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CONTENTS • INHOUD

<i>No.</i>	<i>Page</i>	<i>Gazette</i>
	<i>No.</i>	<i>No.</i>
GENERAL NOTICE		
394	3	6719
North West Biodiversity Conservation Draft Bill: For public inputs and comments		

GENERAL NOTICE

NOTICE 394 OF 2009

THE NORTH WEST BIODIVERSITY CONSERVATION DRAFT BILL

I, Boitumelo Tshwene acting in my capacity as the Member of the Executive Council responsible for the Department of Agriculture, Conservation, Environment and Rural Development in the North West Province hereby publish the North West Biodiversity Conservation Bill for inputs and comments.

Such inputs and comments must be submitted to the Director: Biodiversity Management and Conservation at the following address:

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Boitumelo Tshwene MPL

Department of Agriculture, Conservation,
Environment & Rural Development

Date: 20 / 11 / 2009

BILL**PURPOSE**

To provide for the management and conservation of the North West Province's biophysical environment and protected areas within the framework of the National Environmental Management Act, 1998; the protection of species and ecosystems that warrant provincial protection; the sustainable use of indigenous biological resources and for matters connected therewith.

BE IT ENACTED by the Legislature of North West, as follows:—

SCHEDULE**TABLE OF CONTENTS**

CHAPTER 1	6
INTERPRETATION, OBJECTIVES AND APPLICATION OF ACT	6
1 DEFINITIONS	6
2 PURPOSE OF THIS ACT	22
3 STATE'S TRUSTEESHIP OF BIOLOGICAL DIVERSITY	22
4 APPLICATION OF ACT	23
5 NATIONAL ENVIRONMENTAL MANAGEMENT PRINCIPLES	23
6 CONFLICTS WITH OTHER LEGISLATION	23
7 NORMS AND STANDARDS	23
CHAPTER 2	24
PROTECTED AREAS AND ECOSYSTEMS	24
<i>PART 1: NATURE RESERVES & PROTECTED ENVIRONMENTS</i>	24
1 DECLARATION OF NATURE RESERVES AND PROTECTED ENVIRONMENTS	24
<i>PART 2: THREATENED OR PROTECTED ECOSYSTEMS & HABITAT PROTECTION</i>	25
9 PROTECTION OF THREATENED OR PROTECTED ECOSYSTEMS	25
10 PROTECTION OF RIPARIAN VEGETATION	25
11 PROTECTION OF AQUATIC SYSTEMS	25
CHAPTER 3	25
PROTECTION OF SPECIES	25
<i>PART 1: RESTRICTED ACTIVITIES INVOLVING LISTED THREATENED OR PROTECTED SPECIES</i>	25
12 LISTING OF SPECIES THAT ARE IN NEED OF PROVINCIAL PROTECTION	25
13 MAINTAINING SUSTAINABLE YIELD OF VIABLE POPULATIONS OF LISTED SPECIES.....	26
14 RESTRICTED ACTIVITIES INVOLVING LISTED SPECIES	26
15 EXEMPTIONS	27
16 RESTRICTED ACTIVITIES ON LAND OWNED BY PERSON OTHER THAN APPLICANT	28
17 APPLICATION AFFECTING RIGHTS OF OTHER PERSONS	28
18 ADDITIONAL REQUIREMENTS FOR POSSESSION OF ELEPHANT IVORY AND RHINOCEROS HORN..	28
19 AMENDMENT OF NOTICES	29
<i>PART 2: PROHIBITED ACTIVITIES INVOLVING LISTED THREATENED OR PROTECTED SPECIES</i>	29

20	PROHIBITED ACTIVITIES INVOLVING LISTED LARGE PREDATORS, <i>CERATOTHERIUM SIMUM</i> (WHITE RHINOCEROS) AND <i>DICEROS BICORNIS</i> (BLACK RHINOCEROS).....	29
21	PROHIBITED ACTIVITIES INVOLVING LISTED THREATENED OR PROTECTED <i>ENCEPHALARTOS</i> SPECIES	31
22	PROHIBITED TRANSLOCATION OF LISTED THREATENED OR PROTECTED ANIMALS	31
23	PROHIBITED METHODS OF HUNTING.....	31
24	ADDITIONAL PROHIBITIONS	34
<i>PART 3: RESTRICTED ACTIVITIES INVOLVING ORDINARY GAME.....</i>		34
25	RESTRICTED ACTIVITIES INVOLVING ORDINARY GAME.....	34
26	EXEMPTIONS.....	35
<i>PART 4: DAMAGE CAUSING ANIMALS</i>		35
27	PROVISIONS RELATING TO DAMAGE CAUSING ANIMALS.....	35
<i>PART 5: CONSIDERATIONS, CONDITIONS AND ESSENTIAL REQUIREMENTS OF PERMITS</i>		37
28	FACTORS TO BE TAKEN INTO ACCOUNT BY THE HOD WHEN CONSIDERING PERMIT APPLICATIONS.....	37
29	ADDITIONAL REQUIREMENTS FOR APPLICATIONS INVOLVING WILD POPULATIONS OF LISTED CRITICALLY ENDANGERED SPECIES.....	38
30	ADDITIONAL FACTORS TO BE TAKEN INTO ACCOUNT BY THE HOD WHEN CONSIDERING APPLICATIONS FOR HUNTING	38
31	COMPULSORY CONDITIONS SUBJECT TO WHICH PERMITS TO HUNT MUST BE ISSUED	39
32	RISK ASSESSMENT	39
33	GENERAL REQUIREMENTS FOR ENVIRONMENTAL ASSESSMENT PRACTITIONER.....	41
CHAPTER 4		41
SPECIES AND ORGANISMS POSING POTENTIAL THREATS TO BIODIVERSITY		41
34	PURPOSE OF THIS CHAPTER.....	41
<i>PART 1: ALIEN SPECIES.....</i>		42
35	RESTRICTED ACTIVITIES INVOLVING ALIEN SPECIES	42
36	EXEMPTIONS.....	42
37	PROHIBITED ACTIVITIES INVOLVING CERTAIN ALIEN SPECIES	43
38	AMENDMENT OF NOTICES	43
39	DUTY OF CARE RELATING TO ALIEN SPECIES.....	43
<i>PART 2: INVASIVE SPECIES</i>		44
40	LIST OF INVASIVE SPECIES	44
41	RESTRICTED ACTIVITIES INVOLVING LISTED INVASIVE SPECIES	44
42	AMENDMENT OF NOTICES	45
43	DUTY OF CARE RELATING TO LISTED INVASIVE SPECIES	45
44	CONTROL AND ERADICATION OF LISTED INVASIVE SPECIES	46
CHAPTER 5		46
REGISTRATION OF CAPTIVE BREEDING OPERATIONS, COMMERCIAL EXHIBITION FACILITIES, GAME FARMS, NURSERIES, SCIENTIFIC INSTITUTIONS, SANCTUARIES, REHABILITATION FACILITIES, WILDLIFE TRADERS, WILDLIFE TRANSLOCATORS, PROFESSIONAL HUNTERS, AND PROFESSIONAL HUNTING SCHOOLS.....		46
<i>PART 1: COMPULSORY REGISTRATION REQUIREMENTS.....</i>		46
45	COMPULSORY REGISTRATION REQUIREMENTS	46
46	APPLICATION AFFECTING RIGHTS OF OTHER PERSONS	46
47	APPOINTMENT OF ADVISORS FOR EVALUATION OF HUNTING OUTFITTERS AND PROFESSIONAL HUNTERS.....	47
<i>PART 2: CONSIDERATIONS, CONDITIONS AND ESSENTIAL REQUIREMENTS OF REGISTRATION CERTIFICATES</i>		47
48	FACTORS TO BE TAKEN INTO ACCOUNT BY THE MEC	47
49	CONSIDERATION OF AND DECISION ON APPLICATIONS	47

50	COMPULSORY CONDITIONS FOR THE REGISTRATION OF CAPTIVE BREEDING OPERATIONS, COMMERCIAL EXHIBITION FACILITIES AND REHABILITATION FACILITIES	48
51	ADDITIONAL COMPULSORY CONDITIONS FOR THE REGISTRATION OF COMMERCIAL EXHIBITION FACILITIES	48
52	COMPULSORY CONDITION FOR THE REGISTRATION OF SANCTUARIES	48
53	COMPULSORY CONDITION FOR THE REGISTRATION OF WILDLIFE TRANSLOCATORS	48
54	COMPULSORY CONDITIONS FOR THE REGISTRATION OF PROFESSIONAL HUNTERS AND HUNTING OUTFITTERS	48
CHAPTER 6		49
GENERAL		49
55	LEAVING OR MAKING OF OPENINGS IN CERTAIN FENCES	49
56	POSSESSION OF FISHNETS, FISH TRAPS OR SIMILAR DEVICES	49
CHAPTER 7		49
PERMITS & REGISTRATION CERTIFICATES.....		49
57	PURPOSE OF CHAPTER	49
<i>PART 1: PERMIT & REGISTRATION SYSTEM</i>		<i>50</i>
58	ISSUING AUTHORITIES.....	50
59	TYPES OF PERMITS	50
60	APPLICATION FOR PERMITS & REGISTRATION CERTIFICATES	52
61	CONTENT OF PERMITS & REGISTRATION CERTIFICATES	53
62	INTEGRATED PERMITS.....	54
63	EXERCISING OR PERFORMING OF POWERS, FUNCTIONS OR DUTIES OF OWNER WHERE LAND IS HELD BY MORE THAN ONE PERSON, PARTNERSHIP OR OTHER BODY.	54
64	RENEWAL OF PERMITS AND REGISTRATION CERTIFICATES.....	55
65	CONSIDERATION OF AND DECISION ON RENEWAL APPLICATIONS.....	55
66	AMENDMENT OF PERMITS OR REGISTRATION CERTIFICATES	55
67	APPLICATIONS FOR AMENDMENT BY HOLDER OF PERMIT OR REGISTRATION CERTIFICATE	56
68	CONSIDERATION OF AND DECISION ON APPLICATIONS FOR AMENDMENT.....	56
69	AMENDMENT ON INITIATIVE OF HOD.....	57
70	PROCESS	57
71	DECISION	57
72	CONSIDERATION OF RENEWAL OF PERMIT OR REGISTRATION CERTIFICATE	58
73	CANCELLATION OF PERMITS AND REGISTRATION CERTIFICATES	58
74	CANCELLED PERMITS AND REGISTRATION CERTIFICATES TO BE RETURNED TO THE HOD	60
75	PERMITS OR REGISTRATION CERTIFICATES MAY NOT BE TRANSFERRED.....	60
76	LOST OR STOLEN PERMITS AND REGISTRATION CERTIFICATES	60
<i>PART 2: APPEALS</i>		<i>60</i>
77	APPEALS TO BE LODGED WITH MEC.....	60
78	APPEAL PANELS	61
79	DECISIONS	61
CHAPTER 8		61
ENFORCEMENT AND ADMINISTRATION OF ACT.....		61
<i>PART 1: DELEGATIONS</i>		<i>62</i>
80	DELEGATIONS BY MEC & HOD.....	62
<i>PART 2: APPOINTMENT OF EXTERNAL ADVISORS AND ENVIRONMENTAL MANAGEMENT OFFICERS.....</i>		<i>62</i>
81	APPOINTMENT OF EXPERTS	62
82	APPOINTMENT OF ENVIRONMENTAL MANAGEMENT OFFICERS	62
83	MANDATES	63
84	PRESCRIBED STANDARDS.....	63
85	PROOF OF DESIGNATION	63
86	FUNCTIONS OF OFFICERS.....	63
87	GENERAL POWERS	64

88	SEIZURE OF ITEMS.....	65
89	POWER TO STOP, ENTER AND SEARCH VEHICLES, VESSELS AND AIRCRAFT.....	66
90	ROUTINE INSPECTIONS.....	67
91	POWER TO ISSUE COMPLIANCE NOTICES.....	68
92	OBJECTIONS TO COMPLIANCE NOTICE.....	69
93	FAILURE TO COMPLY WITH COMPLIANCE NOTICE.....	69
94	POWERS OF SOUTH AFRICAN POLICE SERVICE MEMBERS.....	69
95	DUTY TO PRODUCE DOCUMENTS.....	70
96	CONFIDENTIALITY.....	70
97	APPOINTMENT OF HONORARY ENVIRONMENTAL MANAGEMENT OFFICERS.....	70
98	PRESCRIBED STANDARDS.....	70
	<i>PART 3: REGULATIONS & INCORPORATION OF STANDARDS.....</i>	<i>71</i>
99	REGULATIONS BY MEC.....	71
100	INCORPORATION OF STANDARDS BY REFERENCE.....	71
	<i>PART 4: CONSULTATION PROCESS.....</i>	<i>72</i>
101	CONSULTATION.....	72
102	PUBLIC PARTICIPATION.....	72
	CHAPTER 9.....	73
	OFFENCES AND PENALTIES.....	73
103	OFFENCES.....	73
104	PENALTIES.....	75
	CHAPTER 10.....	75
	MISCELLANEOUS.....	75
105	REPEAL OF LAWS.....	75
106	SAVINGS.....	75
107	SHORT TITLE AND COMMENCEMENT.....	76
	SCHEDULE 1: LAWS REPEALED.....	77

CHAPTER 1**INTERPRETATION, OBJECTIVES AND APPLICATION OF ACT****1 Definitions**

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

'alien species' means-

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

"applicable legal requirements" means –

- (a) all legislation and instruments mentioned in section 88(3) of the National Biodiversity Act;
- (b) any national norms and standards issued in terms of section 9 of the National Biodiversity Act, section 7 of this Act or section 11 of the Protected Areas Act which apply to the implementation of this Act;
- (c) any Codes of Practice published by the South African Bureau of Standards incorporated into this Act in terms of section 100; and
- (c) any specific requirements of this Act.

