

**PROVINCIAL NOTICE 205 OF 2019**

**PROVINCE OF THE EASTERN CAPE**

**PROVINCIAL NOTICE**

**DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENTAL AFFAIRS AND TOURISM**

**EASTERN CAPE ENVIRONMENTAL MANAGEMENT BILL**

I, **Mlungisi Mvoko** the Member of Executive Council of Economic Development, Environmental Affairs and Tourism Eastern Cape do hereby publish the Eastern Cape Environmental Management Bill, in terms of Rule 147 of the Standing Rules of the Provincial Legislature, for public comment.

Any person who wishes to comment on the said Bill must submit such comments in writing within 60 days of publication hereof.

Comments must be submitted to -

The Head of Department  
Department of Economic Development, Environmental Affairs & Tourism  
Private Bag X 0054  
BHISHO  
5605

Attention: Ms Ronel de Bruin  
Email: [ronel.debruin@dedea.gov.za](mailto:ronel.debruin@dedea.gov.za)  
Cell: 060 564 5370

Or hand delivered to:

The Head of Department  
Alderwood House  
Palm Square Office Park  
Bonza Bay Road  
Beacon Bay  
EAST LONDON

Attention: Ronel de Bruin  
Or sent by Email to: [ronel.debruin@dedea.gov.za](mailto:ronel.debruin@dedea.gov.za)

Any enquiries in connection with the intended regulations can be directed to Ronel de Bruin

Cell: 060 564 5370.

**Comments received after the closing date will not be considered.**



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**HON. MLUNGISI MVOKO**  
**MEC FOR ECONOMIC DEVELOPMENT,**  
**ENVIRONMENTAL AFFAIRS AND TOURISM**

## **EASTERN CAPE PROVINCE**

### **EASTERN CAPE ENVIRONMENTAL MANAGEMENT BILL**

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*(As introduced in the provincial legislature (the English text is the official text  
of the Bill))*

**(MEC OF ECONOMIC DEVELOPMENT, ENVIRONMENTAL  
AFFAIRS AND TOURISM)**

# BILL

**To rationalize, consolidate and reform the law regulating environmental management and to provide for the harmonisation of provincial legislation with national legislation regulating protected areas, biodiversity, waste management and air quality; and to provide for matters connected therewith.**

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**BE IT THEREFORE ENACTED** by the Provincial Legislature of the Eastern Cape Province follows:

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## **CHAPTER 1**

### **INTERPRETATION AND FUNDAMENTAL PRINCIPLES**

#### **1. Definitions**

(1) In this Act, unless the context indicates otherwise, a word or expression or any derivative or other grammatical form of such word or expression to which a meaning has the corresponding meaning that has been assigned to such word or expression in the following Acts:

- (a) National Environmental Management Act, 1998 (Act No 107 Of 1998);
- (b) National Environmental Management: Air Quality Act, 2004 (Act No 39 of 2004);
- (c) National Environmental Management: Biodiversity Act, 2004 (Act No 10 of 2004);
- (d) National Environmental Management: Integrated Coastal Management Act, 2008 (Act No 24 of 2008);
- (e) National Environmental Management: Protected Areas Act, 2003 (Act No 57 of 2003); and
- (f) National Environmental Management: Waste Act, 2008 (Act 59 of 2008);

**“adequately enclosed”** in relation to land means enclosed by—

- (a) any fence, wall or obstruction of any kind whatsoever forming an enclosure from which any wild animal of a species specified in a certificate of adequate enclosure issued in terms of section 20(4) is unable to escape without breaking it;

- (b) any natural boundary through or over which any wild animal of a species so specified will under normal circumstances not pass, or
- (c) any combination of fences, walls, obstructions or boundaries referred to in paragraphs (a) and (b) so that any wild animal of a species so specified cannot escape from such land;

**“Biodiversity Act”** means the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);

**“biosphere reserve”** means an area designated for inclusion in the World Network of Biosphere Reserves by the International Coordinating Council of the Man and the Biosphere Programme;

**“Biosphere Reserve Interim Committee”** means a committee established in terms of section 12(4);

**“captivity,”** in relation to a wild animal other than a fish, means the holding of an animal captive, in an enclosure or elsewhere, in such a way that its natural movement is restricted or that it is unable to maintain itself by natural means;

**“carcass”** in relation to any wild animal means the whole or any part of the meat (whether dried, smoked, salted, cured or treated in any manner), head, tooth, horns, shell, scale, tusks, bones, feathers, tail, claw, paw, hoof, skin, hide, hair, viscera or any part whatsoever of the carcass, and includes the egg;

**“Certificate of adequate enclosure”** means the certificate issued in terms of section 20(4) of this Act;

**“catch,”** in relation to a fish, means to take out of water or bring to land in any manner or to possess in a net, whether or not the net is in the water, or to be in possession of a fish in or on any boat or on land, and includes any injuring, immobilizing or killing of such fish or attempting to take, injure, immobilize or kill or to pursue or disturb wilfully any such fish;

**“conservancy”** means an area established in terms of section 4;

**“Constitution”** means the Constitution of the Republic of South Africa, 1996;

**“Criminal Procedure Act”** means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

**“Cultivate”** means the artificial reproduction of flora in any manner whatsoever;



**daily bag limit**" means the number of all animals specified in a notice issued in terms of sections 43 and 44 or caught or captured on any day;

**"damage-causing animal"** means any species of wild animal identified in terms of section 40;

**"Department"** means the department responsible for environmental affairs in the Province;

**"export"** in relation to the Province means to convey out or transfer out, or to attempt to convey or transfer out, from a place within the Province to another Province or to a place outside the Republic of any species or specimen;

**"Fauna"** means wild animal

**"Feral animal"** means a domestic animal or species of such animal which has gone wild and which includes a vagrant animal of such species, including hybridisation ;

**"fish"** when used as a noun, means any aquatic fauna living in inland waters, other than an amphibian, reptile, bird or mammal, whether vertebrate or invertebrate, and includes the egg, spawn or larvae of any such animal;

**"flora"** means any plant including the whole or any part of the plant whether dead or dried;

**"game"** means all game kept or held for commercial, hunting, or conservation purposes;

**"Gazette"** means the *Provincial Gazette* of the Province;

**"Head of Department"** means the Head of the Department responsible for environmental affairs in the Province;

**"higher level"**, with regard to a framework plan or other relevant plan, means a larger area of planning, and usually a smaller scale of planning, than the area and scale of such framework plan or other relevant plan;

**"holding facility"** means an enclosure or other structure used for keeping animals on a temporary basis;

**"hunt,"** in relation to a wild animal other than fish, means to hunt or search for, to kill, capture or attempt to kill or capture, to pursue, follow or drive with the

intent to kill or capture, or to shoot at, poison, lie in wait for, wilfully disturb or to collect or try to collect or to destroy the eggs of a bird or reptile by any means;

**“hunting season”** means the period in each year determined by the MEC in terms of section 43 during which a species of wild animal may be hunted subject to the requirements of this Act;

**“import”** in relation to the Province –

- (i) means to convey or introduce into the Province species or specimen; and
- (ii) includes the conveyance into the Province for re-export to a place outside the Province of any species or specimen;

**“inland waters”** means all waters which do not –

- (a) permanently, or at any time of the year, form part of the sea;
- (b) become saline; or
- (c) rise owing to the influence of the sea;

**“Integrated Coastal Management Act”** means the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No 24 of 2008);

**“lower level”**, with regard to a framework plan or other relevant plan, means a smaller area of planning, and usually a larger scale of planning, than the area and scale of such framework plan or other relevant plan;

**“Management Committee”** means a committee established in terms of section 14(2);

**“Man and the Biosphere criteria”** means the general criteria for an area to qualify for designation as a biosphere reserve, as determined by the Man and the Biosphere Programme;

**“Man and the Biosphere Programme”** means the programme in terms of which biosphere reserves are established by UNESCO;

**“Management plan”** means the spatial plan compiled for a biosphere reserve in accordance with section 15;

**“MEC”** means the member of the Executive Council of the Province, to whom the Premier has assigned the responsibility for environmental affairs;

**“Minister”** means the Minister in the national Government responsible for environmental management;

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

**“owner”** means—

- (a) in relation to land—
  - (i) the person in whom is vested the legal title thereto;
  - (ii) where the legal title thereto is vested in an association of persons, whether corporate or unincorporate, the person designated in writing as the owner thereof by such association;
  - (iii) in the case of land under the control or management of a local authority, the local authority concerned;
  - (iv) in the case of State land not under the control or management of a local authority, the Minister of the Department of State or the Member of the Executive Council having control or management thereof or any officer designated by such Minister or Member of the Executive Council for the purpose;
  - (v) in the case of communal land the owner as determined and certified by the Department of Land Affairs and the Council of Traditional Leaders;
  - (vi) in the case of land not occupied by the owner as contemplated by subparagraph (i), the person who is in actual occupation of the land, who exercises general control over such land and who has been authorised in writing by the owner as contemplated by the said subparagraph to exercise the rights conferred on an owner of land by this ordinance;
  - (vii) where the owner as contemplated by subparagraph (i), (ii) or (v) is dead or insolvent or has assigned his estate for the benefit of his creditors or has been placed under curatorship by order of court or is a company being wound up or under judicial management, the person in whom the administration of such land is vested as executor, administrator, trustee, assignee, curator, liquidator or judicial manager, as the case may be, and

- (b) in relation to inland waters, the owner as contemplated by paragraph (a) of the land on which the waters concerned are situated or which abuts on such waters;

**“permit”** means a permit issued in terms this Act, or in terms of an Act mentioned in section 3 of this Act;

**“Pick”** includes cut, chop off, take, gather, pluck, uproot, break or destroy:

**“prescribe”** means prescribe by Regulation in terms of section 82;

**“process principle of planning”** means the principle in terms of which a management plan is compiled in phases through the method of—

- (a) drafting two or more documents in sequence, identifying relevant goals, objectives, problems, issues, policies and strategies, while progressing from the more general in the first document to the more specific in the last; and
- (b) submitting each document for role-player input and decision maker review before compiling a draft management plan for advertisement;

**“professional hunter”** means any person, hunting outfitter or director of a hunting school who escorts or agrees to escort a foreign client, for reward, to enable him or her to hunt a wild animal for reward, or carries out the activities as may be prescribed by the MEC in terms of section 32;

**“protected area”** means any of the protected areas referred to in Chapter 2 of this Act and as defined in the Protected Areas Act;

**“Protected Areas Act”** means the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);

**“Province”** means the Province of the Eastern Cape;

**provincial environmental officer** means an official of the Department designated in terms of section 55;

**“relative”** means the spouse, or those in a similar arrangement, children, parents, and siblings, whether by birth or marriage, or similar lawful arrangement;

**“this Act”** includes any regulations, proclamation, notice or guidelines issued in terms of a provision of this Act;

**“trap”** means any trap, springtrap, snare, gin, cage, net, pitfall or birdlime and any other device or method whatsoever which can be used or adapted for the capture of wild animals; **“this Act”** includes any Regulation, proclamation or Notice issued in terms of a provision of this Act;

**“UNESCO”** means the United Nations Educational, Scientific and Cultural Organisation, and includes the International Coordinating Council of the Man and the Biosphere Programme; and

**“volunteer environmental officer”** means a person appointed in terms of section 69;

**“wild animal”** means any live vertebrate or invertebrate animal (the egg or spawn of any such animal but excluding any ostrich used for farming purposes and the egg thereof) belonging to a nondomestic species and includes any such animal which is kept or has been born in captivity.

