COMMENTS ON PROPOSED REGULATIONS FOR SPECIES IN NEED OF PROTECTION OR POSING A THREAT TO THE ENVIRONMENT AS WELL AS RESTRICTED ACTIVITIES AND RESTRICTED METHODS IN RESPECT OF SUCH SPECIES, SECTION 49 OF THE WESTERN CAPE BIODIVERSITY ACT (6 OF 2021)

Submitted by: BirdLife South Africa
Date: 24/10/2026
By email: tamera.pillary@cesnet.co.za; amanda.vanreenen@cesnet.co.za; c.weatherall-thomas@cesnet.co.za

1 Introduction

This submission is made by BirdLife South Africa in response to the draft Regulations for Species in need of Protection or Posing a Threat to Environment as well as Restricted Activities and Restricted Methods in respect of such Species, under section 49 of the Western Cape Biodiversity Act (6 of 2021) (WCBA).

BirdLife South Africa's work focuses on, and is concerned about, the conservation of the environment particularly in relation to birds. Several of BirdLife South Africa's activities involve the handling and monitoring of species including threatened species, and ensuring that species of conservation concern, and their nests, breeding areas, foraging and key habitat are not destroyed or damaged. Key aspects of our research and conservation projects rely on fair and efficient adjudication and processing of permits under various Acts and Regulations, as well as other committees (e.g. SAFRing). The activities of many of our partner organisations are similarly subject to permitting, codes of conduct and authorisations for research and conservation work: SANCCOB, HawkWatch, VULPRO, EWT, Overberg Renosterveld Trust, to name a few.

Whilst we welcome updating of legislation and associated regulations (including the Nature Conservation Ordinance of 1974, as amended), we have several concerns about the process and content of the draft Regulations under section 49 of the WCBA. Our comments, concerns and recommendations are included under the following headings:

- Consultation on the draft Regulations
- The regulated populations: who the draft Regulations are aimed at
- Overlap and potential conflict with existing legislation, policy and guidelines
- Exclusion of certain species
- Draft Regulations
- Draft Schedules.

2 Comments and Recommendations

2.1 Consultation on draft Regulations

2.1.1 Comments

BirdLife South Africa and numerous other organisations involved in conservation and related activities affected by these regulations have a long history of applying for authorisation and, consequently, have a good understanding of what the needs and constraints are. When CapeNature proposed the revision of Regulations and described the relevant process (in September 2023) several undertakings were made to stakeholders. These included:

- Commitment to the rationalisation and modernisation of the regulatory framework which supports alignment with national and international policy and strategic frameworks;
- A series of stakeholder engagement by which participants would be able to provide inputs, raise concerns, voice expectations and engage with CapeNature to give effect to Sections 49 to 76 of the WCBA;
- Ensuring inclusivity and engagement with ALL stakeholders to identify and address ALL issues that a draft set of regulations should address taking a *tabula rasa* (blank/clean) approach to drafting the regulations (caps in the original PowerPoint presentation).
- Reliance on a phased approach whereby the first phase is a series of stakeholder engagements (facilitated by Cape Nature and the Department of Environmental Affairs and Development Planning) to gauge what it is that stakeholders in the Western Cape want for a set of biodiversity regulations (and what they don't want) as they relate to certain sections of the Act.
- A vision that the WCBA and its implementation through the Regulations will enable a transformed biodiversity economy focusing enabling access to critical resources in an equitable and sustainable manner.

These commitments were made in a virtual meeting on 6 September 2023, at which CapeNature and DEADP also set out a programme of meetings at the following localities:

- City of Cape Town (SANRAL Auditorium)
- Overberg (Bredasdorp)
- Central Karoo (Beaufort West)
- Garden Route (George)
- West Coast (Piketberg)
- Winelands (Worcester)
- Little Karoo (Oudsthoorn)

These were in addition to two virtual meetings to cater for stakeholders who were unable to travel to the main centres.

