

SPECIAL POINTS OF INTEREST:

- Draft lists of threatened and protected species developed in terms of section 56(1) of the Biodiversity Act was published in the Government Gazette for general public comment
- Copies of the draft list can be downloaded from the departmental website: <http://www.deat.gov.za>
- Closing date for general public comment is 22 March 2005

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Draft List of Threatened & Protected Species Published

Following the three ad hoc expert group workshops held last year November, ad hoc expert group coordinators, with the exception of the invertebrates group, submitted draft lists on 1 December 2004. DEAT reviewed these draft lists to ensure that they all complied with the criteria that was developed for the listing process.

On 14 December 2004 the reviewed draft lists were circulated to all registered stakeholders for comment and input. The closing date for this round of stakeholder consultation was 14 January 2005. Comments received during this period were evaluated, and where relevant, incorporated into one consolidated draft list.

The draft list of threatened and protected species was published in the Government Gazette (No 27306; Notice No. 151) of 18 February 2005, for general public comment.



Harpactira sp.

The closing date for general public comment is 22 March 2005.

Stakeholders are requested to submit written comments on the draft threatened and protected species list to: specieslisting@deat.gov.za.

Following this round of stakeholder participation, comments will be evaluated and, where relevant, incorporated into the final list which will be published to give effect to Section 56(1) of the Act.

In terms of the Act these lists have to be reviewed at least every five years. To give effect to this, DEAT has initiated a process to set up a web-based database for future review processes.

We will keep you updated on the development of this database and on how you can provide input into the review process.



Blue Crane



Hawksbill Turtle



Great White Shark

The Biodiversity Act: Interpretation



Giant Girdled Lizard

“The National Environmental Management Biodiversity Act, 2004 (NEMBA) contain several provisions designed to regulate or manage threats to biodiversity, only one of which is listing of threatened or protected species.”

There has been a huge debate amongst the experts regarding the interpretation of the provisions of the Act as it relates to threatened and protected species. A number of concerns have been raised, including the department’s interpretation of “restricted activity” and the interpretation of sections 56 and 57.

Inaccurate interpretation of the definition “restricted activity”

A few individuals have argued that the definition of “restricted activity” should be interpreted to include habitat destruction due to development, agriculture and alien invasion. The department approached the State Law Advisor to provide clarity of the interpretation of the definition of a “restricted activity”.

The State Law Advisor stated, “It is apparent from the definition of ‘restricted activity’ that the activities listed are activities **directed at** the listed threatened or protected species. The destruction of the habitat of a species by development or agriculture is not, in our opinion, an activity directed at a particular species.” He went further to say that the destruction of the habitat of a species by development or agriculture is an activity whose unintended or indirect consequence is the destruction or loss of a threatened

or protected species. He reiterated that “It is therefore our opinion that the destruction or loss of habitat of a species due to development or agriculture is not an activity contemplated in the definition of ‘restricted activity’”.



Stag Beetles

Inaccurate interpretation of the provisions of sections 56 and 57

Individuals also requested that section 56 and 57 be read independently, which would allow for the listing of all indigenous species that are threatened, irrespective of the threat posed to their survival in the wild, and not only those impacted on by restricted activities.

We approached the State Law Advisor to give us his opinion on whether sections 56 and 57 can be read independently and what the implications of listing all indigenous species as either threatened or protected would be, irrespective of whether they are impacted on by a restricted activity.

men of species listed as either threatened or protected. He also indicated that the listing of threatened or protected species in terms of section 56(1) is a prerequisite for the operation of section 57, which identifies activities to be regulated.

According to the State Law Advisor it would be possible to list all indigenous species that are threatened in terms of section 56(1), irrespective of the threat posed to their survival in the wild, however once listed, they would become subject to the provisions of section 57. This means that one would be able to list a species impacted on by habitat destruction but the protection the species will receive, will relate to restricted activities, the definition of which does not accommodate habitat destruction.

He concurred with the department that the Act contains several provisions which are designed to regulate or manage threats to biodiversity, of which the listing of threatened or protected species are just one of the tools which can be used. Provisions relating to ecosystem conservation, bioregional planning and biodiversity management plans also provide for the conservation of species warranting special conservation action.

He indicated that a link between sections 56 and 57 does indeed exist. While section 56 (1) empowers the Minister to publish a list of threatened or protected species, section 57 regulates the activities that relate to the species or speci-



Right: African Bullfrog

Far Right: Heidelberg Copper Butterfly



Clarity on Concerns Relating to Species Listing



Ghaap

1. There is no differentiation in the level of protection given to the different threatened species categories.

This is simply not the case. In terms of the Act, regulations may be developed to ensure the survival of listed species in the wild. The possibility exist to, in regulations, put stricter controls on for example critically endangered species. In terms of regulations we may even prevent certain restricted activities to be carried out with species of a particular threat category.

2. By listing all species on the CITES appendices the current Biodiversity Act listing process is leading to drastic over-listing of plant species in particular, as “look-alike” species are also included in the CITES appendices, although it is abundant and widespread.

In terms of the CITES it is a legal requirement to provide national protection for ALL species listed on the CITES appendices. However, in terms of regulations, we may exempt certain CITES listed “look-alike” species from provisions of the Act as far as domestic control is concerned.

3. The inclusion of exotic/alien species that are listed on CITES appendices and as a result in the list of protected species, would be impossible to implement. Exemption should be granted for possession and domestic trade in

exotic/alien CITES listed species.

Not possible, as this will defeat the control over restricted activities involving CITES listed species within the country. Furthermore, restricted activities involving alien species are also regulated in terms of sections 65-69. Unless, an alien species is exempted from the provisions contained in section 65, no restricted activity may be carried out with that species without a permit and risk assessment.

4. Why can’t we list all Red Data Listed Species in terms of the Act?

The main difference between the Biodiversity Act Listing and the Red Data Listing process, is that the Biodiversity Act Listing is a legal instrument, which will be used to regulate “restricted activities” to be carried out with a listed threatened or protected species. The criteria and assessment process applied to listing species in terms of the Act, is completely different to the assessment process followed in the Red Data Listings. Also, as stated already, unless such a Red Data species is impacted on by a “restricted activity”, which excludes habitat destruction, it will receive no protection by listing it as either a threatened or protected species. It will merely create the impression that the species is protected. Other tools provided for in the Act can be used to give protection to species not impacted on by a “restricted activity”. (See page 2).

The Red Data listings are purely scientific instruments that are valuable as a management support mechanism to indicate the conservation status of a species. The Red Data Listing have proven valuable in the EIA processes and also for the actual listing of species in terms of the Biodiversity Act.

Thank you!!!

We would like to thank all the members of the ad hoc expert groups for their help and assistance, especially considering the limited time they had in which to produce the draft lists.

We would especially like to thank the following individuals:

Jim Cambray (Freshwater Fish);

Helen Barber-James and Ferdy de Moor (Invertebrates);

Aldo Berruti and Steven Evans (Birds);

Nico Avenant (Mammals);

and, Andrew Turner (Reptiles and Amphibians), for their initiative and spirit of cooperation.



Samango Monkey