- (2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended.

## 2. Objects of this Act

The objects this Act are –

- (a) to supplement national legislation in the Province where necessary to protect the environment by providing reasonable measures for –
  - (i) the management, protection and conservation of certain areas of ecological or environmental importance;
  - (ii) the promotion of the sustainable utilisation of the areas of ecological or environmental importance;
  - (iii) the management, protection and conservation of biological diversity and of the components of such biodiversity; and
  - (iv) the use of indigenous biological resources in a sustainable manner;
- (b) to provide for sound environmental management, enhancing and encouraging sustainable use of resources;
- (c) to encourage conservation, a risk averse approach;
- (d) to set provincial requirements, norms and standards for provincial environmental management according to best practices; and
- (e) to provide for compliance with the measures set out in paragraph (a); and
- (f) generally to give effect to section 24 of the Constitution within the Province.

### **3. Application of Act**

- (1) This Act must read, interpreted and applied in conjunction with the following national Acts, including any regulations, sub-ordinate legislation, policies and norms and standards made in terms of any of those acts -
  - (a) National Environmental Management Act, 1998 (Act No 107 Of 1998)
  - (b) National Environmental Management: Air Quality Act, 2004 (Act No 39 of 2004);
  - (c) National Environmental Management: Biodiversity Act, 2994 (Act No 10 of 2004);
  - (d) National Environmental Management: Integrated Coastal Management Act, 2008 (Act No 24 of 2008);
  - (e) National Environmental Management: Protected Areas Act, 2003 (Act No 57 of 2003); and
  - (f) National Environmental Management: Waste Act, 2008 (Act 59 of 2008).
- (2) In the event of a conflict between this Act and a provision of any legislation mentioned in sub-section (1), the conflict must be resolved in terms of section 146 of the Constitution.
- (3) The Act applies to the Province in order to protect the people's rights contemplated in section 24 of the Constitution.

## **CHAPTER 2**

### **PROTECTED AREAS**

#### **4. Establishment of conservancies**

- (1) Any group of adjoining landowners or in the case of communally owned land, the owner, may apply to the MEC for permission to establish and operate a conservancy for the purpose of jointly conserving and managing the biodiversity found in a natural state on that land.
- (2) If the MEC grants permission for the establishment and operation of a conservancy, the MEC must, by notice in the *Gazette*, publish the details of that conservancy as soon as is reasonably practicable.

- (3) The MEC may prescribe norms and standards, requirements for the establishment, management, and operation of conservancies, including signage that may be used by conservancies.

#### **5. Withdrawal of status as a conservancy and exclusion of land from such areas**

- (1) The MEC may –
  - (a) withdraw his or her permission to operate as a conservancy; or
  - (b) exclude land from any part of a conservancy.
- (2) If the MEC decides to withdraw a permission to operate as a conservancy or excludes land from any part of a conservancy, he or she must publish a notice of that decision in the *Gazette* as soon as is reasonably practicable after taking the decision.

### **CHAPTER 3**

#### **BIODIVERSITY**

#### **6. Listing of provincially protected species**

- (1) The MEC may, by notice in the *Gazette*, publish a list of species that are protected in the Province.
- (2) A list published in terms of subsection (1) may divide species into different categories.
- (3) The MEC may, by notice in the *Gazette*, at any time, amend any list published in terms of subsection (1) by –
  - (a) adding species to the list;
  - (b) removing species from the list; or
  - (c) making any other necessary change to give effect to the objects of this Act.
- (4) The MEC must review a list published in terms of subsection (1) at least every five years.

- (5) The published list shall remain in force until a new or amended list is published.

**7. Restricted activities involving provincially protected and endangered species**

- (1) A person may not carry out a restricted activity, as defined in the Biodiversity Act or any regulations made in terms of this Act involving a specimen of a listed species that are protected in the Province without a permit issued in terms of this Act.
- (2) The MEC may prescribe any activity which is prohibited without a permit issued as prescribed in Section 6 and Regulations in terms of this Act.

**8. General powers in respect of species**

- (1) If the Department at any time considers it necessary or desirable that special measures be taken to ensure the survival of any species of fauna or flora, it may, after consultation with the owner of any land on which that species is found –
- (a) cause a number of specified fauna to be captured or a number of specified flora to be picked or gathered which it considers necessary for the purpose of preserving or propagating the fauna or flora;
  - (b) remove any captured, picked or gathered fauna or flora contemplated in paragraph (i) to a protected area or other suitable place;
  - (c) take such steps as may be required for the preservation or propagation of the species on the land where that species is found; or
  - (d) direct the owner, in writing, to take such steps as it considers necessary for the preservation or propagation of the species on the land in question.
- (2) Any person who receives a directive in terms of subsection (1) may object to the directive by making representations, in writing, to the MEC within 30 days of receipt of the directive, or within such longer period as the MEC may determine.
- (3) After considering any representations made in terms of subsection (1) and any other relevant information, the MEC –
- (a) may confirm, modify or cancel any part of a directive; and



- (b) must specify the period within which the person who received the directive must comply with any part of the directive that is confirmed or modified.
- (c) Failure to comply is considered as an offence stipulated in section 72 of this Act'
- (4) If the Department is of opinion that any wild animal or any species of wild animal found on any land—
  - (a) is detrimental to the preservation of fauna or flora;
  - (b) is likely to be dangerous to human life;
  - (c) is wounded, diseased or injured;
  - (d) is causing damage to crops or other property, whether movable or immovable, of any person, or
  - (e) should be hunted in the interests of nature and environmental conservation,

the Department may, with the approval of the MEC, cause such animal, or such number of such species as he may determine, to be hunted on such land or on any land to which such animal or, in the case of a species of wild animal, the number of such species determined by him may flee while being pursued for the purpose of being hunted in terms of this section.

## **9. Management of flora not listed as protected or endangered**

- (1) The MEC may make regulations to manage flora that is not listed as endangered or protected
- (2) The MEC may, by notice in the *Gazette*, publish a list of activities relating to flora to ensure the survival of a species or the functioning of an ecosystem.
- (3) A notice issued by the MEC in terms of subsection (1) must specify –
  - (a) whether a permit is required to carry out the activity;
  - (b) the standards or requirements that must be complied with in carrying out that activity; or
  - (c) whether the activity is prohibited.
- (4) A person may only carry out an activity identified in terms of subsection (1) if –

- (a) that activity is authorised by a permit issued in terms of Section 10 where a permit is required; or
- (b) without a permit, if that activity is carried out in accordance with such standards or requirements that have been specified by the MEC.

## **10. Permit System**

- (1) The MEC is the issuing authority responsible for the deciding on an application for a permit in terms of this Act.
- (2) The MEC may make Regulations relating to a permit system in the Province, including the format, procedure and conditions of applications and permits issued in terms of this Act.

## **CHAPTER 4**

### **BIOSPHERE RESERVES**

## **11. Purpose of this Chapter**

The purpose of this Chapter is to –

- (a) promote the protection of areas of high biodiversity value and ecological importance in the Province as biosphere reserves designated in terms of the Man and the Biosphere Programme;
- (b) make provision for protection by law of biosphere reserves or proposed biosphere reserves;
- (c) ensure that any development in biosphere reserves is undertaken and managed in a sustainable manner taking into account the purpose of a biosphere reserve;
- (d) ensure that any development within a biosphere reserve is managed in accordance with the principle of sustainability through the development, application and enforcement of the requisite management plan; and

- (e) ensure that the need for and purpose of biosphere reserves, and the type of development to be allowed in and around biosphere reserves, are taken into account when any spatial development decision which may potentially impact on the biosphere reserves is taken.

## **12. Preliminary approval to establish biosphere reserve**

- (1) Any person, group of persons or organ of state may request the MEC to preliminarily approve the establishment of a biosphere reserve in the Province.
- (2) The request must be in the format determined by the Man and the Biosphere Programme and must include the proposed composition of the Biosphere Reserve Interim Committee.
- (3) Before submission of the request to the MEC, the prescribed public participation process must be undertaken.
- (4) If the MEC preliminarily approves the request, a Biosphere Reserve Interim Committee must be established in the prescribed manner and subject to the conditions determined by the MEC.
- (5) The Biosphere Reserve Interim Committee must be broadly representative of all relevant interested persons, institutions and communities.

## **13. Application for UNESCO designation as biosphere reserve**

- (1) The Biosphere Reserve Interim Committee must compile an application for UNESCO designation of the biosphere reserve, in the format determined by the Man and the Biosphere Programme.
- (2) The Biosphere Reserve Interim Committee must, within 12 months after its establishment in terms of section 12(4) or a longer period as approved by the MEC, submit the application to the MEC for consideration.

- (3) If the MEC refuses the application or does not receive it within the period or extended period referred to in subsection (2), the application as well as the preliminary approval of the establishment of the biosphere reserve lapse.
- (4) If the MEC is satisfied that the application complies with the relevant Man and the Biosphere criteria, the MEC must forward the application to the Minister for submission to UNESCO.
- (5) If UNESCO designates the biosphere reserve, the MEC must give notice in the *Provincial Gazette* of the designation and add that sections 14 and 15 become applicable.

