

- The need to review the national and provincial planning regimes and how better to integrate and streamline the various legal and other requirements with local government processes, focusing especially on implementation thereof.
- How DEAT and provinces can better co-ordinate their engagement with local government and address issues of non-alignment with priorities faced by local government.
- How DEAT and provinces can assist local government with unlocking opportunities for local economic development.

In 2005, DEAT officials, together with provincial Environmental departments, developed a draft Local Government Support Strategy for Environment and Tourism Sectors to address these and other issues. It is intended that the Strategy also assist DEAT and the provinces to ensure that when local government projects are proposed through various processes such as the Expanded Public Works Programme (EPWP), that they are supportive of the NSDP principles and the needs of the various district and local municipalities.

DPLG has requested DEAT to form part of their post Integrated Development Plan (IDP) hearings. Training workshops will be provided by DEAT to assist IDP managers with understanding the various environmental management requirements.

The implementation of this Strategy will be undertaken through Working Group 3 and MINTEC as well as a Local Government Task Team established by DEAT.

4.4.4 Integrated Environmental Management

Integrated Environmental Management (IEM) is a tool used to assess the environmental impacts of development. IEM is designed to ensure that the environmental consequences of development proposals are adequately considered in the planning process so as to be able to mitigate any negative impacts and to enhance any positive aspects of development proposals. Environmental Impact Assessments (EIA) and Environmental Potential Atlases (ENPAT) are tools for Integrated Environmental Management.

Environmental Impact Assessment (EIA)

The new Environmental Impact and Assessment (EIA) Regulations came into effect on 3 July 2006 and they are now being implemented. The list of activities requiring an EIA has been thoroughly reworked into 9 thematic areas including property development, energy generation, and industrial activities. These have been further divided into two schedules based on the nature and associated risk of the activity – those in schedule one, such as transformation of land to develop residential areas larger than three hectares, will now be subject to only a Basic Assessment process, whilst those in schedule two, like power stations, will require a thorough assessment process (scoping and EIA). It is estimated that these lists, and the introduction of development thresholds, will see the number of EIA applications reduced by up to 20%.

DEAT together with provincial environmental authorities (implementing partners) administrate the Environmental Impact Assessment (EIA) Regulations promulgated in 2006 in terms of the National Environmental Management Act (NEMA).

This entails the processing of EIA applications where the national department is the competent authority; issuing of Environmental Authorisations in this regard, monitoring of compliance against conditions of such authorizations, and, where justified and where all attempts to implement corrective measures failed; initiate enforcement actions where non-compliance with the regulations or with conditions of authorizations persist. DEAT (and provincial EIA authorities) are also processing applications for rectification of unlawful activities submitted in terms of Section 24G of NEMA.

DEAT is also in the process of funding certain environmental management frameworks (EMFs) in some provinces. It is hoped that, once these EMFs are in place, they will assist in identifying areas where listed activities can be excluded from the EIA process or alternatively highlight sensitive areas where more control should be exercised.

Environmental Potential Atlas (ENPAT)

A national ENPAT has been developed as well as an ENPAT for each province with the exception of Gauteng.

An Environmental Potential Atlas (ENPAT) is a Geographical Information System (GIS) decision support tool for environmental management, including the scoping phase of environmental impact assessments (EIAs). In an ENPAT the environment is firstly evaluated for its inherent sensitivity for development, using various available data categories of environmental information (digital maps). All the data categories are overlaid to compile a graded general sensitivity map, representing the total number of reasons for sensitivity. Secondly, environmental management parameters for various development categories are provided to ensure the protection and sustainable management of sensitive environments.

ENPATs can also be used for development planning since it also indicates the environment's potential for development

5. ENSURING COMPLIANCE WITH ENVIRONMENTAL LAWS, NORMS OR STANDARDS APPLIED BY DEAT'S ENVIRONMENTAL MANAGEMENT FUNCTIONS

5.1 QUALITY AND PROTECTION FUNCTION

5.1.1 Environmental Impact Management

Priority legislation requiring administration and enforcement

DEAT together with provincial environmental authorities administrate the Environmental Impact Assessment (EIA) Regulations promulgated in 2006 in terms of the National Environmental Management Act (NEMA). This entails the processing of EIA applications where the national department is the competent authority; issuing of Environmental Authorisations in this regard, monitoring of compliance against conditions of such authorizations, and, where justified and where

all attempts to implement corrective measures failed; initiate enforcement actions where non-compliance with the regulations or with conditions of authorizations persist.

