



NATIONAL BIODIVERSITY OFFSET GUIDELINE

IAIAsa KZN Biodiversity Offsets Webinar
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forestry, fisheries
& the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA



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Introduction

- Purpose of the guideline:
 - Set minimum national standards and lay down basic rules for biodiversity offsetting in South Africa to ensure standardized practice and that offsets are enforceable (published in terms of section 24J);
 - scope of the guideline: EA applications (both in terms of S24 and S24G), but can be used for guidance by other organs of state (e.g. DWS and Forestry)
- What the guideline is not:
 - caveat that the guideline does not replace the law - it only gives guidance on how the law and regulations must be implemented in the context of offsets
- Who is the guideline for?
 - Competent authorities,
 - other organs of state, EAPs,
 - developers, interested and affected parties, etc.
- Structure of the guideline: (11 Chapters - see previous slide)



Background

- South Africa's primary development plan, the National Development Plan (2012-2030) (NDP), notes that South Africa is currently in “ecological deficit”.
- The loss of biodiversity has:
 - negative socio-economic impacts (such as adverse impacts on health, loss of livelihoods and the absence of protection against natural disasters or hazards).
 - One specific challenge identified through the trends analysis in developing the National Framework for Sustainable Development (2008) was the need to reverse the “continuing degradation or loss of biodiversity and functioning ecosystems” on which sustainable development depends.
- South Africa's biodiversity assets and ecological infrastructure contribute significantly towards meeting national development priorities (2018 National Biodiversity Assessment).
- Ecosystem services are delivered by :
 - ecological infrastructure, including
 - healthy mountain catchments,
 - rivers, wetlands, coastal dunes, and
 - nodes and corridors of natural habitat, which together form a network of interconnected structural elements in the landscape and are essential for human well-being and supports economic activities.