"applicant" means a person who has submitted a permit application or registration application;

"arrow" means a projectile launched by a bow;

"artificially propagated" means a listed threatened or protected plant species that is grown under controlled conditions; grown from seeds, cuttings, divisions, callus tissues or other plant tissues, spores or other propagules derived from cultivated parental stocks;

"aquaculture" means the managed production, either through an intervention in the breeding process, or through stocking, feeding or predator control programmes, of fish, invertebrates, amphibians, aquarium plants or other aquatic organisms, including the eggs, ova, spawn, seeds, fruits, bulbs, stems, roots or any other part or derivative of such organisms;

“aquatic biota” –

- (a) means any organism that depends on an aquatic environment for its survival; and
- (b) includes the carcass, egg, ova, spawn, flesh (fresh or cured), hide, tooth, bone, shell, scale, claw, nail, paw, fin, tail, ear, hair, feather, flower, seed, cone, fruit, bulb, tuber, stem, root or any other part or derivative of such organism;

“aquatic growth” –

- (a) means any plant that depends on an aquatic environment for its survival; and
- (b) includes the flower, seed, cone, fruit, bulb, tuber, stem, root, or any other part or derivative of such plant;

“aquatic system” –

- (a) means any area associated with rivers, streams, wetlands, marsh, sponges, peat lands, creeks, lakes, pans, Karst systems (dolomitic systems) or any other natural or man-made water impoundment; and
- (b) includes any such area whether wet or dry;

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

“bow” means an instrument consisting of a body and string designed to launch and propel an arrow;

“bred in captivity” or **“captive bred”**, in relation to a specimen of a listed threatened or protected animal species, means that the specimen was bred in a controlled environment;

“captive breeding operation” means a facility where specimens of a listed threatened or protected animal species are bred in a controlled environment for –

- (a) conservation purposes; or
- (b) commercial purposes;

“CITES species” means species listed in Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 1973;

“commercial exhibition facility” means a facility, including but not limited to zoological gardens, aquariums, travelling exhibitions, that keep listed threatened or protected species for display purposes;

“commercial purposes”, in relation to a restricted activity involving a specimen of a listed threatened or protected species, means that the primary purpose of the restricted activity is to obtain economic benefit, including profit in cash or in kind, and is directed towards trade, exchange or another form of economic use or benefit;

'competent authority', in relation to the control of an alien species, means-

- (a) the MEC; or
- (b) an organ of state in the provincial or local sphere of government designated by regulation as a competent authority for the control of an alien species in terms of this Act or the National Biodiversity Act; or
- (c) any other organ of state;

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

'control', in relation to an alien species, means-

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

“controlled conditions” means an artificial or a non-natural environment that is intensively manipulated by human intervention for the purpose of plant production and includes nurseries;

“controlled environment” means an enclosure designed to hold specimens of a listed threatened or protected species in a way that –

- (a) prevents them from escaping;
- (b) facilitates intensive human intervention or manipulation in the form of the provision of –
 - (i) food or water;

- (ii) artificial housing; or
- (iii) health care; and
- (c) facilitates the intensive breeding or propagation of a listed threatened or protected species,

but excludes fenced land on which self-sustaining wildlife populations of that species are managed in an extensive wildlife system;

“culling”

- (a) in relation to a specimen of a listed threatened or protected species in a protected area, means an operation executed by an official of, or other person designated by, the management authority of the area to kill a specific number of specimens of a listed threatened or protected species within the area in order to manage that species in the area in accordance with the management plan of the area; or
- (b) in relation to a specimen of a listed threatened or protected species on a registered game farm, or communal land means an operation executed by the land owner or other person designated by the land owner, to kill a specific number of specimens of a listed threatened or protected species within the registered game farm in order to manage that species on the farm;

“cultivated parental stock” means listed threatened or protected plant species legally obtained and grown under controlled conditions and used for reproduction;

“damage causing animal” means an individual of a listed threatened or protected species that, when interacting with human activities, there is substantial proof that it –

- (a) causes losses to stock or to other wild specimens;
- (b) causes excessive damage to cultivated trees, crops, natural flora or other property;
- (c) presents a threat to human life; or
- (d) is present in such numbers that agricultural grazing is materially depleted;

“darting”, in relation to a live specimen of a listed threatened or protected species, means to shoot the specimen with a projectile loaded with a tranquillising, narcotic, immobilising, or similar agent;

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

“delegation list” means the written record of delegations established and maintained by the MEC in terms of section 80;

'Department' means the North West Department of Agriculture, Conservation, Environment and Rural Development

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

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

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

"elderly person" means a person of 65 years and older;

"elephant ivory" in relation to marking and registration means any piece of elephant tusk which is both 20cm or more in length and more than 1kg in weight, whether carved or not;

"environment" means the surroundings within which humans exist and that are made up of –

- (a) the land, water and atmosphere of the earth;
- (b) micro-organisms, plant and animal life;
- (c) any part or combination of (a) and (b) and the inter-relationships amongst and between them; and
- (d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

"environmental assessment practitioner" means the individual responsible for conducting risk assessments in terms of section 32;

'environmental management officer' means a person authorised in terms of the section 82 to enforce the provisions of this Act and includes employees of the Department declared as peace officers by the Minister of Justice in terms of section 334 of the Criminal Procedures Act, 1977 (Act no 51 of 1977);

"exempt species" means any plant and/or animal species exempted from any or all of the provisions of this Act in terms of sections 15, 26 or 36;

'**export**', in relation to the Province, means to take out or transfer, or attempt to take out or transfer, from a place within the Province to another Province or to a place outside the republic;

"**extensive wildlife system**" means a system that is large enough, and suitable for the management of self-sustaining wildlife populations in a natural environment which requires minimal human intervention in the form of –

- (a) the provision of water;
- (b) the supplementation of food, except in times of drought;
- (c) the control of parasites; or
- (d) the provision of health care.

"**fair chase principle**" means a set of hunting conditions in which the individual decision-maker judges the taking of prey as acceptably uncertain and difficult for the hunter;

'**Gazette**', means the Provincial Gazette of the North West Province;

"**game capturer**" means a person that captures and conveys specimens of listed threatened or protected terrestrial vertebrate species for commercial purposes on behalf of another person and may include buying, temporary possession and selling of these specimens.

"**game farm hunting permit**" means a permit issued by the HOD to the landowner of a registered game farm, authorising a person authorised by the landowner to carry out a specific restricted activity, namely the buying and hunting of a listed threatened or protected species on that landowner's registered farm, including the subsequent transport and possession of the dead specimen of a listed threatened or protected species subsequent to the hunt;

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

'**genetic resource**' includes-

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

"**gin trap**" means a leg hold or foothold trap made up of two tightly closing jaws, a spring of sorts, and a trigger in the middle, without an off-set jaw or padded jaw that reduces chances of injury to the animal;

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

"HOD" means the Head of the Department responsible for biodiversity conservation in the North West Province;

"honorary environmental compliance officer" means a person appointed by the MEC in terms of section 97;

"hunt" in relation to a specimen of a listed threatened or protected species, includes –

- (a) to intentionally kill such species by any means, method or device whatsoever;
- (b) to capture such species by any means, method or device whatsoever with the intent to kill;
- (c) to search for, lie in wait for, pursue, shoot at, tranquillise or immobilise such species with the intent to kill; or
- (d) to lure by any means, method or device whatsoever, such species with the intent to kill,

but excludes the culling of a listed threatened or protected species in a protected area or on a registered game farm or the culling of a listed threatened or protected species that has escaped from a protected area and has become a damage causing animal;

"hunting client" means a person who –

- (a) is not resident in the Republic; and
- (b) pays or rewards a professional hunter directly or indirectly through a hunting outfitter for, or in connection with, the hunting of wildlife;

"hunting organisation" means any organisation that represents hunters, and that has an accepted constitution and code of conduct that provide for disciplinary actions, should a member not adhere to the code of conduct of the organisation to which he or she is a member;

"hunting-outfitter" means a person who –

- (a) presents or organises the hunt of wildlife for a hunting client ; and
- (b) is the holder of a registration certificate issued in terms of Chapter 7.

"hybridisation" means the cross-breeding of individuals from different species or sub-species;

'import', in relation to the Province-

- (a) means to land on, bring into or introduce into the Province, or attempt to land on, bring into or introduce into the Province; and
- (b) includes to bring into the Province for re-export to a place outside the Province;

'indigenous biological resource' means any resource consisting of-

- (i) any living or dead animal, plant or other organism of an indigenous species;
- (ii) any derivative of such animal, plant or other organism; or
- (iii) any genetic material of such animal, plant or other organism;

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

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

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

'invasive species' means any species whose establishment and spread outside of its natural distribution range-

- (a) threaten ecosystems, habitats or other species or have demonstrable potential to threaten ecosystems, habitats or other species; and
- (b) may result in economic or environmental harm or harm to human health;

"invertebrate" means any living or dead invertebrate in any stage of its life cycle, including any part or derivative of an invertebrate;

“listed species” means any plant and/or animal species listed as threatened or protected in terms of this Act by notice in the Provincial Gazette and a specimen of any species listed in Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 1973.

“IUCN Red List status” means the conservation status of the species based on the International Union for the Conservation of Nature and Natural Resources (IUCN) Red List categories and criteria;

“kept in captivity” or **“captive kept”**, in relation to a specimen of a listed threatened or protected species, means that the species is kept in a controlled environment for a purpose other than –

- (a) transfer or transport;
- (b) quarantine; or
- (c) veterinary treatment;

“landowner” means the natural or juristic person reflected as the registered owner in the Deeds Registry, or his / her nominated representative;

“listed large predator” means a specimen of any of the following listed threatened or protected species:

- (a) Cheetah (*Acinonyx jubatus*);
 - (b) Spotted hyaena (*Crocuta crocuta*);
 - (c) Brown hyaena (*Parahyaena brunnea*);
 - (d) Wild dog (*Lycaon pictus*);
- or
- (e) Leopard (*Panthera pardus*);

“listed protected species” means a species listed as a protected species in terms of section 12 of the Act;

“listed threatened species” means a species listed as critically endangered, endangered or vulnerable in terms of section 12(1) of the Act;

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

'management authority', in relation to a protected area, means an authority to whom the management of a protected area has been assigned in terms of the Protected Areas Act;

"management plan" in relation to a protected area, means a management plan referred to in section 41 of the Protected Areas Act;

"mark" means an indelible imprint, micro-chip or other recognised means of identifying a specimen, designed in such a way as to render the imitation thereof by unauthorized persons as difficult as possible;

'MEC' means the Member of the Executive Council responsible for conservation of biodiversity in the North West Province;

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

'municipality' means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

"National Biodiversity Act" means the National Environmental Management: Biodiversity Act (Act no 10 of 2004);

'National Environmental Management Act' means the National Environmental Management Act, 1998 (Act 107 of 1998);

'national environmental management principles' means the principles referred to in section 5;

"National Threatened or Protected Species Regulations, 2007" means the National Environmental Management: Biodiversity Act, 2004: Threatened or Protected Species regulations published in Government Notice R152 of 23 February 2007.

"nature reserve", means a nature reserve as defined in the Protected Areas Act;

"norms and standards" means any norms and standards issued in terms of –

- (a) section 9 of the National Biodiversity Act and/or section 7 of this Act to the extent that they apply to –
- (i) restricted activities involving listed threatened or protected species; or
 - (ii) registered captive breeding operations, registered commercial exhibition facilities, registered game farms, registered nurseries, registered scientific institutions, registered sanctuaries, registered rehabilitation facilities or registered wildlife traders; or
- (b) section 11 of the Protected Areas Act, to the extent that they apply to restricted activities involving listed threatened or protected species in protected areas;

“nursery” means a facility where a listed threatened or protected plant species is sold, artificially propagated or multiplied for commercial purposes;

“nursery possession permit” means a permit issued by the MEC to a registered nursery, authorising a person to buy threatened or protected species from the registered nursery and for such person to convey and keep it in his or her possession for a period specified on the permit;

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

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

“person” means a natural or juristic person;

“personal effects permit” means a permit issued by the HOD to a registered wildlife trader, authorising a person to buy dead or live, specimens of listed threatened or protected species, including products derived from such species, from the registered wildlife trader and for such person to transport or convey and keep it in his or her possession for a period specified on the permit or to export it from the Republic;

“physically disabled person” means a person with a disability that significantly limits their functional mobility as defined by the World Health Organisation’s International Classification on Functioning and Disability in Health;

“possession permit” means a permit for keeping or conveying a specimen of a listed threatened, protected species for personal use in a person’s possession without carrying out any other restricted activity;

“professional hunter” means a person who offers or agrees to escort any other person for reward in order to enable the hunting of wildlife and who is registered in terms of regulation 27(1) as a professional hunter;

'prescribe' means prescribe by regulation or notice of incorporation in terms of section 77;

“professional hunter” means a person who offers or agrees to escort any other person for reward in order to enable the hunting of listed threatened or protected and who is registered as a professional hunter in terms of Chapter 7;

“professional hunting school” means a person or institution who is –

- (a) responsible for –
 - (i) the presentation of a prescribed curriculum to educate prospective professional hunters and hunting outfitters; and
 - (ii) the conducting of examinations to evaluate prospective professional hunters and hunting-outfitters; and
- (b) the holder of a registration certificate issued in terms of the Act;

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

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

“Protected environment” means a protected environment defined in the Protected Areas Act;

“Protected species” means indigenous animal or plant species that, although not threatened, are of high conservation value or provincial importance, as listed by notice in the Provincial Gazette in terms of section 12(1) of this Act;

“put and take animal” means a live specimen of a captive bred listed large predator, or a live specimen of a captive bred *Ceratotherium simum* (White rhinoceros) or *Diceros bicornis*

(Black rhinoceros) that is released for the purpose of hunting the animal within a period of 24 months after its release from a captive environment;

'Public Finance Management Act' means the Public Finance Management Act, 1999 (Act 1 of 1999);

're-export', in relation to a specimen of a listed species, means the export from the Province of a specimen of a listed species previously imported into the Province;

"registered nursery" means a nursery registered by the HOD in terms of Chapter 7;

"registered wildlife trader" means a person registered with the MEC to hawk, peddle, barter, exchange, offer, advertise, expose or have in his or her possession for the purpose of exhibition, display, sale, hawking, peddling, bartering or exchanging, any listed threatened or protected species, and includes taxidermists, game capturers, hunting outfitters and their agents;

"registered wildlife translocator" means a person who is registered by the HOD in terms of Chapter 7 to convey, move or otherwise translocate wildlife;

"registration certificate" means a registration certificate issued by the HOD in terms of Chapter 7;

"registered game farm" means a game farm registered by the HOD in terms of Chapter 7;

"rehabilitation facility" means a registered facility equipped for the temporary keeping of live specimens of a listed threatened or protected species for –

- (a) treatment and recovery purposes, in the case of sick or injured specimens;
- (b) rearing purposes, in the case of young orphaned specimens;
- (c) quarantine purposes; or
- (d) relocation,

with the overall intent to release the species.

