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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT**NO. 4887****24 May 2024****PUBLICATION OF THE DRAFT NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY BILL FOR PUBLIC COMMENT**

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries and the Environment, hereby publish for public comment, the draft National Environmental Management: Biodiversity Bill (the Biodiversity Bill) as set out in the Schedule hereto.

The Department of Forestry, Fisheries and the Environment (the Department) is the lead department responsible for the biodiversity sector, which includes the terrestrial, freshwater and marine sub-sectors. Biodiversity conservation within the country is currently achieved through the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEM: BA), as well as provincial conservation legislation. As a result of the recent finalisation of the White Paper on the Conservation and Sustainable Use of South Africa's Biodiversity, 2023 and due to a number of implementation challenges being identified in NEM: BA, this has necessitated substantial amendment of its provisions.

At policy and legislative level, the Biodiversity Bill has been informed by the:

- White Paper on Conservation and Sustainable Use of South Africa's Biodiversity, 2023; and
- National Environmental Management Laws Amendment Act, 2022.

The Biodiversity Bill will enable:

- more effective implementation of the provisions and achievement of the objectives of NEM: BA due to a revised regulatory approach;
- greater protection of species and ecosystems through additional provisions relating to the listing of species and ecosystems, implementation of international agreements and restriction of wildlife trafficking;
- more flexible management of species and ecosystems;
- more effective achievement of economic benefits in the biodiversity sector, as well as beneficiation from indigenous biological resources involved in bioprospecting; and
- transformation of the biodiversity sector.

Once the Bill is enacted and in operation, the Biodiversity Bill will repeal and replace the current NEM: BA.

The primary purposes of the Biodiversity Bill are to:

- provide for the conservation and sustainable utilisation of ecosystems and species within the Republic of South Africa;
- provide for the duty of care towards all components of biodiversity and for the well-being of wild animals;
- provide for the development and alignment of biodiversity planning tools;
- provide for the management of the impacts of invasive species;
- provide for the fair and equitable sharing of benefits arising from bioprospecting involving indigenous biological resources and indigenous knowledge;
- address historical imbalances, enable and facilitate transformation, facilitate cultural practices and achieve equity within the biodiversity sector;
- provide for the South African National Biodiversity Institute to develop, manage, co-ordinate, promote and provide assistance on biodiversity;
- provide for the Scientific Authority to assist in regulating trade in specimens of species which are subject to international agreements regulating international trade and to assist with the regulation of species of concern; and
- provide for appropriate measures in response to climate change.

The Department presented the Biodiversity Bill to Cabinet for approval. Cabinet approved the Biodiversity Bill on 27 March 2024 for publication for public comment.

The Socio-Economic Impact Assessment for the Biodiversity Bill has been approved by the Presidency. A copy of the assessment and Memorandum on the Objects is available for download from the Department's website at <https://www.dffe.gov.za/legislation/bills>. Copies can also be emailed if requested via the below email.

The public is herewith invited to submit written representations on the Biodiversity Bill within 60 (sixty) days from the date of publication of this notice in the *Government Gazette*, or from the date of publication of the corresponding newspaper notice, whichever is the later date. Written representations received after the closing date may not be considered. All representations and comments must be submitted as follows:

By post to: The Director-General: Department of Forestry, Fisheries and the Environment
Attention: Magdel Boshoff
Private Bag X447
PRETORIA
0001

By hand at: Reception, Environment House, 473 Steve Biko Road, Arcadia, Pretoria, 0083

By e-mail: biodiversitybill@dffe.gov.za

Enquiries in connection with this Notice can be directed to Ms Magdel Boshoff on 083 952 2334 or biodiversitybill@dffe.gov.za.

Written representations received after the closing date may be disregarded.



BARBARA DALLAS CREECY
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

SCHEDULE**REPUBLIC OF SOUTH AFRICA****NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY BILL**

*(As introduced in the National Assembly (proposed section 76); explanatory
summary of Bill published in Government Gazette No. ... of ... 2024)
(The English text is the official text of the Bill)*

(MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT)

[B—2024]

BILL

To provide for the management and conservation of the Republic's biodiversity within the framework of the National Environmental Management Act, 1998; to provide for the South African National Biodiversity Institute to develop, manage, co-ordinate, promote and provide assistance on biodiversity; to provide for the development and alignment of biodiversity planning tools; to provide for the protection, conservation and management of species and ecosystems; to provide for the Scientific Authority to assist in regulating trade in specimens of species which are subject to international agreements regulating international trade and to assist with the regulation of species of concern; to provide for the sustainable use of components of biodiversity; to provide for the management of the impacts of invasive species; to provide for the fair and equitable sharing of benefits arising from bioprospecting involving indigenous biological resources and indigenous knowledge; to provide for permits and emergency interventions; to address historical imbalances, enable and facilitate transformation and to achieve equity within the biodiversity sector; to provide for the duty of care for all components of biodiversity; to provide for the well-being of animals; to provide for appropriate measures in response to climate change; to provide for regulations by the Minister; to provide for offences and penalties; and to provide for matters connected therewith.

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

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CHAPTER 1

INTERPRETATION, OBJECTIVES AND APPLICATION

Definitions

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

“alien species” means a species that is not an indigenous species;

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

“biodiversity planning tool” means the framework or any plan developed in terms of sections 34, 35 and 36;

“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 includes diversity at genetic, species, and ecosystem levels;

“bioprospecting” means any discovery-phase of bioprospecting or the commercial exploitation of an indigenous biological resource or indigenous knowledge;

“Board” means the board referred to in section 10;

“buying” means to receive or obtain, whether for money or in kind, and includes bartering;

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

“conservation” means the protection, management, care, sustainable use, maintenance, rehabilitation, restoration, and recovery of ecological and evolutionary processes as well as biological diversity and its components, for their intrinsic and instrumental value, and for the benefit of present and future generations;

“conservation areas” means areas that are managed for conservation outcomes and which are not protected areas;

“control” means—

- (a) the systematic destruction of all specimens of invasive species from within a specified area of or the whole of the Republic; or
- (b) where systematic destruction is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment, re-growth, multiplication, propagation, regeneration or spreading of invasive species;

“Council” has the meaning assigned to it in section 1 of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997);

“Department” means the national department responsible for environmental affairs;

“derivative” means any part, tissue or extract of an animal, plant or other organism, whether fresh, preserved or processed, and includes any genetic material or chemical compound derived from that part, tissue or extract;

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

“domestication” means a process whereby wild plants and animals are subject to human-controlled directional selection over time to alter reproductive, physical, physiological or behavioural characteristics for human use, potentially leading to maladaptation to natural environments and dependency on humans for survival;

“duty of care” means reasonable measures to prevent harm to biodiversity and when those harms cannot reasonably be avoided or stopped, are minimised and remedied;

“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;

“environmental management inspector” has the meaning assigned to it in section 1 of the National Environmental Management Act;

“eradication” means the complete removal of invasive species from within the Republic, including all living parts of that species;

“export” means to take out or transfer, or attempt to take out or transfer, from the Republic to another country or to international waters;

“extra-limital species” means an indigenous species translocated or intended to be translocated to a place outside its natural distribution range in the Republic, but excludes an indigenous species that has extended its natural distribution range by natural means of migration or dispersal without human intervention;

“Gazette”, when used—

- (a) in relation to the Minister, means the *Government Gazette*; or
- (b) in relation to the MEC for environmental affairs of a province, means the Provincial *Gazette* of that province;

“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, characteristics or information of any species;

“GMO Registrar” means the registrar as defined in section 1 of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997);

“habitat” means a place where a species or an ecological community naturally occurs;

“humane practices” means any activities, methods, or actions involving wild animals that avoid or minimise pain, stress, suffering, or distress, and consider their well-being;

“import” means—

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

“indigenous species” means a species that occurs, or has historically occurred, naturally in a free state in nature within the borders of the Republic, and that has not been introduced in the Republic as a result of human intervention, and includes migratory species;

“Institute” means the South African National Biodiversity Institute;

“introduction from the sea” means the transportation into the Republic of a specimen taken from a marine environment not under the jurisdiction of any state;

“invasive species” means any alien or extra-limital species that—

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

“issuing authority” means—

- (a) the Minister, as contemplated in section 65(1) or (3);
- (b) the MEC, as contemplated in section 65(2) or (3); or
- (c) an organ of state in the national, provincial or local sphere of government, delegated in terms of section 42 of the National Environmental Management Act or assigned in terms of section 41 of the National Environmental Management Act as an issuing authority for a permit or registration of the kind in question;

“listed ecosystem” means any ecosystem published in terms of section 40(1);

“listed invasive species” means any invasive species published in terms of section 48(1);

“listed species” means any species published in terms of section 40(1) or 42(1);

“management authority” has the meaning assigned to it in the Protected Areas Act;

“MEC” means a member of the Executive Council of a province who is responsible for environmental affairs;

“migratory species” means a species that moves from one habitat or region to another, cyclically and predictably across one or more national jurisdictional boundaries;

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

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

“national botanical garden” means land declared or regarded as having been declared as a national botanical garden in terms of section 32(1);

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

“national zoological garden” means land declared or regarded as having been declared as a national zoological garden in terms of section 32(1);

“non-detriment finding” means the determination whether or not the impact of an action will be detrimental to the survival of a species in the wild;

“other effective area-based conservation measure (OECM)” means a geographically defined area other than a protected area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in-situ conservation of biodiversity, with associated ecosystem functions and services

and where applicable, cultural, spiritual, socio-economic, and other locally relevant values;

“organ of state” has the meaning assigned to it in section 239 of the Constitution of the Republic of South Africa, 1996;

“permit” means a permit issued in terms of section 64;

“prescribe” means to prescribe by notice or regulation in terms of this 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 (Act No. 57 of 2003);

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

“re-export” means the export from the Republic of a specimen of a species previously imported into the Republic;

“selling” means to give or hand over, whether for money or in kind, and includes any form of bartering, offering or presenting for sale;

“species” means a population of animals, plants or other organisms 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” means—

- (a) any living or dead animal, plant or other organism;
- (b) 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;
- (c) any derivative of any animal, plant or other organism; or
- (d) any goods which—

- (i) contain a derivative of an animal, plant or other organism; or
- (ii) 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;

“sustainable use” means the use of any component of biodiversity in a manner that—

- (a) is ecologically, economically, and socially sustainable;
- (b) does not contribute to its long-term decline in the wild, or disrupt the genetic integrity of the population;
- (c) does not disrupt the ecological integrity of the ecosystem in which it occurs;
- (d) ensures continued benefits to people that are fair, equitable and meet the needs and aspirations of present and future generations; and
- (e) ensures a duty of care towards all components of biodiversity for thriving people and nature;

“this Act” includes any regulation or notice made or issued under this Act;

“transformation” means the redress of discrimination and unfair disadvantage of previously disadvantaged individuals and communities through the promotion of inclusivity, access, empowerment, dignity, respect, ownership, and the equitable sharing of benefits;

“well-being” means the holistic circumstances and conditions of an animal or population of animals which are conducive to their physical, physiological, and mental health and quality of life, including their ability to cope with their environment; and

“wildlife trafficking” includes the illegal killing, collecting, harvesting, gathering, possession, transportation, importing, exporting, re-exporting, buying, selling or distribution of a specimen of a species published in terms of section 42 for purposes

of national or transnational movement.

Objectives of Act

2. Within the framework of the National Environmental Management Act, the objectives of this Act are to—

- (a) provide for the management and conservation of biological diversity within the Republic and of the components of that biological diversity, including animal well-being;
- (b) provide for the protection of the ecosystem as a whole, including species which are not targeted for exploitation;
- (c) provide for the sustainable use of components of biodiversity with due care, including facilitating cultural practices;
- (d) provide for the fair and equitable sharing among stakeholders of benefits arising from bioprospecting involving indigenous biological resources and protecting indigenous knowledge;
- (e) give effect to ratified international agreements relating to biodiversity which are binding on the Republic;
- (f) provide for cooperative governance in the sustainable use, management and conservation of biodiversity;
- (g) give effect to the best available science;
- (h) provide for the Institute to assist in achieving the objectives of this Act;
- (i) address historical imbalances, enable and facilitate transformation and to achieve equity within all branches of the biodiversity sector; and
- (j) provide for appropriate response measures to climate change including the mitigation of environmental degradation.

State trusteeship of biological diversity

3. (1) In fulfilling the rights contained in section 24 of the Constitution of the Republic of South Africa, 1996, the State, through its functionaries and institutions implementing this Act, must—

- (a) act as the trustee of the Republic's biodiversity and its components and genetic resources; and
- (b) take reasonable steps to achieve the progressive realisation of those rights.

(2) The Minister may, by notice in the *Gazette*, specify the species and the circumstances under which the State remains the custodian of faunal components of biodiversity that escape from land under its control.

Application of Act

4. (1) This Act applies—

- (a) in the Republic, including—
 - (i) its territorial waters, exclusive economic zone and continental shelf described in the Maritime Zones Act, 1994 (Act No. 15 of 1994); and
 - (ii) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act No. 43 of 1948); and
- (b) to all persons, vessels and aircraft on, or in the airspace above or the waters referred to in paragraph (a).

(2) This Act binds all organs of state.

Conflicts with other legislation

5. In the event of any conflict between a section of this Act and other national legislation relating to biodiversity, this Act prevails.

Application of National Environmental Management Act

6. (1) This Act must, in relation to biodiversity management, be read, interpreted and applied in conjunction with the National Environmental Management Act.

(2) This Act is a specific environmental management Act as defined in section 1 of the National Environmental Management Act.

(3) 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, as well as the principles set out in the White Paper on the Conservation and Sustainable Use of South Africa's Biodiversity.

(4) Chapter 4 of the National Environmental Management Act applies to the resolution of conflicts arising from decisions made in terms of this Act.

CHAPTER 2

SOUTH AFRICAN NATIONAL BIODIVERSITY INSTITUTE

Part 1

South African National Biodiversity Institute, functions and powers

South African National Biodiversity Institute

7. (1) The South African National Biodiversity Institute, as established in terms of section 10 of the Biodiversity Act, continues to exist in terms of this Act as if established under this Act.

(2) The Institute is a juristic person.

Functions of Institute

8. (1) The Institute—
- (a) must develop national biodiversity indicators in order to assess and monitor the status and trends in biodiversity at an ecosystem, species and genetic level;
 - (b) must monitor and assess the status and trends in biological invasions and the environmental impacts of all categories of genetically modified organisms, and may assess the status and trends related to other threats and pressures on biodiversity;
 - (c) must report to the Minister on all its functions as contemplated in this Act;
 - (d) must co-ordinate and promote the management of biodiversity information in the Republic, including—
 - (i) establishing and maintaining a national biodiversity information system; and
 - (ii) disseminating biodiversity information to enable research, in order to support better management and conservation of biodiversity;
 - (e) must, when requested, provide advice and decision support to organs of state involved in managing and conserving biodiversity, based on the best available

- science and have regard to indigenous knowledge, where applicable;
- (f) may provide advice to other stakeholders engaged in or impacting on biodiversity, based on the best available science and have regard to indigenous knowledge, where applicable;
 - (g) must co-ordinate and promote the taxonomy of the Republic's biodiversity and, upon request by an organ of state, must confirm, in writing, that the identification of a specimen of an indigenous biological resource is taxonomically accurate, where scientifically possible;
 - (h) must develop, co-ordinate and maintain a national ecosystem classification system;
 - (i) must manage, control and maintain all national botanical gardens and national zoological gardens declared in terms of section 32 and any other place or facility under its control, which may include—
 - (i) allowing, regulating or prohibiting access by the public;
 - (ii) educational programs; or
 - (iii) any other services to visitors;
 - (j) must co-ordinate and promote biodiversity collections;
 - (k) may establish, manage, control and maintain its own or other biodiversity collections;
 - (l) must co-ordinate and promote research to support the management and conservation of biodiversity;
 - (m) may undertake research to support the functions of the Institute, including taxonomy, assessment, provision of science-based advice or management of national botanical gardens or national zoological gardens;
 - (o) may convene or lead programmes to strengthen the management and conservation of biodiversity;

- (p) must provide logistical, administrative and financial support for the proper functioning of the Scientific Authority established in terms of section 45;
- (q) must provide scientific and technical expertise, including data to support the functions of the Scientific Authority;
- (r) may host structures that support the execution and implementation of the Republic's obligations in terms of any international agreement that has a bearing on biodiversity;
- (s) on the Minister's request, must assist the Minister in the performance of functions and the exercise of powers assigned to the Minister in terms of this Act;
- (t) on the Minister's request, must advise the Minister on any matter regulated in terms of this Act, including—
 - (i) the implementation of this Act and any international agreements affecting biodiversity which are binding on the Republic;
 - (ii) the preparation and content of any planning tool developed in terms of this Act;
 - (iii) other aspects of biodiversity planning;
 - (iv) the management and conservation of biological diversity; and
 - (v) the sustainable use of components of biodiversity;
- (u) must perform any other function—
 - (i) assigned to it in terms of this Act; or
 - (ii) as may be prescribed; and
- (v) must assess and monitor any other matter as prescribed.

(2) When the Institute gives advice in terms of subsection (1) relating to—

- (a) any scientific matter relating to the marine or coastal environment, the

Institute must provide that advice in consultation with the Department's relevant research components; and

- (b) any other scientific matter, the Institute may consult any appropriate organ of state, person or institution which has expertise in that matter.

(3) The Institute must exercise its powers and perform its functions subject to any norms and standards, instruction and determination issued by the Minister in terms of section 29.

Powers of Institute

9. The Institute may, for the purpose of performing its functions—

- (a) appoint its own staff, subject to section 26;
- (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment;
- (c) acquire or dispose of any right in or to movable or immovable property, or hire or let any property;
- (d) open and operate its own bank accounts;
- (e) establish a company which has as its object the production and supply of goods or the rendering of services on behalf of the Institute, subject to the Public Finance Management Act;
- (f) invest any of its money, subject to section 28;
- (g) borrow money, subject to section 66 of the Public Finance Management Act;
- (h) charge fees—
 - (i) for access to a national botanical garden or a national zoological garden, herbaria and other places under its control;
 - (ii) for any work performed or services rendered by it;

- (iii) for access to the results of, or to other information in connection with, any research performed by it;
- (i) collect royalties resulting from any discoveries, inventions or computer programmes;
- (j) insure itself against—
 - (i) any loss, damage or risk; or
 - (ii) any liability it may incur in the application of this Act;
- (k) perform legal acts, including acts in association with, or on behalf of, any other person or organ of state; and
- (l) institute or defend any legal action.

Part 2

Governing board, composition and membership

Composition of Board

- 10.** (1) The Institute is governed by a Board consisting of—
- (a) not fewer than seven and not more than nine members appointed in terms of section 12;
 - (b) the Director-General or an official of the Department designated by the Director-General; and
 - (c) the Chief Executive Officer of the Institute.
- (2) The Minister—
- (a) must determine the number of members to be appointed in terms of subsection (1)(a); and
 - (b) may alter the number determined in terms of paragraph (a), but a reduction in

the number may be effected only when a vacancy in the Board occurs.

