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## GENERAL NOTICE

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### NOTICE 3391 OF 2002

#### DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

The Minister of Environmental Affairs and Tourism, Mohammed Valli Moosa, MP, hereby publishes the draft National Environmental Management: Protected Areas Bill, which provides for the continued existence of the South African National Parks, the declaration and management of protected areas in South Africa and cooperative governance in such declaration and management of protected areas. More details are set out in the explanatory memorandum and the attached Bill.

Written comments and inputs are invited from interested parties and the general public, which must be submitted to:

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**THE CLOSING DATE FOR COMMENTS IS 31 JANUARY 2003**

**BILL**

The National Environmental Management: Protected Areas Bill, provides for the continued existence of the South African National Parks, through provision of criteria for the selection and appointment of the governing board, defines functions, powers and operating procedures of the board and the South African National Parks, and provides provisions on general administration and financial matters. The Bill provides for the declaration and management of different types of protected areas in South Africa, as well as the maintenance of a register of such protected areas. Procedures for consultation and giving notice of such declaration or designation are set out, and the need for concurrence of relevant Cabinet members are established. The Bill provides for the development of management plans by management authorities and allows for a public consultation process in the declaration of protected areas. The Bill allows for the Minister to set norms and standards for the management of Protected areas. The Bill allows for arrangements to be made for the involvement of communities in the management of Protected areas.

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## CHAPTER 1

### INTERPETATION, OBJECTIVES AND APPLICATION OF ACT

#### Definitions

1. (1) In this Act, unless the context indicates that another meaning is intended –

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

“**biological diversity**” or “**biodiversity**” means the diversity of animals, plants or other organisms, including the diversity of animals, plants or other organisms found within and between –

- (a) ecosystems;
  - (b) habitats;
  - (c) the ecological complexes of which these systems and habitats are part;
- and
- (d) species;

“**biological resource**” means any resource of a biological nature, including –

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

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

**“Board”** means the Board of South African National Parks referred to in section **12** which governs South African National Parks;

**“Chief Executive Officer”** means the Chief Executive Officer of South African National Parks appointed in terms of section **27**;

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

**“Department”** means the national Department of Environmental Affairs and Tourism;

**“Director-General”** means the Director-General of the Department;

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

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

**“Gazette”**, when used in relation to –

- (a) the Minister, means the *Government Gazette*;
- (b) the MEC for environmental conservation in a province, means the *Provincial Gazette* of that province; and
- (c) a municipality, means the *Provincial Gazette* of the province in which the municipality is situated;



**“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;

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

**“local protected area”** means a nature reserve or limited development area –

- (a) declared by a municipality; or
- (b) managed by a municipality or municipal entity;

**“management”**, in relation to a protected area, includes control, protection, conservation, maintenance and rehabilitation of the protected area;

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

**“MEC for environmental affairs”** means the member of the Executive Council of a province who is responsible for protected areas in the province under the control of the province;

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

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

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

**“national environmental management principles”** means the principles contained in –

- (a) section 2 of the National Environmental Management Act; and
- (b) section 2 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

**“national park”** means –

- (a) an area which was a park in terms of the National Parks Act (Act 57 of 1976), excluding such an area designated by the Minister in terms of section **91** (1) as a special nature reserve, nature reserve or protected environment;
- (b) an area which was a lake development area in terms of the Lake Areas Development Act, 1975 (Act 39 of 1975), excluding such an area designated by the Minister in terms of section **91** (2) as a special nature reserve, nature reserve or protected environment; or
- (c) an area declared in terms of section **40** (1) as a national park or part of an existing national park;

**“national protected area”** means –

- (a) a special nature reserve or national park; or
- (b) a nature reserve or protected environment -
  - (i) declared by the Minister; or
  - (ii) managed by a national organ of state;

**“nature reserve”** means –

- (a) an area declared in terms of section **42** (1) as a nature reserve or part of an existing nature reserve; or
- (b) an area which before or after the commencement of this Act was or is declared or designated in terms of any other legislation for a purpose for which that area could in terms of section **42** (2) be declared as a nature reserve;

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

**“prescribe”** means prescribe by the Minister by regulation in terms of section **83**;

**“protected area”** means –

- (a) a special nature reserve;
- (b) a national park;
- (c) a nature reserve; or
- (d) a protected environment;

**“protected environment”** means–

- (a) an area declared in terms of section **46** (1) as a protected environment or part of an existing protected environment; or
- (b) an area which before or after the commencement of this Act was or is declared or designated in terms of any other legislation for a purpose for which that area could in terms of section **46** (2) be declared as a protected environment;

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

- (a) declared by an MEC for environmental affairs in a province; or
- (b) managed by a provincial organ of state;

**“Public Finance Management Act”** means the Public Finance Management Act, 1999

(Act No. 1 of 1999);

**“special nature reserve”** means a special nature reserve established in terms of section **38**;

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

**“subordinate legislation”**, in relation to this Act, means –

- (a) any regulation made in terms of section **83** or **84**; or
- (b) any notice published in terms of section **8, 38, 40, 41 (2), 42, 44, 46, 48** or **91**;

**“this Act”** includes any subordinate legislation issued in terms of a provision of the Act.

(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 this Act**

2. The objectives of this Act are –

- (a) to provide, within the framework of the National Environmental Management Act, for the declaration and management of protected areas;
- (b) to provide for co-operative governance in the declaration and management of protected areas; and
- (c) to provide for the continued existence of South African National Parks to assist in achieving the above objectives.

### **State guardian of protected areas**

3. In fulfilling the rights contained in section 24 of the Constitution, the state –

- (a) through the organs of state implementing this Act, must act as the guardian of protected areas in the Republic; and
- (b) must implement this Act to achieve the progressive realisation of those rights.

### **Application of this Act**

4. (1) This Act applies in the Republic, including –

- (a) its territorial waters, exclusive economic zone and continental shelf as described in the Maritime Zones Act, 1994 (Act No. 15 of 1994); and
- (b) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).

(2) This Act –

- (a) applies to all protected areas in the Republic, subject to subsection (3); and
- (b) binds all organs of state –
  - (i) in the national and local spheres of government; and
  - (ii) in the provincial sphere of government, subject to section 146 of the Constitution.

