



June 14, 2006

The Director-General  
Department of Environmental Affairs and Tourism  
Private Bag X447  
PRETORIA 0001  
South Africa

For Attention: Dr. Pieter Botha

Dear Dr. Botha:

I am writing on behalf of the Trophy Hunting Working Group of the Species Survival Network to provide comments on the Draft National Norms and Standards for the Regulation of the Hunting Industry in South Africa.

The Species Survival Network (SSN) is an international coalition of organizations committed to the promotion, enhancement and strict enforcement of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Through scientific and legal research, education and advocacy, the SSN is working to prevent over-exploitation of animals and plants due to international trade. The Network strongly believes that such trade can occur only when evidence positively demonstrates that survival of the species, subspecies or populations and their role in the ecosystems in which they occur will not be detrimentally affected by trade and when trade in live animals minimizes the risk of injury, damage to health or cruel treatment. The species must always receive the benefit of the doubt if available evidence is uncertain.

We commend the Department of Environmental Affairs and Tourism for preparing these draft regulations and thank you for providing an opportunity for the public to comment on them.

### **GENERAL COMMENTS**

The draft contains numerous terms that are not fully defined and are open to broad interpretation.

The draft often falls back to legislation at provincial level, which will make for a confusing system as legislation differs according to province. Control needs to come from national level to enable uniformity of regulation and enforcement. Many aspects appear difficult and costly to enforce at any level.



The draft provides options for hunting in protected areas, which is cause for significant concern. This could be the stepping stone for hunters to negotiate and organize hunts in protected areas.

## **SPECIFIC COMMENTS**

### **Chapter 1. Interpretation, purpose and application of schedule.**

#### ***Definition: Adjacent land***

The draft does not state the number of kilometers away from a protected area that land must be in order to be considered ‘adjacent’ to that protected area. As the intention seems to be to limit hunting in areas adjacent to protected areas except under certain circumstances, it is important to keep in mind that the biological relevance of the distance will vary from species to species, with species that have greater ranges and thus move greater distances require greater areas of adjacent land than those that do not move as much. If the intention is to establish one distance in this definition, then it should err on the side of precaution and be relevant to animals that move over greater distances

#### ***Definition: Culling***

Draft definition (b) of ‘culling’ includes the language “to kill the animal as a matter of last resort”. We recommend this term be clarified by adding the following words: “... as a matter of last resort after all other options have been carefully evaluated and rejected.” We also recommend that this language also be included in definition (a) of ‘culling’.

#### ***Definition: Damage causing animal***

The draft definition does not reflect the fact that assessment of damage is largely subjective; threshold estimates of damage should be required before an animal is considered to be damage-causing and becomes a target. In addition, it must be recognized that while individual animals may cause damage, this does not mean that the species as a whole should be considered ‘damage causing’. We recommend that the clause ‘means a listed animal that’ be changed to ‘means an individual of a listed animal that has been demonstrated to be the cause of the alleged unreasonable damage’.

#### ***Definition: Humane***

Many SSN member organizations, particularly those that seek to prevent cruelty to animals, believe that hunting, generally, is cruel. The reason for this is that it is that animals that are hunted often do not lose consciousness and die instantaneously; that is, they are not killed humanely. While some wounded animals are sought and eventually killed by the responsible hunter, many are never recovered and suffer and/or die from their wounds minutes, hours, or even days or weeks later. Thus, paragraph (a) of the definition of humane (‘is reconcilable with the prevailing norms of society against cruelty to animals’) is meaningless. It is also misleading and may be seen by some as an indication that any hunting that is permitted under the draft regulations is therefore ‘humane’.

Clause (b) of the definition of ‘humane’ states that hunting is ‘humane’ when it ‘causes no or minimum’ suffering for the hunted animal and distress to other animals in the vicinity of the hunted animal. For killing to be humane it must result in instantaneous unconsciousness of the hunted animal; even minimum suffering is inhumane. In addition, using "or minimum" inserts a significant amount of ambiguity into an otherwise clear standard, which would render enforcement very difficult. Consequently, we recommend removal of the words ‘or minimum’ in this part of the definition.

***Definition: National park***

The draft text defers to a definition of this term in “section 1 of the Protected Areas Act”; however, section 1 of the Protected Areas Act does not contain a definition of this term.<sup>[1]</sup> The National Parks Act<sup>[2]</sup> provides a definition of “park” (to mean national park or parks).

