



Western Cape Government • Wes-Kaapse Regering • URhulumente weNtshona Koloni

PROVINCE OF THE WESTERN CAPE

PROVINSIE WES-KAAP

IPHONDO LENTSHONA KOLONI

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OFFICE OF THE PREMIER
OF THE PROVINCE OF THE
WESTERN CAPE

P.N. 150/2021 14 December 2021

It is hereby notified that the Premier of the Province of Western Cape has assented to the following Act, which is hereby published for general information:—

No. 6 of 2021: Western Cape Biodiversity Act, 2021.

As 'n nuusblad by die Poskantoor geregistreer

*(*Afskrifte is verkrygbaar by Kamer M21, Provinsiale Wetgewer-gebou, Waalstraat 7, Kaapstad 8001.)*

KANTOOR VAN DIE PREMIER
VAN DIE PROVINSIE
WES-KAAP

P.K. 150/2021 14 Desember 2021

Hiermee word bekend gemaak dat die Premier van die Provinsie Wes-Kaap die onderstaande Wet, wat hierby ter algemene inligting gepubliseer word, bekragtig het:—

Nr. 6 van 2021: Wes-Kaapse Wet op Biodiversiteit, 2021.

Ibhaliswe ePosini njengePhephandaba

*(*Iikopi zifumaneka kwigumbi M21, kwiSakhiwo seNdlu yoWisomthetho yePhondo, e7 Wale Street, eKapa 8001.)*

I-OFISI YENKULUMBUSO
YEPHONDO LENTSHONA
KOLONI

I.S. 150/2021 14 Disemba 2021

Kwenziwa isaziso apha sokuba iNkulumbuso yePhondo leNtshona Koloni iwamkele ngokusemthethweni lo Mthetho ulandelayo opapashelwe ulwazi gabalala:—

Nomb 6 ka-2021: UMthetho weNtlobo-ntlobo zeNdalo weNtshona Koloni, 2021.

*(English text signed by the Premier)
(Assented to 9 December 2021)*

ACT

To provide for the framework and institutions for nature conservation and the protection, management and sustainable use of biodiversity and ecosystems in the Province; and for matters incidental thereto.

PREAMBLE

WHEREAS section 24 of the Constitution of the Republic of South Africa, 1996, provides that everyone has the right to an environment that is not harmful to their health or well-being and to have the environment protected for the benefit of present and future generations through measures that promote conservation and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

AND WHEREAS environment and nature conservation to the extent set out in Part A of Schedule 4 to the Constitution of the Republic of South Africa, 1996, are functional areas of concurrent national and provincial legislative competence;

AND WHEREAS the Constitution of the Western Cape 1997 (Act 1 of 1998), requires the provincial government to adopt and implement policies on, among other things, the protection of the environment in the Western Cape, including its unique fauna and flora, for the benefit of the present and future generations;

AND WHEREAS the different organs of state must act in accordance with the principles of cooperative government and intergovernmental relations and make decisions that affect the environment in a coordinated and holistic manner;

AND RECOGNISING the unique biodiversity in the Western Cape, the Republic's international obligations, the Province's dependence on ecosystem services, the need for access and benefit sharing and the need to ensure long-term ecological resilience;

AND RECOGNISING the need for statutory revision to reform, integrate, harmonise and rationalise the existing legislative and institutional frameworks for implementing the provincial mandates for biodiversity and nature conservation;

AND RECOGNISING that it is desirable that the law develops a framework for integrating and coordinating environment and nature conservation considerations into planning and decision making by all organs of state to fulfil their obligations in terms of section 24 of the Constitution of the Republic of South Africa, 1996,

BE IT THEREFORE ENACTED by the Provincial Parliament of the Western Cape as follows:—