(3) This Act, except section **37**, does not apply to–

- (a) an area declared in terms of section 8 of the National Forests Act, 1998 (Act No. 84 of 1998), as a specially protected forest area, forest nature reserve or forest wilderness area, and any such area must be managed in terms of the National Forests Act; and
- (b) an area declared in terms of the Marine Living Resources Act (Act No.18 of 1998), as a marine protected area, and any such area must be managed in terms of Marine Living Resources Act.

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

**5.** (1) This Act must–

- (a) be interpreted and applied in accordance with the national environmental management principles; and
- (b) be read with Chapter 9A and other applicable provisions of the National Environmental Management Act.

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

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

6. The Biodiversity Act applies in all protected areas.

### **Conflicts with other legislation**

7. (1) In the event of any conflict between a section of this Act and –
- (a) other national legislation, the section of this Act prevails if the conflict specifically concerns the management or development of protected areas;
  - (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and
  - (c) a municipal by-law, the section of this Act prevails.

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

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

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

### **Norms and standards**

8. (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 management and development of protected areas;
  - (b) set indicators to measure compliance with those norms and standards; and
  - (c) require the management authorities of protected areas to report on these indicators to the Minister or any other organ of state.

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

- (a) the MEC for environmental affairs in each province in which those norms and standards will apply; and
- (b) organised local government.

(3) Norms and standards may apply –

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

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

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

(5) The Minister may in terms of section **83**, make regulations necessary

for –

- (a) monitoring compliance with the norms and standards; and
- (b) enforcing the norms and standards.

## **CHAPTER 2**

### **SOUTH AFRICAN NATIONAL PARKS**

#### ***Part 1: Continued existence, functions and powers of South African National Parks***

### **Continued existence**

**9.** (1) South African National Parks established by section 5 of the National Parks Act, 1976 (Act No. 57 of 1976), continues to exist as a juristic person despite the repeal of that Act by section **89** of this Act.

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

### **Functions**

- 10.** (1) South African National Parks must –
- (a) manage in accordance with this Act the national parks and other protected areas assigned to it in terms of Chapter **4** and section **91** (3);
  - (b) protect and conserve those national parks and other protected areas, including the biological diversity in the parks and other protected areas; and
  - (c) on the Minister’s request, advise the Minister on any matter concerning –
    - (i) national parks and other protected areas;
    - (ii) the implementation of this Act, and any international agreements relating to national parks which are binding on the Republic;
    - (iii) the contents of the national biodiversity framework referred to in section **37** of the Biodiversity Act;
    - (iv) the identification of bioregions and the contents of any bioregional plans referred to in section **39** of the Biodiversity Act; and
    - (v) other aspects of biodiversity planning as set out in Chapter **3** of the Biodiversity Act.
- (2) South African National Parks may in managing national parks –
- (a) manage breeding and cultivation programmes, and reserve areas in a park as breeding places and nurseries;
  - (b) sell, exchange or donate any animal, plant or other organism occurring in



- a park, or purchase, exchange or otherwise acquire any indigenous species which it may consider desirable to introduce into a park;
- (c) undertake and promote research;
  - (d) carry out any development, and construct or erect any works, necessary for the management of a park, including roads, bridges, buildings, dams, fences, breakwaters, seawalls, boathouses, landing stages, mooring places, swimming pools, oceanariums and underwater tunnels;
  - (e) allow visitors to a park;
  - (f) take steps to ensure the security and well-being of visitors and staff;
  - (g) provide accommodation and facilities for visitors and staff, including the provision of food and household supplies;
  - (h) carry on any business or trade or provide other services for the convenience of visitors and staff, including the sale of liquor;
  - (i) determine and collect fees for –
    - (i) entry to or stay in a park; or
    - (ii) any service provided by it;
  - (j) authorise any person, subject to any conditions and the payment of any fees it may determine, to provide –
    - (i) a service which it may provide in terms of this section; and
    - (ii) the infrastructure for such service;
  - (k) by agreement with –
    - (i) a municipality, provide any service in a park which that municipality may or must provide in terms of legislation; or
    - (ii) another organ of state, perform a function in a park which that organ of state may or must perform in terms of legislation; or
  - (l) do such other things as may be prescribed.

(3) Subsection (2) applies also to other protected areas managed by South African National Parks to the extent that such application is consistent with the purpose for which any such area was declared as a protected area.

### **General powers**

**11.** South African National Parks may for the purpose of performing its functions –

- (a) appoint its own staff, subject to section **28**;
- (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment;
- (c) acquire or dispose of any right in or to movable or immovable property, or hire or let any property;
- (d) open and operate its own bank accounts;
- (e) invest , subject to section **31**, any of its money, including money in the fund referred to in section **32**;
- (f) borrow money, subject to section 66 of the Public Finance Management Act;
- (g) charge fees for any work performed or services rendered by it or collect royalties resulting from any discoveries, inventions or computer programmes;
- (h) insure itself against –
  - (i) any loss, damage or risk; or
  - (ii) any liability it may incur in the application of this Act;
- (i) insure Board members and staff members in respect of bodily injury, disablement or death resulting solely and directly from an incident occurring in the course of the performance of their duties;
- (j) perform legal acts, including acts in association with or on behalf of any other person or organ of state; and
- (k) institute or defend any legal action.

### ***Part 2: Governing board, composition and membership***

### **Composition**

**12.** (1) South African National Parks is governed by a board consisting of –

- (a) no fewer than nine and no more than twelve members appointed in terms of section **14**;
- (b) the Director-General or an official of the Department designated by the Director General; and
- (c) the Chief Executive Officer.

(2) The Minister –

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

(3) The Board takes all decisions in the exercise of the duties and powers of South African National Parks, except –

- (a) those decisions taken in consequence of a delegation in terms of section **26**; or
- (b) where the Public Finance Management Act provides otherwise

### **Qualifications**

**13.** (1) A member of the Board must –

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

(2) The following persons are disqualified from becoming or remaining a

member of the Board:

- (a) a person holding office as a member of Parliament or a provincial legislature; and
- (b) a person who has been removed from office in terms of section **20**.