(3) The Board takes all decisions in the performance of the functions and exercise of powers of the Institute, except—

- (a) those decisions taken in consequence of a delegation in terms of section 24; or
- (b) where the Public Finance Management Act provides otherwise.

Qualifications

11. (1) A member of the Board must—

- (a) be a fit and proper person to hold office as a member; and
- (b) have appropriate qualifications and experience in the field of biodiversity or another relevant field.

(2) The following persons are disqualified from becoming or remaining a member of the Board:

- (a) A person holding office as a member of Parliament, a provincial legislature or a municipal council; or
- (b) a person who has been removed from office in terms of section 18.

Appointment procedure

12. (1) Whenever it is necessary to appoint members of the Board who are referred to in section 10(1)(a), the Minister must—

- (a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations for appointment as such a member; and
- (b) compile a list of the names of persons nominated, setting out the particulars of

each individual nominee.

(2) Any nomination made pursuant to an advertisement in terms of subsection (1)(a) must be supported by—

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

(3) The Minister must, subject to subsection (4), appoint the required number of persons from the list compiled in terms of subsection (1)(b), but if the persons on that list are inadequate, appoint any other suitable persons.

(4) When making appointments, the Minister must—

- (a) consult the MECs responsible for environmental affairs; and
- (b) have regard to the need for appointing persons to promote representivity.

(5) The Minister must make appointments in such a way that the Board is composed of persons covering a broad range of appropriate expertise in the field of biodiversity or another relevant field.

Chairperson

13. (1) The Minister must appoint a member of the Board as the Chairperson of the Board.

(2) The Chairperson is appointed for a period which is determined by the Minister which may, in the case of a member referred to in section 10(1)(a), not extend beyond the period of their term as a member.

(3) The Minister may appoint a member of the Board as acting Chairperson of the Board if—

- (a) the Chairperson is absent for a substantial period; or

- (b) the appointment of a Chairperson is pending.

Term of office

- 14.** Members of the Board referred to in section 10(1)(a)—
- (a) are appointed for a period of three years or, if section 19(2) applies, for a term determined in terms of that section;
 - (b) on completion of that term, are eligible for reappointment for one additional term of three years; and
 - (c) may have their appointment in terms of paragraph (a) or (b) extended by the Minister for a specific period not exceeding one year.

Conditions of appointment

15. (1) The Minister must determine the conditions of employment of members of the Board referred to in section 10(1)(a).

(2) The Minister may, by agreement with the Minister of Finance, determine the terms and conditions of employment of members of the Board who are not in the employment of the Government.

(3) The Institute must pay the remuneration and allowances of members of the Board.

(4) Members who are in the employ of the Government are not entitled to remuneration and allowances and—

- (a) must be compensated for out-of-pocket expenses by the Institute; and
- (b) are appointed on a part-time basis.

Conduct of members

16. (1) A member of the Board—

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

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

Termination of membership

17. (1) A member of the Board referred to in section 10(1)(a) ceases to be a member when that person—

- (a) is no longer eligible in terms of section 11 to be a member;
- (b) resigns; or
- (c) is removed from office in terms of section 18.

(2) A member of the Board may resign by giving at least three

months' written notice to the Minister, but the Minister may accept a shorter period in a specific case.

Removal from office

18. (1) The Minister may remove a member of the Board referred to in section 10(1)(a) from office, but only on one of the following grounds:

- (a) Misconduct, incapacity or incompetence;
- (b) absence from three consecutive meetings of the Board without the prior permission of the Board except on good cause shown;
- (c) insolvency; or
- (d) conviction of a criminal offence without the option of a fine.

(2) A member of the Board may be removed from office on the ground of misconduct or incompetence only after a finding to that effect has been made by a board of inquiry appointed by the Minister.

(3) The Minister may suspend a member under investigation in terms of this section.

Filling of vacancies

19. (1) A vacancy in the Board is filled—

- (a) in the case of a vacating Chairperson, by appointing another member in terms of section 13(1) as the Chairperson; and
- (b) in the case of a vacating member referred to in section 10(1)(a), by following the procedure set out in section 12.

(2) A person appointed to fill a vacancy holds that office for the

remaining portion of the term of the vacating Chairperson or member.

Part 3

Operating procedures of Board

Meetings

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

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

Procedures

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

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

Quorum and decisions

22. (1) A majority of the members of the Board serving at any relevant time constitutes a quorum for a meeting of the Board.

(2) A matter before the Board is decided by the votes of a majority

of the members present at the meeting.

(3) If on any matter before the Board there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to that person's vote as a member.

Committees

23. (1) The Board may establish one or more committees to assist it in the performance of its functions or the exercise of its powers.

(2) When appointing members to a committee, the Board is not restricted to members of the Board.

(3) The Board—

- (a) must determine the functions of a committee;
- (b) must appoint a chairperson and other members of the committee;
- (c) may remove a member of a committee from office at any time, taking into account the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and
- (d) may determine the procedure by which a committee functions.

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

(5) Section 15, read with the necessary changes as the context may require, applies to the terms and conditions of employment of committee members.

(6) A staff member of the Institute appointed to a committee serves on the committee subject to the terms and conditions of that person's employment with the Institute.

Delegation of powers and functions

24. (1) Where necessary for the proper performance of its functions, the Board may, subject to subsection (2), delegate any of its powers or functions to—

- (a) a member of the Board;
- (b) a committee referred to in section 23; or
- (c) a staff member of the Institute.

(2) The Board may not delegate any of the following powers and functions:

- (a) The appointment or reappointment of a person as the Chief Executive Officer in terms of section 25(1) or (2);
- (b) the determination of the terms and conditions of service of the Chief Executive Officer in terms of section 25;
- (c) the determination of an employment policy in terms of section 26(1); or
- (d) the setting of financial limits in terms of section 26(2)(a) or (3).

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

- (a) is subject to any limitations, conditions and directions that the Board may impose;
- (b) must be in writing;
- (c) does not divest the Board of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty; and
- (d) does not prevent the exercise of the delegated power or the carrying out of the delegated duty by the Board.

(4) The Board may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

Part 4***Administration of Institute*****Appointment of Chief Executive Officer**

25. (1) The Board, by agreement with the Minister, must appoint a person with appropriate qualifications and experience as the Chief Executive Officer of the Institute.

(2) The Chief Executive Officer—

- (a) is appointed for a term not exceeding five years; and
- (b) may be reappointed by the Board by agreement with the Minister, but only for one additional term not exceeding five years.

(3) The Chief Executive Officer is employed subject to terms and conditions of employment as the Board may determine in accordance with a policy approved by the Minister by agreement with the Minister of Finance.

(4) The Chief Executive Officer—

- (a) is responsible for the management of the Institute;
- (b) must perform the functions and may exercise the powers as the Board may delegate to him or her; and
- (c) must report to the Board on aspects of management, the performance of functions and the exercise of powers, at the times or intervals and in the manner, as the Board may determine.

(5) The Chairperson of the Board may appoint another employee of the Institute to act as Chief Executive Officer for a maximum period of six months, whenever—

- (a) the Chief Executive Officer is, for any reason, absent or unable to perform their functions; or
 - (b) there is a vacancy in the office of the Chief Executive Officer.
- (6) While acting as Chief Executive Officer, that employee—
- (a) has the powers and functions of the Chief Executive Officer; and
 - (b) is employed subject to the terms and conditions of employment as the Chairperson may determine in accordance with the policy referred to in subsection (3).

Employment of staff

26. (1) The Board, acting by agreement with the Minister, must determine an employment policy for the Institute.

(2) The Chief Executive Officer—

- (a) within the financial limits set by the Board, must determine a staff establishment necessary for the work of the Institute; and
- (b) may appoint persons in posts on the staff establishment.

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

(4) A person in the service of another organ of state may be seconded to the Institute by agreement between the Chief Executive Officer and that organ of state.

(5) Persons seconded to the Institute perform their functions under the supervision of the Chief Executive Officer.

(6) A person in the service of the Institute may, with the consent of that person, be seconded to another organ of state by agreement between the Chief Executive Officer and that organ of state.

Part 5

Financial matters

Funding

27. The funds of the Institute consist of—

- (a) income derived by it from the performance of its functions and the exercise of its powers;
- (b) money appropriated by Parliament;
- (c) grants received from organs of state;
- (d) voluntary contributions, donations and bequests;
- (e) money borrowed in terms of section 9(g);
- (f) income derived from investments referred to in section 28; and
- (g) money derived from any other source, subject to the Public Finance Management Act.

Investments

28. (1) The Institute may invest any of its funds that it does not immediately require subject to any investment policy that may be prescribed in terms of section 7(4) of the Public Finance Management Act.

(2) The Minister may direct the manner in which the Institute invests

its funds in terms of subsection (1).

Part 6

General

Powers of Minister

29. (1) The Minister—

- (a) must monitor the exercise and performance by the Institute of its powers and functions;
- (b) may set norms and standards for the exercise and performance by the Institute of its powers and functions;
- (c) may instruct the Institute on policy, planning, strategy and procedural issues to ensure its effective and efficient functioning;
- (d) may determine limits on fees charged by the Institute in the exercise and performance of its powers and functions by agreement with the Minister of Finance; and
- (e) may identify land for new national botanical gardens or national zoological gardens and extensions to existing botanical or zoological gardens.

Absence of functional Board

30. In the event of absence of a functional Board, the powers and functions of the Board revert to the Minister who, in such a case, must exercise those powers and perform those duties until the Board is functional again.

Winding-up or dissolution of Institute

31. (1) The Institute may not be wound up or dissolved except by or in terms of an Act of Parliament.

(2) Upon its winding-up or dissolution, the Institute must transfer its remaining assets or the proceeds of those assets, after satisfaction of its liabilities, to the State or to an equivalent Schedule 3A Public Entity, which has the same objectives as the Institute and which, itself, is exempt from income tax in terms of section 10(1)(cA) of the Income Tax Act, 1962 (Act No. 58 of 1962).

CHAPTER 3

NATIONAL BOTANICAL GARDENS AND NATIONAL ZOOLOGICAL GARDENS

Declaration of national botanical garden and national zoological garden

32. (1) The Minister, acting with the approval of the Cabinet member responsible for the administration of the land in question may, by notice in the *Gazette*, declare any state land described in the notice as—

- (a) a national botanical garden;
- (b) a national zoological garden; or
- (c) part of an existing national botanical garden or a national zoological garden.

(2) A declaration in terms of subsection (1)(a) may be issued—

- (a) to protect and conserve an area which includes relatively undisturbed natural habitats, representative of some of the main vegetation types and ecological interactions of the province;
- (b) to promote education and research;

- (c) to provide horticultural potential with suitable areas of arable soil; or
- (d) to protect cultural heritage and promote community participation.

(3) A declaration in terms of subsection (1)(b) may be issued—

- (a) to set aside land for the conservation of faunal biodiversity;
- (b) to promote education and research; or
- (c) to facilitate community participation.

(4) The Minister, acting in accordance with an agreement with the owner of the land described in that agreement may, by notice in the *Gazette*, declare that land as—

- (a) a national botanical garden;
- (b) a national zoological garden; or
- (c) part of an existing national botanical or national zoological garden.

(5) A notice in terms of subsection (1) or (4) must assign a name to the national botanical garden or national zoological garden.

(6) The Minister must keep a register of all existing national botanical gardens and national zoological gardens, as well as any declaration made in terms of subsections (1) or (4).

(7) The Minister must notify the relevant Registrar of Deeds, in writing, whenever a national botanical garden or national zoological garden has been declared in terms of this section.

(8) The notification to the relevant Registrar of Deeds must—

- (a) include a description of the land involved;
- (b) be accompanied by a diagram as defined in section 1 of the Land Survey Act, 1997 (Act No. 8 of 1997), of the land involved and which is signed by a land surveyor; and
- (c) comply with any additional requirements under the Deeds Registries Act,

1937 (Act No. 47 of 1937).

Amendment or withdrawal of declarations

- 33.** (1) The Minister may, by notice in the *Gazette*—
- (a) amend or withdraw a notice referred to in section 32, subject to subsection (2); or
 - (b) amend the name assigned to a national botanical garden or a national zoological garden.
- (2) The declaration of state land as a national botanical garden or a national zoological garden, or part of an existing national botanical garden or national zoological garden, may not be withdrawn and a part of a national botanical garden or national zoological garden on state land may not be excluded from it, except by resolution of each House of Parliament.

CHAPTER 4

BIODIVERSITY PLANNING

National biodiversity framework

- 34.** (1) The Minister must adopt a national framework for biodiversity conservation within the Republic to provide for an integrated, co-ordinated and uniform approach to biodiversity conservation, including—
- (a) identifying priority areas and action to be taken for conservation;
 - (b) the establishment of protected areas, conservation areas, and Other Effective area-based Conservation Measures (OECMs);

- (c) identifying threats and pressures to species and ecosystems;
- (d) identifying duty of care measures;
- (e) matters relating to regional and international cooperation on issues concerning biodiversity conservation;
- (f) developing a plan to facilitate the transformation of the biodiversity sector; and
- (g) any other matter which the Minister considers necessary.

(2) The Minister must publish the national framework adopted in terms of subsection (1) in the *Gazette*.

(3) The Minister must review the national framework every 10 years.

Spatial biodiversity plans

35. (1) The Minister may, by notice in the *Gazette*, publish a spatial biodiversity plan in respect of a geographical area that spans more than one province.

(2) The MEC may, by notice in the *Gazette*, publish a spatial biodiversity plan which applies to a geographical area within a particular province.

(3) A municipality may, by notice in the *Gazette*, publish a spatial biodiversity plan which applies to a geographical area within that municipality.

(4) A spatial biodiversity plan must—

- (a) in the case of subsection (2), align with the boundaries of a province, and in the case of subsection (3), align with the boundaries of a municipality;
- (b) identify a set of geographic biodiversity priority areas within the municipality or province, based on the best available science;
- (c) provide measures for the management and conservation of the biodiversity

priority areas identified in terms of paragraph (b);

- (d) provide for the monitoring of the plan;
- (e) if developed by the MEC, align with any national spatial biodiversity plan published by the Minister;
- (f) if developed by a municipality, align with any national spatial biodiversity plan and provincial spatial biodiversity plan published by the Minister or MEC, respectively; and
- (g) comply with any other requirement prescribed by the Minister.

Biodiversity management plans

36. (1) The Minister or MEC may, by notice in the *Gazette*, publish a biodiversity management plan for—

- (a) a listed ecosystem or any other ecosystem which warrants special conservation attention; or
- (b) a listed indigenous species or any other indigenous species which warrants special conservation attention.

(2) Before approving a biodiversity management plan, the Minister or MEC may identify a suitable person, organisation or organ of state that will be responsible for the implementation of the plan.

(3) A biodiversity management plan developed by the MEC must align with any biodiversity management plan published by the Minister.

Contents of biodiversity management plans

37. A biodiversity management plan must—

- (a) be aimed at ensuring the long-term conservation and effective management of the species or ecosystems to which the plan relates;
- (b) identify duty of care measures;
- (c) promote well-being and humane practices, actions, and activities towards wild animals;
- (d) provide for the responsible person, organisation or organ of state to monitor and report on progress with implementation of the plan; and
- (e) take into consideration—
 - (i) any plans issued in terms of Chapter 3 of the National Environmental Management Act;
 - (ii) any municipal integrated development plan;
 - (iii) any applicable spatial biodiversity plan; and
 - (iv) any other plans prepared in terms of national or provincial legislation that are affected.

Biodiversity management agreements

38. The Minister or MEC may enter into a biodiversity management agreement with a person, organisation or organ of state, regarding—

- (a) the implementation of a biodiversity planning tool; or
- (b) a matter relating to biodiversity management.

Co-ordination and alignment with biodiversity planning tools

39. (1) The preparation of—

- (a) an environmental implementation or environmental management plan in terms

of Chapter 3 of the National Environmental Management Act;

- (b) an integrated development plan in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- (c) any spatial development framework in terms of legislation regulating land-use management, land development and spatial planning; and
- (d) any other plan prepared in terms of national or provincial legislation that is affected, must—
 - (i) be aligned with any biodiversity planning tool;
 - (ii) incorporate into that plan those provisions of any biodiversity planning tool that specifically apply to it;
 - (iii) demonstrate how any biodiversity planning tool may be implemented; and
 - (iv) align with the provisions relating to any listed ecosystem or listed species.

(2) The Institute may—

- (a) assist in the preparation of any biodiversity planning tool to comply with subsection (1); and
- (b) make recommendations to organs of state or municipalities referred to in subsection (1) to align their plans referred to in that subsection.

CHAPTER 5

ECOSYSTEMS AND SPECIES

Part 1

Listed ecosystems and species

Species and ecosystems of concern

40. (1) The Minister may, after consultation with the relevant MEC, by notice in the *Gazette*, publish a national list of species or ecosystems that—

- (a) are threatened;
- (b) in need of conservation or protection;
- (c) require careful consideration when promoting access for traditional, cultural or spiritual use; or
- (d) require additional consideration to promote animal well-being and humane practices, actions and activities.

(2) The Minister may, in a notice in terms of subsection (1)—

- (a) impose conditions;
- (b) identify prohibitions or restrictions;
- (c) identify activities which require a permit; or
- (d) identify any other measure.

(3) A notice in terms of subsection (1) may—

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

Management of species and ecosystems

41. (1) The Minister may, after consultation with the relevant MEC, prescribe, in relation to any species or ecosystem which is not a listed species or a listed ecosystem and that is in need of management, any—

- (a) conditions;
- (b) prohibitions or restrictions;
- (c) activities which require a permit; or
- (d) other measure.

(2) A matter prescribed in terms of subsection (1) may—

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

Listing of priority species or ecosystems

42. (1) The Minister may, after consultation with the MEC, by notice in the *Gazette*, publish a national list of priority species, priority specimens or priority

ecosystems, which—

- (a) require preferential protection;
- (b) are vulnerable to organised crime or wildlife trafficking;
- (c) require additional compliance and enforcement resources; or
- (d) require stricter penalty provisions.

(2) The Minister may, in a notice in terms of subsection (1)—

- (a) impose conditions;
- (b) identify prohibitions or restrictions;
- (c) identify activities which require a permit; or
- (d) identify any other measure.

(3) The provisions of section 40(3) apply to a notice issued in terms of subsection (1).

Part 2

Scientific Authority

Establishment of Scientific Authority

43. The Minister must establish a Scientific Authority for the purposes of assisting in regulating and restricting the trade in specimens of species to which an international agreement regulating international trade, and trade in species listed in terms of section 40, applies.

