



SUBMISSION IN RESPECT OF THE
DRAFT REVISED NATIONAL BIODIVERSITY FRAMEWORK

3 MAY 2021



To: **The Director-General**
c/o **Department of Forestry, Fisheries and the Environment**
(hereinafter the “**Department**” or “**DFFE**” or “**DEA**”)

For the Attention of: **Ms Pamela Kershaw**
Per e-mail: pkershaw@environment.gov.za

3 May 2021

Dear Honourable Representatives,

RE: COMMENTS ON SOUTH AFRICA’S DRAFT REVISED NATIONAL BIODIVERSITY FRAMEWORK (“NBF”) 2019 - 2024

Please find herewith the submission (the “**Submission**”) by the EMS Foundation (“**EMS**”) and Animal Law Reform South Africa (“**ALRSA**”) (collectively, “**we**” / “**us**”) in respect of the call for submissions in GN 171 published in *Government Gazette* number 44229 of 5 March 2021 in respect of South Africa’s Draft Revised National Biodiversity Framework Published for Public Comment in Terms of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (hereafter the “**NBF**”).

Kindly confirm receipt of this Submission and address further correspondence to the email addresses: michele@emsfoundation.org.za and amywilson@animallawreform.org.

We look forward to receiving a response to our Submission and are available to engage on any queries, comments, concerns which you may have in respect of the Submission.

Disclaimers

Please note that this Submission is non-exhaustive and does not represent all the responses or objections to or comments on the issues and matters raised herein. We reserve the right to provide any further or additional information on aspects raised herein or in respect of the NBF and related subjects.

The majority of this Submission was prepared prior to the release of the High Level Panel Report on 2 May 2021¹ (hereinafter the “**HLP Report**”). Accordingly, certain issues contemplated herein may have additional considerations in light of such Report. Due to the timing, we have not been able to properly review, evaluate and include all of these.

The views expressed herein are those of the two organisations and do not necessarily represent those of every individual director, member, employee, representative, volunteer, affiliate or others of either EMS and/or ALRSA.

We have attempted to be as comprehensive as possible, given the time, resources and other relevant factors and constraints, however we may not have responded or included each and every relevant consideration.

¹ https://www.environment.gov.za/sites/default/files/reports/2020-12-22_high-levelpanel_report.pdf



We have further attempted to reference as footnotes or hyperlink the resources relied upon for this submission. Should you require any further information in respect of these or the Submission more generally, we are happy to provide these.

We reserve any and all rights, remedies and actions available to us.

Organisational Background and Declaration of Interest

This Submission comes from two registered South African non-profit organisations which have a substantial interest in the issues to be considered by the Department. We have, for years, consistently expressed interest in these issues to DFFE, other government departments, NGOs, the South African public and other stakeholders – both privately and within the public domain.

We have furthermore requested engagement with and feedback from the relevant authorities in respect thereof. We have provided various formal submissions, sent letters, emails, and other correspondence, attended presentations and meetings, and otherwise engaged on these matters (where such engagement has been possible). Both organisations are interested stakeholders and representatives of vulnerable populations within South Africa, including human as well as nonhuman animals. Both organisations have, within their core focus, concepts of social justice and appreciate the need for intersectionality in their approaches.

EMS Foundation²

The EMS Foundation (South Africa) was established in November 2016. As our Foundation was established for public benefit purposes we are a Not for Profit Organisation (NPO) (registration number: 168-304NPO) and Public Benefit Organisation (PBO) with section 18(a) status. (PBO Reference Number: 930053286).

Our key purpose is to alleviate and end suffering, raise public awareness and lobby and empower, provide dignity and promote the rights and interests of vulnerable groups, particularly children, the elderly and wild animals.

The EMS Foundation is a South African based social justice NGO with the purpose of achieving lasting solutions, alleviating and ending suffering, raising public awareness and providing dignity through supporting and sustaining humane solutions, interventions and research for the protection of children, the Aged and wildlife.

Animal Law Reform South Africa³

Animal Law Reform South Africa (“ALRSA”) is a non-profit company and a registered NPO (Number 238-234 NPO).

ALRSA is composed of compassionate legal professionals and envisages a society and legal system that adequately protects both humans and nonhuman animals.

² EMS Foundation Website: <https://emsfoundation.org.za/>

³ Animal Law Reform South Africa Website: <https://www.animallawreform.org/>



We work on connecting three core focus areas: Animal well-being, Social Justice and Law. We focus on a few key areas that we believe will bring about the most change. These focus areas include: Legislative and Policy Reform; Litigation and Legal Services and Education and Research.

Networks, Fora and Involvements

In addition to our individual organisational work, each of EMS Foundation and ALRSA are founding members of the following relevant bodies:

1. Wildlife Animal Protection Forum South Africa (“WAPFSA”)⁴
2. Pro- Elephant Network⁵
3. ALRSA is a member of the Lion Coalition⁶

Our individual members, founders and directors of our organisations have collectively decades of experience working on matters relating to law; human rights; animal welfare; conservation; international and foreign relations and various other relevant experience.

We are thus extremely well placed to not only make this Submission but to engage on matters in respect of the National Biodiversity Framework. We welcome the opportunity to make such Submission and look forward it being properly considered by the Department more broadly.

We look forward to engaging further on the issues contained herein.

Yours sincerely,

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⁴ Wildlife Animal Protection Forum South Africa Website: <http://wapfsa.org/>

⁵ Pro- Elephant Network Website: <http://www.proelephantnetwork.org/>

⁶The Coalition to Stop the Captive Breeding and Keeping of Lions and Other Big Cats for Commercial Purposes (*aka* Lion Coalition). Website: <https://lioncoalition.org/>

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0. EXECUTIVE SUMMARY

The National Biodiversity Framework (“**NBF**”) is a legislative framework with the overall premise of the coordination and alignment of efforts of various organisations and individuals involved in the conservation and management of South Africa’s biodiversity (whether it be land, marine or other aquatic life). The NBF is created in order to fulfil the requirements laid out in terms of section 38 and section 39 of National Environmental Management: Biodiversity Act, 10 of 2004 (“**NEMBA**” or the “**Biodiversity Act**”)⁷.

As a result, the NBF falls within the parameters of Section 24 of Chapter 2 of the Constitution,⁸ and other relevant rights impacted, while being subjected to other relevant considerations such as the provisions of just administrative action (Section 33 of the Constitution) and legislation such as the Promotion of Access to Information Act (“**PAIA**”)⁹ and Promotion of Administrative Justice Act (“**PAJA**”)¹⁰. Recognising the NBF as a short to medium-term coordination tool for the strategic objectives of the NSAP and bearing in mind that this document will provide the basis for conservation measures for the next five years, critical examination of the NBF is required. It is on this basis that we present our Submission in respect to what we believe are issues, gaps shortfalls of and relevant considerations in respect of the current draft version of the revised NBF.

The Submission is 62 pages, divided into two focal Sections, with one Appendix. It deals with selected issues relating to the NBF, the Department and related matters.

It is noteworthy to mention that the NBF is primarily guided and informed by South Africa’s long-term strategy for ensuring sustainable management, use and conservation of biodiversity, the National Biodiversity Strategy and Action Plan (“**NBSAP**”)¹¹ [2015]; the National Biodiversity Assessment (“**NBA**”)¹² [2016], which provides indicators and spatial assessment of ecosystems and species; and the National Protected Areas Expansion Strategy (“**NPAES**”)¹³ [2018], which is the long-term strategy for guiding cost-effective expansion of the country’s protected area estate. As a result, reference to these “**informants**” will be made throughout this submission.

⁷ National Environmental Management: Biodiversity Act, 10 of 2004 (NEMBA). National Department of Agriculture Website: <https://www.nda.agric.za/docs/NPPOZA/NEMBA.pdf>

⁸ Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the “**Constitution**”). Government Website: <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>.

⁹Promotion of Access to Information Act, 2000 (No. 2 of 2000). <https://www.ecolex.org/details/legislation/promotion-of-access-to-information-act-2000-no-2-of-2000-lex-faoc093032/>

¹⁰Promotion of Administrative Justice Act, 2000 (No. 3 of 2000): <https://www.ecolex.org/details/legislation/promotion-of-administrative-justice-act-2000-no-3-of-2000-lex-faoc093033/>

¹¹ South Africa’s 2nd National Biodiversity Strategy and Action Plan 2015 – 2025: https://www.biodiversityfinance.net/sites/default/files/content/knowledge_products/2015%20National%20Biodiversity%20Strategy%20and%20Action%20Plan%20%28Final%29.pdf

¹²See <https://www.csir.co.za/national-biodiversity-assessment> and <http://biodiversityadvisor.sanbi.org/planning-and-assessment/national-biodiversity-assessment-nba-2018/> respectively.

¹³ See <http://extwprlegs1.fao.org/docs/pdf/saf191202.pdf> and <http://biodiversityadvisor.sanbi.org/wp-content/uploads/2016/08/67-Holness-NPAES2016.pdf> respectively.

The NBF notes that its' two pronged approach includes the following two pronged approach, we have attempted to focus our comments on these:

- *providing an overview of key national strategies, frameworks and systems that guide the work of the biodiversity sector, and indicating their relevance to the strategic objectives, outcomes and priority activities of the NBSAP. This is complemented by an overview of key, national-level co-ordination mechanisms and communities of practice through which sector role-players can coordinate their work and exchange information and experiences.*
- *identifying a set of interventions (called 'accelerators') that can be used to accelerate implementation of high-level priorities of the NBSAP over the next five years.*

According to the Convention on Biological Diversity,¹⁴ “biological diversity” is defined as: “...the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems”.¹⁵ Similarly, NEMBA¹⁶ defines “biological diversity” or “biodiversity” as: “the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and also includes diversity within species, between species, and of ecosystems”.

As South Africa’s population grows and human interest increases, the reliance on more land for development and agricultural use seemingly results in the protection of biodiversity becoming less imperative and the preservation of species becoming merely a means to serve human needs. For instance, the Cost-Benefit Analysis in its response to the preservation of endangered species provides for a balancing between the cost to humans only and the tangible benefits to humans. The result of this reasoning is that as long as a species’ benefit to humans (usually in the form of higher financial income) outweighs the costs of having them, these species would continue to be preserved.¹⁷

This approach is evident by the measures of conservation currently employed in South Africa. The conservation efforts are based on the utilisation of biodiversity for economic gain. This appears in the form of the largely privatisation of the wildlife economy of South Africa in activities such as wildlife ranching¹⁸, trophy hunting,¹⁹ the captive big cat industry, live sales and breeding,²⁰ game meat

¹⁴<https://www.cbd.int/>

¹⁵<https://www.cbd.int/convention/articles/?a=cbd-02>

¹⁶ National Environmental Management Biodiversity Act 10 of 2004

¹⁷ Cruise, Adam (2020). *The Value of Being Wild: A Phenomenological Approach to Wildlife Conservation*. Dissertation, University of Stellenbosch at 37 <https://philpapers.org/archive/CRUTVO-2.pdf>

¹⁸ Adam (citing Taylor et al) states that the term ‘wildlife ranching’ refers to the management of wildlife on private land for commercial purposes. See Cruise, Adam (2020). *The Value of Being Wild: A Phenomenological Approach to Wildlife Conservation*. Dissertation, University of Stellenbosch at 47 <https://philpapers.org/archive/CRUTVO-2.pdf>

¹⁹ In 2018 the DEA recognised the trophy hunting industry and other game and wildlife ranching as a major contributor to the South African economy. See Department of Environmental Affairs of the Republic of South Africa (8 March 2018) *Minister Molena Officially Open 3rd Biodiversity in East London* https://www.environment.gov.za/mediarelease/molewaofficially_opens_thirdbiodiversityindaba

²⁰ Adam (citing Taylor et al) states that this activity is conducted similarly to that of the livestock farms in that animals are bred either to be slaughtered or sold live to other game farms. See Cruise, Adam (2020). *The Value of Being Wild: A Phenomenological Approach to Wildlife Conservation*. Dissertation, University of Stellenbosch at 52 <https://philpapers.org/archive/CRUTVO-2.pdf>



production²¹ and the plethora of other ways that wild animals are exploited in South Africa. The same is clearly apparent from the consistent usage by the Department of terms such as “wildlife economy”, “biodiversity economy”, “faunal biological resources”, “ocean economy” and similar phrases. [See more on this in Appendix I, Part C below]. We note here that there now appears to be a willingness to consider and properly deal with problematic wildlife practices, such as the captive lion industry. Following the release of the HLP Report, we applaud certain statements made by Minister Barbara Creecy²² in her statement and in the stakeholder session. We hope to see similar sentiments applied to and tangible legislation promulgated with regard to other problematic practices relating to wildlife and biodiversity. This is absolutely critical if we are to properly protect biodiversity and achieve the goals as contemplated in the NBF and related policies.

The current status of this can be traced back to the interpretation by the Department of Section 24, Chapter 2 of the Bill of Rights in the South African Constitution. As the supreme law of the land, the *lex fundamentalis*, all law must be consistent with it and it seeks to establish a society based on democratic values (human dignity, equality and freedom); social justice; and fundamental human rights.

The Bill of Rights is the cornerstone of democracy in the country and the state must respect, protect, promote and fulfil the rights in the Bill.

Despite its aim to protect the environment and human rights, the approach adopted by the Department to interpreting one of its key terms, the “sustainable use of natural resources” has been detrimental to both of these aims. The notion of ‘sustainable use’ has been utilised to justify rampant and harmful use and takings of animals and other wildlife (as “natural resources”), including over and unethical exploitation, and the failure to consider the welfare of animals or nature or the impact on broader ecosystems and biodiversity. Animals, including wild animals, are considered to be objects rather than legal subjects capable of holding legally enforceable rights. The welfare of wild animals has also been divorced from their management, with continued lack of constitutionally mandated intergovernmental co-operation between those organs of state charged with a (limited) mandate animal welfare and those mandated with environmental management. Those stakeholders that promote this interpretation are included in consultations, and those that promote a different interpretation are largely excluded from any real decision-making.

EMS and ALRSA have previously provided detailed submissions to the Department on these and other issues, including the most recent voluminous Submission to the Advisory Committee to Review Policies, Legislation and Practices on Matters Related to the Management, Breeding,

²¹ According to Taylor et al, game meat production in South Africa is run on a free-market basis, meaning that there is little governmental **interference** or monopoly and creates an uncomplicated business opportunity in the private sector. See Taylor W.A, Lindsey P.A and Davies-Mostert H (2015) *An Assessment of the Economic, Social and Conservation Value of the Wildlife Ranching Industry and its Potential to Support the Green Economy in South Africa* (Johannesburg: The Endangered Wildlife Trust). <https://www.sagreenfund.org.za/wordpress/wp-content/uploads/2016/04/EWT-RESEARCH-REPORT.pdf>

²² Statement by Minister Creecy: Release of report of High-Level Panel on the management, breeding, hunting, trade and handling of elephant, lion, leopard and rhinoceros
02 May 2021: https://www.environment.gov.za/speeches/creecy_releaseofhlpreport_pretoria



Hunting, Trade and Handling of Elephant, Lion, Leopard and Rhinoceros and Related Matters²³ (hereinafter the “**HLP Submission**”). For purposes of this Submission, we have not reiterated all relevant aspects of the HLP Submission, although many of these apply in respect of the NBF. Rather, for purposes of this Submission, we have attempted to focus on a few key elements we believe out of necessity need to be incorporated as part of and in the implementation of the NBF. Notably, some of our proposals were incorporated into the HLP Report, and we hope to see the same considerations with regard the NBF, and wildlife and biodiversity more generally.

EMS and ALRSA submit that the draft NBF represents a “business as usual” approach to biodiversity conservation that fails to recognise that biodiversity is not just “under pressure” but in **a global crisis of extinction** that is part of and interconnected with the climate crisis. Current biodiversity management measures allow for zoonotic diseases transmission, which is a critical consideration in the wake of a global pandemic. The current paradigm has failed us and led to a state of crises. **We must make transformative changes to the way biodiversity is managed in order to address these crises.**

The Biodiversity Act requires that the NBF must be consistent with any relevant international agreements binding on the Republic and as South Africa is a party to the Convention on Biological Diversity (“**CBD**”), the NBF must respond to the need for transformational changes identified by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (“**IPBES**”). IPBES defines transformative change “as a fundamental, system-wide reorganization across technological, economic and social factors, including paradigms, goals and values.”²⁴

It is not possible to achieve the transformation change that is required by simply aggregating existing policies and accelerating their implementation (the approach which the draft NBF reflects).

In our view the NBF must be strengthened by the addition of a few key and critical considerations:

- i. a section that explains the global context within which South African biodiversity management is occurring (including references to the accelerating collapse of wild populations globally and the inadequacies of existing governance approaches);
- ii. a section dealing with the initiation of a review of **all** existing policies, principles, management systems, and legislation that affect the conservation of biological diversity with a view to identifying how to bring about transformational change;
- iii. the inclusion of all relevant stakeholders, including those that represent the interests of land, marine and other aquatic wildlife, animal and biodiversity protection (among others mentioned in this Submission);
- iv. referencing key sectors, threats and policies that relate to the NBF, including in respect of animal agriculture; captive wildlife; fishing; climate change and zoonotic diseases; and

²³ EMS Foundation and ALRSA Submission in respect of the High Level Panel: <https://www.animallawreform.org/wp-content/uploads/2020/07/HLP-Submission-ALRSA-EMS-Foundation-June-2020.pdf>

²⁴ https://ipbes.net/sites/default/files/decision_ipbes-7_1_en.pdf



- v. a review of the NBF in the context of all relevant constitutional considerations (as further detailed below).

In addition to these considerations, we note that there are a number of matters contained in the NBF that are impacted by the findings, goals and recommendations in the HLP Report. Accordingly, the NBF should be reviewed in its totality in light of such considerations. We are of the view that the HLP Report greatly impacts on not only the NBF but also biodiversity and wildlife matters more generally. For example, the word “biodiversity” is included 619 times within the HLP Report.

The Department must consider and include the HLP Report within the NBF and other relevant documents as appropriate.

