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NBSAP/26

Dear Ms Malepo Phoshoko

**RE: COMMENTS ON SOUTH AFRICA'S DRAFT NATIONAL BIODIVERSITY STRATEGY
AND ACTION PLAN 2026 – 2035**

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A. INTRODUCTION

1. The following submission is made by the Biodiversity Law Centre (“**BLC**”) on South Africa’s draft National Biodiversity Strategy and Action Plan 2026 – 2035 (“**Draft**”

NBSAP") published by the Department of Forestry, Fisheries and Environment's (**DFFE**) and its Minister ("**Minister**") on 5 August 2026.¹

2. This submission is endorsed by the Southern African Faith Communities' Environment Institute ("**SAFCEI**").

a. South Africa's international and domestic biodiversity obligations

3. South Africa is party to the Convention on Biological Diversity ("**CBD**"), the multilateral treaty which seeks the conservation of biological diversity and the sustainable use of its components, noting its importance for evolution and for maintaining Earth's life-sustaining systems.²
4. NBSAPs have been State Parties' main tool to implement the CBD nationally. However, these State Parties have since recognised that the stakes for effecting the CBD's objectives have raised significantly. Due to the alarming continued loss of biodiversity and the resulting threat that this poses to nature and human well-being,³ CBD State Parties adopted the Kunming-Montreal Global Biodiversity Framework ("**GBF**").
5. The GBF calls for urgent and transformative concerted action to halt and reverse this ongoing biodiversity loss.⁴ It aims for a world where "by 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people."⁵
6. To achieve this 2050 vision, the GBF sets 23 action-oriented targets to be completed by 2030.⁶ These 2030 targets ground –

"urgent action to halt and reverse biodiversity loss to put nature on a path to recovery for the benefit of people and planet by conserving and sustainably using biodiversity and by ensuring the fair and equitable sharing of benefits from the use of genetic resources, while providing the necessary means of implementation."⁷
7. NBSAPs are therefore now also the main tool to implement the enhanced 2050 vision and 2030 targets of the GBF.⁸
8. Accordingly, State Parties' NBSAPs must align with the GBF. This alignment is especially significant for South Africa's Draft NBSAP because of the country's unique potential to

¹ In Government Gazette No 7773, Government Notice 55141.

² CBD preamble and Article 1.

³ CDB Decision 15/4 Kunming-Montreal Global Biodiversity Framework CBD/COP/DEC/15/4 19 December 2022 at page 2.

⁴ GBF at sections A and B.

⁵ GBF at section F.10.

⁶ GBF at section H.13.

⁷ GBF at section F.11.

⁸ CBD Decision 15/6 Mechanisms for planning, monitoring, reporting and review CBD/COP/DEC/15/6 19 December 2022.

contribute to the global achievement of the GBF. As the Draft NBSAP itself records, South Africa has exceptional biodiversity⁹ – it is one of the world's megadiverse countries,¹⁰ being characterised by high species richness (ranking amongst the top ten countries in terms of plant species richness); a wide variety of ecosystem types; and high endemism rates (having the third highest marine species endemism globally).¹¹

9. Helpfully, under the CBD, State Parties agreed to certain guidance that was published to ensure that their NBSAPs align with the GBF (“**CBD Guidance for Updating NBSAPs**”).¹² In terms of this CBD Guidance for Updating NBSAPs –

- 9.1. NBSAPs are an umbrella process under which all national targets and actions relevant to the Kunming-Montreal Global Biodiversity Framework can be planned, implemented, monitored, reviewed and enhanced;¹³
- 9.2. NBSAPs should facilitate the engagement of all government sectors at all levels of government, and all stakeholders, indigenous peoples and local communities, women and youth across society;¹⁴
- 9.3. NBSAPs should promote and support increased efforts and actions, and improved implementation and consistency over time, in a cooperative and flexible manner, ensuring responsibility and transparency of information on national targets reflecting the GBF;¹⁵
- 9.4. NBSAPs should include information regarding means of implementation for developing countries;¹⁶
- 9.5. NBSAPs should include national targets addressing or contributing towards each of the goals and targets of the Kunming-Montreal Global Biodiversity Framework and ensuring close alignment where possible, taking into account the availability of resources and means of implementation;¹⁷
- 9.6. NBSAPs may wish to distinguish those targets and actions that will be implemented with already identified resources from those which they will only

⁹ Draft NBSAP at page 8.

¹⁰ Draft NBSAP at page 7.

¹¹ SANBI ‘South Africa’s biodiversity profile’ 5 December 2025 <https://nba.sanbi.org.za/content/context/biodivprof.html>

¹² CBD Decision 15/6 Mechanisms for planning, monitoring, reporting and review CBD/COP/DEC/15/6 19 December 2022 at Annex 1.

¹³ Item 2 of the CBD Guidance for Updating NBSAPs.

¹⁴ Item 2 of the CBD Guidance for Updating NBSAPs.

¹⁵ Item 5 of the CBD Guidance for Updating NBSAPs.

¹⁶ Item 5 of the CBD Guidance for Updating NBSAPs.

¹⁷ Item 6(a) of the CBD Guidance for Updating NBSAPs.

be able to achieve or implement if additional resources become available;¹⁸
and

- 9.7. NBSAPs should include concrete actions, policies and programmes designed to meet the national targets and contribute to the global goals and targets, including spatial, temporal and financial aspects, as appropriate. The development of these actions should go hand in hand with the identification of financing and capacity gaps and the development of national finance plans, or similar instruments, as well as capacity-building and development plans. This should also include the provision of finance and other means of implementation;¹⁹
- 9.8. NBSAPs should include national monitoring, reviewing and assessment, including to track contributions towards the goals and targets.²⁰
10. Section 2(b) of the National Environmental Management: Biodiversity Act 10 of 2004 (“**NEMBA**”) records that one of its objects is to give effect to ratified international agreements relating to biodiversity which are binding on the Republic. The National Environmental Management Act 107 of 1998 (“**NEMA**”) further requires international responsibilities relating to the environment to be discharged in the national interest, bolstering the obligations that the CBD and the GBF place on the State to protect ecosystems and the biodiversity they support. It is through this lens, and in this context, that the Draft NBSAP falls to be assessed.

b. The BLC’s focus on the Draft NBSAP

11. The BLC is a non-profit organisation and law clinic. Our mandate is to use the law to protect and restore indigenous ecosystems and species in Southern Africa in order to support ecosystem functioning and sustainable livelihoods. The BLC is particularly concerned with law and policy giving effect to section 24 of the Constitution,²¹ particularly the State’s obligations to protect the environment for present and future generations, by preventing pollution and ecological degradation, promoting conservation, and securing ecologically sustainable development.

¹⁸ Item 6(a) of the CBD Guidance for Updating NBSAPs.

¹⁹ Item 6(b) of the CBD Guidance for Updating NBSAPs.

²⁰ Item 6(c) of the CBD Guidance for Updating NBSAPs.

²¹ Constitution of the Republic of South Africa, 1996.

12. The work of the BLC has focused on biodiversity in the contexts of arid lands, estuaries and marine fisheries. Our focus areas also serve as the context through which our comments to the Draft NBSAP are made.

c. Structure of these comments

13. The BLC welcomes several features of the Draft NBSAP. It is grounded in the 2025 National Biodiversity Assessment (“**2025 NBA**”). It creates dedicated thematic areas for pollution and waste, for ecological infrastructure and climate resilience, and for biosafety, which the second NBSAP did not. It proposes a national biodiversity monitoring and indicator reporting system that directly addresses the monitoring failures of the previous decade.²² In section 5.12 it commits to establishing accessible legal support systems, formal grievance mechanisms and remedy processes for indigenous peoples and local communities.²³ These are real advances and should be retained. The BLC submits, however, that additional work is required to ensure the Draft NBSAP meets the standard set by the GBF and the CBD Guidance for Updating NBSAPs.
14. These comments are structured as follows:
 - 14.1. Part 1 addresses general concerns with the Draft NBSAP –
 - 14.1.1. Section B addresses its general lack of deadlines ahead of 2035;
 - 14.1.2. Section C addresses its silence on the GBF’s 2050 Vision.
 - 14.2. Part 2 addresses Draft NBSAP’s shortcomings in the BLC’s focus areas –
 - 14.2.1. Section D speaks to the need to supplement the targets so as to directly address drivers of biodiversity loss in South Africa’s sensitive arid lands, particularly as a result of mining and cumulative impacts, including the omission of mining-affected land from the restoration targets and the enforcement of financial provisioning obligations;
 - 14.2.2. Section E speaks to the need to supplement the targets to specifically provide for the restoration and protection of estuaries and their Estuarine Functional Zones (“**EFZs**”);
 - 14.2.3. Section F addresses the need to supplement the targets so as to adequately protect marine biodiversity, particularly in the context of

²² Section 6.2 of the Draft NBSAP.

²³ Section 5.12 of the Draft NBSAP.

overexploitation of keystone species and ensuring an ecosystem-based approach to fisheries management;

14.3. Part 3 addresses our remaining concerns with the Draft NBSAP –

14.3.1. Section G addresses business biodiversity disclosures under Draft NBSAP Target 1 (Mainstreaming biodiversity);

14.3.2. Section H addresses climate change and ecological infrastructure under Draft NBSAP Target 8, specifically groundwater;

14.3.3. Section I addresses pollution and waste management under Draft NBSAP Target 7, and the implications of the immediately realisable nature of section 24(a) of the Constitution for the framing of the Draft NBSAP's targets;

14.3.4. Section J addresses the 30x30 commitment under Draft NBSAP Target 3;

14.3.5. Section K concludes.

PART 1: GENERAL CONCERNS WITH THE DRAFT NBSAP

B. THE DRAFT NBSAP GENERALLY LACKS DEADLINES

15. The Draft NBSAP contains 125 actions across its 12 targets/thematic areas. Each is assigned a lead organisation and, usually, supporting organisations. None is assigned a deadline. None is assigned a budget line. None is linked to a reporting obligation.
16. The consequence is a Draft NBSAP whose targets and target indicators are dated but whose implementation is not. This is particularly concerning noting that the targets are only required to be achieved by 2035, and similarly their target indicators are due by 2035 or 2030 (presently only one target indicator must be achieved before 2030 – namely by 2028).²⁴
17. The Draft NBSAP should be amended to reflect clear and achievable targets, indicators and actions over the short, medium and long term. This will allow the Draft NBSAP to be in the best position to attain ambitious national contributions to the GBF targets and goals, and to align with the CBD Guidance for Updating NBSAPs by providing for the monitoring and enhancing of targets, as well as the promotion of increased efforts and actions, and improved implementation over time.

²⁴ Draft NBSAP at page 76.

18. The absence of deadlines operates at the following four levels, which the BLC submits should be remedied.

The actions

19. No action in the Draft NBSAP carries a date. Actions may be commenced in 2026 or in 2034 without triggering any alarm from the Draft NBSAP. The BLC proposes that a timeframe column be added to every action table, with each activity assigned to a short-term (2026–2028), medium-term (2029–2031) or long-term (2032–2035) window, and with the sequencing dependencies between actions made explicit.

The baselines

20. A substantial proportion of the Draft NBSAP's indicators are recorded in the data source column as not currently measured, not yet measured, or requiring further sources. This affects, among others, the indicators for business disclosure, sustainable agricultural area, positive incentives, coastal eutrophication, pesticide toxicity, ecosystem services, and both public and private biodiversity finance. Each affected thematic area then carries a residual activity to establish baselines for currently unmeasured indicators. None of those baseline activities carries a date.
21. This is the point at which the absence of deadlines becomes self-defeating. An indicator with no baseline and no date by which a baseline will exist cannot be reported against, cannot support the progress assessment categories contemplated in section 6.2, and cannot inform the Eighth National Report to the Convention.
22. The BLC proposes that all baseline-setting activities be completed by a fixed date, and suggests 31 March 2028, being sufficiently in advance of the Eighth National Report to allow the resulting data to be used.

The interim milestones

23. Every national target is expressed as a 2035 target. The GBF targets to which they correspond are 2030 targets. The only 2030 dates in the document are those inherited from the Land Degradation Neutrality submission to the United Nations Convention to Combat Desertification ("UNCCD").²⁵
24. The practical effect is that none of the Draft NBSAP's national targets falls due during the currency of the GBF's 2030 targets, and no slippage can be identified until the Draft NBSAP has expired. This is inconsistent with the CBD Guidance for Updating NBSAPs.

²⁵2025 NBA available at https://nba.sanbi.org.za/content/terrestrial/ter_pressures-condition.html.

The BLC proposes that every national target carry a 2030 interim milestone tied to the corresponding GBF target, with 2035 reserved for the residual.

The costing

25. The Financial Needs Assessment costs 17 of its 125 actions, at approximately R656.71 million over ten years. The Draft NBSAP records that this is a partial estimate and should not be interpreted as the total cost of implementation, and expressly excludes large-scale ecological restoration, protected area expansion toward 30x30, full species recovery implementation, biodiversity economy scaling, pollution control infrastructure and ecosystem-based climate adaptation.²⁶
26. Those exclusions comprise every high-cost element of the plan. An NBSAP that is uncostered in respect of its most expensive commitments cannot demonstrate that its targets are achievable, and cannot support the conditionality attached to the 30x30 commitment discussed in section J below: the resources on which that commitment is conditional have not been quantified. The BLC proposes that the Financial Needs Assessment be completed for all 125 actions and published by a fixed date, and that the excluded high-cost areas be costed and published separately in the interim.
27. Overall, the NBSAP should strengthen its biodiversity finance approach by building a clear, evidence-based case for increased public, blended and whole-of-society investment. This should highlight biodiversity's economic importance, including the dependence of over half of global GDP on nature, and the substantial costs avoided through healthy ecosystems, protected areas and effective conservation. A high-level roundtable with environmental stakeholders should identify funding needs, NGO and partner contributions, and opportunities for sustainable biodiversity finance. The Draft NBSAP should also address existing funding gaps and underfunded mandates to ensure protected areas are adequately resourced, managed and enforced, avoiding "paper parks". Government should make a formal political commitment to the GBF, particularly its target 3, while maintaining and, where possible, increasing baseline biodiversity funding despite fiscal constraints. Finally, transparent mechanisms should be established to prioritise, allocate, manage and monitor finance, link spending to measurable impacts, and consistently account for contributions from government, NGOs and other partners.

C. DRAFT NBSAP'S SILENCE ON THE GBF'S 2050 VISION

28. The GBF is structured around four long-term Goals for 2050 and 23 action targets for 2030. The targets are the means; the Goals are the end. Yet the Draft NBSAP – which will be in effect after the GBF targets are due, but before the 2050 Goals must be achieved – engages extensively with the targets and almost not at all with the Goals.
29. The 2050 Vision's Goals A, B, C and D are not set out, are not disaggregated to the national level, and are not linked to any national target or indicator.²⁷ This is so notwithstanding that Goal A requires the integrity, connectivity and resilience of all ecosystems to be maintained, enhanced or restored, substantially increasing the area of natural ecosystems by 2050, and that Goal B requires nature's contributions to people to be valued, maintained and enhanced, with those currently in decline being restored.²⁸
30. As a result of this silence –
 - 30.1. The plan has no long-term outcome logic. The theory of change in section 4.5 of the Draft NBSAP runs from activities to indicators to outcomes to the four White Paper Goals, and stops. There is no link from the White Paper Goals to the GBF 2050 Goals, and no statement of what South Africa's ecosystems, species and genetic diversity are intended to look like in 2050.
 - 30.2. The vision adopted is a societal vision, not an ecological one. The Draft NBSAP adopts the White Paper vision of an inclusive, transformed society living in harmony with nature. That is a legitimate and important statement of values. It is not an ecological end-state, and it cannot function as one. It does not tell a decision-maker in 2031 whether the country is on track.
 - 30.3. The 2035 targets cannot be tested for sufficiency. Without a 2050 anchor, there is no basis on which to assess whether the Draft NBSAP's 21% protected area target, 22% restoration target, or its business disclosure indicator is adequate. Sufficiency requires a near-term target and a long-term outcome. The Draft NBSAP supplies only the former.

PART 2: DRAFT NBSAP'S SHORTCOMINGS IN THE BLC'S FOCUS AREAS

²⁷The GBF 2050 Vision is referred to twice in the Draft NBSAP: once in section 2.2, in a descriptive table of international instruments, and once in a figure in section 2.2 recording that the Kunming-Montreal Global Biodiversity Framework "sets global goals for 2050 and targets for 2030". GBF Goals A, B, C and D are not set out, disaggregated to the national level, or linked to any national target or indicator.

D. NEED TO EXPLICITLY RESPOND TO DRIVERS OF BIODIVERSITY LOSS IN SENSITIVE ARID LANDS

The gap in the Draft NBSAP

31. The Draft NBSAP identifies mining as a primary pressure on South Africa's biodiversity. It records that the clearing of land for, among other things, mining has been especially severe in terrestrial areas; that mining and energy activities lead to the direct destruction of natural habitats, with particularly severe impacts along the Namaqualand coast and on vulnerable reptiles, plants and amphibians; and that these pressures significantly increase extinction risk for multiple species groups.²⁹
32. The 2025 NBA supports and extends that finding. It records that the cumulative impacts of mining are intense and persistent, and extend well beyond the footprint of the mining operation itself.³⁰ It records that the increase in mining and prospecting applications poses a further concern in relation to potential future habitat loss.³¹ It identifies the long-term effects of mining, coupled with the exacerbating effects of climate change, as a significant driver of land degradation on the west coast and into Namaqualand.³² The impact of mining on threatened species is, moreover, regarded in the literature as underestimated.³³
33. Despite having identified mining in these terms, the Draft NBSAP does not carry this into its action plan. Mining appears in the 12 targets/thematic areas only under the pollution and waste management target, and there only in three respects: the mapping of legacy contaminated sites, the harmonisation of mandates between the environment, water, mining and local government sectors, and an action to "Regulate and enforce Mining Waste Management".³⁴ There is no national target, no indicator, and no action anywhere in the Draft NBSAP directed at the biodiversity consequences of the decision to authorise prospecting or mining – particularly in relation to land-use change as a major driver of biodiversity loss nationally. The Department of Mineral and Petroleum

²⁹Draft NBSAP, section 2.1, Table 1, drivers N1 (Habitat Loss from Land Conversion) and N6 (Mining and Energy Production). Driver N6 records that mining and energy activities cause direct destruction of natural habitats, with particularly severe impacts along the Namaqualand coast, and that these pressures significantly increase extinction risk for multiple species groups.

³⁰2025 NBA available at https://nba.sanbi.org.za/content/terrestrial/ter_pressures-condition.html

³¹2025 NBA available at https://nba.sanbi.org.za/content/terrestrial/ter_pressures-condition.html

³²2025 NBA available at https://nba.sanbi.org.za/content/terrestrial/ter_pressures-condition.html

³³ Dale G.N. *et al*, Cell Reports Sustainability *The underestimated global impact of mining on threatened species* 5.

³⁴Draft NBSAP, section 5.7, action table ("Map and prioritise contaminated sites and legacy industrial or mining areas..."; "Harmonise mandates and coordination mechanisms between the environment, water, mining and local government sectors..."; "Regulate and enforce Mining Waste Management", Lead: DFFE, Support: DMR).

Resources (“DMPR”) appears once in the entire 125-activity action plan, as a supporting party on the mining waste action. It leads nothing.

34. The result is that the Draft NBSAP addresses the one isolated aspect of the potential impacts of mining but not the manner in which mining and prospecting applications are granted, particularly in sensitive areas. That is a significant omission in a plan whose own evidence base identifies mining as a leading driver of terrestrial habitat loss. It is also indicative of inadequate biodiversity mainstreaming – the Draft NBSAP as the roadmap to achieving GBF Targets should explicitly address the integration of biodiversity targets into decision-making processes around mining and prospecting.
35. Importantly: this does not mean that mining should not occur. It means that mining should be strategically planned so as to ensure that biodiversity and the ecosystem goods and services it provides, and on which the whole of society depends, are not unduly eroded, particularly in areas where it is most sensitive.

An increase the volume of applications driven by the rush for critical minerals

36. The pressure described above has intensified in recent years. South Africa, in its arid biomes in particular, is experiencing a rapid proliferation of mining and prospecting activity, driven in part by growing global demand for minerals framed as “critical” to the energy transition, defense, and modern technology, and those in short supply in the global north. This expansion is occurring across South Africa’s most biologically diverse and environmentally sensitive landscapes, including areas of high biodiversity value, ecological connectivity and water scarcity, and recent research has noted that the impacts of mining on biodiversity are currently underestimated.
37. These minerals are also identified in the Critical Minerals and Metals Strategy for South Africa, directed at expanding exploration and extraction of minerals identified as critical to decarbonisation and green industrialisation, and provides for implementation through an action matrix with timelines, named responsible entities and key performance indicators, monitored against exploration targets among other measures. A biodiversity strategy which does not engage with the principal driver of new land-use pressure over the coming decade cannot succeed.
38. That rising volume of mining applications gives rise to two problems. First, ecological harm: the aggregate impact of many individually authorised activities on biodiversity is never assessed. Second, a problem of foreclosure: applications are being granted in and around declared protected areas and in areas earmarked for protected area expansion, progressively removing the land on which South Africa’s achievement of

Target 3 depends. The first is addressed by requiring cumulative impact assessment and strategic biodiversity planning. The second is addressed by protecting properties earmarked for protection.

Cumulative impacts and the erosion of the biodiversity estate

39. The omission matters most in relation to cumulative impacts. The word “cumulative” appears twice in the Draft NBSAP, neither time in an assessment context and neither time in the action plan. The Draft NBSAP contains no target, indicator or action concerning the assessment of cumulative impacts, and the phrase “strategic environmental assessment” (“SEA”) does not appear at all. The phrase “environmental authorisation” appears twice: once in a rationale, and once in an enforcement action against developments commenced without one.³⁵

Cumulative ecological harm

40. This is a material departure from the GBF. GBF target 7 requires the reduction of pollution risks and the negative impacts of pollution from all sources “considering cumulative effects”.³⁶ The corresponding national target in the Draft NBSAP omits that qualification,³⁷ as addressed further in section I below. GBF target 14 expressly requires the integration of biodiversity into SEAs and environmental impact assessments (“EIAs”).³⁸ Neither instrument features in the Draft NBSAP’s mainstreaming target, its indicators, or its actions.
41. The practical consequence is tangible. Prospecting and mining authorisations are granted one application at a time. Each application is presented, and assessed, as a discrete and temporary activity of limited footprint. Applicants routinely characterise prospecting as low-impact and reversible, and defer consideration of the consequences of any resulting mine to a later and separate authorisation process that may or may not be triggered. Assessed individually, each application appears marginal. Assessed

³⁵The phrase “environmental authorisation” appears twice in the Draft NBSAP: once in the rationale to section 5.1, and once in an action under section 5.1 directed at enforcement against developments commenced without the required authorisation. The phrase “strategic environmental assessment” does not appear at all.

³⁶GBF, Target 7, which requires the reduction of pollution risks and the negative impact of pollution from all sources by 2030 to levels not harmful to biodiversity and ecosystem functions and services, “considering cumulative effects”, and which includes quantified sub-targets for the reduction of excess nutrients and of the overall risk from pesticides and highly hazardous chemicals.

³⁷ section 5.7 of the Draft NBSAP.

³⁸GBF, Target 14, which requires the full integration of biodiversity and its multiple values into policies, regulations, planning and development processes, poverty eradication strategies, strategic environmental assessments, environmental impact assessments and, as appropriate, national accounting, within and across all levels of government and across all sectors.

together, a sequence of such applications transforms a landscape and forecloses the conservation options that the same landscape represents.

