



Image: Corlette Wessels

Fair Game?

Improving the well-being of South African wildlife

Review of the legal and practical regulation of the welfare of wild animals in South Africa, 2018

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ACRONYMS

APA	Animals Protection Act, 71 of 1962
BMP-S	Biodiversity Management Plans for Species
CACH	Campaign Against Canned Hunting
CapeNature	Western Cape Nature Conservation Board (t/a CapeNature)
CHASA	Confederation of Hunting Associations of South Africa
CITES	Convention on the International Trade of Endangered Species of Fauna and Flora, 1973
COP	Convention of the Parties
DAFF	Department of Agriculture, Forestry and Fisheries
DEA	Department of Environmental Affairs
DEDEA	Eastern Cape Department of Economic Development, Environmental Affairs and Tourism
DENC	Northern Cape Department of Environment and Nature Conservation
DESTEA	Free State Department of Small Business Development, Tourism and Environmental Affairs
EKZNW	KZN Nature Conservation Board (t/a Ezemvelo KZN Wildlife)
EMI	Environmental Management Inspectorate
GDARD	Gauteng Department of Agriculture and Rural Development
GTUP	CapeNature Game Translocation Policy
IATA LAR	International Air Transport Association Live Animal Regulations
ICPA	International Convention for the Protection of Animals, 1988
IUCN	International Union for Conservation of Nature
KEP	Knysna Elephant Park
KZN	KwaZulu-Natal
LEDET	Limpopo Department of Economic Development, Environment and Tourism
LEMA	Limpopo Environmental Management Act, 7 of 2003
MEC	Member of the Executive Council
MLRA	Marine Living Resources Act, 18 of 1998
MTPA	Mpumalanga Tourism and Parks Agency
NCSPCA / NSPCA	National Council of Societies for the Prevention of Cruelty to Animals
NDF	Non-detriment finding in terms of CITES
NEMBA	National Environmental Management: Biodiversity Act, 10 of 2004
NEMLAB4	National Environmental Management Laws Amendment Bill, 2017
NHSA	National Hunting and Shooting Association
NWBMA	North West Biodiversity Management Act, 4 of 2016
OIE	World Organisation for Animal Health
PAAZA	Pan-African Association of Zoos and Aquaria
PAIA	Promotion of Access to Information Act, 2 of 2000
PAPA	Performing Animals Protection Act, 24 of 1935
PHASA	Professional Hunters Association of South Africa
READ	North West Department of Rural, Environmental and Agricultural Development
SABS	South African Bureau of Standards

SAHGCA	South African Hunters and Game Conservation Association
SANBI	South Africa National Biodiversity Institution
SANS codes	SABS' South African National Standards codes
SAPA	South African Predator Association
SAPS	South African Police Services
SAVA	South African Veterinary Association
SEMA	Specific Environmental Management Act
SPCA	Society for the Prevention of Cruelty to Animals
SPCAA	Society for the Prevention of Cruelty to Animals Act
TOPS	Threatened or Protected Species Regulations, 2007
UDAW	Universal Declaration on Animal Welfare, 2011 (proposed draft)
UN	United Nations
WRSA	Wildlife Ranching South Africa
WSPA	World Society for the Protection of Animals
WTA	Wildlife Translocation Association

EXECUTIVE SUMMARY

The legal regulation of wild animal welfare in South Africa follows the traditional – but outdated – distinction between animal welfare and biodiversity conservation. Captive wild animals under the physical control of humans, whether held temporarily or permanently, straddle the divide between inter-departmental and concurrent national and provincial jurisdiction due to a statutory regime unintended and unsuited to addressing the issue of wild animal welfare. In practice, this ultimately provides minimal protection for wild animals.

The fast-growing number of commercial exploits involving wild animals, and the increasing public awareness and interest in the welfare of wild animals coupled with growing public concern about frequent reports of violations of general principles of welfare, the need for a solid, consistent and adequate welfare regime in respect of wild animals is apparent and urgent. This report was prompted by shared concern amongst civil society organisations, including the Endangered Wildlife Trust (EWT) and the Centre for Environmental Rights (CER), about the absence of welfare considerations in biodiversity laws, and the inadequacy of existing welfare laws as they apply to wild animals. This report was prepared to inform the broad consultation and collaboration amongst a range of stakeholders with a view to constructive engagement with the national and provincial departments of environmental affairs and agriculture, aiming to address a more appropriate legal framework to improve the welfare protection of wild animals. The report also importantly places the issue of wildlife welfare in a Constitutional context.

In part one, the national, provincial and international law, as well as the norms and standards applicable to wild animals are evaluated. In part two, the practical application of these laws is reviewed through information obtained from media and other reports, articles, studies, interviews with relevant role-players and responses to access to information requests. A summary of feedback from initial consultations with various stakeholders is included as an annexure to this report.

The report concludes by providing legal and practical recommendations for the improvement and proper regulation, compliance with and enforcement of appropriate minimum welfare standards for wild animals under the control of humans. These recommendations serve as a catalyst to open discussions with and tender assistance to the relevant government and legislative bodies for the improvement of wildlife welfare laws and practices.

In summary, 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. 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. Simultaneously, investment in compliance, monitoring and enforcement capacity (including well-trained officials) together with a standardised and transparent permit system are essential. Third, short-term reform of the permit system requires the following:

- Nationally prescribed standard permit conditions (with the necessary adjustments for province-endemic species as well as exotic or non-indigenous animals as there is no reason why welfare protection should discriminate between species) with the mandatory incorporation of basic welfare provisions in line with standard welfare laws and guidelines, such as the South African Bureau of Standards' (SABS) South African National Standards (SANS) codes (which provide basic standard operating procedures, for example, for the conveyance and temporary housing of different species of animals);
- National standardisation of permit applications, including standard, uniform and mandatory permit application forms, assessment checklists, and the minimum mandatory information required to appear on a permit (including, for example, full addresses, microchip numbers or other objective identification mechanisms for each animal listed on the permit, the specific restricted activities permitted);
- To promote the quality and appropriateness of permit conditions, publication of permit applications and proposed permits for 15-30 days to allow an opportunity for comment and objection by civil society organisations and other affected parties;
- Strict monitoring and enforcement of permit conditions, particularly those relating to welfare; and
- Easy and automatic public access to permits, compliance inspection reports and audit reports.

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.

The improvement of animal welfare laws and their consistent implementation, compliance, monitoring and enforcement is an urgent Constitutional imperative.

I. INTRODUCTION

The legal regulation of wild animal welfare in South Africa follows the traditional distinction between animal welfare (which falls under the auspices of the Department of Agriculture, Forestry and Fisheries (DAFF)),¹ and biodiversity conservation (which fall within the mandate of the Department of Environmental Affairs (DEA)). This tradition is reflected in the legislation, which is outdated. Captive wild animals, whether held temporarily or permanently, uncomfortably straddle the divide between inter-departmental and concurrent national and provincial jurisdiction due to a statutory regime unintended and unsuited to addressing the issue of wild animal welfare. In fact, wildlife welfare is generally understood to be almost non-existent, and merely incidental to conservation in some instances.²

Commercial exploitation of wild animals include wildlife ranches, exotic breeding,³ game translocations, game auctions, carnivore/predator breeding for hunting and tourism and animal interaction facilities (walking with lions, cheetahs and other wild animals considered to be charismatic, lion cub and cheetah petting, elephant-back safaris, and so forth).⁴

This report was prompted by the growing concern amongst civil society organisations, including the Endangered Wildlife Trust (EWT), Centre for Environmental Rights (CER) and the Lewis Foundation, about the absence of welfare considerations in biodiversity laws and permits, and the inadequacy of existing welfare laws as they apply to wild animals, particularly those in temporary or permanent captivity. The increase in reported incidents of captive wild animal neglect and abuse, which are discussed in detail in this report, and the general lack of monitoring and enforcement of welfare standards for these animals, indicate an urgent need for the reform of the practices and laws in relation to wild animal welfare.

This report aims to serve as a starting point for the broad consultation and collaboration amongst a range of stakeholders,⁵ including government, industry bodies, conservation agencies and animal welfare organisations, required to address a more appropriate legal framework to improve the welfare protection of wild animals.

¹ The Minister of Agriculture, Forestry and Fisheries (DAFF) was tasked with the administration of the Animals Protection Act, 71 of 1962, in 1997 in line with trends in countries such as Australia, New Zealand and the United States of America. Draft Animal Care policy online at:

https://www.capetown.gov.za/en/CityHealth/Documentation/Documents/Animal_Care_Policy_for_SA_Dept_of_Agriculture_Draft.pdf (accessed 17 February 2016).

² Scholtz W 'Injecting compassion into international wildlife law: from Conservation to Protection?' 2017 Transnational Environmental Law 1-21 at 4.

³ Both the breeding of animals not indigenous to South Africa and the breeding of new varieties of indigenous animals, such as colour-morphs, etc.

⁴ The CEO of SA Tourism echoed the sentiments of a large number of South Africans in 2017, saying that "South African Tourism does not promote or endorse any interaction with wild animals such as the petting of wild cats, interacting with elephants and walking with lions, cheetahs and so on" and urging the promotion of authentic and credible tourism. See online at <http://conservationaction.co.za/recent-news/time-end-animal-interaction-bloody-slow-process/> (accessed 25 January 2017).

⁵ See Annexure 1 for list of stakeholders.

It is fair to say that good animal welfare as a whole is dealt with inconsistently in our society and law. Good welfare, by its very definition, promotes healthy development, humane treatment, the ability to express innate behaviour and the fostering of biodiversity as each species performs its role in the ecosystem optimally. Welfare is therefore an important consideration, for more than just anthropocentric reasons, in biodiversity conservation. The courts, including the Constitutional Court, have recently and increasingly recognised the importance of animal welfare and the important link between conservation and welfare.

This report examines the legal and practical regulation of the welfare of wild animals in South Africa with view to constructive engagement with the national and provincial departments of DEA and DAFF, and other relevant stakeholders, aiming at reform. The report also importantly places the issue of wildlife welfare in a Constitutional context. In part one, the national, provincial and international law, as well as the guidelines, norms and standards applicable to wild animals are evaluated. In part two, the practical application of these laws is reviewed through information obtained from media and other reports, articles and studies, interviews with relevant role-players and responses to access to information requests.

The report concludes by providing legal and practical recommendations for the improvement and proper regulation, compliance with and enforcement of good minimum welfare standards for wild animals under the control of humans, on a Constitutional basis.

Measures to standardise the application and enforcement of conservation and welfare laws are required to adequately give effect to the existing prescripts. The improvement of welfare laws and the consistent implementation, compliance, monitoring and enforcement thereof is not only a policy issue but an urgent Constitutional imperative.

II. **SCOPE**

What is welfare?

Due mainly to the entrenched commercial use of animals for centuries, the protection of the welfare of animals, both domesticated and wild, was reactionary and developed slowly and disjointedly. The first official animal welfare society started in England in 1824, called upon by the need for the protection of carriage horses.⁶ The trend quickly spread to British colonies and other countries: the United States of America in 1866, Canada in 1869, Australia in 1871 and South Africa a year later.⁷ At this time, the welfare focus was mainly on agricultural, transport and companion domestic animals rather than on wild animals, the latter generally being hunted and otherwise exploited worldwide without regulation.

The National Council of Societies for the Prevention of Cruelty to Animals (NCSPCA), (also referred to as NSPCA) was statutorily established in South Africa in 1993.⁸ Prior to this and since 1872, with the establishment of the Cape of Good Hope SPCA (which still exists today as a society under the NCSPCA

⁶ Online at <https://www.rspca.org.uk/utilities/aboutus/history> (accessed 5 April 2016).

⁷ Online at <http://www.spca.org/about-spca/our-history/> and <https://www.animallaw.info/article/history-rspca> (accessed 5 April 2016).

⁸ Societies for the Prevention of Cruelty to Animals Act, 169 of 1993.

umbrella),⁹ the different welfare societies operated independently. The role of the NCSPCA and SPCAs are discussed later.

The “five freedoms” in animal welfare, first developed five short decades ago in 1965 in the United Kingdom in the wake of Ruth Harrison’s ground-breaking *Animal Machines*,¹⁰ and officially endorsed in Europe and North America by 1979,¹¹ form the basis of welfare assessment of animals under human control.¹² In 2008 the World Organisation for Animal Health (OIE) adopted a standard definition of animal welfare, incorporating the five freedoms.¹³ These basic welfare considerations are:¹⁴

- Freedom from hunger and thirst;
- Freedom from discomfort;
- Freedom from pain, injury or disease;
- Freedom from fear and distress; and
- Freedom to express natural behaviour.

Freedom of liberty, life or body, while essential for any autonomous being, are not included in the list of freedoms due to direct conflict with the consumptive use of animals. As will be discussed later, the five freedoms themselves are subject to commercial standards of practice.

In 2000, a draft Universal Declaration on Animal Welfare (UDAW) consisting of seven articles was proposed by the World Society for the Protection of Animals (WSPA) to United Nations member states. It was updated in 2011, and is yet to be adopted. UDAW states:

PREAMBLE

- [1] AFFIRMING that animals are sentient beings and that their welfare is an issue worthy of consideration and respect by Member States;
- [2] CONSCIOUS that humans share this planet with other species and other forms of life and that all forms of life co-exist within an interdependent ecosystem;
- [3] EMPHASIZING that animal welfare should be guided by the best available science & ethical values;
- [4] RECALLING that the “five freedoms (freedom from hunger, thirst and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; and freedom to express normal patterns of behaviour)” provide valuable general guidance for animal welfare;
- [5] CONVINCED that good practices in animal welfare can have major benefits for humans and the environment, and that inclusion of animal welfare in policy discussions can strengthen efforts by governments and the United Nations on a range of issues including human and animal health, food security, poverty & hunger reduction, disaster risk reduction &

⁹ The Cape of Good Hope SPCA is also the only SPCA branch in the country that has a wildlife unit at the time of this report; the rest of the wild animal welfare in the country is managed by the NSPCA Wildlife Unit, consisting of a manager and three inspectors (February 2017). Online at <http://www.nspca.co.za/wildlife/> and <https://capespca.co.za/wildlife-unit/> (accessed 4 March 2016).

¹⁰ Harrison, Ruth *Animal Machines: The New Factory Farming Industry* (1964) Vincent Stuart Ltd, London.

¹¹ Online at <http://webarchive.nationalarchives.gov.uk/20121007104210/http://www.fawc.org.uk/freedoms.htm>; <http://www.fve.org/news/publications/pdf/gvp.pdf>;

<http://webarchive.nationalarchives.gov.uk/20121007104210/http://www.fawc.org.uk/pdf/fivefreedoms1979.pdf> (accessed 8 October 2010).

¹² Online at http://msue.anr.msu.edu/news/an_animal_welfare_history_lesson_on_the_five_freedoms (accessed 10 October 2010).

¹³ Online at <http://www.oie.int/en/animal-welfare/animal-welfare-key-themes/> (accessed 14 June 2017).

¹⁴ Online at http://msue.anr.msu.edu/news/an_animal_welfare_history_lesson_on_the_five_freedoms (accessed 10 October 2010); <http://nspca.co.za/?s=five+freedoms> (accessed 5 April 2016).

relief, environmental sustainability and social development;

[6] WELCOMING *the FAO's integration of animal welfare into its poverty alleviation, disaster relief and livestock development programmes, as outlined in the FAO Expert Meeting Report "Capacity building to implement good animal welfare practices" (2008)*;

[7] RECOGNIZING that many Member States already have a system of legal protection for animals, both domestic and wild, and that it is important to ensure the continued effectiveness of these systems and the development of better and more comprehensive animal welfare provisions;

[8] CONSIDERING that the promotion of animal welfare requires collective action and that all stakeholders and affected parties must be involved;

[9] ACKNOWLEDGING *that the provisions contained in this declaration do not affect the rights of any Member State*;

[10] NOTING *Resolution XIV adopted on 24 May 2007 by the International Committee of the OIE (recognized as an international animal welfare standard-setting body) expressing support in principle for the development of a UDAW*.

Proclaims the following Universal declaration as a means of improving the welfare of animals:

The clauses in the Preamble section are numbered for ease of reference for discussion purposes only.

1. Article I:
Animals are sentient beings and their welfare should be respected.
2. Article II:
For the purposes of this Declaration, animal welfare includes animal health and encompasses both the physical and psychological state of the animal. The welfare of an animal can be described as good or high if the individual is fit, healthy, free from suffering and in a positive state of wellbeing.
3. Article III:
Sentience shall be understood to mean the capacity to have feelings, including pain and pleasure, and implies a level of conscious awareness. Scientific research confirms that all vertebrates are sentient animals, and indicates sentience in some invertebrates. This is an active research area and knowledge of sentience of different species continues to grow.
4. Article IV:
All appropriate steps shall be taken by Member States to prevent cruelty to animals and to reduce their suffering. This Declaration provides a basis for states and peoples to:
-work to improve their national animal welfare legislation;
-introduce animal welfare legislation in countries where it does not currently exist;
-encourage those businesses which use animals to keep welfare at the forefront of their policies;
-link humanitarian, development and animal welfare agendas nationally and internationally;
-inspire positive change in public attitudes towards animal welfare.
5. Article V:
Appropriate policies, legislation and standards on the welfare of animals shall be further developed and elaborated on the basis of this Declaration including, but not limited to, those governing the treatment and management of wild and companion animals, animals used in

farming, scientific research or for draught and recreational purposes and those kept in captivity.

6. Article VI:
The policies, legislation and standards attained by each state on animal welfare shall be observed, recognized and promoted by improved practices and capacity-building, nationally and internationally. Whilst there are significant social, economic and cultural differences between societies, each should care for and treat animals in a humane and sustainable manner in accordance with the principles of the Declaration.
7. Article VII:
Member States are called upon to adopt all necessary measures to give effect to these agreed principles.

An earlier, also unadopted, proposal, the International Convention for the Protection of Animals (ICPA), was made by the Committee for the Convention for the Protection of Animals in 1988, along with Protocols – the Protocol for the Care of Exhibited Wildlife, the Protocol for the Taking of Wild Animals and the Protocol for the International Transportation of Animals having relevance here, and may be used as guiding principles.

The Animals Protection Act, 71 of 1962, South Africa's primary animal welfare statute, drafted prior to the identification of the five freedoms, aims to prevent "unnecessary" cruelty rather than to promote care or welfare of animals. This Act is assessed in detail in the next chapter.

Accordingly, welfare in the context of this report is limited to ensuring the basic physical and psychological well-being of a wild animal while under the temporary or permanent control of humans.

What is a wild animal?

The term "wild animal" is generally considered to be any animal that belongs to a species that exists in a wild state anywhere in the world, whether domesticated or not, and excludes fully domesticated species such as animals used in agriculture or kept as companion animals. The different pieces of legislation tailor the definition to the purpose of the legislation. The majority of the provincial nature conservation Acts and Ordinances define a "wild animal" as:

"any vertebrate, including a bird and a reptile but excluding a fish, belonging to a species which is not a recognised domestic species and the natural habitat of which is either temporarily or permanently in the Republic and any sub-species thereof occurring in Africa and includes the carcass, egg, flesh (whether fresh or cured), biltong, hide, skin, thong, tooth, tusk, bone, horn, shell, scale, claw, nail, hoof, paw, ear, hair, feather or any other part of such vertebrate, including any part of such vertebrate which has been processed into a final product."¹⁵

¹⁵ Mpumalanga Nature Conservation Act, 10 of 1998. The Transvaal Nature Conservation Ordinance 12 of 1983, Gauteng Nature Conservation Bill, 2014, Free State Nature Conservation Ordinance 8 of 1969 and KwaZulu-Natal Nature Conservation Act, 28 of 1998, contain a substantially similar definition.

Animals non-endemic to the region specified in the definition are regarded as exotic animals (some of which may also be classified as alien and invasive species). Despite the inclusion of threatened or protected species of marine animals on the Marine TOPS Regulations list,¹⁶ marine fish remain, for reasons partly made apparent by the Marine Living Resources Act, 18 of 1998, discussed later, without any significant welfare consideration or protection. The welfare legislation, on the other hand, deals with domestic as well as wild animals, and defines "*animal*" as "*any equine, bovine, sheep, goat, pig, fowl, ostrich, dog, cat or other domestic animal or bird, or any wild animal, wild bird or reptile which is in captivity or under the control of any person*"¹⁷, while in agricultural legislation an animal is "*any mammal, bird, fish, reptile or amphibian which is a member of the phylum vertebrates, including the carcass of any such animal*".¹⁸ "*Game*" is defined in terms of the Game Theft Act, 105 of 1991, as "*all game kept or held for commercial or hunting purposes, and includes the meat, skin, carcass or any portion of the carcass of that game*." South African Bureau of Standards' South African National Standards (SANS) codes define a wild animal as an "*animal that belongs to a species which is not a recognised domestic species, irrespective of the tameness or degree of apparent domestication, of a particular animal*".¹⁹

In terms of the National Environmental Management: Biodiversity Act, 10 of 2004 (NEMBA): Threatened or Protected Species Regulations, 2007 (TOPS Regulations),²⁰ a "*wild specimen*" is "*a specimen that is living and growing in natural conditions with or without human intervention*." The NEMBA draft Norms and Standards for the Management of Damage-causing Animals, 2010,²¹ applies to "*the management of any wild vertebrate animal within the Republic of South Africa that causes damage, and which is regulated in terms of the TOPS Regulations and/or in terms of provincial biodiversity legislation and does not apply to domestic animals that have become wild or vagrant [feral]*".²²

This report focuses on all wild animals, in the context of the definitions above and in terms of a broader understanding of what a wild animal is. This includes all wild animals, both indigenous and exotic, including those that are free-roaming, captive or domesticated.

What activities in respect of wild animals require welfare regulation?

In terms of the current legislative regime, the aim of the applicable environmental legislation is the conservation of biodiversity, subject to the "sustainable use of natural resources".²³ Welfare requirements are inherent in any activity that causes a wild animal's usual, natural functioning to be influenced by a human, for whatever reason, and especially when a wild animal is under the control of a human, temporarily or permanently. In terms of NEMBA, the following constitute restricted activities in respect of wild animals listed in the TOPS Regulations and for which a permit is required:²⁴

1. Hunting, catching, capturing or killing;

¹⁶ The Threatened or Protected Marine Species Regulations, GG 40876, GNR477, 30 May 2017.

¹⁷ Animals Protection Act, 71 of 1962.

¹⁸ Animal Diseases Act, 35 of 1984.

¹⁹ SANS1884:3:2008: Vehicles for the transport of wild carnivores by road to holding pens and other facilities, par 3.12.

²⁰ National Environmental Management: Biodiversity Act, 10 of 2004 (NEMBA): Threatened or Protected Species Regulations, GG 29657, GN R152, 1 June 2007 and GG 35565, GNR 614, 2 August 2012 (TOPS).

²¹ GG 33806, GN R1084, 26 November 2010, republished for comment on 21 April 2016.

²² Par. 3(b) and (c).

²³ NEMA s12(a).

²⁴ NEMBA definitions "restricted activity" (a)(i)-(x).

2. Gathering, collecting or plucking;
3. Picking parts of, cutting, chopping off, uprooting, damaging or destroying;
4. Importing into South Africa;
5. Exporting or re-exporting from South Africa;
6. Having in possession or exercising physical control over;
7. Growing, breeding or propagating;
8. Conveying, moving or translocating;
9. Selling, trading in, buying, receiving, giving, donating or accepting as a gift, acquiring or disposing of; and
10. Any other prescribed activity.²⁵

All of the activities listed above involve some extent of interference, whether temporarily or permanently, as far as they are applicable to living, wild animals. Activities such as breeding and conveying require more welfare considerations than an activity such as buying.

This report assesses the legal and practical regulation of the welfare of wild animals during any period within which they are under the control or in the possession of humans, whether in wildlife ranches, tourist operations, zoos, temporary transport operations, breeding, sanctuary or rehabilitation facilities, including such time directly before and after such control or possession.

²⁵ The Marine TOPS Regulations specify an additional six restricted activities in relation to marine TOPS listed species: (a) harassing a specimen; (b) attracting a live specimen; (c) release of a live specimen; (d) boat-based dolphin or whale watching; (e) white shark cage diving and (f) feeding (Reg. 3).

1. THE LEGISLATIVE SETTING

A wide array of national and provincial legislation can be considered in the assessment of the welfare protection afforded to wild animals, some of these influenced by international treaties and conventions to which South Africa is a signatory.

National legislation generally prevails over provincial legislation and takes precedence in the event of conflicting provisions; however, with regard to animal control and the environment, the national and provincial spheres of government have concurrent legislative competence in accordance with Schedule 4 of the Constitution, 108 of 1996.

The applicable international Conventions to which South Africa is a signatory are written into South African law in order to be binding domestically. The main pieces of law assessed in this report are listed below.

