REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT

REPABOLIKI YA AFERIKA BORWA

TSAMAISO YA BOSETŠHABA YA TIKOLOGO: MOLAO WA *BIODIVERSITY*

No , 2004

ACT

To provide for the management and conservation of South Africa's biodiversity within the framework of the National Environmental Management Act, 1998; the protection of species and ecosystems that warrant national protection; the sustainable use of indigenous biological resources; the fair and equitable sharing of benefits arising from bioprospecting involving indigenous biological resources; the establishment and functions of a South African National Biodiversity Institute; and for matters connected therewith.

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

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CHAPTER 1

INTERPRETATION, OBJECTIVES AND APPLICATION OF ACT

Definitions

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

"alien species" means—

(a) a species that is not an indigenous species; or

(b) an indigenous species translocated or intended to be translocated to a place outside its natural distribution range in nature, but not an indigenous species that has extended its natural distribution range by natural means of migration or dispersal without human intervention;

"benefit", in relation to bioprospecting involving indigenous biological resources, means any benefit, whether commercial or not, arising from bioprospecting involving such resources, and includes both monetary and non-monetary returns;

"biological diversity" or **"biodiversity"** means the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and also includes diversity within species, between species, and of ecosystems;

"bioprospecting", in relation to indigenous biological resources, means any research on, or development or application of, indigenous biological resources for commercial or industrial exploitation, and includes—

(a) the systematic search, collection or gathering of such resources or making extractions from such resources for purposes of such research, development or application;

(b) the utilisation for purposes of such research or development of any information regarding any traditional uses of indigenous biological resources by indigenous communities; or

(c) research on, or the application, development or modification of, any such traditional uses, for commercial or industrial exploitation;

"bioregion" means a geographic region which has in terms of section 40(1) been determined as a bioregion for the purposes of this Act;

"Board" means the board referred to in section 13;

"competent authority", in relation to the control of an alien or invasive species, means—

(a) the Minister;

(b) an organ of state in the national, provincial or local sphere of government designated by regulation as a competent authority for the control of an alien species or a listed invasive species in terms of this Act; or

(c) any other organ of state;

"components", in relation to biodiversity, includes species, ecological communities, genes, genomes, ecosystems, habitats and ecological processes;

"control", in relation to an alien or invasive species, means—

(a) to combat or eradicate an alien or invasive species; or

(b) where such eradication is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment, re-growth, multiplication, propagation, regeneration or spreading of an alien or invasive species;

"critically endangered ecosystem" means any ecosystem listed as a critically endangered ecosystem in terms of section 52(2);

"critically endangered species" means any indigenous species listed as a critically endangered species in terms of section 56;

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

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

"derivative", in relation to an animal, plant or other organism, means any part, tissue or extract, of an animal, plant or other organism, whether fresh, preserved or processed, and includes any chemical compound derived from such part, tissue or extract;

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

"ecological community" means an integrated group of species inhabiting a given area;

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

"endangered ecosystem" means any ecosystem listed as an endangered ecosystem in terms of section 52(2);

"endangered species" means any indigenous species listed as an endangered species in terms of section 56;

"environmental management inspector" means a person authorised in terms of the National Environmental Management Act to enforce the provisions of this Act;

"export", in relation to the Republic, means to take out or transfer, or attempt to take out or transfer, from a place within the Republic to another country or to international waters;

"*Gazette*", when used—

(a) in relation to the Minister, means the *Government Gazette*; or

(b) in relation to the MEC for Environmental Affairs of a province, means the *Provincial Gazette* of that province;

"genetic material" means any material of animal, plant, microbial or other biological origin containing functional units of heredity;

"genetic resource" includes—

(a) any genetic material; or

(b) the genetic potential or characteristics of any species;

"habitat" means a place where a species or ecological community naturally occurs;

"import", in relation to the Republic—

(a) means to land on, bring into or introduce into the Republic, or attempt to land on, bring into or introduce into the Republic; and

(b) includes to bring into the Republic for re-export to a place outside the Republic;

"indigenous biological resource" —

(a) when used in relation to bioprospecting, means any indigenous biological resource as defined in section 80(2); or

(b) when used in relation to any other matter, means any resource consisting of —

(i) any living or dead animal, plant or other organism of an indigenous species;

(ii) any derivative of such animal, plant or other organism; or

(iii) any genetic material of such animal, plant or other organism;

"indigenous species" means a species that occurs, or has historically occurred, naturally in a free state in nature within the borders of the Republic, but excludes a species that has been introduced in the Republic as a result of human activity;

"Institute" means the South African National Biodiversity Institute established in terms of section 10;

"introduction", in relation to a species, means the introduction by humans, whether deliberately or accidentally, of a species to a place outside the natural range or natural dispersal potential of that species;

"introduction from the sea", in relation to a specimen of any species, means the transportation into the Republic of a specimen taken from a marine environment not under the jurisdiction of any state;

"invasive species" means any species whose establishment and spread outside of its natural distribution range—

(a) threaten ecosystems, habitats or other species or have demonstrable potential to threaten ecosystems, habitats or other species; and

(b) may result in economic or environmental harm or harm to human health;

"issuing authority", in relation to permits regulating the matters mentioned in section 87, means—

(a) the Minister; or

(b) an organ of state in the national, provincial or local sphere of government designated by regulation in terms of section 97 as an issuing authority for permits of the kind in question;

"listed ecosystem" means any ecosystem listed in terms of section 52(1);

"listed invasive species" means any invasive species listed in terms of section 70(1);

"listed threatened or protected species" means any species listed in terms of section 56(1);

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

"management authority", in relation to a protected area, means an authority to whom the management of a protected area has been assigned;

"MEC for Environmental Affairs" means a member of the Executive Council of a province who is responsible for the conservation of biodiversity in the province;

"migratory species" means the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries;

"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 botanical garden" means land declared or regarded as having been declared as a national botanical garden in terms of section 33, and includes any land declared in terms of section 33 as part of an existing botanical garden;

"National Environmental Management Act" means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

"national environmental management principles" means the principles referred to in section 7;

"non-detriment findings" means the determination of the non-detrimental impact of an action on the survival of a species in the wild;

"organ of state" has the meaning assigned to it in section 239 of the Constitution;

"permit" means a permit issued in terms of Chapter 7;

"prescribe" means prescribe by regulation in terms of section 97;

"protected area" means a protected area defined in the Protected Areas Act;

"Protected Areas Act" means the National Environmental Management: Protected Areas Act, 2003;

"protected ecosystem" means any ecosystem listed as a protected ecosystem in terms of section 52(2);

"protected species" means any species listed as a protected species in terms of section 56;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"re-export", in relation to a specimen of a listed threatened or protected species, means the export from the Republic of a specimen of a listed threatened or protected species previously imported into the Republic;

"restricted activity"—

(a) in relation to a specimen of a listed threatened or protected species, means—

(i) hunting, catching, capturing or killing any living specimen of a listed threatened or protected species by any means, method or device whatsoever, including searching, pursuing, driving, lying in wait, luring, alluring, discharging a missile or injuring with intent to hunt, catch, capture or kill any such specimen;

(ii) gathering, collecting or plucking any specimen of a listed threatened or protected species;

(iii) picking parts of, or cutting, chopping off, uprooting, damaging or destroying, any specimen of a listed threatened or protected species;

(iv) importing into the Republic, including introducing from the sea, any specimen of a listed threatened or protected species;

(v) exporting from the Republic, including re-exporting from the Republic, any specimen of a listed threatened or protected species;

(vi) having in possession or exercising physical control over any specimen of a listed threatened or protected species;

(vii) growing, breeding or in any other way propagating any specimen of a listed threatened or protected species, or causing it to multiply;

(viii) conveying, moving or otherwise translocating any specimen of a listed threatened or protected species;

(ix) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of a listed threatened or protected species; or

(x) any other prescribed activity which involves a specimen of a listed threatened or protected species; and

(b) in relation to a specimen of an alien species or listed invasive species, means—

(i) importing into the Republic, including introducing from the sea, any specimen of an alien or listed invasive species;

(ii) having in possession or exercising physical control over any specimen of an alien or listed invasive species;

(iii) growing, breeding or in any other way propagating any specimen of an alien or listed invasive species, or causing it to multiply;

(iv) conveying, moving or otherwise translocating any specimen of an alien or listed invasive species;

(v) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of an alien or listed invasive species; or

(vi) any other prescribed activity which involves a specimen of an alien or listed invasive species;

"species" means a kind of animal, plant or other organism that does not normally interbreed with individuals of another kind, and includes any sub-species, cultivar, variety, geographic race, strain, hybrid or geographically separate population;

"specimen" means—

(a) any living or dead animal, plant or other organism;

(b) a seed, egg, gamete or propagule or part of an animal, plant or other organism capable of propagation or reproduction or in any way transferring genetic traits;

(c) any derivative of any animal, plant or other organism; or

(d) any goods which—

(i) contain a derivative of an animal, plant or other organism; or

(ii) from an accompanying document, from the packaging or mark or label, or from any other indications, appear to be or to contain a derivative of an animal, plant or other organism;

"stakeholder" means—

(a) a person, an organ of state or a community contemplated in section 82(1)*(a)*; or

(b) an indigenous community contemplated in section 82(1)*(b)*;

"subordinate legislation", in relation to this Act, means—

(a) any regulation made in terms of section 97; or

(b) any notice published in terms of section 9, 33, 34, 40(1), 42(2), 43(3), 46(2), 52(1), 53(1), 55, 56(1), 57(2), 58, 66(1), 67(1), 68, 70(1), 72, 86(1) or 100(1)

"sustainable", in relation to the use of a biological resource, means the use of such resource in a way and at a rate that—

(a) would not lead to its long-term decline;

(b) would not disrupt the ecological integrity of the ecosystem in which it occurs; and

(c) would ensure its continued use to meet the needs and aspirations of present and future generations of people;

"this Act" includes any subordinate legislation issued in terms of a provision of this Act;

"threatening process" means a process which threatens, or may threaten—

(a) the survival, abundance or evolutionary development of an indigenous species or ecological community; or

(b) the ecological integrity of an ecosystem,

and includes any process identified in terms of section 53 as a threatening process;

"vulnerable ecosystem" means any ecosystem listed as a vulnerable ecosystem in terms of section 52(2);

"vulnerable species" means any indigenous species listed as a vulnerable species in terms of section 56.

