



## forestry, fisheries & the environment

Department:  
Forestry, Fisheries and the Environment  
REPUBLIC OF SOUTH AFRICA

### **SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)**

#### **REVISED (2020): FINAL IMPACT ASSESSMENT TEMPLATE –PHASE 2**

#### **NAME OF THE PROPOSAL: NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY BILL**

The proposal involves a substantial amendment of the current National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEMBA), and will replace NEMBA upon implementation

1. Please DO NOT ALTER the template and questionnaire
2. Date must be clearly indicated
3. Draft SEIAS report should have a watermark word DRAFT indicating the version and should be accompanied by the supporting documents (draft proposal, M&E plan and pieces of research work)
4. FINAL report will be in PDF format and will be inclusive of the sign-off
5. FINAL report will have the approval stamp of the Presidency on the front cover and will include the signoff
6. Sign off forms are only valid for a period of six months.
7. Bills and Regulations that introduce permitting, licensing and registration system must be accompanied by a streamlined process map and indicate the proposed turnaround time for processing of such.

## Background:

The National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEMBA) was implemented to fulfil the environmental mandate as contained in section 24 of the Constitution of the Republic of South Africa, as far as it relates to biodiversity matters. It also gives effect to the three objectives of the Convention on Biological Diversity (CBD), to which South Africa is a Party and which entered into force in December 1993, namely the:

- conservation of biodiversity;
- sustainable use of biological diversity; and
- fair and equitable sharing of benefits arising from the use of genetic resources.

The NEMBA came into effect on 7 June 2004, and since its inception, this Act has undergone amendments that took effect in 2009, 2013, and 2023 respectively. However, these revisions were prompted solely by pressing necessities, primarily aimed at incorporating or modifying provisions essential for its efficient execution and related subsidiary regulations. Notably, some of the pivotal amendments encompassed the following:

- inclusion of new definitions and provisions applicable to bioprospecting, access and benefit-sharing (BABS);
- amendment of the criteria for the listing of species as protected species, and for the further sub-categorisation of those species;
- inclusion of an enabling provision for exemptions applicable to listed threatened or protected species (TOPS) and listed invasive species;
- inclusion of a new provision for the prohibition of restricted activities involving listed invasive species;
- inclusion of a new provision to require permits for import, export, re-export or introduction from the sea, for specimens of species included in the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- inclusion of new provisions relating to the well-being of wild animals;
- inclusion of a new provision relating to the State retaining custodianship over wild animals that have escaped from land under its control; and
- inclusion of a new enabling provision for the Minister to prescribe circumstances under which a competent authority must be notified of the presence or occurrence of listed invasive species.

The Department of Forestry, Fisheries, and the Environment (DFFE) has actively engaged in various processes that underscore the imperative for a comprehensive review of NEMBA to ensure its alignment with these initiatives. This encompasses:

- The Biodiversity Economy Lab that was hosted in 2016, where it was highlighted that one of the key drivers preventing/hampering growth of, and opportunities in, the biodiversity economy relates to excessive permits and a legislative framework that is not conducive for economic growth. It was further highlighted that one of the main constraints of NEMBA is the fact that it focuses on biodiversity protection and conservation, and although sustainable use is reflected in section 2 of NEMBA as one of its objectives, it does not contain provisions that promote sustainable use. An initiative with a detailed implementation plan was then developed for the amendment of NEMBA in order to unblock the legislative challenges.

- The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (the Nagoya Protocol), which South Africa is a Party to, entered into force on 12 October 2014. The Nagoya Protocol advances the provisions of articles 15 and 8(j) of the CBD and its third objective, by providing legal certainty and transparency for both users and providers of genetic resources and associated traditional knowledge (TK). The Nagoya Protocol further strengthens opportunities for fair and equitable sharing of benefits arising from their utilisation. The full implementation of the Nagoya Protocol depends on national legislation. The NEMBA was developed and implemented before the adoption of the Nagoya Protocol and therefore requires amendment and alignment to ensure successful implementation of the Nagoya Protocol.
- The Committee of Inquiry (COI) established by the Minister of Environmental Affairs ahead of the 17<sup>th</sup> Conference of Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES COP 17), to advise on the possibility of proposing legal international trade in rhinoceros horn, or not. The COI concluded that South Africa should do everything possible to address the five key areas of security (law enforcement), community empowerment, biological management, responsive legislative provisions and effective implementation, and demand management / reduction in order:
  - ✓ to create an environment conducive for rhinoceros conservation in South Africa;
  - ✓ to effectively address rhinoceros poaching and the illegal trade in rhinoceros horn; and
  - ✓ to reach a point where any potential international commercial trade in rhinoceros horn would contribute to conservation outcomes.
- On 21 and 22 August 2018, the Parliamentary Portfolio Committee for Environmental Affairs (Portfolio Committee) convened the Colloquium. The recommendations of the Colloquium were adopted by the National Assembly on 6 December 2018. One of the recommendations was that *“The Department of Environmental Affairs should as a matter of urgency initiate a policy and legislative review of captive breeding of lions for hunting and lion bone trade with a view to putting an end to this practice”*.
- Given that the issues raised in the COI and the Colloquium were also potentially applicable to other species, the Minister of Forestry, Fisheries and the Environment (the Minister), in response, established an Advisory Committee in October 2019, to serve as the High-Level Panel (HLP) with a mandate to review policies, legislation and practices on matters related to the management, breeding, hunting, trade and handling of elephant, lion, leopard and rhinoceros. The HLP report was adopted by Cabinet and released to the public on 2 May 2021, and it contained 18 Goals and 60 Recommendations.
- The White Paper on the Conservation and Sustainable Use of South Africa’s Biodiversity (the White Paper) was published in the *Government Gazette*, No. 48785, for implementation on 14 June 2023. The White Paper provides a broad policy context with four goals, namely Enhanced Biodiversity Conservation, Sustainable Use, Equitable Access and Benefit Sharing, and Transformed Biodiversity Conservation and Sustainable Use.

The departure point when developing the draft NEMBA Bill was to provide a framework Biodiversity Act with more flexible empowering provisions that would contain less detail, thus reducing the need for regular urgent amendments and the risk of litigation. The empowering provisions have therefore been drafted in a manner that provide: 1) more flexibility in their application, and 2) more opportunities to restrict activities by notice in the *Gazette* or through regulations, as opposed to the inclusion of these specific restrictions in the Act.

## **PART ONE: ANALYSIS FOR FINAL SEIAS REPORT**

*Please keep your answers as short as possible. Do not copy directly from any other document.*

### **1. Conceptual Framework, Problem Statement, Aims and Theory of Change**

#### **1.1. What socio-economic problem does the proposal aim to resolve?**

The key social problem that is sought to be solved in general relates to difficulties for previously disadvantaged persons to participate in the biodiversity value chain, as a result of excessive permit requirements.

The key economic problem that is sought to be solved in general relates to the costs of permits to especially new entrants to the biodiversity economy, due to the excessive number of permits that are often required to conduct a business, as well as insufficient financial resources for conservation authorities to do inspections and to monitor compliance with permits and conditions.

The social or economic problem that the proposed amendments seek to address in relation to Chapter 6 of NEMBA in particular is inadequate fair and equitable sharing of benefits derived from bioprospecting or biotrade involving commercial utilisation of indigenous biological or genetic resources and/ or their associated traditional knowledge. The envisaged benefits to be shared are between the commercial or industrial sectors involved and the providers of access to indigenous biological or genetic resources and the holders of traditional knowledge associated with the use of indigenous biological or genetic resources.

In addition, there is lack of transformation in the biodiversity sector, where a majority of the population are disadvantaged and disenfranchised from contributing to conservation and sustainable use. Historically, previously disadvantaged individuals/communities have been faced with limited access to indigenous biological resources due to the absence of a conducive legislative environment that grants opportunities for equitable utilization of such resources. The Bill intends to empower the Minister to enhance facilitation of transformation through, amongst others, the listing of ecosystems or species that require additional facilitation of access for traditional, cultural or spiritual use.

Furthermore, the proposed amendments seek to address matters that led to South Africa's reputational damage as a world leader in biodiversity conservation and sustainable use due to practices within the sector that has brought the country into

disrepute. The amendment will ensure that there is comprehensive implementation of the newly adopted animal well-being mandate, duty of care and humane practices in conducting activities involving fauna and flora.

