

**Bioregions and bioregional plans**

- 40.** (1) The Minister or the MEC for environmental affairs in a province may, by notice in the *Gazette*—
- (a) determine a geographic region as a bioregion for the purposes of this Act if that region contains whole or several nested ecosystems and is characterised by its landforms, vegetation cover, human culture and history; and 5
  - (b) publish a plan for the management of biodiversity and the components of biodiversity in such region.
- (2) The Minister may determine a region as a bioregion and publish a bioregional plan for that region either— 10
- (a) on own initiative but after consulting the MEC for Environmental Affairs in the relevant province; or
  - (b) at the request of a province or municipality.
- (3) The MEC for environmental affairs may determine a region as a bioregion and publish a bioregional plan for that region only with the concurrence of the Minister. 15
- (4) Any person or organ of state may, on the request of the Minister or MEC for Environmental Affairs, assist in the preparation of a bioregional plan.
- (5) The Minister—
- (a) may enter into an agreement with a neighbouring country to secure the effective implementation of the plan; and 20
  - (b) must submit to Parliament a copy of any agreement entered into in terms of paragraph (a).

**Contents of bioregional plans**

- 41.** A bioregional plan must—
- (a) contain measures for the effective management of biodiversity and the components of biodiversity in the region; 25
  - (b) provide for monitoring of the plan; and
  - (c) be consistent with—
    - (i) this Act;
    - (ii) the national environmental management principles; 30
    - (iii) the national biodiversity framework; and
    - (iv) any relevant international agreements binding on the Republic.

**Review and amendment of bioregional plans**

- 42.** (1) The Minister or the MEC for Environmental Affairs in the relevant province, as may be appropriate, must review a bioregional plan published in terms of section 40(1)(b) at least every five years, and assess compliance with the plan and the extent to which its objectives are being met. 35
- (2) The Minister or MEC for Environmental Affairs may, when necessary, by notice in the *Gazette*, amend a bioregional plan or the boundaries of the bioregion.
- (3) The MEC for Environmental Affairs may amend a bioregional plan or the boundaries of the bioregion only with the concurrence of the Minister. 40

**Biodiversity management plans**

- 43.** (1) Any person, organisation or organ of state desiring to contribute to biodiversity management may submit to the Minister for his or her approval a draft management plan for— 45
- (a) an ecosystem—
    - (i) listed in terms of section 52; or
    - (ii) which is not listed in terms of section 52 but which does warrant special conservation attention;
  - (b) an indigenous species— 50
    - (i) listed in terms of section 56; or

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- (ii) which is not listed in terms of section 56 but which does warrant special conservation attention; or
  - (c) a migratory species to give effect to the Republic's obligations in terms of an international agreement binding on the Republic.
- (2) Before approving a draft biodiversity management plan, the Minister must identify a suitable person, organisation or organ of state which is willing to be responsible for the implementation of the plan. 5
- (3) The Minister must—
- (a) publish by notice in the *Gazette* a biodiversity management plan approved in terms of subsection (1); 10
  - (b) determine the manner of implementation of the plan; and
  - (c) assign responsibility for the implementation of the plan to the person, organisation or organ of state identified in terms of subsection (2).

#### Biodiversity management agreements

44. The Minister may enter into a biodiversity management agreement with the person, organisation or organ of state identified in terms of section 43(2), or any other suitable person, organisation or organ of state, regarding the implementation of a biodiversity management plan, or any aspect of it. 15

#### Contents of biodiversity management plans

45. A biodiversity management plan must— 20
- (a) be aimed at ensuring the long-term survival in nature of the species or ecosystem to which the plan relates;
  - (b) provide for the responsible person, organisation or organ of state to monitor and report on progress with implementation of the plan; and
  - (c) be consistent with— 25
    - (i) this Act;
    - (ii) the national environmental management principles;
    - (iii) the national biodiversity framework;
    - (iv) any applicable bioregional plan;
    - (v) any plans issued in terms of Chapter 3 of the National Environmental Management Act; 30
    - (vi) any municipal integrated development plan;
    - (vii) any other plans prepared in terms of national or provincial legislation that is affected; and
    - (viii) any relevant international agreements binding on the Republic. 35

#### Review and amendment of biodiversity management plans

46. (1) The Minister must review a biodiversity management plan published in terms of section 43(3) at least every five years, and assess compliance with the plan and the extent to which its objectives are being met.
- (2) The Minister, either on own initiative or on request by an interested person, organisation or organ of state, may by notice in the *Gazette* amend a biodiversity management plan published in terms of section 43(3). 40
- (3) Before amending a biodiversity management plan, the Minister must consult—
- (a) any person, organisation or organ of state implementing the plan; and
  - (b) any organ of state whose activities are affected by the implementation of the plan. 45

#### Consultation

47. (1) Before adopting or approving a national biodiversity framework, a bioregional plan or a biodiversity management plan, or any amendment to such a plan, the Minister must follow a consultative process in accordance with sections 99 and 100. 50

