Namibian Law and Policy Related to

Defense of Life and Property from Wild Animals

August 2012

INTRODUCTION

The Legal Assistance Centre has been asked to explain what Namibian law permits people to do when their lives or property are threatened by wild animals, especially elephants. The LAC will review 4 sources:

A The Nature Conservation Ordinance No 4 of 1975;

B The National Policy on Human Wildlife Conflict Management, 2009

C The Measures & Guidelines for the Implementation of the National Policy on Human-Wildlife Conflict Management

D Roman-Dutch “Common Law”

SPECIAL NOTE #1

“Problem Animal” Terminology

The meaning of “problem animal” as used in everyday conversation by most people, is different from the meaning of “Problem Animal” as defined in law [the Nature Conservation Ordinance No. 4, of 1975]

1 When most people use the term “problem animal” in everyday conversation, they mean – “any wild animal causing a problem”. In this document, we will use the term “problem-causing animal” to describe that everyday meaning.

2 In law, the term “Problem Animal” means an animal declared a “Problem Animal” in the Government Gazette [under Section 53 of the Ordinance]. In fact only 4 species are declared “problem Animals”: baboons, lynx, dassies and black-backed jackals. Consequently, the use of the official “Problem Animal” term has very limited application, and does not apply to common “problem-causing animals” such as: elephants, lions, hyenas, cheetah, hippos, crocodiles etc.

3 MET’s National Policy on Human Wildlife Conflict Management, 2009, introduces the term “problem-causing animal” in the sense of #1 above, and provides strategies for improved management of “problem-causing animals”

A Nature Conservation Ordinance, No. 4 of 1975

[1] Definitions

“game” means specially protected game, protected game, huntable game, huntable game birds, [Schedules 3,4, 5,6, respectively] and exotic game

“hunt” (a) for the purposes of any provision of this Ordinance, excluding a provision of Chapter IV [Problem Animals], means by any means whatsoever to kill or attempt to kill, or to shoot or attempt to shoot at, or to pursue, to search for, to lie in wait for or to drive with intent to kill or to shoot at, or willfully disturb;

(b) for the purposes of any provision of Chapter IV [Problem Animals], means to –

(i) search for, trace, lie in wait for or pursue problem animals

(ii) set a trap, spring trap, net, drug, poison or any other means or device approved by the Director to capture or kill problem animals;

(iii) shoot at, or with dogs to hunt for, problem animals;

(iv) kill or capture problem animals in any other manner whatsoever approved by the Director;

“owner” in relation to a farm; land or land on which waters are situated, means –

(a) the person who is registered in a deeds registry as the owner of such farm or land, and includes every director of a company registered in a deeds registry as the owner of such farm or land; or

(b) the lawful heir of the owner referred to in paragraph *(a)*at the death of the owner; or

(c) where such farm or land is subject to a usufruct, the usufructuary thereof; or

(d) where such farm or land is owned by the State, the Government of Namibia;

(e) where such farm or land is owned by a local authority, the town clerk or the secretary of such local authority

“problem animal” means any animal declared a problem animal in terms of section 53

“wild animals” (a) for the purposes of any provision of this Ordinance, excluding a provision of Chapter IV [Problem Animals], means any vertebrate [including any bird, fish, and reptile), whether kept or bred in captivity or elsewhere, belonging to a non-domestic species and the habitat of which is in the Republic of South Africa or Namibia.

(b) for the purposes of any provision of Chapter IV [Problem Animals], means any vertebrate (including any bird, fish or reptile) belonging to a non-domestic species

SPECIAL NOTE #2

The Nature Conservation Ordinance allows defence from wild animals in 4 ways:

1 What people may do in defence from “problem-causing animals” [ mostly Chapter III, Sections 26, 27 and 37]

1. What people may do if certain wild animals have been declared “problem animals” in the *Gazette* [Chapter IV, Sections 52-64]
2. What the MET may do to manage “problem-causing animals” [mostly Sections 79, 81 and 84]
3. What the MET may do to manage “Problem Animals” [mostly Chapter IV, Sections 52-64 and 79, 81 and 84]

