

MEMORANDUM OF UNDERSTANDING

between

SWAZILAND NATIONAL TRUST COMMISSION (SNTC)
and
THE KINGDOM OF SWAZILAND'S BIG GAME PARKS (BGP)

BOUNDARIES OF WILDLIFE RESPONSIBILITY

Preamble

The purpose of this Memorandum of Understanding is:

- To acknowledge and respect the supremacy of the Head of State for the responsibility for the wildlife of Swaziland;
- To clearly lay out the legal realities as they currently exist concerning the respective roles and responsibilities of the two main implementing agencies empowered to deal with matters relating to indigenous fauna and flora and Protected Areas (PAs) in Swaziland;
- To remove confusion and misunderstanding on the mandates and responsibilities of the two agencies;
- To promote understanding by all third parties including private and community stakeholders and role-players dealing with Nature conservation and indigenous wildlife;
- On the basis of the above, to establish a good working relationship for a co-operative way forward between the two agencies, for the benefit of wildlife, biodiversity conservation and a wider enabling environment that supports sustainable socio-economic development in Swaziland.

This MOU is not a legally binding document but it establishes a definite intent.

The above parties will respect each other's boundaries of responsibility for wildlife and PAs as follows:

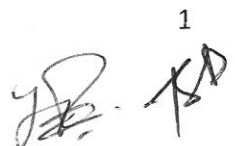
A. LEGISLATION

SNTC

The Swaziland National Trust Commission Act No. 9/1972 as amended by K-O-I-C
No. 22/1973

Date of commencement: 13 March 1972.

"An Act to provide for the operation of cultural institutions and the proclamation of National Parks, Monuments and matters incidental thereto".

1


The SNTC Act confines jurisdiction of the SNTC to the boundaries of its proclaimed institutions. Therefore SNTC is responsible for wildlife only within the boundaries of parks and reserves proclaimed under the SNTC Act.

These boundaries are confirmed in the following letters by the Chief Officer of the King's Office:

1. "To Whom it May Concern" Ref. KO.52 dated 05 July 2007 (Appendix I);
2. To the Honourable Minister for Tourism and Environmental Affairs Ref. KO.18 dated 12 October 2012 (Appendix II).

They are further confirmed by Sections 24(1) and (2) of the SNTC Act which read:

"Powers of park wardens and park officials:

"24(1) Any park warden or park official acting on the orders of a park warden may, within a park or reserve or within five miles from the boundary thereof....."

"24(2) Any park warden or park official acting on the orders of a park warden may within the boundaries of a park or reserve....."

The SNTC is, however, responsible for the National Environmental Education Programme (NEEP) and operates outreach programmes into community areas. The responsibility to practice environmental education is not exclusive to SNTC and should be encouraged countrywide.

BGP

Wildlife and Flora Act No. 51/1953 (The Game Act) as amended by the Game (Amendment) Act No. 4/1991 and the Game Amendment Order No. 12/1993.

Date of commencement: 01 September 1953.

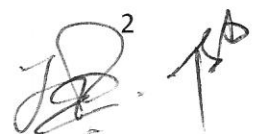
"An Act to amend the laws dealing with the preservation of game and provide for the preservation of other types of wildlife in Swaziland".

Short Title: This Act may be cited as the Game Act.

The Game Act applies to the protection of wildlife countrywide.

BGP is mandated by the Head of State to Nationally administer, manage and enforce the provisions of the Game Act and CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora). CITES applies only to cross-border international trade in species listed in the CITES Schedules, of both fauna and flora, from all countries of the world that are signatories to CITES (approximately 180 Sovereign States).

This mandate by the Head of State to BGP is entrenched by Royal Warrant (Appendix III) and facilitated by Legal Notice No. 142/1998 (Appendix IV), which removes the responsibilities for custodianship of the Game Act and CITES from the Ministry of Tourism and assigns them to the King's Office.

Handwritten signature and initials in the bottom right corner of the page.

The above position is further confirmed by His Excellency the Rt. Hon. Prime Minister as reflected in the Attorney General's Memorandum to the Chief Officer in the King's Office of 30 January 2013 Ref. AG9/LRO/KO/3A/1 (Appendix V), notwithstanding Legal Notice No. 25/2009 (Appendix VI), which was somehow published in error without the knowledge of the Head of State, the King's Office or BGP. *The SNTC and BGP support the findings of His Excellency the Rt Hon Prime Minister and the Attorney General and therefore commit to actively following up the matter until Legal Notice No. 25/2009 has been repealed.*

BGP is totally committed to defending the Head of State's primacy over wildlife, and to honour and perform its own mandate to administer and manage the Game Act and CITES through the King's Office, this having been determined and installed by the Head of State.

