



DEPARTMENT OF
ENVIRONMENTAL AFFAIRS
AND TOURISM

**SPECIAL
POINTS OF
INTEREST:**

- The Biodiversity Act is only one of a set of legal instruments available to regulate the management and protection of biodiversity
- EIA regulations is one of the better known instruments used to identify activities that may have a substantial harmful effect on the environment
- The Protected Areas Act provide for interventions to protect sensitive species or ecosystems

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Species Listing

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Integrated Environmental Legislation For Protection & Management Of Species

Listing of threatened and protected species in terms of Chapter 4 of the National Environmental: Biodiversity Act, 2004 (NEMBA) is only one of a set of legal instruments available to regulate the management and protection of biodiversity. One of the better-known instruments that have been in existence for some time is the Regulations in terms of Section 21 of the Environment Conservation Act, 1989 identifying activities that may have a substantial harmful effect on the environment. These regulations generally referred to as the EIA regulations had a profound effect on development initiatives and a more environmentally sensitive approach to development.

The National Environmental Management Act, 1998 (NEMA) introduced a framework for integrated environmental management and planning, and to set enabling national principles, norms and standards. Section 24 of NEMA establishes a suitable "home" for the EIA regulations currently being amended and which will then be promulgated in terms of Section 24 of NEMA. The Environmental Management: Protected Areas Act, 2003 (PAA) and NEMBA, being subsidiary legislation of NEMA, provide more specific and focused provisions to deal with threats to biodiversity, and in some instances are cross-linked to the NEMA Section 24 provisions.

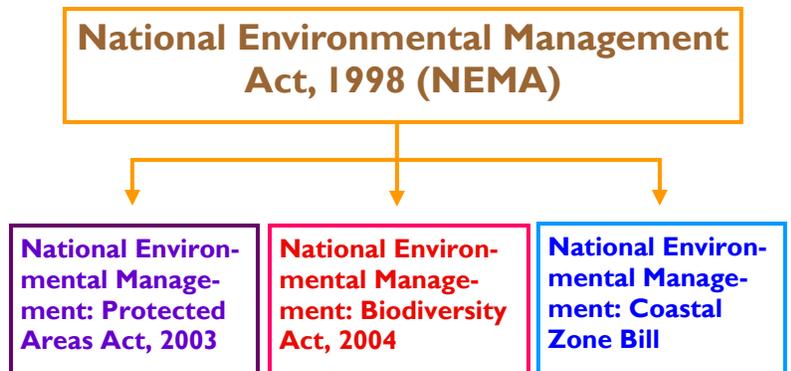
Apart from the objective of protected areas in general to contribute

inter alia to species conservation, two provisions of the PAA specifically provide for interventions to protect sensitive species or ecosystems. Special Nature Reserves declared in terms of PAA Section 18 are the highest form of protection afforded and is intended only for those exceptional cases where highly sensitive species or ecosystems are in danger of extinction and can not be protected by other means. Conversely, protected natural environments declared in terms of PAA Section 29 are more appropriate to provide protection to species in general and is available as intervention option also to landowners as collective action against development pressure.

The NEMBA provisions in Chapter 4 create a suite of protective tools for protection of biodiversity against a wide range of threats including ecosystem transformation, habitat destruction and excessive extractive use regimes. The listing of threatened and protected ecosystems in terms of NEMBA Section 52, coupled with the identifica-

tion of threatening processes (Section 53) and linking these with the NEMA Section 24 requirements, provide the ideal legal instrument to protect species that are threatened by processes or activities that lead to impacts on ecosystem integrity or habitat loss, thereby threatening the long-term survival of their integral species components.

Listing of threatened or protected species in terms of NEMBA Section 56 establishes a legal requirement for permit approval of restricted activities as defined in Section 1 of NEMBA. By nature and extent of the defined restricted activities and the definitions of species and specimen as in NEMBA, severe legal restrictions are placed on any conceivable activity with a listed threatened or protected species. It therefore follows logically that listing of species as threatened or protected should be considered only when threatened as a result of a restricted activity and where other appropriate and adequate legal protective measures can not lead to the desired protection of the species.



Listing Species as Threatened or Protected: Criteria & Considerations



Pretoria Workshop: Discussion on criteria and considerations for listing threatened and protected species

“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.”

Although many South African species of plants, animals and other organisms are under pressure and may be threatened, the nature and diversity of threats to species do not allow for a catch-all solution to manage or mitigate all threats. It is for this reason that integrated environmental legislation within the context of the National Environmental Management Act, 1998 provides for a range of legislative tools to regulate not only threats to biodiversity, but also to ensure integration of risk and threat considerations with decision making frameworks.

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. Listing of a species as threatened or protected is in no way a reflection of either the conservation status or threatened status of the species but triggers a legal process to provide protection to such a species against threats emanating from activities that are defined in the act as “restricted activities”.

Additionally, South Africa’s international commitments in accor-

dance with the Convention on the International Trade in Endangered Species (CITES) require legal protection in domestic law for all species listed in the CITES appendices, regardless of whether such species may be indigenous to the country or not.

It therefore follows logically that the only criteria for listing of a species as threatened or protected in terms of NEMBA, would be a definite need for protection as determined by:

- a. a legal obligation in accordance with CITES; or
- b. that the continued survival of the species is threatened; and
- c. the threat to continued survival of the species results from one or more of the restricted activities as defined in NEMBA.