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

Objectives of Act

2. The objectives of this Act are—

(a) within the framework of the National Environmental Management Act, to provide for—

(i) the management and conservation of biological diversity within the Republic and of the components of such biological diversity;

(ii) the use of indigenous biological resources in a sustainable manner; and

(iii) the fair and equitable sharing among stakeholders of benefits arising from bioprospecting involving indigenous biological resources;

(b) to give effect to ratified international agreements relating to biodiversity which are binding on the Republic;

(c) to provide for co-operative governance in biodiversity management and conservation; and

(d) to provide for a South African National Biodiversity Institute to assist in achieving the objectives of this Act.

State's trusteeship of biological diversity

3. In fulfilling the rights contained in section 24 of the Constitution, the state through its organs that implement legislation applicable to biodiversity, must—

(a) manage, conserve and sustain South Africa's biodiversity and its components and genetic resources; and

(b) implement this Act to achieve the progressive realisation of those rights.

Application of Act

4. (1) This Act applies—

(a) in the Republic, including—

(i) its territorial waters, exclusive economic zone and continental shelf described in the Maritime Zones Act, 1994 (Act No. 15 of 1994); and

(ii) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act No. 43 of 1948); and

(b) to human activity affecting South Africa's biological diversity and its components.

(2) This Act binds all organs of state—

(a) in the national and local spheres of government; and

(b) in the provincial sphere of government, subject to section 146 of the Constitution.

Application of international agreements

5. This Act gives effect to ratified international agreements affecting biodiversity to which South Africa is a party, and which bind the Republic.

Application of other biodiversity legislation

6. (1) This Act must be read with any 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.

National environmental management principles

7. The application of this Act must be guided by the national environmental management principles set out in section 2 of the National Environmental Management Act.

Conflicts with other legislation

8. (1) In the event of any conflict between a section of this Act and—
(a) other national legislation in force immediately prior to the date of commencement of this Act, the section of this Act prevails if the conflict specifically concerns the management of biodiversity or indigenous biological resources;
(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 which affects provinces to the National Council of Provinces for approval.

Norms and standards

9. (1) The Minister may, by notice in the *Gazette*—
(a) issue norms and standards for the achievement of any of the objectives of this Act, including for the—
(i) management and conservation of South Africa's biological diversity and its components;
(ii) restriction of activities which impact on biodiversity and its components;
(b) set indicators to measure compliance with those norms and standards; and
(c) amend any notice issued in terms of paragraph *(a)* or *(b)*.

(2) *(a)* Before publishing a notice in terms of subsection (1), the Minister must follow a consultative process in accordance with sections 99 and 100.
(b) A consultative process referred to in paragraph *(a)* need not apply to a non-substantial change to the notice.

(3) Norms and standards may apply—
(a) nationwide;
(b) in a specific area only; or
(c) to a specific category of biodiversity only.

(4) Different norms and standards may be issued for—
(a) different areas; or
(b) different categories of biodiversity.

CHAPTER 2

SOUTH AFRICAN NATIONAL BIODIVERSITY INSTITUTE

Part 1

Establishment, powers and duties of Institute

Establishment

10. (1) The South African National Biodiversity Institute is established by this Act.
(2) The Institute is a juristic person.

Functions

11. (1) The Institute—
(a) must monitor and report regularly to the Minister on—
(i) the status of the Republic's biodiversity;

(ii) the conservation status of all listed threatened or protected species and listed ecosystems; and

(iii) the status of all listed invasive species;

(b) must monitor and report regularly to the Minister on the impacts of any genetically modified organism that has been released into the environment, including the impact on non-target organisms and ecological processes, indigenous biological resources and the biological diversity of species used for agriculture;

(c) may act as an advisory and consultative body on matters relating to biodiversity to organs of state and other biodiversity stakeholders;

(d) must coordinate and promote the taxonomy of South Africa's biodiversity;

(e) must manage, control and maintain all national botanical gardens;

(f) may establish, manage, control and maintain—

(i) herbaria; and

(ii) collections of dead animals that may exist;

(g) must establish facilities for horticulture display, environmental education, visitor amenities and research;

(h) must establish, maintain, protect and preserve collections of plants in national botanical gardens and in herbaria;

(i) may establish, maintain, protect and preserve collections of animals and micro-organisms in appropriate enclosures;

(j) must collect, generate, process, coordinate and disseminate information about biodiversity and the sustainable use of indigenous biological resources, and establish and maintain databases in this regard;

(k) may allow, regulate or prohibit access by the public to national botanical gardens, herbaria and other places under the control of the Institute, and supply plants, information, meals or refreshments or render other services to visitors;

(l) may undertake and promote research on indigenous biodiversity and the sustainable use of indigenous biological resources;

(m) may coordinate and implement programmes for—

(i) the rehabilitation of ecosystems; and

(ii) the prevention, control or eradication of listed invasive species;

(n) may coordinate programmes to involve civil society in—

(i) the conservation and sustainable use of indigenous biological resources; and

(ii) the rehabilitation of ecosystems;

(o) on the Minister's request, must assist him or her in the performance of duties and the exercise of powers assigned to the Minister in terms of this Act;

(p) on the Minister's request, must advise him or her on any matter regulated in terms of this Act, including—

(i) the implementation of this Act and any international agreements affecting biodiversity which are binding on the Republic;

(ii) the identification of bioregions and the contents of any bioregional plans;

(iii) other aspects of biodiversity planning;

(iv) the management and conservation of biological diversity; and

(v) the sustainable use of indigenous biological resources;

(q) on the Minister's request, must advise him or her on the declaration and management of, and development in, national protected areas; and

(r) must perform any other duties—

(i) assigned to it in terms of this Act; or

(ii) as may be prescribed.

(2) When the Institute in terms of subsection (1) gives advice on a scientific matter, it may consult any appropriate organ of state or other institution which has expertise in that matter.

General powers

12. The Institute may for the purpose of performing its duties—
(a) appoint its own staff, subject to section 29;
(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) establish a company which has as its object the production and supply of goods or the rendering of services on behalf of the Institute, subject to the Public Finance Management Act;
(f) invest any of its money, subject to section 32;
(g) borrow money, subject to section 66 of the Public Finance Management Act;
(h) charge fees—
(i) for access to national botanical gardens, herbaria and other places under its control;
(ii) for any work performed or services rendered by it, except for any such work performed or services rendered in terms of section 11(1)*(m)*, *(n)* or *(o)*; or
(iii) for access to the results of, or to other information in connection with, any research performed by it;
(i) collect royalties resulting from any discoveries, inventions or computer programmes;
(j) insure itself against—
(i) any loss, damage or risk; or
(ii) any liability it may incur in the application of this Act;
(k) perform legal acts, including acts in association with, or on behalf of, any other person or organ of state; and
(l) institute or defend any legal action.

Part 2

Governing board, composition and membership

Composition

13. (1) The Institute is governed by a Board consisting of—
(a) not fewer than seven and not more than nine members appointed in terms of section 15;
(b) the Director-General or an official of the Department designated by the Director-General; and
(c) the Chief Executive Officer of the Institute.
(2) The Minister—
(a) must determine the number of members to be appointed in terms of subsection (1)*(a)*; and
(b) may alter 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 duties and exercise of powers of the Institute, except—
(a) those decisions taken in consequence of a delegation in terms of section 27; or
(b) where the Public Finance Management Act provides otherwise.

Qualifications

14. (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 and experience in the field of biodiversity.

(2) The following persons are disqualified from becoming or remaining a member of the Board:

(a) A person holding office as a member of Parliament, a provincial legislature or a municipal council; or

(b) a person who has been removed from office in terms of section 21.

