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**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

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## GOVERNMENT NOTICES

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### DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. 752

3 June 2003

#### NATIONAL ENVIRONMENTAL MANAGEMENT: FIRST AMENDMENT BILL

The Minister of Environmental Affairs and Tourism, Mohammed Valli Moosa, hereby publishes the National Environmental Management: First Amendment Bill for public information. The Bill seeks to amend the National Environmental Management Act, No. 107 of 1998 by adding a new chapter (Chapter 9 A). This chapter provides for the administration and enforcement of certain national environment management legislation to ensure that offences committed in terms of specified environmental legislation are investigated and prosecuted. It also provides for the designation of Environmental Management Inspectors as well as their powers and functions in ensuring and monitoring compliance with specified environmental legislation.

More details are set out in the attached explanatory memorandum.

The Bill will be tabled in Parliament for consideration during the month of June 2003. Written comments and inputs are invited from interested and affected parties as well as the general public. These must be submitted to:

Ms G Mahlangu-Nkabinde  
Chair Person of the Portfolio Committee on Environmental Affairs and Tourism  
Parliament of South Africa  
P.O.BOX 15  
CAPE TOWN  
8000

Copies of the Bill can be obtained from:

- Government Printers – Cape Town & Pretoria
- Ms K Maphanga  
Department of Environmental Affairs and Tourism  
Private Bag X 447  
**PRETORIA**  
0001  
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**THE CLOSING DATE FOR COMMENTS IS 10 JUNE 2003**

## **MEMORANDUM ON THE OBJECTS OF THE BILL**

### **THE NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT BILL, 2003**

#### **1. General background and overview**

- 1.1 The National Environmental Management Act, 107 of 1998 (NEMA) provides the legal framework for implementing the state's constitutional obligations with regard to environmental management. A suite of draft sectoral environmental legislation is proposed to give effect to the policy obligations in respect of biodiversity and protected areas management, air quality and waste management as well as coastal management.

Included in the suite of new legislation are the following:

- The National Environmental Management: Protected Areas Bill;
- The National Environmental Management: Biodiversity Bill;
- The National Environmental Management: Coastal Zone Bill;
- The National Environmental Management: Air Quality Management Bill.

This draft sectoral legislation is consistent with, and guided by the framework established by NEMA. Amendments are required to NEMA in order to ensure that NEMA provides the necessary supporting legal framework for this new legislation.

- 1.2.1 The National Environmental Management Amendment Bill provides a new legal framework for the administration and enforcement of environmental legislation. The amendment rationalises and streamlines administration and enforcement provisions in NEMA, and is also aimed at addressing the previous lack of effective enforcement and implementation of environmental laws.

#### **2. Chapter by chapter analysis**

##### **2.1 Definitions**



The most important definition that is being added by the Bill is the definition of 'specific environmental management Act' which is defined as the National Environmental Management: Biodiversity Act and the National Environmental Management: Protected Areas Act and any regulations or other subordinate legislation made in terms of these two Acts. The implication of this definition is that relevant provisions of NEMA will apply to these Acts as well as to NEMA. When further environmental management legislation is passed, this definition may be extended to include these additional Acts thereby making the enforcement provisions of NEMA applicable to them as well.

## **2.2 Amendments to Chapter 7: Compliance, enforcement and protection**

Chapter 7 of the NEMA which deals with compliance, enforcement and protection, has been restructured to accommodate new enforcement provisions. Part 1 of Chapter 7 now reads, "Environmental hazards, access to information and protection of whistleblowers." Part 2 is headed "Enforcement of this Act and the Specific Environmental Management Acts." Part 3 is an amalgamation of existing and new provisions dealing with judicial matters relating to compliance, enforcement and protection and is headed, "Judicial Matters."

### **2.2.1 Chapter 7: Part 1: Environmental hazards, access to information and the protection of whistleblowers**

Part 1 retains existing provisions of the NEMA and includes provisions setting out the general duty of care, the protection of workers refusing to do environmentally hazardous work, the control of emergency incidents, access to environmental information and the protection of whistleblowers. None of these provisions are being amended.

#### **2.2.2.1 Chapter 7: Part 2: Enforcement of this Act and specific environmental management Acts**

Part 2 of the Bill inserts a series of new provisions that seek to standardise and strengthen the current legislative regime for the enforcement and administration of environmental legislation. The designation of environmental management inspectors by the Minister/MEC for environmental affairs is aimed at establishing the necessary capacity to enforce the provisions of environmental legislation. In terms of Part 2, the Minister/MEC for environmental affairs may designate any staff

member of the department or other organ of state, as an environmental management inspector. If the designation is of a staff member outside the designator's department, then consensus is required. The environmental management inspectors may be designated to enforce the NEMA, specific environmental management Acts, certain provisions of specific environmental management Acts and NEMA or all of NEMA and the specific environmental management Acts. An environmental management inspector must first comply with certain prescribed criteria and complete prescribed training before he/she will be eligible for designation. The prescribed criteria and training will be set out in regulations made by the Minister. The inspectors must also carry proof that they have been officially designated as inspectors.

Members of the South African Police Service (SAPS) will have all of the powers assigned to environmental management inspectors in terms of this Part of the Act, other than the power to conduct routine inspections and issue and enforce compliance notices.

The powers and duties of environmental management inspectors are set out. Importantly, the powers assigned to inspectors serve a dual purpose, namely –

- ensuring that offences committed in terms of specified environmental legislation are investigated and prosecuted; and
- ensuring that there is compliance with specified environmental legislation and with terms and conditions of permits and other authorisations issued in terms of that legislation. Breaches of environmental legislation and breaches of permits and other authorisations will not in all circumstances amount to an offence.

The general approach of the Bill is to give inspectors police powers as set out in the Criminal Procedure Act, 1977 in so far as those powers are required to investigate and prosecute an offence. However, the Bill sets out additional powers which will primarily be used to enable inspectors to follow up breaches of the specified environmental Acts that may not necessarily be an offence and to ensure compliance with the terms and conditions of permits and authorisations issued in terms of the specified environmental legislation.

The powers of inspectors include powers of search and seizure and powers of arrest as set out in the Criminal Procedure Act, 1977. In addition inspectors will have the power to stop and search

vehicles, vessels and aircraft and the power to conduct routine inspections and to issue compliance notices. Where there is a reasonable suspicion that an offence may have been committed, an inspector may require a person to disclose certain information. However, this information may not be used against the person who disclosed the information in any subsequent criminal proceedings. A confidentiality provision ensures that information received by inspectors is not unlawfully disclosed.

### **2.2.3 Chapter 7: Part 3: Judicial matters**

Part 3 is a combination of existing judicial provisions in the NEMA and new judicial provisions that are consequent to the promulgation of the specific environmental management Acts. In addition, section 32 which sets out which people have legal standing to enforce environmental laws is extended to apply to all of the environmental management Acts.

Part 3 further provides for offences relating to environmental management inspectors, the forfeiture, handling and disposal of certain items seized in judicial proceedings, the cancellation of permits or other authorisations and the issuing of written notices and admission of guilt fines. The Bill provides for an award of no more than one-fourth of a fine, to be paid to a person whose evidence leads to a conviction or who assists in bringing an offender to justice.

### **2.3. Amendments to Chapter 9: Administration of the Act**

The heading of Chapter 9 has been amended to read "Administration of this Act and specific environmental management Acts." The primary change to Chapter 9 of the NEMA is the expansion of the existing delegation clause to explicitly provide for provincial delegation. The Bill also adds other miscellaneous administrative matters.

#### **2.3.1 Amendments to section 42: Delegation**

The current delegations clause in section 42 of NEMA only provides for delegation by the Minister and the Director-General. An amendment to section 42 now expands the scope of the provision to also give MECs for Environmental Affairs the authority to delegate any power, function or duty vested in them in terms of NEMA or a specific environmental management Act.

### **2.3.2 Miscellaneous administrative provisions**

Further additional provisions in Chapter 9 deal with matters of consultation, extension of time periods, the validity of legal documents and steps, and the delivery of documents. The limitation of liability provision is also extended to include the exercise of any power or the performance of any duty under the provisions of any specific environmental management Act.

Lastly, the long title of the principal Act is amended to include the provision for certain aspects of the administration and enforcement of other environmental management legislation.

### **3. Effects on the provinces and local government**

The primary effect that this Bill will have on the provinces and/or local government is that staff members of those departments may be designated as environmental management inspectors to enforce the provisions of national environmental management legislation. If the designation emanates from outside of that particular department, then agreement between the Minister/ MEC for environmental affairs and that other organ of state is required. This does not derogate from the provinces' or local governments' competence to appoint staff members to enforce provincial or municipal legislation.

A person designated by an MEC as an environmental enforcement inspector will only be empowered to enforce provisions of environmental legislation that are administered by the province or provisions that have been assigned or delegated to the province.

In addition, the situation where only the Minister and the Director-General has the power to delegate under the current section 42 of the NEMA has been expanded to give the provincial MEC for Environmental Affairs the power to delegate.

#### **4. Other Departments and bodies consulted**

All relevant national and provincial departments were consulted and a draft Bill was published for public comment in Government Gazette No.24311 on the 24<sup>th</sup> January 2003.

#### **5. Parliamentary procedure**

In the opinion of the Department of Environmental Affairs and Tourism and the State Law Advisers this Bill should be dealt with in accordance with the procedure established by section 76 of the Constitution, as it falls within a functional area listed in Schedule 4 of the Constitution, namely "Environment".



<b>Table summary of the effects of the National Environmental Management Amendment Bill on the principal Act</b>	
<b>Present NEMA</b>	<b>NEMA after the amendment has taken place</b>
Chapter 7: Compliance, enforcement and protection	The heading to the chapter is unaltered
Part 1: Environmental hazards	<b>Heading amended: Part 1: Environmental hazards, access to information and protection of whistleblowers</b>
S28: Duty of care and remediation of environmental damage	Unaltered
S29: Protection of workers refusing to do environmentally hazardous work	Unaltered
S30: Control of emergency incidents	Unaltered
Part 2: Information, enforcement and compliance	<b>Heading deleted</b>
S31: Access to environmental information and protection of whistleblowers	Unaltered
	<b>Addition: S31A-31Q: Part 2: Enforcement of this Act and the specific environmental management Acts</b>
	<b>Additional heading: Part 3: Judicial matters</b>
S32: Legal standing to enforce environmental laws	<b>Amended</b>
S33: Private prosecutions	Unaltered
S34: Criminal proceedings	Unaltered
	<b>Addition: S34A-34H: Addition of provisions on judicial matters relating to specific environmental management Acts and NEMA</b>
Chapter 9: Administration of Act	<b>Heading amended: Administration of this Act and specific environmental management Acts</b>
S36: Expropriation	Unaltered
S37: Reservation	Unaltered

S38: Intervention in litigation	Unaltered
S39: Agreements	Unaltered
S40: Appointment of employees on contract	Unaltered
S41: Assignment of powers	Unaltered
S42: Delegation	<b>Amended</b>
	<b>Addition: S42A: Delegation of powers by MECs</b>
S43: Appeal to the Minister	Unaltered
S44: Regulations in general	Unaltered
S45: Regulations for management co-operation agreements	Unaltered
S46: Model environmental management by-laws	Unaltered
S47: Procedure for making by-laws	Unaltered
	<b>Addition: S47A-47D Addition of administrative matters relating to specific environmental management Acts and NEMA</b>
Chapter 10: General and Transitional provisions	Unaltered
S49: Limitation of liability	<b>Amended</b>
Long title of the Act	<b>Amended</b>

REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT BILL

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*(As introduced in the National Assembly as a section 76 Bill; explanatory summary  
of Bill published in Government Gazette No.     of     ) (The English text is the  
official text of the Bill)*  
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(MINISTER OF NATIONAL ENVIRONMENT)

[B - 2003]

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## GENERAL EXPLANATORY NOTE:

[                    ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

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## BILL

To amend the National Environmental Management Act, 1998, so as to define certain expressions; to provide for the administration and enforcement of certain national environment management laws; and to provide for matters connected therewith.

**BE IT ENACTED** by the Parliament of the Republic of South Africa as follows:—

**Amendment of section 1 of Act 107 of 1998**

1. Section 1 of the National Environmental Management Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by —

(a) the insertion after the definition of “Agenda 21” of the following definition:

“ ‘aircraft’ means an airborne craft of any type whatsoever, whether self-propelled or not, and includes a hovercraft;”

- (b) the insertion after the definition of "Constitution" of the following definition:

" 'delegation', in relation to a duty, includes an instruction to perform the duty;";

- (c) the insertion after the definition of "environmental management co-operation agreement" of the following definition:

" 'environmental management inspector' means a person designated as an environmental management inspector in terms of section 31B or 31C;";

- (d) the insertion after the definition of "regulation" of the following definition:

" 'specific environmental management Act' means –

(i) the National Environmental Management: Biodiversity Act, 2003; and

(ii) the National Environmental Management: Protected Areas Act, 2003,

and includes any regulations or other subordinate legislation made in terms of any of these Acts;"; and

- (e) the insertion after the definition of "this Act" of the following definition:

" 'vessel' means any waterborne craft of any kind, whether self-propelled or not, but does not include any moored floating structure that is not used as a means of transporting anything by water."



**Amendment of heading to Part 1 of Chapter 7 of Act 107 of 1998**

2. Part 1 of Chapter 7 of the principal Act is hereby amended by the substitution for the heading of the following heading:

**“Part 1**

***Environmental hazards, access to information and protection of  
whistleblowers*”**

**Deletion of heading after section 30 of Act 107 of 1998**

3. The following heading after section 30 of the principal Act is hereby deleted:

**[Part 2**

***Information, enforcement and compliance]***

**Insertion of Part in Chapter 7 of Act 107 of 1998**

4. The following Part is hereby inserted in Chapter 7 of the principal Act after section 31:

**"Part 2*****Application and Enforcement of Act and specific environmental management Acts*****Application**

**31A.** (1) This Part applies to the enforcement of this Act and the specific environmental management Acts.

(2) In this Part, unless inconsistent with the context, a word or expression to which a meaning has been assigned in a specific environmental management Act, has in relation to the administration or enforcement of that Act, the meaning assigned to it in that Act.

(3) For the purposes of this Part, Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), is deemed to include an offence committed in terms of this Act or a specific environmental management Act.

**Designation of environmental management inspectors by Minister**

**31B.** (1) The Minister may –

(a) designate as an environmental management inspector, any staff member of –

- (i) the Department; or
    - (ii) any other organ of state; and
  - (b) at any time withdraw a designation made in terms of paragraph (a).
- (2) A designation in terms of subsection (1)(a)(ii) may only be made by agreement between the Minister and the relevant organ of state.