***Definition: SANBI***

The draft text defers to a definition of this term in “section 1 of the Biodiversity Act”; however, section 1 of the Biodiversity Act does not contain a definition of this term.<sup>[3]</sup>

**Chapter 2. Provincial hunting authorizations.**

***“...must, to the extent possible, take into account”***

The draft text states that provincial hunting authorities “must, to the extent applicable, take into account” various factors. First, we recommend deleting “to the extent applicable” because all the items listed should be taken into account. Furthermore, we are concerned that the text presents a list of factors to consider but does not offer guidance about what to do with this information. Thereby, the language does not make clear what requirements must be met for authorization of hunting. For example, the text states in clause (5)(d) that the issuing authority must take into account “the impact of the hunt on the conservation of the species” but it does not state that the impact should not cause a detriment to the wild population of the species. We understand that the hunting restrictions are in Chapter 3; however the reasons for considering the factors in Chapter 2 should be clearly stated, factor-by-factor, in Chapter 2.

***“impact of the hunt on the conservation status”***

Clause 5(d) states that the impact of the hunt on the conservation status of the relevant species should be taken into account. In order to do that, information on the size and age structure of the population and in some cases the herd, clan or family unit is required. We recommend adding a sub-clause stating “the size and age class of the population, and herd, clan or family unit of relevant species.”

***“... recognized hunting organization”***

Clause (5)(i) states that the authorities should take into account “if the applicant is a professional or amateur hunter, whether the applicant is a member of a recognized hunting organization.” This is understandable in the case of the professional hunter who should be required to be a member in good standing of a recognized hunting organization that has enforceable standards (including routine, unannounced inspections of the professional hunter’s activities) that must be met by the professional hunter in order to keep the membership. However, in the case of the amateur hunter, belonging to a hunting organization has no meaning whatsoever. For example, one can join Safari Club International (SCI) for US\$55 per year but SCI does not regulate or inspect the activities of its members when they are hunting to ensure the hunters are acting in accordance with published ethical conduct and good practice. The low membership price, set at such a minimal level, will enable an amateur hunter to meet the requirement in clause 5(i).

***“...objections to the application”***

Clause 5(k)(iii) states that the authority should take into account “any objections to the application submitted by an interested person”. The text should make clear how people will be able to find out about the application. Will all applications be published and comment periods opened? How will

interested persons become aware of an application? Furthermore, how will the authority demonstrate that such objections have been taken into account?

### ***Contents of provisional hunting authorizations***

Clause 6(e) states that a provincial hunting authorization must reflect “the scientific and common name of the species ...”. We recommend including the parenthetical phrase “(genus, species and subspecies)” following the word “scientific”; it may be important to consider the subspecies in order to determine the conservation impact of the hunt.

Clause 6(f) states that a provincial hunting authorization must reflect “the number of specimens involved, and its gender if applicable”. First, because ‘specimens’ is plural, ‘its gender’ should be changed to ‘their gender’. Second, we cannot think of any species typically hunted for which gender would not be applicable; therefore, we recommend deleting ‘if applicable’. Third, the age of the specimens should be contained in the information; like gender, the age of animals killed by hunters has an effect on the conservation impact of the hunt.

Clause 6(g) states that a provincial hunting authorization must reflect “the location and other particulars of the place where the hunt is to be carried out”. We recommend including the parenthetical phrase “(area, region or ranch and nearest city)” after the word “place”. These specifics are needed to determine the conservation impact of the hunt.

### ***Suggested additional contents of provisional hunting authorizations***

- Certification by the applicant: I hereby certify that I have read and am familiar with the regulations contained in [insert relevant regulations official titles and numbers], and I certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of [insert relevant enforcement regulations]. Signature of the applicant \_\_\_\_\_. Date \_\_\_\_\_.
- Date the animals are to be hunted. This is needed to determine the conservation impact of the hunt (due to seasonality of breeding / births or nesting, for example).