Appointment procedure

15. (1) Whenever it is necessary to appoint members of the Board referred to in section 13(1)*(a)*, the Minister must—

(a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations for appointment as such a member; 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) nominee's qualifications or experience; and

(c) any other information that may be prescribed.

(3) The Minister must, subject to subsection (4), appoint—

(a) the required number of persons from the list compiled in terms of subsection (1)*(b)*; and

(b) if such list is inadequate, any suitable person.

(4) When making appointments the Minister must—

(a) consult the MECs for Environmental Affairs; and

(b) have regard to the need for appointing persons to promote representivity.

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

Chairperson

16. (1) Whenever necessary the Minister must appoint a member of the Board as the Chairperson of the Board.

(2) The Chairperson is appointed for a period which is determined by the Minister which may, in the case of a member referred to in section 13(1)*(a)*, not extend beyond the period of 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

17. Members of the Board referred to in section 13(1)*(a)*—

(a) are appointed for a period of three years or, if section 22(2) applies, for a term determined in terms of that section;

(b) on completion of that term, are eligible for reappointment for one additional term of three years; and

(c) may have their appointment in terms of paragraph *(a)* or *(b)* extended by the Minister for a specific period not exceeding one year.

Conditions of appointment

18. (1) The Minister must determine the conditions of employment of members of the Board referred to in section 13(1)*(a)*.

(2) *(a)* The Minister may, with the concurrence of the Minister of Finance, determine the terms and conditions of employment of members of the Board who are not in the employment of the Government.

(b) Their remuneration and allowances are paid by the Institute.

(3) *(a)* Members who are in the employ of the Government are not entitled to remuneration and allowances, but must be compensated for out of pocket expenses by the Institute.

(b) Such members are appointed on a part-time basis.

Conduct of members

19. (1) A member of the Board—

(a) must perform the duties 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 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 the Institute.

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

Termination of membership

20. (1) A member of the Board referred to in section 13(1)*(a)* ceases to be a member when that person—

(a) is no longer eligible in terms of section 14 to be a member;

(b) resigns; or

(c) is removed from office in terms of section 21.

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

Removal from office

21. (1) The Minister may remove a member of the Board referred to in section 13(1)*(a)* from office, but only 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

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

(a) in the case of a vacating Chairperson, by appointing another member in terms of section 16(1) as the Chairperson; and

(b) in the case of a vacating member referred to in section 13(1)*(a)*, by following the procedure set out in section 15.

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

Part 3

Operating procedures of Board

Meetings

23. (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 Board meeting at a time and place set out in the request.

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

Procedures

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

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

Quorum and decisions

25. (1) A majority of the members of the Board serving at any relevant time 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

26. (1) The Board may establish one or more committees to assist it in the performance of its duties or the exercise of its powers.

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

(3) The Board—

(a) must determine the duties of a committee;

(b) must appoint a chairperson and other members of the committee;

(c) may remove a member of a committee from office at any time, taking into account the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and

(d) must determine a working procedure of a committee.

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

(5) *(a)* Section 18 read with the necessary change as the context may require, applies to the terms and conditions of employment of committee members.

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

Delegation of powers and duties

27. (1) When necessary for the proper performance of its duties, the Board may, subject to subsection (2), delegate any of its powers or duties to—

(a) a member of the Board;

(b) a committee referred to in section 26; or

(c) a staff member of the Institute.

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

(a) The appointment or reappointment of a person as the Chief Executive Officer in terms of section 28(1) or (2);

(b) the determination of the terms and conditions of service of the Chief Executive Officer in terms of section 28(3);

(c) the determination of an employment policy in terms of section 29(1); and

(d) the setting of financial limits in terms of section 29(2)*(a)* or (3).

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

(a) is subject to any limitations, conditions and directions that the Board may impose;

(b) must be in writing;

(c) does not divest the Board of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty; and

(d) does not prevent the exercise of the delegated power or the carrying out of the delegated 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 Institute

Appointment of Chief Executive Officer

28. (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 the Institute.

(2) The Chief Executive Officer—

(a) is appointed for a term not exceeding five years; and

(b) may be reappointed by the Board with the concurrence of the Minister, but only for one additional term not exceeding five years.

(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 the Institute;

(b) must perform such duties and may exercise such powers as the Board may delegate to him or her; and

(c) must report to the Board on aspects of management, the performance of duties and the exercise of powers, at such times or intervals and in such manner, as the Board may determine.

(5) *(a)* The Chairperson of the Board may appoint another employee of the Institute as acting Chief Executive Officer for a period not exceeding six months, whenever—

(i) the Chief Executive Officer if for any reason absent or unable to perform his or her duties; or

(ii) there is a vacancy in the office of the Chief Executive Officer.

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

(i) has the powers and duties of the Chief Executive Officer; and

(ii) is employed subject to such terms and conditions of employment as the Chairperson may determine in accordance with the policy referred to in subsection (3).

Employment of staff

29. (1) The Board, acting with the concurrence of the Minister, must determine an employment policy for the Institute.

(2) The Chief Executive Officer—

(a) within the financial limits set by the Board, must determine a staff establishment necessary for the work of the Institute; and

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

(3) An employee of the Institute 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 the Institute by agreement between the Chief Executive Officer and such organ of state.

(b) Persons seconded to the Institute perform their duties under the supervision of the Chief Executive Officer.

(5) A person in the service of the Institute 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

30. The Institute is a public entity for the purposes of the Public Finance Management Act, and must comply with the provisions of that Act.

Funding

31. The funds of the Institute consist of—
(a) income derived by it from the performance of its duties and the exercise of its powers;
(b) money appropriated by Parliament;
(c) grants received from organs of state;
(d) voluntary contributions, donations and bequests;
(e) money borrowed in terms of section 12*(g)*;
(f) income derived from investments referred to in sections 32; and
(g) money derived from any other source, subject to the Public Finance Management Act.

Investments

32. The Institute 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 such a manner that the Minister may approve.

Part 6

National botanical gardens

Declaration

33. (1) The Minister, acting with the approval of the Cabinet member responsible for the administration of the land in question may, by notice in the *Gazette*, declare any state land described in the notice as a—
(a) national botanical garden; or
(b) part of an existing national botanical garden.
(2) The Minister, acting in accordance with an agreement with the owner of the land described in that agreement may, by notice in the *Gazette* declare that land as a—
(a) national botanical garden; or
(b) part of an existing national botanical garden.
(3) A notice in terms of subsection (1)*(a)* or (2)*(a)* must assign a name to the national botanical garden.
(4) The sites described in Schedule 1 to the Forest Act, 1984 (Act No.122 of 1984), must be regarded as having been declared as national botanical gardens in terms of this section.

Amendment or withdrawal of declarations

34. (1) The Minister may, by notice in the *Gazette*—
(a) amend or withdraw a notice referred to in section 33, subject to subsection (2); or
(b) amend the name assigned to a national botanical garden.
(2) The declaration of state land as a national botanical garden, or part of an existing national botanical garden, may not be withdrawn and a part of a national botanical garden on state land may not be excluded from it except by resolution of each House of Parliament.

Part 7

General

Minister's supervisory powers

35. (1) The Minister—
(a) must monitor the exercise and performance by the Institute of its powers and duties;

(b) may set norms and standards for the exercise and performance by the Institute of its powers and duties;
(c) may issue directives to the Institute on policy, planning, strategy and procedural issues to ensure its effective and efficient functioning;
(d) must determine limits on fees charged by the Institute in the exercise and performance of its powers and duties; and
(e) may identify land for new botanical gardens and extensions to existing botanical gardens.

(2) The Institute must exercise its powers and perform its duties subject to any norms and standards, directives and determinations issued by the Minister in terms of subsection (1).

Absence of functional Board

36. In the event of absence of a functional Board, the powers and duties of the Board revert to the Minister who, in such a case, must exercise those powers and perform those duties until the Board is functional again.

CHAPTER 3

BIODIVERSITY PLANNING AND MONITORING

Purpose of Chapter

37. The purpose of this Chapter is to—
(a) provide for integrated and co-ordinated biodiversity planning;
(b) provide for monitoring the conservation status of various components of South Africa's biodiversity; and
(c) promote biodiversity research.

Part 1

Biodiversity planning

National biodiversity framework

38. (1) The Minister—
(a) must prepare and adopt a national biodiversity framework within three years of the date on which this Act takes effect;
(b) must monitor implementation of the framework;
(c) must review the framework at least every five years; and
(d) may, when necessary, amend the framework.

(2) The Minister must, by notice in the *Gazette*, publish the national biodiversity framework and each amendment of the framework.

Contents of national biodiversity framework

39. (1) The national biodiversity framework must—
(a) provide for an integrated, co-ordinated and uniform approach to biodiversity management by organs of state in all spheres of government, non-governmental organisations, the private sector, local communities, other stakeholders and the public;
(b) be consistent with—
(i) this Act;
(ii) the national environmental management principles; and
(iii) any relevant international agreements binding on the Republic;
(c) identify priority areas for conservation action and the establishment of protected areas; and
(d) reflect regional co-operation on issues concerning biodiversity management in Southern Africa.