#### **14. Management of biosphere reserve**

- (1) The MEC must ensure that a biosphere reserve is properly managed in accordance with management principles determined by the MEC and which must be published simultaneously with the notice referred to in section 13(5) or as soon as possible thereafter.
- (2) After designation of a biosphere reserve, a Management Committee must be established in the prescribed manner to replace the Biosphere Reserve Interim Committee.
- (3) Upon establishment of the Management Committee, the functions of the Biosphere Reserve Interim Committee are automatically transferred to the Management Committee.
- (4) The Management Committee—
  - (a) is responsible for the management of the biosphere reserve, subject to this Act and the management principles referred to in subsection (1);
  - (b) must compile a constitution for the biosphere reserve in the prescribed manner and containing the prescribed particulars;

- (c) must provide an annual report on its activities to the MEC, municipalities in whose areas of jurisdiction the biosphere reserve is located and adjacent municipalities; and
  - (d) must compile a management plan for the biosphere reserve.
- (5) The MEC must periodically, and at least every 10 years, with effect from the designation of a biosphere reserve, review the status, functioning, effectiveness and management plan of the biosphere reserve according to the relevant objectives, strategies and guidelines of the Man and the Biosphere Programme, and report thereon to the Minister.

#### **15. Management plan for biosphere reserve**

- (1) The Management Committee must, as soon as possible after its appointment, prepare a spatial plan (in this Act referred to as a management plan) for the biosphere reserve in accordance with the process principle of planning and the prescribed approval procedure.
- (2) The MEC may determine conditions, in accordance with the process principle of planning, as to the manner in which the management plan is to be drafted, and draft products and the approved plan are to be made known, which must include conditions with regard to inspection of draft products and representations by any interested and affected parties, including inhabitants of the area concerned, in the course of the preparation of the management plan.
- (3) Subject to subsection (4), the management plan must comply and be consistent with any spatial framework or plan in terms of any legislation, including any—
  - (a) environmental implementation plan or environmental management plan referred to in Chapter 3 of the National Environmental Management Act;
  - (b) integrated management plan referred to in Chapter IV of the World Heritage Convention Act, 1999 (Act 49 of 1999);

- (c) integrated development plan referred to in section 25 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);
  - (d) management plan referred to in Chapter 4 of the Protected Areas Act, insofar as the biosphere reserve may include an existing special nature reserve, national park, nature reserve or protected environment as defined in that Act;
  - (e) national biodiversity framework, bioregional plan or biodiversity management plan referred to in Chapter 3 of the Biodiversity Act;
  - (f) plan under the Integrated Coastal Management Act;
  - (g) plan under the Physical Planning Act, 1991 (Act 125 of 1991); and
  - (h) any plan under applicable land use and development legislation
- (4) Notwithstanding subsections (3) and (6), a management plan which is inconsistent with a framework or plan referred to in that subsection can be approved insofar as it is more restrictive than that framework or plan.
- (5) The Management Committee must within 12 months after designation of the biosphere reserve, or the longer period approved by the MEC, submit the management plan to the MEC for approval.
- (6) If the MEC approves the management plan, it is regarded as a plan approved in terms of applicable land use and development legislation.
- (7) The MEC may amend a management plan in the prescribed manner.
- (8) Other than the appointment of the Management Committee and the preparation of the management plan, no further steps may be taken to implement the designation conditions of the biosphere reserve before the approval of the management plan.
- (9) All land uses and land use plans within a biosphere reserve must comply or be consistent with the management plan concerned: Provided that—

- (a) the provisions of the management plan do not take away current land use rights;
- (b) should an existing legal land use not comply with or be inconsistent with a management plan at the time of the approval of the plan, that land use may continue to be exercised until interrupted for at least two years or until further building plan approval may be required, whichever is the earlier;
- (c) should a land use referred to in paragraph (b)—
  - (i) be interrupted for at least two years; or
  - (j) require further building plan approval,

the use of the land concerned must be caused to comply or be consistent with the management plan; and

- (d) where subparagraph (ii) of paragraph (c) would apply, but additional building plan approval is in the opinion of the municipal manager concerned not required for the purpose of land use or building expansion, that municipal manager may approve that building plan without requiring compliance with paragraph (c).

(10) Questions relating to compliance, consistency and conformity in respect of land use in relation to a management plan, or in respect of a management plan in relation to plans or frameworks under other legislation, must be dealt with as follows:

- (a) In relation to a management plan existing in terms of this Act –
  - (i) a land use complies with the management plan if the designation on the management plan explicitly provides for the land use concerned;
  - (ii) a land use is consistent with the management plan if the designation on the management plan does not explicitly provide for the land use concerned, but the land use in the particular location would not conflict with the goals of the designation; and

- (iii) a proposed land use which does not comply with or is inconsistent with the management plan may not be approved, unless the management plan is appropriately amended, either before the approval concerned or simultaneously therewith.
- (b) In relation to a management plan being approved, revised or amended in terms of this Act—
  - (i) the management plan complies with a higher level framework or plan existing under other legislation and functioning at a higher level in relation to the management plan, if the designations of the higher level framework or plan explicitly provide for the proposals of the lower level framework plan;
  - (ii) the management plan is consistent with a higher level framework or plan existing under other legislation and functioning at a higher level in relation to the management plan, if the designations of the higher level framework or plan do not explicitly provide for the proposals of the lower level management plan, but those proposals in the particular locations would not conflict with the goals of the designations concerned; and
  - (iii) the management plan must comply or be consistent with a higher level framework or plan existing under other legislation and functioning at a higher level in relation to the management plan, and may not be approved, revised or amended in a way that does not comply with or is inconsistent with a higher level framework or plan existing under other legislation and functioning at a higher level in relation to the management plan unless the higher level framework or plan is appropriately amended under the legislation concerned, either before the approval, revision or amendment concerned or simultaneously therewith.



- (c) In relation to a management plan existing in terms of this Act-
  - (i) a framework or plan existing under other legislation and functioning at a lower level in relation to the management plan, complies with the management plan if the designations of the management plan explicitly provide for the proposals of the lower level framework or plan;
  - (ii) a framework or plan existing under other legislation and functioning at a lower level in relation to the management plan, is consistent with the management plan if the designations of the management plan do not explicitly provide for the proposals of the lower level framework or plan, but those proposals in the particular locations would not conflict with the goals of the designations concerned;
  - (iii) a framework or plan contemplated under other legislation and intended to function at a lower level in relation to the management plan must comply or be consistent with the management plan, and may not be approved unless the management plan is appropriately amended, either before the approval concerned or simultaneously therewith; and
  - (iv) a framework or plan existing under other legislation and functioning at a lower level in relation to the management plan must comply or be consistent with the management plan, and may not be revised or amended in a way which does not comply with or is inconsistent with the management plan, unless the management plan is appropriately amended, either before the revision or amendment concerned or simultaneously therewith.
- (11) When a dispute arises concerning consistency, the matter must be referred to the MEC for a ruling.

## **16. Extension of biosphere reserve**

- (1) The Management Committee of a biosphere reserve may at any time apply for the extension of the reserve.
- (2) An application for the extension of a biosphere reserve follows the same procedure as described in section 12 for new designations.
- (3) For the purposes of subsection (2) the Management Committee must perform the functions assigned to the Biosphere Reserve Interim Committee by section 14.

## **17. Funding of biosphere reserve**

- (1) The MEC may, in accordance with an appropriation by the Provincial Legislature of the Province, provide financial or other assistance in respect of the establishment, operation, management or extension of, or in respect of conservation within, a biosphere reserve.
- (2) The assistance may be made subject to conditions determined by the MEC with the concurrence of the member of the provincial Cabinet responsible for finance.

## **18. Management principles for biosphere reserves**

The MEC may make regulations regarding the principles for the management of biosphere reserves.

## **19. Existing biosphere reserves**

- (1) The management of a biosphere reserve existing in the Province on the date of commencement of this Act must within three months after that date -
  - (a) appoint a Management Committee in the prescribed manner; and
  - (b) transfer its functions to the Management Committee.

- (2) The Management Committee must within 12 months after its appointment, or a longer period approved by the MEC, submit a management plan for the biosphere reserve to the MEC in accordance with section 15.

## CHAPTER 5

### CERTIFICATES OF ADEQUATE ENCLOSURE

#### 20. Certificate of adequate enclosure.

- (1) Any owner of land on which any species of wild animal is found may in the prescribed manner and form and in relation to any such species, apply to the MEC for a certificate of adequate enclosure as contemplated by subsection (4) in respect of the whole or any portion of such land.
- (2) Any application under subsection (1) shall—
- (a) include a full description of the land in respect of which application is made, its boundaries and size and the vegetation thereon;
  - (b) state the species of wild animal to which the application relates, the estimated number of such species in a free state of nature and the number of such species in captivity, on the land referred to in paragraph (a); and
  - (c) set forth the grounds on which the land in question is considered to be adequately enclosed.
- (3) For the purpose of deciding upon any such application the MEC may require the applicant to furnish him with such further information as he or she may consider necessary or desirable.
- (4) If the MEC—
- (a) having regard to the size of the land in respect of which application has been made under subsection (1), the number of the species of wild animal to which such application relates which is normally found on such

land and such other circumstances as he may consider relevant, is of opinion that the animals in question are in effect being kept in captivity, he shall refuse the application; or

- (b) is satisfied that such land is adequately enclosed in relation to such species, he or she may in his or her discretion grant the application subject to such conditions as he may consider necessary or desirable and issue to the applicant a certificate of adequate enclosure in respect of such land and shall in such certificate specify the conditions, if any, subject to which it is issued, define the boundaries of the land concerned and specify the species of protected wild animal to which it relates.
- (2) A certificate of adequate enclosure issued in terms of subsection (4) shall, subject to the provisions of subsection 6, be valid for the period specified therein.
  - (3) A certificate of adequate enclosure may at any time during the period of validity thereof be withdrawn by the MEC summarily and without prior notice to or consultation with the holder thereof; provided that such withdrawal may be set aside by the MEC if, after consultation with such holder, he or she is of the opinion that such setting aside is not necessary or desirable.
  - (5) Any certificate issued prior the coming into operation of this Act shall be deemed to be a certificate of adequate enclosure issued in terms of subsection (4) of this section, and any such certificate shall remain valid for the period stated therein unless it is withdrawn in terms of subsection (6) prior to the expiration of such period.

## **21. Rights of holders of certificate of adequate enclosure**

- (1) A landowner who keeps or holds game or, on behalf of whom game is kept or held on land for which the MEC issued a certificate of adequate enclosure in terms of section 20 of this Act, shall not lose ownership of that game if the game escapes from such enclosed land.