Cumulative erosion of the biodiversity estate under the protected area expansion strategies critical to meeting GBF Target 3

42. In a single Namaqualand matter in which the BLC recently appealed a granted environmental authorisation, approximately fifteen further prospecting applications were on record on land parcels directly adjacent to the application area, within an ecological corridor identified as a Primary Focus Area in both the National and the Northern Cape Protected Area Expansion Strategies, and within Critical Biodiversity Areas.³⁹ No cumulative impact assessment was undertaken. Land identified by the State's own protected area expansion planning as priority land for the 30x30 estate is, in this way, being progressively encumbered by extractive rights, one authorisation at a time, while the Draft NBSAP counts only the hectares added to the estate and not those lost from the candidate pool.
43. This expressly undermines NEMA. Section 2(4)(i) of NEMA requires that the cumulative impacts of an activity be considered, assessed and evaluated, and section 2(4)(a)(vii) requires a risk-averse and cautious approach.⁴⁰ In *Fuel Retailers*, the Constitutional Court held that the cumulative impact of a proposed development, together with existing developments, must be assessed, and that this obligation is an expression of the precautionary principle.⁴¹ In *South Durban Community Environmental Alliance*, the Supreme Court of Appeal held that a competent authority must consider impacts that may become significant when combined with other existing potential activities, and that the EIA Regulations require an evaluation of how a project's impacts, added to those of similar existing and reasonably foreseeable developments, can lead to significant environmental changes that would not be apparent from consideration of the project in isolation.⁴² In *Green Connection*, the Western Cape High Court held it impermissible to rely on the benefits of a later production stage while deferring its adverse consequences to a future assessment process.⁴³

³⁹ Internal appeal on BLC

⁴⁰ National Environmental Management Act 107 of 1998 ("**NEMA**"), sections 2(4)(i) and 2(4)(a)(vii).

⁴¹ *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 (6) SA 4 (CC); [2007] ZACC 13 (7 June 2007), paras 72 and 81.

⁴² *South Durban Community Environmental Alliance and Another v Minister of Forestry, Fisheries and the Environment and Others* (479/2023) [2025] ZASCA 134 (17 September 2025), paras 55–57.

⁴³ *Green Connection NPC and Another v Minister of Forestry, Fisheries and the Environment and Others* [2025] ZAWCHC 349 (13 August 2025).

44. The Draft NBSAP is the natural instrument in which to translate these obligations into a measurable national commitment. Left as it is, project-by-project extractive decision-making will continue to erode the biodiversity estate in a way that undermines the achievement of GBF Targets 1, 2, 3, 4, 7, 8, 11, 14 and 15 simultaneously, while the Draft NBSAP's own indicators record no loss at all.
45. In this manner, the Draft NBSAP presents an immense opportunity for embedding landscape scale strategic biodiversity planning into land-use change decision-making. The tools are available in our legislation. SEA's are a well-recognised and utilised strategic planning tool. Environmental Management Frameworks ("EMFs") are a spatial planning and decision-support instrument under NEMA⁴⁴ that identify and map the environmental attributes, sensitivities, development pressures and opportunities of a defined area, and translates this information into a framework to guide decisions about land and resource use. EMFs are a relevant consideration which a competent authority must take into account when deciding an environmental authorisation for prospecting and mining.⁴⁵ They are also supported by the National Development Plan as a measure to protect the country's natural resources,⁴⁶ and are consistent with South Africa's obligations under Target 1 of the GBF – plan and manage all areas to reduce biodiversity loss, and Target 8 – minimise the impacts of climate change on biodiversity and build resilience.
46. The NBSAP should place much greater emphasis on the development of EMFs to inform development and conservation decision-making: development of ecosystem-based EMFs should be a target with measurable indicators under the National Target:

"By 2035, biodiversity and its multiple values are fully and equitably integrated into the policies, planning, and development processes across all sectors and spheres of government and society, including spatial planning, private sector and sustainable practices, resulting in decisions that avoid biodiversity loss."⁴⁷

Restoration: mining-affected land is not counted

47. The same omission is visible in the restoration thematic area. Among the intervention targets listed in the Draft NBSAP for restoration, the only interventions identified are those dealing with bush encroachment, invasive alien species clearing and wetland

⁴⁴ Section 24(2) and (3).

⁴⁵ Section 24O of NEMA.

⁴⁶ NDP 2030, page 48.

⁴⁷ Draft NBSAP 55.

rehabilitation.⁴⁸ This is not reflective of the rehabilitation effort required across South Africa's natural landscapes. Land degraded by prospecting and mining is not identified as a category, is not quantified, and does not feature in the 22% national restoration target.

48. This is a consequence of the decision to align the restoration indicators to the hectare figures submitted to the UNCCD. Those figures were compiled for a different purpose. Adopting them wholesale means that the national restoration target excludes a category of degradation that the 2025 NBA identifies as intense, persistent and expanding. The BLC submits that mining-affected land should be quantified and included as a disaggregated category within the restoration target.

Financial provisioning and the DMPR's environmental mandate

49. Related to the threat posed by mining and prospecting is the need to ensure enforcement of existing legislation and regulations, and in particular the financial provisioning regime. Regulation 4 of the NEMA Financial Provisioning Regulations is clear that financial provision must guarantee the availability of sufficient funds to undertake the rehabilitation and remediation of the adverse environmental impacts of prospecting and mining.⁴⁹ Regulation 6 requires an applicant to determine the financial provision through a detailed itemisation of all activities and costs, calculated on the basis of *actual implementation costs*.
50. The Draft NBSAP must show firm and clear commitments towards ensuring that the provisions of the Financial Provisioning Regulations are substantively honoured by all rights holders conducting mining and related activities, so that restoration efforts and obligations are not abandoned. Restoration targets that do not account for the sector generating the degradation, and that are not underpinned by enforced financial provisioning, will not be met.
51. Section 2(h) of the Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRDA") provides that one of the objects of that Act is to give effect to section 24 of the Constitution by ensuring that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development.⁵⁰ Under the current one environmental system, this

⁴⁸Draft NBSAP 58–59, Table 4 (Hectare and percentage targets for restoration and invasive species clearing, drawn from the Land Degradation Neutrality targets submitted to the UNCCD).

⁴⁹ Regulations pertaining to the Financial Provision for Prospecting, Exploration, Mining or Production Operations, published under GN R.1147 in Government Gazette 39425 of 20 November 2015, as amended ("Financial Provisioning Regulations"), regulations 4 and 6. BLC to confirm the currently operative financial provisioning regulations before filing.

⁵⁰Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRDA"), section 2(h).

provision recognises the role that the DMPR must play in holding extractive rights holders accountable.⁵¹ Accordingly, the DMPR must recognise and fulfil its environmental mandate in this regard, or relinquish it to the DFFE if it does not possess the resources to enforce substantive past, present and future environmental restoration efforts stemming from the extractive industry.

Arid lands

52. The Draft NBSAP contains no thematic, spatial or sectoral treatment of South Africa's arid and semi-arid lands. The Succulent Karoo, the Nama Karoo and the Desert biome appear only as hectare line items in its Land Degradation Neutrality restoration table. Namaqualand is named once. This is despite the Draft NBSAP's own recognition that prolonged droughts in the arid western regions are contributing to species declines,⁵² and despite the 2025 NBA's identification of the West Coast and Namaqualand as a locus of mining-driven land degradation.
53. Arid lands warrant distinct treatment for four reasons that the Draft NBSAP does not engage with:
 - 53.1. **Groundwater dependence.** In arid and semi-arid systems, groundwater is frequently the primary determinant of ecological integrity, sustaining springs, ephemeral pans, non-perennial river baseflows and the specialised biota dependent on them. The word "groundwater" does not appear anywhere in the Draft NBSAP.⁵³ This is addressed more fully in section H below.
 - 53.2. **Carbon storage.** Dryland soils hold approximately 32% of the global soil organic carbon pool, which reservoir is released on degradation and is not readily recoverable.⁵⁴ Disturbance of arid soils is therefore a climate issue as well as a biodiversity issue, and one that the Draft NBSAP's climate thematic area does not address.
 - 53.3. **Connectivity and climate refugia.** Arid landscapes with intact elevational and climatic gradients allow species to shift range in response to changing temperature and rainfall. Enhanced landscape connectivity is among the most

⁵¹The "one environmental system" established under NEMA, in terms of which the Minister responsible for mineral resources exercises the powers of the competent authority in respect of environmental authorisations for prospecting and mining activities.

⁵²Draft NBSAP, section 2.1, Table 1, driver N7 (Climate Change), recording that prolonged droughts in the arid western regions are contributing to species declines.

⁵³The word "groundwater" does not appear anywhere in the Draft NBSAP.

⁵⁴Xiaobing Zhou et al, "Environmental drivers of soil carbon and nitrogen accumulation in global drylands" *Geoderma* (2024), available at <https://www.sciencedirect.com/science/article/pii/S0016706124003045>.

frequently identified climate adaptation strategies for biodiversity, and fragmented or isolated reserves cannot substitute for it.⁵⁵ Connectivity is referred to in the Draft NBSAP but is not the subject of any target indicator.

- 53.4. **Irreversibility.** Restoration in arid systems is slow, uncertain and expensive. The Draft NBSAP assigns 1 499 km² of its restoration target to the Succulent Karoo, 5 286 km² to the Nama Karoo and 765 km² to the Desert biome, without any accompanying commitment to avoid further degradation of those biomes in the first instance. Avoidance is the first step of the mitigation hierarchy, and it is materially cheaper than restoration. The Draft NBSAP cannot merely provide for arid lands' restoration.

Consent, not merely consultation: free, prior and informed consent

54. Prospecting and mining decisions in Namaqualand, the Karoo and the Northern Cape more broadly affect Nama, Khoi and San communities, communal property associations and other rights holders, whose rights are recognised in the Traditional and Khoi-San Leadership Act 3 of 2019.⁵⁶ In June 2026 the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises published guidance on the right of Indigenous Peoples to free, prior and informed consent in the context of business activities ("**FPIC Guidance**").⁵⁷
55. Two elements of the FPIC Guidance bear directly on this thematic area. First, it identifies a lack of policy coherence as a major obstacle to the effective implementation of free, prior and informed consent, and states that policy coherence requires legal and regulatory frameworks to be aligned so that respect for those rights is integrated from the earliest stages of decision-making and applied consistently throughout the project lifecycle.⁵⁸ That is an argument for consent processes at the strategic and planning

⁵⁵Littlefield, C.E., Krosby, M., Michalak, J.L. & Lawler, J.J. (2019) "Connectivity for species on the move: supporting climate-driven range shifts" *Frontiers in Ecology and the Environment* 17(5) 270–278; Parks, S.A., Holsinger, L.M., Abatzoglou, J.T., Littlefield, C.E. & Zeller, K.A. (2023) "Protected areas not likely to serve as steppingstones for species undergoing climate-induced range shifts" *Global Change Biology*, DOI: 10.1111/gcb.16629.

⁵⁶Traditional and Khoi-San Leadership Act 3 of 2019.

⁵⁷Working Group on the issue of human rights and transnational corporations and other business enterprises, "Guidance on the right of Indigenous Peoples to free, prior and informed consent in the context of business activities" UN Doc A/HRC/62/36/Add.2 (16 June 2026), delivered to the Human Rights Council at its 62nd session ("the FPIC Guidance"). Available at <https://www.ohchr.org/en/documents/thematic-reports/ahrc6236add2-guidance-right-indigenous-peoples-free-prior-and-informed>.

⁵⁸FPIC Guidance, in which the Working Group identifies a lack of policy coherence as a major obstacle to the effective implementation of free, prior and informed consent, and states that policy coherence requires the alignment of legal and regulatory frameworks so that respect for Indigenous Peoples' rights, including free, prior and informed consent, is integrated from the earliest stages of decision-making and consistently applied throughout any project lifecycle.

stage, and not only at the point of a project-specific public participation process. Second, the Guidance records that consent may be given or withheld, including with conditions, and may be withdrawn; that where consent is not granted businesses should refrain from proceeding; and that where project parameters change or new impacts arise, further consent processes may be required.

South African law already requires consent where informal land rights are affected

56. Free, prior and informed consent is not, in the South African context, a purely international standard awaiting domestication. Section 2(1) of the Interim Protection of Informal Land Rights Act 31 of 1996 provides that no person may be deprived of any informal right to land without his or her consent, save by expropriation. An “informal right to land” is defined to include the use of, occupation of or access to land in terms of any tribal, customary or indigenous law or practice, and beneficial occupation for a continuous period of not less than five years.⁵⁹ Much of the communal land in Namaqualand, the Karoo and elsewhere in the Northern Cape is held on precisely that basis.
57. In *Maledu*, the Constitutional Court held that IPILRA and the MPRDA must be read together, and that the grant of a mining right does not entitle the right holder to deprive holders of informal land rights of those rights.⁶⁰ In *Baleni*, it was held that, where an application for a mining right affects land held under customary or informal tenure, the Minister may not grant that right without the consent of the holders of the informal rights, and that the consultation standard applicable under the MPRDA does not displace the higher consent standard imposed by section 2(1) of IPILRA.⁶¹ Read together, these authorities establish that in a substantial part of the landscape in which prospecting and

⁵⁹Interim Protection of Informal Land Rights Act 31 of 1996 (“IPILRA”), section 2(1), which provides that no person may be deprived of any informal right to land without his or her consent, save by expropriation. “Informal right to land” is defined in section 1 to include the use of, occupation of, or access to land in terms of any tribal, customary or indigenous law or practice of a tribe, and beneficial occupation of land for a continuous period of not less than five years prior to 31 December 1997. IPILRA has been extended by annual notice since its enactment.

⁶⁰*Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another* [2018] ZACC 41; 2019 (2) SA 1 (CC); 2019 (1) BCLR 53 (CC), in which the Constitutional Court held that IPILRA and the MPRDA must be read together, that the holder of a mining right is not thereby entitled to deprive holders of informal land rights of those rights, and that the consent requirement in section 2(1) of IPILRA applies notwithstanding the grant of a mining right paras 94-110.

⁶¹*Baleni and Others v Minister of Mineral Resources and Others* [2018] ZAGPPHC 829; 2019 (2) SA 453 (GP), in which the High Court held that, where an application for a mining right affects land held under customary or informal tenure, the Minister may not grant that right without the consent of the holders of the informal rights, and that the consultation standard in the MPRDA does not displace the higher consent standard imposed by section 2(1) of IPILRA. BLC to confirm the paragraph references before filing.

mining is authorised, the applicable domestic standard is already consent and not merely consultation.

58. The Draft NBSAP does not reflect this. It refers neither to IPILRA nor to the consent standard, and it confines free, prior and informed consent to a single activity directed at the ethical access, verification and use of indigenous and traditional knowledge under the Indigenous Knowledge Act 6 of 2019.⁶² Consent in relation to land, territories and resources, which is where the right principally operates in the extractive context and where South African law already requires it, is not provided for at all. That is a gap between the Draft NBSAP and the existing domestic legal position, not merely between the Draft NBSAP and an international standard.

Sustaining the Wild Coast

59. After the Draft NBSAP was gazetted for comment, the Constitutional Court handed down judgment in *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others*.⁶³ The Court set aside the SCA's order which had permitted a defective consultation process at the grant of an offshore exploration right to be cured through a further renewal application, and reinstated the order of the High Court setting aside the exploration right and its renewals. Several aspects of the judgment bear directly on this thematic area and should be reflected in the final NBSAP.

- 59.1. **Consultation is a matter of substance, not process.** The Court held that consultation is not merely about the opportunity to express a view or influence an outcome, but is a process which affirms human dignity by affording a seat at the table to those whose lives are impacted by decisions, and which affirms the agency of affected communities and their status as participants rather than obstacles.⁶⁴ It held that to tell communities more than a decade after the fact

⁶²Draft NBSAP, section 5.12, action: "Develop and implement Free, Prior and Informed Consent protocols to ensure the ethical access, verification, and use of indigenous and traditional knowledge, in line with the Protection, Promotion, Development and Management of Indigenous Knowledge Act (Act 6 of 2019)." Lead: DFFE, DSTI; Support: NGOs.

⁶³*Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others; Natural Justice and Another v Minister of Mineral Resources and Energy and Others* (CCT 194/24; CCT 196/24) [2026] ZACC 33 (14 August 2026) ("*Sustaining the Wild Coast*"), majority judgment of Kollapen J (Maya CJ, Mathopo J, Mhlantla J, Musi AJ, Theron J and Tshiqi J concurring); Rogers J (Savage J concurring) dissenting.

⁶⁴*Sustaining the Wild Coast* (above) para 131, in which the Court held that consultation is not merely about the opportunity to express a view or influence an outcome, but is on a more fundamental level a process which affirms human dignity by affording a seat at the table to those whose lives are impacted by decisions, and which affirms the agency of affected communities and their status as participants rather than obstacles in decisions that profoundly affect their land, culture and livelihoods.

that they may now be consulted is not curative, because it says to them that the violation of their rights was a matter of process rather than substance.⁶⁵

59.2. **Extractive decisions are not a neutral balancing exercise.** The Court held that in the context of extractive industries the enquiry cannot be reduced to a formal balancing exercise which treats cultural, religious, spiritual and environmental concerns as merely competing interests against economic development, and that it is ahistorical to place these interests on an equal footing given the long history of dispossession and marginalisation of affected communities. It held that job creation cannot be assumed to be inherently beneficial without asking who receives those jobs, how secure they are, and what social, ecological and cultural costs the affected communities are expected to bear, and that speculative or corporation-centred economic benefits should not be allowed to outweigh procedural justice.⁶⁶

59.3. **Ecological protection and dignity are inseparable.** The Court recorded that environmental governance in coastal areas is often marked by deep contestation, in which the protection of ecological systems is inseparable from the protection of the rights to dignity, culture and livelihood.⁶⁷ The Draft NBSAP's treatment of indigenous peoples and local communities is confined to target 12 and to benefit sharing under target 9. This judgment indicates that community rights are engaged across the ecosystem conservation, sustainable use and mainstreaming thematic areas as well.

⁶⁵Sustaining the Wild Coast (above) para 133, in which the Court held that to tell communities, more than a decade after the fact, that they may now be consulted is not curative, and that requiring a consultation to be conducted now does not vindicate the right to be consulted at the outset and does not vindicate the infringement of the applicant communities' right to dignity.

⁶⁶Sustaining the Wild Coast (above) para 132, in which the Court held that in the context of extractive industries the enquiry cannot be reduced to a formal balancing exercise treating cultural, religious, spiritual and environmental concerns as merely competing interests against economic development; that it is ahistorical to place these interests on an equal footing given the long history of dispossession and marginalisation of coastal communities; that job creation cannot be assumed to be inherently beneficial without asking who receives those jobs, how secure they are and what social, ecological and cultural costs the affected communities are expected to bear; and that a just and equitable remedy should not allow speculative or corporation-centred economic benefits to outweigh procedural justice where communities' livelihoods, cultural identity and environmental interests are directly at stake.

⁶⁷Sustaining the Wild Coast (above) para 4, in which the Court recorded that environmental governance in coastal areas is often marked by deep contestation, in which the protection of ecological systems is inseparable from the protection of the rights to dignity, culture and livelihood. See also para 3, referring to the well documented struggles of coastal communities to protect their land, marine resources and ways of life in the face of extractive activities, and para 4, referring to the resistance of the Xolobeni communities to proposed mining activities.

59.4. **Defective participation cannot be deferred and cured later.** The Court held that permitting a flawed consultation at the grant stage to be cured at a later stage would risk encouraging future applicants to bypass proper consultation by deferring it. That reasoning applies with equal force to the practice of deferring the assessment of mining impacts from the prospecting stage to a later and separate authorisation process which may or may not ever be triggered.

59.5. **Consultation defects are not the only defects.** The Court held that the defects in the impugned decisions extended beyond procedural shortcomings, and specifically included the decision-maker's failure to take climate change considerations into account, the failure to apply the precautionary principle, and the failure to comply with applicable legal prescripts. These are independent legality defects arising from direct statutory and constitutional obligations. They are addressed further in section H below.

59.6. **Financial investment does not outweigh constitutional violation.** The Court held that financial interests should not be unduly elevated so as to overrule other factors, and endorsed the finding that financial loss cannot be weighed against the infringement of the constitutional rights in question.⁶⁸ That has a direct bearing on the conditionality attached to the 30x30 commitment addressed in section J below.

60. As the Draft NBSAP is being finalised after this judgment, it should reflect it. The BLC submits that the free, prior and informed consent action in target 12 should be widened, and that a corresponding activity should be inserted in the extractive-sector target proposed below.

61. The Draft NBSAP confines free, prior and informed consent to a single activity, directed at the ethical access, verification and use of indigenous and traditional knowledge under the Indigenous Knowledge Act.⁶⁹ Consent in relation to land, territories and resources, which

⁶⁸Sustaining the Wild Coast (above) paras 143 and 150, in which the Court held that financial interests should not be unduly elevated so as to overrule other factors, endorsed the finding that the financial loss likely to be suffered cannot be weighed against the infringement of the constitutional rights in question, and concluded that financial prejudice cannot outweigh the gravity of the unlawfulness.

⁶⁹Draft NBSAP, section 5.12, action: "Develop and implement Free, Prior and Informed Consent protocols to ensure the ethical access, verification, and use of indigenous and traditional knowledge, in line with the Protection, Promotion, Development and Management of Indigenous Knowledge Act (Act 6 of 2019)." Lead: DFFE, DSTI; Support: NGOs.

is where the right principally operates in the extractive context, is not provided for. The BLC submits that this framing is too narrow, and should be widened as set out below.

Proposed supplementary target, indicators and actions

62. The BLC proposes that the Draft NBSAP be supplemented by a national target addressing extractive-sector and cumulative impacts, with a specific arid lands component. The BLC records that the Draft NBSAP's own blueprint discourages the creation of new structures and encourages the leveraging of existing tools.⁷⁰ The proposals below are framed accordingly: every instrument proposed already exists in South African law and has already been used.
63. The proposed target may be inserted either as a thirteenth thematic area or as an additional national target within target 1 (Mainstreaming biodiversity), whichever the Department considers structurally preferable. The BLC's substantive submission is that it must appear somewhere.

Proposed national target

By 2035, land-, water- and sea-use decisions in the extractive sector are informed by strategic, spatially explicit and cumulative assessment, so that there is no net loss of natural habitat in arid and semi-arid biomes, Critical Biodiversity Areas, Ecological Support Areas and protected area expansion focus areas, and land degraded by prospecting and mining is rehabilitated at the cost of the rights holder responsible for it.

Proposed target indicators

Proposed target indicator	GBF target	Data source
By 2028, a Strategic Environmental Assessment for prospecting and mining in the arid biomes (Succulent Karoo, Nama Karoo and Desert) is completed and the resulting spatial tool or environmental management instrument is adopted and gazetted.	1, 14	Gazette; DFFE
By 2030, 100% of granted prospecting and mining environmental authorisations in Critical Biodiversity Areas, Ecological Support Areas and NPAES Focus Areas are supported by a cumulative impact assessment that considers reasonably foreseeable applications within the same catchment or ecological corridor.	7, 14	DFFE/DMPR authorisation register (to be established)

⁷⁰Draft NBSAP, section 5, Table 6 ("Blueprint developed to guide consistency and content decisions in developing the thematic areas"), which requires activities to "Leverage existing tools" and to "Prioritise the implementation of existing initiatives, strategies and platforms rather than calling for new structures".

