Government Gazette

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THE PRESIDENCY

No. 181 18 February 2004

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:–

No. 57 of 2003: National Environmental Management: Protected Areas Act, 2003.

AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

***** Areas marked with five asterisks indicate omitted provisions which will be inserted by way of an Amendment Bill. That Bill will be dealt with in terms of the procedure prescribed by section 75 of the Constitution — as explained in paragraph 1 of the Memorandum on the Objects of the Bill.

(English text signed by the President.)
(Assented to 11 February 2004.)

ACT

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

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

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CHAPTER 1

INTERPRETATION, OBJECTIVES AND APPLICATION OF ACT

Definitions

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

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

"Biodiversity Act" means the National Environmental Management: Biodiversity Act, 2003;

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

"biological resource" means any resource consisting of—

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

(b) a derivative of such an animal, plant or other organism, as defined in section 1 of the Biodiversity Act; or

(c) any genetic material of such animal, plant or other organism, as defined in section 1 of the Biodiversity Act;

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"declare", when used in relation to—

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

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

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

"designate", when used in relation to—

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

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

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

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

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

"environmental goods and services" includes—

(a) benefits obtained from ecosystems such as food, fuel and fibre and genetic resources;

(b) benefits from the regulation of ecosystem processes such as climate regulation, disease and flood control and detoxification; and

(c) cultural non-material benefits obtained from ecosystems such as benefits of a spiritual, recreational, aesthetic, inspirational, educational, community and symbolic nature;

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

(a) the Minister, means the *Government Gazette*; and
(b) the MEC, means the *Provincial Gazette* of that province;
"habitat", in relation to a specific species, means a place or type of site where such species naturally occurs;
"indigenous species", in relation to a specific protected area, means a species that occurs, or has historically occurred, naturally in a free state in nature within that specific protected area, but excludes a species introduced in that protected area as a result of human activity;
"lawful occupier" includes an occupier protected under the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996), or the Extension of Security of Tenure Act, 1997 (Act No. 26 of 1997), if the land regarding which the occupier enjoys such protection falls within a protected area or is proposed to be declared as or included in a protected area;
"local community" means any community of people living or having rights or interests in a distinct geographical area;
"local protected area" means a nature reserve or protected environment managed by a municipality;
"management", in relation to a protected area, includes control, protection, conservation, maintenance and rehabilitation of the protected area with due regard to the use and extraction of biological resources, community-based practices and benefit-sharing activities in the area in a manner consistent with the Biodiversity Act;
"management authority", in relation to a protected area, means the organ of state or other institution or person in which the authority to manage the protected area is vested; *****
"MEC" means the member of the Executive Council of a province in whose portfolio provincial protected areas in the province fall;
"Minister" means the Cabinet member responsible for national environmental management;
"municipality" means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
"National Environmental Management Act" means the National Environmental Management Act, 1998 (Act No. 107 of 1998);
"national environmental management principles" means the principles contained in section 2 of the National Environmental Management Act;
*****
"national protected area" means—
(a) a special nature reserve;
*****
(c) a nature reserve or protected environment—
(i) managed by a national organ of state; or
(ii) which falls under the jurisdiction of the Minister for any other reason;
"nature reserve" means—
(a) an area declared, or regarded as having been declared, in terms of section 23 as a nature reserve; or
(b) an area which before or after the commencement of this Act was or is declared or designated in terms of provincial legislation for a purpose for which that area could in terms of section 23(2) be declared as a nature reserve,
and includes an area declared in terms of section 23(1) as part of an area referred to in paragraph *(a)* or *(b)* above;
"organ of state" has the meaning assigned to it in section 239 of the Constitution;
"prescribe" means prescribe by the Minister by regulation in terms of section 86;
"protected area" means any of the protected areas referred to in section 9;
"protected environment" means—
(a) an area declared, or regarded as having been declared, in terms of section 28 as a protected environment; or

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

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

"provincial protected area" means a nature reserve or protected environment—

(a) managed by a provincial organ of state; or

(b) which falls under the jurisdiction of a province for any other reason;

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

"special nature reserve" means—

(a) an area which was a special nature reserve in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), immediately before the repeal of section 18 of that Act by section 90 of this Act; or

(b) an area declared, or regarded as having been declared, in terms of section 18 as a special nature reserve,

and includes an area declared in terms of section 18 as part of an area referred to in paragraph *(a)* or *(b)* above;