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CHAPTER 1

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INTERPRETATION, OBJECTIVES AND APPLICATION

Definitions

1. In this Act, unless the context indicates otherwise—
- “**adverse effect**” means any actual, potential or cumulative negative impact on biodiversity, ecosystem services or ecological infrastructure that is more than 25
trivial;
- “**access and benefit sharing**” means the fair and equitable sharing of benefits arising from the use of indigenous biological resources;
- “**aircraft**” means an airborne craft of any type, whether manned or unmanned and whether self-propelled or not; 30
- “**alien species**” means—
- (a) a species that is not an indigenous species;
- (b) an indigenous species translocated or intended to be translocated to a place outside its natural distribution range in nature through human intervention, but not an indigenous species that has extended its natural distribution range 35
by natural means of migration or dispersal without human intervention;
- (c) a species listed by the Provincial Minister in terms of section 49(2)(h);
- “**aquifer**” means a geological formation which has structures or textures that hold water or permit an appreciable water movement through them;
- “**authorisation**” means any registration, certificate, licence, permit or other 40
written permission issued or granted in terms of this Act that authorises the person to whom it is issued or granted to do anything that would otherwise be prohibited, and includes an integrated authorisation contemplated in section 54;
- “**biodiversity**” means the variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems and the ecological 45
complexes of which they are part, and includes diversity within and between species, within and between populations, and of ecosystems;
- “**Biodiversity Act**” means the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004);
- “**biodiversity economy**” means the businesses and economic activities that either 50
directly depend on biodiversity for their business or that contribute to conservation of biodiversity through their activities;

- “biodiversity offset”** means measurable conservation actions designed to counterbalance the residual adverse effects of any activity, or of the implementation of any plan, on biodiversity or ecological infrastructure after every effort has been made sequentially to avoid and minimise such effects, and to rehabilitate or restore damage, and includes the outcome of such measures; 5
- “biodiversity priority area”** means an area in the landscape or seascape that is important for conserving a representative sample of ecosystems and species, maintaining ecological processes and ecological infrastructure or the provision of ecosystem services;
- “Biodiversity Spatial Plan”** means a plan contemplated in section 34; 10
- “biodiversity stewardship agreement”** means an agreement entered into between the Chief Executive Officer and a landowner which sets out the obligations of the parties to secure the conservation of a biodiversity priority area;
- “biodiversity stewardship area”** means an area of land contemplated in section 42; 15
- “biodiversity target”** means the quantitative amount of any biodiversity feature, including biodiversity patterns or ecological processes, that should be prioritised for conservation in order to ensure the long-term survival and persistence of the biodiversity feature;
- “biosphere reserve”** means an area designated for inclusion in the World Network of Biosphere Reserves by the International Coordinating Council of UNESCO’s Man and the Biosphere Programme; 20
- “Biosphere Reserve Framework Plan”** means the spatial plan compiled for a biosphere reserve as contemplated in section 45;
- “Board”** means the governing board of CapeNature as contemplated in section 12; 25
- “CapeNature”** means the provincial public entity contemplated in section 9;
- “captivity”**, in relation to a wild animal, means the keeping within an enclosure by means of any fence, wall or obstruction of any kind or the implementation of any method in such a way that the wild animal is unable to maintain itself by natural means; 30
- “Chairperson”** means the Chairperson of the Board appointed in terms of section 16(1)(a);
- “Chief Executive Officer”** means the Chief Executive Officer of CapeNature appointed in terms of section 27;
- “CITES”** means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, D.C., United States of America, 1973; 35
- “climate change”** means a change in climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods; 40
- “coastal public property”** has the same meaning as in the Integrated Coastal Management Act;
- “conservation”**, in relation to biodiversity and nature, means the protection, care, management, rehabilitation and maintenance of ecosystems, habitats and indigenous species and populations, including the genetic variability within ecosystems and species, to safeguard the natural conditions for their long-term persistence and the ecosystem services that they may provide, and **“conserve”** has a corresponding meaning; 45
- “Constitution”** means the Constitution of the Republic of South Africa, 1996;
- “Criminal Procedure Act”** means the Criminal Procedure Act, 1977 (Act 51 of 1977); 50
- “critically endangered species”** means an indigenous species that is listed by the IUCN as a critically endangered species, and includes a species listed by the Provincial Minister in terms of section 49(2)(b);
- “Department”** means the provincial department responsible for environmental matters in the Province; 55
- “derivative”**, in relation to an animal, plant or other organism, means any part, tissue or extract of the animal, plant or other organism, whether fresh, preserved or processed, and includes any genetic material or chemical compound derived from such part, tissue or extract; 60
- “development”** means any process initiated by a person to change the use, physical nature, appearance, form or function of a place, and includes—

