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The Director -General Department of  
Environmental Affairs  
Attention: Ms Magdel Boshoff  
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16 February 2017

Dear Ms Magdel Boshoff,

**Draft Regulations for the Domestic Trade in Rhinoceros Horn, or Part,  
Product or Derivative of Rhinoceros Horn**

Please find below "*written representations or objections*" to the proposed draft "*Domestic Trade in Rhinoceros Horn, or Part, Product or Derivative of Rhinoceros Horn*" - (the "*draft Regulations*"), as notified in Government Gazette, Vol. 620, No. 40601, Notice 74, Department of Environmental Affairs (DEA), dated 8 February 2017.

The first obvious question raised by the draft Regulations, is why are they titled "*Domestic Trade,*" but include provisions for international export?

**Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)  
Regulation**

At present, there is no CITES regulation that permits international trade in rhinoceros horn, so how does regulation 2.(4)(d) – "*the CITES Regulations*" - actually have any practical application in current form within the draft Regulations proposed?

How is any of the draft Regulation's proposed export and potential 'trade' in rhinoceros horn compliant with "*CITES Regulations*" which only currently permits rhino horn being exported (subject to quotas) as a hunting trophy from South Africa, or Namibia?

It would appear that the DEA's proposed 'get out clause' within the draft Regulations to enable potential mass exportation of rhinoceros horn is to pass the onus of responsibility to

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the CITES "Management Authority" in the "country of import or residence" for any given "person," as outlined at regulation of 6.(1)(b) and 6.(2)(b) of the draft Regulations:

*"written confirmation from the Management Authority contemplated in paragraph (a) that domestic legislative provisions are in place to ensure that the imported rhinoceros horn will not be used in a manner that is in contravention with the provision of CITES that apply to the importation of specimens of species included in Appendix I of the Convention."*

CITES stipulates an import permit "may be issued" by the relevant "Management Authority" only "if the specimen is not to be used for primarily commercial purposes and if the import will be for purposes that are not detrimental to the survival of the species."

How will any "Management Authority" possibly have the resources to ensure that any given rhinoceros horn so imported is not passed on, or traded "for primarily commercial purposes" as it is used once in country? It is naïve to think that passing on and trading in rhinoceros horn will not ensue.

Does the DEA truly believe that if the draft Regulations as proposed are implemented, that there is not a highly probable risk that reliance on a third party country's "Management Authority" (for example, Vietnam) will not be subject to manipulation (for profit) and that there is a significant negative risk that "specimens" will indeed be used "for primarily commercial purposes."

How much "importation of specimens of species included in Appendix I of the Convention" (regulation 6.(1)(b) and 6.(2)(b) of the draft Regulations ) can possibly be deemed realistic and believable, or does the DEA not have any compulsion to limit exports of "specimens," but make it potentially an uncapped, limitless export market? Or, presumably the DEA proposes to wash its hands of any responsibility and place the onus on CITES and any relevant "Management Authority" oversight to set an arbitrary threshold and what can realistically be believed as not imported "for primarily commercial purposes?"

If the same export principle as proposed within the draft Regulations for rhinoceros horn is universally applied to other Appendix I species, then this sets a dangerous precedent for a virtually unlimited export trade, with the only safeguard being CITES' oversight of applicable "Management Authority" activity of "specimens." This relies on the premise that CITES is willing, resourced and prepared for such potential eventualities, ie. everyone is supposed to



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believe that the majority of exports so arranged are not *"for primarily commercial purposes."*

### **Market Dynamics of Proposed Trade and Species Conservation**

What market/demand modelling and onus on independent, scientifically proven evidence has been accumulated by the DEA that proves any rhinoceros horn trade and export/import so orchestrated by the draft Regulations will actually *"be for purposes that are not detrimental to the survival of the species"* as stipulated by CITES?

