

National Environmental Management Biodiversity Act 10 of 2004 (Biodiversity Act)

Topic: Environment, Fauna and Flora

IN A CALABASH

Introduction

In terms of the Constitution of the Republic of South Africa, 1996, everyone has the right to an environment that is not harmful to their health or well-being.

The Constitution categorically states that the environment should be protected for the benefit of present and future generations through reasonable legislative and other measures that prevent pollution and ecological degradation. These measures must promote conservation, secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

The National Environmental Management: Biodiversity Act 10 of 2004 (Biodiversity Act) seeks to ensure that South African plants, animals and ecosystems are protected and preserved for future generations.

Objectives of the Act

The objective of the Act is to provide for the protection, management and conservation of South Africa's—

- animal life and plant species, known as flora and fauna;
- threatened flora and fauna which warrants national protection; and
- indigenous biological resources and the fair and equitable sharing of benefits arising from bio-prospecting.

The Act seeks to control and eradicate certain foreign and or alien animals, organisms and plants which threaten South Africa's biodiversity.

Application of the Act and its implication to Tourism

The Biodiversity Act applies to all South Africans, including legal entities and businesses, in particular those who operate in areas where there is a presence of fauna and flora.

Summary of the provisions of the Act

Norms and standards

In terms of the Biodiversity Act, certain norms and standards have been issued which–

- pertain to the management and conservation of South Africa's biological diversity and its components;
- restrict certain activities which may impact on biodiversity and its components; and
- set indicators to measure compliance with these norms and standards.

These norms and standards may apply nationwide, in a specific area only or to a specific category of biodiversity.



To date, norms and standards pertaining to–

- the management of elephants;
- endangered species (Convention on International Trade in Endangered Species (CITES));
- rhinoceros and rhinoceros horn;
- the trade in certain Encephalartos (cycad) species; and
- hunting methods in South Africa,

have been issued.

Protection of threatened or protected ecosystems

In terms of the Act, the Minister or MEC for a province may, by notice in the Gazette, publish a national list of ecosystems that are threatened and in need of protection.

An 'ecosystem' means a dynamic complex of animal, plant and micro-organism communities and their non-living environment interacting as a functional unit. 'Endangered ecosystem' means any ecosystem listed as an endangered ecosystem.

Listed ecosystems may be categorised as–

- critically endangered ecosystems, being ecosystems that have undergone severe degradation of ecological structure, function or composition as a result of human intervention and are subject to an extremely high risk of irreversible transformation;
- endangered ecosystems, being ecosystems that have undergone degradation of ecological structure, function or composition as a result of human intervention, although they are not critically endangered ecosystems;
- vulnerable ecosystems, being ecosystems that have a high risk of undergoing significant degradation of ecological structure, function or composition as a result of human intervention, although they are not critically endangered ecosystems or endangered ecosystems; and
- protected ecosystems, being ecosystems that are of high conservation value or of high national or provincial importance.

The list must describe, in sufficient detail, the location of each ecosystem on the list and be reviewed every five years.

Please refer to the government website which lists the current ecosystems requiring protection.

Listing of species that are threatened or in need of national protection

In terms of the Act, the Minister may, by notice in the Gazette, publish a list of–

- critically endangered species, being any indigenous species facing an extremely high risk of extinction in the wild in the immediate future;
- endangered species, being any indigenous species facing a high risk of extinction in the wild in the near future, although they are not a critically endangered species;
- vulnerable species, being any indigenous species facing an extremely high risk of extinction in the wild in the medium-term future, although they are not a critically endangered species or an endangered species; and
- protected species, being any species which are of such high conservation value or national importance that they require national protection.

'Species' is defined to mean a kind of animal, plant or other organism that does not normally interbreed with individuals of another kind and includes any sub-species, cultivar, variety, geographic race, strain, hybrid or geographically separate population.

The Minister must review the lists at least every five years.

These species have to be treated in accordance with the specifications and under the permit housed under the Threatened or Protected Species Regulations.

Please refer to the government website which lists the current ecosystems requiring protection.

Restricted activities involving listed threatened or protected species



In terms of the Biodiversity Act, 'restricted activity' means–

- hunting, catching, capturing or killing any living specimen of a listed threatened or protected species by any means, method or device whatsoever, including searching, pursuing, driving, lying in wait, luring, alluring, discharging a missile or injuring with intent to hunt, catch, capture or kill any such specimen;
- gathering, collecting or plucking any specimen of a listed threatened or protected species;
- picking parts of, or cutting, chopping off, uprooting, damaging or destroying, any specimen of a listed threatened or protected species;
- importing into the Republic, including introducing from the sea, any specimen of a listed threatened or protected species;
- exporting from the Republic, including re-exporting from the Republic, any specimen of a listed threatened or protected species;
- having in possession or exercising physical control over any specimen of a listed threatened or protected species;
- growing, breeding or in any other way propagating any specimen of a listed threatened or protected species, or causing it to multiply;
- conveying, moving or otherwise translocating any specimen of a listed threatened or protected species;

- selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift or in any way acquiring or disposing of any specimen of a listed threatened or protected species; or
 - any other prescribed activity which involves a specimen of a listed threatened or protected species,
- in relation to a specimen of a listed threatened or protected species.