## **Chapter 3. Hunting restrictions.**

### ***Restrictions relating to protected areas and land adjacent to protected areas***

Clause 7(1) states that no hunting of any animal species may take place in a special nature reserve, a world heritage site, or a wilderness area. However, this leaves many other types of protected areas (as defined in Chapter 2, clause 9, of the Protected Areas Act) including: nature reserves other than wilderness areas, protected environments, specially protected forest areas, forest nature reserves, forest wilderness areas, and mountain catchment areas. We see no reason to exclude these other types of protected areas from clause 7(1). Protected areas should protect the animals that live there from potential detriment caused by hunting. There are many other areas in South Africa where hunting can take place other than protected areas. Oddly, clause 7(1) does not prohibit hunting in National Parks although the National Parks Act<sup>[4]</sup> prohibits hunting in national parks without exception. This needs to be explicitly addressed.

### ***Hunting in national protected areas other than those referred to in clause 7(1)***

Clause 8 provides exemptions that allow hunting in national protected areas other than those specifically excluded in clause 7(1). One exclusion allows hunting on private land that, by agreement, becomes part of a national park or nature reserve, where the agreement confers hunting rights to the owner. It must be recognized in this case that such owners will be allowed to hunt animals (or sell hunting rights to others), including nationally listed threatened or protected animals (such as lions or leopards), that may be baited out of other parts of the protected area. We cannot see any reason for this exemption even given the additional restrictions in clause (8)(3)(a-d). To the extent that protected areas are made up of large parcels of such privately-owned land that encompass large percentages of protected areas, this could seriously undermine the conservation value of protected areas.

The other exclusion allows hunting on state-owned land that, by agreement, is part of a national protected area and provides for historical hunting rights of the local community. The restrictions on the use of this exemption should include that the rights cannot be conferred to others (that is, the local community cannot sell hunting rights to hunting companies or professional or amateur hunters). Otherwise, we would have the same objections mentioned in the paragraph above regarding the impact of this exemption on the conservation value of the protected area.

### ***Hunting in provincial protected areas***

Like clause 8, clause 9 allows hunting in any provincial protected areas on land that is privately owned, or state owned land where a local community claims historical hunting rights. Our comments on this clause are the same as our comments on clause 8 above.

### ***Hunting on private land adjacent to protected areas***

Clause 11(1) will allow animals, including threatened and protected animals (such as lions and leopards), to be baited out of protected areas and hunted. Obviously, such activities may have a negative conservation impact. Instead of allowing hunting on adjacent land, we encourage the establishment of a buffer zone around protected areas where no hunting would be allowed. In the event that hunting is nonetheless allowed on adjacent areas, we recommend as a minimum that all adjacent land owners (regardless of whether there is a fence or not which, depending on the fence type and size, for many species is completely irrelevant) who want to hunt on their land should sign a conservation agreement with the Minister that would be compatible with the management plan of the adjacent protected area and demonstrably ensure that off-take for hunting is not detrimental to the relevant population, including the herd, clan or family unit.

### ***Damaging causing animals***

Clause 12(2) states that “if a damage causing animal has escaped from a protected area, the management authority of that protected area is responsible for retrieving the animal, or if this is not possible, for culling the animal”. First, it may be impractical to identify the individual animal that has caused the damage. Second, recognizing it is often much more difficult and costly to retrieve an animal than to kill it, further language is needed to address the effort needed before culling is resorted to. Third, we recommend that the public be given an opportunity to provide sound reasons for not killing the animal.

Clause 12(3)(a) states that the entity suffering the damage must notify the provincial department responsible for biodiversity management in the province. The statement should clarify that the entity should not kill the animal themselves but be bound by the terms of clause 12(2).

Clause 12(3)(b) states that for nationally listed threatened or protected animals, the department “must endeavor to translocate the animal to a suitable area, and may for this purpose make use of the assistance of any conservation agency”. We recommend removing the words “endeavor to” in order to clarify the language and the apparent intent. In addition, we recommend further clarification on the term “suitable area” so that the animals are not translocated to private land, for example; “back into the protected area or if the animal is wounded, to a wildlife veterinary facility” would be preferred.

Clause 12(4) allows people to kill a damage causing animal in self-defense where there is a clear and present threat to human life is threatened or where killing of the animal is permitted in terms of legislation”. First, it is unclear how it will be determined after the fact that a killing was in self-defense; this seems unenforceable. Second, the specific legislation should be noted here as it is elsewhere in the draft text. If “specific legislation” includes provincial legislation, then this may not be consistent from province to province, which would not be consistent with the one of the stated purposes of the schedule: to ensure that the hunting industry is regulated in a uniform way across the country.