'restricted activity'-

- (a) in relation to a specimen of listed threatened or protected species, means-
 - (i) hunting, catching, capturing, or killing any living specimen by any means, method or device whatsoever, including

- searching, pursuing, driving, lying in wait, luring, alluring, discharging a missile, obstructing free passage or injuring with intent to hunt, catch, capture or kill any such specimen;
 - (ii) gathering, collecting or plucking any such specimen;
 - (iii) picking parts of, or cutting, chopping off, uprooting, damaging or destroying of any such specimen;
 - (iv) importing into the Province, including introducing from the sea, any such specimen;
 - (v) exporting from the Province, including re-exporting from the Province, any such specimen;
 - (vi) having in possession or exercising physical control over any such specimen;
 - (vii) growing, breeding or in any other way propagating any such specimen, or causing it to multiply;
 - (viii) conveying, moving or otherwise translocating any such specimen;
 - (ix) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any such specimen;
 - (x) damaging, disturbing or destroying the breeding site or habitat of any such specimen;
 - (xi) any other prescribed activity which involves a specimen of a listed threatened or protected species; and
- (b) in relation to a specimen of an alien species or listed invasive species, means-
- (i) importing into the Province, including introducing from the sea, any specimen of an alien or listed invasive species;
 - (ii) having in possession or exercising physical control over any specimen of an alien or listed invasive species;
 - (iii) growing, breeding or in any other way propagating any specimen of an alien or listed invasive species, or causing it to multiply;
 - (iv) conveying, moving or otherwise translocating any specimen of an alien or listed invasive species;
 - (v) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring

or disposing of any specimen of an alien or listed invasive species; or

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

“rhinoceros horn”, in relation to marking and registration, an unprocessed rhinoceros horn or part thereof longer than 10 cm in length;

“risk assessment” means a risk assessment requested by the HOD in terms of section 32 of the Act;

“SANBI” means the South African National Biodiversity Institute established by section 10 of the National Biodiversity Act;

“sanctuary” means a registered facility in which a permanent captive home is provided in a controlled environment for specimens of a listed threatened or protected species that would be unable to sustain themselves if released;

“Scientific Authority” means the Scientific Authority referred to in section 60 of the National Biodiversity Act;

“scientific institution” means a museum, organ of state involved in research, registered research unit of a tertiary institution or herbarium where specimens of a listed threatened or protected species are kept or used for research, scientific, information or identification purposes;

“scientific purposes” means the purpose is directed towards the practice of science and includes research;

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

'specimen' -

- (a) in relation to a specimen of listed threatened or protected species, means-
- (i) any living or dead animal, plant or other organism;

- (ii) a seed, egg, gamete or propagule or part of an animal, plant or other organism capable of propagation or reproduction or in any way transferring genetic traits;
- (iii) any derivative of any animal, plant or other organism; or
- (iv) any goods which-
 - (aa) contain a derivative of an animal, plant or other organism; or
 - (bb) from an accompanying document, from the packaging or mark or label, or from any other indications, appear to be or to contain a derivative of an animal, plant or other organism;

“standing permit” means a permit referred to in section 59 that is valid for a longer specified period than an ordinary permit;

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

- (a) would not lead to its long-term decline;
- (b) would not disrupt the ecological integrity of the ecosystem in which it occurs; and
- (c) would ensure its continued use to meet the needs and aspirations of present and future generations of people;

“taxidermist”-

- (a) means a person who, as a profession, prepares and mounts a skin, horn or any other derivative of wildlife with lifelike effect; and
 - (b) includes the dipping and packing of any skin, horn or any similar derivative of wildlife for the purpose of exporting either directly or indirectly to a client; and
- “taxidermy”** has a corresponding meaning;

'the Act' means the North West Biodiversity Conservation Act and includes any regulations issued in terms of a provision of this Act and “this Act” has a corresponding meaning;

“Threatened species” means critically endangered, endangered and vulnerable animal and plant species, listed by notice in the Provincial Gazette in terms of section 12(1) of this Act;

“tracking” means to search for or pursue a specimen of a listed threatened or protected species without killing the specimen;

“**trade**” includes the import into the Province, export from the Province, selling or otherwise trading in, buying, receiving, giving, donating, or accepting as a gift, or in any way acquiring or disposing of any specimen;

'watercourse' means-

- (a) a river or spring;
- (b) a natural channel in which water flows regularly or intermittently; and
- (c) a wetland, lake or dam into which, or from which, water flows; and

a reference to a watercourse includes, where relevant, its bed and banks;

“**wild populations**” means a group or collection of wild specimens;

“**wild specimen**” means a specimen that is living and growing in natural conditions with or without human intervention.

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

2 Purpose of this Act

The purpose of this Act is to –

- (a) manage, promote and protect the biodiversity in the Province;
- (b) provide for the registration of captive breeding operations, commercial exhibition facilities, game farms, nurseries, scientific institutions, sanctuaries, rehabilitation facilities, wildlife traders, wildlife translocators, professional hunters and hunting schools in the Province;
- (c) provide for the prohibition of specific restricted activities involving specific listed species;
- (d) provide for the protection of wild populations of listed species;
- (e) consolidate biodiversity legislation in the Province.

3 State's trusteeship of biological diversity

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

- (a) manage, conserve and sustain South Africa's biodiversity and its components and genetic resources; and
- (b) implement this Act to achieve the progressive realisation of those rights.

4 Application of Act

(1) This Act applies to human activity affecting biological diversity and its components in the North West Province.

(2) This Act binds all organs of state in the provincial and local spheres of government.

5 National environmental management principles

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

6 Conflicts with other legislation

(1) In the event of any conflict between a section of this Act and-

- (a) other provincial legislation in force immediately prior to the date of commencement of this Act, the section of this Act prevails if the conflict specifically concerns the management of biodiversity;
- (b) national 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.

7 Norms and standards

(1) The MEC may, by notice in the Provincial Gazette-

- (a) issue norms and standards for the achievement of any of the objectives of this Act, including for the-
 - (i) management and conservation of the Province's biological diversity and its components;
 - (ii) restriction of activities which impact on biodiversity and its components;
- (b) set indicators to measure compliance with those norms and standards; and
- (c) amend any notice issued in terms of paragraph (a) or (b).

- (2) (a) Before publishing a notice in terms of subsection (1), the MEC must follow a consultative process in accordance with sections 101 and 102.
- (b) A consultative process referred to in paragraph (a) need not be applied to a non-substantial change to the notice.
- (3) Norms and standards may apply-
- (a) throughout the Province;
 - (b) in a specific area only; or
 - (c) to a specific category of biodiversity only.
- (4) Different norms and standards may be issued for-
- (a) different areas; or
 - (b) different categories of biodiversity.

CHAPTER 2 PROTECTED AREAS AND ECOSYSTEMS

This chapter is based on the knowledge that many natural areas and/or sensitive ecosystems are irreplaceable. Biodiversity depends on functioning ecosystems that include the land, air, water and other organisms, and it is by encouraging the health of the ecosystems that biodiversity is best managed.

Part 1 : Nature Reserves & Protected Environments

"Nature reserve" is defined in the Protected Areas Act as including nature reserves promulgated in terms of provincial legislation before or after the promulgation of the Protected Areas Act, in effect rendering all provincial nature reserves subject to the provisions of the Protected Areas Act.

8 Declaration of nature reserves and protected environments

- (1) Any nature reserve or protected environment declared by the MEC in terms of the Protected Areas Act is deemed to be a nature reserve or protected area declared in terms of this Act.
- (2) The provisions of the Protected Areas Act relating to nature reserves and protected areas apply *mutatis mutandis* to a provincial nature reserve or protected environment.

Part 2: Threatened or Protected Ecosystems & Habitat Protection

9 Protection of threatened or protected ecosystems

(1) Any sensitive habitats identified, listed and/or regulated by the MEC in terms of the National Biodiversity Act as bioregions and/or threatened or protected ecosystems is deemed to be identified, listed and/or regulated in terms of this Act.

(2) The provisions of the National Biodiversity Act relating to bioregions and/or threatened or protected ecosystems apply *mutatis mutandis* to provincial bioregions and/or threatened or protected ecosystems.

10 Protection of riparian vegetation

No person may without a permit issued in terms of Chapter 7, pick or disturb any indigenous plant within an area bordering any watercourse, whether wet or dry, up to and within a distance of 32 meters from the high watermark on either side of the watercourse.

11 Protection of aquatic systems

No person may without a permit issued in terms of Chapter 7 –

- (a) establish or operate an aquaculture process;
- (b) place or release live aquatic biota in any aquatic system except aquatic biota released alive in the same aquatic system where it had been caught.

**CHAPTER 3
PROTECTION OF SPECIES**

Part 1: Restricted activities involving listed threatened or protected species

12 Listing of species that are in need of provincial protection

(1) The MEC may, by notice in the Provincial Gazette, publish a list of -

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

- (b) endangered species, being any indigenous species facing a high risk of extinction in the Province in the near future, although they are not a critically endangered species;
- (c) vulnerable species, being any indigenous species facing an extremely high risk of extinction in the Province 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 provincial importance that they require provincial protection, although they are not listed in terms of paragraph (a), (b) or (c).

(2) Any list published in terms of subsection (1) must be reviewed by the MEC at least every three years.

13 Maintaining sustainable yield of viable populations of listed species

(1) The MEC must each year before the end of November determine for the following year, annual hunting off-take limits and bag limits for the province in respect of listed threatened or protected animal species not determined by the Minister in terms of regulation 72 of the *National Threatened or Protected Species Regulations, 2007*.

(2) Hunting off-take limits set in terms of this section do not apply to listed threatened or protected animal species culled in protected areas in accordance with the management plans of the respective area.

(3) The determination made in terms of subsection (1) must be done in accordance with scientific procedures aimed at maintaining sustainable yields of viable populations of listed threatened and protected animal species.

14 Restricted activities involving listed species

(1) Subject to section 15, no person may carry out a restricted activity involving a specimen of a listed threatened or protected species without a permit issued in terms of Chapter 7.

(2) Permits issued in terms of Chapter 7 may differentiate between different categories of applicants and may impose different validity periods.

(3) No person may import or export from the Province to or from any other country a specimen of any species listed in Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 1973 without a permit issued in terms of Chapter 7.

(4) The MEC may, by notice in the Provincial Gazette, specify the season within which permits for certain restricted activities may be applied for, and may also declare a period of the year to be a closed season.

(5) A notice published in terms of subsection (4) must specify –

- (a) the start and end date of the season;
- (b) the persons or category of persons that may carry out the restricted activity during the specified season;
- (c) the species, numbers and sex, or the other categories, of listed threatened or protected species in respect of which permits may be applied for during the specified season; and
- (d) the area or category of areas in which the restricted activities may be applied for during the specified season.

(6) The MEC must, when specifying a season under subsection (4)-

- (a) publish such notice two months prior to the start of the said season; and
- (b) publish such notice in all provincial newspapers circulating in the entire Province.

15 Exemptions

(1) Section 14(1) does not apply to a specimen of a listed threatened or protected species conveyed from outside the Province in transit through the Province to a destination outside the Province; provided that the export and import authorisations from the relevant provincial nature conservation authorities can be produced.

(2) Subject to subsection (3), the MEC may, by notice in the Provincial Gazette, exempt from the provisions of section 14-

- (a) any species specified in the notice; or
- (b) any species of a category specified in the notice; or
- (c) any specimen or derivative of any species specified in the notice

(3) A notice contemplated in subsection (2) may not contain any species, or a specimen or derivative of a species that is listed in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 1973

(4) Any person may carry out a restricted activity involving a specimen of an exempted species without a permit mentioned in section 14 (1).

16 Restricted activities on land owned by person other than applicant

(1) Subject to subsection (2), if the restricted activity applied for is to be carried out on private or state-owned land and the applicant is not the owner of the land, the applicant must

–

(a) in the case of a listed threatened species other than birds or fish obtain and submit the written consent of the landowner to undertake the proposed restricted activity on that land, when applying for a permit; or

(b) in the case of a listed threatened bird or fish species or listed protected species, obtain the written consent of the landowner prior to undertaking the proposed restricted activity on that land.

