

**DEVELOPING CRITERIA AND A FRAMEWORK FOR THE APPLICATION
OF LEGISLATION ON THE PROTECTION OF INDIGENOUS TREE SPECIES**

WORKSHOP PROCEEDINGS AND PAPERS

26 - 27 OCTOBER 2000

KNYSNA



Ngoya Forest KZN

A G E N D A

1. **Welcome (see list of participants in Appendix 1)**
2. **Objectives of the workshop**
3. **Brief introductory historical overview of protection of trees, including rationale and relevance of existing list of protected species: Presentation by Theo Stehle (outline of talk in Appendix 2)**
4. **Reconciling National Level Protected Tree Species Lists with Community Management of Forest and Woodland Resources: A brief review of Experiences from Neighbouring Countries, and of Options for South Africa, presented by Jeanette Clarke (outline of talk in Appendix 3)**
5. **Review objectives and arrive at a new rationale**
6. **Develop a set of objective criteria for species to be included in protected species list**
7. **If appropriate and feasible, consider species to be included in a draft list, based on above criteria**
8. **Consider and discuss practical application of the legislation concerning protected tree species**
9. **Review guidelines for considering applications to cut protected trees**
10. **Conclusion**

1. INTRODUCTION AND BACKGROUND

1. Legislative Context

- 1.1.1 Under the terms of the National Forests Act (No. 84 of 1998) the Minister may declare a particular tree or trees belonging to a particular species to be protected [S.12]. This status carries with it particular powers that go beyond the general protection afforded indigenous trees and forests. For this reason, a tree or species of tree may only be declared protected if, in the Minister's opinion, it is not adequately protected under other legislation.

The Minister must also consider the fact that, under S3(3) of the NFA:

- *natural forests must not be destroyed save in exceptional circumstances;*
 - *forests must be managed so as to conserve biological diversity and sustain the potential yield of their economic, social and environmental benefits;*
- whilst under S7(1):
- *no person may cut, disturb, damage or destroy any indigenous living tree or remove such from a natural forest without a licence or exemption;*
- and under S7(2):
- *the minister may declare a groups of indigenous trees a natural forest in order to protect it under S7 of the NFA.*

- 1.1.2 Furthermore, the following amendments to the NFA have been proposed that provide further protection for forest products:
of S7(1):

- *no person may*
 - a) *cut, disturb, damage or destroy any indigenous, living tree in a natural forest,*
or
 - b) *possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any tree, or any forest product derived from a tree, which has been cut, disturbed, damaged or destroyed in contravention of para (a) without a licence or exemption.*

of S15(1)(b):

- *no person may possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any protected tree, or any forest product derived from a protected tree.*

- 1.1.3 This indicates that the provision for *in-situ* protection and conservation management of indigenous tree species is already well catered for by existing legislation. S12 of the NFA would therefore primarily be applied to trees found outside of natural forests or woodlands, usually individual trees in urban environments.

S12 can be applied to individual specimens or groups of trees that have important significance for the nation (in much the same way as a national monument) as well as to tree species. Administratively, it is the provision for protected species that will be the more bureaucratic to regulate as this will refer to many individuals often spread across wide geographic areas whereas individual the protection of specimens can be more easily managed.

1.2 Current Protected Tree Species Lists

- 1.2.1 Currently there are 57 protected tree species that were declared in 1976. These cover woodland and forest species. A Further 11 *Cycad* species are protected under the 1976 declaration. These remain protected until a new list is declared.
- 1.2.2 During 1999, the Department compiled a list of 200 species that were protected by provincial legislation. Not all these species are protected in all provinces. The provincial lists were drawn up on the basis of provincial-level scarcity and vulnerability and so may not reflect the national status of the listed species. Furthermore, the provincial legislation is primarily concerned with the *in-situ* protection of these species.
- 1.2.3 Other species lists that are relevant to the compilation of a national list may include the IUCN Red Data Book list of endangered species, and the National Botanical Institute list of rare and threatened species.

1.3 The Interpretation of the Legislation

- 1.3.1 In the 1998 NFA, no criteria were given to determine the protection status of a tree or tree species. The 1984 Forestry Act did provide a guide by a set of criteria, but these referred primarily to protection of trees in their natural surroundings.
- 1.3.2 This is because the initial justification for having to protect tree species was to protect species and ecosystem diversity in the face of legislation otherwise weak in terms of forest protection. It was primarily used to regulate the harvesting and trade of economically important, but ecologically rare, indigenous timber species. It was never previously interpreted in the context of medicinal plant collection, where fruits, bark, leaves and roots of protected species are harvested traded and consumed.
- 1.3.3 In this context, it is important to consider whether the legislation is currently relevant in relation to particular species as a whole, or whether it is merely implemented in terms of particular specimens or groups of trees. Given this, a new set of guiding criteria should be developed to allow the interpretation of S12 and indicate how it could be administered.