Functions of Scientific Authority

- 44.** (1) The Scientific Authority must—
- (a) monitor and evaluate the legal and illegal trade in specimens of species to which an international agreement regulating international trade applies in the Republic, and the legal and illegal trade in species listed in terms of section 40;
 - (b) advise the Minister and any other interested organs of state on the matters contemplated in paragraph (a);
 - (c) make non-detriment findings as prescribed relating to the international trade in specimens of species to which an international agreement regulating international trade applies, and must submit those findings to the Minister;
 - (d) advise the Minister on—
 - (i) the registration of ranching operations, nurseries, captive breeding operations and other facilities;
 - (ii) whether an operation or facility meets the criteria for producing species considered to be bred in captivity or artificially propagated;
 - (iii) any amendments to a notice published in terms of section 40(1);
 - (iv) the nomenclature of species;
 - (v) species that require specific management intervention;
 - (vi) the setting of any quota; and
 - (vii) any other matter as prescribed;
 - (e) assist the Minister or an environmental management inspector in the identification of specimens for the purpose of enforcing the provisions of this Act;
 - (f) perform any other function that may be—

- (i) prescribed; or
 - (ii) delegated to it by the Minister in terms of the National Environmental Management Act; and
- (g) deal with any other matter necessary for, or reasonably incidental to, its powers and duties.
- (2) In performing its duties, the Scientific Authority must—
- (a) base its findings, recommendations and advice on a scientific and professional review of available information; and
 - (b) consult, when necessary, organs of state, the private sector, non-governmental organisations, local communities and other stakeholders before making any findings or recommendations or giving any advice.

Part 3

Trade in species

Activities involving species or ecosystems to which international agreements apply

45. (1) No person may import, export, re-export or introduce from the sea, a specimen of a species listed in terms of the Convention on International Trade in Endangered Species of Wild Fauna and Flora without a permit issued in terms of section 60.

(2) Subsection (1) does not apply to specimen of a species conveyed from outside the Republic in transit through the Republic to a destination outside the Republic, provided that the transit through the Republic takes place with the required original documentation from the country of origin accompanying the

shipment.

(3) The Minister may prescribe conditions, measures including prohibitions or restrictions, or activities that require a permit in respect of any—

- (a) specimen of a species referred to in subsection (1); or
- (b) specimen of a species or ecosystem to which any other international agreement applies.

CHAPTER 6

ALIEN AND INVASIVE SPECIES AND GENETICALLY MODIFIED ORGANISMS

Management of alien species

46. (1) No person may import a specimen of an alien species without a permit issued in terms of section 63.

(2) An application for a permit mentioned in subsection (1) may only be considered after a risk assessment has been submitted.

(3) The Minister may prescribe any conditions, prohibitions, restrictions, requirements for a permit or any other measure, necessary for—

- (a) the management of an alien species or category of alien species;
- (b) the keeping, propagation, or breeding of an alien species.

(4) Regulations in terms of subsection (3) may apply—

- (a) within the Republic or a province, as the case may be, or only in a specified area or a specified category of areas;
- (b) to all persons, to specific persons or only to a specified category of persons;
or
- (c) to all species or only to a specified species or a specified category of species.

List of invasive species

47. (1) The Minister must, after consultation with the relevant MEC, by notice in the *Gazette*, publish a national list of invasive species, with any conditions, prohibitions, restrictions, requirements for a permit or any other measure, necessary for the management of that listed invasive species.

(2) The Minister may review the list published in terms of subsection (1), as may be appropriate.

(3) A notice in terms of subsection (1) may apply—

- (a) within the Republic or a province, as the case may be, or only in a specified area or a specified category of areas;
- (b) to all persons, to specific persons or only to a specified category of persons;
or
- (c) to all species or only to a specified species or a specified category of species.

Invasive species control plans

48. (1) The management authority of a protected area preparing a management plan for the area in terms of the Protected Areas Act, must incorporate invasive species control strategies into that management plan.

(2) The Minister may prescribe when an organ of state or any other person must prepare an invasive species control plan for land which they own, occupy or is under their control, or for any listed invasive species under their control.

Genetically modified organisms

49. (1) The GMO Registrar must, prior to every meeting of the Council, provide the Minister with all applications submitted for authorisation in terms of the Genetically Modified Organisms Act, 1997.

(2) The Minister must notify the Council if an applicant in subsection (1) is required to—

- (a) apply for an environmental authorisation in terms of the National Environmental Management Act; or
- (b) undertake any other environmental assessment as may be prescribed.

(3) The Council must notify the applicant where an environmental authorisation or prescribed assessment is required.

(4) No person may release a genetically modified organism into the environment without an authorisation contemplated in subsection (2), if required.

CHAPTER 7

ACCESS TO INDIGENOUS BIOLOGICAL RESOURCES AND INDIGENOUS KNOWLEDGE, BIOPROSPECTING AND BENEFIT SHARING

Definitions

50. In this Chapter—

"access agreement" means a written agreement concluded with a person giving access to an indigenous biological resource or indigenous knowledge for bioprospecting;

"benefit-sharing agreement" means a written agreement between an applicant for

a commercial bioprospecting permit and—

- (a) a person giving access; or
- (b) an organ of state,

to regulate the commercial exploitation of an indigenous biological resource or indigenous knowledge;

"biotrade" means the trade in an indigenous biological resource or indigenous knowledge by any person who lawfully obtains permission to use an indigenous biological resource or indigenous knowledge from the holder of a commercial bioprospecting permit;

"commercial bioprospecting permit" means a permit issued in terms of section 55(1);

"commercial exploitation of an indigenous biological resource or indigenous knowledge" means any activity listed in terms of section 55(2);

"discovery-phase bioprospecting permit" means a permit issued in terms of section 53(1);

"discovery-phase of bioprospecting" means any research on, or application of, indigenous biological resources or indigenous knowledge, to discover genetic or biochemical information, where the nature and extent of any actual or potential benefits is not sufficiently clear or known, with the intention to undertake commercial exploitation of an indigenous biological resource or indigenous knowledge;

"indigenous biological resource"—

- (a) means—
 - (i) any component of biodiversity, whether gathered from the wild or accessed from any other source, including any animals, plants or other organisms of an indigenous species cultivated, bred or kept in captivity or altered in any way by means of technology;

- (ii) any cultivar, variety, strain, derivative, hybrid or fertile version of any indigenous species referred to in subparagraph (i); and
 - (iii) any alien species, including alien animal, plant or other organism, whether gathered from the wild or accessed from any other source, which have been altered to contain any genetic material or chemical compound found in any indigenous species referred to in subparagraph (i) or (ii); and
- (b) excludes—
- (i) genetic material of human origin; and
 - (ii) any alien species, including alien animals, plants or other organisms, other than the alien species referred to in paragraph (a)(iii);

"indigenous community" has the meaning assigned to it in the Indigenous Knowledge Act;

"indigenous knowledge" has the meaning assigned to it in the Indigenous Knowledge Act;

"Indigenous Knowledge Act" means the Protection, Promotion, Development and Management of Indigenous Knowledge Act, 2019 (Act No. 6 of 2019);

"non-commercial research" means research that is undertaken with the specific intention not to use any results of the research for the commercial exploitation of indigenous biological resources or indigenous knowledge; and

"person giving access" means—

- (a) an indigenous community or the person representing that community who is authorised to give access to an indigenous biological resource owned by that community or indigenous knowledge belonging to that community;
- (b) the owner of land on which an indigenous biological resource occurs;
- (c) a person who is lawfully authorised or lawfully entitled to give access to an

- indigenous biological resource or indigenous knowledge; or
- (d) the Minister, on behalf of the State, as trustee for purposes of section 54(2).

Application of Chapter

51. (1) This Chapter applies to—

- (a) the use of indigenous biological resources for bioprospecting; and
- (b) the use of indigenous knowledge, where the Indigenous Knowledge Act is not applicable.

(2) Where indigenous knowledge has been registered in terms of the Indigenous Knowledge Act, the processes and provisions of that Act applies and this Chapter does not apply.

Prior informed consultation, consent process and access agreement

52. (1) Before applying for a discovery-phase bioprospecting permit or a commercial bioprospecting permit, an applicant must first apply to the Minister for written approval of—

- (a) the prior informed consultation and consent process, and must address the following criteria in that application:
- (i) the nature and extent of the access to the indigenous biological resource or indigenous knowledge which has been requested;
- (ii) the details of all material information relating to the proposed bioprospecting which will be disclosed to the person giving access;
- (iii) whether or not the person giving access or the applicant will be required to sign a written non-disclosure agreement to protect any

- intellectual property belonging to any party to that agreement;
- (iv) the cultural and historical characteristics, customs, rules and practices of the person giving access and how this information will be acquired;
 - (v) the nature of the consultation process to be undertaken; and
 - (vi) any other matter relating to the prior informed consultation and consent process which may be prescribed; and
- (b) the contents of an access agreement and must address the following criteria in that application:
- (i) whether or not the terms of that agreement are fair towards the person giving access;
 - (ii) the nature of the access to indigenous biological resources and indigenous knowledge given to the applicant;
 - (iii) the nature of the compensation the person giving access will receive for that access;
 - (iv) how the customary and traditional rights of the person giving access are adequately protected in terms of that agreement; and
 - (v) any other matter relating to an access agreement which may be prescribed.

(2) Subsection (1) does not apply to an applicant who owns the land on which the indigenous biological resource is located, except if the applicant intends to utilise indigenous knowledge.

(3) Subsection (1) does not apply to an applicant for a commercial bioprospecting permit if that applicant has been granted a discovery-phase bioprospecting permit.

Discovery-phase bioprospecting permit

53. (1) No person may—

- (a) undertake the discovery-phase of bioprospecting;
- (b) export an indigenous biological resource to undertake the discovery-phase of bioprospecting; or
- (c) undertake the discovery-phase of bioprospecting outside of the Republic, without a permit issued by the Minister.

(2) The Minister may issue a discovery-phase bioprospecting permit if—

- (a) a prior informed consultation and consent process has been completed, with the approval of the Minister, in terms of section 52(1)(a).
- (b) the access agreement, approved by the Minister in terms of section 52(1)(b), has been signed by all parties to that agreement; and
- (c) the applicant has complied with any other discovery-phase of bioprospecting requirements which may be prescribed.

(3) The holder of a discovery-phase bioprospecting permit may not access any indigenous knowledge associated with the indigenous biological resource, unless access to that indigenous knowledge is also specifically authorised in that permit.

Benefit-sharing agreement

54. (1) An applicant for a commercial bioprospecting permit must—

- (a) conclude a benefit-sharing agreement; and
- (b) obtain the Minister's written approval of the benefit-sharing agreement,

prior to applying for a permit.

(2) An applicant for a commercial bioprospecting permit relating to an indigenous biological resource located on land owned by the applicant must conclude a benefit-sharing agreement with the Minister who, on behalf of the State, acts as trustee of the Republic's indigenous biological resources and any money resulting from that agreement must be transferred to the suspense bank account referred to in section 59(1).

(3) When applying for approval in terms of subsection (1)(b), an applicant must address the following criteria:

- (a) Whether the applicant was issued with a discovery-phase bioprospecting permit in terms of section 54(1), if applicable; and
- (b) whether the applicant has complied with any other benefit-sharing agreement requirement which may be prescribed.

(4) A benefit-sharing agreement may provide for monetary and non-monetary benefits.

Commercial bioprospecting permit

55. (1) No person may—

- (a) undertake the commercial exploitation of an indigenous biological resource or indigenous knowledge;
- (b) export indigenous knowledge or an indigenous biological resource in order to undertake the commercial exploitation of that resource; or
- (c) undertake the commercial exploitation of an indigenous biological resource or indigenous knowledge outside of the Republic,

without a permit issued by the Minister.

(2) The Minister must, by notice in the *Gazette*, list activities that are activities for the commercial exploitation of an indigenous biological resource or indigenous knowledge for purposes of commercial bioprospecting.

(3) Subject to section 52(3), the Minister may issue a commercial bioprospecting permit if—

- (a) a prior informed consultation and consent process has been completed, with the approval of the Minister, in terms of section 52(1);
- (b) the access agreement, approved by the Minister in terms of section 52(1), has been signed by all parties to that agreement;
- (c) a benefit-sharing agreement approved by the Minister in terms of section 54(1) is signed by all parties to that agreement; and
- (d) the applicant has complied with any other commercial bioprospecting permit requirements which may be prescribed.

Biotrade agreement

56. (1) No person may engage in biotrade unless they have concluded a biotrade agreement with the Minister.

(2) The Minister may prescribe the requirements, contents and process for the conclusion of a biotrade agreement.

(3) The Minister must, by notice in the *Gazette*, determine a financial benefit, as a percentage of the financial value of any right, ingredient, product or resource sold as part of biotrade that is payable to the person giving access, and that financial benefit percentage may apply to different—

- (a) areas or categories of areas;
- (b) persons or categories of persons;

- (c) indigenous biological resources or categories of indigenous biological resources;
- (d) indigenous knowledge or categories of indigenous knowledge; or
- (e) products or categories of products.

Import of indigenous biological resources from other countries

57. No person may import or utilise, within the Republic, an indigenous biological resource or indigenous knowledge from another country for bioprospecting, unless that person declares in writing that the regulatory requirements of the country in which the resource or knowledge is located, were complied with.

Non-commercial research

58. No person may undertake non-commercial research outside the Republic utilising an indigenous biological resource or indigenous knowledge without a permit.

Collection and payment of benefit sharing funds

59. (1) The following funds must be paid into a suspense bank account administered by the Department and set up specifically for the administration of those funds:

- (a) Funds arising from an access agreement, which are lawfully owed to any party to that agreement, except for funds lawfully owed to the applicant who is

party to that agreement;

- (b) funds arising from a benefit-sharing agreement, which are lawfully owed to any party to that agreement, except for funds lawfully owed to the holder of a commercial bioprospecting permit who is a party to that agreement;
- (c) funds arising from a biotrade agreement, which are lawfully owed to a person giving access in terms of that agreement; and
- (d) any other funds which the Minister, by agreement with the Minister of Finance, may deposit into that account.

(2) The Director-General is the accounting officer responsible for funds paid into the suspense bank account and for payment of funds from that account.

(3) All funds paid into the suspense bank account must be managed in accordance with the Public Finance Management Act.

(4) The Director-General must pay, from the suspense bank account, funds arising from an access agreement, benefit-sharing agreement or biotrade agreement, to any party who is lawfully owed funds in terms of any of those agreements, except to—

- (a) an applicant in the case of an access agreement;
- (b) the holder of a commercial bioprospecting permit; or
- (c) any person who concluded a biotrade agreement with the Minister in terms of section 57.

CHAPTER 8

ISSUING OF PERMITS AND EMERGENCY INTERVENTIONS

Permits

60. (1) Any permit issued in terms of this Act, may be—

- (a) issued for a specified period;
- (b) issued subject to the conditions determined by the issuing authority in the permit;
- (c) renewed for a specific period; or
- (d) issued against the payment of any prescribed fees.

(2) A permit to exercise an existing right in terms of this Act may be refused if the conditions of a previously issued permit had not been adhered to.

(3) An issuing authority may defer a decision to issue a permit if the applicant is under investigation for the contravention or failure to comply with any provision of this Act, until such time that the investigation is concluded and—

- (a) no prosecution in respect of that contravention or failure is instituted against the applicant concerned;
- (b) the applicant concerned is acquitted or found not guilty, if a prosecution in respect of that contravention or failure has been instituted; or
- (c) the applicant concerned has been convicted by a court of law of an offence in respect of that contravention or failure and the applicant has, in respect of the conviction, exhausted all the recognised legal proceedings pertaining to appeal or review.

Issuing authority

61. (1) The Minister is the issuing authority responsible for deciding an

application for a permit—

- (a) for a specimen of a marine species;
- (b) involving a specimen of a listed species, listed ecosystem or species managed in terms of section 41(1)—
 - (i) in a national protected area; or
 - (ii) applied for by an official, on behalf of—
 - (aa) a provincial department or provincial organ of state responsible for the conservation of biodiversity in a province;
 - (bb) a national protected area;
 - (cc) the Institute; or
 - (dd) an organ of state in the national sphere of government;
- (c) for the import, export, re-export or introduction from the sea, of a specimen of a species listed in terms of the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 1973—
 - (i) originating from a national protected area; or
 - (ii) applied for by an official, on behalf of—
 - (aa) a provincial department or provincial organ of state responsible for the conservation of biodiversity in a province;
 - (bb) a national protected area;
 - (cc) the Institute; or
 - (dd) an organ of state in the national sphere of government;
- (d) for a specimen of an alien species or a listed invasive species;
- (e) in terms of Chapter 7; and
- (f) for the export of any indigenous biological resources from the Republic for the purpose of bioprospecting.

- (2) The MEC is the issuing authority responsible for deciding an

application for any permit not listed in subsection (1).

(3) The Minister and the MEC may, in writing, agree that any application for a permit or a type of permit—

- (a) contemplated in subsection (1), may be decided by the MEC; or
- (b) contemplated in subsection (2), may be decided by the Minister.

Risk assessments and expert evidence

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

Amendment, revocation and suspension of permits

63. (1) An issuing authority may amend, revoke or suspend a permit issued in terms of this Act, if—

- (a) the permit-holder contravenes or fails to comply with a condition subject to which the permit was issued or any provision of this Act or other law governing the permitted activity;
- (b) changes in circumstances require the amendment, revocation or suspension;
- (c) it is necessary to meet the Republic's international obligations;
- (d) the permit-holder has been issued with a final notice or directive in terms of the National Environmental Management Act or any specific environmental management Act;
- (e) the applicant or permit-holder has been convicted of an offence in terms of this Act;

- (f) the carrying out of the activity has a detrimental impact on the species or ecosystem; or
- (g) the permit was issued as a result of a misleading or false representation by the applicant or a person acting on behalf of the applicant.

(2) An issuing authority must notify the permit-holder in writing of an intention to act in terms of subsection (1) and request the permit-holder to make written representations within 30 days from the date of being notified as to why the permit should not be amended, revoked or suspended.

(3) After the 30-day period in subsection (2) has expired, the issuing authority must consider any representations made by the permit-holder, and may—

- (a) revoke the permit;
- (b) suspend the permit for a period determined by the issuing authority;
- (c) amend the terms or conditions of the permit; or
- (d) decide not to amend, revoke or suspend the permit.

Emergency intervention

64. (1) The Minister may, by notice in the *Gazette*, declare an emergency intervention for—

- (a) the control or eradication of an alien species or a listed invasive species, if that alien species or listed invasive species constitutes a significant threat to the environment;
- (b) the protection or management of a listed species or listed ecosystem or any other species or ecosystem managed in terms of this Act, if that species or ecosystem is under or may be under significant threat from natural or human impacts or activities;

- (c) any indigenous biological resource regulated by Chapter 7, where that resource is required for immediate research, distribution or use, or for the protection of human health or the environment; or
- (d) the protection and management of any other species or ecosystem not mentioned in paragraphs (a), (b) or (c).

(2) A notice in terms of subsection (1) must—

- (a) list the species, ecosystem or component of biodiversity to which the emergency intervention relates;
- (b) provide a brief summary of the reasons for the intervention; and
- (c) provide the details relating to the intervention.