National Legislation and Bills, including Regulations under NEMBA

Legislation	Year	Jurisdiction	Govt. Dept.
Constitution of the Republic of South Africa, Act 108 of 1996	1996	National	All
Performing Animals Protection Act, 24 of 1935 (PAPA)	1935	National	DAFF
Animals Protection Act, 71 of 1962 (APA)	1962	National	DAFF
Animal Protection Amendment Bill, 2018	2017	National (Bill)	DAFF (Private Member's Bill)
Animal Diseases Act, 35 of 1984	1984	National	DAFF
Game Theft Act, 105 of 1991 (GTA)	1991	National	DEA
Societies for the Prevention of Cruelty to Animals Act, 169 of 1993 (SPCAA)	1993	National	DAFF
National Environmental Management Act, 107 of 1998 (NEMA)	1998	National	DEA
Animal Improvement Act, 62 of 1998	1998	National	DAFF
Marine Living Resources Act, 18 of 1998	1998	National	DAFF
Animal Health Act, 7 of 2002	2002	National	DAFF
Animal Identification Act, 6 of 2002	2002	National	DAFF
National Environmental Management: Protected Areas Act, 57 of 2003 (NEMPA)	2003	National	DEA
National Environmental Management: Biodiversity Act, 104 of 2004 (NEMBA)	2004	National	DEA
Draft Regulations relating to the Keeping and Hunting of <i>Acinonyx Jubatus</i> , <i>Hyaena Brunnea</i> , <i>Crocuta Crocuta</i> , <i>Lycaon Pictus</i> , <i>Panthera Leo</i> and <i>Panthera Pardus</i> , 28 January 2005	2005	National (draft)	DEA
Threatened or Protected Species Regulations, 23 February 2007 (TOPS Regs)	2007	National	DEA

Convention on the International Trade of Endangered Species of Fauna and Flora Regulations (CITES Regs), 2010	2010	National	DEA
Draft Regulations for the Registration of Professional Hunters, Hunting Outfitters and Trainers, 13 August 2013	2013	National (draft)	DEA
Draft Regulations for the Registration of Professional Hunters, Hunting Outfitters and Trainers, 18 December 2014	2014	National (draft)	DEA
National Environmental Management Laws Amendment Bill (NEMLAB4), particularly the Proposed Amendment of the Invasive Species List and Proposed Listing of Species that are Threatened or Protected, Restricted Activities that are Prohibited and Exemption from Restriction, 8 February 2017	2017	National (Bill)	DEA
Draft Regulations for the Domestic Trade in Rhinoceros Horn or a Part, Product or Derivative, 8 February 2017	2017	National (draft)	DEA
List of Marine Species that are Threatened or Protected, Restricted Activities that are Prohibited and Exemption from Restriction, 30 May 2017 (Marine TOPS List)	2017	National	DEA
Threatened or Protected Marine Species Regulations, 30 May 2017 (Marine TOPS Regulations)	2017	National	DEA

Biodiversity Management Plans for Species (BMP-S) in terms of NEMBA (including drafts)

BMP-S	Year	Jurisdiction
Draft Biodiversity Management Plan for <i>Sphenicus Demersus</i> (African Penguin), 20 August 2012	2012	National (draft)
Biodiversity Management Plan for the Black Rhinoceros (<i>Diceros bicornis</i>) in South Africa 2011-2020, 25 January 2013	2013	National
Biodiversity Management Plan for the African Penguin, 31 October 2013	2013	National
Biodiversity Management Plan for <i>Gypaetus Barbatus Meridionalis</i> (bearded vulture), 8 May 2014	2014	National
Biodiversity Management Plan for Sharks, 25 March 2015	2015	National
Biodiversity Management Plan for the African Lion, 17 April 2015	2015	National
Biodiversity Management Plan for the Clanwilliam Sandfish, 1 April 2016 (withdrawn by DEA 17 February 2017) ²⁶	2016	National
Draft Biodiversity Management Plan for the Clanwilliam Sandfish, 17 February 2017	2017	National (draft)
Biodiversity Management Plan for the Pickersgill's Reed Frog, 2 June 2017	2017	National
Draft Biodiversity Management Plan for the Bontebok in South Africa, 14 November 2017	2017	National (draft)
Biodiversity Management Plan for Cape Mountain Zebra (<i>Equus Zebra Zebra</i>), 16 March 2018	2018	National

²⁶ GG40621, GNR120, 17 February 2017.

Norms and Standards, and Prohibition Notices in terms of NEMBA (including drafts)

Norms and Standards / Prohibition Notice	Year	Jurisdiction
Draft National Norms and Standards for the Sustainable Use of Large Predators, 28 January 2005	2005	National (draft)
National Norms and Standards for the Management of Elephants in South Africa, 29 February 2008	2008	National
Norms and Standards for the Marking of Rhinoceros Horn and for the Hunting of White Rhinoceros for Trophy Hunting Purposes, 20 July 2009	2009	National
Draft Minimum Standards for the Management of Captive Elephants, 27 November 2009	2009	National (draft)
Draft Norms and Standards for Regulation of the Hunting Industry, 11 December 2009	2009	National (draft)
Draft Norms and Standards for the Translocation of Indigenous Species in South Africa, 15 January 2015	2015	National (draft)
Draft Amendment of the Norms and Standards for the Marking of Rhinoceros and Rhinoceros Horn, and for the Hunting of Rhinoceros for Trophy Hunting Purposes, 12 January 2016	2016	National (draft)
Draft Norms and Standards for the Management of Damage-causing Animals in South Africa, 31 December 2010, republished for comment 30 August 2016	2016	National (draft)
Prohibition of the Powdering or Shaving of Rhinoceros Horn, the Domestic Selling or otherwise Trading in, Giving, Donating, Buying, Receiving, Accepting as a Gift or Donation, or in any way Disposing or Acquiring, of Powdered or Shaved Rhinoceros Horn, and the Export of Powdered or Shaved Rhinoceros Horn, 2017	2017	National (draft)
Draft Norms and Standards for the Management and Monitoring of the Hunting of Leopard in South Africa for Trophy Hunting Purposes, 2017	2017	National (draft)

Provincial Legislation and Bills

Legislation	Year	Jurisdiction
Free State Nature Conservation Ordinance, 8 of 1969	1969	Provincial : Free State
Nature Conservation Ordinance, 19 of 1974	1974	Provincial : Western and Eastern Cape
Transvaal Nature Conservation Ordinance, 23 of 1983	1983	Provincial : North West and Gauteng
Nature Conservation Act, 29 of 1992	1992	Provincial : KwaZulu-Natal
Nature Conservation Act, 10 of 1998	1998	Provincial : Mpumalanga
Limpopo Environmental Management Act, 7 of 2003 (LEMA)	2003	Provincial : Limpopo
Nature Conservation Act, 9 of 2009	2009	Provincial : Northern Cape

KwaZulu-Natal Environment, Biodiversity and Protected Areas Management Bill, 2014	2014	Provincial Bill : KwaZulu-Natal
Draft Gauteng Nature Conservation Bill, 2014	2014	Provincial Bill : Gauteng
North West Biodiversity Management Act, 4 of 2016 (NWBMA) (commencement date not yet proclaimed) and Bill, August 2017 and Draft Regulations, September 2017	2017	Provincial : North West

International Conventions and Treaties

Convention on the International Trade of Endangered Species of Fauna and Flora, 1973 (CITES)
International Convention on Biological Diversity, 1992

Norms, Standards and Procedures (voluntary unless incorporated by legislation or permit conditions)

Code	Year	Jurisdiction
SANS 10331:2000 (SABS 0331): Translocation of certain species of wild herbivore	2000	National
SANS 1884.1:2004: Holding pens for wild herbivores at auctions and in quarantine facilities	2004	National
SANS 10391:2004: Welfare of wild animals transported by sea	2004	National
SANS 1884.2:2007: Vehicles for the transportation of wild herbivores by road to holding pens and other facilities	2007	National
SANS 1884.3:2008: Vehicles for the transportation of wild carnivores by road to holding pens and other facilities	2008	National
IATA (International Air Transport Association) Live Animal Regulations (LAR) – transport of animals by air	2016 – 42 nd edition	International
Cape Nature Game Translocation Policy, 2010 (WC)	2010	Provincial
SAPA Norms and Standards for Hunting Managed Ranch Lions, 2013 (updated 2016)	2011	National
Keeping Wild Animals in Captivity, KwaZulu-Natal, South Africa: Registration, Permits, and Licences for Keeping Wild Animals in Captivity and for the Exhibition, Breeding or Relocation, or Trade, Sale or Exchange (Alienation), of Such Animals, 2013	2013	Provincial
Free State Nature Conservation Ordinance, 8 of 1969: Norms and Standards, 2013	2013	Provincial
Western Cape Nature Conservation Board Standard Operating Procedure: Submission of Management Plans for Keeping Wild Animals in Captivity / Exhibition Centres and Standard Operating Guideline	2014	Provincial

Traditionally, and at least since 1996,²⁷ all matters of animal welfare have been regarded, particularly within national government, as falling within the scope of agriculture, and within the ambit of whichever national and provincial departments were responsible for agriculture at the time. Inherent in the

²⁷ See online at https://www.capetown.gov.za/en/CityHealth/Documentation/Documents/Animal_Care_Policy_for_SA_Dept_of_Agriculture_Draft.pdf (accessed 17 February 2016).

agricultural governmental department is the focus on the efficient commercial exploitation of animal, plant and aquatic sources,²⁸ which is frequently in direct conflict with the uneconomical, expensive, and/or time-consuming basic welfare of animals.

Animal welfare is not generally regarded as a consideration in environmental protection, partly because of the perceived exclusive categorisation as an agricultural concern, and partly because it is not generally believed to be relevant for biodiversity or conservation.²⁹

This allocation of mandates is well-entrenched in national government, as a result of which the subservient nature of welfare considerations of individual animals in relation to, *inter alia*, maximisation of commerce and selective conservation of biodiversity, has become the accepted norm.

As is discussed below, the NSPCA – a statutory body – is tasked with responding to wild animal welfare complaints, conducting its own welfare investigations and attempting to regulate good welfare practices without state funding or resources. It is also expected to adequately bridge the jurisdictional divide between what DEA and DAFF believe to be their respective mandates.

Against this background, if one looks at the 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.

The key aspects of the applicable legal framework are discussed in detail below.

1.1 The Constitution of the Republic of South Africa, Act 108 of 1996 (Constitution)

The Constitution is the legal foundation of, provides the basis for, and supersedes all law in the country. Due to the previous discriminatory dispensation in the country, the Constitution of necessity became the “supreme law of the land”,³⁰ entrenching basic human, societal and administrative rights and democracy. Despite having been raised in the technical committees,³¹ animal welfare did not make the cut for inclusion in the supreme law. Nevertheless, the overall survival of wild animals for biodiversity and human use purposes is a tenet of the environmental right enshrined in section 24 of the Constitution, which states:

Everyone has the right--

- (a) to an environment that is not harmful to their wellbeing (sic); and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable and other legislative measures that –

²⁸ Or national natural resources, as they are currently considered.

²⁹ NEMBA s2(a). See for example DEA's 2014 statement in relation to its 2008 Norms and Standards for the management of elephants, discussed below. See also online <https://www.dailymaverick.co.za/article/2014-10-14-analysis-animal-welfare-and-environmental-protection-go-together/#.WJgneW997IW> (accessed 6 February 2017).

³⁰ Online at <http://www.gov.za/documents/constitution/Constitution-Republic-South-Africa-1996-1>.

³¹ See for example Animal Voice newspaper, April-June 1996 at 3-6.

- 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**.³²

It is arguable that an essential requirement for the basic conservation of biodiversity is a safe, protected and healthy ecosystem and environment for all life on earth, present and future, however, the Constitution affords protection only to human, and not to other, animals.³³ Animal matters, such as disease, are issues of concurrent national and provincial competence, while issues such as animal pounds are of municipal competence in terms of Schedule 4 of the Constitution.

As far as welfare and conservation are concerned, in 2016, the Constitutional Court confirmed the importance of animal welfare, making use of the integrative approach coined by Professor David Bilchitz,³⁴: “... *the rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of humans to placing [accepting or recognising the] intrinsic value on animals as individuals ...*” and that “... *animal welfare is connected with the environmental right to have the “environment protected ... through legislative and other means”*”.³⁵ Prior to this, the Supreme Court of Appeal similarly connected animal welfare to biodiversity and conservation aims.³⁶ Notably, two other courts also expressed strong views in favour of wildlife welfare in 2009 and 2014.³⁷ These are a welcome shift in the attitude of the judiciary.

As will be seen below, the welfare of wild animals fails to be secured under biodiversity and (commerce-focused) agricultural welfare legislation, which this report shows is currently not fully adequate and is generally unsuited for this purpose.

1.2 Societies for the Prevention of Cruelty to Animals Act, 1993 (SPCAA)

The SPCA created the statutory body, a juristic person, the National Council of Societies for the Prevention of Cruelty to Animals (NCSPCA) in 1993 to bring together and regulate the various animal welfare societies already in existence across the country since the late 1800s. Interestingly, the direct translation from the Afrikaans, Nasionale Raad van Dierebeskermingsvereenigings (DBV), is National Council of Animal *Protection* Societies (the English text of the statute was signed into law by the then Acting President, cementing the English interpretation). A fundamental distinction lies in the underlying basis upon which the organisation is created – prevention of cruelty as opposed to promotion of

³² My emphasis.

³³ But see Bilchitz D ‘Does Transformative Constitutionalism require the recognition of Animal Rights?’ SAPL 2010 267 at 268.

³⁴ Bilchitz D ‘Can the Environmental Rights in the South African Constitution Offer Protection for the Interests of Animals?’ available online at: <https://www.uj.ac.za/faculties/law/saifac/Publishing/Images/Pages/default/The%20Environmental%20Rights%20and%20Animal%20Interests.pdf> and presented at the Harvard Conference on Animals and the Constitution in 2016 (accessed 22 February 2016), see also online at <https://www.dailymaverick.co.za/article/2014-10-14-analysis-animal-welfare-and-environmental-protection-go-together/#.WJgneW997IW> (accessed 6 February 2017).

³⁵ [2016] ZACC 46 at pars 57 and 58. See also online at <http://www.animalvoice.org/triumph-for-animals-2016> (accessed 19 January 2017).

³⁶ *Lemthongthai v S*(849/2013) [2014] ZASCA 131 25 September 2014 at par 20.

³⁷ *Natal Zoological Gardens (Pty) Ltd and others v Ezemvelo KZN Wildlife and others*, Pietermaritzburg High Court, case number 5945/09 (judgment delivered on 13 August 2009) and *Macrae v The State*, Supreme Court of Appeal, case number 93/2013 (judgment delivered on 28 March 2014).

protection or care, is reactive rather than proactive. The Constitutional Court however emphasised the critical and necessary role of the NSPCA in South Africa: “[t]he historical development of the protection of animal welfare, and the role of the NSPCA in upholding this mandate, illustrates why the NSPCA plays a critical and unique role in our polity. Its long history of guarding the interests of animals reflects constitutional values. It has taken on the role of protecting animals in all of our interest.”³⁸

Section 13 of the SPCAA requires the NCSPCA to report annually on its activities to the Minister of DAFF. Each registered SPCA, which is considered to be a society for the prevention of cruelty to animals in terms of the Animals Protection Act, 1962,³⁹ must pay annual contributions to the NCSPCA,⁴⁰ undertake its own fundraising and is required by the SPCAA to be authorised in terms of the Fundraising Act, 1978.⁴¹ Thus the NCSPCA and the SPAs perform an acknowledged public function and report to a governmental department, yet are required to be self-funded and are reliant on charity. The NCSPCA and SPCA's statutorily granted powers and perceived hurdles are discussed further below.

1.3 Animals Protection Act, 71 of 1962 (APA)

The APA is the primary source of welfare protection for almost all animals, domestic or wild, indigenous or exotic (including alien and invasive species), in South Africa. As noted above, all animals, including wild animals, are considered to be property and a resource in the South African legal system. As indicated, the APA applies to all domestic animals or birds, and any wild animals, wild birds or reptiles in captivity or under the control of a person. Fish and other aquatic animals are specifically excluded. The APA is currently subject to amendment by the Animal Protection Amendment Bill, 2018, a private members Bill that amends the definition of “animal” and certain provisions in relation to cosmetic testing and euthanasia of animals.⁴²

1.3.1 Offences and potential loopholes in terms of APA

While the APA came into operation prior to the formal international acceptance of the five freedoms, these basic welfare tenets are generally apparent in the text of the APA, perhaps because they are more inherently required than lawmakers at the time believed. However, it is clear that this Act is outdated in some respects. Many concepts entrenched in the Act have since been overridden by the new Constitutional dispensation as the APA merely protects property and some narrowly perceived “human sensibilities”.

Section 2(1)(a) to (s) of the APA created certain offences in relation to the treatment of animals.⁴³ The freedoms ostensibly protected by each of the provisions are listed adjacent to each subsection in the table below. It is apparent from the plain wording of the sections that the offences below contain subjective exceptions (these are highlighted) and contradictions that serve to dilute the protection afforded to animals by the APA.

³⁸ CCT1/2016 at par 61.

³⁹ SPCAA s6(1).

⁴⁰ S9(2)(h), s10.

⁴¹ S9(2)(b).

⁴² B4-2018, GG41289 GN R 942, 30 November 2017.

⁴³ My emphasis.

Section 2(1)(a) aims to protect an animal from overloading, overdriving, overriding, ill-treatment, neglect, infuriation, torture or maiming or *cruel*/beating, kicking, goading or terrifying. It is difficult to see how the beating, kicking, goading or terrifying of an animal can be done in a cruelty-free manner, yet this constitutes an exception to the offence. The assessment of what would constitute the *overloading*, driving or riding of a particular animal is also subjective. Section 2(1)(e) merely requires an owner⁴⁴ of an animal to provide the medical or veterinary care that he is *able to* provide. Thus even basic, necessary veterinary care is subject to the owner's ability to pay for it or the owner's ability to transport the animal to such care.

The most significant loophole however, is the use of the word "unnecessary" (see point b) in the table below) and constitutes the main cause of dilution of the statutory protection. What is "unnecessary" is assessed according to the subjective requirements of industry and the societal views and/or circumstances in which the animal is used. The word also places the onus of proof to prove lack of necessity on the prosecution, when it would make more sense for the offender to prove the action or omission to have been necessary in the circumstances. In other words, these requirements of APA are not robust and fail to set basic foundational and objective standards for the welfare of all animals which cannot be overridden. Without such standards, the APA fails to ensure the protection of most animals unless the cruelty is overwhelmingly apparent.

Section 2(1):	Applicable freedom:
a) overloads, overdrives, overrides, ill-treats, neglects, infuriates, tortures or maims or cruelly beats, kicks, goads or terrifies any animal;	Freedom from discomfort, Freedom from pain, injury or disease, Freedom from fear and distress. The freedom is limited as to whether the animal is deemed to be cruelly beaten or not.
b) confines, chains, tethers or secures any animal unnecessarily or under such conditions or in such a manner or position as to cause that animal unnecessary suffering or in any place which affords inadequate space, ventilation, light, protection or shelter from heat, cold or weather;	Freedom from discomfort, Freedom from pain, injury or disease, Freedom from fear and distress, Freedom to express natural behaviour. The freedom is limited to suffering that is unnecessary. It is assumed that this caveat is introduced here to allow for animal agriculture where the suffering of animals in feedlots and abattoirs takes place for the deemed necessity of mass food production.
c) unnecessarily starves or under-feeds or denies water or food to any animal;	Freedom from hunger and thirst. This freedom is limited to instances where it is deemed to be necessary to starve or under-feed an animal.

⁴⁴ An owner is defined to include "any person having the possession, charge, custody or control of the animal" for purposes of the APA.

<p>d) lays or exposes any poison or any poisoned fluid or edible matter or infectious agents except for the destruction of vermin or marauding domestic animals or without taking reasonable precautions to prevent injury or disease being caused to animals;</p>	
<p>e) being the owner of any animal, deliberately or negligently keeps such animal in a dirty or parasitic condition or allows it to become infested with external parasites or fails to render or procure veterinary or other medical treatment or attention which he is able to render or procure for any such animal in need of such treatment or attention, whether through disease, injury, delivery of young or any other cause, or fails to destroy or cause to be destroyed any such animal which is so seriously injured or diseased or in such a physical condition that to prolong its life would be cruel and would cause such animal unnecessary suffering;</p>	<p>Freedom from hunger and thirst, Freedom from discomfort, Freedom from pain, injury or disease, Freedom from fear and distress, Freedom to express natural behaviour. This freedom is limited by the capability of the owner. Such capability is subjective.</p>
<p>f) uses on or attaches to any animal any equipment, appliance or vehicle which causes or will cause injury to such animal or which is loaded, used or attached in such a manner as will cause such animal to be injured or to become diseased or to suffer unnecessarily;</p>	<p>Freedom from discomfort, Freedom from pain, injury or disease, Freedom from fear and distress. The freedom is limited by any suffering that is considered to be necessary.</p>
<p>g) save for the purpose of training hounds maintained by a duly established and registered vermin club in the destruction of vermin, liberates any animal in such manner or place as to expose it to immediate attack or danger of attack by other animals or by wild animals, or baits or provokes any animal or incites any animal to attack another animal;</p>	
<p>h) liberates any bird in such manner as to expose it to immediate attack or danger of attack by animals, wild animals or wild birds;</p>	<p>Freedom from pain, injury or disease, Freedom from fear and distress.</p>
<p>i) drives or uses any animal which is so diseased or so injured or in such a physical condition that it is unfit to be driven or to do any work;</p>	<p>Freedom from pain, injury or disease, Freedom from fear and distress. This freedom is limited by the words 'that it is unfit to be driven or do any work'. The idea is that the animal must be injured or diseased to such a degree that it cannot work.</p>

j) lays any trap or other device for the purpose of capturing or destroying any animal, wild animal or wild bird the destruction of which is not proved to be necessary for the protection of property or for the prevention of the spread of disease;	
k) having laid any such trap or other device fails either himself or through some competent person to inspect and clear such trap or device at least once each day;	
l) except under the authority of a permit issued by the magistrate of the district concerned, sells any trap or other device intended for the capture of any animal, including any wild animal (not being a rodent) or wild bird, to any person who is not a bona fide farmer;	
m) conveys, carries, confines, secures, restrains or tethers any animal –	
i. under such conditions or in such a manner or position or for such a period of time or over such a distance as to cause that animal unnecessary suffering;	Freedom from discomfort, Freedom from pain, injury or disease, Freedom from fear and distress, Freedom to express natural behaviour. This freedom is limited to the extent that the suffering is deemed necessary.
ii. in conditions affording inadequate shelter, light or ventilation or in which such animal is excessively exposed to heat, cold, weather, sun, rain, dust, exhaust gases or noxious fumes;	Freedom from discomfort, Freedom from pain, injury or disease, Freedom from fear and distress, Freedom to express natural behaviour. This freedom is limited to what is deemed as adequate.
iii. without making adequate provision for suitable food, potable water and rest for such animal in circumstances where it is necessary ;	Freedom from hunger and thirst. The freedom is limited by the words 'where it is necessary'.
n) without reasonable cause administers to any animal any poisonous or injurious drug or substance;	Freedom from discomfort, Freedom from pain, injury or disease.
o) ... [repealed]	
p) being the owner of any animal, deliberately or without reasonable cause or excuse, abandons it, whether permanently or not, in circumstances likely to cause that animal unnecessary suffering;	Freedom from hunger and thirst, Freedom from discomfort, Freedom from pain, injury or disease, Freedom from fear and distress,

	Freedom to express natural behaviour.
q) causes, procures or assists in the commission or omission of any of the aforesaid acts or, being the owner of any animal, permits the commission or omission of any such act;	Freedom from hunger and thirst, Freedom from discomfort, Freedom from pain, injury or disease, Freedom from fear and distress, Freedom to express natural behaviour.
r) by wantonly or unreasonably or negligently doing or omitting to do any act or causing or procuring the commission or omission of any act, causes any unnecessary suffering to any animal;	Freedom from hunger and thirst, Freedom from discomfort, Freedom from pain, injury or disease, Freedom from fear and distress, Freedom to express natural behaviour.
s) kills any animal in contravention of a prohibition in terms of a notice published in the <i>Gazette</i> under subsection (3) of this section.	

1.3.2 The inadequacy of the implementation of APA

In addition to the above legislative weaknesses, the implementation and application of the APA in practice, has been shown to be inadequate in protecting most animals. By way of example, despite many reports of charges being laid by the SPCA against battery hen farmers and abattoir owners and employees for blatant acts of cruelty against hens, sheep, pigs and cows,⁴⁵ not one of these cases is reported to have made it to prosecution, let alone conviction. Cases of cruelty against dogs, cats and horses seem to be more successful. If it is accepted that the APA was enacted to protect the interests of property owners, and not the interests of animals themselves – the APA makes provision for the owner to be financially compensated when his property (animal) is damaged, the contradictions in the treatment of different types of animals in the APA are more easily understood.