Therefore, in 2023, there appeared to have been an intention to engage meaningfully with a range of stakeholders towards a visionary and inclusive makeover of laws in support of a "transformed biodiversity economy". It is unclear whether all the meetings took place and whether there is a record of the engagements. Irrespective, it is now three years later, and we would have expected that the intention would remain despite evident delays. It is, consequently, inexplicable that the consultation has been confined to four, mostly smaller towns, without any meeting in Cape Town and no online meetings. It is impossible to contemplate how these four meetings, with a few hundred people (mostly locals) at best, is serving the vision that was originally presented. BirdLife South Africa maintains that the standards for reasonable and meaningful engagement have not been met. The importance of such engagement is even more apparent on a reading of the objectives of the WCBA.

A "blank slate" approach only works if key stakeholders are invited to workshop with the authorities to decide on a plausible framework and approach. In CapeNature's own words the original intentions were to:

- Identify what works for **YOU**
- Identify what doesn't work for **YOU**
- What can CapeNature **do better / more of / less of for YOU** and **YOUR sector**

Fulfilling these intentions requires multisector engagement with different representative organisations (as well as individuals) participating together, sharing information, insights and suggestions in a transparent and inclusive manner. Under such conditions, it is acceptable to offer a template-type draft and gather information to develop the Regulations into a more comprehensive second draft. However, if stakeholders are being expected to comment without being engaged in a workshop-type environment, in the absence of any explanatory notes or guidance, and are presented with an incomplete consultative text replete with missing information and containing factual errors, it is not possible to move forward collaboratively or productively.

2.1.2 Recommendations

BirdLife South Africa is asking for a Cape Town-based hybrid/online meeting to have the draft properly explained in the presence of key organisations who are interested in and/or materially affected by the draft regulations, including at minimum E-NGOs, relevant academic institutions, relevant associations, rehabilitation centres, animal/species handlers, animal well-being/anti-cruelty organisations, breeding, hunting organisations etc. Thereafter, the draft ought to be revised into a complete consultative text and stakeholders need to be given requisite time (i.e. 30 working days) to comment.

2.2 The regulated population: who the draft Regulations are aimed at

2.2.1 Comments

Linked to our concerns about the inadequacy of the consultation process is that the revision shifts the focus from landowner rights under the Nature Conservation Ordinance to a much wider regulated population. The unidentified drafter/reviewer makes the comment in respect of Regulation 5 that provision must be made for landowners to conduct certain restricted activities on their own land without requiring a permit and without being prohibited from doing so. They also state that "stakeholder input" is required in this regard. Notably, the Ordinance includes allowances to exploit biodiversity resources on private property (mostly subject to conditions), including the following:

- Owners can hunt protected wild game on their land and in season without a licence (s 27(2)).
- An adequate-enclosure certificate allows owners to hunt listed species at any time, keep them, and sell them but subject to certain conditions (s 36).
- Owners can possess naturally occurring endangered flora on their own land, although picking, selling or transporting endangered flora requires a permit (s 62(2)).
- Protected and unprotected flora can be picked by landowners with a permit, subject to conditions (s 63(3)).
- Owners of privately owned dams, reservoirs, vleis or other inland waters are exempt from certain of the fishing rules (s 61), provided the water body is completely surrounded by land owned by one owner.
- The Board is entitled to grant exemptions in its discretion and on conditions, including for scientific purposes (s61A and s80).

An overly restrictive approach on private property may disrupt routine farming, hunting and gathering activities, and scientific research may be impeded in a manner that could undermine the purpose of the Regulations and/or bring the Regulations into conflict with the rights to property albeit that this right is a limited real right.

2.2.2 Recommendation

Consideration should be given to granting conditional exemptions to individual and communal landowners from certain activities that may affect their rights to use their property and biodiversity resources thereon to sustain their lives and livelihoods.

Further consideration ought to be given to whether and how the revised regulations will intersect with the proposed Norms and Standards for the Recognition of Other Effective Area-Based Conservation Measures (OECMS) and associated Management Plans, and whether OECMS can be incentivised through certain allowances/exemptions in the Regulations.

