

TEMPLATE FOR PROVIDING INPUTS ON THE PROPOSED AMENDMENTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT (ACT NO. 10 OF 2004) (NEMBA): CITES REGULATIONS OF 2010

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Would you like us to include you as a stakeholder on our future communications?	YES

Section:	General	Page:	N/A			
Section Content:	General					
Nature of comment:	Edit	Change	Deletion	Addition	Recommendation X	Other (Specify)
Comments	<p>TOPS Regulations have not been included as part of this exercise of consolidation, although the CITES Regulations are required to be read with TOPS. As these are also used to implement CITES (including but not limited to dealing with the issuing of permits) they should therefore form part of this overall process and be included, and the amendments consolidated.</p> <p>There should also be an inclusion that to the extent that the TOPS regulations offer a higher level of protection to species or specimens, these prevail over the CITES Regulations. Here we would like to note that CITES is the lowest requirement – South Africa in its domestic legislation could and should go much further for the protection of species – this should be reflected in its legislation and regulation as well as the enforcement of these provisions.</p> <p>The importance of wild animals, not only for their commercial worth, has been recognized by the highest courts in South Africa (including the Constitutional Court and Supreme Court of Appeal). These sentiments should be reflected in legislation.</p>					
Action Taken (Office Use only)						
Notes						
Section:	General	Page:	N/A			
Section Content:	General					
Nature of comment:	Edit	Change	Deletion	Addition	Recommendation X	Other (Specify)
Comments	<p>Further to the point above, provincial regulation has not been included as part of this process. As CITES is required to be implemented by the provinces, this legislation must also be included. The provinces all implement CITES in a different and inconsistent manner including the issuing of permits. This needs to be regularised in legislation. However, National Government is accountable for implementation of CITES and should have overall sight and responsibility for this.</p>					
Action Taken						

<b>(Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	General			<b>Page:</b>	N/A	
<b>Section Content:</b>	General					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition	Recommendation X	Other (Specify)
<b>Comments</b>	Transparency and access to information. We are of the view that it is essential that processes for obtaining permits is transparent. We request that the issue of a central database whereby information on permit applications can be accessed prior to the granting of such permits.					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	1			<b>Page:</b>	4	
<b>Section Content:</b>	Definition of "hunting trophy"					
<b>Nature of comment:</b>	Edit	Change	Deletion X	Addition	Recommendation	Other (Specify)
<b>Comments</b>	This term is not used in the Regulations and must be deleted					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	1			<b>Page:</b>	4	
<b>Section Content:</b>	Definition of "introduction from the sea"					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>	The definition in the CITES Regulations does not match the definition in CITES Convention which also includes "including the air space above the sea and the sea-bed and subsoil beneath the sea"					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	1			<b>Page:</b>	4	
<b>Section Content:</b>	Definition of "NEMBA"					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>	The definition should include "its Schedules, rules and notices published under the Act, as amended from time to time;"					
<b>Action Taken</b>						

<b>(Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	1 (2)			<b>Page:</b>	7	
<b>Section Content:</b>	Interpretation					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition	Recommendation	Other (Specify) X
<b>Comments</b>	This provision appears to nullify TOPS regulations and provincial regulation dealing with this issue					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	1(3)			<b>Page:</b>	7	
<b>Section Content:</b>	Interpretation					
<b>Nature of comment:</b>	Edit	Change X	Deletion	Addition	Recommendation	Other (Specify)
<b>Comments</b>	The word "can" before "serve" should be replaced with "should"					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	2(1)			<b>Page:</b>	8	
<b>Section Content:</b>	Application					
<b>Nature of comment:</b>	Edit	Change X	Deletion	Addition	Recommendation	Other (Specify)
<b>Comments</b>	Reference is made to Schedules I, II and III however the Appendices are not named as such. There needs to be consistency with the use of the word Schedules and Appendices throughout the Regulations					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	2(6)			<b>Page:</b>	8	
<b>Section Content:</b>	Application					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition	Recommendation X	Other (Specify)
<b>Comments</b>	There should be guidance as to which of the pieces of legislation/regulation prevail to the extent of a conflict. As per our above suggestion, the regulation offering the highest level of protection to species or specimens must prevail					
<b>Action Taken</b>						