### **Appointment procedure**

**14.** (1) Whenever it is necessary to appoint a member or members of the Board,

the Director-General must –

- (a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations for appointment of such member or members;
- (b) compile a list of the names of persons nominated, setting out the prescribed particulars of each individual nominee; and
- (c) submit the list to the Minister.

(2) Any nomination made pursuant to an advertisement in terms of subsection

(1) (a) must be supported by –

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

(3) The Minister must make the required number of appointments from the list submitted in terms of subsection (1) (c), but if the list is inadequate, the Minister may appoint any suitable person of the Minister's choice.

(4) When making appointments the Minister must have regard to the need for

appointing persons disadvantaged by unfair discrimination. Appointments must be made in such a way that the Board is composed of persons covering a broad range of appropriate expertise.

### **Chairperson**

**15.** (1) Whenever necessary the Minister must appoint a member of the Board

as the Chairperson.

(2) The Chairperson is appointed for a period as may be determined by the Minister which may, in the case of a member referred to in section **12** (1) (a), not extend beyond his or her term as a member.

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

the Board if –

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

#### **Term of office**

**16.** Members of the Board referred to in section **12** (1) (a) –

- (a) are appointed for a period of three years, subject to section **21** (2);
- (b) are eligible for re-appointment for one additional term of three years, subject to section **13**; 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**

**17.** (1) The Minister must determine the conditions of appointment of members of

the Board referred to in section **12** (1) (a).

(2) The conditions of appointment of members who are not in the employ of a

national, provincial or local organ of state may provide for the payment of remuneration

and allowances determined by the Minister with the concurrence of the Cabinet member

responsible for finance. Such remuneration and allowances are payable by South African National Parks.

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

(4) Members are appointed part-time.

### **Conduct of members**

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

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

### **Termination of membership**

- 19.** (1) A person referred to in section **12** (1) (a) ceases to be a member of the Board when that person –
- (a) is no longer eligible in terms of section **13** to be a member;
  - (b) resigns; or
  - (c) is removed from office in terms of section **20**.

(2) A member may resign only by giving at least three month's written notice

to the Minister, but the Minister may accept a shorter period in a specific case.

### **Removal from office**

**20.** (1) The Minister may remove a member of the Board referred to in section **12** (1) (a) from office, but only on the ground of –

- (a) misconduct, incapacity or incompetence; or
- (b) absence from three consecutive meetings of the Board without the prior permission of the Board except on good cause shown.

(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**

**21.** (1) A vacancy in the Board is filled –

- (a) in the case of a vacating Chairperson, by appointing another member in terms of section **15** (1) as the Chairperson; and
- (b) in the case of a vacating member referred to in section **12** (1) (a), by following the procedure set out in section **14**.

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

**Part 3: Operating procedures of Board**

**Meetings**

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

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

**Procedures**

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

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

**Quorum and decisions**

24. (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**

25. (1) The Board may establish one or more committees to assist it in the performance of its functions 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 functions of a committee;
- (b) must appoint the chairperson and other members of the committee;
- (c) may remove a member of a committee from office at any time; and
- (d) may determine a committee's procedure.

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

(5) Section **17** read with the necessary modifications as the context may require, applies to the conditions of appointment of committee members. A staff member of South African National Parks appointed to a committee serves on the committee subject to the terms and conditions of that person's employment.

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

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

- (a) a Board member;
- (b) a committee referred to in section **25**; or
- (c) a staff member of South African National Parks.

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

- (a) the appointment or re-appointment of a person as the Chief Executive Officer in terms of section **27** (1) or (2);
- (b) the determination of the conditions of service of the Chief Executive Officer in terms of section **27** (3);
- (c) the determination of an employment policy in terms of section **28** (1);
- (d) the setting of financial limits in terms of section **28** (2) (a) or (3); and

(e) the approval of the budget.

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

- (a) is subject to any limitations, conditions and directions 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 carrying out 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 South African National Parks***

**Appointment of the Chief Executive Officer**

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

(2) The Chief Executive Officer –

- (a) is appointed for a term not exceeding three years; and
- (b) may be re-appointed by the Board with the concurrence of the Minister, but only for one additional term not exceeding three 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 South African National Parks;
- (b) must perform such duties and may exercise such powers as the Board may delegate to the Chief Executive Officer; and
- (c) must report to the Board on aspects of management, the performance of duties and the exercise of powers, at such frequency and in such manner, as the Board may determine.

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

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

### **Employment of staff**

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

(2) The Chief Executive Officer –

- (a) within the financial limits set by the Board, must determine a staff establishment necessary to enable South African National Parks to perform its functions; and
- (b) may appoint persons in posts on the staff establishment.

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

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

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

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

### ***Part 5: Financial matters***

#### **Financial accountability**

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

(2) Despite section 49 (2) (a) of the Public Finance Management Act, the Chief Executive Officer is the accounting authority of South African National Parks.

#### **Funding**

**30.** The funds of South African National Parks consist of –

- (a) income derived by it from the performance of its functions and the exercise of its powers;
- (b) money appropriated for its purposes by Parliament;
- (c) grants received from organs of state;
- (d) voluntary contributions, donations and bequests;
- (e) money borrowed by it in terms of section 11 (f);
- (f) income derived by it from investments;
- (g) fines received or recovered in respect of offences committed within national parks; and
- (h) money derived from any other source, subject to the Public Finance Management Act.

## **Investments**

**31.** South African National Parks may invest any of its funds not immediately

required –

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

## **National Parks Land Acquisition Fund**

**32.** (1) The National Parks Land Acquisition Fund established by section 12A of the National Parks Act, 1976 (Act No. 57 of 1976), continues to exist as a separate fund under the administration of South African National Parks despite the repeal of that Act by section **89** of this Act.

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

of –

- (a) any voluntary contributions, donations and bequests received by South African National Parks for the purpose of the Fund;
- (b) money appropriated by Parliament for the purpose of the Fund;
- (c) the proceeds of land sold by South African National Parks which it has acquired in terms of section **78**;
- (d) income derived from investing any credit balances in the Fund;
- (e) money borrowed by South African National Parks in terms of section **11** (f) for the purpose of the Fund; and
- (f) money derived from any other source for the purpose of the Fund.