(3) When publishing a notice in terms of subsection (1), the Minister must follow an appropriate consultation process having regard to the nature of the emergency, but does not have to comply with the process contemplated in section 61.

(4) An intervention may provide for, but is not limited to, the following:

- (a) The suspension of all or any activity or authorisation, or any specified part of it;
- (b) the restriction or prohibition of any activity in relation to any species, ecosystem or resource;
- (c) the restriction of the number of persons in a particular area or areas of operation; or
- (d) a declaration that an area is closed and may not be accessed by the public until such time as the circumstances giving rise to the intervention have been adequately resolved.

(5) The Minister may, by notice in the *Gazette*, amend, withdraw or

suspend an intervention issued in terms of subsection (1).

CHAPTER 9

GENERAL AND MISCELLANEOUS

Biodiversity officers

65. (1) The Minister or an MEC may appoint any member of the public who they deem fit as a biodiversity officer.

(2) The Minister or an MEC may—

- (a) prescribe the responsibilities and duties of biodiversity officers;
- (b) clearly define the responsibilities and duties of each biodiversity officer in their letter of appointment; and
- (c) issue each biodiversity officer with an identity card that confirms their appointment.

Recognition of associations and organisations and establishment of fora

66. (1) The Minister may recognise any industrial body, association or organisation which, in the opinion of the Minister, is representative of any part of the biodiversity sector and may prescribe the application process, requirements and any other criteria.

(2) The Minister may establish fora to co-ordinate and assist with the management of any aspect of biodiversity.

(3) The Minister must consult the Institute before assigning a function to a forum that may fall within the functional area of the Institute.

Norms and standards

67. (1) The Minister may, after consultation with the relevant MEC, by notice in the *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 Republic's biodiversity and its components;
 - (ii) restriction of activities which impact on biodiversity and its components; or
 - (iii) restriction of practices, actions, and activities that impact on the well-being of animals or populations of animals;
- (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) Norms and standards may apply—

- (a) nationwide;
- (b) in a specific area only; or
- (c) to a specific category of biodiversity only.

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

- (a) different areas; or
- (b) different categories of biodiversity.

Public participation

68. (1) Before publishing or amending a notice in terms of this Act, the

Minister must follow an appropriate consultation process and consider any comments by the general public, relevant biodiversity stakeholders and affected organs of state.

(2) For purposes of subsection (1), the Minister must publish a notice—

- (a) in the *Gazette* inviting members of the public to submit written representations or objections within a minimum period of 30 days from the date of that publication; and
- (b) in at least one newspaper distributed nationally, or if the exercise of the power affects only a specific area, in at least one newspaper distributed in that area.

Exemptions

69. (1) The Minister may, in writing or by notice in the *Gazette*, exempt any person or group of persons or organ of state from a provision of this Act, provided that the exemption does not conflict with the objects of the Act.

(2) An exemption granted in terms of subsection (1) may—

- (a) be subject to conditions;
- (b) be subject to payment of a fee; and
- (c) be amended or cancelled at any time by the Minister.

Regulations by Minister

70. (1) The Minister may make regulations relating to—

- (a) any matter that may or must be prescribed in terms of this Act;
- (b) any measures necessary for the management or well-being of an animal or

any species, ecosystem or other component of biodiversity managed in terms of this Act;

- (c) the implementation of any international agreement regulating international trade in specimens of species and any other international agreement relating to biodiversity;
- (d) the systems and requirements for the compulsory or voluntary registration of persons, institutions, facilities or operations;
- (e) the composition, operating procedures and functions of the Scientific Authority including the making of non-detriment findings;
- (f) the sustainable use of components of biodiversity, including—
 - (i) ensuring a duty of care towards all components of biodiversity;
 - (ii) limiting the number of permits;
 - (iii) qualifications or requirements necessary for the undertaking of a particular activity;
 - (iv) criteria for the equitable allocation of permits which enables and facilitates transformation;
 - (v) certification or labelling systems or schemes;
 - (vi) methods, gear, equipment, measure or devices;
 - (vii) quotas, bag limits, off-take limits or any other measure, restrictions or prohibitions;
 - (viii) the requirements for a permit for hunters, hunting facilities, or any other hunting operator or body involved in the hunting industry;
 - (ix) prohibitions, restrictions, or specific provisions for the taking of animals from the wild into captivity, and for their captive keeping, breeding and use;
 - (x) prohibitions, restrictions, or specific provisions for the export of

- components of biodiversity ex situ;
- (xi) to mitigate any risk of domestication of faunal components of biodiversity;
 - (xii) training requirements;
 - (xiii) a person or category of person who may not operate without a permit;
or
 - (xiv) translocation;
- (g) any industry sector, including, but not limited to, the hunting industry, game farms, aquaria, zoos, captive breeding, or rehabilitation facilities;
 - (h) the collection of samples for genetic analyses or other purposes;
 - (i) the marking of specimens;
 - (j) prohibitions, restrictions, methods or measures relating to an activity involving any species, ecosystem or other component of biodiversity managed in terms of this Act;
 - (k) the requirements for or circumstances in which a risk assessment in respect of any species, ecosystem or other component of biodiversity managed in terms of this Act, may be required;
 - (l) the form, content, criteria, procedures and evaluation of any risk assessment;
 - (m) the form, content, requirements and implementation of programmes or plans for the prevention, control or eradication of invasive species;
 - (n) prohibitions, restrictions, or specific provisions for the captive keeping, breeding or use of alien species;
 - (o) biosecurity, including, but not limited to—
 - (i) vectors and pathways;
 - (ii) restrictions on trade;
 - (iii) sale of immovable property;

- (iv) procedures, requirements and processes for notification, management,
 - (v) control, eradication or clearance certificates for invasive species; and
 - (vi) the establishment of intergovernmental and stakeholder committees to advise and make recommendations on any aspect of biosecurity;
- (p) any matter concerning bioprospecting, access and benefit-sharing, including, but not limited to—
- (i) an application to approve a prior informed consultation and consent process in terms of section 52;
 - (ii) an application to approve an access agreement in terms of section 52;
 - (iii) an application for a discovery-phase bioprospecting permit in terms of section 53;
 - (iv) an application to approve a benefit-sharing agreement in terms of section 54;
 - (v) an application for a commercial bioprospecting permit in terms of section 55;
 - (vi) the process to conclude and the content of, a biotrade agreement in terms of section 56;
 - (vii) the financial benefit payable in terms of a biotrade agreement to the person giving access in terms of section 56 read with section 59;
 - (x) an application for, and the form and content of, a non-commercial research permit in terms of section 58(2); and
 - (xi) funds payable from and the administration of, the suspense bank account referred to in section 59(1);
- (q) the procedure to be followed for anything in terms of this Act, including—
- (i) fees for the lodging and consideration of applications and issuance of permits, exemptions or registrations;

- (ii) the conditions with which applicants must comply before or after the lodging of applications;
 - (iii) the powers of issuing authorities when considering and deciding applications;
 - (iv) the factors that must be taken into account when deciding applications;
 - (v) the form and content of permits, exemptions or registrations;
 - (vi) timeframes, measures, criteria, processes, geographical areas of application, categories and types of permits and exemptions, and any other matter relating to the issuing, renewal, amendment, revocation or suspension of permits, exemptions or registrations;
 - (vii) the period of validity of a permit, exemption or registration;
 - (viii) the circumstances in which applications must be refused or may be approved and general or compulsory conditions;
 - (ix) the giving of security in respect of any obligation that may arise from a permit or exemption and the form of that security;
 - (x) the transferability of a permit, exemption or a registration certificate;
 - (xi) the duties and reporting requirements of issuing authorities, permit holders, exemption holders and registration holders; or
 - (xii) the type and format of data to be submitted to the issuing authority or other organs of state for the purposes of monitoring and the implementation of this Act;
- (r) incentives or disincentives to assist with biodiversity conservation;
- (s) self-administration within the biodiversity sector;
- (t) the national co-ordination of activities in terms of this Act or matters of national security which affect biodiversity or to ensure compliance with the Republic's international obligations in terms of this Act;

- (u) any other matter that may be necessary to facilitate the implementation of this Act; and
- (v) any matter that is necessary or expedient to achieve the objectives of the Act.

(2) The Minister may only prescribe fees by agreement with the Minister of Finance.

Offences

71. (1) A person is guilty of an offence if that person contravenes or fails to comply with a provision of section 45(1), 46(1), 49(4), 53(1)(a), 53(1)(b), 53(1)(c), 53(3), 54(2), 55(1)(a), 55(1)(b), 55(1)(c), 56(1), 57 or 58.

(2) A person who is the holder of a permit or exemption is guilty of an offence if that person contravenes or fails to comply with a condition or direction contained in that permit or exemption.

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

- (a) fraudulently alters any permit or exemption;
- (b) fabricates or forges any document for the purpose of passing it as a permit or exemption;
- (c) passes, uses, alters or has in their possession any altered or false document purporting to be a permit or exemption;
- (d) knowingly makes a false statement or report for the purpose of obtaining a permit or exemption;
- (e) fails to comply with a provision or restriction of an emergency intervention in terms of section 64(4);
- (f) fails to comply with a norm or standard issued in terms of section 67(1)(a);
- (g) fails to comply with a regulation, notice or any other instrument issued in

terms of this Act; or

- (h) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of subsections (1) or (2) or paragraphs (a), (b), (c), (d), (e), (f), or (g).

Penalties

72. (1) A person convicted of an offence in terms of section 71(1), (2), or (3) is liable to a fine not exceeding R10 million, or imprisonment for a period not exceeding 10 years, or to both the fine and the imprisonment.

(2) If a person is convicted of an offence involving a specimen of a listed species, listed ecosystem, a species managed in terms of section 41(1) or 45(3), or an alien species or for undertaking the commercial exploitation of an indigenous biological resource or indigenous knowledge, a fine may be determined, either in terms of subsection (1) or equal to three times the commercial value of the specimen or activity in respect of which the offence was committed, whichever is the greater.

(3) If a person is convicted of an offence involving a specimen of a listed invasive or extra-limital species, a fine may be determined, either in terms of subsection (1) or equal to the estimated cost associated with the eradication or control of the specimen in respect of which the offence was committed or both.

(4) A person who is convicted of an offence in terms of section 71(1), (2) or (3)—

- (a) as a member of a group of persons, a syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy, involving a specimen of a listed species;

(b) where the offence involves a priority species, priority specimen, or priority ecosystem; or

(c) who is an employee of the State,

is liable to—

- (i) a fine not exceeding R20 million, or to a fine equal to six times the commercial value of the specimen or activity in respect of which the offence was committed, whichever is the greater;
- (ii) imprisonment for a period not exceeding 20 years; or
- (iii) to both the fine and the imprisonment.

Savings and transitional arrangements

73. (1) Anything done in terms of the Biodiversity Act, which may or must be done in terms of this Act, must be regarded as having been done in terms of this Act.

(2) Any plan, strategy, framework or programme adopted, approved or published in terms of the Biodiversity Act, must be regarded as one adopted, approved or published in terms of this Act, and in the case of any bioregional plan adopted in terms of that Act, it must be regarded as a spatial biodiversity plan in terms of this Act.

(3) The National Zoological Gardens known as the Pretoria Zoo is deemed to be a national zoological garden declared in terms of section 32(1)(b) of this Act.

(4) Any national botanical garden which has been declared as such in terms of the Biodiversity Act, and any other national botanical garden which existed prior to that Act, and which exists when this Act takes effect, must be

regarded as a national botanical garden declared as such in terms of this Act.

(5) Any regulation made, or notice published in terms of the Biodiversity Act, which exists when this Act takes effect, must be regarded as having been prescribed or published in terms of this Act and remains valid until it is repealed or amended in terms of this Act.

(6) Any permit, exemption, registration or other authorisation granted in terms of the Biodiversity Act, which was valid immediately before the commencement of this Act, remains valid and must be regarded as having been issued or done in terms of this Act, until it is revoked, cancelled or has expired.

(7) Any application for a permit, exemption, registration or other authorisation submitted in terms of the Biodiversity Act, which has not been finalised when this Act takes effect, must, despite the repeal of the Biodiversity Act by section 76 of this Act, be dispensed with in terms of the Biodiversity Act, and a decision taken in terms of that Act must be deemed as a decision taken in terms of this Act.

(8) The Board as constituted in terms of section 13 of the Biodiversity Act, and which exists at the time this Act comes into effect, continues to exist as the Board, as if constituted and appointed in terms of this Act.

Repeal of legislation

74. The National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), and the Sea Birds and Seals Protection Act, 1973 (Act No. 46 of 1973) are repealed by this Act.

Short title and commencement

75. This Act is called the National Environmental Management: Biodiversity Act, 2024 and takes effect on a date determined by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL
MANAGEMENT: BIODIVERSITY BILL,**

1. BACKGROUND

1.1 The National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (“NEM: BA”) was published in the *Gazette* on 7 June 2004 and, with the exception of a few provisions, commenced on 1 September 2004.

1.2 In 2016, the then Department of Environmental Affairs and the Department of Tourism jointly hosted the Biodiversity Economy and Tourism Lab, as part of government’s Operation Phakisa. Legislation was highlighted as one of the challenges that hamper transformation of the biodiversity sector and growth of the biodiversity economy. The regulatory approach created by the empowering provisions of NEM: BA is restrictive and inflexible, leading to over-regulation and an excessive administrative burden. This has resulted in challenges in achieving conservation, economic and socio-economic goals connected with the biodiversity sector. This Bill, while replacing NEM: BA as an Act, also amounts to a substantial changing of the primary regulatory system in NEM: BA by creating a more flexible enabling legislative environment geared towards economic growth for all economic sectors involved in biodiversity, while at the same time addressing challenges relating to the effective implementation of existing subordinate legislation.

2 PURPOSE

2.1 The Bill seeks to repeal NEM: BA and replace it by changing the primary regulatory system which consists of a rigid, individualised activity-based permitting system in NEM: BA, to a more flexible, enabling legislative environment suited to regulate a dynamic and ever-evolving biodiversity sector. The Bill retains NEM: BA's overall objective of preservation and conservation of biodiversity. The Bill creates the regulatory framework based on principles and objectives set out in its various provisions, while enabling the Minister to adopt appropriate instruments such as regulations to address the current challenges relating to the effective implementation of existing provisions and objectives in terms of the current NEM: BA and the regulations made in terms of it.

2.2 CLAUSE BY CLAUSE EXPLANATION

2.2.1 Clause 1 - Definitions

This clause contains the definitions used in the Bill. Certain definitions have been updated and new ones added as to what is contained in NEM: BA. Existing definitions that have been updated include “indigenous species” and “migratory species”. New definitions include “conservation”, “biodiversity planning tool”, “extra-limital species”, “human practices”, “other effective area-based conservation measure (OECM)”, “transformation” and “wildlife trafficking”.

2.2.2 Clause 2 - Objectives of Act

The objectives of the Bill are, among others, to—

- provide for the management and conservation of biological diversity within the

Republic and of the components of that biological diversity, including animal well-being;

- provide for the protection of the ecosystem as a whole, including species which are not targeted for exploitation;
- provide for the sustainable use of components of biodiversity with due care, including facilitating cultural practices;
- provide for the fair and equitable sharing among stakeholders of benefits arising from bioprospecting involving indigenous biological resources and protecting indigenous knowledge;
- give effect to ratified international agreements relating to biodiversity which are binding on the Republic;
- provide for cooperative governance in the sustainable use, management and conservation of biodiversity;
- give effect to the best available science;
- provide for a South African National Biodiversity Institute to assist in achieving the objectives of this Act;
- address historical imbalances, enable and facilitate transformation and to achieve equity within all branches of the biodiversity sector; and
- provide for appropriate response measures to climate change, including the mitigation of environmental degradation.

2.2.3 Clause 3 - State trusteeship of biological diversity

This clause confirms that the State acts as the trustee of South Africa's biodiversity and its components and genetic resources and in implementing this Bill, will take reasonable steps to achieve the progressive realisation of the rights contained in

section 24 of the Constitution of the Republic. The clause further provides that the Minister may, by notice in the *Gazette*, specify the species and the circumstances under which the State remains the custodian of faunal components of biodiversity that escape from land under its control.

2.2.4 Clause 4 - Application of Act

This clause sets out the application of the Bill. The Bill will apply to all areas of the Republic including its territorial waters, exclusive economic zone and its continental shelf, as well as the Prince Edward Islands. The Bill will also apply to all persons, vessels and aircraft on, or in the airspace above or the territorial waters of the Republic and will bind organs of state.

2.2.5 Clause 5 - Conflicts with other legislation

This clause confirms that in the event of any conflict between a section of this Bill and other national legislation relating to biodiversity, this Bill prevails.

2.2.6 Clause 6 - Application of National Environmental Management Act

The clause confirms that the Bill must be interpreted and applied in conjunction with the National Environmental Management Act and its application be guided by the principles set out in the White Paper on the Conservation and Sustainable Use of South Africa's Biodiversity. The Bill also states that it is a specific environmental management Act as defined in section 1 of the National Environmental Management Act.

2.2.7 Clause 7 - South African National Biodiversity Institute

This clause provides for the continuation of the South African National Biodiversity Institute as established in terms of section 10 of NEM: BA.

2.2.8 Clause 8 – Functions of Institute

This clause sets out the South African National Biodiversity Institute's functions:

In terms of the Bill, the Institute, among others—

- (a) must develop national biodiversity indicators in order to assess and monitor the status and trends in biodiversity at an ecosystem, species and genetic level;
- (b) must monitor and assess the status and trends in biological invasions and the environmental impacts of all categories of genetically modified organisms, and may assess the status and trends related to other threats and pressures on biodiversity;
- (c) must report to the Minister on all its functions as contemplated in this Act;
- (d) must co-ordinate and promote the management of biodiversity information in the Republic, including—
 - (i) establishing and maintaining a national biodiversity information system; and
 - (ii) disseminating biodiversity information to enable research, in order to support better management and conservation of biodiversity;
- (e) must, when requested, provide advice and decision support to organs of state involved in managing and conserving biodiversity, based on the best available science, and have regard to indigenous knowledge, where applicable;
- (f) may provide advice to other stakeholders engaged in or impacting on

biodiversity, based on the best available science, and have regard to indigenous knowledge, where applicable; and

- (g) must co-ordinate and promote the taxonomy of South Africa's biodiversity, and upon request by an organ of state, must confirm, in writing, that the identification of a specimen of an indigenous biological resource is taxonomically accurate, where scientifically possible.

2.2.9 Clause 9 – Powers of Institute

This clause sets out the South African National Biodiversity Institute's general administrative powers. These powers include the power to—

- (a) appoint its own staff, subject to section 26;
- (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment;
- (c) acquire or dispose of any right in or to movable or immovable property, or hire or let any property;
- (d) open and operate its own bank accounts;
- (e) establish a company which has as its object the production and supply of goods or the rendering of services on behalf of the Institute, subject to the Public Finance Management Act;
- (f) invest any of its money, subject to section 28;
- (g) borrow money, subject to section 66 of the Public Finance Management Act; and
- (h) charge fees for access to a national botanical garden or a national zoological garden, herbaria and other places under its control, for any work performed or services rendered by it and for access to the results of, or to other information

in connection with, any research performed by it.