## 1.2. What are the main root causes of the problem identified above?

| What socio-economic problem does the proposal aim to resolve  | What are the main roots or causes of the problem   |
|---|--|
| Hampered growth of, and opportunities in the biodiversity economy   | <ul style="list-style-type: none"> <li>• Inflexible regulatory approach of NEMBA</li> <li>• Non-compliance with the provisions of NEMBA by the regulated community</li> <li>• Ineffective implementation of, and in some cases the inability to implement the permit requirements of NEMBA by issuing authorities</li> <li>• Over-regulation; i.e.:               <ul style="list-style-type: none"> <li>○ excessive and/ or unnecessary permit requirements for the regulated community, and</li> <li>○ excessive administrative burden for issuing authorities</li> </ul> </li> </ul>  |
| Insufficient equitable distribution of benefits arising from bioprospecting or biotrade involving commercial utilization of indigenous biological or genetic resources and their associated traditional knowledge | <ul style="list-style-type: none"> <li>• Non-alignment with provisions and principles of Nagoya Protocol</li> <li>• excessive administrative burden for issuing authorities.</li> <li>• Inflexible regulatory approach of NEMBA</li> </ul>   |
| Lack of transformation in the biodiversity sector, where a majority of the population are disadvantaged and disenfranchised from benefiting and/or contributing to conservation and sustainable use               | <ul style="list-style-type: none"> <li>• The sector remains untransformed, limiting the full exercising of rights and inclusive participation by traditional leaders and traditional health practitioners, previously disadvantaged individuals (PDIs) and indigenous people and local communities in access to, and sharing of, benefits.</li> <li>• Limited participation and access of traditional leaders and traditional health practitioners, PDIs and indigenous people and local communities to natural resources and associated socio-economic opportunities.</li> <li>• Complicated processes and procedures, and lack of resources, access, and awareness, hinder the unlocking of the genetic potential of biodiversity, and associated traditional and indigenous knowledge, into biotechnology value chains Lack of conducive legislative environment that allows for facilitation of transformation, access for traditional, cultural or spiritual use</li> </ul> |

|   |  |
|---|--|
| <p>Constrained realization of benefits from the utilization of biodiversity at a global level, coupled with insufficient protection to biological resources that demand heightened protection at an international level</p> | <ul style="list-style-type: none"> <li>• Non-alignment between international agreements and obligations that South Africa has signed and ratified and national processes</li> <li>• Non-alignment of the provisions of NEMBA with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (the Nagoya Protocol), which entered into force on 12 October 2014</li> <li>• Lacking enabling provisions to implement some of the international agreements; e.g. the Convention on Migratory Species</li> <li>• Inability to effectively implement the obligations of, and beneficiation arising from, international agreements</li> </ul> |
| <p>Decline in numbers of the species in the wild</p>  | <ul style="list-style-type: none"> <li>• Inadequate protection measures in NEMBA, aggravated by fragmented and often outdated provincial legislation</li> <li>• Excessive removal of specimens of plant and animal specimens from the wild</li> </ul>  |
| <p>Inability to effectively address wildlife trafficking</p>  | <ul style="list-style-type: none"> <li>• Inability to prioritise species that are vulnerable to wildlife trafficking, for the allocation of additional resources.</li> <li>• Inadequate penalties</li> </ul>   |
| <p>Reputation damage for South Africa as a world leader in biodiversity conservation and sustainable</p>  | <ul style="list-style-type: none"> <li>• Lack of enabling legislative framework to adequately address issues relating to well-being, humane practices and duty of care for wild animals.</li> <li>• Unsustainable practices that have brought the wildlife sector into disrepute.</li> </ul>   |

1.3. Summarise the **aims** of the proposal and **how** it will address the problem in no more than five sentences.

The proposal aims to amend the regulatory approach, from an all-encompassing approach where permits are required for every restricted activity involving every specimen of listed species, to an approach where the specific activities requiring permits will be specified, either by notice in the *Gazette*, or prescribed in regulations.

The proposal also aims to streamline the permitting systems for bioprospecting and biotrade, including the associated benefit-sharing models.

The proposal provides a more flexible regulatory approach that will enable the Minister and MECs responsible for environmental affairs to exercise greater discretionary powers, which will result in simpler implementation of the provisions and more effective compliance with international agreements.

A more flexible regulatory approach will further enable growth of the biodiversity economy and participation in the biodiversity value chain by previously excluded groups.

The Bill will also include new enabling provisions that are aimed at the protection of species and ecosystems, in order to address current regulatory gaps.

Furthermore, the Bill intends to strengthen issues relating to the newly adopted mandate of well-being, as well as advancing the need to ensure a duty of care and humane practices.

#### 1.4. How is this proposal contributing to the following national priorities?

| National Priority   | Impact   |
|---|--|
| Economic transformation and job creation                                  | <ul style="list-style-type: none"> <li>• Reduced permit requirements will enhance opportunities for previously disadvantaged individuals to enter the biodiversity economy space</li> <li>• Specific benefit sharing model for bioprospecting will enhance contribution to economic transformation in terms various innovation-based beneficiation schemes such as through Intellectual Property Rights protection.</li> <li>• Specific benefit sharing model for Biotrade will enhance contribution to job creation as it is labour intensive in terms of the supply of raw materials.</li> <li>• The Bill aims, among others, to prioritize the objectives outlined in the White Paper, which emphasizes the need to transform the biodiversity sector and subsequently boost job creation prospects for everyone</li> </ul> |
| Education, skills and health  | <ul style="list-style-type: none"> <li>• Some of the benefits anticipated to be shared from bioprospecting are non-monetary in a form of:               <ul style="list-style-type: none"> <li>✓ Technology and skills transfer;</li> <li>✓ Collaboration, cooperation and contribution in education, awareness and training.</li> <li>✓ Food, health and livelihood security benefits; and</li> <li>✓ Access to scientific information regarding biodiversity value relevant for conservation and sustainable use of its components.</li> </ul> </li> <li>• Enhanced accessibility to biological resources for medicinal purposes translates to improved conditions of human health</li> </ul>  |
| Consolidating the social wage through reliable and quality basic services | <ul style="list-style-type: none"> <li>• Stricter regulation of activities or threatening processes in threatened ecosystems should improve ecosystem services</li> <li>• Biotrade depends on labour intensive supply of raw materials from the wild. The Bill makes provisions for the Minister to determine</li> </ul>   |

| National Priority   | Impact   |
|---|--|
|   | standardise pricing through consultative process on annual basis. Currently there is no standard pricing of raw wild and cultivated materials.   |
| Spatial integration, human settlements and local government | Biodiversity hotspots for bioprospecting and biotrade are mainly at the local government level, in particular in the rural communities.  |
| Social cohesion and safe communities                        | <ul style="list-style-type: none"> <li>• Improved ability to: <ul style="list-style-type: none"> <li>○ benefit from the use of indigenous biological resources; and</li> <li>○ participate in the biodiversity value chain.</li> </ul> </li> <li>• Bioprospecting and biotrade promotes coordination and cooperation with full involvement of every member of the community where the indigenous biological or genetic resources will be accessed.</li> <li>• Traditions, cultures and spiritual use enhanced and promoted</li> <li>• Addressing intensive management practices, as well as promoting duty of care and humane conduct involving wild animals will be regarded as a positive step from a moral, ethical and humane perspective for many South Africans and will render support to the South African government in its conservation efforts</li> </ul> |
| Building a capable, ethical and developmental state         | <ul style="list-style-type: none"> <li>• Increased penalties applicable to persons involved in organised crime and wildlife trafficking, and applicable to employees of the State, should assist to contribute to a capable and ethical state</li> <li>• Regulated bioprospecting and biotrade promotes ethical access to indigenous genetic or biological resources and their associated traditional knowledge, which in return contribute to building capable and developmental state.</li> <li>• Strengthened aspects relating to humane practices, duty of care and animal well-being</li> </ul>   |
| A better Africa and world.                                  | <ul style="list-style-type: none"> <li>• Ability to improve breeding and captive keeping practices due to the inclusion of the well-being provision, resulting in improving South Africa's reputation in respect of biodiversity conservation</li> <li>• Improving South Africa's ability to fulfil its obligations under international agreements, including the Convention on Biological Diversity and the Nagoya Protocol on ABS, and the Convention on Migratory Species.</li> <li>• Enhanced South Africa's reputation as a world leader in biodiversity conservation and</li> </ul>  |



| National Priority | Impact  |
|-------------------|---|
|                   | sustainable through improvement of the duty of care towards biodiversity. |

1.5. Please describe how the problem identified could be addressed if this proposal is not adopted. At least one of the options should involve no legal or policy changes, but rather rely on changes in existing programmes or resource allocation.

|                  |   |
|------------------|---|
| <b>Option 1.</b> | Resource allocation (human and financial resources); however, this option will not enable the DEFF to address regulatory gaps or over-regulation. |
| <b>Option 2.</b> | Training and awareness; however, this option will not address regulatory gaps and excessive permitting  |

## PART TWO: IMPACT ASSESSMENT

### 2. Policy/Legislative alignment with other departments, behaviours, consultations with stakeholders, social/economic groups affected, assessment of costs and benefits and monitoring and evaluation.