The “National Policy on Human-Wildlife Conflict, 2009” deals with “problem-causing animals”, both what people and the MET may do

Chapter III Wild Animals

*[Chapter III (Sections 25-51) includes what people can do to defend from “problem-causing animals” (i.e., NOT those wild animals which have been declared “Problem Animals” in the Gazette). See Special Note #1 above]*

SPECIAL NOTE #3

Wherever this Chapter III uses the term “owner or lessee of land” it also applies to the Conservancy Committee [of ‘communal’ conservancies] due to Section 24A(5) of the Nature Conservation Amendment Act No. 5 of 1996

[26] Hunting of specially protected game

*[Schedule 3 “Specially Protected Game” includes: elephant, rhino and hippo, and others. See Annex for complete list]*

[4](a) No provision contained in this section shall prohibit the owner or lessee of land [or Conservancy Committee] or occupier of communal land from killing specially protected game on such land in defence of a human life or to prevent a human being from being injured or to protect any livestock, poultry or domestic animal of such owner lessee or occupier whilst the life of such livestock, poultry or domestic animal is actually being threatened

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SPECIAL NOTE #4

Section 26(4)(a) above does NOT apply to defence of crops, or other property such as structures or water installations. See Section 37 below on grazing, cultivated lands & gardens

(b) Any person who kills specially protected game in terms of the provisions of this subsection shall report it in writing to the nearest nature conservator or at the nearest police office within 10 days thereafter.

(c) Any person who fails or neglects to comply with the provisions of paragraph *(b)* shall be guilty of an offence

[27] Hunting of protected game

*[Schedule 4 “Protected Game includes: aardwolf, cape hunting dog, cheetah, leopard, lion, silver jackal, crocodile and others. See Annex for complete list]*

[5](a) No provision contained in this section shall prohibit the owner or lessee of land [or Conservancy Committee] or occupier of communal land from killing specially protected game on such land in defence of a human life or to prevent a human being from being injured or to protect any livestock, poultry or domestic animal of such owner lessee or occupier whilst the life of such livestock, poultry or domestic animal is actually being threatened.

SPECIAL NOTE #5

Section 27(5)(a) above does NOT apply to defence of crops, or other property such as structures or water installations. See Section 37 below on grazing, cultivated lands & gardens.

(b) Any person who kills specially protected game in terms of the provisions of this subsection shall report it in writing to the nearest nature conservator or at the nearest police office within 10 days thereafter.

(c) Any person who fails or neglects to comply with the provisions of paragraph *(b)* shall be guilty of an offence

[37] Hunting of game to protect grazing, cultivated lands and gardens

(1)(a)

(i) the owner or lessee of land [or Conservancy Committee] or any employee in the permanent service of such owner or lessee, authorized thereto in writing by such owner of lessee, may hunt any game, excluding elephant, hippopotami and rhinoceros, destroying or damaging crops or plants on any cultivated land on such land; provided that no game shall be hunted in accordance with this subparagraph during the period from half an hour after sunset on any day to half an hour before sunrise on the following day, unless such cultivated land is not less than one hundred hectares in extent and enclosed with a game-proof fence prescribed in respect of kudu

SPECIAL NOTE #6

• land owners …..may defend their crops or plants on any of their cultivated land from any game [species listed in Schedules 3, 4, 5, 6 and exotic game] excluding elephant, hippopotami, & rhinoceros, destroying or damaging crops or plants during daylight hours, or during the night if the cultivated land is less than 100ha and enclosed in a kudu game-proof fence

• This provision does NOT apply to defence of human life, livestock, or other property (such as structures or water installations

(ii) any occupier of communal land may hunt any game, excluding elephant, hippopotami and rhinoceros, destroying or damaging crops or plants on any cultivated land on such communal land which has been laid out and is being cultivated by such occupier, provided such cultivated land is enclosed with a fence approved by the Director.