- (2) Notwithstanding anything to the contrary contained in this Act, the holder of a certificate of adequate enclosure, or any person acting with the written permission of the holder, may, subject to any conditions specified in the certificate of adequate enclosure, hunt any number of provincially wild animals identified in the certificate at any time and by any means other than by the use of fire and poison without a permit authorising that hunt, sell or donate

## **22. Obligations of holders of certificate of adequate enclosure**

- (1) A holder of a certificate of adequate enclosure must maintain fences on the relevant property in accordance with departmental specifications at all times.
- (2) If a certificate of adequate enclosure lapses, expires, or is withdrawn by the MEC, the holder of that certificate must remove all wild animals which are not indigenous, to which the certificate of adequate enclosure is applicable off the property.
- (3) The Department may take the required action to remove, and or dispose of, the species, and recover the costs incurred from the holder of the certificate if he or she fails to comply with subsection (2).

## **23. Transfer of hunting and other rights.**

- (1) If a certificate of adequate enclosure has been issued in terms of section 20(4)(b) is still valid, the MEC may in writing authorise –
  - (a) any owner of land to whom a certificate of adequate enclosure has been issued in terms of section 20 (4)(b), or any other owner of land, to transfer, whether temporarily; or
  - (b) permanently, to a person approved by him or her and subject to such conditions as he or she may impose –
    - (i) in the case of an owner referred to in paragraph (a), the rights conferred on such owner by section 21; and
    - (ii) in the case of an owner referred to in paragraph (b), the rights of any such owner under this Act.

- (2) In the application of the provisions of this Act, any person to whom any rights have been transferred as contemplated by subsection (1), shall as from the date of such transfer and, in the case of a temporary transfer, for the duration of the period concerned, be deemed to be the owner of the land in question.

**24. Certificate of adequate enclosure lapses on transfer or lease of land.**

Any certificate of adequate enclosure issued in terms of section 20 (4) (b) shall lapse upon the transfer or lease of the land in respect of which it was issued or of any portion of such land.

**CHAPTER 6**

**WILD ANIMALS**

***Part 1 - Prohibitions***

**25. Keeping of wild animals in captivity**

- (1) No person shall without a permit authorising him or her to do so, keep any wild animal in captivity; provided that in the case of a wild animal which is a bird, the provisions of this section shall only apply in respect of a bird which is an endangered or protected wild animal.
- (2) No person shall at any time, whether authorised by a permit issued under subsection (1) or not, restrain any wild animal by means of a rope, cord, chain or any similar contrivance.
- (3) No person shall without a permit authorising him to do so, release any exotic wild animal in the Province.
- (4) No person may establish or operate a game park, zoo, sanctuary, rehabilitation centre, reptile park or similar institution without a permit issued in terms of Section 10.

- (5) The MEC may require a management plan and/or risk assessment, to establish risk and feasibility, for establishing the above institutions.
- (6) The owner of a game park, zoo, bird sanctuary, reptile park, snake park or similar institution may not trade, exchange or donate any wild animal without a permit issued for that purpose in terms of Section 10.

## **26. Prohibition on use of certain fire-arms to hunt certain wild animals.**

No person shall use a fire-arm having a barrel of a calibre of six comma five millimetres or less to hunt any Buffalo, Eland, Kudu, Wildebeest, Oryx or Red Hartebeest.

## **27. Prohibitions involving alien wild animals**

- (1) A person may not release an alien wild animal into the wild in the Province.
- (2) The MEC may publish rules for the acquiring, management, keeping and disposal of alien wild animals by regulation.

## **28. General prohibition on the laying of poison**

- (1) No person may without a permit lay or cause or allow to be laid any poison at any place where it may be assimilated or ingested by a wild animal
- (2) The provisions of subsection (1) shall not preclude any person from laying any poison with due observance of such provisions, for the purpose of exterminating rodents, Redwinged Starlings, European Starlings, English Sparrows or Colies.

## **29. General powers in respect of wild animals**

- (1) The MEC must, by notice in the *Gazette* -
  - (a) list activities in respect of wild animals which require a permit;
  - (b) list activities which must be registered with the Department;
  - (c) list activities in respect of which specified standards or requirements must be complied with in carrying out that activity; or
  - (d) prohibit activities in respect of wild animals.

(2) A person may only carry out an activity identified in terms of subsection (1)(a), (b) or (c) if –

- (a) that activity is authorised by a permit issued in terms of section 10; where a permit is required;
- (b) if that activity has been registered with the Department, where registration is required; or
- (c) without a permit, if that activity is carried out in accordance with such standards or requirements that have been specified by the MEC.

(3) No person may carry out an activity prohibited in terms of subsection (1)(d).

### **30. Alteration and removal of fences and interference with fences**

No person may without a permit –

- (a) alter, remove or partly remove or cause to be altered, removed or partly removed any fence, whether on a common boundary or on his or her own property, if that action will, or is likely to, result in a wild animal being unable to return through the point at which the animal entered the property; or
- (b) heap up or cause to be heaped up soil or any other material on one side of a fence, whether on a common boundary or on his or her own property, or remove or cause to be removed soil on one side of such fence that has the effect of reducing or increasing the height, as the case may be, of such fence on one side, unless a wild animal, that gains or may gain access to such property over the lower section of that fence, can return or is likely to be able to return over the same section of such fence.
- (c) alter, remove or partly remove or cause to be altered a Departmentally approved Certificate of Adequate Enclosure fence.



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**Part 2: Hunting****31. Hunting activities**

The MEC may identify any activity as hunting by notice in the *Gazette*. If the MEC exercises his or her powers in terms of subsection (1), the MEC must specify -

- (a) whether a permit is required to carry out the hunting activity;
- (b) the standards or requirements that must be complied with in carrying out that activity; or
- (c) any registration requirements that apply to hunters.

**32. Professional hunting**

The MEC may, prescribe –

- (a) the requirements for a person who operates or who intends to operate as a professional hunter, hunting outfitter or a director of a hunting school;
- (b) the conditions under which a professional hunter, hunting outfitter or a hunting school may operate; and
- (c) the circumstances when a professional hunter, hunting outfitter or a hunting school may or must be used.

**33. Permissible hunting activities**

A person may only undertake a hunting activity if –

- (a) that activity is authorised by a permit issued in terms of the Biodiversity Act or this Act.
- (b) without a permit, the hunting activity is –
  - (i) carried out in accordance with such standards or requirements that have been prescribed by the MEC
  - (ii) conducted by the owner of land, or any relative of such owner acting on the written authority of such owner, with the permission of the owner, in respect of a species of wild animal

for which a hunting season has been determined in terms of section 43 and that is hunted on the land of such owner in accordance with the requirements of the notice issued in terms of section 43.

**34. Hunting of wild animals on land belonging to another person.**

No person shall on land of which he is not the owner hunt any wild animal or remove any such animal or the carcass of such animal from such land without the permission of the owner of such land granted in terms of section 33.

**35. Donation or sale of wild animal or carcass thereof.**

No person shall donate or sell any wild animal or the carcass of any such animal to any other person unless, when he delivers such animal or carcass to such other person, he furnishes such other person with a written document signed by him reflecting—

- (a) the full names and address of such first mentioned person;
- (b) the full names and address of such other person;
- (c) the number and species of wild animals or carcasses so donated or sold;
- (d) the date on which such animal or carcass was so donated or sold, and
- (e) a statement by him that he has donated or sold such animal or carcass to such other person.

**36. Possession of wild animal or carcass thereof.**

Any person found in possession of any wild animal or the carcass of any such animal shall be guilty of an offence unless, in the event of—

- (a) the animal having been hunted by him on the land of any other person, he is in possession of the written permission contemplated by section 33, or
- (b) his having acquired such animal or carcass from any other person, he is in possession of a written document contemplated by section 35.

**37. Documents relating to permission to hunt or to the donation of wild animals or the carcasses thereof to be retained for certain period.**

Every document referred to in sections 34 and 35 shall be retained by the person to whom it was furnished for a period of at least two months from the date on which it

was so furnished or while such person is in possession of the wild animal or carcass to which it relates, whichever is the longer period.

### **38. Transport of wild animals.**

- (1) Subject to the provisions of this Act, no person shall without a permit authorising him to do so—
  - (a) import into, export from or transport in or through the Province any wild animal;
  - (b)
    - (i) import into the Province from any place outside the Republic the carcass of any wild animal, or
    - (ii) export from the Province the carcass of any endangered wild animal or any protected wild animal specified in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 1973;
  - (c) sell, buy, donate or receive as a donation the carcass or anything manufactured from the carcass of any endangered wild animal;
  - (d) process, prepare, cure, tan or in any manner whatsoever treat the carcass of any endangered wild animal for the purpose of—
    - (i) manufacturing any article therefrom;
    - (ii) exhibiting such carcass or any article manufactured therefrom, or
    - (iii) mounting such carcass, or
  - (e) sell, buy, donate, receive as a donation or be in possession of any live endangered or protected wild animal.
- (2) The provisions of subsection (1) (a) shall not be construed so as to preclude the export from or the transport in or through the Province without a permit, of any bird which is not an endangered or protected wild animal.

### **39. Prohibited hunting methods**

- (1) The MEC may make Regulations identifying prohibited methods of hunting.
- (2) Regulations contemplated in subsection (1) may –

- (a) specify whether the prohibited method of hunting applies generally or in respect of certain species only;
- (b) exclude species from the application of the notice; and
- (c) specify the conditions under which the method of hunting is prohibited.

### ***Part 3: Management of damage-causing animals***

#### **40. Identification of damage-causing animals**

- (1) The MEC may determine whether a species can be deemed to be a damage causing animal.
- (2) An animal will be deemed to be a damage-causing animal if it:
  - (a) presents an imminent threat to human life;
  - (b) is wounded, diseased or injured;
    - (i) has caused losses to livestock or other animals;
    - (ii) has caused damage to crops or other property; or
    - (iii) has caused excessive damage to fauna or flora.
- (3) A person may only carry out an activity to control or destroy a damage-causing animal, identified in subsection 2, if –
  - (a) that activity is authorised by a permit issued in terms of Chapter 10; or
  - (b) provision is made for the management of such animal in the hunting proclamation

#### **41. General powers in respect of damage-causing animals**

Any *canis lupus familiaris*, *felis catus* or other feral species found trespassing at any time on state land or in a fenced camp or enclosed place in which there are wild animals, may be destroyed by the landowner or any person acting on his or her written authority.