In our view, in order to achieve the transformational change that is required, it will be necessary to make the transition away from the current interpretation of the “sustainable use” paradigm that values wild species primarily on the basis of their use value to humans and focusses on maximising the contribution of the “biodiversity sector” to the economy. Instead, what is required is a scientifically and ethically sound approach that recognises the intrinsic value and interconnections of all life forms, and their right to continue playing their unique ecological roles, free of unjustifiable human interference. We (provisionally) propose the term “**harmonious co-existence**” to refer to this paradigm. Such an approach would then inform all new biodiversity policy including revisions to the NBSAP, the informants, and other relevant documents.

We therefore call for the Minister and the Department to make provision in the NBF for developing a new approach to section 24 of the Constitution which considers animal welfare, non-consumptive use, and promotion of internationally accepted thinking – requiring a shift from considering animals as simply natural resources to be utilised, to considering their intrinsic value and the value they bring to the current and future citizens of the country, communities, and other stakeholders.

This Submission recognises that the notions of ‘conservation’ and ‘sustainable use’ should be interpreted in terms of what it terms an ‘integrative’ approach rather than the existing ‘aggregative’ approach.²⁵ These are imperative considerations in respect to the proper implementation of the NBF as well as the related documents, legislation and policy. This approach must be incorporated throughout including in the informants, as appropriate.

Section 39(1)(b)(iii) of NEMBA requires that the NBF must be consistent with any relevant international agreements binding on the Republic. Thus, in addition to the aforementioned aspects of the CBD and IPBES, South Africa’s other relevant international obligations must find application. South Africa is a party to the UNFCCC and Paris Agreement. The Department recently released the draft updated National Proposed Contribution (“**NDC**”), which is the cornerstone of the country’s climate change response. In this document, biodiversity is mentioned a number of times. While climate change is mentioned in the NBF (including a few occasional reference to the UNFCCC and Paris Agreement), these must be more q captured. **Climate change is one of the greatest threats to biodiversity and must be properly provided for in the NDF.** In addition, the NDC must be

²⁵ See: Bilchitz, David. 2009. “Does Transformative Constitutionalism Require the Recognition of Animal Rights?” *Southern African Public Law* 25(2): 267-300. Retrieved September 10, 2019 (<https://ssrn.com/abstract=1872936>).



included and tangible engagement with the relevant factors and strategies, frameworks and policies incorporated meaningfully.

South Africa is also a party to the Convention on the Rights of the Child,²⁶ the most ratified treaty in history. In 2019, sixteen child petitioners (including Greta Thunberg and a complainant from South Africa) from twelve countries, presented a landmark official complaint²⁷ to the United Nations Committee on this convention. Specifically, they alleged that the respondents: Germany, France, Brazil, Argentina, and Turkey are failing to uphold their obligations. Such complaint notes that: “The precautionary principle has particular significance for the rights of the child: *“The cumulative effects of long-term environmental harm, such as climate change and the **loss of biodiversity**, increase over time, so that decisions taken today will affect children much more than adults.”*²⁸ A few days ago, the German Constitutional Court made a key ruling relating to the rights of future generations and government’s obligations in respect thereof.²⁹ It is important to recognise South Africa’s obligations to future generations, which include the preservation of biodiversity. **South Africa’s international and constitutional obligations to future generations must be included in the NDF and future generations must be included as relevant stakeholders.**

In addition the above climate change considerations, key sectors that impact on biodiversity must be more clearly articulated and incorporated throughout the NDF as well as the stakeholders implicated. **To this end, we propose that industrialised animal agriculture (including aquaculture); captive wildlife (including wildlife farming) and large-scale industrial and over-fishing be recognised as major pressures on South Africa’s biodiversity. These must specifically mentioned in the NBF for further action and reference to the relevant key national strategies, frameworks and systems.** These omissions severely undermine the overall vision of the NBSAP and NBF. The relevant corresponding departments must be included as appropriate throughout the NBF, for example - the Department of Agriculture, Land Reform and Rural Developments (“**DALRRD**”) must be included where animal agriculture impacts on the issue.

In addition, the past trend of the Department engaging with only a few of the relevant stakeholders is clearly prevalent throughout this NBF. It is not only industries that make economic profit from biodiversity and wildlife that should have input into these issues. **We submit that there must be proper and adequate representation of wildlife and biodiversity protection organisations. Thus we propose that the “Wildlife Animal Protection Forum of South Africa” (WAPFSA) must be included as a stakeholder for engagement where appropriate throughout the NBF.**

Without dealing with these issues and considerations as a fundamental start, the remainder of the issues to be deliberated on by the Department, including specific matters related thereto, will not receive due and proper regard.

²⁶ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

²⁷ <https://childrenvsclimatecrisis.org/wp-content/uploads/2019/09/2019.09.23-CRC-communication-Sacchi-et-al-v.-Argentina-et-al-2.pdf>

²⁸ Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/58 ¶57 (Feb. 1 2016).

²⁹ <https://www.nytimes.com/2021/04/29/world/europe/germany-high-court-climate-change-youth.html>



It has never been more important than now, in the wake of the sixth mass extinction and a global pandemic affecting the entire population of human and nonhuman animals, to reconsider our approach and future. As the Department's Deputy Director-General: Biodiversity and Conservation, Mr Shonisani Munzhedzi stated during UNEP World Environment Day 2020 webinar

“The COVID 19 Pandemic has put nature into sharp focus as we recognise the need to take better care of nature so that nature can in turn take care of us.”

The NBF does not reflect such sentiments, rather opting for continuation of the paradigm that helped create current crises. We believe that we cannot simultaneously aim to take care of nature (and accordingly ourselves and the future) while continuing and promoting exploitative and harmful practices to it. Particularly, we cannot seek to promote biodiversity while exploiting and destroying certain species, their habitats and the integrity of the ecosystems of which they form part.

For ease of reference, the focal Sections can be broken down as follows:

Section I deals with Constitutional and Overarching Considerations. These form the fundamental basis of our Submission and which are summarised to some extent in this Executive Summary above.

A. Transformative Change

As an overarching consideration, we propose that the NBF take account of the IPBES call for transformative changes, but the methodology used in the creation of the NBF, namely the aggregation of existing policies and accelerating of their implementation, will not do so. On this basis we assert that the NBF must initiate a parallel process to identify how to achieve the necessary transformative change with the inclusion of a new eco-centric paradigm.

B. Constitutional Context

- The intrinsic value of biodiversity should be recognised as a self-standing strategy
- The environmental right (Section 24) requires a change in the approach of the South African legislature and executive towards animals – particularly the current interpretation of “use” as “sustainable” and mostly consumptive. This must be reflected in the NBF
- The Department must throughout the NBF and its implementation include animal welfare as an integral component.
- The NBF must adequately consider and provide for all elements in Section 24 of the Constitution.
- The NBF must provide for foundational Constitutional Values within its content and implementation.
- The NBF must allow for transformative constitutionalism by promoting an approach that encompasses the above considerations

C. Inclusion of Key Threats, Sectors, Threats and Stakeholders

- There are a few key threats and sectors that impact on biodiversity, climate change, environmental degradation and zoonotic diseases. Omission of these sectors and their stakeholders as a major pressures on South Africa's biodiversity and objectives addressing

this pressure severely undermines the overall vision of the NBSAP and NBF, namely to conserve, manage and sustainably use biodiversity to ensure equitable benefits to the people of South Africa, now and in the future:

- In its Strategies, frameworks and systems guiding work in the biodiversity sector the NBF must include the animal agriculture, captive wildlife and fishing; zoonotic diseases; climate change; environmental degradation and relevant stakeholders
- Animal agriculture (including aquaculture) must be properly provided for as a key threat and risk to biodiversity and must be properly recorded throughout the NBF and its Strategies, frameworks and systems
- Wildlife farming negatively impacts on biodiversity, increases the risk of transmission of zoonotic diseases and has various other negative consequences. The NBF must include wildlife farming and ranching as a key threat and risk to biodiversity and this industry and impacts must be properly recorded throughout the NBF and its Strategies, frameworks and systems and include relevant policies to tackle this issue
- Industrialised, large-scale fishing, bycatch over-fishing and destructive practices as bottom trawling, negatively impacts on biodiversity and has various other negative consequences (including in relation to climate change). The NBF must include industrial and illegal, unreported and unregulated (IUU) fishing as a key threat and risk to biodiversity and this industry and impacts must be properly recorded throughout the NBF and its Strategies, frameworks and systems and include relevant policies to tackle this issue
- South Africa's climate change obligations must be properly accounted for in the NBF and the express recognition of climate change legislation and regulations be utilised as an objective in the strategic objectives, as a matter of urgency.
- We submit that there must be proper and adequate representation of wildlife and biodiversity protection organisations. We propose that the “Wildlife Animal Protection Forum of South Africa” (WAPFSA) is a suitable body for such engagement must be included where appropriate throughout the NBF.

* The Department must consider and include the appropriate goals, recommendations and considerations in the HLP Report within the NBF and other relevant documents as appropriate.

Section II sets out non-exhaustive and Selected Objections to and Issues with the NBF. In addition to the more general comments and suggestions provided for in Section I, we provide some specific non-exhaustive comments on specific portions of the NBF.

Appendix I sets out non-exhaustive and Selected Broader Concerns relating to the Department more generally that we have previously raised with the Department. These matters have an impact indirectly on the NBF and which are of relevance to this Submission.



SECTION I: CONSTITUTIONAL AND OVERARCHING CONSIDERATIONS

PART A: BACKGROUND

1. At the outset, we wish to record that we welcome the revised National Biodiversity Framework (“NBF”). What follows below, are some proposals and considerations in respect to this framework document.
2. The protection of biodiversity ensures the longevity of sustained life with the supply of oxygen, clean air and water, pollination of plants, pest control and wastewater treatment to name just a few. Consistent evaluation of current measures along with the coordination and alignment of the efforts of various organisations and individuals in the conservation and management of South Africa’s biodiversity under the auspices of sustainable development remains a pivotal measure in the protection of biodiversity. To paraphrase a sentiment made in *Chu v The State*³⁰

*If we do not take measures... these magnificent creatures would be decimated from earth. Our Flora and Fauna would be poorer for it. South Africa would no longer be the safe home of the ‘Big Five’, as it is known all over the world.*³¹
3. We are in support of the inclusion of the six strategic objectives undertaken by the NBSAP that serve to guide the actions taken by the actors of the NBF. The vision to conserve, manage and sustainably use biodiversity to ensure equitable benefits to the people of South Africa, now and in the future adequately aligns with the objectives of the actors mentioned throughout this framework.
4. We are in support of the utilisation of the National Biodiversity Assessment as the assessment mechanism of the state of South Africa’s biodiversity. The collaboration between SANBI, DFFE and other partner organisations to produce a synthesis report serve as a guide towards the efforts of the NBF.
5. We are in support of the implementation of the NPAES. The NPAES as a cost effective expansion of the protected area estate for improved ecosystem representation, ecological sustainability, and resilience to climate change serves to bolster efforts towards the continued sustainability of biodiversity in South Africa. This presents one of the most impactful contribution made within this framework, and is akin to actions taken by foreign governments. An example of this is the executive order issued by the United States in January 2021 in which President Joe Biden ordered a pause on new oil and gas leases on public lands. This is furthered by the United States committing to the goal of protecting 30% of land within the country and coastal seas by 2030.³² South Africa must undertake to do the same.

³⁰ [2012] ZAGP JHC 204 (13 March 2012).

³¹ Para 20

³² National Geographic *The U.S commits to tripling its protected lands. Here’s how it could be done* https://www.nationalgeographic.com/environment/article/biden-commits-to-30-by2030-conservation-executive-orders?cmpid=int_org=ngp:int_mc=website:int_src=ngp:int_cmp=amp:int_add=amp_readtherest

6. We are in support of the recognition of the users of the NBF as both institutions whose core business is biodiversity conservation and environmental management as well as those whose core work is not biodiversity conservation, but whose business either impacts on the status of biodiversity and ecosystems, or depending on biodiversity assets, ecosystem services and ecological infrastructure. However, this is not adequately and properly addressed throughout the NBF. The recordal of having “some relevance” for stakeholders in “agriculture” and fisheries” for example is grossly underexaggerated. These sectors and stakeholders have a major and undeniable impact on biodiversity. They **must be properly included** throughout the NBF and all relevant policies relating to these sectors that have an impact on biodiversity accounted for. These stakeholders, include government departments, corporates, members of industry, NGOs (including animal welfare and protection organisations) and others have a **major role to play** in protecting biodiversity, and should be accountable for such.
7. We are in support of the recognition of the key pressures on South Africa’s biodiversity. These pressures result in the degradation or loss of the ability of ecological infrastructure to provide services, the loss of livelihoods through impacts to biodiversity assets that many South Africans depend on directly or indirectly, the impacts to food security, ecotourism and livelihoods linked to estuaries, coastal and marine ecosystems and require national and provisional measures to address.³³ We propose further considerations in respect to key pressures relating to South Africa’s biodiversity, including animal agriculture, captive wildlife and fishing, which will be further discussed throughout this Submission.
8. We are in support of the recognition of the international commitments South Africa is a signatory to in respect of the area of conservation and related commitments. This is required by section 39(1)(b)(iii) of NEMBA These international commitments are aligned with the NBSAP and must be evident throughout the NBF framework, supporting the international movement towards conservation measures. As aforementioned, such international commitments should include South Africa’s climate commitments as well as its commitments to future generations as these are interconnected to biodiversity.
9. At the outset, we note that as per section 1 of the NBF:

“The National Biodiversity Framework (NBF) is a requirement under Section 38 of the National Environmental Management: Biodiversity Act (10 of 2004, hereafter referred to as the “Biodiversity Act”).

As the NBF is guided in respect of NEMBA, it is imperative to note that one of its objectives is:

“In fulfilling the rights contained in section 24 of the Constitution, the state through its organs that implement legislation applicable to biodiversity, must

(a) manage, conserve and sustain South Africa’s biodiversity and its components and genetic resources; and

(b) implement this Act to achieve the progressive realisation of those rights”

³³ South African National Biodiversity Strategy and Action Plan, Page 15.

PART B: THE NEED FOR TRANSFORMATIVE CHANGE

1. We appreciate that the Biodiversity Act specifies that the NBF must provide for an integrated, co-ordinated and consistent approach to biodiversity management. The draft NBF seeks to do this, first by providing an overview of 30 strategies, frameworks and systems that exist in the biodiversity sector, and secondly by identifying “accelerators” that can be used to fast-track implementation and hopefully achieve policy goals more quickly.
2. In general we agree that it is appropriate to review existing policies in order to ensure that they are mutually consistent and to integrate them into a coherent national framework, and to remove bottlenecks and barriers to implementation. However, this approach only aims to implement existing approaches more efficiently and amounts to “business as usual but faster.” An approach based on aggregating and co-ordinating existing policies cannot achieve the “transformation change” that the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (“IPBES”) considers necessary to stop and reverse the catastrophic global collapse of populations of wild species and to achieve the 2050 Vision for Biodiversity.
3. According to IPBES’s Global Assessment Report, “[G]oals for 2030 and beyond may only be achieved through transformative changes across economic, social, political and technological factors” (IPBES 2019)³⁴. IPBES defines transformative change “as a fundamental, system-wide reorganization across technological, economic and social factors, including paradigms, goals and values.” The rationale underlying this assessment is to move away from current, relatively short-term incremental changes towards more holistic pathways reflecting revised paradigms, goals and values (Pelling et al. 2015)³⁵.
4. The Biodiversity Act requires that the NBF must be consistent with any relevant international agreements binding on the Republic (section 39(1)(b)(iii)). Since South Africa is a party to the Convention on Biological Diversity (“**CBD**”), we believe that the NBF should be consistent with the approaches, goals and action plans being developed under the auspices of the CBD, including the need to achieve transformational change. We appreciate that identifying the kind of fundamental changes necessary to transform the paradigm, values, goals and implementation techniques that inform biodiversity management in South Africa will take some time, but given the accelerating loss of biological diversity, it is essential that this process be initiated as soon as possible.
5. In our view the NBF must be strengthened by the addition of:
 - a. a section that explains the global context within which South African biodiversity management is occurring (i.e. references to the commencement of the Sixth Period of Mass Extinction, the accelerating collapse of wild populations globally, the fact that we

³⁴IPBES (2019) Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. Advanced Unedited Version: 6 May 2019. Bonn, Germany: IPBES.

³⁵Pelling, M, O’Brien, K, Matyas, D (2015) Adaptation and transformation. *Climatic Change* 133: 113–127. Cited in Beck, S., & Forsyth, T. (2020). Who gets to imagine transformative change? Participation and representation in biodiversity assessments. *Environmental Conservation*, 47(4), 220-223. doi:10.1017/S0376892920000272

have probably already exceeded the “planetary boundary” in relation to biosphere integrity, and the inadequacies of existing governance approaches as evidenced by the failure to achieve any of the 20 ‘Aichi Biodiversity Targets’ agreed on under the CBD)³⁶ as well as to join more than a hundred countries in the transformation towards a net-zero target by 2050; and

- b. a section dealing with the initiation of a review of all existing policies, principles, management systems, and legislation that affect the conservation of biological diversity with a view to identifying how to bring about transformational change.
6. In our view, in order to achieve the transformational change that is required, it will be necessary to make the transition from the current “sustainable use” paradigm that values wild species primarily on the basis of their use value to humans and focusses on maximising the contribution of the “biodiversity sector” to the economy. Instead, what is required is a scientifically and ethically sound approach that recognises the intrinsic value of all life forms, and their right to continue playing their unique ecological roles, free of unjustifiable human interference. We (provisionally) propose the term “harmonious co-existence” to refer to this paradigm.
7. We are proposing that the NBF initiate a process for considering how best to achieve the necessary transformation change as fast as possible. Accordingly we have not attempted to explain the harmonious co-existence approach in any detail in these comments. However, in our view, in order to achieve the necessary transformational change, it will be necessary to give reconsider the following issues (among others).
 - a. **The intrinsic value of wild species** (and of Nature as whole). The sustainable use approach is based on the misplaced belief that the value of wildlife and wild habitats is determined by their use value to humans. This is a deeply flawed anthropocentric approach which only sees Nature through the eyes of the market and approaches conservation and wildlife as a sector of the economy. One of the core reasons why conservation is failing is because we value wildlife and Nature only as commodities. In fact, other species and ecological communities are far more valuable because they are essential to all that really matters to humanity including our continued existence.
 - b. **Adopting an eco-centric approach.** In order to have any realistic prospect of reversing the catastrophic global decline in wild species, biodiversity and restoring ecological health, we have to transform our approach by adopting an eco-centric approach that recognises that human well-being is derived from Nature and sustaining human wellbeing requires restoring ecological health. Seeking economic growth at the expense of life is counterproductive. We need to sustain life in all its diversity, not the use and exploitation of living beings.
 - c. **Integrate respect for individual animals (which requires protecting their wellbeing) with conserving the species and the environment.** The current division

³⁶The failure to meet the Aichi targets is evident from Global Biodiversity Outlook 5 report.

between protecting the well-being of individual animals and conserving the species (which is an aggregation of individuals) is unhelpful and misplaced.