The authorisation process should not stand in the way of efficient access to land for scientific, monitoring and research purposes, including for emergency rescue and rehabilitation work.

2.3 Overlap and potential conflict with existing legislation, policy and guidelines

2.3.1 Comments

There are several existing laws with authorisation requirements, policies and guidelines that either align to or overlap with those of the WCBA and the draft Regulations under section 49 of the WCBA. Examples include:

- National Environmental Management Biodiversity Act 10 of 2004 (NEMBA) Chapter 4 (s 56 to 58: threatened or protected species and restricted activities) and s 97 TOPS Regulations and lists, 2007, including Threatened or Protected Marine Species Regulations, 2017
- CITES Regulations under NEMBA (GN R173 in *GG* 33002 of 5 March 2010)
- Alien and Invasive Species Regulations under NEMBA (GNR 1020 in *GG* 43735 of 25 September 2020) and the national lists.
- National List of Ecosystems that are Threatened and in Need of Protection under NEMBA (GN 2747 in GG 47526 of 18 November 2022)
- National Environmental Management: Protected Areas Act 57 of 2003 (NEMPAA) including restrictions on hunting and collecting in protected areas
- National Forests Act 84 of 1998, specifically s 15 which refers to protected trees
- Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947 which registers poisons and pesticides used against damage-causing species
- Draft Guidelines for the Management of Damage-Causing Animals in South Africa (GN 7650 in *GG* 54938 of 2 July 2026) under NEMBA
- Marine Living Resources Act 18 of 1998 and some relevant regulations
- Sea Birds and Seals Protection Act 46 of 1973, regulating access to breeding islands and prohibiting any unauthorized killing, capturing, or harassment of seals and certain sea birds
- National Environmental Management: Integrated Coastal Management Act 24 of 2008 and Estuarine Management Plans
- Draft Norms and Standards for the Recognition of Other Effective Area-Based Conservation Measures, under NEMBA (GN 7123 in *GG* 54123 of 13 February 2026)
- Norms and Standards for the Translocation of Indigenous Species in South Africa under NEMBA (GN 44 in *GG* 38395 of 15 January 2015).

A stated aim of the WCBA is to rationalise and modernise the regulatory for biodiversity governance in the Western Cape and support alignment with national and international policy and strategic frameworks. It is, therefore, important that synergies, overlapping and potentially conflicting requirements are recognised and explicitly addressed in the Regulations and the procedures governed thereby. Section 54 of the WCBA makes provision for “integrated authorisations”, i.e.:

54. (1) If the Chief Executive Officer is empowered under another law to issue an authorisation in terms of that other law for an activity which also requires authorisation under this Act, the Chief Executive Officer may issue a single, integrated authorisation.

(2) An integrated authorisation may be issued only if the application concerned complies with the relevant provisions of this Act and the other law.

The difficulty here is that integrated permits are only permissible when the Chief Executive Officer (CEO) of CapeNature is empowered by the relevant Acts/Regulations. It does not deal with the overlapping and potentially conflicting requirements where the CEO is not the authorising authority under both or more Acts/Regulations. Section 4 of the Act is then relevant which states that conflicts must be resolved in terms of section 146 of the Constitution which sets down criteria for dealing with conflicting requirements. This process of resolution could take time and delay important or urgent decisions.

2.3.2 Recommendations

Given that the overlaps, synergies and potential conflicts can be readily anticipated, it would be prudent if these are dealt proactively so that duplication and potential conflict and confusion (and associated delays) can be avoided from the outset. We suggest that the Regulations include a tabular summary of all complementary, overlapping and potentially conflicting requirements for all relevant Acts, Regulations and Guidelines, accompanied by an explanation of how requirements are/will be aligned and rationalised.

Given the likely need for integrated permits to be issued, the Regulations should define the associated authorisation procedures and include an application form that caters to an integrated authorisation as envisaged under s54 of the WCBA.