1.4 Administration of S12

- 1.4.1 Administration of the current protected list of 68 species places a large administrative burden on forestry staff. Currently, staff in some cases have to travel hundreds of kilometres to permit an urban resident to prune or fell a protected tree in his or her garden. Moreover, where those trees have been planted and raised by the resident themselves, the time consuming and costly nature of administering the legislation discourages *ex-situ* propagation of protected species.
- 1.4.2 To ease this burden, the responsibility for administering licences for protected species in urban or artificial environments could be delegated to municipalities, whilst in rural areas, provincial environmental affairs bodies could be required to play a role. However, the application of the exemption in urban areas could circumvent this.

- 1.4.3 Similarly, the trade in protected tree produce derived from domesticated species would, if the act was followed to the letter, require a detailed paper chain of licences from the purchase of the seed, the sale of the seedling, the harvesting of the wood, the processing of the timber, the manufacture and sale of the wood product and the possession of the product itself. The paper chain required to regulate the propagation, harvesting trade and use of medicinal protected tree parts would be much more complex and difficult to administer.
- 1.4.4 The trade in some endangered species – particularly those of low volume and high value like Cycad species for example – could be regulated through S12. Trade in valuable timber species might also be regulated, but only as far as the regulation and applied to the harvesting of the tree and the primary processing into timber (as the mill and its timber source could still be identified in many cases). Experience from the Forest Stewardship Council’s certification scheme that also requires a considerable paper-chain could be of assistance in this regard.
- 1.4.5 The previous legislation on protected species did not consider the protection of indigenous plants provided by rural African communities through taboo and spiritualist cultural traditions. This form of often area-specific protection was and still is important for the protection of both particular trees or groups of trees as well as tree species. This protection may allow for utilisation of certain tree species in cultural activities as long as the appropriate rules and regulations are followed. The administrative procedures to permit use of nationally protected species in this case should be reconciled with the locally accepted rules and regulations (perhaps through giving exemptions to the community through their chief with conditions attached).

1.5 Challenge

1.5.1 The Chief Directorate: Forestry is faced with the challenge of how to protect the poaching of and trade in endangered and vulnerable tree species whilst encouraging their propagation and conservation.

- It should be encouraging the domestication of those species frequently utilised by informal sectors that are very difficult to regulate – especially medicinal plants.
- It should not discourage the ornamental propagation of protected species.
- It should provide a list of criteria to determine the status of tree species and hence their need for further protection under S12.
- It should consider the protection provided to certain species through culture and taboo and the need to reconcile the need to regulate in this context.
- It should consider the applicability of the S12 legislation for tree species in the face of the progressive and holistic protection of indigenous forest provided by the 1998 NFA.
- It should consider the possibility of restricting the legislation to certain types of species and trade in those species.
- It should consider how licences could be applied, and the relevance of exemptions for certain circumstances or a tiered protection status.
- It should consider how the licensing of protected tree produce does not lead to

unmanageable paper chains from tree source to owner of finished product (whether furniture or a medicinal tincture).

- It should consider the practicalities of administering the act to protected species found in artificial environments such as urban gardens, including delegations of authority where appropriate, and
- consider how the regulations should be amended to provide an effective but administratively practical and efficient system for protecting the country's threatened and vulnerable tree species.

2. OBJECTIVES OF THE WORKSHOP

- ❖ To review the objectives regarding a national list of indigenous tree species to be protected.
- ❖ To examine mechanisms for reconciling a system of national-level protected tree species with a system to give legal support to local-level rules and customs.
- ❖ To arrive at a meaningful basis for a new list of protected tree species.
- ❖ To develop criteria for the inclusion / exclusion of tree species in / from such a list.
- ❖ To consider the practical application of the relevant sections of the National Forests Act (NFA), and how it should be embodied in the regulations of the NFA (*i.a.* to what extent it would be feasible to extend control to products derived from protected indigenous trees).
- ❖ To review existing guidelines for consideration of applications for the cutting of protected trees under past legislation.

The following relevant aspects need to be taken into account :

- Have the aims regarding past protected species legislation changed, and if so, what are they now?
- The role of traditional communities in the utilisation / protection of tree species.
- The provisions of the NFA with regard to protected trees (sections 12 and 15).
- The provisions of sec. 7 of the NFA concerning the protection of all natural forests.
- Protection of indigenous tree species versus protection of other categories of trees.
- The protection of indigenous trees under the legislation of the provinces.
- The across the border trade from neighbouring states, in protected tree timber products.
- The feasibility of exercising control over an extensive list of protected species.
- The feasibility, in terms of human and financial resources and priorities, to administrate legislation and carry out policing, to the extent it was done in the past.
- Does protected area status (e.g. IUCN classification) affect the issue, and if, in what way?

3. ISSUES TO BE DEALT WITH:

- ❖ How should protected tree species legislation be applied / approached, with regard to:

- ◆ Trees (and their natural offspring) in artificial environments (e.g. urban areas)
- ◆ Trees that are artificially propagated (*i.e.* nursery plants and planted trees)
- ◆ Products derived from protected trees, e.g. :
 - Bark, leaves, branches, etc., for medicinal / cultural purposes
 - Processed timber products : logs, sawn timber, firewood, furniture, etc.
- ❖ Who should administrate / apply the legislation (e.g. delegation to appropriate levels of govt. / institutions)?