(2) The national biodiversity framework may determine norms and standards for provincial and municipal environmental conservation plans.

Bioregions and bioregional plans

40. (1) The Minister or the MEC for environmental affairs in a province may, by notice in the *Gazette*—

(a) determine a geographic region as a bioregion for the purposes of this Act if that region contains whole or several nested ecosystems and is characterised by its landforms, vegetation cover, human culture and history; and

(b) publish a plan for the management of biodiversity and the components of biodiversity in such region.

(2) The Minister may determine a region as a bioregion and publish a bioregional plan for that region either—

(a) on own initiative but after consulting the MEC for Environmental Affairs in the relevant province; or

(b) at the request of a province or municipality.

(3) The MEC for environmental affairs may determine a region as a bioregion and publish a bioregional plan for that region only with the concurrence of the Minister.

(4) Any person or organ of state may, on the request of the Minister or MEC for Environmental Affairs, assist in the preparation of a bioregional plan.

(5) The Minister—

(a) may enter into an agreement with a neighbouring country to secure the effective implementation of the plan; and

(b) must submit to Parliament a copy of any agreement entered into in terms of paragraph *(a)*.

Contents of bioregional plans

41. A bioregional plan must—

(a) contain measures for the effective management of biodiversity and the components of biodiversity in the region;

(b) provide for monitoring of the plan; and

(c) be consistent with—

(i) this Act;

(ii) the national environmental management principles;

(iii) the national biodiversity framework; and

(iv) any relevant international agreements binding on the Republic.

Review and amendment of bioregional plans

42. (1) The Minister or the MEC for Environmental Affairs in the relevant province, as may be appropriate, must review a bioregional plan published in terms of section 40(1)*(b)* at least every five years, and assess compliance with the plan and the extent to which its objectives are being met.

(2) The Minister or MEC for Environmental Affairs may, when necessary, by notice in the *Gazette*, amend a bioregional plan or the boundaries of the bioregion.

(3) The MEC for Environmental Affairs may amend a bioregional plan or the boundaries of the bioregion only with the concurrence of the Minister.

Biodiversity management plans

43. (1) Any person, organisation or organ of state desiring to contribute to biodiversity management may submit to the Minister for his or her approval a draft management plan for—

(a) an ecosystem—

(i) listed in terms of section 52; or

(ii) which is not listed in terms of section 52 but which does warrant special conservation attention;

(b) an indigenous species—

(i) listed in terms of section 56; or

(ii) which is not listed in terms of section 56 but which does warrant special conservation attention; or

(c) a migratory species to give effect to the Republic's obligations in terms of an international agreement binding on the Republic.

(2) Before approving a draft biodiversity management plan, the Minister must identify a suitable person, organisation or organ of state which is willing to be responsible for the implementation of the plan.

(3) The Minister must—

(a) publish by notice in the *Gazette* a biodiversity management plan approved in terms of subsection (1);

(b) determine the manner of implementation of the plan; and

(c) assign responsibility for the implementation of the plan to the person, organisation or organ of state identified in terms of subsection (2).

Biodiversity management agreements

44. The Minister may enter into a biodiversity management agreement with the person, organisation or organ of state identified in terms of section 43(2), or any other suitable person, organisation or organ of state, regarding the implementation of a biodiversity management plan, or any aspect of it.

Contents of biodiversity management plans

45. A biodiversity management plan must—

(a) be aimed at ensuring the long-term survival in nature of the species or ecosystem to which the plan relates;

(b) provide for the responsible person, organisation or organ of state to monitor and report on progress with implementation of the plan; and

(c) be consistent with—

(i) this Act;

(ii) the national environmental management principles;

(iii) the national biodiversity framework;

(iv) any applicable bioregional plan;

(v) any plans issued in terms of Chapter 3 of the National Environmental Management Act;

(vi) any municipal integrated development plan;

(vii) any other plans prepared in terms of national or provincial legislation that is affected; and

(viii) any relevant international agreements binding on the Republic.

Review and amendment of biodiversity management plans

46. (1) The Minister must review a biodiversity management plan published in terms of section 43(3) at least every five years, and assess compliance with the plan and the extent to which its objectives are being met.

(2) The Minister, either on own initiative or on request by an interested person, organisation or organ of state, may by notice in the *Gazette* amend a biodiversity management plan published in terms of section 43(3).

(3) Before amending a biodiversity management plan, the Minister must consult—

(a) any person, organisation or organ of state implementing the plan; and

(b) any organ of state whose activities are affected by the implementation of the plan.

Consultation

47. (1) Before adopting or approving a national biodiversity framework, a bioregional plan or a biodiversity management plan, or any amendment to such a plan, the Minister must follow a consultative process in accordance with sections 99 and 100.

(2) Before adopting a bioregional plan, or any amendment to such a plan, the MEC for Environmental Affairs in the relevant province must follow a consultative process in accordance with sections 99 and 100.

Part 2

Co-ordination and alignment of plans, monitoring and research

Co-ordination and alignment of biodiversity plans

48. (1) The national biodiversity framework, a bioregional plan and a biodiversity management plan prepared in terms of this Chapter may not be in conflict with—

(a) any environmental implementation or environmental management plans prepared in terms of Chapter 3 of the National Environmental Management Act;

(b) any integrated development plans adopted by municipalities in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

(c) any spatial development frameworks in terms of legislation regulating land-use management, land development and spatial planning administered by the Cabinet member responsible for land affairs; and

(d) any other plans prepared in terms of national or provincial legislation that are affected.

(2) An organ of state that must prepare an environmental implementation or environmental management plan in terms of Chapter 3 of the National Environmental Management Act, and a municipality that must adopt an integrated development plan in terms of the Local Government: Municipal Systems Act, 2000, must—

(a) align its plan with the national biodiversity framework and any applicable bioregional plan;

(b) incorporate into that plan those provisions of the national biodiversity framework or a bioregional plan that specifically apply to it; and

(c) demonstrate in its plan how the national biodiversity framework and any applicable bioregional plan may be implemented by that organ of state or municipality.

(3) The Institute may—

(a) assist the Minister and others involved in the preparation of the national biodiversity framework, a bioregional plan or a biodiversity management plan to comply with subsection (1); and

(b) make recommendations to organs of states or municipalities referred to in subsection (2) to align their plans referred to in that subsection with the national biodiversity framework and any applicable bioregional plan.

Monitoring

49. (1) The Minister must for the purposes of this Chapter designate monitoring mechanisms and set indicators to determine—

(a) the conservation status of various components of South Africa's biodiversity; and

(b) any negative and positive trends affecting the conservation status of the various components.

(2) The Minister may require any person, organisation or organ of state involved in terms of subsection (1) in monitoring the matters referred to in that subsection to report regularly to the Minister on the results of such monitoring measured against the predetermined indicators.

(3) The Minister must—

(a) annually report to Parliament on the information submitted to the Minister in terms of subsection (2); and

(b) make such information publicly available.

Research

50. (1) The Minister must promote research done by the Institute and other institutions on biodiversity conservation, including the sustainable use, protection and conservation of indigenous biological resources.

(2) Research on biodiversity conservation may include—

(a) the collection and analysis of information about—

(i) the conservation status of the various components of biodiversity;

(ii) negative and positive trends affecting the conservation status of various components; and

(iii) threatening processes or activities likely to impact on biodiversity conservation;

(b) the assessment of strategies and techniques for biodiversity conservation;

(c) the determination of biodiversity conservation needs and priorities; and

(d) the sustainable use, protection and conservation of indigenous biological resources.

CHAPTER 4

THREATENED OR PROTECTED ECOSYSTEMS AND SPECIES

Purpose of Chapter

51. The purpose of this Chapter is to—

(a) provide for the protection of ecosystems that are threatened or in need of protection to ensure the maintenance of their ecological integrity;

(b) provide for the protection of species that are threatened or in need of protection to ensure their survival in the wild;

(c) give effect to the Republic's obligations under international agreements regulating international trade in specimens of endangered species; and

(d) ensure that the utilisation of biodiversity is managed in an ecologically sustainable way.

Part 1

Protection of threatened or protected ecosystems

Ecosystems that are threatened or in need of protection

52. (1) (a) The Minister may, by notice in the *Gazette*, publish a national list of ecosystems that are threatened and in need of protection.

(b) An MEC for environmental affairs in a province may, by notice in the *Gazette*, publish a provincial list of ecosystems in the province that are threatened and in need of protection.

(2) The following categories of ecosystems may be listed in terms of subsection (1):

(a) critically endangered ecosystems, being ecosystems that have undergone severe degradation of ecological structure, function or composition as a result of human intervention and are subject to an extremely high risk of irreversible transformation;

(b) endangered ecosystems, being ecosystems that have undergone degradation of ecological structure, function or composition as a result of human intervention, although they are not critically endangered ecosystems;

(c) vulnerable ecosystems, being ecosystems that have a high risk of undergoing significant degradation of ecological structure, function or composition as a

result of human intervention, although they are not critically endangered ecosystems or endangered ecosystems; and

(d) protected ecosystems, being ecosystems that are of high conservation value or of high national or provincial importance, although they are not listed in terms of paragraphs *(a)*, *(b)* or *(c)*.