SPECIAL NOTE #7

• communal land occupiers …..may defend their crops or plants on any of their cultivated land from any game [species listed in Schedules 3, 4, 5, 6 and exotic game] excluding elephant, hippopotami, & rhinoceros, destroying or damaging crops or plants provided that such land is enclosed by a fence approved by the Director.

• This provision does NOT apply to defence of human life, livestock, or other property (such as structures or water installations)

(b) Any person who kills any game in terms of the provisions of this subsection shall report it in writing to the nearest nature conservator or at the nearest police office within 10 days thereafter.

(c) Any person who fails or neglects to comply with the provisions of paragraph *(b)* shall be guilty of an offence.

(2) (a) Whenever the Minister is convinced that it is necessary to protect grazing on a farm or any other land it may grant a permit to the owner or lessee of such farm or land [or to a Conservancy Committee] authorizing him, notwithstanding anything to the contrary in this Ordinance are contained but subject to the conditions, requirements and restrictions which are imposed when such permit is granted, within the period mentioned in the permit to hunt on such land the species of game, and the number thereof, mentioned in such permit: Provided that –

(i) if a company is the owner or lessee of such farm or land, such permit shall be issued to a director of such company or any other person nominated by such company;

(ii) if a local authority is the owner or lessee of such farm or land, such permit shall be issued to a person nominated by the council or board of such local authority;

(iii) if the lessee of such farm or land applies for permission to hunt huntable game, huntable game birds or exotic game in terms of such permit, the Minister shall grant such permit only after consultation with the owner of such huntable game, huntable game birds or exotic game.

(b) Any person to whom a permit referred to in paragraph *(a)* was granted, who contravenes or fails to comply with any condition, requirement or restriction of such permit, shall be guilty of an offence.

(3) If at the trial of a person on a charge for the contravention of section 30 [hunting of huntable game] or section 32 [hunting of huntable birds], it appears from the evidence that the game, the subject of the charge, was lawfully killed in terms of the provision of subsection (1), but the accused failed or neglected to report the killing thereof in accordance with the said subsection (1) such person may be convicted of a contravention of subsection (1)

(4) Any game killed lawfully in terms of this section, shall be the property of the person who so killed it.

Chapter IV Problem Animals

*[This covers what can be done if certain wild animals are declared “Problem Animals” in the Government Gazette]*

[53] Declaration as a problem animal

(1) The Minister may declare any wild animal a problem animal throughout Namibia or within such parts of Namibia as it may in its discretion determine.

(2) Whenever the Minister declares any wild animal a problem animal in terms of the provisions of subsection (1), the name of such wild animal and a definition of the part or parts of Namibia within which such wild animal is declared a problem animal shall be know by notice in the *Official Gazette*

SPECIAL NOTE #8

The MET has only declared 4 types of wild animals as “problem animals” in the *Gazette*: baboons, lynx, dassies and black-backed jackal. Therefore Chapter IV has very limited application. Rather, the MET uses Section 81 when dealing with wild animals threatening lives or property.

[54] Hunting of problem animals

(1) Notwithstanding anything to the contrary in this Ordinance contained but subject to the provisions of this Chapter, the owner or lessee of land may –

(a) at any time hunt any problem animal found on such land

(b) engage or request any other person at any time to hunt, or assist in the hunting of any problem animal found on such land

as long as such problem animal is on such land.

(2) Notwithstanding anything to the contrary in this Ordinance contained, any nature conservator, or any other such person authorized or instructed thereto by the Minister, may at any time hunt any problem animal and for that purpose such nature conservator or other person may enter upon any land without the consent of the owner or lessee thereof; Provided that whenever possible notice of such person’s presence on such land shall be given to the occupier thereof or any other person apparently in charge thereof.

SPECIAL NOTE #9

Where this Chapter IV, Problem Animals, Sections 52-64 [including 54 above], uses the term “owner or lessee of land”, it does NOT apply to communal farmers or conservancy committees of ‘communal’ conservancies

[56] Provision of aids

The Minister may on the conditions and at the prices determined by it provide any person, authorized by or in terms of this Chapter to hunt problem animals, with any apparatus and aids (including poison) which can be applied for in connection with the hunting of problem animals.

