

2.2.2 Swaziland (Ted Reilly)

1. Priorities for Rhino Conservation in Swaziland

These have not changed since our previous submission except that the two 4x4 vehicle requirements have been achieved with a gift from the US Fish and Wildlife Service of the USA. This assistance was channelled through their Rhino Elephant and Tiger programme and was in response to an application for help with our Elephant Conservation Programme. As there is, in reality, common purpose in the Rhino and Elephant Conservation Programme, these vehicles automatically serve the conservation of both species.

The Introductory Boma at Hlane to receive translocations from Mkhaya and elsewhere is still a wanted priority whose cost has escalated from E 150,000 to E 200,000.

Ground Support for Rangers – 2 motorcycles are still an important requirement for security purposes as described in the last report. The price has escalated to E 60,000.

Expansion of Range always remains a priority. With it comes the need for fencing and a patrol track network. So unless there are unlimited funds, the financial requirement is not easily quantifiable; it would be easier to determine this requirement if the magnitude of funds which may be available is known. The cost of land in the area is now approximately E 4,000/ha.

2. The Swazi Game Act (Preventative rather than Remedial legislation)

The Swaziland Game Act is the enabling legislation in use to control poaching and it has helped to turn around the disaster of the late 80's and the early 90's converting it into a resounding success.

The **salient** points of this legislation are: -

Game Rangers have been given the necessary powers under the Act to perform with confidence and without fear, enabling them to deal with highly developed mafia-styled crime. This has boosted morale and has resulted in very effective law enforcement.

A game ranger appointed by the Head of State **or any person acting under the instruction of such game ranger** may:

- bear arms and may, **in life threatening circumstances**, shoot to kill
- search any person or premises without a warrant
- arrest without a warrant
- seize any property or item connected with an offence without a warrant
- stop and search any vehicle, train or aeroplane without a warrant
- and in doing any of these things in the execution of his/her official duty he/she shall **not be liable** to prosecution.

Because the powers of game rangers are so extensive and because of their power to co-opt additional manpower by instruction, the number of substantive rangers has been kept to a minimum. In Swaziland there are only 8 substantively gazetted rangers all of whom are highly disciplined and responsible people who have stood the test of time and who are aware that abuse of power would threaten the survival of the Game Act. Furthermore there is in practice a zero tolerance of abuse of power, so extreme caution and discipline is exercised and enforced in co-opting additional manpower.

In response to Court failure to respond to the need to protect wildlife and to help curb poaching, discretion has been removed from the Courts in substantial measure.

Section 8 of the Game Act, which covers schedules I & II (specially protected and Royal game respectively), is included in the Non-bailable Offences Act along with Murder, Rape, Armed Robbery, hard drugs, weapons of war and money laundering. This indicates how serious Swaziland is in her commitment to conserving her wildlife heritage.

All birds are listed under Schedule II (Royal game) making the killing of any bird without a permit a non-bailable offence.

- Mandatory minimum penalties have been introduced.
- Offenders against species listed in Schedule I face a minimum jail term of 5 years imprisonment without the option of a fine. Second offenders – a mandatory 15 years without the option of a fine.
- Offenders against species listed in Schedule II face a minimum mandatory 2 years imprisonment or E 4,000 – provided the **fine imposed shall not be less** than the value of the animals poached, e.g. the scheduled value of sable is currently E 20,000. (The schedules of valuation need updating because game prices have escalated since 1991 when values were set.)
- Offenders against species listed in Schedule III face a minimum sentence of 6 months in jail or E 600 – provided the **fine shall not be less** than the value of animals poached. E.g. (6 impala snared, currently valued at E 250 each, would equate to E 1,500 so the fine imposed or compensation may **not be less than this.**)

In all cases the concept of replacement of animals poached has been introduced into the Act. Failing replacement or compensation for the animals' value an additional mandatory 2 years is added to the 5 year term for Schedule I game and an additional 1 year is mandatorily added to the 2 year and 6 months minimum jail terms prescribed for Schedules II and III species respectively.

Replacement/compensation for animals taken, in terms of the Act, shall be awarded to the **owner** of such animals or if the owner cannot be identified the replacement/compensation shall be awarded to the **State** by order of the Court. No sentence may be suspended or remitted by the court.