***Persons restricted from obtaining hunting authorizations and permits***

Clause 13(1)(a) states that one requirement before an issuing authority may authorize a national hunting permit is that the person is a “natural person”; this requires further explanation since most people are natural persons. Another requirement should be an age limit, such as “over the age of 21”, which would be consistent with the age that a person must be in order to own a gun in South Africa under the Firearms Control Act. Permits should only be issued to adults who have legal capacity and responsibility. A further requirement should be that the person has been issued a competency certificate under the Firearms Control Act.

Clause 13(1)(b) states that one requirement before an issuing authority may authorize a national hunting permit is that the person is a “member of a recognized hunting organization”. Further, according to clause 13(2), the aforementioned sub-clause does not apply to hunting clients who are accompanied on the hunt by a professional hunter. As noted above, this is understandable in the case of the professional hunter who should be required to be a member in good standing of a recognized hunting organization that has enforceable standards (including routine, unannounced inspections of the professional hunter’s activities) that must be met by the professional hunter in order to keep the membership. However, in the case of the amateur hunter, belonging to a hunting organization has no meaning whatsoever. For example, one can join Safari Club International (SCI) for US\$55 per year but SCI does not regulate or inspect the activities of its members when they are hunting to ensure the hunters are acting in accordance with published ethical conduct and good practice. The low membership price, set at such a minimal level, will enable an amateur hunter to meet the requirement in clause 5(i).

Clause 13(2) states that a hunting client who is “accompanied on the hunt by a professional hunter” does not have to be a member of a recognized hunting organization in order to obtain a provincial hunting authorization or national hunting permit. We recommend that the term “accompanied” be modified to read “accompanied and at all times fully supervised” in order to clarify how closely the professional hunter must be to the hunter in order to successfully supervise the client.

***Compulsory conditions subject to which hunting authorizations and permits must be issued***

Clause 14(1)(d) states that the permit is issued subject to conditions that the holder must abide by including “must act in accordance with the code of ethical conduct and good practice of the hunting

organization of which the person is a member ...”. As noted in the paragraph above, this is meaningless for amateur hunters and completely unenforceable.

Recommended new sub-clause: 14(2)(a)(...) “nets” (as used for bird hunting, for example).

Recommended new sub-clause: 14(2)(a)(...) “sling shots” (as used for bird hunting, for example).

Clause 14(2)(a)(x) states that authorizations for listed animals are subject to conditions which include that the animal may not be hunted by means of “any other device which use would result in injuring or killing an animal in a way that is not humane”. As noted above, regarding the definition of “humane”, many organizations that seek to prevent cruelty to animals consider hunting, generally, to be cruel. The reason for this is that it is that animals that are hunted often do not lose consciousness and die instantaneously; that is, they are not killed humanely. While some wounded animals are sought and eventually killed by the responsible hunter, many are never recovered and suffer and/or die from their wounds minutes, hours, or even days or weeks later. Thus, paragraph (a) of the definition of humane (‘is reconcilable with the prevailing norms of society against cruelty to animals’) is meaningless. It is also misleading and may be seen by some as an indication that hunting that is permitted under the draft regulations is ‘humane’. In addition, causing an “injury” to an animal is obviously inhumane because the animal is wounded and in undoubtedly suffering. We recommend changing this sentence to read, “any other device which might not result in the instantaneous killing of an animal”.

Clause 14(2)(b)(i) allows leopards and lions to be hunted by luring the animal by means of bait, provided that the use of dead bait is allowed by provincial legislation. First, we do not understand how hunting leopards and lions over bait can be considered to be ethical conduct or provides the animal with a “fair chance” of evading the hunter, which are qualifications stipulated elsewhere in the draft text. Second, provincial legislation regarding hunting of leopards and lions over bait varies from province to province; deferring to provincial legislation on this key issue is inconsistent with one of the stated purposes of the schedule: to ensure that the hunting industry is regulated in a uniform way across the country.

Clause 14(2)(d)(ii) prohibits hunting of animals in a “small enclosure where the animal does not have a fair chance of evading the hunter”. The term “small enclosure” is subjective, unenforceable, and requires further elaboration; this term would, at any rate, need to be defined on a species-specific basis (what is large for one species may be small for another). Even fairly large enclosures have corners where animals can be baited and/or trapped. We recommend replacing the word “small” with “any”. The term “fair chance” is a key phrase that is highly subjective; either an objective, enforceable definition of “fair chance” is needed or the term should be eliminated from the draft text. We recommend replacing it with “...animal cannot evade the hunter.”