[57] Training of hunters

(1) The Minister may train nature conservators and other persons or cause them to be trained to hunt problem animals and to use any apparatus or aid which can be applied for or in connection with the hunting of problem animals and may for that purpose present any courses, or cause such courses to be presented, on such conditions (including payment of fees) as it may determine.

[62] Research in regard to problem animals

(1) The Minister may instruct any nature conservator or other officer and authorize any other person to do research in connection with the control of problem animals, subject to the conditions determined by it.

(2) Any person instructed or authorized in terms of subsection (1) to do research in connection with the control of problem animals may, notwithstanding anything to the contrary in this Ordinance contained, but subject to the provisions of this Chapter and the conditions imposed by the Executive Committee, hunt any problem animals or capture or kill any problem animals by any chemical, mechanical or biological means.

(3) In the exercise of the powers or the performance of the functions or duties granted to or imposed on him by or in terms of this section, any person may, subject to the conditions determined by the [Minister], enter upon any land without the consent of the owner or lessee thereof: Provided that whenever possible notice of such person’s presence on such land shall be given to the occupier thereof or any other person apparently in charge thereof.

[64] Limitations in relation to damages

If any person sustains damages as a result of the exercise or performance by a nature conservator or any other person of any power or function or duty granted to or imposed on such nature conservator or other person by or in terms of this Chapter, no person shall be compelled to compensate the damages concerned unless the person claiming the damages proves that the damages concerned was wantonly or negligently caused by such nature conservator or other person.

Chapter VII General

*[This covers what may be done by MET’s nature conservators, (not farmers)]*

[79] Appointment of nature conservators and honorary nature conservators

(2)(a) The Minister may appoint one or more persons whom it may deem suitable as honorary nature conservators of the whole of Namibia or for a part of Namibia or for a magisterial district for a period not exceeding three years at a time: Provided that the Minister may in its discretion appoint any person as honorary nature conservator for life.

[81] Powers, functions and duties of nature conservators and honorary nature conservators

(1) A nature conservator may exercise and perform and all those powers, duties and functions granted to or imposed on him by or in terms of this ordinance and may, in addition thereto –

(n) having been instructed thereto by the Minister, and with the permission of the owner or lessee of the land concerned, capture or destroy on such land any game or wild animal –

SPECIAL NOTE #10

• Because “communal land” is “vested” in the State, rather than “owned” by the State, the Traditional Authority may be the appropriate institution from whom permission should be sought.

• Where the communal land is part of a ‘communal’ conservancy, the relevant provisions of the National Policy on Human-Wildlife Conflict Management, 2009 should apply

(i) destroying or damaging crops or plants on cultivated lands, or cultivated trees on such land;

(ii) found in such numbers on such land that, in the opinion of the Minister, they will damage of may probably damage the grazing on such land;

(iii) which is or may possibly be a danger to human beings:

SPECIAL NOTE # 11

The Section above applies to defence of crops, plants on cultivated lands, and cultivated trees, and to defence of human beings, but NOT to other property (such as structures or water installations).

(o) whenever it is necessary for the proper exercise of his powers, or for the proper performance of his functions or duties, and whether for scientific or any other purposes –

(i) hunt, capture or keep any game or other wild animal….on any land or in an inland water owned by the State and, with the permission of the owner or lessee thereof, also on any land not owned by the State….