- (a) the construction, erection, alteration, demolition, or removal of a structure or building;
 - (b) any change to the existing or natural topography of the land;
 - (c) the carrying out of any works on, over or under a site;
 - (d) the destruction or removal of indigenous vegetation; and 5
 - (e) a process to rezone, subdivide or consolidate land;
- “domesticated species”** means any species for which no equivalent population exists in the wild, and which has been influenced by humans to meet human needs, and includes a species listed by the Provincial Minister in terms of section 49(2)(j);
- “ecological infrastructure”** means the naturally functioning ecosystems, including mountain catchments, water resources, coastal dunes, wetlands and nodes and corridors of natural habitat that together form networks of interconnected structural elements in the landscape that generate or deliver valuable ecosystem services to people; 10
- “ecosystem”** means a dynamic complex of animal, plant and microorganism communities and their non-living environment interacting as a functional unit, which may be terrestrial, coastal, inland aquatic, estuarine or marine, or a combination thereof; 15
- “ecosystem services”** means the benefits humans derive from ecosystems, which benefits include— 20
- (a) provisioning services, such as the production of food and provisioning of water;
 - (b) regulating services, such as the control of climate, air quality or disease and disaster risk reduction;
 - (c) supporting services, such as nutrient cycling, soil formation and crop 25
 - pollination; and
 - (d) cultural services, such as spiritual and recreational benefits;
- “endangered species”** means an indigenous species that is listed by the IUCN as an endangered species, and includes a species listed by the Provincial Minister in terms of section 49(2)(c); 30
- “environment”** means the surroundings within which humans exist and that are made up of—
- (a) the land, water and atmosphere of the earth;
 - (b) microorganisms and plant and animal life;
 - (c) any part or combination of the surroundings contemplated in paragraphs (a) 35
 - and (b) and the interrelationships among and between them; and
 - (d) the physical, chemical, aesthetic and cultural properties and conditions of the surroundings contemplated in paragraphs (a), (b) and (c) that influence human health and well-being;
- “environmental legislation”** means— 40
- (a) the Environment Conservation Act, 1989 (Act 73 of 1989);
 - (b) the National Environmental Management Act;
 - (c) the National Water Act, 1998 (Act 36 of 1998);
 - (d) the National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004); 45
 - (e) the National Environmental Management: Waste Act, 2008 (Act 59 of 2008);
 - (f) the Protected Areas Act;
 - (g) the Biodiversity Act;
 - (h) the Integrated Coastal Management Act; and
 - (i) the World Heritage Convention Act, 1999 (Act 49 of 1999), 50
- and includes any regulations or other subordinate legislation made in terms of these Acts;
- “estuary”** means a body of surface water—
- (a) that is permanently or periodically open to the sea;
 - (b) in which a rise and fall of the water level as a result of the tides is measurable 55
 - at spring tides when the body of surface water is open to the sea; or
 - (c) in respect of which the salinity is higher than fresh water as a result of the influence of the sea, and where there is a salinity gradient between the tidal reach and the mouth of the body of surface water, and **“estuarine”** has a corresponding meaning; 60
- “export”** means the transfer, or attempted transfer, of any species or specimen, or any part or derivative of such species or specimen, from any position or place in the