2.4 Exclusion of certain species

2.4.1 Comments

It was apparently stated at the meetings in Velddrif that coastal and seabirds are excluded from the draft Regulations because these are adequately regulated under other legislation. This is problematic for several reasons:

- The WCBA itself does not envisage this exclusion, defining ecosystems with explicit reference to "coastal, inland aquatic, estuarine or marine, or a combination thereof".
- The draft Regulations make no reference to the exclusion of a select group of species.
- There is no indication of which legislation or regulations would substitute for permits currently acquired under the Nature Conservation Ordinance of 1974: if the Marine TOPs Regulations are

implicated here, it is unclear why equivalent exclusions would not apply to any other species regulated by national legislation/regulations (see prior list of relevant laws).

2.4.2 Recommendations

As has been stressed in email correspondence with the consultants, BirdLife South Africa currently applies for permits for a range of research, monitoring and conservation activities involving seabirds, including the Critically Endangered African Penguin, under the Nature Conservation Ordinance. Unless specific provisions are made under the draft Regulations to cater to a potential lacuna or confusion in this regard, there could be serious repercussions on the progression of donor-funded, priority research projects as well as advancement of key academic programmes.

The recommendation here links back to our call for further consultation: the absence of clear explanations and justification for why African Penguins and other seabirds are excluded, clearly needs to be addressed in a forum that includes multiple stakeholders that are involved in seabird conservation, including activities related to species transfer, rehabilitation, nesting/breeding, testing, monitoring, tracking and other aspects of species management (relevant entities include but are not limited to BirdLife South Africa, SANCCOB, SANParks, Two Oceans Aquarium, Dyer Island Conservation Trust, Percy Fitzpatrick Institute of African Ornithology).

2.5 Draft Regulations

2.5.1 Comments

The use of the term "Biodiversity Act" is confusing in the Regulations as it seems to refer interchangeably to the National Environmental Management: Biodiversity Act 10 of 2004, and the Western Cape Biodiversity Act 6 of 2021.

Requirements for landowner consent (and a risk assessment in some cases), under Regulations 5 and 6, are onerous and can have implications for researchers, students, and other bodies who are working according to funding and academic schedules. For others, such as traditional authorities, healers etc. the costs associated with these steps may be prohibitive. There are also times where urgent search, rescue or rehabilitation activities are required. Exemptions need to be included to cater to urgent situations and landowner consent should preferably be a condition of the permit rather than a requirement for authorisation.

The Special Management Measures contemplated in Regulation 15 are policy documents. Their inclusion in the Regulations such that they become mandatory could be problematic, particularly if these documents are not publicly available and their drafting has not been subject to a consultation process (see further comments below with regard to Table 5 in the Schedules).

2.5.2 Recommendations

References to "Biodiversity Act" need to be substituted with precise language so that it is clear whether the provincial or national Act is being referred to.

Serious consideration needs to be given to time consuming procedures that could inhibit urgent research or conservation interventions, thereby undermining rather than facilitating the objectives of the WCBA: we note that EWT has also raised concerns in this regard.

The scope of and inclusions under Special Management Measures should be reconsidered to ensure that the potential of this provision is realised in respect to species requiring urgent intervention (see further comments on this aspect below).

2.6 Draft Schedules

2.6.1 Comments

The list of restricted activities casts a wide net and, without clear exclusions, may unintentionally cover an excessive number activities, persons and institutions (e.g. snake handlers in urban areas, museum collections, urgent carcass removal on private land to avoid attraction of species under wind turbines, etc). Authorisation processes that place added burden on the authorities and take up time unnecessarily is not in keeping with the intent to rationalise and can also slow down response time and delay the issue of priority permits. We also re-iterate the potential for overlap with other legislation and the need to streamline rather than complicate the overall governance of biodiversity.