DEAT (and provincial EIA authorities) are also processing applications for rectification of unlawful activities submitted in terms of Section 24G of NEMA.

Challenges in enforcement of Environmental Impact Management legislation at provincial and local government levels and programmes to address these

Challenges:

- Local Government does not have any mandate in terms of EIA legislation.
- Capacity, financial resources, absence of tools and systems are some of the factors inhibiting provinces ability to administer the EIA function efficiently and effectively.

Most of the programmes mentioned below will assist in addressing these challenges.

Priority programmes for the Environmental Impact Management function for the next 3-4 years

- Implementation and amendment of the 2006 EIA Regulations and the Environmental Impact Management (EIM) provisions in NEMA.
- Development and implementation of a comprehensive EIM Strategy and action plan, including:
 - Review of efficiency and effectiveness of the EIA system
 - Rationalisation of EIA by introduction of other more appropriate tools
 - Integration of EIM in other legislative processes such as land use planning
 - Promotion of self-regulation
- Development of integrated EIA decision support system
- Establishing adequate EIA governance capacity through:
 - Training
 - Procedural and technical Guidelines
 - Structure/organogram reviews and guidelines
 - Roll out of decision support tools to provincial authorities
 - Financial and technical assistance to deal with backlogs
- Building EIA capacity amongst external stakeholders, focusing on:
 - Provide "extension" services to people with disabilities; illiteracy or where other limiting factors prevail
 - Empowering interested and affected parties to meaningfully participate in EIA processes
- Transformation of the EIA practitioner industry

5.1.2 Air Quality Management & Climate Change

Priority legislation requiring administration and enforcement

- National Air Quality Act (Notice 39 of 2004).

- The Atmospheric Pollution Prevention Act (Notice 65 of 1966) is still in place until the new Act is implemented.
- In the process of identifying activities to be listed under the new legislation and developing emission standards for new activities.

Challenges in enforcement of Air Quality Management legislation at provincial and local government levels and programmes to address these

- There has been some improvement in the enforcement capacity of national and provincial air quality management officers since the previous DEAT EIMP. Staffing levels have been increased – there are now air quality officers in each province and in the metros - and the establishment of a National and Provincial Air Quality Officers Forum in 2006 has boosted coordination and cooperation. Some metros are in the process of acquiring air quality management functions which will enable them to monitor and enforce compliance with legislation.
- Data on air quality emissions has improved somewhat. Comprehensive monitoring systems are in place in three metros and a new monitoring system has been put in place in the Vaal Triangle – and air quality 'hot spot'.
- There is a need to develop a national air quality management system that will integrate all the information collected from the different monitoring systems countrywide.
- It is intended that the monitoring of the new Act will be a function of the National and Provincial Air Quality Officers Forum.
- The Chief Directorate Regulatory Services does some air quality compliance monitoring (Need input from this section).

Priority programmes for the Air Quality Management function for the next 3-4 years

- The Atmospheric Pollution Act Review involves converting old registration certificates issued for scheduled processes into a format that will look like the new emissions licensees under the National Air Quality Act. In this review process the top 50 polluting sectors were prioritised and all industries falling within these sectors will be reviewed. DEAT, provincial environmental departments and local government/metros will be involved in reviewing the certificates of each industry. This process involves building capacity of local governments/metros as they are the licensing authorities in terms of the new Act.
- Development of a National Framework to implement the National Air Quality Act. This framework will include norms, standards and procedures for listing activities, declaring controlled emissions and fuels, and monitoring ambient air quality standards.
- Identification of Listed Activities and the development of related emissions standards for these activities.
- Finalising National Air Quality Ambient Standards – these are legally enforceable standards to protect human health.
- Air Quality Planning Management Regime – developing guidelines and procedures for air quality management plans. The Air Quality Management Act requires that all departments that are required to develop EIPs/EMPs have to develop Air Quality Management plans as well.
- Development of an Air Quality Management Plan for the Vaal Triangle.