#### **42. Department may cause certain wild animals to be hunted.**

- (1) If the Department is of opinion that any wild animal or any species of wild animal found on any land—

- (a) is detrimental to the preservation of fauna or flora;
- (b) is likely to be dangerous to human life;
- (c) is wounded, diseased or injured;
- (d) is causing damage to crops or other property, whether movable or immovable, of any person, or

should be hunted in the interests of nature and environmental conservation, the Department may, with the approval of the MEC, cause such animal, or such number of such species as he may determine, to be hunted on such land or on any land to which such animal or, in the case of a species of wild animal, the number of such species determined by him may flee while being pursued for the purpose of being hunted in terms of this section.

- (2) The provisions of section 62 shall apply mutatis mutandis in respect of the exercise of the powers conferred on the Department by subsection (1) of this section.
- (3) The ownership in the carcass of any wild animal killed during a hunt in terms of subsection (1) shall vest in the Department.

#### ***Part 4: Hunting and fishing seasons***

##### **43. Hunting seasons for wild animals and limits**

- (1) The MEC may, by notice in the *Gazette*, determine the period for which permits may be issued for the hunting of a wild animal identified in the notice.
- (2) The MEC may, by notice in the *Gazette*, determine limits of a species of wild animal identified in the notice.
- (3) No person may hunt a wild animal outside of a hunting season specified for that animal.
- (4) In addition to any other permission which is required in terms of this Act, a person may not kill or capture a greater number of any wild animal for which a limit has been determined in terms of subsection (2) without a permit issued in terms of this Act.

#### **44. Fishing seasons, daily bag limits and undersized fish in freshwater**

- (1) The MEC may, by notice in the *Gazette*, determine the period during which no permits may be issued for the catching of a species of fish identified in the notice.
- (2) The MEC may, by notice in the *Gazette*, determine the daily bag limit and the size or mass of a species of fish identified in the notice.
- (3) No person may catch fish outside of a fishing season specified for that fish.
- (4) In addition to any other permissions which are required in terms of this Act, a person may not catch a greater number or size of any fish for which a daily bag limit or size or mass has been determined in terms of subsection (2) without a permit issued in terms of this Act.
- (5) A notice issued in terms of subsection (1) or (2) does not apply to an owner of the land which surrounds the inland water or the owner's relative, with the permission of the owner, or any person acting with the permission of the owner, if the fishing activity is undertaken in a sustainable manner in or on inland water and that owner, relative or person does not kill, catch or injure or attempt to kill, catch or injure fish with the use of any explosive, fire-arm, electric current, poison or other noxious substance.

### **Part 5: Flora**

#### **45. Possession etc. of endangered flora.**

- (1) Subject to the provisions of this Act, no person shall without a permit, be in possession of, sell, buy, donate, receive as a donation, pick, or import into, export from or transport in or through the Province, any endangered flora.
- (2) The provisions of subsection (1) shall not be construed so as to preclude the possession without a permit by an owner of land, of any endangered flora growing in a natural state on such land.
- (3) Any person desiring to sell endangered flora which he or she has cultivated on any fixed premises shall apply to the MEC in the prescribed form for registration as a grower of endangered flora and a permit to sell endangered flora which has been

cultivated and furnish him with the prescribed information and such further information as he or she may require.

- (4) Upon receipt of any such application, the MEC may cause such inspection of the premises concerned as he or she may deem necessary to be made and if he or she is satisfied that the granting of such application will further the objectives of this Act he or she may, subject to the conditions which he or she deems fit, in the prescribed form issue to the applicant a certificate of registration as a grower of endangered flora and a permit to sell endangered flora which has been cultivated.
- (5) A certificate and a permit issued under subsection (4) shall be valid—
  - (a) in the first mentioned case, until it is cancelled by the MEC, and
  - (b) in the last mentioned case, for a period of twelve months from the date of issue thereof.
- (6) The holder of a permit issued under subsection (4) shall not sell or donate any endangered flora to any person unless, when he or she sells or donates such flora to such person, he or she furnishes such person with a written and dated document signed by him and reflecting—
  - (a) his or her full name and address;
  - (b) the full name and address of such person;
  - (c) the number and date of such permit, and
  - (d) the name of each species and the number of each species of such flora which has been sold or donated.
- (7) Notwithstanding any provision to the contrary contained in this section, no permit shall be required for the purchase, receipt as a donation, transport or possession of any endangered flora which has been sold or donated by the holder of a permit issued under subsection (4) and in which such flora is specified; provided that any person who has bought or received as a donation or is in possession of such flora, is in possession of a document contemplated by subsection (6).

**46. Prohibition on picking of certain flora.**

- (1) No person shall—
- (a) uproot the plant in the process of picking the flower of any flora;
  - (b) without a permit—
    - (i) pick any endangered or protected flora, or
    - (ii) pick any flora on a public road or on the land on either side of such road within a distance of ninety metres from the centre of such road, or
  - (c) pick any protected or indigenous unprotected flora on land of which he or she is not the owner, without the permission of the owner of such land or of any person authorised by such owner to grant such permission.
- (2) No permission granted in terms of subsection (1) (c) shall be valid unless it is reduced to writing and reflects—
- (a) the full names and address of the owner of the land concerned or of the person authorised to grant such permission;
  - (b) the full names and address of the person to whom permission is granted, and
  - (c) the number and species of flora, the date or dates on which such flora may be picked and the land in respect of which permission is granted,
- and is signed and dated by such owner or the person authorised by him.
- (3) The provisions of subsection (1) (b) shall not apply to the owner of any land, any relative of such owner and any full-time employee of such owner acting on the instructions or with the consent of such owner, in respect of any protected or indigenous unprotected flora on such land.



- (4) The provisions of subsection (1) (b) (i) shall not apply to any person authorised in writing by the owner of any land to pick any protected flora on such land for the purpose of gathering and propagating the seed of such flora.

**47. Sale and purchase of protected flora.**

No person shall—

- (a) sell or buy any protected flora at any place other than on the premises of a registered flora grower or registered flora seller, and
- (b) sell any protected flora without a licence issued under section 48.

**48. Registration and licensing of flora growers and flora sellers.**

- (1) Any person desiring to be registered and licensed in respect of any fixed premises as a flora grower or flora seller, as the case may be, shall apply to the MEC in the prescribed manner and form for registration in terms of this section and furnish him with the prescribed information and such further information as he or she may require.
- (2) Upon receipt of any such application, the MEC may cause such inspection of the premises concerned as he or she may deem necessary to be made and if, after consultation with the local authority in whose area of jurisdiction such premises are situate and regard being had to any other information at his or her disposal, he or she is satisfied that the granting of such application will not be contrary to the objectives of this Chapter, he or she may, in his or her discretion and subject to the conditions which he or she deems fit, in the prescribed form issue to any such applicant—
- (a) in respect of the premises concerned, a certificate of registration as a flora grower or flora seller, as the case may be, and
- (b) on payment of the prescribed fee, a licence to sell on the premises concerned the protected flora specified by him in such licence;

provided that no fee shall be payable in respect of a licence to sell protected flora which has been cultivated.

(3) The holder of a licence issued under subsection (2) shall not be exempt from compliance with any requirements for a business licence in the Province.

(4) (a) A licence issued to—

(i) a flora grower shall be valid for a period of twelve months from the date of issue thereof, and

(ii) a flora seller shall be valid for a period of three years from the date of issue thereof.

(b) A certificate of registration as a flora grower or flora seller shall be valid until it is cancelled by the MEC or, in the case where the MEC does not receive an application for a new licence from a flora grower or flora seller, as the case may be, within thirty days of the expiry of the periods contemplated by paragraph (a) for the periods contemplated by paragraph (a) and for thirty days thereafter.

#### **49. Sale of protected flora on the premises of registered flora growers and sellers.**

No person shall sell any protected flora on the premises of—

(a) a registered flora grower unless such flora was propagated or cultivated or occurred in a natural state on such premises;

(b) a registered flora seller unless such flora has been obtained from any other registered flora seller or registered flora grower, or

(c) a registered flora seller if such flora was propagated or cultivated or occurred in a natural state on any premises of any registered flora seller who is not registered as a flora grower in respect of such premises.

#### **50. Places for sale of indigenous unprotected flora.**

(1) A local authority may in respect of the sale of indigenous unprotected flora within its area of jurisdiction set aside such places as it may deem suitable for the sale of such flora, erect such shelters or other structures as it may deem necessary thereon and notwithstanding anything to the contrary contained in the business licence requirements, when issuing a licence authorising the holder of such licence to carry

on the business of selling, bartering or exchanging flowers or offering or exposing flowers for sale, barter or exchange, restrict the carrying on of such business in respect of indigenous unprotected flora to any place so set aside.

- (2) No person shall sell any indigenous unprotected flora at any place other than a place set aside in terms of subsection (1) or on the premises of a registered flora seller or registered flora grower.

**51. Sale of indigenous unprotected flora by owner of land.**

Notwithstanding the provisions of section 50(2), an owner of land on which indigenous unprotected flora is being propagated or cultivated or on which such flora occurs in a natural state may sell such flora which has been so propagated or cultivated or which so occurs to any person -

- (a) on such land;
- (b) at a place set aside in terms of section 50 (1), or
- (c) carrying on business under a licence issued to him under section 48(2).

**52. Export and importation of flora.**

No person shall without a permit—

- (a) export any flora from the Province; provided that the provisions of this paragraph shall not apply to the export by any person of any flora, except endangered flora and protected flora referred to in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 1973, which he or she legally obtained from any registered flora grower or registered flora seller who is the holder of a permit to export such flora contemplated by this paragraph; provided further that such person, while he or she is exporting such flora, shall be in possession, in addition to any document contemplated by sections 46 and 48, of a document in which the number and date of such export permit of such flora grower or flora seller are reflected, or

- (b) import into the Province any protected flora specified in appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 1973.

**53. Donation of flora.**

The provisions of sections 34 and 36 shall apply mutatis mutandis in respect of the donation of any flora by any person to any other person.

**54. Possession of flora.**

The provisions of sections 35 and 36 shall apply mutatis mutandis in respect of any person found in possession of any flora.

**CHAPTER 7**

**COMPLIANCE AND ENFORCEMENT OF THIS ACT**

**55. Designation of environmental management inspectors**

- (1) The MEC must designate environmental management inspectors in accordance with the relevant provisions of the National Environmental Management Act.
- (2) An environmental management inspector has the powers, duties and functions contained in the National Environmental Management Act and this Act.