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

(a) to finance –

- (i) the acquisition of private land or a right in or to private land in terms of section **77** or **78**;
- (ii) the cancellation of a servitude on state land, or a privately held right in or to state land, in terms of section **79**; or

- (iii) the cancellation of a servitude on land owned by South African National Parks, or a privately held right in or to such land, in terms of section **80**; or
  - (b) the defrayal of expenses incurred by South African National Parks in connection with the management of the Fund.
- (4) The Chief executive Officer must –
- (a) keep account of the Fund separately from the other money of South African National Parks; and
  - (b) comply with the Public Finance Management Act in administering the Fund.

***Part 6: General***

**Minister's supervisory powers**

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

(2) South African National Parks must perform its functions and exercise its powers subject to any norms and standards, directives and determinations issued by the Minister in terms of subsection (1).

**Absence of functional Board**

**34.** In the event of the absence of a functional Board, the functions and powers of the Board revert to the Minister who, in such a case, must perform

those functions and may exercise those powers until the Board is functional again.

### **CHAPTER 3**

## **DECLARATION OF PROTECTED AREAS**

### ***Part 1: Purpose, kinds and register of protected areas***

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

- 35.** The purpose of the declaration of areas as protected areas is –
- (a) to select ecologically viable areas representative of South Africa's biological diversity and natural land- or sea-scapes;
  - (b) to preserve the ecological integrity of those areas;
  - (c) to conserve biodiversity in those areas;
  - (d) to manage the interrelationship between natural environmental biodiversity and human settlement and economic development;
  - (e) generally to contribute to human, social, cultural, spiritual and economic development;
  - (f) to protect an area which is vulnerable or ecologically sensitive;
  - (g) to provide for the sustainable use of natural and biological resources;
  - or
  - (h) to create or augment destinations for nature based tourism.

#### **Protected areas in South Africa**

- 36.** There are the following kinds of protected areas in the Republic:
- (a) special nature reserves;
  - (b) national parks;
  - (c) nature reserves; and
  - (d) protected environments.

#### **Register of Protected Areas**

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

- (2) The Register must –

- (a) be a list of all protected areas in the Republic, whether declared in terms of this Act or any other legislation; and
- (b) contain the information determined by the Minister.

(3) For the purposes of subsection (1) –

- (a) an area declared in terms of section 8 of the National Forests Act, 1998 (Act No. 84 of 1998), as a specially protected forest area, forest nature reserve or forest wilderness area, must be included in the Register as a nature reserve; and
- (b) a protected area declared in terms of provincial legislation must be included in the Register as a nature reserve or protected environment depending on the purpose for which it was declared.

(4) The Cabinet member responsible for the administration of the National

Forests Act, 1998, and the MEC for environmental affairs in each province must notify the Minister of all areas declared in terms of legislation referred to in subsection (3).

## ***Part 2: Special nature reserves***

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

**38.** (1) The Minister may by notice in the *Gazette* –

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

(2) The purpose for declaring an area as a special nature reserve or as part of

an existing special nature reserve must be –

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



- (3) Only the following land may be declared in terms of subsection (1) as a special nature reserve or as part of an existing special nature reserve:
- (a) land owned by the state or an organ of state;
  - (b) land under the exclusive physical control of the state or an organ of state; or
  - (c) land owned by a private person who has consented to the declaration by way of a written agreement with the Minister.

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

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

***Part 3: National parks***

**Declaration of national parks**

- 40.** (1) The Minister may by notice in the *Gazette* –
- (a) declare an area specified in the notice as –
    - (i) a national park; or
    - (ii) a part of an existing national park; and
  - (b) assign a name to the national park.
- (2) The purpose for declaring an area as a national park or as part of an existing national park must be –
- (a) to protect –
    - (i) the area if the area is of national or international biodiversity significance or a viable, representative sample of South Africa's natural systems or scenic areas; or
    - (ii) the ecological integrity of one or more ecosystems in the area;

- (b) to prevent exploitation or occupation inconsistent with the protection of the ecological integrity of the area; and
- (c) to provide spiritual, scientific, educational, recreational and tourism opportunities which are environmentally compatible.

(3) Only the following land may be declared in terms of subsection (1) as a

national park or as part of an existing national park:

- (a) land owned by the state or an organ of state;
- (b) land under the exclusive physical control of the state or an organ of state; or
- (c) land owned by a private person who has consented to the declaration by way of a written agreement with the Minister.

#### **Withdrawal of declarations or exclusion of parts of national parks**

**41.** (1) The declaration of an area as a national park or as part of an existing national park, may not be withdrawn, and no part of a national park may be excluded from the park, except –

- (a) by resolution of the National Assembly; or
- (b) in terms of subsection (2).

(2) The Minister, by notice in the *Gazette*, may –

- (a) withdraw the declaration of an area as a national park or part of an existing national park if the park, or that part of the park, consists solely of land referred to in section **40** (3) (c); or
- (b) exclude any part of a national park from the park if that part consists solely of land referred to in section **40** (3) (c).

(3) All national parks must for the purpose of subsection (1) be assumed as having been declared in terms of section **40**.

#### **Part 4: Nature reserves**

### **Declaration of nature reserves**

**42.** (1) The Minister, an MEC for environmental affairs or a municipality may by notice in the *Gazette* –

- (a) declare an area specified in the notice as –
  - (i) a nature reserve; or
  - (ii) a part of an existing nature reserve;
- (b) determine the type of the nature reserve in accordance with section **43**;  
and
- (c) assign a name to the nature reserve.

(2) The purpose for declaring an area as a nature reserve or as part of an existing nature reserve must be either –

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

(3) Only the following land may be declared in terms of subsection (1) as a

nature reserve or as part of an existing nature reserve:

- (a) land owned by the state or an organ of state;
- (b) land under the exclusive physical control of the state or an organ of state; or
- (c) land owned by a private person who has consented to the declaration by way of a written agreement with the Minister, the MEC for

environmental affairs in the relevant province or the relevant municipality.

(4) No area which is or forms part of a special nature reserve or national park

may be declared as a nature reserve or as part of an existing nature reserve.