Where is the independent evidence that the proposed *"trade in rhinoceros horn"* contained within the draft Regulations is not likely to stimulate demand and poaching of rhinoceros by others seeking to profit? How will protection and security of rhinoceros be enhanced and guaranteed by the draft Regulations as proposed beyond verbal reassurances that income derived from the proposed draft Regulation trade model will be able to cope with the potential rise in rhinoceros poaching if/when demand increases as a result?:

*"Governments, economists and conservationists who think they can curb poaching by selling rhino horn and ivory legally have little understanding of macroeconomics or the sophistication of international crime syndicates" - [1]*

The objective of Alejandro Nadal's and Francisco Aguayo's 2014 paper (*"Leonardo's Sailors: A Review of the Economic Analysis of Wildlife Trade"* [2]) was to *"...evaluate the scope and limitations of the economic analysis of wildlife trade that has been carried out in the past three decades."* A few extracts sum up this paper's hard hitting assessment of the use of 'misguided' economic theory when applied to the wildlife trade:

*"The pro-market argument starts from the premise that poaching and illegal trade are a consequence of trade bans imposed by bodies like CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora)."*

*"One of the most striking features in the economic analysis of wildlife trade is the level of misinformation concerning the evolution of market theory over the last six decades. To anyone who comes in contact with the corpus of literature on wildlife trade, and in particular the literature recommending the use of market-based policies, the uncritical use of theoretically discredited analytical instruments is a striking revelation. Perhaps the most important issue here is the conviction that*



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*markets behave as self-regulating mechanisms that smoothly lead to equilibrium allocations and therefore to economic efficiency. This belief is not sustained by any theoretical result, a fact that is well known in the discipline since at least the early seventies."*

In a July 2016 study (*"A quantitative assessment of supply and demand in rhino horn and a case against trade"* [3]), Dr Barbara Maas of NABU International concludes that opening up 'legal' trade has major potential downside risk:

*"Pro-trade proponents have suggested that if things go wrong and poaching escalates further as a result of lifting the ban, rhino horn trade could either be "closed down or restructured" after three or four years. Such plans are both unhelpful and impractical, firstly because it risks setting off an illegal buying and poaching rush to exploit a potentially limited window of opportunity as soon as trade is permitted. Secondly, experience from rising exports of rhino horn as hunting trophies from so called "pseudo hunts" [4],[5] in South Africa has shown that it can take seven years (2003-2009) to recognise and address such problems."*

Enrico Di Minin, an economist at the University of Helsinki, stated in a 2014 study [6] that the trade in rhino horn could bring "\$717m USD per annum" to South Africa's economy and help protect its rhino populations. However, the study failed to consider that there could be any link between encouraging a 'legal' trade whilst simultaneously stimulating the negative impact of illicit trade to also profit from infiltrating the 'legal' market demand rise/profitting envisaged.

Douglas J. Crooks, James N. Blignaut [7] (Department of Economics, University of Pretoria) in their 2015 paper, *"Debunking the myth that a legal trade will solve the rhino horn crisis: A system dynamics model for market demand"* concluded *"we find that a legal trade [in rhino horn] will increase profitability, but not the conservation of rhino populations."*

Therefore, the weight of academics' [2] [3] [7], key conservationist's [8] and ecologist's [9] thinking concludes that attempting to influence wildlife trade is often based upon biased priorities (not conservation per se) and a simplistic appreciation of the potential market dynamics and likelihood of negative effects.



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In addition, the November 2013 report, "*The Horn of Contention*," ("A review of literature on the economics of the rhino horn trade," Economists at Large/IFAW [10]) found the following:

*"The formal studies suggest that predicting the outcome of liberalising trade is complex and difficult to determine. Although it may decrease pressure on poaching, as rhino horn becomes increasingly supplied through the non-lethal legal trade, there is also a real risk that trade could drive an increase in poaching through any combination of five mechanisms:*

- *Through legal and illegal markets coexisting and interacting in complex ways.*
- *Through reducing the stigma attached to consumption of the product.*
- *By potentially reducing the supply costs of illegal supply.*
- *By potentially facilitating the laundering of illegal supply in with legal supply.*
- *As a result of uncertainty around the response of illegal suppliers to competition from a legal market."*

*"The articles from the grey literature are all overtly pro-trade, generally assuming that:*

- *Legal markets will "hijack" consumers from illegal markets and that legal and illegal horn would be perfectly substitutable.*
- *Stigma effects are small and that efforts to reduce demand through education and information would be ineffective.*
- *Increased surveillance funded by rhino horn sales would increase poaching costs.*
- *Technical advances such as DNA technology would minimise laundering.*
- *Smugglers with market power would respond to the introduction of a legal trade passively, accepting reduced sales, rather than competing to retain market share."*

*"Little empirical evidence is offered to support these views. Under certain conditions these assumptions may hold, but it is unclear if these conditions are in place in either supplying or consuming countries. We suggest further research should be undertaken before any formal steps are taken towards legalising trade in rhino horn."*

So where are the DEA's 'convincing reasons' why the proposed trade within the draft Regulations benefits long-term global rhino conservation?



