

Catching the Ivory Smugglers: An Overview of South Africa's biodiversity, conservation and heritage legislation

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Introduction to illegal trade in wildlife and wildlife poisoning

- After drugs and weapons this is the third most significant illegal trade in the world;
- International conventions such as CITES regulate this at an international level but do not necessarily regulate the illegal extraction etc of wildlife;
- Plants, reptiles, birds as well as mammals;
- What are illegally caught or extracted products used for: Medicines, Food, Ornaments, Skins, furs and wools, the pet trade, forest products.
- Wildlife poisoning is a big threat to biodiversity.

Main legislation applicable to illegal extraction and trade in wildlife

- The National Environmental Management: Biodiversity Act 10 of 2004;
- the National Environmental Management: Protected Areas Act 57 of 2003;
- National Heritage Resources Act 25 of 1999;
- provincial conservation ordinances.

Examples from KZN of the sort of wildlife crimes that occur in the province

- Crimes related to big animals (like rhinos and lions);
- The theft of birds worth millions of rands;
- The harvesting of tons of plants for medicinal use;
- Exporting endangered, protected species such as tortoises;
- Illegal hunting (poaching) with firearms in the conservation areas;
- Smuggling and possession of elephant ivory, rhino horn, cycads etc;
- The illegal harvesting of marine products such as abalone, crayfish and prawns;
- Gill-netting;
- Over-exploitation of marine life by commercial trawlers and
- Illegal hunting activities by professional hunters.

Historical regulation of illegal trade in South Africa

- Fragmented mix of provincial ordinances, national statutes, decrees from the TBVC states and proclamations.
- Did not allow for national monitoring of the extent and nature of wildlife trade.
- Inconsistencies, for example:
 - Permitting procedures,
 - Sanction provisions,
 - Legal definitions,
 - Conservation status of indigenous species.

The National Environmental Management: Biodiversity Act Introduction

- To provide for the management and conservation of South Africa's biodiversity;
- the protection of species and ecosystems that warrant national protection (Chapter 4);
- the sustainable use of indigenous biological resources;
- the fair and equitable sharing of benefits arising from bioprospecting involving indigenous biological resources;
- the establishment and functions of a South African National Biodiversity Institute.

**The National Environmental Management: Biodiversity Act
Chapter 4**

- provide for the protection of ecosystems that are threatened or in need of protection to ensure the maintenance of their ecological integrity;
- provide for the protection of species that are threatened or in need of protection to ensure their survival in the wild; (Draft [controversial] lists produced December 2004 for Amphibians, Invertebrates, Fish, Birds, Mammals, Plants and Reptiles not yet been finalized.)
- give effect to the Republic's obligations under international agreements regulating international trade in specimens of endangered species; and
- ensure that the utilization of biodiversity is managed in an ecologically sustainable way;
- NB no species listed yet and big debate about the sort of species that should be listed – red data book species, CITES species, other criteria etc.

**The National Environmental Management: Biodiversity Act
Offences - section 101**

Most relevant offences - Listed or threatened species

- Section 57(1) prohibits **carrying out a restricted activity involving a specimen or a listed, protected or threatened species without a permit issued under section 7 of the Act**. The term 'restricted activity' is defined in section 1 of the Act and includes hunting, catching, capturing, killing, importing, exporting, breeding, uprooting or selling any living specimen of a listed, threatened or protected species.
- Section 67(1) prohibits the act of **engaging in restricted activities involving certain alien species**. Section 1 of the Act defines alien species as, 'a species that is not an indigenous species or an indigenous species that is translocated to a place outside its natural distribution range'.
- It is an offence to contravene a notice published by the Minister in terms of section 57(2) prohibiting an activity that may negatively impact on the survival of a listed, threatened or protected species.

