

31st March 2021

Principal Secretary,
State Department for Wildlife,
The Ministry of Tourism and Wildlife,
P.O Box 41394 - 00100, Nairobi



Dear Prof. Fred H. K. Segor,

EAST AFRICAN WILD LIFE SOCIETY'S COMMENTS AND RECOMMENDATIONS FOR THE REVIEW OF THE WILDLIFE (CONSERVATION AND MANAGEMENT) ACT NO 47 OF 2013

East African Wild Life Society (EAWLS) herewith submits its comments on the drafting of the new Bill on wildlife conservation and management in response to the notice issued by your office inviting the public and general stakeholders to submit comments on the subject matter by 31st March 2021.

EAWLS is a membership-based conservation Non-Governmental Organisation registered in Kenya, whose mission is to advocate for environmental conservation in East Africa with special interest in Kenya. Our advocacy work largely focuses on working with governments to formulate policy, legal and institutional framework that govern the conservation of wildlife, forests, wetlands and marine natural resources; monitoring the implementation of such policies and legislation and building the capacity of institutions (government and non-state actors) to deliver on their mandates. Having a following of thousands of members and in partnership with like-minded stakeholders EAWLS organizes natural resource forums for professional deliberations on conservation issues and to formulate related laws and policies at both county and national level. Through this approach, EAWLS has facilitated the formulation and review of various natural resource laws in Kenya, Wildlife Conservation and Management Act No. 47 of 2013 included.

EAWLS through Kenya Wildlife Conservation Forum (KWCF) facilitated discussions to build consensus among stakeholders and lobbied the legislators leading to the enactment of the Wildlife Conservation and Management Act 2013 which puts EAWLS at a high pedestal in making contributions to its review.

As a key stakeholder, EAWLS deployed multiple methods to ensure the views of its members count in this process. The methodology utilized included internal review and synthesis of the national wildlife policy, the Wildlife Act 2013 and the Statute Law (Miscellaneous Amendments) Act, 2018. This was to make the documents simple for the general public and especially our members to understand and to be able to contribute to the process meaningfully. EAWLS also conducted an online survey with its members and the general public on the key thematic areas identified as wildlife user rights, compensation, the Wildlife Conservation Trust Fund; institutional and engagement framework, benefit-sharing and incentives. Over 100 people participated in the survey. The survey was complemented by expert interviews and an internal review by EAWLS staff. These engagements culminated into a memo with comments and recommendations attached herewith this letter.

Summary of Key Comments and Recommendations

- 1) Generally, EAWLS members and the general public feel that the enactment of the Wildlife Conservation and Management Act 2013 was a great milestone for the wildlife sector; having a new National Wildlife Policy Sessional Paper No.1 of 2020 is an added success. As such it is of great interest that these gains be secured even as the new Bill is being drafted. More so the new Act should be formulated in the spirit of the policy by capturing all the guiding principles.
- 2) We also note that the issue of benefits is still ambiguous in both the Wildlife Act 2013 as well as in the Statute Law (Miscellaneous Amendments) Act, 2018 yet it has been overemphasised in the policy and national plans. We, therefore, recommend that the process to develop regulations and guidelines could

be initiated to run alongside the review of the Act to paint a clear picture of the definition of benefits and how these benefits can be shared. This will ensure that it is clearly defined in the Act.

- 3) The current institutional arrangement is not responsive to the aspirations of the 2013 act nor the new national wildlife policy. There is a pressing need to create a structure that would streamline both national and county functions. We recommend the establishment of a regulatory authority that would handle all matters of wildlife user rights at the national level. We also recommend the formation of advisory boards at either county or regional level to oversight wildlife conservation and management in the devolved units. We further recommend that research functions be withdrawn from the mandates of Kenya Wildlife Service and assigned to the Kenya wildlife Training and Research Institute so that the Service solely focuses on the conservation and management of wildlife in parks. The essence is to distinctively separate roles and minimizes conflict of interests brought about by conflicting functions. This will streamline the devolution of the management of wildlife resources as envisioned in the policy.
- 4) We have noted a lax in the provisions of the Act regarding regional cooperation and international commitments. We noted that the Act only requires the Cabinet to report on the progress of Kenya's implementation of wildlife-related bilateral or multilateral environmental agreements to which Kenya is a party as part of the biannual wildlife conservation status report under section 50(4). We find this not stringent enough considering the emphasis given to transboundary resource management in the Policy. We, therefore, recommend that the Cabinet Secretary is compelled to provide a separate standalone report on the implementation of wildlife-related international instruments; and to formulate a strategy for transboundary resources which in Kenya can be within or beyond Kenya's territorial borders.
- 5) Past experience has shown delayed implementation of some parts of the law due to lack of regulations, guidelines and standards required to give effect to the Act. We, therefore, recommend that either Cabinet Secretary is compelled to table an annual report on the progress in developing these pieces of subsidiary legislation and or a timeframe is inserted in every clause such legislation is required.