In applying the set criteria for listing of a threatened or protected species, a number of considerations need to be taken account of in order to arrive at a final decision on whether to list and what category to list in. The relevant considerations to take into account are:

- a. the need for protection should be demonstrable or

- at least strongly indicative on firm grounds;
- b. the need for protection should be of national importance and require national scope of application
- c. justifiability of the need for protection, based on legal obligation, level and nature of threat or Red Data status;
- d. resource value whether financial, cultural or other, coupled with extensive use regimes that may threaten the survival of the species or future value benefits derived from the resource;
- e. listing should lead to a legal regime regulating restricted activities as defined in the act; and
- f. enforcement of listing regulatory regimes should be practicable i.e. be readily interpreted by the general public and be implementable by enforcement agencies.

Judicious application of the above criteria and considerations for listing of threatened and protected species should facilitate a listing process leading to lean and targeted species lists that will enable effective and efficient protection of species against the excessively harmful effects of any one or more of the restricted activities as set out in NEMBA.

Far right: African Fish Eagle

Center: Perlemoen

Right: African Elephant



Ad Hoc Expert Group Workshops & Way Forward



Ms Leseho Sello (Director: Biodiversity Conservation)

Three workshops were held in Pretoria, Grahamstown and Cape Town between 10 and 17 November 2004 for members of the ad hoc expert groups.

The main objectives of the workshops were to gain a common understanding amongst members of the Ad Hoc Expert Groups on the following:

- a. The obligations, requirements and provisions of the Biodiversity Act, as well as the obligations, requirements and provisions of CITES and CMS in relation to the requirements for the Biodiversity Act species lists;
- b. The process being followed to develop lists of threatened and protected species lists in terms of the Act;
- c. To consider, review and give recommendations on criteria for the threatened and protected species categories and the procedure for listing (Page 2);
- d. To consider, review and give recommendations on the format and content for the species lists; and
- e. To review and give recommendations on the Ad Hoc Expert Groups Terms of Reference (Page 4).

Draft lists of threatened and protected species are due 30 November 2004

This issue address the main discussions emanating from the workshops.

Progress to date and the month ahead



Things are taking off!!

Even before the final Ad Hoc Expert Group workshop, held on 17 November 2004, members of the expert group on birds, attending the first workshop on 10 November 2004, took the initiative to compile a draft list of threatened and protected birds for discussion and debate.

Merely one day after the final workshop, the draft bird list was already actively debated by e-mail amongst the members of the Ad Hoc Expert Group.

DEAT wishes to extend its congratulations and gratitude to this group for its initiative and spirit of coopera-

tion to ensure timely and successful achievement of our common objectives, and for setting an example to the other groups.



Blue Crane

Ad Hoc Expert Groups

The ad hoc expert groups will analyse existing lists/data and identify, select and evaluate suitability for listing of selected taxa against listing criteria; recommend selected taxa and categories for listing; review and recommend on proposals for listing from expert and other stakeholder groups; and assist in developing draft lists.

A coordinator was selected for each of the ad hoc expert groups. Their main task would be to coordinate, secure and manage inputs from the members of the relevant groups. The coordinators for the groups are as follows:

- a. Dr Gert Willemse—Mammals
- b. Dr Les Underhill—Birds
- c. Dr Andrew Turner—Reptiles and Amphibians
- d. Dr Jim Cambray—Fishes
- e. Dr Michael Samways—Invertebrates
- f. Ms Wendy Foden—Plants

The coordinators can co-opt expertise when necessary.



Members of the Ad Hoc Expert Groups



Frequently Asked Questions

1. How were expert groups compiled?

The ad hoc expert groups were constituted based on the experts' fields of expertise, experience in their respective fields, and whether they indicated their availability.

2. Why are all the provinces not represented on the ad hoc expert groups?

The short answer is that not all the provinces had registered by the time the ad hoc expert groups were constituted. However, those who have registered are included in the roster of experts to whom the draft lists will be circulated for comment. Apart from this, the provincial conservation authorities will also be able to comment through other departmental structures, such as the Working Group on Biodiversity.

3. Do we list all species hunted or utilised?

Not necessarily. For a species to be listed in one of the categories of threatened or protected, there has to be a clear need for protection combined with a threat associated with a "restricted activity" such as hunting or use. The mere fact that the species is being hunted or utilised does not mean that its

survival in the wild is threatened by this activity.

4. How can we be assured that the species not listed will receive protection?

The Biodiversity Act contains several provisions to protect species not listed as threatened or protected. If its continued survival is threatened by ecosystem transformation, habitat destruction and excessive extractive use regimes, listing the ecosystem as threatened or protected, and its associated threatening processes, will afford the species with the appropriate protection. In addition the Biodiversity Act also provides for the development of Biodiversity Management Plans to protect a species.

5. Does not listing a species relegate it to a status of lesser importance, even if it is more threatened?

Listing a species in terms of the Biodiversity Act is by no means a reflection on the conservation or threatened status of that species. Listing of species not threatened by a "restricted activity" merely creates the impression that the species is protected, yet it is not. Other tools provided for in the legislation will be utilised in such cases.