(3) A list referred to in subsection (1) must describe in sufficient detail the location of each ecosystem on the list.

(4) The Minister and the MEC for environmental affairs in a relevant province, respectively, must at least every five years review any national or provincial list published by the Minister or MEC in terms of subsection (1).

(5) An MEC may publish or amend a provincial list only with the concurrence of the Minister.

Threatening processes in listed ecosystems

53. (1) The Minister may, by notice in the *Gazette*, identify any process or activity in a listed ecosystem as a threatening process.

(2) A threatening process identified in terms of subsection (1) must be regarded as a specified activity contemplated in section 24(2)*(b)* of the National Environmental Management Act and a listed ecosystem must be regarded as an area identified for the purpose of that section.

Certain plans to take into account in protection of listed ecosystems

54. An organ of state that must prepare an environmental implementation or environmental management plan in terms of Chapter 3 of the National Environmental Management Act, and a municipality that must adopt an integrated development plan in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), must take into account the need for the protection of listed ecosystems.

Amendment of notices

55. The Minister or the MEC for Environmental Affairs in any relevant province may, by notice in the *Gazette*, amend or repeal any notice published by him or her in terms of section 52(1) or 53(1).

Part 2

Protection of threatened or protected species

Listing of species that are threatened or in need of national protection

56. (1) The Minister may, by notice in the *Gazette*, publish a list of—

(a) critically endangered species, being any indigenous species facing an extremely high risk of extinction in the wild in the immediate future;

(b) endangered species, being any indigenous species facing a high risk of extinction in the wild in the near future, although they are not a critically endangered species;

(c) vulnerable species, being any indigenous species facing an extremely high

risk of extinction in the wild in the medium-term future, although they are not a critically endangered species or an endangered species; and

(d) protected species, being any species which are of such high conservation value or national importance that they require national protection, although they are not listed in terms of paragraph *(a)*, *(b)* or *(c)*.

(2) The Minister must review the lists published in terms of subsection (1) at least every five years.

Restricted activities involving listed threatened or protected species

57. (1) A person may not carry out a restricted activity involving a specimen of a listed threatened or protected species without a permit issued in terms of Chapter 7.

(2) The Minister may, by notice in the *Gazette*, prohibit the carrying out of any activity—

(a) which is of a nature that may negatively impact on the survival of a listed threatened or protected species; and

(b) which is specified in the notice,

or prohibit the carrying out of such activity without a permit issued in terms of Chapter 7.

(3) Subsection (1) does not apply in respect of a specimen of a listed threatened or protected species conveyed from outside the Republic in transit through the Republic to a destination outside the Republic, provided that such transit through the Republic takes place under the control of an environmental management inspector.

Amendment of notices

58. The Minister may by notice in the *Gazette* amend or repeal any notice published in terms of section 55(1) or 56(2).

Part 3

Trade in listed threatened or protected species

Functions of Minister

59. The Minister—

(a) must monitor—

(i) compliance with section 57(1) insofar as trade in specimens of listed threatened or protected species is concerned; and

(ii) compliance in the Republic with an international agreement regulating international trade in specimens of endangered species which is binding on the Republic;

(b) must consult the scientific authority on issues relating to trade in specimens of endangered species regulated by such an international agreement;

(c) must prepare and submit reports and documents in accordance with the Republic's obligations in terms of such an international agreement;

(d) may provide administrative and technical support services and advice to organs of state to ensure the effective implementation and enforcement in the Republic of such an international agreement;

(e) may make information and documentation relating to such an international agreement publicly available; and

(f) may prescribe a system for the registration of institutions, ranching operations, nurseries, captive breeding operations and other facilities.

Establishment of scientific authority

60. (1) The Minister must establish a scientific authority for purpose of assisting in regulating and restricting the trade in specimens of listed threatened or protected species.

(2) The Institute must provide logistical, administrative and financial support for the proper functioning of the scientific authority.

Functions of scientific authority

61. (1) The scientific authority must—

(a) monitor in the Republic the legal and illegal trade in specimens of listed threatened or protected species;

(b) advise the Minister and any other interested organs of state on the matters that it monitors;

(c) make recommendations to an issuing authority on applications for permits referred to in section 57(1) or (2);

(d) make non-detriment findings on the impact of actions relating to the international trade in specimens of listed threatened or protected species;

(e) advise the Minister on—

(i) the registration of ranching operations, nurseries, captive breeding operations and other facilities;

(ii) whether an operation or facility meets the criteria for producing species considered to be bred in captivity or artificially propagated;

(iii) the choice of a rescue centre or other facility for the disposal of forfeited specimens;

(iv) any amendments to a notice published in terms of section 56(1) or 57(2);

(v) the nomenclature of species; or

(vi) any other matter of a specialised nature;

(f) assist the Minister or an environmental management inspector in the identification of specimens for the purpose of enforcing the provisions of this Act;

(g) issue certificates in which the identification of a specimen is verified as being taxonomically accurate;

(h) perform any other function that may be—

(i) prescribed; or

(ii) delegated to it by the Minister in terms of section 47D of the National Environmental Management Act; and

(i) deal with any other matter necessary for, or reasonably incidental to, its powers and duties.

(2) In performing its duties, the scientific authority must—

(a) base its findings, recommendations and advice on a scientific and professional review of available information; and

(b) consult, when necessary, organs of state, the private sector, non-governmental organisations, local communities and other stakeholders before making any findings or recommendations or giving any advice.

Annual non-detriment findings

62. (1) The scientific authority must publish in the *Gazette* any annual non-detriment findings on trade in specimens of listed threatened or protected species in accordance with an international agreement regulating international trade in specimens of listed threatened or protected species which is binding on the Republic.

(2) Any interim findings of the scientific authority must be published in the *Gazette* for public information within 30 days after the decision has been made.

Part 4

General provisions

Consultation

63. (1) Before publishing a notice in terms of section 52(1), 53(1), 56(1) or 57(2), or amending or repealing such a notice in terms of section 55 or 58, the Minister must follow a consultative process in accordance with sections 99 and 100.

(2) Before publishing a notice in terms of section 52(1), or amending or repealing such a notice in terms of section 55, the MEC for environmental affairs in the relevant province must follow a consultative process in accordance with sections 99 and 100.

CHAPTER 5

SPECIES AND ORGANISMS POSING POTENTIAL THREATS TO BIODIVERSITY

Purposes of Chapter

64. (1) The purpose of this Chapter is—

(a) to prevent the unauthorized introduction and spread of alien species and invasive species to ecosystems and habitats where they do not naturally occur;

(b) to manage and control alien species and invasive species to prevent or minimize harm to the environment and to biodiversity in particular;

(c) to eradicate alien species and invasive species from ecosystems and habitats where they may harm such ecosystems or habitats; and

(d) to ensure that environmental assessments for purposes of permits in terms of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997), are conducted in appropriate cases in accordance with Chapter 5 of the National Environmental Management Act.

(2) For the purpose of this Chapter, ''specimen'' has the meaning assigned to it in paragraphs *(a)* and *(b)* of the definition of ''specimen'' in section 1(1).

Part 1

Alien species

Restricted activities involving alien species

65. (1) A person may not carry out a restricted activity involving a specimen of an alien species without a permit issued in terms of Chapter 7.

(2) A permit referred to in subsection (1) may be issued only after a prescribed assessment of risks and potential impacts on biodiversity is carried out.

Exemptions

66. (1) The Minister may, by notice in the *Gazette*, exempt from the provisions of section 65—

(a) any alien species specified in the notice; or

(b) any alien species of a category specified in the notice.

(2) Any person may carry out a restricted activity involving a specimen of an exempted alien species without a permit mentioned in section 65(1).

(3) The Minister must regularly review a notice published in terms of subsection (1).

Restricted activities involving certain alien species totally prohibited

67. (1) The Minister may, by notice in the *Gazette*, publish a list of those alien species in respect of which a permit mentioned in section 65(1) may not be issued.

(2) A person may not carry out any restricted activity involving a specimen of an alien species published in terms of subsection (1).

(3) The Minister must regularly review a list published in terms of subsection (1).

Amendment of notices

68. The Minister may, by notice in the *Gazette*, amend or repeal any notice published in terms of section 66(1) or 67(1).

Duty of care relating to alien species

69. (1) A person authorised by permit, in terms of section 65(1), to carry out a restricted activity involving a specimen of an alien species must—

(a) comply with the conditions under which the permit has been issued; and

(b) take all required steps to prevent or minimise harm to biodiversity.

(2) A competent authority may, in writing, direct any person who has failed to comply with subsection (1), or who has contravened section 65(1) or 67(2), to take such steps—

(a) as may be necessary to remedy any harm to biodiversity caused by the actions of that person; and

(b) as may be specified in the directive.

(3) If that person fails to comply with a directive issued in terms of subsection (2), the competent authority may—

(a) implement the directive; and

(b) recover from that person all costs incurred by the competent authority in implementing the directive.