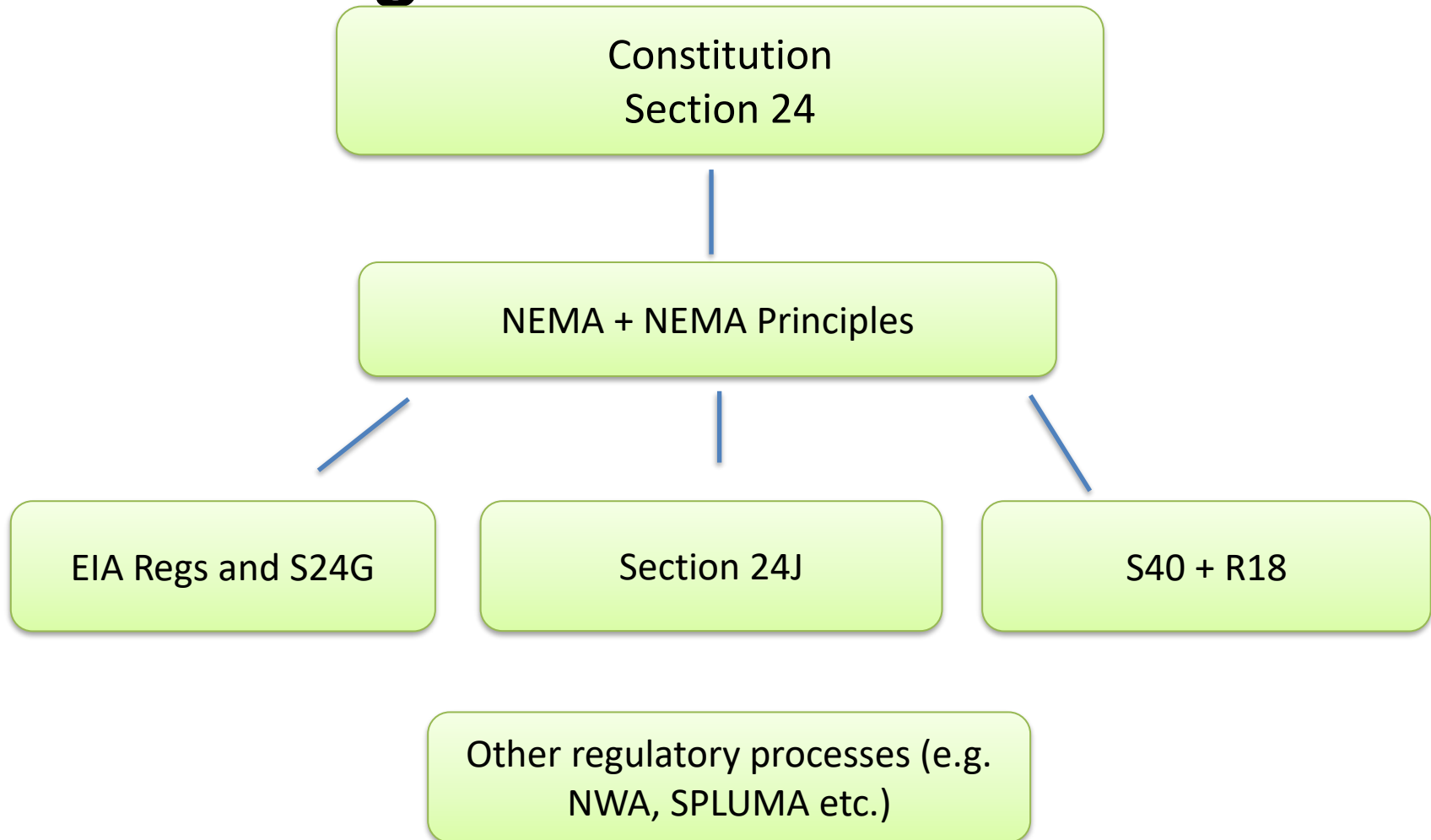


Background..

- South Africa's biodiversity is being gradually eroded and degraded (NBA 2018).
- Biodiversity offsetting has the potential (i.e. if used correctly) to help improved consideration of avoidance and minimisation of impacts, and will help compensate for loss; as well as help SA to meet its biodiversity targets (but acknowledge that it is just ONE mitigation option and should be seen in the context of the mitigation hierarchy).
- Law and policy on biodiversity offsetting in SA is vague.
- Offsets are required in terms of law; expressed as condition in EA.
- Biodiversity offsets are being used around the country, but their implementation has been patchy and inconsistent; conditions are often unenforceable - this is as a result of vague law, policy and no guidance.