**The National Environmental Management: Biodiversity Act
Further offences - section 101**

Less relevant offences - Alien Species

- Section 71(1) prohibits **carrying out a restricted activity involving a specimen of a listed invasive species without a permit issued under section 7 of the Act**. In terms of section 70(1), The Minister must publish a national list of invasive species within 24 months of the date on which section 70 of the Act took effect (1 September 2004).
- In terms of section 69(1) it is an offence to fail to comply with permit conditions dealing with alien species.
- In terms of section 69(2), **the failure by a person to comply with a directive, or the failure to take the necessary steps to remedy any harm to biodiversity (caused by such person)** is an offence.
- Section 73(1) provides that **the failure by the holder of a permit in terms of section 71, to take the required steps to prevent or minimize harm to biodiversity** is an offence. (i.e. notify the competent authority in writing of the listed invasive species occurring on the land; take steps to control and eradicate the listed invasive species and to prevent it from spreading; and take all the required steps to prevent or minimise harm to biodiversity).

**The National Environmental Management: Biodiversity Act
Further offences - section 101**

Relevant offences - General permit related offences

- Fabrication or forging any document for the purpose of **passing it as a permit**.
- Fraudulently **altering any permit**.
- Knowingly **making a false statement or report** for the purpose of obtaining a permit.
- Performing an activity for which a permit was issued **otherwise than in accordance with the conditions of the permit**.
- It is an offence for the holder of a permit to **allow another person to do or to omit to do anything** amounting to an offence under the alien species provisions of the Act.
- Bio-prospecting
- Section 81(1) prohibits **engaging in bio-prospecting** involving any indigenous biological resources, or exporting any indigenous biological resources for bio-prospecting or other research, without a permit.

**The National Environmental Management: Biodiversity Act
Penalties**

- A fine, or to imprisonment for a period not exceeding five years, or to both fine and such imprisonment.
- A fine may not exceed an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act 101 of 1991); or
- if a person is convicted of an offence involving a specimen of a listed threatened or protected species, an amount determined in terms of paragraph (a) or which is equal to three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater.

**The National Environmental Management: Protected Areas Act
Introduction**

- The protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes;
- The establishment of a national register of all national, provincial and local protected areas;
- The management of those areas in accordance with national norms and standards;
- Intergovernmental co-operation and public consultation in matters concerning protected areas;
- Not yet in effect;
- Will also apply to National Parks.

**The National Environmental Management: Protected Areas Act
Offences – section 89**

- Section 45(1) provides that **no person may enter, reside in or perform any activity** in a special nature reserve. This does not apply to an official of the Department or another organ of state designated to monitor conservation or biodiversity, any police, customs or excise officer entering the area in the performance of official duties, or a person acting in terms of an exemption granted. [* could be relevant]
- Section 46 No person may without the written permission of the management authority of a **nature reserve or world heritage site** enter or reside in the reserve or site. [* could be relevant]
- Section 47(2) provides that **no person may land or take off in an aircraft in a special nature reserve or world heritage site**, except on or from a landing field designated by the management authority of that special nature reserve or world heritage site; and (b) with the permission of, and on conditions determined by, the management authority. [* could be relevant]

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

**Heritage Resources Act
General objects**

- To control the export of **nationally significant heritage objects** and the import into the Republic of cultural property illegally exported from foreign countries.
- To enable the provinces to establish heritage authorities which must adopt powers to protect and manage certain categories of heritage resources.
- To provide for the protection and management of conservation-worthy places and areas by local authorities.
- Section 3 provides that those heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations must be considered part of the "national estate" and fall within the sphere of operations of heritage resources authorities. The national estate may include - places, buildings, structures and equipment of cultural significance; places to which oral traditions are attached or which are associated with living heritage; historical settlements and townscapes; landscapes and natural features of cultural significance; geological sites of scientific or cultural importance; archaeological and palaeontological sites; graves and burial grounds; sites of significance relating to the history of slavery in South Africa, movable objects

**Heritage Resources Act
Offences re heritage sites – section 51
Could include a species related activity**

- Sections 27(18) provides a person who **destroys, damages, defaces, excavates, alters, removes from its original position, subdivides or changes the status of any heritage site** without a permit issued by the heritage resources authority responsible for that site, is guilty of an offence. A "heritage site" means a place declared to be a national heritage site by SAHRA or a place declared to be a provincial heritage site by a provincial heritage resources authority.
- Section 29(10) provides that **damaging, defacing, excavating, altering, removing from its original position, subdividing or changing the planning status of a provisionally protected place or object** without a permit issued by a heritage resources authority or local authority responsible for the provisional protection amounts to an offence. An "object" means any movable property of cultural significance which may be protected in terms of any provisions of this Act, including any archaeological artifact; palaeontological and rare geological specimens; meteorites; and other objects referred to in section 3.