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## **Export Boundaries**

How is any proposed *"export a maximum of two rhinoceros horns"* at regulation 3.(3) of the draft Regulations to be bounded? That *"maximum"* is not just two complete rhinoceros horns only, but also the (subjective) equivalent of two rhinoceros horns made up of *"parts and pieces"* or *"products or derivatives"*:

How is any boundary based on *"a maximum of two rhinoceros horns"* (where *"rhinoceros horn"* is defined in the draft Regulations as *"the whole horn, or any part or cut piece of the horn, whether polished or unpolished, in any form whatsoever or however changed from its original form, and includes rhinoceros horn in its powdered form or shavings of rhinoceros horn"*) applicable to the proposed regulation 2.(3) trade in *"(b) a part or piece of rhinoceros horn,"* or *"(c) any product or derivative of rhinoceros horn..."* which begs the question what is the 'legal' definition of *"two rhinoceros horns"* – is it a defined, standard unit weight for two whole horns, with some sort of accumulation of *"parts or pieces"* and/or *"product or derivatives"* equivalent to a defined standard of two *"rhinoceros horns?"* If not, how will any such accumulation of *"parts or pieces"* and/or *"product or derivatives"* be consistently regulated and not become an abused, arbitrary stipulation? The risk is that any poorly regulated accumulation of *"parts or pieces"* and/or *"product or derivatives"* approach will allow more than *"a maximum of two rhinoceros horns"* to be subverted and abused – with potentially many *"parts or pieces"* and/or *"product or derivatives"* providing more latitude than was envisaged by an arbitrary *"a maximum of two rhinoceros horns."*

## **Burden of Proof of Rhino Ownership**

Under regulation 6.(1) of the draft Regulations (*"Issuance of a permit in respect of the export of rhinoceros horn"*) it states:

*"A person who is not a citizen or a permanent resident of the Republic of South Africa, but who owns a rhinoceros within the Republic of South Africa, and who intends to export the horn of such rhinoceros of which he or she is the owner, must submit..."*

Where is there any independent burden of proof of a given rhinoceros' 'ownership' in the short, medium or long term? The obvious risk is, that there will be a no independent burden of proof on how any *"person"* 'obtained' a given rhino's 'ownership:'



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- Potentially 'rhino ownership' could be 'obtained' for a mere fraction of market value, or no exchange of monies to obtain purchase/'ownership,' but any subsequent rhinoceros horn sales profits split in return (the profit derived regardless of any hope that the relevant "*Management Authority*" will be able to guarantee 100% that any "*specimen*" so imported "*is not to be used for primarily commercial purposes*");
- Potentially 'rhinoceros ownership' could be passed around on a rotating basis, just so "*a person who is not a citizen or a permanent resident of the Republic of South Africa*" can claim ownership of a rhino and export the related horn. Then a given rhino's ownership potentially, conveniently changes hands to another "*person who is not a citizen or a permanent resident of the Republic of South Africa*";
- So, when any given farmed rhinoceros' horn grows back, the whole merry-go-round of a given rhinoceros' 'ownership' and export of its horn can start again – basically, rather than the scourge of "*pseudo- hunting*" of rhinoceros for their horn, this 'rhino ownership' regulation is clearly a loop-hole for 'pseudo-rhino ownership' to ensue if due oversight and considerable resources are not deployed;
- For example, if a South African rhinoceros farmer has one thousand rhinoceros within their facility, then what is to stop some sort of time-share market developing, whereby a given rhinoceros' 'ownership' is rotated as a matter of convenience? For example, the time-share ownership of farmed rhinoceros happens to be available when horn harvesting approaches and/or already the given rhinoceros has genetically linked stockpiled rhino horn, just so the "*person*" (i.a.w. regulation 6.(1)) can conveniently benefit from the export of the subsequent rhino horn at a convenient, potentially profitable time?