And to ensure compliance with the Act a clause is included which stipulates that any person, including a judicial official who frustrates, obstructs or defeats the ends of justice or who **attempts** to do so, shall go to jail for a period of not less than 1 year without the option of a fine. (Here we see the unique development of the judiciary itself being legislated against. It must be remembered that this legislation came about in response to Court failure to handle cases against wild animals responsibly.)

Any legislation is as good only as its application. And it is easy for prosecution to deliberately spoil a case with pretended incompetence. It is also not difficult for a magistrate to deliberately misinterpret evidence. It therefore can be a thin line that separates a blunder from a deliberate act so we need the police, the prosecution and the judiciary to respect the spirit and the purpose of the Act. Nevertheless the Game Act has worked extremely well for us and has produced the intended results.

3. Births, Deaths and Sales

White Rhino: Since the last meeting of SADC Rhino Range States attended by Swaziland at KwaMaritane Lodge, Pilanesberg National Park there have been 3 White rhino sales to South African buyers. There have been 6 deaths from natural causes including those caused by bull aggression. Births recorded over this period amounted to 14 calves leaving a net gain of 5 animals.

Black Rhino: There have been two losses. One was a new born heifer calf which drowned when her mother led her across the flooding Ngweyane River which is normally a dry sand

drainage. The other loss was an adult cow which was the only cow which had not produced a calf. Cause of death was not determined. There have been 3 births during the period giving a net gain of 1 surviving animal.

4. Law Enforcement

The 1992 Big Bend shoot-out between game rangers and horn traffickers brought rhino poaching in Swaziland to an end. The last rhino poached in the Kingdom was in 1992 – a full 12 years ago. Since the Game Act amendments of approximately the same time, general poaching has declined by about 90%. This Act has proven to be a huge deterrent of wildlife crime. So poaching is currently well contained in Swaziland. However, the threat of a poaching resurgence is ever present and there is no room for complacency! Indeed trafficking and smuggling of contraband which embraces rhino horn and ivory is still a background problem, and a few incidents of this type of crime have been detected in Swaziland in the period under review – the twelve months ending 1st March 2003.

Big Game Parks has been proactive in dealing with the problem of poaching and trafficking and has developed a base of informants as a part of her intelligence in an attempt to distance would be poachers from rhinos on the ground. In April 2001 this intelligence resulted in an early warning that a rhino horn had entered the market, so Big Game Parks infiltrated the Syndicate and set up a sting operation posing as buyers. The deal was arranged to take place at Lavumisa Hotel on Swaziland's Southern border with South Africa. The hotel belonged to a certain Mr. Peter McIntyre who, it transpired, had previously been a Magistrate in South Africa for many years. He also owned property on the South African side of the border known as Golela, giving the man almost unrestricted access to and fro across the border.

Mick Reilly, posing as the buyer, led his group of plain clothed rangers to the venue, strategically placing them at predetermined positions. The horn was produced and the price asked was R 250,000. Mick negotiated the price down to R 80,000 and the deal was concluded. The rangers then identified themselves and arrested McIntyre and three others. Two more people being part of the syndicate – one a Swazi and one a Shangaan from Mozambique – were arrested later bringing the tally to six.

The trial was set in the High Court of Swaziland and 3 days were allocated for it. The trial lasted for 21 days becoming a very high profile case in which 4 attorneys and an advocate defended the accused. The trial judge was Chief Justice Stanley Saphire. Three of the accused were acquitted almost immediately. We have appealed against these acquittals. Two expert witnesses were called by the Crown – the Hon. Richard Emslie whose abundant evidence was interrupted continually by the Defence who wanted him to stop talking, and Mr Mario Scholtz, of the S.A. Police Endangered Species Unit. Scholtz recognized one of the attorneys – a Mr Louis Ben – as a previous offender of rhino horn dealing in the Mpumalanga Province and in which he entered a plea bargain in an out of court settlement with the Attorney General for a fine of R 5,000.

We were tipped off that there might be a hit squad focused on the witnesses so the rangers were escorted each day to court by well armed rangers who mingled strategically with the crowd outside the High Court and who were in radio communication with each other. The general atmosphere was very tense, but fortunately no attempt on the witnesses was made. Being a non-bailable offence the accused remained in custody until the outcome of the trial.