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

## Part 2

### *Co-ordination and alignment of plans, monitoring and research* 5

#### Co-ordination and alignment of biodiversity plans

- 48.** (1) The national biodiversity framework, a bioregional plan and a biodiversity management plan prepared in terms of this Chapter may not be in conflict with—
- (a) any environmental implementation or environmental management plans prepared in terms of Chapter 3 of the National Environmental Management Act; 10
  - (b) any integrated development plans adopted by municipalities in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
  - (c) any spatial development frameworks in terms of legislation regulating land-use management, land development and spatial planning administered by the Cabinet member responsible for land affairs; and 15
  - (d) any other plans prepared in terms of national or provincial legislation that are affected.
- (2) An organ of state that must prepare an environmental implementation or environmental management plan in terms of Chapter 3 of the National Environmental Management Act, and a municipality that must adopt an integrated development plan in terms of the Local Government: Municipal Systems Act, 2000, must— 20
- (a) align its plan with the national biodiversity framework and any applicable bioregional plan;
  - (b) incorporate into that plan those provisions of the national biodiversity framework or a bioregional plan that specifically apply to it; and 25
  - (c) demonstrate in its plan how the national biodiversity framework and any applicable bioregional plan may be implemented by that organ of state or municipality.
- (3) The Institute may— 30
- (a) assist the Minister and others involved in the preparation of the national biodiversity framework, a bioregional plan or a biodiversity management plan to comply with subsection (1); and
  - (b) make recommendations to organs of states or municipalities referred to in subsection (2) to align their plans referred to in that subsection with the national biodiversity framework and any applicable bioregional plan. 35

#### Monitoring

- 49.** (1) The Minister must for the purposes of this Chapter designate monitoring mechanisms and set indicators to determine—
- (a) the conservation status of various components of South Africa's biodiversity; 40
  - and
  - (b) any negative and positive trends affecting the conservation status of the various components.
- (2) The Minister may require any person, organisation or organ of state involved in terms of subsection (1) in monitoring the matters referred to in that subsection to report regularly to the Minister on the results of such monitoring measured against the predetermined indicators. 45
- (3) The Minister must—
- (a) annually report to Parliament on the information submitted to the Minister in terms of subsection (2); and 50
  - (b) make such information publicly available.

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**Research**

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

- (2) Research on biodiversity conservation may include— 5
- (a) the collection and analysis of information about—
    - (i) the conservation status of the various components of biodiversity;
    - (ii) negative and positive trends affecting the conservation status of various components; and
    - (iii) threatening processes or activities likely to impact on biodiversity conservation; 10
  - (b) the assessment of strategies and techniques for biodiversity conservation;
  - (c) the determination of biodiversity conservation needs and priorities; and
  - (d) the sustainable use, protection and conservation of indigenous biological resources. 15

**CHAPTER 4**

**THREATENED OR PROTECTED ECOSYSTEMS AND SPECIES**

**Purpose of Chapter**

- 51.** The purpose of this Chapter is to—
- (a) provide for the protection of ecosystems that are threatened or in need of protection to ensure the maintenance of their ecological integrity; 20
  - (b) provide for the protection of species that are threatened or in need of protection to ensure their survival in the wild;
  - (c) give effect to the Republic's obligations under international agreements regulating international trade in specimens of endangered species; and 25
  - (d) ensure that the utilisation of biodiversity is managed in an ecologically sustainable way.

**Part 1**

*Protection of threatened or protected ecosystems*

**Ecosystems that are threatened or in need of protection** 30

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

(b) An MEC for environmental affairs in a province may, by notice in the *Gazette*, publish a provincial list of ecosystems in the province that are threatened and in need of protection. 35

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

- (a) critically endangered ecosystems, being ecosystems that have undergone severe degradation of ecological structure, function or composition as a result of human intervention and are subject to an extremely high risk of irreversible transformation; 40
- (b) endangered ecosystems, being ecosystems that have undergone degradation of ecological structure, function or composition as a result of human intervention, although they are not critically endangered ecosystems;
- (c) vulnerable ecosystems, being ecosystems that have a high risk of undergoing significant degradation of ecological structure, function or composition as a 45

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

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

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

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

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

### Threatening processes in listed ecosystems

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

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

### Certain plans to take into account in protection of listed ecosystems

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

### Amendment of notices

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

## Part 2

### *Protection of threatened or protected species*

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

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

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

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

- (d) protected species, being any species which are of such high conservation value or national importance that they require national protection, although they are not listed in terms of paragraph (a), (b) or (c). 5

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

**Restricted activities involving listed threatened or protected species**

57. (1) A person may not carry out a restricted activity involving a specimen of a listed threatened or protected species without a permit issued in terms of Chapter 7. 10