The property status of the animal defines the measurement of the offence. For example, treating a pet dog the way that commercial pigs are treated during raising and slaughter would constitute an offence by the owner of the dog but not by the owner of the pigs. This is not relevant to the level of intelligence of the animal, but rather the owner's purpose for such animal. In contrast, it would be an offence to treat a pet teacup pig the way commercial pigs are treated.⁴⁶ In the context of wild animals, causing unnecessary suffering to a free-roaming cheetah or dolphin⁴⁷ in the sea would, presumably, be legal,

⁴⁵ See for example the reports and photographs regarding kicking and abuse of sheep at GWK abattoir, reported to be the source of Woolworths's "humane", free-range Karoo lamb, online at:

<http://www.sabc.co.za/news/aba20380476c64919be7db4602d973ea/NSCPA-to-lay-c> (accessed 26 July 2016), and NSPCA's statement regarding its growing concern about the neglect of commercial chickens in South Africa online at <https://www.enca.com/south-africa/chicken-neglect-growing-concern-spca> (accessed 26 July 2016).

⁴⁶ For example, breeding sows in South Africa are confined to gestation and farrowing crates for months during and after pregnancy where they are unable to move or turn around. See for example online at <http://www.news24.com/archives/witness/cruel-pig-pens-to-phase-out-20150430> (accessed 26 July 2016). Sow crates are outlawed in many European countries on welfare grounds. Research has shown that pigs are more intelligent than dogs and are as sentient and intelligent as a human toddler, however their inhumane treatment is not deemed to be an offence as it is seen as necessary for the economical production of the pigs for human consumption.

⁴⁷ Dolphins are the second most intelligent species in the world (according to the most intelligent species, *homo sapiens*). National Geographic online at <http://ngm.nationalgeographic.com/2015/05/dolphin-intelligence/foer-text> (accessed 27 July 2016).

because these animals are not in captivity or under the control of any person, and therefore APA would not apply to them. However, the same treatment of a captive cheetah or performing dolphin would constitute an offence because the cheetah or dolphin is owned (and captive).

Even when wild animals are owned, reported successful prosecutions of offences under the APA are difficult to find. Criminal charges were laid by the NSPCA against the owners and an employee of the Brian Boswell circus for the beating, chaining and confining of, and lack of provision of sufficient water for, elephants. It is reported that the relevant handlers, who were caught on camera beating the elephants and leaving them in the sun for prolonged periods, disappeared before the trial and the charges were therefore dropped. This is contrary to the intention of the APA, as it is primarily the owners and not the handlers who are criminally responsible for the welfare of the animal under their ownership.⁴⁸ Until early 2015, the circus continued to use elephants in its shows despite their lack of permits to hold the elephants captive in terms of the TOPS regulations. Circus management only conceded to retiring the elephants after the extensive country-wide protests against captive circus animals took place from 2012 to 2014.⁴⁹ The illogical and anthropocentric treatment of different types of animals and the lack of recourse to the law result in many contradictions. Remedy these would render the APA a more effective tool in the protection of wild animals.



Fig. 1 Protest against Boswell Circus, Centurion, Gauteng, 21 April 2013.⁵⁰

Penalties in terms of the APA are restricted to a maximum of one⁵¹ to two years' imprisonment with or without the option of a fine.⁵² The amount of the fine is unspecified, therefore the Adjustment of Fines

⁴⁸ Online at <http://www.iol.co.za/news/crime-courts/boswell-circus-cruelty-charges-withdrawn-2014696> (accessed 26 July 2016).

⁴⁹ Response from EKZNW to PAIA request ref CER-2016-EKW-0006 (TOPS Elephant Permits). See online at <http://krugersdorpnews.co.za/281827/activists-back-at-circus-protesting-after-harassment/>; <https://allevents.in/east%20rand/bat-circus-protest-compassion-in-action/380575862108848>; <https://www.youtube.com/watch?v=CvfSsFQT8P4>; <https://www.facebook.com/BoycottBrianBoswellsAnimalCircus/>; <http://www.georgeherald.com/news/News/General/127097/Activists-to-protest-against-circus>; <http://allevents.in/johannesburg/bwc-protest-against-brian-boswells-circus/589353311124811>; <http://fourwaysreview.co.za/165139/circus-protest-hits-home-protest-highlights-plight-of-circus-animals/>; <https://www.youtube.com/watch?v=OESBds9VFE> (accessed 26 July 2016).

⁵⁰ Photograph obtained online at

<https://www.facebook.com/photo.php?fbid=10151357849126574&set=t.646223382&type=3&theater> (accessed 21 April 2013).

⁵¹ S2(1).

⁵² S2A – offences relating to animal fights.

Act applies, which amounts to a maximum fine of R40 000 and R80 000 respectively.⁵³ In contrast, penalties in the National Environmental Management Act, 1998 (NEMA) and the National Environmental Management: Biodiversity Act, 2004 (NEMBA) are up to a maximum fine of R10 million or ten years' imprisonment.⁵⁴

Section 10 of the APA provides the Minister with the important power to make Regulations under the APA. While the APA could have been updated by way of Regulations in line with progresses in animal welfare, for example, incorporating SANS codes and norms and standards into the applicability of the APA, no Regulations have been passed since 1986.⁵⁵ Without Regulations or appropriate amendments, APA seems to have remained difficult to implement to any meaningful extent.

1.3.3 How APA is unsuited to wild animal protection

In terms of how the APA has historically been interpreted, an animal's protection from or right⁵⁶ to the applicable freedom has frequently been outweighed by the human activity concerned. South African courts have historically favoured the indirect duty approach to animal welfare,⁵⁷ basing the purpose of the legislation on the degree of offence to human sensibilities or, more frequently, the subjective status of the property, rather than the animal's own interest in dignity or bodily integrity. This principle is a complicated concept to use, and is therefore not consistently included in the legislation or applied by the courts.

This manner of thinking must progress in line with scientific developments in the understanding of animals, biodiversity requirements and growing public concern regarding the ethical treatment of animals, in order for the welfare protection to improve, and, as discussed above, the courts have rightly begun to make this move. In the context of canned hunting,⁵⁸ coupled with captive predator breeding for other purposes (such as the lion bone trade), there has been an increased movement against the captive breeding of lions for trophy hunting and ancillary trades by the local and international community. This movement is based on an ethical and moral basis, bringing issues of public policy, as a reflection of public opinion, to the fore. DEA defends trophy hunting and the legal lion bone trade for economic reasons, but civil society organisations contend that the department has prioritised consultation with and the position of industry bodies over those of civil society bodies.⁵⁹ Dhoya Snijders, examining the national Biodiversity/Wildlife Forum, shows how government and industry have, since 2005, *"by means of organisational and discursive restructuring, promoted a discourse alliance that endorses both government's conservation interests and industry's development interests, while*

⁵³ Act 101 of 1991. In terms of this Act, R10 000 is equated to one year of imprisonment.

⁵⁴ See discussion of NEMBA below.

⁵⁵ Regulations relating to the seizure of animals by an officer of a society for the prevention of cruelty to animals, GN R468, 14 March 1986.

⁵⁶ The word "rights" is used here loosely. It is not the aim of this report to interrogate the subject of animal rights.

⁵⁷ Bilchitz D 'Moving Beyond Arbitrariness: The Legal Personhood and Dignity of Non-Human Animals' (2009) 25 SAJHR 2009 at 44 – 46.

⁵⁸ 'Canned hunting' means the hunting of any animal in captivity, unduly restricted in its capacity to escape, or which cannot eat, drink or breed without constant human intervention, which has been habituated to humans or which is not hunted under the principles of fair chase".

⁵⁹ See for example online at

https://www.environment.gov.za/mediarelease/molewa_stakeholderengagement_lionbreeding ;
https://www.environment.gov.za/mediarelease/14thafricanwildlife_consultativeforum; <http://citizen.co.za/864923/animal-activists-crash-secret-dea-meeting-with-hunters/> ; <http://conservationaction.co.za/media-articles/mass-poisoning-limpopo-national-park/> (accessed 12 October 2016);

excluding dissenting voices", such as labour and environmental organisations, in contravention of section 2 of NEMA, which provide the base principles for environmental management.⁶⁰

The Campaign Against Canned Hunting (CACH), together with the release of a well-publicised feature film titled *Blood Lions* in 2015,⁶¹ are probably the forerunners in raising public awareness and increasing mass campaigning in the quest for welfare and basic life protections for captive-bred lions and hopefully all other captive and exploited wild animals. Worldwide public outcry against captive lion breeding reached massive proportions during 2014 with global marches, petitions and support from various national and international organisations, which have continued annually.⁶² The *Blood Lions* website contains some of the details of mass public opinion on the issue, including a quotation by a former manager of the NSPCA Wildlife Protection Unit:⁶³

"The NSPCA has huge animal welfare concerns for the animals exploited in the captive predator and canned hunting industry in South Africa. This industry is unregulated, uncontrolled and is responsible for untold cruelty. It is a tragedy that our wild animals are reduced to profit-making machines. Coupled with this, members of the public are unwittingly encouraging and supporting this cruelty, so it is vital that the public are aware of the truth behind the industry so they can make informed decisions and hopefully choose not to support such an unethical industry."

The Free State High Court has also weighed in on the morality of canned hunting, stating that the practice is abhorrent and repulsive on account of the animals' suffering *"[i]t is clear on the evidence and also not disputed that very many people all over the world find the notion of hunting a lion bred and raised in captivity, often by hand, and totally dependent on humans for its survival, abhorrent and repulsive. I find this view to be objectively reasonable and justifiable, to say the least."*⁶⁴

A proposal by various stakeholders, including proponents of sustainable use, to curb captive predator breeding was recently accepted by the IUCN in Hawaii during the IUCN World Conservation Congress.⁶⁵

⁶⁰ Snijders D 'Wildlife policy matters: inclusion and exclusion by means of organisational and discursive boundaries' 32 Journal of Contemporary African Studies 2014 173-189. Members of the Biodiversity/Wildlife Forum as at 10 February 2017 were: DEA, the nine provincial departments/organs of state responsible for nature conservation, DAFF, South Africa National Biodiversity Institution (SANBI), Association of Taxidermists and Game Skin Tanners, African Bow Hunting Organization, Confederation of Hunting Associations of South Africa (CHASA), National Hunting and Shooting Association (NHSA), Professional Hunters Association of South Africa (PHASA), Pan-African Association of Zoos and Aquaria (PAAZA), South African Crocodile Industry Association (SACIA), South African Veterinary Association (SAVA), South Africa Bow Hunters Association (SABA), South African Wingshooters, South African Sport Anglers Casting Confederation (SASACC), South African Predator Association (SAPA), South African Hunters and Game Conservation Association (SAHGCA), South African Nursery Association (SANA), Wildlife Translocation Association (WTA), and Wildlife Ranching South Africa (WRSA) (confirmed by the Assistant Director, TOPS Policy Management, DEA). EWT was admitted as a member later in 2017.

⁶¹ Online at <http://www.bloodlions.org/> (accessed 27 June 2016).

⁶² Online at <http://www.cannedlion.org/organisers-and-marches.html> (accessed 27 June 2016). A while after a large protest outside the Lion Park on Malibongwe Drive in Johannesburg in March 2015, followed by the release of *Blood Lions*, the Lion Park announced that it would no longer breed and make available for petting any more lion cubs once it moved to its new location <http://traveller24.news24.com/Explore/Bush/Joburg-Lion-Park-no-longer-to-allow-cub-petting-20150715> (accessed 27 July 2016). The Lion Park, now called the Lion and Safari Park, then backtracked on this promise due to financial reasons, see online at

<http://traveller24.news24.com/Explore/Bush/pics-joburgs-controversial-lion-park-backtracks-on-canning-cub-petting-policy-20160816> (accessed 17 August 2016) and still offers cub petting at R225 per adult and R150 per child including entry into the park, see online at www.lion-park.com/rates/ (accessed 27 July 2016).

⁶³ Online at <http://www.bloodlions.org/> (accessed 27 July 2016).

⁶⁴ *South African Predator Breeders' Association and 2 others v Minister of Environmental Affairs* (1900/2007) [2009] ZAFSHC 68 (11 June 2009) at par 72.

⁶⁵ See online at <http://m.traveller24.news24.com/Traveller/Explore/Green/shockwildlifetruths-motion-to-end-sas-canned-lion-hunting-industry-accepted-at-iucn-20160905>; https://www.environment.gov.za/mediarelease/SA%20position_toTerminate_huntingcaptivebeldions

In addition, and perhaps due to the failure by CITES to adequately limit export in this regard, Australia, France and the United States of America have banned the import of canned lion hunt trophies from South Africa;⁶⁶ a number of airlines, such as South African Airways, Emirates Airlines, American Airlines, Delta, United Airlines and Air Canada, have refused to transport these;⁶⁷ many airlines have placed restrictions;⁶⁸ and Nedbank South Africa has recently announced that it will no longer "finance any activity constituting captive breeding of mammalian predator species for hunting or the exotic pet trade."⁶⁹ It is uncertain whether any of these initiatives are monitored or enforced, as they are self-regulatory.

Further concerns over the welfare of captive bred lions and canned hunting were brought to the DAFF Minister's attention via parliamentary questions in September 2016. The Minister confirmed that the welfare of captive bred animals such as lions lies within the purview of DAFF, and while the DEA Minister states that the captive breeding and hunting industry is well-regulated and no canned lion hunting takes place in South Africa,⁷⁰ DAFF acknowledges that it does take place on an unmonitored basis:

"The care and protection of animals in South Africa is regulated by two Acts – the Animal Protection Act, (APA) 1962 (Act 71 of 1962) (APA) and the Performing Animal Protection Act, (PAPA) 1935 (Act 24 of 1935) (PAPA) under the Department of Agriculture, Forestry and Fisheries (DAFF). A third Act, the Societies for the Prevention of Cruelty to Animals Act (Act No. 169 of 1993) governs the organization and management of the SPCA movement in South Africa. DAFF is publishing Draft Norms and Standards for the Welfare of Captive Lions under Animals Protection Act, 1962 (Act 71 of 1962) to enforce welfare prescripts regarding lions in captivity. Currently the Department of Agriculture, Forestry and Fisheries does not monitor the canned lion hunts but will, after the publication and adoption of the Norms and Standards for Welfare of captive lions, in partnership with the Department of Environmental Affairs, enforce welfare prescripts regarding captive of lions."⁷¹

DEA's stance on the issue is replicated below in excerpts from its Q&A document.⁷²

(accessed 5 September 2016); <http://mype.co.za/new/parliament-implored-to-can-canned-lion-hunting/75667/2016/09>; <http://whitelions.org/wp-content/uploads/2014/12/WLT-Canned-Hunting-Chronology-20142.pdf> (accessed 5 October 2016). See also <http://www.africanindaba.com/2017/04/encore-canned-lion-breeding-and-shooting-april-2017-volume-15-2/> (accessed 13/04/2017)

⁶⁶ See online at <http://conservationaction.co.za/media-articles/us-bans-canned-lion-trophy-imports-south-africa-2/> ("Because South Africa was unable to demonstrate the conservation value of canned lion hunting, the United States last week banned the import of all trophies from captive lion hunts in the country."); <http://www.four-paws.org.za/campaigns/wild-animals/canned-hunting/success-for-animal-welfare-australia-first-to-ban-import-of-lion-trophies/>; <https://www.theguardian.com/environment/2015/nov/19/france-bans-imports-of-lion-hunt-trophies>; (accessed 31 October 2016).

⁶⁷ See online at http://www.huffingtonpost.co.za/entry/airlines-exotic-animal-trophies-cecil_us_55c0f839e4b0a50ad0aa8de9; <http://traveller24.news24.com/News/Airlines-send-SA-trophy-hunting-industry-into-tailspin-with-cargo-ban-20150514>; <http://www.phasa.co.za/what-is-in-the-news/general-newsflashes/item/627-airlines-ban-on-transporting-hunting-trophies.html> (accessed 31 October 2016).

⁶⁸ See list of restrictions per airline online at <http://www.higherperspectives.com/airlines-have-started-refusing-to-ship-hunting-trophies-1406173807.html> (accessed 31 October 2016).

⁶⁹ See online at <http://traveller24.news24.com/Explore/Green/major-sa-bank-refuses-to-fund-any-canned-hunting-programmes-20161027> and <http://conservationaction.co.za/recent-news/major-sa-bank-refuses-fund-canned-hunting-programmes/> (accessed 1 November 2016).

⁷⁰ Online at https://www.environment.gov.za/mediarelease/molewa_stakeholderengagement_lionbreeding; <http://www.dailymaverick.co.za/article/2015-06-08-op-ed-playing-with-words-while-captive-lions-die/#.V30kEf97IU> (accessed 27 July 2016), <http://mg.co.za/article/2015-03-20-conservations-biggest-con-job>; (accessed 5 October 2016).

⁷¹ National Assembly: written replies to questions 1717-1719 / NW1966-1968E, Inkosi R N Cebekhulu (IFP) to ask the Minister of Agriculture, Forestry and Fisheries.

⁷² Fn above.

9: Is the DEA responsible for the welfare of lion in captivity?

The DEA is liaising with Department of Agriculture, Forestry and Fisheries (DAFF) regarding the development of standards for the captive keeping of lions in terms of the Animals Protection Act, 1962 (Act No. 71 of 1962). The DAFF is responsible for the administration and implementation of the Animals Protection Act.

Section 10(1) of the Animals Protection Act provides that the Minister of Justice may make regulations relating to, among others, the following matters:

- (a) the method and form of confinement and accommodation of any animal or class, species or variety of animals, whether travelling or stationary;
- (b) any other reasonable requirements which may be necessary to prevent cruelty to or suffering of any animal; and
- (c) the seizure, impounding, custody or confining of any animal due to any condition of such animal, the disposal or destruction of such animal and the recovery of any expenses incurred in connection therewith from the owner of such animal.

Provincial conservation authorities are mandated in terms of their provincial legislation to regulate the manner in which lions are kept.

Fig. 2.1 DEA Q&A document on lion management

20. A documentary that was released recently, accuses the government of turning a blind eye to Canned Lion hunting, is this true?

No, the government does not condone canned hunting.

In general, the term "canned lion hunting" refers to the hunting of lion in artificial circumstances, including the hunting of lion that is under the influence of a tranquiliser, by trapping it against a fence to hamper its escape, by luring it through the use of bait, hunting it in a controlled environment, and hunting it from a motorised vehicle.

In terms of the Threatened or Protected Species (TOPS) Regulations, 2007, which have been promulgated in terms of NEMBA, the hunting of lion in the following circumstances is prohibited, which means that a permit may not be issued:

- by means of poison, traps, snares, flood- or spot lights or darting;
- with an automatic weapon, a weapon discharging a rimfiring cartridge of .22 of an inch or smaller, a shotgun or an air gun;
- by luring it by means of bait, smell, sound or any other luring method;
- if the lion is under the influence of a tranquilizing, narcotic, immobilizing or similar agent;
- if the lion is trapped against a fence or in a small enclosure where the lion does not have a fair chance to evade the hunter
- from a motorised vehicle, except for the tracking of the lion if the hunt takes place over long ranges, for allowing a physically disabled person to hunt;
- from an aircraft, except for the tracking of the lion if the hunt takes place over long ranges; or
- by means of dogs, except if the dogs are used to track a wounded lion, or for the purpose of pointing, flushing and retrieving a lion.

The Department is currently collaborating with the Department of Agriculture, Forestry and Fisheries to develop measures in terms of the Animals Protection Act, 1962 (Act No. 71 of 1962) for the manner in which lion are kept in captive facilities, in order to address concerns relating to the welfare of lions in these facilities.

Fig 2.2 DEA Q&A document on lion management

14: Why has the Department of Environmental Affairs given recognition to the captive breeding of lions in the draft BMP for the African Lion?

The purpose of making reference to the captive breeding of lions is not to manage these facilities through the BMP, but to explore whether these facilities could contribute to the conservation of the species (although the South African wild population is stable, populations in other African countries are under threat of extinction), and to identify and manage possible risks relating to the release of captive bred lions into the wild. Exploring the risks and opportunities also lead to research opportunities (e.g. genetic integrity of lions in captive facilities; or the release period for successful rehabilitation of captive-bred lion).

17: Why does the draft BMP for African Lion not address the welfare of lions, particularly because it addresses captive lions?

The BMP is developed in terms of the National Environmental Management: Biodiversity Act, 2004, which does not provide a mandate to regulate welfare matters. Welfare is regulated in terms of the Animals Protection Act, 1962, which is administered by DAFF.

18. Will lion farming in the near future fall under DAFF?

No decision has been taken that lion farming will fall under DAFF. However, the two departments are currently collaborating to agree on areas of cooperation based on their respective mandates.

Fig. 2.3 DEA Q&A document on lion management

When it comes to compliance monitoring and enforcement, the APA contains an extraordinary provision in section 8, which provides any society for the prevention of cruelty to animals (currently only SPCA officers) with powers to search, seize and arrest under certain circumstances. While welfare and the APA falls under the auspices of the Minister of DAFF, the NSPCA, not DAFF, is in practice tasked with almost sole enforcement of the APA. This responsibility is shared with the national police services (SAPS), which has its own difficulties with law enforcement in terms of capacity, wild animal welfare training and expertise but provide much needed support for the work of the SPCA.⁷³ The wildlife unit of the NSPCA is therefore on the frontline for enforcement of the APA nationally, save for in the Cape where the Cape of Good Hope SPCA has its own internal wildlife unit consisting of three inspectors for the peninsula. The NSPCA reports having conducted 225 inspections of captive and other wildlife facilities, rescuing 156-170 “wild and exotic” animals during 2015 to 2016 (pages 18 and 29 list contradictory figures).⁷⁴ The Cape of Good Hope SPCA Wildlife Unit reports having inspected 5 087 wild animals, 198 cases of cruelty against wild animals and having admitted 1 408 wild animals to its wildlife facility.⁷⁵

⁷³ The NSPCA trains members of the SAPS stock theft units (NSPCA Annual Report 2015-2016, page 14).

⁷⁴ NSPCA Annual Report 2015-2016.

⁷⁵ Cape of Good Hope SPCA Annual Report 2015-2016, page 2.

WILDLIFE PROTECTION UNIT

NATIONAL AND PROVINCIAL CONSERVATION

National

A number of pieces of national legislation are pending implementation and the Wildlife Protection Unit has been actively involved in providing the necessary welfare input during the process. This has been accomplished by attending stakeholder workshops and by providing written comment to the Department of Environmental Affairs.

A formal letter was sent to the Ministers, Deputy Ministers and Director-Generals of the Department of Environmental Affairs (DEA) and the Department of Agriculture, Forestry and Fisheries (DAFF) appealing for an urgent solution to certain issues experienced by the National Council as result of lack of co-operation and poor communication between these two Departments.

It was pointed out that the National Council is required to undertake work which falls within the scope and responsibility of both these Departments.

We are repeatedly told by the DEA that 'welfare' does not fall within their mandate but resides with DAFF. However the National Council is then called upon by various departments within the Department of Environmental Affairs to euthanase confiscated animals and animals prohibited in terms of their legislation.

Our correspondence has been acknowledged and a formal response from both Departments is awaited.

Provincial

During the period under review the Wildlife Protection Unit has referred many conservation related complaints to the provincial nature conservation authorities, especially in the case of the illegal keeping of various animals. The conservation authorities are mandated to address permitting issues and take appropriate action in terms of provincial ordinances.

The illegal keeping of wildlife often dovetails with neglect and welfare concerns, and is therefore of major concern to the National Council.

ELEPHANTS – CRIMINAL PROSECUTION TO PROCEED

In May 2014 the National Council laid animal cruelty charges against Elephants of Eden, the Knysna Elephant Park, their directors and management in terms of the Animals Protection Act, 71 of 1962 for cruelty to elephants. This proved necessary after the NSPCA received horrific footage depicting the cruel and abusive training methods employed to control and train baby and young elephants for their future, captive lives in the elephant-based tourist industry.

Following the refusal of the Grahamstown Director of Public Prosecutions (DPP) to continue with prosecution, the National Council pursued the matter by approaching the Office of the National Director of Public Prosecution.

The outcome, namely that the prosecution for contraventions to the Animals Protection Act is to proceed, has been welcomed.

The case has been elevated to the regional court of the area.



The tide is turning internationally against tourist facilities which offer interactions with wild animals.

Our years of advocacy, investigation and placing before the public the truth behind elephant rides or elephant-back safaris is now being rewarded through public awareness, pressure and impact.



Fig.3 Excerpt from NSPCA Annual Report 2015-2016

While details regarding criminal prosecutions instituted in respect of investigations undertaken by the different SPCAs are difficult to find,⁷⁶ the NSPCA has had success with enforcing the aims of the APA in court. At times the courts have generally taken the path of least resistance in dismissing cases for procedural or jurisdictional reasons rather than using judicial discretion to further the aims of the APA. In *NCSPCA v Openshaw*,⁷⁷ the NCSPCA sought an interdict against Peter Openshaw, the manager employed at a tiger farm who was revealed on television to have been feeding the tigers live buck. The appeal court found on the merits that there was no apparent danger of the live feeding happening again and that the matter was moot as Openshaw had emigrated. An interdict application and appeal against Openshaw personally, rather than against the owners of the tigers, may not have been the only legal remedy in this case.

