears that the quota has only strengthened this. To paint the quota as a preventive mechanism against illegal parallel markets therefore appears to be disingenuous, especially given that one of the authors of the 2019 study⁷⁰ was also one of the same authors of the 2015 Traffic report.

12.6 Evidence of this parallel market was further explicitly noted in the parliamentary colloquium of 2018. The final report noted that the EMS/BAT study⁷¹ revealed, ‘how the minister, her department and conservation agencies support and grow a trade, which has strong links to international criminal networks, is providing a legal channel for the trafficking of illegal big cat parts, and is fuelling the demise of wild big cat populations.’⁷²

12.7 The link to organised crime is important for the theoretical economics that should inform policy decisions pertaining to a legal trade. By way of example, consider this: In June 2011, two Thai men (Phichet Thongpai and Punitak Chunchom) were arrested for possession of lion bones. They worked for the Xaysavang Export-Import Company, based in Lao P.D.R., and confessed that the main business of the company was to trade in lion bones, supplied by the captive breeding industry. A month later, Chumlong Lemtongthai, a Thai national who worked for Xaysavang, was arrested at the same residence. Lemtongthai’s record of rhino poaching is well recorded in the literature. While Lemtongthai was sentenced to 40 years’ imprisonment for his role in the rhino horn trade, the charges against Chunchom were dropped. The court case revealed that Xaysavang Company traded in rhino horn, lion bones, teeth and claws.⁷³ In 2013, the U.S. government offered a \$1 million reward for the dismantling of the Xaysavang network, which was said to be Asia’s largest wildlife crime syndicate.⁷⁴ Lemtongthai told the court that Marthinus Philippus (Marnus) Steyl – a former member of the SAPA council – had

⁶⁸ Williams et al., “Bones of Contention : An Assessment of the South African Trade in African Lion Panthera Leo Bones and Other Body Parts.”

⁶⁹ Williams et al.

⁷⁰ Williams and ‘t Sas-Rolfes, “Born Captive: A Survey of the Lion Breeding, Keeping and Hunting Industries in South Africa.”

⁷¹ EMS Foundation and Ban Animal Trading, “The Extinction Business: South Africa’s Lion Bone Trade,” 2018, <http://emsfoundation.org.za/wp-content/uploads/THE-EXTINCTION-BUSINESS-South-Africas-lion-bone-trade.pdf>

⁷² Portfolio Committee on Environmental Affairs, “Report of the Portfolio Committee on Environmental Affairs on the Colloquium on Captive Lion Breeding for Hunting in South Africa: Harming or Promoting the Conservation Image of the Country, Held on 21 and 22 August 2018, Dated 8 November 2018.”

⁷³ Vivienne L Williams et al., “A Roaring Trade? The Legal Trade in Panthera Leo Bones from Africa to East-Southeast Asia,” *PLoS ONE* 12, no. 10 (2017): 1–22, <https://doi.org/10.1371/journal.pone.0185996>.

⁷⁴ Thomas Fuller, “U.S. Offers Reward in Wildlife-Trade,” *The New York Times*, November 13, 2013, <https://www.nytimes.com/2013/11/14/world/asia/us-to-offer-reward-in-wildlife-trafficking-fight.html>.

offered to supply bones to him. ‘Two other council members in 2016/17 had also previously been charged in connection with illegal rhino hunting and associated activity.’⁷⁵ Steyl is indeed in the business of trading lion bones, and sought a court order against the Free State Department of Economic Development, Tourism and Environmental Affairs on 23 June 2017 to compel them to allow him to export bones even prior to the finalisation of the export quota (a commitment made by South Africa at the 17th CITES Conference of the Parties in 2016).⁷⁶ Part of Steyl’s court documents was his application for a permit to export lion bones to Somok Phaimany. Phaimany and Steyl has known links to Vixay Keosavang, the owner of Xaysavang, an importer of lion bones.⁷⁷

12.8 The EMS/BAT *Extinction Business* report provides hard evidence of the strong connection between international criminal syndicates, rhino horn syndicates and the trade in South African lion bones (see Appendix 2: <https://emsfoundation.org.za/wp-content/uploads/THE-EXTINCTION-BUSINESS-South-Africas-lion-bone-trade.pdf>). Operating a legal quota only provides cover for such activity, the very opposite of operating as a preventive mechanism for such parallel trade.

12.9 According to Chapter 2, section 24 of the Bill of Rights in the *Constitution of the Republic of South Africa* (Act No. 108 of 1996), “everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations...” The National Development Plan (NDP) supports this notion as there is a need for the country to “protect the natural environment in all respects...” South Africa is also party to several international multilateral environmental agreements, among others the Convention on Biological Diversity (CBD) and CITES, which oblige the country to conserve its natural heritage and ensure that international trade in listed wildlife species does not threaten their survival in the wild. South Africa, therefore, not only has a national obligation, but also an international obligation, to address wildlife trafficking that negatively impacts on its precious natural heritage.

12.10 The disruption of criminal networks has been acknowledged as being key to ending poaching and transnational wildlife crime. South Africa’s law enforcement have acknowledged that the issue of wildlife trafficking has evolved into a national security threat. However, as far as we are aware South Africa’s National Integrated Strategy to Combat Wildlife Trafficking (NISCWT) has not yet been implemented. How can the Minister justify and allow this trade until critical law enforcement measures and strategies have been put in place that aim to deal with organised and globalised wildlife crime issues.