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

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

- (b) which is specified in the notice, 15

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

(3) Subsection (1) does not apply in respect of a specimen of a listed threatened or protected species conveyed from outside the Republic in transit through the Republic to a destination outside the Republic, provided that such transit through the Republic takes place under the control of an environmental management inspector. 20

**Amendment of notices**

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

**Part 3**

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*Trade in listed threatened or protected species*

**Functions of Minister**

59. The Minister—

- (a) must monitor—

- (i) compliance with section 57(1) insofar as trade in specimens of listed threatened or protected species is concerned; and 30

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

- (b) must consult the scientific authority on issues relating to trade in specimens of endangered species regulated by such an international agreement; 35

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

- (d) may provide administrative and technical support services and advice to organs of state to ensure the effective implementation and enforcement in the Republic of such an international agreement; 40

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

- (f) may prescribe a system for the registration of institutions, ranching operations, nurseries, captive breeding operations and other facilities. 45

**Establishment of scientific authority**

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

(2) The Institute must provide logistical, administrative and financial support for the proper functioning of the scientific authority. 5

**Functions of scientific authority**

61. (1) The scientific authority must—

- (a) monitor in the Republic the legal and illegal trade in specimens of listed threatened or protected species; 10
- (b) advise the Minister and any other interested organs of state on the matters that it monitors;
- (c) make recommendations to an issuing authority on applications for permits referred to in section 57(1) or (2);
- (d) make non-detriment findings on the impact of actions relating to the international trade in specimens of listed threatened or protected species; 15
- (e) advise the Minister on—
  - (i) the registration of ranching operations, nurseries, captive breeding operations and other facilities;
  - (ii) whether an operation or facility meets the criteria for producing species considered to be bred in captivity or artificially propagated; 20
  - (iii) the choice of a rescue centre or other facility for the disposal of forfeited specimens;
  - (iv) any amendments to a notice published in terms of section 56(1) or 57(2);
  - (v) the nomenclature of species; or 25
  - (vi) any other matter of a specialised nature;
- (f) assist the Minister or an environmental management inspector in the identification of specimens for the purpose of enforcing the provisions of this Act;
- (g) issue certificates in which the identification of a specimen is verified as being taxonomically accurate; 30
- (h) perform any other function that may be—
  - (i) prescribed; or
  - (ii) delegated to it by the Minister in terms of section 47D of the National Environmental Management Act; and 35
- (i) deal with any other matter necessary for, or reasonably incidental to, its powers and duties.

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

- (a) base its findings, recommendations and advice on a scientific and professional review of available information; and 40
- (b) consult, when necessary, organs of state, the private sector, non-governmental organisations, local communities and other stakeholders before making any findings or recommendations or giving any advice.

**Annual non-detriment findings**

62. (1) The scientific authority must publish in the *Gazette* any annual non-detriment findings on trade in specimens of listed threatened or protected species in accordance with an international agreement regulating international trade in specimens of listed threatened or protected species which is binding on the Republic. 45

(2) Any interim findings of the scientific authority must be published in the *Gazette* for public information within 30 days after the decision has been made. 50

**Part 4***General provisions***Consultation**

63. (1) Before publishing a notice in terms of section 52(1), 53(1), 56(1) or 57(2), or amending or repealing such a notice in terms of section 55 or 58, the Minister must follow a consultative process in accordance with sections 99 and 100. 5

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

**CHAPTER 5**

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**SPECIES AND ORGANISMS POSING POTENTIAL THREATS TO  
BIODIVERSITY****Purposes of Chapter**

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

- (a) to prevent the unauthorized introduction and spread of alien species and invasive species to ecosystems and habitats where they do not naturally occur; 15
- (b) to manage and control alien species and invasive species to prevent or minimize harm to the environment and to biodiversity in particular;
- (c) to eradicate alien species and invasive species from ecosystems and habitats where they may harm such ecosystems or habitats; and 20
- (d) to ensure that environmental assessments for purposes of permits in terms of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997), are conducted in appropriate cases in accordance with Chapter 5 of the National Environmental Management Act.

(2) For the purpose of this Chapter, “specimen” has the meaning assigned to it in paragraphs (a) and (b) of the definition of “specimen” in section 1(1). 25

**Part 1***Alien species***Restricted activities involving alien species**

65. (1) A person may not carry out a restricted activity involving a specimen of an alien species without a permit issued in terms of Chapter 7. 30

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

**Exemptions**

66. (1) The Minister may, by notice in the *Gazette*, exempt from the provisions of section 65— 35

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

(2) Any person may carry out a restricted activity involving a specimen of an exempted alien species without a permit mentioned in section 65(1). 40

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

**Restricted activities involving certain alien species totally prohibited**

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

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

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

**Amendment of notices**

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

**Duty of care relating to alien species**

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

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

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

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

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

(b) as may be specified in the directive.