Proposed target indicator	GBF target	Data source
By 2035, no net loss of the extent of natural habitat within NPAES Primary Focus Areas.	1, 3	NBA; PACA
By 2035, no deterioration in the Red List of Ecosystems status of any arid-biome ecosystem type.	1	NBA (headline A.1)
By 2028, a publicly accessible, spatially referenced national register of prospecting and mining right applications and granted environmental authorisations is operational and mapped against Critical Biodiversity Area, Ecological Support Area, protected area and NPAES layers.	14, 21, 22	DMPR; DFFE
By 2035, decrease in the area of arid-biome land subject to a prospecting or mining right within Critical Biodiversity Areas 1 and 2.	1, 3	DMPR cadastre, once publicly available ⁷¹ ; SANBI
By 2028, the extent of land degraded by prospecting and mining is quantified and included as a disaggregated category within the national restoration targets.	2	DMPR; DFFE; SANBI
By 2030, 100% of operating prospecting and mining rights have financial provision assessed as adequate against actual implementation costs, in accordance with the Financial Provisioning Regulations.	2, 14	DMPR; DFFE compliance reporting
By 2030, a national dryland soil organic carbon baseline is established for the arid biomes.	8, 11	To be established (SANBI, ARC)
By 2030, groundwater-dependent ecosystems in the arid biomes are mapped and ecological drawdown thresholds are established.	8, 11	DWS; SANBI

Proposed actions

Proposed action	Responsibility
Undertake a Strategic Environmental Assessment for prospecting and mining in the arid biomes, and adopt and gazette the resulting spatial tool or environmental management instrument under section 24(5) of NEMA, identifying areas in which extractive activity is excluded, areas in which it is subject to prescribed conditions, and areas in which streamlined assessment applies.	Lead: DFFE Support: DMPR, SANBI, DWS, provincial conservation authorities
Develop and gazette a protocol under section 24(5)(a) and (h) of NEMA prescribing the method for the assessment of cumulative impacts in environmental impact assessment, including the geographic and temporal scope of the assessment and the treatment of reasonably foreseeable applications.	Lead: DFFE

⁷¹ <https://www.dailymaverick.co.za/article/2026-05-27-sa-mining-sector-gatvol-with-dmpr-over-endless-cadastre-delay/>

Proposed action	Responsibility
Amend the Environmental Screening Tool so that it flags NPAES Focus Areas, declared protected area buffer zones, and the density of prospecting and mining applications within a defined radius of the site.	Lead: DFFE Support: SANBI, DMPR
Establish and maintain a publicly accessible, spatially referenced register of prospecting and mining right applications and granted environmental authorisations.	Lead: DMPR Support: DFFE
Quantify the extent of land degraded by prospecting and mining, and include it as a disaggregated category within the national restoration targets and the National Restoration Project Inventory.	Lead: DFFE, SANBI Support: DMPR
Audit and enforce compliance with regulations 4 and 6 of the Financial Provisioning Regulations across all operating prospecting and mining rights, and publish the outcome, so that rehabilitation obligations are funded on the basis of actual implementation costs.	Lead: DMPR Support: DFFE, National Treasury
Resolve the allocation of the environmental mandate for the extractive sector under the one environmental system, either by resourcing the DMPR to discharge it or by relinquishing it to DFFE, and assign the DMPR as a lead organisation for at least one activity in each of the mainstreaming, restoration, ecosystem conservation, and pollution and waste thematic areas.	Lead: DFFE, DMPR
Develop and implement an arid lands biodiversity and climate resilience programme addressing groundwater-dependent ecosystems, dryland soil organic carbon, ephemeral wetland systems and connectivity for climate-driven range shifts.	Lead: DFFE, SANBI Support: DWS, DoA, CMAs, provincial conservation authorities
Prescribe, through the section 24(5) protocols, that environmental authorisation applications in arid biomes include an assessment of dryland soil carbon loss and of loss of climate connectivity.	Lead: DFFE Support: SANBI
Recognise the arid biomes expressly in the revised National Protected Area Expansion Strategy, including the identification of climate corridors across elevational and climatic gradients.	Lead: DFFE Support: SANBI, SANParks, provincial conservation authorities
Develop and implement free, prior and informed consent protocols that extend beyond indigenous and traditional knowledge to decisions affecting the land, territories and resources of indigenous peoples and local communities, applying from the strategic and planning stage of any project lifecycle.	Lead: DFFE, DMPR Support: DSTI, CoGTA, NGOs, affected communities

64. The BLC records that none of the above requires new primary legislation. SEA under section 24(5) of NEMA has been used repeatedly, including for shale gas development in the Central Karoo, for renewable energy development zones, for electricity transmission

and distribution corridors, and for gas pipeline corridors.⁷² The enabling provisions and the adoption procedure already exist.⁷³ The Environmental Screening Tool is already the subject of an action in target 1 of the Draft NBSAP, and the amendments proposed above are incremental to it.⁷⁴ The Central Karoo shale gas assessment is, moreover, direct authority for the proposition that a strategic assessment of extractive activity in an arid biome is both feasible and valuable.⁷⁵

E. NEED TO SPECIFICALLY PROVIDE FOR THE RESTORATION AND PROTECTION OF ESTUARIES AND EFZS

65. Presently, neither the Draft NBSAP's strategy nor its action plan fully address the biodiversity importance of, and threats to, estuaries – despite both being set out in the NBSAP's biodiversity context section. As a result, even if the Draft NBSAP is fully implemented, it omits adequate provision for estuaries. Because estuaries are ecosystems that are vital enablers of biodiversity and ecosystem services, under the Draft NBSAP South Africa will fall short of its potential national contribution to multiple GBF targets and goals.

66. In order to align with the GBF 2030 targets and 2050 goals, the Draft NBSAP must be amended as follows to specifically provide for the protection and restoration of South Africa's estuaries in the Draft NBSAP's national targets, target indicators and actions.

⁷²Precedents include the Strategic Environmental Assessment for Shale Gas Development in the Central Karoo (CSIR, 2016); the Renewable Energy Development Zones; the geographical areas of strategic importance identified for electricity transmission and distribution infrastructure; and the Strategic Gas Pipeline Corridors, each adopted under section 24(5) of NEMA. BLC to confirm the current gazette references for each before filing.

⁷³NEMA, section 24(5)(a), (bA) and (h), read with the procedure to be followed for the adoption of spatial tools and environmental management instruments published under Government Notice 542 in Government Gazette 42380 of 5 April 2019, as subsequently amended. BLC to confirm the current form of the enabling provision and the notice before filing.

⁷⁴Draft NBSAP, section 5.1, action: "Ensure that the Environmental Screening Tool includes the most up-to-date and appropriate biodiversity datasets, protocols and guidelines, including developing a marine theme for the Environmental Screening Tool." Lead: DFFE; Support: SANBI.

⁷⁵Holness, S., Driver, A., Todd, S., Snaddon, K., Hamer, M., Raimondo, D., Daniels, F., Alexander, G., Bazelet, C., Bills, R., Bragg, C., Branch, B., Bruyns, P., Chakona, A., Child, M., Clarke, R.V., Coetzer, A., Coetzer, W., Colville, J., Conradie, W., Dean, R., Eardley, C., Ebrahim, I., Edge, D., Gaynor, D., Gear, S., Herbert, D., Kgatla, M., Lamula, K., Leballo, G., Lyle, R., Malatji, N., Mansell, M., Mecenero, S., Midgley, J., Mlambo, M., Mtshali, H., Simaika, J., Skowno, A., Staude, H., Tolley, K., Underhill, L., van der Colff, D., van Noort, S. and von Staden, L. 2016. Biodiversity and Ecological Impacts: Landscape Processes, Ecosystems and Species, in Scholes, R., Lochner, P., Schreiner, G., Snyman-Van der Walt, L. and de Jager, M. (eds), Shale Gas Development in the Central Karoo: A Scientific Assessment of the Opportunities and Risks, available at <http://seasgd.csir.co.za/scientific-assessment-chapters>. The assessment records that ephemeral aquatic ecosystems have a high intrinsic variability in aquatic community responses to inundation patterns, and that limited knowledge of the species inhabiting the aquatic ecosystems of the more arid parts of the Central Karoo, their ranges, population sizes and habitat requirements, is a constraint on the determination of the best aquatic indicator species. These knowledge gaps are directly relevant to the precautionary approach required under NEMA.

The Draft NBSAP section on South Africa's national biodiversity context fully contextualises estuaries

67. In its section on South Africa's national biodiversity context,⁷⁶ the Draft NBSAP recognises estuaries' high biodiversity importance.

68. The Draft NBSAP provides that despite their limited spatial footprint,⁷⁷ South Africa's approximately 290 functional estuaries –

68.1. provide critical habitat for highly diverse, endemic, and threatened species of fish, birds, invertebrates, and plants;⁷⁸

68.2. are vital ecological infrastructure enhancing climate resilience, including through protecting communities from the impacts of extreme weather events,⁷⁹ and through making food and water provision more climate resilient.⁸⁰

69. Accordingly, the Draft NBSAP concludes that estuaries' conservation and restoration are 'essential for maintaining ecological resilience, biodiversity, and the socio-economic benefits to coastal communities and the broader ocean economy'.⁸¹

70. The Draft NBSAP flags that despite the essential roles of estuaries, they nonetheless face a range of threats, including –

70.1. dam infrastructure, extensive water abstraction, and modified river flows disrupting sediment delivery to estuaries;⁸²

70.2. overfishing in estuaries;⁸³

70.3. pollution from sources like acid mine drainage, industrial and urban effluent, agricultural return flows, and stormwater runoff, being a 'major driver' of estuarine degradation;⁸⁴ and

70.4. extreme weather events due to climate change affecting estuarine areas.⁸⁵

71. Cumulatively, these threats subject estuaries, and the biodiversity they sustain, to significant stress.

⁷⁶ Draft NBSAP at section 2, headed 'national context for biodiversity'.

⁷⁷ Draft NBSAP at page 12.

⁷⁸ Draft NBSAP at page 12.

⁷⁹ Draft NBSAP at page 12.

⁸⁰ Draft NBSAP at page 13.

⁸¹ Draft NBSAP at page 12.

⁸² Draft NBSAP at page 18.

⁸³ Draft NBSAP at page 18.

⁸⁴ Draft NBSAP at page 18.

⁸⁵ Draft NBSAP at page 18.

72. Finally, the Draft NBSAP highlights that in addition to being one of the most threatened ecosystems in South Africa, estuaries are also one of our least protected ecosystems.⁸⁶

The Draft NBSAP fails to give effect to the need to protect and restore estuaries

73. Despite the NBSAP's section on South Africa's biodiversity context detailing the simultaneous importance and plight of estuaries, the strategy and action plan it sets out only narrowly addresses estuaries in its national targets, target indicators and actions.

74. Presently, the Draft NBSAP addresses estuaries as follows.

75. The Draft NBSAP's national target 1 (which targets the biodiversity mainstreaming aimed at government decisions that avoid biodiversity loss by 2035) provides that its second target indicator is that estuarine areas are covered by relevant Spatial Development Frameworks or National Estuarine Management Protocol that incorporate systematic biodiversity plans not older than 10 years.⁸⁷ This target indicator 1.2 aligns with GBF target 1, which aims to ensure that all areas are under participatory, integrated, and biodiversity inclusive spatial planning and/or effective management processes, to bring the loss of areas of high biodiversity importance, including ecosystems of high ecological integrity, close to zero by 2030.

76. The Draft NBSAP's national target 2 (which targets the restoration or rehabilitation of certain degraded ecosystems and ecological infrastructure by 2035) provides that its fifth target indicator is the restoration or rehabilitation of 1 200 hectares of degraded estuaries by 2035.⁸⁸ This target indicator 2.5 aligns with GBF target 2, which aims at the effective restoration of degraded ecosystem areas in order to enhance biodiversity and ecosystem functions and services, ecological integrity and connectivity.

77. The Draft NBSAP's national target 6 (which targets a transformed, inclusive and viable biodiversity economy that ensures sustainable management, harvest and use of wild species, and safe and legal trade, while protecting and encouraging customary sustainable use by local communities by 2035) does not include estuaries in any of its target indicators. However, its fourth action is the adoption of an ecosystem-based approach to fisheries management across marine, estuarine and freshwater systems, including the development of a National By-catch Reduction Strategy, the transition of recreational fishing toward a catch-and-release policy, and redirecting efforts towards establishing legal

⁸⁶ Draft NBSAP at page 14.

⁸⁷ Draft NBSAP at page 59.

⁸⁸ Draft NBSAP at page 65.

mechanisms to enable Indigenous Peoples and Local Communities to enter the existing small-scale fisheries sector.⁸⁹

78. The Draft NBSAP's national target 7 (which targets the reduction of pollution from all sources to levels not harmful to biodiversity and ecosystem services by 2035) provides that one of its target indicators is the improvement of the ecological condition of estuaries.⁹⁰ This target indicator aligns with GBF target 7.

79. The Draft NBSAP's national target 8 (which targets the implementation of ecosystem-based adaptation or nature-based solutions to restore and maintain ecological infrastructure to enhance the resilience of ecosystems, species and communities to climate change and ocean acidification, reducing climate related disaster risks and generating other societal benefits) does not include estuaries in any of its target indicators. However, its ninth action is the protection, restoration and maintenance of ecosystems vulnerable to climate change using climate-smart approaches, including through climate aligned Estuarine Management Plans ("**EMPs**") to enhance coastal resilience.⁹¹

80. Based on the NBSAP's section on SA's biodiversity context alone, it appears that while important strides have been made in the setting of the above national targets, target indicators and actions in the Draft NBSAP, they fall short of addressing multiple biodiversity concerns specific to estuaries. If not augmented, the NBSAP runs the risk of falling short in relation to the roadmap for the restoration and protection of estuaries, as well as giving full effect to estuaries' importance in South Africa's contribution to the GBF's 2030 targets and 2050 goal. Significantly, this is also contrary to section 2(4)(r) of NEMA, which provides that sensitive, vulnerable, highly dynamic or stressed ecosystems, such as estuaries require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.

81. To remedy this, we propose the following amendments to the Draft NBSAP.

Proposed amendments to the Draft NBSAP to better provide for estuaries

Draft NBSAP Target 1: Target indicator 1.2

82. We welcome the specific reference to estuarine areas in the Draft NBSAP's biodiversity mainstreaming target. However, to best serve this Draft NBSAP target (as well as its corresponding GBF target 1) we propose the following amendments to target indicator 1.2.

⁸⁹ Draft NBSAP at page 80.

⁹⁰ Draft NBSAP at page 82.

⁹¹ Draft NBSAP at page 87.

83. First, this target (as well as the rest of the Draft NBSAP) must refer to estuaries' Estuarine Functional Zone ("EFZ") rather than just the estuary or "estuarine areas". The EFZ is made up of the estuary as a water body, as well as "the supporting physical and biological processes necessary for estuarine function and health...including all dynamic areas influenced by long-term estuarine sedimentary processes...and the multiple ecotones of floodplain and estuarine vegetation that contribute detritus to the estuary and/or provide refuge during high flow events."⁹² The National Estuarine Management Protocol⁹³ ("NEMP") promulgated under the National Environmental Management: Integrated Coastal Management Act 24 of 2008 ("ICMA") provides that the boundaries of an estuary's system are determined by its EFZ.⁹⁴ Accordingly, the meaningful provision for the restoration and protection of estuaries by the Draft NBSAP requires reference to estuaries EFZs, and any reference to the restoration and protection of estuaries is undermined by not providing for the full EFZ.
84. Second, it appears that target indicator 1.2 has already been reached. The NEMP already provides for 100% of estuaries (which estuaries the NEMP defines with reference to their EFZs).⁹⁵ Further, the NEMP provides for estuaries to have an Estuarine Management Plan ("EMP") that considers the most recent National Biodiversity Assessment,⁹⁶ which EMPs must be reviewed every five years.⁹⁷ Contrary to the guidance in Annex I to CBD Decision 15/6, the current target indicator 1.2 therefore fails to "support and promote increased efforts and actions, and improve implementation over time".⁹⁸
85. It is therefore proposed that target indicator 1.2 should be revised to remove reference to estuaries and a new target indicator must be inserted to provide for the ramping up of the development of EMPs for estuaries. EMPs are an important tool to manage estuaries, and serve as informers of management decisions within estuaries' EFZs – for example, coastal planning schemes are required to align with EMPs,⁹⁹ and environmental authorisations for listed activities in the coastal zone must consider EMPs.¹⁰⁰ Yet in 2025, SANBI recorded that only "over 20% of estuaries had EMPs in various stages of completion."¹⁰¹ The proposed new target indicator should target the development of EMPs for a representative

⁹² SANBI '2018 Estuarine Functional Zone Map' at <https://metadata.sanbi.org/srv/api/records/c2c2c496-ae56-44ab-ace6-c3e37ad09355>.

⁹³ GN 533 in GG 44724 of 18 June 2021.

⁹⁴ NEMP at item 6.2.

⁹⁵ NEMP at item 6.2.

⁹⁶ NEMP at item 6.4.

⁹⁷ NEMP at item 10.

⁹⁸ Item 5 of Annex I to CBD Decision 15/6.

⁹⁹ ICMA at section 56(2).

¹⁰⁰ ICMA at section 63.

¹⁰¹ SANBI 'Overview: Estuarine realm' at https://nba.sanbi.org.za/content/estuaries/est_overview.html

sample of estuaries, particularly estuaries with a Present Ecological State (“**PES**”) that is heavily to critically modified.

86. Third, as one of the key messages of the 2025 NBA calls for EMPs to detail estuaries’ freshwater allocation, fish resource use, water quality management and appropriate land-use activities,¹⁰² the new target indicator should further require EMPs to cover these matters.

87. Revised new target indicator: ‘By 2035, 100% of estuarine areas with a PES that are heavily to critically modified are covered by Estuarine Management Plans that detail estuaries’ freshwater allocation, fish resource use, water quality management and appropriate land-use activities.’

Proposed target indicator	GBF target	Data source
By 2035, 100% of estuarine areas with a PES that are heavily to critically modified are covered by EMPs that detail estuaries’ freshwater allocation, fish resource use, water quality management and appropriate land-use activities.	1	SANBI

Draft NBSAP Target 1: Proposed supplementary target action

88. In accordance with GBF target 1 and its focus on participatory and integrated biodiversity inclusive effective management processes – and noting that ‘estuarine management straddles multiple sectors’ and the need to prevent mandate conflict between government spheres and departments – ¹⁰³ we propose that Draft NBSAP Target 1 is supplemented by a new action namely:

Proposed action	Responsibility
‘Harmonise mandates and coordination mechanisms between the relevant local, provincial and national government spheres and departments to resolve fragmented and overlapping jurisdictions within, and promote integrated governance of, estuaries and their EFZs’	DFFE, DWS, DMPR, provincial government, local government.

Draft NBSAP Target 2: Proposed amendment to target indicator 2.5

¹⁰² 2025 NBA at page 41.

¹⁰³ SANBI ‘Overview: Estuarine realm’ at https://nba.sanbi.org.za/content/estuaries/est_overview.html

89. We welcome the target indicator 2.5, which specifically seeks to restore or rehabilitate degraded estuaries by 2035, and which sets a clear measurable area of estuaries to be restored or rehabilitated – namely 1 200 hectares.
90. The 2025 NBA notes that the ecosystems ‘that are most useful to people are those whose condition deteriorates the most’ with these ecosystems losing their ability to provide vital services as their condition deteriorates.¹⁰⁴ Estuaries are a clear example of this, as they support numerous ecosystem services, but SANBI recently reported that 70% of estuarine area is heavily to critically modified.¹⁰⁵ SANBI notes that pressures on estuaries cause ‘resultant reductions in ecosystem productivity, food security, fisheries livelihood, property values and recreational enjoyment.’¹⁰⁶ The Draft NBSAP’s targeting of estuary restoration is therefore crucial for the attainment of multiple GBF 2030 targets and 2050 goals.
91. However, to best serve this Draft NBSAP target (as well as its corresponding GBF target 2) we propose the following amendments to target indicator 2.5.
92. First, in order for the 1 200 hectare estuarine restoration or rehabilitation commitment to be meaningfully transparent, the Draft NBSAP must set out how these hectares translate in terms of the percentages of total estuarine areas. The Draft NBSAP should clarify what percentage of South Africa’s total estuarine habitat is degraded, and what percentage of degraded estuarine habitat is made up by the 1 200 hectare commitment. This will enable meaningful engagement with the Draft NBSAP target indicator, and its consistency with GBF Target 2. We note that while the Draft NBSAP translates the total areas of certain biomes – and the degraded portion of these total areas – into percentages,¹⁰⁷ this is not done for estuaries and their EFZs. Thus, at present it is unclear whether this target indicator aligns with the 30% area of restoration required by the GBF target 2. This must be clarified.
93. The translation into percentages of the Draft NBSAP’s references to hectares of degraded estuarine habitat targeted for restoration or rehabilitation also ensures that the Draft NBSAP target indicator 2.5 is itself consistent with GBF target 21, which is aimed at “ensuring that the best available data, information and knowledge, are accessible to decision makers, practitioners and the public to guide effective and equitable governance, integrated and participatory management of biodiversity.”

¹⁰⁴ 2025 NBA at page 47.

¹⁰⁵ SANBI ‘Ecological condition: Estuarine realm’ 4 August 2026 at https://nba.sanbi.org.za/content/estuaries/est_condition.html#approach

¹⁰⁶ SANBI ‘Ecological condition: Estuarine realm’ 4 August 2026 at https://nba.sanbi.org.za/content/estuaries/est_condition.html#approach

¹⁰⁷ Table 4 in Draft NBSAP at pages 62 – 63.

94. Secondly, we understand that the DFFE and provincial authorities are engaging in an ‘Estuary Restoration Programme’ that focuses on degraded and novel systems with an emphasis on the larger systems of high biodiversity importance and the socially important urban systems.¹⁰⁸ Target indicator 2.5 should be amended to require alignment with the degraded estuaries targeted in this Estuary Restoration Programme.

95. Revised target indicator 2.5:

Revised target indicator	GBF target	Data source
By 2035, [insert number of hectares] hectares of degraded estuaries and EFZs – being [insert percentage value] % of the total area of degraded estuaries and EFZs – are restored or rehabilitated, in line with the priorities of the Estuary Restoration Programme.	2	SANBI

Draft NBSAP Target 3: Proposed supplementary target indicator

96. It is perplexing that the Draft NBSAP acknowledges estuaries as grossly under protected ecosystems, while not providing for any target indicator specifically aimed at their protection, particularly noting that protecting estuaries is especially “challenging”.¹⁰⁹ Direct habitat loss in estuarine realms is a “major pressure” on aquatic biodiversity.¹¹⁰ The 2025 NBA provides that this pressure is particularly felt by species that move between marine and freshwater environments during their life cycle, including by fish species who use estuaries as a nursery.¹¹¹

97. Our work to protect estuaries along the West Coast has revealed that estuaries like the Verlorenvlei Estuary and Olifants River Estuary – which serve as fish nurseries, bird habitats, and provide multiple ecosystem services – have been prioritised for formal protection for decades,¹¹² but have nonetheless not yet been declared as protected areas. The Draft NBSAP offers the opportunity to target estuaries like these for protection.

98. Further, the potential of the formal protection of estuaries and their EFZs, has the capacity to both contribute directly to GBF target 3, as well as to GBF targets focused on the recovery and conservation of species.¹¹³ The Draft NBSAP’s failure to seek such formal

¹⁰⁸ SANBI ‘Ecological condition: Estuarine realm’ at https://nba.sanbi.org.za/content/estuaries/est_condition.html#approach

¹⁰⁹ 2025 NBA at page 18.

¹¹⁰ 2025 NBA at page 30.

¹¹¹ 2025 NBA at pages 40 – 41.

¹¹² See Verlorenvlei 2023 EMP at page 29 section 6.1.2.

¹¹³ Such as GBF target 4.

protection falls short of the GBF. To remedy this, we propose the addition of a new target indicator to Draft NBSAP target 3.

99. We note that estuaries may be protected through the various protected areas provided in the National Environmental Management: Protected Areas Act 57 of 2003 (“**NEM:PAA**”), as well as through certain declarations under the National Environmental Management: Integrated Management Act 24 of 2008 (“**ICMA**”) including the declaration of a Special Management Area.¹¹⁴

100. Supplementary target indicator:

Supplementary target indicator	GBF target	Data source
“By 2035, [insert number of hectares] hectares of estuaries and EFZs – being [insert percentage value] % of the total area of estuaries and EFZs in South Africa – are added to the marine and coastal conservation area estate.”	3	DFFE

Draft NBSAP Target 6: Proposed supplementary target indicator

101. We welcome the Draft NBSAP’s express reference to the adoption of an ecosystem-based approach to fisheries management including in estuarine systems in the actions of its target 6. However, noting that “fishing exerts the greatest pressure on estuarine (and marine) biodiversity”, impacting ecosystems, species and genetic diversity,¹¹⁵ and further noting the vital fish nursery functions that estuaries serve, we submit that this singular action does not fully give effect to ensuring the sustainable management and use of fish within estuaries in order to provide for those most dependent on such fish, as required by GBF target 9.

102. Concerns have been raised about recreational fishing’s impact on fish stocks and small-scale fisheries in estuaries.¹¹⁶ In this regard it has been suggested that stricter monitoring of recreational fishing within estuaries (with a view to considering the restriction of such recreational fishing) may protect estuarine fish (and the small-scale fishers who rely on them).¹¹⁷ Noting that recreational fishing permits are granted on an annual basis,¹¹⁸ and thus future granting can be quickly adapted to monitoring, we therefore propose the addition of a new target indicator to Draft NBSAP target 6.

¹¹⁴ Under section 23 of ICMA.

¹¹⁵ 2025 NBA at page 36.

¹¹⁶ Olifants River Estuary 2023 EMP at page 12.

¹¹⁷ Olifants River Estuary 2023 EMP at page 12.

¹¹⁸ Section 13(1) and (2) of the Living Resources Act 18 of 1998 (“**MLRA**”).