- d. **Impose duties on humans to respect the rights of other species to play their ecological roles.** In order to implement an eco-centric approach, policies and laws must be revised so that they are oriented towards ensuring that humans are prevented from interfering with natural processes or harming other species and individual animals without adequate justification. The tests for what constitutes “adequate justification” must be stricter than they are now.
- e. **Require proactive restoration of degraded ecosystems.** Given the amount of ecological damage that has already occurred, simply preventing more damage is insufficient. Measures must be put in place to achieve large-scale and rapid restoration of ecosystems (including for example, measures to re-integrate habitats on a large-scale, to re-establish migration corridors and others).
- f. **Transform as soon as possible.** The process for envisioning and identifying the transformative changes that are urgently needed, and the process of transition must both commence as soon as possible.

Certain considerations in this Part have been expanded on below, particularly in the context of the South African Constitution.

PART C: CONSTITUTIONAL BACKGROUND AND CONTEXT

1. Intrinsic Value

The intrinsic value of biodiversity should be recognised as a self-standing strategy

- a. There remains an apparent omission of the recognition of biodiversity as having intrinsic value. According to judgment from the Constitutional Court³⁷, we are required to re-examine our relationship with and laws relating to animals. The recognition of the intrinsic value of biodiversity is merely mentioned in this document, however an emphasis is not placed on this imperative aspect. This could render the measures created throughout the NBSAP and obligations created by the NBF as merely a mechanism for the further exploitation of biodiversity for human gain.
- b. Intrinsic value is the value that an entity possesses of itself, for itself, regardless of the interest or utility of others. Intrinsic value of individual organisms manifests itself in to distinct, albeit related forms namely good-of-its-on and a good-of-its kind.³⁸ Throughout the NBF, with respect to the abovementioned reference as well the strategy

³⁷ *NSPCA v Minister of Justice and Constitutional Development and Another* 2017 (4) BCLR 517 (CC). <http://www.saflii.org/za/cases/ZACC/2016/46.html> at para 57.

³⁸ Schaffner, Joan, Value, wild animals and law in Scholtz, Werner, *Animal Welfare and International Environmental Law: From Conservation to Compassion* (2019) at 10.

objectives contained in the NBSAP, the intrinsic value of biodiversity is not emphasised adequately.

- c. The Constitutional Court has recognised the importance of intrinsic value and welfare of biodiversity. The *NSPCA* case³⁹ recognised that the rationale behind protecting animal welfare has shifted from the safeguarding of the sensibilities of humans to placing intrinsic value on animals as individuals. In the *Lemthongthai*⁴⁰ case it was further held that constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general. *Lemthongthai* further confirmed that animal welfare and section 24(b) of the Constitution are connected and the integrative approach linking the suffering of individual animals to conservation.⁴¹
- d. The result of these and other judgments; represents a departure from the position of the Department, which held the view that it does not have the legislative mandate to regulate matters of welfare.⁴² The NBF and guiding NBSAP documents presents an opportunity for the Department to be guided by and recognise the intrinsic value and welfare considerations of biodiversity.
- e. A glaringly inadequate representation of the importance of biodiversity as having intrinsic value is merely mentioned amongst the principles of the NBF in passing. The NBF provides (emphasis added):

*Biodiversity has **intrinsic value** but also constitutes critical natural capital which is essential for sustainable and resilient economic and social development. Management of biodiversity and ecological infrastructure should be directed to meet conservation objectives, and should **also be people-centred** and strive to meet multiple transformational benefits, by placing strategic protection, wise management, and sustainable use of natural capital at the core of the country's sustainable development agenda.'*

- f. We assert that this reference does not indicate a proper understanding of the constitutionally recognised concept of intrinsic value in conservation and biodiversity protection measures. In addition, it is not made clear how making the management of biodiversity “people centred” can be reconciled with recognising the intrinsic value of wildlife.
- g. As stated previously, we welcome the National Protected Areas Expansion Strategy (NPAES). With the goal of the NPAES being to achieve cost-effective expansion of the protected area estate for improved ecosystem representation, ecological sustainability, and resilience to climate change. The NPAES provides the opportune starting point for the recognition of intrinsic value and welfare of biodiversity; however

³⁹*NSPCA v Minister of Justice and Constitutional Development and Another 2017 (4) BCLR 517 (CC)* para 54-7.

⁴⁰*S v Lemthongthai [2014] ZASCA 131* para 20.

⁴¹*Lemthongthai* at para 58.

⁴²Scholtz, Werner Trading rhinoceros horn for the sake of conservation: dehorning the dilemma through a legal analysis of the emergence of animal welfare in Scholtz, Werner, *Animal Welfare and International Environmental Law: From Conservation to Compassion* (2019) at 256. Also see Department of Environmental Affairs ‘Norms and Standards for the Management of Elephants in South Africa to be Amended’ (24 September 2014). Retrieved from https://www.environment.gov.za/mediarelease/normsandstandards_managementofelephants accessed 02 April 2021.

we assert that further action could be taken in respect of this aspect. We propose that emphasis be placed on the expansion of protected areas, along with non-consumptive use of biodiversity. We suggest that along with the six strategic objectives under the NBSAP, the expansion of protected areas and promotion of biodiversity intrinsic value be regarded as a self-standing strategic objective.

2. Use: “sustainable use” and consumptive use

The environmental right (Section 24) requires a change in the approach of the South African legislature and executive towards animals – particularly the current interpretation of “use” as “sustainable” and mostly consumptive. This must be reflected in the NBF

- a. As we have previously stated, we reject the Department’s current approach to Section 24 of the Constitution, specifically as it pertains to the interpretation of the terms ‘conservation’ and ‘sustainable use of natural resources’ when applied to biodiversity and wildlife. Our rejection centres around the fact that current interpretation of “sustainable use”:
 - i. cannot be reconciled with biodiversity protection, conservation or goals;
 - ii. is ecologically unsustainable;
 - iii. is non-compliant with constitutional values;
 - iv. is non-compliant with South Africa’s international obligations;
 - v. is inconsistent with rulings of South African courts and the Department’s obligations;
 - vi. does not reflect the majority of the South African public’s views;
 - vii. focuses on consumptive use and not alternatives;
 - viii. is anachronistic and diametrically opposed to the international trend towards eco-centric philosophies of law (e.g. Earth Jurisprudence) that seek to regulate human beings in accordance with the understanding that we are all members of a community of life from which we derive our wellbeing;
 - ix. is harmful and exploitative;
 - x. raises a plethora of other issues (some of which have been included in this Submission, which is non-exhaustive);
 - xi. is inconsistent with goals of reducing inequality; and
 - xii. fails to recognise the rights and cultures of indigenous people and local communities in South Africa.
- b. On ethical and legal grounds, we submit that the Department continues to misinterpret these terms, which misinterpretation flows through to policies and legislation. We have previously requested this, however should the Minister, the Department and related

parties continue to rely on the current interpretation that is exploitative and harmful, **we request a formal legal opinion to be provided as to why the Department believes this is correct and the legal basis for this.**

- c. We wish to note that the HLP Report has recognised issues with the current approach and interpretation. The Report notes for example that: “The definition of ‘sustainable’, as provided for in NEMBA, is viewed as outdated and misaligned with the strong approach to sustainability detailed in the National Framework for Sustainable Development. This definition needs to be updated and supported by policy.” (page 112)
- d. It further recommends that “That the Minister urgently initiates a process to develop an overarching national policy on biodiversity (including wildlife) that provides a clear vision and objectives on South Africa’s approach to conservation and sustainable use of the country’s biodiversity. The measure of how the current challenges associated with the five iconic species are addressed through the Policy should serve as the test of the policy’s efficacy.” (page 280)
- e. For further information in this regard, we refer to our aforementioned Submission to the High Level Panel. We also refer to the Submission to the High Level Panel as made by The South African Institute for Advanced Constitutional, Public, Human Rights and International Law (“SAIFAC”) of the University of Johannesburg attached as Appendix III to The Submission⁴³ by ALRSA and EMS Foundation to the High Level Panel.
- f. We note that the interpretation not only fails to account for the intrinsic value concepts as dealt with above and required by the new constitutional framework but also because the approach is self-defeating at in its aim of achieving sustainability. Rather, an “integrative approach” should be adopted. This recognises that t an attitude of respect must be adopted towards individual animals that make up a species and the components of biodiversity. The integrative approach, as its name suggests, focuses also on the relationships between individual animals and the environment more generally, including their connection to human beings. The goal is not simply to exploit nature for our economic benefit – it is to live within relationships of respect with other humans, animals and the environment. The integrative approach is deeply consonant with the ethic of ‘ubuntu’ that is a central feature of African philosophical systems and the development in South Africa of a post-colonial approach towards animals.

3. Welfare of Wild Animals

The Department must throughout the NBF and its implementation include animal welfare as an integral component

⁴³<https://www.animallawreform.org/wp-content/uploads/2020/07/HLP-Submission-ALRSA-EMS-Foundation-June-2020.pdf>

- a. An issue which is of seminal importance and which is completely lacking from the NBF is the mention of animal welfare.
- b. The welfare of wildlife must be explicitly incorporated into the NBF. The Constitutional Court, Supreme Court of Appeal⁴⁴, the Supreme Court and the High Court⁴⁵ have connected biodiversity to animal welfare. This is no longer outside of the Department's domain and must be tangibly incorporated into the NBF.
- c. This includes reference to relevant welfare legislation and policies, including the Animals Protection Act, 71 of 1962, as well as relevant stakeholders. Thus, reference must be made to the DALRRD, the NSPCA and other animal welfare stakeholders. In particular, we submit that the Wildlife Animal Protection Forum of South Africa (WAPFSA) as a relevant stakeholder.
- d. As referred to in the "Intrinsic Value" section above, The Constitutional Court, Supreme Court of Appeal⁴⁶, the Supreme Court and the High Court⁴⁷ have connected biodiversity to animal welfare. This is no longer outside of the Department's domain and must be tangibly incorporated into the NBF. If and where necessary, the DALRRD must be included in relevant provisions throughout the NBF.
- e. In August 2019, the High Court⁴⁸ confirmed that welfare must be considered as integral to conservation. More specifically, the court said that:

*"In addition and from an environmental perspective the treatment of lions in captivity as an environmental issue and its relationship with the commercial activities that arise from the operations of lion breeders in this case the export of lion bone) **is inextricably linked to the constitutional issue of what may constitute the elements of the right to an environment** and the right to have it protected for the benefit of this and future generations that Section 24 of the Constitution articulates."*⁴⁹ (emphasis added)
- f. As far as we are aware, no legally binding standards have been put in place to regulate the welfare of wild animals in commercial breeding operations.⁵⁰ We know that there is some "self-regulation" in this regard, as well as a proposed MoU with the NSPCA and

⁴⁴ *Lembongthai v S* (849/2013) [2014] ZASCA 131; 2015 (1) SACR 353 (SCA) (25 September 2014). <http://www.saflii.org/za/cases/ZASCA/2014/131.html>

⁴⁵ *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs* <http://www.saflii.org/za/cases/ZAGPPHC/2019/337.html> paras 66 - 74.

⁴⁶ *Lembongthai v S* (849/2013) [2014] ZASCA 131; 2015 (1) SACR 353 (SCA) (25 September 2014). <http://www.saflii.org/za/cases/ZASCA/2014/131.html>

⁴⁷ *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs* <http://www.saflii.org/za/cases/ZAGPPHC/2019/337.html> paras 66 - 74.

⁴⁸ *National Council of The Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others* (86515/2017) [2019] ZAGPPHC 367; [2019] 4 All SA 193 (GP) (26 August 2019)

⁴⁹ Ibid at paragraph 45.

⁵⁰ We note there are some exceptions including certain regulations in the Meat Safety Act that relate to ostriches as one example. However, these deal with very limited considerations and apply only to specific species in specific circumstances.

others as it pertains to certain species, in the making. However, self-regulation is neither law, nor is it sufficient.⁵¹

- g. Amendments to the National Environmental Management Act, 107, of 1998 proposed in Bill 14/2017 (“**NEMLA**”) to deal with the welfare of wild animals are wholly inadequate. In the first place, they refer to “well-being” which is defined to include only an individual animal’s “health”. This term is at best extremely vague. The amendments fail to take into account the fact that the welfare or wellbeing of a wild animal is also dependent on it living in the conditions for which it has evolved including family and social systems and structures. In any event, there is no indication as to when the amendments might come into force.
- h. In comparison, “animal welfare” is much more encompassing. Although there are varying definitions, the OIE⁵² defines animal welfare as “the physical and mental state of an animal in relation to the conditions in which it lives and dies” and further looks to incorporate the Five Freedoms.
- i. As aforementioned, in the landmark 2016 Constitutional Court case brought by the NSPCA,⁵³ the Constitutional Court referred with approval to the earlier statements of the Supreme Court of appeal in the *Lemthongbai*⁵⁴ case that “[c]onstitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general”. It held that “[a]nimal welfare and animal conservation together reflect two intertwined values.”
- j. This case was referred to with approval in a new case brought by the NSPCA in the North Gauteng High Court in which the Court, referring to captive lions stated that “[e]ven if they are ultimately bred for trophy hunting and for commercial purposes, their suffering, the conditions under which they are kept and the like **remain a matter of public concern** and are inextricably linked to how we instil respect for animals and the environment of which lions in captivity are an integral part of.”⁵⁵

⁵¹We note for example in relation to captive lions (which are, in some instances sold and utilised for consumption by humans, such as in the lion bone trade), the South African Predators Association (“**SAPA**”) have set their own Norms and Standards which they believe are adequate. For example, their “Norms and Standards for the Hunting of Captive Lions in South Africa” [See <https://sapredators.co.za/images/photos/SAPA-Final-Norms-and-Standards-For-HuntingOct2017.pdf>] and “Norms and Standards for the Management (Welfare, Breeding and Keeping) of Captive Lions in South Africa Ranch & Working lions” [See: <https://sapredators.co.za/images/photos/SAPA-Final-NS-for-BREEDING-and-KEEPING-Ranch-and-Working-lions-Okt2017.pdf>] It is worth noting that SAPA members have been implicated in animal cruelty and egregious practices. A prominent example includes Walter Slippers – who not only once, but on various occasions had problems with his lions – including “evidence of shocking animal neglect and cruelty”. <https://www.sapeople.com/2020/05/13/breaking-starving-emaciated-lions-found-at-slippers-limpopobreeding-farm-again/>

⁵²OIE: “Animal Welfare” <https://www.oie.int/en/animal-welfare/animal-welfare-at-a-glance/>

⁵³National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another (CCT1/2017).

⁵⁴ *S v Lemthongbai* [2014] ZASCA 131; 2015 (1) SACR 353 (SCA).

⁵⁵ *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others* [2019] ZAGPPHC 337.

- k. We note that this issue has similarly been raised in the HLP Report. In particular, the references to “One Welfare” and incorporating this meaningfully into relevant policies. One example is that the HLP Report recommends: “Taking a One Welfare approach, the Minister should immediately initiate a process to engage with welfare and well-being issues across the sector, with a view to including elements within the conservation and sustainable use policy for the sector,” (page 292). This is also critical considering the transmission of zoonotic diseases.

4. **Additional Key Elements of Section 24: Right to Environment**

The NBF must adequately and appropriately consider and provide for all elements in Section 24 of the Constitution

In order to comply with its obligations in terms of Section 24, the Department should in the NBF adequately consider and implement other elements including but not limited to the following phrases (non-exhaustive):

- a. **“for the benefit of present and future generations...”**
 - i. Development decisions have to be informed by the imperative of ecological sustainability and resources can only be utilised if they do not violate this imperative or undermine the ability of future generations to live in a healthy natural environment. This is fundamentally different to the way in which the South African government is currently interpreting this critical right.
 - ii. To date, the Department has been managing the environment based on reductionist models inherited from the extractive colonial and apartheid eras that essentially viewed the natural environment as a type of farm where public power was used to promote and protect the interests of a small part of the population.
 - iii. Future generations must be incorporated as stakeholders in the NBF.
- b. **“through reasonable legislative and other measures”**
 - i. Self-regulation by industries (such as the wildlife ranching; captive wild animal industries; animal agriculture; aquaculture; and others) that impact on biodiversity should be prohibited.
 - ii. The Department must promulgate legally binding regulations as they pertain to section 24 of the Constitution, and for purposes of this Submission: the protection of biodiversity. This is a constitutional mandate.
- c. **“health or well-being”**
 - i. The Department must adequately regulate industries that impact on the health and wellbeing of South Africans.
- d. **“ecologically sustainable development”**

- i. Development projects should support this key concept and development considerations must be weighed against this criterion, with a further emphasis on inter-generational equity.