- Province in any manner to another province of the Republic or to a country outside the borders of the Republic or to international waters;
- “extra-limital species”** means a species contemplated in paragraph (b) of the definition of “alien species”, and includes a species listed by the Provincial Minister in terms of section 49(2)(g); 5
- “feral animal”** means an animal of a domesticated species which has gone wild;
- “genetic material”** means any material of animal, plant, microbial or other biological origin containing functional units of heredity;
- “habitat”** means a place where a species or ecological community naturally occurs; 10
- “Head of Department”** means the head of the provincial department responsible for environmental matters in the Province;
- “heritage resource”** means any place or object of cultural significance;
- “honorary nature conservation officer”** means a person designated in terms of section 56(a)(iii); 15
- “hunt”**, in relation to a wild animal, an animal belonging to a non-indigenous species or a feral animal, means to—
- (a) search for;
 - (b) pursue, follow or drive;
 - (c) lie in wait for or wilfully disturb; or 20
 - (d) shoot at or poison,
- the animal by any means whatsoever for the purpose of killing, injuring or capturing or attempting to kill, injure or capture it;
- “import”** means to—
- (a) land on, bring into or introduce into the Province, or attempt to land on, bring into or introduce into the Province; or 25
 - (b) bring into the Province for re-export to a place outside the Province;
- “indigenous”**—
- (a) in relation to a species, means a species that occurs, or has historically occurred, naturally in a free state within the borders of the Republic, but excludes a species that has been introduced into the Republic as a result of human activity; and 30
 - (b) in relation to a specimen, means an indigenous plant or wild animal of a species contemplated in paragraph (a);
- “indigenous biological resources”** means any resource consisting of— 35
- (a) any specimen of an indigenous species; or
 - (b) any genetic material of such specimen;
- “Integrated Coastal Management Act”** means the National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008);
- “invasive species”** means any species whose establishment and spread outside of its natural distribution range— 40
- (a) threaten ecosystems, habitats, ecological infrastructure or other species or have the potential to threaten ecosystems, habitats, ecological infrastructure or other species; and
 - (b) may result in economic or environmental harm or harm to human health; 45
- “IUCN”** means the International Union for the Conservation of Nature, established in Fontainebleau, France, 1948;
- “landowner”** means the registered owner of land, except that if—
- (a) the land is not occupied by the registered owner, it means the person— 50
 - (i) who lawfully occupies the land;
 - (ii) who exercises general control over the land;
 - (iii) who has any registered real right in the land, subject to any other law; or
 - (iv) who has been authorised in writing by the registered owner to fulfil his or her rights or duties in relation to the land;
 - (b) the land is owned by an association of persons, whether corporate or unincorporated, it means the person designated by the association in writing as the owner; 55
 - (c) the land is under the control or management of a municipality, it means the municipal manager;
 - (d) the registered owner or the person who is defined as the owner in paragraph (a) or (b)— 60
 - (i) is deceased;
 - (ii) is insolvent;

- (iii) has assigned his or her estate for the benefit of his or her creditors;
 - (iv) has been placed under curatorship by order of court; or
 - (v) is a company being wound up or under judicial management,
- it means the person in whom the administration of the land is vested as executor, administrator, trustee, assignee, curator, liquidator or judicial manager, as the case may be; or 5
- (e) the land is coastal public property, it means the national department responsible for the fulfilment of the obligations of the state as public trustee of coastal public property in terms of sections 11 and 12 of the Integrated Coastal Management Act; 10
- “listed species”** means a species included in a list contemplated in section 49(2);
- “Local Government: Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);
- “long term”** means a period of 50 years or longer;
- “mitigation measure”** means a measure or sequence of measures aimed at avoiding, minimising, rehabilitating, restoring or remedying, including by means of biodiversity offsets, an adverse effect; 15
- “mountain catchment area”** means an area contemplated in section 40;
- “Mountain Catchment Areas Act”** means the Mountain Catchment Areas Act, 1970 (Act 63 of 1970); 20
- “National Environmental Management Act”** means the National Environmental Management Act, 1998 (Act 107 of 1998);
- “National Minister”** means the member of the National Cabinet responsible for environmental affairs;
- “nature conservation officer”** means a person designated in terms of section 56(a)(i); 25
- “nature conservation ranger”** means a person designated in terms of section 56(a)(ii);
- “newspaper”** means a monthly, weekly or daily publication containing articles on the news, features, reviews and advertisements, including such a publication communicated and received through the internet; 30
- “Ordinance”** means the Nature Conservation Ordinance, 1974 (Ordinance 19 of 1974);
- “organ of state”** means—
- (a) any department of state or administration in the national, provincial or local sphere of government; or 35
 - (b) any other functionary or institution—
 - (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation, 40
- but does not include a court or a judicial officer;
- “peace officer”** means a person declared a peace officer under section 334(1) of the Criminal Procedure Act;
- “person”** means a— 45
- (a) natural person; or
 - (b) juristic person, including any—
 - (i) body incorporated or unincorporated established in terms of any law;
 - (ii) partnership or trust; or
 - (iii) organ of state that has been established as a juristic person; 50
- “poison”** includes any preparation or substance that can be used to catch, immobilise, sterilise, kill or physically harm any animal, plant or other organism;
- “Premier”** means the Premier of the Province;
- “premises”** means any land, site, property, building, structure or any part of any land, site, property, building or structure, and includes any container and any vehicle, train, railway carriage, vessel, aircraft or other conveyance; 55
- “prescribe”** means prescribe by regulation;
- “protected area”** means a protected area contemplated in section 9 of the Protected Areas Act;
- “Protected Areas Act”** means the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003); 60
- “protected environment”** has the same meaning as in the Protected Areas Act;

