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environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE

PORTFOLIO COMMITTEE MEETING 14 AUGUST 2012: ISSUES TO BE ADDRESSED BY THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS: INFORMATION REQUESTED FROM THE DIRECTORATE: REGULATION AND MONITORING SERVICES

1. PURPOSE

To provide you with information on the following two matters:

- 1.1 Penalties in terms of other countries' legislation; and
- 1.2 Reasoning behind imposing national requirements when there are existing provincial provisions.

2. DISCUSSION

2.1 Below is a summary of information with regards to penalties imposed by New Zealand, Australia, Botswana, Namibia and Kenya, in terms of their biodiversity legislation:

Countries	Legislation and offences	Penalties
New Zealand	Wildlife Act 1953 A person is guilty of an offence if found capturing, hunting, selling, in possession of or for the purpose of liberating, or exporting absolutely protected wildlife.	<ul style="list-style-type: none"> • \$100,000 (R678 723.74) and further \$5,000 (R33 936.18) for each head of wildlife and egg of wildlife for individual and body cooperate, a fine not exceeding \$200,000 (R1 357 447.49) plus further fine of \$10,000 (R67 872.37) for each head of wildlife and egg of wildlife.
Australia	National Parks and Wildlife Act, 1974 Possession of a species in danger of extinction without a licence. Every state has unique species classification system: <ul style="list-style-type: none"> • Pick, Posses threatened species without permit 	<p>Highest penalty in Queensland 3,000 penalty units (a fine of \$180 000 (R1 569 601.49)) and or 2 years imprisonment.</p> <ul style="list-style-type: none"> • \$220,000 (R1 918 401.82) and or two years imprisonment

	<ul style="list-style-type: none"> • Taking protected fish species without a possession of permit 	<ul style="list-style-type: none"> • Maximum fine of \$100,000 (R872 000.83) and or four years imprisonment or \$500,000 For body corporate(Around R5, 2250 000)
Botswana	<p><u>Wildlife Conservation and National Parks Act</u></p> <ul style="list-style-type: none"> • Hunt or capture any protected game animal • Killing an animal by accident or in error whilst he is hunting 	<ul style="list-style-type: none"> • Shall be guilty of an offence and liable to a fine of P10 000 (R10 809.98) and liable to a fine of P10 000 (R10 809.98) and to imprisonment for 15 years if the animal is in respect of Rhinoceros. • Shall be guilty of an offence and liable to a fine of P1000 (R1 080.99) and to imprisonment for 1 year and where the animal is rhinoceros the offender shall be liable to a fine of P100 000 (R108 099.83), and to imprisonment for 15 years; and where the animal killed is an elephant the offender shall be liable to a fine of P50 000 (R54 049.91), and imprisonment for 10 years
Namibia	<p><u>Amended Nature Conservation Ordinance Act, 1975</u></p> <ul style="list-style-type: none"> • Hunt any animal in any park or any nature reserve without written permission. • Unauthorized hunt any protected game. 	<ul style="list-style-type: none"> • To a fine not exceeding R 200 000 or to imprisonment for a period of not exceeding twenty years or to both such fine and such imprisonment if such offence relates to the hunting of any elephant or rhinoceros or to fine not exceeding R 20 000 or to imprisonment for a period not exceeding five years to both fine and imprisonment if such offence relates to hunting of any other specially protected game. • Shall be guilty of an offence and liable on conviction to a fine not exceeding R4000 or to imprisonment for a period not exceeding four years or to both such fine and imprisonment.
Kenya Note: Kenya is currently in the process of amending the Act and offence provisions to make it more punitive	<p><u>Wildlife Act of 1976</u></p> <ul style="list-style-type: none"> • Hunts any animal in a national park. • Exports or attempt any animal or attempts to export animal or trophy 	<ul style="list-style-type: none"> • Shall be guilty of a forfeiture offence and liable to a fine of not less than five thousand shillings and no more than twenty thousand shillings or to imprisonment for a term which shall not be less than six months and not more than three years, with or without corporal punishment or both. (20 000 shillings is equivalent to R2 200. 00) • Shall be guilty of forfeiture offence (Where person is convicted of a forfeiture offence, the court shall order that any animal, trophy, weapon, net, vehicle, instrument, material whether similar to those enumerated or not, in relation to, shall be forfeited).

2.2 The need for national legislative requirements relating to biodiversity matters could be argued for a number of reasons:

2.2.1 National biodiversity legislation provides uniformity in the manner in which the sustainable utilization of biodiversity resources is regulated, with due regard to the following aspects:

- The extent to which restricted activities involving a listed threatened or protected species are regulated, depending on its national conservation status in the wild, and thus the extent to which the species requires protection. Species are currently categorised differently in terms of the different provincial conservation ordinances, and are therefore receiving different levels of protection. It may be found that one species is regulated extensively in one province, and to a very low extent in another province;
- Fragmentation of provincial biodiversity legislation. In addition to the nine provincial conservation acts/ ordinances, the legislation of the previous homelands such as Bophuthatswana, Ciskei and Transkei still apply in provinces such as North West and the Eastern Cape;
- In many cases provincial conservation legislation is outdated. The Nature Conservation Ordinance, 1974 still apply in the Western Cape and Eastern Cape, whereas Ordinance 12 of 1983 (the former Transvaal Nature Conservation Ordinance) still apply in North West;
- Decisions with regards to the issuance of a permit are based on the same considerations. This will prevent/ limit the possibility of one province refusing a permit, whereas another province would issue a permit, based on different legislative provisions regulating the same matter.
- Many species are not confined/ contained by game fences and move across provincial borders. It would be in the best interest of the species to be regulated uniformly in terms of one set of national biodiversity legislation.

2.2.2 In the case where emergency/ immediate legislative intervention is required, e.g. the development of a procedure to mark live rhinoceros and rhinoceros horn and the compulsory collection of tissue samples for genetic profiling, it is extremely difficult to coordinate the amendment of nine sets of provincial conservation acts/ ordinances.

2.2.3 National legislation prevents/ limits the possibility of a person contravening the legislation in one province and continues the illegal conduct in another province ("province hopping"). Provincial legislation does not make provision for a system of compulsory registration before a person can obtain a permit. If the holder

of such a registration contravenes the provisions of national legislation, his/ her registration can be withdrawn, and the person would not be able to obtain a permit in any province.

2.2.4 Any applicable Norms and Standards issued in terms of the National Environmental Management: Biodiversity Act (Act No. 10 of 2004) (NEMBA) are currently enforceable through a compulsory condition to a permit issued in terms of Chapter 7 of NEMBA. In most cases, this link between Norms and Standards and provincial conservation legislation has not been established yet.

2.2.5 The seriousness of biodiversity-related crimes is elevated if regulated in terms of national legislation. Organized wildlife crime is comparable to some of the most serious crimes on an international scale such as drug-, weapon- and human trafficking. In terms of NEMBA, the Minister has the authority to prohibit the carrying out (on a national level) of a restricted activity involving a listed threatened or protected species within the country, if it is detrimental for the survival of the species in the wild. Currently, no restricted activities involving wild specimens of cycad species listed as threatened or protected may be carried out (i.e. a permit must be refused), unless if for conservation or enforcement purposes. Very few, if any, provincial conservation acts/ ordinances make provision for such an explicit prohibition of a restricted activity.