5. Constitutional Values

The NBF must provide for foundational Constitutional Values within its content and implementation

- a. The foundational values of the Constitution include dignity, equality and freedom. There is a growing body of research and resources that incorporate these values and the achievement thereof, together with an ethos of respect for non-human animals.
- b. While the NBF mentions certain of these values, these are not adequately incorporated. Currently, around the world, thousands of people are calling for an end to racial injustice, inequity and oppression.
- c. The wildlife and biodiversity sectors in South Africa are examples of anti-constitutional values, with blatant inequality in the ownership and management of wild animals, wildlife operations and land on which these animals live and are utilised.
- d. We note that recent research shows, for instance, the highly racialised and discriminatory practices in the hunting industry⁵⁶ as well as the exploitation of poor black workers who often have to deal with wild animals with very little safety and minimal pay.⁵⁷
- e. As mentioned in the SAIFAC Submission, the current “aggregative approach - “...*has really been a continuation of the colonial attitude to the environment as well as the ethos inculcated by the apartheid government.*”
- f. We need stop treating the 21 million hectares of land under 9,000 private wildlife ranches as a conservation success story. Our objective should be to drop the fences between these fragmented reserves where viable and restore ecological functionality on a scale previously unimagined. We also need to increase the number of UNESCO World Heritage Sites to keep them exempt from exploitation.
- g. It is clear that there is an interlinkage between the oppression of nonhuman animals and human animals and this is a subject which is increasingly being developed,⁵⁸ and has

⁵⁶ Nomalanga Mkhize ‘Game farm conversions and the land question: Unpacking present contradictions and historical continuities in farm dwellers’ tenure insecurity in Cradock’ (2014) 32 *Journal of Contemporary African Society* 207-219; Femke Brandt and Marja Spierenburg ‘Game fences in the Karoo: Reconfiguring spatial and social relations’ (2014) *Journal of Contemporary African Society* 1-18.

⁵⁷ Femke Brandt ‘Trophy hunting in South Africa: Risky business for whom’ *Daily Maverick* (17 Nov 2015) available at http://www.dailymaverick.co.za/opinionista/2015-11-17-trophy-hunting-in-south-africa-risky-business-for-whom/?utm_source=Daily+Maverick+Mailer#.VqCRDLZ97IV.

⁵⁸ See for example, Wilson, A. P. (2020). (Non) Human(imal) Rights: Dismantling the Separateness in Law and Policy. *Society Register*, 3(3), 39-65. <https://doi.org/10.14746/sr.2019.3.3.03>



come to the fore during the COVID-19 pandemic.⁵⁹The answer is not to widen the oppression of non-human animals but to end it and change the relationship between humans and non-humans.

6. Transformative Constitutionalism

The NBF must allow for transformative constitutionalism by promoting an approach that encompasses the above considerations

- a. In the context of the NBF, we submit that the Department should take due consideration and application of concept of “transformative constitutionalism”, that the Constitution in South Africa was not designed simply to entrench the status quo: rather, it was enacted for the purpose of fundamentally transforming society.
- b. More specifically, we refer to the work of Professor David Bilchitz in this regard, which asks a critical question as to whether transformative constitutionalism requires the recognition of animal rights.⁶⁰
- c. A useful point of departure is also to locate environmental policies within an overarching framework of ‘Doughnut Economics’, in which we reach a ‘safe and just’ space characterised by justice and ecological sustainability instead of endless resource extraction.⁶¹ South Africa needs to move away from the model that has entrenched global oligopolies at the expense of local, artisanal production.⁶² A new economic model has to place far higher and more realistic value on irreplaceable biodiversity. Not everything has a dollar value, but if one has to be attributed, it needs to be informed by the true opportunity costs of *foregoing* that biodiversity. Moreover, our accounting systems cannot continue to allow polluting and environmentally destructive producers to offload negative externalities (the divergence between private returns and social or environmental costs) onto those who can least afford to bear them – the poor.⁶³

All around the world, countries are starting to change their approach towards animals, as well as the environment more generally. This has been recognised through developing jurisprudence, court decisions, policy and legislative considerations. South Africa has the opportunity to lead the way in this regard. [See Appendix I of for more specific examples of this.]In addition to these considerations, we note that there are a number of matters contained in the NBF that are impacted by the findings, goals and recommendations in the HLP Report. Accordingly, the NBF should be reviewed in its totality in light of such considerations. We are of the view that the HLP Report greatly

⁵⁹See for example: Saskia Stucki, Tom Sparks, The Elephant in the (Court)Room: Interdependence of Human and Animal Rights in the Anthropocene, Blog of the European Journal of International Law <https://www.ejiltalk.org/the-elephant-in-the-courtroom-interdependence-of-human-and-animal-rights-in-the-anthropocene/>

⁶⁰ Bilchitz, David. 2009. “Does Transformative Constitutionalism Require the Recognition of Animal Rights?” *Southern African Public Law* 25(2): 267-300. Retrieved September 10, 2019 (<https://ssrn.com/abstract=1872936>).



impacts on not only the NBF but also biodiversity and wildlife matters more generally. For example, the word “biodiversity” is included 619 times within the HLP Report.

The Department must consider and include the HLP Report within the NBF and other relevant documents as appropriate.

REQUEST

Based on the issues highlighted in this Section I, to be read in the context of and with regard to the Submission, as our first request from DFFE, we request that the Department revise the NBF.

The Department needs to undergo a serious process of reform of its policy documents and framework in light of what the Constitution and our international obligations require. This transformation has not happened as yet and is long overdue.

The proper revision and implementation of the NBF and NBSAP is necessary to re-align conservation measures relating to all forms of biodiversity with the Constitutional imperative of adopting an integrative approach towards the environmental right which we have outlined above. Specifically, the a new workstream or project must be established in the NBF to develop the new approach to section 24.

We wish to note that we have previously provided a very detailed Submission⁶⁴ to the Department in terms of its appointed High Level Panel. This Submission deals with the aforementioned issues in much greater detail. We have not reiterated all relevant considerations herein, however many of the same considerations apply to the NBF. We are happy to engage further on these if the Department is willing. Again, we reiterate the need to consider relevant findings within the HLP Report.

PART D: INCLUSION OF KEY THREATS, SECTORS AND STAKEHOLDERS

1. Introduction

In its Strategies, frameworks and systems guiding work in the biodiversity sector the NBF must include the animal agriculture, captive wildlife and fishing; zoonotic diseases; climate change; environmental degradation and relevant stakeholders

- a. Within the NBF, and as it pertains to key threats to biodiversity, sectors that have a considerable impact on biodiversity, and relevant stakeholders, there are notable exclusions, or failure to adequately provide for these.
- b. For purposes of this Submission, we wish to focus on the following:
 - i. Sectors: Animal agriculture (including aquaculture); Captive wildlife operations; Fishing

⁶⁴ <https://www.animallawreform.org/wp-content/uploads/2020/07/HLP-Submission-ALRSA-EMS-Foundation-June-2020.pdf>

- ii. Threats: Zoonotic diseases (and pandemics); Climate change; environmental degradation, fragmentation, conflict with wild predators
- iii. Stakeholders: WAPFSA; future generations and indigenous groups, among others (other relevant stakeholder include NGOs, DALRRD, others).
- c. We believe these issues must be properly and adequately addressed within the NBF in order for it to achieve its aims. While all of these are major subjects that we are not able to delve into, we wish to highlight some key considerations.
- d. In addition, many of these issues are interconnected with the aforementioned matters in this Section 1.

2. Animal Agriculture

Animal agriculture must be properly provided for as a key threat and risk to biodiversity and must be properly recorded throughout the NBF and its Strategies, frameworks and systems

- a. Animal agriculture⁶⁵ has a major impact on biodiversity, from indirect impacts such as to their habitat, and driving the climate change, to direct killing of wildlife. In addition, biodiversity is required to support food systems. The NBF must clearly speak to the link between the impact of factory farming on wild animals and biodiversity and provide for clear objectives as well as the inclusion of all relevant stakeholders.
- b. Food systems are dependent on biodiversity and surrounding ecosystem services that support the productivity of agriculture, soil fertility, water quality and supply. The 2019 International Day for Biological Diversity focused on biodiversity as the foundation for our food and health and as a key catalyst to transforming food systems and improving human well-being. The Center for Biological Diversity (“**CBD**”) provides a list of things that can be done on an individual basis that can conserve and ensure sustainability use of biodiversity including the reduction of meat consumption, the purchase and consumption of seasonal foods and the promotion of local and indigenous biodiversity for food and nutrition.⁶⁶
- c. Biodiversity forms the foundation of agriculture, as it is the source of all variety in our crops and livestock. The CBD states that globally agriculture produces an average of 23.7 million tons of food per day and provides livelihoods for 2.5 billion people.⁶⁷ Despite the benefits of the agriculture industry, agriculture poses an unprecedented threat to biodiversity worldwide. The current practices of the agriculture industry causes tremendous environmental impact through the conversion of natural habitats to monocultures, soil degradation, unsustainable consumption of water, and unsustainable use of pesticides and fertilizers.

⁶⁵ For purposes of this Submission, animal agriculture includes both terrestrial animal agriculture and aquaculture. Emphasis is on industrialised and intensive systems rather than smaller extensive animal agriculture.

⁶⁶ CBD (2018) *Food system depend on biodiversity and ecosystem services* <https://www.cbd.int/article/food-2018-11-27-04-39-11>

⁶⁷ CBD (2019) *Agriculture must be part of the solution, not the problem* <https://www.cbd.int/article/food-2019-12-11-16-49-46>

- d. This is however not the same issue internationally as a five-year-initiative in partnership with the UN Environment Programme, the Food and Agriculture Organisation of the United Nations (“**FAO**”), and the United Nations Development Programme to enhance long-term sustainability and resilience for food security in sub-Saharan Africa with activities in 12 countries.⁶⁸
- e. With the recognition of South Africa being one of the smaller countries hosting more than two thirds of the world’s biodiversity while only having a landmass of 1.21 million km² and 1.1 million km² of surrounding seas,⁶⁹ the increased clearing of biodiversity in order to facilitate factory farming and agricultural activities presents a tremendous threat towards the conservation of biodiversity. The omission of industrialised animal agriculture (including aquaculture) and commercial fishing as threats to biodiversity in the current biodiversity framework is tremendously problematic.
- f. We propose that the Department of Agriculture Land Reform and Rural Development (“**DALRRD**”) be consulted in relation to the recognition of the agricultural sector as a threat to biodiversity and that relevant policies applicable are harmonised across departments to indicate the interconnected nature. This should specifically be done in relation to environmental impacts such as soil quality, land and pesticide usage and welfare considerations within the agricultural industry.
- g. Apart from direct impacts on biodiversity, we wish to point out the extreme and undeniable negative environmental impacts which animal agriculture more broadly has on the environment,⁷⁰ which indirectly impacts on biodiversity.
- h. These have been well document and include but are not limited to huge amounts of resources required (including water and land); soil pollution, reduction in quality and contamination; water pollution and contamination; air pollution and contamination; greenhouse gas emissions; environmental justice issues; harmful chemicals and antibiotics; and various others.
- i. While other countries in the world are looking at reducing their reliance on animal agriculture; and investing in alternatives – including plant-based agriculture, South Africa is actively promoting and attempting increasing it.
- j. Section 27 of the Bill of Rights states that everyone has the right to have access to (inter alia) sufficient food and water; and furthermore, that the state must “take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights”. Studies show (among other things) that animal

⁶⁸ CBD (2019) *Agriculture must be part of the solution, not the problem* <https://www.cbd.int/article/food-2019-12-11-16-49-46>

⁶⁹ Department of Environmental Affairs National Biodiversity Assessment (2018) http://opus.sanbi.org/bitstream/20.500.12143/6376/3/NBA2018_Vol7_GeneticDiversity.pdf

⁷⁰Some examples (non-exhaustive) of this include: <https://www.sciencedirect.com/science/article/pii/B9780128052471000253> and <https://www.humanesociety.org/sites/default/files/docs/hsus-report-agriculture-global-warming-and-climatechange.pdf> and <https://www.nationalgeographic.com/environment/2019/01/commission-report-great-foodtransformation-plant-diet-climate-change/>.

products have a particularly large water requirement per unit of nutritional energy compared to food of plant origin, and that the production of meat requires and pollutes large amounts of water.⁷¹

- k. Section 24: Right to Environment (Examples)
- i. Reports that indicate that “meat, aquaculture, eggs, and dairy use ~83% of the world’s farmland and contribute 56-58% of food’s different emissions, despite providing only 37% of our protein and 18% of our calories”.⁷²
 - ii. Current animal agricultural farming systems have a major and harsh impact on the environment.⁷³
 - iii. Studies show that a further consequence of the intensive farming of animals is the huge amount of greenhouse gas emissions associated therewith.⁷⁴
 - iv. As the association of increased greenhouse gas emissions impacts climate change and environment.
- l. It has been well-documented that the effects of global warming (a major driver of which, is animal agriculture) will be felt by poorer members of society.⁷⁵ This is grossly omitted in any of the strategic objectives contained in the NBSAP and NBF respectively. “While wealth and excess of the planet’s rich drive the pollution responsible for global warming, it is the economically marginal that will be hardest hit by the environmental shocks that are the inevitable fallout of that pollution”.⁷⁶

3. Wildlife Farming / “Ranching”

Wildlife farming negatively impacts on biodiversity, increases the risk of transmission of zoonotic diseases and has various other negative consequences. The NBF must include wildlife farming and ranching as a key threat and risk to biodiversity and this industry and impacts must be properly recorded throughout the NBF and its Strategies, frameworks and systems and include relevant policies to tackle this issue

- a. While zoonotic diseases are also prevalent in animal agriculture, mentioned above, of particular relevance and importance here is that the COVID-19 pandemic is largely believed to have been caused as a result of the use of wildlife. Yet, the aspects contained in the NBF shed no light this global issue.

⁷¹Gerbens-Leenes, P. Winnie and Mesfin M. Mekonnen and Arjen Y. Hoekstra. 2013. “The Water Footprint of Poultry, Pork and Beef: A Comparative Study in Different Countries and Production Systems.” *Water Resources and Industry* 1–2: 2536. <https://doi.org/10.1016/j.wri.2013.03.001>

⁷²Poore, Joseph and Thomas Nemecek. 2018. “Reducing food’s environmental impacts through producers and consumers” *Science* 360 (6392): 987-992. DOI: 10.1126/science.aaq0216.

⁷³Clark, Michael and David Tilman. 2017. “Comparative analysis of environmental impacts of agricultural production systems, agricultural input efficiency, and food choice.” *Environmental Research Letters* 12(6): 1-11. Retrieved July 20, 2019 (<https://iopscience.iop.org/article/10.1088/1748-9326/aa6cd5/meta>).

⁷⁴Supra note 69. Poore

⁷⁵Goldenberg, Suzanne. 2014. “Climate change: the poor will suffer most.” *The Guardian*, March 30, 2014. Retrieved July 20, 2019 (<https://www.theguardian.com/environment/2014/mar/31/climate-change-poor-suffer-most-un-report>).

⁷⁶*Ibid* Goldenberg.

- b. The NBF does not address the issue of diseases potentially spreading from wildlife and do not propose ways to prevent, monitor or mitigate these risks. It also does not deal with any of the issues of the use of biodiversity, despite promoting this consistently throughout, this is a major oversight.
- c. As the consumption of animals and wildlife is a critical issue, it is concerning to not see this issue being raised.
- d. A major percent of diseases are of zoonotic origin⁷⁷. The current global health crisis makes it clear that we are all inter-connected and that zoonotic spillovers are a result of human actions towards non-human animals and the way we interact with them. The exploitation of wildlife by humans through hunting, trade, habitat degradation and close contact between the two, increases the risk of virus spillover.⁷⁸
- e. According to infectious disease experts, the emerging of infectious zoonotic disease outbreaks have increased dramatically in the last 30 years and the most likely causes are anthropogenic commercialisation drivers such as: **Increased** number of farmed animals – including wild animals; **increased** hunting, **increased** trade in and transport of wild and domestic animals and **increased** agricultural activities and expansion of agricultural land⁷⁹ with consequent degradation of eco-systems.
- f. Reducing the risk of zoonotic spillover events from wild animals to people requires maintaining wild animals in secure and intact wild habitats and minimizing wild animal-human interaction, including by severely limiting the use and trade of wild animals, particularly for sale as luxury meats in large urban wildlife markets. We define wild animals to include non-domesticated species captured from the wild or bred in captivity; a particular focus is required for mammals and birds as these have been the sources of past zoonotic outbreaks. We define the wild animal trade as the legal and illegal commerce of such live wild animals, as well as of their parts and derivatives. We are not advocating for restrictions on the movement of animals for non-commercial trade (e.g., conservation, sanctuaries).
- g. It is internationally recognised that all species react to unsuitable conditions and when stressed and immune-compromised they become a vehicle for pathogens and the ideal environment for the emergence and spread of infectious diseases which can then be transmitted to humans. Good welfare conditions are not possible for commercially-farmed wild animals since captivity is inherently stressful for most wild animals. Poor welfare among groups of animals increases the risk of disease, and therefore zoonosis.