4. REASONS FOR HAVING A NATIONAL LIST OF PROTECTED SPECIES

- DWAF has an obligation under the NFA
- The list will be a useful conservation tool as it will
 - guide management priorities
 - provide a tool to guide development in treed areas
 - educate the public as to the importance of certain species
 - focus research efforts on the priority species, and through the criteria – guide the scope of the research
 - force unsustainable utilisation practices to be curtailed and provide a platform for promotion of sustainable utilisation
- The list may provide an opportunity to rationalise the various protected species lists in the country, so that a similar criteria, or similar procedure is used in all cases
- A tool to strengthen the legislative controls over deforestation
- Allow monitoring of cross-border trade and transport in endangered species
- Allow DWAF to monitor the provincial list and to back these up if they are weak in some sections
- Allow maintenance of species and provenances that are internationally threatened through a link to international species lists (s.a. IUCN Red data)

5. EXISTING PROVISIONS WHICH COULD BE USED TO PROTECT TREE SPECIES

1. National Forests Act 1998.

S3(4) A minimum area of each woodland type to be conserved

S4: promotion and enforcement of SFM, in terms of a national set of principles, criteria, indicators and minimum standards for SFM

S7: All closed canopy indigenous forests are protected. This could include closed canopy bushveld, riverine and other categories that are not strictly forest

S 12: The Minister may declare:

- a) particular tree
- b) particular group of trees
- c) particular woodland
- d) (*species*)

to be protected

S 14: emergency procedures for protecting trees (and preventing deforestation)

2. Provincial nature conservation ordinances

These exist in all Provinces

Apply to non-State land

Fall under provincial Departments of Environment

Protected species lists covering flowers, cycads, and trees

3. NEMA (National Environmental Management Act)

Provisions for local government by-laws – could these be used to protect tree species? Proposals to establish a national bio-diversity institute may be in conflict with protected tree species under the NFA, need to reconcile these. The proposal from DEAT to have a reverse listing, that is to list species that can be utilised sustainably. To have a list of of sustainable species which will have a large amount of species and then to give protective status to all other species which is not on that list will not be practical from a regulatory point.

6. CRITERIA FOR SELECTING TREE SPECIES REQUIRING PROTECTION

N.B. Where information in one of the measurables is not available, one should adopt the precautionary principle until such time as the available information is forthcoming

(Von Breitenbach - Scarcity categorisation)

1. BIODIVERSITY

RATIONALE: SOUTH AFRICA HAS NATIONAL AND INTERNATIONAL OBLIGATION TOWARDS BIODIVERSITY CONSERVATION THAT DWAF HAS A MANDATE TO IMPLEMENT

MEASURABLES

1.1 - Occurrence by lowest taxonomic criteria: Species/sub-species/varieties

- Fragmentation
- Species
- Habitat

- Isolation

- Endemism (example Cycads)

- Peripheral Range (end of its biogeographical range) The most important group that will fall in this category is trees that are found in small groups along the Northern borders of S. A.

- Provincial Distribution

1.2 - Population:

- Size
- Density

1.3 - Trends

- Distribution (increasing/decreasing)
- Population (increasing/decreasing)

1.4 - Extent of Existing Conservation of the Species (in already protected areas)

2. KEYSTONE SPECIES IN SENSITIVE AND TREE DOMINATED HABITATS

RATIONALE: BY PROTECTING TREE SPECIES THAT ARE KEY TO THE FUNCTIONING OF A PARTICULAR HABITAT WE CAN PRO-ACTIVELY CONSERVE THE SPECIES AND HENCE THE HABITAT GENERALLY

MEASURABLES

1.1 - Function of Species:

- In plant community functioning
- In maintaining the sensitive area

1.2 - Indirect values of keystone species (links to utilisation of species dependant on the keystone species, such as Mopane and its associated insect species)

3. SUSTAINABILITY OF USE

RATIONALE: UTILISED SPECIES MAY BE THREATENED FROM UNSUSTAINABLE HARVESTING PRACTISES. AN OUTRIGHT PROHIBITION ON USE WILL BE DIFFICULT TO ENFORCE, SO INCLUSION ON THE PROTECTED SPECIES LIST CAN PROVIDE INCENTIVES FOR, AND PROMOTION OF, SUSTAINABLE USE

(Still needs to be altered in line with other 3)

MEASURABLES

- 3.1 - Livelihoods Value
- Used by Whom
 - Used for What (food, medicine, etc)
 - Economic Value
 - Already protected by communities for their livelihood values
 - Type of Use (Bark, Leaves, Fruits, Roots etc)
 - Level of Use (high/low)
- 3.2 - Resilience to Use
- Reproductive Potential and Constraints

4. CULTURAL/ SPIRITUAL

RATIONALE: SPECIES INTEGRAL TO THE SPIRITUAL AND CULTURAL FABRIC OF THE VARIOUS SOUTH AFRICAN PEOPLE SHOULD BE PRESERVED. ALSO, THE TRADITIONAL PROTECTION OF SPECIES FOR SPIRITUAL AND CULTURAL VALUES MAY BE ENHANCED OR STRENGTHENED THROUGH THIS FORMAL PROTECTION

MEASURABLES

- 4.1 - Is a species central to cultural and spiritual values?
- 4.2 - Is a species protected by communities for its cultural and spiritual values, e.g. in sacred groves?