### **Types of nature reserves**

**43.** When exercising their powers in terms of section **42**, the Minister, an MEC for environmental affairs or a municipality may determine different types of nature reserves.

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

**44.** (1) The Minister, the MEC for environmental affairs in the relevant province or the relevant municipality, as may be appropriate, may by notice in the *Gazette* –

- (a) withdraw the declaration of an area in terms of section **42** as a nature reserve or as part of an existing nature reserve; or
- (b) exclude any part of a nature reserve from the reserve.

(2) All nature reserves must for the purpose of subsection (1) be assumed as

having been declared in terms of section **42**.

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

**45.** An MEC for environmental affairs and a municipality must promptly forward to the Minister a copy of each notice issued in terms of section **42** or **44**.

## ***Part 5: Protected environments***

### **Declaration of protected environments**

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

- (a) declare any area specified in the notice as –

- (i) a protected environment; or
- (ii) a part of an existing protected environment;
- (b) determine the type of the nature reserve in accordance with section **47**;  
and
- (c) assign a name to the protected environment.

(2) The purpose for declaring an area as a protected environment or as part of an existing protected environment must be either –

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

(3) Only the following land may be declared in terms of subsection (1) as a protected environment or as part of an existing protected environment:

- (a) land owned by the state or an organ of state;
- (b) land under the exclusive physical control of the state or an organ of state; or
- (c) land owned by a private person who has been duly notified in writing by the Minister, the MEC for environmental affairs in the province or a municipality in terms of section **52** or **53**.

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

(5) The declaration of an area referred to in subsection (2) (f) as a protected environment, lapses at the expiry of three years from the date of publication of the notice, but the Minister, the MEC for environmental affairs in the province or the relevant municipality may by notice in the *Gazette* extend that period for not more than one year.

### **Types of protected environments**

**47.** When exercising their powers in terms of section **46**, the Minister, an MEC for environmental affairs or a municipality may determine different types of protected environments.

### **Withdrawal of declarations or exclusion of parts of protected environments**

**48.** (1) The Minister, the MEC for environmental affairs in the relevant province or the relevant municipality, as may be appropriate, may by notice in the *Gazette* –

- (a) withdraw the declaration of an area in terms of section **46** as a protected environment or as part of an existing protected environment; or
- (b) exclude any part of a protected environment from the area.

(2) All protected environments must for the purpose of subsection (1) be assumed as having been declared in terms of section **46**.

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

**49.** An MEC for environmental affairs and a municipality must promptly forward to the Minister a copy of each notice issued by them in terms of section **46** or **48**.

**Part 6: Consultation process**

**Consultation by Minister**

**50.** (1) Before declaring an area in terms of this Chapter as a special nature reserve, national park, nature reserve or protected environment or as part of any existing protected area, the Minister must follow a consultative process as may be appropriate in the circumstances, subject to section **54**.

(2) The Minister must, as may be appropriate in terms of subsection (1) –

- (a) consult all national organs of state affected by any proposed declaration;
- (b) in accordance with the principles of co-operative government as set out in Chapter 3 of the Constitution, consult –
  - (i) the MEC for environmental affairs in the province concerned; and
  - (ii) the municipality or municipalities in which the area is situated; and
- (c) allow public participation in the process in accordance with section **53**.

**Consultation by MECs for environmental affairs**

**51.** (1) Before declaring an area in terms of this Chapter as a nature reserve or protected environment, or as part of an existing nature reserve or limited development area, an MEC for environmental affairs must follow a consultative process as may be appropriate in the circumstances, subject to section **54**.

(2) The MEC must, as may be appropriate in terms of subsection (1) –

- (a) consult in accordance with the principles of co-operative government as set out in Chapter 3 of the Constitution –
  - (i) the Minister and other affected national organs of state; and
  - (ii) the municipality or municipalities in which the nature reserve or protected environment is situated;
- (b) consult all provincial organs of state affected by any proposed declaration; and
- (c) allow public participation in the process in accordance with section 53.

### **Consultation by municipalities**

**52.** (1) Before declaring an area in terms of this Chapter as a nature reserve or protected environment, or as part of an existing nature reserve or protected environment area, a municipality must follow a consultative process as may be appropriate in the circumstances, subject to section 54.

- (2) The municipality must, as may be appropriate in terms of subsection (1) –
  - (a) consult –
    - (i) the Minister and other national organs of state affected by the proposed declaration;
    - (ii) the MEC for environmental affairs in the province;
    - (iii) any other municipality that may have an interest in the declaration;
  - (b) allow community participation through mechanisms, processes and procedures established in terms of Chapter 4 of the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000); and
  - (c) give notice of the intention to declare the area in terms of this Chapter as a protected area to each owner of land within the area, by registered post to the last known postal address of each such owner.



### **Public participation**

- 53.** (1) The Minister or an MEC for environmental affairs must –
- (a) give notice in the *Gazette* and in at least one newspaper distributed in the area in which the area to be declared is situated, of the intention to declare the area in terms of this Chapter as a protected area of the category concerned or as part of an existing protected area; and
  - (b) send a copy of the notice by registered post to the last known postal address of each owner of land within the area.

- (2) The notice must –
- (a) invite members of the public, including owners referred to in subsection (1) (b), to submit to the Minister or MEC written representations on or objections to the proposed declaration within 30 days from the date of publication of the notice; and
  - (b) contain sufficient information to enable members of the public to submit meaningful representations or objections, and must include a clear indication of the area that will be affected by the declaration.

- (3) The Minister or MEC may in appropriate circumstances allow any interested person or local community to present oral representations or objections to the Minister or the MEC, or to a person designated by the Minister or MEC. This subsection must be applied where the declaration of an area will affect the rights or interests of a local community.

- (4) The Minister or MEC must give due consideration to all representations or objections received or presented before declaring the area.

### **Concurrence of affected organs of state, communities and beneficiaries**

- 54.** (1) If the area to be declared as a protected area or as part of an existing protected area consists of or includes –
- (a) land owned by the state, the Minister, the MEC for environmental

affairs in the province or the relevant municipality may declare that area only with the concurrence of the organ of state responsible for the administration of that land;

or

- (b) land owned by or which is under the physical control of a specific organ of state, the Minister, the MEC for environmental affairs in the province or the relevant municipality may declare that area only with the concurrence of that organ of state.