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

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

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"this Act" includes any subordinate legislation;

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

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

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

Objectives of Act

2. The objectives of this Act are—

(a) to provide, within the framework of national legislation, including the National Environmental Management Act, for the declaration and management of protected areas;

(b) to provide for co-operative governance in the declaration and management of protected areas;

(c) to effect a national system of protected areas in South Africa as part of a strategy to manage and conserve its biodiversity;

(d) to provide for a representative network of protected areas on state land, private land and communal land;

(e) to promote sustainable utilisation of protected areas for the benefit of people, in a manner that would preserve the ecological character of such areas; and

(f) to promote participation of local communities in the management of protected areas, where appropriate.

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State trustee of protected areas

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

(a) act as the trustee of protected areas in the Republic; and

(b) implement this Act in partnership with the people to achieve the progressive realisation of those rights.

Application of Act

4. (1) This Act also applies—

(a) in the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948); and

(b) to the exclusive economic zone and continental shelf of the Republic, referred to in sections 7 and 8, respectively, of the Maritime Zones Act, 1994 (Act No. 15 of 1994).

(2) This Act binds all organs of state.

Application of National Environmental Management Act

5. (1) This Act must—

(a) be interpreted and applied in accordance with the national environmental management principles; and

(b) be read with the applicable provisions of the National Environmental Management Act.

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

Application of Biodiversity Act in protected areas

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

Conflicts with other legislation

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

(a) other national legislation, the section of this Act prevails if the conflict specifically concerns the management or development of protected areas;

(b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and

(c) a municipal by-law, the section of this Act prevails.

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

(a) an Act of Parliament, the Act of Parliament prevails;

(b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and

(c) a municipal by-law, the subordinate legislation issued in terms of this Act prevails.

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

Status of provincial legislation on provincial and local protected areas

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

(a) regulates matters not covered by this Act;

(b) is consistent with this Act; or

(c) prevails over this Act in terms of section 146 of the Constitution.

CHAPTER 2

SYSTEM OF PROTECTED AREAS IN SOUTH AFRICA

Kinds of protected areas

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

(a) special nature reserves, nature reserves (including wilderness areas) and protected environments;

(b) world heritage sites;

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(d) specially protected forest areas, forest nature reserves and forest wilderness areas declared in terms of the National Forests Act, 1998 (Act No. 84 of 1998); and

(e) mountain catchment areas declared in terms of the Mountain Catchment Areas Act, 1970 (Act No. 63 of 1970).

Register of Protected Areas

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

(2) The Register must—

(a) contain a list of all protected areas;

(b) indicate the kind of protected area in each case; and

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

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

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

Norms and standards

11. (1) The Minister may prescribe—

(a) norms and standards for the achievement of any of the objectives of this Act, including for the management and development of protected areas referred to in section 9*(a)*, *(b)* and *(c)*;

(b) indicators to measure compliance with those norms and standards; and

(c) the requirement for the management authorities of those protected areas to report on these indicators to the Minister.

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

(a) the MEC of each province in which those norms and standards will apply; and

(b) the relevant local government.

(3) Norms and standards may apply—

(a) nationwide;

(b) in a specific protected area only;

(c) to a specific management authority or category of management authorities only.

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

(a) different areas; or

(b) different management authorities or categories of management authorities.

Provincial protected areas

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

World heritage sites

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

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

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

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

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

Mountain catchment areas

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

CHAPTER 3

DECLARATION OF PROTECTED AREAS

Purpose of protected areas

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

(a) to protect ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes in a system of protected areas;

(b) to preserve the ecological integrity of those areas;

(c) to conserve biodiversity in those areas;

(d) to protect areas representative of all ecosystems, habitats and species naturally occurring in South Africa;

(e) to protect South Africa's threatened or rare species;

(f) to protect an area which is vulnerable or ecologically sensitive;

(g) to assist in ensuring the sustained supply of environmental goods and services;

(h) to provide for the sustainable use of natural and biological resources;

(i) to create or augment destinations for nature-based tourism;

(j) to manage the interrelationship between natural environmental biodiversity, human settlement and economic development;

(k) generally, to contribute to human, social, cultural, spiritual and economic development; or

(l) to rehabilitate and restore degraded ecosystems and promote the recovery of endangered and vulnerable species.