### **Designation of environmental management inspectors by MEC**

- 31C.** (1) An MEC may –
- (a) designate as an environmental management inspector, any staff member of –
    - (i) the department responsible for environmental management in the province;
    - (ii) any other provincial organ of state; or
    - (iii) any municipality in the province; and
  - (b) at any time withdraw a designation made in terms of paragraph (a).
- (2) A designation in terms of subsection (1)(a)(ii) or (iii) may only be made by agreement between the relevant MEC and the relevant provincial organ of state or municipality.

**Mandates**

**31D.** (1) When designating a person as an environmental management inspector, the Minister or MEC must, subject to subsection (2), determine whether the person concerned is designated for the enforcement of –

- (a) this Act;
- (b) a specific environmental management Act;
- (c) specific provisions of this Act or a specific environmental management Act;
- (d) this Act and all specific environmental management Acts; or
- (e) any combination of those Acts or provisions of those Acts.

(2) An MEC may designate a person as an environmental management inspector for the enforcement of only those provisions of this Act or any specific environmental management Act –

- (a) which are administered by the MEC or a provincial organ of state;  
or
- (b) in respect of which the MEC or a provincial organ of state exercises assigned or delegated powers or duties.

(3) A person designated as an environmental management inspector may exercise any of the powers given to environmental management inspectors in terms of this Act that are

necessary for the inspector's mandate in terms of subsection (1) and as may be specified by the Minister or MEC by notice in writing to the inspector.

### **Prescribed standards**

**31E. (1)** The Minister may prescribe –

- (a) qualification criteria for environmental management inspectors;
- (b) training that must be completed by environmental management inspectors.

(2) The Minister may only prescribe criteria and training in terms of subsection (1) after consultation with the Minister responsible for safety and security.

### **Proof of designation**

**31F. (1)** A prescribed identity card must be issued to each person designated as an environmental management inspector.

(2) When exercising any powers or carrying out any duties in terms of this Act or a specific environmental management Act, an environmental management inspector must, on demand by a member of the public, produce the identity card, the notice issued to the inspector in terms of section 31D(3) and proof of identity.



## Functions of Inspectors

**31G. (1)** An environmental management inspector within his or her mandate in terms of section 31D –

- (a) must monitor and enforce compliance with a law for which he or she has been designated in terms of that section;
- (b) may investigate any act or omission in respect of which there is a reasonable suspicion that it might constitute –
  - (i) an offence in terms of such law;
  - (ii) a breach of such law; or
  - (iii) a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law.

**(2)** An environmental management inspector –

- (a) must carry out his or her responsibilities and exercise his or her powers –
  - (i) in accordance with any instructions issued by the Minister or MEC, as the case may be; and
  - (ii) subject to any limitations and in accordance with any procedures that may be prescribed; and
- (b) may be accompanied by an interpreter or any other person whose assistance may be reasonably required;
- (c) must exercise his or her powers in a way that minimises any

damage to, loss, or deterioration of any premises or thing.

## General powers

**31H. (1)** An environmental management inspector, within his or her mandate in terms of section 31D, may –

(a) question a person about any act or omission in respect of which, there is a reasonable suspicion, that it might constitute –

(i) an offence in terms of a law for which that inspector has been designated in terms of that section;

(ii) a breach of such law; or

(iii) a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law;

(b) issue a written notice to a person who refuses to answer questions in terms of paragraph (a), requiring that person to answer questions put to him or her in terms of that paragraph;

(c) inspect, or question a person about, any document, book or record or any written or electronic information –

(i) which may be relevant for the purpose of paragraph (a); or

(ii) to which this Act or a specific environmental management Act relates;

(d) copy, or make extracts from, any document, book or record, or any written or electronic information, referred to in paragraph (c), or

- remove such document, book, record or written or electronic information in order to make copies or extracts;
- (e) require a person to produce or deliver to a place specified by the inspector, any document, book or record, or any written or electronic information, referred to in paragraph (c) for inspection;
- (f) inspect, question a person about, and if necessary remove, any specimen, article, substance or other item, which, on reasonable suspicion, may have been used in –
- (i) committing an offence in terms of such law;
  - (ii) breaching such law; or
  - (iii) breaching a term or condition of a permit, authorisation or other instrument issued in terms of such law;
- (g) take photographs or make audio-visual recordings of anything or any person that is relevant for the purposes of an investigation;
- (h) dig or bore into the soil;
- (i) take samples;
- (j) remove any waste or other matter deposited or discharged in contravention of such law or a term or condition of a permit, authorisation or other instrument issued in terms of such law; or
- (k) carry out any other prescribed duty not inconsistent with this Act and any other duty that may be prescribed in terms of a specific environmental management Act.
- (2) A written notice issued in terms of subsection (1)(b)

must be in the prescribed format and must require a person to answer specified questions either orally or in writing, and either alone or in the presence of a witness, and may require that questions are answered under oath or affirmation.

(3) A person who receives a written notice in terms of subsection (1)(b), must answer all questions put to him or her truthfully and to the best of his or her ability, notwithstanding that an answer might incriminate him or her, but any answer that incriminates such person may not be used against him or her in any subsequent criminal proceedings for an offence in terms of this Act or a specific environmental management Act.

(4) An environmental management inspector must –

(a) provide a receipt for –

(i) any document, book, record or written or electronic information removed in terms of subsection (2)(c); or

(ii) any specimen, article, substance or other item, removed in terms of subsection (2)(e); and

(b) return anything removed within a reasonable period or, subject to section 34D, at the conclusion of any relevant criminal proceedings.

(5) In addition to the powers set out in this Part, an environmental management inspector, within his or her mandate in terms of section 31D, has all the powers assigned in terms of Chapters 2, 5, 7 and 8 of the Criminal Procedure Act, 1977 to a police official who is not a

commissioned officer.

### **Seizure of items**

**31I.** (1) The provisions of sections 30 to 34 of the Criminal Procedure Act, 1977 apply to the disposal of anything seized in terms of this Part, subject to such modifications as the context may require.

(2) When an item is seized in terms of this Part, the environmental management inspector may request the person who was in control of the item immediately before the seizure of the item, to take it to a place designated by the inspector, and if the person refuses to take the item to the designated place, the inspector may do so.

(3) In order to safeguard a vehicle, vessel or aircraft that has been seized, the environmental management inspector may immobilise it by removing a part.

(4) An item seized in terms of this section, including a part of a vehicle, vessel or aircraft referred to in subsection (3), must be kept in such a way that it is secured against damage.

(5) An environmental management inspector may –  
(a) in the case of a specimen of a threatened or protected species or alien species being imported into the Republic, at the port of entry, request the person responsible for the import or that person's agent, to produce the original copies of the import permit, together



with such other documentation as may be required; and

- (b) in the case of a specimen of a threatened or protected species, being exported or re-exported from the Republic, at the port of exit, request the person responsible for the export or re-export or that person's agent, to produce the original copy of the export or re-export permit, together with such other documentation as may be required.

### **Powers to stop, enter and search vehicles, vessels and aircraft**

**31J.** (1) An environmental management inspector, within his or her mandate in terms of section 31D, may, without a warrant, enter and search any vehicle, vessel or aircraft, or search any pack-animal, on reasonable suspicion that that vehicle, vessel, aircraft or pack-animal –

- (a) is being or has been used, or contains or conveys anything which is being or has been used, to commit –

(i) an offence in terms of the law for which that inspector has been designated in terms of section 31D; or

(ii) a breach of such law or a term or condition of a permit, authorisation or other instrument issued in terms of such law;

or

- (b) contains or conveys a thing which may serve as evidence of such offence or breach.

(2) An environmental management inspector may, without a warrant, seize anything contained in or on any vehicle, vessel, aircraft or pack-animal that may be used as evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act.

(3) The provisions of section 31I apply to anything seized in terms of subsection (2), subject to such modifications as the context may require.

(4) An environmental management inspector may for the purpose of implementing subsection (1), at any time, and without a warrant –

- (a) order the driver of a vehicle or vessel to stop, or the pilot of an aircraft to land; or
- (b) if necessary and possible, force the driver or pilot to stop or land, as the case maybe.

(5) An environmental management inspector may exercise on or in respect of such vehicle, vessel or aircraft any of the powers mentioned in section 31H.

(6) An environmental management inspector may apply to the National or Provincial Commissioner of Police for written authorisation in terms of section 13(8) of the South African Police Service Act, 1995 (Act No. 68 of 1995) to establish a roadblock or a checkpoint.

(7) An environmental management inspector, has, within

his or her mandate in terms of section 31D, all the powers of a member of the South African Police Service in terms of section 13(8) of the South African Police Service Act, 1995.

### **Routine inspections**

**31K.** (1) An environmental management inspector, within his or her mandate in terms of section 31D, and subject to subsection (2), may, at any reasonable time, without a warrant, enter and inspect any building, land or premises for the purposes of ascertaining compliance with –

- (a) the legislation for which that inspector has been designated in terms of section 31D; or
- (b) a term or condition of a permit, authorisation or other instrument issued in terms of such legislation.

(2) An environmental management inspector, within his or her mandate in terms of section 31D, may, with a warrant obtained in terms of subsection (3), but subject to subsection (4), enter and inspect any residential premises for the purposes of ascertaining compliance with–

- (a) the legislation for which that inspector has been designated in terms of section 31D; or
- (b) a term or condition of a permit, authorisation or other instrument

issued in terms of such legislation.

(3) A magistrate may issue a warrant contemplated in subsection (2) only on written application by an environmental management inspector setting out under oath or affirmation that it is necessary to enter and inspect the specified residential premises for the purposes of ascertaining compliance with the Acts for which that inspector has been designated in terms of section 31D.

(4) An environmental management inspector may in terms of subsection (2) enter and inspect any residential premises without a warrant, but only if –

- (a) the person in control of the premises consents to the entry and inspection; or
- (b) there are reasonable grounds to believe that a warrant would on application be issued, but that the delay that may be caused by applying for a warrant would defeat the object of the entry or inspection.

(5) While carrying out a routine inspection, an environmental management inspector may seize anything in or on any business or residential premises or land that may be used as evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act.

(6) The provisions of section 31I apply to anything seized in terms of subsection (5), subject to such modifications as the context

may require.

(7) An environmental management inspector may exercise on such business or residential premises or land any of the powers mentioned in section 31H.

#### **Power to issue compliance notices**

**31L.** (1) An environmental management inspector, within his or her mandate in terms of section 31D, may issue a compliance notice in the prescribed form and following a prescribed procedure if there are reasonable grounds for believing that a person has not complied –

- (a) with a provision of the law for which that inspector has been designated in terms of section 31D; or
- (b) with a term or condition of a permit, authorisation or other instrument issued in terms of such law.

(2) A compliance notice must set out –

- (a) details of the conduct constituting non-compliance;
- (b) any steps the person must take and the period within which those steps must be taken;
- (c) any thing which the person may not do, and the period during which the person may not do it; and
- (d) the procedure to be followed in lodging an objection to the compliance notice with the Minister or MEC, as the case may be.

(3) An environmental management inspector may, on good cause shown, vary a compliance notice and extend the period within which the person must comply with the notice.

(4) A person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the Minister or MEC has agreed to suspend the operation of the compliance notice in terms of subsection (5).

(5) A person who receives a compliance notice and who wishes to lodge an objection in terms of section 31M, may make representations to the Minister or MEC, as the case may be, to suspend the operation of the compliance notice pending finalisation of the objection.

### **Objections to compliance notice**

**31M.** (1) Any person who receives a compliance notice in terms of section 31L may object to the notice by making representations, in writing, to the Minister or MEC, as the case may be, within 30 days of receipt of the notice, or within such longer period as the Minister or MEC may determine.

(2) After considering any representations made in terms of subsection (1) and any other relevant information, the Minister or MEC, as the case may be—

- (a) may confirm, modify or cancel a notice or any part of a notice; and
- (b) must specify the period within which the person who received the notice must comply with any part of the notice that is confirmed or modified.

### **Failure to comply with compliance notice**

**31N.** (1) A person who fails to comply with a compliance notice commits an offence.

(2) If a person fails to comply with a compliance notice, the environmental management inspector must report the non-compliance to the Minister or MEC, as the case may be, and the Minister or MEC may—

- (a) revoke or vary the relevant permit, authorisation or other instrument which is the subject of the compliance notice;
- (b) take any necessary steps and recover the costs of doing so from the person who failed to comply; and
- (c) report the matter to the Director of Public Prosecutions.

### **Powers of South African Police Service members**

**31O.** (1) A member of the South African Police Service has in respect of an offence in terms of this Act or a specific environmental



management Act, all the powers of an environmental management inspector in terms of this Part excluding the power to conduct routine inspections in terms of section 31K and the power to issue and enforce compliance notices in terms of sections 31L to 31O.

(2) Notwithstanding subsection (1), the Minister or MEC, as the case may be, may, with the concurrence of the Minister responsible for safety and security, by written notice to a member of the South African Police Service, assign to that member all the powers contemplated in sections 31K to 31O.

#### **Duty to produce documents**

**31P.** Any person to whom a permit, licence, permission, certificate, authorisation or any other document has been issued in terms of this Act or a specific environmental management Act, must produce that document at the request of an environmental management inspector.

#### **Confidentiality**

**31Q. (1)** It is an offence for any person to disclose information about any other person if that information was acquired while exercising or performing any power or duty in terms of this Act or a specific environmental management Act, except –

- (a) if the information is disclosed in compliance with the provisions of any law;
- (b) if the person is ordered to disclose the information by a court;
- (c) if the information is disclosed to enable a person to perform a function in terms of this Act or a specific environmental management Act; or
- (d) for the purposes of the administration of justice.

(2) A person convicted of an offence in terms of this section is liable to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment."

#### **Insertion of heading before section 32 of Act 107 of 1998**

5. The following heading is hereby inserted in the principal Act before section 32:

**"Part 3**

***Judicial matters"***

#### **Amendment of section 32 of Act 107 of 1998**

6. Section 32 of the principal Act is hereby amended by –

- (a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) Any person or group of persons may seek appropriate relief in respect of any breach or threatened breach of any provision of this Act, including a principle contained in Chapter 1, or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment or the use of natural resources –”;

(b) the substitution for subsection (2) of the following subsection:

“(2) A court may decide not to award costs against a person who, or group of persons which, fails to secure the relief sought in respect of any breach or threatened breach of any provision **[including a principle]** of this Act, including a principle contained in Chapter 1, or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment or the use of natural resources, if the court is of the opinion that the person or group of persons acted reasonably out of a concern for the public interest or in the interest of protecting the environment and had made due efforts to use other means reasonably available for obtaining the relief sought.”; and

(c) the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“(3) Where a person or group of persons secures the relief sought in respect of any breach or threatened breach of

any provision of this Act, or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment, a court may on application – ”.