<b>(Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	3(2)(c)			<b>Page:</b>	9	
<b>Section Content:</b>	<b>Specific duties of the National Management Authority</b>					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>	The word “accurate” should be inserted before “records”					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	3(2)(f)			<b>Page:</b>	9	
<b>Section Content:</b>	<b>Specific duties of the National Management Authority</b>					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>	The words “on all necessary issues as required by the Convention, including but not limited to” should follow after the words “the Scientific Authority”					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	3(2)(f)			<b>Page:</b>	9	
<b>Section Content:</b>	<b>Specific duties of the National Management Authority</b>					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>	After the word “quotas” the following shall be included: “provided that due public consultation in the setting of any quotas is done and a full impact assessment on a species has been considered prior to the setting of a quota”					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	3(2)			<b>Page:</b>	10	
<b>Section Content:</b>	<b>Specific duties of the National Management Authority</b>					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>						
<b>Action Taken (Office Use only)</b>	Insertion of a new duty [3(2)(l)]: “to perform all of its functions required in terms of the Convention by engaging with all relevant stakeholders”					

<b>Notes</b>						
<b>Section:</b>	3(5)(a)			<b>Page:</b>	10	
<b>Section Content:</b>	Provincial Management Authority					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>	The words “on all necessary issues as required by the Convention, including but not limited to” should follow after the words “the Scientific Authority”					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	3(5)(b)			<b>Page:</b>	10	
<b>Section Content:</b>	Provincial Management Authority					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>	After the word “quotas” the following shall be included: “provided that due public consultation in the setting of any quotas is done and a full impact assessment on a species has been considered prior to the setting of a quota”					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	3(5)(i)		Page			
<b>Section Content:</b>	Provincial Management Authority					
<b>Nature of comment:</b>	Edit X	Change	Deletion	Addition	Recommendation	Other (Specify)
<b>Comments</b>	The word “optimise” should be replaced with “enforce” or a more appropriate term.					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	3(5)(j)			<b>Page:</b>	11	
<b>Section Content:</b>	Provincial Management Authority					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>	The word “accurate” should be inserted before “records”					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						

<b>Section:</b>	3(5)(n)				<b>Page:</b>	12	
<b>Section Content:</b>	Provincial Management Authority						
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)	
<b>Comments</b>	Insertion of a new duty: "to perform all of its functions required in terms of the Convention by engaging with all stakeholders"						
<b>Action Taken (Office Use only)</b>							
<b>Notes</b>							
<b>Section:</b>	4(1)(a)				<b>Page:</b>	12	
<b>Section Content:</b>	Scientific Authority						
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition	Recommendation	Other (Specify) X	
<b>Comments</b>	There should be further guidance as to what needs to be considered for a non-detrimental finding and who else needs to give input into this. The issue of non-detriment findings is an extremely important one and should involve a transparent public process. We suggest that this involve publications as well as due public process and not simply a ruling by the Scientific Authority. This issue should be clearly legislated for as it is crucial in the process of ensuring the implementation of CITES.						
<b>Action Taken (Office Use only)</b>							
<b>Notes</b>							
<b>Section:</b>	4(2)(a)(ii)			<b>Page:</b>	13		
<b>Section Content:</b>	Scientific Authority						
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition	Recommendation	Other (Specify) X	
<b>Comments</b>	Reference is made to meeting criteria – however this is not further set out. This should be specifically set out in the Regulations.						
<b>Action Taken (Office Use only)</b>							
<b>Notes</b>							
<b>Section:</b>	4(3)(b)				<b>Page:</b>	13	
<b>Section Content:</b>	Scientific Authority						
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)	
<b>Comments</b>	Insertion of the words: "including animal protection organizations"						
<b>Action Taken</b>							