Part 1

Special nature reserves

Declaration of special nature reserves

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

(a) declare an area specified in the notice—

(i) as a special nature reserve; or

(ii) as part of an existing special nature reserve; and

(b) assign a name to such special nature reserve.

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

(a) to protect highly sensitive, outstanding ecosystems, species or geological or physical features in the area; and

(b) to make the area primarily available for scientific research or environmental monitoring.

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

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

Withdrawal of declaration or exclusion of part of special nature reserve

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

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Part 3

Nature reserves

Declaration of nature reserve

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

(a) declare an area specified in the notice—

(i) as a nature reserve; or

(ii) as part of an existing nature reserve; and

(b) assign a name to the nature reserve.

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

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(b) to protect the area if the area—

(i) has significant natural features or biodiversity;

(ii) is of scientific, cultural, historical or archaeological interest; or

(iii) is in need of long-term protection for the maintenance of its biodiversity or for the provision of environmental goods and services;

(c) to provide for a sustainable flow of natural products and services to meet the needs of a local community;

(d) to enable the continuation of such traditional consumptive uses as are sustainable; or

(e) to provide for nature-based recreation and tourism opportunities.

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

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

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

Withdrawal of declaration or exclusion of part of nature reserve

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

(a) in the case of a declaration by the Minister, by resolution of the National Assembly;

(b) in the case of a declaration by an MEC, by resolution of the legislature of the relevant province; or

(c) in terms of subsection (2).

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

Designation of nature reserve as specific type

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

Designation of nature reserve as wilderness area

26. (1) The Minister or MEC may by notice in the *Gazette* designate a nature reserve or part thereof as a wilderness area.

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

(a) to protect and maintain the natural character of the environment, biodiversity, associated natural and cultural resources and the provision of environmental goods and services;

(b) to provide outstanding opportunities for solitude;

(c) to control access which, if allowed, may only be by non-mechanised means.

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

Notice to be given to Minister of provincial declarations

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

Part 4

Protected environments

Declaration of protected environment

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

(a) declare any area specified in the notice—

(i) as a protected environment; or

(ii) as part of an existing protected environment; and

(b) assign a name to the protected environment.

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

(a) to regulate the area as a buffer zone for the protection of a special nature reserve, world heritage site or nature reserve;

(b) to enable owners of land to take collective action to conserve biodiversity on their land and to seek legal recognition therefor;

(c) to protect the area if the area is sensitive to development due to its—

(i) biological diversity;

(ii) natural characteristics;

(iii) scientific, cultural, historical, archeological or geological value;

(iv) scenic and landscape value; or

(v) provision of environmental goods and services;

(d) to protect a specific ecosystem outside of a special nature reserve, world heritage site or nature reserve;

(e) to ensure that the use of natural resources in the area is sustainable; or

(f) to control change in land use in the area if the area is earmarked for declaration as, or inclusion in, a nature reserve.

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

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

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

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

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

Withdrawal of declaration or exclusion of part of protected environment

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

(a) withdraw the declaration, issued under section 28, of an area as a protected environment or as part of an existing protected environment; or

(b) exclude any part of a protected environment from the area.

Notice to be given to Minister of provincial declarations

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

Part 5

Consultation process

Consultation by Minister

31. Subject to section 34, before issuing a notice under section 18(1), 19, *****, 23(1), 24(1), 26(1), 28(1) or 29, the Minister may follow such consultative process as may be appropriate in the circumstances, but must—

(a) consult all national organs of state affected by the proposed notice;

(b) in accordance with the principles of co-operative government as set out in Chapter 3 of the Constitution, consult—

(i) the MEC of the province concerned; and

(ii) the municipality in which the area concerned is situated;

(c) in the prescribed manner, consult any lawful occupier with a right in land in any part of the area affected; and

(d) follow a process of public participation in accordance with section 33.

Consultation by MEC

32. Subject to section 34, before issuing a notice under section 23(1), 26(1), 28(1) or 29, the MEC may follow such consultative process as may be appropriate in the circumstances, but must—

(a) consult in accordance with the principles of co-operative government as set out in Chapter 3 of the Constitution—

(i) the Minister and other national organs of state affected by the proposed notice; and

(ii) the municipality in which the area concerned is situated;

(b) consult all provincial organs of state affected by any proposed notice;

(c) in the prescribed manner, consult any lawful occupier with a right in land in any part of the area affected; and

(d) follow a process of public participation in accordance with section 33.