### **Insertion of sections 34A to 34G in Act 107 of 1998**

7. The following sections are hereby inserted in the principal Act after section 34:

#### **“ Offences relating to environmental management inspectors**

**34A. (1) A person is guilty of an offence if that person –**

- (a) hinders or interferes with an environmental management inspector in the execution of that inspector's official duties;**
- (b) pretends to be an environmental management inspector, or the interpreter or assistant of such an inspector;**
- (c) furnishes false or misleading information when complying with a request of an environmental management inspector; or**
- (d) fails to comply with a request of an environmental management inspector.**

**(2) A person convicted of an offence in terms of subsection (1) is liable to a fine or to imprisonment for a period not**

exceeding one year or to both a fine and such imprisonment.

#### **Award of part of fine recovered to informant**

**34B.** (1) A court which imposes a fine for an offence in terms of this Act or a specific environmental management Act, may order that a sum of not more than one-fourth of the fine, be paid to the person whose evidence led to the conviction or who assisted in bringing the offender to justice.

(2) A person in the service of an organ of state or engaged in the implementation of this Act or a specific environmental management Act is not entitled to such an award.

#### **Cancellation of permits**

**34C.** (1) The court convicting a person of an offence in terms of this Act or a specific environmental management Act may –

- (a) withdraw any permit or other authorisation issued in terms of this Act or a specific environmental management Act to that person, if the rights conferred by the permit or authorisation were abused by that person;
- (b) disqualify that person from obtaining a permit or other authorisation for a period not exceeding five years;

- (c) issue an order that all competent authorities authorised to issue permits or other authorisations be notified of any disqualification in terms of paragraph (b).

### **Forfeiture of items**

**34D. (1)** The court convicting a person of an offence in terms of this Act may declare any item including but not limited to any specimen, container, vehicle, vessel, aircraft, or document that was used for the purpose of or in connection with the commission of the offence and was seized under the provisions of this Part, to be forfeited to the State.

**(2)** The provisions of section 35 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), apply to the forfeiture of any item in terms of subsection (1), subject to such modifications as the context may require.

**(3)** The Minister must ensure that any specimen forfeited to the State in terms of subsection (1) is –

- (a)** repatriated to the country of export or origin as appropriate, at the expense of the person convicted for the offence involving that specimen;
- (b)** deposited in an appropriate institution, collection or museum, if –
- (i)** the specimen is clearly marked as a seized specimen; and
  - (ii)** the person convicted for the offence does not benefit or gain

from such deposit; or

(c) otherwise disposed of in an appropriate manner.

### **Treatment of seized live specimens**

**34E.** Pending the institution of any criminal proceedings in terms of this Act or a specific environmental management Act or the resolution of such proceedings, a live specimen that has been seized in terms of this Part must be deposited with a suitable institution, rescue centre or facility which is able and willing to house and properly care for it.

### **Security for release of vehicles, vessels or aircraft**

**34F.** (1) If a vehicle, vessel or aircraft is seized in terms of this Act and is kept for the purposes of criminal proceedings, the owner or agent of the owner may at any time apply to a court for the release of the vehicle, vessel or aircraft.

(2) A court may order the release of the vehicle, vessel or aircraft on the provision of security determined by the court.

(3) The amount of the security must at least be equal to the sum of –

(a) the market value of the vehicle, vessel or aircraft;

(b) the maximum fine that a court may impose for the alleged offence;



and

- (c) costs and expenses incurred or reasonably foreseen to be incurred by the State in connection with prosecuting the offence and recoverable in terms of this Act.

(4) If the court is satisfied that there are circumstances which warrant a lesser amount of security, it may order the release of the vehicle, vessel or aircraft subject to the provision of security for such lesser amount.

#### **Admission of guilt fines**

**34G.** (1) The Minister may by regulation specify offences in terms of this Act or a specific environmental management Act in respect of which alleged offenders may pay a prescribed admission of guilt fine instead of being tried by a court for the offence.

(2) An environmental management inspector who has reason to believe that a person has committed an offence specified in terms of subsection (1) may issue to the alleged offender a written notice referred to in section 56 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(3) The amount of the fine stipulated in the notice referred to in subsection (2) may not exceed the amount –

- (a) prescribed for the offence; and

(b) which a court would presumably have imposed in the circumstances.

(4) The provisions of sections 56, 57 and 57A of the Criminal Procedure Act, 1977 apply, subject to such modifications as the context may require, to written notices and admission of guilt fines referred to in this section."

#### **Substitution of heading to Chapter 9 of Act 107 of 1998**

8. The following heading is hereby substituted for the heading to Chapter 9 of the principal Act:

**"CHAPTER 9  
ADMINISTRATION OF ACT AND SPECIFIC ENVIRONMENTAL  
MANAGEMENT ACTS".**

#### **Substitution of section 42 of Act 107 of 1998**

9. The following section is hereby substituted for section 42 of the principal Act:

**"Delegation of powers and duties by Minister and Director-General**

42. (1) The Minister may delegate a power[, function] or

duty vested in him or her in terms of this Act or a specific environmental management Act to—

- (a) **[a named officer of the Department]** the Director-General;
- (b) **[the holder of an office in the Department or, after consultation with the relevant Minister or MEC, the holder of an office of any other national department, provincial administration or municipality]** an MEC, by agreement with the MEC;
- (c) the management authority of a protected area; or
- (d) any organ of state, by agreement with that organ of state.

(2) A delegation referred to in subsection (1) –

- (a) must be in writing;
- (b) may be made subject to conditions;
- (c) does not prevent the exercise of the power[, **function**] or duty by the Minister himself or herself; **[and]**
- (d) may include the power to sub-delegate; and
- (e) may be withdrawn by the Minister.

(2A) The Minister must give notice in the *Gazette* of any delegation of a power or duty to an MEC, an organ of state.

(2B) The Minister may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

(2C) The Minister may not delegate a power or duty vested

in the Minister in terms of this Act or a specific environmental management Act –

- (a) to make regulations;
- (b) to publish notices in the Gazette;
- (c) to appoint a member of a board or committee ; or
- (d) to expropriate private land.

(3) The Director-General may delegate a power[, **function**] or duty vested in him or her by or under this Act or a specific environmental management Act to –

**[(a) a named officer of the Department;]**

**[(b)](a)** the holder of an office in the Department; or

**[(c)](b)** after consultation with a provincial head of department, an officer in a provincial administration or municipality.

(4) The Director-General may permit a person to whom a power[, **function**] or duty has been delegated by the Director-General to delegate further that power[, **function**] or duty.

(5) A delegation referred to in subsection (3) and the permission referred to in subsection (4) –

- (a) must be in writing;
- (b) may be subject to conditions;
- (c) does not prevent the exercise of the power[, **function**] or duty by the Director-General himself or herself; **[and]**
- (d) may include the power to sub-delegate; and

- (e) may be withdrawn by the Director-General.”

### Insertion of section 42A in Act 107 of 1998

10. The following section is hereby inserted in the principal Act after section 42:

#### “Delegation of powers by MEC

**42A. (1) The MEC of a province may delegate a power or duty vested in or delegated to the MEC in terms of this Act or a specific environmental management Act to –**

- (a) the head of that MEC's department;**
- (b) the management authority of a provincial or local protected area;**
- (c) a municipality, by agreement with the municipality; or**
- (d) any provincial organ of state, by agreement with that organ of state.**

**(2) A delegation in terms of subsection (1) –**

- (a) must be in writing;**
- (b) may be made subject to conditions;**
- (c) does not prevent the exercise of the power or duty by the MEC personally;**
- (d) may include the power to sub-delegate; and**
- (e) may be withdrawn by the MEC.**

(3) The MEC may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

(4) The MEC may not delegate a power or duty vested in the MEC in terms of this Act or a specific environmental management

Act—

(a) to make regulations;

(b) to publish notices in the Gazette;

(c) to appoint a member of a board or committee; or

(d) to expropriate private land.”

#### **Insertion of sections 47A to 47D in Act 107 of 1998**

11. The following sections are hereby inserted in the principal Act after section 47:

**“Regulations, legal documents and steps valid under certain circumstances**

**47A. (1) A regulation or notice, or an authorisation, permit or other document, made or issued in terms of this Act or a specific environmental management Act –**

(a) but which does not comply with any procedural requirement of the relevant Act, is nevertheless valid if the non-compliance is not material and does not prejudice any person;

(b) may be amended or replaced without following a procedural requirement of the relevant Act if –

(i) the purpose is to correct an error; and

(ii) the correction does not change the rights and duties of any person materially.

(2) The failure to take any steps in terms of this Act or a specific environmental management Act as a prerequisite for any decision or action does not invalidate the decision or action if the failure –

(a) is not material;

(b) does not prejudice any person; and

(c) is not procedurally unfair.

### **Consultation**

**47B.** When in terms of this Act or a specific environmental management Act the Minister or an MEC is required to consult any person or organ of state, such consultation is regarded as having been satisfied if a formal written notification of intention to act has been made to that person or organ of state and no response has been received within a reasonable time.



### **Extension of time periods**

**47C.** The Minister or an MEC may extend, or condone a failure by a person to comply with, a time period in terms of this Act or a specific environmental management Act, except a time period which binds the Minister or MEC.

### **Delivery of documents**

**47D.** (1) A notice or other document in terms of this Act or a specific environmental management Act may be issued to a person –

- (a) by delivering it by hand;
- (b) by sending it by registered mail –
  - (i) to that person's business or residential address; or
  - (ii) in the case of a juristic person, to its registered address or principal place of business; or
- (c) where an address is unknown despite reasonable enquiry, by publishing it once in the *Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address.

(2) A notice or other document issued in terms of subsection (1)(b) or (c) must be regarded as having come to the notice of

the person, unless the contrary is proved.”

### **Substitution of section 49 of Act 107 of 1998**

12. The following section is hereby substituted for section 49 of the principal Act:

#### **“Limitation of liability**

49. Neither the State nor any other person is liable for any damage or loss caused by –

(a) the exercise of any power or the performance of any duty under this Act or any specific environmental management Act; or

(b) the failure to exercise the power, or perform any [function or] duty under this Act or any specific environmental management Act,

unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, negligent or in bad faith.”.

### **Substitution of long title of Act 107 of 1998**

13. The following long title is hereby substituted for the long title of the principal Act:

**“To provide for co-operative environmental governance by**

**establishing principles for decision-making on matters affecting the environment, institutions that will promote co-operative governance and procedures for co-ordinating environmental functions exercised by organs of state; to provide for certain aspects of the administration and enforcement of other environmental management laws; and to provide for [incidental] matters connected therewith."**

#### **Short title and commencement**

**14.** This Act is called the National Environmental Management Amendment Act, 2003, and takes effect on a date determined by the President by proclamation in the *Gazette*.

No. 753

3 June 2003

**NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS  
BILL**

The Minister of Environmental Affairs and Tourism, Mohammed Valli Moosa, hereby publishes the National Environmental Management: Protected Areas Bill, which provides for:

- the establishment of a representative system of protected areas as part of the national strategy to protect South Africa's biodiversity and to ensure that the sustained biodiversity benefits future generations
- the participation by communities in conservation and its associated benefits, and for cooperative governance in the management of protected areas
- the continued existence of South African National Parks and its governance.

More details are set out in the attached explanatory memorandum.

The Bill will be tabled in Parliament during the month of June 2003 and written comments and inputs are invited from interested and affected parties as well as the general public. These must be submitted to:

Ms G Mahlangu-Nkabinde  
Chairperson of the Portfolio Committee on Environmental Affairs and Tourism  
Parliament of South Africa  
P.O.BOX 15  
CAPE TOWN  
8000

Copies of the Bill can be obtained from:

- Government Printers – Cape Town & Pretoria

Dr G I Cowan  
Department of Environmental Affairs and Tourism  
Private Bag X 447  
**PRETORIA**  
0001  
Tel: 012 – 310 3701  
Facsimile: 012-320 7026  
e-mail [gcowan@ozone.pwv.gov.za](mailto:gcowan@ozone.pwv.gov.za)

**The closing date for comments is 10 June 2003.**

## **MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS BILL, 2003**

### **General background and overview**

The National Parks Act, 1976 (Act No. 57 of 1976) is outdated and some sections are in conflict with the Constitution. The National Environment Management: Protected Areas Bill (the Bill) seeks to bring the system of national parks and other protected areas in line with the new constitutional and legal order, as well as the policies and programmes of government.

The *White Paper on the Conservation and Sustainable use of South Africa's Biological Diversity* (1997) provides the primary policy for conservation in South Africa. This Bill provides one of the tools for the implementation of this policy by consolidating and rationalizing existing legislation dealing with protected areas. It aims to deal with the system of protected areas more broadly than the National Parks Act, 1976 and the Environmental Conservation Act, 1989 (Act No. 73 of 1989), and seeks to ensure that the system of conservation and protected areas management is linked with the current policies and programmes of government, and brings tangible benefits to all South Africans, in particular local communities.

The Bill provides for the establishment of a representative system of protected areas as part of the national strategy to protect South Africa's biodiversity and to ensure that the sustained biodiversity benefits future generations. It further provides for the participation by communities in conservation and its associated benefits, and for cooperative governance in the management of protected areas. The Bill also provides for the continued existence of South African National Parks and its governance.

The Bill forms part of a suite of legislation established to manage the environment. The framework is provided for in the National Environmental Management Act (NEMA), in which environmental management principles are set out. Sections common to the other legislation in the suite will be included in NEMA by the proposed amendments to the act.

### **Analysis of Bill**

Chapter 1 defines certain words and expressions used in the Bill and sets out the objectives of the Bill. It establishes the state as guardian of protected areas in South Africa. It further sets the framework for the application of the Bill in relation to the National Environmental Management Act, the National Environmental Management: Biodiversity Bill and other legislation.

Chapter 2 establishes the system of protected areas in South Africa. Four types of protected area are declared in terms of this Chapter, viz. special nature reserves, national parks, nature reserves and protected environments. The following protected areas are recognized and their relationship to the Bill established: Protected areas declared in terms of the World Heritage Convention Act (world heritage sites), the Marine Living Resources Act (marine protected areas), the National Forest Act (specially protected forest areas, forest nature reserves and forest wilderness areas) and the Mountain Catchment Areas Act (mountain catchment areas). All protected areas are to be included in a register of protected areas established in terms of the Bill.

The declaration of different types protected areas and the purposes for establishing them are provided for in Chapter 3. Procedures for consultation are set out, and the need for concurrence of relevant Cabinet members are established. Four types of protected areas can be declared in terms of this Bill:

- **A special nature reserve** is declared to—
  - (a) protect highly sensitive, outstanding ecosystems, species, geological or physiological features; and
  - (b) be made primarily available for scientific research or environmental monitoring.