In *NCSPCA v Withers and others*,⁷⁸ the NCSPCA appealed against a transport permit granted for the translocation of five baby elephants from the North West province to a training facility in the Eastern Cape on cruelty grounds under section 2 of the APA. The elephants were later removed from the facility in the Eastern Cape to the Knysna Elephant Park (KEP) in the Western Cape. The Eastern Cape High Court found that since the elephants no longer resided within the provincial jurisdiction, the appeal was moot.⁷⁹ Unfortunately the particular remedy sought resulted in a lost opportunity to challenge the substantive cruelty issues relating to the baby elephants.

In the Tuli elephant case convictions were made in 2003 against owner Riccardo Ghiazza and his employee Wayne Stockigt for contravening the APA by using cruel methods to train thirty orphaned juvenile elephants for riding and other entertainment, including sale to international zoos.⁸⁰ The elephants were found to be “severely malnourished, highly traumatised and fearful, terrified of the mahouts [Indonesian handlers] and most of them had abscesses and lesions caused by the training implements, one of which was a pole with the sharp end of a drill bit protruding.”⁸¹ Handler Craig Saunders, who today owns several captive elephant facilities in South Africa and even some of the original Tuli elephants, was not convicted due to the fact that the State was not able to prove the case against him beyond reasonable doubt. It took five years for the case to be finalised, during which the elephants remained in the possession of Ghiazza. Ghiazza was sentenced to a fine of R25,000 or six months’ imprisonment, which he appealed in 2006.⁸² It is disheartening that a case of such blatant animal cruelty, which led to calls for the improvement of wild animal welfare and elephants in particular, did not result in a severe sentence, and significant improvement of the welfare of the animals in question. Moreover, the lack of a conviction and meaningful sentence imposed under the APA meant that an opportunity to deter other would-be offenders was lost.

⁷⁶ The NSPCA Training Unit is currently sourcing prosecution information from the different SPCAs for compilation of a national database, which could provide a clearer picture of the success of enforcement of the limited scope of the APA. The NSPCA’s Annual Report 2015-2016 records six successful and fifty pending prosecutions in the year under review (pages 18 and 20).

⁷⁷ (462/07) [2008] ZASCA 78 (RSA).

⁷⁸ (686/2015) Eastern Cape High Court.

⁷⁹ The National Prosecuting Authority (NPA) decided in July 2016 to prosecute the owners of KEP and the former Elephants of Eden based on representations made by the NSPCA after filing criminal charges in 2014 in relation to separate cruelty reports and footage depicting abusive training methods used against baby and juvenile elephants, online at <http://www.nspca.co.za/elephants-eden-criminal-prosecution-proceed/> (accessed 1 August 2016). This prosecution has been set down for 6 November 2017.

⁸⁰ See summary online at <http://www.ens-newswire.com/ens/apr2003/2003-04-10-01.html> and https://www.sheldrickwildlifetrust.org/html/tuli_elephant_debacle.html. See also <http://www.nspca.co.za/wp-content/uploads/2016/05/welfare-of-elephants-in-captivity-in-south-africa-jun-2015.pdf> (accessed 22 September 2016).

⁸¹ See online at https://www.sheldrickwildlifetrust.org/html/tuli_elephant_debacle.html (accessed 22 September 2016).

⁸² See online at <http://www.iol.co.za/news/south-africa/tuli-elephant-abuse-saga-continues-in-court-270968> (accessed 22 September 2016).

Despite these challenges, the NSCPA has also achieved some notable successes. Examples include the recent successful prosecution and sentencing on charges laid by the NSPCA in terms of the APA in the context of animal cruelty outside of established commercial industry.⁸³ Four foreign nationals who were in the country illegally were sentenced in Polokwane to eight months' imprisonment without the option of a fine for transporting to an abattoir 41 donkeys, consisting of adults and foals, who were in various states of collapse, near-death or death. The NSPCA stated that it "*continues to pursue leads to uncover and handle further instances when donkeys are being stolen and abused in terms of transportation, general neglect and the unacceptable manner of slaughter for the trade in donkey hide for Chinese traditional medicine. We remain gravely concerned as the practice is widespread and growing.*"⁸⁴

Further confirmation of the NCSPCA's commitment and ability to advance the aims of the APA came from the Constitutional Court in *NCSPCA v Minister of Justice and Constitutional Development*.⁸⁵ While the court a quo and Supreme Court of Appeal found that the NCSPCA, being a juristic entity, did not have legal standing to bring a private prosecution, the NCSPCA's appeal to the Constitutional Court was upheld in December 2016. The Constitutional Court confirmed that the NSPCA has the statutory power, despite not being an individual, to bring private prosecutions without first obtaining a certificate of *nolle prosequi*, in terms of section 6(2)(e) of the SPCA Act read with section 8 of the Criminal Procedure Act (private prosecutions by statutory power).⁸⁶ This power allows the NSPCA to avoid delays and other capacity constraints in the NPA, and drive the prosecution independently from the NPA. Private prosecution however is an expensive procedure, yet to be fully tested in practice in South Africa. Section 33 of NEMA provides for the bringing of a private prosecution by both natural and juristic persons,⁸⁷ on the grounds of matters in the public interest or in the interest of the protection of the environment.⁸⁸

Significantly, this case contains an important mandate for the development of a new welfare regulatory framework. The court explained 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". The court also quoted the rhino poaching *Lemthongthai* prosecution judgment with approval,⁸⁹ which explained that "constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general". The court specifically related animal welfare with questions of biodiversity. The court explained that animal welfare is connected with section 24 of the Constitution (in particular section 24(b)) and that this "integrative approach links the suffering of individual animals to conservation". In accordance with the opinion of the court, the integrative approach shows how concern for individual animals strengthens environmental protection efforts. Thus, "animal welfare and animal conservation together reflect two intertwined values". The emphasis of the court on section 24(b) of the Constitution indicates the need for the promulgation of wildlife-specific welfare legislation. While welfare was previously considered to be unrelated to conservation, the courts have ruled otherwise. The inherent welfare-evasive gap between the mandates of DEA, DAFF and the NCSPCA, as well as the considerable challenges faced by the NCSPCA must be remedied accordingly.

⁸³ See online at <http://nspca.co.za/guilty-four-sentenced-donkey-horror-case/> (accessed 31 October 2016).

⁸⁴ As above.

⁸⁵ (20781/2014) [2015] ZASCA 206 (4 December 2015).

⁸⁶ Act 51 of 1977.

⁸⁷ "Person" includes a juristic person in the definition under NEMA.

⁸⁸ S33(1)(a) and (b).

⁸⁹ Fn 36.

1.4 Performing Animals Protection Act, 24 of 1935 (PAPA) (amended 2017)

Promulgated over 80 years ago, PAPA is the oldest Act discussed in this report. It is a short statute aimed at the administrative regulation of the exhibition and training of performing animals, and dogs used for safeguarding. PAPA has not been amended to keep up with progresses in science and widespread universal societal views about performing animals, and merely requires the issue of an annual certificate and licence for the training and use of animals for public exhibition. Reform in this regard is decades overdue.

The ancient PAPA recently came into the spotlight via the declaration of the constitutional invalidity of sections 2 and 3 on grounds of the doctrine of separation of powers as the Act required a magistrate to perform an administrative function in issuing licences and certificates in terms of PAPA.⁹⁰ The Constitutional Court ordered Parliament to amend the offending provisions by August 2016. This resulted in the current Performing Animals Protection Bill B9B-2015, which was passed by Parliament on 25 May 2016 but was returned to Parliament by the President on 10 August 2016 over concerns that a quorum was not reached during the voting in of the Bill by the national legislature.⁹¹ Upon application by the Minister on 25 August 2015, the Constitutional Court extended the deadline for a third time, to 31 July 2017.⁹² The Bill was again passed in both Houses of Parliament in November 2016 and was signed into law by the President on 11 January 2017, without a commencement date. On 4 August 2017, the commencement date was proclaimed retrospectively from 28 July 2017.⁹³ This amendment Act, despite calls for overhaul during public comment, was not amended any more than was required by the Constitutional Court judgment. It is assumed that this limited amendment is due to time constraints, and the behind the scenes work done in 2015 on the envisaged Animal Welfare Bill referred to in parliamentary committee meetings and DAFF's current Strategic Plan (development of "*a single welfare Act in line with relevant sections of the Constitution as well as international animal welfare legislation*" for "*improved animal welfare coordination in the country*").⁹⁴

The same definition of "animal" used in APA applies to PAPA, but excludes reptiles.⁹⁵ PAPA regulates only the training and exhibition of animals, domestic and wild, excluding animals used for "military, police or sporting purposes or the purposes of agricultural show, horse show, dog show, caged bird show or any public zoological gardens or to the use of a dog by the South African National Defence Force, the South African Police or the Prisons Service".⁹⁶ All wild animal interaction and exhibition facilities therefore are subject to PAPA compliance in addition to NEMBA TOPS requirements, where applicable. Contravention of PAPA holds the meagre penalty upon conviction of a fine to a maximum of R40,000.00 and/or a maximum of 12 months' imprisonment.⁹⁷ While PAPA authorises the Minister

⁹⁰ *NSPCA v Minister of Agriculture, Forestry and Fisheries and others* CCT120/12 [2013] ZACC 26.

⁹¹ Parliamentary Monitoring Group online at <https://pmg.org.za/bill/559/> (accessed 18 August 2016).

⁹² Online at <http://www.constitutionalcourt.org.za/site/CCT186-16A.htm> (accessed 25 August 2016).

⁹³ Performing Animals Protection Amendment Act, 6 of 2017, GG41024 GN R776, 4 August 2017.

⁹⁴ Online at <https://pmg.org.za/committee-meeting/20836/> (accessed 12 May 2016). Links to copies of all public presentations, minutes of committee meetings, deliberations and audio recordings thereof can be found online at <https://pmg.org.za/bill/559/> (accessed 29 February 2016). DAFF Strategic Plan 2015/16 – 2019/20 available online at http://www.daff.gov.za/doaDev/topMenu/DAFF_SP_%20complete.pdf (pages 9 and 28) (accessed 12 May 2016).

⁹⁵ S11.

⁹⁶ S9.

⁹⁷ S8 read with the Adjustment of Fines Act.

of DAFF to make regulations with regard to, *inter alia*, the prevention of cruelty against and suffering of animals trained and/or used for exhibition, no regulations were passed until 4 August 2017 along with the proclamation date of the amendment Act (commencing retrospectively from 28 July 2017).⁹⁸ The Regulations prescribe the process, requirements and fees for the licensing of performing animals.

The necessary updating of PAPA will presumably be done as a chapter in or regulations to the proposed Animal Welfare Bill.

1.5 National Environmental Management Act, 107 of 1998 (NEMA)

The National Environmental Management Act, 107 of 1998 (NEMA) is the pioneer act of South Africa's Constitutional environmental dispensation. As framework legislation, NEMA provides for the creation of specific environmental management Acts (SEMA) to give effect to the Constitutional mandate in section 24. It aims, *inter alia*, to provide for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment.

While neither NEMA nor NEMBA, discussed below, contain express welfare provisions,⁹⁹ NEMA incorporates certain offences under APA (along with a list of other offences under other environmental and water laws) into its compliance and enforcement provisions. NEMA refers in Schedule 3 thereto, for purposes of section 34 (cost of damage) to the inclusion of sections 2(1) and 2A of APA. Therefore, whenever a person has been convicted of an offence in terms of APA and which offence has resulted in a loss or damage, including environmental damage in terms of NEMA, a series of consequences attach, including that that criminal court may enquire into the cost of the damage or loss and give judgment therefor in favour of the owner of the animal.

1.6 National Environmental Management: Biodiversity Act, 10 of 2004 (NEMBA) and Threatened or Protected Species Regulations, 2007 (TOPS Regs)

As its title suggests, NEMBA is a biodiversity conservation statute, and makes no express reference to welfare. However, since thousands of animal species contribute to the make-up of the country's rich biodiversity, the welfare aspects of human interaction with, and commercial or other exploitation of, these species are apparent. As is discussed below, welfare arguably is an implicit part of NEMBA.

NEMBA is a SEMA under NEMA. TOPS are regulations under NEMBA, promulgated to list the species of animals and plants to which the regulations apply, and to:

- (a) further regulate the permit system set out in Chapter 7 of NEMBA insofar as that system applies to restricted activities involving specimens of listed threatened or protected species;

⁹⁸ S7. Performing Animals Protection Regulations, 2016, GG41024 GN R776, 4 August 2017.

⁹⁹ NEMLAB4, 2017, contains provisions adding the "well-being" of listed species in the performance of a restricted activity as an object of NEMBA and gives the Minister the power to make regulations in this regard.

- (b) provide for the registration of captive breeding operations, commercial exhibition facilities, game farms, nurseries, scientific institutions, sanctuaries and rehabilitation facilities and wildlife traders;
- (c) provide for the regulation of the carrying out of a specific restricted activity, namely hunting;
- (d) provide for the prohibition of specific restricted activities involving specific listed threatened or protected species;
- (e) provide for the protection of wild populations of listed threatened species; and
- (f) provide for the composition and operating procedure of the Scientific Authority.¹⁰⁰

TOPS has been amended several times since the publication of the list in June 2007 (the actual Regulations only having been published in August 2012),¹⁰¹ but the list of animals to which it applies has never been updated to correspond with the current International Union for Conservation of Nature (IUCN) Red List of Threatened Species (red list) statuses and other relevant developments in respect of threatened and endangered animals in South Africa.¹⁰² In addition to this, an amended version of TOPS and the species lists were Gazetted for comment in 2013, but did not come into operation.¹⁰³ A further amended version and list were republished for comment in 2015 and was expected to be submitted to Parliament for adoption between April and June 2017, but, at the date of this report, has not yet occurred.¹⁰⁴

The restricted activities in terms of NEMBA TOPS apply only in relation to those wild animals listed in TOPS due to their endangered, threatened or protected status as recorded in TOPS. Other animals, while not afforded national protection, may be protected under provincial legislation due to their perceived biodiversity value or status in the jurisdiction of their province. All other animals that are common, or those not indigenous to South Africa, do not enjoy any special legislative protection unless they are catered for under provincial legislation for other reasons.¹⁰⁵ Exotic species of wild animals not indigenous to South Africa (called alien and invasive species) are considered a threat to national and local biodiversity and are therefore subject to eradication rather than protection. This is a clear welfare issue that must be addressed.

TOPS is additionally peppered with welfare-based provisions, pointing to an implicit welfare mandate of DEA.¹⁰⁶ If it is to be accepted the DEA does not have the mandate to enforce welfare laws in relation to wild animals, inclusion of such provisions in the conservation legislation is illogical as the enforcement thereof by DEA would then be *ultra vires*.

Chapter 2 of TOPS deals with the permit system. Any person intending to undertake a restricted activity in relation to a listed species must obtain a permit to do so.¹⁰⁷ Regulation 10 provides a long list of

¹⁰⁰ Reg.2.

¹⁰¹ GG 35565, GN R614, 2 August 2012.

¹⁰² The IUCN red list is a compilation of data assessed and kept up to date by experts worldwide in relation to thousands of species in order to ascertain their conservation status (critically endangered, endangered, vulnerable or least concern). See online at <http://www.iucnredlist.org/> (accessed 22 March 2016).

¹⁰³ GG 36375, GN R388, 16 April 2013.

¹⁰⁴ GG 38600, GN R256, 31 March 2015.

¹⁰⁵ See discussion of provincial legislation below.

¹⁰⁶ See for example TOPS Annexure 2, par E, relating to captive breeding operations, commercial exhibition facilities, rehabilitation centres and sanctuaries.

¹⁰⁷ NEMBA chapter 7.

factors that the issuing authority (DEA¹⁰⁸ or the MEC/delegated provincial authority¹⁰⁹) must take into account when considering an application for a TOPS permit:

When considering a permit application, an issuing authority must, to the extent applicable, take into account -

- (a) all applicable legal requirements, in order to ensure that any decision with respect to a permit is consistent with regulation 17;
- (b) whether the species to which the application relates is listed in terms of section 56, of the Biodiversity Act as a critically endangered species, an endangered species, a vulnerable species or a protected species;
- (c) the IUCN Red List status of the species;
- (d) whether the application involves a listed threatened or protected species that will be taken or removed from a wild population;
- (e) whether the restricted activity applied for is prohibited in terms of regulations 23, 24, 26 or 25;
- (f) whether the issuing authority has cancelled other permits issued to the applicant in terms of section 93 of the Biodiversity Act;
- (g) all other relevant factors, including -
 - (i) all the information and documentation submitted by the applicant to the issuing authority in connection with the application;
 - (ii) any additional information required by the issuing authority in terms of section 88(2)(a) of the Biodiversity Act;
 - (iii) whether the restricted activity in respect of which the application is submitted is likely to have a negative impact on the survival of the relevant listed threatened or protected species;
 - (iv) the biodiversity management plan for the species concerned (if any);
 - (v) any recommendation by the Scientific Authority in terms of section 61(l)(c) of the Biodiversity Act regarding the application;
 - (vi) any risk assessment or expert evidence requested by the issuing authority;
 - (vii) any relevant information on the database that SANBI is required to keep in terms of section 11(1)(o) of the Biodiversity Act;
 - (viii) any objections to the application;
 - (ix) whether the restricted activity will be carried out by, or will take place in a registered captive breeding operation, commercial exhibition facility, nursery, scientific institution, sanctuary, rehabilitation facility, or by a wildlife trader registered in compliance with these regulations; and
 - (x) whether the restricted activity will be carried out on a registered game farm registered in terms of Chapter 3 of these regulations.

Some of the above factors contain further requirements within them, complicating an already unwieldy set of laws. Regulation 17(1) requires the decision on a permit application to be consistent with all legal requirements. TOPS defines "applicable legal requirements" as all legislation and instruments

¹⁰⁸ DEA only issues TOPS and CITES permits for restricted activities in relation to a listed species in a national protected area; by an official organ of state; or that is a marine species (NEMBA s3(2)).

¹⁰⁹ All other TOPS and CITES permits are dealt with by the provincial authorities.

referred to in section 88(3) of NEMBA,¹¹⁰ any norms and standards issued in terms of section 9 of NEMBA, any specific requirements of the TOPS regulations and any applicable provincial legislation. The ability and capacity of the different issuing authorities to understand and adhere to this set of complicated laws from various sources in order to comply with this single requirement, is doubtful. Further to this, it is not understood how the different issuing authorities consider, weigh up and apply the different factors listed in Regulation 10 of TOPS.

While penalties in terms of TOPS are a maximum of R5 million and/or a maximum of five years' imprisonment, NEMBA penalties provide for imprisonment for a maximum period of 10 years and/or a fine to the maximum of R10 million or three times the value of the listed species in respect of which the offence was committed, whichever is the greater, and/or a maximum of ten years' imprisonment.¹¹¹

1.6.1 Biodiversity Management Plans for Species in terms of NEMBA (BMP-S)

BMP-S published in terms of section 43 of NEMBA are subordinate to the environmental Acts and Regulations but binding plans for the management of the species in the plans. BMP-S are required to be updated every five years.¹¹² To date, only a handful of BMP-S (black rhino,¹¹³ African penguin,¹¹⁴ African lion,¹¹⁵ Clanwilliam sandfish,¹¹⁶ sharks¹¹⁷, and Pickersgills' reed frog¹¹⁸ have been written into law, and draft BMP-S have been published for comment. The BMP-S for black rhinos, captive penguins and captive lions again contain a host of welfare provisions. The BMP-S for black rhinos acknowledges that rhinos have an existence value (over and above a purely commercial, economic value)¹¹⁹ and states that "[o]ther Acts such as the Animals Protection Act which regulates animal welfare in South Africa is [sic] also applicable to wildlife."¹²⁰

1.6.2 Norms and Standards, Regulations and Prohibition Notices in terms of NEMBA

As the current draft NEMBA regulations and prohibition notices do not relate to welfare, they will not be discussed here. A handful of norms and standards has been published in terms of section 9 of NEMBA.¹²¹

The National Norms and Standards for the Management of Elephants in South Africa, 2008, reads in stark contrast to the other pieces of environmental legislation, depicting detailed welfare imperatives for captive elephants and even acknowledging that elephants are sentient beings.¹²² DEA released a

¹¹⁰ Being the national environmental management principles; the national biodiversity framework; any other relevant plans approved or adopted in terms of chapter 3 of NEMBA; any applicable international agreements binding upon South Africa; the Promotion of Administrative Justice Act, 3 of 2000 (PAJA); and any requirements that may be prescribed.

¹¹¹ TOPS Reg.74, NEMBA s102.

¹¹² S46(1).

¹¹³ GG36096, GN R49, 25 January 2013.

¹¹⁴ GG36966, GN R824, 31 October 2013.

¹¹⁵ GG38706, GN R351, 17 April 2015.

¹¹⁶ GG39899, GN R406, 1 April 2016.

¹¹⁷ GG38601, GN R258, 25 March 2015.

¹¹⁸ GG40883, GN R423, 2 June 2017.

¹¹⁹ Par 1.2.

¹²⁰ Par 3.1.3.

¹²¹ The draft Norms and Standards for the Management of Damage-causing Animals, 2010 were republished for comment in April 2016 and again in August 2016 but have not yet been passed. GG40236 GN R512 (30 August 2016).

¹²² Par 2(2)(a)(vii).

statement on 24 September 2014, confirming that the entire welfare mandate lies with DAFF and that the elephant norms and standards would be amended to remove the ethical and welfare requirements as these do not relate to biodiversity conservation.¹²³ In 2009, DEA published for comment a much truncated document called the Minimum Standards for Captive Elephants, which has, to date, not been passed into law.¹²⁴

TOPS Regulation 19(2) explicitly requires that "if any norms and standards apply to the restricted activity for which a permit is issued, that permit must be issued subject to a condition that the permit holder is bound by those norms and standards and must act in accordance with those norms and standards when carrying out the restricted activity". In 2016, the CER submitted nine requests in terms of the Promotion of Access to Information Act, 2 of 2000, to DEA and/or the provincial conservation authorities for copies of captive elephant permits issued by their departments. Not one of the permits received in response to these PAIA requests contains this mandatory condition.¹²⁵

As the elephant Norms and Standards have not yet been amended, they can provide a useful tool for enforcing welfare protection of elephants, both captive and wild. However, the actual impact of the Norms and Standards on the lives of the elephants used for tourism in the many captive elephant facilities in the country to date, has been almost non-existent.

1.7 CITES Regulations, 2010

The Convention on International Trade of Endangered Species of Fauna and Flora, 1973 (CITES) was ratified by South Africa at its inception in 1975. However, national legislation to introduce provisions of CITES was only enacted by way of regulations to NEMBA in 2010.¹²⁶ One of CITES aims is to enforce strict requirements upon the commercial movement of endangered animals and their parts across borders.

Species listed in Appendix I of CITES are "all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances."¹²⁷ Species listed in Appendix II are "(a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in subparagraph (a) of this paragraph may be brought under effective control."¹²⁸ Appendix III lists species "which any Party identifies as being subject to regulation within its jurisdiction for the purpose of

¹²³ See online at https://www.environment.gov.za/mediarelease/normsandstandards_managementofelephant (accessed 27 July 2016).

¹²⁴ GG 32745, GN R1567, 27 November 2009.

¹²⁵ Circus-owner Brian Boswell recently (2016) brought a court application against DEA, the KZN MEC for Economic Development and Tourism and Ezemvelo KZN Wildlife (EKZNW), to review EKZNW's decision to refuse to issue TOPS permits for export of Boswell's retired circus elephants. The application challenged paragraphs 12(4) and 12(5) of the Norms and Standards, which relate to the prohibition against the import and export of elephants for captive purposes, as he wished to sell off the five retired elephants for R1.5 – R3 million each to zoos and/or other captive facilities in the United Arab Emirates. The case was dismissed with costs. Pietermaritzburg High Court case number 3972/16. See online at <http://cer.org.za/news/boswell-court-challenge-of-elephant-norms-and-standards-dismissed-with-costs> (accessed 1 June 2017).

¹²⁶ NEMBA: CITES Regulations, GG33002, GN R173, 5 March 2010.

¹²⁷ Article II (1).

¹²⁸ Article II (2).

preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade.”¹²⁹

In terms of welfare, CITES explicitly requires the management authority of the Party State to be “satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.”¹³⁰ In line with the CITES requirement, Regulation 5(3) of the NEMBA regulations requires the management authority (DEA) to “ensure that all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment”. While the two former requirements are presumably for the protection of the trade “product”, the latter is inherently welfare based. Again, it must follow that DEA has an implicit welfare mandate in order to comply with its obligations under CITES and enforce the welfare prescriptions.