<b>(Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	<b>6(1)</b>	<b>Page:</b>	<b>15</b>			
<b>Section Content:</b>	<b>Export Permit</b>					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>	Reference should be made to the fact that an import permit from the importing country is required.					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	<b>6 (3)(a)</b>	<b>Page:</b>	<b>15</b>			
<b>Section Content:</b>	<b>Export Permit</b>					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>	Add 'breeding facility has been inspected by DAFF and they sign off on the welfare of the animals as acceptable as per APA'					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	<b>6(3)(b)</b>	<b>Page:</b>	<b>15</b>			
<b>Section Content:</b>	<b>Export Permit</b>					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition	Recommendation	Other (Specify) X
<b>Comments</b>	<p>In accordance with CITES this needs to be done as to minimise the risk of injury, damage to health or cruel treatment. This should be stated up front as the way the clause is currently worded appears that it needs to be done in accordance with Live Animal Regulations of International Air Transport situation first and foremost with welfare being a secondary concern. This is not what is required by CITES.</p> <p>The term "IATA live animals regulations" is defined in the definitions and then is not used correctly in this paragraph.</p> <p>As an additional point, we are extremely concerned about the issue of appropriate destinations as to where these specimens are going. The term "appropriate destinations" should be properly defined. We have become aware of export permits being issued for places where either (i) the addresses are not valid; (ii) that are private homes of individuals; (iii) are pet stores, traders or intermediate traders. Furthermore, once the animals are exported they are being subjected to cruel and inhumane treatment and living in terrible conditions. Evidence can be presented on these issues, to the degree it is required.</p>					
<b>Action Taken</b>						

<b>(Office Use only)</b>							
<b>Notes</b>							
<b>Section:</b>	6(3)(c)			<b>Page:</b>	15		
<b>Section Content:</b>	<b>Export Permit</b>						
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition	Recommendation	Other (Specify) X	
<b>Comments</b>	It should be noted here that the non-detriment finding should be made available to the public.						
<b>Action Taken (Office Use only)</b>							
<b>Notes</b>							
<b>Section:</b>	8(2)(b)			<b>Page:</b>	16		
<b>Section Content:</b>	<b>Re-export</b>						
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition	Recommendation	Other (Specify)	
<b>Comments</b>	<p>In accordance with CITES this needs to be done as to minimise the risk of injury, damage to health or cruel treatment. This should be stated up front as the way the clause is currently worded appears that it needs to be done in accordance with Live Animal Regulations of International Air Transport situation first and foremost with welfare being a secondary concern. This is not what is required by CITES.</p> <p>The term "IATA live animals regulations" is defined in the definitions and then is not used correctly in this paragraph.</p> <p>As an additional point, we are extremely concerned about the issue of appropriate destinations as to where these specimens are going. The term "appropriate destinations" should be properly defined. We have become aware of export permits being issued for places where either (i) the addresses are not valid; (ii) that are private homes of individuals; (iii) are pet stores, traders or intermediate traders. Furthermore, once the animals are exported they are being subjected to cruel and inhumane treatment and living in terrible conditions. Evidence can be presented on these issues, to the degree it is required.</p>						
<b>Action Taken (Office Use only)</b>							
<b>Notes</b>							
<b>Section:</b>	9(2)(b)			<b>Page:</b>	17		
<b>Section Content:</b>	<b>Introduction from the Sea</b>						
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)	
<b>Comments</b>	For Appendix I species, although not specified in CITES, the wording should include "and the specimen will be so handled as to minimize the risk of injury, damage to health or cruel treatment". This is included in CITES for species in Appendix II and should equally apply to species listed in Appendix I as there is no reason for distinguishing between the two.						



<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	10(1)	<b>Page:</b>		17		
<b>Section Content:</b>	Permits and Certificates					
<b>Nature of comment:</b>	Edit	Change X	Deletion	Addition	Recommendation	Other (Specify)
<b>Comments</b>	The number "4" should be replaced with "IV" in order to be consistent with the labelling of the Appendix in the Regulations.					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	11	<b>Page:</b>		19		
<b>Section Content:</b>	Registration and Marking					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>	New section 1A to be inserted: Any and all persons wishing to trade specimens of any species listed in any of the Appendices shall do so at all times in accordance with the provisions of the Convention, these Regulations and any other laws of the Republic whether National or Provincial, which may apply.					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	11(4)	<b>Page:</b>		20		
<b>Section Content:</b>	Registration and Marking					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>	The words "and any other Resolutions as agreed to by the parties to CITES from time to time which may apply" should follow the words "Resolution 12.10 an[d] its amendments".					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	11(6)	<b>Page:</b>		20		
<b>Section Content:</b>	Registration and Marking					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)