(p) if it is necessary for the exercise of his powers or the performance of his functions or duties, or if he deems it necessary therefor carry a fire-arm on his person even if he is on land which is not owned State;

(4) An honorary nature conservator shall have the power granted to a nature conservator by subsection (1)(a), and shall in addition thereto –

(*c*) at least once a year,….report to the Director ….and in such report provide information in relation to –

(iv) particular difficulties caused by game or wild animals

[84] Regulations

(1) The Minister may make regulations in relation to -

(*a*) any matter which is required or permitted to be prescribed in terms of this Ordinance;

(*j*) research in connection with problem animals and other animals which may possibly be declared problem animals;

(*m*) the payment of a reward for the destruction or extermination of problems animals, whether in general or in any specific area, the conditions on which such reward shall be paid and the proof to be submitted in connection with the payment of such reward;

SUMMARY HIGHLIGHTS #1 (from Ordinance)

What a PERSON may do to defend human life and property

against "problem-causing animals”

1 A person may kill “specially protected” or “protected” game in defence of human life, or to prevent a human being from being injured or to protect any livestock, poultry or domestic animal of the owner or occupier whilst the life of such animal is being threatened human life. [Section 26(4)(a); 27(5)(a)]

• See Schedules 3&4 for lists of Specially Protected & Protected Game. Currently Schedule 3 (Specially Protected Game) includes such animals as elephant, rhinoceros, and hippopotamus, while Schedule 4 (Protected Game) includes such animals as: cape hunting dog, cheetah, leopard, lion, silver jackal, crocodile. Neither Schedule includes buffalo.

• Note that the above relates to human life and domestic animals and NOT to other property such as gardens, water installations, or structures.

2 The owner or lessee of land [or ‘communal’ Conservancy Committee] or any employee in the permanent service of such owner or lessee, authorized thereto in writing by such owner of lessee, may hunt any game, excluding elephant, hippopotami and rhinoceros, destroying or damaging crops or plants on any cultivated land on such land; provided that no game shall be hunted in accordance with this subparagraph during the period from half an hour after sunset on any day to half an hour before sunrise on the following day; unless such cultivated land is not less than 100 hectares in extent and enclosed with a game-proof fence prescribed in respect of kudu. [Section 37(1)(a)(i)]

3 Any occupier of communal land may hunt any game, excluding elephant, hippopotami and rhinoceros, destroying or damaging crops or plants on any cultivated land on such communal land which has been laid out and is being cultivated by such occupier, provided such cultivated land is enclosed with a fence approved by the Director. [Section 37(i)(a)(ii)]

• Any person who kills an animal under subsections in #s 1, 2 & 3 above must report the killing to the nearest nature conservator or at the nearest police office or be guilty of an offence. [Sections 26(4)(b&c);27(5)(b&c);37(1)(b&c)]

• Note that #s 2& 4 above do NOT permit the hunting of elephant, hippopotami, or rhinoceros which are destroying or damaging crops or plants

SUMMARY HIGHLIGHTS #2 (from Ordinance)

What a PERSON may do in relation to a “Problem Animal”

1 A “Problem Animal” is one which has been declared as such in the *Government Gazette* under [Section 53(1&2)]. However, since the only species which have been declared “Problem Animals” are baboons, lynx, rock dassies and black-backed jackals, this provision has very limited application.

2 The owner or lessee of land may – at any time hunt any problem animal found on such land, or engage or request any other person at anytime hunt, or assist in hunting of any problem animal found on such land as long as such problem animal is found on such land. [Section 54(1)(a&b] [It is not clear whether this applies to communal land?]

SUMMARY HIGHLIGHTS #3 (from Ordinance)

What the MET may do in relation to “problem-causing animals”

1 The Minister may declare any wild animal a “Problem Animal” in the *Government* Gazette [Section 53] and then deal with it under [Chapter IV, in which case see Summary Highlights #4]. However, this has proved impractical because of the time involved, and only 4 species have been declared “Problem Animals”: baboons, lynx, rock dassies and black-backed jackals, Therefore this provision has had very limited application.