McIntyre was convicted and sentenced to 5 years in jail without the option of a fine as prescribed by the Game Act for possession of the rhino horn, and Jabulane Mhlabane was convicted for trafficking the horn and sentenced to 7 years in jail without the option of a fine as prescribed by the Game Act. There was very useful regional co-operation in that we consulted with, and were well advised by Deputy Director of Public Prosecutions, Mr. Gert Nel of the National Public Prosecution Authority of South Africa. The case was very professionally prosecuted by Public Prosecutor Nkhosinathi Masego. Both convictions were appealed against and both appeals subsequently failed. The convictions were confirmed by the Court of Appeal. The defence was based among other arguments, on the horn belonging to the subspecies the Northern subspecies of the White rhino (*Ceratotherium simum cottoni*), which subspecies was not indigenous to Swaziland. An anomaly of the Act is that 'game' is defined as any wild animal indigenous to Swaziland.

The schedules to the Act had been amended to cover “all species of rhinos” following the Brown rhino debacle of a previous case wherein the Defence argued that while it had no problem conceding that the horn before the Court was indeed the horn of a rhino, the State had failed to prove that the horn did not belong to a Brown rhino. And if it was the horn of a Brown rhino there was no offence because the schedules protected only White rhinos and Black rhinos – not Brown rhinos! The prosecution argued that there was no such thing as a Brown rhino but the Court upheld the argument and the accused was acquitted! Now it was being argued the “ALL species of rhinos” did not cover “subspecies”!!

Fortunately this argument failed in the High Court but it is interesting to note that on appeal the Advocate for the Crown, a very experienced and prominent attorney from Johannesburg called Denis Khune, was uncertain of this line of defence and homed in instead on the “balance of probabilities” argument expounded upon at length by Richard Emslie. Emslie had given evidence to the effect that in terms of his mathematical model the likelihood of the horn belonging to a Northern White rhino was 0.01% against the 99.9% likelihood of its coming from a Southern White rhino! (*Ceratotherium simum simum*).

So the subspecies argument has not been fully tested in Court and this gives cause for concern which should be addressed by all range states when revising their legislation for it could open huge holes in prosecuting future cases. The 3rd accused, the Mozambican, was acquitted on the technicality that his understanding of the proceedings was limited because no interpreter had been provided. Another disturbing aspect of this case was that the Chief Executive of Big Game Parks was approached by a messenger of a very influential Senator and a Prince with a proposal that the case be withdrawn against McIntyre in favour of an out of court settlement. The tentacles of highly priced contraband are unexpectedly long indeed!

It is this aspect of the Swaziland Game Act as **preventative** rather than **remedial** legislation which should be emphasized! We don't want people in jail! We would rather have live rhinos wandering around unmolested, attracting tourists and adding value to the image of the country and to the National economy in a legally sustained manner!

Other than the McIntyre case two other cases involving trafficking of single tusks of ivory were proactively pursued culminating in the arrest of 5 (2 + 3) offenders who are still in jail awaiting trial. A manufactured horn built up around a length of cow horn entered the market and cost the fraudster 6 months in jail on a non bailable offence while the horn went for forensic scrutiny. This horn was easily seen to be false.

During the trial period information was received that another smuggling operation through Swaziland had been diverted because of the high profile publicity this case was receiving on the consequences of rhino poaching in Swaziland.

5. Threats

We perceive as our biggest current threat a conspiratorial attempt to wrest the Game Act out of the King's Office by people of influence who would have it softened. If the Swazi media are followed it is no secret that the Game Act has entered the political arena with the misleading slogan “Wild animals are more important than people”. The historical reality is that the Kingdom's wildlife was restored to Swaziland with the support of the Monarchy. Education on this reality, together with the probable consequences of a shift in responsibility for the Game Act, has become urgently necessary to address and Big Game Parks has identified this as one of its priorities. The Rhinos of Swaziland depend on it – as does wildlife as a whole, with its contribution to the sustainability of any economy. Big Game Parks therefore stands resolute in its position to support the Game Act, Cites, etc being retained in the King's Office, where its functionality flourishes, and to resist all moves to transfer it to the Ministry of Tourism. We have therefore found it important and necessary to contradict adverse propaganda at every level by way of paid **advertisement** in the media to ensure that our submissions are not corrupted by editing.