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

(a) implement the directive; and

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

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

**Part 2*****Invasive species*****List of invasive species**

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

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

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

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

**Restricted activities involving listed invasive species**

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

(2) A permit referred to in subsection (1) may be issued only after a prescribed assessment of risks and potential impacts on biodiversity is carried out. 5

**Amendment of notices**

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

**Duty of care relating to listed invasive species**

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

(2) A person who is the owner of land on which a listed invasive species occurs must— 15

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

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

(c) take all the required steps to prevent or minimise harm to biodiversity. 20

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

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

(i) the actions of that person; or

(ii) the occurrence of the listed invasive species on land of which that person is the owner; and 25

(b) as may be specified in the directive.

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

(a) implement the directive; and 30

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

(i) from that person; or

(ii) proportionally from that person and any other person who benefited from implementation of the directive. 35

**Requests to competent authorities to issue directives**

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

(2) A competent authority must reply to the request, in writing, within 30 days of receipt of the request. 40

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

**Control and eradication of listed invasive species**

75. (1) Control and eradication of a listed invasive species must be carried out by means of methods that are appropriate for the species concerned and the environment in which it occurs. 45

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

(3) The methods employed to control and eradicate a listed invasive species must also be directed at the offspring, propagating material and re-growth of such invasive species in order to prevent such species from producing offspring, forming seed, regenerating or re-establishing itself in any manner. 5

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

(5) The Minister may establish an entity consisting of public servants to coordinate and implement programmes for the prevention, control or eradication of invasive species. 10

#### **Invasive species control plans of organs of state**

76. (1) The management authority of a protected area preparing a management plan for the area in terms of the Protected Areas Act must incorporate into the management plan an invasive species control and eradication strategy. 15

(2) (a) All organs of state in all spheres of government must prepare an invasive species monitoring, control and eradication plan for land under their control, as part of their environmental plans in accordance with section 11 of the National Environmental Management Act. 20

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

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

(4) An invasive species monitoring, control and eradication plan must include— 25

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

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

(c) an assessment of the extent of such infestation; 30

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

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

(f) measurable indicators of progress and success, and indications of when the control plan is to be completed. 35

#### **Invasive species status reports**

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

(2) A status report must include— 40

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

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

(c) an assessment of the extent of such infestation; and 45

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

### **Part 3**

#### *Other threats*

#### **Genetically modified organisms**

78. (1) If the Minister has reason to believe that the release of a genetically modified organism into the environment under a permit applied for in terms of the Genetically 50

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

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

(3) For the purposes of subsection (1) "release" means trial release or general release as defined in section 1 of the Genetically Modified Organisms Act, 1997. 10

#### Part 4

#### *General provisions*

#### Consultation

79. (1) Before publishing a notice in terms of section 66(1), 67(1) or 70(1), or amending or repealing such a notice in terms of section 68 or 72, the Minister must follow a consultative process in accordance with sections 99 and 100. 15

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

#### CHAPTER 6 20

#### BIOPROSPECTING, ACCESS AND BENEFIT-SHARING

#### Purpose and application of Chapter

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

- (a) to regulate bioprospecting involving indigenous biological resources;
- (b) to regulate the export from the Republic of indigenous biological resources for the purpose of bioprospecting or any other kind of research; and 25
- (c) to provide for a fair and equitable sharing by stakeholders in benefits arising from bioprospecting involving indigenous biological resources.

(2) In this Chapter—

"indigenous biological resources"— 30

(a) includes—

- (i) any indigenous biological resources as defined in paragraph (b) of the definition of "indigenous biological resource" in section 1, whether gathered from the wild or accessed from any other source, including any animals, plants or other organisms of an indigenous species cultivated, bred or kept in captivity or cultivated or altered in any way by means of biotechnology; 35
- (ii) any cultivar, variety, strain, derivative, hybrid or fertile version of any indigenous species or of any animals, plants or other organisms referred to in subparagraph (i); and 40
- (iii) any exotic animals, plants or other organisms, whether gathered from the wild or accessed from any other source which, through the use of biotechnology, have been altered with any genetic material or chemical

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- compound found in any indigenous species or any animals, plants or other organisms referred to in subparagraph (i) or (ii); but
- (b) excludes—
- (i) genetic material of human origin;
  - (ii) any exotic animals, plants or other organisms, other than exotic animals, plants or other organisms referred to in paragraph (a)(iii); and
  - (iii) indigenous biological resources listed in terms of the International Treaty on Plant Genetic Resources for Food and Agriculture.

### Permits

- 81.** (1) No person may, without a permit issued in terms of Chapter 7—
- (a) engage in bioprospecting involving any indigenous biological resources; or
  - (b) export from the Republic any indigenous biological resources for the purpose of bioprospecting or any other kind of research.
- (2) Before any application for a permit referred to in subsection (1) may be considered by a relevant issuing authority, the applicant must at the request of the issuing authority, disclose to the issuing authority all information concerning the proposed bioprospecting and the indigenous biological resources to be used for such bioprospecting that is relevant for a proper consideration of the application.