(4) Should an alien species establish itself in nature as an invasive species because of the actions of a specific person, a competent authority may hold that person liable for any costs incurred in the control and eradication of that species.

Part 2

Invasive species

List of invasive species

70. (1) *(a)* The Minister must within 24 months of the date on which this section takes effect, by notice in the *Gazette*, publish a national list of invasive species in respect of which this Chapter must be applied nationally.

(b) The MEC for environmental affairs in a province may, by notice in the *Gazette*, publish a provincial list of invasive species in respect of which this Chapter must be applied in the province.

(2) The Minister or the MEC for environmental affairs in a relevant province must regularly review the national list or any provincial list published in terms of subsection (1), as may be appropriate.

(3) An MEC for Environmental Affairs may only publish or amend a provincial list in terms of subsection (1) or (2) with the concurrence of the Minister.

Restricted activities involving listed invasive species

71. (1) A person may not carry out a restricted activity involving a specimen of a listed invasive species without a permit issued in terms of Chapter 7.

(2) A permit referred to in subsection (1) may be issued only after a prescribed assessment of risks and potential impacts on biodiversity is carried out.

Amendment of notices

72. The Minister or the MEC for environmental affairs in any relevant province may, by notice in the *Gazette*, amend or repeal any notice published by him or her in terms of section 70 (1).

Duty of care relating to listed invasive species

73. (1) A person authorised by permit in terms of section 71(1) to carry out a restricted activity involving a specimen of a listed invasive species must take all the required steps to prevent or minimise harm to biodiversity.

(2) A person who is the owner of land on which a listed invasive species occurs must—

(a) notify any relevant competent authority, in writing, of the listed invasive species occurring on that land;

(b) take steps to control and eradicate the listed invasive species and to prevent it from spreading; and

(c) take all the required steps to prevent or minimise harm to biodiversity.

(3) A competent authority may, in writing, direct any person who has failed to comply with subsection (1) or (2), or who has contravened section 71(1), to take such steps—

(a) as may be necessary to remedy any harm to biodiversity caused by—

(i) the actions of that person; or

(ii) the occurrence of the listed invasive species on land of which that person is the owner; and

(b) as may be specified in the directive.

(4) If that person fails to comply with a directive issued in terms of subsection (3), a competent authority may—

(a) implement the directive; and

(b) recover all costs reasonably incurred by a competent authority in implementing the directive—

(i) from that person; or

(ii) proportionally from that person and any other person who benefited from implementation of the directive.

Requests to competent authorities to issue directives

74. (1) Any person may request a competent authority, in writing, to issue a directive in terms of section 73(3).

(2) A competent authority must reply to the request, in writing, within 30 days of receipt of the request.

(3) Should a competent authority fail to respond to the request within the stated period or refuses the request, the person who made the request may apply to a court for an order directing that competent authority to issue the directive.

Control and eradication of listed invasive species

75. (1) Control and eradication of a listed invasive species must be carried out by means of methods that are appropriate for the species concerned and the environment in which it occurs.

(2) Any action taken to control and eradicate a listed invasive species must be executed with caution and in a manner that may cause the least possible harm to biodiversity and damage to the environment.

(3) The methods employed to control and eradicate a listed invasive species must also be directed at the offspring, propagating material and re-growth of such invasive species in order to prevent such species from producing offspring, forming seed, regenerating or re-establishing itself in any manner.

(4) The Minister must ensure the coordination and implementation of programmes for the prevention, control or eradication of invasive species.

(5) The Minister may establish an entity consisting of public servants to coordinate and implement programmes for the prevention, control or eradication of invasive species.

Invasive species control plans of organs of state

76. (1) The management authority of a protected area preparing a management plan for the area in terms of the Protected Areas Act must incorporate into the management plan an invasive species control and eradication strategy.

(2) *(a)* All organs of state in all spheres of government must prepare an invasive species monitoring, control and eradication plan for land under their control, as part of their environmental plans in accordance with section 11 of the National Environmental Management Act.

(b) The invasive species monitoring, control and eradication plans of municipalities must be part of their integrated development plans.

(3) The Minister may request the Institute to assist municipalities in performing their duties in terms of subsection (2).

(4) An invasive species monitoring, control and eradication plan must include—

(a) a detailed list and description of any listed invasive species occurring on the relevant land;

(b) a description of the parts of that land that are infested with such listed invasive species;

(c) an assessment of the extent of such infestation;

(d) a status report on the efficacy of previous control and eradication measures;

(e) the current measures to monitor, control and eradicate such invasive species; and

(f) measurable indicators of progress and success, and indications of when the control plan is to be completed.

Invasive species status reports

77. (1) The management authority of a protected area must at regular intervals prepare and submit to the Minister or the MEC for Environmental Affairs in the province a report on the status of any listed invasive species that occurs in that area.

(2) A status report must include—

(a) a detailed list and description of all listed invasive species that occur in the protected area;

(b) a detailed description of the parts of the area that are infested with listed invasive species;

(c) an assessment of the extent of such infestation; and

(d) a report on the efficacy of previous control and eradication measures.

Part 3

Other threats

Genetically modified organisms

78. (1) If the Minister has reason to believe that the release of a genetically modified organism into the environment under a permit applied for in terms of the Genetically

Modified Organisms Act, 1997 (Act No. 15 of 1997), may pose a threat to any indigenous species or the environment, no permit for such release may be issued in terms of that Act unless an environmental assessment has been conducted in accordance with Chapter 5 of the National Environmental Management Act as if such release were a listed activity contemplated in that Chapter.

(2) The Minister must convey his or her belief referred to in subsection (1) to the authority issuing permits in terms of the Genetically Modified Organisms Act, 1997, before the application for the relevant permit is decided.

(3) For the purposes of subsection (1) ''release'' means trial release or general release as defined in section 1 of the Genetically Modified Organisms Act, 1997.

Part 4

General provisions

Consultation

79. (1) Before publishing a notice in terms of section 66(1), 67(1) or 70(1), or amending or repealing such a notice in terms of section 68 or 72, the Minister must follow a consultative process in accordance with sections 99 and 100.

(2) Before publishing a notice in terms of section 70(1), or amending or repealing such a notice in terms of section 72, the MEC for environmental affairs in the relevant province must follow a consultative process in accordance with sections 99 and 100.

CHAPTER 6

BIOPROSPECTING, ACCESS AND BENEFIT-SHARING

Purpose and application of Chapter

80. (1) The purpose of this Chapter is—

(a) to regulate bioprospecting involving indigenous biological resources;

(b) to regulate the export from the Republic of indigenous biological resources for the purpose of bioprospecting or any other kind of research; and

(c) to provide for a fair and equitable sharing by stakeholders in benefits arising from bioprospecting involving indigenous biological resources.

(2) In this Chapter—

''indigenous biological resources''—

(a) includes—

(i) any indigenous biological resources as defined in paragraph *(b)* of the definition of ''indigenous biological resource'' in section 1, whether gathered from the wild or accessed from any other source, including any animals, plants or other organisms of an indigenous species cultivated, bred or kept in captivity or cultivated or altered in any way by means of biotechnology;

(ii) any cultivar, variety, strain, derivative, hybrid or fertile version of any indigenous species or of any animals, plants or other organisms referred to in subparagraph (i); and

(iii) any exotic animals, plants or other organisms, whether gathered from the wild or accessed from any other source which, through the use of biotechnology, have been altered with any genetic material or chemical

compound found in any indigenous species or any animals, plants or other organisms referred to in subparagraph (i) or (ii); but

(b) excludes—

(i) genetic material of human origin;

(ii) any exotic animals, plants or other organisms, other than exotic animals, plants or other organisms referred to in paragraph *(a)*(iii); and

(iii) indigenous biological resources listed in terms of the International Treaty on Plant Genetic Resources for Food and Agriculture.

Permits

81. (1) No person may, without a permit issued in terms of Chapter 7—

(a) engage in bioprospecting involving any indigenous biological resources; or

(b) export from the Republic any indigenous biological resources for the purpose of bioprospecting or any other kind of research.

(2) Before any application for a permit referred to in subsection (1) may be considered by a relevant issuing authority, the applicant must at the request of the issuing authority, disclose to the issuing authority all information concerning the proposed bioprospecting and the indigenous biological resources to be used for such bioprospecting that is relevant for a proper consideration of the application.

Certain interests to be protected before permits are issued

82. (1) Before a permit referred to in section 81(1)*(a)* or *(b)* is issued, the issuing authority considering the application for the permit must in accordance with this section protect any interests any of the following stakeholders may have in the proposed bioprospecting project:

(a) A person, including any organ of state or community, providing or giving access to the indigenous biological resources to which the application relates; and

(b) an indigenous community—

(i) whose traditional uses of the indigenous biological resources to which the application relates have initiated or will contribute to or form part of the proposed bioprospecting; or

(ii) whose knowledge of or discoveries about the indigenous biological resources to which the application relates are to be used for the proposed bioprospecting.

