

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.

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. R. 1188

14 December 2007

**NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004 (ACT 10 OF 2004):
THREATENED OR PROTECTED SPECIES AMENDMENT REGULATIONS**

The Minister of Environmental Affairs and Tourism hereby publishes non-substantive amendments to the regulations published in Government Gazette No. 29657, Government Notice R.152 of 23 February 2007 as set out in the Schedule below.

SCHEDULE

Definitions

1. In these regulations-

“**the Act**” means the National Environment Management Act: Biodiversity Act, 2004 (Act No. 10 of 2004); and

“the Regulations” means the Threatened or Protected Species Regulations, 2007 published in Government Gazette No. 29657, Government Notice No. R 152 of 23 February 2007;

Amendment of regulation 1 of the Regulations

2. Regulation 1 of the Regulations is hereby amended by:-
- (a) the substitution of the definition of “**elephant ivory**” for the following definition:

“**elephant ivory**” in relation to marking and registration means any piece of elephant tusk which is both 20cm or more in length[, or] and more than 1kg in weight, whether carved or not;”;
 - (b) the insertion of after the definition of “elephant ivory” of the following definition:

“**environmental assessment practitioner**’ means the individual responsible for conducting risk assessments in terms of regulation 15;”;
 - (c) the insertion after “extensive wildlife system of the following definitions in alphabetical order:
 - (i) “**fair chase principle**’ means a set of hunting conditions in which the individual decision-maker judges the taking of prey as acceptably uncertain and difficult for the hunter;”;
 - (ii) “**game capturer**’ means a person that captures and conveys specimens of listed threatened or protected terrestrial vertebrate species for commercial purposes on behalf of another person and may include buying, temporary possession and selling of these specimens;”;
 - (d) the substitution of the definition of “**game farm hunting permit**” for the following definition:

“**game farm hunting permit**’ means a permit issued by the issuing authority to the landowner of a registered game farm, authorising a person authorised by the

landowner to carry out a specific restricted activity, namely the buying and hunting of a listed threatened or protected species on that landowner's registered farm, **[and the]** including the subsequent transport and possession of the dead specimen of a listed threatened or protected species subsequent to the hunt;";

(e) the substitution of the definition of '**hunting client**' for the following definition:

"hunting client' means a person who –

- (a) is not resident in the Republic; and
- (b) pays or rewards a professional hunter directly or indirectly through a hunting outfitter for, or in connection with, the hunting of a listed threatened or protected species;";

(f) the insertion after the definition of "hunting client" of the following definitions in alphabetical order:

- (i) **"hunting organisation'** means any organisation that represents hunters, and that has an accepted constitution and code of conduct that provide for disciplinary actions, should a member not adhere to the code of conduct of the organisation to which he or she is a member;";
- (ii) **"hunting outfitter'** means a person who is licensed in terms of provincial legislation as a hunting outfitter;";

(g) the substitution of the definition of '**listed large predator**' for the following definition:

"listed large predator' means a specimen of any of the following listed threatened or protected species:

- (a) Cheetah (*Acinonyx jubatus*);
- (b) Spotted hyaena (*Crocuta crocuta*);
- (c) Brown hyaena (*Parahyaena brunnea*);
- (d) Wild dog (*Lycaon pictus*); or
- [(e) Lion (*Panthera leo*); or]**

- (f) Leopard (*Panthera pardus*);";
- (h) the insertion after the definition of "kept in captivity" of the following definition:
"land owner" includes the authorised representative of the land owner or persons in control of the land;";
- (i) the substitution of the definition of '**nursery**' for the following definition:
"nursery" means a facility where a listed threatened or protected plant species is sold, artificially propagated or multiplied for commercial purposes;";
- (j) the substitution of the definition of '**personal effects permit**' for the following definition:
"personal effects permit" means a permit issued by the issuing authority to a registered wildlife trader, authorising a person to buy dead or live specimens of listed threatened or protected species, including products derived from such species, for non-commercial purposes, from the registered wildlife trader and for such person to transport or convey and keep it in his or her possession for a period specified on the permit or to export it from the Republic;";
- (k) the substitution of the definition of '**possession permit**' for the following definition:
"possession permit" means a permit for keeping or conveying a specimen of a listed threatened or protected species for personal use in a person's possession without carrying out any other restricted activity;";
- (l) the substitution of the definition of '**put and take animal**' for the following definition:
"put and take animal" means a live specimen of a captive bred listed large predator, or a live specimen of a captive bred *Ceratotherium simum* (White rhinoceros) or *Diceros bicornis* (Black rhinoceros) that is released [on a property irrespective of the size of the property] in an extensive wildlife system for the purpose of hunting the animal within a period of twenty four months;";