(2) If the area to be declared as a protected area or as part of an existing protected area consists of or includes land which is held in trust by the state or an organ of state for a community or other beneficiary, the Minister, the MEC for environmental affairs in the province or the relevant municipality may declare that area only with the concurrence of organisations representing that community or of that other beneficiary.

### ***Part 7: General***

#### **Certain protected areas to include air space above area**

**55.** A special nature reserve and a national park includes the air space above the reserve or park to a level of 1000 metres above ground level.

#### **Initiation of declarations**

**56.** (1) The declaration of private land as a protected area, or part of an existing protected area, may be initiated either by the Minister, the MEC for environmental affairs in the province, the relevant municipality or the owners

of that land acting individually or collectively.

(2) Any request received by the Minister, an MEC or a municipality from the owners of private land for their land to be declared as a protected area, or part of an existing protected area, must be considered by the Minister, MEC or municipality.

### **Endorsements by Registrar of Deeds**

**57.** (1) The Minister, the MEC for environmental affairs in the province or the

relevant municipality, as may be appropriate, must in writing notify the Registrar of Deeds whenever an area is declared as a special nature reserve, national park, nature reserve or protected environment, or as part of an existing special nature reserve, national park, nature reserve or protected environment, or in respect of which a declaration has been withdrawn or altered.

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

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

## **CHAPTER 4**

### **MANAGEMENT OF PROTECTED AREAS**

#### **Definitional provision**

**58.** In this Chapter “**protected area**” excludes a protected environment.

#### ***Part 1: Management authorities and business plans***

##### **Management authorities**

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

Minister must assign the management of a protected area which is a national park to –

- (a) South African National Parks; or
- (b) another organ of state provided that it manages the national park within the prescripts set by South African National Parks.

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

(3) A municipality must –

- (a) manage a local protected area itself; or
- (b) assign in accordance with the Local Government: Municipal Finance Management Act, 2003, the management of the area to a municipal entity under the sole or shared ownership control of the municipality.

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

### **Preparation of management plans**

**60.** (1) The Minister or the MEC for environmental affairs in a province may make an assignment in terms of section **59** (1) or (2) only –

- (a) with the concurrence of the prospective management authority; and
- (b) upon approval by the Minister or the MEC of a management plan for the protected area prepared and submitted by the prospective management authority within 12 months.

(2) A municipality must prepare a management plan for a local protected area

and submit a copy of the plan to the MEC for environmental affairs in the province for

approval.

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

### **Management criteria**

**61.** (1) The management authority of a protected area must manage the area –

- (a) exclusively for the purpose for which it was declared; and
- (b) in accordance with –
  - (i) the management plan for the area;
  - (ii) this Act, the Biodiversity Act and any other applicable national legislation; and
  - (iii) any applicable provincial legislation, in the case of a provincial protected area; and
  - (iii) any applicable municipal by-laws, in the case of a local protected area.

(2) The management authority of a national or provincial protected area

may amend the management plan by agreement with the Minister or the MEC for environmental affairs in the province, as may be appropriate.

### **Contents of management plans**

**62.** The management plan for a protected area must include –

- (a) the management objectives for the area;
- (b) a zonation of the area indicating what activities may take place in different sections of the area, and the conservation objectives of those sections;
- (c) a development plan for the area;
- (d) norms and standards for the management of the area;
- (e) indicators for monitoring compliance with these norms and standards;
- (f) health promoting education and malaria control measures if malaria causing mosquitos are present in the area; and

(g) arrangements for the involvement of local communities in the development plan.

### **Co-management of protected areas**

**63.** (1) The management authority managing a protected area may enter into an agreement with another organ of state or a local community for –

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

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

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

(3) A co-management agreement must be consistent with this Act.

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

### ***Part 2: Monitoring and supervision***

#### **Performance indicators**

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

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

(3) If the Minister or MEC, as may be appropriate, so requests, the management authority of a protected area must –

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

### **Termination of mandates to manage protected areas**

**65.** (1) If the management authority of a protected area is not fulfilling its duties in terms of the management plan for the area, or is under-performing with regard to the management of the area, including the biodiversity of the area, the Minister or the MEC for environmental affairs in the province, as may be appropriate, must –

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

(2) If the management authority of a national or provincial protected area fails

to take the required steps, the Minister or MEC may –

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

(3) The Minister implements this section in relation to national protected areas

and the MEC implements this section in relation to provincial and local protected areas.

**National supervision of provincial management**

**66.** (1) If the MEC for environmental affairs in a province fails to ensure that a provincial or local protected area is managed in accordance with any prescribed norms and standards, the Minister may take such steps as may be necessary in the circumstances, including an intervention in terms of section 100 of the Constitution.

(2) Before the Minister intervenes in terms of section 100 of the Constitution, the Minister must first in writing to the MEC –

- (a) indicate in what respect those norms and standards are not being met; and
- (b) set reasonable time frames for compliance with those norms and standards.

**Provincial supervision of municipal management**

**67.** (1) If a municipality fails to ensure that a local protected area is managed in accordance with any prescribed norms and standards, the MEC for environmental affairs in the province may take such steps as may be necessary in the circumstances, including an intervention in terms of section 139 of the Constitution.

(2) Before the MEC intervenes in terms of section 139 of the Constitution, the MEC must first in writing to the municipality –

- (a) indicate in what respect those norms and standards are not being met; and
- (b) set reasonable time frames for compliance with those norms and standards.

***Part 3: Access to protected areas*****Access to special nature reserves**

- 68.** (1) No person may –
- (a) enter a special nature reserve;
  - (b) reside in a special nature reserve; or



- (c) perform any activity in a special nature reserve.
  - (2) Subsection (1) does not apply to –
    - (a) an official of the Department or another organ of state designated by the Minister in writing to monitor –
      - (i) the state of conservation of the reserve or any biodiversity in the reserve; or
      - (ii) the implementation of the management plan and this Act;
    - (b) any police, customs or excise officer entering the area in the execution of official duties; or
    - (c) a person acting in terms of an exemption granted in terms of subsection (3).