2.1. Are other government laws or regulations linked to this proposal? If so, who are the custodian departments? Add more rows if required.

| Government legislative prescripts   | Custodian Department   | Areas of Linkages   | Areas of contradiction and how will the contradictions be resolved  |
|---|--|---|---|
| Provincial acts/ordinances regulating biodiversity-related matters  | Provincial departments/organs of state responsible for biodiversity conservation | Over-lapping species and activities regulated through both the Bill and provincial acts/ordinances                              | Some activities currently prohibited in terms of NEMBA (e.g. involving cycads) are regulated through permits in terms of provincial acts/ordinances (where such conflict exists, it will be resolved in terms of section 146 of the Constitution) |
| <ul style="list-style-type: none"> <li>Animals Protection Act, 1962 (Act No. 71 of 1962) (APA)</li> <li>Performing Animals</li> </ul> | Department of Agriculture, Land Reform and Rural Development (DALRRD)            | Requirements aimed at addressing the well-being of animals<br>The APA prohibits the activities on the basis of welfare/ cruelty | The new provision included in the Biodiversity Bill will not result in conflict. The intention is to address gaps; thus to develop  |

| Government legislative prescripts   | Custodian Department        | Areas of Linkages  | Areas of contradiction and how will the contradictions be resolved   |
|---|-----------------------------|--|--|
| <p>Protection Act, 1935 (Act No. 24 of 1935) (PAPA)</p> <ul style="list-style-type: none"> <li>Animal Improvement Act, 1998 (Act No. 62 of 1998) (AIA)</li> </ul> |                             | <p>considerations. The DALRRD has the primary mandate to regulate welfare issues (<i>welfare vs well-being mandate</i>) The Bill is intended to empower Minister to regulate certain activities, such as breeding that may also be regulated in terms of the AIA</p> | <p>measures that will augment the provisions of the APA and the PAPA There may be confusion between welfare, which is under the administration of DALRRD and well-being mandate, which is under the administration of DFFE.</p> <p>The DFFE and DALRRD have entered into an MOU to collaborate on matters of mutual interest, amongst others, the distinction between the two mandates, issues of breeding or keeping.</p> |
| <p>Game Theft Act, 1991 (Act No. 105 of 1991)</p>   | <p>Department of Police</p> | <p>Retaining of custodianship over wild animals escaping from land under the state's control (see section 3(2) of the Bill)</p>  | <p>No conflict is anticipated, as it will address an area that is not adequately addressed in the Game Theft Act</p>   |
| <p>Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983) (CARA)</p>   | <p>DALRRD</p>               | <p>Regulation of listed invasive plant species</p>   | <p>No conflict is anticipated, as NEMBA currently regulates alien and listed invasive species in a manner that is aligned with CARA.</p>   |
| <p>Spatial Planning and Land Use Management Act, Act No. 16 of 2013 (SPLUMA)</p>  | <p>DALRRD</p>               | <p>Spatial planning and land use management</p>  | <p>No conflicts anticipated. NEMBA will complement the objectives of SPULMA in that NEMBA will provide further guidance on spatial planning and land use management pertaining to biodiversity in the country and thereby strengthening SPLUMA's objectives.</p>   |
| <p>Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997) (GMO Act)</p>  | <p>DALRRD</p>               | <p>Assessment of applications for permits relating to genetically modified organisms</p>   | <p>No conflict is anticipated, as the aim of the provision is to align the process of assessing permit applications</p>  |

| <b>Government legislative prescripts</b>  | <b>Custodian Department</b>                | <b>Areas of Linkages</b>  | <b>Areas of contradiction and how will the contradictions be resolved</b>   |
|---|--|---|---|
| Marine Living Resources Act, 1998 (Act No. 18 of 1998)  | DFFE                                       | Management of marine resources and habitat  | None anticipated  |
| Patent Amendment Act, 2005 (Act No. 20 of 2005)   | Department of Trade and Industry (DTI)     | The Act and accompanying regulations took effect on 14 December 2007 following NEMBA and therefore aligns itself to it  | No conflict is anticipated, as it has a mandatory disclosure of evidence of compliance with NEMBA requirements during Patent application process.   |
| Intellectual Property Amendment Act, 2013 (Act No. 28 of 2013)(IPLAA)   | DTI  | The objective of the Act is to protect Indigenous knowledge/Traditional Knowledge and to enable traditional communities to exploit it commercially for their own gain | No conflict is anticipated, as the Act seeks to protect the holder of indigenous knowledge/traditional knowledge for their own benefit.   |
| Protection, Promotion, Development and Management of Indigenous Knowledge Systems Act, 2019 (Act No. 6 of 2019) | Department of Science and Innovation (DSI) | The Act was developed following NEMBA and therefore aligns itself to it   | The Act seeks to establish a national Indigenous Knowledge systems office tasked, among other things, with documenting legitimate holders of indigenous knowledge associated with biological resources, amongst other things through a National Recordal System (NRS). The NRS system complements the NEMBA requirements by providing information about the indigenous communities who are entitled to receive fair and equitable share of benefits arising from the commercial use of their indigenous knowledge associated with indigenous biological resources. DEFF and DSI are already working on a one-Stop-Shop permitting system. |

2.2. Proposals inevitably seek to change behaviour in order to achieve a desired outcome. Describe (a) the behaviour that must be changed, and (b) the main mechanisms to bring about those changes. These mechanisms may include modifications in decision-making systems; changes in procedures; educational work; sanctions; and/or incentives.

a) What and whose behaviour do the proposal seek to change? How does the behaviour contribute to the socio-economic problem addressed?

- Non-compliance with NEMBA permit requirements by the regulated community
- Non-compliance with NEMBA benefit-sharing requirements by the regulated community
- Ineffective/ non-implementation of the permit provisions of NEMBA by issuing authorities. Late issuance of permits due to over-regulation and excessive administrative burden affects the livelihoods of the regulated community and promotes non-compliance.
- Poor participation in the biodiversity value chain by previously disadvantaged groups, resulting in challenges to promote transformation of the biodiversity sector and to maximise beneficiation.
- Unregulated removal of specimens of plant- and animal species that are not listed as threatened or protected in terms of NEMBA, by e.g. wildlife collectors and/ or wildlife traders, resulting in localised decline in species.
- Wildlife trafficking, by proposing stricter penalties
- New provisions that outline the prior informed consultation and consent process to be followed leading to the negotiation and conclusion of a benefit-sharing agreement.
- New provisions that will enable sector-specific benefit-sharing models.
- Conducting of activities that may pose negative impact on the well-being of wild animals.

b) How does the proposal aim to bring about the desired behavioural change?

- Reduced number of permits to be obtained, and reduced administrative burden for issuing authorities
- Reduces permit costs due to reduced number of permits that will be required
- New enabling provisions relating to the listing of priority species, national coordination of activities and increased penalties for wildlife trafficking
- New enabling provision to implement the obligations of international agreements in a more effective manner, and a substantial amendment of Chapter 6 of NEMBA that relates to the implementation of the Nagoya Protocol on ABS
- The adoption of provisions relating to well-being will empower the Minister to prohibit or regulate activities that may have a negative impact on the well-being of wild animals. This measure will compel permit holders to conduct practices in a humane manner.
- New objective intended to ensure facilitation of transformation, which would be achieved through the inclusion of a provision that empowers the Minister to list species or ecosystems that require additional facilitation of access for traditional, cultural or spiritual use.

### 2.3. Consultations

a) Who has been consulted inside of government and outside of it? Please identify major functional groups (e.g. business; labour; specific government departments or provinces; etc.); you can provide a list of individual entities and individuals as an annexure if you want.