In respect of listed activities P and Q we object to the use of the word "hunting" in relation to conducting research and rescue operations. This was a problem with permitting under the Nature Conservation Ordinance which should be rectified in the Regulations. ''**Hunt**'' is defined in the WCBA as follows:

> *in relation to a wild animal, an animal belonging to a non-indigenous species or a feral animal, means to*
> *(a) search for;*
> *(b) pursue, follow or drive;*
> *(c) lie in wait for or wilfully disturb; or*
> *(d) shoot at or poison,*
> *the animal by any means whatsoever for the purpose of killing, injuring or capturing or attempting to kill, injure or capture it.*

It is evident that research and rescue operations are not aligned to the purpose of a hunt or hunting. A separate category is called for where species are secured, confined or held for scientific, research, treatment or rehabilitation purposes, usually for a temporary period.

We would urge that the regional IUCN status is considered and included where relevant, as this may differ from the global status. It must be made explicit which list is used and how the regulations will respond to a changed status of a species if this should occur within the five-year review period. It is not uncommon for a species to go from being Vulnerable to Critically Endangered if there is a mass mortality event, or significant advances in research. A change in status may require an immediate response and this eventuality should be catered to in the Regulations.

Table 2 is incomplete and, without explanation, some categories have been populated (e.g. reptiles) and others not. Specifically in respect of reptiles, the general category of F, G, H, I etc. is allocated without the numerical sub-category. This creates confusion. The net is also cast too wide in respect of certain species. For example, under the proposed regulations it would be illegal to transfer a live Cape Cobra from one's house to the wild. It would also be illegal for museums or academic laboratories to keep dead specimens of animals. Furthermore, it does not make sense that one would be permitted (J) to grow, breed, or propagate a live specimen but not legally be allowed to be (I1)"in possession of or exercise physical control over any live specimen".

Under the "Fish" category, it is concerning that restricted activity M does not apply to trout, bass, carp, catfish and tilapia. Inadvertent introduction or purposeful stocking of water bodies with these species is well known to be detrimental to indigenous fish populations and yet it is not a listed restricted activity. Also relevant to fish is the inclusion of angling under A1 and A2 , with the effect that angling for indigenous fish would need per-species authorisation. Angling for alien fish (trout, bass, carp) is not listed at all.

With reference to Table 2 it is unclear:

- what the position is when some categories of restricted activities do not occur in either the blanket prohibition or the restricted column?
- why some columns have been populated and others not?
- why some categories of restricted activities have been included and others not?
- why the numeric sub-categories have generally not been included?
- why some species are duplicated under different categories?
- why the categories P and Q (research and search & rescue) are not assigned to any species?
- why birds are treated according to generic categories, yet individual species of reptiles, mammals, etc. have been named?
- why has an exception been made for quelea and not, for example, crows or starlings?
- why have categories D and E been applied to the birds list when these are plant-related?
- why would captive breeding and release be prohibited for threatened fish given the potential beneficial impacts of reintroduction programmes for endangered species?
- why the inclusion of species not native to the Western Cape (e.g. Samango monkey)?

As already highlighted in the email correspondence with the CES consultants, the Regulations and Schedules need to incorporate nuance in order to deal with complex situations where measures are required to cater to situations where an indigenous predatory species may need to be managed in order to protect another indigenous and endangered species. Provision for Special Management Measures are included for in Chapter 4 of the Regulations (with reference to section 49(1)(i) and (4) of the WCBA) and could and should cater to complex circumstances, but this section in the Schedules seems incomplete and the last part is non-sensical.

The contents of Table 5 under par. 8 (List of Species Requiring Special Management Measures) is problematic for several reasons:

- It does not cater to the protection of Critically Endangered species from other critical or non-critical predatory species as one would expect: in this regard, Special Management Measures should include or refer to species that have dedicated Biodiversity or equivalent Management Plans at a national or provincial level.

- The Table includes “Game”, “All game species” and “Bontebok” as three separate categories. Since “game” is not defined in the definitions, it is unclear what the difference is between “game”, “all game species” and why Bontebok is distinguished from other game. This is made more confusing by the overlapping requirements for each category.