(3) The management authority of a special nature reserve may, in writing and

on conditions determined by it after consulting the Minister, grant exemption from a provision of subsection (1) to –

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

### **Access to national parks and nature reserves**

**69.** (1) No person may without the written permission of the management authority of a national park or a nature reserve –

- (a) enter the park or reserve; or
- (b) reside in the park or reserve.

(2) Subsection (1) does not apply to –

- (a) an official of the Department or of another organ of state designated by the Minister, or, in the case of a provincial or local nature reserve, a person designated the MEC for environmental affairs in the relevant province or the relevant municipality, to monitor –

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

- (3) If the management authority of a park or reserve refuses permission to an official of an organ of state to enter the park or reserve, for the performance of official duties, the Minister may –
- (a) reconsider the matter; and
  - (b) either confirm the refusal or grant the permission.

#### ***Part 4: Restrictions***

##### **Prospecting and mining activities in national protected areas**

**70.** (1) Despite other legislation, no person may conduct prospecting or mining activities –

- (a) in a special nature reserve, a national park or a nature reserve declared by the Minister in terms of this Act; or
- (b) without the written permission of the Minister and the Cabinet member responsible for minerals and energy affairs, in a protected environment declared by the Minister in terms of this Act.

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

### **Regulation or restriction of activities in special nature reserves, national parks and nature reserves**

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

- (a) regulations made in terms of section **83**;
- (b) regulations made in terms of section **84**, in the case of provincial and local nature reserves;
- (c) by-laws made by the relevant municipality, in the case of local nature reserves; and
- (d) internal rules made by the managing authority of the area in terms of section **74**.

### **Commercial and community activities in national parks and nature reserves**

**72.** (1) The management authority of a national park or a nature reserve may, despite any regulation or by-law referred to in section **71** but subject to the management plan of the park or reserve –

- (a) carry out or allow –
  - (i) a commercial activity in the park or reserve; or
  - (ii) an activity in the park or reserve aimed at raising revenue;
- (b) enter into a written agreement with a local community inside or adjacent to the park or reserve to allow members of the community to collect biological resources in the park or reserve; and
- (c) set norms and standards for any activity allowed in terms of paragraph (a) or (b).

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

(3) The management authority of the national park or nature reserve must establish systems to monitor –

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

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

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

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

### **Regulation or restriction of activities in protected environments**

**73.** The Minister, the MEC for environmental affairs in a province or a municipality may, by notice in the *Gazette*, restrict or regulate in a protected environment under the jurisdiction of the Minister, the MEC or the municipality, the carrying out of activities that impedes the purpose for which the area was declared.

### **Internal rules**

**74.** (1) The management authority of a protected area may, in accordance with any prescribed norms and standards, make rules for the proper administration of the area.

(2) Rules made in terms of subsection (1) must be consistent with this Act and the management plan for the protected area.

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

**75.** (1) Sections **68**, **69**, **71**, **72**, **73** or **74** may not be applied in a manner that would obstruct –

- (a) an owner of riparian land to exercise any rights to water in a public stream to which that owner is entitled in terms of the National Water Act 1998, (Act 36 of 1998), if that public stream, or the bed or any part of the bed, falls within a protected area; or

- (b) issues relating to land rights which are to be dealt with in terms of the Restitution of Land Rights Act.

(2) An owner of riparian land may exercise a right referred to in subsection (1) (a) subject to any conditions that may be prescribed by the Minister with the concurrence of the Minister of Water Affairs.

***Part 5: Miscellaneous***

**Status of provincial legislation regulating management of provincial and local protected areas**

**76.** This Act does not affect the implementation of provincial legislation with regard to the management of provincial and local protected areas to the extent that such legislation is consistent with this Act, subject to section 7.

**CHAPTER 5**

**ACQUISITION OF RIGHTS IN OR TO LAND**

**Acquisition of private land by the state**

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

- (a) purchasing the land or right;
- (b) exchanging the land for other land; or
- (c) expropriating the land or right in terms of the Expropriation Act, 1975 (Act No.

63 of 1975), if no agreement is reached with the owner or holder of the right.

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

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

- (a) by purchasing the land or right; or

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

(2) If South African National Parks fails to agree on a purchase price for the land or right in terms of subsection (1) (a), the Minister may on behalf of South African National Parks expropriate the land or right in terms of the Expropriation Act, 1975 (Act No. 63 of 1975).

**Cancellation of servitudes on, or privately held rights in or to, state land**

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

(2) If the Minister fails to reach an agreement with the owner of the property in whose favour the servitude is registered or with the person holding the right, the Minister may expropriate the servitude in terms of the Expropriation Act, 1975 (Act No. 63 of 1975).

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

**80.** (1) South African National Parks may take any steps necessary to cancel a servitude on land owned by South African National Parks, or a privately held right in or to such land, which has been or is proposed to be declared as or included in a national park.

(2) If South African National Parks fails to reach an agreement with the owner

of the property in whose favour the servitude is registered or with the person holding the right, the Minister may on behalf of South African National Parks expropriate the servitude or right in terms of the Expropriation Act, 1975 (Act No. 63 of 1975).

### **Mineral rights**

**81.** The Minister may acquire or cancel a mineral right by way of expropriation in terms of section **77, 78, 79** or **80** only with the concurrence of the Cabinet member responsible for mineral and energy affairs.

### **Financing**

**82.** (1) The Minister may finance the acquisition of private land or a right in or to private land in terms of section **77**, or the cancellation of a servitude on, or a privately held right in or to, state land in terms of section **79**, from –

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

(2) South African National Parks may finance the acquisition of private land or a right in or to private land in terms of section **78**, or the cancellation of a servitude on, or a privately held right in or to, land owned by South African National Parks in terms of section **80**, from –

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

## **CHAPTER 6**

### **ADMINISTRATION OF ACT**

#### **Regulations by Minister**

- 83.** (1) The Minister may make regulations –
- (a) prescribing a matter that may be prescribed in terms of this Act; and
  - (b) assigning additional powers and duties to management authorities;

- (c) regulating –
  - (i) biodiversity management and conservation in protected areas;
  - (ii) the use of biological resources in protected areas;
  - (iii) access to protected areas;
  - (iv) tourism in protected areas where tourism is allowed;
  - (v) activities that may be carried out in terms of section **72**; or
  - (vi) the use of land and water in protected areas;
- (d) prohibiting or restricting –
  - (i) activities that have an adverse effect in protected areas;
  - (ii) the use of biological resources in protected areas;
  - (iii) land uses in protected areas that are harmful to the environment;
- (e) providing for the establishment of advisory committees for protected areas, the appointment of members and their powers and functions;
- (f) setting norms and standards for the management of protected areas, including for any of the above matters; or
- (g) providing for any other matter that may be necessary to facilitate the implementation of this Act.