B. PROCLAMATION OF PROTECTED AREAS (PAs)

Both the SNTC Act and the Game Act have provisions for proclamation of PAs:

Proclamation under the SNTC Act :

- Gives protection against exploitation e.g. mining, or intrusions e.g. roads and overhead power lines, but this can be overruled by the Commission for scientific or good and sufficient reason.
- Limits future land use options and provides regulation of certain activities for the land owners or users, but agreements can be entered into to lessen the impact of this.

Section 17 and Sub-Section 18 (1) of the SNTC Act read:

*"Upon the approval of the Minister, the Commission may in respect of a particular park delegate to any person its powers in terms of Section 16(2), (3) and (6):
Provided that no such delegation shall relieve the Commission of its responsibility to control, manage and maintain each park for the objects described in Section 15."*

"The Director of National Parks and his functions:

"18(1) The Commission shall appoint a Director of National Parks to be in charge of all proclaimed parks."

Proclamation under the Game Act :

- Gives no protection against exploitation;
- Provides owners or occupiers of land within a sanctuary protection against marauding dogs, giving them the right to destroy such dogs without being liable for compensation. It also protects owners or occupiers from trespass;
- Provides protection for unscheduled species of wildlife;
- Leaves ownership integrity and management integrity intact with owner/custodian.

Handwritten signature and initials in the bottom right corner of the page.

Section 6(1) of the Game Act provides for proclamation of Sanctuaries under the Act and is silent on all aspects of control, management and maintenance of Sanctuaries.

There is, however, no need to proclaim any area under either Act to defend one's wildlife resources because the Game Act, which is arguably the best anti-poaching legislation in existence, already all-encompassingly protects all scheduled species in or out of proclaimed PAs, everywhere in Swaziland.

C. ISSUING OF PERMITS

SNTC

Issues permits :

1. To hunt, harvest or convey species within the boundaries of parks and reserves proclaimed under the SNTC Act. Beyond these boundaries, a Game Act permit is needed.
2. The SNTC Act does not cover the issue of flora permits outside its proclaimed parks and reserves. However the authority of SNTC is mentioned in the Plant Control Act No. 8/1981. This Act originated with the Ministry of Agriculture as a Phytosanitary Act to control the spread of plant disease, and includes indigenous, alien, noxious and commercial plants, and is managed by the Department of Forestry. Extract of this Act is attached (Appendix VII), which indicates the scope and intent of the Act and includes Section 16(5) which calls for the authority of SNTC.

The origin of the above is as follows. In the 1970's, the Plant Control Bill was brought to Reilly (who was a SNTC Commissioner) for comment and he suggested that wherever import and export of indigenous plants was concerned, SNTC's approval be sought before such permits were issued by the Ministry of Agriculture. In hindsight the SNTC is irrelevant to the Plant Control Act, the purpose of which is plant health and phytosanitary issues, *which are the responsibility of the Ministry of Agriculture*. In addition, cross border movement for certain plant species requires a permit from BGP as the Management Authority of CITES.

SNTC and BGP will work together to correct the above anomaly in the future.

BGP

Under the provisions of the Game Act, BGP issues permits covering:

1. All movements of scheduled species or parts thereof to destinations within Swaziland, or being exported from, or being imported into, Swaziland;
2. All carcasses or parts thereof, of scheduled species being translocated to destinations within Swaziland;
3. The capture and conveyance of live scheduled species between destinations.
4. The hunting, culling and possession of scheduled species or parts thereof, within Swaziland;

5. The keeping of scheduled species in captive circumstances;
6. To accredited game capture operators, permits to operate in Swaziland.

The Game Act also allows owners of land to hunt Schedule III species (Common Game) in season (01 May to 31 August) without a permit.

Under the provision of CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora), and as implied by this title, BGP issues permits for:

- All species of fauna and flora, from all areas of the world, which are listed in the CITES Schedules, which are either imported into Swaziland or exported out of Swaziland.

CITES permits cover cross-border movements only.

D. OTHER

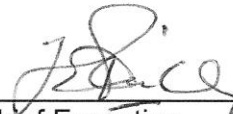
Responsibilities for wildlife matters incidental to the Game Act and CITES lie with the Head of State and the King's Office, with administration and management delegated to BGP in accordance with Appendix III.

Within the parameters outlined in this MOU and its Appendices, SNTC and BGP are committed to working together towards the future welfare of Swaziland's wildlife heritage.

Signed at Hlabwane on the 28th day of April, 2014.



Chief Executive Officer,
SWAZILAND NATIONAL TRUST COMMISSION



Chief Executive,
BIG GAME PARKS