103. Supplementary target indicator:

Supplementary target indicator	GBF target	Data source
“By 2035, 100% of recreational fishing in estuaries is being monitored, and this monitoring determines the future granting of annual recreational fishing permits within estuaries”.	9	DFFE

Draft NBSAP Target 7: Proposed revised target indicator and supplementary target indicator

104. Noting that half of South Africa’s estuaries have moderate to very high levels of pollution, which in turn compromises estuaries’ role in water and food security,¹¹⁹ we welcome the Draft NBSAP’s national target 7 providing that one of its target indicators is the improvement of the ecological condition of estuaries (and rivers and wetlands).¹²⁰

105. However, not all estuaries are in an equal ecological condition. The 2025 NBA found that 11% of estuaries are considered to be in a natural state (A category), 43% in a near-natural state (B category), 28% in a moderately modified state (C category), 8% in a heavily modified state (D category), and 7% in a severely/critically modified state.¹²¹ It is submitted that the Draft NBSAP should instead first prioritise, by 2030, the improvement of these moderately to critically modified estuaries to an improved ecological state before attention is turned to near-natural and natural estuaries. It is proposed that the NBSAP include a separate target indicator to, by 2035, improve estuaries that are in a near-natural state. This proposal will contribute to ensuring that the Draft NBSAP aligns with the CBD’s Guidance for NBSAPs, by promoting and supporting increased efforts and actions, and improved implementation and consistency over time.¹²²

Proposed revised target indicator and supplementary target indicator:

Supplementary target indicator	GBF target	Data source
By 2030, the improvement of all moderately, heavily and critically modified estuaries to an improved ecological state.	7	DFFE

¹¹⁹ 2025 NBA at page 32.

¹²⁰ Draft NBSAP at page 82.

¹²¹ SANBI ‘Ecological condition: Estuarine realm’ at https://nba.sanbi.org.za/content/estuaries/est_condition.html#approach

¹²² CBD Decision 15/6 at Annex 1 item 5.

Revised target indicator	GBF target	Data source
By 2035, the improvement of all estuaries that are in a near-natural state to an improved ecological state.	7	DFFE

Draft NBSAP Target 8: Proposed supplementary target indicator

106. The GBF targets 8 and 11 respectively, aim for climate resilience and the maintenance and enhancement nature's contributions to people, including as protection from natural hazards and disasters. Considering that the Draft NBSAP target 8 is aimed at effecting these GBF targets, as well as the Draft NBSAP's own recognition of estuaries as vital ecological infrastructure,¹²³ it is inadequate for Draft NBSAP target 8 to have no target indicators focused on estuaries, and a single estuary-centred action – being the protection, restoration and maintenance of ecosystems vulnerable to climate change using climate-smart approaches, including through climate aligned EMPs.

107. The 2025 NBA notes that while well-managed ecological infrastructure, like estuaries, can support resilient agricultural production and maintain a steady supply of water, 'estuarine ecosystems are particularly at risk from extreme weather events, especially where human settlements limit the natural resilience of these ecosystems'.¹²⁴

108. Draft NBSAP target 8 must be supplemented to include an additional target indicator for the determination of the ecological water reserves for all estuaries, and monitoring in accordance with these determined reserves to ensure that they are prioritised in water use decision making.

109. Proposed supplementary target indicator:

supplementary target indicator	GBF target	Data source
By 2035, 100% of all estuaries have a Gazetted ecological reserve determination, which is the basis of monitoring and water-use decision-making in their catchments.	8 and 11	DWS / CMA

¹²³ Draft NBSAP at page 12.

¹²⁴ 2025 NBA at page 9 and 29.

F. CONSERVATION AND ECOLOGICALLY SUSTAINABLE USE OF MARINE ECOSYSTEMS

110. The Draft NBSAP expresses concern for the increasing threats facing marine ecosystems, including from climate change, overfishing, and illegal harvesting – thus affecting biodiversity and species distribution,¹²⁵ which necessarily has knock-on effects for people dependent on thriving marine ecosystems. It notes that overfishing in marine areas is an example of excessive and unsustainable use of biological resources that place a heavy strain on ecosystems.¹²⁶ Yet these concerns are not meaningfully reflected in its national targets, target indicators or actions. Our concerns with the Draft NBSAP’s treatment of marine biodiversity, particularly in the contexts of overexploitation of keystone species (such as sharks) and current failure to adopt an ecosystem-based approach to fisheries management, relate first to its Draft NBSAP target 6, and second, to the Draft NBSAP targets 4 and 5. These are dealt with in turn below.

Draft NBSAP Target 6: Sustainable use and the biodiversity economy in the context of marine ecosystems and fishing

“Sustainable use” in South African law

111. The Draft NBSAP does not define “sustainable use”, despite building national targets around the concept, specifically targets 4 and 6. NEMBA defines “sustainable”, in relation to the use of a biological resources, to mean to use the resource in a way and at a rate that would not lead to long-term decline, would not disrupt the ecological integrity of the ecosystem in which it occurs, and would ensure its continued use to meet the needs and aspirations of present and future generations.¹²⁷

112. The three aspects are cumulative. Harvesting a living resource within its biological limits, but with knock-on effects to a non-target species, is not sustainable.

113. The MLRA contains the same standard. Section 2 binds “the Minister and any organ of state ... in exercising any power under the Act” to have regard to “the need to achieve optimum **and** ecologically sustainable development of marine living resources”,¹²⁸ to precautionary approaches,¹²⁹ the “need to protect the ecosystem as a whole, including species not targeted for exploitation”,¹³⁰ to the preservation of marine biodiversity,¹³¹ and to approaches contributing to food security and the alleviation of poverty.¹³² Section 2(a)

¹²⁵ Draft NBSAP at page 11.

¹²⁶ Draft NBSAP at page 18.

¹²⁷ NEMBA section 1, definition of “sustainable”.

¹²⁸ MLRA section 2(a).

¹²⁹ MLRA section 2(c).

¹³⁰ MLRA section 2(e), see also NEMBA section 2(a)(iA).

¹³¹ MLRA section 2(f).

¹³² MLRA section 2(j) and (k).

of the MLRA is conjunctive, meaning optimum utilisation is to be achieved **with** ecological sustainability. This is consistent with section 24(b)(iii) of the Constitution¹³³ which requires the State to secure ecologically sustainable development **while** promoting justifiable economic and social development. Economic development is promoted within that constraint, not at its expense.¹³⁴

114. ICMA adds a trusteeship dimension and states that ownership of coastal public property vests in the citizens of South Africa and is held in trust by the State.¹³⁵ The State must ensure that it is “used, managed, protected, conserved, and enhanced in the interests of the whole community” – the definition of “whole community” is particularly instructive in this regard¹³⁶ Further, the Constitutional Court recently held that access to marine resources “is not merely an economic concern but is intimately bound to customary practices and cultural identity” and that “sustainable development and sustainable use and the exploitation of natural resources are at the core of the protection of the environment”.¹³⁷

Concerns with Draft NBSAP’s national target 6

The Draft NBSAP’s national target 6 does not incorporate all the elements of the GBF targets

115. The Draft NBSAP’s national target 6, for sustainable use and the biodiversity economy is “by 2035, achieve a transformed, inclusive, and viable biodiversity economy that ensures sustainable management, harvest and use of wild species, safe and legal trade, while protecting and encouraging customary sustainable use by local communities”.¹³⁸ However, this national target misses elements of the GBF target, as explained below.

116. We note at the outset that the Draft NBSAP carries a second and materially different formulation of the same target in the elsewhere in the document,¹³⁹ being “by 2035, achieve a transformed, inclusive and viable biodiversity economy that ensures use of wild species is safe, legal and sustainable, protecting customary use and traditional knowledge, and providing equitable benefits to all people while enhancing biodiversity conservation”.

¹³³ Constitution of the Republic of South Africa, 1996.

¹³⁴ See *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 (6) SA 4 (CC).

¹³⁵ ICMA section 11(1).

¹³⁶ ICMA section 12(a). “**Interests of the whole community**” is defined as the collective interests of the community determined by (a) prioritising the collective interests in coastal public property of all persons living in the Republic over the interests of a particular group or sector of society, (b) adopting a long-term perspective that takes into account the interests of future generations in inheriting coastal public property and a coastal environment characterised by healthy and productive ecosystems and economic activities that are ecologically and socially sustainable, and (c) taking into account the interests of other living organisms that are dependent on the coastal environment.

¹³⁷ *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others; Natural Justice and Another v Minister of Mineral Resources and Energy and Others* [2026] ZACC 33 (14 August 2026) at paragraphs 4, 11 and 18, applying *Gongqose v Minister of Agriculture* 2018 (5) SA 104 (SCA).

¹³⁸ Draft NBSAP section 5.6.

¹³⁹ Draft NBSAP section 4.5

While this formulation carries more of the elements of GBF targets 5 and 9 than the formulation in the Draft NBSAP's action plan, neither formulation carries all of them. The inconsistency is itself a defect, and the analysis below is directed at the formulation in the Draft NBSAP's action plan, which is the operative one.

117. The Draft NBSAP further falls short of GBF targets 5 and 9.

118. GBF target 5 requires parties to ensure that the use, harvesting, and trade of wild species is “sustainable”, safe, and legal, to prevent overexploitation, to minimise impacts on non-target species and ecosystems, and to reduce the risk of pathogen spill-over. Ecosystem approaches must be applied while respecting and protecting customary sustainable use by indigenous peoples and local communities.

119. GBF Target 9 requires benefits especially for those in vulnerable situations and those most dependent on biodiversity, and GBF target 16 requires supportive policy, legislative, or regulatory frameworks enabling sustainable consumption.

120. Measured against these GBF targets, it is evident that Draft NBSAP target 6 fails to effect them as follows –

Element of the GBF target	Carried into the Draft NBSAP's national target?	Where, if anywhere, it appears
Use, harvesting, and trade of wild species is sustainable, safe, and legal (T5)	Partly	Only trade is qualified as safe and legal. Use and harvesting are not.
Preventing overexploitation (T5)	No	Nowhere in this target, theory of change, indicators or actions.
Minimising impacts on non-target species and ecosystems (T5)	No	Bycatch appears only within a composite action. No indicator.
Applying the ecosystem approach (T5)	No	Only within the same composite action. No indicator.
Protecting customary sustainable use by indigenous peoples and local communities (T5 and T9).	Partly	“Local communities” only, although action under the same target says “indigenous peoples and local communities”.
Social, economic, and environmental benefits, especially for those in vulnerable situations and most dependent on biodiversity (T9)	Partly	The closest indicators address participation and use benefits generally. Neither an environmental-benefit indicator nor the vulnerability qualifier appears
Supportive policy, legislative, or regulatory frameworks enabling sustainable consumption (T16).	Partly	A single certification indicator. No policy, legislative, or regulatory element.

121. The most consequential omission is the prevention of over-exploitation, the element most applicable to South Africa, as a country which, on the Draft NBSAP's own account, has depleted or heavily depleted about a third of its marine living resources.¹⁴⁰ The Draft NBSAP must fill this omission.

Ecosystem-based management is already a legal requirement, but the Draft NBSAP identifies no mechanism to meet it

122. The Draft NBSAP target 6 includes an action committing South Africa to “adopt an ecosystem-based approach to fisheries management across marine, estuarine, and freshwater systems”, contained in a single action with a bycatch strategy, a recreational fishing transition, and small-scale fisher access.¹⁴¹

123. This commitment has the potential to be significant in contributing to the GBF's targets and goals, as the ecosystem-based approach aligns with the MLRA¹⁴² and is reinforced by section 2(a)(iA) of NEMBA, as well as the principles contained in section 2 of NEMA (the “**NEMA Principles**”), including the avoidance and minimization of ecosystem disturbance and biodiversity loss,¹⁴³ the risk-averse and cautious approach which takes into account the limits of current knowledge,¹⁴⁴ integrated management that recognises that all elements of the environment are linked and interrelated,¹⁴⁵ and specific attention to sensitive, vulnerable, highly dynamic, or stressed ecosystems.¹⁴⁶

124. However, the Draft NBSAP presenting the ecosystem approach as something to be “adopted” by 2035 misdescribes the legal position. The substantive elements of an ecosystem approach are already embedded in the statutory framework. What is missing is the implementation of existing duty, which is not discussed in the Draft NBSAP. This framing matters because, currently, there is no discussion about how the statutory instruments will be used, who will use them, and by when this will be done. The MLRA contains the below mechanisms to implement this duty, yet none are mentioned in the Draft NBSAP –

124.1. **The determination of the total allowable catch and total applied effort in terms of MLRA section 14** should be made with regard to the objectives and principles the MLRA sets out in section 2, as well as the NEMA Principles. This is where ecosystem-based fisheries management should appear, in practice,

¹⁴⁰ Draft NBSAP section 2.1.

¹⁴¹ Draft NBSAP section 5.6, actions table.

¹⁴² Sections 2(c), 2(e), and 2(f) of the MLRA.

¹⁴³ NEMA section 2(4)(a)(i).

¹⁴⁴ NEMA section 2(4)(a)(vii).

¹⁴⁵ NEMA section 2(4)(b).

¹⁴⁶ NEMA section 2(4)(r).

but the Draft NBSAP does not tie this mechanism to any of its targets, indicators or actions.

124.2. **The permit conditions in terms of MLRA section 13** are the mechanism through which ecosystem-based management measures can be imposed.

124.3. **Fisheries management areas and plans in terms of MLRA section 15** are existing vehicles for spatially explicit ecosystem-based management. **Emergency measures in terms of MLRA section 16** are another useful mechanism. There are also various regulations promulgated **in terms of MLRA section 77** that allow for ecosystem-based management. However, while these mechanisms are available, the Draft NBSAP does not identify how they will be used systematically to deliver its ecosystem-based fisheries commitment.

124.4. The Consultative Advisory Forum for Marine Living Resources ("**Forum**") is provided for but the latest publicly available evidence indicates that the Forum had still not been constituted, despite a call for the nomination of new members to the Forum.¹⁴⁷ The Forum's statutory function is to advise the Minister on the total allowable catch, on operational management procedures, on management plans, and the MLRA's objectives and principles.

125. The Draft NBSAP provides the lead for every fisheries action as the DFFE, to be supported by provincial conservation authorities, SANBI, research institutions, private sector, and NGOs. However, it also records capacities concerns in the fisheries sector and states "the freezing of critical government posts ... prevents the recruitment of scarce technical skills".¹⁴⁸ The Draft NBSAP identifies institutional incapacity in the branch on which the sustainable use of marine living resources depends and then assigns the department a single composite action bundling four distinct fisheries undertakings, without naming the branch that must deliver any of them.

Collectively, the target 8 target indicators cannot provide a reliable basis for determining achievement of the target

126. Of the eight target indicators for the Draft NBSAP's target 6, only one is supported by an existing, published, recurring national data source, being the marine fish stock indicator drawn from the Status of South African Marine Fishery Resources reports. Of the remaining seven, two are recorded as not yet measured or still under development, two are recorded as KMGBF headline indicators still under development internationally, and

¹⁴⁷ GN 5536 in GG 51538 of 12 November 2024.

¹⁴⁸ Draft NBSAP section 6.3 and following, "Capacity needs assessment required to implement the NBSAP".

three are recorded as “not currently measured, although relevant data exist across fragmented sources”.¹⁴⁹

127. Section 49 of NEMBA provides that the Minister “must ... designate monitoring mechanisms and set indicators” to determine the conservation status of the components of South Africa’s biodiversity and, further, that the trends affecting that status may require regular reporting and “must ... annually report to Parliament on the information submitted” and make it publicly available.¹⁵⁰ The Draft NBSAP therefore exposes a longstanding gap between the statutory monitoring architecture contemplated by section 49 and the monitoring actually available for several components of biodiversity, without committing to timelines to remedy that gap.

128. The indicators also fail the Draft NBSAP’s own criteria that they be quantifiable, feasible, and, where no existing source exists, accompanied by identification of “new monitoring systems needed”.¹⁵¹ The only marine fisheries indicator (to increase the proportion of fish stocks of exploited marine fisheries resources to within biological sustainable levels by 2035) has no baseline year, no starting value, no target value, and no interim milestone. This, therefore, cannot be said to be an accountable indicator.

129. Unfortunately, this has foreseeable (and proven) consequences. Only five of the twenty-two strategic outcomes of the 2015 – 2025 NBSAP were achieved (fourteen still in process and three have a “completely unknown” status because of a “pervasive lack of consistent monitoring”).¹⁵² The Draft NBSAP records that its monitoring system “will support evidence-based progress assessment, but it will not automatically determine whether an NBSAP target has been achieved” and provides for a finding of “insufficient evidence”.¹⁵³ The Draft NBSAP must go further than this statement and state the consequences of an unmeasured indicator, including stating that, where the information necessary to assess risk or progress is absent, decision-makers will apply the precautionary principle where required by the applicable statutory framework, so that uncertainty does not become a reason for inaction.

130. The existing evidence base makes this indicator even less adequate. The Draft NBSAP records (according to the 2025 status report) that 31% of South Africa’s marine living resource stocks are depleted or heavily depleted.¹⁵⁴ The 2025 NBA finds that 45% of 163

¹⁴⁹ Draft NBSAP section 5.6, indicator table. The same formulation recurs across the action plan: all three indicators for human-wildlife coexistence, a thematic area which expressly names sharks among the conflict-prone species, are recorded as not currently measured (section 5.5).

¹⁵⁰ NEMBA sections 49(1), (2), and (3).

¹⁵¹ Draft NBSAP section 5 table 6.

¹⁵² Draft NBSAP section 1.2.

¹⁵³ Draft NBSAP section 6.2.

¹⁵⁴ Draft NBSAP section 2.1, recording that the number of species evaluated by the status report rose from a baseline of 22 species in 2008 to 65 in 2025, and that depleted or heavily depleted stocks account for 31% of the monitored resources.

marine ecosystem types are threatened, that more than 700 marine species are directly affected by fishing, which shows more pressure linkages than any other sector, that 43% of assessed sharks, rays and chimaeras are threatened, and that recreational fishing, the largest sector by participation, is largely unmonitored with roughly half of participants non-compliant.¹⁵⁵

131. Against that baseline, it is difficult to see how a target expressed only as a direction of travel, with no quantum and no milestone, can constitute a sufficient ‘reasonable legislative and other measure’ for purposes of section 24(b) of the Constitution.

Bycatch, small-scale fishing, recreational fishing, and animal wellbeing

132. **Bycatch –**

132.1. The minimisation of impacts on non-target species is an element of GBF Target 5. This element is not carried into the Draft NBSAP’s national target 6 and is not given a corresponding outcome indicator, appearing instead only in a composite implementation action, in the form of a commitment to develop a National Bycatch Reduction Strategy – with no date, no indicator, no legal form and no lead beyond DFFE.

132.2. The powers to regulate bycatch already exist and are unused in the Draft NBSAP. The Minister may regulate the catching and utilisation of incidentally caught fish, the disposition of bycatch, and measures for the protection of specified species, and may designate observers.¹⁵⁶ The Draft NBSAP does not situate the proposed strategy in relation to the existing national plans of action for sharks and for seabirds, the second edition of the latter (NPOA-Seabirds II, 2026 – 2030) having been adopted in August 2026.¹⁵⁷ It also does not address the consequences of the recent listing of commercially important South African shark species on CITES Appendix II, which engages the Scientific Authority’s duty to make non-detriment findings and the Minister’s duty to publish them.¹⁵⁸

133. **Small-scale fishing –**

133.1. The action commits DFFE to “establishing legal mechanisms” to enable communities to enter the existing small-scale fisheries sector. Those mechanisms already exist. Section 19 of the MLRA obliges the Minister to

¹⁵⁵ South African National Biodiversity Institute, *National Biodiversity Assessment 2025: The status of South Africa’s biodiversity*, Skowno *et al*, Pretoria, 2025, marine chapters, <https://nba.sanbi.org.za/>.

¹⁵⁶ MLRA sections 77(2)(f), 21(3)(e), 77(2)(y) and 50.

¹⁵⁷ NPOA-Seabirds II, 2026–2030.

¹⁵⁸ NEMBA sections 61(1)(d) and 62

establish areas where small-scale fishers may fish and to prescribe the process, procedures, management and “criteria and timetable for recognition of small-scale fishers and small-scale fishing communities” and requires a community-based approach to allocation.¹⁵⁹

133.2. The barrier is the administration of this mechanism. Allocation rounds have been set aside and re-run, recognition remains incomplete, and courts have intervened where facially neutral criteria produced discriminatory effects and where the department relied on survey data more than a decade old.¹⁶⁰

133.3. The action recognises that the sector exists, but frames the task as the creation of legal mechanisms rather than the administration of those already in place. To that extent it misdiagnoses the barrier, contrary to the drafters’ own criterion that activities address known constraints. The associated target indicator, “stable percentage of population in traditional occupations”, measures stasis in a thematic area whose target is transformation and is itself unmeasured.

134. **Recreational fishing –**

134.1. The action committing to “the transition of recreational fishing toward a catch-and-release policy” is undefined, carries no indicator, and does not identify the instrument through which it would be effected, although one does exist. The Minister may make regulations “relating to the circumstances in which fish which have been caught shall be returned or not returned to the sea or shall be released or not released”.¹⁶¹

134.2. The Draft NBSAP fails to grapple with how this catch-and-release policy is to be reconciled with its own commitment to animal wellbeing.

135. **Animal wellbeing –**

135.1. Again, the action to “ensure sustainable use practices consider animal wellbeing and humane practices to give effect to a duty of care” has no indicator, no deliverable, no date and no marine content. Since 30 June 2023, NEMBA has defined “well-being” as “the holistic circumstances and conditions of an animal, which are conducive to its physical, physiological and mental health and quality of life, including the ability to cope with its environment”;

¹⁵⁹ MLRA sections 19(1)(a), 19(1)(d) and 19(3), substituted by section 5 of Act 5 of 2014. See also the regulations relating to small-scale fishing, GNR 229 in *Government Gazette* 39790 of 8 March 2016, and the Policy for the Small-Scale Fisheries Sector in South Africa, General Notice 474 in *Government Gazette* 35455 of 20 June 2012.

¹⁶⁰ See *Coastal Links Langebaan and Others v Minister of Agriculture, Forestry and Fisheries and Others* [2016] ZAWCHC 150; [2017] 2 All SA 46 (WCC).

¹⁶¹ MLRA section 77(2)(aa).

NEMBA has made its consideration in the sustainable use of animals an object; and NEMBA has empowered the Minister to prohibit activities that may negatively affect it and to regulate for it.¹⁶²

- 135.2. In the marine context the duty applies to the handling and release of bycatch, soak and servicing times for static gear, gear that drowns air-breathing and ram-ventilating species, and lethal bather protection gear, which is in substance a fishery and which the draft does not mention at all (although Draft NBSAP target/thematic area 5 names sharks among the conflict-prone species)¹⁶³

The Draft NBSAP does not recognise that marine ecosystems are ecological infrastructure

136. The Draft NBSAP's target/thematic area 8 targets the implementation of ecosystem-based adaptation or nature-based solutions to restore and maintain ecological infrastructure, so as to enhance resilience to climate change and ocean acidification.¹⁶⁴

137. Despite Draft NBSAP target 8 naming ocean acidification, it identifies no marine ecological infrastructure and target/thematic area 6 does not cross-refer to it at all. In the marine realm, the ecological functions on which resilience depends are substantially provided by the ecosystems and populations that constitute marine ecological infrastructure. Kelp forests, estuaries, reefs, seagrass and sediment systems perform the buffering, nursery and water-quality functions the plan attributes to ecological infrastructure elsewhere; forage fish are the trophic link on which predators including the critically endangered African penguin depend, so a fishery managed as a single-species harvest cannot deliver climate resilience because it does not manage the trophic function; and populations reduced in abundance, age structure and spatial distribution have diminished capacity to absorb warming, deoxygenation, acidification and range shifts, which makes the rebuilding of depleted stocks an adaptation measure and not merely a fisheries measure.

138. This connection is now confirmed at the level of international law. In its 2024 Advisory Opinion on Climate Change and International Law, the International Tribunal for the Law of the Sea addressed, in its discussion of the Article 192 obligation to protect and preserve the marine environment, the ocean's function as a carbon sink and the role of coastal "blue

¹⁶² NEMBA sections 1, 2(a)(iiA), 9A and 97(1)(aA), inserted by the National Environmental Management Laws Amendment Act 2 of 2022, in force from 30 June 2023 (Proclamation 125 in *Government Gazette* 48869 of 30 June 2023). On animal wellbeing as a consideration connected to section 24, see *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* [2016] ZACC 46; 2017 (1) SACR 284 (CC) at paragraphs 57 to 58, and *National Council of Societies for the Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others* 2020 (1) SA 249 (GP).

¹⁶³ Draft NBSAP section 5.5. Bather protection gear takes species listed under the Threatened or Protected Marine Species Regulations, GNR 477 in *Government Gazette* 40876 of 30 May 2017.