NB: Please find below a detailed schedule with our comments and recommendations.

We hope that you will find our comments and recommendations useful and that they will be highly considered in the drafting of the new Wildlife Bill. We are available to substantiate any of our recommendations when called upon by your office.

Thank you.

Yours Faithfully,



Nancy Ogonje

EXECUTIVE DIRECTOR

RIARA ROAD, OFF NGONG ROAD
P.O. BOX 20110, 00200 City Square NAIROBI - KENYA Tel: +254 (020) 3874145, Fax: +254 (020) 3870335
Cell: 0734 600632, 0722 202473 Email: info@eawildlife.org Website: www.eawildlife.org

PATRONS: THE PRESIDENT OF KENYA, THE PRESIDENT OF TANZANIA, THE PRESIDENT OF UGANDA
PUBLISHER OF THE SOCIETY MAGAZINE 'SWARA' AND AFRICAN JOURNAL OF ECOLOGY

EAWLS SCHEDULE OF PROPOSED AMENDMENTS TO THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013, NO. 47 OF 2013

Section/theme	Situational analysis (Provision of the Wildlife Act 2013 as well as the 2018 Amendments)	Recommendations	Rationale
Section 2: Application	This section states that this Act shall apply to all wildlife resources on public, community and private land, and Kenya territorial waters	Delete Section 2 of the Act.	<ul style="list-style-type: none"> The Application spirit in section 2 is already captured in the long title of the Act Additionally, application of the Act is procedurally captured in the long title of the Act which is a tradition within commonwealth jurisdictions. Leaving section 2 adds no value to the Act
Section 3: Interpretation	<p>Section 2 of the Act provides that the Act shall apply to all Wildlife Resources. Wildlife resources have also been used in a couple of sections within the Act yet it is not defined under the interpretation section of the Act</p> <p>The word “benefit” has also been used 116 times in the Act but has not been defined in this section.</p> <p>Some terms are either introduced or redefined in the Statute Law (Miscellaneous Amendments) Act, 2018 such as “deal”, “trophy” and “subsistence hunting” that needs to be adopted in the revised Act</p>	<ul style="list-style-type: none"> Amend section 3 of the Act by inserting the definition of Wildlife Resources as valuable natural endowments found in gazetted protected areas (national parks, national reserves, wetlands, marine and national sanctuaries) and within private and community lands. Amend section 3 by inserting a definition of “benefit” Delete the definition of the words “dealer” and “trophy” and substitute therefore with the following new definitions- “deal” means- (a) to sell, purchase, distribute, barter, give, receive, administer, supply, or otherwise in any manner deal with a trophy or live species; (b) to cut, carve, polish, preserve, clean, mount or otherwise prepare a trophy or live species; (c) to transport or convey a trophy or live species; (d) to be in possession of any trophy or live species with intent to supply to another; or (e) to do or offer to do any act preparatory to, in furtherance of, or for the purpose of, an act specified above; <p>“trophy” includes any bone, claw, egg, feather, hair, hoof, skin, tooth or tusk of an animal, and for any species of plant, any bark, branch, leaf, log, sip or extract and includes any other durable portion whatsoever of that animal or plant whether processed, added to or changed by the work of man or not, which is recognizable as such.</p>	<ul style="list-style-type: none"> Wildlife Resources is used 32 times in the Act and qualifies to be defined to give an express meaning to it. Left undefined, will be subject to misinterpretation. Likely to present a gap that will be exploited for poaching, pollution and encroachment of wildlife and their habitats. EAWLS’s proposed definition is in tandem with ensuring sustainable exploitation, utilisation, management and conservation of the environment and natural resources under the provisions of Article 69 of the Constitution of Kenya. Failure to define “benefit” may create room for misinterpretation and consequentially, an abuse
Section 4: General principles	This section highlights key principles to reflect the spirit of both the constitution of Kenya, Wildlife policy and the Act. The current Act however has left out certain	Amend section 4 to include principles on the precautionary principle, use of scientific and indigenous knowledge as well as observing the national values and principles of governance	<ul style="list-style-type: none"> The Act needs to capture the spirit of the new policy and therefore the need to align the principles to those prescribed in the policy document. Articles 10(2) and 232 of the