**56. Designation of provincial environmental officers**

The MEC must -

- (a) designate an official of the Department to be a provincial environmental officer ; and
- (b) at any time withdraw a designation made in terms of paragraph (a).

**57. Mandates of provincial environmental officers**

When designating an official as a provincial environmental officer, the MEC must determine whether the official concerned is designated for the enforcement of'

- (a) this Act;
- (b) specific provisions of this Act only; or

- (c) specific provisions of Regulations or Notices published in terms of this Act only.

#### **58. Proof of designation as provincial environmental officer**

- (1) A certificate of designation and card must be issued to each official who has been designated as a provincial environmental officer.
- (2) When exercising any powers or performing any duties in terms of this Act a provincial environmental officer must, on demand by a member of the public, produce the designation card or certificate referred to in subsection (1).

#### **59. Functions of Provincial environmental officers**

- (1) A provincial environmental officer, acting within his or her mandate in terms of section 57 -
  - (a) must monitor and enforce compliance with the provisions of this Act for which he or she has been designated in terms of that section;
  - (b) may investigate any act or omission in respect of which there is a reasonable suspicion that it might constitute -
    - (i) an offence in terms of this Act;
    - (ii) a breach of a provision of this Act; or
    - (iii) a breach of a term or condition of a permit, exemption or other instrument issued in terms of this Act.
- (2) A provincial environmental officer -
  - (a) must carry out his or her duties and exercise his or her powers -
    - (i) in accordance with any instructions issued by the MEC; and
    - (ii) subject to any limitations and in accordance with any procedures that may be prescribed; and
  - (b) may be accompanied by an interpreter or any other person whose assistance may reasonably be required.

## **60. General powers**

- (1) A provincial environmental officer, within his or her mandate in terms of section 57, may –
- (a) question a person about any act or omission in respect of which there is a reasonable suspicion that it might constitute -
    - (i) an offence in terms of a provision of this Act for which that provincial environmental officer has been designated in terms of that section;
    - (ii) a breach of a provision of this Act; or
    - (iii) a breach of a term or condition of a permit, exemption or other instrument issued in terms of this Act;
  - (b) issue written notice to a person who refuses to answer questions in terms of paragraph (a), requiring that person to answer questions put to him or her in terms of that paragraph;
  - (c) inspect any premises, or question a person about, any document, book or record, any written or electronic information or instrument -
    - (i) which may be relevant for the purpose of paragraph (a); or
    - (ii) to which this Act relates;
    - (iii) or conduct an audit in terms of any premises, document, book, record, any written or electronic information or instrument;
  - (d) copy, or make extracts from, any document, book, or record or any written or electronic information referred to in paragraph (c), or remove such document, book, record or written or electronic information in order to make copies or extracts;
  - (e) require a person to produce or deliver to a place specified by the provincial environmental officer, any document, book or record or any written or electronic information referred to in paragraph (c) for inspection;
  - (f) inspect, question a person about, and if necessary remove any specimen, article, substance or other item which, on reasonable suspicion, may have been used in -

- 
- (i) committing an offence in terms of a provision of this Act for which that provincial environmental officer has been designated in terms of section 56;
    - (ii) breaching a provision of this Act; or
    - (iii) breaching a term or condition of a permit, exemption or other instrument issued in terms of this Act;
  - (g) take photographs or make audio-visual recordings of anything or any person that is relevant for the purpose of an investigation or for an inspection;
  - (h) dig or bore into soil;
  - (i) take samples;
  - (j) remove any waste or other matter deposited or discharged in contravention of this Act for which that provincial environmental officer has been designated in terms of section 56 or a term or condition of a permit, exemption or other instrument issued in terms of this Act;
  - (i) apply to a magistrate for a warrant where a warrant is required for the proper discharge of his or her functions; or
    - (ii) carry out any other prescribed duty not inconsistent with this Act.
  - (k) Make use of a light, as approved by the Department of Transport, for identification and enforcement purposes
  - (l) Destroy a dog not used in lawful hunting and which is pursuing or searching for a wild animal.
  - (m) A written notice issued in terms of subsection (1)(b), must be as prescribed, and must require a person to answer specified questions either orally or in writing, and either alone or in the presence of a witness, and may require that questions are answered under oath or affirmation.
- (2) A person who receives a written notice in terms of subsection (1)(b), must answer all questions put to him or her truthfully and to the best of his or her ability, notwithstanding that an answer might incriminate him or her, but any answer that incriminates such person may not be used against him or her in any subsequent criminal proceedings for an offence in terms of this Act.

- (3) A provincial environmental officer must -
  - (a) provide a receipt for-
    - (i) any document, book, record or written or electronic information removed in terms of subsection (1)(d); or
    - (ii) any specimen, article, substance or other item removed in terms of subsection (1)(f).

#### **61. Seizure of items**

- (1) The provisions of sections 30 to 34 of the Criminal Procedure Act apply to the disposal of anything seized in terms of this Chapter, subject to such modifications as the context may require.
- (2) When an item is seized in terms of this Chapter, the provincial environmental officer may request the person who was in control of the item immediately before the seizure of the item, to take it to a place designated by the provincial environmental officer, and if the person refuses to take the item to the designated place, the provincial environmental officer may do so.
- (3) In order to safeguard a vehicle, vessel or aircraft that has been seized, the provincial environmental officer may take reasonable measures to immobilise it.

#### **62. Powers to stop, enter and search**

- (1) A provincial environmental officer, within his or her mandate in terms of section 56, may, without a warrant, enter and search any land, building premises, vehicle, vessel or aircraft, or search any pack-animal, on reasonable suspicion that that building, vehicle, vessel, aircraft or pack-animal -
  - (a) is being or has been used, or contains or conveys anything which is being or has been used, to commit -
    - (i) an offence in terms of a provision of this Act for which that provincial environmental officer has been designated in terms of section 56 or
    - (ii) a breach of a provision of this Act or a term or condition of a permit, exemption or other instrument issued in terms of this Act; or



- (b) contains or conveys anything which may serve as evidence of such offence or breach.
- (2) A Provincial environmental officer may, without a warrant, seize anything contained in or on any land, building, premises, vehicle, vessel, aircraft or pack-animal that may be used as evidence in the prosecution of any person for an offence in terms of this Act.
- (3) The provisions of section 61 apply to anything seized in terms of subsection (2), subject to such modifications as the context may require.
- (4) A provincial environmental officer may, for the purposes of implementing subsection (1), at any time, and without warrant -
  - (a) order the driver of a vehicle or vessel to stop, or cause the pilot of an aircraft to be ordered to land; or
  - (b) if necessary and possible, force the driver or pilot to stop or land, as the case may be.
- (5) A provincial environmental officer may exercise on or in respect of such vehicle, vessel or aircraft any of the powers mentioned in section 60.
- (6) A provincial environmental officer may apply to the Provincial Commissioner of Police for written authorisation in terms of section 13 (8) of the South African Police Service Act, 1995 (Act No. 68 of 1995), to establish a roadblock or a checkpoint.

### **63. Notices**

A provincial environmental officer in terms of this Act may issue notices to any person who he or she suspects of contravening any provision of this Act or conditions contained in a permit issued in terms of the Regulations

#### **64. Power to issue notices**

A provincial environmental officer may issue a written notice if he or she believes that there are reasonable grounds that a person has not complied

- (a) with the provision of this Act for which that officer has been designated in terms of Section 56; or
- (b) with a term or condition of a permit, exemption or other instrument issued in terms of this Act

#### **65. Objections to notices**

- (1) Any person who receives a notice in terms of Section 63 may object to the Notice by making written representations to the MEC within 30 days of receipt of the notice or in such longer period which the MEC may determine.
- (2) After considering any representations made in terms of subsection 1 and any other relevant information the MEC
  - (a) May confirm, modify or cancel any part of the notice; and
  - (b) Must specify the period in which the person who receives the notice must comply with any part of the notice which is confirmed or modified.

#### **66. Failure to comply with notices**

- (1) If a person fails to comply with a notice a provincial environmental officer must report the non-compliance to the MEC who may
  - (a) Revoke or vary the relevant permit, exemption or other instrument which is the subject of the notice; and
  - (b) Take any necessary steps and recover the costs from the person who failed to comply

#### **67. Duty to produce documents**

Any person to whom a permit, exemption or any other document has been issued in terms of this Act must produce that document at the request of a provincial environmental officer.

## 68. Inspections

- (1) A provincial environmental officer, within his or her mandate in terms of section 57, and subject to subsection (2), may, at any reasonable time conduct inspections without a warrant, enter and inspect any building, land or premises or search any vehicle for the purpose of ascertaining compliance with -
  - (a) the provisions of this Act for which that provincial environmental officer has been designated in terms of section 56; or
  - (b) a term or condition of a permit, exemption or other instrument issued in terms of this Act.
- (2) A provincial environmental officer, within his or her mandate in terms of section 57, may, with a warrant obtained in terms of subsection (3), but subject to subsection (4), enter and inspect any premises for the purpose of ascertaining compliance with -
  - (a) the provisions of this Act for which that provincial environmental officer has been designated in terms of section 56; or
  - (b) a term or condition of a permit, exemption or other instrument issued in terms of this Act.
- (3) A magistrate may issue a warrant contemplated in subsection (2) only on written application by an provincial environmental officer setting out under oath or affirmation that it is necessary to enter and inspect the specified premises for the purpose of ascertaining compliance with the provisions of this Act for which that provincial environmental officer has been designated in terms of section 56.
- (4) A provincial environmental officer may enter and inspect any premises without a warrant, but only if -
  - (a) the person in control of the premises consents to the entry and inspection; or
  - (b) there are reasonable grounds to believe that a warrant would on application be issued, but that the delay that may be caused by applying for a warrant would defeat the object of the entry or inspection.

- (5) While carrying out an inspection, a provincial environmental officer may seize anything in or on any premises, land or vehicle that may be used as evidence in the prosecution of any person for an offence in terms of this Act.
- (6) The provisions of section 61 apply to anything seized in terms of subsection (5), subject to modifications as the context may require.
- (7) A provincial environmental officer may exercise on such premises, land or vehicle any of the powers mentioned in section 60.