- A **national park** is declared to—
    - (a) protect areas of national or international biodiversity significance;
    - (b) protect a viable, representative sample of South Africa's natural systems and scenic areas;
    - (c) protect the ecological integrity of one or more ecosystems;
    - (d) exclude exploitation or occupation inconsistent with such protection;
    - (e) provide a foundation for spiritual, scientific, educational, recreational and tourism opportunities which are environmentally compatible.
  
  - A **nature reserve** is declared to—
    - (a) supplement the system of national parks in South Africa;
    - (b) protect areas with significant natural features, species, habitats or biotic communities;
    - (c) protect a particular site of scientific, cultural, historical or archaeological interest;
    - (d) provide for its long-term protection and the maintenance of its biodiversity;
    - (e) provide for a sustainable flow of natural products and services to meet community needs;
    - (f) enable a variety of traditional consumptive uses;
    - (g) provide for nature-based recreation and tourism opportunities.
  
  - A **protected environment** is declared to—
    - (a) to provide a buffer zone from undesirable development adjacent to national parks or nature reserves;
    - (b) protect ecosystems needing protection outside of national parks and nature reserves;
    - (c) protect areas which are sensitive to development due to either—
      - (i) their natural characteristics; or
      - (ii) aesthetic reasons; or
    - (d) limit land use in an area to be included into a national park or nature reserve.
- The authority to designate wilderness areas within national parks and nature reserves is included in this Chapter.



Chapter 4, provides for the management of protected areas. The assignment of the management of protected areas to management authorities, subject to the approval of management plans based on management criteria, is set out. Co-management of protected areas by agreement is provided for. Monitoring of management authorities, based on performance indicators and the termination of mandates, where warranted by the Minister or MEC, is provided for. Restrictions of access to protected areas and restrictions on activities which may adversely affect protected areas are provided for.

The continued existence of South African National Parks is ensured in Chapter 5. The Chapter provides criteria for the selection and appointment of the governing board and defines the functions and operating procedures of the board and South African National Parks. Provisions regarding general administration and financial matters are provided for. The Chapter establishes the Minister's supervisory powers over South African National Parks.

The acquisition of land as protected areas by the State and by South African National Parks is provided for in chapter 6. Provision is also made for the cancellation of servitudes on, or privately held rights to, state land. Mineral rights may be acquired or cancelled by expropriation by the Minister in protected areas. Financial provisions are made for the acquisition of land or rights.

Administrative arrangements for the implementation of the Act, through regulations by the Minister and MEC respectively, are set out in Chapter 7.

Offences and penalties are set out in Chapter 8.

The last Chapter provides for the repeal of certain laws. The protected areas which exist immediately before the repeal of those laws are to be regarded as protected areas for purposes of the proposed Act. Management will be continued by the current organ of state until the management of the area is assigned in terms of Chapter 4.

**Effect on the provinces and local government**

The Bill will rationalize protected area legislation in South Africa. As such, it negates the need for each province to promulgate its own legislation on the declaration and management of protected areas. It should therefore streamline provincial governance.

The Bill will have no direct implications on local government. However the inclusion of protected areas into the integrated development plans of local governments will be necessary. The protected areas management plans will also need to take the integrated development plans into account without losing the integrity of the protected areas.

**Other departments and bodies consulted**

All national departments and provincial governments were consulted. The draft Bill was published in the *Gazette* in terms of section 154 of the Constitution. During the period when the draft bill was open for comment—

- the Department of Environmental Affairs and Tourism hosted workshops on the draft bill with all nine provinces, the South African National Parks and the Greater St Lucia Wetland Park Authority;
- Contact Trust organized a workshop on the draft bill with civil society on the department's behalf;
- the Department made a presentation on the draft bill to the South African Local Government Association (SALGA);
- bi-lateral meetings on the draft bill were held with the Department of Water Affairs and Forestry, National Treasury, ESKOM and the Civil Aviation Authority; and
- some 66 written comments, from a wide range of interested and affected parties including NGOs, statutory bodies, state and provincial departments and representatives of communities, on the draft Bill were received and analyzed by the Department.

**PARLIAMENTARY PROCEDURE**

The State Law Advisers and the Department of Environmental Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 of the Constitution, to with "Environment" and "Nature conservation".

REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS BILL

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*(As introduced in the National Assembly as a section 76-Bill; explanatory summary  
of Bill published in Government Gazette No.      of      ) (The English text is the  
official text of the Bill)*  
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(MINISTER OF ENVIRONMENTAL AFFAIRS)

[B - 2003]

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040503se

**BILL**

**To provide for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes; for the establishment of a national register of all national, provincial and local protected areas; for the management of those areas in accordance with national norms and standards; for intergovernmental co-operation and public consultation in matters concerning protected areas; for the continued existence, governance and functions of South African National Parks; and for matters in connection therewith.**

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa as follows:—

**ARRANGEMENT OF SECTIONS***Sections***CHAPTER 1****INTERPRETATION, OBJECTIVES AND APPLICATION OF ACT**

1. Definitions
2. Objectives of Act
3. State Trustee of protected areas
4. Application of Act
5. Application of National Environmental Management Act
6. Application of Biodiversity Act in protected areas
7. Conflicts with other legislation

8. Status of provincial legislation on provincial and local protected areas

## **CHAPTER 2**

### **SYSTEM OF PROTECTED AREAS IN SOUTH AFRICA**

9. Kinds of protected areas
10. Register of protected areas
11. Norms and standards
12. Provincial protected areas
13. World heritage sites
14. Marine protected areas
15. Specially protected forest areas, forest nature reserves and forest wilderness areas
16. Mountain catchment areas

## **CHAPTER 3**

### **DECLARATION OF PROTECTED AREAS**

17. Purpose of protected areas

#### ***Part 1***

#### ***Special nature reserves***

18. Declaration of special nature reserves
19. Withdrawal of declaration or exclusion of part of special nature reserve

#### ***Part 2***

#### ***National parks***

20. Declaration of national parks
21. Withdrawal of declaration or exclusion of part of national park
22. Designation of national park as wilderness area

**Part 3****Nature reserves**

- 23. Declaration of nature reserve
- 24. Withdrawal of declaration or exclusion of part of nature reserve
- 25. Designation of nature reserve as specific type
- 26. Designation of nature reserve as wilderness area
- 27. Notice to be given to Minister of provincial declaration

**Part 4****Protected environments**

- 28. Declaration of protected environment
- 29. Withdrawal of declaration or exclusion of part of protected environment
- 30. Notice to be given to Minister of provincial declarations

**Part 5****Consultation process**

- 31. Consultation by Minister
- 32. Consultation by MEC
- 33. Public participation
- 34. Affected organs of state, communities and beneficiaries

**Part 6****General**

- 35. Initiation of declaration
- 36. Endorsement by Registrar of Deeds

**CHAPTER 4****MANAGEMENT OF PROTECTED AREAS**

- 37. Application of Chapter



**Part 1****Management authorities and management plans**

- 38. Management authorities
- 39. Preparation of management plan
- 40. Management criteria
- 41. Management plan
- 42. Co-management of protected area

**Part 2****Monitoring and supervision**

- 43. Performance indicators
- 44. Termination of mandate to manage protected area

**Part 3****Access to protected areas**

- 45. Access to special nature reserve
- 46. Access to national park, nature reserve and world heritage site
- 47. Use of aircraft in special nature reserve, national park or world heritage site

**Part 4****Restrictions**

- 48. Prospecting and mining activities in protected area
- 49. Regulation or restriction of activities in special nature reserve, national park and nature reserve
- 50. Commercial and community activities in national park, nature reserve and world heritage site
- 51. Regulation or restriction of development and other activities in

protected environment

52. Internal rules

53. Certain rights and entitlements to be respected

## **CHAPTER 5**

### **SOUTH AFRICAN NATIONAL PARKS**

#### ***Part 1***

#### ***Continued existence and functions of South African National Parks***

54. Continued existence

55. Functions

56. General powers

#### ***Part 2***

#### ***Governing board, composition and membership***

57. Composition

58. Qualifications

59. Appointment procedure

60. Chairperson

61. Term of office

62. Conditions of appointment

63. Conduct of members

64. Termination of membership

65. Removal from office

66. Filling of vacancies

#### ***Part 3***

#### ***Operating procedures of Board***

67. Meetings

- 68. Procedures
- 69. Quorum and decisions
- 70. Committees
- 71. Delegation of powers and assignment of duties

**Part 4**

***Administration of South African National Parks***

- 72. Appointment of Chief Executive Officer
- 73. Employment of staff

**Part 5**

***Financial matters***

- 74. Financial accountability
- 75. Funding
- 76. Investments
- 77. National Parks Land Acquisition Fund

**Part 6**

***General***

- 78. Minister's supervisory powers
- 79. Absence of functional Board

**CHAPTER 6**

**ACQUISITION OF RIGHTS IN OR TO LAND**

- 80. Acquisition of private land by State
- 81. Acquisition of private land by South African National Parks
- 82. Cancellation of servitude on, or privately held right in or to, state land
- 83. Cancellation of servitude on, or privately held right in or to, land owned  
by South African National Parks

84. Mineral right

85. Financing

## **CHAPTER 7**

### **ADMINISTRATION OF ACT**

86. Regulations by Minister

87. Regulations by MEC

88. General

## **CHAPTER 8**

### **OFFENCES AND PENALTIES**

89. Offences

## **CHAPTER 9**

### **MISCELLANEOUS**

90. Repeal of laws

91. Savings

92. Protected areas existing before commencement of section

93. Short title and commencement

## CHAPTER 1

### INTERPETATION, OBJECTIVES AND APPLICATION OF ACT

#### Definitions

1. (1) In this Act, unless the context indicates otherwise—

**“aircraft”** means an airborne craft of any type whatsoever, whether self-propelled or not, and includes a hovercraft;

**“Biodiversity Act”** means the National Environmental Management: Biodiversity Act, 2003;

**“biological diversity”** or **“biodiversity”** has the meaning ascribed to it in section 1 of the Biodiversity Act;

**“biological resource”** means any resource consisting of—

- (a) a living or dead animal, plant or other organism of an indigenous species;
- (b) a derivative of such an animal, plant or other organism, as defined in section 1 of the Biodiversity Act; or
- (c) any genetic material of such animal, plant or other organism, as defined in section 1 of the Biodiversity Act;

**“Board”** means the Board of South African National Parks referred to in section 57;

**“Chief Executive Officer”** means the Chief Executive Officer of South African National Parks appointed in terms of section 72;

**“declare”**, when used in relation to—

- (a) the Minister, means declare by notice in the *Government Gazette*; and

(b) the MEC, means declare by notice in the *Provincial Gazette*;

**"delegation"**, in relation to a duty, includes an instruction to perform the duty;

**"designate"**, when used in relation to—

(a) the Minister, means designate by notice in the *Government Gazette*;

(b) the MEC, means designate by notice in the *Provincial Gazette*;

**"Department"** means the national Department of Environmental Affairs and Tourism;

**"Director-General"** means the Director-General of the Department;

**"ecological integrity"** means the sum of the biological, physical and chemical components of an ecosystem, and their interactions which maintain the ecosystem and its products, functions and attributes;

**"ecosystem"** means a dynamic complex of animal, plant and micro-organism communities and their non-living environment interacting as a functional unit;

**"Gazette"**, when used in relation to—

(a) the Minister, means the *Government Gazette*; and

(b) the MEC means the *Provincial Gazette* of that province;

**"habitat"**, in relation to a specific species, means a place or type of site where such species naturally occurs;

**"indigenous species"**, in relation to a specific protected area, means a species that occurs, or has historically occurred, naturally in a free state in nature within that specific protected area, but excludes a species introduced in that protected area as a result of human activity;

**"local community"** means any community of people living or having rights or interests in a distinct geographical area;

**“local protected area”** means a nature reserve or protected environment managed by a municipality;

**“management”**, in relation to a protected area, includes control, protection, conservation, maintenance and rehabilitation of the protected area with due regard to the use and extraction of biological resources, community based practices and benefit sharing activities in the area in a manner consistent with the Biodiversity Act;

**“management authority”**, in relation to a protected area, means the organ of state or other institution in which the authority to manage the protected area is vested;

**“marine protected area”** means an area declared as a marine protected area in terms of section 43 of the Marine Living Resources Act, 1998 (Act No.18 of 1998);

**“MEC”** means the member of the Executive Council of a province in whose portfolio provincial protected areas in the Province fall;

**“Minister”** means the Cabinet member responsible for national environmental management;

**“municipality”** means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**“National Environmental Management Act”** means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

**“national environmental management principles”** means the principles contained in section 2 of the National Environmental Management Act;

**“national park”** means—

(a) an area which was a park in terms of the National Parks Act (Act No.57



of 1976), immediately before the repeal of that Act by section 92(1) of this Act, and includes a park established in terms of an agreement between a local community and the Minister which has been ratified by Parliament;

(b) an area which was a lake development area in terms of the Lake Areas Development Act, 1975 (Act No.39 of 1975), immediately before the repeal of that Act by section 92(1) of this Act; or

(c) an area declared or regarded as having been declared in terms of section 20 as a national park,

and includes an area declared in terms of section 20 as part of an area referred to in paragraph (a), (b) or (c) above;

**“national protected area” means—**

(a) a special nature reserve;

(b) a national park; or

(c) a nature reserve or protected environment—

(i) managed by a national organ of state; or

(ii) which falls under the jurisdiction of the Minister for any other reason;

**“nature reserve” means—**

(a) an area declared, or regarded as having been declared, in terms of section 23 as a nature reserve; or

(b) an area which before or after the commencement of this Act was or is declared or designated in terms of provincial legislation for a purpose for which that area could in terms of section 23(2) be declared as a nature reserve,

and includes an area declared in terms of section 23(1) as part of an area referred to in paragraph (a) or (b) above;

**“organ of state”** has the meaning assigned to it in section 239 of the Constitution;

**“prescribe”** means prescribe by the Minister by regulation in terms of section 86;

**“protected area”** means any of the protected areas referred to in section 9;

**“protected environment”** means—

- (a) an area declared, or regarded as having been declared, in terms of section 28 as a protected environment; or
- (b) an area which before or after the commencement of this Act was or is declared or designated in terms of provincial legislation for a purpose for which that area could in terms of section 28(2) be declared as a protected environment,

and includes an area declared in terms of section 28(1) as part of an area referred to in paragraph (a) or (b) above;

**“provincial protected area”** means a nature reserve or protected environment—

- (a) managed by a provincial organ of state; or
- (b) which falls under the jurisdiction of a province for any other reason;

**“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**“special nature reserve”** means—

- (a) an area which was a special nature reserve in terms of the National Conservation Act (Act No. 73 of 1989), immediately before the repeal of

section 18 of that Act by section 92(1) of this Act; or

(b) an area declared, or regarded as having been declared, in terms of section 18 as a special nature reserve, and includes an area declared in terms of section 18 as part of an area referred to in paragraph (a) or (b) above;

**"species"** means a kind of animal, plant or other organism, including any subspecies, cultivar, variety, geographic race, strain, hybrid or geographically separate population;

**"subordinate legislation"** means any regulation made or notice issued under or in terms of this Act;

**"this Act"** includes any subordinate legislation;

**"wilderness area"** means an area designated in terms of section 22 or 26 for the purpose of retaining an intrinsically wild appearance and character, or capable of being restored to such and which is undeveloped and roadless, without permanent improvements or human habitation;

**"world heritage site"** means a world heritage site in terms of the World Heritage Convention Act, 1999 (Act No. 49 of 1999).