- Inside government:
  - DALRRD
  - DSI
  - DTI
  - National Prosecuting Authority
  - South African National Parks (SANParks)
  - South African National Biodiversity Institute (SANBI)
  - Provincial conservation authorities (permitting, enforcement and scientific officials)
  - Local authorities
  - Bioprospecting Advisory Committee

- Outside government:
  - Associations/ organisations represented at national level, who are members of the Wildlife Forum (generally the wildlife ranching, hunting, game translocation and nursery industries) and the Bioprospecting Forum
  - Representatives of Indigenous and Local Communities
  - Commercial and industrial sectors such as pharmaceutical-, nutraceutical-cosmeceutical, and flavours and fragrances companies, and scientific institutions
  - Persons/ companies in the sector involved with alien and listed invasive species

**Consulted Government Departments, Agencies and Other Organs of State**

| <b>Department's name</b> | <b>What do they see as main <u>benefits</u>, <u>Implementation/ Compliance costs</u> and <u>risks</u>?</b>   | <b>Do they <u>support</u> or <u>oppose</u> the proposal?</b> | <b>What <u>amendments</u> do they propose?</b>   | <b>Have these amendments been <u>incorporated</u> in your proposal? If yes, under which section?</b> |
|--------------------------|--|--|--|--|
| DALRRD                   | <ul style="list-style-type: none"> <li>• Benefit<br/>Regulatory gaps in respect of animal well-being to be addressed</li> <li>• Implementation cost<br/>None anticipated for DALRRD</li> <li>• Compliance cost<br/>None anticipated for DALRRD</li> <li>• Risk<br/>Potential duplication in legal requirements to some extent</li> </ul> | Support  | <b>To be completed after the public participation process</b>  | <b>To be completed after the public participation process</b>  |
| SANBI                    | <ul style="list-style-type: none"> <li>• Benefit<br/>Easier implementation of the primary legislation</li> <li>• Implementation cost</li> </ul>  | Support  | A number of proposals have been made, mostly on the inclusion/ amendment of definitions, and the role of SANBI | The proposals relating to the roles of SANBI have been incorporated. Some of the other proposals     |

| Department's name                   | What do they see as main <u>benefits</u> , <u>Implementation/ Compliance costs</u> and <u>risks</u> ?   | Do they <u>support</u> or <u>oppose</u> the proposal? | What <u>amendments</u> do they propose?  | Have these amendments been <u>incorporated</u> in your proposal? If yes, under which section?              |
|-------------------------------------|---|---|--|--|
|                                     | <p>To be completed after public consultation</p> <ul style="list-style-type: none"> <li>• Compliance cost<br/>To be completed after public consultation</li> <li>• Risk<br/>None anticipated</li> </ul>   |   | <p><b>To be further completed after the public participation process</b></p>   | <p>have been incorporated</p> <p><b>To be further completed after the public participation process</b></p> |
| SANParks                            | <ul style="list-style-type: none"> <li>• Benefit<br/>Ability to retain custodianship over wild animals escaping from land under control of the state</li> <li>• Implementation cost<br/>None anticipated</li> <li>• Compliance cost<br/>None anticipated</li> <li>• Risk<br/>None anticipated</li> </ul>                                      | Support   | <p><b>To be completed after the public participation process</b></p>   | <p><b>To be completed after the public participation process</b></p>                                       |
| Provincial conservation authorities | <ul style="list-style-type: none"> <li>• Benefit <ul style="list-style-type: none"> <li>○ Easier implementation of the primary legislation and reduced administrative burden</li> <li>○ Ability to retain custodianship over wild animals escaping from land under control of the state</li> </ul> </li> <li>• Implementation cost</li> </ul> | Support   | <p>With regards to biodiversity planning - concern regarding the change in approach, from mandatory powers for the Minister to discretionary powers</p> <p><b>To be further completed after the public participation process</b></p> | <p><b>To be completed after the public participation process</b></p>                                       |

| Department's name | What do they see as main <u>benefits</u> , <u>Implementation/ Compliance costs</u> and <u>risks</u> ?  | Do they <u>support</u> or <u>oppose</u> the proposal? | What <u>amendments</u> do they propose?  | Have these amendments been <u>incorporated</u> in your proposal? If yes, under which section? |
|-------------------|--|---|--|---|
|                   | <p>Capacity (financial and human) to implement the provisions of the Bill</p> <ul style="list-style-type: none"> <li>• Compliance cost Training and appointment of officials as Environmental Management Inspectors (EMIs) to enforce the provisions of the Bill</li> <li>• Risk Duplication with provincial legislation and potential conflict</li> </ul> |   |  |   |
| Local authorities | <ul style="list-style-type: none"> <li>• Benefit Clarity in terms of the role of local authorities in respect of biodiversity planning</li> <li>• Implementation cost To be completed after public consultation</li> <li>• Compliance cost To be completed after public consultation</li> <li>• Risk To be completed after public consultation</li> </ul>  | Support   | <p>With regards to biodiversity planning - concern regarding the change in approach, from mandatory powers for the Minister to discretionary powers</p> <p><b>To be completed after the public participation process</b></p> | <b>To be completed after the public participation process</b>                                 |
| DSI               | <ul style="list-style-type: none"> <li>• Benefit Regulatory gaps in respect of permitting system for bioprospecting and</li> </ul>   | Support   | <b>To be completed after the public participation process</b>  | <b>To be completed after the public participation process</b>                                 |



| Department's name | What do they see as main <u>benefits</u> , <u>Implementation/ Compliance costs</u> and <u>risks</u> ?   | Do they <u>support</u> or <u>oppose</u> the proposal? | What <u>amendments</u> do they propose?                       | Have these amendments been <u>incorporated</u> in your proposal? If yes, under which section? |
|-------------------|---|---|---|---|
|                   | <p>biotrade and associated beneficiation model to be addressed</p> <ul style="list-style-type: none"> <li>• Implementation cost<br/>None anticipated for DSI</li> <li>• Compliance cost<br/>None anticipated for DSI</li> <li>• Risk<br/>Potential duplication in legal requirements to some extent</li> </ul>  |   |   |   |
| DTI               | <ul style="list-style-type: none"> <li>• Benefit<br/>Regulatory gaps in respect of permitting system for bioprospecting and biotrade and associated beneficiation model to be addressed</li> <li>• Implementation cost<br/>None anticipated for DTI</li> <li>• Compliance cost<br/>None anticipated for DTI</li> <li>• Risk<br/>None anticipated for DTI</li> </ul> | Support   | <b>To be completed after the public participation process</b> | <b>To be completed after the public participation process</b>                                 |

## Consulted stakeholders outside government

| Name of Stakeholder  | What do they see as main <u>benefits</u> , <u>Implementation/</u> <u>Compliance costs</u> and <u>risks</u> ?  | Do they <u>support</u> or <u>oppose</u> the proposal? | What <u>amendments</u> do they propose?                       | Have these amendments been <u>incorporated</u> in your proposal? |
|--|---|---|---|--|
| Wildlife sector: <ul style="list-style-type: none"> <li>• Wildlife ranching</li> <li>• Hunting</li> <li>• Game translocation</li> <li>• Nurseries</li> </ul> | <ul style="list-style-type: none"> <li>• Benefits<br/>Reduced permits and permit costs</li> <li>• Implementation costs<br/>To be completed after public consultation</li> <li>• Compliance costs<br/>To be completed after public consultation</li> <li>• Risks<br/>To be completed after public consultation</li> </ul>  | Generally support                                     | <b>To be completed after the public participation process</b> | <b>To be completed after the public participation process</b>    |
| Bioprospecting sector  | <ul style="list-style-type: none"> <li>• Benefits<br/>Improved ability to ensure beneficiation derived from indigenous biological resources and associated indigenous knowledge</li> <li>• Implementation costs<br/>To be completed after public consultation</li> <li>• Compliance costs<br/>To be completed after public consultation</li> <li>• Risks</li> </ul> | Generally support the intention of the proposal       | <b>To be completed after the public participation process</b> | <b>To be completed after the public participation process</b>    |

| Name of Stakeholder                              | What do they see as main <u>benefits, Implementation/ Compliance costs and risks?</u>   | Do they <u>support or oppose the proposal?</u> | What <u>amendments</u> do they propose?                       | Have these amendments been <u>incorporated</u> in your proposal? |
|--|---|--|---|--|
|  | Duplication of efforts amongst Government Departments   |  |   |  |
| Alien and invasive species sector                | <ul style="list-style-type: none"> <li>• Benefits<br/>Reduced permits and permit costs</li> <li>• Implementation costs<br/>To be completed after the public participation process</li> <li>• Compliance costs<br/>To be completed after the public participation process</li> <li>• Risks<br/>To be completed after the public participation process</li> </ul> | Generally support                              | <b>To be completed after the public participation process</b> | <b>To be completed after the public participation process</b>    |
| Previously disadvantaged individuals/communities | <ul style="list-style-type: none"> <li>• Benefits<br/>Improved access to resources for traditional, cultural or spiritual use</li> <li>• Implementation costs<br/>To be completed after the public participation process</li> <li>• Compliance costs:<br/>To be completed after the public participation process</li> </ul>                                     |  | <b>To be completed after public consultation</b>              | <b>To be completed after public consultation</b>                 |

| Name of Stakeholder | What do they see as main <u>benefits</u> , <u>Implementation/ Compliance costs</u> and <u>risks</u> ?               | Do they <u>support</u> or <u>oppose</u> the proposal? | What <u>amendments</u> do they propose? | Have these amendments been <u>incorporated</u> in your proposal? |
|---------------------|---|---|---|--|
|                     | <ul style="list-style-type: none"> <li>Risks:<br/>To be completed after the public participation process</li> </ul> |   |   |  |

b) Summarise and evaluate the main disagreements about the proposal arising out of discussions with stakeholders and experts inside and outside of government. Do not give details on each input, but rather group them into key points, indicating the main areas of contestation and the strength of support or opposition for each position