Legislative Framework



Principles on biodiversity offsetting

1. Offsets are the final option in the mitigation hierarchy

2. Ecological equivalence (like-for-like) is the preferred biodiversity offset type

3. Residual impacts on irreplaceable biodiversity cannot be offset

4. Biodiversity offsets require new outcomes (additionality)

5. The significance of the residual impacts on biodiversity must be considered

6. Offsets must embody the ecosystem approach and promote connectivity in the wider landscape

7. Offsets must result in long-term protection and management of priority biodiversity

8. Biodiversity offset design must be evidence-based and transparent

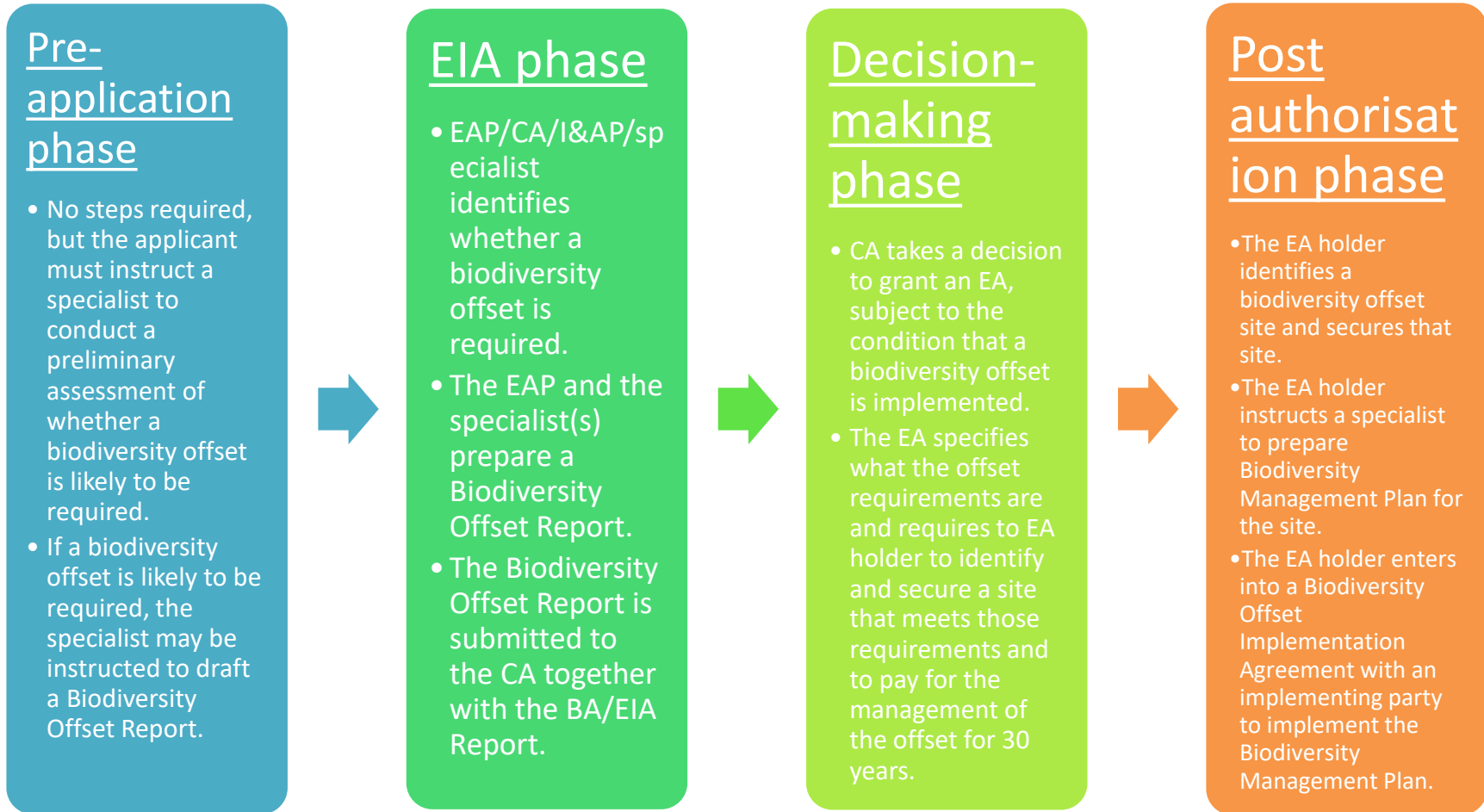
9. Offsets must follow a risk averse and cautious approach

10. Offsets must be fair and equitable

11. Offset intervention timing should take place preferably before or soon after impacts occur

12. Biodiversity offsets must be measurable, auditable and enforceable

Biodiversity offsets in the environmental authorisation application process



When are biodiversity offsets required?