(2) In this Act, words or expressions derived from words or expressions defined in subsection (1) have corresponding meanings unless the context indicates otherwise.

## **Objectives of Act**

2. The objectives of this Act are—

(a) to provide, within the framework of national legislation, including the

National Environmental Management Act, for the declaration and management of protected areas;

- (b) to provide for co-operative governance in the declaration and management of protected areas;
- (c) to effect a national system of protected areas in South Africa as part of a strategy to manage and conserve its biodiversity;
- (d) to provide for a representative network of protected areas on state land, private land and communal land; and
- (e) to provide for the continued existence of South African National Parks.

### **State trustee of protected areas**

3. In fulfilling the rights contained in section 24 of the Constitution, the state through the organs of state implementing legislation applicable to protected areas, must—

- (a) act as the trustee of protected areas in the Republic; and
- (b) implement this Act in partnership with the people to achieve the progressive realisation of those rights.

### **Application of Act**

4. (1) This Act also applies—

- (a) in the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948); and
- (b) to the exclusive economic zone and continental shelf of the Republic,

respectively referred to in sections 7 and 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994).

(2) This Act binds all organs of state.

### **Application of National Environmental Management Act**

5. (1) This Act must—

- (a) be interpreted and applied in accordance with the national environmental management principles; and
- (b) be read with the applicable provisions of the National Environmental Management Act.

(2) Chapter 4 of the National Environmental Management Act applies to the resolution of conflicts arising from the implementation of this Act.

### **Application of Biodiversity Act in protected areas**

6. This Act must, in relation to any protected area, be read, interpreted and applied in conjunction with the Biodiversity Act.

### **Conflicts with other legislation**

7. (1) In the event of any conflict between a section of this Act and—

- (a) other national legislation, the section of this Act prevails if the conflict

specifically concerns the management or development of protected areas;

- (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and
- (c) a municipal by-law, the section of this Act prevails.

(2) In the event of any conflict between subordinate legislation issued in terms of this Act and—

- (a) an Act of Parliament, the Act of Parliament prevails;
- (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and
- (c) a municipal by-law, the subordinate legislation issued in terms of this Act prevails.

(3) For the proper application of subsection (2)(b) the Minister must, in terms of section 146(6) of the Constitution, submit all subordinate legislation issued in terms of this Act and which affects provinces, to the National Council of Provinces for approval.

### **Status of provincial legislation on provincial and local protected areas**

8. This Act does not affect the implementation of provincial legislation regulating matters with regard to provincial or local protected areas to the extent that such legislation—

- (a) regulates matters not covered by this Act;
- (b) is consistent with this Act; or
- (c) prevails over this Act in terms of section 146 of the Constitution.

## CHAPTER 2

### SYSTEM OF PROTECTED AREAS IN SOUTH AFRICA

#### Kinds of protected areas

9. The system of protected areas in South Africa consists of the following kinds of protected areas:

- (a) special nature reserves, national parks, nature reserves and protected environments;
- (b) world heritage sites;
- (c) marine protected areas;
- (d) specially protected forest areas, forest nature reserves and forest wilderness areas declared in terms of the National Forests Act, 1998 (Act No. 84 of 1998); and
- (e) mountain catchment areas declared in terms of the Mountain Catchment Areas Act, 1970 (Act No. 63 of 1970).

#### Register of Protected Areas

10. (1) The Minister must maintain a register called the Register of Protected Areas.

(2) The Register must—

- (a) contain a list of all protected areas;
- (b) indicate the kind of protected area in each case; and



(c) contain any other information determined by the Minister.

(3) For the purposes of subsection (2)(b) a protected area declared in terms of provincial legislation must be included in the Register as a nature reserve or protected environment depending on the purpose for which it was declared.

(4) The Cabinet member responsible for the administration of the National Forests Act, 1998 (Act No. 84 of 1998), and the MEC must notify the Minister of all areas declared as protected areas in terms of that Act or provincial legislation, as the case may be.

### **Norms and standards**

11. (1) The Minister may prescribe—

- (a) norms and standards for the achievement of any of the objectives of this Act, including for the management and development of protected areas referred to in section 9(a), (b) and (c);
- (b) indicators to measure compliance with those norms and standards; and
- (c) the requirement for the management authorities of those protected areas to report on these indicators to the Minister.

(2) Before issuing norms and standards and setting indicators for provincial or local protected areas, the Minister must consult—

- (a) the MEC of each province in which those norms and standards will apply; and
- (b) the relevant local government.

(3) Norms and standards may apply—

- (a) nationwide;
- (b) in a specific protected area only;
- (c) to a specific management authority or category of management authorities only.

(4) Different norms and standards may be issued for—

- (a) different areas; or
- (b) different management authorities or categories of management authorities.

### **Provincial protected areas**

12. A protected area which immediately before this section took effect was reserved or protected in terms of provincial legislation for any purpose for which an area could in terms of this Act be declared as a nature reserve or protected environment, must be regarded to be a nature reserve or protected environment for the purpose of this Act.

### **World heritage sites**

13. (1) Chapter 1 and this Chapter apply to world heritage sites, declared as such in terms of the World Heritage Convention Act, 1999 (Act No. 49 of 1999).

(2) The other provisions of this Act do not apply to world heritage sites except where expressly or by necessary implication provided otherwise.

**Marine protected areas**

14. (1) Chapter 1, this Chapter and section 48 apply to marine protected areas, declared as such in terms of section 43 of the Marine Living Resources Act (Act No. 18 of 1998).

(2) The other provisions of this Act do not apply to marine protected areas, but if a marine protected area has been included in a special nature reserve, national park or nature reserve, such area must be managed and regulated as part of the special nature reserve, national park or nature reserve in terms of this Act.

**Specially protected forest areas, forest nature reserves and forest wilderness areas**

15. (1) Chapter 1, this Chapter and section 48 apply to specially protected forest areas, forest nature reserves or forest wilderness areas, declared as such in terms of section 8 of the National Forests Act, 1998 (Act No. 84 of 1998).

(2) The other provisions of this Act do not apply to specially protected forest areas, forest nature reserves or forest wilderness areas, but if any such area has been declared as or included in a special nature reserve, national park or nature reserve, such area must be managed as, or as part of, the special nature reserve, national park or nature reserve in terms of this Act in accordance with an agreement concluded between the Minister and the

Cabinet member responsible for forestry.

### **Mountain catchment areas**

16. Chapter 1 and this Chapter apply to mountain catchment areas, declared as such in terms of the Mountain Catchment Areas Act, 1970 (Act No. 63 of 1970).

## **CHAPTER 3**

### **DECLARATION OF PROTECTED AREAS**

#### **Purpose of protected areas**

17. The purposes of the declaration of areas as protected areas are—

- (a) to adequately protect ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes in a system of protected areas;
- (b) to preserve the ecological integrity of those areas;
- (c) to conserve biodiversity in those areas;
- (d) to adequately protect areas representative of all ecosystems, habitats and species naturally occurring in South Africa;
- (e) to protect South Africa's threatened or rare species;
- (f) to protect an area which is vulnerable or ecologically sensitive;
- (g) to assist in ensuring the sustained supply of environmental goods and

services;

- (h) to provide for the sustainable use of natural and biological resources;
- (i) to create or augment destinations for nature based tourism;
- (j) to manage the interrelationship between natural environmental biodiversity, human settlement and economic development; or
- (k) generally, to contribute to human, social, cultural, spiritual and economic development.

### ***Part 1***

#### ***Special nature reserves***

##### **Declaration of special nature reserves**

**18. (1)** The Minister may by notice in the *Gazette*—

- (a) declare an area specified in the notice—
  - (i) as a special nature reserve; or
  - (ii) as part of an existing special nature reserve; and
- (b) assign a name to such special nature reserve.

(2) A declaration under subsection (1)(a) may only be issued—

- (a) to protect highly sensitive, outstanding ecosystems, species, geological or physical features in the area; and
- (b) to make the area primarily available for scientific research or environmental monitoring.

(3) A notice under subsection (1)(a) may be issued in respect

of private land if the owner has consented to the declaration by way of a written agreement with the Minister.

(4) An area which was a special nature reserve immediately before this section took effect must for purposes of this section be regarded as having been declared as such in terms of this section.

### **Withdrawal of declarations or exclusion of parts of special nature reserves**

19. The declaration of an area as a special nature reserve, or as part of an existing special nature reserve, may not be withdrawn and no part of a special nature reserve may be excluded from the reserve except by resolution of the National Assembly.

## **Part 2**

### **National parks**

#### **Declaration of national parks**

20. (1) The Minister may by notice in the *Gazette* –
- (a) declare an area specified in the notice—
    - (i) as a national park; or
    - (ii) as part of an existing national park; and
  - (b) assign a name to the national park.
- (2) A declaration under subsection (1)(a) may only be

issued—

(a) to protect—

(i) the area if the area is of national or international biodiversity importance or is or contains a viable, representative sample of South Africa's natural systems, scenic areas or cultural heritage sites; or

(ii) the ecological integrity of one or more ecosystems in the area;

(b) to prevent exploitation or occupation inconsistent with the protection of the ecological integrity of the area;

(c) to provide spiritual, scientific, educational, recreational and tourism opportunities which are environmentally compatible; and

(d) to contribute to economic development.

(3) A notice under subsection (1)(a) may be issued in respect of private land if the owner has consented to the declaration by way of a written agreement with the Minister or South African National Parks.

(4) The Minister must notify the relevant MEC of any declaration of an area in terms of subsection (1).

(5) An area which was a national park when this section took effect must for purposes of this section be regarded as having been declared as such in terms of this section.

### **Withdrawal of declaration or exclusion of part of national park**

21. (1) A declaration under section 20 may only be withdrawn—

(a) by resolution of the National Assembly; or



(b) in terms of subsection (2).

(2) If the Minister, or the other party to an agreement, withdraws from an agreement referred to in section 20(3), the Minister must withdraw the declaration in terms of which the land in question was declared a national park or part of an existing national park.

### **Designation of national park as wilderness area**

22. (1) The Minister may by notice in the *Gazette* designate any national park, or part thereof, as a wilderness area.

(2) A designation under subsection (1) may only be issued—

- (a) to protect and maintain the natural character of the environment, biodiversity, and associated natural and cultural resources;
- (b) to provide outstanding opportunities for solitude;
- (c) to control access which, if allowed, may only be by non-mechanized means.

(3) Before issuing a designation under subsection (1), the Minister must consult the management authority of the park.

## **Part 3**

### **Nature reserves**

#### **Declaration of nature reserve**

23. (1) The Minister or the MEC may by notice in the *Gazette* —

- (a) declare an area specified in the notice –
  - (i) as a nature reserve; or
  - (ii) as part of an existing nature reserve; and
- (b) assign a name to the nature reserve.

(2) A declaration under subsection (1)(a) may only be issued—

- (a) to supplement the system of national parks in South Africa;
- (b) to protect the area if the area –
  - (i) has significant natural features or biodiversity;
  - (ii) is of scientific, cultural, historical or archaeological interest; or
  - (iii) is in need of long term protection for the maintenance of its biodiversity;
- (c) to provide for a sustainable flow of natural products and services to meet the needs of a local community;
- (d) to enable the continuation of such traditional consumptive uses as are sustainable; or
- (e) to provide for nature based recreation and tourism opportunities.

(3) A notice under subsection (1)(a) may be issued in respect of private land if the owner has consented to the declaration by way of a written agreement with the Minister or the MEC.

(4) No area which is or forms part of a special nature reserve or national park may be declared as a nature reserve or as part of an existing nature reserve.

(5) An area which was a nature reserve immediately before this section took effect must for purposes of this section be regarded as

having been declared as such in terms of this section.

### **Withdrawal of declaration or exclusion of part of nature reserve**

**24.** (1) A declaration under section 23(1) may only be withdrawn—

- (a) in the case of a declaration by the Minister, by resolution of the National Assembly;
- (b) in the case of a declaration by an MEC, by resolution of the legislature of the relevant province; or
- (c) in terms of subsection (2).

(2) If the Minister or MEC, or the other party to an agreement, withdraws from an agreement referred to in section 23(3), the Minister or MEC must withdraw the notice in terms of which the land in question was declared a nature reserve or part of an existing nature reserve.

### **Designation of nature reserve as specific type**

**25.** The Minister or the MEC may, by notice in the *Gazette*, designate a nature reserve as a specific type of nature reserve in accordance with such uniform system of types as may be prescribed.

### **Designation of nature reserve as wilderness area**

**26.** (1) The Minister or MEC may, by notice in the *Gazette*,

designate a nature reserve or part thereof as a wilderness area.

(2) A notice under subsection (1) may only be issued—

- (a) to protect and maintain the natural character of the environment, biodiversity, and associated natural and cultural resources;
- (b) to provide outstanding opportunities for solitude;
- (c) to control access which, if allowed, may only be by non-mechanized means.

(3) Before designating a nature reserve or part of nature reserve as a wilderness area, the Minister or MEC must consult the management authority of the nature reserve.

#### **Notice to be given to Minister of provincial declarations**

27. The MEC must promptly forward to the Minister a copy of each notice issued under section 23, 24, 25 or 26.

### **Part 4**

#### ***Protected environments***

##### **Declaration of protected environment**

28. (1) The Minister or the MEC may by notice in the *Gazette*—

- (a) declare any area specified in the notice—
  - (i) as a protected environment; or
  - (ii) as part of an existing protected environment; and

(b) assign a name to the protected environment.

(2) A declaration under subsection (1)(a) may only be issued—

- (a) to regulate the area as a buffer zone for the protection of a special nature reserve, national park, world heritage site or nature reserve;
- (b) to enable owners of land to take collective action to conserve biodiversity on their land and to seek legal recognition therefor;
- (c) to protect the area if the area is sensitive to development due to its—
  - (i) biological diversity;
  - (ii) natural characteristics;
  - (iii) scientific, cultural, historical or archeological value; or
  - (iv) scenic value;
- (d) to protect a specific ecosystem outside of a special nature reserve, national park, world heritage site or nature reserve;
- (e) to ensure that the use of natural resources in the area is sustainable; or
- (f) to control change in land use in the area if the area is earmarked for declaration as, or inclusion in, a national park or nature reserve.