(2) If a stakeholder has an interest as set out in subsection (1)*(a)*, an issuing authority may issue a permit only if—

(a) the applicant has disclosed all material information relating to the relevant bioprospecting to the stakeholder and on the basis of that disclosure has obtained the prior consent of the stakeholder for the provision of or access to such resources;

(b) the applicant and the stakeholder have entered into—

(i) a material transfer agreement that regulates the provision of or access to such resources; and

(ii) a benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the relevant bioprospecting; and

(c) the Minister has in terms of sections 83(2) and 84(2) approved such benefit-sharing and material transfer agreements.

(3) If a stakeholder has an interest as set out in subsection (1)*(b)*, an issuing authority may issue a permit only if—

(a) the applicant has disclosed all material information relating to the relevant bioprospecting to the stakeholder and on the basis of that disclosure has obtained the prior consent of the stakeholder to use any of the stakeholder's

knowledge of or discoveries about the indigenous biological resources for the proposed bioprospecting;

(b) the applicant and the stakeholder have entered into a benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the relevant bioprospecting; and

(c) the Minister has in terms of section 83(2) approved such benefit-sharing agreement.

(4) An issuing authority—

(a) may engage the applicant and stakeholder on the terms and conditions of a benefit-sharing or material transfer agreement;

(b) may facilitate negotiations between the applicant and stakeholder and ensure that those negotiations are conducted on an equal footing;

(c) on request by the Minister, must ensure that any benefit-sharing arrangement agreed upon between the applicant and stakeholder is fair and equitable;

(d) may make recommendations to the Minister; and

(e) must perform any other functions that may be prescribed.

Benefit-sharing agreements

83. (1) A benefit-sharing agreement must—

(a) be in a prescribed format;

(b) specify—

(i) the type of indigenous biological resources to which the relevant bioprospecting relates;

(ii) the area or source from which the indigenous biological resources are to be collected or obtained;

(iii) the quantity of indigenous biological resources that is to be collected or obtained;

(iv) any traditional uses of the indigenous biological resources by an indigenous community; and

(v) the present potential uses of the indigenous biological resources;

(c) name the parties to the benefit-sharing agreement;

(d) set out the manner in which and the extent to which the indigenous biological resources are to be utilised or exploited for purposes of such bioprospecting;

(e) set out the manner in which and the extent to which the stakeholder will share in any benefits that may arise from such bioprospecting;

(f) provide for a regular review of the agreement by the parties as the bioprospecting progresses; and

(g) comply with any other matters that may be prescribed.

(2) A benefit-sharing agreement or any amendment to such an agreement—

(a) must be submitted to the Minister for approval; and

(b) does not take effect unless approved by the Minister.

Material transfer agreements

84. (1) A material transfer agreement must—

(a) be in a prescribed format;

(b) specify—

(i) particulars of the provider, and the exporter or recipient, of the indigenous biological resources;

(ii) the type of indigenous biological resources to be provided or to be given access to;

(iii) the area or source from which the indigenous biological resources are to be collected, obtained or provided;

(iv) the quantity of indigenous biological resources that is to be provided, collected, obtained or exported;

(v) the purpose for which such indigenous biological resources are to be exported;

(vi) the present potential uses of the indigenous biological resources; and

(vii) conditions under which the recipient may provide any such indigenous biological resources, or their progeny, to a third party.

(2) A material transfer agreement or any amendment to such an agreement—

(a) must be submitted to the Minister for approval; and

(b) does not take effect unless approved by the Minister.

Establishment of Bioprospecting Trust Fund

85. (1) A Bioprospecting Trust Fund is established into which all moneys arising from benefit-sharing agreements and material transfer agreements, and due to stakeholders, must be paid, and from which all payments to, or for the benefit of, stakeholders must be made.

(2) All money paid into the bioprospecting trust fund is trust money within the meaning of section 13(1)*(f)*(ii) of the Public Finance Management Act.

(3) The Director-General—

(a) must manage the Fund in the prescribed manner; and

(b) is accountable for the money in the Fund in terms of the Public Finance Management Act.

Exemptions

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

(a) declare that this Chapter does not apply to indigenous biological resources specified in the notice or to an activity relating to such indigenous biological resources; and

(b) amend or withdraw a notice referred to in paragraph *(a)*.

(2) Before publishing a notice in terms of subsection (1) the Minister must follow a consultative process in accordance with sections 99 and 100.

CHAPTER 7

PERMITS

Purpose of Chapter

87. The purpose of this Chapter is to provide for the regulation of the issuing of permits authorising—

(a) restricted activities involving specimens of—

(i) listed threatened or protected species in terms of section 57(1);

(ii) alien species in terms of section 65(1); or

(iii) listed invasive species in terms of section 71(1);

(b) activities regulated in terms of a notice published in terms of section 57(2);

(c) bioprospecting involving indigenous biological resources in terms of section 81(1); or

(d) the export of indigenous biological resources for bioprospecting or any other type of research in terms of section 81(1).

Part 1

Permit system

Application for permits

88. (1) A person may apply for a permit by lodging an application on the prescribed form to the authority.

(2) An issuing authority may—

(a) request the applicant to furnish any additional information before it considers the application;

(b) require the applicant to comply with such reasonable conditions as it may impose before it grants the application;
(c) issue a permit unconditionally or issue it subject to conditions; or
(d) refuse a permit.

(3) A decision of the issuing authority to issue or refuse a permit or to issue it subject to conditions, must be consistent with—

(a) the applicable provisions of this Act;
(b) the national environmental management principles;
(c) the national biodiversity framework;
(d) any other relevant plans adopted or approved in terms of Chapter 3;
(e) any applicable international agreements binding on the Republic;
(f) the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
(g) any requirements that may be prescribed.

(4) If compulsory conditions are prescribed for any kind of permit, an issuing authority may not issue a permit of that kind other than subject to those conditions.

(5) If an application is rejected, the issuing authority must give reasons for the decision in writing to the applicant.

Risk assessments and expert evidence

89. Before issuing a permit, the issuing authority may in writing require the applicant to furnish it, at the applicant's expense, with such independent risk assessment or expert evidence as the issuing authority may determine.

Permits

90. (1) A permit—

(a) must specify—
(i) the purpose for which it is issued;
(ii) the period for which it will remain valid; and
(iii) any other matters that may be prescribed;
(b) may be issued on conditions specified in the permit; and
(c) must be in the form and contain such other particulars as may be prescribed.

(2) A permit issued in terms of section 91 does not absolve the holder or any other person from complying with the provisions of any other applicable law.

Additional requirements relating to alien and invasive species

91. An issuing authority may issue a permit for a restricted activity involving a specimen of an alien species or of a listed invasive species only if—

(a) adequate procedures have been followed by the applicant to assess the risks and potential impacts associated with the restricted activity;
(b) the relevant species has been found to have negligible or no invasive potential;
(c) the benefits of allowing the activity are significantly greater than the costs associated with preventing or remedying any resultant damage to the environment or biodiversity; and
(d) it is satisfied that adequate measures have been taken by the applicant to prevent the escape and spread of the species.

Integrated permits

92. (1) If the carrying out of an activity mentioned in section 90 is also regulated in terms of other law, the authority empowered under that other law to authorise that

activity and the issuing authority empowered under this Act to issue permits in respect of that activity may—

(a) exercise their respective powers jointly; and

(b) issue a single integrated permit instead of a separate permit and authorisation.

(2) An authority empowered under that other law may issue an integrated permit for the activity in question if that authority is designated in terms of this Act also as an issuing authority for permits in respect of that activity.

(3) An integrated permit may be issued only if—

(a) the relevant provisions of this Act and that other law have been complied with; and

(b) the permit specifies the—

(i) provisions in terms of which it has been issued; and

(ii) authority or authorities that have issued it.

Cancellation of permits

93. An issuing authority which issued a permit may cancel the permit if—

(a) the permit was issued as a result of misleading or false representations by the applicant or a person acting on behalf of the applicant; or

(b) the applicant or permit holder has contravened or failed to comply with—

(i) any condition of the permit;

(ii) any provision of this Act or other law governing the permitted activity; or

(iii) any foreign law governing the permitted activity.

Part 2

Appeals

Appeals to be lodged with Minister

94. (1) An applicant who feels aggrieved by the decision of an issuing authority in terms of section 88(2)*(c)* or *(d)*, or a permit holder whose permit has been cancelled in terms of section 93, may lodge with the Minister an appeal against the decision within 30 days after having been informed of the decision.

(2) The Minister must either—

(a) consider and decide the appeal;

(b) redirect the appeal to the MEC for Environmental Affairs in the relevant province to consider and decide the appeal; or

(c) designate a panel of persons to consider and decide the appeal.

(3) An appeal does not suspend the decision against which the appeal is lodged unless the Minister, MEC for Environmental Affairs or appeal panel considering the appeal directs otherwise.

Appeal panels

95. (1) If the Minister decides that the appeal must be considered and decided by an appeal panel, the Minister must designate—

(a) a number of persons with appropriate knowledge as members of the panel; and

(b) one of the panel members as the presiding member.

(2) The presiding member of the appeal panel decides when and where the panel meets.