(2) The landowner's written consent need not be obtained if the application concerns a damage causing animal that poses a threat to human life.

17 Application affecting rights of other persons

(1) If the granting of an approval for a permit will affect the rights of a specific person, the applicant must give notice of the application to that person.

(2) A person notified of an application in terms of subsection (1) may within 15 working days of having been notified, submit to the HOD, in writing, any objections that he or she has against the application.

18 Additional requirements for possession of elephant ivory and rhinoceros horn

(1) Any person who is in possession of elephant ivory or rhinoceros horn must apply in writing to the MEC to have such elephant ivory or rhinoceros horn –

(a) permitted;

(b) marked in accordance with subsection (3); and

(c) registered on the national database for elephant ivory and rhinoceros horn maintained in terms of the *National Threatened or Protected Species Regulations, 2007*.

- (2) If the elephant ivory or rhinoceros horn, in respect of which the application contemplated in subsection (1) is made, has already been marked and registered in terms of other relevant legislation, the application referred to in subsection (1) shall be accompanied by proof of such marking and registration.
- (3) The MEC, if satisfied that the possession of the elephant ivory or rhinoceros horn is lawful, must, at the expense of the person applying for marking –
- (a) mark the elephant ivory by means of punch-die, or if not practicable, with indelible ink, using the following formula:
- (i) The country-of-origin two letter ISO code and the last two digits of the particular year, followed by a forward slash and the provincial code;
 - (ii) the serial number for the particular year, followed by a forward slash; and
 - (iii) the weight of the ivory in kilograms; or
- (b) mark the rhinoceros horn by means of a micro-chip.
- (4) In the case of an application in terms of subsection (2), if the marking requirements as stipulated in subsection 3 (a) and (b) are met, the existing marking should be accepted and the information reflected in the permit.
- (5) The loss through theft or any other means of elephant ivory or rhinoceros horn marked and registered in terms of this section must be reported within 48 hours to the South African Police and the MEC.

19 Amendment of notices

The MEC may by notice in the Provincial Gazette amend or repeal any notice published in terms of section 12(1) or 15(2).

Part 2: Prohibited activities involving listed threatened or protected species

20 Prohibited activities involving listed large predators, *Ceratotherium simum* (White rhinoceros) and *Diceros bicornis* (Black rhinoceros)

- (1) The following are prohibited activities involving a listed large predator, *Ceratotherium simum* (White rhinoceros) or *Diceros bicornis* (Black rhinoceros):
- (a) The hunting of a listed large predator, *Ceratotherium simum* (White rhinoceros) or *Diceros bicornis* (Black rhinoceros) that is a put and take animal;

- (b) the hunting of a listed large predator, *Ceratotherium simum* (White rhinoceros) or *Diceros bicornis* (Black rhinoceros) in a controlled environment;
- (c) the hunting of a listed large predator, *Ceratotherium simum* (White rhinoceros) or *Diceros bicornis* (Black rhinoceros) under the influence of any tranquilising, narcotic, immobilising or similar agent; and
- (d) the hunting of a listed large predator released in an area adjacent to a holding facility for listed large predators; and
- (e) the hunting of a listed large predator, *Ceratotherium simum* (White rhinoceros) or *Diceros bicornis* (Black rhinoceros) by making use of a gin trap;
- (f) the hunting of a listed large predator, *Ceratotherium simum* (White rhinoceros) or *Diceros bicornis* (Black rhinoceros), unless the owner of the land on which the animal is to be hunted provides an affidavit or other written proof indicating –
 - (i) the period for which the species to be hunted has been on that property, if that species was not born on that property; and
 - (ii) that the species to be hunted is not a put and take animal;
- (g) the breeding in captivity of a listed large predator, unless the prospective breeder provides a written undertaking that no predator of that species will be bred, sold, supplied or exported for hunting activities that are considered prohibited activities in terms of paragraphs (a) to (e) of this subsection;
- (h) the sale, supply or export of a live specimen of a listed large predator, *Ceratotherium simum* (White rhinoceros) or *Diceros bicornis* (Black rhinoceros) bred or kept in captivity unless the person selling, supplying or exporting the animal provides an affidavit or other written proof indicating –
 - (i) the purpose for which the species is to be sold, supplied or exported; and
 - (ii) that the species is not sold, supplied or exported for hunting activities that are considered prohibited activities in terms of paragraphs (a) to (e) of this subsection;
- (i) the purchase or acquisition of a live specimen of a listed large predator species, *Ceratotherium simum* (White rhinoceros) or *Diceros bicornis* (Black rhinoceros) bred or kept in captivity unless the person purchasing or acquiring the species provides an affidavit or other written proof indicating –
 - (i) the purpose for which the species is to be purchased or acquired; and
 - (ii) that the species is not purchased or acquired for hunting activities that are considered prohibited activities in terms of paragraphs (a) to (e) of this subsection.

- (2) Subsection (1) does not apply to a listed large predator, *Ceratotherium simum* (White rhinoceros) or *Diceros bicornis* (Black rhinoceros) bred or kept in captivity which –
- (a) has been rehabilitated in an extensive wildlife system; and
 - (b) has been fending for itself in an extensive wildlife system for at least 24 months.

21 Prohibited activities involving listed threatened or protected *Encephalartos* species

The following are prohibited activities involving listed threatened or protected *Encephalartos* species:

- (a) Any restricted activity involving wild specimens of listed threatened or protected *Encephalartos* species, except where provided for in a Biodiversity Management Plan approved by the Minister in terms of section 43 of the National Biodiversity Act;
- (b) trade in artificially propagated specimens of critically endangered or endangered *Encephalartos* species or the export of such specimens, with a stem diameter of more than 15cm, except where provided for in a Biodiversity Management Plan approved by the Minister in terms of section 43 of the National Biodiversity Act;
- (c) export or re-export of artificially propagated specimens of listed vulnerable or protected *Encephalartos* species with a stem diameter of more than 15 cm, except the following species which cannot be exported or re-exported if the stem diameter is more than 7 cm: *E. caffer*, *E. humilis*, *E. umbeluziensis* and *E. ngoyanus*.

22 Prohibited translocation of listed threatened or protected animals

The MEC must refuse a permit application for the transfer, transport or translocation of a specimen of a listed threatened or protected animal species to an extensive wildlife system –

- (a) if such an extensive wildlife system falls outside the natural distribution range of that animal species and the extensive wildlife system is a protected area; or
- (b) if there is a risk of –
 - (i) transmitting disease; or
 - (ii) hybridisation with other species in that extensive wildlife system.

23 Prohibited methods of hunting

(1) The HOD, when considering an application for the hunting of a listed threatened or protected species may not authorise the following methods of hunting, unless it is for the management of damage causing animals in accordance with section 27:

- (a) Listed threatened or protected species, may not be hunted by means of –
- (i) poison;
 - (ii) traps, except as provided for in subsection (2);
 - (iii) snares;
 - (iv) dogs, except as provided for in subsection (3);
 - (v) darting, except as provided for in subsection (4);
 - (vi) a weapon which, after it has been discharged, automatically reloads and fires when the trigger thereof is pulled or held in a discharged position;
 - (vii) a weapon discharging a rim firing cartridge of .22 of an inch or smaller calibre;
 - (viii) shotguns, except for the hunting of birds; and
 - (ix) airguns;
- (b) listed threatened or protected species may not be hunted by luring it, by means of –
- (i) bait, except in the case of -
 - (aa) lions, leopards and hyena, where dead bait may be used;
 - (bb) listed threatened or protected marine and other aquatic species; and
 - (cc) terrestrial vertebrates and invertebrates to be collected for scientific purposes;
 - (ii) sounds;
 - (iii) smell; or
 - (iv) any other induced luring method;
- (c) except as provided for in subsection (4), (5), (6) or (7) the animal may not be hunted by using –
- (i) flood or spotlights;
 - (ii) motorised vehicles; or
 - (iii) aircraft; and
- (d) the animal may not be hunted if it is –
- (i) under the influence of any tranquillising, narcotic, immobilising or similar agent; or
 - (ii) trapped against a fence or in a small enclosure where the animal does not have a fair chance of evading the hunter.
- (e) except as provided for in subsection (8), angling is not allowed with –
- (i) more than two lines;
 - (ii) a line to which more than two single hooks are attached with natural bait; or
 - (iii) a line to which more than one artificial lure or spoon is attached;

- (f) fish may not be caught with a set line, except as provided for in subsection (8);
- (g) fish may not be caught, stunned or killed by means of any explosive or electrical device;
- (h) fish may not be wilfully poisoned by any means or method;
- (i) fish may not be lured by placing any animal matter, vegetable matter or other substance therein; or
- (j) angling in a nature reserve or protected environment is prohibited, except as provided for in subsection (8).

(2) Subsection (1)(a)(ii) does not prevent the use of traps for the purpose of -

- (a) the hunting and / or catching of listed threatened or protected marine and other aquatic species;
- (b) collecting invertebrates for scientific purposes; and
- (c) trapping listed threatened or protected terrestrial vertebrate species for scientific, veterinary or management purposes.

(3) Subsection (1)(a)(iv) does not prevent the use of dogs for the purpose of -

- (a) tracking a wounded animal; or
- (b) flushing, pointing and retrieving listed threatened or protected species.

(4) Subsection (1)(a)(v) and (c) does not prevent the darting of an animal by a veterinarian or a person authorised by a veterinarian in writing and in possession of a valid permit, whether on foot or from a motorised vehicle or aircraft, to immobilise or tranquillise the animal for the purpose of -

- (a) carrying out a disease control procedure or a scientific experiment or for management purposes;
- (b) veterinary treatment of the animal; or
- (c) translocating or transporting the animal.

(5) Notwithstanding subsection (1)(c) -

- (a) an aircraft may be used for -
 - (i) tracking an animal in an area where the hunt takes place over long ranges;
 - (ii) culling; and
 - (iii) controlling damage causing animals.
- (b) a motorised vehicle may be used for -
 - (i) tracking an animal in an area where the hunt takes place over long ranges;
 - (ii) culling;

(iii) allowing a physically disabled or elderly person to hunt.

(6) Subsection (1)(a)(ii) –(ix) and (b) does not prevent the use of the hunting methods or luring methods described in these subsections for the purpose of controlling damage causing animals in accordance with section 27.

(7) Subsection (1)(c) does not prevent the use of flood or spotlights for the purpose of –

- (a) controlling damage causing individuals;
- (b) culling of listed threatened or protected species;
- (c) hunting of leopards and hyenas; or
- (d) tracking wounded animals.

(8) Subsections (1)(e),(f) and(j) do not apply to the following persons with respect to an aquatic system that has been artificially created and that is totally surrounded by the land of the owner —

- (a) the owner of such land; or
- (b) any other person acting with the written permission of the owner.

(9) The HOD may not issue a permit to hunt a listed large predator, *Ceratotherium simum* (white rhinoceros), *Crocodylus niloticus* (Nile crocodile), *Diceros bicornis* (black rhinoceros) or *Loxodonta africana* (African elephant) by means of or by the use of a bow and arrow.

24 Additional prohibitions

The MEC may, by notice in the Provincial Gazette, prohibit the carrying out of any activity-

- (a) which is of a nature that may negatively impact on the survival of a listed threatened or protected species; and
- (b) which is specified in the notice, or prohibit the carrying out of such activity without a permit issued in terms of Chapter 7.

Part 3: Restricted activities involving ordinary game

25 Restricted activities involving ordinary game

(1) Subject to section 26(1), no person may carry out a restricted activity involving a specimen of ordinary game without a permit issued in terms of Chapter 7.

(2) The MEC may, by notice in the Provincial Gazette, specify the season within which permits for certain restricted activities may be applied for, and may also declare a period of the year to be a closed season.

(3) A notice published in terms of subsection (2) must specify –

- (a) the start and end date of the season;
- (b) the persons or category of persons that may carry out the restricted activity during the specified season;
- (c) the species, numbers and sex, or the other categories, of ordinary game in respect of which permits may be applied for during the specified season; and
- (d) the area or category of areas in which the restricted activities may be applied for during the specified season.

(4) The MEC must, when specifying a season under subsection (2)-

- (a) publish such notice two months prior to the start of the said season; and
- (b) publish such notice in all provincial newspapers circulating in the entire Province.

26 Exemptions

(1) The MEC may, by notice in the Provincial Gazette, exempt from the provisions of section 25-

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

(2) Any person may carry out a restricted activity involving a specimen of an exempted species without a permit mentioned in section 25(1).

Part 4: Damage causing animals

27 Provisions relating to damage causing animals

(1) The MEC must determine whether an individual of a listed threatened or protected species can be deemed to be a damage causing animal.

(2) In the case of a damage causing animal originating from a protected area, the following control options must be considered by the MEC in concurrence with the management authority of a protected area:

- (a) Capture and relocation by the Department or the management authority of the protected area;
- (b) control by the Department or the management authority of a protected area by culling or by using methods prescribed in subsections (4), (5) and (6); or
- (c) control by a person, other than a hunting client, designated in writing, by the Department or the management authority of the protected area and in possession of a valid permit to capture and relocate or to control by means of methods prescribed in subsection (4), (5) and (6).

(3) Subsection (1) does not prevent a person from killing a damage causing animal in self-defence where human life is threatened. If a damage causing animal is killed in an emergency situation -

- (a) the person who killed the animal must inform the MEC of the incident within 24 hours after it has taken place; and
- (b) the person must make a declaration under oath at a police station within 24 hours after it has taken place; and
- (c) the MEC must evaluate the evidence and may condone the action in writing or if necessary, take appropriate steps to institute criminal proceedings.