(3) A notice under subsection (1)(a) may be issued in respect of private land if the owner has requested or consented to a declaration contemplated in subsection (1)(a) and the Minister or the MEC has given the owner notice in writing in terms of section 33.

(4) No area which is or forms part of a special nature reserve, national park or nature reserve may be declared as a protected environment or as part of an existing protected environment.

(5) The declaration of an area as a protected environment

for purposes of subsection (2)(f), lapses at the expiry of three years from the date of publication of the notice contemplated in subsection (1), but the Minister or the MEC may by notice in the *Gazette* extend that period for not more than one year.

(6) An area ceases to be a protected environment if that area is declared as, or included into, a national park or nature reserve or part thereof.

(7) An area which was a protected environment immediately before this section took effect must for purposes of this section be regarded as having been declared as such in terms of this section.

#### **Withdrawal of declaration or exclusion of part of protected environment**

29. The Minister or the MEC may by notice in the *Gazette*—

- (a) withdraw the declaration, issued under section 28, of an area as a protected environment or as part of an existing protected environment;  
or
- (b) exclude any part of a protected environment from the area.

#### **Notice to be given to Minister of provincial declarations**

30. The MEC must promptly forward to the Minister a copy of each notice issued under section 28 or 29.

**Part 5****Consultation process****Consultation by Minister**

**31.** Subject to section 34, before issuing a notice under section 18(1), 20(1), 23(1), 28(1) or 29 (1), the Minister may follow such consultative process as may be appropriate in the circumstances, but must—

- (a) consult all national organs of state affected by the proposed notice;
- (b) in accordance with the principles of co-operative government as set out in Chapter 3 of the Constitution, consult—
  - (i) the MEC of the province concerned; and
  - (ii) the municipality in which the area concerned is situated; and
- (c) follow a process of public participation in accordance with section 33.

**Consultation by MEC**

**32.** Subject to section 34, before issuing a notice under section 23(1), 28(1) or 29(1), the MEC may follow such consultative process as may be appropriate in the circumstances, but must—

- (a) consult in accordance with the principles of co-operative government as set out in Chapter 3 of the Constitution—
  - (i) the Minister and other national organs of state affected by the proposed notice; and



- (ii) the municipality in which the area concerned is situated;
- (b) consult all provincial organs of state affected by any proposed notice;  
and
- (c) follow a process of public participation in accordance with section 33.

### **Public participation**

**33. (1)** The Minister or the MEC must—

- (a) publish the intention to issue a notice contemplated in section 31 or 32, in the *Gazette* and in at least two newspaper distributed in the area in which the affected area is situated; and
- (b) if it is proposed to declare any private land as a protected environment, send a copy of the proposed notice by registered post to the last known postal address of each owner of land within the area to be declared, as well as to each holder of rights to such land.

**(2)** The publication contemplated in subsection (1) must—

- (a) invite members of the public and the persons referred to in subsection (1)(b), if applicable, to submit to the Minister or MEC written representations on or objections to the proposed notice within 60 days from the date of publication in the *Gazette*; and
- (b) contain sufficient information to enable members of the public to submit meaningful representations or objections, and must include a clear indication of the area that will be affected by the declaration.

**(3)** The Minister or MEC may in appropriate circumstances allow any interested person to present oral representations or objections to



the Minister or the MEC, or to a person designated by the Minister or MEC, but such representations or objections must be allowed where the proposed notice will affect the rights or interests of a local community.

(4) The Minister or MEC must give due consideration to all representations or objections received or presented before publishing the relevant notice.

### **Affected organs of state, communities and beneficiaries**

**34.** (1) If it is proposed to declare an area under section 18(1) or 20(1) as a special nature reserve or a national park, or as part thereof, and that area consists of or includes—

- (a) land owned by the state, the Minister may declare that area only—
  - (i) with the concurrence of the Cabinet member responsible for the administration of that land, if that land is administered by the national executive; or
  - (ii) after consultation with the MEC responsible for the administration of that land, if that land is administered by a provincial executive;
- (b) land which is held in trust by the state or an organ of state for a community or other beneficiary, the Minister may declare that area only with the concurrence of the trustee.

(2) If it is proposed to declare an area under section 23(1) or 28(1) as a nature reserve or a protected environment, or as part thereof, and that area consists of or includes—

- (a) land owned by the State, the Minister or the MEC may declare that area only with the concurrence of the Cabinet member or MEC responsible for the administration of that land;
- (b) land which is held in trust by the state or an organ of state for a community or other beneficiary, the Minister or the MEC may declare that area only with the concurrence of the trustee.

## **Part 6**

### **General**

#### **Initiation of declaration**

35. (1) The declaration of private land as a special nature reserve, national park, nature reserve or protected environment, or as part thereof, may be initiated either by the Minister, the MEC or the owners of that land acting individually or collectively.

(2) Any request received by the Minister or an MEC from the owners of private land for their land to be declared must be considered by the Minister or MEC.

#### **Endorsement by Registrar of Deeds**

36. (1) The Minister or the MEC, as the case may be, must in writing notify the Registrar of Deeds whenever an area is declared as a special nature reserve, national park, nature reserve or protected

environment, or as part thereof, or in respect of which a declaration has been withdrawn or altered.

(2) The notification must include a description of the land involved.

(3) On receipt of the notification, the Registrar of Deeds must record any such declaration, withdrawal or alteration in relevant registers and documents in terms of section 3(1)(w) of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

## **CHAPTER 4**

### **MANAGEMENT OF PROTECTED AREAS**

#### **Application of Chapter**

37. Except where expressly stated otherwise in this Chapter, this Chapter only applies to a protected area which is a special nature reserve, national park or nature reserve, and the expressions "protected area", "national protected area", "provincial protected area" and "local protected area" must be construed accordingly.

**Part 1****Management authorities and management plans****Management authorities**

**38.** (1) (a) The Minister must assign, in writing, the management of a national protected area to an organ of state or any other institution.

(b) Notwithstanding paragraph (a) the Minister must assign the management of a national park to—

- (i) South African National Parks; or
- (ii) another organ of state, subjects to the prescripts set by the Minister.

(2) The MEC must assign, in writing, the management of a provincial protected area in the province to an organ of state.

(3) The organ of state or other institution to whom the management of a protected area has been assigned in terms of subsection (1) or (2) is the management authority of the area for the purposes of this Act.

**Preparation of management plan**

**39.** (1) The Minister or the MEC may make an assignment in terms of section 38(1) or (2) only with the concurrence of the prospective management authority.

(2) The management authority assigned in terms of section

38(1)( or (2) must, within 12 months of the assignment, submit a management plan for the protected area for approval by the Minister or the MEC.

(3) When preparing a management plan for a protected area, the prospective management authority must consult municipalities, other organs of state and affected parties which have an interest in the area.

(4) A management plan must take into account any applicable aspects of the integrated development plan of the municipality in which the protected area is situated.

### **Management criteria**

40. (1) The management authority must manage the area—

(a) exclusively for the purpose for which it was declared; and

(b) in accordance with—

(i) the management plan for the area;

(ii) this Act, the Biodiversity Act, the National Environmental Management Act and any other applicable national legislation;

(iii) any applicable provincial legislation, in the case of a provincial protected area; and

(iv) any applicable municipal by-laws, in the case of a local protected area.

(2) The management authority may amend the management plan by agreement with the Minister or the MEC, as the case may be.

**Management plan**

41. (1) The object of a management plan is to ensure the protection, conservation and management of the protected area concerned in a manner which is consistent with the objectives of this Act and for the purpose it was declared.

(2) A management plan must contain at least—

- (a) a co-ordinated policy framework;
- (b) such planning measures, controls and performance criteria as may be prescribed;
- (c) a programme for the implementation of the plan and its costing; and
- (d) procedures for public participation.

(3) Management plans may include subsidiary plans, and the Minister or MEC may approve the management plan or any subsidiary plan in whole or in part.

**Co-management of protected area**

42. (1) (a) The management authority may enter into an agreement with another organ of state, a local community, an individual or other party for—

- (i) the co-management of the area by the parties; or
- (ii) the regulation of human activities that affect the environment in the area.

(b) The co-management contemplated in paragraph (a) may not lead to fragmentation or duplication of management functions.

(2) A co-management agreement may provide for—

- (a) the delegation of powers by the management authority to the other party to the agreement;
- (b) the apportionment of any income generated from the management of the protected area or other form of benefit sharing between the parties;
- (c) the collection, catching or use of biological resources in the area;
- (d) access to sites of cultural or religious significance in the area;
- (e) occupation of the protected area or portions thereof; and
- (f) any other relevant matter.

(3) A co-management agreement must—

- (a) provide for the harmonisation and integration of the management of cultural heritage resources in the protected area by the management authority; and
- (b) be consistent with the other provisions of this Act.

(4) The Minister or the MEC, as the case may be, may cancel a co-management agreement after giving reasonable notice to the parties if the agreement is not effective or is inhibiting the attainment of any of the management objectives of the protected area.

## **Part 2**

### **Monitoring and supervision**

#### **Performance indicators**

**43.** (1) The Minister may establish indicators for monitoring performance with regard to the management of national protected areas and the conservation of biodiversity in those areas.

(2) The MEC may establish indicators for monitoring performance with regard to the management of provincial and local protected areas and the conservation of biodiversity in those areas.

(3) The management authority of a protected area must—

- (a) monitor the area against the indicators set in terms of subsection (1) or (2); and
- (b) annually report its findings to the Minister or MEC or a person designated by the Minister or MEC.

(4) The Minister or MEC may appoint external auditors to monitor a management authority's compliance with the overall objectives of the management plan.

#### **Termination of mandate to manage protected area**

**44.** (1) If the management authority of a protected area is not fulfilling its duties in terms of the management plan for the area, or is under-



performing with regard to the management of the area or the biodiversity of the area, the Minister or the MEC, as the case may be, must—

- (a) notify the management authority in writing of the failure to fulfill its duties or of the under-performance; and
- (b) direct the management authority to take corrective steps set out in the notice within a specified time.

(2) If the management authority fails to take the required steps, the Minister or MEC may—

- (a) terminate that management authority's mandate to manage the protected area; and
- (b) assign another organ of state as the management authority of the area.

(3) The Minister implements this section in relation to national protected areas and the MEC implements this section in relation to provincial and local protected areas.

### ***Part 3***

#### ***Access to protected areas***

##### **Access to special nature reserve**

45. (1) No person may—

- (a) enter a special nature reserve;
- (b) reside in a special nature reserve; or
- (c) perform any activity in a special nature reserve.

(2) Subsection (1) does not apply to—

- (a) an official of the Department or another organ of state designated by the Minister in writing to monitor—
  - (i) the state of conservation of the reserve or of the biodiversity in the reserve; or
  - (ii) the implementation of the management plan and this Act;
- (b) any police, customs or excise officer entering the area in the execution of official duties; or
- (c) a person acting in terms of an exemption granted under subsection (3).

(3) The management authority of a special nature reserve may, in writing and on conditions determined by it after consulting the Minister, grant exemption from a provision of subsection (1) to—

- (a) a scientist to perform scientific work;
- (b) a person to perform an activity related to the conservation of the reserve or of the biodiversity in the reserve;
- (c) an official of the management authority to perform official duties; or
- (d) an official of an organ of state to perform official duties.

#### **Access to national park, nature reserve and world heritage site**

46. (1) Despite any other legislation, no person may without the written permission of the management authority of a national park, nature reserve or world heritage site enter or reside in the park, reserve or site.

(2) Subsection (1) does not apply to—

- (a) an official of the Department or of another organ of state designated by the Minister, or, in the case of a provincial or local nature reserve, a

person designated the MEC, to monitor—

- (i) the state of conservation of the park, reserve or site or of the biodiversity in the park, reserve or site; or
- (ii) the implementation of the management plan and this Act;
- (b) an official of the management authority to perform official duties in the park, reserve or site;
- (c) any police, customs or excise officer entering the park, reserve or site in the execution of official duties;
- (d) the holder of a vested right to enter the park, reserve or site, or
- (e) a person traveling through the park, reserve or site by rail, as long as that person stays on the train or within the precincts of any railway station.

(3) If the management authority of a national park, nature reserve or world heritage site refuses permission to an official of an organ of state to enter the park, reserve or site for the performance of official duties, the Minister may—

- (a) reconsider the matter; and
- (b) either confirm the refusal or grant the permission.

#### **Use of aircraft in special nature reserve, national park or world heritage site**

47. (1) A special nature reserve, national park or world heritage site includes the air space above the reserve, park or site to a level of 1500 feet above ground level.

(2) No person may land or take off in an aircraft in a special nature reserve, national park or world heritage site, except—

- (a) on or from a landing field designated by the management authority of that special nature reserve, national park or world heritage site; and
- (b) with the permission of, and on conditions determined by, the management authority.

(3) No person may fly over a special nature reserve, national park or world heritage site at an altitude of less than 1500 feet, except as may be necessary for the purpose of subsection (2).

(4) Subsections (2) and (3) do not apply—

- (a) in an emergency; or
- (b) to a person acting on the instructions of the management authority.

(5) The Minister, acting with the concurrence of the Cabinet member responsible for civil aviation, may prescribe other reasonable restrictions on flying over protected areas.

#### **Part 4**

#### **Restrictions**

#### **Prospecting and mining activities in protected area**

48. (1) Despite other legislation, no person may conduct commercial prospecting or mining activities—

- (a) in a special nature reserve, national park or nature reserve;
- (b) in a protected environment without the written permission of the

Minister and the Cabinet member responsible for minerals and energy affairs; or

(c) in a protected area referred to in section 9(b), (c) or (d).

(2) Subsection (1) does not affect mining activities which were lawfully conducted immediately before this section took effect.

### **Regulation or restriction of activities in special nature reserve, national park and nature reserve**

**49.** Activities in special nature reserves, national parks and nature reserves are regulated or restricted to the extent prescribed by—

- (a) regulations made under section 86;
- (b) regulations made under section 87, in the case of provincial and local nature reserves;
- (c) by-laws made by the relevant municipality, in the case of local nature reserves; and
- (d) internal rules made by the managing authority of the area under section 52.

### **Commercial and community activities in national park, nature reserve and world heritage site**

**50.** (1) The management authority of a national park, nature reserve or world heritage site may, despite any regulation or by-law referred to in section 49, but subject to the management plan of the park, reserve or

site—

(a) carry out or allow—

- (i) a commercial activity in the park, reserve or site; or
- (ii) an activity in the park, reserve or site aimed at raising revenue;

(b) enter into a written agreement with a local community inside or adjacent to the park, reserve or site to allow members of the community to harvest in a sustainable manner biological resources in the park, reserve or site; and

(c) set norms and standards for any activity allowed in terms of paragraph (a) or (b).