Section/theme	Situational analysis (Provision of the Wildlife Act 2013 as well as the 2018 Amendments	Recommendations	Rationale
	constitutional principles as well as some principles that have been largely used in the Act and policy.	provided for in Article 10 (2) and 232 of the Constitution of Kenya	<p>Constitution require that all state organs/entities must observe the national values and principles of governance.</p> <p>These principles are very important as the whole Act must be guided by the spirit of the principles. Also, the principles are crucial in guiding the state officer in interpreting or implementing any section of this Act.</p>
Section 5: National Wildlife Conservation and Management Strategy	<p>Provides for the development of the national wildlife conservation and management strategy.</p> <p>Development of the strategy should be participatory and must be done within the guidance of the general principles under this Act.</p>	Amend section 5(1) The Cabinet Secretary shall, subject to subsection (5-public participation) and general principles in section 4, formulate and publish in the Gazette national wildlife conservation and management strategy at least once every five years, in accordance with which wildlife resources shall be protected, conserved, managed and regulated.	<ul style="list-style-type: none"> • Strategy development should be participatory to create ownership and to ensure collaborative and harmonized implementation. <p>The CS is a State Officer and therefore must be bound by the general principles under section 4 and this must be expressed to avoid unnecessary excesses from any state officer acting with impunity</p>
Section 7: Functions of the Service	<p>There are new policy prescriptions that have a bearing on the functions of the Service.</p> <p>One of the functions of the Service is to conduct and co-ordinate, all research activities in the field of wildlife conservation and management and ensure application of research findings in conservation planning, implementation and decision making;</p>	<p>Amend section 7 (l) by deleting the words “conduct and coordinate all research activities in the field of wildlife conservation and management and” and add the functions below to functions of the Service highlighted in the Principal Act:</p> <ul style="list-style-type: none"> • Promote the conservation of transboundary wildlife resources, - Promote the use of indigenous knowledge in the conservation and management of wildlife resources, • Develop a framework for engaging young volunteers and senior citizens in wildlife conservation and management, • Promote partnerships between communities and investors on viable wildlife-based enterprises to enhance income generation and improvement of livelihoods, • Establish a framework for inter-agency cooperation and stakeholder engagement for effective management of wildlife in Kenya, • Mainstream wildlife resources into frameworks in blue and green economies 	<ul style="list-style-type: none"> • These amendments will be in line with the Policy Prescription No. 1 of 2020 on Wildlife Policy. The Act establishes a Training and Research Institute that should be mandated to conduct and coordinate all research activities. The Service should just be a beneficiary of the research activities by ensuring their application in decision making
Section 11(4): Qualification	a)holds a minimum qualification of a postgraduate	<ul style="list-style-type: none"> • Amend to read a)Hold a minimum postgraduate degree in natural 	<ul style="list-style-type: none"> • This is a senior management role that requires someone with experience at the management