7. ISSUES FOR CONSIDERATION

Discussions over the meaning of the large list – should it be seen as a database – lets not call it a list to keep it separated. Like a Red Data List for RSA Trees. Who will maintain the D- Base ? Probably NBI would be the most suitable institute. Linkages should be built in to other relevant Government Departments, NGO's etc.

DWAF/DEAT should 'own' the process. But should be excessable: people should not have to pay for information – they could be able to get it by right so that they know what is protected. It must be a educational tool and be able to assist in identifying research needs.

NBI has a database with distributions that is a starting point.
Provinces also have databases which document rare species – KZNNCS. WCNC
So, review what is there, adapt to our needs. There is no need to start from Zero
Must also make use of other digital data that is available.

Can the list be tiered as in the Provincial systems – specially protected, protected and controlled ?
The Act provides for 1 since regulated list, but could have conditions on species within that list.
A threatened and endangered species system could be developed with a listing and delisting
function.

Also there is the fact that Minister may make regulations that apply for different regions (S53(3)) and this can
provide some sort of tiered system. For example *Acacia erioloba* in the Northern Cape.

Issuing of licences: as opposed to exemptions – suggests that ownership is vested in the state as opposed to the
owners of the trees. Raises issues of the legal status of local rules – but that goes further than the mandate of the
meeting to things generally. But the protected tree under S12 can bolster local rules by adding some legal clout.

Problem that only the Minister can make laws. There is some provision under the local council for making rules ?
Thing is that we want to enable the process of protecting trees by communities and not disrupt it.

Can we, under S15 declare exemptions under the act ?

Mention example of Agriculture Act where weed species have a column on exemptions for certain regions.
For example the special conditions colom for *Acacia mearnsii* (Black Wattle) which is a category 1
weed except in KwaZulu Natal and Mpumalanga where it is used commercially.

Also the issue of Private Property (will it work on communal land though ?) where the owner can be exempt in
terms of the Agric Act of certain things for a given period of time after which it will be reviewed. This exemption
goes with a set of defined rules to follow. Problem of state and non-state land and that properly set rules within a
structure is referred to in the Act as CFA, but this refers only to State Forest Land. We need something we can use
in non-state land also.

Suggest that for subsistence use – it gets an exemption if it has a sustainable use plan or management plan
It will be important that such a plan should include site – specific management actions to ensure the
conservation and survival of the species in question.

Suggest for commercial purposes – it requires a sustainable use plan with a licence or exemption.

Also need to know WHY we are putting species onto S12 – e.g. commercial use of proteaceae that works
because a small number of commercial users who can be licenced.

Also need to define a procedure to protect species but also to take them off the protected list. BUT a means to
enable use still. A listing and delisting with reasons. Like Recovered, or if new information on the species
is discovered.

8. PROCESS FOR GETTING AGREEMENT ON THE PROCESS FOR ARRIVING AT A LIST OF TREE SPECIES FOR REGULATION UNDER S12 OF NFA

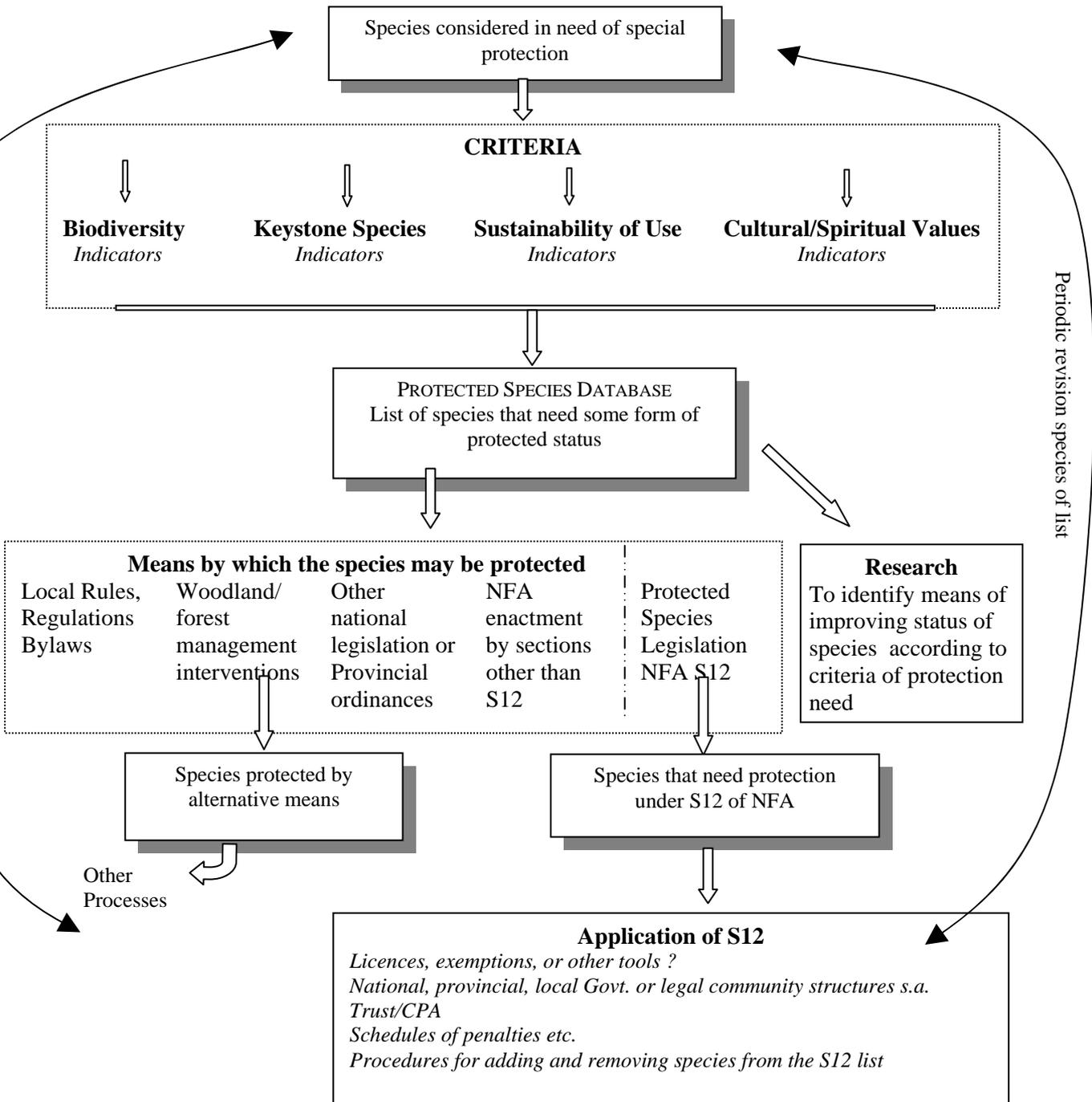
Criteria:

