

## NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL – DISCUSSION ON WELL-BEING

Clause of Bill Section of Act	Text of the clause in the NEMLA Bill in context with the relevant section in NEMBA	Summary of comment received	DEA's view
Clause 38/ section 2 of NEMBA	<p><b>2. Objectives of Act.</b>—The objectives of this Act are—</p> <p>(a) within the framework of the National Environmental Management Act, to provide for—</p> <p>(i) the management and conservation of biological diversity within the Republic and of the components of such biological diversity;</p> <p>(iA) the need to protect the ecosystem as a whole, including species which are not targeted for exploitation;</p> <p>(ii) the use of indigenous biological resources in a <b>[sustainable] manner that is ecologically sustainable, including taking into account the well-being of any faunal biological resource involved;</b> and</p> <p>(iii) the fair and equitable sharing among stakeholders of benefits arising from bioprospecting involving indigenous biological resources;</p> <p>(b) to give effect to ratified international agreements relating to biodiversity which are binding on the Republic;</p>	<p><b>AfriForum:</b></p> <p>The section now aligns better with Section 24 of the Constitution. It is however noted that reference is made to the wellbeing of faunal biological resources.</p> <p>It is not certain what is meant by faunal wellbeing, especially when considered against the difficulties encountered with determining wellbeing within humans.</p>	<p>The following definition is proposed:</p> <p><u>“well-being” means a state where the living conditions of a faunal biological resource are conducive for its health;</u></p>
		<p><b>EMS Foundation</b></p> <p>The language in section 2(a)(ii) needs to be changed to reflect a more caring position, i.e. one which indicates a duty of care and which will correctly and accurately point to what is the intention of this amendment.</p> <p>Reference to “well-being” must be replaced with “welfare” and “protection”. Well-being is too open for interpretation, adaptation and exploitation</p>	<p>Proposal not supported</p> <p>The primary objective remains ensuring the management and conservation of biological diversity, as well as the sustainable use thereof, whereas the well-being is a secondary objective (i.e. incidental to the primary objective)</p> <p>Proposal not supported.</p> <p>A definition for “well-being” has been proposed above</p>

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	<p>(c) to provide for cooperative governance in biodiversity management and conservation; and</p> <p>(d) to provide for a South African National Biodiversity Institute to assist in achieving the objectives of this Act.</p>	<p><b>Centre for Environmental Rights</b> "Well-being should be defined.</p> <p>Clarity is required on how "well-being" will be measured (i.e. clear, identifiable and acceptable parameters should be provided)</p>	<p>Definition proposed above</p> <p>Comment not supported The detail of the measures/ parameters will be prescribed in the regulations.</p>
		<p><b>Centre for Environmental Rights</b> Clarity should be provided on the intended meaning of "taking into account"; therefore factors and processes should be provided.</p>	<p>Comment not supported The text must be read alongside the newly proposed definition for "well-being" and the proposed amendment of the text of clause 43. The processes and factors can be provided in the regulations.</p>
		<p><b>Centre for Environmental Rights</b> Reference to "faunal biological resources" should be amended to include all "wild fauna".</p> <p>Classifying live wild animals as "faunal biological resources" is problematic, as it entrenches their primary use and value from the on-set. The conservation and well-being of the animals should be the primary objective, and not their economic exploitation.</p> <p><b>EMS Foundation</b></p>	<p>Proposals not supported The Convention on Biological Diversity (CBD) to which South Africa is a Party, refers to "biological resources". It is defined in Article 2 of the text of the CBD as meaning to include "genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity."</p>

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		<p>Reference to "faunal biological resources" is problematic, as it creates the impression that that if an animal is not economically valuable as a resource, then the well-being of that animal does not matter.</p> <p>Reference to "faunal biological resources" should be amended to include all "wild fauna" and "wild animals" and "wildlife"</p>	
		<p><b>Centre for Environmental Rights</b></p> <p>Clarity should be provided on whether "all wild fauna" will include non-indigenous wild animals</p>	<p>Comment not supported</p> <p>The current text does not exclude non-indigenous faunal biological resources</p>
<p>Clause 43/ section 97 of NEMBA</p>	<p><b>97. Regulations by Minister.</b>—(1) The Minister may make regulations relating to—</p> <p>.....</p> <p><u>"(aA) the protection of the well-being of a faunal biological resource during the carrying out a restricted activity involving such faunal biological resource;"</u>;</p> <p>....</p>	<p><b>EMS Foundation</b></p> <p>The language in section 97 needs to be changed to reflect a more caring position, i.e. one which indicates a duty of care and which will correctly and accurately point to what is the intention of this amendment.</p>	<p>Comment not supported</p> <p>The primary objective remains ensuring the management and conservation of biological diversity, as well as the sustainable use thereof, whereas the well-being is a secondary objective (i.e. incidental to the primary objective)</p> <p><b>Proposed revised text of clause 43:</b></p> <p><u>(aA) the well-being of faunal biological resources;</u></p> <p>The revised text is more flexible and less limiting. It further provides for the regulation of well-being in circumstances that do not</p>

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			necessarily relate to the carrying out of restricted activities.