(4) The holder of a permit referred to in section 59(2)(a) or a person referred to in subsection 2(c) may hunt a damage causing animal by the following means, as specified on his or her permit:

- (a) bait and traps, excluding gin traps, where the damage causing animal is -
 - (i) in the immediate vicinity of the carcass of domestic stock or wildlife which it has or apparently has killed;
 - (ii) about to cause damage to domestic stock or wildlife;
- (b) dogs, for the purpose of flushing the damage causing animal or tracking a wounded animal;
- (c) darting, for the subsequent translocation of the damage causing animal, and
- (d) a firearm suitable for hunting purposes.

(5) The holder of a permit referred to in section 59(2)(a) or a person referred to in subsection 2(c) may hunt a damage causing individual by luring it by means of-

- (a) sounds; and

(b) smell.

(6) The holder of a permit referred to in section 59(2)(a) or a person referred to in subsection 2(c) may hunt a damage causing animal by using a motorised vehicle, or an aircraft and flood or spotlights.

(7) In the case of a damage causing animal originating from an area other than a protected area, the following control options must be considered by the Department:

- (a) capture and relocation;
- (b) control by using methods prescribed in subsection (4), (5) and (6); or
- (c) control by a person, other than a hunting client, designated in writing, by the MEC, and in possession of a valid permit to capture and relocate or to control by means of methods prescribed in subsection (4), (5) and(6).

(8) Subject to the provisions of this Act and any prohibitions imposed by the National Biodiversity Act, the MEC may take steps that may be necessary or expedient to destroy, reduce, remove or eliminate, either generally or in a particular area, any listed species which may be harmful or detrimental to biodiversity.

Part 5: Considerations, conditions and essential requirements of permits

28 Factors to be taken into account by the HOD when considering permit applications

When considering a permit application in terms of Chapter 7, the HOD must, to the extent applicable, take into account –

- (a) all applicable legal requirements;
- (b) whether the species to which the application relates is listed in terms of section 12 of the Act as a critically endangered species, an endangered species, a vulnerable species or a protected species;
- (c) the IUCN Red List status of the species;
- (d) whether the application involves a listed threatened or protected species that will be taken or removed from a wild population;
- (e) whether the restricted activity applied for is prohibited in terms of sections 21, 22 or 23;
- (f) whether the HOD has cancelled other permits issued to the applicant in terms of section 73 of the Act;

- (g) all other relevant factors, including –
- (i) whether the restricted activity in respect of which the application is submitted is likely to have a negative impact on the survival of the relevant listed threatened or protected species;
 - (ii) the biodiversity management plan for the species concerned (if any);
 - (iii) any recommendation by the Scientific Authority in terms of section 61(1)(c) of the National Biodiversity Act regarding the application;
 - (iv) any risk assessment or expert evidence requested by the HOD;
 - (v) any relevant information on the database that SANBI is required to keep in terms of section 11(1)(j) of the National Biodiversity Act;
 - (vi) any objections to the application; and
 - (vii) whether the restricted activity will be carried out by, or will take place in a captive breeding operation, commercial exhibition facility, game farm, nursery, scientific institution, sanctuary, rehabilitation facility, or by a wildlife trader, wildlife translocator, hunting outfitter or professional hunter registered in terms of section 45 of the Act.

29 Additional requirements for applications involving wild populations of listed critically endangered species

If the application involves a wild population of listed critically endangered species, the HOD must, in addition to the factors listed in section 28, -

- (a) require a risk assessment in accordance with section 32; and
- (b) consider whether the restricted activity applied for is in line with the biodiversity management plan for the species involved (if available).

30 Additional factors to be taken into account by the HOD when considering applications for hunting

When considering an application for a permit to hunt a specimen of a listed threatened or protected animal species, the HOD must, in addition to the factors listed in sections 28 & 29, also take into account:

- (a) Prohibited activities listed in section 20;
- (b) prohibited methods of hunting as listed in section 23;
- (c) whether the activity involves the control of damage causing animals as provided for in section 27;
- (d) in the case of a hunting client, whether he or she will be accompanied by a professional hunter;

- (e) in the case of a disabled person, the view of the National Council for Persons with Physical Disabilities in South Africa on whether the applicant is a physically disabled person;
- (f) whether a person applying for a permit is a member of a recognised hunting organisation;
- (g) the hunting off-take limits determined by SANBI for a listed threatened or protected animal species determined by the Minister in terms of regulation 72 of the *National Threatened and Protected Regulations, 2007*; and
- (h) the hunting off-take or bag limits for wild populations determined by the HOD for a listed threatened or protected species in terms of section 13.

31 Compulsory conditions subject to which permits to hunt must be issued

(1) All permits, including game farm hunting permits, authorising the buying and hunting of a specimen of a listed threatened or protected animal species must, in addition to any other conditions the HOD may or must impose, be issued subject to the following conditions:

- (a) The permit holder must have all relevant documentation authorising the hunt on his or her person during the hunt;
- (b) the permit holder must within 21 days of the hunt furnish the HOD with a written return on the hunt stating –
 - (i) the permit number and date of issuance of the permit;
 - (ii) the species, sex and number of animals hunted; and
 - (iii) the location where the hunt took place; and
- (c) in the case of a hunting client, that he or she is accompanied by a professional hunter.

(2) All game farm hunting permits for the buying and hunting of listed threatened or protected species, must, in addition to any other conditions the HOD may or must impose, be subject to the following conditions:

- (a) The landowner of the registered game farm must return all the copies of the game farm hunting permits used during a 12 month period to the HOD; and
- (b) must submit a list of any unused permit numbers to the HOD.

32 Risk assessment

(1) If the HOD requests that a risk assessment be carried out, the assessment must, as the HOD may determine, include the following:

- (a) Information regarding the relevant listed threatened or protected species, including –

- (i) the taxonomy of the species, including the class, order, family, scientific name, scientific synonyms and common names of the species;
- (ii) the national and provincial conservation status of the species, including IUCN Red List Status;
- (iii) the population status and trends of the species, including –
 - (aa) its national population status;
 - (bb) the size of its local population which will be affected by the restricted activity in respect of which application is made; and
 - (cc) its current national and local population trends;
- (iv) the geographic distribution and trends of the species, including –
 - (aa) the distribution of the natural population;
 - (bb) the distribution of any translocated and introduced populations; and
 - (cc) the geographic distribution trends;
- (v) the requirements of the species with respect to habitat and climate;
- (vi) the role of the species in its ecosystem, taking into account –
 - (aa) whether the species is a keystone or indicator species;
 - (bb) the species' level in the food chain; and
 - (cc) the functions which the species performs in its ecosystem; and
- (vii) the major threats affecting the species nationally and locally;
- (b) information regarding the restricted activity in respect of which application is made, including –
 - (i) the nature of the restricted activity;
 - (ii) the reason for the restricted activity;
 - (iii) where the restricted activity is to be carried out;
 - (iv) the gender, age and number of the specimens of the species involved; and
 - (v) the intended destination of the specimens, if they are to be translocated;
- (c) any regulations, policies, norms and standards or international agreements binding on the Republic which may be applicable to the application;
- (d) the potential risks associated with the restricted activity to the particular listed threatened or protected species and a specific population of such threatened or protected species or to any other species or ecosystems, including –
 - (i) degradation and fragmentation of a species' habitat;

- (ii) creation of a significant change in an ecosystem caused by the removal or addition of keystone species;
 - (iii) over-exploitation of a species; and
 - (iv) hybridisation of species;
 - (e) evaluation of the risk identified under paragraph (d) in terms of –
 - (i) the likelihood of the risk being realised; and
 - (ii) the severity of the risk and consequences of the realisation of the risk for the particular species as well as for other species, habitats and ecosystems; and
 - (f) options for minimising potential risks;
 - (g) management of potential risks; and
 - (h) any other information as the MEC may determine.
- (2) An applicant must appoint an environmental assessment practitioner at own cost to provide the information required in section 32(1).
- (3) The applicant must –
- (a) take all reasonable steps to verify whether the environmental assessment practitioner to be appointed complies with section 33(a), (b) and (c); and
 - (b) provide the environmental assessment practitioner with access to all information at the disposal of the applicant regarding the application, whether or not such information is favourable to the applicant.

33 General requirements for environmental assessment practitioner

An environmental assessment practitioner appointed in terms of section 32(2) must -

- (a) be independent; and
- (b) have expertise in conducting risk assessments, including knowledge of the Act and any guidelines that have relevance to the proposed application; and
- (c) comply with any qualification criteria specified for environmental assessment practitioners in terms of the National Environmental Management Act, 1998 (Act 107 of 1998).

CHAPTER 4

SPECIES AND ORGANISMS POSING POTENTIAL THREATS TO BIODIVERSITY

34 Purpose of this Chapter

- (1) The purpose of this Chapter is-

- (a) to prevent the unauthorised introduction and spread of alien and listed invasive species to ecosystems and habitats where they do not naturally occur;
- (b) to manage and control alien species and listed invasive species to prevent or minimise harm to the environment and to biodiversity in particular;
- (c) to eradicate alien and listed invasive species from ecosystems and habitats where they may harm such ecosystems or habitats; and
- (d) to protect the habitat of listed threatened and protected species.

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

Part 1: Alien species

35 Restricted activities involving alien species

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

(2) The HOD may issue a permit for a restricted activity involving a specimen of an alien species only if-

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

36 Exemptions

(1) The MEC may, by notice in the Provincial Gazette, exempt from the provisions of section 33(1)-

- (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 35 (1).

(3) Any notice published in terms of subsection (1) must be reviewed by the MEC every five years.

37 Prohibited activities involving certain alien species

(1) The MEC may, by notice in the Provincial Gazette, publish a list of those alien species in respect of which a permit mentioned in section 35 (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) Any list published in terms of subsection (1) must be reviewed by the MEC every five years.

38 Amendment of notices

The MEC may, by notice in the Provincial Gazette, amend or repeal any notice published in terms of section 36 (1) or 37(1).

39 Duty of care relating to alien species

(1) A person authorised by permit, in terms of section 35 (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 35(1) or 37(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

40 List of invasive species

(1) The MEC 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) Any list published in terms of subsection (1) must be reviewed by the MEC every five years.

(3) Any list published in terms of the National Biodiversity Act shall be deemed to be published in terms of this Act and applies *mutatis mutandis* in the Province.

41 Restricted activities involving listed invasive species

(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) The HOD may issue a permit for a restricted activity involving a specimen of a listed invasive species only if-

- (a) adequate procedures have been followed by the applicant to assess the risks and potential impacts associated with the restricted activity;
- (b) the relevant species has been found to have negligible or no invasive potential;
- (c) the benefits of allowing the activity are significantly greater than the costs associated with preventing or remedying any resultant damage to the environment or biodiversity; and

- (d) it is satisfied that adequate measures have been taken by the applicant to prevent the escape and spread of the species.

42 Amendment of notices

The MEC may, by notice in the Gazette, amend or repeal any notice published by him or her in terms of section 40(1).

43 Duty of care relating to listed invasive species

(1) A person authorised by permit in terms of section 41 to carry out a restricted activity involving a specimen of a listed invasive species must take all the required steps to prevent or minimise harm to biodiversity.

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

- (a) notify the Department, in writing, of the listed invasive species occurring on that land;
- (b) take steps to control and eradicate the listed invasive species and to prevent it from spreading; and
- (c) take all the required steps to prevent or minimise harm to biodiversity.

(3) The MEC may, in writing, direct any person who has failed to comply with subsection (1) or (2), or who has contravened section 41(1), to take such steps-

- (a) as may be necessary to remedy any harm to biodiversity caused by-
 - (i) the actions of that person; or
 - (ii) the occurrence of the listed invasive species on land of which that person is the owner; and
- (b) as may be specified in the directive.

(4) If that person fails to comply with the provisions of subsection (3), a competent authority may-

- (a) implement the directive; and
- (b) recover all costs reasonably incurred by a competent authority in implementing the directive-
 - (i) from that person; or
 - (ii) proportionally from that person and any other person who benefited from implementation of the directive.

44 Control and eradication of listed invasive species

- (1) Control and eradication of a listed invasive species must be carried out by means of methods that are appropriate for the species concerned and the environment in which it occurs.
- (2) Any action taken to control and eradicate a listed invasive species must be executed with caution and in a manner that may cause the least possible harm to biodiversity and damage to the environment.
- (3) The methods employed to control and eradicate a listed invasive species must also be directed at the offspring, propagating material and re-growth of such invasive species in order to prevent such species from producing offspring, forming seed, regenerating or re-establishing itself in any manner.

CHAPTER 5**REGISTRATION OF CAPTIVE BREEDING OPERATIONS, COMMERCIAL EXHIBITION FACILITIES, GAME FARMS, NURSERIES, SCIENTIFIC INSTITUTIONS, SANCTUARIES, REHABILITATION FACILITIES, WILDLIFE TRADERS, WILDLIFE TRANSLOCATORS, PROFESSIONAL HUNTERS, AND PROFESSIONAL HUNTING SCHOOLS*****Part 1: Compulsory registration requirements*****45 Compulsory registration requirements**

No person may operate a captive breeding operation, commercial exhibition facility, game farm, nursery, scientific institution, sanctuary, rehabilitation facility or act as a wildlife trader, wildlife translocator, professional hunter or a professional hunting school involving specimens of any listed threatened or protected species, without a registration certificate issued in terms of Chapter 7.

46 Application affecting rights of other persons

- (1) If the granting of an approval for a registration application will affect the rights of a specific person, the applicant must give notice of the application to that person.
- (2) A person notified of an application in terms of subsection (1) may within 15 working days of having been notified, submit to the HOD, in writing, any objections that he or she has against the application.