2.2.10 Clause 10 – Composition of Board

This clause describes the composition of the management of the South African National Biodiversity Institute. It sets out that the Institute is to be governed by a Board. The clause further sets out the composition of the Board and that the Board takes all decisions in the performance of the duties and exercise of powers of the Institute.

2.2.11 Clause 11 - Qualifications

This clause sets out the requirements, including qualifications, pertaining to the members of the Board of the South African National Biodiversity Institute. The clause also sets out who is disqualified from being a member of the Board.

2.2.12 Clause 12 - Appointment procedure

This clause sets out the appointment procedure for members of the Board of the South African National Biodiversity Institute and that the Minister has the power to appoint members of the Board subject to the procedure.

2.2.13 Clause 13 - Chairperson

This clause describes that the Minister must appoint a chairperson and may appoint an acting chairperson of the Board of the South African National Biodiversity Institute.

2.2.14 Clause 14 - Term of office

This clause sets out the term of office for members of the Board of the South African National Biodiversity Institute.

2.2.15 Clause 15 - Conditions of appointment

This clause describes that the Minister must determine the conditions of employment of members of the Board of the South African National Biodiversity Institute and that the Minister may, by agreement with the Minister of Finance, determine the terms and conditions of employment of members of the Board who are not in the employment of the government.

2.2.16 Clause 16 - Conduct of members

This clause sets out specific rules and standards that members of the Board of the South African National Biodiversity Institute must adhere to. The clause also confirms that a member of the Board who contravenes or fails to comply with a rule or standard is guilty of misconduct.

2.2.17 Clause 17 - Termination of membership

This clause sets out when a member of the Board of the South African National Biodiversity Institute ceases to be a member.

2.2.18 Clause 18 - Removal from office

This clause sets out the Minister's powers and the grounds on which the Minister may suspend or remove a member of the Board of the South African National Biodiversity Institute.

2.2.19 Clause 19 - Filling of vacancies

This clause regulates how vacancies on the Board of the South African National Biodiversity Institute may be filled where there is an instance of a vacancy.

2.2.20 Clause 20 - Meetings

This clause describes that the Chairperson of the Board of the South African National Biodiversity Institute decides when and where the Board meets, but a majority of the members may request the Chairperson, in writing, to convene a Board meeting at a time and place set out in the request. The clause also describes who presides over meetings of the Board.

2.2.21 Clause 21 - Procedures

This clause confirms that the Board of the South African National Biodiversity Institute may determine its own procedures subject to the provisions of this Bill.

2.2.22 Clause 22 - Quorum and decisions

This clause regulates what constitute quorums of the Board of the South African National Biodiversity Institute and how decisions are passed by the Board.

2.2.23 Clause 23 - Committees

This clause empowers the Board of the South African National Biodiversity Institute to appoint one or more committees in the performance of its duties or the exercise of its powers. The clause sets out the Board's powers in respect of the appointment of committees.

2.2.24 Clause 24 - Delegation of powers and functions

This clause empowers the Board of the South African National Biodiversity Institute to delegate its powers. The clause also sets out which powers and functions may not be delegated by the Board.

2.2.25 Clause 25 - Appointment of Chief Executive Officer

This clause regulates the appointment of the Chief Executive Officer of the South African National Biodiversity Institute. The clause also deals with the Chief Executive Officer's term of office and terms and conditions of employment. The clause also sets out the Chief Executive Officer's primary responsibilities.

2.2.26 Clause 26 - Employment of staff

This clause sets out who may appoint staff of the South African National Biodiversity Institute and the rules for the appointment of that staff.

2.2.27 Clause 27 – Funding

This clause sets out the composition of the funds belonging to the South African National Biodiversity Institute.

2.2.28 Clause 28 - Investments

This clause confirms that the South African National Biodiversity Institute may invest any of its funds that it does not immediately require, subject to any investment policy that may be prescribed in terms of section 7(4) of the Public Finance Management Act. The clause also confirms that the Minister may direct the manner in which the

Institute invests its funds.

2.2.29 Clause 29 – Powers of Minister

This clause describes the Minister's supervisory powers over the South African National Biodiversity Institute.

2.2.29 Clause 30 - Absence of functional Board

This clause confirms that in the event of absence of a functional Board of the South African National Biodiversity Institute, the powers and duties of the Board revert to the Minister who, in such a case, must exercise those powers and perform those duties until the Board is functional again.

2.2.30 Clause 31 – Winding-up or dissolution of Institute

This clause describes the process for the winding-up or dissolution of the South African National Biodiversity Institute. The Institute may not be wound-up or dissolved, except by or in terms of an Act of Parliament.

2.2.30 Clause 32 - Declaration of national botanical garden and national zoological garden

This clause describes the power of the Minister and the process to declare national botanical gardens and national zoological gardens.

2.2.31 Clause 33 - Amendment or withdrawal of declarations

This clause describes the Minister's powers to amend and withdraw declarations made in terms of clause 32.

2.2.32 Clause 34 - National biodiversity framework

This clause describes the Minister's obligation to prepare and adopt a national framework for biodiversity conservation within the Republic.

2.2.33 Clause 35 - Spatial biodiversity plans

This clause sets out that the Minister, MEC or any municipality may, by notice in the *Gazette*, publish a spatial biodiversity plan. A spatial biodiversity plan must, among others, align with the boundaries of a municipality or a province, identify a set of geographic biodiversity priority areas within the municipality or province, based on the best available science, and provide measures for the management and conservation of biodiversity in the priority areas identified.

2.2.34 Clause 36 - Biodiversity management plans

This Clause sets out the Minister or any MEC's power to publish biodiversity management plans. A biodiversity management plan may be adopted for a listed ecosystem or any other ecosystem which warrants special conservation attention, or a listed indigenous species or any other indigenous species which warrants special conservation attention.

2.2.35 Clause 37 – Contents of biodiversity management plans

This clause describes the contents of biodiversity management plans. A plan must, among others, be aimed at ensuring the long-term conservation and effective management of the species or ecosystems to which the plan relates and provide for the responsible person, organisation or organ of state to monitor and report on

progress with implementation of the plan.

2.2.36 Clause 38 – Biodiversity management agreements

This clause describes that the Minister or an MEC may enter into a biodiversity management agreement with a person, organisation or organ of state, regarding the implementation of any biodiversity planning tool or a matter relating to biodiversity management.

2.2.37 Clause 39 - Co-ordination and alignment of biodiversity plans

This clause describes that environmental implementation or environmental management plans in terms of the National Environmental Management Act, integrated development plans in terms of the Local Government: Municipal Systems Act, 2000, any spatial development frameworks in terms of legislation regulating land-use management, land development and spatial planning and any other plans prepared in terms of national or provincial legislation that are affected must, among others, be aligned with any planning tool prepared in terms of this Bill.

2.2.38 Clause 40 - Species and ecosystems of concern

This clause provides the Minister with the power to list species and ecosystems which are threatened, in need of conservation or protection, require careful consideration when promoting access for traditional, cultural or spiritual use, and require additional consideration to promote animal well-being of individuals or populations, and humane practices, actions, and activities. The clause also provides for powers to regulate those species and ecosystems in the listing notice, including prohibitions, providing for permits and regulating specific activities relating to those species.

2.2.39 Clause 41 - Management of species and ecosystems

This clause provides for the same powers as in clause 40 above, whereas these powers relate to those species and ecosystems which are not necessarily threatened, but which need to be managed in some specific manner to ensure that the species or ecosystem does not become threatened or vulnerable. This clause also caters for species which have an economic value like hunting to ensure that activities are carried out in a sustainable and responsible manner.

2.2.40 Clause 42 - Listing of priority species or ecosystems

This clause is specific to those species which are vulnerable to poaching and have links to wildlife trafficking and organised crime. The clause also provides for the listing of priority ecosystems and priority specimens. The clause allows for the Minister to list those high value species, priority ecosystems and priority specimens, which then automatically attracts higher penalties for criminal offences and allows for more specific interventions and operations relating to these listed species to try and mitigate the impact of poaching.

2.2.41 Clause 43 - Establishment of Scientific Authority

This clause obliges the Minister to establish the Scientific Authority, which is an advisory committee, to advise the Minister on international trade in specimens of species to which an international agreement regulating international trade, and trade of species listed in Clause 40, applies.

2.2.42 Clause 44 - Functions of Scientific Authority

This clause sets out the functions of the Scientific Authority, which include monitoring legal and illegal trade in specimens, making non-detrimental findings as required under CITES and various other advisory functions relating to the implementation of the Bill.

2.2.43 Clause 45 - Activities involving species to which international agreements apply

This clause determines that a permit is required for any CITES listed species that are imported, exported or re-exported into or out of the Republic. It also provides for the Minister to be able to provide for specific measures relating to any other species managed under any other international agreement.

2.2.44 Clause 46 - Management of alien species

This clause provides that no alien species may be imported into the Republic without a permit and that a permit can only be considered after a risk assessment has been conducted.

2.2.45 Clause 47 - List of invasive species

This clause obliges the Minister to list, by notice in the *Gazette*, invasive species and further provides for powers to regulate each species on that list, including prohibitions, restrictions, control measures and whether permits would be required for specific activities.

2.2.46 Clause 48 - Invasive species control plans

This clause makes it compulsory for a protected area management authority to

include an invasive species control strategy in their protected area management plan, and also gives the Minister powers to prescribe when other organs of state or any other person would be required to have a control plan in place for the management of listed invasive species.

2.2.47 Clause 49 - Genetically modified organisms

This clause requires the Registrar for Genetically Modified Organisms, prior to every meeting of the Council, to provide the Minister with copies of all applications submitted for authorisation in terms of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997). If the applicant, in that instance, is required to apply for an environmental authorisation in terms of the National Environmental Management Act, or to undertake any other environmental assessment as may be prescribed, the Minister must notify the Council, in which case the Council must notify the applicant of that requirement.

2.2.48 Clause 50 – Definitions (Chapter 7)

This clause contains definitions that are only applicable to the chapter dealing with access to indigenous biological resources and indigenous knowledge and benefit sharing (i.e. Chapter 7).

2.2.49 Clause 51 - Application of Chapter

This clause sets out that where indigenous knowledge has been registered in terms of the Protection, Promotion, Development and Management of Indigenous Knowledge Act, 2019 (Act No. 6 of 2019), the processes and provisions of that Act applies, and this Bill does not apply. This Bill only applies where the indigenous

knowledge has not yet been registered in terms of that Act.

2.2.31 Clause 52 – Prior informed consultation and consent process and access agreement

This clause explains that any person wanting to obtain a discovery-phase bioprospecting permit or a commercial bioprospecting permit must first obtain the Minister's written approval of the prior informed consultation and consent process and of their access agreement and sets out the criteria for each.

2.2.32 Clause 53 – Discovery-phase bioprospecting permit

This clause sets out that no person may undertake the discovery phase of bioprospecting without a permit issued by the Minister and sets out that the Minister may issue that permit if the applicant's prior informed consultation and consent process and their access agreement has been approved.

2.2.50 Clause 54 – Benefit-sharing agreement

This clause sets the requirement that an applicant must conclude a benefit-sharing agreement and that the Minister must approve that agreement prior to applying for a commercial bioprospecting permit. The clause also sets out the criteria applicable to the Minister's power to approve a benefit-sharing agreement.

2.2.51 Clause 55 - Commercial bioprospecting permit

This clause sets out that no person may undertake the commercial exploitation of an indigenous biological resource or indigenous knowledge without a commercial bioprospecting permit. The clause also describes that the Minister must, by notice in

the *Gazette*, list the activities which will be activities for the commercial exploitation of an indigenous biological resource or indigenous knowledge.

2.2.52 Clause 56 – Biotrade agreement

This clause sets out that any person who engages in biotrade must conclude a biotrade agreement with the Minister. The clause also describes how the Minister must, by notice in the *Gazette*, determine a financial benefit, as a percentage of the financial value of any right, ingredient, product or resource sold as part of biotrade that is payable to the person giving access to that resource.

2.2.53 Clause 57 - Import of indigenous biological resources from other countries

This clause describes that no person may import or utilise, within the Republic, an indigenous biological resource or indigenous knowledge from another country, unless that person declares, in writing, that the regulatory requirements from the country in which the resource or knowledge is located, were complied with.

2.2.54 Clause 58 – Non-commercial research

This clause sets out that no person may undertake non-commercial research outside the Republic utilising an indigenous biological resource or indigenous knowledge, without a permit.

2.2.55 Clause 59 - Collection and payment of benefit-sharing funds

This clause sets the requirement that all funds pertaining to the administration of bioprospecting and the sharing of benefits must be administered by the Department through a suspense bank account.

2.2.56 Clause 60 - Permits

This clause sets out the general provisions for applying for any permits in terms of the Act and guides conditions and decision-making for such permit applications.

2.2.57 Clause 61 - Issuing authority

This clause determines who the issuing authority is in terms of the Bill for the various types of permits mentioned in the Bill.

2.2.58 Clause 62 - Risk assessments and expert evidence

This clause provides that the issuing authority may require any person applying for a permit in terms of the Bill to undertake a risk assessment or obtain expert evidence. The specifics of these provisions and when they are required will be prescribed by regulation by the Minister.

2.2.59 Clause 63 - Amendment, revocation and suspension of permits

This clause provides for circumstance when a permit issued in terms of the Act may be amended, revoked or suspended. These include where the permit holder has not complied with permit conditions, where circumstances have changed from when the permit was originally issued or to meet international obligations.

2.2.60 Clause 64 - Emergency intervention

This clause allows the Minister to publish a notice in the *Gazette* declaring an emergency intervention for specific situations, including for the control or eradication of an alien species or a listed invasive species, if that alien species or listed invasive

species constitutes a significant threat to the environment, and for the protection or management of a listed species or listed ecosystem or any other species or ecosystem managed in terms of the Bill, if that species or ecosystem is under, or may be under, significant threat from natural or human impacts or activities, as well as for any indigenous biological resource regulated by Chapter 7.

When publishing the emergency intervention notice, the Minister is required to list the species or biological resource to which the emergency intervention relates, provide a brief summary of the reasons for the intervention, and provide the details relating to the intervention.

2.2.61 Clause 65 - Biodiversity officers

This clause provides that the Minister may appoint biodiversity officers to assist with implementation of the Act. They generally complement the functions of conservation officials.

2.2.62 Clause 66 - Recognition of associations and organisations and establishment of fora

This clause provides for the Minister to recognise any industry body, association or organisation in any of the biodiversity sectors as a body representing a particular group of persons or facilities. The clause also allows for the Minister to set up fora to assist with the management of biodiversity.

2.2.63 Clause 67 - Norms and standards

This clause allows the Minister to publish norms and standards in the *Gazette* after consulting the relevant MEC, which norms and standards may relate to any aspect

of biodiversity management, including general management and conservation measures and restrictions on activities.

2.2.64 Clause 68 – Public participation

This clause provides that an appropriate consultation process must be undertaken when publishing or amending a notice in terms of the Bill.

2.2.65 Clause 69 - Exemptions

This is a general exemption clause which allows for the Minister to exempt any person, group of persons or organ of state from a specific provision of the Bill under certain circumstances, provided that the decision to exempt is consistent with the objectives of the Bill.

2.2.66 Clause 70 - Regulations by Minister

This clause sets out the various issues for which the Minister can make regulations.

2.2.67 Clause 71 - Offences

This clause sets out the various offences for contravention of the specific provisions of the Act or regulations.

2.2.68 Clause 72 - Penalties

This clause determines the penalties that may be imposed by a court if a person is convicted of an offence in terms of the Bill or regulations, including fines and imprisonment and determining higher penalties for certain offences relating to wildlife trafficking, organised crime and offences committed by officials.

2.2.69 Clause 73 - Savings and transitional arrangements

Since this Bill will be replacing NEM: BA, transitional arrangements are provided for the preservation of all permits, authorisations, regulations, and other regulatory measures adopted under NEM: BA and deems them to have been done in terms of the Bill. This ensures a smooth transition from the old law to the new one.

2.2.70 Clause 74 – Repeal of legislation

This repeals the current National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), which will be replaced by this Bill in its entirety. The Bill also provides for the repeal of the Sea Birds and Seals Protection Act, 1973 (Act No. 46 of 1973) as NEM: BA and the regulations made in terms of that Act already provides a new regulatory framework for the protection of marine species, including sea birds and seals. The 1973 Act is therefore redundant and has been overtaken by the current legislative regime.

2.2.71 Clause 75 - Short title and commencement

This clause gives the Act its short name and indicates when it will commence and become law.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

- Department of Agriculture, Land Reform and Rural Development
- National conservation entities
- Provincial environmental departments and conservation authorities via MINMEC process

- The Department of Planning, Monitoring and Evaluation
- Organised industry organisations

4. IMPLICATIONS FOR VULNERABLE GROUPS

Improves the regime for bio-prospecting to ensure that indigenous communities benefit when their knowledge and tradition relating to indigenous biological resources is utilised.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department of Forestry, Fisheries and the Environment are of the opinion that the proposed Bill falls within the ambit of section 76(3) of the Constitution as it deals with a functional area listed in Schedule 4, namely the environment, nature conservation and to some extent trade. As such, the Bill must be dealt with in accordance with the procedure established in terms of sections 76(1) or (2) of the Constitution.

6.2 The State Law Advisers are of the opinion that, in view of Chapter 7 of the Bill, which deals with indigenous knowledge as it is defined in the Indigenous Knowledge Act, it is necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it contains provisions pertaining to customary law or customs of traditional communities.



forestry, fisheries & the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)

REVISED (2020): FINAL IMPACT ASSESSMENT TEMPLATE –PHASE 2

NAME OF THE PROPOSAL: NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY BILL

The proposal involves a substantial amendment of the current National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEMBA), and will replace NEMBA upon implementation

1. Please DO NOT ALTER the template and questionnaire
2. Date must be clearly indicated
3. Draft SEIAS report should have a watermark word DRAFT indicating the version and should be accompanied by the supporting documents (draft proposal, M&E plan and pieces of research work)
4. FINAL report will be in PDF format and will be inclusive of the sign-off
5. FINAL report will have the approval stamp of the Presidency on the front cover and will include the signoff
6. Sign off forms are only valid for a period of six months.
7. Bills and Regulations that introduce permitting, licensing and registration system must be accompanied by a streamlined process map and indicate the proposed turnaround time for processing of such.

Background:

The National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEMBA) was implemented to fulfil the environmental mandate as contained in section 24 of the Constitution of the Republic of South Africa, as far as it relates to biodiversity matters. It also gives effect to the three objectives of the Convention on Biological Diversity (CBD), to which South Africa is a Party and which entered into force in December 1993, namely the:

- conservation of biodiversity;
- sustainable use of biological diversity; and
- fair and equitable sharing of benefits arising from the use of genetic resources.