⁷⁷ Professor Lu Jia Hai, Epidemiology, University of Guangzhou, Webinar; Zoonotic Risks in Wildlife Farming, 28 April 2020

⁷⁸ (<https://royalsocietypublishing.org/doi/10.1098/rspb.2019.2736>)

⁷⁹ Professor Thijs Kuiken, Comparative Pathology at the Department of Viroscience of the Erasmus University Medical Centre in Rotterdam, The Netherlands and Di Marco et al. Moreno Di Marco et. al., Sustainable development must account for pandemic risk, PNAS February 25, 2020, 117 (8) 3888-3892; <https://doi.org/10.1073/pnas.200165511>)

- h. More worryingly, animal farming is a system which allows the same or better production at lower costs, therefore welfare and wildlife farming are contradictory concepts. In terms of welfare, the more controlled the environment is, the more the physiology of the animal stresses.⁸⁰ We will never be able to predict how the transmission will cross a species. So, whenever we try to farm domestic or wild animals for economic benefits, we expose humanity to pathogens that are and can be extremely dangerous for humans.⁸¹
- i. Wildlife farms can also contribute to the increased spread of infections and diseases to domestic farmed animals, to humans and to other wildlife. This is a threat to conservation and to traditional cattle farming and consequently also to those communities relying on a few animals for food. Farmed wildlife have shown to be carrying ticks, a carrier of the *Borrelia* bacteria; a number of skin diseases are more prevalent in farmed animals, both domestic and wild. Of additional concern is Tuberculosis, which affects a large number of humans and nonhumans and it is currently making victims in South Africa and in countries to which South Africa exports wild animals and their derivative parts. TB, for example, is the first cause of human death in China. Currently, South Africa is on high alert for a potential break out of avian flu – including ostrich farming operations. This is just one example.⁸²
- j. In the case of the big cat breeding industry, the slaughter of animals and export of bones involves serious food health and safety violations (also noted in the HLP Report). Individual lion ‘slaughterhouses’ are operating outside of South African law and are not compliant with food safety law and/or occupational health legislation especially given that many lions might be affected by bovine Tuberculosis.
- k. A recent peer-reviewed scientific paper⁸³ highlighted how the captive lion breeding industry in South Africa poses a real and serious health risk to thousands of tourists, industry workers and communities.
- l. Veterinarians who have assisted this industry in the slaughtering of captive predators need to be investigated for contravening veterinary codes of conduct which regulate the discipline in terms of protecting the health, avoiding the suffering of the animals and in terms of acting in the interest of people of South Africa and their health and welfare. In a sense, this makes them complicit in this abhorrent practice and trade. Since many big cats are bred purely for their bones, they can be neglected, starved, inbred and left to barely survive with their deformities, often in conditions where they develop

⁸⁰European Parliament's Committee on Petitions commissioned study on Animal Welfare in the European Union, 2017, [https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2017\)583114](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2017)583114)

⁸¹ Professor Lu Jia Hai, Epidemiology, University of Guangzhou, Webinar; Zoonotic Risks in Wildlife Farming, 28 April 2020

⁸² <https://www.dailymaverick.co.za/article/2021-04-20-karoo-ostrich-farmers-and-workers-fear-avian-flu-outbreak-after-gauteng-cases/>

⁸³Green, J.; Jakins, C.; Asfaw, E.; Bruschi, N.; Parker, A.; de Waal, L.; D’Cruze, N. African Lions and Zoonotic Diseases: Implications for Commercial Lion Farms in South Africa. *Animals* **2020**, *10*, 1692. <https://doi.org/10.3390/ani10091692>

diseases and infections. DFFE has not acted sufficiently to address the welfare violations pervasive throughout the industry.

- m. The environmental impacts of the current global food support chain leads to approximately 26% of anthropogenic GHG emissions, 32% of terrestrial acidification and 78% of eutrophication, while replacing animal by plant protein would reduce GHG emission of 49%, reduce acidification of 50%, reduce eutrophication of 49% and reduce land use of 76%.⁸⁴
- n. The number of farmed animals should be reduced, not increased, as part of transformative changes for sustainability.⁸⁵ This would mean lower risk of zoonosis, more efficient land use, less harm to climate, improved biodiversity and cleaner land, water and air. Ultimately, it would mean initiating that transformative process to honour the Sustainable Development Goals⁸⁶ South Africa committed to. The Minister should support measures to implement the above changes in the interest of the environment and the people.
- o. Global and national action to curb the wildlife trade is one of the most effective strategies to prevent future pandemics, and is necessary to reduce animal suffering and protect biodiversity.⁸⁷ We therefore call upon South Africa to support and champion a permanent ban on wild animal markets that could become sources for future pandemics and to commit to ending the international trade in wild animals and their products that could aid in the spread of zoonotic diseases. To fulfil South Africa's commitment and demonstrate that this is a global problem requiring a global solution, we further urge South Africa to develop a national plan to ensure that our own contributions to the wild animal trade do not contribute to this global problem.
- p. Other key stakeholders as issues relate to zoonotic diseases, pandemics and health issues, include the Department of Health (“**DoH**”). Thus any of the policies and strategies identified that have a risk of same must include this stakeholder.
- q. The breeding of wild animals as if they were domestic animals can and will affect the survival of these species as a whole **including wild populations**. There is significant potential for wild animals illegally obtained to be “laundered” through the captive breeding industry as well as potential for the genetic integrity of wild populations to be compromised by intensive breeding practices and hybridisation.

⁸⁴ Professor Thijs Kuiken, Comparative Pathology, Erasmus University Medical Centre, Rotterdam, Role of Animal Farming in the Emergence of Zoonosis, Webinar: Wildlife Trade and Zoonotic Diseases, Intergroup on Welfare and Conservation of Animals, 23 April 2020

⁸⁵*Ibid.*

⁸⁶<https://www.undp.org/content/undp/en/home/sustainable-development-goals.html>

⁸⁷Wishart, David. Commentary: Four states to help avoid the next pandemic. Folio. May 28 2020 www.folio.ca/commentary--four-strategies-to-help-avoid-the-next-pandemic/; Kolby, Jonathan. To prevent the next pandemic, it's the legal wildlife trade we should worry about. National Geographic. May 7 2020. <https://www.nationalgeographic.com/animals/2020/05/to-prevent-next-pandemic-focus-on-legal-wildlife-trade/>

- r. Captive wildlife breeding is likely to endanger the genetic health of wild populations since weak enforcement of laws means that there is a high possibility of genetically manipulated specimens coming into contact with wild populations.
- s. Wildlife ranching is clearly incorporated into the NBF, along with the current approach to “sustainable use”, however such approach is potentially damaging on long term biodiversity, the environment as well as human health. We are happy to provide further information as to the points specified above, as well as to how and why South Africa’s biodiversity will be impacted by the industrialized agriculture and captive breeding.
- t. Here we also wish to note reference in the HLP Report with one example (emphasis added) “In 2013, the Minister of Environmental Affairs requested the Scientific Authority to investigate and assess the current and potential risks of intensive and selective breeding of game on South Africa’s biodiversity heritage. An expert team of scientists, with a diverse range of skills and experience, was established. Their resultant report was submitted to the Minister in 2018. The report concluded that **intensive management and selective breeding of game poses a number of significant threats to biodiversity at an ecosystems and species level, while also threatening the prospects of other sectors of the biodiversity economy of South Africa, potentially compromising the sector’s current and future contribution to biodiversity conservation.**” (page 16)

4. Wild Caught Fishing⁸⁸

Industrialised, large-scale commercial fishing and over-fishing negatively impacts on biodiversity and has various other negative consequences (including in relation to climate change). The NBF must include fishing as a key threat and risk to biodiversity and this industry and impacts must be properly recorded throughout the NBF and its Strategies, frameworks and systems and include relevant policies to tackle this issue

- a. The CBD states that biodiversity underpins all fishing and aquaculture activities, as well as other species harvested for food and medicines. With 5 million fish being slaughtered every minute, fish continues to be the most traded food commodities worldwide.⁸⁹
- b. Human activities are a tremendous threat to aquaculture and threat seas and coast through activities including overfishing, destructive fishing practices, pollution and waste disposal, agricultural runoff and habitat destruction. Global climate change further adds pressure to marine biodiversity by raising the sea level, increasing water temperature and being the catalyst for more storms and other natural disasters.⁹⁰

⁸⁸ For purposes of our submission, we have focused on large scale, industrialised fishing operations and not small-scale operations.

⁸⁹ Convention on Biological Diversity <https://www.cbd.int/article/waterforbiodiversity>

⁹⁰ Convention on Biological Diversity <https://www.cbd.int/article/oceanscontainawealthofbiodiversity>

- c. Internationally, a global initiative has taken shape. In the United States specifically, this is known as the 30 x 30 initiative.⁹¹ The 30x30 campaign is a science-based initiative to conserve 30 percent of America's lands and waters by 2030 to fight climate change and reverse the destruction of wildlife, water sources and natural places.⁹² According to the NRDC, the 30 x 30 is an initiative taken to fully and highly protect at least 30 percent of our oceans by 2030 to help safeguard marine ecosystems and fisheries that provide food, jobs, and cultural sustenance to the global community.⁹³ The 30x30 initiative contains three key priorities namely the protection of biodiversity, the mitigation of climate change and the reduction of major environmental threats.⁹⁴
- d. As a member of the CBD, South Africa is said to be addressing the various challenges to the conservation and sustainable use of marine and coastal biodiversity through the application of precautionary and ecosystem approaches respectively.⁹⁵ Furthermore, South Africa has to take heed of the international 30x30 initiative in relation to both land and aquaculture in its conservation efforts.

5. Climate Change

South Africa's climate change obligations must be properly accounted for in the NBF and the express recognition of climate change legislation and regulations be utilised as an objective in the strategic objectives, as a matter of urgency.

- a. Environmental degradation and the impacts on sustained life for all on Earth has become a global concern. Climate change is one of the Anthropocene affected on continued life for both human and non-humans. Climate change is having a detrimental impact on the biodiversity and structure of global ecosystems.⁹⁶
- b. The global recognition of the importance of addressing climate change in light of sustainable development has been well noted in international instruments. The cumulative effects of climate change have already begun to take hold in Africa.⁹⁷

⁹¹ 30x30 Toolkit: Protecting 30 percent of America's Lands and Waters by 2030 https://www.google.com/url?sa=t&source=web&rct=j&url=https://static1.squarespace.com/static/589e56be46c3c44d745ac992/t/5eced9ffbd69a776fa88d63b/1590614527724/30x30%2BToolkit.pdf&ved=2ahUKEwi_rYPVm5_wAhWj_onEKHf7sBD8QFjABegQIAxAG&usq=AOvVaw32l_LDRC2LO99NMbcmdmjr2j&csid=1619554249253

⁹² Science Advances *A Global Deal for Nature: Guiding principles, milestones and targets 19 April 2019 Vol 5 no 4* <https://advances.sciencemag.org/content/5/4/eaaw2869>

⁹³ 30X30:NRDC'S Commitment to protect nature and life on Earth <https://www.nrdc.org/30x30-nrdcs-commitment-protect-nature-and-life-earth>

⁹⁴ Science Advances *A Global Deal for Nature: Guiding principles, milestones and targets 19 April 2019 Vol 5 no 4* <https://advances.sciencemag.org/content/5/4/eaaw2869>

⁹⁵ Convention on Biological Diversity <https://www.cbd.int/article/oceanscontainawealthofbiodiversity>

⁹⁶ Imbert J et al, Synergies between Climate Change, Biodiversity, Ecosystem function and Services, Indirect Drivers of Change and Human Well-being in forests (2020). Retrieved from www.link.springer.com/chapter/10.1007/978-981-15-7301-9_12.

⁹⁷ Intergovernmental Panel on Climate Change Synthesis Report (2014:90)

Various international and national assessments and research papers have stated that South Africa is likely to be vulnerable to the adverse effects of climate change.⁹⁸

- c. South Africa has played a leading role in the global climate change action as a member of BASIC,⁹⁹ the African Group of Climate Change Negotiators¹⁰⁰ as well as the G77.¹⁰¹ As such, South Africa is regarded as an important member of the developing world in the international climate change regime.¹⁰²
- d. South Africa remains committed to making a fair contribution towards addressing GHG emissions however this is done subject to its developmental objectives in light of poverty elimination and the eradication of inequality.¹⁰³
- e. South Africa ratified the United Nations Framework Convention on Climate Change (“UNFCCC”) in August 1997.¹⁰⁴ The state regularly reports to the UNFCCC secretariat on how it meets its obligations under the UNFCCC.¹⁰⁵ South Africa subsequently acceded to the Kyoto Protocol in 1997, recognising that the commitments set out in the UNFCCC were insufficient to achieve its ultimate objective of making a fair contribution to the stabilization of GHG emissions.¹⁰⁶
- f. South Africa has announced that it would act voluntarily to reduce domestic GHG emissions.¹⁰⁷ This is evident from the statement that the country will contribute its fair

⁹⁸Midgley G ‘Scientific Aspects of Climate Change and their Impacts in South Africa’ in Humby et al ‘Climate Change, Law and Governance in South Africa’ (2016) 2-1.

⁹⁹ Kidd M describes BASIC as a grouping consisting of Brazil, South Africa, India and China. The group was established in 2009 before the Copenhagen COP (COP 15). See Kidd M ‘South Africa, Climate Negotiations and the UNFCCC’ in Humby T et al ‘Climate Change Law and Governance in South Africa’ (2016) 4-5.

¹⁰⁰ This body was established at the COP21 in Berlin in 1995 as an alliance of African member states in order to have representation of the interests of Africa in climate change negotiations. Further information regarding the group is available at <https://africangroupofnegotiators.org/> accessed on (09 March 2020).

¹⁰¹The G77 is the largest intergovernmental organization of developing countries in the United Nations and provides the developing South with a collective voice an enhanced negotiating capacity on all major international economic and developmental issues. More information on the G77 is available at <https://www.g77.org/doc/> accessed (09 March 2020).

¹⁰² Kidd M ‘South Africa, Climate Negotiations and the UNFCCC’ in Humby T et al ‘Climate Change Law and Governance in South Africa’ (2016) 4-11.

¹⁰³ South Africa’s Intended Nationally Determined Contribution 2. Also see Kotze L et al ‘Climate Change Law and Governance in South Africa – Setting the Scene’ in Humby T et al ‘Climate Change Law and Governance in South Africa’ (2016) 1-24.

¹⁰⁴Odeku K & Meyer E (2010) ‘Climate Change Surge: Implementing Stringent Mitigation and Adaptation Strategies’ in South Africa *Journal of African Law* 54 159 at 182. Also see Kotze L et al ‘Climate Change Law and Governance in South Africa – Setting the Scene’ in Humby T et al ‘Climate Change Law and Governance in South Africa’ (2016) 1-9.

¹⁰⁵ Brown DA, Glider A & Kotze L ‘South Africa and Climate Change Ethics’ in Humby T et al ‘Climate Change Law and Governance in South Africa’ (2016) 7-5 & 6.

¹⁰⁶ Ibid.

¹⁰⁷ Statement by South Africa to the UNFCCC COP 13 Plenary, 12 December 2007 available at www.environment.gov.za accessed (07 March 2020).

share towards the common responsibility for the future and committed itself to having its actions being measurable, reportable and verifiable.¹⁰⁸

- g. South Africa refers to climate change as an ongoing trend of change in the Earth's general weather conditions as a result of an average rise in the temperature of the Earth's surface often referred to as global warming.¹⁰⁹ Climate change seriously threatens to undermine many of the sustainable development advances being made in South Africa.¹¹⁰ The state has expressed its vulnerability to the impacts of climate change, particularly in respect of water and food security as well as health, human settlements, infrastructure and ecosystem services.¹¹¹
- h. South Africa has stated that the key challenge for South Africa is to drive, at an economy-wide scale, financing of and investing in the transition to a low carbon and climate resilient economy and society.¹¹² The strengthening of domestic institutions in developing countries is imperative towards addressing climate change and its effects.¹¹³
- i. Various government publications have provided a position on climate change taking into account the international instruments mentioned.
- j. The South African NDC to the UNFCCC was stated to be formulated in the context of its on environmental and climate change regime, taking into account various legislative and other measures.¹¹⁴ The most pertinent of these are the National Climate Change Response Strategy 2004, The National Climate Change Response Green Paper 2010, The National Climate Change Response White Paper 2011 and the Climate Change Bill of 2018.¹¹⁵
- k. The National Climate Change Response Strategy 2004 provided that at the time legislation addressing climate change was not appropriate, however current legislation could be amended to provide for addressing climate change.¹¹⁶ It is noteworthy to mention that this strategy document makes explicit mention of the government's

¹⁰⁸ Official letter to the UNFCCC dated 29 January 2010 available at https://unfccc.int/files/meetings/cop_15/copenhagen_accord/application/pdf/southafricacphaccord_app2.pdf accessed (07 March 2020). Also see Brown DA, Glider A & Kotze L 'South Africa and Climate Change Ethics' in Humby T et al 'Climate Change Law and Governance in South Africa' (2016) 7-6.

¹⁰⁹ The National Climate Change Response White Paper, 2011 8.

¹¹⁰ Midgley G 'Scientific Aspects of Climate Change and their Impacts in South Africa' in Humby et al 'Climate Change, Law and Governance in South Africa' (2016) 2-12.

¹¹¹ South Africa Intended National Contribution to the UNFCCC p1 available at <https://www4.unfccc.int> (accessed 25 March 2020)

¹¹² South Africa Intended National Contribution to the UNFCCC p8 available at <https://www4.unfccc.int> (accessed 25 March 2020)

¹¹³ Wang X et al 'Research and scholarship on climate change law in developing countries' in Farber DA and Peeters M (eds.) 'Climate Change Law' (2016) 122.

¹¹⁴ South Africa Intended National Contribution to the UNFCCC p2 available at <https://www4.unfccc.int> (accessed 25 March 2020)

¹¹⁵ Ceaser C (2020) *Agenda 2030: A South African Perspective on the Sustainable Development Goals* University of the Western Cape <http://hdl.handle.net/11394/7348>

¹¹⁶ South African National Climate Change Strategy 2004 29.

intention that GHG emissions and inventories.¹¹⁷ This further highlighted the interrelationship between air quality and climate change through air quality legislation.¹¹⁸ The National Climate Change Response Green Paper 2010 highlights that South Africa is both a contributor to and potential victim of the global concern of climate change largely due to its fossil fuel dependency for economic sustainability.¹¹⁹ It provides that the objectives are that South Africa takes into account the principles of equity and common but differentiated responsibilities and respective capabilities as well as inter-generational commitment to section 24 of the Constitution. This will be done in order to make a fair contribution towards achieving stabilisation of GHG concentrations in the atmosphere and effectively adapt and manage unavoidable and potential damaging climate change impacts by implementation of interventions that build and sustain South Africa's social, economic and environmental resilience and emergency response capacity.¹²⁰ These objectives are a clear encapsulation of the objectives of the previously discussed UNFCCC. This illustrates South Africa's commitment to take positive steps to address its reliance on coal-fired power stations as its main energy source and in doing so mitigate its GHG emissions.