47 Appointment of advisors for evaluation of hunting outfitters and professional hunters

The MEC may appoint such number of persons as he may deem expedient to advise him whether a professional hunter or hunting outfitter complies with the prescribed requirements and may from time to time determine the remuneration, travelling and subsistence allowances and other allowances payable to a person(s) so appointed who is not a member of the Public Service of the Republic.

Part 2: Considerations, conditions and essential requirements of registration certificates

48 Factors to be taken into account by the MEC

When considering a registration application, the MEC must take into account -

- (a) all applicable legal requirements in order to ensure that any decision with respect to the registration is consistent with those requirements;
- (b) whether the species to which the application relates is listed in terms of section 12 of the Act as a critically endangered species, an endangered species, a vulnerable species or a protected species;
- (c) the purpose for which the captive breeding operation, commercial exhibition facility, game farm, nursery, scientific institution, sanctuary, rehabilitation facility, wildlife trade, wildlife translocation, professional hunting or and professional hunting schools is conducted;
- (d) whether the applicant is prepared to micro-chip or mark, where appropriate, each specimen of a listed threatened or protected species bred or kept at the captive breeding operation, commercial exhibition facility, game farm, nursery, sanctuary or rehabilitation facility or traded with by the wildlife trader; and
- (e) in the case of an application for the registration of a game farm, whether the game farm is fenced in accordance with the prescribed specifications.

49 Consideration of and decision on applications

(1) On receipt of an application in terms of section 48, the HOD must –

- (a) instruct an official in the Department to inspect the premises in respect of which the application has been lodged;
- (b) make a written recommendation as to –
 - (i) whether the application must be granted or refused; and
 - (ii) if the recommendation is to grant the application, any conditions on which the application must be granted.

50 Compulsory conditions for the registration of captive breeding operations, commercial exhibition facilities and rehabilitation facilities

A registration certificate issued in respect of a captive breeding operation, rehabilitation facility and a commercial exhibition facility must be subject to a condition that the person to whom the registration certificate is granted to, must -

- (a) prevent hybridisation and /or inbreeding;
- (b) keep a studbook, where appropriate; and
- (c) provide information relating to paragraphs (a) and (b) of this section to the HOD within three months after the end of each calendar year.

51 Additional compulsory conditions for the registration of commercial exhibition facilities

A registration in respect of a commercial exhibition facility must, in addition to any other conditions the HOD may impose and the compulsory conditions in section 50, be subject to a condition that the person to whom the registration is granted must, -

- (a) if it is a travelling exhibition, inform the province to which it will be going at least two months prior to leaving the province it is registered in; and
- (b) must comply with the provisions of the latest version of the South African Bureau of Standard's Code of Practice SANS 10379: Zoo and aquarium practice.

52 Compulsory condition for the registration of sanctuaries

A registration certificate issued in respect of a sanctuary for listed threatened or protected species must be subject to the condition that no breeding will be allowed in the sanctuary.

53 Compulsory condition for the registration of wildlife translocators

A registration certificate may only be issued in respect of a wildlife translocator if the HOD is of the opinion that the applicant possesses the necessary knowledge, ability, skill and experience, and subject to compliance with the latest version of the South African Bureau of Standards' Code of Practice 10331: Translocation of certain species of wild herbivores.

54 Compulsory conditions for the registration of professional hunters and hunting outfitters

- (1) A registration certificate may only be issued in respect of a professional hunter or a hunting outfitter if the HOD is of the opinion that the applicant—
- (i) possesses the necessary knowledge, ability, skill and experience;
 - (ii) is of and above the age of majority; and

- (iii) in the case of a hunting outfitter, if the applicant can provide the prescribed services and conveniences.

CHAPTER 6 GENERAL

55 Leaving or making of openings in certain fences

No person may on land upon which listed species or ordinary game are found or likely to be found and which is fenced in such a manner that such animals cannot readily escape, make an opening in the fence so designed that such animals entering the land through the opening, cannot easily find the opening to escape.

56 Possession of fishnets, fish traps or similar devices

- (1) No person may without a permit issued in terms of Chapter 7, on land on which an aquatic system occurs, be in possession of a fishnet, a fish trap or a similar device designed for the catching of fish, without the written permission of the owner of the land.
- (2) Subsection (1) does not apply to the possession on land on which an aquatic system occurs, of a landing net or keep-net designed for the purpose of landing or keeping fish.

CHAPTER 7 PERMITS & REGISTRATION CERTIFICATES

57 Purpose of Chapter

The purpose of this Chapter is to provide for -

- (1) the regulation of the issuing of permits authorising -
- (a) restricted activities involving specimens of-
 - (i) listed threatened or protected species in terms of section 12 (1);
 - (ii) CITES species in terms of section 12(2);
 - (ii) alien species in terms of section 35(1);
 - (iii) listed invasive species in terms of section 41(1); or
 - (iv) ordinary game species in terms of section 25(1);.
 - (b) activities regulated in terms of a notice published in terms of section 24(b);

- (c) restricted activities involving aquatic systems in terms of section 11;
- (d) restricted activities involving vegetation within 32 m from the high watermark on either side of a watercourse in terms of section 10; and
- (e) the possession of fishnets, traps or similar devices in terms of section 56.

(2) the regulation of the issuing of registration certificates authorising captive breeding operations, commercial exhibition facilities, game farms, nurseries, scientific institutions, sanctuaries, rehabilitation facilities, wildlife traders, wildlife translocations, professional hunters and professional hunting schools in terms of section 45.

Part I: Permit & Registration system

58 Issuing authorities

- (1) The HOD is the issuing authority for permits relating to the carrying out of restricted activities involving specimens of listed threatened or protected species in the province, excluding permits relating to –
- (a) listed threatened or protected species in protected area or an area managed or under control of an organ of state;
 - (b) listed threatened or protected marine species;
 - (c) listed threatened or protected species where the restricted activity will be carried out by the Department on land under its jurisdiction or where control of damage causing animals originating from protected areas will take place in compliance with section 27; and
 - (d) listed threatened or protected species where the restricted activity will be carried out by a national department on land under its jurisdiction.
- (2) The Minister responsible for Environment is the issuing authority for permits relating to the carrying out of the activities described in subsection 2(a) – (d) in terms of the *National Threatened or Protected Species Regulations, 2007*.
- (3) The HOD is the issuing authority for registration certificates required in terms of section 45.

59 Types of permits

- (1) Any person may apply for a permit or registration certificate by lodging an application to the HOD on the prescribed form.

- (2) Only the following persons may apply for standing permits:
- (a) the management authority of a protected area, for a standing permit authorising restricted activities involving specimens of listed threatened or protected species within the protected area that are necessary for their management in accordance with the management plan of the area;
 - (b) a veterinarian engaged in the treatment of listed threatened or protected species, for a standing permit authorising the restricted activities involving specimens of listed threatened or protected species that are necessary for their treatment or for applying medical procedures;
 - (c) a person conducting a registered captive breeding operation, for a standing permit authorising restricted activities involving specimens of listed threatened or protected species kept or bred at that captive breeding operation that are necessary for the purpose for which that captive breeding operation is registered;
 - (d) a person conducting a registered nursery, for a standing permit authorising restricted activities involving specimens of listed threatened or protected species cultivated or artificially propagated at that nursery that are necessary for the purpose for which that nursery is registered;
 - (e) the operator of any registered sanctuary or registered rehabilitation facility, for a standing permit authorising restricted activities involving specimens of listed threatened or protected species brought to that sanctuary or rehabilitation facility that are necessary for their treatment or care;
 - (f) the operator or head of a registered scientific institution or a person approved in writing by such an institution, for a standing permit authorising restricted activities involving specimens of listed threatened or protected species kept at that institution or being researched by the institution;
 - (g) the operator or head of a registered commercial exhibition facility, for a standing permit authorising restricted activities involving specimens of listed threatened or protected species under the care of the exhibitor that are necessary for the purpose for which the commercial exhibition facility is registered;
 - (h) a landowner of a registered game farm, for a standing permit authorising restricted activities involving specimens of listed threatened or protected species kept on the farm that are necessary for the management of the farm;
 - (i) a registered wildlife trader, for a standing permit authorising him or her to operate as a wildlife trader in listed threatened or protected species as specified by the HOD;

(j) a registered wildlife translocator, for a standing permit authorising him or her to operate as a wildlife translocator in listed threatened or protected species as specified by the HOD.

(3) A landowner of a registered game farm may apply for game farm hunting permits, authorising a person to buy and hunt a listed threatened or protected species on the registered game farm and for the subsequent transport and possession of the dead specimen(s) that was hunted, if the registration provisions in Chapter 5 are complied with.

(4) A registered nursery may apply for nursery possession permits authorising a person to buy, transport or convey and keep in his or her possession a listed threatened or protected species acquired from the registered nursery, if the registration provisions of Chapter 5 are complied with.

(5) Any person may apply for a possession permit for having or conveying a listed specimen of a threatened or protected species or a product or derivative of a listed threatened or protected species in his or her possession, if that person does not intend to carry out any other restricted activity with that specimen.

(6) A registered wildlife trader may apply for personal effects permits, authorising a person to buy, transport or convey and keep in his or her possession and, or export out of the Province, dead or live specimens of listed threatened or protected species, including products derived from such species and acquired from the registered wildlife trade, if the registration provisions in Chapter 5 are complied with.

60 Application for permits & registration certificates

(1) Upon receiving an application in terms of section 59, the HOD may-

- (a) request the applicant to furnish any additional information before it considers the application, including information on interested and affected parties, risk assessments and expert evidence;
- (b) require the applicant to comply with such reasonable conditions as it may impose before it grants the application;
- (c) issue a permit or registration certificate unconditionally or issue it subject to conditions; or
- (d) refuse a permit or registration certificate.

(2) In order to be valid, a decision of the HOD to issue or refuse a permit or a registration certificate or to issue it subject to conditions, must be consistent with-

- (a) the applicable provisions of this Act;
- (b) the national environmental management principles;
- (c) the national biodiversity framework;
- (d) any applicable international agreements binding on the Province;
- (e) the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);
- (f) the delegation of powers in terms of section 80, as recorded on the delegation list;
- (g) any requirements that may be prescribed.

(4) The HOD's decision must be rationally connected to-

- (a) the purpose of the Act;
- (b) the information before the HOD; or
- (c) the reasons given for it by the HOD.

(5) After having reached a decision on an application, the HOD must within 10 working days, in writing –

- (a) notify –
 - (i) the applicant of the decision;
 - (ii) any person who lodged an objection against the application; and
- (b) if the decision is to refuse the application or to grant the application on conditions –
 - (i) give reasons for the decision to the applicant if so requested by the applicant; and
 - (ii) draw the applicant's attention to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of the Act.

61 Content of permits & registration certificates

(1) A permit or registration certificate-

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

(2) A permit or registration certificate issued in terms of this Act does not exempt the holder or any other person from complying with the provisions of any other applicable law.

62 Integrated permits

(1) If the carrying out of an activity mentioned in section 57 is also regulated in terms of other law, the authority empowered under that other law to authorise that activity and the HOD may-

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

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

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

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

63 Exercising or performing of powers, functions or duties of owner where land is held by more than one person, partnership or other body.

Where land is held by—

- (a) more than one person in undivided shares;
- (b) a partnership;
- (c) a body corporate or incorporate,

the powers, functions or duties which an owner of land may exercise or perform in terms of the provisions of the Act, shall be exercised or performed on behalf of such persons, partnership or body by a person nominated by such persons, partnership or body and approved by HOD.

64 Renewal of permits and registration certificates

- (1) The holder of a permit or registration certificate may, before the expiry of the period for which a permit or registration certificate was issued, apply in writing to the HOD for the renewal of that permit or registration certificate.
- (2) An application referred to in subsection (1) must be accompanied by –
 - (a) the reasons for the application; and
 - (b) the prescribed processing fee and the species fee as determined by the HOD, if the restricted activity applied for is hunting.

65 Consideration of and decision on renewal applications

- (1) On receipt of an application in terms of section 64, the HOD –
 - (a) must consider the application; and
 - (b) may require the applicant to furnish additional information.
- (2) After having reached a decision on an application for renewal, the HOD must –
 - (a) if the application was approved, issue a new permit or registration certificate in the name of the applicant; and
 - (b) if the application was refused –
 - (i) notify the applicant of the decision, in writing
 - (ii) give reasons for the refusal if required by the applicant; and
 - (iii) inform the applicant of his or her right to appeal against the decision.

66 Amendment of permits or registration certificates

- (1) The HOD may amend a permit or registration certificate –
 - (a) on application by the holder of the permit or registration certificate in accordance with section 67; or
 - (b) on the HOD's own initiative in accordance with section 69.
- (2) A permit or registration certificate may be amended by –
 - (a) removing a condition;
 - (b) changing a condition;
 - (c) adding a condition;

- (d) updating or changing any detail on the permit or registration certificate; or
- (e) correcting a technical or editorial error on the permit or registration certificate.

67 Applications for amendment by holder of permit or registration certificate

(1) The holder of a permit or registration certificate may at any time apply to the HOD for an amendment of the permit or registration certificate.

(2) An application in terms of subsection(1) must be –

- (a) on an official application form determined by the HOD and containing, as a minimum the information as prescribed and obtainable from the HOD; and
- (b) accompanied by the prescribed processing fee.

68 Consideration of and decision on applications for amendment

(1) On receipt of an application in terms of section 67, the HOD –

- (a) must consider whether the granting of the application is likely to adversely affect the environment or the rights or interest of other parties; and
- (b) may require the applicant to furnish additional information.