6. Rhino Habitat Assessment Survey

Finally to report is the visit last year to Swaziland by Keryn Adcock, ARSG rhino consultant to survey rhino habitats and produce an assessment only. Keryn's visit was commissioned by SADC's Rhino Range States programme which is very generously funded by the Italian Government. She visited Hlane Royal National Park and Mkhaya Game Reserve. Her findings are going to be very useful in guiding us in our Rhino Conservation Programme and in the expansion of Swaziland's rhino range.

We record our sincerest appreciation to all members of the SADC Rhino Range States' group for their support for this exercise and to the Italian Government for making the survey possible. Big Game Park looks forward to implementing the recommendations which have emerged from Keryn Adcock's report.

2.2.3 South Africa (Mike Knight)

1. Rhino population sizes & trends

Table 1. Rhinoceros populations in South Africa for 1999, 2000 and 2001

Species/ecotype	1999			2000			2001		
	State	Pvt	Tot	State	Pvt	Tot	State	Pvt	Tot
<i>D. b. minor</i>	946	54	1000	NA	NA	NA	1017	77	1094
<i>D. b. bicornis</i>	32	10	42	32	10	42	37	13	50
<i>D. b. michaeli</i>	20	12	32	13	20	33	6	29	35
Total (black rhinos)	998	76	1074	....	....	....	1060	118	1179
<i>C. s. simum</i>	7743	2011	9751	.....	.....	.....	8432	2556	10988

By 2001 the South African black rhino population had increased to 1179 animals, a marginal increase of 4.7 % since the 1999 estimate of 1074. This increase is marginally up from the 4.0% reported in the previous reporting period. Over the longer period since 1991 the total South African population has increased at about 4.3% per annum, with *D.b.bicornis*, *D. b. minor* and *D. b. michaeli* performing differently with 12.8, 4.1 and 6.1% increases respectively. Since 1997 *D.b.bicornis*, *D. b. minor* and *D. b. michaeli* populations have increased by 8.6, 3.5 and 6.5 %, respectively. The positive response in the *D. b. michaeli* population growth rate during this period results from the establishment and settling down of the Thabatholo population. The SA population of this subspecies now stands at 35 (with one still in captivity), equivalent to its 1996 population size. The *D. b. minor* has shown a slight positive increase in its rate from the 2.8% to 3.4% between the last two reporting periods. This may be a positive response to the reductions in Hluhluwe-Umfolozi Park (HUP) and Ithala Game Reserve populations since 1997. The debate on the removal strategy from the important Kwazulu-Natal populations was to be debated in 2002.

Some other populations such as in Pilanesberg NP may have similarly reached or over shot the MPECC. The population of 52 animals has lost 5 subadults through fighting over the last two years, which has prompted authorities to put six animals up for sale in 2002 as a means of reducing the population size but it still falls short of the recommended MPECC of 36 animals. The Great Fish River Reserve with its introduction of 20 animals in 2000 has increased this population to a 75 animals, the fourth largest population after Umkhuzi GR. None-the-less the population was increasing at a healthy 7%, excluding the introduced animals, as is destined to be an important SA population. Monitoring of the KNP population remains a problem, as no survey was undertaken in the subsample area in 2001 owing to staff problems.

The issue of where to place the extra animals that may emerge from the protected areas (PA's) and private land owners remains a problem given the conflict between financial and conservation needs. The large Kruger NP offers the best prospects for absorbing these excess animals, while other parks (Vembe-Dongola NP) with the potential to carry an important population should come on line soon. If increasing the rate of increase and attaining the goals of the RMG remain a priority, action will need to be undertaken. During the reporting period two more state reserves (Tussen die Riviere & Ophathe) received two males and seven animals, respectively while a single new private population was established. The new private reserve is situated in Subtropical Thicket and offers ideal habitat similar to Addo Elephant NP and the Great Fish Reserve. The number of private properties total 15, an increase on the 11 noted in