Clause 14(5) allows the use of a motorized vehicle to track animals in areas where the hunt takes place over “long ranges” provided that the animal is not shot from the vehicle “except in the case of a wounded animal”. First, we do not understand how hunting with vehicles can be considered ethical conduct or providing the animal with a “fair chance” of evading the hunter, particularly with larger animals. Second, the term “long ranges” requires further elaboration on a species-specific basis. Third, the fact that a wounded animal can be shot from a vehicle is an unenforceable loophole that would allow hunting from vehicles.

## **Chapter 4. Self-regulation of hunting industry.**

### ***National association of hunting organizations***

Clause 15(2)(d) states that the purpose of a national association of hunting organizations is to “maintain an accreditation system for its member organizations to ensure enforcement by those member organizations of their codes of ethical conduct and good practice”. The term “ensure enforcement” requires further elaboration specifically concerning how enforcement will occur. At a minimum, such an association should regularly monitor the activities of its accredited organizations. This may be impractical, but if the only organizations that are expelled from the association are those for whom information on how breached the code accidentally comes to light—as opposed to the association actively searching for such information and monitoring their members—then this clause will be meaningless

### ***Regulation of hunting organizations***

Clause 16(2) provides for hunting organizations to become recognized in each province provided that the applicant will “enforce its code of ethical conduct and good practices against members who breach the code”. The term “enforce” requires further elaboration specifically concerning how enforcement will occur. At a minimum, such an organization must regularly monitor the activities of its accredited members, including by surprise inspections of ongoing hunts. This may be impractical, but if the only members that are expelled from the organization are those for whom information on how breached the code accidentally comes to light—as opposed to the organization actively searching for such information and monitoring their members—then this clause will be meaningless.

### ***Norms and standards for codes of ethical conduct and good practice***

Clause 17 provides a list of standards that must be met by a hunting organization. We recommend including a new sub-clause: “require its members to submit to monitoring of their members’ hunts”.

### ***Withdrawal of recognition of hunting organizations***

Clause 18 provides an explanation of how recognition of a hunting organization can be withdrawn. We recommend including a new sub-clause explaining how a member of the public can supply information to the MEC on the activities of any hunting organization or that may be relevant to the recognition thereof. In addition, we recommend that any consideration of the withdrawal of recognition of a hunting organization be published and that the public be provided with an opportunity to comment, preferably by posting on a website.

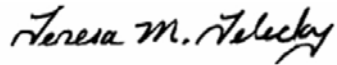
## **Chapter 5. Miscellaneous matters.**

### ***National hunting register***

Clause 19 (1)(b) stipulates that SANBI should keep and maintain a National Hunting Register in which “the number of animals of each species annually culled in each protected area”. We recommend that the gender and age of the animals also be recorded.

Thank you for considering the comments of the Trophy Hunting Working Group of the Species Survival Network.

Sincerely,



Teresa M. Telecky, Ph.D.  
Chair, Trophy Hunting Working Group  
Species Survival Network

On behalf of the following organizations:

Animal Alliance of Canada  
Animals Asia Foundation  
Animal Protection Institute  
Born Free Foundation  
Born Free USA  
Care for the Wild International  
Centre for Marine Mammals Research – Leviathan  
Cetacean Society International  
David Shepherd Wildlife Foundation  
Environmental Investigation Agency  
Franz Weber Foundation, Switzerland  
Humane Society of the United States  
Humane Society International  
International Fund for Animal Welfare  
Life Conservationist Association Taiwan  
Pan African Sanctuary Alliance  
Pro Wildlife  
World Society for the Protection of Animals  
Zoocheck Canada

[1] [www.sanparks.org/about/acts/ProtectAreasAct.pdf](http://www.sanparks.org/about/acts/ProtectAreasAct.pdf)

[2] [www.sanparks.org/about/acts/NatParksAct.pdf](http://www.sanparks.org/about/acts/NatParksAct.pdf)

[3] [www.info.gov.za/acts/2004/a10-04/a10-04b.pdf](http://www.info.gov.za/acts/2004/a10-04/a10-04b.pdf)

[4] [www.sanparks.org/about/acts/NatParksAct.pdf](http://www.sanparks.org/about/acts/NatParksAct.pdf)