(3) An appeal panel must—

(a) consider and decide the appeal in accordance with a prescribed procedure; and

(b) keep a record of its proceedings and decisions.

Decisions

96. (1) The Minister, MEC for Environmental Affairs or appeal panel considering an appeal may—

(a) either uphold or refuse the appeal; and
(b) when upholding or refusing the appeal, make such other orders as may be appropriate.

(2) If the appeal is upheld against—
(a) a refusal to issue a permit, the Minister, MEC for Environmental Affairs or appeal panel may issue the permit unconditionally or subject to conditions;
(b) a condition subject to which the permit was issued, the Minister, MEC for Environmental Affairs or appeal panel may withdraw or amend the condition; or
(c) the cancellation of a permit, the Minister, MEC for Environmental Affairs or appeal panel may restore the permit.

CHAPTER 8

ADMINISTRATION OF ACT

Part 1

Regulations

Regulations by Minister

97. (1) The Minister may make regulations relating to—
(a) the monitoring of compliance with and enforcement of norms and standards referred to in section 9;
(b) (i) the designation of organs of state which may be issuing authorities for permits referred to in section 57(1) or (2);
(ii) the facilitation of the implementation and enforcement of section 57(1) or any notice published in terms of section 57(2);
(iii) the carrying out of a restricted activity involving a specimen of a listed threatened or protected species;
(iv) the facilitation of the implementation and enforcement of an international agreement regulating international trade in specimens of listed threatened or protected species which is binding on the Republic;
(v) the minimising of the threat to the survival in the wild of a listed threatened or protected species;
(vi) the minimising of the threat to the ecological integrity of a listed ecosystem;
(vii) the composition and operating procedure of the scientific authority; or
(viii) the ecologically sustainable utilization of biodiversity;
(c) (i) the designation of organs of state which may be issuing authorities for permits referred to in section 67(1) or 71(1);
(ii) the designation of organs of state which may be competent authorities for implementing and enforcing the provisions of this Chapter;
(iii) the facilitation of the implementation and enforcement of section 65, 67 or 71;
(iv) the prescription of compulsory conditions for any permit issued in terms of section 65(1) or 71(1);
(v) the assessment of risks and potential impacts on biodiversity of restricted activities involving specimens of alien species or of listed invasive species; and
(vi) the control and eradication of listed invasive species;
(d) biosafety and the environment;
(e) (i) the designation of organs of state that may be issuing authorities for permits referred to in section 81;
(ii) the form and contents of, and the requirements and criteria for, benefit-sharing agreements and material transfer agreements;
(iii) moneys payable in connection with benefit-sharing agreements and material transfer agreements; and

(iv) the administration of the Bioprospecting Trust Fund;

(f) (i) the conditions subject to which issuing authorities may issue permits in terms of this Act;

(ii) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of applications for permits;

(iii) the powers of issuing authorities when considering and deciding such applications;

(iv) the conditions with which applicants must comply before or after the lodging of their applications;

(v) appropriate consultation processes;

(vi) the authorities whose consent is required before permits may be issued;

(vii) the factors that must be taken into account when deciding applications;

(viii) the circumstances in which applications must be refused or may be approved;

(ix) the form and contents of permits;

(x) the conditions on which permits must be issued, or guidelines for determining conditions on which permits may be issued;

(xi) methods, procedures and conditions of enforcing compliance with the conditions of a permit;

(xii) the giving of security in respect of any obligation that may arise from carrying out a restricted activity authorised by a permit, and the form of such security;

(xiii) the period of validity of permits;

(xiv) the transferability of permits;

(xv) the duties of the permit holders; and

(xvi) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals;

(g) any other matter that may be prescribed in terms of this Act; and

(h) any other matter that may be necessary to facilitate the implementation of this Act.

(2) Any regulation with direct fiscal implications may be made only with the concurrence of the Minister of Finance.

(3) Before publishing any regulations in terms of subsection (1), or any amendment to the regulations, the Minister must follow a consultative process in accordance with sections 99 and 00.

(4) Subsection (3) need not be applied to a non-substantial change to the regulations.

General

98. (1) Regulations made in terms of section 97 may—

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

(b) apply—

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

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

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

(iv) generally with respect to all permits or appeals or only to a specified category of permits or appeals; or

(c) differentiate between different—

(i) areas or categories of areas;

(ii) persons or categories of persons;

(iii) species or categories of species; or

(iv) categories of permits or appeals.

(2) Regulations made in terms of section 97 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) imprisonment for a period not exceeding five years;

(b) an appropriate fine; or

(c) both a fine and such imprisonment.

Part 2

Consultation process

Consultation

99. (1) Before exercising a power which, in terms of a provision of this Act, must be exercised in accordance with this section and section 100, the Minister must follow an appropriate consultative process in the circumstances.

(2) The Minister must, in terms of subsection (1)—

(a) consult all Cabinet members whose areas of responsibility may be affected by the exercise of the power;

(b) in accordance with the principles of co-operative governance set out in Chapter 3 of the Constitution, consult the MEC for Environmental Affairs of each province that may be affected by the exercise of the power; and

(c) allow public participation in the process in accordance with section 100.

Public participation

100. (1) The Minister must give notice of the proposed exercise of the power referred to in section 99—

(a) in the *Gazette*; and

(b) in at least one newspaper distributed nationally, or if the exercise of the power may affect only a specific area, in at least one newspaper distributed in that area.

(2) The notice must—

(a) invite members of the public to submit to the Minister, within 30 days of publication of the notice in the *Gazette*, written representations on, or objections to, the proposed exercise of the power; and

(b) contain sufficient information to enable members of the public to submit meaningful representations or objections.

(3) The Minister may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister or a person designated by the Minister.

(4) The Minister must give due consideration to all representations or objections received or presented before exercising the power.

CHAPTER 9

OFFENCES AND PENALTIES

Offences

101. (1) A person is guilty of an offence if that person contravenes or fails to comply with a provision of—

(a) section 57(1), 65(1), 67(2), 71(1) or 81(1);

(b) a notice published in terms of section 57(2); or

(c) a directive issued in terms of section 69(2) or 73(3).

(2) A person who is the holder of a permit is guilty of an offence if that person—

(a) contravenes or fails to comply with a provision of section 69(1) or 73(1);

(b) performs the activity for which the permit was issued otherwise than in accordance with any conditions subject to which the permit was issued; or

(c) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of paragraph *(a)* or *(b)*.

(3) A person is guilty of an offence if that person—

(a) fraudulently alters any permit;

(b) fabricates or forges any document for the purpose of passing it as a permit;

(c) passes, uses, alters or has in his or her possession any altered or false document purporting to be a permit; or

(d) knowingly makes any false statement or report for the purpose of obtaining a permit.

Penalties

102. (1) A person convicted of an offence in terms of section 101 is liable to a fine, or to imprisonment for a period not exceeding five years, or to both fine and such imprisonment.

(2) A fine in terms of subsection (1) may not exceed—

(a) an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991); or

(b) if a person is convicted of an offence involving a specimen of a listed threatened or protected species, an amount determined in terms of paragraph *(a)* or which is equal to three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater.

CHAPTER 10

MISCELLANEOUS

Repeal of Act 122 of 1984

103. The Forest Act, 1984 (Act No. 122 of 1984), is repealed by this Act.

Savings

104. (1) Anything done in terms of the Forest Act, 1984 (Act No. 122 of 1984), which may 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 Forest Act, 1984, by section 100 of this Act was—

(a) a member of the board of the National Botanical Institute, becomes a member of the Board of the South African National Biodiversity Institute and remains such a member until the Minister appoints the members of the Board in terms of section 15;

(b) the chief executive officer of the National Botanical Institute becomes the acting chief executive officer of the South African National Biodiversity Institute and remains the acting chief executive officer until the Board appoints a person as the chief executive officer of the Institute in terms of section 29; and

(c) all employees of the National Botanical Institute, including its chief executive officer, must be regarded as having been appointed in terms of section 30 as employees of the South African National Biodiversity Institute subject to the same conditions of services which applied to them immediately before the repeal of the Forest Act, 1984.

(3) Subsection (2)*(c)* does not affect pension, leave and other benefits which accrued to employees referred to in that subsection before the repeal of the Forest Act, 1984, and such benefits must be respected as if there was no break in their service and no change of employer.

(4) As from the date of repeal of the Forest Act, 1984—

(a) all assets and liabilities and all rights and obligations of the National Botanical Institute are vested in the South African National Biodiversity Institute; and

(b) any balance in the National Botanical Institute Fund referred to in section 64 of that Act must be paid to the South African National Biodiversity Institute.

Existing bioprospecting projects

105. (1) Any party involved at the commencement of Chapter 6 in a bioprospecting project which concerns any interests to be protected in terms of section 82, may despite

that section continue with the project pending the negotiation and entry into force of an appropriate benefit-sharing agreement in terms of that Chapter.

(2) Subsection (1) lapses one year after Chapter 6 takes effect.

Short title and commencement

106. This Act is called the National Environmental Management: Biodiversity Act, 2004, and takes effect on a date determined by the President by proclamation in the *Gazette*.