(m) the substitution of the definition of '**registered wildlife trader**' for the following definition:

"registered wildlife trader" means a person who may hawk, peddle, barter, exchange, offer, advertise, expose or have in his or her possession for the purpose of exhibition, display, sale, hawking, peddling, bartering or exchanging, any listed threatened or protected species, and includes taxidermists and game capturers;"

(n) the insertion after the definition "rehabilitation facility" of the following definitions in alphabetical order:

(i) "rhinoceros horn", in relation to marking and registration, an unprocessed rhinoceros horn or part thereof longer than 10cm in length;"

(o) the substitution of the definition of '**scientific institution**' for the following definition:

"scientific institution" means a museum, organ of state involved in research, registered research unit of a tertiary institution or herbarium where specimens of a listed threatened or protected species are kept or used for research, scientific, information or identification purposes;"

(p) the insertion after the definition of "standing permit" of the following definitions in alphabetical order:

(i) "threatened species" means indigenous species listed as critically endangered, endangered or vulnerable species in terms of section 56(1) of the Biodiversity Act;"

(ii) "tracking" means to search for or pursue a specimen of a listed threatened or protected species without killing the specimen;"

Substitution of regulation 3 of the Regulations

3. The following regulation is hereby substituted for regulation 3 of the Regulations:

“3. (1) All permit applications must be decided upon by an issuing authority.

(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 **[national]** protected area or an area managed or under control of an organ of state;

(b) that are marine species, including listed threatened or protected marine species in marine protected areas;

(c) by a provincial department on land under its jurisdiction and for the control of damage causing animals originating from protected areas in compliance with regulation **14**; or

(d) by a national department on land under its jurisdiction.

(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) activities referred to in subregulation (2)(a) involving listed threatened or protected species in [national] protected areas;

(b) listed threatened or protected marine species;

(c) listed threatened or protected species where the restricted activity will be carried out by the provincial department on land under its jurisdiction or where control of damage causing animals originating from protected areas will take place 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.

(4) The MEC must enter into an agreement with SANParks in relation to the control of damage causing animals originating from national parks.

[4] (5) An official of the Department or a provincial department may exercise a power or duty of an issuing authority in terms of the Biodiversity Act or these regulations to the extent that that power or duty has been delegated or sub-delegated to that official in terms of section 42 or 42A of the National Environmental Management Act, 1998 (Act No. 107 of 1998).".

Substitution of regulation 4 of the Regulations

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

"(4) A person operating under an exemption in terms of the legislation referred to in subregulation (1) may continue to do so for a period of six months from the date of coming into effect of these regulations, within which period he or she must either apply for a permit under these regulations or stop the activity."

Substitution of regulation 5 of the Regulations

(a) by the substitution for subregulation (3) of the following subregulation:

"(3) A landowner of a registered game farm may apply for game farm hunting permits, authorising a person to buy and hunt a listed threatened or protected species on the registered game farm and for the subsequent transport and possession of the dead specimen(s) that was hunted, if the registration provisions in Chapter 3 are complied with.";

(b) by the substitution for subregulation (5) of the following subregulation:

"(5) Any person may apply for a possession permit for having or conveying a listed specimen of a threatened or protected species or a product or derivative of a listed

threatened or protected species in his or her possession, if that person does not intend to carry out any other restricted activity with that specimen.”;

- (d) by the substitution for subregulation (6) of the following subregulation:

“(6) A registered wildlife trader may apply for personal effects permits, authorising a person to buy, transport or convey and keep in his or her possession and, or export out of the Republic, dead or live specimens of listed threatened or protected species, including products derived from such species and acquired from the registered wildlife trade, if the registration provisions in Chapter 3 are complied with.”.

Substitution of regulation 7 of the Regulations

6. The following regulation is hereby substituted for regulation 7 of the Regulations:

“7. (1) If the restricted activity applied for is to be carried out on private land and the applicant is not the owner of the land, the applicant must –

- (a) in the case of a listed threatened species obtain and submit the written consent of the landowner to undertake the proposed restricted activity on that land, when applying for a permit; or
- (b) in the case of a listed protected species, obtain the written consent of the landowner prior to undertaking the proposed restricted activity on that land.