### Certain interests to be protected before permits are issued

- 82.** (1) Before a permit referred to in section 81(1)(a) or (b) is issued, the issuing authority considering the application for the permit must in accordance with this section protect any interests any of the following stakeholders may have in the proposed bioprospecting project:
- (a) A person, including any organ of state or community, providing or giving access to the indigenous biological resources to which the application relates; and
  - (b) an indigenous community—
    - (i) whose traditional uses of the indigenous biological resources to which the application relates have initiated or will contribute to or form part of the proposed bioprospecting; or
    - (ii) whose knowledge of or discoveries about the indigenous biological resources to which the application relates are to be used for the proposed bioprospecting.
- (2) If a stakeholder has an interest as set out in subsection (1)(a), an issuing authority may issue a permit only if—
- (a) the applicant has disclosed all material information relating to the relevant bioprospecting to the stakeholder and on the basis of that disclosure has obtained the prior consent of the stakeholder for the provision of or access to such resources;
  - (b) the applicant and the stakeholder have entered into—
    - (i) a material transfer agreement that regulates the provision of or access to such resources; and
    - (ii) a benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the relevant bioprospecting; and
  - (c) the Minister has in terms of sections 83(2) and 84(2) approved such benefit-sharing and material transfer agreements.
- (3) If a stakeholder has an interest as set out in subsection (1)(b), an issuing authority may issue a permit only if—
- (a) the applicant has disclosed all material information relating to the relevant bioprospecting to the stakeholder and on the basis of that disclosure has obtained the prior consent of the stakeholder to use any of the stakeholder's

- knowledge of or discoveries about the indigenous biological resources for the proposed bioprospecting;
- (b) the applicant and the stakeholder have entered into a benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the relevant bioprospecting; and 5
- (c) the Minister has in terms of section 83(2) approved such benefit-sharing agreement.
- (4) An issuing authority—
- (a) may engage the applicant and stakeholder on the terms and conditions of a benefit-sharing or material transfer agreement; 10
- (b) may facilitate negotiations between the applicant and stakeholder and ensure that those negotiations are conducted on an equal footing;
- (c) on request by the Minister, must ensure that any benefit-sharing arrangement agreed upon between the applicant and stakeholder is fair and equitable;
- (d) may make recommendations to the Minister; and 15
- (e) must perform any other functions that may be prescribed.

### Benefit-sharing agreements

- 83.** (1) A benefit-sharing agreement must—
- (a) be in a prescribed format; 20
- (b) specify—
- (i) the type of indigenous biological resources to which the relevant bioprospecting relates;
- (ii) the area or source from which the indigenous biological resources are to be collected or obtained;
- (iii) the quantity of indigenous biological resources that is to be collected or obtained; 25
- (iv) any traditional uses of the indigenous biological resources by an indigenous community; and
- (v) the present potential uses of the indigenous biological resources;
- (c) name the parties to the benefit-sharing agreement; 30
- (d) set out the manner in which and the extent to which the indigenous biological resources are to be utilised or exploited for purposes of such bioprospecting;
- (e) set out the manner in which and the extent to which the stakeholder will share in any benefits that may arise from such bioprospecting;
- (f) provide for a regular review of the agreement by the parties as the bioprospecting progresses; and 35
- (g) comply with any other matters that may be prescribed.
- (2) A benefit-sharing agreement or any amendment to such an agreement—
- (a) must be submitted to the Minister for approval; and
- (b) does not take effect unless approved by the Minister. 40

### Material transfer agreements

- 84.** (1) A material transfer agreement must—
- (a) be in a prescribed format;
- (b) specify—
- (i) particulars of the provider, and the exporter or recipient, of the indigenous biological resources; 45
- (ii) the type of indigenous biological resources to be provided or to be given access to;
- (iii) the area or source from which the indigenous biological resources are to be collected, obtained or provided; 50
- (iv) the quantity of indigenous biological resources that is to be provided, collected, obtained or exported;
- (v) the purpose for which such indigenous biological resources are to be exported;
- (vi) the present potential uses of the indigenous biological resources; and 55

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- (vii) conditions under which the recipient may provide any such indigenous biological resources, or their progeny, to a third party.
- (2) A material transfer agreement or any amendment to such an agreement—
- (a) must be submitted to the Minister for approval; and
  - (b) does not take effect unless approved by the Minister.

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### Establishment of Bioprospecting Trust Fund

85. (1) A Bioprospecting Trust Fund is established into which all moneys arising from benefit-sharing agreements and material transfer agreements, and due to stakeholders, must be paid, and from which all payments to, or for the benefit of, stakeholders must be made.
- (2) All money paid into the bioprospecting trust fund is trust money within the meaning of section 13(1)(f)(ii) of the Public Finance Management Act.
- (3) The Director-General—
- (a) must manage the Fund in the prescribed manner; and
  - (b) is accountable for the money in the Fund in terms of the Public Finance Management Act.