#### **69. Appointment of volunteer environmental officers.**

- (1) The MEC may -
  - (a) appoint any person he or she considers fit and proper as a volunteer environmental officer; and
  - (b) at any time withdraw the appointment made in terms of paragraph (a).
- (2) When a volunteer environmental officer takes with him or her an interpreter or assistant, such interpreter or assistant shall be deemed to be a volunteer environmental officer.

#### **70. Mandates and powers of volunteer environmental officers**

- (1) When appointing a person as a volunteer environmental officer, the MEC must determine whether the official concerned is designated for the enforcement of
  - (a) this Act;
  - (b) specific provisions of this Act only; or
  - (c) specific provisions of Regulations or Notices published in terms of this Act only.
- (2) The MEC must determine the powers that may be exercised by a volunteer environmental officer.

## **71. Proof of designation as Volunteer Environmental Officer**

- (1) A certificate of appointment and card must be issued to each person who has been appointed as a volunteer environmental officer.
- (2) When exercising any powers or performing any duties in terms of this Act a volunteer environmental officer must, on demand by a member of the public, produce the card or certificate referred to in subsection (1).

## **72. Offences**

- (1) A person is guilty of an offence if that person –
  - (a) contravenes any provision of this Act;
  - (b) or any provision of the Acts, Decrees, or Ordinances referred to in Schedule 1 before this Act came into force; or
  - (c) if that person unlawfully and intentionally or negligently –
    - (i) carried out an activity in contravention of the provisions of this
    - (ii) fails to comply with provisions of the Act if compliance is required;
    - (iii) fails to comply with a directive issued in terms of this Act;
    - (iv) carries out any activity without a permit where a permit is required in terms of this Act;
    - (v) contravenes or fails to comply with any standards or requirements that have been prescribed for an activity in terms of this Act;
    - (vi) carries out an activity prohibited in terms of this Act;
    - (vii) contravenes or fails to comply with a condition or requirement of a permit or of an integrated permit contemplated in in this Act;
    - (viii) fails to submit a report required by this Act;

- (ix) contravenes or fails to comply with a condition subject to which exemption from a provision of this Act was granted in terms of this Act;;
  - (x) knowingly supplies false or misleading information to an environmental officer;
  - (xi) hinders or interferes with an environmental officer in the execution of that officer's official duties;
  - (xii) pretends to be or passes off as being an environmental officer, or the interpreter or assistant of such an officer;
  - (xiii) fails to comply with a request of an environmental officer;
  - (xiv) fails to comply with a notice issued in terms of this Act; or
  - (xv) fails to provide the information contemplated in this Act.
- (2) A person who is convicted of an offence in terms of this Act and who persists after conviction in the act or omission which constituted the offence is guilty of a continuing offence.

### **73. Penalties**

- (1) A person convicted of an offence in terms of this Act is liable to a fine not exceeding R100 000 000 or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment, and to a fine not exceeding three times the commercial value of anything in respect of which the offence was committed, in addition to any other penalty or award that may be imposed or made in terms of this Act.
- (2) A fine contemplated in subsections (1) must be determined with due consideration of –
- (a) the severity of the offence in terms of its impact, or potential impact, on health, well-being, safety and the environment; and

- (b) the monetary or other benefits which accrued to the convicted person through the commission of the offence.
- (3) In the event of a conviction in terms of this Act the court may order that any damage to the environment resulting from the offence be repaired by the person so convicted, to the satisfaction of the MEC or Department.
- (4) In the event of a conviction in terms of this Act the court may order that any building or infrastructure erected unlawfully must be demolished and the environment be rehabilitated to the satisfaction of the MEC or Department.
- (5) If within a period of 30 days after conviction or such longer period as the court may determine at the time of conviction, an order in terms of subsection (3) or (4) is not being complied with, the MEC or Department may, by instruction of the court, itself take the necessary steps to repair the damage and recover the cost thereof from the person so convicted.

#### **74. Awards of part of fine recovered to informants**

- (1) A court which imposes a fine for an offence in terms of this Act may order that a sum of not more than one-fourth of the fine be paid to the person whose evidence led to the conviction or who assisted in bringing the offender to justice.
- (2) A person in the service of an organ of state or engaged in the implementation of this Act is not entitled to such an award.

#### **75. Cancellation of permits**

- (1) The court convicting a person of an offence in terms of this Act may –
  - (a) withdraw any permit or other authorisation issued in terms of this Act to that person; and
  - (b) disqualify that person from obtaining a permit or other authorisation for a period not exceeding five years.

- (2) If a court exercises a power in terms of subsection (1), it may issue an order that all authorities that are authorised to issue permits or other authorisations in terms of environmental legislation be notified of any disqualification in terms of subsection (1).

## **76. Forfeiture of Items**

- (1) The court convicting a person of an offence in terms of this Act may declare any item including but not limited to any specimen, container, vehicle, vessel, aircraft or document that was used for the purpose of or in connection with the commission of the offence and which was seized under the provisions of this Act, to be forfeited to the Department or State.
- (2) The provisions of section 35 of the Criminal Procedure Act apply to the forfeiture of any item in terms of subsection (1), subject to such modifications as the context may require.

## **77. Admission of guilt fines**

- (1) The MEC may by regulation specify offences in terms of this Act in respect of which alleged offenders may pay an admission of guilt fine instead of being tried by a court for the offence.
- (2) A provincial environmental officer who has reason to believe that a person has committed an offence specified in terms of subsection (1) may issue to the alleged offender a written notice referred to in section 56 of the Criminal Procedure Act.
- (3) The provisions of sections 56, 57 and 57A of the Criminal Procedure Act apply subject to such modifications as the context may require, to written notices and admission of guilt fines referred to in this section.

## **78. Treatment of seized live specimens**

Pending the institution of any criminal proceedings in terms of this Act or the resolution of such proceedings, a live specimen that has been seized in terms of this



Act must be released, destroyed, sold or deposited with a suitable institution, rescue centre or facility which is able and willing to house and properly care for it

## CHAPTER 8

### GENERAL MATTERS

#### 79. Delegations

- (1) The MEC may delegate a power or duty vested in him or her in terms of this Act to a relevant official of the Department, but the MEC may not delegate the power to make regulations or publish notices in the gazette
- (2) A delegation or assignment to an official under subsection (1) –
  - (a) must be in writing;
  - (b) is subject to such limitations and conditions as the MEC may impose;
  - (c) may either be to a specific individual or to the holder of a specific post in the Department;
  - (d) may authorize that official to sub-delegate or further delegate, in writing, the power or duty concerned to another official in the Department, or to the holder of a specific post in the Department;
  - (e) does not prevent the exercise of that power or the performance of that duty by the MEC; and
  - (f) does not divest the MEC of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

#### 80. Appeals

- (1) Any person may appeal to an MEC against a decision taken by any person acting under a power delegated by that MEC under this Act.
- (2) An appeal under subsection (1) must be noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee.
- (3) The MEC may consider and decide an appeal or appoint an appeal panel to consider and advise the MEC on the appeal.
- (4) The MEC may, after considering such an appeal, confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate decision,

including a decision that the prescribed fee paid by the appellant, or any part thereof, be refunded.

- (5) An appeal under this section suspends an environmental authorisation, exemption, directive, or any other decision made in terms of this Act or any other specific environmental management Act, or any provision or condition attached thereto.

### **81. Camping sites, picnic areas and hiking trails.**

The MEC may make Regulations for the establishment and management of camping sites, picnic areas and hiking trails for any conservancy, biosphere reserve or any area established or managed in terms of this Act.

### **82. Regulations by MEC**

- (1) The MEC may make Regulations dealing with any matter which under this Act which is necessary or expedient to be prescribed or dealt with by Regulation.
- (2) Before publishing any Regulation contemplated in subsection (1), the MEC must publish the draft Regulations in the *Gazette* for public comment.

### **83. Repeal and amendment of laws and savings**

- (1) The laws set out in the Table in Schedule 1 are hereby repealed to the extent set out in the third column of the Table, subject to the provisions of subsections (2), (3) and (4) of this section and section 84.
- (2) Any proclamation, regulation, rule, notice, authority, certificate, direction, declaration or appointment that was lawfully proclaimed, made, issued, given, declared or granted, and any other act done under any provision of a law repealed by this Act is, subject to the provisions of subsection (3), deemed to have been proclaimed, made, issued, given, declared or granted under the corresponding provisions of this Act.
- (3) Anything lawfully done under a provision repealed by subsection (1) remains valid until anything done under this Act overrides it.

- (4) Notwithstanding the repeal of any law in terms of subsection (1), those laws for the purpose of the disposal of any investigation, prosecution or any criminal or other legal proceedings, remain in force as if such laws had not been repealed.
- (5) An investigation or prosecution or other legal proceedings in respect of any conduct which would've constituted as an offence under the laws repealed under subsection (1) which occurred after the commencement of that law, but before the commencement of this act, may be concluded, instituted and continued as if this act had not been passed, provided that the court may apply the powers set out in sections (offences, penalties sections)

#### **84. Transitional provisions**

- (1) The provisions of : S1,2,3,6,7,the entire Chapter 7 and S sections 81 and 82. Of the Environmental Conservation Decree, 1992 (Decree No. 9 of 1992) of the former Republic of Transkei and Sections 1,2,4,5,6, 41, 42, 43, 48,66,68,72 and 73 of the Nature Conservation Act, 1987 (Act No. 10 of 1987) of the former Republic of Ciskei, shall remain in force , despite their repeal by section 82 until such time as the MEC publishes a date of the effect of the repeal by notice in the Gazette and the relevant legislation has come into effect.
- (2) The coastal conservation area established by sections 39(1) and (2)1)and 40 of the Environmental Conservation Decree, 1992 (Decree No. 9 of 1992) of the former Republic of Transkei and sections 42(1),(2) and 66 of the Nature Conservation Act, 1987 (Act No. 10 of 1987) of the former Republic of Ciskei, Ordinance No. 19 of 1957 (Cape Provincial Administration), Ordinance No. 3 of 1982 and Proclamation No. R 6 of 1978 remain in force, despite their repeal by section 83, until such time as the MEC publishes a date of the effect of the repeal by notice in the *Gazette*.
- (3) All permits or authorisations issued in terms of Decree, Acts or Ordinances referred to in subsection (1) and in Schedule 1 will remain until, where necessary, revoked, amended or suspended in terms of this Act and suitable replacement regulations have been gazetted.

**85. Short title and commencement**

- (1) This Act is called the Eastern Cape Environmental Management Act, 2019 , and will come into operation on a date determined by the Premier by proclamation in the Gazette.
- (2) The Premier may determine different dates for commencement of different sections or chapters of this Act.