A fine or imprisonment for a period not exceeding five years or to both the fine and imprisonment.

**Heritage Resources Act
Offences re heritage objects and foreign objects – section 51
Unlikely to apply to a species related activity**

- Section 32(13) provides that **destroying, damaging, disfiguring or altering any heritage object, or dispersing any collection which is listed in Part II of the register, without a permit issued by SAHRA** is an offence. (Listed twice ... three months.)
- Section 32(19) of the Heritage Act provides that **exporting or attempting to export any heritage object from South Africa without a permit issued by SAHRA** is an offence.

A fine or imprisonment for a period not exceeding five years or to both the fine and imprisonment.

- Section 33(2) provides that it is an offence to **import any foreign cultural property that has been illegally exported** from a reciprocating state after a cultural property fine agreement between South Africa and the reciprocating state to both the fine and imprisonment.

**Heritage Resources Act
Further offences re archaeological sites and objects – section 51
Could include a species related activity**

- Section 35(4) provides that **engaging in the following activities without a permit issued by the responsible heritage resources authority** is an offence.

destroying, **damaging, excavating, altering, defacing or otherwise disturbing any archaeological or palaeontological site or any meteorite;

** destroying, **damaging, excavating, removing from its original position, collecting or owning** any archaeological or palaeontological material or object or any meteorite;

**trading in, selling for private gain, exporting or attempting to export from the Republic any category of archaeological or palaeontological material or object, or any meteorite; or

** bringing onto or using at an archaeological or palaeontological site any excavation equipment or any equipment to assist in the detection or recovery of metals or archaeological and palaeontological material or objects, or use such equipment for the recovery of meteorites.

A fine or imprisonment for a period not exceeding three years or to both the fine and imprisonment.

**Heritage Resources Act
Further offences re graves and burial grounds – section 51
Unlikely to include a species related activity**

- Section 36(3) provides that it is an offence to **engage in the following activities without a permit issued by SAHRA or a provincial heritage resources authority:**

destroying, **damaging, altering, exhuming or removing a grave from its original position or otherwise disturbing the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;

destroying, **damaging, altering, exhuming, removing a grave from its original position or otherwise disturbing any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or

** bringing onto or using at a burial ground or grave referred to above, any excavation equipment, or any equipment which assists in the detection or recovery of metals.

A fine or imprisonment for a period not exceeding three years or to both the fine and imprisonment.

Heritage Resources Act

Further offences re protected areas and 60 years old sites – section 51

Could apply to a species related activity

- Section 29(3) provides that it is an offence to **damage, disfigure, alter, subdivide or in any other way develop any part of a protected area** without consulting the heritage resources authority which designated the area at least 60 days prior to the initiation of such changes. Section 34(1) provides that it is an offence to alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority.

A fine or imprisonment for a period not exceeding two years or to both such fine and imprisonment.

- Section 27(22) provides that it is an offence to **damage any fence, wall or gate constructed or sign erected by a heritage resources authority** in terms of subsection 21.

A fine or imprisonment for a period not exceeding one year or to both such fine and imprisonment.

Heritage Resources Act

Further offences re misc matters – section 51

Unlikely to apply to a species related activity

- According to section 32(15), failure by the owner or custodian of a heritage object listed in Part II of the register of heritage objects, to **keep the heritage object in good condition and in a secure place** amounts to an offence.
- Section 33(1) provides that **importing any foreign cultural property** other than through a customs port of entry is an offence.
- Section 35(6) provides that: it is an offence to fail to comply with a notice to **prevent activities within a specified distance from a heritage site or meteorite.** [*]
- Section 44(3) provides that it is an offence to **erect a plaque or other permanent display** in the vicinity of a place protected in terms of the Act without consulting with the heritage resources authority responsible for the protection of the place.