¹⁶⁴ Draft NBSAP section 5.8. One action in that section refers to climate-aligned estuarine management plans; no other marine ecological infrastructure, such as kelp forests, reefs or seagrass, is named there.

carbon” ecosystems such as mangroves, salt marshes and seagrasses in reducing the risks and impacts of climate change.¹⁶⁵ The Tribunal’s reasoning in that section supports the proposition that Article 192 carries a dual significance in the climate context: it protects and conserves marine resources, and it protects the ocean’s carbon sequestration function, which is itself a mitigation-relevant function recognised elsewhere in international climate law. The ITLOS Advisory Opinion reinforces the relevance of marine ecosystem protection and restoration to climate change mitigation, adaptation and resilience under Part XII of UNCLOS.

139. Spatial protection is the shared instrument, and the statutory framework already says so: protected areas are declared to protect representative seascapes, preserve ecological integrity and assist in ensuring the sustained supply of environmental goods and services, and a marine protected area may be declared to protect migratory routes and breeding, nursery or feeding areas “thus allowing species recovery and to enhance species abundance in adjacent areas”;¹⁶⁶ the coastal protection zone must maintain “the productive capacity of the coastal zone by protecting the ecological integrity of the coastal environment” and address the risk of sea-level rise; and biodiversity plans under NEMBA must be aligned with and give effect to the national coastal management programme.¹⁶⁷ None of these is mentioned in targets/thematic areas 6 and 8.

140. A further spatial instrument is also missing from this account. DFFE’s National Coastal and Marine Spatial Biodiversity Plan (“**NCMSBP**”) comprises a map of Critical Biodiversity Areas and Ecological Support Areas, together with Sea-Use Guidelines indicating the compatibility of different sea-use activities with each biodiversity priority area, and is intended for use by decision-makers across the departments whose activities occur in the coastal and marine space, including fisheries. The broader Draft NBSAP addresses the marine spatial planning architecture, but the relevant material is not sufficiently connected across targets/thematics areas 6 and 8.

Proposed amendments to Draft NBSAP Target 6

141. The BLC recommends the following changes –

¹⁶⁵ ITLOS Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Advisory Opinion), 21 May 2024, Case No. 31, ITLOS Reports 2024, discussed at paragraphs 46 – 66 (scientific background) and in the Tribunal’s treatment of Article 192 at paragraphs 384 – 400.

¹⁶⁶ NEMPAA sections 17(a), 17(b), 17(g) and 22A(2)(e).

¹⁶⁷ NEMICMA sections 17(c), 17(e), 51 and 52.

Proposed changes to the Draft NBSAP	GBF target
Redraft Target 6 so that the ecological outcome is the end-state , restore the omitted elements of GBF Targets 5 and 9 (including the prevention of overexploitation, the minimisation of impacts on non-target species and ecosystems and the ecosystem approach) align the customary use limb with the wording of those targets, and publish a single authoritative formulation of the target.	GBF 5 and 10; supporting 14 and 21
Reframe the ecosystem approach as implementation of an existing statutory duty , unbundle the composite action into four separate actions with their own leads, dates and indicators, and identify the instruments through which each will be delivered, including the MLRA.	GBF 5 and 10; supporting 14 and 21
Explicitly name the DFFE branch responsible for Fisheries Management as the lead for each fisheries action, qualify the listing of provincial conservation authorities in the support column for marine actions, so that it does not imply a competence over marine living resources that provinces do not hold, and require the establishment and functioning of the Consultative Advisory Forum.	GBF 10 and 14; supporting 22
Quantify the fisheries target indicator , stating the baseline year and value, the 2035 value and at least two interim milestones, and expressing it in absolute as well as proportional terms.	GBF 5 and 10; supporting 21
Commit to a date, custodian and method for every target indicator recorded as unmeasured , align the monitoring commitments expressly with NEMBA section 49 including the annual report to Parliament, add indicators for bycatch, for recreational fishing effort and compliance and for animal wellbeing in marine use, and state the consequence of an unmeasured indicator, namely that, where the information necessary to assess risk or progress is absent, the management response to the use concerned will apply the precautionary principle, where required by the applicable statutory framework, until the baseline exists.	GBF 21; supporting 5, 4 and 9
Give the National Bycatch Reduction Strategy a date, a lead, a legal form and an indicator , situate it in relation to the existing national plans of action, commit to expanded independent observer coverage and electronic monitoring in the highest-risk fisheries, and address the implications of the recent CITES listings for non-detriment findings.	GBF 5; supporting 4, 10 and 21
Replace the small-scale fisheries action with one addressed to the administration of the existing mechanism , including the timetable required by MLRA section 19(1)(d)(iv), the appeal backlog and provincial parity; replace the “stable percentage” indicator with one capable of registering transformation; bring the national audit of rights and tenure in marine systems into this thematic area; and record the effect of <i>Gonggose</i> in the rights allocation system.	GBF 9 and 22; supporting 10 and 14
Define the recreational fishing transition , identify MLRA section 77(2)(aa) as its instrument, state its evidence base and provide expressly that it will not restrict fishing for household consumption.	GBF 9 and 10; supporting 5 and 22

Proposed changes to the Draft NBSAP	GBF target
Give the animal wellbeing action marine content and an indicator , requiring the National Human-Wildlife Coexistence Strategy (which the Draft NBSAP aims to develop and implement) ¹⁶⁸ to expressly address marine conflict, including the progressive replacement of lethal bathers protection gear with non-lethal alternatives.	GBF 4 ; supporting 5 and 9
Cross-refer Draft NBSAP targets 6 and 8 , name marine and coastal ecological infrastructure in target 8, record that rebuilding depleted stocks is a climate adaptation measure, and align this thematic area with ICMA's instruments.	GBF 8 and 11 ; supporting 10 and 14

142. These comments do not seek for the Draft NBSAP to become an operational fisheries management plan. Rather, we seek the Draft NBSAP to set out how its strategic commitments will be made operational through existing statutory mechanisms.

Draft NBSAP Targets 4 and 5: Species conservation and direct overexploitation of species in the context of human-wildlife coexistence

143. We address this aspect of the Draft NBSAP in the context of sharks. Sharks are important apex predators because of how they help regulate the rest of the marine ecosystem. Their presence in marine ecosystems influences abundance, behaviour, and distribution of the trophic levels below them. The Draft NBSAP notes in particular that cartilaginous fishes face the highest risk of extinction,¹⁶⁹ yet it does not adequately provide for their conservation.

144. These submissions address target 4, species conservation,¹⁷⁰ and target 5, human-wildlife coexistence,¹⁷¹ as they apply to sharks, rays, skates and chimaeras (Class Chondrichthyes, referred to as "chondrichthyans" or, where the Draft NBSAP's own language is used, "sharks"). We adopt the taxonomic scope used by the 2025 NBA, by South Africa's Shark Biodiversity Management Plan and by the Red List, each of which assesses the group together.

The Draft NBSAP is silent on South Africa's most threatened marine group

145. The Draft NBSAP records that "freshwater (66%) and cartilaginous fishes (42%) face the highest risk" of extinction of any assessed group.¹⁷² That is the only quantitative statement about chondrichthyans in the document. The word "shark" appears four times in the whole plan: in a list of threatened marine animals; in Table 2, where the plan states

¹⁶⁸ Draft NBSAP at pages 71 and 72.

¹⁶⁹ Draft NBSAP at page 14.

¹⁷⁰ Draft NBSAP section 5.4.

¹⁷¹ Draft NBSAP section 5.5.

¹⁷² Draft NBSAP section 2.1.

that the Convention on the Conservation of Migratory Species of Wild Animals ("**CMS**") "informs NBSAP species recovery plans for animals that move naturally across borders, like vultures and sharks"; in the Thematic Area 4 rationale, in a list of assessed taxonomic groups; and in the Thematic Area 5 rationale, in a list of "high-profile species" around which conflict management is said to be concentrated.¹⁷³ "Rays" appears once, in the same list of assessed taxonomic groups. "Skate" and "chimaera" do not appear at all.

146. No target, indicator, action or responsibility assignment in either thematic area refers to this threatened group. None refers to the Shark Biodiversity Management Plan, to the National Plan of Action for the Conservation and Management of Sharks, to the Threatened or Protected Marine Species Regulations by name, to the demersal shark longline fishery or to bathner protection. The only reference to the marine listing regime is the compliance action's reference to "TOPS and CITES – terrestrial and marine" permit conditions. That is not a proportionate treatment of a group of which 43% of the 191 assessed species are threatened, of which 12 are Critically Endangered and 35 Endangered, of which 6 of 13 endemic species are threatened, and which has the lowest Red List Index score of any South African taxonomic group assessed. Globally, the group's Red List Index has declined more steeply since 1970 than that of any marine taxonomic group except stony corals.¹⁷⁴ We ask that the figure of 42% be reconciled with the 43% published by the NBA, and that the plan state the figure it relies on and its source.

The Thematic Area 4 indicators cannot register change for this group

147. Thematic Area 4 carries eight indicators. Seven of the eight are sourced to the NBA; the eighth to seed and gene banks. Thematic Area 5 carries three, every one recorded in the plan itself as "the proposed indicator is not currently measured, although relevant data exist across fragmented sources".¹⁷⁵ Annexure A tests each against the question whether it can presently record any change for chondrichthyans. In summary –

- 147.1. **Species protection level.** The indicator reads "improve by 10% species protection level across all realms". The NBA's protection level indicator was applied to mammals, reptiles, birds, amphibians and freshwater fishes, and to a sample of 900 plant taxa. Marine species were not assessed.¹⁷⁶ The words "across all realms" do not correspond to the data source.

¹⁷³Draft NBSAP section 2.1; section 2.2, Table 2(CMS entry); section 5.4 (rationale); section 5.5 (rationale).

¹⁷⁴South African National Biodiversity Institute, *National Biodiversity Assessment 2025*, "Sharks, rays and chimaeras", https://nba.sanbi.org.za/content/species/sp_sharks.html: 191 species assessed, 43% threatened, 13 endemic species of which 6 are threatened. On the figures in the marine species table the threatened species comprise 12 Critically Endangered, 35 Endangered and 34 Vulnerable; the narrative on the sharks page gives 35 Vulnerable.

¹⁷⁵Draft NBSAP section 5.4, page 68, and section 5.5, page 71, indicator tables, data source columns.

¹⁷⁶National Biodiversity Assessment 2025, "Species threat status and protection level", <https://nba.sanbi.org.za/content/integrated-findings/intf-species.html>, and "Headline indicators", https://nba.sanbi.org.za/content/integrated-findings/intf_headline.html. The protection level indicator is recorded as having been used to assess terrestrial and freshwater species within six taxonomic groups.

- 147.2. **Effective population size and populations maintained.** The NBA genetic indicators are a pilot covering 126 species across six groups, of which 61 had sufficient data for the Ne 500 indicator. Chondrichthyans are not among them.¹⁷⁷
- 147.3. **DNA-based monitoring, EDGE species and ex situ resources.** The first has no stated baseline for any realm and none for this group; the second does not identify the priority list to which it refers, and we could not establish whether any chondrichthyan appears on it; and the third is by its terms directed at species used for traditional medicine, food and agriculture.¹⁷⁸
148. Of the eight indicators, only the Red List Index and the "no extinctions ... for species under recovery" indicator are in principle capable of registering anything for this group, and the second depends on a category the plan does not define and which, for chondrichthyans, has no content.
149. This is a legal problem and not merely a technical one. First, setting indicators is a statutory duty: section 49 of NEMBA, obliges the Minister to designate monitoring mechanisms and set indicators to determine the conservation status of the components of South Africa's biodiversity, to require regular reporting, to report annually to Parliament and to make the information publicly available.¹⁷⁹
150. Second, the plan does not meet the criteria it sets for itself: its blueprint requires indicators to be measurable, quantifiable and feasible and, where they cannot rest on existing sources with baseline data, to "identify new monitoring systems needed".¹⁸⁰ An indicator recorded as "not currently measured" which identifies no monitoring system, baseline, custodian or date does not satisfy that, and the recurrence of the identical formulation across every Thematic Area 5 indicator and across multiple indicators elsewhere suggests it has become a default rather than an exception.
151. Third, the plan disclaims the automatic consequence of its own indicators, recording that the monitoring system "will not automatically determine whether an NBSAP target has been achieved" and that assessments will distinguish between "progress, mixed progress, insufficient evidence and decline or implementation concern".¹⁸¹ Combined with unmeasured indicators, "insufficient evidence" becomes the destination rather than the

¹⁷⁷National Biodiversity Assessment 2025, "Genetic diversity: genetic indicators", <https://nba.sanbi.org.za/content/genetics/genetic-indicators.html>. Of 126 species assessed, 90 had sufficient data for the populations maintained indicator and 61 for the Ne 500 indicator; 58%, being 35 of 61, fell below the threshold. The six groups are amphibians, angiosperms, birds, fish, mammals and reptiles.

¹⁷⁸Draft NBSAP section 5.4, indicator table, fifth, sixth and eighth indicators.

¹⁷⁹NEMBA sections 49(1), 49(2) and 49(3).

¹⁸⁰Draft NBSAP section 5, Table 6, "Target Indicators" row, criteria 1, 3 and 4.

¹⁸¹Draft NBSAP section 6.2 and following, under "Progress assessment".

exception: the second NBSAP achieved five of twenty-two strategic outcomes, with fourteen "in progress" and three "completely unknown", which the draft attributes primarily to "a pervasive lack of consistent monitoring".¹⁸² The draft identifies the cause of the previous plan's failure and, for this group, reproduces it.

152. Fourth, KMGBF Target 4 carries a component indicator on trends in the effective and sustainable management of human-wildlife conflict and coexistence; Thematic Area 5 aligns itself with Target 4 but adopts none of that architecture, and South Africa will have nothing to report against it.¹⁸³

153. We submit that the legal consequence of an unmeasured indicator should be stated in the plan. Where the conservation status of a species or the magnitude of a pressure is unknown, the precautionary principle in section 2(4)(a)(vii) of NEMA requires a risk-averse and cautious approach which takes into account the limits of current knowledge.¹⁸⁴

154. The Draft NBSAP should specify how decision-makers will respond where the information necessary to assess progress is absent, including by applying the precautionary principle where appropriate. That is not abstract for a group which is, as a class, late-maturing, slow-growing and of low fecundity. Managing such species on absent information does not produce error that is detected and corrected; it produces error that becomes apparent only once recovery has become a matter of decades.

The Shark Biodiversity Management Plan has not been reviewed within the statutory five-year period, and the Draft NBSAP does not mention this

155. South Africa already has a statutory species instrument for this group. The Shark Biodiversity Management Plan was published by the Minister under NEMBA section 43(3)(a) by Government Notice 258 in *Government Gazette* 38607 of 25 March 2015.¹⁸⁵ It covers all sharks, rays, skates and chimaeras in South African waters, being approximately 185 species. Its objective is to achieve and maintain a favourable conservation status for resident and migratory sharks; and it was published for a five-year period with annual progress assessments.

156. Four statutory consequences follow, none of them reflected in the draft NBSAP: such a plan must be aimed at ensuring the long-term survival in nature of the species and must provide for monitoring and reporting on implementation; the Minister must determine the

¹⁸²Draft NBSAP section 1.2, and section 3.2.

¹⁸³CBD Decision 15/4 (CBD/COP/DEC/15/4) of 19 December 2022, Annex, Target 4, read with the monitoring framework component indicator "trends in effective and sustainable management of human-wildlife conflict and coexistence".

¹⁸⁴NEMA section 2(4)(a)(vii). The NEMA Principles apply throughout the Republic to the actions of all organs of state that may significantly affect the environment: section 2(1)(a).

¹⁸⁵Biodiversity Management Plan for Sharks, Government Notice 258 in *Government Gazette* 38607 of 25 March 2015, published under NEMBA section 43(3)(a) read with sections 99 and 100.

manner of implementation and assign responsibility for it; the Minister **must** review the plan at least every five years and assess compliance and the extent to which its objectives are being met; and it must be consistent with NEMBA, the NEMA Principles, the national biodiversity framework and relevant binding international agreements.¹⁸⁶

157. The section 46(1) review fell due on 25 March 2020. A revised draft was published for comment on 2 June 2023,¹⁸⁷ and we have been unable to locate a final revised plan. The second National Plan of Action for the Conservation and Management of Sharks ("**NPOA-Sharks II**"), published in 2022, describes the plan as "currently being developed".¹⁸⁸ If that is the position, the only statutory species instrument for South Africa's most threatened marine taxonomic group is more than eleven years old and more than six years past the date on which its review became due. We invite DFFE to state its status in the final NBSAP, with notice and gazette particulars, as the plan's own "Policy links" element requires.¹⁸⁹ The review machinery is in use elsewhere: a draft revised Biodiversity Management Plan for Black and White Rhinoceros was published for comment under section 46 in March 2024 and the revised plan was published in April 2026, and a revised Biodiversity Management Plan for *Pelargonium sidoides* was published for implementation on 27 February 2026. The contrast underscores the need for the final NBSAP to explain the status and review timetable of the Shark Biodiversity Management Plan.

158. More fundamentally, Thematic Area 4 does not mention biodiversity management plans at all. Its recovery commitment is expressed as "recovery plans ... using a one-plan approach", led by the SANBI Threatened Species Programme, the Centre for Species Survival and the IUCN National Species Specialist Group.¹⁹⁰ Those are scientific bodies, not repositories of the Minister's statutory power under section 43. A recovery plan that is not a biodiversity management plan does not itself acquire the statutory status and associated implementation, monitoring, reporting and review architecture of a biodiversity management plan under NEMBA section 43. NPOA-Sharks II is also relevant here: it contains 41 prioritised actions, has a five-year operational period and commits that progress "will be evaluated against the specific goals of the 41 actions" at the end of that period.¹⁹¹ That evaluation falls due within the first two years of the NBSAP period. It is the most obvious existing accountability mechanism for this group, and the draft does not mention it.

¹⁸⁶NEMBA sections 45(a) and 45(b); 43(3)(b) and 43(3)(c); 46(1); and 45(c).

¹⁸⁷General Notice 3488 in *Government Gazette* 48696 of 2 June 2023.

¹⁸⁸Department of Forestry, Fisheries and the Environment, *South Africa's second National Plan of Action for the Conservation and Management of Sharks* (2022) at page 6.

¹⁸⁹Draft NBSAP section 5, Table 6, "Policy links" row. No thematic area in the draft in fact contains that element; the phrase "policy links" appears once in the document, namely in the blueprint that requires it.

¹⁹⁰Draft NBSAP section 5.4, actions table, second action.

¹⁹¹NPOA-Sharks II at pages 12 and 18.

The Demersal Shark Longline Fishery: A directed fishery on endangered species

159. The starkest omission from Thematic Area 4 is that South Africa continues to operate a directed commercial fishery on two species that its own scientists assess as depleted and that the IUCN assesses as threatened with extinction.
160. Longline permits for the directed catching of sharks were first issued in 1991. The fishery operates in demersal waters off the southern Cape, and is regulated by effort control rather than by any total allowable catch: there is no catch limit, no closed season and no bag limit, and permits regulate fishing effort.¹⁹² The number of permit holders has fallen from about 30 in the early 1990s to 23, then six, and to a single right holder by 2021, the others having ceased operations or breached permit conditions. Almost the entire catch of meat and fins is exported.¹⁹³
161. Its two principal target species are the common smoothhound (*Mustelus mustelus*) and the soupfin or tope shark (*Galeorhinus galeus*). Their status is not in doubt –
 - 161.1. the NBA 2025 records soupfin shark as heavily depleted and common smoothhound as depleted, and states in terms that "urgent effort is needed to halt the rapid decline in shark and ray resources";¹⁹⁴
 - 161.2. the IUCN assesses soupfin shark as Critically Endangered and common smoothhound as Endangered;¹⁹⁵ and
 - 161.3. the departmental stock assessments completed in 2019 found that smoothhound had declined by approximately 30% since the early 1990s and recommended that catches be reduced below 75 tonnes to allow recovery, and estimated the soupfin catch at between 100 and 200 tonnes in 2019 against a population decline reported at more than 90% over three generations.¹⁹⁶
162. That state of affairs cannot be reconciled with the Thematic Area 4 target, which is to "prevent new extinctions" and "support the recovery of priority threatened species". A directed fishery is not bycatch and not an incidental pressure. It involves the deliberate

¹⁹²C da Silva and M Bürgener "South Africa's demersal shark meat harvest" (2007) 21(2) *TRAFFIC Bulletin* 55, recording that longline permits for the directed catching of sharks were first issued in 1991 and that the fishery is effort-controlled, with no total allowable catch, closed season or bag limit. The fishery is permitted under MLRA section 13 and effort is determined under section 14.

¹⁹³R Bregman "South African sharks threatened by fisheries, weak enforcement" *Mongabay*, October 2025. The article records the reduction in permit holders from about 30 in the early 1990s to a single right holder by 2021, and that almost the entire catch of shark meat and fins is exported.

¹⁹⁴National Biodiversity Assessment 2025, "Species status: marine", https://nba.sanbi.org.za/content/species/marine_sp.html, which lists soupfin shark (*Galeorhinus galeus*) as heavily depleted and common smoothhound (*Mustelus mustelus*) as depleted, and records that "[u]rgent effort is needed to halt the rapid decline in shark and ray resources".

¹⁹⁵IUCN Red List of Threatened Species: *Galeorhinus galeus* (Critically Endangered) and *Mustelus mustelus* (Endangered). The assessment years and the global decline estimates should be confirmed against the Red List entries before this submission is finalised.

¹⁹⁶Departmental stock assessments completed in 2019, reported in *Mongabay*, October 2025: "Assessment of smoothhound shark *Mustelus mustelus* in South Africa" and "First comprehensive assessment of soupfin shark *Galeorhinus galeus* in South Africa".

authorisation of the taking of a species that the State has itself assessed as heavily depleted. The plan sets a target of preventing extinctions while the department that would implement it continues to authorise the targeted removal of the animals concerned.

163. Three legal points follow, each of which the final NBSAP should confront.

163.1. First, sustainable use. We have set out above what "sustainable" means in section 1 of NEMBA. Applied to these two species the definition raises a serious question on its own terms: use must be at a rate that would not lead to the resource's long-term decline and would not disrupt the ecological integrity of the ecosystem in which it occurs. A directed take of a species assessed as heavily depleted, and declining, does not satisfy the first limb. A fishery managed by effort rather than by catch does not measure whether it satisfies either limb, because effort is an input and depletion is an outcome, and the relationship between them changes as abundance falls.

163.2. Second, the ecosystem. We have addressed the ecosystem approach to fisheries management in our submissions on commercial fisheries. The point here is the converse one, and it belongs in a species thematic area: these animals are not only a resource being used, they are components of the ecosystem that the approach exists to protect. Section 2 of the MLRA requires the Minister and every organ of state exercising a power under that Act to have regard to the need to protect the ecosystem as a whole including species not targeted for exploitation, to preserve marine biodiversity, and to apply precautionary approaches.¹⁹⁷ Smoothhound and soupfin are mid- and upper-trophic-level predators in the inshore and shelf systems where they are taken. A directed fishery on them is not simply a use of a stock; it is a structural intervention in the ecosystem whose integrity NEMBA and the MLRA both require to be maintained, and it is a pressure on precisely the ecological condition that the plan's ecological infrastructure thematic area is meant to secure.

163.3. Third, trade. Both species were listed on CITES Appendix II at the twentieth meeting of the Conference of the Parties in Samarkand, held from 24 November to 5 December 2025: *Mustelus* spp. with effect from 5 March 2026, and *Galeorhinus galeus* with delayed implementation to 5 June 2027.¹⁹⁸

¹⁹⁷MLRA sections 2(c), 2(e) and 2(f). Section 2 binds "the Minister and any organ of state" in the exercise of any power under the Act. See also NEMBA section 2(a)(iA), which makes the protection of the ecosystem as a whole, including species not targeted for exploitation, an object of that Act.

¹⁹⁸Amendments to Appendices I and II adopted at the twentieth meeting of the Conference of the Parties to CITES, Samarkand, 24 November to 5 December 2025. We have relied on United States Fish and Wildlife Service Office of Law Enforcement public

Because the fishery is almost entirely export-oriented, that listing is not incidental to it. It engages the Scientific Authority's duty to make non-detriment findings on the impact of actions relating to international trade in listed species, and the Minister's duty to publish those findings by notice in the *Gazette*, with interim findings published within 30 days and a 30-day public invitation for written scientific information.¹⁹⁹ A non-detriment finding for a species assessed as heavily depleted and declining is not a formality. The final NBSAP should record, with a date, that non-detriment findings will be made and published for both species before further export is authorised.