(2) The HOD must promptly decide on the application if-

- (a) the application is for a non-substantive amendment to the environmental authorisation, or the environmental rights or interests of other parties are not likely to be adversely affected; or
- (b) the environment or rights or interests of other parties are not likely to be adversely affected.

(3) If the application is for a substantive amendment, or if the environment or rights or interests of other parties are likely to be adversely affected, the HOD, must before deciding on the application consider the relevant factors in Chapter 2 of the Act.

(4) After having reached a decision on an application, the HOD must –

- (a) notify the applicant of the decision, in writing; and
- (b) if the application was approved, issue an amended permit or registration certificate to the applicant; or

- (c) if the application was refused –
 - (i) give reasons for the refusal to the applicant; and
 - (ii) draw the applicant's attention to the fact that an appeal may be lodged against the decision in terms of Chapter 6 of the Act.

69 Amendment on initiative of HOD

The HOD may on own initiative amend a permit or registration certificate if it is necessary –

- (a) for the more effective protection of the listed threatened or protected species to which the permit or registration relates;
- (b) for the more effective enforcement of the Act;
- (c) to give effect to any norms and standards that apply to the relevant captive breeding operation, commercial exhibition facility, game farms, nursery, scientific institution, sanctuary, rehabilitation facility, wildlife traders translocators, professional hunters or hunting schools; or
- (d) to correct technical or editorial errors on the permit or registration certificate.

70 Process

The HOD –

- (a) must notify the holder of the relevant permit or registration certificate, in writing, of –
 - (i) the proposed amendment; and
 - (ii) the reasons for the proposed amendment; and
- (b) must afford the holder of the permit or registration certificate a reasonable opportunity to submit representations regarding the proposed amendment.

71 Decision

After having reached a decision whether or not to amend the permit or registration certificate, the HOD must–

- (a) notify the holder of the permit or registration certificate, in writing, if the permit or registration certificate is not to be amended;
- (b) if the decision is to amend the permit or registration certificate –
 - (i) give reasons for the decision to the holder of the permit or registration certificate;

- (ii) issue an amended permit or registration certificate to the holder; and
- (iii) draw the attention of the holder of the permit or registration to the fact that an appeal may be lodged against the decision in terms of Chapter 6 of the Act.

72 Consideration of renewal of permit or registration certificate

- (1) The HOD may consider renewing a permit or registration certificate if –
- (a) all conditions subject to which the permit or registration was issued were complied with;
 - (b) there is no evidence that the permit holder or the operation, facility, game farm or institution is managed in a manner which is detrimental to the species kept by the permit holder or at the operation, facility, game farm or institution; and
 - (c) the conservation status of the species has been maintained or has improved, or the legislation that affects the continuation of the permit or registration has not changed.
- (2) If the conservation status of the species has deteriorated or the legislation has changed, the HOD may request a risk assessment to be submitted prior to considering renewal of the permit or registration certificate.

73 Cancellation of permits and registration certificates

The HOD may cancel the permit or registration certificate if-

- (a) the permit or registration certificate was issued as a result of misleading or false representations by the applicant or a person acting on behalf of the applicant;
- (b) the permit or registration certificate is inconsistent with any of the requirements outlined in section 60(3) or (4); or
- (c) the applicant, permit holder or holder of a registration certificate has contravened or failed to comply with-
 - (i) any condition of the permit;
 - (ii) any provision of this Act or other law governing the permitted activity; or
 - (iii) any foreign law governing the permitted activity.

- (2) The HOD may cancel the permit or registration of a captive breeding operation, commercial exhibition facility, game farm, nursery, scientific institution, sanctuary, rehabilitation facility, wildlife trader, wildlife translocator, professional hunter or professional hunting school if –
- (a) the permit or registration certificate holder has breached a condition subject to which the permit was issued or registration was registered;
 - (b) the operation, commercial exhibition facility, game farm, nursery, scientific institution, sanctuary or rehabilitation facility is managed, or a wildlife trader, wildlife translocator, professional hunter or professional hunting school is operating, in a manner which is –
 - (i) detrimental to the specimens being bred, reared, propagated, or kept at such operation, commercial exhibition facility, game farm, nursery, scientific institution, sanctuary, rehabilitation facility, wildlife trading premises, wildlife translocation methods or professional hunting methods;
 - (ii) not in accordance with any information provided to the MEC or
 - (c) there is a change in the conservation status of the relevant species being bred, propagated or kept by a permit holder or at such facility that affects the continuation of the permit or registration.
- (3) The HOD considering the cancellation of a permit or registration certificate in terms of subsection (1) and (2) must–
- (a) notify the holder of that permit or registration certificate that cancellation of the permit or registration certificate is being considered, together with the reasons for the proposed cancellation; and
 - (b) afford the holder of the permit or registration certificate a reasonable opportunity to submit representations regarding the proposed cancellation.
- (4) After having reached a decision on the cancellation of the permit or registration certificate, the HOD must –
- (a) notify the permit or registration certificate holder of the decision, in writing; and
 - (b) if the decision is to cancel the permit or registration –
 - (i) instruct the permit or registration certificate holder to return the permit within 30 days; and
 - (ii) inform the permit or registration certificate holder of the right to appeal against the decision.

74 Cancelled permits and registration certificates to be returned to the HOD

- (1) The holder of a permit or registration certificate which has been cancelled must return the permit or registration certificate to the HOD within 30 days of the date of cancellation.

- (2) Any failure by a permit holder to return a cancelled permit in accordance with subsection (1) must be taken into account by the HOD when considering any future application from that person.

75 Permits or registration certificates may not be transferred

- (1) No permit or registration certificate may be transferred to any other person.
- (2) In the event of a change in ownership, the holder of the permit or registration certificate must apply for the amendment of such permit or registration certificate, which amendment must not unreasonably be withheld by the HOD.

76 Lost or stolen permits and registration certificates

The HOD may, on the written request of a permit or registration certificate holder, issue a replacement of that permit or registration certificate if the original was lost or stolen, provided that such request is accompanied by –

- (a) proof that the original was lost or stolen or an affidavit by that permit or registration certificate holder stating that the permit or registration certificate was lost or stolen; and
- (b) the prescribed processing fee.

Part 2: Appeals**77 Appeals to be lodged with MEC**

- (1) A person who feels aggrieved by the decision in terms of section 60(2), or a permit holder or holder of a registration certificate whose permit or registration certificate has been cancelled in terms of section 73, may lodge with the MEC an appeal against the decision within 30 days after having been informed of the decision.

- (2) The MEC must either-
 - (a) consider and decide the appeal; or
 - (b) 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 MEC or appeal panel considering the appeal directs otherwise.

78 Appeal panels

(1) If the MEC decides that the appeal must be considered and decided by an appeal panel, the MEC must designate-

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

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

(3) An appeal panel must-

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

79 Decisions

(1) The MEC or appeal panel considering an appeal may-

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

(2) If the appeal is upheld against-

- (a) a refusal to issue a permit, the MEC or appeal panel may issue a directive to the HOD to issue the permit unconditionally or subject to conditions;
- (b) a condition subject to which the permit was issued, the MEC or appeal panel may issue a directive to the HOD to withdraw or amend the condition; or
- (c) the cancellation of a permit, the MEC or appeal panel may issue a directive to the HOD to restore the permit.

CHAPTER 8 ENFORCEMENT AND ADMINISTRATION OF ACT

Part 1: Delegations

80 Delegations by MEC & HOD

(1) The MEC may, in writing, delegate any power or function conferred, entrusted or imposed upon the MEC under the Act, except the power to make regulations, to the HOD with or without the authority to delegate further.

(2) Any delegations by the MEC or HOD in terms of subsection (1) must be recorded in writing on the delegation list.

(3) An official of the Department may exercise a power or a duty in terms of this Act only to the extent that that power or duty has been delegated or sub-delegated in writing by the MEC or the HOD, as the case may be, as recorded in the delegation list.

Part 2: Appointment of External Advisors and Environmental Management Officers

81 Appointment of Experts

The MEC may appoint external specialist advisors on matters relating to biodiversity conservation on such terms and conditions as he or she may deem fit.

82 Appointment of Environmental Management Officers

(1) For the purposes of this Part, Schedule 1 to the Criminal Procedure Act, 1977 (Act 51 of 1977), is deemed to include an offence committed in terms of this Act.

(2) The MEC may -

(a) designate as an environmental management officer, any staff member of-

- (i) the Department;
- (ii) any other provincial organ of state; or
- (iii) any municipality in the province; and

(b) at any time withdraw a designation made in terms of paragraph (a).

(3) A designation in terms of subsection (2) (a) (ii) or (iii) may only be made by agreement between the MEC and the relevant provincial organ of state or municipality.

83 Mandates

A person designated as an environmental management officer may exercise any of the powers given to environmental management officers in terms of this Act.

84 Prescribed standards

(1) The MEC may prescribe-

- (a) qualification criteria for environmental management officers; and
- (b) training that must be completed by environmental management officers.

(2) The MEC may only prescribe criteria and training in terms of subsection (1) after consultation with the MEC responsible for safety and security.

85 Proof of designation

(1) An identity card must be issued to each person designated as an environmental management officer.

(2) When exercising any powers or performing any duties in terms of this Act, an environmental management officer must, on demand by a member of the public, produce the identity card and the notice issued to the inspector in terms of section 82(2).

86 Functions of officers

(1) An environmental management officer -

- (a) must monitor and enforce compliance with this Act;
- (b) may investigate any act or omission in respect of which there is a reasonable suspicion that it might constitute-
 - (i) an offence in terms of this Act;
 - (ii) a breach of this Act; or
 - (iii) a breach of a term or condition of a permit, authorisation or other instrument issued in terms of this Act.

(2) An environmental management officer-

- (a) must carry out his duties and exercise his powers-
 - (i) in accordance with any instructions issued by the MEC; and
 - (ii) subject to any limitations and in accordance with any procedures that may be prescribed; and
- (b) may be accompanied by an interpreter or any other person whose assistance may reasonably be required;

- (c) must exercise his powers in a way that minimises any damage to, loss or deterioration of any premises or thing.

87 General powers

(1) An environmental management officer may-

- (a) question a person about any act or omission in respect of which there is a reasonable suspicion that it might constitute-
 - (i) an offence in terms of this Act;
 - (ii) a breach of this Act or
 - (iii) a breach of a term or condition of a permit, authorisation or other instrument issued in terms of this Act;
- (b) issue a written notice to a person who refuses to answer questions in terms of paragraph (a), requiring that person to answer questions put to him or her in terms of that paragraph;
- (c) inspect, or question a person about, any document, book or record or any written or electronic information-
 - (i) which may be relevant for the purpose of paragraph (a); or
 - (ii) to which this Act relates;
- (d) copy, or make extracts from, any document, book or record or any written or electronic information referred to in paragraph (c), or remove such document, book, record or written or electronic information in order to make copies or extracts;
- (e) require a person to produce or deliver to a place specified by the inspector, any document, book or record or any written or electronic information referred to in paragraph (c) for inspection;
- (f) inspect, question a person about, and if necessary remove any specimen, article, substance or other item which, on reasonable suspicion, may have been used in-
 - (i) committing an offence in terms of this Act;
 - (ii) breaching this Act; or
 - (iii) breaching a term or condition of a permit, authorisation or other instrument issued in terms this Act;
- (g) take photographs or make audio-visual recordings of anything or any person that is relevant for the purposes of an investigation;
- (h) dig or bore into the soil;
- (i) take samples;

- (j) remove any waste or other matter deposited or discharged in contravention of this Act or a term or condition of a permit, authorisation or other instrument issued in terms of this Act; or
- (k) carry out any other prescribed duty not inconsistent with this Act.

(2) A written notice issued in terms of subsection (1) (b) must be in a format approved by the MEC and must require a person to answer specified questions either orally or in writing, and either alone or in the presence of a witness, and may require that questions are answered under oath or affirmation.

(3) A person who receives a written notice in terms of subsection (1) (b), must answer all questions put to him or her truthfully and to the best of his or her ability, notwithstanding that an answer might incriminate him or her, but any answer that incriminates such person may not be used against him or her in any subsequent criminal proceedings for an offence in terms of the Act.

(4) An environmental management officer must-

- (a) provide a receipt for-
 - (i) any document, book, record or written or electronic information removed in terms of subsection (1) (d); or
 - (ii) any specimen, article, substance or other item removed in terms of subsection (1) (f); and
- (b) return, as far as reasonably practical, anything removed within a reasonable period or at the conclusion of any relevant criminal proceedings.

(5) In addition to the powers set out in this section, an environmental management officer has all the powers assigned in terms of Chapters 2, 5, 7 and 8 of the Criminal Procedure Act, 1977, to a police official who is not a commissioned officer.

88 Seizure of items

(1) The provisions of sections 30 to 34 of the Criminal Procedure Act, 1977, apply to the disposal of anything seized in terms of this Part, subject to such modifications as the context may require.

(2) When an item is seized in terms of this section, the environmental management officer may request the person who was in control of the item immediately before the seizure of the

item, to take it to a place designated by the officer, and if the person refuses to take the item to the designated place, the officer may do so.

(3) In order to safeguard a vehicle, vessel or aircraft that has been seized, the environmental management officer may immobilise it by removing a part.

(4) An item seized in terms of this section, including a part of a vehicle, vessel or aircraft referred to in subsection (3), must be kept in such a way that it is secured against damage.