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### Exemptions

86. (1) The Minister may by notice in the *Gazette*—
- (a) declare that this Chapter does not apply to indigenous biological resources specified in the notice or to an activity relating to such indigenous biological resources; and
  - (b) amend or withdraw a notice referred to in paragraph (a).
- (2) Before publishing a notice in terms of subsection (1) the Minister must follow a consultative process in accordance with sections 99 and 100.

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## CHAPTER 7

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### PERMITS

#### Purpose of Chapter

87. The purpose of this Chapter is to provide for the regulation of the issuing of permits authorising—
- (a) restricted activities involving specimens of—
    - (i) listed threatened or protected species in terms of section 57(1);
    - (ii) alien species in terms of section 65(1); or
    - (iii) listed invasive species in terms of section 71(1);
  - (b) activities regulated in terms of a notice published in terms of section 57(2);
  - (c) bioprospecting involving indigenous biological resources in terms of section 81(1); or
  - (d) the export of indigenous biological resources for bioprospecting or any other type of research in terms of section 81(1).

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#### Part 1

##### *Permit system*

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#### Application for permits

88. (1) A person may apply for a permit by lodging an application on the prescribed form to the authority.
- (2) An issuing authority may—
- (a) request the applicant to furnish any additional information before it considers the application;

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- (b) require the applicant to comply with such reasonable conditions as it may impose before it grants the application;
  - (c) issue a permit unconditionally or issue it subject to conditions; or
  - (d) refuse a permit.
- (3) A decision of the issuing authority to issue or refuse a permit or to issue it subject to conditions, must be consistent with— 5
- (a) the applicable provisions of this Act;
  - (b) the national environmental management principles;
  - (c) the national biodiversity framework;
  - (d) any other relevant plans adopted or approved in terms of Chapter 3; 10
  - (e) any applicable international agreements binding on the Republic;
  - (f) the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
  - (g) any requirements that may be prescribed.
- (4) If compulsory conditions are prescribed for any kind of permit, an issuing authority may not issue a permit of that kind other than subject to those conditions. 15
- (5) If an application is rejected, the issuing authority must give reasons for the decision in writing to the applicant.

**Risk assessments and expert evidence**

**89.** Before issuing a permit, the issuing authority may in writing require the applicant to furnish it, at the applicant's expense, with such independent risk assessment or expert evidence as the issuing authority may determine. 20

**Permits**

- 90.** (1) A permit—
- (a) must specify— 25
    - (i) the purpose for which it is issued;
    - (ii) the period for which it will remain valid; and
    - (iii) any other matters that may be prescribed;
  - (b) may be issued on conditions specified in the permit; and
  - (c) must be in the form and contain such other particulars as may be prescribed.
- (2) A permit issued in terms of section 91 does not absolve the holder or any other person from complying with the provisions of any other applicable law. 30

**Additional requirements relating to alien and invasive species**

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

- (a) adequate procedures have been followed by the applicant to assess the risks and potential impacts associated with the restricted activity; 35
- (b) the relevant species has been found to have negligible or no invasive potential;
- (c) the benefits of allowing the activity are significantly greater than the costs associated with preventing or remedying any resultant damage to the environment or biodiversity; and 40
- (d) it is satisfied that adequate measures have been taken by the applicant to prevent the escape and spread of the species.

**Integrated permits**

**92.** (1) If the carrying out of an activity mentioned in section 90 is also regulated in terms of other law, the authority empowered under that other law to authorise that 45

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

- (a) exercise their respective powers jointly; and
- (b) issue a single integrated permit instead of a separate permit and authorisation.

(2) An authority empowered under that other law may issue an integrated permit for the activity in question if that authority is designated in terms of this Act also as an issuing authority for permits in respect of that activity. 5

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

- (a) the relevant provisions of this Act and that other law have been complied with; and 10
- (b) the permit specifies the—
  - (i) provisions in terms of which it has been issued; and
  - (ii) authority or authorities that have issued it.

### **Cancellation of permits**

**93.** An issuing authority which issued a permit may cancel the permit if— 15

- (a) the permit was issued as a result of misleading or false representations by the applicant or a person acting on behalf of the applicant; or
- (b) the applicant or permit holder has contravened or failed to comply with—
  - (i) any condition of the permit;
  - (ii) any provision of this Act or other law governing the permitted activity; or 20
  - (iii) any foreign law governing the permitted activity.

## **Part 2**

### *Appeals*

#### **Appeals to be lodged with Minister**

**94.** (1) An applicant who feels aggrieved by the decision of an issuing authority in terms of section 88(2)(c) or (d), or a permit holder whose permit has been cancelled in terms of section 93, may lodge with the Minister an appeal against the decision within 30 days after having been informed of the decision. 25

(2) The Minister must either—

- (a) consider and decide the appeal; 30
- (b) redirect the appeal to the MEC for Environmental Affairs in the relevant province to consider and decide the appeal; or
- (c) designate a panel of persons to consider and decide the appeal.