- l. The National Climate Change Response White Paper 2011 emphasises South Africa's commitment to build climate resilience in the country, its economy and its people. Furthermore, it highlights the transition to a climate-resilient, equitable and internationally competitive lower-carbon economy and society in a manner that simultaneously addresses South Africa's over-riding national priorities for sustainable development, job creation, improved public and environmental health, poverty eradication and social equality.¹²¹
- m. Bearing this in mind, this response paper provides the objective is to effectively manage climate change impacts through intervention and build and sustain South Africa's social, economic and environmental resilience and emergency response capacity and, like the Green Paper, make a fair contribution to the global stabilisation of the GHG concentration in the atmosphere.¹²²
- n. The White Paper further provides principles underlying its objectives inter alia common but differentiated responsibilities and respective capabilities, equity, uplifting the poor and vulnerable and addressing the special needs and circumstances of its people. Additional principles include polluter pays, informed participation, the precautionary

¹¹⁷Kotze L et al 'Climate Change Law and Governance in South Africa- Setting the Scene' in Humby T et al 'Climate Change Law and Governance in South Africa' (2016) 1-11.

¹¹⁸See Kotze L et al 'Climate Change Law and Governance in South Africa' in Humby T et al 'Climate Change Law and Governance in South Africa' (2016) 1-23.

¹¹⁹ National Climate Change Response Green Paper 2010 5.

¹²⁰ Ibid.

¹²¹ Brown DA, Glider A & Kotze L 'South Africa and Climate Change Ethics' in Humby T et al 'Climate Change Law and Governance in South Africa' (2016) 7-5.

¹²²Government of the Republic of South Africa *National Climate Change Response White Paper* 2011) GN 757 GG 34695 of 19 October 2011 (hereafter NCCRP) 11.

principle and sustainable development.¹²³ The NCCRP further provides the South Africa will continue to meaningfully engage in the current multilateral negotiations to further strengthen and enhance the international response to the climate change crisis.¹²⁴ In assessing these objectives and principles, it is evident that the objective of the White Paper aspires towards a low-carbon emitting system while doing so on the basis of social equity, a precautionary approach and upholding all of the pillars of sustainable development.

3.1. These policies ultimately led to the position changing in the 2004 Strategy plan and the drafting of the Climate Change Bill 2018 (the Bill). In its preamble the bill acknowledges the urgency of climate change and states that an effective, progressive and incremental response is required. It provides that the state is guided by the current international climate change regime, by stating that

‘the Republic has committed, internationally, to communicate and implement an effective nationally determined climate change response, including mitigation and adaptation actions that represents the Republic’s fair contribution to the global climate change response.’

- o. Most notably, the preamble of the Bill recognises the need to the implementation of a national climate change instrument in the context of an *environmentally sustainable development framework* that integrates the pillars of sustainable development as well as the employment objectives to meet its own national development goals. The preambular provisions indicate the states willingness to not only take action towards climate change, but do so in a manner consistent with the sustainable development agenda and international climate law.
- p. This Bill contains similar objectives as the abovementioned Green and White Paper respectively while providing for the coordinated and integrated response to climate change and its impacts by all spheres of government in accordance with the principles of cooperative governance.¹²⁵ It further seeks to address all spheres of governance, obligating coordination and harmonisation of policies, plans and decision of those exercising functions affecting or affected by climate change.¹²⁶ The Bill further highlights CBDRRC as contained in the Paris Agreement as a driving principle, acknowledging international equity and its own contribution towards taking urgent action to combat climate change and its impacts.¹²⁷
- q. The Bill provides the states objectives in relation to adaptation and mitigation respective. Its National Adaptation Strategy is stated to focus on achieving *inter alia* a reduction in the vulnerability of society, the economy and the environment to the effects of climate change, strengthening the resilience of the socio-economic and

¹²³ NCCRP 12.

¹²⁴ NCCRP s1. Also see Kidd M ‘South Africa, Climate Negotiations and the UNFCCC’ in Humby T et al ‘Climate Change Law and Governance in South Africa (2016) 4-6.

¹²⁵ Climate Change Bill 2018.

¹²⁶ Section 7 of the Climate Change Bill 2018.

¹²⁷ See s3(c) of the Climate Change Bill 2018.

environmental system and enhancing the adaptive capacity of the national environment and economic impacts of climate change.¹²⁸

- r. We assert that, in light of the urgency in addressing climate change as well as the legislative measures, both nationally and internationally, climate change be regarded as an urgent pressure in relation to South Africa's biodiversity. All of the relevant climate change legislation, obligations and policies must be included in the NBF – including the NDC.
- s. If we are to halt the sixth mass extinction, we require at least half of the world's land to be conserved under protected areas.¹²⁹ Ecological recovery is remarkable if natural systems are protected from extraction. The biggest threats to most wildlife species at present are habitat destruction and fragmentation. Local communities need to be incentivised through carbon credit schemes that pay community members directly to conserve and restore ecosystems and the biodiversity that they contain. The larger the contiguous area conserved, the greater the ecological benefit. In other words, ecological functionality tends to improve exponentially with contiguous scale expansion. Elephants, for instance, if given enough space, can reach threshold densities from which they then disperse. This produces patch heterogeneity – uneven impacts across a landscape – and regenerative vegetation growth in a dynamic system. Carbon efficacy is vastly improved in a dynamic system versus one that is managed to maintain a static aesthetic state. South Africa needs to move away from seeing conservation as a matter of farming the wild, and – rather – truly wilding the farm.¹³⁰
- t. In South Africa, this means that we stop treating the 21 million hectares of land under 9,000 private wildlife ranches as a conservation success story. Our objective should be to drop the fences between these fragmented reserves where viable and restore ecological functionality on a scale previously unimagined. We also need to increase the number of UNESCO World Heritage Sites to keep them exempt from exploitation.
- u. Instead of viewing wild animals as a commodity from which some kind of short-term economic rent can be derived, South Africa requires a policy that views wild animals as integrally connected to the country's conservation and tourism reputation, possessing both inherent biodiversity value and long-term economic value. Aside from the fact that there is a strong case to be made for some wild animals like elephants to be granted non-human personhood,¹³¹ wild animals generate far larger photographic tourism/wildlife watching revenue over a lifetime than being shot once for a trophy. Moreover, if we valued carbon sinks properly, and the ecological functionality required to optimise them, then the incentives would be loaded in favour of abandoning the current, fragmented and short-term model in favour of the long-term model that creates value through connecting landscapes through creating corridors.

¹²⁸ Section (4)(a) of the Climate Change Bill 2018.



- v. It is critical that the new conservation model for South Africa emphasises the importance of creating migratory corridors between currently fragmented properties. To this effect, we posit that the strategic objectives created by the NBF adequately addresses the conservation and expansion of protected areas, through the use of the NPAES, with the dual vision of the abovementioned intrinsic value of biodiversity and mitigation of climate change.

6. Stakeholders

- a. In light of:
 - i. the above considerations and their impact on animal, wildlife and biodiversity protection; future generations and others
 - ii. the past trend of the Department predominantly engaging with only a few of the relevant stakeholders (including industries that make economic profit from biodiversity and wildlife and those that promote a similar interpretation of “sustainable”)
 - iii. the view to move to a different approach,

We submit that there must be proper and adequate representation of wildlife and biodiversity protection organisations. We propose that the “Wildlife Animal Protection Forum of South Africa” (WAPFSA) is a suitable body for such engagement must be included where appropriate throughout the NBF.

Furthermore, other key stakeholders include future generations and indigenous groups, among others.

SECTION II: SELECTED OBJECTIONS TO AND ISSUES WITH THE NATIONAL BIODIVERSITY FRAMEWORK (NON-EXHAUSTIVE)

For purposes of this Section II, we have included more specific comments on the NBF. We have not reiterated the considerations from Section I herein as these apply to various portions of the NBF and should be incorporated throughout as appropriate. Failure or omission to comment on a specific issue does not indicate acceptance or approval of such provision.

As a technical point, all references to:

- “DAFF” must be amended to the Department of Agriculture, Land Reform and Rural Development. At times, both “DAFF” and “DALRRD” are mentioned as separate stakeholders.
- Department of Environment, Forestry and Fisheries (“DEFF”) must be amended to the Department’ new name.

[1 Introduction to the National Biodiversity Framework](#) Page1

[1.2.1 Overview of the National Biodiversity Strategy and Action Plan](#) Page2

While we appreciate that it is not the NBSAP that is up for comment, as per our previous comments, there are a number of issues with the current approach. These issues flow throughout the NBF and are captured in multiple sections. Importantly, they form the basis of the accelerators, which we believe are focused on

The “Vision” is recorded as: “Conserve, manage and sustainably use biodiversity to ensure equitable benefits to the people of South Africa, now and in the future”. This phrasing is problematic and does not capture the essence of Section 24 of the Constitution – again the emphasis is on the use of biodiversity, compared with the right to an environment that is not harmful and that is protected:

“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.”

In addition it does not capture the relevant constitutional factors (including case law) as referred to above.

[1.4 Users](#) Page6

1. The recordal that “the NBF may also have **some relevance for stakeholders** whose core work is not biodiversity conservation, but whose business either impacts on the status of biodiversity and ecosystems, or depends on biodiversity assets, ecosystem services and ecological infrastructure – for example, sectors such as **agriculture, fisheries**, water and sanitation, mining, energy, rural development and land reform, urban development, local economic development, and education” is not adequate.

2. Agriculture and fisheries should be included as key, relevant stakeholders as it pertains to biodiversity.
3. This means that DALRRD, the agriculture and fishing industries, NGOs include animal protection must be expressly included as key institutions.
4. In terms of NGOs, we submit that the NSPCA, EMS, ALRSA and the Wildlife Animal Protection Forum of South Africa (WAPFSA)¹³² must be expressly included. The recordal stating that the list is not comprehensive is not sufficient and stakeholders that represent animal and animal protection interests must be included.
5. Representatives of future generations' interests and human rights organisations must be included.

2 Context for implementation of the National Biodiversity Framework Page 8

The NBF identifies key pressures on South Africa's biodiversity.

We assert that animal agriculture, captive wild animals, wildlife farming and overfishing must be included as a key pressures on South Africa's biodiversity. This is further supplemented by the abovementioned submissions.

2.1 Status of South Africa's biodiversity Page 8

1. Specific activities that have caused the decline of species must be included and explicitly acknowledged in this section. It is not simply enough to acknowledge what these pressures are – the fundamental causes of these must be indicated.
2. Overfishing, animal agriculture, captive wildlife, wildlife farming, trophy hunting, other key issues impacting on biodiversity must be highlighted and emphasized in relation to the status of South African biodiversity.
3. Climate change must be

2.2 Institutional context for biodiversity management and protection Page 11

Must include the private sector include corporations and businesses who are responsible for the decimation of biodiversity and their habitats.

2.3 Alignment with national policy and legislation Page 11

1. The Animals Protection Act 61 of 1972 should be included in this list of relevant legislation it applies to animals in South Africa.
2. NEMLA to be included – as reference for when final legislation is adopted
3. We note that specific reference is made to national policy and legislation yet the provinces have legislation that applies and is relevant to these sectors. These must be adequately addresses.
4. We also note that key legislation includes statutes and not subordinate legislation and regulations. However, we wish to note the critical importance of these in the preservation of biodiversity including the TOPS regulations (marine and terrestrial), the CITES regulations, provincial ordinances and acts and various others that all have a major impact on biodiversity.
5. We are of the view that we should not be relying on White Papers that are literally decades old:
 - a. White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity (1997)
 - b. White Paper on Environmental Management Policy for South Africa (1998)
6. Climate change is not only "Reducing climate change impacts through reducing CO2 emissions" it includes all greenhouse gas emissions – such as methane and others.

¹³² <https://wapfsa.org/>

2.4 Alignment with international commitments

Page13

1. The following international commitments must be included:
 - a. The Convention on the Rights of the Child
 - b. The Paris Agreement must be specifically included **and the** Kyoto Protocol
 - c. World Organisation for Animal Health OIE – including Welfare Codes for Terrestrial and Aquatic Animals World Health Organisation
 - d. (WHO) commitments
 - e. African Union (AU) Animal Welfare Strategy [AU-IBAR]¹³³
2. South Africa must commit to 30% by 2030 – “30 by 30” Commitment, as other governments around the world are doing.

2.5 Principles

Page14

1. The aforementioned principles must be included such as intrinsic worth, animal welfare, integrative approach Animal welfare must be included as a key principle as it pertains to fauna.
2. The principles do not explain how one can recognise the intrinsic value of biodiversity yet still advocate that biodiversity management should be “people-centred”.
3. An eco-centric approach, based on harmonious coexistence with Nature should replace the “people-centred” approach advocated in this section.

3 Integrated framework for strategic coordination in the biodiversity sector

Page 15

1. DALRRD be included insofar as issues relating to animal welfare, agriculture and farming. The Department of Health included insofar as any of these areas impact on zoonotic diseases and pandemics. The relevant provincial authorities insofar as there is an overlap with their jurisdiction.
2. NGOs should also be included as interested stakeholders representing the interests of civil society – particularly animal protection organisations
3. Climate Change – should be mitigation measures
4. Provisions for alternatives to non-consumptive use of biodiversity, designated funding, research and resources towards non-consumptive use. References to “sustainable use” reconsidered.

3.1 National strategies, frameworks and systems in the biodiversity sector

Page15

1. As a general comment, we submit that all of the referenced strategies, frameworks and systems:
 - a. Clear timeframes must be identified;
 - b. Revision dates even provisionally must be provided for;
 - c. Public input and comment must be adequately allowed for.
2. At 5. Operation Phakisa promotes the fishing and aquaculture industries, yet there is insufficient regulation in these areas and they do or have the potential to dramatically impact on biodiversity. Relevant stakeholders must be included as identified above.

¹³³ https://rr-africa.oie.int/wp-content/uploads/2019/05/awsa_executive_summary_layout_eng_2017.pdf

3. At 14 and 15 must include the NDC.
4. 16: “The National Water Resource Strategy v2 (NWRs): Must include DALRRD and agricultural components as highest use of fresh water in South Africa.

[3.2 Accelerators for implementing NBSAP priorities](#) Page38

[Acceleration measures organized by NBSAP strategic objectives, outcomes and high priority Activities](#) Page39

EMS and ALRSA submit that the draft NBF represents a “business as usual” approach to biodiversity conservation that fails to recognise that biodiversity is not just “under pressure” but in a global crisis of extinction that is part of the climate crisis. Current biodiversity management measures have also allowed a global pandemic to develop. In order to address these crises, transformative changes to the way biodiversity is managed are necessary.

The traditional, anthropocentric approach that values nature only as a commodity is one of the core reasons why conservation is failing. In addition, another failure is the consistent failure to engage with other stakeholders. This section represents a clear trend in including the same stakeholders (with a few exceptions) and no real consultation with other stakeholders including civil society and those that represent animal protection, animal welfare, youth rights, human rights and others.

This section should include an additional key intervention or “accelerator” in the NBF comprising the establishment of a workstream to review the potential for adopting a new legislative and policy approach to wild animals as a means of achieving the transformative change that is necessary to have a significant impact on reversing the loss of wild species.

This section furthermore includes the usual suspects when it comes to consultation.

All relevant stakeholders must be given a proper platform on these key issues. Thus, animal protection and welfare organisations **must be included** where relevant. Those in industry have a clear vested interest in maintaining the status quo. The Department must allow for real public participation by providing a platform for more inclusive stakeholder engagement. “Expand membership of the Wildlife Forum,” – must therefore include animal protection organisations or they must be given their own mention and platform in the NBF.

Furthermore, despite SO 6 speaking to indigenous knowledge, indigenous stakeholders are clearly missing throughout this process.

Other key stakeholders include future generations and youth – who must also be given proper consideration and a platform.

Outcome 2.2. “NBSAP SO 3: Biodiversity considerations are mainstreamed into policies, strategies and practices of a range of sectors” – agriculture and fishing must be included.

[4 Mechanisms for Coordination, Cooperation and Implementation](#) Page 54

[4.2 National communities of practice for knowledge sharing](#) Page57

1. Table 7: Key national coordination mechanisms operating in the biodiversity sector **must include the Wildlife Animal Protection Forum of South Africa (WAPFSA)** as organized representative of animal protection and wildlife protection NGOs in South Africa
2. Additional key stakeholders include: future generations; indigenous communities [see in particular NBSAP SO 6] and other NGOs including human rights organisations.

[4.4 Strengthening biodiversity monitoring and reporting](#) Page63

1. Transparency – public databases with relevant information

The NBIS system must be expanded to include a public database of permits issued in terms of both national and provincial biodiversity legislation. This is necessary for the public to have oversight over biodiversity protection and to be able to participate in environmental decision-making which is part of every South African’s right to

have the environment protected in the manner envisaged in section 24 and to have access to information held by the State.

Despite these fundamental rights, biodiversity permits are overwhelmingly treated as protected information by conservation authorities, where there is no sound legal basis for doing so.

It is also anachronistic that biodiversity permits are regarded as protected information while other environmental management authorisations are made public as a matter of course. See for example, the South African Waste Information System (SAWIS) and the South African Air Quality Information System (SAAQIS).

In a landmark judgment in the United States in March 2021, a federal judge in the District of Columbia held that the U.S. Fish and Wildlife Service can no longer withhold from the public valuable wildlife trade data such as tracking the imports of at-risk species killed by trophy hunters into the U.S.

2. Independent audits and monitoring

4.5 Regional priorities and mechanisms for coordination Page64

1. Within the regional implementation – the following must be included: the African Union – Animal Welfare Strategy – AU IBAR¹³⁴

4.6 Mobilising finance for the biodiversity sector Page65

1. Notably missing from Figure 3 is NGOs and wildlife protection
2. Please can the Department clarify what a “Wildlife Ranching Certification” is; how this creates revenues; who issues such a certification; on what basis; what the authority and enabling legislation is for this and other relevant factors.

4.7 Implementation of the NBF Page66

1. Progress must be publicly available.

5 Annexures

5.1 Full list of strategies, frameworks and systems included in the NBF Page68

See comments above.