We have to get a consensus agreement on the criteria and their measurables ('indicators') with other management authorities and with the general public. That is, it should be seen to be a *consultative* and *transparent* process of coming to the criteria. Relevant stakeholders should be contacted.

Process:

Similarly, we need to get a broad agreement on the process by which a species will be considered for declaration under S12. This is set out under S13 to some extent, but this mainly refers to the end result. The process which gets you to S13 also requires agreement.

The Suggested Process for Arriving at a List of Species for Regulation under S12 of NFA



9. KEY ISSUES AND IDEAS FOR THE WAY FORWARD

Do we need to protect species of trees under the NFA or can this be done using other provisions?

The National Forests Act in combination with Provincial Ordinances protecting tree species should be adequate for protecting tree species, without having to sue the provisions under S 12(d). However, DWAF must play an important overseeing, facilitating and monitoring role in the protection of rare, endangered and valuable tree species.

- Produce a national protected species database to guide these roles oversight, e.g. use the list to check that all important species are indeed captured in Provincial Ordinance lists.
- Develop a set of criteria and objectives for protecting species, which can be used as the basis for guidelines for the Provinces
- Ensure that a legislative framework for tiered jurisdiction over protected species exists at Provincial, local government and community level.
- Provide guidelines for Provinces/local government on promoting and supporting local level protection and sustainable use of rare/threatened species
- Promote and support research into ways of promoting sustainable management of rare/threatened species
- Documentation and databases: e.g. species status, occurrence, trends, lists of species which are locally protected according to custom in certain areas.
- Enforce other sections of the NFA
- Only as a last resort, declare certain species protected under the NFA and prepare regulations

Does DWAF have the authority to order Provinces to include certain species in their Ordinances? Or can we proceed only on the basis of co-operation?

We need to remember that protection of species should be done at different levels: National (maybe), Provincial, Local Government and Village, community. We need to work out and put in place the mechanisms for this.

A. CONSIDERATIONS FOR INCLUDING A SPECIES INTO THE SCHEDULE FOR SECTION 12d IN THE NFA

1. Does existing legislation provide adequate support? If there is other legislation which could be used, also consider:
 - The need to ensure that other legislation or other sections of the NFA are indeed used to protect that species. For example, by taking measures to ensure certain species are on the Provincial Ordinances, or using another section on the NFA to protect a certain species. If there are problems or obstacles encountered, then it may still be necessary to include these species in the Schedule of protected species.
 - Whether a species should be given protected species status IN ADDITION to the other provision, for example to give a measure of additional protection through increasing the penalty, or it may be easier to get a conviction in the terms of the NFA than under the other provision. It gives more chance of getting a conviction if an offender can be tried for more than one offence
2. Examine the scores for the 4 criteria. These will tell us a lot about the best way to manage the species and whether or not it should be on the schedule.
 - Do not use only the total score — a high score for any one can justify the need for inclusion. Adding up the scores for all criteria could be misleading. The British assessment /rating of species were mentioned as an example of a system that can be used / modified to suit South Africa.

3. As with the criteria, there is need to “test drive” these screening mechanisms using a few trial species or case studies, and adapt accordingly.