A fine or imprisonment for a period not exceeding one year or to both such fine and imprisonment.

Heritage Resources Act

Further offences – section 51

Unlikely to apply to a species related activity

- Section 27(23)(b) provides that a person other than the owner of the heritage site, who makes a **reproduction of the site** for profit without a permit issued by SAHRA or a provincial heritage resources authority, is guilty of an offence.
- Section 32(17) provides that it is an offence to carry out any work of **restoration or repair of a heritage object**, listed in Part II of the register of heritage objects, without a permit issued by a duly authorised representative of SAHRA.
- Section 35(3) provides that the **failure to report the discovery** of archaeological or palaeontological objects or material or a meteorite in the course of development or agricultural activity to the responsible heritage resources authority, or to the nearest local authority offices or museum is an offence.

A fine or imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Heritage Resources Act

Further offences re remediation of damage – section 51

Could apply to a species related activity

- Section 51(8) provides that a person may be convicted for **any action resulting in damage to or alteration of a protected heritage resource** in terms of the Heritage Act. Section 51(8)(a) provides that a court may order a person convicted of the above actions to put right the result of the act of which he or she was found guilty, in a specified manner and within a specified period. Failure to comply with the terms of the order will result in the court ordering such person to pay to the heritage resources authority responsible for the protection of such resource a sum equivalent to the cost of making good. Alternatively, the court may order such person to pay to the heritage resources authority a sum equivalent to the cost of making good.

A fine or imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Heritage Resources Act

Further offences re graves and burial ground– section 51

Unlikely to apply to a species related activity

Section 36(3) provides that it is an offence for a person to do the following **without a permit issued by SAHRA or a PHRA:**

- destroy, damage, alter, exhume or remove from its original position or otherwise disturb the **grave** of a victim of conflict, or any burial ground or part thereof which contains such graves;
- destroy, damage, alter, exhume or remove from its original position or otherwise disturb any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or
- bringing onto or use at a burial ground or grave referred to above, any excavation equipment, or any equipment which assists in the detection or recovery of metals.

A fine or imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Heritage Resources Act

Further offences re heritage objects – section 51

Unlikely to apply to a species related activity

- Section 32(16) provides that it is an offence for an owner or custodian of **heritage object** listed in Part II of the register of heritage objects to fail to report to SAHRA any **loss of or damage** to such a heritage object or any part thereof upon discovery of such loss or damage. (repeated)
- Section 32(20) provides that the **removal of a heritage object from South Africa other than through a customs port of entry is an offence.** The section provides further that the relevant export permit issued under subsection (19) or certificate of exemption issued under subsection (32) must be produced to a custom officer before removal from South Africa is effected or allowed.
- Section 35(7)(a) provides that it is an offence for a person in possession of any archaeological or palaeontological material or object or any meteorite which was acquired other than in terms of a permit issued in terms of this Act, equivalent provincial legislation or the National Monuments Act, 28 of 1969, to fail to lodge with the responsible heritage resources authority **lists of such objects** and other information prescribed by that authority within two years from the commencement of the heritage Act.

A fine or imprisonment for a period not exceeding three months or to both the fine and imprisonment.

Heritage Resources Act
Further offences re heritage inspectors (amongst others) – section 51

- Section 44(2) provides that the failure of a person wishing to present a heritage resource to consult with the heritage resources authority regarding the contents of interpretive material or programmes amounts to an offence. Where a heritage resource formally protected in terms of Part 1 of Chapter II of the Heritage Act (sections 27 to 32), is to be presented, the person wishing to undertake such presentation must, at least 60 days prior to the institution of interpretive measures or manufacture of associated material, consult with the heritage resources authority which is responsible for the protection of such heritage resource regarding the contents of interpretive material or programmes.
- Section 50(5) provides that the failure by a person who ceases to be a heritage inspector to return his or her identity card to the heritage authority concerned is an offence.
- Section 50(12)(a) then provides that a person who fails to comply with a request or requirement lawfully made in terms of section 50 of the Heritage Act is guilty of an offence. According to section 50(12)(b), it is an offence for a person to knowingly furnish information that is false or misleading. [*could apply to a species activity*]
- Section 50(12)(c) provides that it is an offence to hinder or obstruct any heritage inspector in the exercise of his or her powers. [*could apply to a species activity*]

A fine or imprisonment for a period not exceeding three months or to both the fine and imprisonment.