¹³⁴ https://rr-africa.oie.int/wp-content/uploads/2019/05/awsa_executive_summary_layout_eng_2017.pdf



APPENDIX I: SELECTED BROADER CONCERNS AND CONSIDERATIONS

This Appendix contains some of the broader concerns and considerations that we have previously raised with the Department and Minister/s more generally, and specifically did so in respect of our Submission relating to the High Level Panel.

This is by no means a complete list and we reserve the right to amend and update this at any time. It is meant to be illustrative rather than comprehensive. We have not necessarily repeated the specific considerations referred to in the Previous Sections herein, but these find equal application, where appropriate, in this Appendix I.

In addition, it includes certain matters for consideration as these pertain to matters to be deliberated on by, or are relevant to the NBF and strategic objectives. These include developments from foreign and international jurisdictions as well as legal and policy progression.

In addition to these considerations, we note that there are a number of matters contained in the NBF that are impacted by the findings, goals and recommendations in the HLP Report. Accordingly, the NBF should be reviewed in its totality in light of such considerations. We are of the view that the HLP Report greatly impacts on not only the NBF but also biodiversity and wildlife matters more generally. For example, the word “biodiversity” is included 619 times within the HLP Report.

The Department must consider and include the HLP Report within the NBF and other relevant documents as appropriate.

PART A: BROADER WELFARE, AGRICULTURE, CO-ORDINATION AMONG GOVERNMENT

1. Departmental Considerations

- 1.1. As stated previously, the Constitution provides 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 as well as securing ecologically sustainable development and use of natural resources (section 24).
- 1.2. Section 3 of the NEM:BA is entitled “State’s trusteeship of biological diversity” and this section requires the State to manage, conserve and sustain South Africa’s biodiversity and its components and to implement the Act to achieve the progressive realisation of the rights in section 24 of the Constitution. Further, as organs of state, the respective departments have a Constitutional duty to coordinate their actions, policies and laws and to ensure transparent, accountable and coherent government (section 41 of the Constitution).
- 1.3. South African common law classifies wild animals as unowned (*res nullius*) until someone acquires ownership by capturing or killing them. The common law situation has been changed to some extent by the Game Theft Act, 105 of 1991 which provides that the owner of land is the owner of game animals (which are defined) on that land

provided that the land is adequately enclosed with a fence that can contain that species of game.(In essence this game is treated as having been captured by the landowner).However, the net effect is that in the eyes of the law animals remain property and are incapable of having any rights (just as slaves once were).

- 1.4. Treating wild animals as commodities also entrenches an exploitative relationship between humans (who have rights) and animals (who have none).This promotes unethical behaviour instead of engendering respect for wildlife and all aspects of the natural world that sustains us. It also means that as wild animals become rarer, it will become increasingly profitable to remove them from the wild and farm them (as has already occurred with several species).This is not only undesirable from an ecological perspective, it also exposes the animals to cruel commercial farming practices.
- 1.5. The animal welfare implications of the amendments to agricultural legislation are also deeply concerning. The welfare of wild animals has historically been very inadequately protected. This is because environmental authorities within all spheres of government have consistently denied that they have a mandate to deal with welfare at all. On the other hand, agricultural authorities continue to devote few or no resources to wild animal welfare. The Animals Protection Act is seriously outdated and is entirely inadequate to deal with the welfare consequences of expanding and promoting the wildlife breeding and trading industry.

PART B: GENERAL TRANSPARENCY, ACCOUNTABILITY

1. Lack of Transparency and Accountability

- 1.1. The public has a legitimate interest in knowing whether or not the State is complying with its Constitutional obligations to take reasonable measures to protect the environment and conserve wildlife for the benefit of present and future generations.
- 1.2. However, instead of giving prompt access to relevant information such as hunting permits and quotas, investigating the allegations, and making their findings public, the Department has consistently frustrated attempts to obtain this information.
- 1.3. Section 32(1) of the Constitution guarantees the right to any information held by the State. Section 32(2) of the Constitution mandates the enactment of national legislation to give effect to the right in section 32(1).
- 1.4. PAIA has been enacted in compliance with this section. Chapter 4 of PAIA enumerates the specific grounds on which access to a document may or must be refused. These provisions constitute a limitation on the right guaranteed in section 32(1). Although this limitation can probably be regarded as constitutionally acceptable, these provisions must be narrowly construed. In the absence of a ground for refusing the information, PAIA and the Constitution require that access must be given. The Courts have held that “[u]nder our laws, the disclosure of information is the rule and exemption from disclosure is the exception. The default position in respect of access to information held

by the state is that of disclosure.” (M & G Media Ltd v President of the Republic of South Africa and Others [2013] 2 All SA 316 (GNP)). (emphasis added)

- 1.5. Access to information serves as an integral gateway for civil society organisations and communities to access information relating to a range of rights and issues. Furthermore, the realisation of section 24 of the Constitution is dependent on the ability of individuals, communities, civil society organisations and others to access information about the state of the environment.
- 1.6. The objects of PAIA expressly include that procedures and mechanisms must be developed to allow the public to obtain access to records of public bodies as “swiftly, inexpensively and effortlessly as reasonably possible” as well as “generally, to promote transparency, accountability and effective governance of all public ...bodies”.¹³⁵
- 1.7. Further, section 2 principles of NEMA, which serve as guidelines by reference to which DFFE is required to exercise any function relating to the protection of the environment, incorporate the principles that “the participation of all interested and affected parties in environmental governance must be promoted”,¹³⁶ that “decisions must take into account the interests, needs and values of all interested and affected parties”¹³⁷ and that “decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law”.¹³⁸

2. Recommendations

We recommend that the Minister:

- 2.1. direct the DFFE and all provincial Nature Conservation departments to ensure that their information officers give immediate access, on request, to all records relevant to all international trade in wildlife (i.e. CITES and non-CITES trade) including applications for permits, permits and permit conditions, records of decision-making processes, and reasons for the decisions, and amend their PAIA information manuals accordingly;
- 2.2. establish an on-line system as part of the NBIS or otherwise to enable the public to access this information over the internet; and
- 2.3. require DFFE and all provincial conservation authorities to implement procedures that enable and facilitate public participation in decision-making processes concerning the international trade in wildlife (e.g. giving interested or affected organizations and individuals an opportunity to make submissions to the decision-maker before a final decision is made).

¹³⁵ PAIA, section 9.

¹³⁶Section 2(4)(f) of NEMA.

¹³⁷Section 2(4)(g) of NEMA.

¹³⁸Section 2(4)(k) of NEMA.

PART C: CONCERNS RELATING TO TERMINOLOGY, VIEWS AND RELATED MATTERS

1. Inappropriate Language/Terminology Used by the Department and Minister and the Provinces

- 1.1. The type of language and terminology used across policy documents, legislation, regulations, documents and other statements produced by DFFE, the Ministry, their representatives and the provinces in relation to wild animals is unacceptable, insensitive and needs to urgently change to reflect: a much more caring position which indicates a duty of care and recognition of sentience; Constitutional Court judgments; and the overwhelming knowledge that humans have on the sentience of nonhuman animals.
- 1.2. The current terminology compels that if an animal is not economically valuable as a resource, then the well-being of that animal does not matter. Such a legislated situation is abhorrent and not justifiable. Conservation, all-round biodiversity and healthy welfare are independent from and inescapably precede any economic use.
- 1.3. The kind of terminology used by the Department takes place against the backdrop of the commodification of wild animals (who usually “pay their way” with their lives) and a deeply ingrained marginalization of “the Other”. Animal suffering seems, therefore, not to be on their agenda and indeed, through its use of terminology it is advocating endless exploitation of animals, concealing ethical issues and real suffering behind its raw commercialism.
- 1.4. The specific use of desensitized and detached language and terminology serves to codify, objectify, control, convert, erase, and disembody living beings. It plays an important role in legitimizing and sanitizing the unspeakable so that there is a deliberate collective forgetfulness about the main actors—who is being traded, where they come from—and the devastation that is being unleashed on wild animals through trade and commercial activities. Hence, sterile scientific terminology such as “game,” “wildlife products,” “wildlife production,” “off-takes,” “quotas,” “harvest,” “high value natural resource,” “damage causing”, “wild sourced inputs,” “specimens,” “derivatives,” and “derived products” are endlessly used when referring to sentient living beings.
- 1.5. Given that Department’s primary mandate is conservation; it is obliged, first and foremost, to holistically protect by all means, our natural heritage and healthy biodiverse environment, before any economic development can ever be considered.
- 1.6. The recently introduced words “faunal biological resources”—supposedly to allay our concerns in relation to welfare address and to address the recent court jurisprudence on the importance of animal welfare, do not reflect the intrinsic value or sentience of wild animals and are in contradiction with the need to protect or consider their welfare and protection – the very *raison d’être* of the amendments to underlying NEM:BA.
- 1.7. In addition, DFFE has introduced the word “well-being” when referring to faunal biological resources” instead of “welfare” and “protection”. Welfare and protection are normative terms that have common, accepted guidelines in law, while “well-being”

is open to too much interpretation, adaptation and exploitation, and will not pass legislative muster.

- 1.8. This kind of utilitarian language does not reflect the values of the South African Constitution or sentiment expressed by the Constitutional Court on this matter.
- 1.9. The recent Constitutional Court unanimous and landmark judgment handed down on 8th December 2016 by 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)*. This Judgment not only elevated the welfare and protection of non-human animals to a constitutional concern, but also significantly related their welfare and protection to biodiversity and the constitutional right to have the “environment protected ... through legislative and other means” in section 24 of the Constitution.
- 1.10. The Constitutional Court emphasised that constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general and that this obligation was especially pertinent because of South Africa’s history. Of particular interest is that the Constitutional Court held that:
 - i. The rationale behind protecting non-human animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on animals as individuals.
 - ii. Non-human animals are sentient beings capable of suffering and experiencing pain.
 - iii. Non-human animals are worthy of protection.
 - iv. Guardianship of the interests of non-human animals reflects constitutional values and the interests of society at large.
 - v. The protection of non-human animals safeguards the moral status of humans and the degeneration of human values.
- 1.11. It is particularly significant that the Judges concurred with and highlighted their support for the judgments of other Courts which have held that canned-lion hunting is “abhorrent and repulsive”.
- 1.12. In the judgment, the Constitutional Court made the following important declarations which necessarily impact directly on the Department’s policies, regulations and legislation:
 - i. Humans and animals have a storied relationship, one that is a part of the fabric of our society, homes and lives. Animals have shifted from being “mere brutes or beasts” to “fellow beasts, fellow mortals or fellow creatures” and finally to “companions, friends and brothers.”

- ii. To protect these voiceless companions, individuals have time and again stepped in when animals are mistreated.
 - iii. 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”. The High Court in South African Predator Breeders Association championed this view. A unanimous Full Bench found that canned hunting of lions is “abhorrent and repulsive” due to the animals’ suffering. On appeal, the Supreme Court of Appeal did not dispute this finding.
 - iv. 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”. The Court concluded further that this obligation was especially pertinent because of our history. 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.
 - v. 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”. 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.
- 1.13. It goes without saying that the Minister and her Department are obliged to act in accordance with this judgment and our environmental legislation needs to be in synergy with these constitutional imperatives. This must include a change in the use of derogatory language and terminology.
- 1.14. We note that the Department consistently refers to the “biodiversity economy” and similar terms where the pure economic aspects of wildlife in particular are emphasized. This is apparent from the “game changer” website¹³⁹.
- 1.15. Notably, there are important objectives and aims of the biodiversity economy such as “contribution towards the reduction of poverty in rural areas through the development and capitalisation of resources and hidden skills currently available in areas where the poorest South Africans live, thus incorporating marginalised communities into the greater biodiversity economy”
- 1.16. The website indicates that “If we support this sector the returns will be endless.”

¹³⁹<https://thegamechanger.co.za/>

1.17. However, absent from this is the consideration of alternatives to achieve such aims as well as the failure to consider living beings.

2. Other Views Expressed by the Department and Minister and the Provinces

1.1. As indicated in the WAPFSA Letter and reiterated herein, The Minister of the Department, Barbara Creecy (the “**Minister**”) made a public statement on Twitter¹⁴⁰ that:

“It is not the Animals that we need to worry about, it’s the people. After all animals have been looking after themselves for hundreds of thousands of years. If we want to address these issues we need to focus our energy on the people”.¹⁴¹

1.2. This and other statements by the Minister as well as the Department show the blatant disregard for the intrinsic value of animals or any other worth besides their commodification. It further indicates a complete lack of knowledge and understanding of the interconnectedness of species – on biological, environmental, societal, political, legal and various other issues one would expect the Minister in charge of this portfolio to have.

1.3. The former Minister of the Department, Edna Molewa, indicated similar sentiments when she indicated that if the captive lion breeding industry was shut down, lions would have “no value”.¹⁴²

1.4. On the 29th October 2019 at the opening of 3rd annual conference of the Global Wildlife Programme in Pretoria¹⁴³, the Minister seemed intent on only referring to the economic value of wildlife. She said that “the poaching of charismatic species, such as elephant and rhinoceros, prevents sustainable rural development since it reduces the tourism potential of natural habitats.” There appears to be a complete lack of concern for anything relating to the wildlife itself. Furthermore, without any mention of individual animals but rather the promotion of “the biodiversity economy” – indicating that the Department appears to be of the view that animals only have economic value – a sentiment which we submit is not representative of the majority of South Africans. It is also not Constitutional in light of statements by the Constitutional Court.

PART D: CURRENT REGULATORY FRAMEWORK

1. Issues with Current Regulation/ Regulatory Framework & Enforcement

¹⁴⁰<https://twitter.com/BarbaraCreecy> - Subsequently deleted.

¹⁴¹Report 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 (<https://pmg.org.za/taled-committee-report/3595/>)

¹⁴²*Ibid.*

¹⁴³https://www.environment.gov.za/mediarelease/barbaracreecy_partnershipsrequiredto_combatwildlifecrime

- 3.1. The below are some non-exhaustive issues with the current regulatory framework, in addition to those which have already been raised above.
- 3.2. We wish to raise these as they should be adequately addressed throughout the NBF as well as subsequent conservation framework documents.
- 3.3. As indicated in the WAPFSA Letter and reiterated herein, as well as the #TipsforBarbara Letter and Continuous Correspondence for further concerns, which include (but are not limited to):
 - i. inadequacy of existing legislation;
 - ii. inadequacies and proposals for law reform.

2. Fair Game Report¹⁴⁴

- 3.1. We refer to the 2018 Report entitled “Fair Game” in which a number of gaps, shortfalls and issues were identified with the current regulation of wildlife. We have included certain of these herein, which is by no means a complete list.
- 3.2. They concluded that: “The improvement of animal welfare laws and their consistent implementation, compliance, monitoring and enforcement is an urgent Constitutional imperative.”
- 3.3. Certain identified issues include but are not limited to:
 - i. “entrenched jurisdictional divide, the outdated and at times inadequate laws that are inconsistently applied and enforced, the judicial treatment of animal cruelty cases, and the focus on economic progress, welfare of wild animals is not currently a priority in South Africa.”
 - ii. specific issues identified with regard to (non-exhaustive):
 1. Animals Protection Act (offences and potential loopholes; inadequacies of implementation; APA is unsuited to wild animal protection);
 2. Performing Animals Protection Act;
 3. NEMA¹⁴⁵; NEMBA¹⁴⁶ and TOPS¹⁴⁷;

¹⁴⁴ Centre for Environmental Rights & Endangered Wildlife Trust: Fair Game. CER Website: <https://cer.org.za/wp-content/uploads/2018/06/CER-EWT-Regulation-of-Wildlife-Welfare-Report25-June-2018.pdf>. (Hereinafter “**Fair Game Report**”).

¹⁴⁵ National Environmental Management Act, 107 of 1998 (NEMA). Ecolex Website: <https://www.ecolex.org/details/legislation/national-environmental-management-act-1998-no-107-of-1998-lex-faoc018752/>

¹⁴⁶ National Environmental Management: Biodiversity Act, 10 of 2004 (NEMBA). National Department of Agriculture Website: <https://www.nda.agric.za/docs/NPPOZA/NEMBA.pdf>

¹⁴⁷ Threatened or Protected Species Regulations, 2007. Department of Environmental Affairs Website: https://www.environment.gov.za/sites/default/files/legislations/nemba_threatenedspecies_regulations_g29657rg8638gon152.pdf

4. Provincial legislation; and
5. Self-regulation.

3.4. In addition, reform measures were proposed including but not limited to:

- i. Immediate, medium, and long-term measures to standardise the application and enforcement of conservation and welfare laws are required to give adequate effect to the existing provisions.
- ii. As an immediate first step, clarification of the legal mandate for the welfare of wild animals and the updating of laws and closing of loopholes in the system is necessary.
- iii. Simultaneously, investment in compliance, monitoring and enforcement capacity (including well-trained officials) together with a standardised and transparent permit system are essential.
- iv. Short-term reform of the permit system with a number of proposals.
- v. Long-term reform of the permit system requires an integrated electronic national permit database, including permits, compliance inspection reports and audit reports. This is critical as the lack of any cross-referencing across provinces has allowed for the dubious practice of obtaining permits in one province where these have been refused in another. All provinces should have real-time access to the nationwide details of all applications, approvals and denials. In addition, significantly increased capacity for an adequate number of trained officials, regular welfare inspections and consistent enforcement, including through funding from increased permit application fees and fines, in addition to government funding to the NSPCA in its performance of its crucial public function, is required.

3.5. More specifically, in relation to the welfare of wild animals. We have not re-iterated all of these herein, however we wish to note that despite this Report coming out nearly two years ago and making recommendations – much of these have not been dealt with. We seek clarity from the Department as to what actions have been taken in response to the Fair Game Report.