- Definition for “indigenous species” strongly opposed by some participants within the wildlife ranching sector
- Proposal on access to indigenous biological resources and indigenous knowledge, bioprospecting and benefit-sharing (Chapter 6 of the Bill) – although the intention of the chapter is supported, the level of detail included in the chapter is strongly opposed on the basis that the Chapter should provide a framework leaving the details to be included in the regulations.

2.4. Describe the groups that will benefit from the proposal, and the groups that will face a cost. These groups could be described by their role in the economy or in society. Note: NO law or regulation will benefit everyone equally so do not claim that it will. Rather indicate which groups will be expected to bear some cost as well as which will benefit. Please be as precise as possible in identifying who will win and who will lose from your proposal. Think of the vulnerable groups (disabled, youth women, SMME), but not limited to other groups.

| List of beneficiaries (groups that will benefit) | How will they benefit?  |
|--|---|
| DFFE<br>Provincial conservation authorities      | <ul style="list-style-type: none"> <li>• Improved implementation of the provisions of NEMBA, due to the reduced number of permits that will be required to be issued, resulting in:               <ul style="list-style-type: none"> <li>○ reduced administrative burden to permit components; and</li> <li>○ reduced compliance monitoring and enforcement efforts</li> </ul> </li> <li>• Improved ability to protect species due to ability to list priority species at national level that require additional protection/enforcement measures</li> </ul> |

| List of beneficiaries (groups that will benefit) | How will they benefit?  |
|--|---|
|  | <ul style="list-style-type: none"> <li>• Improved ability to implement obligations in respect of binding international agreements</li> <li>• Improved ability to ensure fair and equitable sharing of benefits arising from bioprospecting and biotrade, with the custodians of biodiversity and holders of indigenous knowledge</li> <li>• Ability to improve practices relating to the keeping and breeding of wild animals in captivity, ensure duty of care and humane practices</li> </ul> |
| State  | Ability to retain custodianship over wild animals escaping from e.g. state-owned protected areas  |
| Regulated community                              | Reduced number of permits to be obtained and reduction in associated costs to conduct business  |
| Previously disadvantaged individuals/communities | <p>Improved ability to:</p> <ul style="list-style-type: none"> <li>• benefit from the use of indigenous biological resources; and</li> <li>• participate in the biodiversity value chain</li> <li>• Improved facilitation of access for traditional, cultural or spiritual use</li> </ul>   |
| Wildlife Well-being stakeholders                 | Ability to ensure the adoption of practices that are responsible, legal, sustainable, humane and promote animal well-being of the five iconic species   |
| South Africa as a whole                          | <ul style="list-style-type: none"> <li>• Ability to improve breeding and captive keeping practices due to the inclusion of the well-being provision, resulting in improving South Africa's reputation in respect of biodiversity conservation</li> <li>• Ability to ensure duty of care and humane practices</li> <li>• Ability to exercise sovereign rights over biological diversity.</li> <li>• Improved facilitation of access for traditional, cultural or spiritual use</li> </ul>        |

| List of cost bearers (groups that will bear the cost) | How will they incur / bear the cost   |
|---|---|
| DFFE  | <p><b>Primary costs:</b></p> <ul style="list-style-type: none"> <li>• Costs associated with consultation and awareness-raising to implement to provisions of the Bill</li> </ul> <p><b>Secondary costs:</b></p> |

| List of cost bearers (groups that will bear the cost) | How will they incur / bear the cost   |
|---|---|
|   | <ul style="list-style-type: none"> <li>• Amendment of existing subordinate legislation, or development of new subordinate legislation, to be aligned with the amended regulatory approach of the Bill, to: <ul style="list-style-type: none"> <li>○ develop additional protection mechanisms, as well as compliance and enforcement efforts, in respect of priority species</li> <li>○ develop measures to ensure the well-being of wild animals, and training of EMLs to monitor compliance with this aspect</li> <li>○ coordinate national hunting seasons</li> <li>○ to implement a system to issue national hunting licences</li> <li>○ implement measures/ mechanisms to coordinate matters at national level, when required</li> <li>○ implement measures to monitor compliance by the regulated community with the regulatory requirements of the country in which the indigenous biological resources or indigenous knowledge was imported</li> <li>○ implement measures for emergency interventions</li> <li>○ implement measures for various benefit sharing models.</li> <li>○ Measures giving effect to the well-being mandate, ensuring duty of care and promote humane practices</li> </ul> </li> </ul> <p>There is no direct cost associated with implementing the Nagoya Protocol on ABS. Funds will be made available periodically for implementation of Nagoya Protocol through Global Environment Facility (GEF) and other international donors. Most of the principles and provisions of the Nagoya Protocol are currently being implemented, however; needs to be empowered and strengthen through the Bill.</p> |
| DFFE<br>Provincial conservation authorities           | <ul style="list-style-type: none"> <li>• Implementation of systems to: <ul style="list-style-type: none"> <li>○ appoint biodiversity officers; and</li> <li>○ monitor the conduct of biodiversity officers</li> </ul> </li> <li>• Alignment of permit systems to accommodate newly listed species</li> </ul>  |
| Bioprospecting sector                                 | Additional costs associated with:   |

| List of cost bearers (groups that will bear the cost) | How will they incur / bear the cost   |
|---|---|
|   | <ul style="list-style-type: none"> <li>requirements relating to consultation with access providers; and</li> <li>negotiation and conclusion of benefit sharing agreement</li> </ul> |
| Previously disadvantaged individuals                  | No additional cost will be incurred for the indigenous communities in relation to BABS Chapter.   |

2.5. Describe the costs and benefits of implementing the proposal to each of the groups identified above, using the following chart. Please do not leave out any of the groups mentioned, but you may add more groups if desirable. Quantify the costs and benefits as far as possible and appropriate. Add more lines to the chart if required.

*Note: "Implementation costs" refer to the burden of setting up new systems or other actions to comply with new legal requirements, for instance new registration or reporting requirements or by initiating changed behaviour. "Compliance costs" refers to on-going costs that may arise thereafter, for instance providing annual reports or other administrative actions. The costs and benefits from achieving the desired outcomes relate to whether the particular group is expected to gain or lose from the solution of the problem.*

*For instance, when the UIF was extended to domestic workers:*

- The implementation costs were that employers and the UIF had to set up new systems to register domestic workers.*
- The compliance costs were that employers had to pay regularly through the defined systems, and the UIF had to register the payments.*
- To understand the inherent costs requires understanding the problem being resolved. In the case of UIF for domestic workers, the main problem is that retrenchment by employers imposes costs on domestic workers and their families and on the state. The costs and benefits from the desired outcome are therefore: (a) domestic workers benefit from payments if they are retrenched, but pay part of the cost through levies; (b) employers pay for levies but benefit from greater social cohesion and reduced resistance to retrenchment since workers have a cushion; and (c) the state benefits because it does not have to pay itself for a safety net for retrenched workers and their families.*

Most of the costs (implementation as well as compliance) will arise with the alignment of subordinate legislation, due to the fact that most of the changes will be effected by regulation or by notice in the *Gazette*. The consequential changes to existing subordinate legislation will require amendment, consultation and SEIA processes of their own. Subordinate legislation that will require changes involve primarily the following:

- Threatened or Protected Species (TOPS) Regulations;
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Regulations;
- Alien and Invasive Species (AIS) Regulations; and

- Bioprospecting, Access and Benefit-Sharing (BABS) Regulations.