**SCHEDULE 1****Laws repealed or amended**

<b>No. and year of Act, Decree of Ordinance</b>	<b>Short title</b>	<b>Extent of repeal or amendment</b>
Ordinance 19 of 1974 (Cape Provincial Administration)	Nature and Environmental Conservation Ordinance (Cape Provincial Administration)	The whole insofar as it applies to the Province
Ordinance 28 of 1957 (Cape Provincial Administration)	Problem Animal Control Ordinance (Cape Provincial Administration)	The whole insofar as it applies to the Province
Act No. 10 of 1987 (Ciskei)	Nature Conservation Act (Ciskei)	The whole, subject to section 83(1) and 83(2)
Decree No. 9 of 1992 (Transkei)	Environment Conservation Decree	The whole, subject to section 83(1) and 83(2)
Ordinance No. 19 of 1957 (Cape Provincial Administration)	Damage-causing Animal Control Ordinance (Cape Provincial Administration)	The whole insofar as it applies to the Province
Ordinance No. 3 of 1982	Nature Reserves Validation Ordinance (Cape Provincial Administration)	The whole insofar as it applies to the Province
Proclamation No. R 6 of 1978	Nature Conservation in Black Areas Proclamation	The whole insofar as it applies to the Province
Act No. 63 of 1970	The Mountain Catchment Areas Short Act, 1970.	The whole insofar as it applies to the Province

## **EXPLANATORY MEMORANDUM**

### **PART I**

#### ***(OBJECTS AND PRINCIPLES OF THE BILL)***

##### **1. OBJECTS OF THE BILL**

In 1994 the Province inherited a fragmented legislative and administrative system in respect of the environment management.

The current provincial environmental regulatory mechanism applicable is as follows:-

- Environmental Conservation Decree (Transkei Decree) No 9 of 1992;
- Cape Nature and Environmental Conservation Ordinance 19 of 1974.;
- Ciskei Nature Conservation Act 10 of 1987; and
- All the applicable National Legislation and Regulations.

Apart from being fragmented, this legislation was based on outdated approaches to environmental management and in many instances conflicted with both the Constitution and recent policy approaches to the management of the environment.

The objects of this this Bill are to provide for environmental management governance in accordance with the current values and principles of a democratic South Africa and to transform the legislative dispensation for environmental management in the Province.

##### **2. THE REASONS FOR AND EFFECT OF THE BILL**

The existing environmental management legislative environment consists of older order legislation and National Acts and it is incumbent to develop a Provincial Act aligned to the National Acts without the influences of the old order legislation.

##### **3. THE POLICY CONTEXT OF THE BILL AND HOW THE BILL RELATES TO ITS POLICY OBJECTIVES**

Section 24 of the Constitution provides that everyone has the right-

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-
  - (i) prevent pollution and ecological degradation;
  - (ii) promote conservation; and
  - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic *and social development*.

This Bill ensures that the government of the Province of the Eastern Cape shall manage the environment in such a way the above basic right of every citizen can be realised.

The Bill also ensures that the national norms and standards are captured and present or future conflict between national and provincial legislations avoided.

#### **4. THE SOCIAL AND ECONOMIC IMPACT OF THE BILL**

The Bill shall ensure that an adverse impact on the environment is limited and that the rights of all that live in the province with regard to the environment are protected.

#### **5. COMMENTS FROM STAKEHOLDERS AND THE PUBLIC AND DISCOUNTED IN THE DRAFTING PROCESS.**

This Bill has been published for comment and if comments are received it shall be made available before the Legislature's consideration of the Bill.

### **PART II**

#### **(CLAUSE-BY-CLAUSE EXPLANATION OF THE CONTENT OF THE BILL)**

- CLAUSE 1:** Provides for the definitions used in the Bill.
- CLAUSE 2:** provides for the objects of the Bill.
- CLAUSE 3:** Describes how the Bill must be applied.
- CLAUSE 4:** Provides for the establishment of conservancies.
- CLAUSE 5:** Provides for the withdrawal of status as a conservancy and exclusion of land from such areas in certain circumstances.

- CLAUSE 6:** Provides for the listing of provincially protected species.
- CLAUSE 7:** Provides for the restricted activities involving provincially protected and endangered species.
- CLAUSE 8:** Provides for general powers in respect of species.
- CLAUSE 9:** Provides for the management of flora not listed as protected or endangered.
- CLAUSE 10:** Provides for a permit system.
- CLAUSE 11:** Sets out the purpose of Chapter 4 of the Bill.
- CLAUSE 12:** Provides for the requests for Preliminary approval to establish biosphere reserve.
- CLAUSE 13:** Provides for the application for a UNESCO designation as biosphere reserve
- CLAUSE 14:** Provides for the management of biosphere reserve.
- CLAUSE 15:** Requires a management plan for a biosphere reserve.
- CLAUSE 16:** Provides for an application for extension of biosphere reserve.
- CLAUSE 17:** Provides for the funding of biosphere reserve.
- CLAUSE 18:** Empowers the MEC to prescribe management principles for biosphere reserves.
- CLAUSE 19:** Provides for the transitional provisions for existing biosphere reserves.
- CLAUSE 20:** Provides for the application and issuing of a certificate of adequate enclosure.
- CLAUSE 21:** Details the rights of holders of certificate of adequate enclosure.
- CLAUSE 22:** Details the obligations of holders of certificate of adequate enclosure.
- CLAUSE 23:** Provides for the transfer of hunting and other rights of a holder of a certificate of adequate enclosure.
- CLAUSE 24:** Provides that the certificate of adequate enclosure lapses on transfer or lease of land.
- CLAUSE 25:** Prohibits the keeping of wild animals in captivity.
- CLAUSE 26:** Prohibits the use of certain fire-arms to hunt certain wild animals.
- CLAUSE 27:** Details prohibitions involving alien wild animals.
- CLAUSE 28:** Provides for the general prohibition on the laying of poison.
- CLAUSE 29:** Provides for the MEC's general powers in respect of wild animals.



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- CLAUSE 30:** Prohibits the alteration and removal of fences and interference with fences without a permit.
- CLAUSE 31:** Provides that the MEC may identify hunting activities.
- CLAUSE 32:** Provides that the MEC may prescribe requirements and conditions for professional hunting.
- CLAUSE 33:** Provides for permissible hunting activities with and without a permit.
- CLAUSE 34:** Prohibits the hunting of wild animals on land belonging to another person without permission.
- CLAUSE 35:** Provides for the requirements for the donation or sale of wild animal or carcass thereof.
- CLAUSE 36:** Provides for the requirements for the possession of wild animal or carcass thereof.
- CLAUSE 37:** Provides for the documents relating to permission to hunt or to the donation of wild animals or the carcasses thereof to be retained for certain period.
- CLAUSE 38:** Provides for the requirements to transport wild animals.
- CLAUSE 39:** Empowers the MEC to prescribe prohibited hunting methods.
- CLAUSE 40:** Provides for the identification of damage-causing animals .
- CLAUSE 41:** Provides for the general powers in respect of damage-causing animals.
- CLAUSE 42:** Provides that the Department may cause certain wild animals to be hunted.
- CLAUSE 43:** Empowers the MEC to determine hunting seasons for wild animals and limits.
- CLAUSE 44:** Empowers the MEC to determine fishing seasons, daily bag limits and undersized fish in freshwater .
- CLAUSE 45:** Provides for the requirements to be in possession of endangered flora.
- CLAUSE 46:** Prohibits the picking of certain flora.
- CLAUSE 47:** Prohibits the sale and purchase of protected flora without a license.
- CLAUSE 48:** Provides for the registration and licensing of flora growers and flora sellers.
- CLAUSE 49:** Regulates the sale of protected flora on the premises of registered flora growers and sellers.
- CLAUSE 50:** Provides for the setting aside of places for sale of indigenous unprotected flora.

- CLAUSE 51:** Provides for the sale of indigenous unprotected flora by owner of land.
- CLAUSE 52:** Provides for the requirements for the export and importation of flora.
- CLAUSE 53:** Provides for the requirements for the donation of flora.
- CLAUSE 54:** Provides for the requirements for the possession of flora.
- CLAUSE 55:** Provides for the designation of environmental management inspectors.
- CLAUSE 56:** Provides for the designation of provincial environmental officers.
- CLAUSE 57:** Provides for the mandates of provincial environmental officers.
- CLAUSE 58:** Provides for the issuing of proof of designation as provincial environmental officer.
- CLAUSE 59:** Provides for the functions of provincial environmental officers .
- CLAUSE 60:** Provides for the general powers of provincial environmental officers.
- CLAUSE 61:** Provides for the seizure of items .
- CLAUSE 62:** Provides for the powers to stop, enter and search.
- CLAUSE 63:** Provides for issuing of notices by provincial environmental officers.
- CLAUSE 64:** Provides for the power to issue notices.
- CLAUSE 65:** Provides for the procedure of objections to notices.
- CLAUSE 66:** Details the consequences of failure to comply with notices.
- CLAUSE 67:** Provides for the duty to produce documents at request.
- CLAUSE 68:** Provides for the powers of provincial environmental officers to conduct inspections.
- CLAUSE 69:** Provides for the appointment of volunteer environmental officers.
- CLAUSE 70:** Provides for the mandates and powers of volunteer environmental officers.
- CLAUSE 71:** Provides for the issuing of proof of designation as volunteer environmental officer.
- CLAUSE 72:** Provides for the offences in terms of the Bill.
- CLAUSE 73:** Provides for the penalties in terms of the Bill.
- CLAUSE 74:** Provides for the awards of part of fine recovered to informants.
- CLAUSE 75:** Provides for the cancellation of permits .
- CLAUSE 76:** Provides for the forfeiture of Items.

- CLAUSE 77:** Provides for the admission of guilt fines.
- CLAUSE 78:** Provides for the treatment of seized live specimens.
- CLAUSE 79:** Provides for delegations of powers and duties.
- CLAUSE 80:** Provides for appeals to the MEC.
- CLAUSE 81:** Provides for camping sites, picnic areas and hiking trails.
- CLAUSE 82:** Empowers the MEC to make Regulations.
- CLAUSE 83:** Provides for the repeal and amendment of laws and savings.
- CLAUSE 84:** Provides for transitional provisions.
- CLAUSE 85:** Details the short title and commencement of the Act.

This Bill falls within the ambit of Schedule 4 of the Constitution.