B. APPLYING PROTECTED SPECIES AND OTHER SECTIONS OF THE NFA TO PROMOTE COMMUNITY LEVEL SUSTAINABLE MANAGEMENT OF THREATENED/RARE SPECIES

ISSUES:

- We do not want to cause unnecessary obstacles to local subsistence use of protected species
- We want to promote sustainable use of protected species rather than total prohibition on use that cannot be enforced and tends to exacerbate destruction
- We want to give legal status to locally protected species. In some parts of the country, local communities protect certain species of trees for spiritual, cultural or use-value reasons. There is need to provide an mechanism for giving a legally enforceable protected status to these species
- We want to support and encourage local communities to take responsibility for the management of their own resources rather than rely on a top-down policing approach. The protection of large trees of significance for example the Segole Boabab in the Northern Province which is the largest tree in South Africa and which is situated on communal land could be protected and used as a tourist attraction by the local community , which will provide some economic benefit to them as well.

MECHANISMS

Subsistence use: Provide for exemptions for the subsistence use of protected species, both in and outside of forest reserves. *Model this on regulations for the exemption under S 24 (6). Is there any provision for exemptions to granting licences for protected species? Can S 24 (6) be used or is that only applicable to State Forests? Can an exemption be put under the regulations anyway, even if there is no mention or provision in the Act?*

Enabling sustainable use : Use the licence provisions under S 15. When the regulations for this are drafted, consider the need to apply these to community situations, i.e. do not make them overly bureaucratic and complex. Specify requirements /guidelines for granting a licence in the regulations, such as having a management plan, or approved harvesting practice, details of species to be harvested and ways in which over-exploitation will be controlled. Put in place recovery or rehabilitation plans.

Legal Status to locally protected species: One option is to use s12 (d) and specify area in which the species in protected. This may be clumsy. Another option is to use S 12 (b) or(c) which enables the Minister to protect a particular group of trees or a particular woodland. *Would this work?? Could the Minister, for instance, using section 12 (b), protect all Parinari spp and Sclerocarya spp growing in the Venda area? Could these be considered a “group of trees?”*

Encourage and support local rules and management of forests, woodlands and trees. There is no provision for this in the NFA. The Act assumes state custodianship of protected species and protected forests, and does not provide for legal recognition to be given to community-level management plans and rules, other than CFA which only applies in State Forests. Most of the Forest Acts in the rest of Africa and Asia provide for community ownership and management of forests on customary / communal land. In the long term we may need to consider an amendment. Alternatively, other provisions may be used to give legal status to community custodianship of land and resources. These include:

Tenure Reform in communal areas: still no mechanism for this since the Land Rights Bill was shelved by the new Minister of Lands and Agric. The CPA (and Trust and Section 21) can be used by communities to hold land

in common as legally recognised owners. On this basis they can make rules regarding their resources and these can be enforced in courts of law.

Local government by-laws: provision for local government by-laws in NEMA (s. 46), could possibly be made up of clusters of community based by-laws?

Conservancies: (under Parks and Wildlife act?) currently used on private land but not in communal land. Gives the members the rights to manage the wildlife and plants within their conservancy, and thereby be exemption from government regulations and policing. The use of the conservancy concept in communal land is being investigated in the Richtersveld in the N Cape.

Land Care: DoA is also looking at institutions for local level management of natural resources, under the umbrella of the Land Care programme.

C. APPLYING PROTECTED SPECIES AND OTHER SECTIONS OF THE NFA TO PROMOTE/REGULATE ORNAMENTAL PROPAGATION (URBAN AREAS), DOMESTICATION AND NURSERIES , THE PAPER CHAIN AND THE ADMINISTRATION OF THESE ISSUES

Ornamental

-Administration in urban areas shouldn't be an issue for DWAF when there are municipal and provincial and district councils.

-We could make urban areas exempt from the regulations. But – ornamental planting on farms – to we should rather include closed gardens, or, alternatively, say *exempted from artificial environments*.

-If there are important trees in these areas they can be protected through the S12.1.a,b.

and forest officers from these other authorities appointed under S.65. Regional District Councils etc.

There is also the National Monuments Act, so under S12(2), we may not have to use S12.1.a or b if this legislation is adequate. Then we do not have to appoint the forest officer either.

If that is the case – there needs to be a public awareness campaign so that the urban public, who are used to DWAF doing it, know that it is now other authority.

Should also be guidance for municipalities.

Domestication

How will this work in terms of applying it to protected tree produce that is from domestic/artificial sources.

What about domestication of protected species so that you do not have to use the protected, naturally occurring specimens?

The exemption from the artificial environments can also apply in this case.

BUT – what about collection of seeds from the forest. Get seeds from DWAF – or DWAF collects the seeds.

Cycads example is a specific case as the system for controlling cycad exploitation and trade is a well established network now. A system of Nursery receipts exists, micro-chipping as well.

Protected tree Nurseries – this should be encouraged: use some form of nursery receipt for the purchase and transport etc of the seedlings. Once they are planted in an artificial environment they become exempted

We should be encouraging domestication of protected species – especially those that are utilised. So we do not want to place administrative burdens on species that may discourage or put domesticated produce at a disadvantage.

Protected tree produce and products –

the amendment means that protected spp. products (processed produce) will also be incorporated into the act and so may be used in regulations.

Agree with legislation group: at this time timber – saw logs – are relatively simpler to trace to source and so can be policed. This produce may thus be subject to the legislation.