2 The Minister may appoint…honorary nature conservators…[Section 79(2)(a)]

3 A nature conservator [including honorary nature conservators]….having been instructed by the Minister, and with the permission of or the owner or lessee of the land concerned, may capture or destroy on such land any game or wild animal – destroying or damaging crops or plants…or which may possibly be a danger to human beings. [Section 81(1)(n)]

4 A nature conservator may, whenever it is necessary for the proper exercise of his powers, or for the proper performance of his function or duties…. hunt, capture or keep any game or wild animal…on any land…owned by the State and with the permission of the owner or lessee thereof, also on any land not owned by the State [Section 81(1)(o)(i)]

SUMMARY HIGHLIGHTS #4 (from Ordinance)

What the MET may do in relation to a “Problem Animal”

1 A “Problem Animal” is one which has been declared as such in the *Government Gazette* under [Section 53(1&2)]. However, since the only species which have been declared “Problem Animals” are baboons, lynx, rock dassies and black-backed jackals, this provision has very limited application.

2 An owner or lessee of land may – at any time hunt any problem animals found on such land [Section 54(1)]

3 Any nature conservator or other person authorized and instructed by the Minister, may at any time hunt any problem animal and for that purpose may enter upon any land without the consent of the owner or lessee thereof….provided that whenever possible notice of such person’s presence on such land shall be given to the occupier thereof or any other person apparently in charge thereof [Section 54(2)]

4 The Minister may provide any person authorised to hunt problem animals with any apparatus and aids in connection with the hunting of problem animals [Section 56]

5 The Minister may train nature conservators and other persons to hunt problem animals and to use apparatus or aids in connection with such [Section 57]

6 The Minister may instruct any nature conservator or other officer or any other authorized person to do research in connection with the control of problem animals…which may include hunting, capturing or killing such problem animal by any chemical, mechanical or biological means [Section 62(1&2)]

B National Policy on Human-Wildlife Conflict Management, 2009

SPECIAL NOTE # 12

There are 2 publications on MET’s Policy on Human-Wildlife Conflict Management:

1. National Policy on Human-Wildlife Conflict Management, 2009
2. Measures and Guidelines for Implementation of the National Policy on Human-Wildlife Conflict Management.

This Section B of this paper deals with #1, while Section C further below deals with #2

Glossary

“Problem-causing animal” An identified individual wild animal that at any point in time, harms destroys or damages human life or property

“wild animal” Any wild animal that is included in Schedules 3, 4, and 5 of the Nature Conservation Ordinance (Ordinance 4 of 1975, as amended)

[2.4.2] Community-Based Natural Resource Management

*Strategic Approach*

• increasing delegation of authority over wildlife to conservancies

[2.4.3] Delegation of decision-making authority

“As in the past, people should have the right to defend themselves or their property against a wild animal if attacked, and this policy does not aim to remove that right”

The specific objectives of this strategy are:

[2.4.3.1] “to delegate decision-making authority over the destruction of identified problem-causing animals to staff members of the Ministry and communal area conservancies so that the correct individual animal can be speedily destroyed, providing protections to people and their property”

*Strategic Approach*

“The Minister will authorize staff members…to determine when to destroy a problem causing animals under the guidelines provided in Annex 1. The authorized staff member will be responsible for deciding whether a problem-causing animal should be destroyed by MET personnel or by a conservancy to which authority has been delegated by the MET.”

“Government may delegate authority to specific conservancies to destroy problem-causing animals when the region to which the specific conservancy falls has an appropriate framework for determining when a problem-causing animal can be destroyed and to use the products derived from the animal, except elephants, rhinoceros and hippopotamus…”

“A conservancy to which authority to destroy a problem-causing animal has been delegated may only take such action if it is given written permission by the authorized staff member.”

“The authorized staff member will be responsible for determining that the animal was destroyed for good reason i.e. according to the reasons provided in the decision-making framework contained in the conservancy’s wildlife management plan”.

“Conservancies will have the right to inform the professional hunter (PH) with whom they have an existing contract or any other hunter if the contracted PH is not available., of the opportunity to hunt a problem-causing animal for which they have been given permission to destroy by the authorized staff member.”

