Dear Sirs

COMMENTS ON: THREATENED OR PROTECTED SPECIES REGULATIONS PUBLISHED FOR COMMENT ON 16 APRIL 2013 IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004 (ACT NO 10 OF 2004)

The South African Veterinary Council remains concerned that veterinarians are required to obtain permits to render veterinary services to TOPS.

Veterinarians have a duty to treat animals in emergency situations. Permit requirements to render veterinary services do not serve the objects of the NEMBA. To the contrary the requirement to obtain a permit could be to the detriment of the welfare of TOPS.

It is inconceivable that an application for a permit to render veterinary treatment will ever be refused as it can only be in the interest of the survival and protection of TOPS that veterinary treatment be rendered and not refused. It would be contrary to the objects of the NEMBA to
refuse to issue a permit to a veterinarian to render veterinary treatment to TOPS. The rationale to require a permit to render veterinary services must therefore be questioned.

Information of translocation and movement of TOPS should be obtained from the persons who are required to have permits to possess TOPS and not the veterinarian who renders a veterinary service

1. The new regulations do not distinguish between restricted activities and the rendering of veterinary services although the regulations acknowledge that listed TOPS may:
   - be sick/ill or injured¹;
   - require veterinary treatment²; and
   - require darting prior to the veterinary treatment.³

2. Unless exempted by the Minister veterinarians are to apply for permits to catch, capture and dart listed TOPS when they perform veterinary services.⁴

3. Regulation 1 defines "catch or capture" as "to employ any means, method or device to gain control over, or to secure possession of, a specimen of a listed threatened or protected species, irrespective of whether such control or possession is intended to be temporary or permanent, and irrespective of whether such control or possession is with the intent to kill such specimen or not, but excludes angling."

¹ See regulation 77(2)(a) and regulation 83(2)(a)(ii)(aa).
² See regulation 1 definition of "hunt" (d), regulation 7(3)(b), regulation 32(2)(a), regulation 37(n), regulation 38(1)(e) and regulation 83(3)(b).
³ See regulation 77(2)(a).
⁴ A restricted activity may only be carried out if a person is the holder of a permit unless the Minister has exempted the restricted activity in terms of section 57(4) of NEMBA.
Comments:

- Provision should be made for the exclusion of the rendering of veterinary services from the definition of catch or capture, similar to the exclusion of angling.

- Regulation 1 should define "veterinary services "as follows" means the diagnosis, treatment, prevention of, or advice on a disease, physiological or pathological condition, or chemical restraint, which includes general, standing, and/or regional anaesthesia, as well as chemical immobilisation of, or a surgical or dental operation or procedure on, or the administration of medicine to a listed threatened or protected species."6

4. Regulation 2(a) prescribes as a restricted activity "darting of a specimen of a listed" TOPS. Darting as defined in regulation 1 "means to shoot the specimen with a projectile loaded with a tranquillising, narcotic, immobilizing or similar agent." In terms of Regulation 4(1) the darting of listed TOPS is a restricted activity which may only be carried out by a person who is the holder of a permit issued in terms of Chapter 7 of NEMBA unless the Minister has given an exemption in terms of section 57(4) of NEMBA.

Comments:

- The Minister should grant a general exemption for veterinary services from the permit requirements.

- In terms of the rules relating to the practising of the veterinary professions published in terms of the Veterinary Act the "chemical restraint of an animal,"
which includes general, standing, and/or regional anaesthesia, as well as chemical immobilisation of an animal" and "the administration of medicine" are veterinary procedures that may only be performed by veterinarians.⁶

- Furthermore tranquilising, narcotic, immobilising or similar agents are schedule 5 or 6 medicines that are regulated in terms of the Medicines and Related Substances Control Act, Act No. 101 of 1965 ("Medicines Act"). Although the Medicines Act provides that scheduled medicines may be possessed by a medical practitioner, dentist, veterinarian or nurse without a prescription, section 22A(16)(c) prescribes that scheduled medicines may only be possessed by a practitioner for administration within the scope of that practitioner's practice, which in effect means that only a veterinarian may possess a tranquilising, narcotic, immobilising or similar agent for administration in an animal without a prescription.⁷

- In so far as darting is a veterinary service to be performed by a veterinarian it should be excluded as a restricted activity.

5. Regulation 5 makes provision for the issuing of an integrated permit if:

- The restricted activity is regulated in terms of NEMBA as well as in terms of other law;

⁶ Rule 2 (b) and (d)
⁷ See sec 22A(16) of the Medicines Act: "Notwithstanding anything to the contrary contained in this section-
(a) any person may possess a Schedule 0, Schedule 1 or Schedule 2 substance for medicinal purposes;
(b) any person may possess a Schedule 3, Schedule 4, Schedule 5 or Schedule 6 substance if he or she is in possession of a prescription issued by an authorised prescriber;
(c) any medicine or scheduled substance may be possessed by a medical practitioner, dentist, veterinarian, practitioner, nurse or other person registered under the Health Professions Act, 1974, or under the Veterinary and Para-Veterinary Professions Act, 1982, for the purposes of administering it in accordance with his or her scope of practice;"
- The species is listed as a TOPS; and
- The issuing authority is authorised to issue a permit in terms of NEMBA as well as the other law.