The NEMBA came into effect on 7 June 2004, and since its inception, this Act has undergone amendments that took effect in 2009, 2013, and 2023 respectively. However, these revisions were prompted solely by pressing necessities, primarily aimed at incorporating or modifying provisions essential for its efficient execution and related subsidiary regulations. Notably, some of the pivotal amendments encompassed the following:

- inclusion of new definitions and provisions applicable to bioprospecting, access and benefit-sharing (BABS);
- amendment of the criteria for the listing of species as protected species, and for the further sub-categorisation of those species;
- inclusion of an enabling provision for exemptions applicable to listed threatened or protected species (TOPS) and listed invasive species;
- inclusion of a new provision for the prohibition of restricted activities involving listed invasive species;
- inclusion of a new provision to require permits for import, export, re-export or introduction from the sea, for specimens of species included in the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- inclusion of new provisions relating to the well-being of wild animals;
- inclusion of a new provision relating to the State retaining custodianship over wild animals that have escaped from land under its control; and
- inclusion of a new enabling provision for the Minister to prescribe circumstances under which a competent authority must be notified of the presence or occurrence of listed invasive species.

The Department of Forestry, Fisheries, and the Environment (DFFE) has actively engaged in various processes that underscore the imperative for a comprehensive review of NEMBA to ensure its alignment with these initiatives. This encompasses:

- The Biodiversity Economy Lab that was hosted in 2016, where it was highlighted that one of the key drivers preventing/hampering growth of, and opportunities in, the biodiversity economy relates to excessive permits and a legislative framework that is not conducive for economic growth. It was further highlighted that one of the main constraints of NEMBA is the fact that it focuses on biodiversity protection and conservation, and although sustainable use is reflected in section 2 of NEMBA as one of its objectives, it does not contain provisions that promote sustainable use. An initiative with a detailed implementation plan was then developed for the amendment of NEMBA in order to unblock the legislative challenges.

- The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (the Nagoya Protocol), which South Africa is a Party to, entered into force on 12 October 2014. The Nagoya Protocol advances the provisions of articles 15 and 8(j) of the CBD and its third objective, by providing legal certainty and transparency for both users and providers of genetic resources and associated traditional knowledge (TK). The Nagoya Protocol further strengthens opportunities for fair and equitable sharing of benefits arising from their utilisation. The full implementation of the Nagoya Protocol depends on national legislation. The NEMBA was developed and implemented before the adoption of the Nagoya Protocol and therefore requires amendment and alignment to ensure successful implementation of the Nagoya Protocol.
- The Committee of Inquiry (COI) established by the Minister of Environmental Affairs ahead of the 17th Conference of Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES COP 17), to advise on the possibility of proposing legal international trade in rhinoceros horn, or not. The COI concluded that South Africa should do everything possible to address the five key areas of security (law enforcement), community empowerment, biological management, responsive legislative provisions and effective implementation, and demand management / reduction in order:
 - ✓ to create an environment conducive for rhinoceros conservation in South Africa;
 - ✓ to effectively address rhinoceros poaching and the illegal trade in rhinoceros horn; and
 - ✓ to reach a point where any potential international commercial trade in rhinoceros horn would contribute to conservation outcomes.
- On 21 and 22 August 2018, the Parliamentary Portfolio Committee for Environmental Affairs (Portfolio Committee) convened the Colloquium. The recommendations of the Colloquium were adopted by the National Assembly on 6 December 2018. One of the recommendations was that *“The Department of Environmental Affairs should as a matter of urgency initiate a policy and legislative review of captive breeding of lions for hunting and lion bone trade with a view to putting an end to this practice”*.
- Given that the issues raised in the COI and the Colloquium were also potentially applicable to other species, the Minister of Forestry, Fisheries and the Environment (the Minister), in response, established an Advisory Committee in October 2019, to serve as the High-Level Panel (HLP) with a mandate to review policies, legislation and practices on matters related to the management, breeding, hunting, trade and handling of elephant, lion, leopard and rhinoceros. The HLP report was adopted by Cabinet and released to the public on 2 May 2021, and it contained 18 Goals and 60 Recommendations.
- The White Paper on the Conservation and Sustainable Use of South Africa’s Biodiversity (the White Paper) was published in the Government *Gazette*, No. 48785, for implementation on 14 June 2023. The White Paper provides a broad policy context with four goals, namely Enhanced Biodiversity Conservation, Sustainable Use, Equitable Access and Benefit Sharing, and Transformed Biodiversity Conservation and Sustainable Use.

The departure point when developing the draft NEMBA Bill was to provide a framework Biodiversity Act with more flexible empowering provisions that would contain less detail, thus reducing the need for regular urgent amendments and the risk of litigation. The empowering provisions have therefore been drafted in a manner that provide: 1) more flexibility in their application, and 2) more opportunities to restrict activities by notice in the *Gazette* or through regulations, as opposed to the inclusion of these specific restrictions in the Act.

PART ONE: ANALYSIS FOR FINAL SEIAS REPORT

Please keep your answers as short as possible. Do not copy directly from any other document.

1. Conceptual Framework, Problem Statement, Aims and Theory of Change

1.1. What socio-economic problem does the proposal aim to resolve?

The key social problem that is sought to be solved in general relates to difficulties for previously disadvantaged persons to participate in the biodiversity value chain, as a result of excessive permit requirements.

The key economic problem that is sought to be solved in general relates to the costs of permits to especially new entrants to the biodiversity economy, due to the excessive number of permits that are often required to conduct a business, as well as insufficient financial resources for conservation authorities to do inspections and to monitor compliance with permits and conditions.

The social or economic problem that the proposed amendments seek to address in relation to Chapter 6 of NEMBA in particular is inadequate fair and equitable sharing of benefits derived from bioprospecting or biotrade involving commercial utilisation of indigenous biological or genetic resources and/ or their associated traditional knowledge. The envisaged benefits to be shared are between the commercial or industrial sectors involved and the providers of access to indigenous biological or genetic resources and the holders of traditional knowledge associated with the use of indigenous biological or genetic resources.

In addition, there is lack of transformation in the biodiversity sector, where a majority of the population are disadvantaged and disenfranchised from contributing to conservation and sustainable use. Historically, previously disadvantaged individuals/communities have been faced with limited access to indigenous biological resources due to the absence of a conducive legislative environment that grants opportunities for equitable utilization of such resources. The Bill intends to empower the Minister to enhance facilitation of transformation through, amongst others, the listing of ecosystems or species that require additional facilitation of access for traditional, cultural or spiritual use.

Furthermore, the proposed amendments seek to address matters that led to South Africa's reputational damage as a world leader in biodiversity conservation and sustainable use due to practices within the sector that has brought the country into

disrepute. The amendment will ensure that there is comprehensive implementation of the newly adopted animal well-being mandate, duty of care and humane practices in conducting activities involving fauna and flora.

1.2. What are the main root causes of the problem identified above?

What socio-economic problem does the proposal aim to resolve	What are the main roots or causes of the problem
Hampered growth of, and opportunities in the biodiversity economy	<ul style="list-style-type: none"> • Inflexible regulatory approach of NEMBA • Non-compliance with the provisions of NEMBA by the regulated community • Ineffective implementation of, and in some cases the inability to implement the permit requirements of NEMBA by issuing authorities • Over-regulation; i.e.: <ul style="list-style-type: none"> ○ excessive and/ or unnecessary permit requirements for the regulated community, and ○ excessive administrative burden for issuing authorities
Insufficient equitable distribution of benefits arising from bioprospecting or biotrade involving commercial utilization of indigenous biological or genetic resources and their associated traditional knowledge	<ul style="list-style-type: none"> • Non-alignment with provisions and principles of Nagoya Protocol • excessive administrative burden for issuing authorities. • Inflexible regulatory approach of NEMBA
Lack of transformation in the biodiversity sector, where a majority of the population are disadvantaged and disenfranchised from benefiting and/or contributing to conservation and sustainable use	<ul style="list-style-type: none"> • The sector remains untransformed, limiting the full exercising of rights and inclusive participation by traditional leaders and traditional health practitioners, previously disadvantaged individuals (PDIs) and indigenous people and local communities in access to, and sharing of, benefits. • Limited participation and access of traditional leaders and traditional health practitioners, PDIs and indigenous people and local communities to natural resources and associated socio-economic opportunities. • Complicated processes and procedures, and lack of resources, access, and awareness, hinder the unlocking of the genetic potential of biodiversity, and associated traditional and indigenous knowledge, into biotechnology value chains Lack of conducive legislative environment that allows for facilitation of transformation, access for traditional, cultural or spiritual use

Constrained realization of benefits from the utilization of biodiversity at a global level, coupled with insufficient protection to biological resources that demand heightened protection at an international level	<ul style="list-style-type: none"> • Non-alignment between international agreements and obligations that South Africa has signed and ratified and national processes • Non-alignment of the provisions of NEMBA with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (the Nagoya Protocol), which entered into force on 12 October 2014 • Lacking enabling provisions to implement some of the international agreements; e.g. the Convention on Migratory Species • Inability to effectively implement the obligations of, and beneficiation arising from, international agreements
Decline in numbers of the species in the wild	<ul style="list-style-type: none"> • Inadequate protection measures in NEMBA, aggravated by fragmented and often outdated provincial legislation • Excessive removal of specimens of plant and animal specimens from the wild
Inability to effectively address wildlife trafficking	<ul style="list-style-type: none"> • Inability to prioritise species that are vulnerable to wildlife trafficking, for the allocation of additional resources. • Inadequate penalties
Reputation damage for South Africa as a world leader in biodiversity conservation and sustainable	<ul style="list-style-type: none"> • Lack of enabling legislative framework to adequately address issues relating to well-being, humane practices and duty of care for wild animals. • Unsustainable practices that have brought the wildlife sector into disrepute.

1.3. Summarise the **aims** of the proposal and **how** it will address the problem in no more than five sentences.

The proposal aims to amend the regulatory approach, from an all-encompassing approach where permits are required for every restricted activity involving every specimen of listed species, to an approach where the specific activities requiring permits will be specified, either by notice in the *Gazette*, or prescribed in regulations.

The proposal also aims to streamline the permitting systems for bioprospecting and biotrade, including the associated benefit-sharing models.

The proposal provides a more flexible regulatory approach that will enable the Minister and MECs responsible for environmental affairs to exercise greater discretionary powers, which will result in simpler implementation of the provisions and more effective compliance with international agreements.

A more flexible regulatory approach will further enable growth of the biodiversity economy and participation in the biodiversity value chain by previously excluded groups.

The Bill will also include new enabling provisions that are aimed at the protection of species and ecosystems, in order to address current regulatory gaps.

Furthermore, the Bill intends to strengthen issues relating to the newly adopted mandate of well-being, as well as advancing the need to ensure a duty of care and humane practices.

1.4. How is this proposal contributing to the following national priorities?

National Priority	Impact
Economic transformation and job creation	<ul style="list-style-type: none"> • Reduced permit requirements will enhance opportunities for previously disadvantaged individuals to enter the biodiversity economy space • Specific benefit sharing model for bioprospecting will enhance contribution to economic transformation in terms various innovation-based beneficiation schemes such as through Intellectual Property Rights protection. • Specific benefit sharing model for Biotrade will enhance contribution to job creation as it is labour intensive in terms of the supply of raw materials. • The Bill aims, among others, to prioritize the objectives outlined in the White Paper, which emphasizes the need to transform the biodiversity sector and subsequently boost job creation prospects for everyone
Education, skills and health	<ul style="list-style-type: none"> • Some of the benefits anticipated to be shared from bioprospecting are non-monetary in a form of: <ul style="list-style-type: none"> ✓ Technology and skills transfer; ✓ Collaboration, cooperation and contribution in education, awareness and training. ✓ Food, health and livelihood security benefits; and ✓ Access to scientific information regarding biodiversity value relevant for conservation and sustainable use of its components. • Enhanced accessibility to biological resources for medicinal purposes translates to improved conditions of human health
Consolidating the social wage through reliable and quality basic services	<ul style="list-style-type: none"> • Stricter regulation of activities or threatening processes in threatened ecosystems should improve ecosystem services • Biotrade depends on labour intensive supply of raw materials from the wild. The Bill makes provisions for the Minister to determine

National Priority	Impact
	standardise pricing through consultative process on annual basis. Currently there is no standard pricing of raw wild and cultivated materials.
Spatial integration, human settlements and local government	Biodiversity hotspots for bioprospecting and biotrade are mainly at the local government level, in particular in the rural communities.
Social cohesion and safe communities	<ul style="list-style-type: none"> • Improved ability to: <ul style="list-style-type: none"> ◦ benefit from the use of indigenous biological resources; and ◦ participate in the biodiversity value chain. • Bioprospecting and biotrade promotes coordination and cooperation with full involvement of every member of the community where the indigenous biological or genetic resources will be accessed. • Traditions, cultures and spiritual use enhanced and promoted • Addressing intensive management practices, as well as promoting duty of care and humane conduct involving wild animals will be regarded as a positive step from a moral, ethical and humane perspective for many South Africans and will render support to the South African government in its conservation efforts
Building a capable, ethical and developmental state	<ul style="list-style-type: none"> • Increased penalties applicable to persons involved in organised crime and wildlife trafficking, and applicable to employees of the State, should assist to contribute to a capable and ethical state • Regulated bioprospecting and biotrade promotes ethical access to indigenous genetic or biological resources and their associated traditional knowledge, which in return contribute to building capable and developmental state. • Strengthened aspects relating to humane practices, duty of care and animal well-being
A better Africa and world.	<ul style="list-style-type: none"> • Ability to improve breeding and captive keeping practices due to the inclusion of the well-being provision, resulting in improving South Africa's reputation in respect of biodiversity conservation • Improving South Africa's ability to fulfil its obligations under international agreements, including the Convention on Biological Diversity and the Nagoya Protocol on ABS, and the Convention on Migratory Species. • Enhanced South Africa's reputation as a world leader in biodiversity conservation and

National Priority	Impact
	sustainable through improvement of the duty of care towards biodiversity.

1.5. Please describe how the problem identified could be addressed if this proposal is not adopted. At least one of the options should involve no legal or policy changes, but rather rely on changes in existing programmes or resource allocation.

Option 1.	Resource allocation (human and financial resources); however, this option will not enable the DEFF to address regulatory gaps or over-regulation.
Option 2.	Training and awareness; however, this option will not address regulatory gaps and excessive permitting

PART TWO: IMPACT ASSESSMENT

2. Policy/Legislative alignment with other departments, behaviours, consultations with stakeholders, social/economic groups affected, assessment of costs and benefits and monitoring and evaluation.

2.1. Are other government laws or regulations linked to this proposal? If so, who are the custodian departments? Add more rows if required.

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of contradiction and how will the contradictions be resolved
Provincial acts/ordinances regulating biodiversity-related matters	Provincial departments/organs of state responsible for biodiversity conservation	Over-lapping species and activities regulated through both the Bill and provincial acts/ordinances	Some activities currently prohibited in terms of NEMBA (e.g. involving cycads) are regulated through permits in terms of provincial acts/ordinances (where such conflict exists, it will be resolved in terms of section 146 of the Constitution)
<ul style="list-style-type: none"> Animals Protection Act, 1962 (Act No. 71 of 1962) (APA) Performing Animals 	Department of Agriculture, Land Reform and Rural Development (DALRRD)	Requirements aimed at addressing the well-being of animals The APA prohibits activities on the basis of welfare/ cruelty	The new provision included in the Biodiversity Bill will not result in conflict. The intention is to address gaps; thus to develop

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of contradiction and how will the contradictions be resolved
<p>Protection Act, 1935 (Act No. 24 of 1935) (PAPA)</p> <ul style="list-style-type: none"> Animal Improvement Act, 1998 (Act No. 62 of 1998) (AIA) 		<p>considerations. The DALRRD has the primary mandate to regulate welfare issues (<i>welfare vs well-being mandate</i>)</p> <p>The Bill is intended to empower Minister to regulate certain activities, such as breeding that may also be regulated in terms of the AIA</p>	<p>measures that will augment the provisions of the APA and the PAPA</p> <p>There may be confusion between welfare, which is under the administration of DALRRD and well-being mandate, which is under the administration of DFFE.</p> <p>The DFFE and DALRRD have entered into an MOU to collaborate on matters of mutual interest, amongst others, the distinction between the two mandates, issues of breeding or keeping.</p>
Game Theft Act, 1991 (Act No. 105 of 1991)	Department of Police	Retaining of custodianship over wild animals escaping from land under the state's control (see section 3(2) of the Bill)	No conflict is anticipated, as it will address an area that is not adequately addressed in the Game Theft Act
Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983) (CARA)	DALRRD	Regulation of listed invasive plant species	No conflict is anticipated, as NEMBA currently regulates alien and listed invasive species in a manner that is aligned with CARA.
Spatial Planning and Land Use Management Act, Act No. 16 of 2013 (SPLUMA)	DALRRD	Spatial planning and land use management	No conflicts anticipated. NEMBA will complement the objectives of SPLUMA in that NEMBA will provide further guidance on spatial planning and land use management pertaining to biodiversity in the country and thereby strengthening SPLUMA's objectives.
Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997) (GMO Act)	DALRRD	Assessment of applications for permits relating to genetically modified organisms	No conflict is anticipated, as the aim of the provision is to align the process of assessing permit applications

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of contradiction and how will the contradictions be resolved
Marine Living Resources Act, 1998 (Act No. 18 of 1998)	DFFE	Management of marine resources and habitat	None anticipated
Patent Amendment Act, 2005 (Act No. 20 of 2005)	Department of Trade and Industry (DTI)	The Act and accompanying regulations took effect on 14 December 2007 following NEMBA and therefore aligns itself to it	No conflict is anticipated, as it has a mandatory disclosure of evidence of compliance with NEMBA requirements during Patent application process.
Intellectual Property Amendment Act, 2013 (Act No. 28 of 2013)(IPLAA)	DTI	The objective of the Act is to protect Indigenous knowledge/Traditional Knowledge and to enable traditional communities to exploit it commercially for their own gain	No conflict is anticipated, as the Act seeks to protect the holder of indigenous knowledge/traditional knowledge for their own benefit.
Protection, Promotion, Development and Management of Indigenous Knowledge Systems Act, 2019 (Act No. 6 of 2019)	Department of Science and Innovation (DSI)	The Act was developed following NEMBA and therefore aligns itself to it	The Act seeks to establish a national Indigenous Knowledge systems office tasked, among other things, with documenting legitimate holders of indigenous knowledge associated with biological resources, amongst other things through a National Recordal System (NRS). The NRS system complements the NEMBA requirements by providing information about the indigenous communities who are entitled to receive fair and equitable share of benefits arising from the commercial use of their indigenous knowledge associated with indigenous biological resources. DEFF and DSI are already working on a one-Stop-Shop permitting system.