- “**protected species**” means a species listed by the Provincial Minister in terms of section 49(2)(e);
- “**Province**” means the Province of the Western Cape and “**provincial**” has a corresponding meaning;
- “**Provincial Minister**” means the member of the Provincial Cabinet responsible for environmental affairs in the Province; 5
- “**provincial protected area**” means a provincial protected area as defined in the Protected Areas Act, which may include a nature reserve in the Province declared in terms of section 23(1) of the Protected Areas Act or a nature reserve in the Province regarded as having been declared in terms of section 23(5) of that Act; 10
- “**Provincial Protected Areas Expansion Strategy**” means the strategy contemplated in section 39(1)(a);
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act 1 of 1999);
- “**regulation**” means a regulation made under this Act; 15
- “**resilience**”, in relation to an ecosystem or ecological infrastructure, means the ability of the ecosystem or ecological infrastructure to withstand disturbances thereto while retaining the same basic structure and functioning, the capacity for self-organisation and the capacity to adapt to stress or change;
- “**restricted activity**” means an activity which has been listed as a restricted activity under section 49(1) or (7); 20
- “**restricted method**” means a method which has been listed as a restricted method under section 49(1) or (7);
- “**spatial development framework**” means a spatial development framework as contemplated in the Spatial Planning and Land Use Management Act; 25
- “**Spatial Planning and Land Use Management Act**” means the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013);
- “**species**” means a kind of animal, plant or other organism that does not normally interbreed with individuals of another kind, and includes any subspecies, cultivar, variety, geographic race, strain, hybrid or geographically separate population; 30
- “**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; 35
- (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; 40
- “**subordinate legislation**” means any—
- (a) regulation made; or
- (b) notice published in the *Provincial Gazette*, by the Provincial Minister in terms of this Act; 45
- “**sustainable**” means the use of or impact on biodiversity, ecosystems or ecosystem services in a way and at a rate that—
- (a) will not lead to its long-term decline and which can be sustained indefinitely without causing adverse effects thereon;
- (b) will not compromise or disrupt its ecological integrity; and 50
- (c) ensures its continued persistence to meet the needs and aspirations of present and future generations of people;
- “**systematic biodiversity planning**” means a planning method that identifies biodiversity priority areas, taking into account biodiversity patterns and the ecological and evolutionary processes that sustain them, based on quantitative biodiversity targets and thresholds for aquatic, terrestrial, coastal and marine biodiversity features in order to conserve a representative sample of biodiversity patterns and ecological processes; 55
- “**this Act**”, except in section 4, includes subordinate legislation made or issued in terms of this Act; 60
- “**UNESCO**” means the United Nations Educational, Scientific and Cultural Organisation, and includes the International Coordinating Council of the Man and the Biosphere Programme;

“**vulnerable species**” means an indigenous species that is listed by the IUCN as a vulnerable species, and includes a species listed by the Provincial Minister in terms of section 49(2)(d);

“**watercourse**” means—

- (a) a river or spring; 5
- (b) a natural channel in which water flows regularly or intermittently;
- (c) a wetland, lake or dam into which, or from which, water flows; and
- (d) any collection of water declared in terms of the National Water Act, 1998, to be a watercourse,

and a reference to a watercourse includes, where relevant, its bed and banks; 10

“**water resource**” includes a watercourse, surface water, an estuary and an aquifer;

“**weapon**” means anything whatsoever that can be used in such a way that a wild animal is killed, injured, captured or immobilised thereby;

“**well-being**” means the ecological, behavioural, physical and physiological state of health of a wild animal; 15

“**Western Cape Constitution**” means the Constitution of the Western Cape, 1997 (Act 1 of 1998);

“**Western Cape Nature Conservation Board Act**” means the Western Cape Nature Conservation Board Act, 1998 (Act 15 of 1998); 20

“**wild animal**” means an animal, excluding a domesticated species and a microorganism, whether or not the animal is alive or dead, tame, bred or kept in captivity, and includes the eggs, spawn, gametes, genetic material, or any part of such an animal.