- Greenhouse Gas inventory – updating the inventory and reporting to UNCCC as per our commitments.

5.1.3 Pollution And Waste Management

Priority legislation requiring administration and enforcement

Section 20 of the Environmental Conservation Act – permits issued in terms of this section is not enforced and municipalities are the worst in complying with permit conditions.

- Waste management regulatory framework: this will include regulations in support of the Waste Act, National Waste Management Strategy and the National Integrated Waste Management Plan.
- Strategy on reducing the backlog on waste service delivery
- Reducing the backlog of unauthorised waste disposal facilities

Challenges in enforcement of Pollution and Waste Management legislation at provincial and local government levels and programmes to address these

Solutions will and must entail among other formation of national waste management structures that include all 3 spheres of government at Operational level not strategic level so that all concerned can understand the requirements and challenges collectively.

Priority programmes for the Pollution and Waste Management function for the next 3-4 years

None planned but it should be empowerment of the Waste management officers and forming a forum that meets at least once a year – similar structures as those formed by Air Quality.

5.1.4 Regulatory Services

Priority legislation requiring administration and enforcement

The Chief Directorate Regulatory Services is responsible for implementing and enforcing pollution and waste management policy and legislation in a manner that encourages compliance with pollution and waste management authorisations, directives and agreements in order to protect the people's right to an environment that is not harmful to health and well-being. Functions include:

- Administer and process all departmental pollution and waste related authorisations.
- Enforce compliance with authorisations and initiate legal proceedings in respect of pollution and waste offences.
- Investigate emergency incidents and possible cases of non-compliance notices, directives, court rulings, etc.

Challenges in enforcement of Regulatory Services legislation at provincial and local government levels and programmes to address these

- the lack of skills and resources at provincial and local government levels for compliance and enforcement, particularly where the legal mandate lies with the province or municipality; and
- lack of awareness in municipalities of the requirements of environmental laws, leading to non-compliance with pollution, waste and EIA legislation.

Priority programmes for the Regulatory Services function for the next 3-4 years

Priority programmes for the Chief Directorate: Regulatory Services include:

- expanding current compliance and enforcement capacity through the creation of additional posts;
- finalising a compliance monitoring strategy in relation to the pollution, waste and EIA legislation;
- expanding existing national strategic compliance monitoring projects to more industry sectors;
- improving the number of criminal cases that are prosecuted, and prosecuted successfully;
- developing preventative programmes in relation to non-compliance trends.

5.2 BIODIVERSITY AND CONSERVATION FUNCTION

5.2.1 Biodiversity Conservation

Priority legislation requiring administration and enforcement

NEMA provides the overarching legislation that guides the National Environmental Management: Protected Areas Act (Act 57 of 2003) which makes provision for the protection and conservation of ecologically viable areas representative of the country's biological diversity, its natural landscapes and seascapes. It further provides for the establishment of a national register of protected areas, the management of these areas, co-operative governance, public participation and matters related to protected areas.

The National Environmental Management: Biodiversity Act (Act 10 of 2004) provides for the management and protection of the country's biodiversity within the framework established by NEMA. It provides for the protection of ecosystems and species in need of protection, sustainable use of indigenous biological resources, equity in bioprospecting and the establishment of a regulatory body on biodiversity-the South African National Biodiversity Institute (SANBI).

Challenges in enforcement of legislation at provincial and local government levels and programmes to address these

Challenges include lack of capacity and expertise and experience at provincial and local level, as well as a high turn over of staff. Uncoordinated efforts at biodiversity conservation often result in initiatives falling through the cracks.

A National Biodiversity Strategy and Action Plan (NBSAP) was developed over a period of two years and provides a short to medium term framework to address the challenges. One of the activities identified, for instance, is to provide technical support to municipalities to integrate biodiversity into

planning and environmental management. SANBI embarked on such a programme with municipalities in 2005. Many other actions were identified, of which the most urgent and pressing ones are contained in the National Biodiversity Framework - a legal obligation in terms of Section 38 of the Biodiversity Act).