The main criticisms of CITES as a conservation protection tool are that the conservation aspect is outweighed by the trade aspect, that the Convention is not internationally enforceable, that the majority of the Parties do not have national empowering legislation in place, that borders are almost impossible to seal and that species listing is subject to change by strong-arming and collusion by States that are Parties to the Convention in favour of trade as only a two-thirds majority of the Parties is required to vote in favour of a listing amendment.¹³¹ During the Seventeenth CITES Convention of the Parties (COP17) held in Sandton, Johannesburg at the end of September 2016, a proposal by a number of African countries for the up-listing of the African Lion from Appendix II to Appendix I of CITES was rejected, with South Africa being one of the parties who voted against the proposal.¹³² South Africa also managed to obtain agreement to an annual quota of lion bone exports from captive bred lions (prior to this there was no cap on the international trade of lion bones).¹³³

1.8 Game Theft Act, 105 of 1991

The aim of the Game Theft Act is the protection of ownership of free-roaming “game”.¹³⁴ Game is defined as “all game kept or held for commercial or hunting purposes, and includes all meat, skin, carcass or any portion of the carcass of that game”. The main effect of this Act is to remove the common law *res nullius*¹³⁵ status of a wild animal as long as the animal is or was fenced in a reserve that holds a certificate of “adequate enclosure”.¹³⁶ Therefore if a herd of antelope moves out of a certified adequately enclosed area, their owner (and holder of the certificate) may still exert his

¹²⁹ Article II (3).

¹³⁰ Articles III (2)(c) and III (4)(b).

¹³¹ Article XV (1)(b). See also online at http://www.dailymaverick.co.za/article/2016-09-12-op-ed-can-cites-cope-with-the-illegal-wildlife-trade/#.V_eGCfI97IV (accessed 17 September 2016).

¹³² See Minister’s speech to the media after the closing of COP17 online at

<http://www.gov.za/speeches/minister-edna-molewa-outcomes-cites-cop17-5-oct-2016-0000> (accessed 14 October 2016).

¹³³ See also online at <https://www.dailymaverick.co.za/article/2017-02-01-op-ed-permission-to-drink-a-lion/#.WJriV2997IW> (accessed 8 February 2017).

¹³⁴ Preamble: “To regulate the ownership of game in certain instances; to combat the theft and wrongful and unlawful hunting, catching and taking into possession of game; and to provide for matters connected therewith.”

¹³⁵ *Res nullius*, an ownerless object, is a Roman Law concept indicating the ability of an object to be owned as soon as a person takes possession of or control over the object.

¹³⁶ S2.

ownership right over the herd even if they have moved to another owner's adequately enclosed property, the antelope do not become ownerless and capable of being owned by another.

The commodification of wild animals is entrenched by this Act, as game owners and the State (in fenced national or provincial parks) are able to enforce ownership over free-roaming animals by the mere production of a certificate. Due to this, there are few, if any, real "wild" areas or truly free wild animals.

All of the South African conservation legislation emphasises the right of landowners to hunt and give permission to hunt on their land, while the consent of adjoining landowners is a requirement for capture permits.¹³⁷ Canadian environmental science Professor Emeritus, Valerius Geist, makes the point that private land ownership does not promote ecological stewardship: "[o]n private land dedicated to a market economy, management will [generally] reflect markets, not ecology".¹³⁸ The impact of this regime is described by a National Geographic journalist:

"Groenewald's focus on the animals' worth was a reminder of what had taken me so long to understand: To Groenewald and many other South Africans, you're not a poacher if you kill what's yours. This idea is rooted in the country's pro-game ranching laws, which make wildlife the property of anyone who can fence it off. "Everybody knows I'm not a poacher," Groenewald tells me. "I believe that an animal like a rhino should be mine. I can do with that what I want, like any other animal—like a kudu or a buffalo. If I buy that animal, it belongs to me. If you want to shoot the rhino, it's my rhino; it's on my farm. If I want you to shoot it, you can shoot it." ... Hume owns about a fifth of South Africa's privately held rhinos. Part of what makes the rhino special, Hume says, is that it is so "user friendly." This is a cattle ranch, he says. "You couldn't keep elephants here." Each week his staff tranquilizes 10 to 15 rhinos, assists them as they stumble around, trims their horns, gives them reviving shots, and sends the horns by armed guard to a secure facility. His rhinos each produce up to 4.4 pounds of horn a year, and the horns are cut every 20 months or so. He's been doing this for years and estimates he's amassed five tons of horn, which he hopes one day to sell legally for more than \$4,500 a pound: about \$45 million".¹³⁹

The restriction of the natural movement of animals, while beneficial to owners, hampers the balanced use of habitat by these animals and has far-reaching consequences for the ecosystems that they are now confined to and those that they are prevented from reaching.

1.9 Provincial Legislation

Provincial statutes are subservient to national legislation. In the event of conflict between the two, the national legislation will apply if the national legislation is, *inter alia*, necessary for the protection of the

¹³⁷ See next chapter.

¹³⁸ See online at <http://www.accuraterloading.com/2009/lc1762011.pdf> (accessed 16 June 2016).

¹³⁹ See online at <http://www.nationalgeographic.com/magazine/2016/10/dark-world-of-the-rhino-horn-trade/> (accessed 13 September 2016).

environment (subject to the fact that conservation is a matter of both national and provincial competence).¹⁴⁰

The nine provinces each apply, in addition to and sometimes instead of NEMBA TOPS,¹⁴¹ province-specific legislation, some many decades old. The mix of provincial departments that regulate the differing conservation legislation across the country is a significant cause of the lack of uniformity in complying with and applying the relevant legislation in issuing permits and monitoring and enforcing the national and provincial laws. In most of the provinces, environmental and thus biodiversity conservation is combined with the portfolios of economic development and, in some cases, tourism. In the balance of the provinces, being Western Cape, KwaZulu-Natal and Mpumalanga, the biodiversity conservation legislation is applied, monitored and enforced by a statutory body created for the purpose under a delegated authority from the provincial MEC for environmental conservation.

Province	Provincial Legislation	Issuing Authority
Free State	Nature Conservation Ordinance, 8 of 1969	Free State Department of Small Business Development, Tourism and Environmental Affairs (DESTEA)
Western Cape	Nature Conservation Ordinance, 19 of 1974	Western Cape Nature Conservation Board (t/a CapeNature)
Eastern Cape	Nature Conservation Ordinance, 19 of 1974	Eastern Cape Department of Economic Development, Environmental Affairs and Tourism (DEDEA)
Gauteng	Transvaal Nature Conservation Ordinance, 23 of 1983	Gauteng Department of Agriculture and Rural Development (GDARD)
	Gauteng Nature Conservation Bill, 2014	
North West	Transvaal Nature Conservation Ordinance, 23 of 1983	North West Department of Rural, Environmental and Agricultural Development (READ)
	North West Biodiversity Management Act, 4 of 2016 and Bill, 2017 (commencement date not yet proclaimed)	
KwaZulu-Natal	Nature Conservation Act, 29 of 1992	KZN Nature Conservation Board t/a Ezemvelo KZN Wildlife (EKZNW)
	KwaZulu-Natal Environment, Biodiversity and Protected Areas Management Bill, 2014	
Mpumalanga	Nature Conservation Act, 10 of 1998	Mpumalanga Tourism and Parks Agency (MTPA)
Limpopo	Limpopo Environmental Management Act, 7 of 2003 (LEMA)	Limpopo Department of Economic Development, Environment and Tourism (LEDET)

¹⁴⁰ NEMBA s8(1)(b), Constitution s146(2).

¹⁴¹ See next chapter regarding application of the law by the provinces.

Northern Cape	Nature Conservation Act, 9 of 2009	Northern Cape Department of Environment and Nature Conservation (DENC)
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Common provisions that appear in all the provincial legislation in some form or other are the following:

- Same or similar definition of “wild animal”;
- Requirements for hunting protected animals, ordinary animals and exotic animals;
- Prohibited methods of and weapons for hunting;
- Owner of land: is exempt from certain provisions, may hunt ordinary game without permits and must supervise or give written permission to other hunters hunting on his/her land;
- Activities in respect of certain animals for which permits are required;
- Fishing method, prohibited methods and weapons;
- Fencing and making holes in fences;
- Indigenous and non-endemic plants;
- Damage-causing animals;
- Deeming provisions;
- Forfeiture; and
- Offences and penalties.

A common thread of welfare-based provisions also runs through the legislation, both new and old. By way of example, the use of cruel hunting methods is prohibited.

In addition to the common provisions above, some of the anomalies and provisions peculiar to each province are briefly noted below.

1.9.1 Nature Conservation Ordinance, 8 of 1969 (Free State)

The 1969 Ordinance is the oldest piece of provincial conservation legislation currently still in operation and applies to the Free State province. This Ordinance does not require a permit for the breeding of wild animals.

In 2013 the Free State enacted norms and standards in terms of the Ordinance for the keeping and management of bontebok in the province; activities regarding listed large predators by land owners, foreign clients and the exportation of hunting trophies; activities regarding white and black rhinoceros.¹⁴²

The balance of the Ordinance is on par with the other provincial ordinances.

1.9.2 Nature Conservation Ordinance 19 of 1974 (Western and Eastern Cape)

The Eastern and Western Cape still apply the 1974 Ordinance that was applicable throughout the then Cape province prior to the establishment of the nine provinces in 1994. As South Africa is the third

¹⁴² PG 75, 1 February 2013.

most biodiversity-rich country in the world, and the Western Cape's renowned floristic region is home to the largest range of endemic flora in the world on a unit area basis,¹⁴³ this Ordinance and its effective application, monitoring and enforcement is of utmost importance. These aspects are discussed in the next chapter.

1.9.3 Transvaal Nature Conservation Ordinance, 23 of 1983 (Gauteng and North West)

The North West and Gauteng are two provinces of the former Transvaal province that still apply the 1983 Ordinance. Gauteng, being the smallest of the South African provinces, does not have a dedicated environmental branch. Conservation falls under the auspices of the agricultural department. Encouragingly, both provinces have published for comment updated conservation Bills which generally mirror NEMBA TOPS aligned provisions and contain progressive welfare provisions.¹⁴⁴

The NWBMA, 2016 (which was promulgated in January 2017 without a commencement date and a further amendment Bill published on 25 August 2017, in addition to draft Regulations dated 5 September 2017),¹⁴⁵ for example, prohibits canned hunting of a listed species for one month after release¹⁴⁶ in comparison, the KZN conservation Bill, being the only other provincial legislation that deals with canned hunting, prohibits same totally, without a time period, so as long as a released animal is not able to feed or breed on his/her own, s/he may not legally be hunted. "*Canned hunt* means a hunt in which a live specimen bred in an intensive wildlife management system, is released in a confined semi extensive or extensive wildlife management system of the size less than 1500 hectares for the purpose of hunting the animal within a period which is less than one month".¹⁴⁷

1.9.4 Nature Conservation Act, 29 of 1992 (KwaZulu-Natal)

KwaZulu-Natal applies a quarter of a century old conservation statute, which follows the general format of the other old provincial conservation laws. Notable is the EKZNW policy on keeping of wild animals in captivity, discussed below.

Although the KwaZulu-Natal Nature Conservation Amendment Act, which prescribes the law relating to the protection of flora and fauna, has been passed, until such time as regulations necessary to supplement the Amendment Act are finalised the Amendment Act will not be enacted.¹⁴⁸

1.9.5 Nature Conservation Act, 10 of 1998 (Mpumalanga)

Mpumalanga prides itself in being the first province to enact conservation legislation under the new environmental dispensation. The Act seems to be a combination of some of the Transvaal Ordinance

¹⁴³ See online at <http://www.capenature.co.za/care-for-nature/biodiversity/cape-floristic-region/> (accessed 5 July 2016).

¹⁴⁴ Gauteng Nature Conservation Bill, 2014 and North West Biodiversity Management Act, 4 of 2016.

¹⁴⁵ North West Biodiversity Management Amendment Bill, PG7801 PN 171, 25 August 2017; North West Biodiversity Management Draft Regulations, PG7804 PN 260.

¹⁴⁶ S23(1)(b).

¹⁴⁷ S1(15).

¹⁴⁸ Kwazulu-Natal, Environmental, Biodiversity and Protected Areas Management Bill, 2014 – Bill and memorandum on the objects of the bill. GN4, PG1314, 25 February 2015.

provisions and a few of the NEMBA TOPS provisions. This Act also requires the compulsory registration of game traders.

1.9.6 Limpopo Environmental Management Act, 7 of 2003 (LEMA)

LEMA is drafted substantially in line with NEMBA TOPS provisions. This Act also requires the compulsory registration of wildlife translocators.¹⁴⁹

1.9.7 Nature Conservation Act, 9 of 2009 (Northern Cape)

The Northern Cape applies the most recent provincial conservation legislation. This Act is drafted substantially in line with NEMBA TOPS, as discussed above.

1.10 Voluntary Norms and Standards

The welfare of wild animals is significantly more regulated by voluntary codes, norms and standards than it is by the law. However, these codes are entirely voluntary and of no force or effect unless incorporated by way of reference into legislation and/or permit conditions, provided that the authorities issuing those permits (DEA and the provincial environment authorities) also have a clear legislative mandate empowering it to enforce those codes, norms and standards as they relate to welfare.

1.10.1 SABS SANS Codes and IATA Live Animal Regulations (LAR)

The Standards Act, 29 of 1993, regulated by the Department of Trade and Industry, enables the South African Bureau of Standards (SABS), a juristic person, to establish national standards or codes of good practice in respect of certain trade items and issues. The South African National Standards (SANS) (former SABS)¹⁵⁰ codes in respect of wild animals provide a ready regulatory system for a number of activities in relation to wild animals, where standards of good welfare are critical due to the level of human interaction with the animals. In addition to and unlike the conservation legislation and codes, the SANS codes do not discriminate between protected and other species but apply to all animals.

SANS Code	Year
SANS 10331:2000 (SABS 0331): Translocation of certain species of wild herbivore	2000
SANS 1884.1:2004: Holding pens for wild herbivores at auctions and in quarantine facilities	2004
SANS 10391:2004: Welfare of wild animals transported by sea	2004
SANS 1884.2:2007: Vehicles for the transportation of wild herbivores by road to holding pens and other facilities	2007
SANS 1884.3:2008: Vehicles for the transportation of wild carnivores by road to holding pens and other facilities	2008

The codes are simple to follow and provide recommendations covering a range of practical and crucial issues for the temporary housing and transport of wild animals. Such recommendations include

¹⁴⁹ Section 35.

¹⁵⁰ GG 26877, GN R1194, 15 October 2004.

construction methods and materials for housing pens and transport crates, capture methods and means, safe loading ramps and floor coverings, location and environment suitability (protection from adverse weather conditions, drainage, ventilation, cleanliness and hygiene), food and water supplies and facilities, fencing, access, insect control, veterinary presence and care, euthanasia, driver etiquette aimed at reducing the time spent on the road and levels of stress of the animals, human safety, as well as detailed requirements for different species of animals with different needs.

SANS1884-2:2007 aims to ensure that “no animal is transported under such conditions, or in such a manner or position, as to cause that animal unnecessary or avoidable suffering; or in conditions which do not provide adequate shelter or ventilation, or in which such animal is exposed to heat, cold, sun, rain, dust, exhaust fumes, noise, etc.”.¹⁵¹ Even though the aforesaid covers only the bare basic welfare needs of any animal, the subjective terms “unnecessary” and “avoidable” appear in the codes as well.

SANS 10391:2004,¹⁵² which deals with the welfare of wild animals transported by sea, explains that “[g]ood animal welfare practices are concurrent with the aims and objectives of the exporter and importer in securing the successful export of wild animals. This standard outlines the processes necessary to minimise undue stress and injury, distress, suffering and death of animals. These factors are of economic, as well as ethical and legal importance to international trading entities”.¹⁵³ The code states that it “seeks to afford wild animals a greater degree of recognition as a specialised article of trade, similar to that of dangerous and perishable goods”. While the codes are essentially related to trade issues, they can be used to ensure basic welfare protections are in place in relation to wild animals in transit.

The IATA (International Air Transport Association) Live Animal Regulations (LAR) prescribe the mandatory requirements for the transport of live animals by air.

1.10.2 Provincial and industry policy documents

The provincial norms and standards also point towards the various provincial conservation departments' inclination towards fulfilment of an ethical or welfare mandate, whether institutionalised or perceived, in contradiction to DEA's insistence that welfare does not form part of the conservation mandate.

1.10.2.1 Cape Nature Game Translocation Policy (GTUP)

Compliance with this 2010 policy is voluntary but aims to, *inter alia*, “confirm CapeNature's legal mandate to administer the subject-matter of the policy”. The policy is primarily aimed at biodiversity conservation and prescribes requirements for the prevention of hybridisation, introduction of alien and invasive species, genetic interference and habitat damage. As the policy also contains some welfare based recommendations for transport and veterinary care, and refers to the APA, it seems that CapeNature indeed considers itself to have an ethical and welfare mandate. The policy ends with a statement against the breeding of colour-morphs as these do not have any biodiversity conservation value. The other provinces are silent on this latter issue.

¹⁵¹ Par 4.1.2.

¹⁵² Online at www.sabs.co.za.

¹⁵³ Introduction, paragraph 2.

1.10.2.2 Western Cape Nature Conservation Board Standard Operating Procedure: Submission of Management Plans for Keeping Wild Animals in Captivity / Exhibition Centres and Standard Operating Guideline

The 2014 *Western Cape Nature Conservation Board Standard Operating Procedure: Submission of Management Plans for Keeping Wild Animals in Captivity / Exhibition Centres and Standard Operating Guideline* contains a section specifically dedicated to "animal welfare (physiological, psychological and physical needs)" and lists the five freedoms as part of the compliance checks.¹⁵⁴ The checklist also requires management plans to contain contingency plans and emergency procedures in the interests of animal protection.

1.10.2.3 KZN Policy for Keeping Wild Animals in Captivity

The run-on titled *Keeping Wild Animals in Captivity, KwaZulu-Natal, South Africa: Registration, Permits, and Licences for Keeping Wild Animals in Captivity and for the Exhibition, Breeding or Relocation, or Trade, Sale or Exchange (Alienation), of Such Animals*, published by EKZNW in 2013, is a good guide to basic welfare of different species of wild animals.

The policy confirms that EKZNW quite clearly considers itself to have a welfare mandate. The policy repeatedly refers to the welfare and safety of animals, takes into account issues such as social needs of certain listed species of animals, well-being and enrichment requirements for housing facilities, in addition to requirements for adequate protection from the elements with adequate exposure to natural conditions, cleanliness and hygiene, appropriate bedding, appropriate food and water facilities, veterinary care, etc., in line with the five freedoms. Useful tables in the policy provide information as to the minimum requirements for the size of enclosures, maximum numbers of animals per enclosure and the enrichment and behavioural requirements (furnishing and design, climbing, perching, elevated resting, pool depths, sand baths, play items, etc.) for a number of different species. An updated version of this policy could serve as a starting point for the development of national regulations that take into account welfare and good practice aims.

1.10.2.4 SAPA Norms and Standards for Hunting Managed Ranch Lions

This 2013 policy is currently being updated by the authors, the South African Predator Association (SAPA). While the policy is voluntary, it states that failure by SAPA members to comply with the policy "will lead to disciplinary action and possible expulsion of the offender" from the Association.¹⁵⁵ (Expulsion, however, is no great sanction and nothing prevents predator breeders from operating profitably without SAPA membership.) The policy importantly requires adherence to the APA, prescribes minimum standards for housing and hunting areas, disease prevention and, in respect of breeding, forbids sourcing from the wild, hand rearing, human-imprinting and prescribes compulsory identification of carnivores bred for hunting trade purposes.

¹⁵⁴ Par 5.

¹⁵⁵ Par 1.

1.10.2.5 DAFF Animal Welfare Strategic Implementation of the Veterinary Strategy

DAFF, together with the State Veterinarian, developed a strategy in 2016 with regard to the health and welfare of animals used for commercial purposes “to preserve the health and welfare of animals, to produce enough for ourselves and to share with the world”.¹⁵⁶ The drafting of the Animal Welfare Bill referred to above is also led by veterinarian Dr Tembile Songabe, director of veterinary health at DAFF. The veterinary strategy lists “strengthening competencies for animal welfare” as the fifth of the five pillars of the strategy, yet dedicates fewer than two pages of the 60-page document to welfare. The core welfare section of the veterinary strategy is reproduced below.

¹⁵⁶ DAFF South African Veterinary Strategy (2016 – 2026), March 2016 (the VS), available online at <http://www.nda.agric.za/docs/media/Vet%20strategy%20final%20signed.pdf> (accessed 9 November 2016).

5.6.2 Animal welfare³⁸

The VS should establish an animal welfare unit with relevant expertise within the central and provincial VS. Their responsibilities and tasks will be to update the two relevant Acts, provide independent review for animal welfare legal disputes, develop a communication, compliance and enforcement programme (based on the new legislation) and develop capacity in animal welfare science. The VS should establish an animal welfare coordinator in each province responsible for training, extension and compliance within provinces to implement the legislation. Actual extension and enforcement in the field should be undertaken by field veterinarians (including private) and para-veterinary professionals in the relevant domains (e.g. slaughter welfare standards in VPH, farm welfare standards during farm visits, transport welfare standards during border inspection and movement control activity etc.) The VS should consult with relevant NGOs, industry and provincial authorities, especially in the development of updated animal welfare legislation. Welfare organisations should be linked to veterinary services and report to the national welfare unit.

Animal welfare at abattoirs should be included in independent meat inspection and the welfare aspects at stunning, for traditional and religious slaughter and during transport should be investigated / researched and guidelines developed.

Welfare guidelines should be developed for wildlife (including transport and capture), laboratory animals and exotic animals. Regulations should be developed on game slaughter (in collaboration with the DEA) and welfare during fish farming and harvesting should be investigated. A system of registering research animal ethics committees is required and competition dog fighting needs to be addressed in the revised animal welfare legislation.

The VS should cooperate with the SABS to develop welfare standards and communicate these to farmers. The VS should investigate product labelling according to welfare grading for consumer information as well as whether the animal was stunned prior to slaughter. Standards on euthanasia in various situations should also be developed (e.g. rabid animals).

There was a request from stakeholders to legalise dog racing and develop the necessary guidelines to govern this sport, similar to horse racing. It was also requested that welfare officials at NGO's receive adequate, standardised training. Clarity is required regarding the Pounds Act, its finalisation and under whose mandate it falls.

Fig.4 Excerpt from the Animal Welfare Strategic Implementation of the Veterinary Strategy.

From a legal point of view, this strategy is not enforceable and can at most be seen as a guideline.

It is unclear how much training is received by the average veterinarian in matters of wild animal welfare. Veterinarians in South Africa chiefly graduate from the University of Pretoria, Onderstepoort, however the Sefako Makgatho Health Sciences University (SMU) (previously Medunsa) also offers veterinary degrees and courses. A course outline available for these courses was not available at the time of

writing this report.¹⁵⁷ Dr Quixi Sonntag of the University of Pretoria confirms that welfare is dealt with in the first two years of the BVSc programme under the following headings, with concentration on general principles rather than specific species:

- uses of animals and their welfare implications;
- introduction to animal ethics;
- animal welfare legislation;
- animal welfare role players;
- euthanasia methods;
- animal welfare and the environment;
- animal welfare and world trade;
- humane education;
- assessment of animal welfare - physiological and behavioural parameters; and
- systems of welfare assessment - five freedoms, welfare quality.

Dr Greg Simpson of the South African Veterinary Association (SAVA) wildlife unit confirms that the wildlife unit does advise owners on wildlife welfare, however, as wild animals live in different environments and have different needs, the primary reliance is on welfare guidelines contained in the SANS codes.

These codes and policy documents, when applied and properly enforced as conditions to permits and licences, provide useful tools for enforcement of welfare quality for at least some wild animals in certain temporary or permanently captive situations, in the short term. Ideally, the codes and policies should not be enforced uniformly and in respect of all wild animals, irrespective of listing or status.

1.11 Other applicable legislation

The other agricultural legislation is consistently aimed at maximisation of profit by economic exploitation of plants, animals and other “resources”. Implicit in this legislation is that the protection of the resources is for the purpose of human gain and not animal welfare.

The Animal Improvement Act, 16 of 1998 is aimed at breeding for genetic qualities that enhance the economic value of the animal. Certain wild herbivores were included in an update to the regulations in terms of this Act in mid-2016, in reaction to the trend of breeding colour variants.¹⁵⁸ It makes no provision for the welfare of the animals involved in the process. The apparent move towards the farming of wild animals as agricultural stock is concerning from both conservation and welfare perspectives.

The Marine Living Resources Act, 18 of 1998, is aimed at providing for “the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources”. This Act does not apply to aquatic species in inland waters, or any sea birds or seals.¹⁵⁹ The APA also excludes the latter animals. The MLRA contains no welfare provisions.

¹⁵⁷ The Minister of Environmental Affairs, Dr Bomo Edith Edna Molewa, was appointed as the first Chancellor of SMU on 17 March 2017.

¹⁵⁸ GG 40058, GN R690, 10 June 2016.

¹⁵⁹ Definition (xiii).

The draft international instruments, ICPA and UDAW referred to in II above provide additional guidelines for the welfare of wild animals.

The legal system in South Africa, when it comes to regulating and enforcing balanced and ostensibly ethical welfare standards for wild animals, is thus fragmented, inconsistent and biased in favour of economic gain and anthropocentric interests. In short, it is far from an ideal framework to adequately manage the welfare of wildlife. The next chapter deals with the practical application of the legislation by the various role-players.