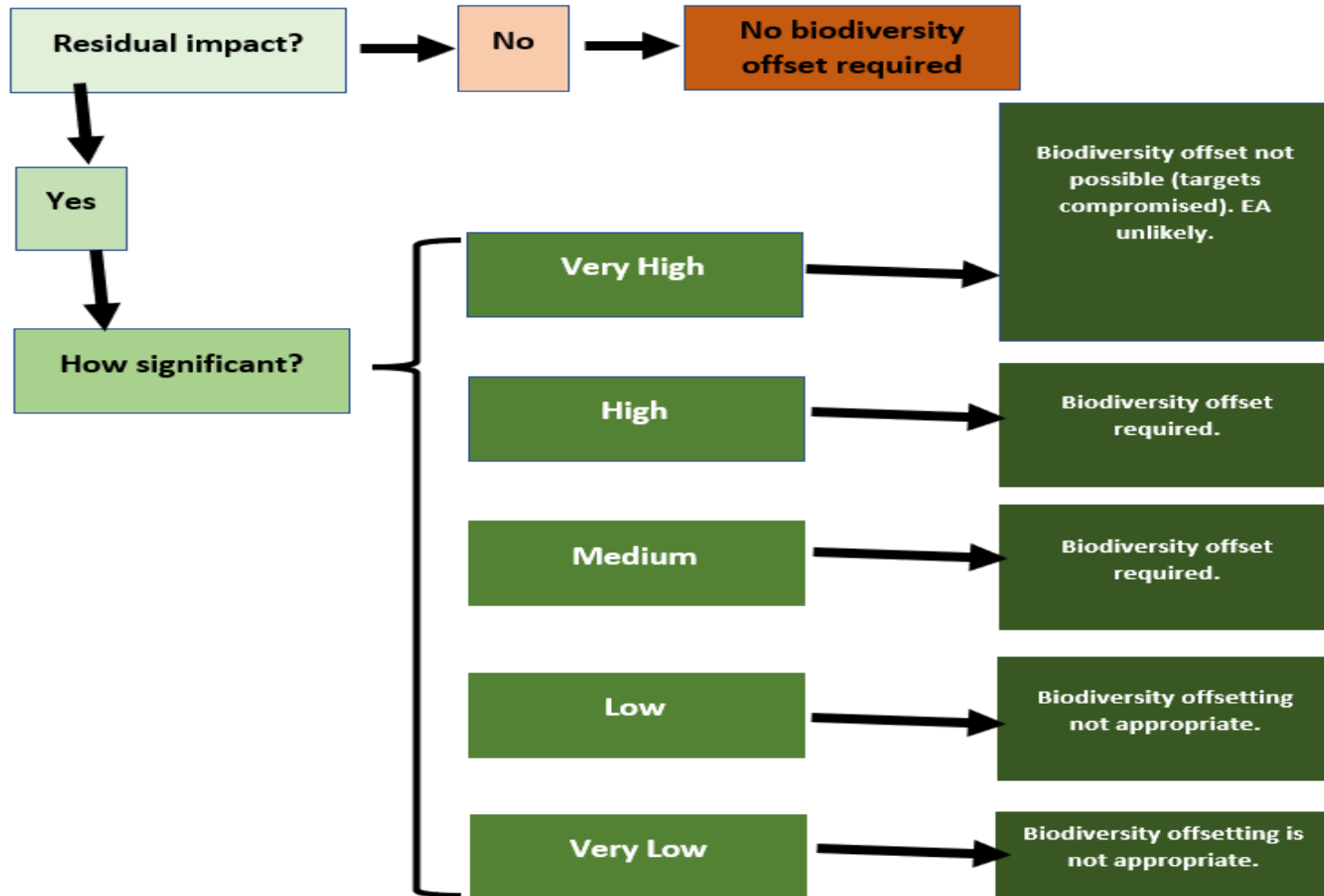
Pre-application and BA/S&EIA Phases:

1. Identify residual direct, indirect and cumulative residual impacts in all phases of the project
2. Apply mitigation hierarchy (Ref to mitigation hierarchy in guideline):
 - Biodiversity offsets will likely be required when –
 - when a proposed listed or specified activity, or activities, is/are likely to have **residual negative impacts on biodiversity of medium or high significance**
 - When they will likely not be required when –
 - residual impacts on biodiversity and ecological infrastructure are irreplaceable / irreversible

Best practice: biodiversity offsets proposals should ideally be done in the pre-application phase



When are biodiversity offsets required?



Determining biodiversity offset requirements

Pre-application and BA/S&EIA Phases:

1. Determination of biodiversity offset requirements (methodology to be explained).
2. The requirements for a biodiversity offset are set out in a Biodiversity Offset Report, which must be prepared by a relevant specialist, or specialists, and be submitted to a CA together with a BA Report or EIA Report at the end of the EIA phase
3. In preparing the Biodiversity Offset Report, the specialist, or specialists, must take the following steps:
 - Assess the significance of the residual negative biodiversity impacts.
 - Determine the right size of the biodiversity offset.
 - Take into consideration unique or special biodiversity features.
 - Selecting and securing candidate biodiversity offset sites.
 - Selecting the biodiversity offset site.
 - Planning for biodiversity offset implementation.
 - Preparing the Biodiversity Offset Report.

Best practice: biodiversity offsets proposals should ideally be done in the pre-application phase



Determining the basic offset ratio

The standard approach to determining a basic biodiversity offset ratio is based on biodiversity targets. Those targets are, in turn, based on-

- Ecosystem Extent,
- Ecosystem Protection Level and
- Ecosystem Threat Status of the various ecosystem types identified in the ecosystem assessment conducted as part of the determination of ecosystems that are threatened and in need of protection in terms of the National Environmental Management: Biodiversity Act, 2004.