Heritage Resources Act
Further offences – section 51
Unlikely to apply to a species related activity

Section 51(5) provides that a person is guilty of an offence if he or she:

- fails to provide any information that is required to be given in terms of the Heritage Act; makes any statement or representation knowing it to be false or not knowing or believing it to be true for the purpose of obtaining, any permit, consent or authority in terms of the Heritage Act;
- fails to comply with or performs any act contrary to the terms, conditions, restrictions or directions subject to which any permit, consent or authority has been issued to him or her in terms of the Heritage Act;
- receives any badge, emblem or any other property or thing unlawfully taken or removed from a place protected in terms of the Heritage Act; and
- commits or attempts to commit any other unlawful act, violates any prohibition or fails to perform any obligation imposed upon him or her by its terms, or who counsels, procures, solicits or employs any other person to do so.

Section 51(13) stipulates that **vandalism** as an offence.

Admission of guilt fines up to a maximum amount of R10 000 serve a notice imposing a daily fine of R50 for the duration of the contravention.

Genetically Modified Organisms Act
General

- 'genetically modified organism' means an organism the genes or genetic material of which has been modified in a way that does not occur naturally through mating or natural recombination or both, and 'genetic modification' shall have a corresponding meaning.
- Provides measures 'to promote the responsible development, production, use and application of genetically modified organisms'.
- Regulates the use of genetically modified organisms (including importation, production, release and distribution).
- Provides for permitting, "trial release" and risk assessment.
- One of the few "strict liability" statutes in SA: "The liability for damage caused by the use or release of a genetically modified organism shall be borne by the user concerned".
- No relevant offenses and penalties.

Provincial conservation ordinances
Natal Nature Conservation Ordinance 15 of 1974
Selection of offences – hunting, capturing protected game

- Within a private wild-life reserve **no person** other than an officer shall hunt specially **protected game** and then only with the approval of the Administrator in terms of Chapter III of this Ordinance.
- No person shall at any time hunt, capture or keep in captivity any **specially protected game**.

(Penalty - fine not exceeding ten thousand rand or imprisonment for a period not exceeding two years or to both such fine and such imprisonment; provided that if such contravention relates to a black rhinoceros, square-lipped rhinoceros or elephant the person so convicted shall be liable to a fine not exceeding one hundred thousand rand or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.)

"Game" means any of the mammals or birds, alive or dead, mentioned in Schedule 1, 2, 3 or 4 and shall include any meat, fat or blood thereof, whether fresh, preserved, processed or manufactured in any manner, and also any tooth, tusk, bone, head, horn, shell, claw, hoof, hide, skin, hair, egg, feather, or other durable portion or any such mammal or bird, whether preserved, processed, manufactured or not, but shall not include any trophy.

Provincial conservation ordinances
Natal Nature Conservation Ordinance 15 of 1974
Selection of offences - trespass

- If any person hunts or captures game on land on which he is **trespassing**, or if any person trespasses upon any land on which game is or is likely to be found with any weapon or trap in his possession or accompanied by any dog, he shall be guilty of an offence
- No person may **wilfully trespass** upon any nature reserve which in terms of section 2 (2) is deemed to be private property.

Fine not exceeding five hundred rand or in default of payment of such fine to imprisonment for a period not exceeding six months.

Provincial conservation ordinances
Natal Nature Conservation Ordinance 15 of 1974
Selection of offences - general

- Within a **private nature reserve** or **private wild-life** reserve no person shall **gather** any indigenous plant or hunt any wild bird save in accordance with a permit issued by the Board, which permit shall specify the numbers and species of the indigenous plants or wild birds to which it shall apply.
- no person shall at any time purchase, acquire by any means, possess, sell, exchange or otherwise dispose of, or keep in captivity any **endangered mammal** (i.e. any indigenous mammal or exotic mammal listed in Schedule 6).