Public participation

33. (1) The Minister or the MEC must—

(a) publish the intention to issue a notice contemplated in section 31 or 32, in the *Gazette* and in at least two national newspapers distributed in the area in which the affected area is situated; and

(b) if it is proposed to declare any private land as a protected environment, send a copy of the proposed notice by registered post to the last known postal address of each owner of land within the area to be declared, and inform in an appropriate manner any other person whose rights in such land may materially and adversely be affected by such declaration.

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

(a) invite members of the public and the persons referred to in subsection (1)*(b)*, if applicable, to submit to the Minister or MEC written representations on or objections to the proposed notice within 60 days from the date of publication in the *Gazette*; and

(b) contain sufficient information to enable members of the public to submit meaningful representations or objections, and must include a clear indication of the area that will be affected by the declaration.

(3) The Minister or MEC may in appropriate circumstances allow any interested person to present oral representations or objections to the Minister or the MEC, or to a person designated by the Minister or MEC, but such representations or objections must be allowed where the proposed notice will affect the rights or interests of a local community.

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

Affected organs of state, communities and beneficiaries

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

(a) land owned by the State, the Minister may make that declaration only—

(i) with the concurrence of the Cabinet member responsible for the administration of that land, if that land is administered by the national executive; or

(ii) after consultation with the provincial executive, if that land is administered by that provincial executive;

(b) land which is held in trust by the State or an organ of state for a community or other beneficiary, the Minister may declare that area only with the concurrence of the trustee and the community involved.

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

(a) land owned by the State, the Minister or the MEC may make that declaration only with the concurrence of the Cabinet member or MEC responsible for the administration of that land; or

(b) land which is held in trust by the State or an organ of state for a community or other beneficiary, the Minister or the MEC may declare that area only with the concurrence of the trustee and the community involved.

Part 6

General

Initiation of declaration

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

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

(3) *(a)* The terms of any written agreement entered into between the Minister or MEC and the owner of private land in terms of section 18(3), ***** or 23(3) are binding on the successors in title of such owner.

(b) The terms of agreement must be recorded in a notarial deed and registered against the title deeds of the property.

Endorsement by Registrar of Deeds

36. (1) The Minister or the MEC, as the case may be, must in writing notify the Registrar of Deeds whenever an area is declared as a special nature reserve, nature reserve or protected environment, or as part thereof, or whenever a declaration in respect thereof is withdrawn or altered.

(2) The notification must include a description of the land involved and the terms and conditions of any notarial deed.

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

CHAPTER 4

MANAGEMENT OF PROTECTED AREAS

Application of Chapter

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

Part 1

Management authorities and management plans

Management authorities

38. (1) The Minister, in writing—

(a) must assign the management of a special nature reserve or a nature reserve to a suitable person, organisation or organ of state; and

(b) may assign the management of a protected environment to a suitable person, organization or organ of state, provided that the owner and lawful occupier have requested or consented to such assignment, and the Minister has given the owner and lawful occupier notice in writing in terms of section 33.

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(2) The MEC, in writing—

(a) must assign the management of a nature reserve to a suitable person, organisation or organ of state; and

(b) may assign the management of a protected environment to a suitable person, organisation or organ of state, provided that the owner and lawful occupier have requested or consented to such assignment, and the MEC has given the owner and lawful occupier notice in writing in terms of section 33.

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

(4) Marine and terrestrial protected areas with common boundaries must be managed as an integrated protected area by a single management authority.

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

Co-management of protected area

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

(i) the co-management of the area by the parties; or

(ii) the regulation of human activities that affect the environment in the area.

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

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

(a) the delegation of powers by the management authority to the other party to the agreement;

(b) the apportionment of any income generated from the management of the protected area or any other form of benefit sharing between the parties;

(c) the use of biological resources in the area;

(d) access to the area;

(e) occupation of the protected area or portions thereof;

(f) development of economic opportunities within and adjacent to the protected area;

(g) development of local management capacity and knowledge exchange;

(h) financial and other support to ensure effective administration and implementation of the co-management agreement; and

(i) any other relevant matter.

(3) A co-management agreement must—

(a) provide for the harmonisation and integration of the management of cultural heritage resources in the protected area by the management authority; and

(b) be consistent with the other provisions of this Act.