In this regard, the Minister may, by notice in the Gazette—

- prohibit the carrying out of any activity which is of a nature that may negatively impact on the survival of a listed threatened or protected species without a permit; or
- prohibit the carrying out of any activity which is of a nature that may negatively impact on the survival of a listed threatened or protected species.



Note: This will not apply in respect of a listed threatened or protected species conveyed from outside the Republic in transit through the Republic to a destination outside the Republic, provided that such transit through the Republic takes place under the control of an environmental management inspector.

Restricted activities involving alien species

The Biodiversity Act defines an ‘alien species’ as a species that is not an indigenous species or an indigenous species translocated or intended to be translocated to a place outside its natural distribution range in nature, but not an indigenous species that has extended its natural distribution range by natural means of migration or dispersal without human intervention.



‘Restricted activity’ means—

- importing into the Republic, including introducing from the sea, any specimen of an alien or listed invasive species;
 - having in possession or exercising physical control over any specimen of an alien or listed invasive species;
 - growing, breeding or in any other way propagating any specimen of an alien or listed invasive species or causing it to multiply;
 - conveying, moving or otherwise translocating any specimen of an alien or listed invasive species;
 - selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift or in any way acquiring or disposing of any specimen of an alien or listed invasive species; or
 - any other prescribed activity which involves a specimen of an alien or listed invasive species,
- in relation to a specimen of an alien species or listed invasive species.

A person or legal entity may not carry out a restricted activity involving a specimen of an alien species without a permit. Such permit will only be issued after a prescribed

assessment of risks and potential impacts which the alien species and related activity may place or expose the environment to, is carried out.

The Minister may, however, by notice in the Gazette, exempt any alien species specified in the notice from this requirement.

Notwithstanding the above, the Minister may, by notice in the Gazette, publish a list of those alien species in respect of which a permit may not be issued.

In this regard a person may not carry out any restricted activity involving a specimen of an alien species at all.

List of invasive species

The Biodiversity Act defines an 'invasive species' as any species whose establishment and spread outside of its natural distribution range threaten ecosystems, habitats or other species or have demonstrable potential to threaten ecosystems, habitats or other species and may result in economic or environmental harm or harm to human health.

In terms of the Biodiversity Act, the Minister must by notice in the Gazette, publish a national list of invasive species to be applied nationally.

Furthermore, the MEC for Environmental Affairs in a province may, by notice in the Gazette, publish a provincial list of invasive species.

The Minister or the MEC for Environmental Affairs in a relevant province must regularly review the national list or any provincial list.

Restricted activities involving listed invasive species

A person may not carry out a restricted activity involving a specimen of a listed invasive species without a permit.

A permit may be issued only after a prescribed assessment of risks and potential impacts on biodiversity is carried out.

When a person has received a permit to carry out a restricted activity involving a specimen of an invasive species, he or she must comply with the conditions under which the permit has been issued and, in doing so, must take all required steps to prevent or minimise harm to biodiversity.

Control and eradication of listed invasive species

Control and eradication of a listed invasive species must be carried out by means of methods that are appropriate for the species concerned and the environment in which it occurs.

Any action taken to control and eradicate a listed invasive species must be executed with caution and in a manner that may cause the least possible harm to biodiversity and damage to the environment.

The methods employed to control and eradicate a listed invasive species must also be directed at the offspring, propagating material and re-growth of such invasive species in order to prevent such species from producing offspring, forming seed, regenerating or re-establishing itself in any manner.

The Minister must ensure the co-ordination and implementation of programmes for the prevention, control or eradication of invasive species.

The Minister may establish an entity consisting of public servants to co-ordinate and implement programmes for the prevention, control or eradication of invasive species.

One should take note when one is eradicating invasive species.



WHAT HAPPENS IF YOU DO NOT COMPLY?

Any person who fails to comply with the Biodiversity Act will be guilty of an offence.

A person convicted of an offence above is liable to a fine, to imprisonment for a period not exceeding five years or to both fine and such imprisonment.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

Awareness of–

- protected and endangered ecosystems and species; and
- alien and invasive species.;
- Ensure that all alien and evasive species are eradicated and are controlled within one's area of operation;
- Obtain necessary permits, where applicable;
- Comply with any applicable norms and standards; and
- Protect endangered and protected species.

FURTHER INFORMATION

Regulator

Department of Environmental Affairs

Website

www.environment.gov.za