Non-destructive produce such as fruits, and destructive produce such as bark or flowers, are very difficult to monitor because of the informal market and transport chain. This would make proving the product came from an exempted source or not near impossible. Thus, at this time, we should start by applying the legislation at source – i.e. at the harvesting site. Promotion of domestication should be the ‘carrot’ to lead the ‘stick’ of the legislation. This would also provide a focus for PFM initiatives that could improve the sustainability of wild harvesting and the production of a sustainable utilisation plan under which a licence could be granted.

As the markets become more formalised and domesticated sources take a larger proportion of the market, protected species ‘certificates’ or ‘receipts’ can be introduced.

Policing and Administration

Who Produces the list: DWAF with other ‘expert’ bodies

Who maintains the list: DWAF must investigate suitable partners: NBI is one possibility

Who Reviews the list: The NFAC could be given the mandate to ensure that the list is periodically reviewed. DWAF should co-ordinate this.

Who Applies the list: The list should be applied by a variety of authorities. Forest Officer can be appointed in these institutions as well as in communities, who then apply it. Municipalities, Tribal authorities (community police), provincial authorities, DWAF.

9.1 The Way Forward

The way forward for DWAF following this meeting was outlined:

***Test Case:* A series of species, using current list, red data species, culturally/spiritually protected species should be used to test the criteria and to create a methodology and scoring mechanism for the criteria.**

***Revise Criteria/Matrix:* Based on the findings from the test case, the criteria should be revised, and the draft matrix – criteria against spp – finalised.**

Meanwhile, DWAF should approach the NFAC regarding their monitoring of the periodic review.

***Key Stakeholders* are invited to comment on the criteria and methodology, and invited to participate in the drawing up of list.**

Key Stakeholders *NGOs:* NBI, dendrological society, Botanical Soc, Tree society, WESSA, IUCN, CBOs, Indigenous Plant Use Forum.

***GOs:* DWAF, DEAT, Provincial authorities, NFAC, local Govt.**

***Revise criteria* as necessary following Stakeholder consultation.**

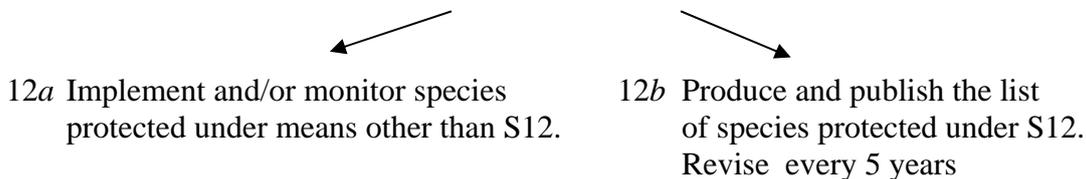
DWAF must consider who may manage the species list. Management will require that the species database is kept up to date as information becomes available regarding its status, use and management.

A Fact Sheet could be produced at this point by DWAF Communications Directorate to inform the public of the process by which protected species will be identified, how the legislation will be applied and how reviews will be undertaken. This will act as an introduction to the later publication of species under S12.

The Protected Species Database should be put together by DWAF and an ‘expert panel’. This will include the provincially protected species, red data species and locally protected species. This is the initial list of all trees that need some form of protection. Many of these will already have protection under provincial and other national legislation.

Consult Key Stakeholders with the Database and consider regulations for protection of these species.

Incorporate the measures for protection into the database and revise as necessary.



This process may take up to 1 year to complete. However, it will lead to an agreed and transparent process and objectivity in the production of the eventual list.

APPENDIX 1**ATTENDANCE LIST WORKSHOP ON PROTECTED SPECIES**

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Mr. J. Bester	012 – 336 8171	lcg@dwaf.pwv.gov.za
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Mr. W. Vermeulen	044 – 382 5466	VermeuW@dwaf-wcp.wcape.gov.za
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Ms C. Vermeulen	044 – 382 5466	VermeuC@dwaf-wcp.wcape.gov.za
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Dr. C. Geldenhuys	012 – 803 3277	Cgelden@mweb.co.za

APPENDIX 2

BRIEF INTRODUCTORY HISTORICAL OVERVIEW OF THE PROTECTION OF TREES

PHASES

1. Reservation of important timber trees - Natural Forests
2. Protection of tree species because of over – exploitation and for soil Conservation – mainly outside Natural Forests
3. Protection of tree species for Biodiversity conservation and other purposes - Country – wide , all biomes, including specimens of exotics.

Phase 1 : 1859 – 1941

Phase 2 : 1941 – 1974

Phase 3 : 1974 – 1998

* FOREST ACTS 1888, 1913

Emphasis on reservation of utilisable timber species.

