
GENERAL NOTICES

NOTICE 1100 OF 2010

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004 (ACT NO. 10 OF 2004) PROPOSED AMENDMENTS TO THE THREATENED OR PROTECTED SPECIES REGULATIONS

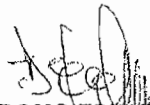
I, Bomo Edith Edna Molewa, Minister of Water and Environmental Affairs, hereby, in terms of section 100 of the Act, publish for public comment, the draft Threatened or Protected Species Amendment Regulations in the Schedule hereto. For the convenience of the public, the amendments are indicated in bold and underlined.

Any person who wishes to submit representations or comments in connection with the TOPS Amendment Regulations is invited to do so within 30 days of the date of this notice. All representations and comments must be submitted in writing to the Director-General of the Department of Environmental Affairs:

By post to: The Director-General: Environmental Affairs
Attention: Ms Magdel Boshoff
Private Bag X447
Pretoria, 0001

By fax to: (012) 320 7026, and by e-mail to mboshoff@environment.gov.za

Comments received after the closing date may not be considered.



BOMO EDITH EDNA MOLEWA
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS
2010/11/23

GENERAL EXPLANATORY NOTE:

- [] Words in bold typed in square brackets indicate omissions from existing enactments.
— Words underlined with a solid line indicate insertions in existing enactments.

SCHEDULE**Definitions**

1. In these regulations—

“**the Regulations**” means the Threatened or Protected Species Regulations, 2007 published in Gazette No. 29657, Notice No. R. 152 of 23 February 2007, as amended by Notice No. R. 69 of 28 January 2008, published in Gazette No. 30703, as amended by Notice No. R. 209 of 27 February 2009, published in Gazette No. 31962, as amended by Notice No. R. 210 of 27 February 2009, published in Gazette No. 31962.

Amendment of regulation 1 of the Regulations

2. Regulation 1 of the Regulations is hereby amended by—
- (a) the substitution of the definition of “**applicable legal requirements**” for the following definition:
- “**applicable legal requirements**’ means—
- (a) all legislation and instruments mentioned in section 88(3) of the Biodiversity Act;
- (b) any national norms and standards issued in terms of section 9 of the Biodiversity Act or section 11 of the Protected Areas Act which apply to the implementation of these regulations; **[and]**
- (c) any specific requirements of these regulations; and
- (d) any applicable provincial legislation”;
- (b) the substitution of the definition of “**controlled environment**” for the following definition:

“**controlled environment**’ means an enclosure designed to hold specimens of a listed threatened or protected species in a way that—

- (a) prevents them from escaping;
- (b) facilitates intensive human intervention or manipulation in the form of the provision of—
 - (i) food or water;
 - (ii) artificial housing; or
 - (iii) health care; and
- (c) may facilitate[s] the intensive breeding or propagation of a listed threatened or protected species,

but excludes fenced land on which self-sustaining wildlife populations of that species are managed in an extensive wildlife system;”.

Amendment of Regulation 3 of the Regulations

3. Regulation 3 of the Regulations is hereby amended by—

(a) the substitution of subregulation (2) for the following subregulation:

“(2) The Minister is the issuing authority for permits relating to the carrying out of restricted activities involving any listed threatened or protected species—

- (a) **[in a protected area or an area managed by or under control of an organ of state, where the restricted activities will be carried out]** by an official of an organ of state;
- (b) that are marine species, including listed threatened or protected marine species in marine protected areas; and
- (c) by an organ of state for the control of damage causing animals originating from protected areas or private land in compliance with regulation 14.”;

(b) the substitution of subregulation (3) for the following subregulation:

“(3) The MEC is designated as an issuing authority for permits relating to the carrying out of restricted activities involving specimens of listed threatened or protected species in the province, excluding permits relating to—

- (a) restricted activities carried out by officials of organs of state [in **protected areas or areas under control of organs of state**];
- (b) listed threatened or protected marine species; and
- (c) the control of damage causing animals by an organ of state originating from protected areas or private land in compliance with regulation 14.]; and]
- [(d) listed threatened or protected species where the restricted activity will be carried out by a national department on land under its jurisdiction.]".**

Amendment of Regulation 5 of the Regulations

4. Regulation 5 of the Regulations is hereby amended by the substitution of paragraph (a) of subregulation (2) for the following paragraph:

- "(a) The provincial department, for a standing permit authorising the carrying out of restricted activities involving listed threatened or protected species on land under its jurisdiction and to control damage causing animals originating from protected areas or private land in accordance with regulation 14;"

Amendment of Regulation 6 of the Regulations

5. Regulation 6 of the Regulations is hereby amended—

- (a) by the substitution of subregulation (2) for the following subregulation:

"(2) Unless the Minister directs otherwise in the case of a specific application, a permit application must be submitted to—

- (a) the Department, if the application relates to—
- (i) the carrying out of a restricted activity involving a specimen of a listed threatened or protected species, by an organ of state; **[in a national protected area]; [or]**
 - (ii) a specimen of a listed threatened or protected marine species (including a listed threatened or protected marine species in a protected area); or
 - (iii) the carrying out of a restricted activity by**[the provincial department] an organ of state**[on land under its jurisdiction or] for the control of

damage causing animals originating from a protected area or private land
in accordance with regulation 14; **[or]**

**[(iv) the carrying out of a restricted activity by a national department on
land under its jurisdiction;]**

(b) the provincial department in which the restricted activity is to be carried out, if the application relates to a specimen of a listed threatened or protected species not referred to in paragraph (a)."

(b) by the addition of subregulation (4):

"(4) Notwithstanding the provision of subregulation (3)(b), payment of the applicable processing fee as set out in Annexure 5 to these regulations does not apply to organs of state."

Amendment of Regulation 26 of the Regulations

6. Regulation 26 of the Regulations is hereby amended—

(a) by the substitution of subregulation (4) for the following subregulation:

"(4) Subregulation (1)(a)(v) and (c) does not prevent the darting of an animal by a veterinarian or **[a] any other** person authorised by **[a veterinarian]** the South African Veterinary Council in writing and in possession of a valid permit, whether on foot or from a motorised vehicle or aircraft, to immobilise or tranquillise the animal for the purpose of—

- (a) carrying out a disease control procedure or a scientific experiment or for management purposes;
- (b) veterinary treatment of the animal; or
- (c) translocating or transporting the animal."

(b) by the addition of subregulation (4A) for the following subregulation:

"(4A) A veterinarian must be present when an animal is darted by a person contemplated in subregulation (4)."

Amendment of Regulation 74 of the Regulations

7. Regulation 74 of the Regulations is hereby substituted for the following regulation:

“74. A person convicted of an offence in terms of regulation 73 is liable to—

[(a) a fine of R100 000-00 or three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater;]

[(b)](a) [to]imprisonment for a period not exceeding five years; [or]

[(c)](b) a fine not exceeding R5 million, and in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment; or

(c) both a fine and such imprisonment.”.