2. THE FACTS

The practical application of the legislation, in terms of implementation, permitting, compliance monitoring, and enforcement, presents another hurdle in the quest for welfare protection of wild animals for various reasons.

Information used here was collected via requests to the national and provincial conservation departments in terms of the Promotion of Access to Information Act (PAIA),¹⁶⁰ media reports and interviews with relevant role-players.

Broadly speaking, this information demonstrates:

- an opaque permitting system across provinces that does not always comply with legal requirements, and in which permit conditions relating to welfare are very inconsistently applied;
- since welfare provisions are frequently omitted from permits, even with limited compliance monitoring of those permit conditions, welfare does not feature in regular compliance monitoring; and
- enforcement action in relation to welfare of wild animals tends to take place only in well-publicised cases of cruel treatment of wildlife, rather than a predictable response arising from regular compliance monitoring. When this happens, enforcement is undertaken by the N/SPCA rather than by environmental management inspectors designated to monitor and enforce compliance under NEMA.

2.1 Permitting, and inclusion of welfare provisions in permits

Permits issued under NEMBA are the main entry point to the regulatory system around carrying out activities involving wild animals like hunting, keeping and breeding that may have far-reaching welfare implications for those animals. To what degree do they incorporate provisions dealing with welfare?

Firstly, many provincial conservation issuing authorities do not comply with the TOPS regulations when issuing permits. This is despite the fact that the law is not a voluntary option for issuing authorities to elect to comply with at their discretion, whatever the reasons for the election may be. Every provincial conservation authority has its own approach to what should appear in a permit. Even what are referred to as "standard conditions" on the same types of permits issued by the same authority, are not actually standardised. For example, some require basic welfare to be adhered to during transport and some do not, others require additional information to be submitted by the applicant after the permit is issued, while others contain no welfare or conservation related conditions at all.

The CER's PAIA requests to the nine provinces for information on the standard procedures and decision-making frameworks used by each authority to implement the law in the assessment of a permit application for any restricted activity included:

1. "[a]ny records, including draft and/or approved policy documents,

¹⁶⁰ 2 of 2000.

2. standard procedures,
3. decision-making and/or training frameworks,
4. manuals or guides,
5. risk assessment considerations,
6. lists of permit conditions and/or other internal processes currently in place indicating the step-by-step process according to which a permit and/or licence application in terms of the National Environmental Management: Biodiversity Act, 10 of 2004: Threatened or Protected Species Regulations, 2007 is assessed, treated and/or processed by the issuing authority from receipt of application to finalisation; and/or
7. lists of permit conditions and/or other internal processes currently in place indicating the step-by-step process according to which a permit and/or licence application in terms of the relevant provincial legislation is considered, assessed, treated and/or processed by the issuing authority from receipt of application to finalisation (i.e. approval, deferment or rejection of the permit or licence application)".

The answers to these requests yielded a bouquet of information regarding implementation and compliance that, in many instances, fails to give effect to the primary, mandatory national biodiversity conservation law, NEMBA TOPS. Apart from being problematic from a national conservation perspective, the failure to implement the regulations has a direct effect on welfare considerations as TOPS contains various explicit and implicit welfare provisions.

KZN Nature Conservation Board t/a Ezemvelo KZN Wildlife (EKZNW)

EKZNW advised that it uses many different sources in the assessment of a permit application, and provided us with a flowchart for the assessment of a hunting permit application, its policy regarding large predators in enclosures and its procedures for the keeping of animals in captivity referred to above.

An interesting example of non-compliance with national law, in relation to EKZNW, and to demonstrate the complexities arising from the lack of adequate regulation of human-wildlife activities and wild animal welfare, is the case of a former cheetah breeding project in KZN. This operation commenced with four cheetahs, and offered cheetah interaction to the public in addition to employing international volunteers, without any permits in place for the keeping or breeding of the cheetahs and other captive wild animals.¹⁶¹ Also at the facility were a leopard cub (who later died prematurely), two meerkats (one who was apparently snatched by a hawk while young), a warthog, African wild cats and other wild and domestic animals all living together. With a coffee shop, game drives with cheetahs in the vehicle, walks with cheetahs, cheetah enrichment play and cheetah petting, the operation continued profitably with the knowledge of EKZNW until it was shut down by EKZNW in late 2015 following two separate attacks by cheetahs on visitors to the breeding centre.

Prior to this, the managers who had no previous experience with cheetahs nor any wild animals, hand-raised three litters of cheetahs in their residence after removing the new-borns from their mother (a

¹⁶¹ Confirmed by EKZNW pursuant to a PAIA request for copies of all cheetah permits for Kwa Cheetah (PAIA ref CER-2016-EKW-0003 (Permits)). EKZNW explained the lack of permits by saying that the permits relating to the greater Nambiti (wild) reserve also covered the cheetahs in the Breeding Project as it was located within the reserve – which is patently in contravention of the explicit TOPS requirement to have permits for keeping and breeding all listed captive animals, in addition to the requirement that all breeding facilities be registered.

practice which is prohibited by EKZNW's captivity policy discussed above)¹⁶² over a period of four years. They also publicly took a cheetah, in the backseat of their car, out to the shops on a leash. Any conveyance of a listed animal requires a permit, and that EKZNW's own captivity policy provides that no listed animals may be conveyed for purposes other than relocation or veterinary care and in such case must be housed in specific crates and as per other legislative requirements).¹⁶³ The managers provided an interview and photograph opportunities to national and international journalists, posing as wildlife experts, which interview was widely published online.¹⁶⁴

EKZNW eventually issued permits for some of these cheetahs in mid-2016 with strict conditions restricting the breeding of the animals and aimed at the eventual release into the wild reserve. However, by that stage five of the original cheetahs had already been taken by the former managers to the Free State province under valid export and import permits for further breeding.¹⁶⁵

Free State Department of Small Business Development, Tourism and Environmental Affairs (DESTEA)

The Free State issuing authority, DESTEA, promptly furnished the CER with all documents requested under our PAIA requests.

DESTEA does not issue any permits for the breeding of specific captive listed animals as is required by TOPS,¹⁶⁶ but merely issues registration certificates to captive breeding facilities. It is perhaps for this reason that the Free State contains the largest number of captive lion breeding operations in the country, not all of which are registered as such but none of which are prohibited from breeding lions.¹⁶⁷

The Free State Permit Evaluation Committee (PEC)¹⁶⁸ is the body that assesses all permit applications submitted in the province. The PEC makes use of the following documents, where applicable, in the assessment of permit applications at its weekly meetings:

- lion hunting permit conditions (which provides that "the enclosure where the hunting takes place may not be smaller than 1000 hectare in size and the lion to be hunted must be free roaming for at least 30 (thirty) days before the hunt takes place" and also incorporates the requirements of its published 'Activities regarding Listed Large Predators by Land Owners,

¹⁶² Section A, par 57, page 36.

¹⁶³ Section A, par 39, page 4.

¹⁶⁴ See online at www.cheetahinteraction.com; www.facebook.com/kwacheetah/?fref=ts; www.facebook.com/kwacheetah/photos; www.barcroft.tv/cheetah-on-a-leash-kwa-cheetah-project-nambiti-game-reserve-south-africa; www.northernkzn.getitonline.co.za/2012/01/26/ladysmiths-desmond-and-elizke-gouws/#.Vx6Mfl97IV; <http://www.dailymaverick.co.za/article/2015-09-06-petted-cheetahs-are-biting-back/#.VxdorpI97iu>; <http://www.nambiti.com/wp-content/uploads/2016/04/article.pdf>; http://farandwild.blogspot.co.za/2012_12_01_archive.html; www.tripadvisor.co.za/Hotel_Review-G1055401-d2163804-Reviews-or120-Cheetah_Ridge_Lodge_Ladysmith_KwaZulu_Natal.html#REVIEWS; www.runningwildcheetah.com (accessed 16 March 2016). Some of these webpages were subsequently taken offline.

¹⁶⁵ Response to PAIA request, ref CER-2016-EKW-0003 (Permits). And see online at <http://www.runningwildconservation.org/our-cheetah>.

¹⁶⁶ NEMBA s88. TOPS Reg. 27 in addition requires a captive breeding facility to hold a registration certificate subject to specific requirements as listed in Annexure 2 thereto. The Free State Ordinance, however, does not require a permit for captive breeding of listed animals.

¹⁶⁷ See online at <http://www.sapredators.co.za/p28/faq/the-lion-bone-trade.html> (accessed 25 September 2016).

¹⁶⁸ Consisting of the Chief Director, Biodiversity and Protected Areas or alternate Director, Biodiversity Management; Biodiversity Research Sub Directorate; Compliance and Law Enforcement Deputy Director or alternate, Biodiversity Officer; Biodiversity Compliance Permit Officer (Acting Chief Nature Conservator) or alternate, Biodiversity Officer; Conservation - Assistant Director or alternate, Deputy Director; Professional Hunting and Problem Animal Control – Biodiversity Officer or alternate, EMI; and any other official whose expertise is required.

Foreign Clients and the Exportation of Hunting Trophies' referred to above as a permit condition);

- angling competitions conditions;
- euthanizing permit conditions;
- game capture and trader permit conditions (which states that "Game may only be transported in purpose made vehicles and trailers in accordance with SANS 10331 specifications");
- import-export-transport of Roan antelope;
- traditional healers and muthi¹⁶⁹ shop conditions;
- taxidermist standing permit conditions;
- rhino horn and ivory possession conditions;
- veterinarian standing permit conditions; and
- PEC terms of reference (which confirms that the PEC must ensure that NEMBA TOPS is complied with).

Welfare provisions are scant in these documents and it is not clear from permits issued by DESTEA that the prescripts of these documents are always complied with.

Gauteng Department of Agriculture and Rural Development (GDARD)

The Gauteng issuing authority, GDARD, allocates the smallest portion of its budget to its conservation division, the bulk being allocated to agriculture.¹⁷⁰

Unlike many of the provinces, GDARD found no difficulty in supplying the decision-making frameworks utilised in the assessment of a permit application, as requested by the CER in terms of PAIA.¹⁷¹ GDARD utilises internally approved frameworks for the assessment of permits for zoos and sanctuaries, a standard operating procedure for resource protection and a 222-page conservation policy and procedure guideline. The standard operating procedures outlines the legislation, delegations, timeframes, policy guidelines and brief procedure applicable to the assessment of a permit application. The guideline emphasises that it itself is not peremptory, uses colloquial, explanatory language, outlines the brief history of certain activities and reasons for certain provisions and provides suggestions in the assessment of permit applications and imposition of permit conditions.

However, the GDARD guideline is based on the 1983 Ordinance only and not NEMBA, as it should be. It is primarily meant for use by GDARD's conservation officials. It describes that the reason for the 1983 Ordinance prohibition on hunting of lions or leopards in enclosures by means of sound, sound stimulations or bait was "in view of the fact that some hunters used these measures to lure big beasts of prey to their land and then shoot them. These unethical methods of luring beasts of prey from the land of others and subsequently destroying them gave rise to a great deal of dissatisfaction". Ethics therefore, in the conservation official's mind, plays a role in the application of the law, however, the economic value of the animals to their owners is the main facet. Thwarting the "the wish of all these owners" is said in the guideline to be "unadvisable".¹⁷² The guideline states that the "policy ... is not to issue permits" for the hunting of "big beasts of prey confined to a cage or an enclosure, the area of

¹⁶⁹ Traditional medicine.

¹⁷⁰ See next chapter.

¹⁷¹ PAIA request ref CER-2016-GDA-0004 (Decision-making framework).

¹⁷² GDARD nature conservation "Policy, Procedure and General Information" guideline, 4 February 2003, Item 4&5, par 2, page 13.

which is less than 400 hectares.”¹⁷³ A farmer may destroy the endangered and rare lion, leopard or cheetah (which otherwise requires strict protection)¹⁷⁴ if it has or is about to cause damage to his livestock due to its natural lifestyle as the “person suffering the damage or could possibly suffer damage therefore has far-reaching powers to protect his or her stock and to destroy the cause of the damage”.¹⁷⁵

Mpumalanga Tourism and Parks Agency (MTPA)

No documents were received in response to the CER’s PAIA request for MTPA’s decision-making frameworks.

While requiring mandatory registration of game dealers, the Mpumalanga issuing authority favours use of its Nature Conservation Act and confirmed in writing to the CER and in a media statement that it does not apply TOPS.¹⁷⁶ In addition, the MTPA seems to require only three items for the assessment of a permit application, namely a fully completed application form, proof of payment of the application fee and the consent of neighbouring landowners (the latter in the case of an application to capture or convey an animal listed in the provincial conservation Act).¹⁷⁷ As with EKZNW, substantial non-compliance with peremptory national legislation is therefore evident within the MTPA, thus impeding the welfare protection measures contained in the national laws.

Western Cape Nature Conservation Board t/a CapeNature

The Western Cape issuing authority, CapeNature, similarly confirms that it does not adhere to TOPS Regulations,¹⁷⁸ using solely the 1974 Ordinance. While there is violation of NEMBA TOPS, it is not possible to assess the department’s compliance with its Ordinance.

CapeNature prohibits the breeding of species in its Ordinance and includes animal welfare aspects as standard conditions in its permits.¹⁷⁹ It is however unclear as to what extent these permit conditions are enforced by CapeNature.

Northern Cape Department of Environment and Nature Conservation (DENC)

In the Northern Cape, DENC applies a useful and simple 2-page checklist incorporating TOPS and CITES legal requirements in the assessment of permit applications. It is only one of two provincial issuing authorities, on paper, that specifically require proof of legal acquisition or ownership of the animal relating to the permit application. DENC, on paper at least, seems to substantially comply with the national legislation, including the implementation of the welfare provisions in the legislation.

¹⁷³ Item 4&5, par 7.2, page 13.

¹⁷⁴ Item 19, par 1, page 60.

¹⁷⁵ Item 19, par 2, page 60.

¹⁷⁶ See online at <http://oxpeckers.org/2016/09/oribis/> (accessed 14 September 2016).

¹⁷⁷ PAIA request refs CER-2016-MTP-0001 and CER-2016-MTP-0003.

¹⁷⁸ Response to PAIA request ref CER-2016-CAT-0001 (Permits).

¹⁷⁹ Response to PAIA request ref CER-2016-CAT-0001 (Permits).

Limpopo Department of Economic Development, Environment and Tourism (LEDET)

The Limpopo issuing authority, LEDET timeously and comprehensively furnished the CER with copies of its decision-making frameworks.¹⁸⁰ LEDET utilises a number of standard operating procedures, including a 127-page biodiversity regulation delegation and procedure document. This procedure document contains tables outlining the documents required, procedures applicable to, the delegated authority figurehead responsible, and the applicable NEMBA and LEMA section for each type of restricted activity, including:

- daytime and night time sport hunting with a firearm (cheetah are only available for local hunting; area must be inspected for availability of species to ensure sustainability; official must attend the hunt if relates to rhino, cheetah, lion, leopard or elephant; horns/tusks must be marked by official if applicable);
- hunting in communal areas;
- damage-causing wild animals (endangered Wild Dogs are included in this list);
- culling of wild animals;
- using different hunting methods (large predators, rhinos, elephants, Nile crocodiles and hippos may not be hunted with a bow);
- capture of wild animals (proof of legal acquisition of the species is required);
- management of elephant ivory;
- management of rhino horn;
- international exportation/importation of sport-hunted trophies/parts/derivatives;
- exportation, importation and re-exportation between provinces and internationally;
- conveying of animals (proof of legal acquisition of the species and copy of translocator's permit is required);
- national live wild animal translocation;
- international live wild animal translocation;
- wild animal trade;
- sale of live wild animals or animal products;
- keeping wild animals in captivity (holding facility and captive animals must be inspected – but does not state requirements for acceptability of such facility);
- other wild animal activities;
- LEMA and TOPS integrated permits - facility registration and standing permits (captive facilities must be visited regularly).

While compliance with and enforcement of these procedures has not been investigated, LEDET's frameworks demonstrate the intent to comprehensively comply with, and apply, the relevant national and provincial legislation. In addition, LEDET inserts welfare compliance as a special permit condition on its captivity permits, and breeding is prohibited unless specifically authorised.¹⁸¹

¹⁸⁰ PAIA request ref CER-2016-LPP-0005 (Decision-making framework).

¹⁸¹ PAIA request ref CER-2016-LPP-0002.

Eastern Cape Department of Economic Development, Environmental Affairs and Tourism (DEDEA)

The Eastern Cape issuing authority, DEDEA, did not respond to the CER's PAIA requests for its decision-making frameworks or other permits, save for those in respect of captive elephants (discussed later). For the purpose of this report it was therefore not possible to assess the extent of this department's compliance with conservation legislation (and the welfare provisions therein).

North West Department of Rural, Environmental and Agricultural Development (READ)

The North West issuing authority, READ, failed to respond to the CER's PAIA requests made during June to August 2016, which requests are deemed to have been refused.¹⁸² For the purpose of this report it was therefore not possible to gauge the level of compliance with the welfare provisions in the law by this department.

With the North West being home to an abundance of wild animals - attracting many tourists to the Sun City casino and its prolific game reserves - and with it bordering on Botswana, insight into the operation of the conservation authority within this province is necessary and long overdue.

PAIA requests regarding captive elephants

The CER's PAIA requests for copies of all permits and mandatory management plans relating to captive elephants at the following captive elephant facilities received varying responses from DEA and some of the provinces. These responses indicated substantial non-compliance with the mandatory prescripts of the captive elephant norms and standards in terms of TOPS.¹⁸³

The table below summarises the response received from each province.

Facility by Province	Issuing Authority	Response
WESTERN CAPE : ¹⁸⁴ Gondwana Game Reserve, Mossel Bay; Inverdoorn; Aquila Private Game Reserve, Touws River; Botlierskop Private Game Reserve, Little Brak River; Buffelsdrift Game Lodge (Oudshoorn Elephant Company), Oudshoorn;	Western Cape Nature Conservation Board (CapeNature)	No documents furnished.

¹⁸² PAIA request refs CER-2016-NEA-0001 to 0005. PAIA s27.

¹⁸³ See also report by Animal Rights Africa "Silences and spin-doctoring: accessing information on elephants in South Africa" (22 October 2008).

¹⁸⁴ PAIA request ref CER-2016-CAT-0003.

Fairy Glen Game Reserve, Worcester; Garden Route Game Lodge, Albertinia; Indalu Game Reserve, Mossel Bay; The Elephant Sanctuary, The Crags, Plettenberg Bay; Knysna Elephant Park (KEP), Knysna (including all the elephants moved to KEP from Elephants of Eden in 2014).		
GAUTENG : ¹⁸⁵ Johannesburg Zoo; National Zoological Gardens, Pretoria; Askari Lodge at Plumari Africa Game Reserve, Magaliesberg.	GDARD DEA (National) GDARD	Integrated standing permit for all animals in the zoo. No management plans. Permits issued. Management plan not yet finalised. Two male elephants are kept under permit for elephant-back safaris only, compliance with APA, NEMBA and TOPS is stipulated. No management plans.
KWAZULU-NATAL : ¹⁸⁶ Bayete Zulu Game Reserve, Mkuze; Brian Boswell Circus; Natal Zoological Gardens (Boswell); Thula Thula, Eshowe.	Ezemvelo KZN Wildlife	While the facility's website advertises captive elephant interaction, EKZNW was unable to find details of the persons involved and no permits or plans exist for the Reserve. No permits or management plans exist. No management plans exist. Application for permits received in February 2016, management plan is being amended – information is considered confidential until permits and plan are finalised.

¹⁸⁵ PAIA ref CER-2016-GDA-0003 (TOPS Elephants).

¹⁸⁶ PAIA ref CER-2016-EKW-0006 (TOPS Elephants).

<p>LIMPOPO :¹⁸⁷</p> <p>Adventures with Elephants at Zebula, Bela Bela;</p> <p>Kapama Game Reserve (Camp Jabulani);¹⁸⁸</p> <p>Waterberg Elephant Back Safaris at Shambala Private Game Reserve, Vaalwater.</p>	<p>LEDET</p>	<p>While referred to in the permits, no management plans were provided in respect of any of the facilities.</p> <p>Six elephants are housed here under permits.</p> <p>Twenty elephants are permitted under an integrated standing permit for various listed animals for the Hoedspruit Endangered Species Centre (HESC). The permit for elephant-back safaris does not specify the number of elephants.</p> <p>No permits received.</p>
<p>MPUMALANGA :¹⁸⁹</p> <p>Elephant Whispers (Seasons in Africa), Hazyview;</p> <p>Kwa Madwala Private Game Reserve, Hectorspruit;</p> <p>The Elephant Sanctuary, Hazyview.</p>	<p>MPTA</p>	<p>Access to management plans refused. Documents later obtained by out of court settlement pursuant to the CER instituting a High Court application for review of the MPTA's refusal.</p> <p>A one-page permit authorises the establishment of elephant-back safaris for 6 elephants. Comprehensive management plan and annexures, dated 2007, in excess of 180 pages substantially in compliance with the Elephant N&S.</p> <p>A one-page permit authorises the establishment of elephant-back safaris. Number of elephants not specified. Plan undated, provides for 2 elephants. Plan not fully compliant with the Elephant N&S.</p> <p>A one-page permit authorises the establishment of elephant-back safaris. Number of elephants not specified. Short "Animal management plan" undated,</p>

¹⁸⁷ PAIA ref CER-2016-LPP-0004 (TOPS Elephants).

¹⁸⁸ Camp Jabulani announced in 2016 that it would cease offering elephant back riding and minimise public interaction with its elephants by April 2017, see online at <<http://campjabulani.com/the-evolution-of-the-elephant-experience/>> (accessed 22 November 2017).

¹⁸⁹ PAIA ref CER-2016-MTP-0004 (TOPS Elephants).

		provides for 2 elephants. Plan not fully compliant with the Elephant N&S.
NORTH WEST PROVINCE : ¹⁹⁰ Glen Afric Country Lodge, Broederstroom; Pilanesberg Elephant Back Safaris, Sun City (CLOSED); Sandhurst Safaris / Farm, Tosca; The Elephant Sanctuary, Hartebeespoort.	READ	No documents furnished.
EASTERN CAPE : ¹⁹¹ Addo Elephant Back Safari Lodge, Addo; Knysna Elephant Park (KEP), Knysna (including all the elephants moved to KEP from Elephants of Eden in 2014); Inkwenkwezi Private Game Reserve, Paterson; Kwantu Private Game Reserve.	DEDEA	No management plans exist for any of the facilities. No permits issued. Same owner as KEP below. No permits issued, DEDEA sent a letter to the owner in 2011 to apply for TOPS permits within 21 days. A one-page registration certificate issued for 4 elephants in addition to other listed species, including the "captivity and showing, breeding of lion, cheetah, elephant and elephant-back safaris/interaction", no conditions apparent. A one-page registration certificate issued for 9 elephants as well as other listed species, no conditions.

Below is an example of a captive elephant permit.¹⁹²

¹⁹⁰ PAIA ref CER-2016-EDE-0004 (TOPS Elephants).

¹⁹¹ PAIA ref CER-2016-DEA-0002 (TOPS Elephants).

¹⁹² As this is a public document, the permit-holder's details are not redacted.

PERMIT

TO ESTABLISH / OPERATE AN ELEPHANT BACK SAFARI

(Issued in terms of the provisions of the Nature Conservation Act 10 of 1998)

Name of permit holder: **C. M. Saunders ID: 0000000000000000**

Residential address: **Farm Abek Port. 6
Elephant Sanctuary – HAZYVIEW
Private Bag X 073
Hazyview 1242**

In terms of and subject to the provisions of the Nature Conservation Act, (Act No. 10 of 1998) and the regulations framed thereunder, the above-mentioned person is hereby authorised, subject to the conditions and requirements appearing on this permit to establish and operate an elephant back safari on the property referred to hereunder during the period of validity of this permit.

PARTICULARS OF INSTITUTION

Name of institution: **Elephant Sanctuary – HAZYVIEW**

Place where business is carried out: **Farm Abek, Portion 6, Sabie Rd HAZYVIEW**

Period of validity of permit: From date of issue to: **31 December 2018**

For Chief Executive Officer

Signature of permit holder

Fig.5 Permit for establishment of a captive elephant facility in Mpumalanga.

The requirements of CITES add another layer to the challenges of welfare provisions in permitting of activities involving wild animals. In terms of Articles III and IV (2)(a), CITES requires the Scientific Authority to publish non-detiment findings (NDF) in respect of species listed in Appendix I and II respectively. CITES permits may only be issued in respect of a species once the Scientific Authority has assessed whether international trade will be detrimental to the survival of the species in the wild. To date the Scientific Authority has finalised less than half a dozen NDFs in respect of animals and only two of these have been promulgated.¹⁹³ Despite the CITES requirement, the national and provincial authorities regularly issue CITES permits for the export of Appendix I and II species from South Africa, such as CITES and TOPS-listed endangered black rhino¹⁹⁴, vulnerable cheetahs,¹⁹⁵ leopards,¹⁹⁶ pangolins¹⁹⁷ and protected elephants¹⁹⁸ without an official finding from the Scientific Authority that the export of these species is not detrimental to their survival in the wild. While animals such as oribi and sungazer (giant girdled lizard) are endangered in South Africa, they are not CITES-listed and are therefore able to be traded internationally without restriction.¹⁹⁹

The sampling of CITES permits obtained by the CER from DEA and the nine provinces in relation to permits issued for the export of live wild animals indicate a uniform lack of welfare requirements in relation to the animals during transport. As indicated, CITES requires an authority (DEA) to ensure that all living animals are properly cared for during holding and transit in order to minimise the risk of injury, damage to health and/or cruel treatment.²⁰⁰ Given the lack of standardised permitting requirements, it is unclear how DEA enforces this requirement.