2.2. Proposals inevitably seek to change behaviour in order to achieve a desired outcome. Describe (a) the behaviour that must be changed, and (b) the main mechanisms to bring about those changes. These mechanisms may include modifications in decision-making systems; changes in procedures; educational work; sanctions; and/or incentives.

a) What and whose behaviour do the proposal seek to change? How does the behaviour contribute to the socio-economic problem addressed?

- Non-compliance with NEMBA permit requirements by the regulated community
- Non-compliance with NEMBA benefit-sharing requirements by the regulated community
- Ineffective/ non-implementation of the permit provisions of NEMBA by issuing authorities. Late issuance of permits due to over-regulation and excessive administrative burden affects the livelihoods of the regulated community and promotes non-compliance.
- Poor participation in the biodiversity value chain by previously disadvantaged groups, resulting in challenges to promote transformation of the biodiversity sector and to maximise beneficiation.
- Unregulated removal of specimens of plant- and animal species that are not listed as threatened or protected in terms of NEMBA, by e.g. wildlife collectors and/ or wildlife traders, resulting in localised decline in species.
- Wildlife trafficking, by proposing stricter penalties
- New provisions that outline the prior informed consultation and consent process to be followed leading to the negotiation and conclusion of a benefit-sharing agreement.
- New provisions that will enable sector-specific benefit-sharing models.
- Conducting of activities that may pose negative impact on the well-being of wild animals.

b) How does the proposal aim to bring about the desired behavioural change?

- Reduced number of permits to be obtained, and reduced administrative burden for issuing authorities
- Reduces permit costs due to reduced number of permits that will be required
- New enabling provisions relating to the listing of priority species, national coordination of activities and increased penalties for wildlife trafficking
- New enabling provision to implement the obligations of international agreements in a more effective manner, and a substantial amendment of Chapter 6 of NEMBA that relates to the implementation of the Nagoya Protocol on ABS
- The adoption of provisions relating to well-being will empower the Minister to prohibit or regulate activities that may have a negative impact on the well-being of wild animals. This measure will compel permit holders to conduct practices in a humane manner.
- New objective intended to ensure facilitation of transformation, which would be achieved through the inclusion of a provision that empowers the Minister to list species or ecosystems that require additional facilitation of access for traditional, cultural or spiritual use.

2.3. Consultations

a) Who has been consulted inside of government and outside of it? Please identify major functional groups (e.g. business; labour; specific government departments or provinces; etc.); you can provide a list of individual entities and individuals as an annexure if you want.

- Inside government:
 - DALRRD
 - DSI
 - DTI
 - National Prosecuting Authority
 - South African National Parks (SANParks)
 - South African National Biodiversity Institute (SANBI)
 - Provincial conservation authorities (permitting, enforcement and scientific officials)
 - Local authorities
 - Bioprospecting Advisory Committee

- Outside government:
 - Associations/ organisations represented at national level, who are members of the Wildlife Forum (generally the wildlife ranching, hunting, game translocation and nursery industries) and the Bioprospecting Forum
 - Representatives of Indigenous and Local Communities
 - Commercial and industrial sectors such as pharmaceutical-, nutraceutical-cosmeceutical, and flavours and fragrances companies, and scientific institutions
 - Persons/ companies in the sector involved with alien and listed invasive species

Consulted Government Departments, Agencies and Other Organs of State

Department's name	What do they see as main <u>benefits</u> , <u>Implementation/ Compliance costs</u> and <u>risks</u> ?	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal? If yes, under which section?
DALRRD	<ul style="list-style-type: none"> • Benefit Regulatory gaps in respect of animal well-being to be addressed • Implementation cost None anticipated for DALRRD • Compliance cost None anticipated for DALRRD • Risk Potential duplication in legal requirements to some extent 	Support	To be completed after the public participation process	To be completed after the public participation process
SANBI	<ul style="list-style-type: none"> • Benefit Easier implementation of the primary legislation • Implementation cost 	Support	A number of proposals have been made, mostly on the inclusion/ amendment of definitions, and the role of SANBI	The proposals relating to the roles of SANBI have been incorporated. Some of the other proposals

Department's name	What do they see as main <u>benefits</u> , <u>Implementation/ Compliance costs</u> and <u>risks</u> ?	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal? If yes, under which section?
	<p>To be completed after public consultation</p> <ul style="list-style-type: none"> • Compliance cost To be completed after public consultation • Risk None anticipated 		To be further completed after the public participation process	<p>have been incorporated</p> <p>To be further completed after the public participation process</p>
SANParks	<ul style="list-style-type: none"> • Benefit Ability to retain custodianship over wild animals escaping from land under control of the state • Implementation cost None anticipated • Compliance cost None anticipated • Risk None anticipated 	Support	To be completed after the public participation process	To be completed after the public participation process
Provincial conservation authorities	<ul style="list-style-type: none"> • Benefit <ul style="list-style-type: none"> ○ Easier implementation of the primary legislation and reduced administrative burden ○ Ability to retain custodianship over wild animals escaping from land under control of the state • Implementation cost 	Support	<p>With regards to biodiversity planning - concern regarding the change in approach, from mandatory powers for the Minister to discretionary powers</p> <p>To be further completed after the public participation process</p>	To be completed after the public participation process

Department's name	What do they see as main <u>benefits</u> , <u>Implementation/ Compliance costs</u> and <u>risks</u> ?	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal? If yes, under which section?
	<p>Capacity (financial and human) to implement the provisions of the Bill</p> <ul style="list-style-type: none"> • Compliance cost Training and appointment of officials as Environmental Management Inspectors (EMIs) to enforce the provisions of the Bill • Risk Duplication with provincial legislation and potential conflict 			
Local authorities	<ul style="list-style-type: none"> • Benefit Clarity in terms of the role of local authorities in respect of biodiversity planning • Implementation cost To be completed after public consultation • Compliance cost To be completed after public consultation • Risk To be completed after public consultation 	Support	<p>With regards to biodiversity planning - concern regarding the change in approach, from mandatory powers for the Minister to discretionary powers</p> <p>To be completed after the public participation process</p>	To be completed after the public participation process
DSI	<ul style="list-style-type: none"> • Benefit Regulatory gaps in respect of permitting system for bioprospecting and 	Support	To be completed after the public participation process	To be completed after the public participation process

Department's name	What do they see as main <u>benefits</u> , <u>Implementation/ Compliance costs</u> and <u>risks</u> ?	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal? If yes, under which section?
	<p>biotrade and associated beneficiation model to be addressed</p> <ul style="list-style-type: none"> • Implementation cost None anticipated for DSI • Compliance cost None anticipated for DSI • Risk Potential duplication in legal requirements to some extent 			
DTI	<ul style="list-style-type: none"> • Benefit Regulatory gaps in respect of permitting system for bioprospecting and biotrade and associated beneficiation model to be addressed • Implementation cost None anticipated for DTI • Compliance cost None anticipated for DTI • Risk None anticipated for DTI 	Support	To be completed after the public participation process	To be completed after the public participation process

Consulted stakeholders outside government

Name of Stakeholder	What do they see as main <u>benefits</u> , <u>Implementation/</u> <u>Compliance costs</u> and <u>risks</u> ?	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal?
Wildlife sector: <ul style="list-style-type: none"> • Wildlife ranching • Hunting • Game translocation • Nurseries 	<ul style="list-style-type: none"> • Benefits Reduced permits and permit costs • Implementation costs To be completed after public consultation • Compliance costs To be completed after public consultation • Risks To be completed after public consultation 	Generally support	To be completed after the public participation process	To be completed after the public participation process
Bioprospecting sector	<ul style="list-style-type: none"> • Benefits Improved ability to ensure beneficiation derived from indigenous biological resources and associated indigenous knowledge • Implementation costs To be completed after public consultation • Compliance costs To be completed after public consultation • Risks 	Generally support the intention of the proposal	To be completed after the public participation process	To be completed after the public participation process

Name of Stakeholder	What do they see as main <u>benefits</u> , <u>Implementation/ Compliance costs</u> and <u>risks</u> ?	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal?
	Duplication of efforts amongst Government Departments			
Alien and invasive species sector	<ul style="list-style-type: none"> • Benefits Reduced permits and permit costs • Implementation costs To be completed after the public participation process • Compliance costs To be completed after the public participation process • Risks To be completed after the public participation process 	Generally support	To be completed after the public participation process	To be completed after the public participation process
Previously disadvantaged individuals/communities	<ul style="list-style-type: none"> • Benefits Improved access to resources for traditional, cultural or spiritual use • Implementation costs To be completed after the public participation process • Compliance costs: To be completed after the public participation process 		To be completed after public consultation	To be completed after public consultation

Name of Stakeholder	What do they see as main <u>benefits</u> , <u>Implementation/</u> <u>Compliance costs</u> and <u>risks</u> ?	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal?
	<ul style="list-style-type: none"> Risks: To be completed after the public participation process 			

b) Summarise and evaluate the main disagreements about the proposal arising out of discussions with stakeholders and experts inside and outside of government. Do not give details on each input, but rather group them into key points, indicating the main areas of contestation and the strength of support or opposition for each position

- Definition for “indigenous species” strongly opposed by some participants within the wildlife ranching sector
- Proposal on access to indigenous biological resources and indigenous knowledge, bioprospecting and benefit-sharing (Chapter 6 of the Bill) – although the intention of the chapter is supported, the level of detail included in the chapter is strongly opposed on the basis that the Chapter should provide a framework leaving the details to be included in the regulations.

2.4. Describe the groups that will benefit from the proposal, and the groups that will face a cost. These groups could be described by their role in the economy or in society. Note: NO law or regulation will benefit everyone equally so do not claim that it will. Rather indicate which groups will be expected to bear some cost as well as which will benefit. Please be as precise as possible in identifying who will win and who will lose from your proposal. Think of the vulnerable groups (disabled, youth women, SMME), but not limited to other groups.

List of beneficiaries (groups that will benefit)	How will they benefit?
DFFE Provincial conservation authorities	<ul style="list-style-type: none"> • Improved implementation of the provisions of NEMBA, due to the reduced number of permits that will be required to be issued, resulting in: <ul style="list-style-type: none"> ○ reduced administrative burden to permit components; and ○ reduced compliance monitoring and enforcement efforts • Improved ability to protect species due to ability to list priority species at national level that require additional protection/enforcement measures

List of beneficiaries (groups that will benefit)	How will they benefit?
	<ul style="list-style-type: none"> Improved ability to implement obligations in respect of binding international agreements Improved ability to ensure fair and equitable sharing of benefits arising from bioprospecting and biotrade, with the custodians of biodiversity and holders of indigenous knowledge Ability to improve practices relating to the keeping and breeding of wild animals in captivity, ensure duty of care and humane practices
State	Ability to retain custodianship over wild animals escaping from e.g. state-owned protected areas
Regulated community	Reduced number of permits to be obtained and reduction in associated costs to conduct business
Previously disadvantaged individuals/communities	Improved ability to: <ul style="list-style-type: none"> benefit from the use of indigenous biological resources; and participate in the biodiversity value chain Improved facilitation of access for traditional, cultural or spiritual use
Wildlife Well-being stakeholders	Ability to ensure the adoption of practices that are responsible, legal, sustainable, humane and promote animal well-being of the five iconic species
South Africa as a whole	<ul style="list-style-type: none"> Ability to improve breeding and captive keeping practices due to the inclusion of the well-being provision, resulting in improving South Africa's reputation in respect of biodiversity conservation Ability to ensure duty of care and humane practices Ability to exercise sovereign rights over biological diversity. Improved facilitation of access for traditional, cultural or spiritual use

List of cost bearers (groups that will bear the cost)	How will they incur / bear the cost
DFFE	<p>Primary costs:</p> <ul style="list-style-type: none"> Costs associated with consultation and awareness-raising to implement to provisions of the Bill <p>Secondary costs:</p>

List of cost bearers (groups that will bear the cost)	How will they incur / bear the cost
	<ul style="list-style-type: none"> • Amendment of existing subordinate legislation, or development of new subordinate legislation, to be aligned with the amended regulatory approach of the Bill, to: <ul style="list-style-type: none"> ○ develop additional protection mechanisms, as well as compliance and enforcement efforts, in respect of priority species ○ develop measures to ensure the well-being of wild animals, and training of EMLs to monitor compliance with this aspect ○ coordinate national hunting seasons ○ to implement a system to issue national hunting licences ○ implement measures/ mechanisms to coordinate matters at national level, when required ○ implement measures to monitor compliance by the regulated community with the regulatory requirements of the country in which the indigenous biological resources or indigenous knowledge was imported ○ implement measures for emergency interventions ○ implement measures for various benefit sharing models. ○ Measures giving effect to the well-being mandate, ensuring duty of care and promote humane practices <p>There is no direct cost associated with implementing the Nagoya Protocol on ABS. Funds will be made available periodically for implementation of Nagoya Protocol through Global Environment Facility (GEF) and other international donors. Most of the principles and provisions of the Nagoya Protocol are currently being implemented, however; needs to be empowered and strengthen through the Bill.</p>
DFFE Provincial conservation authorities	<ul style="list-style-type: none"> • Implementation of systems to: <ul style="list-style-type: none"> ○ appoint biodiversity officers; and ○ monitor the conduct of biodiversity officers • Alignment of permit systems to accommodate newly listed species
Bioprospecting sector	Additional costs associated with:

List of cost bearers (groups that will bear the cost)	How will they incur / bear the cost
	<ul style="list-style-type: none"> requirements relating to consultation with access providers; and negotiation and conclusion of benefit sharing agreement
Previously disadvantaged individuals	No additional cost will be incurred for the indigenous communities in relation to BABS Chapter.

2.5. Describe the costs and benefits of implementing the proposal to each of the groups identified above, using the following chart. Please do not leave out any of the groups mentioned, but you may add more groups if desirable. Quantify the costs and benefits as far as possible and appropriate. Add more lines to the chart if required.

Note: "Implementation costs" refer to the burden of setting up new systems or other actions to comply with new legal requirements, for instance new registration or reporting requirements or by initiating changed behaviour. "Compliance costs" refers to on-going costs that may arise thereafter, for instance providing annual reports or other administrative actions. The costs and benefits from achieving the desired outcomes relate to whether the particular group is expected to gain or lose from the solution of the problem.

For instance, when the UIF was extended to domestic workers:

- The implementation costs were that employers and the UIF had to set up new systems to register domestic workers.*
- The compliance costs were that employers had to pay regularly through the defined systems, and the UIF had to register the payments.*
- To understand the inherent costs requires understanding the problem being resolved. In the case of UIF for domestic workers, the main problem is that retrenchment by employers imposes costs on domestic workers and their families and on the state. The costs and benefits from the desired outcome are therefore: (a) domestic workers benefit from payments if they are retrenched, but pay part of the cost through levies; (b) employers pay for levies but benefit from greater social cohesion and reduced resistance to retrenchment since workers have a cushion; and (c) the state benefits because it does not have to pay itself for a safety net for retrenched workers and their families.*

Most of the costs (implementation as well as compliance) will arise with the alignment of subordinate legislation, due to the fact that most of the changes will be effected by regulation or by notice in the *Gazette*. The consequential changes to existing subordinate legislation will require amendment, consultation and SEIA processes of their own. Subordinate legislation that will require changes involve primarily the following:

- Threatened or Protected Species (TOPS) Regulations;
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Regulations;
- Alien and Invasive Species (AIS) Regulations; and

- Bioprospecting, Access and Benefit-Sharing (BABS) Regulations.

The DFFE plans to formulate a costing plan, which will undergo development and finalization following a consultation process for the completion of the draft NEMBA Bill before its publication for implementation.

Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
DFFE (as the administrator of the Biodiversity Bill)	<ul style="list-style-type: none"> • Alignment of existing subordinate legislation with the new enabling provisions of the Bill • Costs associated to consult stakeholders on amended subordinate legislation • Costs associated to capacitate provincial conservation authorities and stakeholders on the provisions of the Bill • Costs associated to set up new systems for the appointment of biodiversity officers 	<ul style="list-style-type: none"> • Development of new subordinate legislation to give effect to new enabling provisions: <ul style="list-style-type: none"> ○ provisions relating to species or ecosystems in need of management, or relating to priority species ○ Provisions relating to well-being of wild animals, duty of care and humane practices ○ Criteria for the State to retain custodianship of wild animals escaping from land under its jurisdiction ○ Provisions relating to ratified international agreements not previously regulated in terms of NEMBA • Additional permits will be required in respect of bioprospecting • Gazetting of a financial benefit in respect of biotrade 	Due to the change in the regulatory approach, existing subordinate legislation will have to be aligned, and new subordinate legislation will have to be developed, to implement new enabling provisions. An intensive stakeholder consultation process will have to be followed, but if the regulated community understands the nature and intention of the changes and the benefits for them, they should be better motivated to comply with NEMBA.	

Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
DFFE and provinces (as the implementing agencies of the Bill)	<ul style="list-style-type: none"> Alignment of permit systems to accommodate newly-listed species 	<ul style="list-style-type: none"> Permits for new activities/ species will have to be issued Costs of inspections in respect of well-being of wild animals 	The cost of additional permits to be issued will be countered by the benefit of a reduction in the total number of permits that will be required.	<p>No implementation or compliance costs will arise as a result of this proposal in respect of CITES.</p> <p>New permits may be required for implementation of international agreements other than CITES</p>
Indigenous wildlife sector Alien and invasive species sector	<p>Systems are already in place for the implementation of current provisions; hence no drastic implementation costs are anticipated. However, it could involve the following:</p> <ul style="list-style-type: none"> Associations will be required to apply for recognition Costs associated with compliance with new well-being provisions/ standards 	<ul style="list-style-type: none"> Compliance with the conditions for recognition of associations Compliance with new well-being provisions Costs associated with newly-listed species 	The costs to update facilities may be high, but improved well-being conditions in facilities will improve the conservation reputation of South Africa	

Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
Bioprospecting	Costs associated with negotiations for new agreements, and new consultation process to be followed	Costs associated with additional permits to be obtained and complied with	Additional requirements, restrictions and agreements to be entered into is a cost for the bioprospecting sector, but the benefit for South Africa as a whole is improved compliance with the Nagoya Protocol on ABS	
Indigenous communities	None	None	Improved beneficiation and participation in the biodiversity value chain.	

2.6 Cost to government: Describe changes that the proposal will require and identify where the affected agencies will need additional resources

- a) Budgets, has it been included in the relevant Medium Term Expenditure Framework (MTEF) and
- b) Staffing and organisation in the government agencies that have to implement it (including the courts and police, where relevant). Has it been included in the relevant Human Resource Plan (HRP)

Note: You MUST provide some estimate of the immediate fiscal and personnel implications of the proposal, although you can note where it might be offset by reduced costs in other areas or absorbed by existing budgets. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.

- a) The key changes that will be required relate to the permitting requirements, which will depend on the detail that will be included in the subordinate legislation (notices in the *Gazette* or regulations to specify the prohibitions or restrictions). This alignment process in itself will require a consultation process; therefore an indication of the fiscal implications cannot be provided at this stage. The overall intention is to reduce the implementation and compliance costs as a result of a reduction in the total number of permits that will be required.