(2) An activity allowed in terms of subsection (1) (a) or (b) may not negatively affect the survival of any species in or significantly disrupt the integrity of the ecological systems of the national park, nature reserve or world heritage site.

(3) The management authority of the national park, nature reserve or world heritage site must establish systems to monitor—

(a) the impact of activities allowed in terms of subsection (1)(a) or (b) on the park, reserve or site and its biodiversity; and

(b) compliance with—

- (i) any agreement entered into in terms of subsection (1)(b); and
- (ii) any norms and standards set in terms of subsection (1)(c).

(4) Any activity or harvesting contemplated in subsection (1) (a) or (b) must be regarded as having been approved in terms of this section if that activity or harvesting was lawfully being carried out on the date immediately before—

- (a) this section took effect; or
- (b) the declaration of the area as a national park, nature reserve or world heritage site or as part of an existing national park, nature reserve or world heritage site.

(5) No development, construction or farming may be permitted in a national park, nature reserve or world heritage site without the prior, written approval of the management authority.

### **Regulation or restriction of development and other activities in protected environment**

51. The Minister or the MEC may, by notice in the *Gazette*, restrict or regulate in a protected environment under the jurisdiction of the Minister or the MEC—

- (a) development that may be inappropriate for the area given the purpose for which the area was declared; and
- (b) the carrying out of other activities that may impede such purpose.

### **Internal rules**

52. (1) The management authority of a national park, nature reserve or world heritage site may, in accordance with prescribed norms and standards, make rules for the proper administration of the area.

(2) Rules made under subsection (1)—

- (a) must be consistent with this Act and the management plan for the area;



- (b) bind all persons in the area, including visitors; and
- (c) may, as a condition for entry, provide for the imposition of fines for breaches of the rules.

### **Certain rights and entitlements to be respected**

**53.** (1) Sections 45, 46, 49, 50, 51 or 52 may not be applied in a manner that would obstruct the resolution of issues relating to land rights dealt with in terms of —

- (a) the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), and on the basis that a protected area should be retained in its original state in order to achieve the effective conservation of the area having regard to economic sustainability and holistic and coherent management by the management authority; and
- (b) the provision of essential services and the acquisition of servitudes for that purpose.

(2) A person may exercise a right that that person may have to water in a public stream in a protected area, but subject to such conditions as may be prescribed by the Minister with the concurrence of the Cabinet member responsible for water affairs.



## **CHAPTER 5**

### **SOUTH AFRICAN NATIONAL PARKS**

#### **Part 1**

#### ***Continued existence and functions of South African National Parks***

##### **Continued existence**

**54.** (1) South African National Parks established by section 5 of the National Parks Act, 1976 (Act No. 57 of 1976), continues to exist as a juristic person despite the repeal of that Act by section 92 of this Act.

(2) As from the repeal of the National Parks Act, 1976, South African National Parks functions in terms of this Act.

##### **Functions**

- 55.** (1) South African National Parks must—
- (a) manage the national parks and other protected areas assigned to it in terms of Chapter 4 and section 94 in accordance with this Act;
  - (b) protect, conserve and control those national parks and other protected areas, including their biological diversity; and
  - (c) on the Minister's request, advise the Minister on any matter concerning—
    - (i) the conservation and management of biodiversity; and

- (ii) proposed national parks and additions to or exclusions from existing national parks; and
- (d) on the Minister's request, act as the provisional managing authority of protected areas under investigation in terms of this Act.

(2) South African National Parks may in managing national parks—

- (a) manage breeding and cultivation programmes, and reserve areas in a park as breeding places and nurseries;
- (b) sell, exchange or donate any animal, plant or other organism occurring in a park, or purchase, exchange or otherwise acquire any indigenous species which it may consider desirable to re-introduce into a specific park;
- (c) undertake and promote research;
- (d) control, remove or eradicate any alien species which it considers undesirable to protect and conserve in a park;
- (e) carry out any development, and construct or erect any works, necessary for the management of a park, including roads, bridges, buildings, dams, fences, breakwaters, seawalls, boathouses, landing stages, mooring places, swimming pools, oceanariums and underwater tunnels;
- (f) allow visitors to a park;
- (g) take reasonable steps to ensure the security and well-being of visitors and staff;
- (h) provide accommodation and facilities for visitors and staff, including the provision of food and household supplies;

- (i) carry on any business or trade or provide other services for the convenience of visitors and staff, including the sale of liquor;
- (j) determine and collect fees for –
  - (i) entry to or stay in a park; or
  - (ii) any service provided by it;
- (k) authorise any person, subject to such conditions and the payment of such fees as it may determine, to—
  - (i) carry on any business or trade, or to provide any service, which South African National Parks may carry on or provide in terms of this section; and
  - (ii) provide the infrastructure for such business, trade or service;
- (l) by agreement with—
  - (i) a municipality, provide any service in a park which that municipality may or must provide in terms of legislation; or
  - (ii) any other organ of state, perform a function in a park which that organ of state may or must perform in terms of legislation; or
- (m) perform such other functions as may be prescribed.

(3) Subsection (2) applies also to other protected areas managed by South African National Parks, and the powers contained in that subsection may be exercised by it to the extent that those powers are consistent with the purpose for which any such area was declared as a protected area.

## **General powers**

**56.** South African National Parks may for the purpose of performing its functions—

- (a) appoint its own staff, subject to section 73;
- (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment;
- (c) acquire or dispose of any right in or to movable or immovable property, or hire or let any property;
- (d) open and operate its own bank accounts;
- (e) invest, subject to section 76, any of its money, including money in the fund referred to in section 77;
- (f) borrow money, subject to section 66 of the Public Finance Management Act;
- (g) charge fees for any work performed or services rendered by it or collect fees resulting from any intellectual property rights;
- (h) insure itself against—
  - (i) any loss, damage or risk; or
  - (ii) any liability it may incur in respect of Board members or staff members in the application of this Act;
- (i) perform legal acts, including acts in association with or on behalf of any other person or organ of state; and
- (j) institute or defend any legal action.

**Part 2*****Governing board, composition and membership*****Composition**

57. (1) South African National Parks is governed by a board consisting of—

- (a) no fewer than nine and no more than twelve members appointed in terms of section 59;
- (b) the Director-General or an official of the Department designated by the Director-General; and
- (c) the Chief Executive Officer.

(2) The Minister—

- (a) must determine the number of members to be appointed in terms of subsection (1) (a); and
- (b) may alter from time to time the number determined in terms of paragraph (a), but a reduction in the number may be effected only when a vacancy in the Board occurs.

(3) The Board takes all decisions in the performance of the functions of South African National Parks, except—

- (a) those decisions taken in consequence of a delegation in terms of section 71; or
- (b) where the Public Finance Management Act provides otherwise.

## **Qualifications**

**58. (1)** A member of the Board must—

- (a) be a fit and proper person to hold office as a member; and
- (b) have appropriate qualifications or experience.

**(2)** A person is disqualified from becoming or remaining a member of the Board if that person—

- (a) is holding office as a member of Parliament or a provincial legislature;  
or
- (b) has been removed from office in terms of section 65.

## **Appointment procedure**

**59. (1)** Whenever it is necessary to appoint a member of the Board, the Minister must —

- (a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations; and
- (b) compile a list of the names of persons nominated, setting out the prescribed particulars of each individual nominee.

**(2)** Any nomination made pursuant to an advertisement in terms of subsection (1) (a) must be supported by—

- (a) the personal details of the nominee;
- (b) particulars of the nominee's qualifications or experience; and
- (c) any other information that may be prescribed.

(3) The Minister must make the required number of appointments from the list referred to in terms of subsection (1)(b), but if the list is inadequate, the Minister may appoint any suitable person.

(4) When making an appointment the Minister must have regard to the need for appointing persons disadvantaged by unfair discrimination.

(5) Appointments must be made in such a way that the Board is composed of persons covering a broad range of appropriate expertise.

### **Chairperson**

60. (1) The Minister must appoint a member of the Board as the Chairperson.

(2) The Chairperson is appointed for such period as the Minister may determine which may, in the case of a member referred to in section 57(1)(a), not extend beyond his or her term as a member.

(3) The Minister may appoint a member of the Board as acting chairperson of the Board if—

- (a) the Chairperson is absent for a substantial period; or
- (b) the appointment of a Chairperson is pending.

### **Term of office**

61. (1) Members of the Board referred to in section 57(1)(a)

are—

- (a) appointed for a term of three years or, if section 66(2) applies, for a term determined in terms of that section;
- (b) on completion of any term contemplated in paragraph (a), eligible for re-appointment for one additional term of three years; and
- (c) after a break of at least three years after a term has ended, eligible for appointment in terms of paragraph (a) again and, if appointed, eligible for re-appointment in terms of paragraph (b).

(2) Any appointment in terms of subsection (1) may be extended by the Minister for a specific period not exceeding one year.

### **Conditions of appointment**

62. (1) The Minister must determine the conditions of appointment of members of the Board referred to in section 57(1)(a).

(2) (a) The conditions of appointment of members who are not in the employ of a national, provincial or local organ of state may provide for the payment of remuneration and allowances determined by the Minister with the concurrence of the Cabinet member responsible for finance.

(b) Such remuneration and allowances are payable by South African National Parks.

(3) Members who are in the employ of a national, provincial or local organ of state are not entitled to remuneration and allowances, but must be compensated for out of pocket expenses by South African National Parks.



- (4) Members are appointed part-time.

### **Conduct of members**

**63.** (1) A member of the Board—

- (a) must perform the functions of office in good faith and without favour or prejudice;
- (b) must disclose to the Board any personal or private business interest that that member, or any spouse, partner or close family member of that Board member, may have in any matter before the Board, and must withdraw from the proceedings of the Board when that matter is considered, unless the Board decides that the interest of that Board member in the matter is trivial or irrelevant;
- (c) may not use the position, privileges or knowledge of a Board member for private gain or to improperly benefit another person; and
- (d) may not act in any other way that compromises the credibility, impartiality, independence or integrity of South African National Parks.

(2) A member of the Board who contravenes or fails to comply with subsection (1) is guilty of misconduct.

### **Termination of membership**

**64.** (1) A person referred to in section 57(1)(a) ceases to be a member of the Board when that person—

- (a) is no longer eligible in terms of section 58 to be a member;

(b) resigns; or

(c) is removed from office in terms of section 65.

(2) A member may resign by giving at least three month's written notice to the Minister, but the Minister may accept a shorter period in a specific case.

### **Removal from office**

65. (1) The Minister may remove a member of the Board referred to in section 57(1)(a) from office on the ground of—

(a) misconduct, incapacity or incompetence;

(b) absence from three consecutive meetings of the Board without the prior permission of the Board, except on good cause shown;

(c) insolvency; or

(d) conviction of a criminal offence without the option of a fine.

(2) A member of the Board may be removed from office on the ground of misconduct or incompetence only after a finding to that effect has been made by a board of inquiry appointed by the Minister.

(3) The Minister may suspend a member under investigation in terms of this section.

### **Filling of vacancies**

66. (1) A vacancy in the Board is filled—

(a) in the case of a vacating Chairperson, by appointing another member

in terms of section 60(1) as the Chairperson; and

- (b) in the case of a vacating member referred to in section 57(1)(a), by following the procedure set out in section 59.

(2) A person appointed to fill a vacancy holds office for the unexpired portion of the term of the vacating Chairperson or member.

### **Part 3**

#### ***Operating procedures of Board***

##### **Meetings**

67. (1) The Chairperson of the Board decides when and where the Board meets, but a majority of the members may request the Chairperson in writing to convene a meeting at a time and place set out in the request.

(2) The Chairperson presides at meetings of the Board, but if absent from a meeting, the members present must elect another member to preside at the meeting.

##### **Procedures**

68. (1) The Board may determine its own procedures subject to the other provisions of this Act.

(2) The Board must keep a record of its proceedings and of decisions taken.

### **Quorum and decisions**

**69.** (1) A majority of the serving members of the Board constitutes a quorum for a meeting of the Board.

(2) A matter before the Board is decided by the votes of a majority of the members present at the meeting.

(3) If on any matter before the Board there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to that person's vote as a member.

### **Committees**

**70.** (1) The Board may establish one or more committees to assist it in the performance of its functions.

(2) When appointing members to a committee, the Board is not restricted to members of the Board.

(3) The Board—

- (a) must determine the functions of a committee;
- (b) must appoint the chairperson and other members of the committee;
- (c) may remove a member of a committee from office at any time; and
- (d) may determine a committee's procedure.

(4) The Board may dissolve a committee at any time.

(5) (a) Section 62 applies with the changes required by the context to the conditions of appointment of committee members.

(b) A staff member of South African National Parks appointed to a committee serves on the committee subject to the terms and conditions of that person's employment.

### **Delegation of powers and assignment of duties**

**71. (1)** When necessary for the proper performance of its functions the Board may delegate any of its powers or assign any of its duties, excluding those mentioned in subsection (2), to—

- (a) a Board member;
- (b) a committee referred to in section 70; or
- (c) a staff member of South African National Parks.

(2) The following powers and duties may not be delegated or assigned by the Board:

- (a) the appointment or re-appointment of a person as the Chief Executive Officer in terms of section 72(1) or (2);
- (b) the determination of the conditions of service of the Chief Executive Officer in terms of section 72(3);
- (c) the determination of an employment policy in terms of section 73(1);
- (d) the setting of financial limits in terms of section 73(2)(a) or (3); and
- (e) the approval of the budget.

(3) A delegation or assignment in terms of subsection (1)—

- (a) must be in writing;
- (b) is subject to such limitations, conditions and directions as the Board may impose;

- (c) does not divest the Board of the responsibility concerning the exercise of the delegated power or the carrying out of the assigned duty; and
- (d) does not prevent the exercise of the assigned power or the carrying out of the assigned duty by the Board.

(4) The Board may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

#### ***Part 4***

### ***Administration of South African National Parks***

#### **Appointment of Chief Executive Officer**

72. (1) The Board, acting with the concurrence of the Minister, must appoint a person with appropriate qualifications and experience as the Chief Executive Officer of South African National Parks.

(2) The Chief Executive Officer—

- (a) is appointed for a term not exceeding five years; and
- (b) may be re-appointed by the Board with the concurrence of the Minister.

(3) The Chief Executive Officer is employed subject to such terms and conditions of employment as the Board may determine in accordance with a policy approved by the Minister with the concurrence of the Cabinet member responsible for finance.