- All members of the Carnivora family are identified as subject to Special Management Measures, but walruses, eared seals and true seals are excluded “as defined and included in the provisions for marine mammals in the Marine Living Resources Act 18 of 1998” (MLRA). Firstly, walruses do not occur in South Africa and, secondly, seals are directly excluded from Section 1 of the MLRA which defines "fish" to cover marine living resources like fish, molluscs, crustaceans, and marine mammals, but appends the exception: "does not include sea birds and seals". Relevant legislation and guidance for the management of the latter includes the Sea Birds and Seals Protection Act 46 of 1973, the International Multi-Species Action Plan (IMSAP) for the Conservation of Benguela Current Upwelling System Coastal Seabirds under the African-Eurasian Migratory Waterbird Agreement (daughter agreement under CITES), and the Marine TOPS Regulations. Relevant permits are issued under either the TOPS Regulations or the Ordinance.

- It is unclear whether the “Special Management Measures” are distinguishable from the policies listed in the second column. If the measures are precisely these policies, the policy texts, dates, or any record of their revision must be available so that the many individuals, protected area owners and managers, institutions, organisations, etc. that deal with “Game” or “Raptors” are familiar with the content of these policy documents. There is also a legal question about whether such “policies” are enforceable by virtue of their definition as Special Management

Measures and their inclusion in the Regulations, without being gazetted and made available for public comment.

Section 9.3 states that "(t)his section relates to the restricted methods as it relates to the following restricted activity". It proceeds to repeat the description of A1 but gives no substance. It is, therefore, unclear what the purpose of section 9.3 is. If it relates to section 9.4. then the number ought to be 9.3(1). Table 6 (under par. 9.4.) is devoid of any information other than categories of Mammals, Reptiles, Birds, Fish and Invertebrates (including species in a category for "extinct in the wild"). Without links between the methods and the species, including those listed in the Annexures to CITES (as per section 49 (2)e(ii) of the WCBA), par. 9.2 has no operative effect.

2.6.2 Recommendations

Hunting must be excluded from Table 1's P and Q categories as the definition of hunt in the WCBA precludes that research activities and rescue operations can be deemed hunting.

Consideration ought to be given to rationalising the list of species that are feasibly or likely to be subjected to the activities listed in Table 1.

Table 2 needs to be explained, and completed for all categories and sub-categories of restricted activities for all species, and the anomalies addressed (i.e. available authorisation for "growing", "breeding" and "propagating"; but a prohibition on "keeping").

Naming conventions and taxonomic classifications need to be correct and consistent to avoid confusion.

Provision for changes in response to species being uplisted or downlisted on the IUCN Red Lists (global and regional/national) need to be included.

Further attention needs to be given to how authorisations are granted in respect of indigenous and non-indigenous fish species to avoid the introduction of alien fish.

The entire content of Table 5 must be reconsidered in conjunction with a clear explanation of what Special Management Measures are intended to achieve and for which species.

Mistakes need to be corrected (including that seals and seabirds are not regulated under the MLRA), and the legal question about translating policies into binding rules without consulting on these policies, needs to be answered.

The numbering of paragraphs 9.3 and 9.4 needs explanation or correction.

3 Conclusion

As indicated in our comments, a primary concern for BirdLife South Africa's relates to the seemingly rushed approach to drafting the Regulations without adequate engagement with key stakeholders in major centres and online. We have highlighted several shortcomings in our comments, many of which can only be addressed if information and insights are shared in a transparent and inclusive manner, particularly by those directly affected by the proposed Regulations. This was what was promised by CapeNature in 2023.

In light of our concerns, we urge that the consultation period on the Regulations be extended and that meaningful engagement takes place with all institutional and other stakeholders such that a framework for the Regulations can be agreed that will support the intentions of the WCBA to rationalise and modernise biodiversity governance in the Western Cape.

BirdLife South Africa is willing to engage further on the issues raised in these comments, preferably in a forum which includes other ENGOs and key parties. Formal input and assistance with drafting on sections relevant to birds will require engagement with our Head of Conservation and CEO.

Submitted by:

Dr Kirsten Day
Policy and Advocacy Programme Manager
BirdLife South Africa

Christina Hagen
Pamela Isdell Fellow: Penguin Conservation
BirdLife South Africa