Priority programmes for the Biodiversity Conservation function for the next 3-4 years

A myriad of initiatives are being conducted by a multitude of stakeholders engaged in biodiversity conservation, but from a national perspective and with the emphasis on the implementation of the Biodiversity Act (2004), the following are priority programmes for the next 3-4 years:

- The publication and implementation of the National Biodiversity Framework;
- Development of a useful, accessible and integrated Information Management System and Decision Support System;
- Building of scientific capacity for natural resources management;
- The publishing of bioregional plans;
- The development of biodiversity management plans for species and ecosystems according to certain norms and standards;
- The publishing of a list of ecosystems that are threatened or in need of protection according to certain criteria;
- Publishing of regulations on threatened or protected species;
- Publishing of regulations regarding alien and listed invasive species;
- Development of national norms and standards for the management of elephant populations in South Africa;
- Development of a National Biodiversity Monitoring and Reporting Framework; and
- Publishing of a Genetically Modified Organisms (GMO) risk assessment framework.

5.2.2 Resource Use

Priority legislation requiring administration and enforcement

- National Environmental Management Act, 1998 (Act No.108 of 1998) and its amendment
- National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004)
- National Environmental Management: Protected Areas Act, 2003 (Act No. 53 of 2003)

Challenges in enforcement of biodiversity legislation by the Resource Use function at provincial and local government levels and programmes to address these

Challenges:

- Bio-prospecting permits are currently issued in terms of provincial ordinances, which tend to be fragmented.
- Currently, there is a huge gap with regard to the protection of rights and interests of holders of indigenous knowledge of potential indigenous biological resources earmarked for bio-prospecting projects. Many bio-prospectors have benefited from the indigenous knowledge, of

which the holder of such knowledge has never been asked for permission to use their knowledge and has not received any benefit from the use of their knowledge. This is referred to as Bio-piracy.

- Lack of alignment of various provincial ordinances with other national legislations has led to over-regulation of some environmental aspects.

Solutions

- Publication of the regulations on bio-prospecting, access and benefit sharing would assist in addressing the above-said challenges by introducing a uniform permitting system for bio-prospecting projects. Further to this, these regulations will designate powers of issuing research permits for bio-prospecting projects to the provincial departments.

Priority programmes for the Resource Use function for the next 3-4 years

- Publishing of regulations on bio-prospecting, access and benefit sharing
- Establish a Bio-prospecting Trust Fund
- Review of all existing benefit-sharing agreements for bio-prospecting projects
- Awareness raising campaign
- Capacity building at the provincial level
- Harmonisation and standardisation of bio-prospecting permitting system
- Facilitate negotiations between applicants and stakeholders with respect to material transfer and benefit sharing agreements
- Develop a database of bio-prospecting projects and update continuously

5.3 MARINE AND COASTAL MANAGEMENT

5.3.1 Integrated Coastal Management

Priority legislation requiring administration and enforcement

- Marine Living Resources Act (Notice 18 of 1998) and Amendment (2000).
- Regulations Regarding Activities in Various Sensitive Coastal Zone Areas (Notices of 1996 and 1998).
- General Policy for the Control of Off-Road Vehicles in the Coastal Zone (Notice 858 of 1994).
- Marine Pollution Act (Control and Liability) (Notice 6 of 1981).
- Dumping at Sea Controls Act (Notice 73 of 1980).
- Sea-Shore Act (Notice 21 of 1935) – still relevant to some degree. Will be replaced by the Coastal Zone Management Bill which is still being consulted with the public.

Challenges in enforcement of Integrated Coastal Management legislation at provincial and local government levels and programmes to address these

- One of the main challenges is that there is no integrated system to monitor coastal management issues. The Chief Directorate: Monitoring, Control and Surveillance does compliance monitoring but is mostly geared to the monitoring of fisheries. They have people on the ground along the coastline who monitor compliance with 4x4 regulations and illegal

developments. They don't focus much on pollution monitoring. Some municipalities have Environmental Units and they are performing some compliance monitoring functions in relation to coastal management. KZN Wildlife and Eastern Cape Parks Board provide assistance with monitoring Marine Living Resource Areas. The Coast Care programme is also used to monitor coastal pollution issues. This programme used to be with Marine and Coastal Management but was moved to the Expanded Public Works Programme.