(5) An environmental management officer may-

- (a) in the case of a specimen of a listed threatened or protected species or alien or invasive species or ordinary game being imported into the Province, at the port of entry, request the person responsible for the import or that person's agent, to produce the original copies of the import permit, together with such other documentation as may be required; and
- (b) in the case of a specimen of a listed threatened or protected species or ordinary game, being exported or re-exported from the Province, at the port of exit, request the person responsible for the export or re-export or that person's agent to produce the original copy of the export or re-export permit, together with such other documentation as may be required.

89 Power to stop, enter and search vehicles, vessels and aircraft

(1) An environmental management officer may, without a warrant, enter and search any vehicle, vessel or aircraft, or search any pack-animal, on reasonable suspicion that that vehicle, vessel, aircraft or pack-animal-

- (a) is being or has been used, or contains or conveys anything which is being or has been used, to commit-
 - (i) an offence in terms of this Act; or
 - (ii) a breach of this Act or a term or condition of a permit, authorisation or other instrument issued in terms of this Act; or
- (b) contains or conveys a thing which may serve as evidence of such offence or breach.

(2) An environmental management officer may, without a warrant, seize anything contained in or on any vehicle, vessel, aircraft or pack-animal that may be used as evidence in the prosecution of any person for an offence in terms of this Act.

(3) The provisions of section 88 apply to anything seized in terms of subsection (2), subject to such modifications as the context may require.

(4) An environmental management officer may, for the purpose of implementing subsection (1), at any time, and without a warrant-

- (a) order the driver of a vehicle or vessel to stop, or the pilot of an aircraft to land; or
- (b) if necessary and possible, force the driver or pilot to stop or land, as the case may be.

(5) An environmental management officer may exercise on or in respect of such vehicle, vessel or aircraft any of the powers mentioned in section 87.

(6) An environmental management officer may apply to the National or Provincial Commissioner of Police for written authorisation in terms of section 13 (8) of the South African Police Service Act, 1995 (Act 68 of 1995), to establish a roadblock or a checkpoint.

90 Routine inspections

(1) An environmental management officer, subject to subsection (2), may, at any reasonable time, without a warrant, enter and inspect any building, land or premises for the purposes of ascertaining compliance with-

- (a) this Act; or
- (b) a term or condition of a permit, authorisation or other instrument issued in terms of this Act.

(2) An environmental management officer may, with a warrant obtained in terms of subsection (3), but subject to subsection (4), enter and inspect any residential premises for the purposes of ascertaining compliance with-

- (a) this Act; or
- (b) a term or condition of a permit, authorisation or other instrument issued in terms of this Act.

(3) A magistrate may issue a warrant contemplated in subsection (2) only on written application by an environmental management officer setting out under oath or affirmation that it is necessary to enter and inspect the specified residential premises for the purposes of ascertaining compliance with this Act.

(4) An environmental management officer may in terms of subsection (2) enter and inspect any residential premises without a warrant, but only if-

- (a) the person in control of the premises consents to the entry and inspection; or
- (b) there are reasonable grounds to believe that a warrant would on application be issued, but that the delay that may be caused by applying for a warrant would defeat the object of the entry or inspection.

(5) While carrying out a routine inspection, an environmental management officer may seize anything in or on any business or residential premises or land that may be used as evidence in the prosecution of any person for an offence in terms of this Act.

(6) The provisions of section 88 apply to anything seized in terms of subsection (5), subject to such modifications as the context may require.

(7) An environmental management officer may exercise on such business or residential premises or land any of the powers mentioned in section 87.

91 Power to issue compliance notices

(1) An environmental management officer may issue a compliance notice in the form and procedure approved by the MEC if there are reasonable grounds for believing that a person has not complied-

- (a) with a provision of this Act; or
- (b) with a term or condition of a permit, authorisation or other instrument issued in terms of this Act.

(2) A compliance notice must set out-

- (a) details of the conduct constituting non-compliance;
- (b) any steps the person must take and the period within which those steps must be taken;
- (c) any thing which the person may not do, and the period during which the person may not do it; and
- (d) the procedure to be followed in lodging an objection to the compliance notice with the MEC.

(3) An environmental management officer may, on good cause shown, vary a compliance notice and extend the period within which the person must comply with the notice.

(4) A person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the MEC has agreed to suspend the operation of the compliance notice in terms of subsection (5).

(5) A person who receives a compliance notice and who wishes to lodge an objection in terms of section 92 may make representations to the MEC, to suspend the operation of the compliance notice pending finalisation of the objection.

92 Objections to compliance notice

(1) Any person who receives a compliance notice in terms of section 91 may object to the notice by making representations, in writing, to the MEC within 30 days of receipt of the notice, or within such longer period as the MEC may determine.

(2) After considering any representations made in terms of subsection (1) and any other relevant information, the MEC -

- (a) may confirm, modify or cancel a notice or any part of a notice; and
- (b) must specify the period within which the person who received the notice must comply with any part of the notice that is confirmed or modified.

93 Failure to comply with compliance notice

(1) A person who fails to comply with a compliance notice commits an offence.

(2) If a person fails to comply with a compliance notice, the environmental management officer must report the non-compliance to the MEC and the MEC may-

- (a) issue a directive to the HOD to revoke or vary the relevant permit, authorisation or other instrument which is the subject of the compliance notice;
- (b) take any necessary steps and recover the costs of doing so from the person who failed to comply; and
- (c) report the matter to a Director of Public Prosecutions.

94 Powers of South African Police Service members

(1) A member of the South African Police Service has, in respect of an offence in terms of this Act, all the powers of an environmental management officers in terms of this Part excluding the power to conduct routine inspections in terms of section 90 and the power to issue and enforce compliance notices in terms of section 91.

(2) Notwithstanding subsection (1), the MEC may, with the concurrence of the MEC responsible for safety and security, by written notice to a member of the South African Police Service, assign to that member all the powers contemplated in sections 90 & 91.

95 Duty to produce documents

Any person to whom a permit, licence, permission, certificate, authorisation or any other document has been issued in terms of this Act, must produce that document at the request of an environmental management officer.

96 Confidentiality

(1) It is an offence for any person to disclose information about any other person if that information was acquired while exercising or performing any power or duty in terms of this Act, except-

- (a) if the information is disclosed in compliance with the provisions of any law;
- (b) if the person is ordered to disclose the information by a court;
- (c) if the information is disclosed to enable a person to perform a function in terms of this Act; or
- (d) for the purposes of the administration of justice.

97 Appointment of Honorary Environmental Management Officers

(1) The MEC may –

- (a) appoint private individuals as Honorary Environmental Management Officers; and
- (b) issue certificates of appointment to these officers.

(2) An Honorary Environmental Management Officer has all the powers set out in section 87 and section 90 provided that these powers.

98 Prescribed standards

The MEC may prescribe-

- (a) qualification criteria for Honorary Environmental Management Officers; and
- (b) training that must be completed by Honorary Environmental Management Officers.

Part 3: Regulations & Incorporation of Standards

99 Regulations by MEC

(1) The MEC may make regulations relating to any matter that may be necessary to facilitate the implementation of this Act

(2) The MEC may prescribe qualification criteria for the registration of professional hunters, hunting outfitters and/or professional hunting schools by notice in the Gazette.

(3) The MEC may prescribe qualification criteria for environmental management officers and honorary environmental management officers by notice in the Gazette.

(4) The MEC may prescribe services and conveniences that must be provided by hunting outfitters.

(5) The MEC may prescribe fencing requirements for game farms.

(6) The MEC may prescribe the format for, and applicable fees, for applications for permits and registration certificates,

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

(8) Before publishing any regulations in terms of subsection (1), or any amendment to the regulations, the MEC must follow a consultative process in accordance with sections 101 and 102.

(9) Subsection (8) need not be applied to a non-substantial change to the regulations.

(10) Any regulation made in terms of the National Biodiversity Act shall be deemed to be published in terms of this Act and applies *mutatis mutandis* in the Province

100 Incorporation of standards by reference

(1) The MEC may by notice in the Gazette incorporate in the regulations any standard without stating the text thereof, by mere reference to the number, title and year of issue of that standard or to any particulars by which that standard is sufficiently identified.

(2) Any standard incorporated in the regulations under subsection (1) shall for the purposes of this Act, in so far as it is not inconsistent with it, be deemed to be a regulation.

(3) A notice under subsection (1) shall come into operation on a date specified in the notice, but not before the expiry of 30 days after the date of publication of the notice.

(4) If any standard is at any time after the incorporation thereof in the regulations amended or replaced, the notice incorporating that standard in the regulations shall, unless otherwise stated therein, be deemed to refer to that standard as so amended or replaced, as the case may be.

(5) In this section 'standard' means any code of practice, compulsory specification, specification, standard or standard method adopted by the South African Bureau of Standards, as defined in section 1 of the Standards Act, 1993 (Act 29 of 1993).

Part 4: Consultation process

101 Consultation

(1) Before exercising a power which, in terms of a provision of this Act, must be exercised in accordance with this section and section 102, the MEC must follow an appropriate consultative process in the circumstances.

(2) The MEC must, in terms of subsection (1)-

- (a) consult all organs of state whose areas of responsibility may be affected by the exercise of the power; and
- (c) allow public participation in the process in accordance with section 102.

102 Public participation

(1) The MEC must give notice of the proposed exercise of the power referred to in section 101-

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

(2) The notice must-

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

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

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

CHAPTER 9 OFFENCES AND PENALTIES

103 Offences

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

- (a) section 10, 14, 18, 20, 21, 22, 23, 24, 25, 27, 35, 41 or 45;
- (b) a notice published in terms of section 14 (3) or 37(2);
- (c) a directive issued in terms of section 39(2) and 43(3);
- (d) a compliance notice issued in terms of section 91(1).

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

- (a) performs the activity for which the permit was issued otherwise than in accordance with any conditions subject to which the permit was issued; or
- (b) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of paragraph (a).

(3) A person registered to conduct a captive breeding operation, commercial exhibition facility, game farm, nursery, scientific institution, sanctuary, rehabilitation facility or to operate as a wildlife trader, wildlife translocator, professional hunter or professional hunting school is guilty of an offence if that person –

- (a) conducts such captive breeding operation, commercial exhibition facility, game farm, nursery, scientific institution, sanctuary, rehabilitation facility or operates as a wildlife trader, wildlife translocator, professional hunter or professional hunting school without a registration certificate issued in terms of Chapter 7 or in a manner that is not in accordance with any condition subject to which registration was granted; or
 - (b) fraudulently alters any certificate of registration issued in terms of Chapter 7.
- (4) A person who owns a registered game farm is guilty of an offence if -
- (a) that person fraudulently alters any game farm hunting permit issued in terms of Chapter 7;
 - (b) prohibited activities takes place on the registered game farm; or
 - (c) any conditions of the registration certificate, standing permit or game farm hunting permits were contravened.
- (5) A person who owns or operates a registered nursery is guilty of an offence if -
- (a) that person fraudulently alters any nursery possession permit issued in terms of Chapter 7; or
 - (b) any conditions of the registration certificate, standing permit or nursery possession permits were contravened.
- (6) A person who operates as a registered wildlife trader is guilty of an offence if -
- (a) that person fraudulently alters any personal effects permit issued in terms of Chapter 7; or
 - (b) any conditions of the registration certificate, standing permit or personal effects permits were contravened.
- (7) A person is guilty of an offence if permitting or allowing any other person to undertake any restricted activity which is an offence in terms of the Act.
- (8) A person is guilty of an offence if that person-
- (a) fraudulently alters any permit or registration certificate;
 - (b) fabricates or forges any document for the purpose of passing it as a permit or registration certificate;
 - (c) passes, uses, alters or has in his or her possession any altered or false document purporting to be a permit or registration certificate;
- or

- (d) knowingly makes any false statement or report for the purpose of obtaining a permit or registration certificate.
- (9) A person is guilty of an offence if that person-
- (a) hinders or interferes with an environmental management officer in the execution of that officer's official duties;
 - (b) pretends to be an environmental management officer, or the interpreter or assistant of such an officer;
 - (c) furnishes false or misleading information when complying with a request of an environmental management officer; or
 - (d) fails to comply with a request of an environmental management officer.

104 Penalties

(1) A person convicted of an offence referred to in section 103 is liable to a fine not exceeding five million rand, or to imprisonment for a period not exceeding ten (10) years and in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment.

CHAPTER 10 MISCELLANEOUS

105 Repeal of laws

The laws set out in Schedule 1 are hereby repealed.

106 Savings

- (1) Anything done in terms of the laws repealed by Section 101, which may or must be done in terms of this Act, must be regarded as having been done in terms of this Act.
- (2) Exemptions, permits, registration certificates and any other authorisations issued in terms of the *National Threatened or Protected Species Regulations, 2007* which were valid immediately before the date on which these regulations took effect, shall be deemed to be issued in terms of this Act.
- (3) Despite the repeal of the Ordinances listed in the First Schedule to the Act, any application for a permit made in terms of such repealed Ordinances that was not decided when this Act

took effect, must be proceeded with in terms of this Act as if such application was an application in terms of the Act.

107 Short title and commencement

This Act is called the North West Biodiversity Conservation Act ?? of 2009 and takes effect on a date determined by the MEC by proclamation in the Provincial Gazette.

**SCHEDULE 1: Laws repealed
(Section 105)**

Number and year of law	Title	Extent of repeal
Ordinance No. 19 of 1974	Cape Nature and Environmental Conservation Ordinance, 1974	The whole, to the extent applicable to the North West province.
Act No. 3 of 1973	Bophuthatswana Nature Conservation Act of 1973	The whole, to the extent applicable to the North West province.
Ordinance No. 12 of 1983	Nature Conservation Ordinance 1983	The whole, to the extent applicable to the North West province.
Ordinance No. 26 of 1957	Cape Problem Animal Control Ordinance	The whole, to the extent applicable to the North West.