Comments
- Darting, as explained above, is the rendering of a veterinary service that is regulated in terms of the Veterinary Act. The only authority that is authorised to allow the rendering of a veterinary service is the SAVC.\(^8\)
- It therefore follows that the only issuing authority for an integrated permit in respect of darting is the SAVC.
- An integrated permit should be defined.\(^9\)

6. Regulation 7(2)(d) makes provision for the issuing of a standing permit to a veterinarian, for darting and any other restricted activities necessary for the management of TOPS.

The permit may be issued for a period not exceeding 36 months.\(^10\)

Comment:
Darting, which is the rendering of a veterinary service, should be excluded as a restricted activity.

7. Regulation 13 makes provision (if it is deemed necessary) to require that tissue samples of listed TOPS are to be collected before a permit is issued.

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\(^8\) In addition to veterinarians registered with the SAVC in terms of the Veterinary Act, section 23(1)(c) of the said Act empowers the SAVC to authorise non-veterinarians to render veterinary services.

\(^9\) Ordinary, permanent possession and standing permits are defined in regulation 1.

\(^10\) Regulation 29(1)(a)(ii).
Comments:

- The effect of such a requirement is that a restricted activity will have to be performed without a permit - as the collection of such a tissue sample requires darting/catching and capturing of TOPS - to obtain a permit to perform a restricted activity.

8. Regulation 18(1) makes provision for a timeframe of 20 working days (one month) to consider and decide whether or not to grant a permit after receipt of all information. Regulation 18(4) furthermore makes provision that should the issuing authority be unable to comply within the 20 working days, it must submit reasons for its delay and decide on the application within the next 20 working days. The issuing authority is then granted an additional 5 working days to issue the permit in terms of regulation 23(1). In terms of section 23(4) permits may not be issued with retrospective effect.

Comments:

- If veterinary treatment of injured/ill TOPS are to be postponed until a permit is issued - that could take up to nine weeks - the rendering of the veterinary treatment could become irrelevant.

- This would not only have a serious impact on the welfare of the TOPS but the veterinarian who fails to attend to the injured/ill TOPS will be acting in contravention of the Veterinary Act \(^\text{11}\) and the owner\(^\text{12}\) of the TOPS will be in contravention of the Animal Protection Act, Act No 71 of 1962.\(^\text{13}\)

\(^\text{11}\) It would be regarded as unprofessional conduct in terms of the Veterinary Act
9. Regulation 19 makes provision for the factors to be taken into account when considering permit applications.

Comment:
The welfare of the TOPS is not a factor that is specified to be taken into account.

10. Regulation 25(2) requires a permit holder to keep a register and submit an annual report to the issuing authority which includes:

a. The name of the permit holder
b. The restricted activity/ies that have been carried out
c. The date when the restricted activity/ies have been carried out
d. The common and scientific names of the TOPS
e. The number of specimens involved

And if applicable
f. The facility to which the registration applies
g. The unique number to which the registration applies
h. The details of the seller/purchaser

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12 Section 1 of the Animals Protection Act, 71 of 1972 defines owner as “in relation to an animal, includes any person having the possession, charge, custody or control of that animal.”
13 Section 2. - (1) Any person who:
(e) being the owner of any animal, deliberately or negligently keeps such animal in a dirty or parasitic condition or allows it to become infected with external parasites or fails to render or procure veterinary or other medical treatment or attention which he is able to render or procure for any such animal in need of such treatment or attention, whether through disease, injury, delivery of young or any other cause, or fails to destroy or cause to be destroyed any such animal which is so seriously injured or diseased or in such a physical condition that to prolong its life would be cruel and would cause such animal unnecessary suffering; or shall, subject to the provisions of this Act and any other law, be guilty of an offence .... “.
The details of the person to where the specimen has been transported or exported to.

Comment:
- In terms of the Veterinary Act, veterinarians are required to maintain records.\textsuperscript{14} It would serve no purpose to require additional recordkeeping if the restricted activity is performed merely to render a veterinary service.
- If a veterinarian darts a TOPS at a registered game farm or facility\textsuperscript{15} the onus should be on the holder of the registration certificate to record and report the required information and this could be included as a condition on the registration certificate.

11. In terms of regulation 77(3) the issuing of a permit for darting, except for listed threatened or protected marine species, is limited to:
   - A veterinarian registered with the SAVC; and
   - A person authorised by the SAVC who is in possession of a permit issued in terms of the Medicines and Related Substances Control Act, Act No 101 of 1965, who may only dart a TOPS in the presence of a veterinarian.

Comment:
- Darting to treat sick/injured TOPS or to carry out a disease control procedure by a veterinarian should not require a permit.

\textsuperscript{14} Rule 26
\textsuperscript{15} Captive breeding facility, commercial exhibition facility, sanctuary or temporary holding facility
12. Regulation 78 makes provision for the translocation of TOPS without the need for a permit for the purpose of translocation subject to certain conditions.

Comments:
- If an animal is injured during a translocation veterinary treatment that requires darting may not be administered in the absence of a permit.
- The darting of TOPS by a veterinarian for the purpose of rendering veterinary treatment should be excluded as a restricted activity.

Yours faithfully

[Signature]

Lynette Havinga
Registrar