Section/theme	Situational analysis (Provision of the Wildlife Act 2013 as well as the 2018 Amendments)	Recommendations	Rationale
of Director General	degree in a relevant field, from a university recognized in Kenya; (b) has at least fifteen years' working experience in a relevant profession; and	resources management, finance, business, or strategic management from a university recognized in Kenya; (b) has at least fifteen years' professional experience at the management level in a similar field.	level; specifying the qualification would guide the Board on the criteria for selecting suitable candidates.
Section 21: Bioprospecting	The current Act provides for the development of guidelines and regulations on bioprospecting. It also highlights the procedure of applying for bioprospecting as a form of wildlife utilization. Bioprospecting can be done within or outside protected areas and therefore the CS needs the policy to guide decision making	<ul style="list-style-type: none"> • Insert a sub-section on the formulation and gazettement of a Bioprospecting Policy with emphasis on public participation 	<ul style="list-style-type: none"> • This is in line with Policy Prescription No. 1 of 2020 on Wildlife Policy. Having a policy in place will give overarching guidance and principles on bioprospecting within and outside protected areas
Section 23: Establishment of Wildlife Endowment Fund	This section under the current Act provides for the establishment of an endowment fund, sources of funds, the board of trustee and the functions of the fund. The endowment fund is deemed not appropriate for the functions which the Act envisions for the Fund and it is mostly associated with a non-profit organisation	<p>Substitute the whole section with the provisions under the Statute Law (Miscellaneous Amendments) Act, 2018:</p> <p>23. (1) There is established a Wildlife Conservation Trust Fund that shall be vested in a governing body established in accordance with subsection (2)-</p> <p>(2) The governing body referred to in subsection (1) shall serve as a public-private partnership and comprise -</p> <ol style="list-style-type: none"> a Chairperson being appointed the Cabinet Secretary; the Principal Secretary in the State Department for the time being responsible for matters relating to wildlife who shall be the Vice-Chairperson; the Principal Secretary in the State Department for the time being responsible for matters relating to finance; the Director General of the Service who shall be the Secretary; four representatives from the private sector, who shall have technical experience in either philanthropy, law, natural resources, finance, business and investment matters; and a representative from the office of the Attorney General <p>(3) There shall be paid into the Wildlife Conservation Trust Fund -</p> <ol style="list-style-type: none"> monies appropriated by Parliament; a proportion of such monies as may be levied for the payment of environmental services by beneficiaries in 	<ul style="list-style-type: none"> • The new policy directs that a fund be established to support the implementation of the Wildlife Conservation and Management Strategy. • Endowment fund is restrictive looking at the nature of functions to which the fund has been established. Recognising the contribution of the county government towards to the fund to finance particular programmes is key. It is also important to allow none state actors to access this fund as the principal principle of the Act and the Policy is that wildlife belongs to people (Public good) and not the state.

Section/theme	Situational analysis (Provision of the Wildlife Act 2013 as well as the 2018 Amendments)	Recommendations	Rationale
		<p>productive and service sectors, and for biodiversity offset schemes that compensate for conservation impacts as a contribution towards the Wildlife Conservation Trust Fund as the Cabinet Secretary may, upon the recommendation of the governing board, determine;</p> <p>c) monies for payment of environmental services and biodiversity offset schemes in which entities make payments directly to the Wildlife Conservation Trust Fund; monies from debt-for-nature transactions;</p> <p>d) income from investments made by the governing board;</p> <p>e) such grants, donations, bequests or other gifts as may be made to the Fund.</p> <p>f) monies provided to the Fund by a county government on agreed programmes</p> <p>NB: Maintain the functions as are in the amendments</p>	
<p>Section 24 and 25: Human-Wildlife Conflict and compensation</p>	<p>The current wildlife Act provides for compensation for human injuries or death, loss or damage to crops, livestock or other property from wildlife specified in the Third Schedule. The Third schedule specifies wildlife species upon which compensation shall be paid. The list was amended in the Statute Law (Miscellaneous Amendments) Act, 2018 to exclude poisonous snake, shark, stone fish, whale, sting ray, wild pig.</p> <p>Section 24 provides that the government shall establish an insurance scheme. The word “Government” can be misleading as it can refer to either the county or national level.</p>	<ul style="list-style-type: none"> • Maintain section 5 as it is. It provides a good backstopping by ensuring no compensation is paid in cases where someone may have been construed to commit an offence under this Act • Maintain section 24 on establishment of an insurance scheme • Amend section 24 of the Act by deleting the word “Government” appearing in the introductory section in subsection (1) and substituting therefor the words “Cabinet Secretary”; 	<p>Compensation and establishment of an insurance scheme have been provided for in the new wildlife policy. 83.5% of EAWLS members supported the need to retain compensation for human injuries or death, loss or damage to crops, livestock or other property. Establishment of insurance scheme could be more sustainable than paying compensation. This should be a core part of the national budget.</p> <p>The new policy also envisages a coexistence between humans and wildlife</p> <p>The word “Government” is likely to confuse especially where we have two levels of government (County & National). It is also for consistency. The Act largely makes reference to Cabinet secretary and not Government</p>
<p>Engagement framework with county governments (County Wildlife)</p>	<p>Recognition of County governments, CSOs and local communities in the conservation and management of wildlife: Currently, the national reserves under the management of County governments and the conservancies combined cover an area more than the</p>	<p>1) Form a regulatory authority within the new Act to deal with all issues wildlife utilisation including bioprospecting (currently this functions is partially with KWS and committee). The authority is to be registered as an independent body under the ministry as at the time responsible for wildlife</p>	<p>The policy directs that an engagement framework between the Service and the county governments be established and therefore it is imperative that this is legislated in the new Act. Recognising the fact the conservation and management of wildlife is vested among diverse and varied stakeholders, there is a great need to have an independent body that would</p>