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

(5) Where the Minister or MEC in terms of subsection (4) cancels a co-management agreement forming a material term of an agreement contemplated in section *****, 23(3) or 28(3), the withdrawal of the declaration of the protected area or exclusion contemplated in section *****, 24(2) or 29, respectively, apply.

Part 2

Monitoring and supervision

Performance indicators

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

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

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

(a) monitor the area against the indicators set in terms of subsection (1) or (2); and

(b) annually report its findings to the Minister or MEC, as the case may be, or a person designated by the Minister or MEC.

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

Termination of mandate to manage protected area

44. (1) If the management authority of a protected area is not performing its duties in terms of the management plan for the area, or is underperforming with regard to the management of the area or the biodiversity of the area, the Minister or the MEC, as the case may be, must—

(a) notify the management authority in writing of the failure to perform its duties or of the underperformance; and

(b) direct the management authority to take corrective steps set out in the notice within a specified time.

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

(a) terminate that management authority's mandate to manage the protected area; and

(b) assign another organ of state as the management authority of the area.

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

Part 3

Access to protected areas

Access to special nature reserve

45. (1) No person may—

(a) enter a special nature reserve;

(b) reside in a special nature reserve; or

(c) perform any activity in a special nature reserve.

(2) Subsection (1) does not apply to—

(a) an official of the Department or another organ of state designated by the Minister in writing to monitor—

(i) the state of conservation of the reserve or of the biodiversity in the reserve; or

(ii) the implementation of the management plan and this Act;

(b) any police, customs or excise officer entering the area in the performance of official duties; or

(c) a person acting in terms of an exemption granted under subsection (3).

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

(a) a scientist to perform scientific work;

(b) a person to perform an activity related to the conservation of the reserve or of the biodiversity in the reserve;

(c) a person recording a news event that occurred in the reserve or an educational or scientific programme;

(d) an official of the management authority to perform official duties; or

(e) an official of an organ of state to perform official duties.

Access to nature reserve and world heritage site

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

(2) Subsection (1) does not apply to—

(a) an official of the Department or of another organ of state designated by the Minister or, in the case of a provincial or local nature reserve, a person designated by the MEC, to monitor—

(i) the state of conservation of the reserve or site or of the biodiversity in the reserve or site; or

(ii) the implementation of the management plan and this Act;

(b) an official of the management authority to perform official duties in the reserve or site;

(c) any police, customs or excise officer entering the reserve or site in the performance of official duties;

(d) the holder of a vested right to enter the reserve or site; or

(e) a person travelling through the reserve or site by rail, as long as that person stays on the train or within the precincts of any railway station.

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

(a) reconsider the matter; and

(b) either confirm the refusal or grant the permission.

Use of aircraft in special nature reserve or world heritage site

47. (1) A special nature reserve or world heritage site includes the air space above the reserve or site to a level of 2 500 feet above the highest point of the reserve or site.

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

(a) on or from a landing field designated by the management authority of that special nature reserve or world heritage site; and

(b) with the permission of, and on conditions determined by, the management authority.

(3) No person may fly over a special nature reserve or world heritage site at an altitude of less than 2500 feet, except as may be necessary for the purpose of subsection (2).

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

(a) in an emergency; or

(b) to a person acting on the instructions of the management authority.

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

Part 4

Restrictions

Prospecting and mining activities in protected area

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

(a) in a special nature reserve or nature reserve;

(b) in a protected environment without the written permission of the Minister and the Cabinet member responsible for minerals and energy affairs; or

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

(2) The Minister, after consultation with the Cabinet member responsible for mineral and energy affairs, must review all mining activities which were lawfully conducted in areas indicated in subsection (1)*(a)*, *(b)* and *(c)* immediately before this section took effect.

(3) The Minister, after consultation with the Cabinet member responsible for mineral and energy affairs, may, in relation to the activities contemplated in subsection (2), as well as in relation to mining activities conducted in areas contemplated in that subsection which were declared as such after the commencement of this section, prescribe conditions under which those activities may continue in order to reduce or eliminate the impact of those activities on the environment or for the environmental protection of the area concerned.

(4) When applying this section, the Minister must take into account the interests of local communities and the environmental principles referred to in section 2 of the National Environmental Management Act, 1998.

Regulation or restriction of activities in protected areas

49. Activities in protected areas are regulated or restricted to the extent prescribed by—

(a) regulations made under section 86;

(b) regulations made under section 87, in the case of provincial and local protected areas;

(c) by-laws made by the relevant municipality, in the case of local protected areas; and

(d) internal rules made by the managing authority of the area under section 52.