The DFFE plans to formulate a costing plan, which will undergo development and finalization following a consultation process for the completion of the draft NEMBA Bill before its publication for implementation.



| Group   | Implementation costs  | Compliance costs   | Costs/benefits from achieving desired outcome   | Comments |
|---|---|--|---|----------|
| <p>DFFE (as the administrator of the Biodiversity Bill)</p> | <ul style="list-style-type: none"> <li>• Alignment of existing subordinate legislation with the new enabling provisions of the Bill</li> <li>• Costs associated to consult stakeholders on amended subordinate legislation</li> <li>• Costs associated to capacitate provincial conservation authorities and stakeholders on the provisions of the Bill</li> <li>• Costs associated to set up new systems for the appointment of biodiversity officers</li> </ul> | <ul style="list-style-type: none"> <li>• Development of new subordinate legislation to give effect to new enabling provisions: <ul style="list-style-type: none"> <li>○ provisions relating to species or ecosystems in need of management, or relating to priority species</li> <li>○ Provisions relating to well-being of wild animals, duty of care and humane practices</li> <li>○ Criteria for the State to retain custodianship of wild animals escaping from land under its jurisdiction</li> <li>○ Provisions relating to ratified international agreements not previously regulated in terms of NEMBA</li> </ul> </li> <li>• Additional permits will be required in respect of bioprospecting</li> <li>• Gazetting of a financial benefit in respect of biotrade</li> </ul> | <p>Due to the change in the regulatory approach, existing subordinate legislation will have to be aligned, and new subordinate legislation will have to be developed, to implement new enabling provisions. An intensive stakeholder consultation process will have to be followed, but if the regulated community understands the nature and intention of the changes and the benefits for them, they should be better motivated to comply with NEMBA.</p> |          |

| Group   | Implementation costs   | Compliance costs  | Costs/benefits from achieving desired outcome   | Comments   |
|---|--|---|---|--|
| DFFE and provinces (as the implementing agencies of the Bill)       | <ul style="list-style-type: none"> <li>Alignment of permit systems to accommodate newly-listed species</li> </ul>  | <ul style="list-style-type: none"> <li>Permits for new activities/ species will have to be issued</li> <li>Costs of inspections in respect of well-being of wild animals</li> </ul>                                     | The cost of additional permits to be issued will be countered by the benefit of a reduction in the total number of permits that will be required.     | <p>No implementation or compliance costs will arise as a result of this proposal in respect of CITES.</p> <p>New permits may be required for implementation of international agreements other than CITES</p> |
| Indigenous wildlife sector<br><br>Alien and invasive species sector | <p>Systems are already in place for the implementation of current provisions; hence no drastic implementation costs are anticipated. However, it could involve the following:</p> <ul style="list-style-type: none"> <li>Associations will be required to apply for recognition</li> <li>Costs associated with compliance with new well-being provisions/ standards</li> </ul> | <ul style="list-style-type: none"> <li>Compliance with the conditions for recognition of associations</li> <li>Compliance with new well-being provisions</li> <li>Costs associated with newly-listed species</li> </ul> | The costs to update facilities may be high, but improved well-being conditions in facilities will improve the conservation reputation of South Africa |  |

| Group                  | Implementation costs   | Compliance costs  | Costs/benefits from achieving desired outcome   | Comments |
|------------------------|--|---|---|----------|
| Bioprospecting         | Costs associated with negotiations for new agreements, and new consultation process to be followed | Costs associated with additional permits to be obtained and complied with | Additional requirements, restrictions and agreements to be entered into is a cost for the bioprospecting sector, but the benefit for South Africa as a whole is improved compliance with the Nagoya Protocol on ABS |          |
| Indigenous communities | None   | None  | Improved beneficiation and participation in the biodiversity value chain.   |          |

2.6 Cost to government: Describe changes that the proposal will require and identify where the affected agencies will need additional resources

- a) Budgets, has it been included in the relevant Medium Term Expenditure Framework (MTEF) and
- b) Staffing and organisation in the government agencies that have to implement it (including the courts and police, where relevant). Has it been included in the relevant Human Resource Plan (HRP)

*Note: You MUST provide some estimate of the immediate fiscal and personnel implications of the proposal, although you can note where it might be offset by reduced costs in other areas or absorbed by existing budgets. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.*

- a) The key changes that will be required relate to the permitting requirements, which will depend on the detail that will be included in the subordinate legislation (notices in the *Gazette* or regulations to specify the prohibitions or restrictions). This alignment process in itself will require a consultation process; therefore an indication of the fiscal implications cannot be provided at this stage. The overall intention is to reduce the implementation and compliance costs as a result of a reduction in the total number of permits that will be required.

- b) Provincial conservation authorities are the key implementers of NEMBA, as the MECs are the issuing authorities for most of the permits as far as it relates to TOPS and CITES. Provinces already have permitting and enforcement structures in place for the implementation and enforcement of the provisions of provincial conservation legislation, and in most cases for the existing provisions of NEMBA and the TOPS Regulations.

In terms of BABS, provincial conservation authorities are the key regulators of export permits for research other than bioprospecting (i.e non-commercial research undertaken outside the Republic of South Africa), as the MECs are the issuing authorities for such permits.

The Minister is currently the issuing authority in respect of some of the permits for TOPS and CITES, for marine species, for alien and listed invasive species, and for BABS. Structures are already in place within the DFFE for the implementation of existing provisions of NEMBA.

2.7 Describe how the proposal minimises implementation and compliance costs for the affected groups both inside and outside of government.

**For groups outside of government (add more lines if required)**

| Group                 | Nature of cost (from question 2.6)        | What has been done to minimise the cost?  |
|-----------------------|---|---|
| Wildlife sector       | Costs to apply for permits                | <ul style="list-style-type: none"> <li>• The number of activities that will require permits, will be greatly reduced (through the process of alignment of subordinate legislation).</li> <li>• The permit application fees are already the bare minimum and cannot be further reduced</li> <li>• Consideration can be given to waver the permit processing fee that must be paid in terms of NEMBA, in the case where an integrated permit is issued</li> </ul> |
|                       | Costs to comply with well-being standards | Most of the captive facilities already implement welfare standards, but these may be varying and not consistent. Where facilities already implement welfare standards, it should not result in additional costs to comply with the envisaged well-being standards   |
| Bioprospecting sector | Costs to apply for permits                | Consideration can be given to waver the permit processing fee that must be paid in terms of NEMBA, in the case where an integrated permit is issued. Also for downstream users of the same indigenous biological resources covered by an existing permit.   |

| Group                             | Nature of cost (from question 2.6) | What has been done to minimise the cost?   |
|-----------------------------------|------------------------------------|--|
| Alien and invasive species sector | Costs to apply for permits         | The number of activities that will require permits, will be greatly reduced (through the process of alignment of subordinate legislation). |

**For government agencies and institutions:**

| Agency/institution | Nature of cost (from question 2.6)   | What has been done to minimise the cost?   |
|--------------------|--|--|
| DFFE               | <ul style="list-style-type: none"> <li>• Costs to align subordinate legislation, or develop new provisions (particularly in respect of the well-being of wild animals)</li> <li>• Costs associated with capacity building</li> </ul> | Costs cannot be minimised. To ensure effective implementation of the Bill, capacity building workshops will be required in each province, as opposed to one or two national workshops. |
| DFFE/ Provinces    | Costs associated with the issuance of permits and conducting of inspections  | The number of activities that will require permits, will be greatly reduced (through the process of alignment of subordinate legislation).   |

**2.8 Managing Risk and Potential Dispute**

- a) Describe the main risks to the achievement of the desired outcomes of the proposal and/or to national aims that could arise from implementation of the proposal. Add more lines if required.

*Note: It is inevitable that change will always come with risks. Risks may arise from (a) unanticipated costs; (b) opposition from stakeholders; and/or (c) ineffective implementation co-ordination between state agencies. Please consider each area of risk to identify potential challenges.*

- b) Describe measures taken to manage the identified risks. Add more rows if necessary.

*Mitigation measures means interventions designed to reduce the likelihood that the risk actually takes place.*

| Identified risk  | Mitigation measures   |
|--|---|
| Ineffective implementation of, or non-compliance with, the proposed NEMBA amendments (by implementing agencies or the regulated community), due to misperceptions of the intended outcomes | <ul style="list-style-type: none"> <li>• Conduct workshops, training and awareness-raising to capacitate government officials and members of the public on the implementation of the proposed NEMBA amendments, to: <ul style="list-style-type: none"> <li>○ promote the benefits of the proposal</li> <li>○ clarify the intended meaning of the proposed provisions (to ensure uniform interpretation)</li> </ul> </li> <li>• Capacity building workshops will be required in each province, as opposed to one or two national workshops.</li> </ul> |
| Litigation as a result of non-acceptance of new enabling provisions  | <ul style="list-style-type: none"> <li>• Ensure that the process of amending NEMBA is legally sound, rational, reasonable and procedurally fair</li> <li>• Promote the benefits of the proposal</li> </ul>  |
| Unanticipated conflicts with other legislation (highlighted in Paragraph 2.1)  | Alignment of the subordinate legislation developed in terms of the Biodiversity Bill and the other legislation when the conflict arise  |

- c) What kinds of dispute might arise in the course of implementing the proposal, whether (a) between government departments and government agencies/parastatals, (b) between government agencies/parastatals and non-state actors, or (c) between non-state actors? Please provide as complete a list as possible. What dispute-resolution mechanisms are expected to resolve the disputes? Please include all of the possible areas of dispute identified above. Add more lines if required.