<b>Comments</b>	We would like to establish requirements for the breeding facility. The main one being that such facility has been inspected by DAFF and has been signed off to comply with the relevant provisions of the South African Animal Protection Act, particularly the welfare provisions.					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	14			<b>Page:</b>	21	
<b>Section Content:</b>	<b>Personal Effects</b>					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>	The current wording of the section does not include the exceptions contained in Article VII of CITES which should specifically be carved out.					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	16(1)(a)			<b>Page:</b>	22	
<b>Section Content:</b>	<b>Offences and Penalties</b>					
<b>Nature of comment:</b>	Edit	Change X	Deletion	Addition	Recommendation	Other (Specify)
<b>Comments</b>	<p>The wording “without a valid permit or certificate issued in terms of these regulations” should be amended to “without complying with all of the necessary requirements in terms of these regulations including but not limited to obtaining all necessary permits and certificates required for the specific action”.</p> <p>We would like to note here that our research is showing has shown that a valid permit is still not a sufficient mechanism as in many instances the animals traded using the valid permit may still go into criminal networks or an illegal trade.</p>					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	16(1)(b)			<b>Page:</b>	22	
<b>Section Content:</b>	<b>Offences and Penalties</b>					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>	The following wording should be included after “which was not legally acquired” - “or which was acquired in contravention with the Convention and/or these Regulations”					
<b>Action Taken (Office Use only)</b>						

<b>Notes</b>						
<b>Section:</b>	16(1)			<b>Page:</b>	23	
<b>Section Content:</b>	<b>Offences and Penalties</b>					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)
<b>Comments</b>	Insertion of new offences including: “entices another person to commit any of the offences referred to in paragraphs (a) to (j) or is aware of any person that commits any of the offences referred to in paragraphs (a) to (j) and fails to disclose such information to the relevant authorities”					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	16(1)			<b>Page:</b>	23	
<b>Section Content:</b>	<b>Offences and Penalties</b>					
<b>Nature of comment:</b>	Edit	Change X	Deletion	Addition	Recommendation	Other (Specify)
<b>Comments</b>	The words “is an offence in terms of these Regulations” should be on a separate line to section 16(1A).					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	16(2)(a)			<b>Page:</b>	23	
<b>Section Content:</b>	<b>Offences and Penalties</b>					
<b>Nature of comment:</b>	Edit	Change X	Deletion	Addition	Recommendation	Other (Specify)
<b>Comments</b>	Proposal for higher punishment: starting point being R10 million and 10 years with repeat offenders going up to R15million and 15 years. This should be per violation of the regulations. Furthermore, the numbers and words are not used consistently in this paragraphs (e.g. “five million rand “ vs. “R10 million”) and this should be corrected.					
<b>Action Taken (Office Use only)</b>						
<b>Notes</b>						
<b>Section:</b>	17			<b>Page:</b>	23 and 24	
<b>Section Content:</b>	<b>Disposal of Confiscated Specimens</b>					
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition	Recommendation X	Other (Specify)
<b>Comments</b>	Suggest that there is a registry for where confiscated specimens are disposed of to. Further, the section should make provision for the destruction of confiscated specimens.					
<b>Action Taken</b>						

<b>(Office Use only)</b>							
<b>Notes</b>							
<b>Section:</b>	New section [21]			<b>Page:</b>			
<b>Section Content:</b>	<b>Trade with States not a party to the Convention</b>						
<b>Nature of comment:</b>	Edit	Change	Deletion	Addition X	Recommendation	Other (Specify)	
<b>Comments</b>	Article X of CITES should be recorded in the Regulations to regulate trade with non-CITES parties.						
<b>Action Taken (Office Use only)</b>							
<b>Notes</b>							
<b>Section:</b>	Annexure 1			<b>Page:</b>	27		
<b>Section Content:</b>	<b>Proposed Amendments to section 3</b>						
<b>Nature of comment:</b>	Edit	Change	Deletion X	Addition	Edit	Change	
<b>Comments</b>	We do not agree that the public consultation process required by NEMBA should be done away with. This is absolutely essential as all South Africans have a stake in how wildlife is managed. This provision should not be amended to reflect Annexure 1.						
<b>Action Taken (Office Use only)</b>							
<b>Notes</b>							