* FOREST AND VELD CONSERVATION ACT 1941

Provision for the declaration of protected trees

Tree protection proclamations

1. 1941 : - Baobab (S. A.)
- Various woodland species (Northern Cape)
2. and 3 1951: Various species (Northern Province)
Because of overexploitation by Commercial
and for the protection of stream banks
4. and 5 1964, 1967 : Endemics and rare and threatened species (Cape)

* FOREST ACT 1968

- Consolidation Notice 1971
- Augmentation Notice 1974
 - White milkwood country – wide
 - Three Yellowwood species (Natal)
 - All trees on 4000 ha private indigenous forest Southern Cape

Conflict with Agriculture

*** NEW LIST OF PROTECTED TREES, 1976
(GN 1339 of 1976)**

- Affirm Forestry's legal obligation to protect in public interest
- Country – wide
- Specific local protection abolished
- Some species removed others retained
- Additional 56 species

Classification :

- all Cycads
- 2 tree ferns
- 11 rare endemics
- 14 periferal tropical species
- 4 sparsely distributed species
- 2 relatively general scrub forest species
- 2 valuable forest timber species
- 1 landscape determining tree
- 1 ornamental
- 3 species accidentally occurring in Nambia/ ex – Transkei only

*** 1977 LIST EXTENDED TO THE PROTECTION OF CERTAIN
EXOTIC SPECIMENS IN DULLSTROOM**

*** FOREST ACT 1984**

Provides more definite criteria

Particular Tree

Particular Group of Trees

Particular Species

- preserve tree dominated biomes
- maintain biodiversity
- conserve and develop natural resources
- promote preservation scenic beauty
- promote preservation or reclamation of soil erosion or drifting sands

Consultative committee

Control committee (local)

Prohibition on cutting, damaging, destroying, disturbing, removing, Collecting, transporting, exporting, purchasing, selling, donating, without written consent.

OBJECTIVES

- **DR. VON BREINTENBACH'S REPORT , 1981**

A. MAINTENANCE OF BIODIVERSITY BY PROTECTION OF RARE SPECIES

- Gene pool
- Endemism
- Causal rarity - Niche species
 - Relict species
- Relative rarity - Local rarity
 - Periferal species
- IUCN – classification Red Data species
- Objective rarity determination

B. CONSERVATION OF TREE – DOMINATED BIOMES THROUGH PROTECTION OF DOMINANT SYSTEM SPECIES

- Natural Forests
- Woodlands
- Karroo and grasslands

C. PROTECTION OF PRODUCTIVE SPECIES

- Fodder trees
- Honey production
- Wild fruit
- “Grazing “ trees
- Trees for shelter

D. CONSERVATION OF VULNERABLE SITES

- Stream banks
- Coastal dunes
- Kalahari sand

E. PROTECTION FOR SCENIC / AESTHETIC PURPOSES

F. PROTECTION AGAINST MISUSE

- e. g. Bark utilisation (medicinal)

• OTHER LEGAL PROVISIONS

- Homeland Forestry Acts
- Provincial ordinances
Plants threatened by exploitation for flowers and ornamental
Purposes
- National Monuments Act
Trees with cultural/ historical significance

APPENDIX 3

SOCIAL CONSIDERATIONS OF PROTECTED SPECIES REGULATIONS UNDER THE NATIONAL FOREST ACT

HISTORICAL ORIGINS OF PROTECTED/ RESERVED TREES

- Colonial state as custodian of forest resources
- Post – war concern to secure supplies of timber for the Empire (“Crown” property)
- reserved species a mechanism to extend State ownership and control beyond the borders of forest reserves
- Economic gain of State (“royalties”) and / or private capital
- Notions of “ backwardness “/ destructiveness of indigenous people
- Conservation : protect rare and valuable species

Question: Protected by WHOM for WHOM ?

“ If State ownership of Forests is considered necessary in European countries where the importance of Forestry is well understood, it is even more necessary in the Colonies, where the inhabitants have as yet developed little or no “ Forest sense “, and are often antagonistic to forest preservation in any form . “

Troup , 1940 pp 226.

Reservation driven by political and economic agendas, values, assumptions, rather than technical considerations.

Unless we question the basis for past laws and regulations, these outdated values and social imbalances will be carried into our new law and regulations

Many countries in Africa adopted colonial forest policy after independence. it is only now that there is a wave of policy and legislative reform throughout the former Colonies in Africa and Asia.

NEW TRENDS IN FOREST POLICY IN SOUTH AFRICA AND INTERNATIONALLY

- Recognition of role of forests, trees in local livelihood security
- Recognition of local level management capacity, knowledge and skills
- Increased community – level ownership and control of resources, including forests

- These principles are recognised in our new policy and in the NFA

NB. Our regulations must embody and give effect to these important principles
(**may even require some amendments to the NFA**)

PREVIOUS REGULATIONS – ISSUES AND CONCERNS

- Negative impacts on livelihoods of vulnerable rural households
- No provision for legally recognised local level management and control , system of tiered jurisdiction
- No provision for local – level declaration of protected species
- Disincentive to domestication
- Difficulties with enforcement

LESSONS FROM POLICY AND LEGISLATION IN OTHER

COUNTRIES

- Reservation / protection is **management** category, does not imply State custodianship (Tanzania)
- Provision for village forest reserves (Tanzania, Lesotho, Malawi, Uganda, Mozambique and Namibia) Not in our NFA
- Review of the need for protected species under Forest Act (Uganda)
- Provisions for exemptions/ exceptions for community use of protected species – e. g. based on a management plan, customary practices, subsistence use (Tanzania , Mozambique)
- Provisions for exemption/ expedited licence on basis of domestication (Malawi , Tanzania ?)