164. We therefore recommend that Thematic Area 4 carry an express action on directed fisheries for threatened chondrichthyans, providing at least for: a moratorium on the directed take of any chondrichthyan species assessed as Critically Endangered or heavily depleted, pending a completed and published non-detriment finding and a stock rebuilding plan; the replacement of effort control with a precautionary catch limit consistent with the 2019 departmental assessments; independent observer or electronic monitoring coverage of the fishery; and the publication of catch, discard and export data by species.

165. The continued authorisation of directed fishing for these species creates an obvious implementation tension with the Draft NBSAP's commitments to prevent extinctions, support recovery of priority threatened species and ensure sustainable use, and the final NBSAP should explain how those objectives will be reconciled.

Trade, migratory species, and the listing of instruments

166. The CoP20 listings extend well beyond the two species discussed above. *Carcharhinus longimanus*, *Rhincodon typus* and all Mobulidae were moved from Appendix II to Appendix I, Centrophoridae were newly listed on Appendix II, and the *Glaucostegus* and Rhinidae listings were annotated with a zero export quota for wild-taken specimens, all with effect from 5 March 2026.²⁰⁰ Several of those taxa occur in South African waters, are taken in South African fisheries and are taken by bathers protection gear. Thematic Area 4's compliance action and the Thematic Area 6 commitment to "the regular publication of Non-Detriment Findings" between them neither acknowledge that publication is a statutory

bulletin PB-26-001 of 13 January 2026. The official CITES Notification to the Parties should be consulted to confirm these particulars, including any reservations entered by the Republic.

¹⁹⁹NEMBA sections 61(1)(d) and 62(1) to (3). See also section 57(1A) read with section 87A(1)(b)(ii), under which the Minister is the issuing authority for permits relating to marine species.

²⁰⁰Amendments to Appendices I and II adopted at the twentieth meeting of the Conference of the Parties to CITES, Samarkand, 24 November to 5 December 2025. We have relied on United States Fish and Wildlife Service Office of Law Enforcement public bulletin PB-26-001 of 13 January 2026.

obligation rather than good practice, nor carry an indicator, nor address the March 2026 listings.²⁰¹

167. On migratory species, the CMS instrument for sharks is the Memorandum of Understanding on the Conservation of Migratory Sharks, whose Annex 1 lists 37 species.²⁰² South Africa is recorded by the CMS Secretariat as a Signatory, having signed the MOU on 12 May 2011. Table 2 records that CMS "informs NBSAP species recovery plans" for sharks, but neither thematic area identifies any such plan. We ask that the final NBSAP record South Africa's status under the Sharks MOU and explain how its commitments under the Sharks MOU are reflected in the species-recovery and fisheries-management architecture. The point matters beyond presentation: NEMBA section 43(1)(c) expressly contemplates a biodiversity management plan for a migratory species to give effect to the Republic's obligations under a binding international agreement, while MLRA section 2(i) makes such an obligation a mandatory consideration in the exercise of powers under that Act.²⁰³

168. Thematic Area 4 also assumes a functioning listing regime. For marine species that regime is the Threatened or Protected Marine Species Regulations and the associated list, both published on 30 May 2017,²⁰⁴ which predate both the NBA 2025 assessments and the CoP20 listings. NEMBA section 56(2) requires the Minister to review the lists at least every five years; that review fell due in 2022. Revised regulations were before the portfolio committee on 7 October 2025 and had not then been gazetted, the record reflecting that they had been "repeatedly presented and withdrawn over several years" and that a member raised the concern that marine species exploitation had not been adequately addressed in consultation.²⁰⁵ The review should consider, in particular, whether species now assessed as heavily depleted and Critically Endangered, including soupfin shark, warrant listing under section 56.

Thematic Area 5 promises a seascape approach and contains no marine content

169. The Thematic Area 5 theory of change states that the coexistence strategy "adopts an integrated landscape and seascape approach that encompasses diverse contexts, including urban areas and the marine environment", and its causal statement is expressed as applying "across terrestrial, freshwater and marine environments".²⁰⁶ Nothing in the thematic area delivers that. Of its four actions, only the first mentions marine species, and

²⁰¹Draft NBSAP section 5.4 actions table, final action; section 5.6, actions table.

²⁰²Memorandum of Understanding on the Conservation of Migratory Sharks, 2010, Annex 1 as revised in December 2018.

²⁰³NEMBA sections 43(1)(c) and 45(c)(viii); MLRA section 2(i).

²⁰⁴Lists of Marine Species that are Threatened or Protected, General Notice 476 in *Government Gazette* 40875 of 30 May 2017, and the Threatened or Protected Marine Species Regulations, GNR 477 in *Government Gazette* 40876 of 30 May 2017.

²⁰⁵Record of the meeting of the Portfolio Committee on Forestry, Fisheries and the Environment of 7 October 2025, <https://pmg.org.za/committee-meeting/41701/>.

²⁰⁶Draft NBSAP section 5.5, theory of change.

then only as part of a baseline data exercise. There is no marine lead, method, species or conflict situation identified, and all three indicators are unmeasured. The thematic area commits to reduce, by 2035, a number that is not counted, in respect of species that are not identified, through measures that are not specified.

170. The responsibility assignments compound this. The action to "capacitate and resource provincial authorities to respond to HWC incidents within 24 hrs" is assigned to provincial authorities, supported by traditional authorities.²⁰⁷ Provincial conservation authorities do not hold the principal statutory powers governing marine living-resource exploitation or the permitting of bather-protection gear, which are exercised nationally by DFFE; Schedule 4 Part A of the Constitution lists nature conservation as a concurrent competence expressly "excluding ... marine resources". A response duty assigned to a sphere of government that lacks the power to respond is not an accountability assignment. Elsewhere the drafters were able to name branches within DFFE, and the same specificity is required here.

Lethal bather protection and gear inside Marine Protected Areas

171. The Draft NBSAP names sharks first among the "high-profile species" around which conflict management is concentrated, but does not say what that conflict consists of, how it is managed, or by whom. In South Africa the answer is the bather protection programme operated by the KwaZulu-Natal Sharks Board. Gear is deployed at 37 beaches along approximately 310 km of coast, reduced from 46 beaches in the mid-1990s, and netting has been reduced by approximately 70%, from 44.5 km in 1992 to 13.5 km in 2021.²⁰⁸ It targets white, tiger and bull sharks, all apex predators and two of them listed under the Threatened or Protected Marine Species Regulations. For 2018 to 2022 the programme caught on average approximately 563 animals per year, of which approximately 85 were target sharks and approximately 480 non-target; approximately 14% of sharks were released alive; and mortality was approximately 66% for target sharks and approximately 74% for non-target animals.²⁰⁹ The NBA records that the programme accounts for 2.4% of South Africa's total shark catch and affects Critically Endangered hammerheads among other species.²¹⁰
172. Three matters follow. Published accounts of the same period differ, one recent account giving 411 animals killed per year comprising 55 target and 356 non-target animals.²¹¹ The operator publishes catch statistics only as periodic summaries covering 2013 to 2017 and

²⁰⁷Draft NBSAP section 5.5, actions table, second action.

²⁰⁸NPOA-Sharks II at page 8.

²⁰⁹T. Carnie "The paradox of KZN's killer shark nets and baited hooks in Marine Protected Areas" *Daily Maverick*, 5 February 2025, reporting KwaZulu-Natal Sharks Board data for 2018 to 2022. The Board's catch statistics are published at <https://shark.co.za/shark-and-harm-catch/>.

²¹⁰National Biodiversity Assessment 2025.

²¹¹Mongabay, "Proposed shark net near Club Med resort in South Africa sparks conservation clash", March 2026.

2018 to 2022, and a five-year-block publication by the operator is not an adequate basis, on its own, for a national coexistence indicator. And aggregate figures conceal proportional impact: a departmental study reported in 2015 found that, for five of six endangered or critically endangered shark species, the Sharks Board was responsible for more than 50% of recorded catches.²¹² For a target to "prevent new extinctions", a programme accounting for the majority of recorded catches of most of the country's most threatened species is not peripheral.

173. We take no position in these submissions on whether bather protection is necessary. We submit that the plan cannot claim to manage human-wildlife interactions "to minimise conflict and promote coexistence to reduce impacts on both communities and species" while remaining silent on the fact that the country's principal public bather-protection programme involves the deliberate deployment of gear that can kill threatened and non-target marine species in order to reduce the risk of shark-human interactions. At minimum it should require the coexistence strategy expressly to address marine conflict, including bather protection, in accordance with the IUCN SSC Guidelines on Human-Wildlife Conflict and Coexistence, which the commitment ought to reference and does not; commit to the testing and progressive deployment of non-lethal alternatives, with a timetable; provide for defined thresholds and an exit strategy at which gear is withdrawn; and require annual public reporting of catch, mortality and release by species and by installation.²¹³ A workable comparator exists: in New South Wales the equivalent programme operates under a published management plan with statutory annual performance reports and threatened species scientific committee advice.²¹⁴ The consequences of leaving this gap are not hypothetical: a proposal to install a net and six drumlines at Tinley Manor, approximately 500 metres from a marine protected area, was subjected to public participation in November 2025, and as at March 2026 DFFE had not decided whether an environmental authorisation was required at all.²¹⁵

174. Seven bather protection installations operate inside three marine protected areas: uThukela, Aliwal Shoal and Tafelgar. The justification advanced on behalf of DFFE is that the gear predates the declarations and that the Department "is required to be inclusive of all users and user activities".²¹⁶ That is difficult to reconcile with the instruments. The uThukela regulations provide that "[n]o person may place any shark protection, exclusion

²¹²Reported in *Daily Maverick*, 5 February 2025.

²¹³IUCN SSC Human-Wildlife Conflict and Coexistence Specialist Group, *IUCN SSC Guidelines on Human-Wildlife Conflict and Coexistence: First Edition* (IUCN, Gland, 2023).

²¹⁴See the *Management Plan for the Shark Meshing (Bather Protection) Program*, New South Wales, and the annual performance reports published under it. We cite this as a comparator on accountability structure only.

²¹⁵Mongabay; and see the comments submitted on the Impact Assessment for the installation of bather protection gear at Tinley Manor, KwaDukuza Municipality.

²¹⁶*Daily Maverick*, 5 February 2025, quoting the Department; Atkins, S. *et al* "Navigating transdisciplinary waters to protect both sharks and bathers in KwaZulu-Natal, South Africa" (2025) 30(3) *Ecology and Society* 18, <https://doi.org/10.5751/ES-16288-300318>.

or repelling device, equipment or infrastructure, including nets, within the Marine Protected Area without a permit from the Minister", and separately that "no person may fish for any shark species (Elasmobranchii) within the Marine Protected Area", subject only to shore-based catch and release in controlled zones. The Aliwal Shoal regulations are materially identical.²¹⁷ Read with section 48A(1) of NEMPAA, under which "[d]espite any other legislation" no person may in a marine protected area fish or attempt to fish or carry on any activity which may have an adverse effect on the ecosystem of the area, and with section 48A(2) and (3), under which zoning may be prescribed only after consultation and only where it achieves the objectives of the Act, the deployment of gear whose purpose is to catch and kill elasmobranchs inside such an area raises a question the plan ought to confront.²¹⁸ A pre-existing use justification is a proposition about history, not about law.

175. The same question arises from the other direction in relation to the longline vessel reported to have fished inside the Garden Route Marine Protected Area. These cases raise a material question about whether the integrity and conservation objectives of the marine protected area network are being adequately protected from incompatible activities. This engages Thematic Area 3, which records that mainland marine protection stands at 5.3% of the maritime domain and that expansion must emphasise the mainland.²¹⁹ the thinner the mainland network, the more the integrity of the areas that exist matters. We recommend an action, with a date, to review all bathy protection installations and authorised activities within marine protected areas against NEMPAA section 48A and the applicable management regulations.

Animal wellbeing

176. Since 30 June 2023 NEMBA has defined "well-being", has made the consideration of animal wellbeing in management, conservation and sustainable use an object of the Act, has empowered the Minister to prohibit by notice any activity that may negatively impact on it, and has empowered the Minister to make regulations relating to it.²²⁰ The White Paper, whose goals the plan expressly adopts, defines "humane" by reference to activities that avoid or minimise pain, stress, suffering or distress.²²¹ The courts have held that animal welfare is connected with the section 24 environmental right and that a failure to

²¹⁷Regulations for the Management of the uThukela Marine Protected Area, GNR 790 in *Government Gazette* 42479 of 23 May 2019, regulations 4(5), 8(3) and 8(4); Regulations for the Management of the Aliwal Shoal Marine Protected Area, GNR 781 in the same *Gazette*, regulation 4(5) and the prohibition on fishing for any shark, skate or ray species (Subclass Elasmobranchii). We have not examined the regulations applicable to the Trafalgar Marine Protected Area, declared by *Government Gazette* 21948 of 29 December 2000 under MLRA section 43 and now governed by NEMPAA.

²¹⁸NEMPAA sections 48A(1), 48A(2) and 48A(3), inserted by section 13 of Act 21 of 2014 with effect from 2 June 2014. The purposes for which a marine protected area may be declared include conserving marine and coastal biodiversity and protecting breeding, nursery and feeding areas "thus allowing species recovery and to enhance species abundance in adjacent areas": section 22A(2)(a), (b) and (e).

²¹⁹Draft NBSAP section 5.3, rationale, recording a marine baseline of approximately 14.7% of the maritime domain, comprising 5.3% around mainland South Africa and 35.8% around the Prince Edward Islands, and that approximately 81 900 km² must be added to reach the 20% national target.

²²⁰NEMBA section 1 (definition of "wellbeing", inserted by section 43(c) of Act 2 of 2022), section 2(a)(iiA), section 9A and section 97(1)(aA), all in force from 30 June 2023.

²²¹Draft NBSAP section 4.

consider it may render a decision reviewable; in the *Lion Bone* matter a quota decision was set aside on that basis.²²²

177. Neither thematic area contains any wellbeing content. For chondrichthyans the omission is acute. Sharks caught in gill nets and on baited hooks may die by drowning. For obligate ram-ventilating species, restraint can prevent adequate water flow over the gills, and static gear that is serviced or hauled at intervals extends the period of restraint. The same is true of demersal longline gear, and the reported removal of heads and fins at sea raises the question directly. A plan that identifies sharks as its leading human-wildlife conflict species, and that authorises a directed fishery on two threatened species, should provide for how those animals die.

Sharks as a component of the ecological system that contributes to ecosystem functioning and resilience

178. Thematic Area 8 targets the implementation of ecosystem-based adaptation and nature-based solutions "to restore and maintain ecological infrastructure, including strategic water source areas, to enhance the resilience of ecosystems, species and communities to climate change and ocean acidification".²²³ That target names ocean acidification but identifies no marine ecological infrastructure; the only asset class named in the target is terrestrial and freshwater, and the only marine or coastal asset named anywhere in the thematic area is the estuary, in a single action on climate-aligned estuarine management plans. Thematic Areas 4 and 5 do not cross-refer to Thematic Area 8 at all. The plan therefore asserts a relationship between climate resilience and ecological infrastructure without recognising that in the marine realm ecological functions on which resilience depends are substantially provided by ecosystems and populations that constitute ecological infrastructure, and without recognising that the species Thematic Area 4 is meant to conserve are part of that infrastructure.

179. The plan defines ecological infrastructure functionally, as naturally functioning ecosystems that provide services to nature, people and the economy, and it treats the restoration and maintenance of those functions as the delivery mechanism for ecosystem-based adaptation. On that definition the argument is straightforward –

179.1. **predator populations perform an ecological function.** Chondrichthyans occupy positions from meso-predator to apex predator across estuarine, inshore, shelf and deep-sea systems. Predation structures the abundance,

²²² *S v Lemthongthai* 2015 (1) SACR 353 (SCA); *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* [2016] ZACC 46; 2017 (1) SACR 284 (CC) at paragraphs 57 to 58; *National Council of Societies for the Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others* 2020 (1) SA 249 (GP), applying section 6(2)(e)(iii) of the Promotion of Administrative Justice Act 3 of 2000.

²²³ Draft NBSAP section 5.8.

behaviour and distribution of prey, and the loss of upper trophic levels is associated with changes in community composition at lower levels. A population reduced to a fraction of its former abundance no longer performs that function, whether or not it is still present;

- 179.2. **that function is the condition the plan already measures.** The plan carries an indicator on the "percentage of terrestrial, marine and freshwater realms in natural or near natural ecological condition" and another on services provided by ecosystems.²²⁴ Ecological condition in the marine realm is influenced by the abundance and structure of its predator populations. The Thematic Area 8 indicators therefore overlap, in part, with ecological outcomes affected by decisions taken under Thematic Area 4 and by fisheries management;
- 179.3. **depleted and truncated populations are less resilient.** Reduced abundance, truncated age structure and contracted range diminish the capacity of a population to absorb warming, deoxygenation, acidification and shifts in prey distribution. For late-maturing, low-fecundity species that capacity is small to begin with. Rebuilding depleted chondrichthyan populations is therefore an adaptation measure and not merely a conservation measure, and it should be recognised as such in Thematic Area 8;
- 179.4. **climate change is already an identified pressure on this group.** The NBA records that approximately one fifth of threatened chondrichthyan species face climate-driven habitat loss or range shifts, and the regional assessment of endemic species in the southwest Indian Ocean identifies climate change as an emerging driver alongside overfishing, with South Africa bearing primary conservation responsibility;²²⁵ and
- 179.5. **range shift produces new conflict and defeats fixed measures.** The redistribution of white sharks along the South African coast, whatever its cause, simultaneously alters the species' status assessment, the geography of human-shark interaction and the effectiveness of spatially fixed management measures. Thematic Areas 4, 5 and 8 each hold part of that problem and none is joined to the others.

180. Spatial protection is the instrument in which these threads meet. Marine protected areas and fisheries closures are simultaneously conservation instruments, fisheries

²²⁴Draft NBSAP section 5.8, indicator table, fifth and sixth indicators. The first is recorded as "[n]ot yet measured, however data can be sourced through the SESA ecosystem accounting".

²²⁵National Biodiversity Assessment 2025; Pollom, R.A. *et al* "Overfishing and climate change elevate extinction risk of endemic sharks and rays in the southwest Indian Ocean hotspot" (2024) 19(9) *PLoS ONE* e0306813.

management instruments and climate adaptation instruments, as NEMPAA and the National Environmental Management: Integrated Coastal Management Act 24 of 2008 each recognise.²²⁶ That is a further reason why the operation of lethal gear and of a directed fishery inside or adjacent to those areas, addressed above under the heading “Lethal bather protection and gear inside Marine Protected Areas”, is not only a compliance question but a climate resilience question.

What the White Shark shows

181. A single illustration makes the point about evidence. The white shark has been protected in South Africa since 1991, is listed on CITES Appendix II and CMS Appendices I and II, has its own cage-diving policy, is one of three species targeted by the bather protection programme, and is among the most intensively studied marine species in the country. Notwithstanding all of that, the State cannot say whether the population is stable, declining or redistributing. A regional trend assessment published in 2023, drawing on bather protection catch rates from 1991 to 2021, vessel-based sightings from False Bay, Gansbaai and Mossel Bay and recreational captures in Algoa Bay, concluded that abundance was “largely unchanged ... since protection in 1991” with a partial eastward redistribution; that was contested in the same journal in 2024 on the ground that stability and redistribution cannot be concluded from the available data; and the original authors replied maintaining their conclusions while accepting that standardised monitoring would reduce uncertainty and that the absence of any abundance increase following protection “remains concerning”.²²⁷ We take no position on that dispute and rely on neither account for a proposition about population size. The point is that for the best-studied and best-protected chondrichthyan in South African waters, after thirty-five years of legal protection, the available evidence has not produced agreement on whether the population is stable, declining or redistributing. If the evidence base is this thin at the top of the distribution, the plan’s 2035 assessment will record “insufficient evidence” for this group, exactly as the second NBSAP did for fourteen of its twenty-two outcomes. That is an argument for a monitoring commitment with a date and a custodian, not for lowering the target.

Proposed amendments to Draft NBSAP Targets 4 and 5

182. We recommend the following amendments to Draft NBSAP Targets 4 and 5 –

²²⁶NEMPAA sections 17(a), 17(b), 17(g) and 22A(2); NEMICMA sections 17(c), 17(e), 33 and 34.

²²⁷Bowlby, H.D., Dicken, M.L., Townner, A.V., Waries, S., Rogers, T. and Kock, A. “Decline or shifting distribution? A first regional trend assessment for white sharks (*Carcharodon carcharias*) in South Africa” (2023) 154 *Ecological Indicators* 110720; Gennari, E. *et al*, reply (2024) *Ecological Indicators*; Bowlby, H.D. *et al* “Ecological conclusions remain unchanged for white sharks in South Africa: A reply to Gennari *et al* 2024” (2024) *Ecological Indicators*.

Proposed NBSAP amendment	GBF Target
Name chondrichthyans in Thematic Area 4, record that they are (with freshwater fishes) the most threatened group assessed in South Africa, state the figure relied on and its source, reconcile the Draft NBSAP's 42% with the NBA's 43%, and add at least one chondrichthyan-specific action with a lead, a date and an indicator.	4; also 21
Add an express action on directed fisheries for threatened chondrichthyans, providing for a moratorium on the directed take of any species assessed as Critically Endangered or heavily depleted pending a published non-detriment finding and a stock rebuilding plan; the replacement of effort control with a precautionary catch limit consistent with the 2019 departmental assessments; independent observer or electronic monitoring coverage; and publication of catch, discard and export data by species.	GBF Targets 4 and 5; also 10 and 21
Commit, with a date, to non-detriment findings for smoothhound and soupfin shark under NEMBA section 61(1)(d) and to their publication under section 62 before further export is authorised, and address the wider CoP20 listings that took effect on 5 March 2026, with an indicator.	GBF Targets 4 and 5; also 21
Disclose, for each indicator, which realms and taxonomic groups its data source actually covers, correct or qualify "across all realms" in the species protection level indicator, and commit, with a date, custodian and method, to extending the NBA species protection level and genetic indicators to marine species including chondrichthyans.	GBF Target 21; also 4

Proposed NBSAP amendment	GBF Target
State how an unmeasured indicator will affect management decisions, including that the management response will apply the precautionary principle under NEMA section 2(4)(a)(vii), where applicable, for so long as the necessary information remains unavailable; align the monitoring commitments with NEMBA section 49; and replace the formulation "not currently measured, although relevant data exist across fragmented sources" with the sources concerned, the custodian and the date by which the baseline will exist.	GBF Target 4; also 14 and 21
State the status of the Shark Biodiversity Management Plan, cite it properly, commit to a date for its review and republication under NEMBA section 46(1), identify the implementing agent assigned under section 43(3)(c), and reframe the recovery action so that recovery plans are expressly linked to biodiversity management plans under NEMBA section 43. Bring the five-year evaluation of NPOA-Sharks II into Thematic Area 4 as an action with a date, and insert the "Policy links" element in both thematic areas.	GBF Target 4; also 14 and 21
State South Africa's position under the Sharks MOU and identify the plan or plans through which its commitments are given effect, Table 2 asserting that CMS informs recovery plans for sharks while no such plan is identified anywhere in the document, and add an action, with a date, to review and republish the list of marine species that are threatened or protected under NEMBA section 56, aligned with the NBA 2025 assessments and the CITES Appendices as amended, considering in particular the listing of soupfin shark.	GBF Target 21; also Targets 4, 5 and 9
Give Thematic Area 5 marine content: name the responsible DFFE branch, qualify the assignment of marine incident response to provincial authorities, and add an indicator for marine human-wildlife conflict disaggregated by species and by installation, with a baseline date.	GBF Target 4; also 14 and 21

Proposed NBSAP amendment	GBF Target
Require the National Human-Wildlife Coexistence Strategy expressly to address marine conflict, including bather protection, in accordance with the IUCN SSC Guidelines (2023); commit to testing and progressive deployment of non-lethal alternatives with a timetable; provide for thresholds and an exit strategy; require annual public reporting of catch, mortality and release by species and by installation; and add an action, with a date, to review all installations and authorised activities within marine protected areas against NEMPAA section 48A, recording the outcome under Thematic Area 3.	GBF Targets 4 and 3; also 21
Give both thematic areas wellbeing content, addressing at least handling and release, servicing and soak intervals for static and longline gear, and gear that drowns obligate ram-ventilating species, with an indicator.	GBF Target 5; also 4 and 21
Cross-refer Thematic Areas 4, 5 and 8; name marine and coastal ecological infrastructure and recognise the role of predator populations in maintaining ecosystem functioning and resilience, in the Thematic Area 8 target; record that rebuilding depleted marine populations is a climate adaptation measure; and include chondrichthyans among the climate-vulnerable species to be identified under that thematic area.	GBF Targets 8 and 11; also 4 and 10

PART 3: REMAINING CONCERNS WITH THE DRAFT NBSAP

G. BUSINESS BIODIVERSITY DISCLOSURES UNDER DRAFT NBSAP TARGET 1 (MAINSTREAMING BIODIVERSITY)

What the Draft NBSAP provides

183. As part of mainstreaming biodiversity, it is important to recognise the role to be played both by government and by the private sector. As one of the target indicators for mainstreaming biodiversity, the Draft NBSAP provides: “By 2035, increase in the number of companies disclosing their biodiversity-related risks, dependencies and impacts”. The

data source is recorded as “Not currently measured”.²²⁸ As an accompanying action, the Draft NBSAP indicates that it will “*Harmonise biodiversity disclosure frameworks to reduce reporting duplication and focus mandatory reporting away from compliance toward tracking meaningful impacts on biodiversity*”, and will “partner with” large and transnational companies to monitor, assess and disclose their impacts “in accordance with existing legal, administrative and/or policy frameworks”.²²⁹

184. This is undoubtedly a welcome step towards promoting private sector compliance and disclosure in relation to biodiversity standards. It does not, however, accelerate, promote or develop current reporting standards into mandatory and robust frameworks.