The proposed applicable ratios are listed in the look-up table, (Annexure A of the Guideline).

- The look-up table also sets out the rationale for the standard approach in greater detail and will be reviewed periodically and updated, if and when necessary.
- The standard approach in summary is as follows:
 - If the Ecosystem Extent is less than or equal to 30%, the precautionary principle demands that a 30:1 ratio must be applied.
 - If the Ecosystem Extent is between 30 and 70%, the ratios provided for in the look-up table, which takes into consideration Ecosystem Extent and EPL, should be applied.
 - The ratios in that range of Ecosystem Extent vary between 1:22 to 1:1 depending on the extent of the ecosystem remaining and how much of the relevant ecosystem type is protected.
 - Following the precautionary approach, it is recommended that the highest of the two ratios described in 2 and 3 above is selected as the starting ratio.



Determining the adjusted offset ratio

- To ensure that biodiversity priorities are considered as part of the determination of the size requirement for a biodiversity offset, the relevant CBA Map must also be considered as part of that process.
- Any loss in a CBA 1 is generally considered irreplaceable
- If it is found that the negative significant impact on biodiversity will take place in a CBA 2, it is recommended that –
 - the basic biodiversity offset ratio should be adjusted by increasing it by a factor of 1.5 up to a maximum of 30:1.



Drafting of biodiversity offset conditions in environmental authorisations

Decision-making phase:

1. The principles of administrative justice apply when deciding on appropriate conditions.
2. A conditions are binding on the EA holder. Non-compliance with, or contravention of, a condition of an EA is an offence in terms of section 49A of NEMA.
3. Minimum requirements to be specified in biodiversity offset conditions:
 - The biodiversity outcomes that must be achieved by a particular biodiversity offset
 - The selection and securing of a biodiversity offset site
 - The obligation to prepare a Biodiversity Offset Management Plan for the biodiversity offset site
 - Entering into a Biodiversity Offset Implementation Agreement
 - Lump sum payments for biodiversity offsets
 - Timeframes for taking the steps in the biodiversity offset process
 - The period of validity of the environmental authorisation
 - Suspensive and resolute conditions
3. Use suspensive or resolute conditions where appropriate



Biodiversity offset implementation agreements

- A Biodiversity Offset Implementation Agreement is a mechanism through which the requirement to implement a Biodiversity Offset Management Plan is made legally binding on, and therefore enforceable against, the EA holder after the EA has lapsed.
- Biodiversity Offset Implementation Agreements are contracts entered into between the EA holder and an implementing party in terms of which the EA holder agrees to –
 - make funds available for the implementation of the Biodiversity Offset Management Plan and
 - the implementing party agrees to implement the Biodiversity Offset Management Plan on behalf of the EA holder.
- An implementing party could be –
 - an appropriate organ of state, such as a conservation authority, an NPO/ PBO or private organisation likely to be in existence for as long as the liability period.



Biodiversity Offset Implementation Agreements

A Biodiversity Offset Implementation Agreement must, as a minimum, contain the following clauses:

- Descriptions of the parties to the Biodiversity Offset Implementation Agreement.
- The required outcomes of the biodiversity offset which need to be achieved (as specified in the EA condition).
- The primary activities that need to be conducted to achieve the outcomes of the biodiversity offset (as per the Biodiversity Offset Management Plan) -
 - The Biodiversity Offset Management Plan can also just be appended to the Biodiversity Offset Implementation Agreement and referred to in the agreement.
- The timeframes within which the primary activities specified in the Biodiversity Offset Management Plan must be completed.
- Descriptions of the roles and responsibilities of the parties to the agreement –
 - the implementing party must be responsible for implementing the activities specified in the Biodiversity Offset Management Plan and
 - the EA holder must be responsible for making the requisite funds available to the implementation of that plan by the implementing party).
- An undertaking on the part of the EA holder to make the funds necessary for the implementation of the biodiversity offset available to the implementing party into a specified financial vehicle.
- An undertaking by the implementing party to implement the Biodiversity Offset Implementation Agreement for the required liability period (which is recommended in this guideline to be a minimum of 30 years).
- Auditing and reporting requirements of EA holder:
 - The implementing party must appoint and pay for out of the funds made available by the EA holder, an independent auditor to undertake periodic performance audits