*Note: Disputes arising from regulations and legislation represent a risk to both government and non-state actors in terms of delays, capacity requirements and expenses. It is therefore important to anticipate the nature of disputes and, where possible, identify fast and low-cost mechanisms to address them.*

| Nature of possible dispute (from sub-section above)                           | Stakeholders involved                              | Proposed Dispute-resolution mechanism   |
|---|--|---|
| Disagreement on the interpretation of the provisions of the Biodiversity Bill | Between implementing agencies (DFFE and provinces) | <ul style="list-style-type: none"> <li>• Potential resolution through formal legal opinions</li> <li>• Development of interpretation guidelines</li> <li>• Resolution through formal inter-governmental structures (Working Groups, MINTECH and MINMEC)</li> <li>• The nature of this risk should not require resolution through the Intergovernmental Relations Framework Act</li> </ul> |

| Nature of possible dispute (from sub-section above)  | Stakeholders involved   | Proposed Dispute-resolution mechanism  |
|--|---|--|
|  | Between DFFE and the regulated community  | <ul style="list-style-type: none"> <li>• Potential resolution through formal legal opinions</li> <li>• Development of interpretation guidelines</li> <li>• Litigation</li> </ul> |
| Dispute between DFFE and other departments arising from conflict between the Biodiversity Bill and the legislation identified in Paragraph 2.1 | Primarily between DFFE and DALRRD   | Alignment of the subordinate legislation developed in terms of the Biodiversity Bill and the other legislation when the conflict arise   |
| Disagreement with decisions to issue or refuse a permit, as the case may be  | Between permit applicants or other interested and affected parties, and issuing authorities | Appeals process to be followed in terms of section 43 of NEMA and the National Appeals Regulations   |

## 2.9 Monitoring and Evaluation

*Note: Sound implementation of policy and legislation is due to seamless monitoring and evaluation integration during the policy development phase. Policies and legislation that are proficiently written yet unable to report on implementation outcomes are often a result of the absence of an M&E framework at the policy and legislative planning phase. It is therefore imperative to state what guides your policy or legislation implementation monitoring.*

2.9.1 Develop a detailed Monitoring and Evaluation Plan, in collaboration with your departmental M&E unit which should include among others the following:

2.9.1.1 Provide clear and measurable policy or legislative objectives

2.9.1.2 Provide a Theory of Change clearly describing the following components:

- Impact: the organisational, community, social and systemic changes that result from the policy or legislation;
- Outcomes: the specific changes in participants (i.e. beneficiaries) behaviour, knowledge, skills, status and capacity;
- Outputs: the amount, type of degree of service(s) the policy or legislation provides to its beneficiaries;
- Activities: the identified actions to be implemented
- Input: departmental resources used in order to achieve policy or legislative goals i.e. personnel, time, funds, etc.
- External conditions: the current environment in which there's an aspiration to achieve impact. This includes the factors beyond control of the policy or legislation (economic, political, social, cultural, etc.) that will influence results and outcomes.

- Assumptions: the facts, state of affairs and situations that are assumed and will be necessary considerations in achieving success

2.9.1.3 Provide a comprehensive Logical Framework (LogFrame) aligned to the policy or legislative objectives and the Theory of Change. The LogFrame should contain the following components:

- Results (Impact, Outcomes and Output)
- Activities and Input
- Indicators (A measure designed to assess the performance of an intervention. It is a quantitative or qualitative factor or variable that provides a simple and reliable means to measure achievement, to reflect the changes connected to an intervention, or to help assess the performance of a development actor)
- Baseline (the situation before the policy or legislation is implemented)
- Targets (a specified objective that indicates the number, timing and location of that which is to be realised)

2.9.1.4 Provide an overview of the planned Evaluation, briefly describing the following:

- Timeframe: when it the evaluation be conducted
- Type: What type of evaluation is planned (formative, implementation or summative) – the selection of evaluation type is informed by the policy owners objective (what it is you want to know about your policy or legislation).

2.9.1.5 Provide a straightforward Communication Plan (Note: a common assumption is that the target group will be aware of, and understand how to comply with a policy or legislation come implementation. However, increases in the complexity and volume of new or amendment policy or legislation render this assumption false. Hence, the need for a communication plan to guide information and awareness campaigns to ensure that all stakeholders (including beneficiaries) are informed.

Compliance with the implementation of NEMBA and its subordinate legislation is monitored by components within DEFF who are responsible for the implementation of the respective areas of NEMBA. Copies of the following documents are attached:

- Compliance monitoring framework for TOPS and CITES
- Key indicators for TOPS and CITES, for compliance monitoring inspections
- Bioprospecting regulatory framework guideline; and
- Criteria for monitoring the implementation of the BABS Regulations.

The Alien and Invasive Species Regulations are implemented by DFFE; hence a compliance monitoring framework is not available for this area of NEMBA.



Monitoring compliance with the provisions of NEMBA by the regulated community is done by the Environmental Management Inspectorate (the Green Scorpions), at national, provincial and local level.

2.10 Furthermore, the DFFE aims to develop a comprehensive Monitoring and Evaluation Plan to effectively oversee and assess the implementation and impact of the provisions within the draft NEMBA Bill. Please identify areas where additional research would improve understanding of then costs, benefit and/or of the legislation.

Additional research in how the proposal would contribute to the National Priorities would be beneficial.

## **PART THREE: SUMMARY AND CONCLUSIONS**

1. Briefly summarise the proposal in terms of (a) the problem being addressed and its main causes and (b) the measures proposed to resolve the problem.

a) Problem being addressed:

- Hampered growth of, and opportunities in the biodiversity economy
- Insufficient equitable distribution of benefits arising from bioprospecting or biotrade involving commercial utilization of indigenous biological or genetic resources and their associated traditional knowledge
- Lack of transformation in the biodiversity sector, where a majority of the population are disadvantaged and disenfranchised from benefiting and/or contributing to conservation and sustainable use
- Constrained realization of benefits from the utilization of biodiversity at a global level, coupled with insufficient protection to biological resources that demand heightened protection at an international level
- Decline in numbers of the species in the wild
- Inability to effectively address wildlife trafficking
- Reputation damage for South Africa as a world leader in biodiversity conservation and sustainable.

b) Measures to resolve the problem:

- The proposal aims to amend the regulatory approach, from an all-encompassing approach where permits are required for every restricted activity involving every specimen of listed species, to an approach where the specific activities requiring permits will be specified, either by notice in the *Gazette*, or prescribed in regulations.

- The proposal also aims to streamline the permitting systems for bioprospecting and biotrade, including the associated benefit sharing models.
- The proposal provides a more flexible regulatory approach that will enable the Minister and MECs responsible for environmental affairs to exercise greater discretionary powers, will result in simpler implementation of the provisions and more effective compliance with international agreements.
- A more flexible regulatory approach will further enable growth of the biodiversity economy and participation in the biodiversity value chain by previously excluded groups.
- The Bill will also include new enabling provisions that are aimed at the protection of species and ecosystems, in order to address current regulatory gaps.
- Furthermore, the Bill intends to strengthen issues relating to the newly adopted mandate of well-being, as well as advancing the need to ensure duty of care and humane practices.