It therefore appears that in addition to inconsistent compliance with NEMBA by provincial conservation agencies, welfare provisions are also not consistently incorporated in TOPS and CITES permits. In particular, compliance with SANS codes on animal welfare are not commonly incorporated as permit conditions.

2.2 Compliance Monitoring and Enforcement

As discussed above, while environment authorities issue permits under the NEMBA TOPS and CITES regulations for activities involving wild animals and have the mandate to monitor compliance and enforce the laws and those permits, the NSPCA is the organisation with the statutory mandate to monitor compliance and enforce the welfare provisions of the APA. From a compliance and enforcement point of view, this creates immediate difficulties. It is also important to understand where current capacity for compliance monitoring and enforcement lies.

¹⁹³ Draft non-detiment findings for bontebok, zebra and leopard published for comment in GG39185 GN R897 (10 September 2015); non-detiment findings for hippopotamus and white rhinoceros, GG40021 GN R575 (27 May 2016), non-detiment findings for *Panthera leo* published on 23 January 2018, GG41393 GN19.

¹⁹⁴ CITES Appendix I. South African and Swazi white rhinos are listed in Appendix II.

¹⁹⁵ CITES Appendix I.

¹⁹⁶ CITES Appendix I.

¹⁹⁷ CITES Appendix II. Moved to Appendix I during COP17.

¹⁹⁸ CITES Appendix II.

¹⁹⁹ Upon written enquiry by the CER, the Minister indicated that the negative NDFs for the sungazer and cheetah as finalised by the Scientific Authority will be published for comment by the end of 2016. As a party to CITES, South Africa must submit an annual and a biennial report to the CITES secretariat. No reports from South Africa appear on the CITES website, while the last report on DEA's website is for the 2008-2009 period.

²⁰⁰ Reg 5(3) of National CITES Regulations.

Media reports of welfare violations in respect of captive wild animals across the country seem to be on the increase.²⁰¹ In a widely publicised case reported in July 2016, lions kept in captivity in Limpopo were photographed looking emaciated, reportedly due to the fact that the owner had been confined to hospital for an extended period. This was not the first time that the owner was in the news for similar infractions and yet no emergency or contingency plans formed part of his permit conditions.²⁰² Many current LEDET permits in respect of captive carnivores provide that the permit is subject to the APA and that it "*may be withdrawn by an authorised person if the execution of any activity may be detrimental to the welfare of any wild animal or the safety of any person, provided that the permit holder is given notice of such intention and be granted the opportunity to appeal such withdrawal*". However, other permits indicate that the provincial department "*does not regulate animal welfare since the mandate lies with the Department of Agriculture who enforces the Animals Protection Act*".²⁰³ It is not known what enforcement steps, if any, have been taken against the owner.

When lions escape from captivity, they are generally shot and killed under the damage-causing animal provisions of the provincial Ordinances as they threaten life and property – no responsibility is attached to the owners of the lions.²⁰⁴ An assessment of the captive lion permits in the Free State reveals that 202 lion "farmers" are registered in the province, some of which also breed other predators such as cheetahs, tigers, caracals, wild dogs, jackals, hyenas, jaguars and servals, and keep other animals such as rhinos and antelope.²⁰⁵ None of the permits contain any conditions with regard to the welfare of the lions (other than a mandatory minimum enclosure size), or emergency contingency arrangements. The permit applications contain no more information than the owner's details and the animals' microchip numbers. (If the issuing authority requires proof of legal acquisition of the animal or proof of compliance with any other mandatory TOPS requirements, this is not evident from the application papers and issued permits). An example of an extract of a currently valid standard permit to keep lions in captivity is below (the microchip numbers are recorded on a separate page of the permit, presumably due to length):

²⁰¹ See for example online at <http://traveller24.news24.com/Explore/Green/watch-61-canned-lions-sold-at-auction-seen-living-under-dubious-conditions-20160225> (accessed 6 March 2016).

²⁰² See online at <http://africageographic.com/blog/photos-emerge-of-malnourished-lions-on-breeding-farm/>; <http://www.sapeople.com/2016/07/07/starving-lions-south-africa-canned-hunting/>; <https://endtrophyyhuntingnow.com/2014/02/15/sa-safari-hunting-ops/> (accessed 15 August 2016).

²⁰³ PAIA request ref CER-2016-LPP-0001 and CER-2016-LPP-0002.

²⁰⁴ See just one example online at <http://www.sabc.co.za/news/a/7954b4804ec69f28b601b795a1c99d56/Escaped-NW-lion-killed-20162910> (accessed 1 November 2016).

²⁰⁵ PAIA request ref CER-2016-DES-0005 (TOPS Lions).

The Permittee is hereby authorised to possess the specified animal/s on the permit.

Species	Scientific Name	Identification	Total
1. Lion	Panthera leo		116

Subject to the following conditions; Standard Conditions

1. This permit is only valid in its original form.
2. This permit is invalid if it is not signed by the permittee and it is not transferable.
3. This permit must be returned to this Department within 14 days after expiry date for renewal.
4. The non-return of this permit is liable to prosecution and will influence future permit applications.
5. If permit conditions are not adhered to, the Department may withdraw this permit.
6. All legislation as determined by Nature Conservation Ordinance no. 8 of 1969 and the Biodiversity Act, no 10 of 2004, must be adhered to.
7. Large predators may not be sold, donated, exchanged or removed in any way without a permit.
8. Changes in the stated numbers of animals as a result of breeding, deaths etc. must be reported to the Department within five working days.(051) 4004851)
9. All escapes of large predators must immediately be reported to Mr. W. Boing at 08278944/051-4004851.
10. No large predators may be kept in a camp smaller than 1,0 ha in size.
11. The camp or enclosure must be enlarged by 0,5 ha for each additional large predator (cubs, juveniles or adults).
12. The fence of the camp or enclosure must be in good condition and all electric strands must be effective and in good working conditions at all times.
13. No permit for the movement of any large predator will be issued if microchip numbers are not made available to the Department.
14. All large predators must be marked by means of a micro-chip and the microchip numbers must be made available to the Department on request.

Fig. 6 Standard conditions on a permit for keeping lions in captivity in the Free State.

A registration certificate for a captive breeding operation contains even less information than the possession permit as the microchip numbers of the animals are not recorded. They are merely described as "all legally acquired TOPS species" or "various numbers of mixed (male and female) lion, *Panthera leo*". The same format of registration certificate is used for a sanctuary but restricts breeding and the same applies for a commercial exhibition facility. No mention is made of the approved management plans that may have been submitted as part of the permit application. An example of a currently valid standard registration certificate for a captive breeding operation for lions (two pages – with the conditions on the second page typed in a tiny, almost illegible font) is below. However, not all the captive breeding facilities' permits contain these conditions and no explanation for the difference is apparent. In addition, breeding is not prohibited on standard possession permits, so captive breeding may take place without such registration. The lack of adequate information on the permits, in addition to being non-compliant with TOPS, renders such permits more difficult to enforce.



Permit nr. TOPS 367

Registration Certificate

(Issued in terms of the provisions of the
National Environmental Management:
Biodiversity Act 2004, Act 10 of 2004)

Name of Issuing Authority	
Name	DTEEA
Address	Private Bag X 20801 Bloemfontein, 9300
Province	Free State Province

<input type="checkbox"/>	PROVINCIAL DEPARTMENT	<input type="checkbox"/>	NATIONAL DEPARTMENT	
<input checked="" type="checkbox"/>	CAPTIVE BREEDING OPERATIONS	<input type="checkbox"/>	COMMERCIAL EXHIBITION	
<input type="checkbox"/>	GAME FARMS	<input type="checkbox"/>	NURSERIES	
<input type="checkbox"/>	SCIENTIFIC INSTITUTIONS	<input type="checkbox"/>	SANCTUARIES	
<input type="checkbox"/>	REHABILITATION FACILITIES	<input type="checkbox"/>	WILDLIFE TRADERS	
UNIQUE REGISTRATION NUMBER		B21/8704245101083		
DETAILS OF CERTIFICATE HOLDER				
NAME	Christian Gideon	ID NO.	██████████	
SURNAME	Botha	PASSPORT NO.	N/A	
ADDRESS	PO Box 359	POSTAL ADDRESS	RESIDENTIAL ADDRESS	
ADDRESS			Smaldeel plaas	
ADDRESS				
TOWN	Theunissen		Theunissen	
POSTAL CODE	9410		9410	
PROVINCE	Free State Province		Free State Province	
PROPERTY WHERE OPERATIONS WILL BE CONDUCTED				
NAME AND SURNAME OF APPLICANT	Christian Gideon Botha			
NAME AND SURNAME OF AGENT	Christian Gideon Botha			
PHYSICAL ADDRESS OF FACILITY	Smaldeel plaas			
PHYSICAL ADDRESS OF FACILITY				
DISTRICT	Theunissen			
PROVINCE	Free State Province			
REGISTERED NAME AND NUMBER (in the case of game farm)				
PARTICULARS OF SPECIES INVOLVED				
SPECIES		SEX (if known)	QUANTITY	
COMMON NAME	SCIENTIFIC NAME			
Lion	Panthera leo	Mixed	Various	
CERTIFICATE VALIDATION				
PERIOD OF VALIDITY	FROM	2016-06-03	TO	2019-06-03
metggpmnijpr				
RECEIPT NUMBER 002delta 3329				
SIGNATURE OF ISSUING OFFICER		SIGNATURE OF PERMIT HOLDER		
DATE STAMP:	Department of Trade & Small Business Development Tourism & Environmental Affairs			
	2016 -06- 03			

Fig.6.1 Page 1 of 2 of a permit for a captive breeding operation in the Free State.

Subject to the following conditions;

Standard Conditions

1. The permit is invalid unless all requirements of any other legislation in respect of the act mentioned are complied with.
2. This permit is invalid if it is not signed by the permittee and is not transferable.
3. This permit is only valid in its original form.
4. The holder of this certificate shall, at request of a person authorised in terms of applicable legislation so to demand, forthwith produce such permit to such person.
5. This certificate may be withdrawn by any authorised person if the execution of any activity may be detrimental to the welfare of any wild animal or the safety of any person, provided that the permit holder is given notice of such intention and be granted
6. The prescribed fees paid for the issuing of the certificate shall not be refunded.
7. This certificate shall be deemed invalid when it is lost or destroyed and no copy thereof shall be issued.
8. If the holder of this certificate contravenes or fails to comply with any permit condition or requirement to which this permit is subject, he or she shall be guilty of an offence.
9. This certificate shall be subject to any applicable norms and standards in existence at the time of issuance of this permit.
10. This certificate is valid only within the province it was issued.
11. The holder of this certificate shall return the certificate to the issuing authority mentioned on the certificate within 7 (seven) working days after expiry of the certificate.
12. This certificate is subject to the provisions of any applicable law in force during the period of validity of the permit.
13. This certificate authorizes the holder thereof to hunt the species listed on the permit on the property as indicated in the permit, and to convey and possess the specimen/s subsequent to the hunt.
14. This certificate is not transferable.

Special Conditions

1. The issuing authority shall determine the species and restricted activities for which this certificate will apply.
2. This certificate is subject to any additional conditions as may be determined by the issuing authority.
3. If this certificate applies to a captive breeding operation, commercial exhibition facility or rehabilitation facility the holder of this certificate must:
 1. Prevent hybridization and/or inbreeding;
 2. Keep a studbook where appropriate;
 3. Provide information relating to paragraphs (1) and (2) mentioned above to the issuing authority mentioned on this certificate, within 3/ three months after the end of each calendar year.
4. If this certificate applies to a sanctuary, the holder of this certificate may not allow any breeding in the sanctuary.
5. If this certificate applies to a game capturer, the holder of this certificate does not qualify to be issued with personal effects permits for the purpose of game capturing.

Fig.6.2 Page 2 of 2 of a permit for a captive breeding operation in the Free State (note the minuscule font and illegibility of the text, reproduced here at 100%)

In its August 2016 newsletter, the NSPCA reported on wild animals rescued in a joint raid by its Wildlife Protection Unit inspectors, officials from the Gauteng Enforcement and Compliance Department and the SAPS Endangered Species Unit on a Johannesburg northern suburbs property. The animals were likely being held for the pet trade, with both indigenous and exotic wild animals found in filthy cages, without water. The NSPCA seized most of the animals, save for the indigenous animals held without permits, the latter being seized by GDARD's Environmental Management Inspectors for admission to a rehabilitation facility. In respect of the animals remaining on the property, the NSPCA issued a warning in terms of APA and advised that they will monitor the conditions.²⁰⁶

The challenges as a consequence of the divided mandate between the respective authorities is apparent. While the NSPCA may only seize animals on grounds of unacceptable welfare conditions,

²⁰⁶ See online at <http://www.nspca.co.za/wildlife-rescued-raid/> (accessed 31 August 2016).

the conservation authorities will only make seizures if no permits are held, or if permit conditions are breached. The seizures themselves are subject to the availability of officials, funds and suitable facilities for the animals. A legislated concurrency of powers and duties would be beneficial.

As non-protected species are not regulated by NEMBA TOPS, most wild animals fall outside of the scope of the limited protection of the conservation laws despite their importance to overall biodiversity and a healthy ecosystem. The welfare of these animals is therefore only regulated by the ineffective APA. For example, the death of a giraffe being transported from KwaZulu-Natal to Gauteng in 2014 made international headlines.²⁰⁷ Two giraffes were loaded onto a truck without overhead protection and were killed when the truck went under a bridge. As giraffes are not listed in TOPS or any provincial legislation, no conveyance permit would have been necessary for their transport. While it was reported that criminal charges would be laid by the SPCA, it is not known if any convictions resulted.

Furthermore, it is questionable whether any issuing authority has the capacity and resources to monitor compliance with and enforce the few and varying permit conditions there are, let alone take on the additional burden of ensuring the good welfare of the large number of captive animals within its jurisdiction, which requires additional training, experience and time.

DEA's annual National Environmental Compliance and Enforcement Report (NECER), which has been published for the past ten years, contains some measurable statistics in respect of compliance monitoring and enforcement capacity and results.

The 2014-2015 NECER records 186 incidents of violations of NEMBA, including TOPS, with 103 of these occurring in KwaZulu-Natal, 36 in Gauteng, 23 in the Eastern Cape, 17 in the North West, 7 in the Free State. There is no information recorded for the remainder of the provinces, DEA itself or SANParks. The 2015-2016 NECER reports that of the 2647 Environmental Management Inspectorate (EMI's) in the country, 802 are employed by SANParks, 605 by EKZNW, 269 by LEDET and 158 by Eastern Cape Parks. Only 531 contraventions of NEMBA (including TOPS and CITES Regulations) were reported, 378 of these occurring in KwaZulu-Natal. As it is highly unlikely for there to have been 100% compliance with all NEMBA and TOPS requirements in all four remaining provinces and the national parks (where rhino poaching is prevalent), it would seem that even the NECER statistics do not provide a completely accurate or comprehensive picture of the situation, insofar as compliance with and enforcement of NEMBA is concerned.²⁰⁸ Moreover, the NECERs do not record any specific data on welfare provisions in NEMBA permits.

The 2015-2016 NECER records the enforcement actions by so-called green EMIs (Environmental Management Inspectors mandated to monitor and enforce compliance with NEMBA):²⁰⁹

²⁰⁷ See online at <http://www.independent.co.uk/news/world/africa/giraffe-killed-after-hitting-head-on-bridge-while-being-transported-in-south-africa-9640928.html> (accessed 10 May 2016).

²⁰⁸ DEA notes in the foreword to the report that no audit is undertaken to verify the accuracy and/or completeness of the information submitted to it by the provinces. While the NECER provides some useful statistics, without any checks and balances in place, it provides more of an overview of environmental compliance and enforcement activities in South Africa, rather than a comprehensive account.

²⁰⁹ While the differentiation between "0", "-" and "blank" is uncertain, "0" is interpreted as nil/zero, while a blank column and "-" are interpreted as "information not available".

Institution	Facilities Inspected	Inspection report finalised	Pro-active	Re-active	Number of non-compliances	Matters require enforcement actions
CapeNature	423	-	-	423	0	0
KwaZulu-Natal	3	3	2	1	1	0
Limpopo	251	116	110	141	53	29
Northern Cape	103	103	103		13	15
North West	267	247	149	118	30	18
Total	1196 (32.4% of total inspections)	469	511	685	133	73

For 2015-16, criminal enforcement by national and provincial authorities is reported as follows (these include green, brown (pollution) and blue (marine) offences):

Action	Number
Arrests by EMIs	939
Criminal dockets registered	2149
Cases handed to NPA	280
NPA declined to prosecute (<i>nolle prosequi</i>)	39
Section 105A agreements (plea bargains)	12
Acquittals	5
Convictions	52
J534s (admission of guilt fines) issued	831
J534s (admission of guilt fines) paid	698 (R564,850.00)

Given the size of the country and the thousands of permits issued by authorities, in addition to designating far more officers in the NSPCA to do compliance monitoring and enforcement of the APA (or successive legislation) it seems essential to ensure that the widest possible group of officials should be mandated to enforce animal welfare requirements – particularly if those officials are already conducting inspections of and taking enforcement action in relation to activities involving wild animals. Not giving them that power means that, when they find violations of animal welfare considerations, they cannot act, but must then stop to call in the already limited capacity of the NSPCA.

It is also important to note that allocated budgets for biodiversity management in general, at national and provincial levels, are declining every year, which will necessarily have knock-on effects for compliance monitoring and enforcement capacity.

In these circumstances, it is easy to see how the welfare of the wild animals as provided for in NEMBA permits, if at all, is put on the backburner or, in most cases, completely ignored.

3. RECOMMENDATIONS FOR REFORM

Based on the analysis and assessment in this report, the following immediate changes are recommended to strengthen the regulation of welfare of wild animals. These revisions may then be strengthened by more comprehensive reform in line with modern scientific and other knowledge and universal societal progress.

3.1 Law reform

3.1.1 Clarify the wild animal welfare mandate

It is clear that the traditional separation of animal welfare and biodiversity conservation does not promote good welfare of wild animals in South Africa. How can this situation be improved?

One option is for current legislation – particularly NEMBA and APA – to be amended to empower both DEA (and conservation authorities) and DAFF (and the NSPCA) expressly to give effect to and enforce welfare requirements in relation to wild animals. Another option is simply to amend NEMBA to include an express mandate on the welfare of wild animals, one that is more robust and inclusive than in the 2017 proposed amendment (NEMLAB4).

Both these options would effectively mean that permits issued under NEMBA could and should expressly and unequivocally include conditions dealing with welfare of all, including exotic, wild animals, and EMIs already mandated and empowered to monitor and enforcement compliance with NEMBA could then simply also extend that to welfare aspects. In the first option, NSPCA officials will then also have a clear mandate in relation to welfare of wild animals.

Should the welfare mandate remain with DAFF, it would require a strong contingent of monitoring and enforcement officials with the necessary knowledge and training in respect of the conservation legislation requirements, standards and guidelines applicable, the welfare needs of the different species of animals, and the necessary infrastructure to accommodate confiscated animals, alternatively, sufficient governmental funding of the NSPCA.

3.1.2 Update and close loopholes, provide national guidelines for welfare provisions

The legal framework must be updated, standardised to remove the anomalies and loopholes in the national and provincial welfare and conservation legislation referred to in the first part of this report. Maximum penalties in the APA must be brought in line with other environmental legislation.

Mandatory welfare standards must be developed in line with progress in science and societal views, severe and more deterrent sanctions for welfare violations and protection for all animals irrespective of conservation status, geographic origin or economic value must be included. The focus must be towards sustainable conservation rather than exploitative animal use.

3.2. Investment in Compliance Monitoring and Enforcement Capacity

Designing a regulatory system without providing for the means and capacity to monitor and enforce compliance is entirely self-defeating.

Without a firm commitment to capacity building within the provincial conservation departments, any improvements to the jurisdictional regime or the legislation will be inadequate. Well-staffed departments with trained and experienced officials and consistent, authoritative application of the law are required to ensure the protection of welfare and biodiversity conservation.

An infusion of the necessary funds into DEA and the provincial conservation authorities in order to enable these departments to fulfil their public mandates is essential. Necessary additional funding can quickly be obtained by increasing the permit application fees (currently R500) for different types of permits – for example, linking it to the risk posed by the permitted activities to the wild animals in question, and members of the public, and to the turnover of the particular enterprise. For example, game ranchers, auctioneers, predator breeders, wildlife interaction facilities and other businesses that profit from the exploitation of wild animals should necessarily pay larger application fees for each of their permits so that permit condition and welfare enforcement are included in the cost of doing business.²¹⁰

Another potential source of funding is from criminal fines collected for NEMBA crime convictions, or from administrative penalties for violations – potentially in significantly higher amounts than criminal penalties.²¹¹

3.3 Standardised and transparent permit system

Clear short- and long-term reform is required for the more efficient and consistent protection of the welfare of wild animals. Short term reform of the permit system requires the following:

- Nationally prescribed standard permit conditions (with the necessary adjustments for province-endemic species) with the mandatory incorporation of basic welfare provisions in line with standard welfare laws and guidelines, and SANS and other applicable codes.
- The uniform national standardisation of the process of the assessment of permit applications, including standard, uniform and mandatory permit application forms, assessment checklists, and the minimum mandatory information required to appear on a permit (including full addresses, microchip numbers or other objective identification mechanisms for each animal listed on the permit, etc.).
- To promote the quality and appropriateness of permit conditions, publication of permit applications and proposed permits for 15-30 days to allow an opportunity for comment and objection by the applicant, but also by civil society organisations and other affected parties.

²¹⁰ Analogous industries where the cost of inspections is included in registration fees are new veterinary practices and aviation.

²¹¹ Although provision does not yet exist in NEMA or NEMBA for such administrative penalties, DEA has already started work on the feasibility of incorporating such penalties into environmental laws.

- Strict enforcement of permit conditions.
- Easy and automatic public access to permits, compliance inspection reports and audit reports.

Long-term reform of the permit system requires:

- Use of the same permit and licencing formats, checklists and procedures and enforcement actions to properly give effect to the intent of the national conservation legislation consistently across the country, and in order to prevent the exploitation of loopholes for certain activities in different provinces.
- An integrated electronic national permit database must be implemented, including permits, compliance inspection reports and audit reports. This is critical as the lack of any cross referencing across provinces has allowed a lot of dubious gathering of 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.
- Capacity for adequate, trained officials, regular welfare inspections and consistent enforcement should be increased, including by funding from increased permit application fees and fines, in addition to governmental funding to the NSPCA in its performance of its crucial public function.

In addition to the administratively just, consistent application of the law, the strengthening of the role and perceived authority of the provincial conservation departments is required to reset the imbalance and reduce the risk of intimidation or threat of legal action by permit applicants.

Enforced transparency by permitting authorities and permit holders will have immediate effects on compliance. As with all similar government action, public participation in the permitting system and easy public access to permits is required in order to increase accountability and compliance by both the authorities and permit holders.

The recommendations above are the first steps towards the urgent Constitutional imperative to improve of welfare and conservation laws and the consistent implementation, compliance, monitoring and enforcement thereof.

Preliminary Stakeholder Consultation Feedback

Stakeholders (not a closed list):

Government

1. Department of Environmental Affairs (DEA)
2. Department of Agriculture, Forestry and Fisheries (DAFF)
3. South African Veterinary Council (SAVC)
4. Western Cape Nature Conservation Board (t/a CapeNature)
5. Gauteng Department of Agriculture and Rural Development (GDARD)
6. Mpumalanga Tourism and Parks Agency (MTPA)
7. KZN Nature Conservation Board (t/a Ezemvelo KZN Wildlife)
8. Free State Department of Small Business Development, Tourism and Environmental Affairs (FSDESTA)
9. Limpopo Department of Economic Development, Environment and Tourism (LEDET)
10. Eastern Cape Department of Economic Development, Environmental Affairs and Tourism (DEDEA)
11. Northern Cape Department of Environment and Nature Conservation (DENC)
12. North West Department of Rural, Environmental and Agricultural Development (READ)
13. National Zoo, Pretoria

Other

1. Animal Law Reform South Africa (ALRSA)
2. Ban Animal Trading (BAT)
3. Blood Lions
4. Campaign Against Canned Hunting (CACH)
5. Cape of Good Hope SPCA Wildlife Unit
6. Confederation of Hunting Associations of South Africa (CHASA)
7. EMS Foundation
8. Humane Society International (HSI), Africa
9. International Fund for Animal Welfare (IFAW), South Africa
10. National Council of Societies for the Prevention of Cruelty to Animals (NSPCA)
11. National Hunting and Shooting Association (HNSA)
12. Pan-African Association of Zoos and Aquaria (PAAZAB)
13. Panthera Africa (sanctuary)
14. Professional Hunters Association of South Africa (PHASA)
15. South African Hunters and Game Conservation Association (SAHGCA)
16. South African Predator Association (SAPA)
17. South African Veterinary Association (SAVA), Wildlife Unit
18. Wild Welfare
19. Wildlife Ranching South Africa (WRSA)
20. Wildlife Translocation Association (WTA)
21. World Wide Fund for Nature (WWF)

Summary of key themes:

1. Wildlife welfare necessary

There is consensus that the welfare of wild animals is important to conservation of biological diversity in addition to being an aim in itself.