Section/theme	Situational analysis (Provision of the Wildlife Act 2013 as well as the 2018 Amendments	Recommendations	Rationale
<p>Conservation and Compensation Committee Sections 3,18, 19, 25 , 43, 68 etc</p>	<p>KWS managed National Parks. The national parks, reserves and sanctuaries collectively cover 12% of the Kenyan landmass. The conservancies on the other hand according to the Kenya Conservancy Status Report of 2016 cover 11% of Kenya’s landmass (6.36 million hectares), and are managed either by the community and private investors. These statistics show that county governments, the private sector and local communities are key stakeholders in the conservation and management of wildlife in Kenya and should not be disregarded by the principal Act.</p> <p>Composition of the Committee: The recent amendment to the Act of 2018 reduces the representation from the counties and the local community in the Wildlife Conservation and Compensation Committee which waters down the critical role they play with regards to the functions associated with the committee. The amendments further change the process of appointing the chairperson from a competitive selection to County commissioner. The current composition of the committee gives it more of a national outfit. This marginalization of counties and local stakeholders is a threat to wildlife conservation as it makes especially communities feel alienated from wildlife and its conservation. Public participation may in practice be very limited if the number of representatives of non-governmental actors is much smaller compared to that of government officials.</p> <p>Functionality: The Wildlife Conservation and Management Act, 2013 outlines about 10 functions performed by the committee,</p>	<ol style="list-style-type: none"> 2) Establish county/regional wildlife conservation board to provide oversight on the management of wildlife both in protected areas and outside and advise the ministry on the same (whether the protected area is managed by KWS, corporate, community or individual). The boards should be adequately resourced. 3) KWS functions to be purely conservation and management of areas under their jurisdiction but could provide technical assistance to other wildlife managers from time to time 	<p>oversight wildlife utilisation in Kenya. The current committees lack authority to make a decision, proper representation and funding. The current institutional arrangements provide room for overlapping mandates and conflict of interest. This new arrangement will help regulate and oversight activities in non-state management areas. Water Act could act as a good case study. Over 70% of EAWLS members propose establishment of an independent authority under the new Act.</p> <p>Section 49 of the Principal Act gives the committee a role to oversee implementation of management standards which is a supervisory role by nature hence justifies the need to have a more authoritative body who could deliver well on this function among others. This in itself is a proper justification that the body should not be oversighted by KWS</p>