Regardless of any comprehensive "*genetic profiling*" of rhinoceros on a Department database, where is the scrutiny, management and control of the potential loop-hole of a given rhinoceros' ownership and the exploitative market potential for 'pseudo-rhino ownership' that will no doubt ensue under regulation 6.(1) of the draft Regulations?

This appears to be a cynical attempt at international trade (in contravention of CITES and likely to tarnish South Africa's reputation with CITES Parties) in rhinoceros horn via an intentionally flawed "*Domestic*" draft Regulations policy – the only possible safeguard being the CITES "*Management Authority*" in the "*country of import or residence*" for any give "*person*" to ensure "*domestic legislative provisions are in place to ensure that the imported rhinoceros horn will not be used in a manner that is in contravention with the provision of CITES that apply to the importation of specimens of species included in Appendix I of the Convention.*"



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### ***"Personal Purposes" and "Person"***

There is an obvious risk, that the same *"person"* could receive a virtually limitless supply of rhinoceros horn, where the *"person"* is defined as:

*"A person who is not a citizen or a permanent resident of the Republic of South Africa, but who owns a rhinoceros within the Republic of South Africa, and who intends to export the horn of such rhinoceros of which he or she is the owner, must submit..."* - regulation 6.(1).; or

*"A person from a foreign state who visits the republic of South Africa, regardless of the purpose of such visit, and who has bought, received, accepted as a gift or donation, or who has in any way acquired rhinoceros horn..."* - regulation 6.(2).

The only limitation on any given *"person"* at regulation:

- 6.(1) is proof of any given rhinoceros' 'ownership' - which is open to abuse as indicated above;
- 6.(2) to export rhinoceros horn appears to be the subjective stipulation for *"personal purposes"* at regulation 3.(3) and a *"maximum of two rhinoceros horns"* - which could conceivably be applied multiple times for any given *"person"*;

So what is the definition of *"personal purposes?"* Does *"personal purposes"* include, or exclude subsequent trading in rhinoceros horn in the country of import for profit? How does the DEA, or relevant *"Management Authority"* know what any *"person"* intends to do with any rhinoceros horn obtained via the draft Regulations? How does *"personal purposes"* circumvent CITES current restriction on the potential international trade by any *"person"* as defined within the draft Regulations if the DEA, or *"Management Authority"* does not know what any given *"person"* does with any rhinoceros horn so obtained?

But of course, the DEA does not intend to have a care, because the onus will be on the CITES *"Management Authority"* in the *"country of import or residence"* for any give *"person"* to ensure *"domestic legislative provisions are in place to ensure that the imported rhinoceros horn will not be used in a manner that is in contravention with the provision of CITES that apply to the importation of specimens of species included in Appendix I of the Convention."*

So, with regard to regulation 6.(2) how much *"personal purposes"* per *"person"* is deemed appropriate (ie. is there a weight threshold for rhinoceros horn export limit proposed per *"person"* per year, per *"person"* per allowed number of visits...), or is there no real definition





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and limit proposed? Again, the obvious risk is, that without any boundary by the DEA and/or a given "*Management Authority*," this invites virtually limitless rhinoceros horn exportation; hardly a recipe likely to not stimulate demand and subsequent poaching of wild rhinoceros to try to infiltrate and cash-in.

### **"Any Way Acquired"**

In regulations 5.(2), 5.(3) and 6.(2) it states "*....bought, received, accepted as a gift or donation, or who has in any way acquired rhinoceros horn...*" what is the definition of "*in any way acquired rhinoceros horn?*"

This would seem to open a multitude of potentially illicit routes by which rhinoceros horn could be "*any way acquired*" regardless of any stipulation for an accompanying "*permit*." How does this "*any way acquired*" ensure (i.a.w. CITES) that an "*export permit may be issued only if the specimen was legally obtained?*"

### **Permits**

What 'conditions' will apply to the issuing of any required permit (i.a.w. Chapter 7 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004)), will there be any "*risk assessment*" and/or "*expert evidence*" sought before issuing a permit?