(3) An appeal does not suspend the decision against which the appeal is lodged unless the Minister, MEC for Environmental Affairs or appeal panel considering the appeal directs otherwise. 35

#### **Appeal panels**

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

- (a) a number of persons with appropriate knowledge as members of the panel; 40
- and
- (b) one of the panel members as the presiding member.

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

(3) An appeal panel must— 45

- (a) consider and decide the appeal in accordance with a prescribed procedure; and
- (b) keep a record of its proceedings and decisions.

#### **Decisions**

**96.** (1) The Minister, MEC for Environmental Affairs or appeal panel considering an appeal may— 50

- (a) either uphold or refuse the appeal; and
  - (b) when upholding or refusing the appeal, make such other orders as may be appropriate.
- (2) If the appeal is upheld against—
- (a) a refusal to issue a permit, the Minister, MEC for Environmental Affairs or appeal panel may issue the permit unconditionally or subject to conditions; 5
  - (b) a condition subject to which the permit was issued, the Minister, MEC for Environmental Affairs or appeal panel may withdraw or amend the condition; or
  - (c) the cancellation of a permit, the Minister, MEC for Environmental Affairs or appeal panel may restore the permit. 10

## CHAPTER 8

### ADMINISTRATION OF ACT

#### Part 1

#### *Regulations*

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#### Regulations by Minister

97. (1) The Minister may make regulations relating to—
- (a) the monitoring of compliance with and enforcement of norms and standards referred to in section 9;
  - (b) (i) the designation of organs of state which may be issuing authorities for permits referred to in section 57(1) or (2); 20
    - (ii) the facilitation of the implementation and enforcement of section 57(1) or any notice published in terms of section 57(2);
    - (iii) the carrying out of a restricted activity involving a specimen of a listed threatened or protected species; 25
    - (iv) the facilitation of the implementation and enforcement of an international agreement regulating international trade in specimens of listed threatened or protected species which is binding on the Republic;
    - (v) the minimising of the threat to the survival in the wild of a listed threatened or protected species; 30
    - (vi) the minimising of the threat to the ecological integrity of a listed ecosystem;
    - (vii) the composition and operating procedure of the scientific authority; or
    - (viii) the ecologically sustainable utilization of biodiversity;
  - (c) (i) the designation of organs of state which may be issuing authorities for permits referred to in section 67(1) or 71(1); 35
    - (ii) the designation of organs of state which may be competent authorities for implementing and enforcing the provisions of this Chapter;
    - (iii) the facilitation of the implementation and enforcement of section 65, 67 or 71; 40
    - (iv) the prescription of compulsory conditions for any permit issued in terms of section 65(1) or 71(1);
    - (v) the assessment of risks and potential impacts on biodiversity of restricted activities involving specimens of alien species or of listed invasive species; and 45
    - (vi) the control and eradication of listed invasive species;
  - (d) biosafety and the environment;
  - (e) (i) the designation of organs of state that may be issuing authorities for permits referred to in section 81;
  - (ii) the form and contents of, and the requirements and criteria for, benefit-sharing agreements and material transfer agreements; 50
  - (iii) moneys payable in connection with benefit-sharing agreements and material transfer agreements; and

- (iv) the administration of the Bioprospecting Trust Fund;
- (f) (i) the conditions subject to which issuing authorities may issue permits in terms of this Act; 5
- (ii) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of applications for permits; 5
- (iii) the powers of issuing authorities when considering and deciding such applications; 5
- (iv) the conditions with which applicants must comply before or after the lodging of their applications; 5
- (v) appropriate consultation processes; 10
- (vi) the authorities whose consent is required before permits may be issued; 10
- (vii) the factors that must be taken into account when deciding applications; 10
- (viii) the circumstances in which applications must be refused or may be approved; 10
- (ix) the form and contents of permits; 15
- (x) the conditions on which permits must be issued, or guidelines for determining conditions on which permits may be issued; 15
- (xi) methods, procedures and conditions of enforcing compliance with the conditions of a permit; 15
- (xii) the giving of security in respect of any obligation that may arise from carrying out a restricted activity authorised by a permit, and the form of such security; 20
- (xiii) the period of validity of permits; 20
- (xiv) the transferability of permits; 20
- (xv) the duties of the permit holders; and 25
- (xvi) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals; 25
- (g) any other matter that may be prescribed in terms of this Act; and 30
- (h) any other matter that may be necessary to facilitate the implementation of this Act. 30
- (2) Any regulation with direct fiscal implications may be made only with the concurrence of the Minister of Finance.
- (3) Before publishing any regulations in terms of subsection (1), or any amendment to the regulations, the Minister must follow a consultative process in accordance with sections 99 and 00. 35
- (4) Subsection (3) need not be applied to a non-substantial change to the regulations.