⁷⁵ Born Free Foundation, “Cash Before Conservation: An Overview of the Breeding of Lions for Hunting and Bone Trade” (Horsham, 2018), 6, http://www.bornfree.org.uk/fileadmin/user_upload/files/reports/Born_Free_Lion_Breeding_Report.pdf

⁷⁶ EMS Foundation and Ban Animal Trading, “The Extinction Business: South Africa’s Lion Bone Trade,” 40.

⁷⁷ EMS Foundation and Ban Animal Trading, 45.

13 Dangerous environment and risks to human health

- 13.1 Apart from the obvious welfare and ethical issues associated with slaughtering lions and other big cats for their bones, the risks to human health associated with the cruel and unregulated (and cannot be regulated) practices of the captive lion industry are well known – the transference of lion TB to humans, for instance, is a significant risk factor in the process of bone production.
- 13.2 In particular, we wish to point out that – with a deterioration in market conditions for captive hunting and a growing demand for derivative lion parts in Asia⁷⁸ – slaughtering lions with teratogenic anaesthetic can be lethal if it enters the bloodstream of humans and similarly lethal to animals who feed on the carcasses of darted animals. Teratogenic agents can also cause abnormalities in physiological development during pregnancy.⁷⁹
- 13.3 Lions are also not included (and should not be) in the Meat Safety Act, 40 of 2000, which again raises governance questions.
- 13.4 Given that it is well known that the meat of slaughtered lions is given to communities for consumption, it is difficult to see how killing captive-bred lions for the bone trade can be justified under community upliftment or even ‘sustainable use’. The only ‘scientific’ paper that argues that the industry is critical for rural development is one of the worst pieces of academic work that has ever been published in a peer-reviewed journal. Moreover, it completely fails to mention the potential costs and dangers to marginalised and exploited ‘game farm’ workers involved in the slaughter for meat or bones.⁸⁰ As Brandt has pointed out, generally the wildlife industry violates the rights of black people and farm workers are disproportionately exposed to risks while living and working with dangerous animals like lions. In addition generally they do not receive employment benefits, such as medical insurance nor do they have the means to protect themselves from harm, disability or death.⁸¹
- 13.5 Beyond this, the consumption of the bones in Asian markets or for *muti* use in African markets may expose consumers to the same risks.
- 13.6 South Africa may be exporting poisonous products and it does not appear that the necessary health and safety governance measures are being deployed to prevent this. Again, the precautionary principle strongly suggests that trade in captive lion parts should be entirely rescinded given the overwhelming health and conservation risks that have been outlined throughout this submission.

⁷⁸ Williams and ‘t Sas-Rolfes, “Born Captive: A Survey of the Lion Breeding, Keeping and Hunting Industries in South Africa.”

⁷⁹ Carel Zietsman, “Letter to the Chairperson” (Zietsman - Horn Attorneys, n.d.).

⁸⁰ Peet Van Der Merwe et al., “The Economic Significance of Lion Breeding Operations in the South African Wildlife Industry,” *International Journal of Biodiversity and Conservation* 9, no. 11 (2017): 314–22, <https://doi.org/10.5897/IJBC2017.1103>.

⁸¹ Femke Brandt *Trophy Hunting in South Africa: Risky Business for Whom?* DAILY MAVERICK (17 Nov 2015) http://www.dailymaverick.co.za/opinionista/2015-11-17-trophy-hunting-in-south-africa-risky-business-for-whom/?utm_source=Daily+Maverick+Mailer#.VqCRDLZ97IV

Conclusion

This submission has clearly shown that the grounds for establishing a quota in 2017 were not scientific. It further shows that the quota was established upon instruction from CITES, but likely violated Article IV (2) of CITES itself in the process. Beyond this, it has shown that the quota cannot reasonably be justified under the banner of Section 24 of the Constitution.

Extractive, exploitative and consumptive use of captive bred lions serves no conservation purpose and cannot meaningfully be said to contribute to ecologically sustainable development, especially given the likely opportunity costs currently associated with the practice. The DEFF appears committed to ignoring the parliamentary report that calls for an ultimate termination of the industry, renewing licences without substantiating reasons for those who had violated their terms.

It is difficult to understand how South Africa can continue operating a quota when the state of governance of the industry is so evidently sub-optimal. There appears to also be a gratuitous overlooking of the facts, considering that a parallel illegal market already exists and a legal trade through a quota is not likely to prevent this illegal market from proliferating, and may even exacerbate it. The links between South African lion bone traders and international criminal syndicates that destroy our wildlife are well established. Establishing and maintaining a quota, given this evidence, appears to be wilfully naïve at best.

It is unlikely that the industry provides a buffer against wild lion exploitation – that it *may* do so is mere speculation. What is less speculative and far more grounded in evidence is that a parallel illegal market already exists, and the presence of a legal trade is a convenient cover under which to launder illegally acquired lion bones that then masquerade as tiger bones in illicit Asian markets, placing further pressure on wild tigers (and likely wild lions in areas where they are already under threat).

For these reasons, we submit that the DEFF adhere to parliament's instruction to review legislation with a view to shutting the industry down as soon as possible. Operating a lion export skeleton quota is incompatible with such an end. It is therefore our recommendation that the quota be rescinded to zero, and credible measures be taken to terminate the industry in its entirety, as per Motion 009 of the IUCN in 2016.

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