Or will permits ("*possession permit*" and/or "*selling permit*") be issued 'unconditionally' and if so, how does this ensure (i.a.w. CITES) that an "*export permit may be issued only if the specimen was legally obtained?*"

How does the DEA propose to detect fraud with the pre-condition (regulations 6.(1)(a) and (b); 6.(2)(a) and (b); 8(2)(a) and (b)) in any "*import permit issued by the Management Authority*" and/or "*written confirmation from the Management Authority*" stipulations?

### **Regulation of Proposed Domestic Trade in Rhinoceros Horn, or Part, Product or Derivative of Rhinoceros Horn**

In 2014, the DEA recommended in "*The viability of legalising trade in rhino horn in South Africa*" [11]:



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*“Taking into account the facts that the mechanisms for controlling a legal trade in South Africa are not yet in place, that the number of rhino horns in private stockpiles are uncertain, and that some private rhino owners are not yet compliant with permitting regulations, it is likely that lifting the moratorium at the present time will lead to laundering of illegal horn into legal stockpiles as well as smuggling of horn out of the country. These acts would tarnish South Africa’s reputation with CITES Parties and could jeopardise future attempts to legalise international trade in rhino horn.”*

So, this begs the question of how the uncertainty of the “*number of rhino horns in private stockpiles*” has been removed, and thereby mitigated the risk of “*laundering of illegal horn into legal stockpiles as well as smuggling of horn out of the country?*”

Has the draft Regulation’s “*national database*” been developed by the DEA, or is it still to be developed? If the latter, then the uncertainty still exists as to the origin of any stockpiled rhino horn that cannot be genetically linked to an existing farmed rhino and microchipped accordingly. How will any stockpiled rhino horn not genetically linked and pre-microchipped be removed from the system and not find its way onto the “*national database*” somehow?

A 2016 report from the IUCN Species Survival Commission (IUCN SSC) African and Asian Rhino Specialist Groups and TRAFFIC to the CITES Secretariat pursuant to Resolution Conf. 9.14 (Rev. CoP15) [12] concluded that South Africa’s stockpiles were not fully compliant with illicit stocks removed from potential laundering within any legal trade:

*“South African private sector stocks also continue to increase in part due to improved declaration and reporting. Whilst problems clearly remain regarding their tracking, the discrepancy between reported and estimated horn has narrowed since CoP16. A 2014 survey of white rhino owners in South Africa found that privately-held stocks totalled 1,697 pieces (6,256 kg) (Balfour et al. 2016), accounting for ~80-85% of the potential estimated weight of stocks expected from natural mortalities (i.e. 7,690 kg). Fear of reporting stockpiles to authorities in some provinces where such information can be leaked to criminals is a factor in under-reporting. It is also noted that some private sector rhino owners are believed to have sold horns into illegal trade (Huebschle 2016).”*

So, there would still seem to be significant questions regarding the credibility of South Africa’s declared and undeclared rhinoceros horn stockpiles.



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## **Conclusions**

In the absence of CITES parties approval (at CoP17 or before) for any international trade in rhinoceros horn, the draft Regulations appear to seek to circumvent any such formal CITES parties' approval.

The draft Regulations seek to place full onus for responsibility and policing of the draft Regulation's international (export) trade on CITES "*Management Authority*" in a given potential recipient's country. How can CITES itself possibly be resourced and prepared if there has been no formal CITES party approval to cope, manage and facilitate any "*import permit issued by the Management Authority*" and/or "*written confirmation from the Management Authority*" expected by the DEA? Or is the DEA expecting some level of complicity from certain "*Management Authority*" offices in say Vietnam?

Furthermore, where has the DEA proved by independent, verifiable science that the proposed trade will "*not be detrimental to the survival of the species*" as required by CITES?

At regulation 12 of the draft Regulations ("*Short title and commencement of these Regulations*") again it would appear and objections raised have already been disregarded as the "*Regulations for the domestic trade in rhinoceros horn, and products or derivatives of rhinoceros horn, 2017, and take effect on a date determined by the Minister by a notice in the Gazette.*" This implies that the Regulations will "*take effect*" at some point - fait accompli, regardless of any reservations, lack of supporting scientific basis for the Regulations, or the lack of any public support for the Regulations, or indeed CITES parties' approval.

Yours sincerely,

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