The existing landscape is voluntary

185. In addition to international and national legal and policy instruments, South Africa is considering the adoption, to varying degrees, of internationally recognised sustainability standards, including the International Financial Reporting Standards (“**IFRS**”) Sustainability Disclosure Standards S1 (*General Requirements for Disclosure of Sustainability-related Financial Information*) and S2 (*Climate-related Disclosures*) (“**IFRS S1 and S2**”) issued by the International Sustainability Standards Board (“**ISSB**”).²³⁰ The Companies and Intellectual Property Commission (“**CIPC**”) has updated its XBRL taxonomy, a digital framework for tagging and standardising disclosures, to include a voluntary sustainability disclosures module aligned with IFRS S1 and S2, facilitating structured digital reporting via its eServices portal.²³¹

186. Furthermore, the technical guidance developed by the Taskforce on Nature-related Financial Disclosures (“**TNFD**”) is expected to inform the development of nature-related reporting standards by the ISSB, which may in time complement IFRS S1 and S2 and be introduced in South Africa. The draft South African Standard SANS 17298ED1: *Biodiversity – Considering biodiversity in the strategy and operations of organizations – Requirements and guidelines* has also been published by the South African Bureau of

²²⁸Draft NBSAP, section 5.1, indicator table: “By 2035, increase in the number of companies disclosing their biodiversity-related risks, dependencies and impacts”, aligned to GBF Target 15 and headline indicator 15.1, with the data source recorded as “Not currently measured”.

²²⁹Draft NBSAP, section 5.1, action table: “Harmonise biodiversity disclosure frameworks to reduce reporting duplication and focus mandatory reporting away from compliance toward tracking meaningful impacts on biodiversity”; and “Partner with large and transnational companies to regularly monitor, assess and disclose their risks, dependencies and impacts on biodiversity in accordance with existing legal, administrative and/or policy frameworks”.

²³⁰<https://group.jse.co.za/sustainability/climate-disclosure-guidance>.

²³¹See xbrl.org/news/south-africas-esg-reporting-revolution/; cipc.co.za/wp-content/uploads/2025/02/Customer-Notice-06-of-2025-Sustainability-Reporting-Survey.pdf.

Standards (“**SABS**”), and the BLC has commented on it.²³² A further framework already widely applied in South Africa, the King V Code (“**King V**”), encourages integrated reporting and sustainability reporting by organisations.²³³ King V is intended to have universal application, and its principles are reconcilable with all organisations.²³⁴

187. To ensure practical uptake, the above standards and frameworks should be aligned with existing governance frameworks rather than operating in parallel to them. However, all of the frameworks mentioned above share a common thread of being voluntary in nature. To mainstream biodiversity-related matters into the private sector appropriately, meaningful and robust mandatory reporting is required, based on standards and frameworks aligned with existing governance frameworks, and this must be reflected as a clear target and actionable measure in the Draft NBSAP.

The global direction on business and biodiversity

188. The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (“**IPBES**”) business and biodiversity assessment (“**business and biodiversity assessment**”) provides critical guidance on business and biodiversity and their interconnected relationships. It acknowledges that all businesses depend on biodiversity and critically evaluates how to measure impacts and dependencies on biodiversity.²³⁵

189. Notably, it acknowledges that:

- 189.1. All businesses depend on and impact biodiversity, and that businesses often do not address their impacts, dependencies, risks and opportunities partly due to a lack of awareness;²³⁶
- 189.2. There is currently a lack of: *“adequate rewards and penalties to drive sufficient action by businesses for the conservation and sustainable use of biodiversity and the fair and equitable sharing of the benefits from the utilization of genetic resources and associated traditional knowledge”*;²³⁷

²³²BLC Comments on Draft South African Standard SANS 17298ED1: Biodiversity – Considering biodiversity in the strategy and operations of organizations – Requirements and guidelines, 18 February 2026 (“BLC SANS Comments”).

²³³King V Code on Corporate Governance for South Africa (“King V”) 10.

²³⁴King V 2.

²³⁵ IPBES Summary for policymakers of the methodological assessment of the impact and dependence of business on biodiversity and nature’s contributions to people (business and biodiversity assessment) 3.

²³⁶ IPBES Summary for policymakers of the methodological assessment of the impact and dependence of business on biodiversity and nature’s contributions to people (business and biodiversity assessment) 5.

²³⁷ IPBES Summary for policymakers of the methodological assessment of the impact and dependence of business on biodiversity and nature’s contributions to people (business and biodiversity assessment) 5.

- 189.3. An enabling environment must be created that includes changes to, amongst others, policy, legal, and regulatory frameworks;²³⁸ and
- 189.4. All business must take responsibility to address their impacts and dependencies based on the scale of their impacts and dependencies on biodiversity as well as their role in contributing to nature and people and in promoting ecosystem services.²³⁹
190. The Draft NBSAP must therefore align with these methodological findings and incorporate functional and robust solutions to enable, incentivise, and penalise businesses in such a manner to ensure that all businesses, address their impacts and dependencies on biodiversity to maintain, improve, and conserve the ecosystems the natural world, societies, and businesses depend on.

Why the current framing falls short of GBF Target 15

191. GBF Target 15 requires Parties to take legal, administrative or policy measures to encourage and enable business, and in particular to ensure that large and transnational companies and financial institutions regularly monitor, assess and transparently disclose their risks, dependencies and impacts on biodiversity, including along their operations, supply and value chains and portfolios; provide information needed by consumers; and report on compliance with access and benefit-sharing regulations.²⁴⁰ Measured against that requirement, the Draft NBSAP is deficient in six respects.

- 191.1. **The measures proposed are not legal, administrative or policy measures.** To “partner with” companies is a form of engagement, not a measure. The action expressly contemplates disclosure occurring “in accordance with existing legal, administrative and/or policy frameworks”. The premise of Target 15 is that the existing frameworks are inadequate and that new measures are required. An action that expressly confines itself to existing frameworks cannot discharge it.

²³⁸ IPBES Summary for policymakers of the methodological assessment of the impact and dependence of business on biodiversity and nature's contributions to people (business and biodiversity assessment) 6.

²³⁹ IPBES Summary for policymakers of the methodological assessment of the impact and dependence of business on biodiversity and nature's contributions to people (business and biodiversity assessment) 8.

²⁴⁰ GBF, Target 15, which requires Parties to take legal, administrative or policy measures to encourage and enable business, and in particular to ensure that large and transnational companies and financial institutions (a) regularly monitor, assess and transparently disclose their risks, dependencies and impacts on biodiversity, including with requirements for all large as well as transnational companies and financial institutions along their operations, supply and value chains and portfolios; (b) provide information needed to consumers to promote sustainable consumption patterns; and (c) report on compliance with access and benefit-sharing regulations and measures.

- 191.2. **Financial institutions are omitted.** Target 15 names financial institutions expressly and separately from companies. Neither the indicator nor either action refers to financial institutions, and the Draft NBSAP's definition of "large companies" is expressed in corporate turnover and listing terms.²⁴¹ Portfolio-level exposure, which is where the financial sector's biodiversity impact principally sits, is therefore outside the scope of the target altogether.
- 191.3. **Supply and value chains are omitted.** Target 15(a) requires disclosure along operations, supply and value chains and portfolios. The Draft NBSAP refers only to companies' own "risks, dependencies and impacts", which on its ordinary meaning is confined to direct operations. This is particularly important in the context of transnational companies operating in South Africa, but with parent companies domiciled in other jurisdictions.
- 191.4. **Targets 15(b) and 15(c) are not given effect anywhere.** The Draft NBSAP allocates Targets 15(b) and (c), and Target 16, to White Paper Goal 2 and therefore to the sustainable use and biodiversity economy thematic area. Neither the national target wording in section 5.6 nor any of its indicators addresses consumer information or business reporting on access and benefit-sharing compliance.²⁴²
- 191.5. **The indicator is vague.** "Increase in the number of companies disclosing", without a baseline, a denominator or a quantum, is satisfied by a single additional disclosing company over a ten-year period. This is inconsistent with the Draft NBSAP's own blueprint, which requires indicators to be quantifiable and to track quantifiable metrics.²⁴³

The domestic route to mandatory disclosure already exists

192. The BLC set out the legal avenues for mandatory biodiversity disclosure in its comments on SANS 17298ED1: *Biodiversity – Considering biodiversity in the strategy and*

²⁴¹Draft NBSAP, section 5.1, footnote 2, defining large companies as: groups or companies with turnover exceeding R1 billion; groups or companies listed on a stock exchange; multinational enterprises (including e-commerce or foreign electronic service providers); and mining groups or companies with turnover exceeding R500 million, adapted from SARS.

²⁴²Draft NBSAP, section 4.3, table of White Paper Goals and Enablers, which allocates GBF Targets 15(b) and (c) and Target 16 to Goal 2 (Sustainable Use). Neither the national target wording nor any indicator under section 5.6 (Sustainable use and the biodiversity economy) gives effect to Target 15(b) or 15(c).

²⁴³Draft NBSAP, section 5, Table 6, which requires national target wording to be a "concise, time-bound statement" in the form "By 2035, [active verb] [specific outcome...]", and requires target indicators to be "Quantifiable" and to "track quantifiable metrics related to outcomes of the target". No equivalent time-binding criterion is applied to activities.

operations of organizations – Requirements and guidelines, and repeats them here in summary.

- 192.1. **Standards Act.** Section 28(1) of the Standards Act 8 of 2008 provides that a South African National Standard affecting environmental protection may be incorporated in any law.²⁴⁴ SANS 17298, once finalised, is such a standard.
 - 192.2. **NEMBA regulations.** Section 97(1)(i) of NEMBA empowers the Minister to make regulations relating to any matter that is necessary or expedient to achieve the objectives of the Act, which include giving effect to ratified international agreements relating to biodiversity binding on the Republic.²⁴⁵ Giving domestic effect to GBF Target 15 falls squarely within that power.
 - 192.3. **Companies Act regulations.** Expanded regulations under the Companies Act 71 of 2008 could require biodiversity reporting, leveraging the CIPC’s existing XBRL taxonomy and sustainability disclosures module and the ongoing work on the adoption of the ISSB Sustainability Disclosure Standards.²⁴⁶
 - 192.4. **Alignment with King V.** Biodiversity metrics should be linked to IFRS S1 and S2 and TNFD formats so that they can be included in King V integrated reports, and risk assessment protocols should link biodiversity dependencies to solvency and **going concern assessments, with sector-specific thresholds.**²⁴⁷
193. The Draft NBSAP has, moreover, already done the difficult definitional work. Its own footnote defines large companies by reference to turnover exceeding R1 billion, listing on a stock exchange, multinational status, and mining groups with turnover exceeding R500 million.²⁴⁸ That definition is a workable threshold for a mandatory disclosure obligation, and it is notable that it already singles out the mining sector, for the reasons canvassed in section A above.

²⁴⁴Standards Act 8 of 2008, section 28(1), which provides that a South African National Standard affecting environmental protection may be incorporated in any law.

²⁴⁵NEMBA, section 97(1)(i), read with section 2(b).

²⁴⁶Companies Act 71 of 2008. See further the Companies and Intellectual Property Commission’s XBRL taxonomy and sustainability disclosures module, and CIPC Notice 6 of 2025 concerning public consultation on mandatory sustainability reporting obligations. The current status of mandatory sustainability reporting in South Africa is the subject of conflicting public reporting and is being verified by BLC.

²⁴⁷Above n 61.

²⁴⁸Above n 64.

Free, prior and informed consent as a disclosable item

194. The United Nations Working Group's June 2026 guidance records that businesses have an independent responsibility to respect human rights, which exists independently of a State's ability or willingness to fulfil its own obligations; that free, prior and informed consent should be sought and obtained throughout the whole lifecycle of projects, including the supply chain; and that businesses are expected to treat the absence of consent as a constraint on their ability to proceed. Given that Target 15(a) extends disclosure to supply and value chains, and that Target 15(c) requires reporting on access and benefit-sharing compliance, the BLC submits that any national biodiversity disclosure instrument should require disclosure of whether free, prior and informed consent has been sought, obtained and maintained in respect of operations affecting indigenous peoples and local communities.

Proposed indicators and actions

195. The BLC proposes that the existing Draft NBSAP Target 15 indicator be replaced, and the corresponding actions amended, as follows.

Proposed target indicator	GBF target	Data source
By 2028, a legal or administrative instrument mandating biodiversity disclosure by large and transnational companies and financial institutions is promulgated.	15	Gazette
By 2028, a baseline of current biodiversity disclosure by entities falling within that definition is established and published.	15	CIPC; JSE; DFFE
By 2030, 100% of large and transnational companies and financial institutions, as defined, publicly disclose their biodiversity-related dependencies, impacts, risks and opportunities across their operations, supply and value chains and portfolios.	15	CIPC XBRL; company reports (headline 15.1)

Proposed target indicator	GBF target	Data source
By 2030, 100% of disclosing entities report on compliance with access and benefit-sharing regulations and on the status of free, prior and informed consent for operations affecting indigenous peoples and local communities.	13, 15(c), 22	CIPC; DFFE permitting systems
By 2035, increase in the proportion of biodiversity disclosures subject to independent third-party assurance.	15	Company reports; assurance providers
By 2030, consumer-facing information requirements are in place for product categories with the highest biodiversity impact.	15(b), 16	DTIC; National Consumer Commission

Proposed supplementary actions	Responsibility
Promulgate regulations under section 97 of NEMBA requiring mandatory biodiversity disclosure by large and transnational companies and financial institutions, incorporating SANS 17298 once finalised by operation of section 28(1) of the Standards Act.	Lead: DFFE Support: SABS, National Treasury, DTIC, SANBI
Expand regulations under the Companies Act to require biodiversity reporting, aligned to the CIPC XBRL taxonomy and to the ISSB Sustainability Disclosure Standards workstream, with enforcement consequences for non-compliance.	Lead: DTIC, CIPC Support: DFFE, National Treasury, JSE
Extend the scope of biodiversity disclosure to financial institutions, and to operations, supply and value chains and portfolios.	Lead: National Treasury Support: Prudential Authority, FSCA, DFFE, JSE

Proposed supplementary actions	Responsibility
Align biodiversity metrics with IFRS S1 and S2, TNFD and King V so that disclosure is embedded within existing integrated reporting rather than operating in parallel to it.	Lead: DFFE, National Treasury Support: JSE, IoDSA, CIPC
Require independent third-party assurance of biodiversity disclosures for entities exceeding defined thresholds of size, turnover, number of sites or position in the value chain.	Lead: DFFE, National Treasury Support: IRBA, CIPC
Require disclosure of the status of free, prior and informed consent and of access and benefit-sharing compliance as part of mandatory biodiversity disclosure.	Lead: DFFE Support: DSTI, CIPC
<u>Amend existing action 13:</u> Delete the words “and focus mandatory reporting away from compliance” from the harmonisation action, and retain the objective of reducing duplicative reporting.	Lead: DFFE, National Treasury
Develop consumer-facing information requirements for product categories with the highest biodiversity impact, giving effect to GBF Targets 15(b) and 16.	Lead: DTIC Support: DFFE, National Consumer Commission

196. The BLC records that clear and mandatory language matters for the same reason it matters in any legal instrument. South African courts interpret instruments by reference to their ordinary meaning, context and purpose.²⁴⁹ Where an instrument is intended to drive conduct, permissive formulations invite the conclusion that no conduct is required.

H. CLIMATE CHANGE AND ECOLOGICAL INFRASTRUCTURE UNDER DRAFT NBSAP TARGET 8, AND IN PARTICULAR GROUNDWATER

The missing limb of GBF Target 8

197. GBF Target 8 has two limbs. The first requires Parties to minimise the impact of climate change and ocean acidification on biodiversity and to increase its resilience. The second

²⁴⁹*Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13, para 18.

requires Parties to minimise the negative, and foster the positive, impacts of *climate action* on biodiversity.²⁵⁰

198. The Draft NBSAP's national target under section 5.8 gives effect only to the first limb. It is directed entirely at ecosystem-based adaptation, nature-based solutions, the restoration and maintenance of ecological infrastructure, and the reduction of climate-related disaster risk.²⁵¹ The second limb is absent.

199. The second limb of Target 8 is the limb that governs the biodiversity consequences of the energy transition: the siting of renewable energy generation and transmission infrastructure, the development of green hydrogen, and the extraction of critical minerals. In South Africa those pressures fall disproportionately on the arid interior and the Northern Cape, which is the same landscape addressed in section A above and the same landscape in which the Draft NBSAP's itself records mining and energy production as causing direct destruction of natural habitat. Omitting to reference the potential biodiversity cost of climate action in the national climate and biodiversity target risks leaving an emerging land-use pressure unaddressed.

Water resources and the extractive sector

200. In the rationale explaining the Draft NBSAP's stance on ecological infrastructure and climate resilience, the importance of water is clearly highlighted. However, neither the rationale nor the actions identify or address the threats faced by water resources stemming from mining and similar extractive operations. Of critical importance to the ecological infrastructure of South Africa is the integrity of water resources, particularly in arid and semi-arid biomes.

201. The potential impact on groundwater must be considered in the context of mining, prospecting and other extractive activities, as groundwater is central to climate adaptation, particularly as a buffer during droughts.²⁵² As global research on groundwater-dependent ecosystems ("GDEs") confirms, groundwater serves as the primary buffer when surface

²⁵⁰GBF, Target 8, which requires Parties to minimise the impact of climate change and ocean acidification on biodiversity and increase its resilience through mitigation, adaptation and disaster risk reduction actions, including through nature-based solutions and ecosystem-based approaches, while minimising negative and fostering positive impacts of climate action on biodiversity.

²⁵¹Draft NBSAP, section 5.8, national target: "By 2035, ecosystem-based adaptation or nature-based solutions are implemented to restore and maintain ecological infrastructure, including strategic water source areas, to enhance the resilience of ecosystems, species and communities to climate change and ocean acidification, reducing climate-related disaster risks and generating other societal benefits."

²⁵²African Climate Alliance and Others v Minister of Mineral Resources and Energy and Others 2024 ZAGPPHC 1271; South Durban Community Environmental Alliance and Another v Minister of Forestry, Fisheries and the Environment and Others 2025 ZASCA 134.

water and precipitation are insufficient, and this function becomes increasingly critical under warming conditions.²⁵³ South Africa is acutely exposed to this dynamic: climate change is reducing rainfall reliability and aquifer recharge rates across significant parts of the country, while simultaneously increasing demand on groundwater as a substitute for unreliable surface water. This concern is particularly acute in arid and semi-arid lands contexts such as the Succulent Karoo, where acute groundwater dependence collides with globally significant biodiversity in fragile arid ecosystems.²⁵⁴

202. Groundwater plays a foundational role in sustaining South Africa's ecological infrastructure. It sustains numerous wetlands and springs hydrologically connected to aquifers, supports baseflows in the non-perennial rivers typical of semi-arid regions, and underpins the functioning of Strategic Water Source Areas.²⁵⁵ Research mapping GDEs globally finds them present across more than one third of drylands analysed, including major biodiversity hotspots, and shows that 53% of GDEs exist in regions with declining groundwater trends.²⁵⁶ The 2025 NBA confirms this picture domestically, finding that estuaries, rivers and wetlands are the most threatened and least protected ecosystems in the country, with mining and energy operations identified as a major pressure whose cumulative impacts extend well beyond their direct footprint. Declining groundwater levels, whether from over-abstraction, mining dewatering, or cumulative land-use pressures, are associated with wetland desiccation, loss of obligate wetland and spring biota, and vegetation regime shifts in riparian systems, particularly in water-stressed catchments.

203. The expansion of critical mineral extraction and other high-intensity industries compounds these risks. Mining activities, including pumping to keep shafts dry, lithium brine extraction, and metal mining operations, lower water tables, alter groundwater flows, and risk generating acid mine drainage and chemical contamination of aquifers.²⁵⁷ These are the precise contexts where climate and biodiversity pressures converge: aquifers are

²⁵³Pitcock, J., Hussey, K. & Stone, A. (2016) "Groundwater Management Under Global Change: Sustaining Biodiversity, Energy and Food Supplies" in Jakeman, A.J., Barreteau, O., Hunt, R.J., Rinaudo, J-D. & Ross, A. (eds) *Integrated Groundwater Management* (Springer, Cham), available at https://doi.org/10.1007/978-3-319-23576-9_4.

²⁵⁴BLC Comments on the Proposed Regulations for the management of Groundwater, 2 March 2026, pp 6–9, available at <https://biodiversitylaw.org/wp-content/uploads/2026/03/BLC-Comments-Proposed-Groundwater-Regulations-2-March-2026.pdf>.

²⁵⁵National Water Act 36 of 1998 ("NWA"), sections 2(g) and (h), 3 and 19. These provisions require the protection of aquatic ecosystems and their biodiversity and impose a duty to prevent pollution and ecological degradation of water resources. Read with section 24 of the Constitution, which requires the State to prevent ecological degradation and promote conservation for present and future generations.

²⁵⁶Rohde, M.M., Albano, C.M., Huggins, X. et al. "Groundwater-dependent ecosystem map exposes global dryland protection needs" (2024) *Nature* 632 101–107, available at <https://doi.org/10.1038/s41586-024-07702-8>, finding groundwater-dependent ecosystems present across more than one third of global drylands analysed, with 53% of such ecosystems in regions showing declining groundwater trends.

²⁵⁷Aska, B. et al., "Mining, biodiversity and social conflict". [Full citation to be completed before filing.]

being drawn down at the same time as recharge rates are declining, and the ecological systems dependent on stable groundwater levels are already under stress. In the Karoo specifically, these risks are amplified by the region's high aquifer vulnerability, slow recharge rates, and the concentration of animal activity around limited water sources, which increases exposure to contaminated water.²⁵⁸

204. Notwithstanding all of this, the word “groundwater” does not appear anywhere in the Draft NBSAP. Its treatment of ecological infrastructure is, in consequence, surface-water-centric, and does not engage with the systems in which groundwater is the primary determinant of ecological integrity. Accordingly, the Draft NBSAP must be direct in addressing impacts on ecological infrastructure and climate resilience in relation to specific sectors and industries, such as the extractive industry, which place significant pressure on South Africa's ecological infrastructure and climate resilience.

Climate change impact assessment in authorisation decisions

205. The Draft NBSAP contains no activity or indicator concerning the assessment of climate change impacts in environmental authorisation decisions. Section 24O(1) of NEMA obliges a competent authority to take into account all relevant factors, including any pollution, environmental impacts or environmental degradation likely to be caused if an application is approved or refused.²⁵⁹ In *Earthlife Africa Johannesburg* the court held that climate change impacts are relevant factors that must be considered, that a formal climate change impact assessment is the best evidentiary means of doing so, and that an environmental authorisation granted without that consideration is unlawful.²⁶⁰

206. The Climate Change Act 22 of 2024 now places adaptation duties on the State and provides for sector-specific adaptation plans.²⁶¹ The Draft NBSAP's action to integrate ecological infrastructure and ecosystem-based adaptation into Climate Change Sector Plans is welcome, but it carries no date, and the corresponding indicator is directional: “increase the number of Climate Change Sector Plans... which recognise ecological infrastructure and Ecosystem-based Adaptation as an intervention”. One additional sector plan over ten years satisfies it.