- There is a need to boost the capacity of Provincial Coastal Management Committees so they can do compliance monitoring. This could also be a function of Local Coastal Management Committees.
- There is a need to establish linkages with the environmental inspectors that will monitor compliance with DEAT's Pollution and Waste Management function. Need to look at how to use this structure to monitor coastal pollution issues.

Priority programmes for the Integrated Coastal Management function for the next 3-4 years

- Promulgate and implement the Coastal Zone Management Act. The implementation of this Act will address compliance issues.
- Establish two Marine Protected Areas.
- Develop and implement the National Estuarine Protocol.
- Implementation of the National Programme of Action for Land Based Sources of Pollution. This programme looks at the management of coastal pollution from a holistic perspective starting with how pollution from agriculture impacts on the coast. The programme of action includes coordination with other land pollution management departments including the Department of Agriculture and Department of Water Affairs and Forestry.
- Development of the South African Coastal Management Information Centre. The idea is to develop a GIS-based information management system that will provide information for coastal management that can be used by development planners to identify coastal 'hot-spots'.
- Development and publication of a State of Coast Report.
- Development of a regional coastal management programme as required by the Abidjan and Nairobi Conventions.

5.3.2 Monitoring, Control and Surveillance

Priority legislation requiring administration and enforcement

- Marine Living Resources Act (Notice 18 of 1998) and Amendment (2000).
- Regulations Regarding Activities in Various Sensitive Coastal Zone Areas (Notices of 1996 and 1998).
- General Policy for the Control of Off-Road Vehicles in the Coastal Zone (Notice 858 of 1994).
- Marine Pollution Act (Control and Liability) (Notice 6 of 1981).
- Dumping at Sea Controls Act (Notice 73 of 1980).
- Sea-Shore Act (Notice 21 of 1935) – still relevant to some degree. Will be replaced by the Coastal Zone Management Bill which is still being consulted with the public.
- Criminal Procedures Act, Act 51 of 1997
- National Environmental Management Act, 1998, 2003
- National Environmental Management: Marine Protected Areas Act, 2003

- Sea Birds and Seals Protection Act, 1973

Challenges in enforcement of Marine & Coastal Management legislation at provincial and local government levels and programmes to address these

There are a number of challenges to the enforcement of marine and coastal legislation in the four coastal provinces including the following:

- The number of role players and rights holders in the fishery sectors, especially in relation to recreational fisheries;
- The limited resources (human; financial and skills) available for monitoring, control and surveillance functions;
- The length of time involved in ensuring successful investigations and convictions of transgressors;
- The increasing sophistication of poaching syndicates;
- The interface between South African legislation in relation to export points and international co-operation;
- The low level of fines, penalties and sanctions for transgressions;
- The extent of the South African coastline and the high seas for monitoring purposes
- The complexities of ensuring 24 hour coverage, seven days a week.

Priority programmes for the Monitoring, Control and Surveillance function for the next 3-4 years

- The development of a compliance strategy and capacity that is better equipped to deal with the land and ocean-based enforcement functions through the effective deployment of Vessel Monitoring Systems (VMS) and Environmental Protection Vessels (EPVs).
- Co-ordination of a monitoring, control and surveillance approach with South Africa's immediate coastal neighbours through honouring existing SADC agreements;
- The design and roll-out of comprehensive monitoring, control and surveillance strategies and programmes specific to the hake and abalone fishery sectors
- Reduction of transgressions within Marine Protected Areas and Estuaries and by off-road vehicles
- Strengthening of compliance partnerships with communities, the fishing industry and other enforcement agencies

5.3.3 Research, Antarctica and Islands

Priority legislation requiring administration and enforcement

It must be noted that the Research, Antarctica and Islands is not enforcement Chief Directorate; the Chief Directorate Compliance Monitoring performs this function. In addition to providing logistical support for research on Antarctica and Marion Islands, this section conducts research into the state of fisheries and stock assessments, which lead to recommendations on Total Allowable Catch and Effort. This information on biological harvest limits is critical for the Chief Directorate Resource Management in allocating fishing rights and determining fishing quotas and conditions to ensure sustainable fisheries. This section also does surveys of other non-consumptive species: dolphins, sharks, seabirds and whales.