Fine not exceeding five hundred rand, or, in default of payment of such fine, to imprisonment for a period not exceeding six months.

Provincial conservation ordinances
Western Cape Nature Conservation Ordinance 19 of 1974
Selection of offences - endangered wildlife, hunting, removing fences

- Section 14 provides that **no person shall hunt any wild animals and pick flora in provincial or local nature reserves** unless he or she is in possession of a permit authorising him or her to do so.
- Section 26 provides that no person shall without a permit **hunt or be in possession** of any endangered wild animal or the carcass of any such animal.
- Section 27 provides that **no person shall hunt any protected wild animal at any time, unless he or she is the holder of a permit** or of a licence. This will not apply to any owner of land.
- Section 31B provides that no person shall **cause or himself alter, remove or partly remove any fence** or heap, remove or cause to be altered soil or any other material whether on a common boundary or on his or her own property, in such a manner that any wild animal which as a result thereof gains access or may gain access to his or her property or a camp on his or her property and cannot escape or is likely not to be able to escape.

Provincial conservation ordinances
Western Cape Nature Conservation Ordinance 19 of 1974
Selection of offences – wild animals generally

- No person shall on land of which he or she is not the owner **hunt any wild animal or remove any such animal or the carcass; no person shall donate or sell any wild animal or the carcass** of any such animal to any other person unless, when he or she delivers such animal or carcass to such other person, he or she furnishes such other person with a written document signed by him or her reflecting the relevant details.
- No person shall engage in the following activities without a **permit** authorising him or her to do so: import into, export from or transport in or through the Province any wild animal; import into the Province from any place outside the Republic the carcass of any wild animal, or export from the Province the carcass of any endangered wild animal or any protected wild animal specified in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 1973; sell, buy, donate or receive as a donation the carcass or anything manufactured from the carcass of any endangered wild animal; process, prepare, cure, tan or in any manner whatsoever treat the carcass of any endangered wild animal for the purpose of manufacturing any article there from, exhibiting such carcass or any article manufactured there from, or mounting such carcass or sell, buy, donate, receive as a donation or be in possession of any live endangered, or protected wild animal.

Provincial conservation ordinances
Western Cape Nature Conservation Ordinance 19 of 1974
Selection of offences – indigenous and endangered flora

- Section 62 provides that **no person shall without a permit, be in possession of, sell, buy, donate, receive as a donation, pick, or import into, export from or transport in or through the Province, any endangered flora.** This does not apply to an owner of land, of any endangered flora growing in a natural state on such land.
- Section 63 prohibits **the uprooting of a plant** in the process of picking the flower of any flora or without a permit pick any endangered or protected flora, or pick any flora on a public road or on the land on either side of such road within a distance of ninety metres from the centre of such road, or pick any protected or indigenous unprotected flora on land of which he or she is not the owner, without the permission of the owner of such land or of any person authorised by such owner to grant such permission.
- Section 68 provides that **no person shall sell any indigenous unprotected flora** at any place other than a place set aside by the local authority or on the premises of a registered flora seller or registered flora grower.

Penalties between ten and one hundred thousand rand one to ten years.

Compounding the penalty in terms of NEMA

- Section 34:
- Convicted of an offence under any provision listed in Schedule 3 - Provincial nature conservation legislation listed –
- the court convicting such person may enquire into and assess the monetary value of any advantage gained or likely to be gained by such person in consequence of that offence,
- in addition to any other punishment imposed in respect of that offence, the court may order the award of damages or compensation or a fine equal to the amount so assessed.

Other relevant legislation

- Game Theft Act 105 of 1991 (only relevant to "game").
- National Forests Act 84 of 1998 ("no person may cut, damage, destroy, disturb or remove any protected tree, or collect, remove transport, export, purchase, sell donate or in any other manner acquire or dispose of any part or produce thereof").
- Marine Living Resources Act 18 of 1998 (exploitation of all marine resources requires a permit, without a permit it is an offence).