[2.4.4] Developing and implementing the best appropriate technical solutions for mitigating HWC

The specific objective of this strategy is:

To promote the development and application by all relevant stakeholders of appropriate and effective plans and measures to prevent or reduce HWC

*Strategic Approach*

Work with relevant stakeholders to develop, implement, test and disseminate the best possible methodologies for preventing or reducing HWC. The Government will do this by:

• Training of stakeholders in the use of specific methodologies

• provide funding through GPTF to stakeholders in need of financial assistance to test and/or implement mitigation measures

[Observation]

This Strategy could potentially include agreements in advance with specific stakeholders to test/use methods to repel threatening animals

[2.4.8] Removal of problem-causing animals

*Strategic Approach*

“In order to address the need for removal of individual animals from populations the Ministry will delegate conditional authority to staff members and conservancies for the destruction of identified –problem causing animals in terms of Section 2.5.3 above, of this policy document”

[ANNEX 1] Guidelines concerning the delegation of authority to Regional Offices of MET and other institutions to determine when to destroy a problem-causing animal

“Authorised staff members of the Ministry of Environment and Tourism and other designated institutions will determine when to destroy a problem-causing animal…”

[ANNEX 2] Guidelines for the destruction of a problem-causing animal by a conservancy to which authority has been delegated by the MET

“Authorised staff members of the Directorate…., may provide written permission to an authorized conservancy to destroy a problem-causing animal, based on the following criteria and procedures”

SUMMARY HIGHLIGHTS #5

(from National Policy on Human-Wildlife Conflict Management, 2009)

The “Policy” quickens the response time of the MET to deal with “problem causing animals” by delegating authority in 2 steps:

1. The Minister may authorize staff members [such as regional MET staff] to determine when to destroy a problem causing animal. Those authorized staff members will be governed by the written Guidelines in Annex 1 of the “Policy”.
2. Those authorized staff members may then delegate the task of destroying a problem causing animal [which has been identified for destruction under 1 above] to other MET staff or to an authorized Conservancy, or to a PH working for the authorized Conservancy. Such delegation will be governed by the written Guidelines in Annex 2 of the “Policy”.

\*[While the Policy indicates the possibility of delegating decision-making authority to communal area Conservancies, it most often describes their role as including the destruction of a problem-causing animal if so authorized by MET staff].

C Measures and Guidelines for Implementation of the National Policy on Human-Wildlife Conflict Management

This Section C of this paper deals with the 2nd publication on MET’s “HWC” Policy, “Measures and Guidelines for Implementation” of the National Policy on Human Wildlife Conflict. It provides useful information in Chapter 2 in understanding the problem of HWC, and in Chapter 3 in managing the problem of HWC. Of particular interest here are Sections:

3.1 Conflict Management through Land Use Planning [thereby reducing the conflict]

3.4 Species Behavioral Information Pertaining to HWC [species information which helps farmers decide how to more effectively deal with that particular wildlife species]

3.5 Mitigation, Protection and Preventative Measures [This section provides 20 measures that may be taken to manage HWC. Section 3.5.8 “Guarding Fields” (see SUMMARY HIGHLIGHTS #6 Box) lists a number of measures which can be used to deal with elephants which are approaching or raiding crops: “firing weapons to scare them away; use of thunder flashes and broadcasting elephant alarm calls; driving elephants away by shouting, cracking whips, beating drums and/or tin cans, blowing vuvuzelas, throwing stones, lighting fires and keeping them burning at night close to arable lands…”]

SUMMARY HIGHLIGHTS #6

(from Measures and Guidelines for Implementation of the

National Policy on Human-Wildlife Conflict Management)

What a PERSON may do when Guarding a field

When guarding a specific fields or crops from wild animals especially elephants, hippos and buffaloes, methods….

which can be used to deal with elephants which are approaching or raiding crops: “firing weapons to scare them away; use of thunder flashes and broadcasting elephant alarm calls; driving elephants away by shouting, cracking whips, beating drums and/or tin cans, blowing vuvuzelas, throwing stones, lighting fires and keeping them burning at night close to arable lands…”

D Common Law

“Common Law” is that body of law which has been established not by a legislature (such as the National Assembly in Namibia) and known as statutory law, but by decisions of courts which: (a) define the law where there is no statutory law; or (b) interpret the fine boundaries and distinctions of statutory law. Such “common law” has been applied to the defense of life and property and could be used or tested in cases related to human-wildlife conflict.