Section/theme	Situational analysis (Provision of the Wildlife Act 2013 as well as the 2018 Amendments)	Recommendations	Rationale
	<p>some of which are supervisory and broad by geographic scope. These functions have been reduced to about four functions in the Statute Law (Miscellaneous Amendments) Act, 2018 including any such functions as may be delegated by the KWS. The amendments do not address the question of who will be responsible for the other six functions. Both Acts give KWS a mandate to oversight these committees yet KWS who is a member of the very committees; can this arrangement allow the committee to discharge their duties effectively? Currently, the committees are resourced through KWS and their meetings capped at four per year with any additional one being done with express approval of the Cabinet Secretary as at the time being responsible for wildlife. This has rendered them dysfunctional.</p>		
<p>Section 39: Establishment of a conservancy or sanctuary</p>	<p>39. Any person or community who own land on which wildlife inhabits may individually or Collectively establish a wildlife conservancy or sanctuary in accordance with the provisions of this Act.</p>	<p>This section should be maintained and highly guarded in the new Act.</p>	<p>Kenya is a party to the Convention on Biological Diversity (CBD) and in Archi target 11, the Government of Kenya commits that to improve the status of biodiversity by conserving 17% of key terrestrial landscapes by 2020. Currently, Kenya has 12% of its land under conservation in the form of National Parks and Reserves. Conservancies and sanctuary have the potential to allow Kenya to meet and exceed its national target</p>
<p>Section 44 (4) Infrastructural Development</p>	<p>No development will be approved in the absence of management plans approved. This gives the Service the final say on approval of infrastructural development within parks, reserves, sanctuaries and conservancies but may give room for abuse in the absence of a management plan. It also doesn't recognise the different management regimes for wildlife conservation area. Other sections of the</p>	<ul style="list-style-type: none"> Amend this section and any other sections requiring an EIA/SEA to be done to give powers to the County/regional level board to approve infrastructural development after an EIA is done in accordance with EMCA and with express approval of the management authority of the wildlife conservation area. The CS shall in consultation of the wildlife management authority (managers responsible for parks, reserves, sanctuary or conservancy) and other stakeholders publish dedicated guidelines and standards for infrastructural development within wildlife 	<p>The new policy directs that guidelines and standards for service provision and infrastructure development in and around wildlife conservation areas be developed. There is need to give the managers in wildlife conservation areas to have a say in the approval of such projects but the green light will only be given by the county level wildlife conservation and management board to avoid conflict of interest and to promote devolution.</p>

Section/theme	Situational analysis (Provision of the Wildlife Act 2013 as well as the 2018 Amendments)	Recommendations	Rationale
	Act seems to give more powers to EMCA of this Act	conservation areas. This will decentralise decision making processes.	
Section 45: Consent to mining and quarrying activities	This section prescribes conditions upon mining and quarrying activities can be conducted in a national park. This is a national legal framework that should apply to all wildlife conservation areas. It indicates that extractive activities such as quarrying may be permitted in wildlife conservation areas. It also creates a window for other wildlife areas to disregard this section of the Act. It however provides a critical cushion by maintaining that such activities shall only be conducted with express authority given to the Service.	Amend the section to either <ol style="list-style-type: none"> 1) completely and robustly disallow extractive activities in parks, reserves, sanctuaries and conservancies or; 2) expand the conditions to also cover conservancies, reserves and Sanctuaries, and that such activities shall only be allowed where there is the express authority of the Cabinet Secretary as at the time responsible for wildlife. 	Recognising the diverse management regimes for the wildlife conservation areas, the decision-making for issues that cut across these conservation areas should be escalated to the ministerial level to ensure equal application. The current protection is limited to KWS managed areas and may leave a window for abuse. 83% of EAWLS members feel that extractive activities should be completely disallowed in the new Act.
Section 47 - Endangered and threatened wildlife species	The current Act offers protection for the endangered and threatened wildlife species and provides for measures of conservation through the development of species-specific recovery plans, heavy penalties on poaching or trade in them or their products and prescribing restricted activities involving the species. The new policy gazetted after the current Act directs that dedicated laws be enacted for the conservation and management of endangered and threatened species. Section 47 (1) only recognise the species listed under schedule six as the only endangered and threatened species. Kenya being a party to the CITES, needs to also protect such species as listed in CITES appendix 1 as an international commitment	<ul style="list-style-type: none"> • Introduce a sub-section on enacting dedicated laws for the conservation and management of endangered and threatened wildlife species. • Amend section 47 (1) to recognise the species listed under CITES appendix 1 	Over 50% EAWLS members feel that despite the stringent protection and conservation measures provided for under the principal Act, having dedicated laws for endangered and threatened wildlife species will be a great milestone. This is also in line with the policy directive under the New National Wildlife Policy and CITES.
Benefit-sharing and incentives Sections 72,73,74 and 76	The current Act refers to the word “benefit” almost 116 times yet the term has not been defined hence leaves room for misinterpretation and consequently abuse. Furthermore, sections 72, 73, 74 and 76 provides for the formulation of	<ul style="list-style-type: none"> • Prescribe the minimum percent of benefits to the local communities • The guidelines being developed should specify how such benefits shall be accessed 	The new policy directs that regulations on access and benefits sharing be developed. Definition of the terms “benefit” and “incentive” will eliminate abuse. Prescribing a minimum percent to the local communities provides for their protection since they