3. Enforcement

- 3.1. There are major issues with the enforcement of the current regulation, particular in so far as it relates to animal welfare as well as the permitting.
- 3.2. For example: the then “DEA”, now ‘DFFE’, reported that of the 227 breeding facilities inspected in the Free State, Limpopo, North West and Eastern Cape, nearly 40% (88 facilities) were non-compliant with, among others, the Threatened or Protected Species (TOPS) Regulations.... In the Free State of the 111 facilities inspected, 62 were found to be in non-compliance with TOPS Regulations. Most facilities were also found to be



operating with expired permits. All permits were however renewed without providing reasons for renewal.¹⁴⁸

- 3.3. It is insufficient to consider “policy positions” and crime-targeted species management recommendations without due consideration of the status and capacity of enforcement agencies, including national and provincial environmental management inspectors, the South Africa Police Services and the capacity of the courts to handle wildlife crime matters.
- 3.4. It is imperative that specific attention is given to significantly improving wildlife crime enforcement and prosecution capacities.

PART E: PUBLIC OPINION

1. Wildlife Conservation and Public Sentiment

- 1.1. International surveys clearly indicate how citizens around the world are increasingly concerned about animal treatment, welfare and management within and outside the European Union (“EU”).¹⁴⁹
- 1.2. Scientific evidence and data collected during investigations, surveys, polls, as well as public consultations, are crucial when legislation and policies are formulated. At the same time, progressive policies in certain countries, will have a positive influence on the progress and growth of others and their code of practices.
- 1.3. US polls, EU surveys and public consultations from many other countries—which form the base of the tourists who come to South Africa—support an increase in the protection of biodiversity and Africa’s so-called “iconic” species. They also support the implementation of bans, including trophy hunting, ivory, rhino horn, big cat breeding and the wildlife trade.
- 1.4. These positions partially reflected at the Convention on the International Trade in Endangered Species (CITES Convention of the Parties CoP 18), where countries around the world were represented and voted.
- 1.5. The results of a US poll on policies in Botswana showed that 75% of respondents think it is important to protect elephants from trophy hunting. An overwhelming 78% percent of respondents did not support culling practices. Furthermore, 73% percent of respondents believed that trophy hunting badly impacts on the reputation of countries considered leaders in wildlife conservation¹⁵⁰.

¹⁴⁸<https://greengirlsinafrica.com/2019/03/18/shock-reversal-of-parliamentary-resolution-on-captive-lion-breeding/>

¹⁴⁹ European Parliament's Committee on Petitions commissioned study on Animal Welfare in the European Union, 2017, [https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2017\)583114](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2017)583114)

¹⁵⁰<https://www.hsi.org/news-media/u-s-poll-shows-strong-support-for-protecting-elephants-and-keeping-trophy-hunting-ban-in-botswana/>

- 1.6. Among the most controversial practices, relating to certain iconic terrestrial wild animals, the following are perceived by a large portion of the public as abhorrent: elephant culling; elephant capture; turning iconic animals into food; trophy hunting of vulnerable and iconic species; captive rhino breeding; rhino dehorning; management practices which include trapping and killing; the issue of so-called “problem animals”; captive breeding of big-cats for bones; trading baby animals as pets, to zoos and circuses.
- 1.7. For marine species, the more controversial and problematic practices include but are not limited to bottom trawling; longline and demersal line fishing; the use of protective nets; and the allowance to high volume of bycatch. Among the most contested sectors are those pertaining to: abalone; West Coast rock lobster; Patagonian toothfish; tuna; several types of sharks and octopuses as well as finfish aquaculture near protected areas (like in the Algoa case).¹⁵¹
- 1.8. Social media is a powerful tool that can galvanize public support for conservation action. In a letter published in Science researchers used an example of animal abuse in the context of the illegal wildlife trade to highlight the power of social media in bringing public attention to conservation issues.
- 1.9. Raising awareness of endangered species as well as the promotion of wildlife conservation is spread across the world via social media platforms.
- 1.10. Social media in all its various formats has done wonders to connect people around the world and expand dialogue on just about any topic you can think of including conservation and wildlife issues.
- 1.11. The emerging social media platforms are a promising means of strengthening public awareness. Quantitative methods have been used to analyse the spread effects of social media news. Concise but lively news is powerful for improving public environmental education. Traditional publishers have the power to influence public response in social media. Multifaceted public perception should be guided for reducing misunderstanding.
- 1.12. Many young people stare at screens instead of being out in the wild but others use technology to form a global community of conservationists. The rise of social media has allowed a new generation to connect with those who share their interests. Young people who are interested in conservation and nature are connecting on social media platforms. Groups such as A Focus on Nature in the United Kingdom connect, support and inspire young people who are interests in nature. `
- 1.13. Social Media has further highlighted these negative reactions. Studies assessing online public sentiment in relation to iconic species and biodiversity loss have been undertaken. One study focused on social media data and other online data sourced from conservation science, using natural language processing methods. The study

¹⁵¹ https://sahris.sahra.org.za/sites/default/files/additionaldocs/AlgoaADZ_Pre-appBAR_AppD_DispersionMod_2_0.pdf



concluded that the public is strongly concerned about worrying trends relative to wildlife, the environment and the current biodiversity loss. The study highlighted how this, in turn, can be used by decision makers to develop adequate conservation actions that can help reverse the biodiversity crisis.¹⁵²

- 1.14. Social Media has also been the platform for public outrage in relation to the killing of specific animals, with the support of celebrities and Ministers.¹⁵³
- 1.15. In recent years, following the expose of wildlife issues, zoos had to temporarily close, business had to be suspended and people have been fired.¹⁵⁴
- 1.16. Internationally there is an increasing number of people who are actively challenging the killing of endangered wildlife for pleasure and profit. They are educated, progressive and they travel. Many among them are conservationists, scientists and journalists.¹⁵⁵
- 1.17. The Captive Lion Industry alone has, between mid-2016 and June 2019, had over four million signatures, only via English language petitions, a number that should certainly highlight the proportion of the concerns from the general public towards this topic.

PART F: NOTABLE DEVELOPMENTS IN JURISPRUDENCE, FOREIGN, ENVIRONMENTAL AND ANIMAL LAW AND THOUGHT SYSTEMS

1. Introduction

- 1.1. As we have referred to throughout this Submission, we believe that a change in overall approach is required by the Department. We have set out some specific proposals in the South African context - particularly in Section I as well as by inclusion of the SAIFAC Submission as Appendix III. More specifically, in relation to an alternative interpretation to include the integrative approach.
- 1.2. In this Part, we build on that by setting out some relevant and emerging thoughts from around the world, indicating a necessary and global shift in thinking towards nature, the environment and animals more generally.
- 1.3. While the matters are distinct and have varying consequences, they are important for broader understanding. Moreover, to some extent the below mentioned aspects have been incorporated to varying degrees in legal systems around the world.

¹⁵² Christoph Fink -Anna Hausmann - Enrico Di Minin, Online sentiment towards iconic species, Jan 2020 <https://www.sciencedirect.com/science/article/pii/S0006320719305099>

¹⁵³<https://www.thelondoneconomic.com/news/environment/celebrities-and-ministers-rally-against-trophy-hunting-in-call-for-imports-ban/22/01/>

¹⁵⁴<https://blog.humanesociety.org/2020/01/norwegian-company-fires-executive-amidst-rising-public-sentiment-against-trophy-hunting.html>

¹⁵⁵<https://conservationaction.co.za/recent-news/opposition-to-trophy-hunting-is-a-major-social-movement-for-good/>

2. Earth Jurisprudence and Rights of Nature

- 2.1. In applying the South African legal system (with the exception of customary law) the Department considers all of Nature, other than human beings, as objects rather than legal subjects capable of holding legally enforceable rights.
- 2.2. Most of Nature is defined as property that the owner has the right to buy, sell and use, with minimal restrictions. Even though wild animals are defined as unowned (*res nullius*) they may be owned by the person that legally captures or kills them, or in the case of some species, encloses them within a game-proof fence capable of containing them. This provides a legal basis for treating wildlife and their body parts as commodities, and for regulating and promoting the commercial exploitation of wildlife and “wildlife products” as if they were inert manufactured objects, with little or no regard for their wellbeing.
- 2.3. The difficulty with the legal approach described above is that it is based on a thoroughly discredited, mechanistic understanding of the Universe which originated in Europe during the 16th and 17th Centuries. The Universe is not a machine composed of discrete inert components as was believed during the so-called “Age of Enlightenment”.
- 2.4. Earth is a complex, self-regulating system comprising myriads of relationships which sustain all forms of life. It is now scientifically indisputable that wild animals are sentient beings with their own agency, relationships and emotions and that they play vital roles in the ecosystems within which they evolved. Treating wildlife as property and granting the humans or juristic person who own them the right to exploit them as commodities has been directly compared to slavery. Human slaves were once legally defined as property and consequently could not hold rights. As with slavery, such laws legitimise and facilitate the treatment of wildlife in ways that are deeply exploitative, cruel and ecologically unsustainable.
- 2.5. It is apparent from the policies of the Department that it regards wild animals as property or commodities and does not recognise the reality that they are not objects but beings with the inherent right to exist and to play their part within the ecosystems within which they evolved.
- 2.6. It is clear that the legal, administrative, and economic measures taken to date protect wildlife, both in South Africa and globally, are inadequate and must be strengthened. The health of ecosystems on which we and all other species depend is deteriorating more rapidly than ever and there has been a catastrophic decline in the wildlife populations as well as an acceleration in the loss of biological diversity. As Sir Robert Watson, the chairperson of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) notes “we are eroding the very foundations of our economies, livelihoods, food security, health and quality of life worldwide.”
- 2.7. Despite this, in recent years the South African government has sought to intensify the commodification, commercial exploitation, hunting and trade in wildlife and their body parts. It has justified this on the basis that it is promoting its approach to “sustainable use” (i.e. consumptive uses that can be maintained indefinitely). However, in our view this policy is at odds with the State’s constitutional mandate to promote conservation

and prevent ecological degradation,¹⁵⁶ and to be a trustee of biological diversity¹⁵⁷. There could hardly be a more important role given the catastrophic decline of ecosystem functioning and loss of biodiversity globally which must be reversed in order to maintain human wellbeing and rights, prevent pandemics, maintain food security and mitigate climate change. Yet the critical role of maintaining and enhancing the ecological systems that sustain life has been made subservient to short-term exploitation of the environment in a manner that undermines long-term sustainability.

- 2.8. DFFE’s approach is anachronistic and diametrically opposed to the international trend towards different philosophies of law such as an eco-centric one (e.g. Earth Jurisprudence) that seek to regulate human beings in accordance with the understanding that we are all members of a community of life from which we derive our wellbeing. Consequently, maintaining the health and integrity of the ecological communities that sustain life (including the whole “Earth Community”) must take precedence over the short-term commercial interest of a minority of the individuals of one species.
- 2.9. The United Nations Harmony with Nature programme¹⁵⁸ tracks the development of this rapidly growing global movement and further information can be obtained from the Global Alliance for the Rights of Nature.¹⁵⁹
- 2.10. In 2008 Ecuador became the first country to recognize rights of Nature in its Constitution. Other countries that have recognised rights of Nature in their legislation include Bolivia and Uganda, while other countries such as New Zealand have enacted legislation recognizing specific rivers, mountains and ecosystems as legal persons capable of holding rights. Many courts have also recognised aspects of Nature as legal persons, including the Atrato River (in a judgment of the Constitutional Court of Colombia) and the Colombian Amazon (Colombia Supreme Court in the case of Future Generations v Ministry of the Environment and Others decided on 5 April 2018).
- 2.11. Applying an Earth Jurisprudence approach, recognising the rights and complying with the duties set out in the Universal Declaration of the Rights of Mother Earth¹⁶⁰ would be enormous beneficial to lions, leopards, elephants and rhinos as well as to humans (who would benefit not only from being able to interact with these magnificent creatures but also from the consequential increase in ecosystem health). For example, applying this approach would mean that parties could go to court to uphold the rights of these animals:
- i. to life and to exist;
 - ii. to water as a source of life;

¹⁵⁶ Constitution, section 24.

¹⁵⁷ The National Environmental Management: Biodiversity Act (NEM:BA) requires the State, as the Trustee of biological resources, to manage, conserve and sustain South Africa’s biodiversity and its components and to implement the Act to achieve the progressive realisation of the rights in section 24 of the Constitution (section 3). This is consistent with the national environmental management principle in section 2(4)(o) of the National Environmental Management Act, 1998 (“NEMA”) which states that “is set out as follows: “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.”

¹⁵⁸ <http://www.harmonywithnatureun.org/>

¹⁵⁹ <https://therightsofnature.org/>

¹⁶⁰ <https://therightsofnature.org/universal-declaration/>

- iii. to wellbeing and integral health;
 - iv. to not have their genetic structure modified or disrupted;
 - v. to habitat and to play their roles within ecological communities; and
 - vi. to live free from torture or cruel treatment by human beings.
- 2.12. We humans would have a legal duty to recognize and promote the full implementation and enforcement of those rights, to ensure that the pursuit of human wellbeing contributes to the wellbeing of the whole Earth community, and to establish and apply effective norms and laws for the defence, protection and conservation of those rights.
- 2.13. In practice this would mean that humans would be required to respect the freedom of lions, leopards, elephants and rhinos to live wild in suitable habitats and would only be entitled to restrict that freedom in very limited circumstances (e.g. fencing to prevent poaching). The killing of these animals for commercial reasons would be unlawful (although a killing in self-defence would be justifiable as it is in relation to human beings). Captive breeding for non-conservation purposes and the trading of lion bone, rhino horn and trophies would be prohibited.
- 2.14. This approach involves “balancing what is good for human beings against what is good for other species...” and we submit that the Department should be considering not only the rights of human beings, but also the rights of wild animals in making any determinations regarding biodiversity, their management, and determining which practices are sustainable. This requires an explicit balancing of interests: for example, an animal’s right to life and to fulfil its ecological role should outweigh the commercial interest of a human that wishes to kill it in order to sell its pelt.
- 2.15. We strongly urge the Department to embrace and apply the eco-centric Earth jurisprudence approach that is rapidly gaining traction around the world rather than persisting with the failing anthropocentric approach to wildlife. This will benefit current and future members of the Earth Community both human and other than human.

3. Additional Developments and Emerging Thoughts in Environmental Law

- 3.1. In addition to the Rights of Nature movement, there is a movement to consider the welfare of animals within a broader context.¹⁶¹
- 3.2. This movement recognizes that environmental law should adapt in order to account for the intrinsic value of animals.¹⁶²
- 3.3. We will not cover this concept in detail; however, there are several resources worth looking at.¹⁶³

¹⁶¹See generally David Bilchitz, *Exploring the Relationship between the Environmental Right in the South African Constitution and Protection for the Interests in Animals* (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2942112; Werner Scholtz, *Animal Welfare and International Environmental Law : From Conservation to Compassion* (2019), <https://www.amazon.com/Animal-Welfare-International-Environmental-Law/dp/1788113934>.

¹⁶²See generally Scholtz – Ibid.

¹⁶³See also STUDIES IN GLOBAL ANIMAL LAW (Anne Peters eds., 2020), <https://link.springer.com/content/pdf/10.1007%2F978-3-662-60756-5.pdf?fbclid=IwAR0ciouxJ6U5ZtH9RAhTSrxVY53hh0gGdQq6jJoR-D7PQWKHkOAJZYxYy1c> (Part III of this book



4. Additional Developments and Emerging Thoughts in Animal Law

- 4.1. Relatedly, Switzerland and Germany are countries on the forefront of granting animals constitutional protections.¹⁶⁴
- 4.2. Other countries, including India, Brazil, Slovenia, Austria, Luxembourg, and Egypt also have constitutional provisions that recognize and include animals.¹⁶⁵
- 4.3. Other statutes and constitutions have recognized that animals are sentient.¹⁶⁶
- 4.4. There are a number of other examples that are representative of a positive shift in legal systems (including in legislation as well as court decisions) from around the globe insofar as they relate to the recognition of animal sentience; elevating the status of animals and other protections granted.
- 4.5. A recently published article highlights some examples of these, in various foreign jurisdictions.¹⁶⁷ We are happy to provide further resources and research on the topic.

5. Indigenous Knowledge and involvement¹⁶⁸

- 5.1. In order to remedy this, Indigenous capacity and local knowledge regarding the conservation of wild animals and plants should be recognized, respected, recorded, developed and play a significant role in determining the management practices and policies for wildlife in South Africa.
- 5.2. Indigenous and local communities play a key role in protecting ecosystems. Many animals are regarded by Indigenous and local communities as sacred and, as custodians of biological diversity, communities have taken responsibilities for their well-being and sustainability.
- 5.3. However, many laws, including the laws relating to wild animals in South Africa, directly undermine Indigenous peoples and local communities, and their approaches to conservation and sustainable use. While communities govern and manage integrated territories, land and seascapes, the State tends to view each type of resource and associated traditional knowledge through a narrow lens, drawing legislative borders around them and addressing them in isolation, essentially compartmentalizing otherwise interdependent aspects of social-ecological landscapes.
- 5.4. One clear example is the historic delineation between matters of wildlife management and matters of welfare. Another is the delineation between Indigenous knowledge and

discusses biodiversity, species protection, concept of international animal rights and humanizing inhuman treatment of animals).

¹⁶⁴ Erin Evans, *Constitutional Inclusion of Animal Rights in Germany and Switzerland: How Did Animal Protection Become an Issue of National Importance?*, *Society and Animals* 18 (2010) 231-250.

¹⁶⁵ Jessica Eisen, *Animals in the constitutional state*, 15.4 *International Journal of Constitutional Law* 909 (2017).

¹⁶⁶ Nicole Pallotta, *Brussels Recognizes Animals as Sentient Beings Distinct from Objects*, ALDF (Dec. 8, 2018), <https://aldf.org/article/brussels-recognizes-animals-as-sentient-beings-distinct-from-objects/>.

¹⁶⁷ <https://news.vin.com/default.aspx?pid=210&catId=6958&Id=9639465>

¹⁶⁸ We draw this section from a draft of the Submission to the HLP provided by the Global White Lion Protection Trust.



wildlife management. This fragmented nature of the law is compounded by the fact that such a compartmentalized approach is implemented by government agencies focusing on particular issues such as biodiversity, forests, agriculture, or Indigenous knowledge systems, without considering a systemic ecosystem approach to conservation and wild animal management, which is the Indigenous Way.

-----**END**-----