²⁵⁸Pienaar et al., Implementation of groundwater protection measures, recording that local impacts such as mining and industrial activities are generally not visible in national scale monitoring networks. See also the opinion of Dr S. Esterhuyse annexed to BLC's comments on the Fracking Regulations, highlighting the need for a comparison of projected water use with existing cumulative catchment stress and for the determination of risk-based abstraction thresholds or adaptive management triggers for groundwater abstraction.

²⁵⁹NEMA, section 24O(1).

²⁶⁰*Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others* 2017 (2) All SA 519 (GP).

²⁶¹Climate Change Act 22 of 2024, sections 5 and 7.

207. The Strategic Water Source Area indicator is similarly unquantified: “increase the percentage area of strategic water source areas that are protected, maintained and restored”.²⁶² Statistics South Africa has published natural capital accounts for Strategic Water Source Areas, which provide a baseline against which a quantified target can be set.

Proposed amendments, indicators and actions

Proposed amendment to the national target

208. The BLC proposes that the words underlined below be inserted into the Draft NBSAP target 8:

By 2035, ecosystem-based adaptation or nature-based solutions are implemented to restore and maintain ecological infrastructure, including strategic water source areas and groundwater-dependent ecosystems, to enhance the resilience of ecosystems, species and communities to climate change and ocean acidification, reducing climate-related disaster risks and generating other societal benefits, and the negative impacts of climate change mitigation and adaptation measures on biodiversity are minimised and their positive impacts fostered.

Proposed target indicators

Proposed target indicator	GBF target	Data source
By 2030, 100% of Climate Change Sector Plans under the National Climate Change Adaptation Strategy recognise ecological infrastructure and ecosystem-based adaptation as an intervention and identify the biodiversity risks arising from mitigation measures within that sector.	8	Climate Change Sector Plans (headline 8.1)

²⁶²Draft NBSAP, section 5.8, indicator: “By 2035, increase the percentage area of strategic water source areas that are protected, maintained and restored”, with the data source recorded as “Accounts for Strategic Water Source Areas”. See Statistics South Africa, Natural Capital Accounts for Strategic Water Source Areas (2023).

Proposed target indicator	GBF target	Data source
By 2028, 100% of environmental authorisation applications for climate mitigation infrastructure (renewable energy generation and transmission, green hydrogen, and critical mineral extraction) located in Critical Biodiversity Areas, Ecological Support Areas, Strategic Water Source Areas or arid biomes include a climate change impact assessment and an assessment of the biodiversity risk of the mitigation measure itself.	8, 14	DFFE; DMPR
By 2035, no net loss of the extent or ecological condition of Strategic Water Source Areas against the Statistics South Africa natural capital account baseline.	11	Accounts for Strategic Water Source Areas
By 2030, groundwater-dependent ecosystems are mapped nationally and ecological drawdown thresholds are established for Strategic Water Source Areas and arid-biome aquifers.	8, 11	DWS; SANBI
By 2030, cumulative catchment stress assessments and risk-based abstraction thresholds are in place for aquifers subject to extractive-sector abstraction or dewatering.	8, 11	DWS; CMAs
By 2035, no reduction in ecological connectivity between protected and conserved areas across elevational and climatic gradients.	3, 8	PACA; NBA; connectivity index to be established
By 2030, a national dryland soil organic carbon baseline is established and monitored.	8, 11	SANBI; ARC; SAEON

Proposed supplementary actions

Proposed action	Responsibility
Amend the national target under section 5.8 to give effect to the second limb of GBF Target 8, and add corresponding indicators and activities addressing the biodiversity impacts of climate mitigation and adaptation measures.	Lead: DFFE Support: SANBI, Presidential Climate Commission
Expressly recognise groundwater and groundwater-dependent ecosystems as ecological infrastructure in the rationale, target, indicators and actions of section 5.8.	Lead: DFFE, SANBI Support: DWS
Develop and gazette a climate change impact assessment protocol under section 24(5)(a) and (h) of NEMA, giving effect to section 24O(1) of NEMA and to the jurisprudence on the consideration of climate change in authorisation decisions.	Lead: DFFE
Integrate groundwater-dependent ecosystems, ecological drawdown thresholds and climate-adjusted recharge estimates into the Groundwater Regulations, catchment management strategies and water use authorisation processes, and require cumulative catchment stress assessment for extractive-sector abstraction and dewatering.	Lead: DWS Support: DFFE, SANBI, CMAs
Establish and monitor a national dryland soil organic carbon baseline, and integrate it into the ecosystem service accounts developed under Natural Capital Accounting.	Lead: SANBI, Stats SA Support: ARC, SAEON, DoA
Identify, map and secure climate corridors across elevational and climatic gradients, and give this activity a date and a corresponding indicator.	Lead: SANBI, DFFE Support: Provincial conservation authorities, SANParks

Proposed action	Responsibility
Quantify the Strategic Water Source Area indicator against the Statistics South Africa natural capital account baseline, and give the ecosystem service accounts activity a completion date.	Lead: SANBI, Stats SA Support: DWS, DFFE

I. POLLUTION AND WASTE MANAGEMENT UNDER DRAFT NBSAP TARGET 7

209. The BLC welcomes the creation of a dedicated thematic area for pollution and waste, which the second NBSAP lacked. Effective pollution and waste management is key to realising not only the right to a healthy environment, but also a host of other human rights, including the rights to life, health, equality and dignity.

Section 24(a) of the Constitution is immediately realisable

210. The Draft NBSAP states that South Africa is progressive in its realisation of the right to a healthy environment contained in section 24 of the Constitution. That characterisation no longer reflects the *status quo*, as our courts have confirmed that the right is immediately realisable. In *Trustees for the time being of the Groundwork Trust and Another v Minister of Environmental Affairs and Others* (“**Deadly Air**”), the court recognised that section 24(a) is an unqualified right and is immediately realisable.²⁶³

211. The court held that section 24(a) is very similarly worded to the section 29(1)(a) constitutional right to basic education. To draw this conclusion, the court relied upon the judgment in *Governing Body of the Juma Masjid Primary School and Others v Essay N.O. and Others*, which emphasised that section 29(1)(a) of the Constitution is immediately realisable, that a progressive realisation of that right is not appropriate, and that the right may only be limited through a law of general application.²⁶⁴

212. The court used the same reasoning to extend that approach to section 24(a) of the Constitution, thereby confirming that this right differs from other socio-economic rights and that it should not afford government the ability to rely on a progressive realisation which allows reasonable measures to be taken within certain time and resource constraints.

²⁶³*Trustees for the time being of the Groundwork Trust and Another v Minister of Environmental Affairs and Others* 2022 ZAGPPHC 208 (“Deadly Air”).

²⁶⁴*Governing Body of the Juma Masjid Primary School and Others v Essay N.O. and Others* 2011 (8) BCLR 761 (CC); [2011] ZACC 13. BLC to confirm the paragraph references before filing.

213. The unqualified interpretation of section 24(a) adopted by the court in *Deadly Air* ensures a right that is not constrained by limitations resulting from progressive realisation. Furthermore, it creates a section 24(a) that is both a positive and a negative right, and which is not bound by the additional obligations mandated by section 24(b).²⁶⁵ It further emphasises that section 24 of the Constitution has an important role to play in protecting society from environmental harm and ensuring long-term environmental protection.
214. Accordingly, the court in *Deadly Air* developed the interpretation of section 24(a) of the Constitution so as to contribute to the path of promoting transformative environmental constitutionalism.²⁶⁶ The concept of transformative environmental constitutionalism promotes, among other things, the relationship and interdependence between society and ecological factors, and the way in which a healthy environment has a direct bearing on achieving just and equitable societies, especially for society's most vulnerable communities who have suffered disproportionate past injustices.²⁶⁷ It further promotes the intersection of rights, and specifically applies a substantive human rights approach that goes hand in hand with environmental issues. Additionally, transformative environmental constitutionalism acknowledges and promotes appropriate substantive rights, in addition to environmental rights, that achieve societal and environmental constitutional objectives.²⁶⁸

Consequences for the framing of the pollution target

215. The Draft NBSAP must reflect the immediately realisable nature of section 24(a) of the Constitution in its targets and actions relating to pollution and waste management. Notably, the target indicators under section 5.7 all specify a timeline of "by 2035", which reflects a progressive implementation.²⁶⁹ This should be amended to reflect clear and achievable targets and indicators over the short, medium and long term. The same reasoning applies more generally across the Draft NBSAP, as addressed in section B above.
216. Two further departures from GBF Target 7 should be corrected. First, Target 7 requires the reduction of pollution risks and negative impacts "considering cumulative effects". That qualification is omitted from the national target, notwithstanding that cumulative pollution loading is precisely the mechanism by which mining legacy waste, acid mine drainage,

²⁶⁵McConnachie 2024 Constitutional Court Review 283–319 at 296.

²⁶⁶Murcott 2023 Constitutional Court Review 147–170 at 163.

²⁶⁷Murcott (above) at 165–167.

²⁶⁸Murcott (above) at 168.

²⁶⁹Draft NBSAP, section 5.7, national target: "By 2035, reduce pollution from all sources to levels not harmful to biodiversity and ecosystem services by implementing the circular economy and managing solid waste, wastewater and effluent to reduce risks from microplastics, nutrient loading, pesticides, hazardous chemicals and other contaminants."

industrial effluent and agricultural return flows combine to degrade aquatic systems. Second, Target 7 contains quantified sub-targets, including the reduction by at least half of excess nutrients lost to the environment and of the overall risk from pesticides and highly hazardous chemicals. The national target drops both quantifications and substitutes directional indicators, several of which are recorded as not currently measured.²⁷⁰

217. Finally, the BLC supports the action to map and prioritise contaminated sites and legacy industrial and mining areas.²⁷¹ That action should be dated, and should be linked to the enforcement of financial provisioning obligations addressed in section D above, so that the cost of remediation falls in the first instance on the rights holder responsible for the contamination rather than on the fiscus.

Proposed indicators and actions

Proposed target indicators

Proposed target indicator	GBF target	Data source
By 2030, excess nutrients lost to the environment are reduced by at least half against a 2027 baseline.	7	DWS; Integrated Water Quality Policy monitoring
By 2030, the overall risk from pesticides and highly hazardous chemicals is reduced by at least half against a 2027 baseline.	7	HHP registry; DoA; DFFE
By 2028, baselines are established and published for the Index of Coastal Eutrophication Potential and for pesticide environment concentration and aggregated total applied toxicity.	7	DFFE; SANBI
By 2028, cumulative effects are expressly incorporated into the assessment of pollution impacts in environmental authorisation and water use licensing.	7, 14	DFFE; DWS

²⁷⁰Draft NBSAP, section 5.7, indicator table, in which the data source for the Index of Coastal Eutrophication Potential is recorded as based on current SDG reporting for the West Coast only, and the data source for pesticide environment concentration and aggregated total applied toxicity is recorded as "Not currently measured as an aggregated index".

²⁷¹Draft NBSAP, section 5.7, action: "Map and prioritise contaminated sites and legacy industrial or mining areas to guide the implementation of targeted remediation and restoration measures." Lead: DFFE, DWS.

Proposed target indicator	GBF target	Data source
By 2030, 100% of identified legacy mining and industrial contaminated sites are mapped, prioritised, and assigned a responsible party or, where none exists, a funded State remediation programme.	7	DFFE; DWS; DMPR
Short-, medium- and long-term milestones (2028, 2031 and 2035) are specified for each pollution and waste indicator.	7	DFFE

Proposed actions

Proposed action	Responsibility
Amend the national target under section 5.7 to include the words “considering cumulative effects” and to adopt the quantified sub-targets contained in GBF Target 7.	Lead: DFFE
Re-express the pollution and waste indicators as short-, medium- and long-term milestones, reflecting the immediately realisable nature of section 24(a) of the Constitution.	Lead: DFFE
Date the action to map and prioritise contaminated sites and legacy industrial and mining areas, and publish the resulting register, including the responsible party for each site.	Lead: DFFE, DWS Support: DMPR
Link legacy site remediation to the enforcement of the Financial Provisioning Regulations, so that remediation costs fall on the responsible rights holder in the first instance.	Lead: DMPR, DFFE Support: National Treasury
Incorporate cumulative pollution loading expressly into environmental authorisation and water use licensing assessment.	Lead: DFFE, DWS

J. THE 30X30 COMMITMENT UNDER DRAFT NBSAP TARGET 3

The target as drafted

218. The Draft NBSAP's national target 3 commits to a system of protected and conserved areas covering 21% of land-based areas and 20% of marine areas by 2035.²⁷² GBF Target 3 requires 30% of terrestrial and inland water areas, and 30% of coastal and marine areas, by 2030.²⁷³ As set out in the introduction, Goal 1 of the White Paper and SANParks' Vision 2040 both proceed on the basis of an expanded, connected protected area estate.

219. The difference between the national target and the global target is dealt with in a footnote, which records a commitment by government, civil society and the private sector to secure an additional 10.4 million hectares, "conditional on mobilising and aligning resources".²⁷⁴ The associated resource mobilisation activity in section 5.11 then refers to accelerating expansion "towards reaching 30% by 2035".²⁷⁵

220. The BLC notes that this commitment is (i) set out in a footnote rather than the body of the strategy, (ii) expressly conditional on unspecified resources, (iii) not accompanied by any clear financing pathway or date, and (iv) referenced in the action plan to 2035 rather than 2030. This renders South Africa's national target as aspirational, and falls short of taking the form of an actionable, measurable commitment that the NBSAP requires.

Specific concerns

221. The target is calculated based on a strategy the Draft NBSAP undertakes to revise: The 21% figure is taken from the long-term target of the National Protected Area Expansion Strategy, 2018. The Draft NBSAP separately records that the NPAES 2018 was developed under the previous Aichi targets, and that its revision is a necessary activity

²⁷²Draft NBSAP, section 5.3, national target: "By 2035, expand a representative system of protected and conserved areas, covering 21% of land-based (terrestrial and freshwater) areas, and 20% of marine areas, ensuring they are effectively managed, equitably governed, and integrated into broader ecological and social land-, water- and seascapes."

²⁷³GBF, Target 3, which requires that by 2030 at least 30 per cent of terrestrial, inland water, and of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem functions and services, are effectively conserved and managed through ecologically representative, well-connected and equitably governed systems of protected areas and other effective area-based conservation measures, integrated into wider landscapes, seascapes and ocean.

²⁷⁴Draft NBSAP, section 5.3, footnote 3, which records that, in pursuit of scaling up national ambition towards alignment with the global target of 30% by 2030, government, civil society and the private sector "further commit to securing an additional 10,4 million hectares of land-based protected and conserved areas, conditional on mobilising and aligning resources".

²⁷⁵Draft NBSAP, section 5.11, action: "Actively pursue effective resource mobilisation from non-state and private actors to accelerate expansion towards reaching 30% by 2035, potentially through innovative sources."

of this NBSAP.²⁷⁶ The national target for the decade to 2035 is therefore anchored to an instrument that the same document says is out of date and will be replaced. That reasoning is circular, and it locks in the ambition of the previous global framework.

222. Part of the baseline is unverified. Of the 17% baseline, approximately 2% is an estimate of other effective area-based conservation measures which the Draft NBSAP itself says has “yet to be properly defined, verified or measured” and “remains preliminary”.²⁷⁷ A target expressed as a percentage increase over an unverified baseline cannot be reliably tracked.

223. The footnote figures do not reconcile. On the figures stated in footnote 3, the difference between the 30% target and the stated 17% baseline is 16 281 590 hectares, not the 15 870 569 hectares recorded. The recorded figure corresponds to a baseline of exactly 17.0% of the stated total land surface area rather than to the hectare baseline given in the same footnote.²⁷⁸ The BLC raises this so that it may be corrected or explained, not as a criticism of substance. It does, however, illustrate that the headline commitment has not been worked through with the care that a national target requires.

224. There is no net-loss accounting.²⁷⁹ The indicators for Target 3 record hectares added. Nothing in the Draft NBSAP tracks hectares lost: degazettement, excision, boundary change, downgrading of management status, or the granting of prospecting and mining rights within Critical Biodiversity Areas, Ecological Support Areas and protected area expansion focus areas. As set out in section A above, the candidate estate for 30x30 is being encumbered by extractive rights one authorisation at a time. A target expressed only in gross additions can be reported as achieved while the underlying estate is degraded. The GBF headline indicator on the extent of natural ecosystems, A.2, is not used anywhere in the Draft NBSAP.²⁸⁰

²⁷⁶Draft NBSAP, section 5.3, which records that the national target has been aligned to the long-term target of the National Protected Area Expansion Strategy (DEA, 2018), and separately records that the NPAES 2018 “was developed under the previous Aichi targets” and that its revision is a necessary activity of this NBSAP.

²⁷⁷Draft NBSAP, section 5.3, which records that while there are likely large areas that can already be counted as other effective area-based conservation measures, such as wildlife ranches, “these have yet to be properly defined, verified or measured, and the estimate remains preliminary”.

²⁷⁸Draft NBSAP, section 5.3, footnote 3, which records a current baseline at 17% of 20 342 800 hectares, a 30% target of 36 624 390 hectares, and an additional requirement of 15 870 569 hectares. On the figures as stated, the difference between the 30% target and the stated baseline is 16 281 590 hectares. The figure of 15 870 569 hectares corresponds to a baseline of exactly 17.0% of the stated total land surface area (20 753 821 hectares) rather than to the hectare baseline given in the same footnote. BLC records that it may be that a different underlying dataset has been used, and invites the Department to clarify.

²⁷⁹ See also section: *Cumulative erosion of the biodiversity estate under the protected area expansion strategies critical to meeting GBF Target 3* above.

²⁸⁰The Draft NBSAP uses GBF goal-level headline indicators A.1, A.3, A.4, B.1, C.1, C.2, D.2 and D.3. Headline indicator A.2 (extent of natural ecosystems) is not used.

225. The qualitative limbs of Target 3 are weakly represented. GBF Target 3 requires the estate to be ecologically representative, well connected and equitably governed. Representation is addressed by a single indicator of a 5% improvement. Connectivity has no indicator at all, notwithstanding that it is referred to repeatedly in the rationale and theory of change, and notwithstanding that connectivity is central to the “Mega Living Landscapes” approach adopted in SANParks’ Vision 2040. Equitable governance has no indicator, and the Draft NBSAP records that further work is needed to understand what equitable governance entails and how it is measured. Those limbs are not optional elements of Target 3.
226. **The marine target conceals the mainland position.** The marine baseline of 14.7% is composed of 5.3% of the maritime domain around mainland South Africa and 35.8% of the maritime domain around the Prince Edward Islands.²⁸¹ The Draft NBSAP acknowledges that the mainland maritime domain is underrepresented, but the target and indicator are expressed at the aggregate level. A separate, disaggregated mainland indicator is required if the target is to drive expansion where it is needed.
227. Post-declaration support is not secured. The Draft NBSAP records that biodiversity stewardship has delivered approximately 90% of terrestrial protected area expansion since the promulgation of NEMPAA, at between 6% and 25% of the cost of state-owned protected areas.²⁸² That is a compelling case for scaling stewardship. It also makes post-declaration support the binding constraint. The action to strengthen post-declaration support carries no date, no budget and no indicator.

Proposed target, indicators and actions

Proposed revised national target 3

228. The BLC’s primary submission is that the national target should be aligned with GBF Target 3:

By 2030, expand a representative, well-connected and equitably governed system of protected and conserved areas covering at least 30% of land-based (terrestrial and freshwater) areas and at least 30% of marine areas, ensuring they are effectively managed, integrated into broader ecological and social land-, water-

²⁸¹Draft NBSAP, section 5.3, which records that the marine baseline stands at approximately 14.7% of total marine conservation, made up of 5.3% of the maritime domain around mainland South Africa and 35.8% of the maritime domain around the Prince Edward Islands.

²⁸²Draft NBSAP, section 5.3, which records that biodiversity stewardship has secured approximately 2.76 million hectares across 469 sites nationwide, representing around 90% of all terrestrial protected area expansion achieved since the promulgation of the Protected Areas Act, at between 6% and 25% of the cost of state-owned protected areas (World Bank, 2025).

and seascapes, and that there is no net loss from the existing protected and conserved area estate.

229. In the alternative, if the DFFE is not able to adopt 30% as the national target, the BLC submits that the 21% figure should be expressly described as a funded floor rather than as South Africa's national ambition; that the 30% commitment should be moved from the footnote into the target; that the words "conditional on mobilising and aligning resources" should be replaced with a dated resource mobilisation milestone; and that the target date for the 30% commitment should revert to 2030.

Proposed target indicators

Proposed target indicator	GBF target	Data source
By 2030, [corrected figure] hectares are added to the land-based (terrestrial and freshwater) protected and conserved area estate, including through verified OECMs.	3	PACA (headline 3.1)
By 2030, [x] km ² is added to the mainland maritime domain, reported separately from the Prince Edward Islands.	3	PACA (headline 3.1)
By 2035, zero hectares of the protected and conserved area estate are degazetted, excised or downgraded in management status.	3	PACA; Gazette
By 2035, zero prospecting or mining rights are granted within areas protected under section 48 of NEMPAA, and no net loss of natural habitat occurs within NPAES Primary Focus Areas.	1, 3	DMPR cadastre (once released); PACA; NBA
By 2027, norms and standards for the definition and verification of OECMs are gazetted, and the OECM component of the baseline is verified and restated.	3	Gazette; PACA
By 2030, an ecological connectivity indicator for the protected and conserved area estate is established, baselined and reported.	3	PACA; SANBI
By 2028, a method for measuring equitable governance of protected and conserved areas is agreed, and a baseline established.	3, 22	DFFE; People and Parks
By 2030, 100% of declared protected areas, recognised OECMs and conservation areas have approved management plans.	3	Consolidated reporting
By 2035, no deterioration in the extent of natural ecosystems.	1, 3	NBA (headline A.2)

Proposed actions

Proposed action	Responsibility
Complete and gazette the revised National Protected Area Expansion Strategy by 2027, aligned to GBF Target 3, inclusive of all expansion mechanisms and land tenure types, and expressly identifying arid-biome priorities and climate corridors.	Lead: DFFE Support: SANBI, SANParks, provincial conservation authorities
Gazette norms and standards for the definition, verification and recognition of OECMs by 2027, and restate the protected and conserved area baseline once the OECM component has been verified.	Lead: DFFE Support: SANBI, SANParks, iSimangaliso, NGOs
Publish a dated financing pathway for the additional 10.4 million hectares referred to in footnote 3, integrated into the Biodiversity Finance Plan, with annual milestones.	Lead: DFFE, National Treasury Support: BIOFIN, NGO collaboration
Enforce section 48 of NEMPAA, and develop norms and standards addressing extractive activity in protected area buffer zones and in NPAES Focus Areas.	Lead: DFFE Support: DMPR, provincial conservation authorities
Report annually on net change in the protected and conserved area estate, disaggregated into additions, losses, degazettement, excisions and changes in management status.	Lead: DFFE Support: SANBI
Establish and resource a dated post-declaration support programme for biodiversity stewardship sites, with a corresponding indicator and budget line.	Lead: DFFE Support: Provincial conservation authorities, NGOs, National Treasury
Report marine protection separately for the mainland maritime domain and the Prince Edward Islands.	Lead: DFFE Oceans and Coasts Support: SANBI

K. CONCLUSION

230. The BLC welcomes several features of the Draft NBSAP, as well as its efforts to align with the GBF. We are encouraged to see momentum commensurate with global action on biodiversity loss and we greatly look forward to implementation, serving both people and nature. However, we have concerns that in its current form, the Draft NBSAP falls short of some of the standards set by the GBF, undermining South Africa's ability, as the third most biodiverse country globally, to contribute to the GBF's primary aim of galvanising urgent and transformative government action to halt and reverse biodiversity loss.

231. The BLC has accordingly endeavoured to comprehensively indicate where consideration and amendments are required to the Draft NBSAP, and we request the DFFE and the Minister to consider our submissions to ensure that the Draft NBSAP fully gives effect to South Africa's potential national contribution to the GBF.

232. We trust that our submissions will be taken under consideration and welcome the opportunity to engage further.

Yours faithfully,

BIODIVERSITY LAW CENTRE NPC

Per:

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(submitted electronically)