National Biodiversity Offset Register

- It is recommended that the Department of Forestry, Fisheries and the Environment:
 - establishes, and maintains, an electronic register of biodiversity offset sites in South Africa(National Biodiversity Offset Register).
- The following information must be recorded in the National Biodiversity Offset Register:
 - Province and municipal area;
 - Date on which the EA was issued;
 - EA number;
 - EA holder;
 - Biodiversity offset conditions and any amendments;
 - Date on which the Biodiversity Offset Management Plan was completed;
 - Date on which the biodiversity offset site was secured (i.e. the date on which the relevant protected area was declared, servitude was registered, etc.);
 - Delineation of the biodiversity offset site;
 - Ecological description of the biodiversity offset site; and
 - Date on which the Biodiversity Offset Implementation Agreement was concluded.



Implementation, monitoring and auditing

- A biodiversity offset must be implemented in accordance with the biodiversity offset condition(s) in the EA, and the Biodiversity Offset Implementation Agreement.
- Once the EA has been granted, the EA holder is legally obligated, in terms of EA conditions, which are enforceable in terms of NEMA, to:
 - select a biodiversity offset site
 - secure the biodiversity offset site
 - prepare a Biodiversity Offset Management Plan and
 - enter into a Biodiversity Offset Implementation Agreement with an implementing party for the implementation of the biodiversity offset.
 - For as long as an EA is valid, the EA holder is required to submit periodic audit reports to the CA.
- Non-compliance with EA conditions is an offence in terms of NEMA and can therefore result in administrative or criminal action being taken against the EA holder in terms of NEMA.
- If adaptive measures are required, the EA holder or the CA should initiate the process for an amendment to the EA in terms of the EIA Regulations
- Oversight over the implementation depends on the way the biodiversity offset site had been secured:
 - Secured through a protected area declaration: the implementing party would be the management authority for that protected area and would be responsible for the implementation of the management plan for the protected area
 - Secured by the establishment of a conservation servitude: the implementing party (must ideally be the landowner) would have to enter into a deed of servitude with a third party, ideally a conservation authority (but it could also be an appropriate conservation PBO/ NPO), in terms of the which the implementing party undertakes not to develop the biodiversity offset site and to give the beneficiary access to the biodiversity offset site for the purpose of monitoring the implementation of the Biodiversity Offset Management Plan.



Implementation, monitoring and auditing

- It is recommended that auditing intervals are:
 - linked to the auditing intervals provided for in the EIA Regulations for as long as the EA is valid, and to the auditing intervals provided for in NEMPAA if the biodiversity offset site had been secured by the declaration of a protected area.
 - If the biodiversity offset site had been secured by the establishment of a conservation servitude, it is recommended that the auditing intervals are required at least yearly.
- Audit reports must be made available to interested and affected parties on request to ensure transparency and public accountability.
- The responsibilities of EA holders for biodiversity offsets are finite (i.e. at minimum 30 years).
- At the end of the period for which the EA holder is responsible, the management of the biodiversity offset site must be handed over to a suitable organ of state, person or organisation, with their consent, to ensure that its biodiversity is maintained.
- The plan for handing over the biodiversity offset site at the end of the liability period should be included in a Biodiversity Offset Management Plan:
 - the financial sustainability of the protected area or conservation area must be taken into consideration when doing a handover report.



Annexures

- Annexure A: Biodiversity offset ratios look-up table
- Detailed guidance on the “standard approach” for determining an appropriate ratio



THANK YOU!

Ms Pamela Kershaw supported by:

Ms Amanda van Reenen (DFFE Law Reform and Policy Support)

Mr Seoka Lekgota (DFFE Biodiversity and Conservation)

Ms Sindisiwe Dlomo (DFFE IEM)

Mr Marthan Theart (SANParks Legal)

Biodiversity Conservation

Department of Forestry, Fisheries and the Environment

Tel: 012 399 9585 | Mobile: 066 156 5458

Website: <http://www.dffe.gov.za>

Address: The Environment House, 473 Steve Biko Road, Arcadia, Pretoria, 0083

Thank You



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