(2) Subregulation (1) does not apply to the control of damage causing animals by provincial departments.”

Substitution of regulation 13 of the Regulations

7. (1) Regulation 13 of the Regulations is hereby amended by –

- (a) the substitution of paragraph (c) in subregulation (1) for the following paragraph:

- "(c) whether the restricted activity applied for is buying and hunting of a listed threatened or protected species and the subsequent transport and possession of a dead specimen; and";
- (b) the substitution of paragraph (b) in subregulation (3) for the following paragraph:
- "(b) whether the specimens applying for are live or dead or processed specimens of listed threatened or protected species, including products or derivatives of such species;"

Substitution of regulation 14 of the Regulations

8. (1) Regulation 14 of the Regulations is hereby amended by –
- (a) the substitution subregulation (1) for the following subregulation:
- "(1) The provincial department responsible for the conservation of biodiversity in a province, must determine whether an individual of a listed threatened or protected species can be deemed to be a damage causing animal.";
- (b) the substitution of paragraph (c) in subregulation (2) for the following paragraph:
- "(c) control by a person, other than a hunting client, designated in writing, by the provincial department referred to in subregulation (1) or the management authority of the protected area, and in possession of a valid permit to capture and relocate or to control by means of methods prescribed in subregulation (4), (5) and (6)."
- (c) the substitution subregulation (4) for the following subregulation:
- "(4) The holder of a permit referred to in regulation 5(2)(a) and (c) or a person referred to in subregulation 2(c) may hunt a damage causing animal by any of the following means, as specified on his or her permit:";

- (a) poison, which has in terms of applicable legislation, been registered for the purpose of poisoning the species involved and as specified by the issuing authority;
- (b) bait and traps, excluding gin traps, where the damage causing animal is -
 - (i) in the immediate vicinity of the carcass of domestic stock or wildlife which it has or apparently has killed;
 - (ii) about to cause damage to domestic stock or wildlife;
- (c) dogs, for the purpose of flushing the damage causing animal or tracking a wounded animal;
- (d) darting, for the subsequent translocation of the damage causing animal, and
- (e) a firearm suitable for hunting purposes.

(d) the substitution subregulation (5) for the following subregulation:

“(5) The holder of a permit referred to in regulation 5(2)(a) and (c) or a person referred to in subregulation 2(c) may hunt a damage causing individual by luring it by means of-

- (a) sounds; or
- (b) smell.”;

(e) the substitution subregulation (6) for the following subregulation:

“(6) The holder of a permit referred to in regulation 5(2)(a) and (c) or a person referred to in subregulation 2(c) may hunt a damage causing animal by using a motorised vehicle or aircraft and flood or spotlights.”;

(f) the insertion of a new subregulation (7):

“(7) In the case of a damage causing animal originating from an area other than a protected area, the following control options must be considered by the provincial department referred to in subregulation (1):

- (a) Capture and relocation by the provincial department referred to in subregulation (1);

(b) control by the provincial department referred to in subregulation (1) by culling or by using methods prescribed in subregulations (4), (5) and (6); or

(c) control by a person, other than a hunting client, designated in writing, by the provincial department referred to in subregulation (1), and in possession of a valid permit to capture and relocate or to control by means of methods prescribed in subregulation (4), (5) and (6)."

Substitution of regulation 20 of the Regulations

9. (1) Regulation 20 of the Regulations is hereby amended by –
- (a) the substitution of subregulation (1) for the following subsection:
- “(1) A permit issued for live specimens of listed threatened or protected species is only valid within the area of jurisdiction of the issuing authority or for the specific locality where the restricted activity involving the specimen of a listed threatened or protected species will take place, except for a possession permit, a personal effects permit or a nursery possession permit.”

Substitution of regulation 21 of the Regulations

10. (1) Regulation 21 of the Regulations is hereby amended by –
- (a) the substitution of subregulation (1) for the following subregulation:
- “(1) All permits, including game farm hunting permits, authorising the buying and hunting of a specimen of a listed threatened or protected animal species must, in addition to any other conditions the issuing authority may or must impose, be issued subject to the following conditions:
- (a) The permit holder must have all relevant documentation authorising the hunt on his or her person during the hunt;
- (b) the permit holder must within 21 days of the hunt furnish the issuing authority with a written return on the hunt stating –