- b) Provincial conservation authorities are the key implementers of NEMBA, as the MECs are the issuing authorities for most of the permits as far as it relates to TOPS and CITES. Provinces already have permitting and enforcement structures in place for the implementation and enforcement of the provisions of provincial conservation legislation, and in most cases for the existing provisions of NEMBA and the TOPS Regulations.

In terms of BABS, provincial conservation authorities are the key regulators of export permits for research other than bioprospecting (i.e non-commercial research undertaken outside the Republic of South Africa), as the MECs are the issuing authorities for such permits.

The Minister is currently the issuing authority in respect of some of the permits for TOPS and CITES, for marine species, for alien and listed invasive species, and for BABS. Structures are already in place within the DFFE for the implementation of existing provisions of NEMBA.

2.7 Describe how the proposal minimises implementation and compliance costs for the affected groups both inside and outside of government.

For groups outside of government (add more lines if required)

Group	Nature of cost (from question 2.6)	What has been done to minimise the cost?
Wildlife sector	Costs to apply for permits	<ul style="list-style-type: none"> The number of activities that will require permits, will be greatly reduced (through the process of alignment of subordinate legislation). The permit application fees are already the bare minimum and cannot be further reduced Consideration can be given to waver the permit processing fee that must be paid in terms of NEMBA, in the case where an integrated permit is issued
	Costs to comply with well-being standards	Most of the captive facilities already implement welfare standards, but these may be varying and not consistent. Where facilities already implement welfare standards, it should not result in additional costs to comply with the envisaged well-being standards
Bioprospecting sector	Costs to apply for permits	Consideration can be given to waver the permit processing fee that must be paid in terms of NEMBA, in the case where an integrated permit is issued. Also for downstream users of the same indigenous biological resources covered by an existing permit.

Group	Nature of cost (from question 2.6)	What has been done to minimise the cost?
Alien and invasive species sector	Costs to apply for permits	The number of activities that will require permits, will be greatly reduced (through the process of alignment of subordinate legislation).

For government agencies and institutions:

Agency/institution	Nature of cost (from question 2.6)	What has been done to minimise the cost?
DFFE	<ul style="list-style-type: none"> Costs to align subordinate legislation, or develop new provisions (particularly in respect of the well-being of wild animals) Costs associated with capacity building 	Costs cannot be minimised. To ensure effective implementation of the Bill, capacity building workshops will be required in each province, as opposed to one or two national workshops.
DFFE/ Provinces	Costs associated with the issuance of permits and conducting of inspections	The number of activities that will require permits, will be greatly reduced (through the process of alignment of subordinate legislation).

2.8 Managing Risk and Potential Dispute

- a) Describe the main risks to the achievement of the desired outcomes of the proposal and/or to national aims that could arise from implementation of the proposal. Add more lines if required.

Note: It is inevitable that change will always come with risks. Risks may arise from (a) unanticipated costs; (b) opposition from stakeholders; and/or (c) ineffective implementation co-ordination between state agencies. Please consider each area of risk to identify potential challenges.

- b) Describe measures taken to manage the identified risks. Add more rows if necessary.

Mitigation measures means interventions designed to reduce the likelihood that the risk actually takes place.

Identified risk	Mitigation measures
Ineffective implementation of, or non-compliance with, the proposed NEMBA amendments (by implementing agencies or the regulated community), due to misperceptions of the intended outcomes	<ul style="list-style-type: none"> Conduct workshops, training and awareness-raising to capacitate government officials and members of the public on the implementation of the proposed NEMBA amendments, to: <ul style="list-style-type: none"> promote the benefits of the proposal clarify the intended meaning of the proposed provisions (to ensure uniform interpretation) Capacity building workshops will be required in each province, as opposed to one or two national workshops.
Litigation as a result of non-acceptance of new enabling provisions	<ul style="list-style-type: none"> Ensure that the process of amending NEMBA is legally sound, rational, reasonable and procedurally fair Promote the benefits of the proposal
Unanticipated conflicts with other legislation (highlighted in Paragraph 2.1)	Alignment of the subordinate legislation developed in terms of the Biodiversity Bill and the other legislation when the conflict arise

- c) What kinds of dispute might arise in the course of implementing the proposal, whether (a) between government departments and government agencies/parastatals, (b) between government agencies/parastatals and non-state actors, or (c) between non-state actors? Please provide as complete a list as possible. What dispute-resolution mechanisms are expected to resolve the disputes? Please include all of the possible areas of dispute identified above. Add more lines if required.

Note: Disputes arising from regulations and legislation represent a risk to both government and non-state actors in terms of delays, capacity requirements and expenses. It is therefore important to anticipate the nature of disputes and, where possible, identify fast and low-cost mechanisms to address them.

Nature of possible dispute (from sub-section above)	Stakeholders involved	Proposed Dispute-resolution mechanism
Disagreement on the interpretation of the provisions of the Biodiversity Bill	Between implementing agencies (DFFE and provinces)	<ul style="list-style-type: none"> Potential resolution through formal legal opinions Development of interpretation guidelines Resolution through formal inter-governmental structures (Working Groups, MINTECH and MINMEC) The nature of this risk should not require resolution through the Intergovernmental Relations Framework Act

Nature of possible dispute (from sub-section above)	Stakeholders involved	Proposed Dispute-resolution mechanism
	Between DFFE and the regulated community	<ul style="list-style-type: none"> • Potential resolution through formal legal opinions • Development of interpretation guidelines • Litigation
Dispute between DFFE and other departments arising from conflict between the Biodiversity Bill and the legislation identified in Paragraph 2.1	Primarily between DFFE and DALRRD	Alignment of the subordinate legislation developed in terms of the Biodiversity Bill and the other legislation when the conflict arise
Disagreement with decisions to issue or refuse a permit, as the case may be	Between permit applicants or other interested and affected parties, and issuing authorities	Appeals process to be followed in terms of section 43 of NEMA and the National Appeals Regulations

2.9 Monitoring and Evaluation

Note: Sound implementation of policy and legislation is due to seamless monitoring and evaluation integration during the policy development phase. Policies and legislation that are proficiently written yet unable to report on implementation outcomes are often a result of the absence of an M&E framework at the policy and legislative planning phase. It is therefore imperative to state what guides your policy or legislation implementation monitoring.

2.9.1 Develop a detailed Monitoring and Evaluation Plan, in collaboration with your departmental M&E unit which should include among others the following:

2.9.1.1 Provide clear and measurable policy or legislative objectives

2.9.1.2 Provide a Theory of Change clearly describing the following components:

- Impact: the organisational, community, social and systemic changes that result from the policy or legislation;
- Outcomes: the specific changes in participants (i.e. beneficiaries) behaviour, knowledge, skills, status and capacity;
- Outputs: the amount, type of degree of service(s) the policy or legislation provides to its beneficiaries;
- Activities: the identified actions to be implemented
- Input: departmental resources used in order to achieve policy or legislative goals i.e. personnel, time, funds, etc.
- External conditions: the current environment in which there's an aspiration to achieve impact. This includes the factors beyond control of the policy or legislation (economic, political, social, cultural, etc.) that will influence results and outcomes.

- Assumptions: the facts, state of affairs and situations that are assumed and will be necessary considerations in achieving success
- 2.9.1.3 Provide a comprehensive Logical Framework (LogFrame) aligned to the policy or legislative objectives and the Theory of Change. The LogFrame should contain the following components:
- Results (Impact, Outcomes and Output)
 - Activities and Input
 - Indicators (A measure designed to assess the performance of an intervention. It is a quantitative or qualitative factor or variable that provides a simple and reliable means to measure achievement, to reflect the changes connected to an intervention, or to help assess the performance of a development actor)
 - Baseline (the situation before the policy or legislation is implemented)
 - Targets (a specified objective that indicates the number, timing and location of that which is to be realised)
- 2.9.1.4 Provide an overview of the planned Evaluation, briefly describing the following:
- Timeframe: when it the evaluation be conducted
 - Type: What type of evaluation is planned (formative, implementation or summative) – the selection of evaluation type is informed by the policy owners objective (what it is you want to know about your policy or legislation).
- 2.9.1.5 Provide a straightforward Communication Plan (Note: a common assumption is that the target group will be aware of, and understand how to comply with a policy or legislation come implementation. However, increases in the complexity and volume of new or amendment policy or legislation render this assumption false. Hence, the need for a communication plan to guide information and awareness campaigns to ensure that all stakeholders (including beneficiaries) are informed.

Compliance with the implementation of NEMBA and its subordinate legislation is monitored by components within DEFF who are responsible for the implementation of the respective areas of NEMBA. Copies of the following documents are attached:

- Compliance monitoring framework for TOPS and CITES
- Key indicators for TOPS and CITES, for compliance monitoring inspections
- Bioprospecting regulatory framework guideline; and
- Criteria for monitoring the implementation of the BABS Regulations.

The Alien and Invasive Species Regulations are implemented by DFFE; hence a compliance monitoring framework is not available for this area of NEMBA.

Monitoring compliance with the provisions of NEMBA by the regulated community is done by the Environmental Management Inspectorate (the Green Scorpions), at national, provincial and local level.

2.10 Furthermore, the DFFE aims to develop a comprehensive Monitoring and Evaluation Plan to effectively oversee and assess the implementation and impact of the provisions within the draft NEMBA Bill. Please identify areas where additional research would improve understanding of then costs, benefit and/or of the legislation.

Additional research in how the proposal would contribute to the National Priorities would be beneficial.

PART THREE: SUMMARY AND CONCLUSIONS

1. Briefly summarise the proposal in terms of (a) the problem being addressed and its main causes and (b) the measures proposed to resolve the problem.

a) Problem being addressed:

- Hampered growth of, and opportunities in the biodiversity economy
- Insufficient equitable distribution of benefits arising from bioprospecting or biotrade involving commercial utilization of indigenous biological or genetic resources and their associated traditional knowledge
- Lack of transformation in the biodiversity sector, where a majority of the population are disadvantaged and disenfranchised from benefiting and/or contributing to conservation and sustainable use
- Constrained realization of benefits from the utilization of biodiversity at a global level, coupled with insufficient protection to biological resources that demand heightened protection at an international level
- Decline in numbers of the species in the wild
- Inability to effectively address wildlife trafficking
- Reputation damage for South Africa as a world leader in biodiversity conservation and sustainable.

b) Measures to resolve the problem:

- The proposal aims to amend the regulatory approach, from an all-encompassing approach where permits are required for every restricted activity involving every specimen of listed species, to an approach where the specific activities requiring permits will be specified, either by notice in the *Gazette*, or prescribed in regulations.

- The proposal also aims to streamline the permitting systems for bioprospecting and biotrade, including the associated benefit sharing models.
- The proposal provides a more flexible regulatory approach that will enable the Minister and MECs responsible for environmental affairs to exercise greater discretionary powers, will result in simpler implementation of the provisions and more effective compliance with international agreements.
- A more flexible regulatory approach will further enable growth of the biodiversity economy and participation in the biodiversity value chain by previously excluded groups.
- The Bill will also include new enabling provisions that are aimed at the protection of species and ecosystems, in order to address current regulatory gaps.
- Furthermore, the Bill intends to strengthen issues relating to the newly adopted mandate of well-being, as well as advancing the need to ensure duty of care and humane practices.

2. Identify the social groups that would benefit and those that would bear a cost, and describe how they would be affected. Add rows if required.

Groups	How they would be affected
Beneficiaries	
1. DFFE and provincial conservation authorities	<ul style="list-style-type: none"> • Improved implementation of the provisions of NEMBA, due to the reduced number of permits that will be required to be issued, resulting in: <ul style="list-style-type: none"> ○ reduced administrative burden to permit components; and ○ reduced compliance monitoring and enforcement efforts • Improved ability to protect species due to ability to list priority species at national level that require additional protection/ enforcement measures • Improved ability to implement obligations in respect of binding international agreements and ensure beneficitation. • Ability to improve practices relating to the keeping and breeding of wild animals in captivity, ensure duty of care and humane practices
2. State	Ability to retain custodianship over wild animals escaping from e.g. state-owned protected areas
3. Regulated community	Reduced number of permits to be obtained and reduction in associated costs to conduct business
4. Indigenous communities	Improved ability to: <ul style="list-style-type: none"> • benefit from the use of indigenous biological resources; and • participate in the biodiversity value chain
5. Wildlife Well-being stakeholders	Ability to ensure the adoption of practices that are responsible, legal, sustainable, humane and promote animal well-being of the five iconic species
Cost bearers	
1. DFFE	Primary costs: <ul style="list-style-type: none"> • Costs associated with consultation and awareness-raising to implement to provisions of the Bill.

Groups	How they would be affected
	Secondary costs: <ul style="list-style-type: none"> Amendment of existing subordinate legislation, or development of new subordinate legislation, to be aligned with the amended regulatory approach of the Bill.
2. DFFE and provincial conservation authorities	<ul style="list-style-type: none"> Implementation of systems to: <ul style="list-style-type: none"> appoint biodiversity officers; and monitor the conduct of biodiversity officers. Alignment of permit systems to accommodate newly listed species
3. Bioprospecting sector	Additional costs associated with streamlined requirements relating to consultation with indigenous communities

3. What are the main risks from the proposal in terms of (a) undesired costs, (b) opposition by specified social groups, and (c) inadequate coordination between state agencies?

- a) Ineffective implementation of, or non-compliance with, the proposed NEMBA amendments (by implementing agencies or the regulated community), due to misperceptions of the intended outcomes
- b) Litigation as a result of non-acceptance of new enabling provisions
- c) Unanticipated conflicts with other legislation (highlighted in Paragraph 2.1)

4. Summarise the cost to government in terms of (a) budgetary outlays and (b) institutional capacity.

Major implications in respect of budget and human resources are not anticipated, as structures are already in place for the current implementation of provincial conservation legislation and NEMBA.

5. Given the assessment of the costs, benefits and risks in the proposal, why should it be adopted?

The proposal will ensure more effective protection to indigenous plant and animal species (by addressing gaps arising from fragmented provincial conservation legislation), will enable the Department to address the problem of over-regulation (which affects the entire regulated community), and will ensure the more effective beneficiation of communities (arising from the use of indigenous biological resources or the use of indigenous knowledge).

The proposal will also ensure that there is comprehensive implementation of newly adopted animal well-being mandate, duty of care and humane in conducting activities involving fauna and flora.

The benefits out-weigh the costs to implement the Biodiversity Bill.

6. Please provide two other options for resolving the problems identified if this proposal were not adopted.

Option 1.	Resource allocation (human and financial resources); however, this option will not enable the Department of Environment, Forestry and Fisheries (DEFF) to address regulatory gaps or over-regulation.
Option 2.	Training and awareness; however, this option will not address regulatory gaps and excessive permitting

7. What measures are proposed to reduce the costs, maximise the benefits, and mitigate the risks associated with the legislation?

The costs will be reduced as a result of a reduced number of permits and permit inspections to be required.

Benefits will be maximised through the alignment/ development of subordinate legislation.

The DFFE will ensure that the process of amending NEMBA is legally sound, rational, reasonable and procedurally fair

Risks can be mitigated through capacity building and awareness-raising workshops, the development of interpretation guidelines, and inter-governmental consultation through formal structures.

8. Is the proposal (mark one; answer all questions)

	Yes	No
a. Constitutional?	Yes	
b. Necessary to achieve the priorities of the state?	Yes	
c. As cost-effective as possible?	Yes	
d. Agreed and supported by the affected departments?	Yes	

9. What is the impact of the Proposal to the following National Priorities?

National Priority	Impact
Economic transformation and job creation	<ul style="list-style-type: none"> • Reduced permit requirements will enhance opportunities for previously disadvantaged individuals to enter the biodiversity economy space. • Specific benefit-sharing model for bioprospecting will enhance contribution to economic transformation in terms various innovation-based beneficiation schemes such as through Intellectual Property Rights protection. • Specific benefit-sharing model for Biotrade will enhance contribution to job creation as it is

National Priority	Impact
	<p>labour intensive in terms of the supply of raw materials.</p> <ul style="list-style-type: none"> • The Bill aims, among others, to prioritize the objectives outlined in the White Paper, which emphasizes the need to transform the biodiversity sector and subsequently boost job creation prospects for everyone
Education, skills and health	<ul style="list-style-type: none"> • Some of the benefits anticipated to be shared from bioprospecting are non-monetary in a form of: <ul style="list-style-type: none"> ✓ Technology and skills transfer; ✓ Collaboration, cooperation and contribution in education, awareness and training; ✓ Food, health and livelihood security benefits; and ✓ Access to scientific information regarding biodiversity value relevant for conservation and sustainable use of its components. • Enhanced accessibility to biological resources for medicinal purposes translates to improved conditions of human health
Consolidating the social wage through reliable and quality basic services	<ul style="list-style-type: none"> • Stricter regulation of activities or threatening processes in threatened ecosystems should improve ecosystem services • Biotrade depends on labour intensive supply of raw materials from the wild. The Bill makes provisions for the Minister to determine standardised pricing through a consultative process on an annual basis. Currently there is no standard pricing of raw wild and cultivated materials.
Spatial integration, human settlements and local government	<p>Biodiversity hotspots for bioprospecting and biotrade are mainly at the local government level, in particular in the rural communities.</p>
Social cohesion and safe communities	<ul style="list-style-type: none"> • Improved ability to: <ul style="list-style-type: none"> ○ benefit from the use of indigenous biological resources; and ○ participate in the biodiversity value chain. • Bioprospecting and biotrade promotes coordination and cooperation with full involvement of every member of the community where the indigenous biological or genetic resources will be accessed. • Traditions, cultures and spiritual use enhanced and promoted • Addressing intensive management practices, as well as promoting duty of care and humane conduct involving wild animals will be regarded as a positive step from a moral, ethical and

National Priority	Impact
	humane perspective for many South Africans and will render support to the South African government in its conservation efforts
Building a capable, ethical and developmental state	<ul style="list-style-type: none"> Increased penalties applicable to persons involved in organised crime and wildlife trafficking, and applicable to employees of the State, should assist to contribute to a capable and ethical state Regulated bioprospecting and biotrade promotes ethical access to indigenous genetic or biological resources and their associated traditional knowledge, which in return contribute in building capable and developmental state. Strengthened aspects relating to humane practices, duty of care and animal well-being
A better Africa and world.	<ul style="list-style-type: none"> Ability to improve breeding and captive keeping practices due to the inclusion of the well-being provision, resulting in improving South Africa's reputation in respect of biodiversity conservation Improving South Africa's ability to fulfil its obligations under international agreements, including the Convention on Biological Diversity and the Nagoya Protocol on ABS, and the Convention on Migratory Species. Enhanced South Africa's reputation as a world leader in biodiversity conservation and sustainable through improvement of the duty of care towards biodiversity.

For the purpose of building a SEIAS body of knowledge please complete the following:

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