2. “9+1”

The fragmentation and varied application of biodiversity laws nationally, inter- and intra-provincially, coupled with the unclear welfare mandate, is seen as the largest challenge faced by all concerned.

3. National Electronic Permit database

An interactive, electronic, real-time national database will greatly assist in uniformity and time-saving in relation to wildlife use permits.

4. Capacity, training and resources

Critical to the implementation of welfare and biodiversity laws is increased human and other resources together with consistent training in the national and provincial conservation departments, as well as capacitation of the NSPCA.

5. Unintended consequences

The development of welfare and biodiversity laws must be done carefully to avoid unintended consequences of such regulation.

Stakeholder feedback:

1. Animal Law Reform South Africa (ALRSA)

Most pressing concerns facing wildlife

A number of the most pressing concerns relating to wildlife have been highlighted in the Document itself including:

- a. inarticulacy of legal mandate in respect of wild animals in South Africa and general lack of sufficient welfare provisions;
- b. inconsistency in the way the current laws are drafted and applied both at a National and Provincial level;
- c. inadequate resources in respect of the enforcement of the laws; and
- d. general commoditization of wild animals and emphasis on their property status.

We agree with all the concerns expressed in the Document and have not repeated those again herein.

Our wildlife is used for many reasons including, but not limited to, as entertainment and exhibitions (circuses, zoos/aquariums, safari and game parks), hunting (sport, canned, “conservation” and trophy) and fishing (commercial, for food and sport), for scientific research, a range of products including medicinal products, ornamental, and clothing, as well as wild animals as pets (companion animals). The legal frameworks governing the use of such animals needs to be clear and consistent and properly enforced. This is a fundamental principle of the rule of law and the Constitution. In order for this to happen, there needs to be dedicated resources, including trained personal and directed funds. In addition, there needs to be training for the relevant persons involved, including those keeping animals as well as those enforcing the legislation as well.

Furthermore, we need to ensure protection for the most vulnerable species, such as those that are endangered and threatened and the law needs to be easily adaptable to changing circumstances.

A huge issue which needs to be addressed is that of wildlife trafficking and the involvement of South Africa in the global black market for wildlife products. Trafficking in animals is a component of trafficking in human beings and drugs, both of which are a scourge on our country. Ensuring that the illegal trade in animals is properly regulated contributes to the enforcement of all illegal trade and trafficking and will only strengthen the legal intervention to protect against human and drug trafficking. Within our borders we need to ensure we are doing all that is possible to protect our wildlife. Then, at a Government level, we need to ensure that we are working together with the relevant stakeholders in other countries to promote strategies which reduce the demand for wildlife products. If necessary, Government should enter into Executive Agreements with key countries and ensure effective enforcement.

Proposed Suggestions / Looking forward

We agree with the proposed recommendations made in the document relating to reform.

In addition, we have set out below some additional proposed suggestions which may assist with the aforementioned recommendations and deal with supplementary issues:

- a. Legislative Reform:
 - i. Improved legislation as a matter of priority. Ideally this should be consolidated, or at the very least easily identifiable (currently the laws are numerous and dispersed).
 - ii. Uniform provisions at a national and provincial level (unless extenuating circumstances exist).
 - iii. Inclusion of welfare provisions in relation to wild animals (which should be compulsory and not voluntary, and which take into account the unique needs of the specific animal). Furthermore, these provisions should regulate welfare throughout the entire life of the relevant wild animal from capture or birth (if applicable – for example in captive breeding situations), to transportation of such animal, the keeping of such animal, the training of such animal (if applicable), any method of killing such animal, etc. The welfare provisions must consider the animal’s physiological, psychological and physical needs and including the Five Freedoms.
 - iv. The welfare provisions should apply throughout the relevant laws dealing with wild animals (for example once promulgated, these standards should apply nationally to all animal-relevant laws).
 - v. Removal/reduction of exemptions which exclude certain animals (for example there are a number of acts that exclude groups of animals such as aquatic animals which deserve as much protection as terrestrial wildlife), certain industries (including for example the hunting industry), certain groups, certain activities (such as culling) and other similar unnecessary exemptions.

b. Resources:

- i. Establishment of specialized fund to deal with wildlife issues and allocation of funds as appropriate (including as part of National Treasury’s budget).

- ii. Establishment of an organization to deal effectively with wild animal laws which is funded by government and one of the aims of which must be to consider the **welfare of animals and acts in the best interest of the animals**.
- iii. A dedicated, appropriately qualified person safeguarding the interests of animals especially when used in Tourism which specifically deals with welfare considerations. Such person should be independent from any tourism, industry or other group which has a commercial interest in the animals. Such person should ensure compliance and suggest reform when necessary.
- iv. Improvement of the provisions relating to unlawful and/or cruel hunting methods (expanding the scope, harsher penalties, etc.). Whether or not a method is deemed to be cruel will be determined by the qualified person identified in paragraph iii above.
- v. In the context of limited resources, we need to take a human centric approach to animal welfare, namely that it is in the best interests of humans to have a properly allocated budget that responds to the needs of animals and humans.
- vi. In addition to the above, it would be useful to have a dedicated forum with representatives of Government and the relevant Departments as well as well as representatives of organizations representing the interests of animals.

c. Compliance with CITES:

- i. Permitting requirements to be strictly enforced.
- ii. Necessary non-detriment findings to be done prior to issuing of permits.
- iii. Automation of permitting system. (See eCITES - <https://cites.org/eng/prog/eCITES>)

d. Better regulation of hunting:

- i. Prohibitions against use of certain technologies in relation to hunting (including drones and other motorized vehicles and equipment).
- ii. Cruel hunting methods – of particular concern is the weaponry and technology used (for example using helicopters, drones and other similar electronic equipment).
- iii. An outright ban on the practice of canned hunting (see notes in Document regarding KZN Conservation Bill).

e. Banning of certain practices:

- i. For example, the use of wild animals in circuses (which has been recognized as cruel in various countries around the world - <http://www.stopcircussuffering.com/circus-bans/>).
- ii. Banning of certain training methods (especially for exhibition purposes, including but not limited to the use of a bull hook).
- iii. As mentioned above, banning of certain hunting practices.

f. Prosecution:

- i. Dealing with failure to prosecute by DPP.
- ii. Potentially including provisions relating to private prosecutions by certain organizations for wildlife crimes (in addition to NSPCA).
- iii. Harsher punishment for wildlife crimes (including in legislation itself).
- iv. Specialized training for prosecutors dealing with wildlife crimes.
- v. On successful prosecution, a list of animal offenders, individuals and organizations which have been prosecuted or alternatively found to be in non-compliance with the necessary legislative provisions.

g. Training:

- i. Permit issuers (to ensure all requirements are complied with and necessary checks are done).
- ii. Veterinarians to undergo specialized training in relation to animal ethics and animal welfare training in relation to wild animals specifically.
- iii. Enforcement officers (e.g. members of SAPS and other officers tasked with enforcing wildlife legislation).

h. Jurisdictional issues:

- i. As indicated in the Document, clarity regarding the authority and enforcement of wild animal issues, between Department of Environment Affairs and Department of Agricultural Affairs (as well as NSPCA and other organizations).
- ii. As indicated in the Document, clarity regarding the applicable legislation and its enforcement as between the provinces and national government and identification and clarity in respect of inconsistencies.
- iii. Ensuring accountability by the relevant stakeholders including those tasked with enforcement of the applicable legislation.
- iv. Engaging and co-operating with neighboring countries regarding matters affecting animals such as migration issues, border control (including for wildlife trafficking), liability issues (for damage caused by wild animals) and other matters arising from wildlife (including for example, spread of diseases).

i. TOPS Regulations:

- i. Updating species in line with IUCN list.
- ii. Consider similar protection for animals which may not fall into TOPS but which are important to overall biodiversity and a healthy ecosystem.

j. Permitting:

- i. All breeding of wild animals to require permits (see notes regarding Free State ordinances for example which does not require a permit).

k. Community Involvement:

- i. As animals and wildlife are an important part of various communities, there should be community involvement in relation to the issues of wildlife management. The relevant communities should be given a voice in relation to these issues.

l. Other:

- i. The following additional issues, not yet mentioned herein, in relation to wildlife are extremely important and we would like to see further regulation in respect thereof:
 - 1. Wildlife trafficking.
 - 2. Prohibitions on wild animals as pets.

- ii. Wild animal welfare is becoming increasingly important in International Law. In this regard, we refer to the EC Seals Case where the Appellate Body of the World Trade Organization considered welfare of wild animals [Appellate Body Report, European Communities Measures Prohibiting the Importation and Marketing of Seal Products, WT/DS400/AB/R and WT/DS401/AB/R (May 22, 2014) [https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(@Symbol=%20wt/ds400/ab/r*%20not%20rw*\)&Language=ENGLISH&Context=FormerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20wt/ds400/ab/r*%20not%20rw*)&Language=ENGLISH&Context=FormerScriptedSearch&languageUIChanged=true#)]

iii. We offer as a suggestion the following additional reading material which may be of assistance for further steps involved in this process:

1. Rachelle Adam and Joan Schaffner, 'International Law and Wildlife Well-Being: Moving from Theory to Action' (2017) 20 Journal of International Wildlife Law & Policy 1.
2. Michael Bowman, Peter Davies and Catherine Redgwell, Lyster's International Wildlife Law (2nd ed, Cambridge University Press 2010) ch 20
3. Werner Scholtz, 'Killing Them Softly? Animal Welfare and the Inhumanity of Whale Killing' (2017) 20 Journal of International Wildlife Law & Policy 18
4. Stuart Harrop, 'Climate Change, Conservation and the Place for Wild Animal Welfare in International Law' (2011) 23 Journal of Environmental Law 441
5. Werner Scholtz, 'Injecting Compassion into International Wildlife Law: From Conservation to Protection?' (2017) 6 Transnational Environmental Law 467
6. Katie Sykes, 'The Appeal to Science and the Appeal to Global Law' (2016) 17 EJIL 497
7. Katie Sykes, 'Globalization and the Animal Turn: How International Trade Law Contributes to Global Norms of Animal Protection' (2016) 5 Transnational Environmental Law 55
8. Anne Peters, 'Global Animal Law: What It Is and Why We Need It' (2016) 5 Transnational Environmental Law 9

We thank you again for this initiative which is much needed. Please do let us know if there is further scope for us to get involved, as we look forward to moving the matter along.

2. Ban Animal Trading (BAT) and EMS Foundation

- The welfare solution is to end all captive breeding. Some main concerns are the corruption and secrecy in the industry that are going unchecked: manipulation of source codes (wild and captive-bred) on CITES documents, swopping of microchips (where these are present in the first place – not all provinces insist on microchipping), transport of animals at night, each province doing its own thing, lack of accountability by the farmers, enclosures being too small, inadequate food and water, no veterinary visits, safety issues, lack of inspections and so forth). There are approximately 8000-12000 captive lions in South Africa and many of the breeders are not registered as captive breeding facilities in terms of the NEMBA TOPS Regulations. There is also a suspicion that lion bone and rhino horn are being processed/powdered in South Africa before export in order to circumvent the quota and the ease of identification – there is no capacity for DNA testing of everything that is exported. The fact that each province operates differently creates a lot of problems. There must be one standard of welfare enforcement across the country, the "9+1" system is definitely not working. Using the province with the highest welfare standards as a blueprint for the entire country is recommended.
- One of the biggest challenges is that exotic animals are not regulated. There are dozens of tigers in backyards on the East Rand and the authorities say they can do nothing about it. Even though hybridisation of indigenous and exotic animals is illegal, it is happening because it is easier to get away with. This is both a conservation and a welfare issue that cannot be ignored in legislation.
- The Department of Environmental Affairs must consider the animals who it is mandated to protect – as beings with their own value and not as replaceable commodities for economic gain.

3. Carla van der Vyver, CEO of CVV Enviro and ex-CEO of South African Predator Association (SAPA)

Thank you for the opportunity to comment on the Report: The Well-Being of South African Wildlife: Initial Review of the Legal and Practical Regulations of the Welfare of Wild Animals in South Africa.

The initial impression of the report, as indicated by the title, is a review of the regulative environment for wildlife welfare in South Africa. Unfortunately when you start to read the report it does not only address issues about wild animal welfare but reflects a strong animal rights and anti-hunting agenda. It seems that the motive behind this report is to ensure a legislative foundation to support animal rights actions and not necessarily welfare. It comes across as an opinion document rather than a scientific or factual document.

The need for effective animal welfare legislation is not in question. The need for more standardised national legislation in place of provincial legislations is also not in question. A key issue, as identified in your report, is the implementation, monitoring and control of any legislation, be it national or provincial.

Hunting has nothing to do with welfare. Welfare is a management issue. Hunting is a practice, and is part of sustainable use, which is a constitutional right. The reference to hunting, especially so called "canned" hunting, and the emotive reasoning behind it, is completely out of place in this document.

Is it important to distinguish between emotive reasoning against a specific action and the mis-presentation of reality? The welfare for the keeping of an animal has got nothing to do with the method of hunting of such an animal.

It seems that your report is focussing on specific target groups, but your proposals will then have implications on other entities as well, such as:

- National (Government) Zoo's
- National and Provincial species breeding operations
- National and Provincial Protected Areas.

It is also very important that documents submitted to government with legislative proposals such as yours, when being made applicable on a national basis; they should apply to all population groups, taking into consideration the traditions of all groups. National legislation applies to all, not just to some. Animal welfare is a national issue. It is not just applicable to one population group or one sector (private game farming) and cannot be motivated by one specific small part of a sector that carries the focus of animal rights activism.

Furthermore, the specific focus on the elephant sanctuaries is vindictive and is totally irrelevant to the context of the report.

The delegation of APA powers to Biodiversity Management officials within the provinces is a possible short term solution to the shortage of staff and funds of the NSPCA.

Your proposal on increasing permit fees in order to raise funds for DEA and Provincial Conservation Authorities is the "easy way out" but is not acceptable. Government incomes are destined to go to National and or Provincial Treasury, and are not allocated to the "source of the income". Increasing permit application fees, on already increased permit application fees, will not be the solution to the problem.

The proposal to publish permit applications, proposed permits and inspection reports for public comment indicates an insensitive approach to the welfare and safety of animals. If this information is made public, the possibilities of poaching of animals will increase many fold.

I appreciate the opportunity to comment on the draft document and I trust that my input will be taken into consideration. I fully support the need for objective welfare legislation that is practical and implementable and focuses on the welfare of animals.

4. Confederation of Hunting Associations of South Africa (CHASA)

- CHASA is an umbrella body consisting of 23 member organisations who concentrate on own-use recreational hunting, they are the end users. Even in cases where it does not affect recreational hunters directly, regulation has a domino effect on the end-user. It is a concern that regulation adds costs, complexity and unintended consequences to wildlife use. It is generally impossible to fully legally comply at times and get a permit out of the conservation authorities.
- Rather than the use of the words “welfare” or “well-being”, concentrating on the practical substance of catering to the welfare of an animal (e.g. specified enclosure sizes) would be better understood in his context. So, for example, what are the technical things needed to realise the five freedoms? In terms of the codes, norms and standards, land-owner buy-in is the only way to achieve widespread compliance.
- Keeping welfare out of the sustainable use mandate is helpful, as bringing welfare into the scope will start a groundswell of politics and pull the Department of Environmental Affairs in all directions, to the detriment of the development and transformation work that we should all be focusing on.

5. Humane Society International (HSI), Africa

HSI-Africa enthusiastically supports the initiative by the CER and the Endangered Wildlife Trust (EWT), as well as the contributing authors, w.r.t. the initial review of the legislation pertaining to the welfare of wildlife in South Africa. Indeed, the significant efforts of all the parties are commended and appreciated.

We found the review thoroughly comprehensive and informative. We are in agreement that there certainly are changes that need to be made, and the suggestions and recommendations outlined in the review are vital and a necessary starting-point. As you are no doubt aware, Humane Society International (HSI) is the global affiliate of The Humane Society of the United States, the largest animal protection organization in the United States. With its many country offices, HSI is well-versed in global wildlife welfare legislation. HSI-Africa would like to suggest reference to and inclusion of some of the exemplary foreign legislation available, but this would be premature at this point.

We look forward to receiving further input on the general steps that will be taken during this process, specifically regarding when specific language will be discussed. We hope that we may be considered as part of the working group or coalition, at which point we may be able to bring our knowledge and experience to bear.

Thank you for initiating this discussion and for taking our points into consideration.

6. National Council of Societies for the Prevention of Cruelty to Animals (NSPCA)

- The Animals Protection Act (APA) is adequate in its content – the implementation is the problem. The NSPCA has had many successes and a good track record in enforcing the APA where it was applied correctly, especially in the High Courts. The only real issue in the APA is the use of the word “unnecessary” in relation to cruelty and suffering, as the removal of the word would then reverse the onus of proof as to the necessity of the action or omission. Importantly, the prioritisation of cruelty cases, investigation and court capacity and processes (especially the large number of cases that prosecutors decline to prosecute despite good evidence and complete dockets) are aspects

that need urgent attention. Training and accreditation of other societies for the prevention of cruelty to animals in order to afford them the same powers of search and seizure would assist in the capacity issues faced by the NSPCA and the SPCA branches. Capacitating EMI's with wildlife training and mandates would be another suggestion.

- The DEA-DAFF mandate issue and the 9+1 also present hurdles in the implementation of the APA when it comes to wild animals. Strict application of APA by the conservation authorities is imperative. The duty of care of conservation authorities must be legally entrenched. As long as the conservation authorities are issuing the permits, they are responsible for the animals.
- The standardisation of permits and incorporation of SANS codes therein are critical.
- The legal protection for exotic wild animals is inadequate and cannot be ignored by conservation laws.
- The report in its discussion of the case studies, such as the Thuli elephant prosecution, does not correctly portray the facts – media reports tend to be sensationalist.

7. Professional Hunters Association of South Africa (PHASA)

- PHASA is happy to comply with legal requirements but want an enabling system and not one that constrains. The unintended consequences of over-regulation are dangerous and in this vein, zero regulation is actually preferred. The most limiting thing for the industry is over-regulation. Great conservation value has come out of South Africa's system of private wildlife ownership.
- The "9+1" problem must be remedied. Provincial officials need training and education, and must realise that their decisions are not without consequences. Delays in issuing of permits and poor administration cause financial loss and there is no recourse for the owner or accountability by the officials. The industry would prefer to self-regulate, and offer a service by issuing the permits.
- DEA and the provinces use the precautionary principle to impede PHASA's work. The cumbersome permit system ends up defeating its own purposes. The permit system should not be used to criminalise the actions of those who are doing the right thing as custodians of wildlife, looking after our animals, livelihoods and our futures.

8. South African Hunters and Game Conservation Association (SAHGCA)

- Different situations bring up different welfare issues and the five freedoms cannot be applied blanket-style, so it is important to make the distinction on the spectrum of environments when applying welfare considerations:

Captive Bred	Intensive Managed	Managed Wild	Simulated Wild	Wild
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- As in all things, an integrated approach is necessary so that welfare and conservation coincide.
- The move by DAFF to include certain wild animals in the (domestic animal) Animal Improvement Act is of grave concern. It is not reasonable or justifiable based only on economic benefit and SA Hunters believes that DAFF is overstepping its mandate by regulating wild animals. There are also long-term sustainability issues that come with it.
- A big welfare issue is intensive breeding of wild animals. Animals bred in intensive controlled environments should be done in limited circumstances and should not be hunted.
- Hunting Associations should be allowed to self-administer their standards and codes of good practice rather than these being regulated legislatively. SA Hunters' members follow a code and are put into a disciplinary process if they contravene it. So rather than provinces legislating hunting

standards, they should just make it compulsory for any hunter to belong to a credible organisation before being issued a permit.

- Regarding permits and licences, an issue is the difficulty of obtaining these. Licences are non-discretionary and should be easier to obtain. Permits are discretionary but it would help if the system is electronic and nationally accessible.
- The Game Theft Act is also an issue, as ownership and use of our wild heritage is not an absolute right, it is subject to the public trust doctrine. DEA is custodian of the environment and has a duty to protect it. DEA has not adequately explained how its economic / sustainable use policies are Constitutionally justifiable.
- SA Hunters believes that the incongruence between national and provinces (the “9+1”) is actually leading to environmental degradation.

9. South African Veterinary Association (SAVA), Wildlife Unit

- Wild animal welfare in a veterinary medical context is being given more attention by the profession, the Council (SAVC) and SAVA of late. While any human interference with a wild animal is stressful for the animal, a core function of every veterinarian is to cause as little pain and suffering as possible in the handling of the animal, and the profession’s conduct is strictly governed by the SAVC.
- The ability for wild animals to express their normal behaviour is important.
- SAVA is assisting the South African Bureau of Standards (SABS) in drafting updated SANS codes for wild animals as the current codes are inadequate.
- TOPS is problematic from a welfare point of view because of the time it takes to obtain a permit for, for example, immobilisation (darting / tranquilising) – animals literally die while awaiting a permit for emergency medical care.
- The main areas of concern in relation to wild animals view are housing, handling and husbandry.
 - Housing: over-crowding and space, inappropriate infrastructure and incorrect nutrition are key issues when wild animals are kept in a non-extensive system.
 - Handling: incorrect transportation facilities, times, lengths and inattention to detail; unsuited catching and immobilisation techniques and lack of care lead to unnecessary fatalities and injuries.
 - Husbandry: mismanagement of intensive and other breeding operations cause unnecessary stress for the animals.

10. Wild Welfare

We would comment that it is well researched and comprehensive. We do not really have anything material to add to it, save perhaps the following observations:

1). The Webster’s Five Freedoms model for animal welfare is really a bit dated and in any event, was originally proposed for agricultural livestock. There are better models to consider. The International zoo community – and indeed ourselves – use the Five Domains of Animal Welfare compromise as proposed by David Mellor in 2014. This model is presented and described in the attached Welfare Strategy produced the World Association of Zoos and Aquariums (WAZA). I would add that we at Wild Welfare had extensive involvement in the production of this document. If a welfare model is to be proposed as a basis for welfare legislation, then we would like to suggest it be a modern one!

2). The development of welfare legislation is actually something that we are closely involved with in other parts of the world – specifically Brazil, Japan and Vietnam. We have developed legislative templates in this regard and we would be happy to share these with you if you wish.

3). It would seem to me that what is needed in SA is better basic animal welfare legislation to begin with, and the specialization of this legislation to cover non-domesticated animals and wildlife once this basic legislation is in place. The Animals Protection Act is of course the only basic legislation in place presently – but this is of course, completely outmoded.

Please continue to keep us in the loop with regard to this project. We are very interested in it. If Wild Welfare can be of assistance, do let me know.

11. Wildlife Ranching South Africa (WRSA)

- WRSA's mandate is to ensure the long-term sustainability of game farming, consisting of four pillars: hunting, breeding, eco-tourism and wildlife products. It has 2400 members. Captive animal interaction facilities fall outside of its mandate.
- WRSA's main concerns:
 - The "9+1" system and the impossible legislation: The provincial legislation is outdated and not compatible with how the wildlife economy has grown, and is unaligned with other provinces and national law. The national and provincial legislation together are not enabling but restrictive of wildlife use;
 - Government seems unable to grow with the times, e.g. the effect of climate change on wild animals;
 - Capacity in the provincial departments and knowledge of the officials is severely lacking;
 - The millions of Rands from permit fees are not put back into conservation or improvement of the system.
- The large investment in the economy by private owners and wildlife ranchers is important. The owners look after the welfare of the animals because they do not want to lose their investment. They protect biodiversity.
- The Welfare Bill is a responsible development but should:
 - Take into account the codes, and norms and standards of industry as they are constantly updated and improved for the business and welfare and biodiversity;
 - Not allow animals to be given rights like humans; and
 - Not lead to over-regulation or stricter measures that suffocate the industry, for example, the number of legal requirements for the transport of buffalo (disease control) actually impede their welfare as they have to wait for hours in the heat while a State Veterinarian travels to the transport destination to close and open the trucks while this can be done by an accredited private wildlife veterinarian / the results of blood testing of buffalo take a long time to be processed and the buffalo have to be left in a *boma* all that while instead of being released.

ACKNOWLEDGMENTS

Citation **Fair Game?** Improving the Well-Being of South African Wildlife: Review of the Legal and Practical Regulation of the Welfare of Wild Animals in South Africa, 2018.

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