2. Identify the social groups that would benefit and those that would bear a cost, and describe how they would be affected. Add rows if required.

| <b>Groups</b>                                   | <b>How they would be affected</b>   |
|---|---|
| <b>Beneficiaries</b>                            |   |
| 1. DFFE and provincial conservation authorities | <ul style="list-style-type: none"> <li>• Improved implementation of the provisions of NEMBA, due to the reduced number of permits that will be required to be issued, resulting in: <ul style="list-style-type: none"> <li>○ reduced administrative burden to permit components; and</li> <li>○ reduced compliance monitoring and enforcement efforts</li> </ul> </li> <li>• Improved ability to protect species due to ability to list priority species at national level that require additional protection/ enforcement measures</li> <li>• Improved ability to implement obligations in respect of binding international agreements and ensure beneficitation.</li> <li>• Ability to improve practices relating to the keeping and breeding of wild animals in captivity, ensure duty of care and humane practices</li> </ul> |
| 2. State  | Ability to retain custodianship over wild animals escaping from e.g. state-owned protected areas  |
| 3. Regulated community                          | Reduced number of permits to be obtained and reduction in associated costs to conduct business  |
| 4. Indigenous communities                       | Improved ability to: <ul style="list-style-type: none"> <li>• benefit from the use of indigenous biological resources; and</li> <li>• participate in the biodiversity value chain</li> </ul>  |
| 5. Wildlife Well-being stakeholders             | Ability to ensure the adoption of practices that are responsible, legal, sustainable, humane and promote animal well-being of the five iconic species   |
| <b>Cost bearers</b>                             |   |
| 1. DFFE   | <b>Primary costs:</b> <ul style="list-style-type: none"> <li>• Costs associated with consultation and awareness-raising to implement to provisions of the Bill.</li> </ul>  |

| Groups  | How they would be affected  |
|---|---|
|   | <b>Secondary costs:</b> <ul style="list-style-type: none"> <li>• Amendment of existing subordinate legislation, or development of new subordinate legislation, to be aligned with the amended regulatory approach of the Bill.</li> </ul>   |
| 2. DFFE and provincial conservation authorities | <ul style="list-style-type: none"> <li>• Implementation of systems to: <ul style="list-style-type: none"> <li>○ appoint biodiversity officers; and</li> <li>○ monitor the conduct of biodiversity officers.</li> </ul> </li> <li>• Alignment of permit systems to accommodate newly listed species</li> </ul> |
| 3. Bioprospecting sector                        | Additional costs associated with streamlined requirements relating to consultation with indigenous communities  |

3. What are the main risks from the proposal in terms of (a) undesired costs, (b) opposition by specified social groups, and (c) inadequate coordination between state agencies?

- a) Ineffective implementation of, or non-compliance with, the proposed NEMBA amendments (by implementing agencies or the regulated community), due to misperceptions of the intended outcomes
- b) Litigation as a result of non-acceptance of new enabling provisions
- c) Unanticipated conflicts with other legislation (highlighted in Paragraph 2.1)

4. Summarise the cost to government in terms of (a) budgetary outlays and (b) institutional capacity.

Major implications in respect of budget and human resources are not anticipated, as structures are already in place for the current implementation of provincial conservation legislation and NEMBA.

5. Given the assessment of the costs, benefits and risks in the proposal, why should it be adopted?

The proposal will ensure more effective protection to indigenous plant and animal species (by addressing gaps arising from fragmented provincial conservation legislation), will enable the Department to address the problem of over-regulation (which affects the entire regulated community), and will ensure the more effective beneficiation of communities (arising from the use of indigenous biological resources or the use of indigenous knowledge).

The proposal will also ensure that there is comprehensive implementation of newly adopted animal well-being mandate, duty of care and humane in conducting activities involving fauna and flora.

The benefits out-weigh the costs to implement the Biodiversity Bill.

6. Please provide two other options for resolving the problems identified if this proposal were not adopted.

|                  |   |
|------------------|---|
| <b>Option 1.</b> | Resource allocation (human and financial resources); however, this option will not enable the Department of Environment, Forestry and Fisheries (DEFF) to address regulatory gaps or over-regulation. |
| <b>Option 2.</b> | Training and awareness; however, this option will not address regulatory gaps and excessive permitting  |

7. What measures are proposed to reduce the costs, maximise the benefits, and mitigate the risks associated with the legislation?

The costs will be reduced as a result of a reduced number of permits and permit inspections to be required.

Benefits will be maximised through the alignment/ development of subordinate legislation.

The DFFE will ensure that the process of amending NEMBA is legally sound, rational, reasonable and procedurally fair

Risks can be mitigated through capacity building and awareness-raising workshops, the development of interpretation guidelines, and inter-governmental consultation through formal structures.

8. Is the proposal (mark one; answer all questions)

|  | <b>Yes</b> | <b>No</b> |
|--|------------|-----------|
| a. Constitutional?                                   | Yes        |           |
| b. Necessary to achieve the priorities of the state? | Yes        |           |
| c. As cost-effective as possible?                    | Yes        |           |
| d. Agreed and supported by the affected departments? | Yes        |           |

9. What is the impact of the Proposal to the following National Priorities?

| <b>National Priority</b>                 | <b>Impact</b>   |
|--|---|
| Economic transformation and job creation | <ul style="list-style-type: none"> <li>• Reduced permit requirements will enhance opportunities for previously disadvantaged individuals to enter the biodiversity economy space.</li> <li>• Specific benefit-sharing model for bioprospecting will enhance contribution to economic transformation in terms various innovation-based beneficiation schemes such as through Intellectual Property Rights protection.</li> <li>• Specific benefit-sharing model for Biotrade will enhance contribution to job creation as it is</li> </ul> |

| National Priority   | Impact  |
|---|---|
|   | <p>labour intensive in terms of the supply of raw materials.</p> <ul style="list-style-type: none"> <li>• The Bill aims, among others, to prioritize the objectives outlined in the White Paper, which emphasizes the need to transform the biodiversity sector and subsequently boost job creation prospects for everyone</li> </ul>   |
| Education, skills and health  | <ul style="list-style-type: none"> <li>• Some of the benefits anticipated to be shared from bioprospecting are non-monetary in a form of: <ul style="list-style-type: none"> <li>✓ Technology and skills transfer;</li> <li>✓ Collaboration, cooperation and contribution in education, awareness and training;</li> <li>✓ Food, health and livelihood security benefits; and</li> <li>✓ Access to scientific information regarding biodiversity value relevant for conservation and sustainable use of its components.</li> </ul> </li> <li>• Enhanced accessibility to biological resources for medicinal purposes translates to improved conditions of human health</li> </ul>   |
| Consolidating the social wage through reliable and quality basic services | <ul style="list-style-type: none"> <li>• Stricter regulation of activities or threatening processes in threatened ecosystems should improve ecosystem services</li> <li>• Biotrade depends on labour intensive supply of raw materials from the wild. The Bill makes provisions for the Minister to determine standardised pricing through a consultative process on an annual basis. Currently there is no standard pricing of raw wild and cultivated materials.</li> </ul>   |
| Spatial integration, human settlements and local government               | <p>Biodiversity hotspots for bioprospecting and biotrade are mainly at the local government level, in particular in the rural communities.</p>  |
| Social cohesion and safe communities                                      | <ul style="list-style-type: none"> <li>• Improved ability to: <ul style="list-style-type: none"> <li>○ benefit from the use of indigenous biological resources; and</li> <li>○ participate in the biodiversity value chain.</li> </ul> </li> <li>• Bioprospecting and biotrade promotes coordination and cooperation with full involvement of every member of the community where the indigenous biological or genetic resources will be accessed.</li> <li>• Traditions, cultures and spiritual use enhanced and promoted</li> <li>• Addressing intensive management practices, as well as promoting duty of care and humane conduct involving wild animals will be regarded as a positive step from a moral, ethical and</li> </ul> |

| National Priority                                   | Impact  |
|---|---|
|   | humane perspective for many South Africans and will render support to the South African government in its conservation efforts  |
| Building a capable, ethical and developmental state | <ul style="list-style-type: none"> <li>• Increased penalties applicable to persons involved in organised crime and wildlife trafficking, and applicable to employees of the State, should assist to contribute to a capable and ethical state</li> <li>• Regulated bioprospecting and biotrade promotes ethical access to indigenous genetic or biological resources and their associated traditional knowledge, which in return contribute in building capable and developmental state.</li> <li>• Strengthened aspects relating to humane practices, duty of care and animal well-being</li> </ul>  |
| A better Africa and world.                          | <ul style="list-style-type: none"> <li>• Ability to improve breeding and captive keeping practices due to the inclusion of the well-being provision, resulting in improving South Africa's reputation in respect of biodiversity conservation</li> <li>• Improving South Africa's ability to fulfil its obligations under international agreements, including the Convention on Biological Diversity and the Nagoya Protocol on ABS, and the Convention on Migratory Species.</li> <li>• Enhanced South Africa's reputation as a world leader in biodiversity conservation and sustainable through improvement of the duty of care towards biodiversity.</li> </ul> |

**For the purpose of building a SEIAS body of knowledge please complete the following:**

|                           |   |
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