Examples for discussion: Suspicious person found in a protected area

- Is it necessary for the person to be in possession of any protected species?
- Which are the areas into which entry is prohibited.
 - Heritage areas?
 - Types of nature conservation areas.
 - Types of protected areas.
- Are these prohibitions absolute?

Examples for discussion: Elephant tusks found in an urban area

- Would it always be an offence for a member of the public to have elephant tusks in their possession or are there circumstances in which it would be permissible?
- Which legislation deals specifically with CITES species?
- If the species was less easily identifiable where are the protected species lists found?
- List each of the offences relevant to this possession and the penalties.
- Is national or provincial legislation most relevant?

Examples for discussion: Removing a protected aloe from a non protected area, a protected area and a heritage area

- How does one determine if the species is protected?
- What are the offenses that would be relevant in a non protected area?
- Is removing a species from a heritage area an offence in terms of heritage legislation or conservation legislation.
- Is removing an aloe from a protected area a worse offense than removing it from a non protected area?
- What other offenses could be committed in the course of removing an aloe from a protected area?

Poisoning of wild animals

- 70 major wildlife poisoning cases per annum.
- One of biggest threats to biodiversity of birds and animals. (Nearly 80% of southern Africa's Blue Crane population has been lost during the past five decades mostly due to pesticide misuse.)
- If threatened species is involved the legislation discussed above would be relevant.
- Also legislation specific to the use of chemicals and poisons which would be applicable.
- Most poisonings are intentional for protein, to control problem birds, to kill guard dogs but birds etc get involved.
- Incorrect/illegal application also responsible.
- Successful prosecution in Trompsburg last year –24 Blue Cranes killed with diazinon in November of 2003 - constructive conservation service sentences of 288 hours of conservation services and four years imprisonment suspended for five years.

**Poisoning of wild animals
Examples of poisoning cases March, April and May**

- 5 March 45+ Black Crows Western Cape, Suspected poisoning
- 20 March 58 Black crows Western Cape, Suspected poisoning
- 8 April Yellow-billed Kite, 200+ White Storks, several crows & Sacred Ibis & doves Gauteng, Suspected poisoning
- 3 May 100+ Rock Pigeons OFS, Sasolburg/Koppies Deliberate poisoning of 2 rows of sunflowers left after harvesting – poison unknown.
- 3 May 1 Owl, 1 Black-shouldered Kite KZN, Oliviershoek Suspected rodenticide poisoning.
- 9 May "100's" of doves and pigeons" Sasolburg – Heilbron. Allegation of deliberate poisoning.
- 10 May 5 White rhinos, 10 Nyalas, 1 Kudu, 3 Impalas, 7 Warthogs, 2 Zebras, 3 Blue wildebeest, "several" baboons, 1 guinea fowl, 10+ oxpeckers.Lumpepe-Nwanedi Reserve, Venda area, Limpopo Aldicarb Deliberate. Speculation on land claim intimidation.
- 18 May 2 African White-backed vultures (plus 1 which survived) Mkuze Game Reserve, Suspected muli collection.
- 23 May Several baboons Cape Town Suspected/ alleged aldicarb poisoning

Legislation applicable to poisoning

Fertilizers, Farm feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947

- Only a pest control officer may administer "pesticides".
- A pesticide may only be administered for the purpose for which it is registered and any other use is an offence. (eg aldicarb registered for microscopic worms used to poison dogs.)
- It is an offence to acquire, dispose of, sell or use agricultural remedies or stock remedies contrary to a prohibition issued by the Minister (eg Monocrotophos toxic organophosphate pesticides May 2005 terminate the importation, formulation, manufacture and sale used against stalk borer on maize and resulted in the death of many wildlife species including birds, mammals and other organisms)
- Agricultural remedies and stock remedies must have the kind, nature, composition, strength, potency or quality described or represented when it is sold.

Penalties R500/R 1000 12 months to 2 years but see the "conservation sentences" in the Trompsburg case.

Hazardous Substances Act 15 of 1973 – Group I licence required for any use.

Thank you ...



Pictures: Endangered Wildlife Trust website; IUCN Red List of Threatened Species - Photo Gallery