(4) The Chief Executive Officer—

- (a) is responsible for the management of South African National Parks;

- (b) must perform such duties and may exercise such powers as the Board may assign or delegate to the Chief Executive Officer; and
- (c) must report to the Board on aspects of management, the performance of duties and the exercise of powers at such frequency and in such manner as the Board may determine.

(5) (a) Whenever the Chief Executive Officer is for any reason absent or unable to carry out his or her functions, or whenever there is a vacancy in the office of the Chief Executive Officer, the Chairperson of the Board may appoint another staff member of South African National Parks as acting Chief Executive Officer for a period not exceeding six months.

(b) Whilst acting as Chief Executive Officer, such staff member—

- (a) has the powers and duties of the Chief Executive Officer; and
- (b) is employed subject to such terms and conditions of employment as the Chairperson of the Board may determine in accordance with the policy referred to in subsection (3).

### **Employment of staff**

73. (1) The Board, acting with the concurrence of the Minister, must determine an employment policy for South African National Parks.

(2) The Chief Executive Officer—

- (a) within the financial limits set by the Board, must determine a staff establishment necessary to enable South African National Parks to perform its functions; and



(b) may appoint persons in posts on the staff establishment.

(3) An employee of South African National Parks is employed subject to the terms and conditions of employment determined by the Chief Executive Officer in accordance with the employment policy of and within the financial limits set by the Board.

(4) (a) A person in the service of another organ of state may be seconded to South African National Parks by agreement between the Chief Executive Officer and such organ of state.

(b) Persons seconded to South African National Parks perform their functions under the supervision of the Chief Executive Officer.

(5) A person in the service of South African National Parks may, with the consent of that person, be seconded to another organ of state by agreement between the Chief Executive Officer and such organ of state.

## **Part 5**

### **Financial matters**

#### **Financial accountability**

74. South African National Parks is a public entity for the purposes of the Public Finance Management Act, and must to that end comply with the provisions of that Act.



## **Funding**

**75.** The funds of South African National Parks consist of—

- (a) income derived from the performance of its functions;
- (b) money appropriated for its purposes by Parliament;
- (c) grants received from organs of state;
- (d) voluntary contributions, donations and bequests;
- (e) money borrowed in terms of section 56(f);
- (f) income derived from investments;
- (g) fines received or recovered in respect of offences committed within national parks; and
- (h) money derived from any other source, with the approval of the Cabinet member responsible for finance.

## **Investments**

**76.** South African National Parks may invest any of its funds not immediately required—

- (a) subject to any investment policy that may be prescribed in terms of section 7(4) of the Public Finance Management Act; and
- (b) in accordance with any criteria set by the Minister.

### **National Parks Land Acquisition Fund**

77. (1) The National Parks Land Acquisition Fund established by section 12A of the National Parks Act, 1976 (Act No. 57 of 1976), continues to exist as a separate fund under the administration of South African National Parks despite the repeal of that Act by section 92 of this Act.

(2) The Fund is administered by South African National Parks and consists of –

- (a) any voluntary contributions, donations and bequests received by South African National Parks for the purpose of the Fund;
- (b) money appropriated by Parliament for the purpose of the Fund;
- (c) the proceeds of land sold by South African National Parks which it has acquired in terms of section 81;
- (d) income derived from investing any credit balances in the Fund;
- (e) money borrowed by South African National Parks in terms of section 56(f) for the purpose of the Fund; and
- (f) money derived from any other source for the purpose of the Fund.

(3) The money in the Fund may be used—

- (a) to finance—
  - (i) the acquisition of private land or a right in or to private land in terms of section 80 or 81; or
  - (ii) the cancellation of a servitude or a right in land in terms of section 82 or 83; or
- (b) to defray expenses incurred by South African National Parks in

connection with the management of the Fund.

(4) The Chief Executive Officer must—

- (a) keep account of the Fund separately from the other money of South African National Parks; and
- (b) comply with the Public Finance Management Act in administering the Fund.

## **Part 6**

### **General**

#### **Minister's supervisory powers**

**78.** (1) The Minister—

- (a) must monitor the performance by South African National Parks of its functions;
- (b) may determine norms and standards for the performance by South African National Parks of its functions;
- (c) may issue directives to South African National Parks on measures to achieve those norms and standards;
- (d) may determine limits on fees charged by South African National Parks in the performance of its functions; and
- (e) may identify land for new national parks and extensions to existing national parks.

(2) South African National Parks must perform its functions subject to the norms and standards, directives and determinations issued by

the Minister in terms of subsection (1).

### **Absence of functional Board**

**79.** In the absence of a functional Board, the functions of the Board revert to the Minister who, in such a case, must perform those functions until the Board is functional again.

## **CHAPTER 6**

### **ACQUISITION OF RIGHTS IN OR TO LAND**

#### **Acquisition of private land by State**

**80.** (1) The Minister, acting with the concurrence of the Cabinet member responsible for land affairs, may acquire private land, or any right in or to private land, which has been or is proposed to be declared as or included in a national protected area, by—

- (a) purchasing the land or right;
- (b) exchanging the land or right for other land or rights; or
- (c) expropriating the land or right in accordance with the Expropriation

Act, 1975 (Act No.63 of 1975), and subject to section 25 of the Constitution, if no agreement is reached with the owner or holder of the right.

(2) The MEC, acting with the approval of the Executive Council of the province, may acquire private land, or any right in or to private

land, which has been or is proposed to be declared as or included in a provincial protected area, by—

- (a) purchasing the land or right;
- (b) exchanging the land or right for other land or rights; or
- (c) expropriating the land or right in accordance with the Expropriation Act, 1975, and subject to section 25 of the Constitution, if no agreement is reached with the owner or holder of the right.

### **Acquisition of private land by South African National Parks**

**81. (1)** South African National Parks, with the approval of the Minister acting with the concurrence of the Cabinet member responsible for land affairs, may acquire private land, or any right in or to private land, which has been or is proposed to be declared as or included in a national park—

- (a) by purchasing the land or right; or
- (b) if the land or right is donated or bequeathed to it, by accepting the donation or bequest.

**(2)** If the parties fails to agree on a purchase price for the land or right contemplated in subsection (1)(a), the Minister may on behalf of South African National Parks or the State expropriate the land or right in accordance with the Expropriation Act, 1975 (Act No. 63 of 1975), subject to section 25 of the Constitution.

**Cancellation of servitude on, or privately held right in or to, state land**

**82.** (1) The Minister, acting with the concurrence of the Cabinet member responsible for public works, may take any steps necessary to cancel a servitude on state land, or a privately held right in or to state land, which has been or is proposed to be declared as or included in a national protected area.

(2) The MEC, acting with the concurrence of the MEC responsible for public works in the province, may take any steps necessary to cancel a servitude on provincial land, or a privately held right in or to provincial land, which has been or is proposed to be declared as or included in a provincial protected area.

(3) If the Minister or MEC fails to reach an agreement with the owner of the property in whose favour the servitude is registered or with the person holding the right, the Minister or MEC may expropriate the servitude in accordance with the Expropriation Act, 1975 (Act No.63 of 1975), subject to section 25 of the Constitution.

**Cancellation of servitude on, or privately held right in or to, land owned by South African National Parks**

**83.** (1) South African National Parks may take any steps necessary to cancel a servitude on land owned by South African National Parks, or a privately held right in or to such land, which has been or is

proposed to be declared as or included in a national park.

(2) If South African National Parks fails to reach an agreement with the owner of the property in whose favour the servitude is registered or with the person holding the right, the Minister may on behalf of South African National Parks or the State expropriate the servitude or right in accordance with the Expropriation Act, 1975 (Act No. 63 of 1975), and subject to section 25 of the Constitution.

### **Mineral right**

84. The Minister may in accordance with section 80(1)(c), 81(2), 82(3) or 83(2), and the MEC may in accordance with section 80(2) or 82(3), acquire or cancel a mineral right by way of expropriation only with the concurrence of the Cabinet member responsible for mineral and energy affairs.

### **Financing**

85. (1) The Minister may finance the acquisition of private land or a right in or to private land in terms of section 80, or the cancellation of a servitude on, or a privately held right in or to, state land in terms of section 82, from—

- (a) money appropriated for this purpose by Parliament; or
- (b) the National Parks Land Acquisition Fund, by agreement with South African National Parks.

(2) South African National Parks may finance the acquisition of private land or a right in or to private land in terms of section 81, or the cancellation of a servitude on, or a privately held right in or to, land owned by South African National Parks in terms of section 83, from—

- (a) the funds of South African National Parks; or
- (b) the National Parks Land Acquisition Fund, by agreement with the Minister.

## CHAPTER 7

### ADMINISTRATION OF ACT

#### Regulations by Minister

86. (1) The Minister may make regulations that are not in conflict with this Act—

- (a) regarding any matter that may or must be prescribed in terms of this Act;
- (b) conferring additional powers or assigning additional duties to management authorities;
- (c) regulating –
  - (i) biodiversity management and conservation in protected areas;
  - (ii) the use of biological resources in protected areas;
  - (iii) access to protected areas;
  - (iv) tourism in protected areas where tourism is allowed;
  - (v) activities that may be carried out in terms of section 50; or



- (vi) the use of land and water in protected areas;
- (d) prohibiting or restricting –
  - (i) activities that have an adverse effect in protected areas;
  - (ii) the use of biological resources in protected areas;
  - (iii) land uses in protected areas that are harmful to the environment;
- (e) providing for the establishment of advisory committees for protected areas, the appointment of members and their role;
- (f) setting norms and standards for the proper performance of any function contemplated in this Act, and the monitoring and enforcing of such norms and standards;
- (g) regarding any other matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.

(2) Any regulation with material financial implications must be made with the concurrence of the Cabinet member responsible for finance.

(3) Before publishing any regulation contemplated in subsection (1), the Minister must publish the draft regulations in the *Gazette* for public comment.

### **Regulations by MEC**

87. (1) The MEC may, in relation to provincial and local protected areas, make regulations not in conflict with this Act regarding any matter referred to in section 86, except a matter referred to in section 86(1)(f).

(2) Any regulation made under subsection (1) must be

consistent with the norms and standards prescribed under section 11 or 86(1)(f).

(3) Any regulation with substantive financial implications for the province, must be made with the concurrence of the MEC responsible for finance in the province.

(4) Before publishing any regulation contemplated in subsection (1), the MEC must publish the draft regulations in the *Gazette* for public comment.

### **General**

**88.** (1) Regulations made under section 86 or 87 may—

(a) restrict or prohibit any act either absolutely or conditionally;

(b) apply—

(i) generally throughout the Republic or province, as the case may be, or only in a specified area or category of areas;

(ii) generally to all persons or only a specified category of persons;  
or

(iii) generally with respect to all species or only a specified species or category of species; or

(c) differentiate between—

(i) different areas or categories of areas;

(ii) persons or categories of persons; or

(iii) species or categories of species.

(2) Regulations made under section 86 or 87 may provide

that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

## **CHAPTER 8**

### **OFFENCES AND PENALTIES**

#### **Offences**

**89. (1)** A person is guilty of an offence if that person—

- (a) contravenes or fails to comply with a provision of section 45(1), 46(1), 47(2) or (3), 48(1) or 50(5);
- (b) contravenes a notice issued under section 51;
- (c) hinders or interferes with a management authority or a member or staff member of a management authority in the execution of official duties;  
or
- (d) falsely professes to be a member or staff member of a management authority, or the interpreter or assistant of such an officer.

(2) A person convicted of an offence in terms of subsection (1) is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

## CHAPTER 9

### MISCELLANEOUS

#### Repeal of laws

90. (1) Subject to subsection (2), the laws mentioned in the second column of Schedule 1 are hereby repealed to the extent set out in the third column thereof.

(2) Sections 16 and 17 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), are repealed in a province with effect from the date of publication by the MEC of regulations under section 87 prescribing matters covered by the said sections 16 and 17.

#### Savings

91. (1) Anything done in terms of a law repealed by section 91 which can or must be done in terms of this Act must be regarded as having been done in terms of this Act.

(2) A person who, immediately before the repeal of the National Parks Act, 1976, was –

- (a) a member of South African National Parks, becomes a member of the Board for the unexpired part of the term for which that person was appointed as a member of South African National Parks; or
- (b) the chairperson of South African National Parks, becomes the chairperson of the Board for the unexpired part of the term for which that person was appointed as the chairperson of South African National Parks.

**Protected areas existing before commencement of section****92. (1) South African National Parks—**

- (a) is the management authority for any protected area it managed immediately before this section took effect, unless otherwise assigned by the Minister in terms of this Act; and
- (b) must manage such area in accordance with—
  - (i) this Act, and any management plan in terms of Chapter 4 for the area; and
  - (ii) any condition and agreement which existed immediately before this section took effect and which were applicable to the area.

(2) The organ of state managing a protected area immediately before this section took effect, other than a protected area referred to in subsection (1), must continue managing the area until the management of the area is assigned either to it or another management authority in terms of Chapter 4.

**Short title and commencement**

**93.** This Act is called the National Environmental Management: Protected Areas Act, 2003, and takes effect on a date determined by the President by proclamation in the *Gazette*.

**SCHEDULE**  
**REPEAL OF LEGISLATION**  
*(Section 90)*

No. and year of Act	Short title of Act	Extent of repeal
Act No. 39 of 1975	Lake Areas Development Act, 1975	The repeal of the whole
Act No. 57 of 1976	National Parks Act, 1976	The repeal of the whole, except section 2(1) and Schedule 1
Act No. 60 of 1979	National Parks Amendment Act, 1979	The repeal of the whole
Act No. 9 of 1980	Lake Areas Development Amendment Act, 1980	The repeal of the whole
Act No. 13 of 1982	National Parks Amendment Act, 1982	The repeal of the whole
Act No. 23 of 1983	National Parks Amendment Act, 1983	The repeal of the whole
Act No. 43 of 1986	National Parks Amendment Act, 1986	The repeal of the whole
Act No. 111 of 1986	National Parks Second Amendment Act, 1986	The repeal of the whole
Act No. 60 of 1987	National Parks Amendment Act, 1987	The repeal of the whole
Act No. 73 of 1989	Environment Conservation Act, 1989	The repeal of sections 16, 17 and 18
Act No. 23 of 1990	National Parks Amendment Act, 1990	The repeal of the whole
Act No. 52 of 1992	National Parks Amendment Act, 1992	The repeal of the whole
Act No. 91 of 1992	National Parks Second Amendment Act, 1992	The repeal of the whole
Act No. 38 of 1995	National Parks Amendment Act, 1995	The repeal of the whole
Act No. 70 of 1997	National Parks Amendment Act, 1997	The repeal of the whole
Act No. 106 of 1998	National Parks Amendment Act, 1998	The repeal of the whole
Act No. 54 of 2001	National Parks Amendment Act, 2001	The repeal of the whole



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