Commercial and community activities in nature reserve and world heritage site

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

(a) carry out or allow—

(i) a commercial activity in the reserve or site; or

(ii) an activity in the reserve or site aimed at raising revenue;

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

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

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

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

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

(b) compliance with—

(i) any agreement entered into in terms of subsection (1)*(b)*; and

(ii) any norms and standards set in terms of subsection (1)*(c)*.

(4) Any activity carried out lawfully in terms of any agreement which exists when this section takes effect may continue until the date of termination of such agreement, provided that the agreement may not be extended or varied so as to expire after the original intended expiry date without the consent of the Minister.

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

Regulation or restriction of development and other activities in protected environment

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

(a) development that may be inappropriate for the area given the purpose for which the area was declared; and

(b) the carrying out of other activities that may impede such purpose.

Internal rules

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

(2) Rules made under subsection (1)—

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

(b) bind all persons in the area, including visitors; and

(c) may, as a condition for entry, provide for the imposition of fines for breaches of the rules.

Certain rights and entitlements to be respected

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

(a) the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); and

(b) the provision of essential services and the acquisition of servitudes for that purpose.

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

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CHAPTER 6

ACQUISITION OF RIGHTS IN OR TO LAND

Acquisition of private land by State

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

(a) purchasing the land or right;

(b) exchanging the land or right for other land or rights; or

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

(2) The MEC, acting with the approval of the Executive Council of the province, may acquire private land, or any right in or to private land, which has been or is proposed to be declared as or included in a provincial protected area, by—

(a) purchasing the land or right;

(b) exchanging the land or right for other land or rights; or

(c) expropriating the land or right in accordance with the Expropriation Act, 1975, and subject to section 25 of the Constitution, if no agreement is reached with the owner of the land or the holder of the right in or to the land.

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

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

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

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

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Mineral right

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

Financing

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

(a) money appropriated for this purpose by Parliament; or

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CHAPTER 7

ADMINISTRATION OF ACT

Regulations by Minister

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

(a) regarding any matter that may or must be prescribed in terms of this Act;

(b) conferring additional powers or assigning additional duties to management authorities;

(c) regulating—

(i) biodiversity management and conservation in protected areas;

(ii) the use of biological resources in protected areas;

(iii) access to protected areas;

(iv) tourism in protected areas where tourism is allowed;

(v) activities that may be carried out in terms of section 50;

(vi) the use of land and water in protected areas;

(vii) community-based natural resource utilisation; or

(viii) consultation activities which are required in terms of this Act.

(d) prohibiting or restricting—

(i) activities that have an adverse effect in protected areas;

(ii) the use of biological resources in protected areas;

(iii) land uses in protected areas that are harmful to the environment;

(e) providing for the establishment of advisory committees for protected areas, the appointment of members and their role;

(f) setting norms and standards for the proper performance of any function contemplated in this Act, and the monitoring and enforcing of such norms and standards;

(g) regarding any other matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.

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

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

Regulations by MEC

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

(2) Any regulation made under subsection (1) must be consistent with the norms and standards prescribed under section 11 or 86(1)*(f)*.

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

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

General

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

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

(b) apply—

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

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

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

(c) differentiate between—

(i) different areas or categories of areas;

(ii) persons or categories of persons; or

(iii) species or categories of species.

(2) Regulations made under section 86 or 87 may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

CHAPTER 8

OFFENCES AND PENALTIES

Offences and penalties

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

(a) contravenes or fails to comply with a provision of section 45(1), 46(1), 47(2) or (3), 48(1) or 50(5);

(b) contravenes a notice issued under section 51;

(c) hinders or interferes with a management authority or a member or staff member of a management authority in the performance of official duties; or

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

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

CHAPTER 9

MISCELLANEOUS

Repeal of laws

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

(2) Sections 16 and 17 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), are repealed in a province with effect from the date of publication by the MEC of regulations under section 87 prescribing matters covered by the said sections16 and 17.

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Protected areas existing before commencement of section

92. (1) *****

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

Short title and commencement

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

SCHEDULE

REPEAL OF LAWS

(Section 90)

No. and year of Act	Short title of Act	Extent of repeal
Act No. 73 of 1989	Environment Conservation Act, 1989	The repeal of sections 16, 17 and 18