Section/theme	Situational analysis (Provision of the Wildlife Act 2013 as well as the 2018 Amendments)	Recommendations	Rationale
	guidelines for benefit sharing, grants access to sustainable wildlife utilisation, specifies a case-to-case basis for benefit sharing and a 5% benefit from national parks going to the local communities.		are barely involved in the negotiations and decision-making processes. Comparative analysis across other countries has revealed a mix of prescribing a minimum percent to local communities to giving priority in terms access and easements to implementing community development projects among others
Section 89: Offences relating to pollution	Section 89 c) discharges any pollutant detrimental to wildlife into a designated wildlife conservation area contrary to the provisions of this Act or any other written law commits an offence and shall be liable upon conviction to a fine of not less than two million shillings or to imprisonment of not less than five years or to both such fine and imprisonment.	Amend to harmonise with EMCA provisions for standardization. EMCA provides only for a fine on five hundred shillings	EMCA is the principal Act on issues environment and therefore is highly considered in the determination of cases relating to pollution
Section 92: Offences relating to endangered and threatened species	92. Any person who commits an offence in respect of an endangered or threatened species or in respect of any trophy of that endangered or threatened species shall be liable upon conviction to a fine of not less than twenty million shillings or imprisonment for life or to both such fine and imprisonment.	Delete and substitute therefor the following new section- 92. (1) A person who kills or injures, tortures or molests, or attempts to kill or injure, a critically endangered, or endangered species as specified in the Sixth Schedule or listed under CITES Appendix I commits an offence and shall be liable upon conviction to a term of imprisonment of not less than five years. (2) A person who, without permit or exemption issued under this Act, deals in a wildlife trophy, of any critically endangered or endangered species as specified in the Sixth Schedule or listed under CITES Appendix I, commits an offence and shall be liable upon conviction to a term of imprisonment of not less than seven years. (3) Any person who, without permit or exemption issued under this Act, deals in a live wildlife species of any of critically endangered or endangered species as specified in the Sixth Schedule or listed under CITES Appendix 1, commits an offence and shall be liable upon conviction to a term of imprisonment of not less than three years. (4) Any person without permit or exemption issued under this Act is in possession of any live wildlife species or trophy of any critically endangered or endangered species as specified in the Sixth Schedule or listed	The Principal Act did not segregate the different offences relating to endangered and threatened species and therefore in the application of law, it became a challenge in determining the gravity of the different offences. The proposed amendments segregate the offences and graduate the penalties and term of imprisonment. This approach also tend to discourage market thereby being proactive in preventing the offences rather than escalating them.

Section/theme	Situational analysis (Provision of the Wildlife Act 2013 as well as the 2018 Amendments)	Recommendations	Rationale
		<p>under CITES Appendix 1, commits an offence and shall be liable upon conviction to a fine of not less than three million shillings or a term of imprisonment of not less than five years or both such fine and imprisonment.</p> <p>(5) Any person who without permit or exemption issued under this Act, manufactures an item from a trophy of a critically endangered or endangered species specified under the Sixth Schedule or listed under CITES Appendix I, commits an offence and shall on conviction, be liable to a fine of not less than ten million shillings or up to life imprisonment or both such fine and imprisonment.</p>	
Section 95: Offences relating trophies and trophy dealing	S.95 Any person who keeps or is found in possession of a wildlife trophy or deals in a wildlife trophy, or manufactures any item from a trophy without a permit issued under this Act or exempted in accordance with any other provision of this Act, commits an offence and shall be liable upon conviction to a fine of not less than one million shillings or imprisonment for a term of not less than five years or to both such imprisonment and fine.	<p>Delete and substitute section 95 with-</p> <p>S.95 Any person who, without a permit or exemption granted under this Act in relation to a species not specified under section 92 -</p> <ol style="list-style-type: none"> (1) kills or injures, tortures or molests, or attempts to kill or injure, any wildlife species; deals in a wildlife trophy; deals in a live wildlife species; (2) is in possession of a wildlife trophy or live wildlife species; or manufactures an item from a wildlife trophy, commits an offence and shall be liable on conviction to a fine of not less than one million shillings or a term of imprisonment of not less than twelve months or to both such fine and imprisonment. 	Segregation of the offences allow for smooth application of the law. More penalty is levied to the consumers and manufacturers to proactively discourage such offences
Introduced offence under section 95	Introduce offences on wildlife poisoning in the new Act	<ul style="list-style-type: none"> • Any person who wildlife knowingly or recklessly uses any substance whose effect is to poison any wildlife species commits an offence and shall be liable to a fine of not less than five million shillings or a term of imprisonment of not less than five years or both. 	Wildlife poisoning is a growing concern especially in human wildlife conflict prone wildlife areas. In as much as the Act prohibits killing, poisoning should be singled out and a penalty spelt out specifically for that. In most case, such killings is done in retaliation and therefore the intent is not for trade and subsistence
Section 98: Offences relating to bush meat trade	98. A person who engages in hunting for bush meat trade, or is in possession of or is dealing in any meat of any wildlife species, commits an offence and shall be liable on conviction to a fine of not less than two hundred thousand shillings or to imprisonment for a term not less than one year or to both such fine and imprisonment.	<p>Amend section 98 to read:</p> <ol style="list-style-type: none"> (1) Any person who, without permit or exemption issued under this Act, deals in the carcass or meat of any wildlife species commits an offence and shall be liable on conviction, to imprisonment for a term of not less than three years. (2) No person shall purchase from another person any meat or eggs of any wildlife species. 	Bush meat trade is fast growing in Kenya and requires very stringent measures for it to be curbed. The cost of killing a wildlife species is not commensurate to the market costs associated with it hence no basis for setting up a fine. The deterrent must therefore by imprisonment and not fine