However, a principle of such defense in Roman-Dutch common law (which applies to Namibia) depends on establishing, for instance, that the act of shooting a wild animal was necessary – that there was no other course of action. Such a defense by “necessity” depends on the individual specific conditions of that particular case, so no generalizations can be made. In the hypothetical case of shooting an elephant to protect a water installation, even a successful defense in one case does not mean that in every instance, one can justify shooting an elephant that was damaging a water installation.

SUMMARY HIGHLIGHTS #7

Roman-Dutch “Common Law”

May a PERSON shoot an elephant to defend property (e.g. water installation)?

1 If, for instance, a person shot an elephant to defend a water installation, he could be charged with an offence under the Nature Conservation Ordinance, No. 4, 1975 because there is nothing in that statue which permits such an action [unlike in cases of defense of human life or livestock for example].

2 A person who shot an elephant in order to defend his water installation would have to establish a defense in court based on the common law principle of “necessity”.

3 The appropriate court would adjudicate a decision based on “necessity”, and as the determination of “necessity” would be different in each case, no generalization can be made about the outcome.

4 Even if the court defense were successful in one case, that does not mean that in a similar case [but not identical since no 2 cases are identical], the court’s decision would be the same.

ANNEX

SCHEDULE 3 Specially Protected Game

Mountain Zebra (Equus zebra hartmannae

Giraffe (Giraffa camelopardalis)

Klipspringer (Oreotragus oreotragus)

Elephant (Loxodanta africana)

Rhinoceros (Diceros bicornis & Ceratotherium simum)

Impala (Aepyceros melampus)

Hippopotamus (Hippopotamus amphibious)

Black-faced Impala (Aepyceros petersi)

Zebra (Equus burcelli - species)

SCHEDULE 4 Protected Game [only the “animals” in this Schedule are listed here because the birds are not considered relevant to this document]

(i) Animals

Aardwolf (Proteles cristatus)

Bat-eared Fox (Otocyon megalotis)

Roan Antelope (Hippotragus equines)

Tsesseby (Damaliscus lunatus)

Dikdik (Madoqua kirki damarensis)

Blue Wildebeest (Connochaetes taurinus)

Bushbuck (Tragelaphus scriptus)

Duiker (Sylvicapra grimmia)

Antbear (Orycteropus afer)

Clawless Otter (Aonyx, capensis)

Scaly Anteater (Manis temmincki)

Cheetah (Acinonyx jubatus)

Spotted-necked Otter (Lutra maculicollis)

Hedgehog (Erinaceus frontalis)

Monitor (Veranus niloticus; V albigularis)

Leopard (Panthera pardus)

Pythons (Python sebae; Python anchietae)

Bush Baby (Galago senegalensis)

Oribi (Ourebia ourebi)

Honey Badger ((Mellivora capensis)

Reedbuck (Redunca arundinum)

Red Hartebeest (Alcelaphus buselaphus)

Silver Jackal (Vulpes chama)

Tortoises (Testundinidae)

Steenbok (Rhaphicerus campestris)

Sable Antelope (Hippotragus niger)

Plains Zebra (Equus burchelli)

Waterbuck (Kobus ellipsiprymus)

Sitatunga (Tragelaphus spekei)

Lechwe (Kobus leche)

Crocodile (Crocodylus niloticus)

Puku (Kobus vardonni)

Sharp’s Grysbok (Rhaphicerus sharpei)

Cape Hunting Dog (Lycaon pictus)

Lion (Panthera leo)

Schedule 5 Huntable Game

Bushpig (Potamochoerus porcus)

Buffalo (Syncerus caffer)

Oryx (Oryx gazelle)

Kudu (Tragelaphus strepsiceros)

Warthog (Potomachoerus aethiopicus)

Springbok (Antidorcas marsupialis)

Hartebeest (Alcelaphus caama)