(2) Any regulation with substantial financial implications may be made only with the concurrence of the Cabinet member responsible for finance.

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

### **Regulations by MECs**

**84.** (1) The MEC for environmental affairs in a province may make regulations

for provincial and local protected areas in the province –

- (a) assigning additional powers and duties to management authorities of those protected areas;
- (b) regulating –



- (i) biodiversity management and conservation in those protected areas;
  - (ii) the use of biological resources in those protected areas to secure sustainability of those resources;
  - (iii) access to protected areas;
  - (iv) tourism in those protected areas where tourism is allowed; or
  - (v) activities that may be carried out in terms of section **72**; or
  - (vi) the use of land and water in those protected areas;
- (c) prohibiting or restricting –
- (i) activities that have an adverse effect in those protected areas;
  - (ii) the use of biological resources in those protected areas when necessary to secure sustainability of those resources; or
  - (iii) land uses in those protected areas that are harmful to the environment; or
- (d) providing for the establishment of advisory committees for those protected areas, the appointment of members and their powers and functions;
- (e) providing for any other matter that will facilitate the implementation of this Act in relation to those protected areas.

(2) Regulations made in terms of subsection (1) must be consistent with any norms and standards prescribed in terms of section **83** (1) (f).

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

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

### **General**

- 85.** (1) Regulations made in terms of section **83** or **84** may –
- (a) restrict or prohibit any act either absolutely or conditionally;

- (b) apply –
  - (i) generally throughout the Republic or province, as the case may be, or only in a specified area or category of areas;
  - (ii) generally to all persons or only a specified category of persons;
 or
  - (iii) generally with respect to all species or only a specified species or category of species; or
- (c) differentiate between –
  - (i) different areas or categories of areas;
  - (ii) persons or categories of persons; or
  - (iii) species or categories of species.

(2) Regulations made in terms of section **83** or **84** may, when appropriate,

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 imprisonment.

### **Extension of time periods**

**86.** The Minister may extend, or condone a failure by a person to comply with, a time period in terms of this Act, except a time period which binds the Minister.

## **CHAPTER 7**

### **OFFENCES AND PENALTIES**

#### **Offences**

- 87.** A person is guilty of an offence if that person –
- (a) contravenes or fails to comply with section **68**, **69** or **70**;
  - (b) contravenes a provision of a notice issued in terms of section **73**;
  - (c) hinders or interferes with a management authority, or a member or staff member of a management authority, in the execution of official duties;
- or

- (d) falsely professes to be a member or staff member of a management authority, or the interpreter or assistant of such an officer.

### **Penalties**

- 88.** A person convicted of an offence under section **87** is liable on conviction to imprisonment for a period not exceeding five years or an appropriate fine, or to both such imprisonment and fine.

## **CHAPTER 8**

### **MISCELLANEOUS**

#### **Repeal of legislation**

- 89.** (1) The National Parks Act, 1976 (Act No. 57 of 1976), and the Lake Areas Development Act, 1975 (Act 39 of 1975), are hereby repealed.

(2) Sections 16 and 17 of the Environmental Conservation Act, 1989 (Act No. 73 of 1989), are repealed in a province with effect from the publication by the MEC of the province of regulations in terms of section **84** of this Act.

#### **Savings**

- 90.** (1) Anything done in terms of legislation repealed in terms of section **89** which can or must be done in terms of this Act must be regarded as having been done in terms of this Act.

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

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

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

### **Existing protected areas**

**91.** (1) The Minister, by notice in the *Gazette*, may designate an area which was a park in terms of the National Parks Act, 1976 (Act No. 57 of 1976), immediately before the repeal of that Act by section **89**, including all parks listed in the Schedule, as a special nature reserve, nature reserve or protected environment, in which case that area, as from the date of the notice, must be regarded as an area declared in terms of this Act as a special nature reserve, nature reserve or protected environment, as the case may be.

(2) The Minister, by notice in the *Gazette*, may designate an area which was a lake development area in terms of the Lake Areas Development Act, 1975 (Act 39 of 1975), immediately before the repeal of that Act by section **89**, as a special nature reserve, nature reserve or protected environment, in which case that area, as from the date of the notice, must be regarded as an area declared in terms of this Act as a special nature reserve, nature reserve or protected environment, as the case may be.

(3) South African National Parks –

- (a) is the management authority of an area to which subsection (1) or (2) applies, unless otherwise assigned by the Minister; and
- (b) must manage the area in accordance with –
- (i) this Act, and any management plan in terms of Chapter **4** for the area; and
  - (ii) any existing conditions and agreements applicable to the area.

(4) The organ of state managing an area to which subsection (2) applies must continue managing the area until the management of the area is assigned either to it or another management authority in terms of Chapter **4**.

**Short title and commencement**

**92.** (1) This Act is called the National Environmental Management: Protected Areas Act, 2003, and takes effect on a date determined by the President by proclamation.

(2) Different dates may in terms of subsection (1) be determined for different provisions of the Act.

**SCHEDULE****LIST OF NATIONAL PARKS**

Kruger National Park

Kalahari Gemsbok National Park

Bontebok National Park

Addo Elephant National Park

Mountain Zebra National Park

Augrabies Falls National Park

Golden Gate Highlands National Park

Tsitsikama National Park

Karoo National Park

Marakele National Park

Vaalbos National Park

West Coast National Park

Tankwa-karoo National Park

Wilderness National Park

Zuurberg National Park

Cape Peninsula National Park

Richtersveld National Park

Agulhas National Park

Dongola National Park

Groenkloof National Park

Namakwa National Park