Section/theme	Situational analysis (Provision of the Wildlife Act 2013 as well as the 2018 Amendments)	Recommendations	Rationale
		(3) Any person who contravenes the subsection(2) commits an offence and is liable on conviction to a fine of up to one million shillings or a term of imprisonment of twelve months or to both such fine and imprisonment.	
Section 109: International Treaties, Conventions and Agreements	This section provides for the key roles of the CS and the Service as regards to the international treaties, conventions and agreements. Some of the key duties specified in this section include making regulations and give directions to ensure compliance with the obligations; ratification of the treaties, conventions and agreements according to the provisions of the Treaty Making and Ratification Act, 2012; negotiate and establish trans-boundary or transfrontier wildlife conservation areas for the better management of shared wildlife resources; promulgate rules and regulations for effective management of trans-boundary or trans-frontier wildlife conservation areas established under this section and; insert on the progress of Kenya's implementation of wildlife-related bilateral or multilateral environmental agreements to which Kenya is a party as part of the biannual wildlife conservation status report under section 50(4)	This section should be protected and enhanced in the new Act. <ul style="list-style-type: none"> • A report on the implementation of the of wildlife related bilateral or multilateral environmental agreements should be a standalone report and not an insert in the Biannual Wildlife Conservation status report • There is a need for the CS to formulate and gazette a transboundary wildlife conservation strategy 	The new policy provides for the domestication of the international instruments that Kenya has acceded to into national legislation to ensure their implementation; It also directs on full implementation of the RAMSAR Convention on wetlands.
Subsidiary legislation	The Current Act does not provide timelines for the formulation of subsidiary legislation including regulations, guidelines and standards	A general provision should be made to obligate the CS to gazette these pieces of legislation within 12 months to allow for the implementation. The regulations will be developed through public participation. The CS should also be compelled to report on this regularly	Most sections of this Act would require regulations, guidelines and standards. If this is delayed, the wildlife is likely to face increasing threats.
Third Schedule	List wildlife species of which compensation may be paid.	<ul style="list-style-type: none"> • Amend the schedule by deleting poisonous snake, shark, stone fish, whale, sting ray, wild pig • Also write the scientific names of all the species listed. 	The species excluded are beyond the control of the Service and therefore including them in the compensation scheme would be unsustainable

Section/theme	Situational analysis (Provision of the Wildlife Act 2013 as well as the 2018 Amendments)	Recommendations	Rationale
Sixth Schedule	Provides a list of endangered and threatened species	<ul style="list-style-type: none"> Review the list to reflect the current status of the species. Also, provide the current scientific names of the listed species 	The Act was enacted some 7 years ago and species status does change over time. Some species' scientific names were either not provided or incorrect. Scientific naming is key especially in transfrontier conservation