### General

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

- (a) restrict or prohibit any act either absolutely or conditionally; 40
- (b) apply— 40
- (i) generally throughout the Republic or a province, as the case may be, or only in a specified area or category of areas; 45
- (ii) generally to all persons or only to a specified category of persons; 45
- (iii) generally with respect to all species or only to a specified species or category of species; or 45
- (iv) generally with respect to all permits or appeals or only to a specified category of permits or appeals; or 45
- (c) differentiate between different— 45
- (i) areas or categories of areas; 50
- (ii) persons or categories of persons; 50
- (iii) species or categories of species; or 50
- (iv) categories of permits or appeals. 50
- (2) Regulations made in terms of section 97 may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to— 55
- (a) imprisonment for a period not exceeding five years;
- (b) an appropriate fine; or
- (c) both a fine and such imprisonment.

**Part 2***Consultation process***Consultation**

**99.** (1) Before exercising a power which, in terms of a provision of this Act, must be exercised in accordance with this section and section 100, the Minister must follow an appropriate consultative process in the circumstances. 5

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

- (a) consult all Cabinet members whose areas of responsibility may be affected by the exercise of the power;
- (b) in accordance with the principles of co-operative governance set out in Chapter 3 of the Constitution, consult the MEC for Environmental Affairs of each province that may be affected by the exercise of the power; and 10
- (c) allow public participation in the process in accordance with section 100.

**Public participation**

**100.** (1) The Minister must give notice of the proposed exercise of the power referred to in section 99— 15

- (a) in the *Gazette*; and
- (b) in at least one newspaper distributed nationally, or if the exercise of the power may affect only a specific area, in at least one newspaper distributed in that area. 20

(2) The notice must—

- (a) invite members of the public to submit to the Minister, within 30 days of publication of the notice in the *Gazette*, written representations on, or objections to, the proposed exercise of the power; and
- (b) contain sufficient information to enable members of the public to submit meaningful representations or objections. 25

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

(4) The Minister must give due consideration to all representations or objections received or presented before exercising the power. 30

**CHAPTER 9****OFFENCES AND PENALTIES****Offences**

**101.** (1) A person is guilty of an offence if that person contravenes or fails to comply with a provision of— 35

- (a) section 57(1), 65(1), 67(2), 71(1) or 81(1);
- (b) a notice published in terms of section 57(2); or
- (c) a directive issued in terms of section 69(2) or 73(3).

(2) A person who is the holder of a permit is guilty of an offence if that person— 40

- (a) contravenes or fails to comply with a provision of section 69(1) or 73(1);
- (b) performs the activity for which the permit was issued otherwise than in accordance with any conditions subject to which the permit was issued; or
- (c) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of paragraph (a) or (b). 45

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

- (a) fraudulently alters any permit;
- (b) fabricates or forges any document for the purpose of passing it as a permit;
- (c) passes, uses, alters or has in his or her possession any altered or false document purporting to be a permit; or 50

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

**Penalties**

**102.** (1) A person convicted of an offence in terms of section 101 is liable to a fine, or to imprisonment for a period not exceeding five years, or to both fine and such imprisonment. 5

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

- (a) an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991); or  
(b) if a person is convicted of an offence involving a specimen of a listed threatened or protected species, an amount determined in terms of paragraph (a) or which is equal to three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater. 10

**CHAPTER 10**

**MISCELLANEOUS**

15

**Repeal of Act 122 of 1984**

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

**Savings**

**104.** (1) Anything done in terms of the Forest Act, 1984 (Act No. 122 of 1984), which may or must be done in terms of this Act must be regarded as having been done in terms of this Act. 20

(2) A person who immediately before the repeal of the Forest Act, 1984, by section 100 of this Act was—

- (a) a member of the board of the National Botanical Institute, becomes a member of the Board of the South African National Biodiversity Institute and remains such a member until the Minister appoints the members of the Board in terms of section 15; 25  
(b) the chief executive officer of the National Botanical Institute becomes the acting chief executive officer of the South African National Biodiversity Institute and remains the acting chief executive officer until the Board appoints a person as the chief executive officer of the Institute in terms of section 29; and 30  
(c) all employees of the National Botanical Institute, including its chief executive officer, must be regarded as having been appointed in terms of section 30 as employees of the South African National Biodiversity Institute subject to the same conditions of services which applied to them immediately before the repeal of the Forest Act, 1984. 35

(3) Subsection (2)(c) does not affect pension, leave and other benefits which accrued to employees referred to in that subsection before the repeal of the Forest Act, 1984, and such benefits must be respected as if there was no break in their service and no change of employer. 40

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

- (a) all assets and liabilities and all rights and obligations of the National Botanical Institute are vested in the South African National Biodiversity Institute; and  
(b) any balance in the National Botanical Institute Fund referred to in section 64 of that Act must be paid to the South African National Biodiversity Institute. 45

**Existing bioprospecting projects**

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

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

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

**Short title and commencement**

**106.** This Act is called the National Environmental Management: Biodiversity Act, 2004, and takes effect on a date determined by the President by proclamation in the *Gazette*. 5