Objectives 25

2. The objectives of this Act are to—
- (a) give effect to the obligation of the state in terms of national legislation to act as trustee in relation to the environment;
 - (b) give effect to section 81(m) of the Western Cape Constitution to protect and conserve the environment in the Province, including its unique biodiversity, for the benefit of present and future generations; 30
 - (c) ensure the long-term ecological sustainability and resilience of biodiversity, ecosystems, ecosystem services and ecological infrastructure through implementation of the principles of ecological sustainability contemplated in section 6 and the protection of priority biodiversity and ecological infrastructure; 35
 - (d) ensure human well-being and the long-term resilience of society and the economy through the conservation of protected areas, biodiversity, ecosystems, ecosystem services and ecological infrastructure;
 - (e) enable reasonable and sustainable access to benefits and opportunities emanating from the conservation of protected areas, biodiversity, ecosystems, ecosystem services and ecological infrastructure; 40
 - (f) establish institutional structures and organisational capacity for the effective discharging of the conservation and management of biodiversity and nature in the Province; 45
 - (g) promote consultation, cooperation, integrated planning, decision-making and management in support of the conservation and sustainable use of biodiversity and ecosystem services in the Province;
 - (h) promote systematic biodiversity planning and the attainment of the biodiversity targets for conservation set in the Biodiversity Spatial Plan and the Provincial Protected Areas Expansion Strategy; 50
 - (i) regulate certain activities to be undertaken in a manner that enhances and protects the integrity and health of the environment;
 - (j) subject to section 231 of the Constitution, implement and give effect to international agreements and best practices pertaining to the environment and conservation of biodiversity; 55
 - (k) enable the financial and economic sustainability of the relevant institutions responsible for the conservation and management of biodiversity and nature in the Province; and

- (l) enable and develop an equitable and sustainable biodiversity economy in the Province, including the promotion and development of eco-tourism in areas under the control of CapeNature.

Application

- 3. This Act binds the state and all persons. 5

Conflicts with other legislation

- 4. (1) If there is a conflict between a provision of this Act and—
 - (a) national legislation, the conflict must be resolved in terms of section 146 of the Constitution;
 - (b) another provincial Act, the provision of this Act prevails to the extent that the conflict concerns provisions governing the conservation of biodiversity; 10
 - (c) municipal legislation, the provision of this Act prevails to the extent that the conflict concerns provisions governing—
 - (i) matters contemplated in either Part A of Schedule 4 or Part A of Schedule 5 to the Constitution; or 15
 - (ii) matters contemplated in Part B of Schedule 4 or Part B of Schedule 5 to the Constitution and the provision is a legitimate exercise or performance of the powers and duties of the Province under section 155(6)(a) and (7) of the Constitution.
- (2) If there is a conflict between subordinate legislation made in terms of this Act and— 20
 - (a) national legislation, the conflict must be resolved in terms of section 146 of the Constitution;
 - (b) a provincial Act, that Act prevails;
 - (c) other subordinate provincial legislation, the subordinate legislation made in terms of this Act prevails to the extent that the conflict concerns provisions governing the conservation of biodiversity; 25
 - (d) municipal legislation, the subordinate legislation made in terms of this Act prevails to the extent that the conflict concerns the matters specified in subsection (1)(c). 30

CHAPTER 2

DUTIES AND PRINCIPLES

Duty of state

- 5. Every organ of state that is empowered or required by or in terms of any law to exercise a power or perform a duty that may have an adverse effect on the environment, must in exercising or performing that power or duty in respect of the Province— 35
 - (a) take a long-term perspective of the likely effects of each action or decision on the environment;
 - (b) apply the principles of ecological sustainability contemplated in section 6; and
 - (c) apply the environmental management principles contemplated in section 2 of the National Environmental Management Act. 40

Principles of ecological sustainability

- 6. Every organ of state whose decisions or actions may affect biodiversity or the environment in the Province must apply the principles of ecological sustainability, which are to— 45
 - (a) take account of the benefits and intrinsic and use value of natural resources and ecosystems;
 - (b) ensure that biodiversity and ecosystems are protected, maintained and rehabilitated in a manner that enables the attainment of biodiversity targets for conservation set by the Province; 50
 - (c) promote the resilience of biodiversity, ecosystems and ecological infrastructure;
 - (d) ensure that development does not undermine the long-term persistence and resilience of biodiversity, ecosystems and ecological infrastructure;

- (e) ensure that the conservation and resilience of biodiversity for the benefit of present and future generations are given priority over the interests of any member or members of any community;
- (f) avoid or, where they cannot altogether be avoided, minimise and remedy the disturbance of ecosystems and loss of biological diversity; 5
- (g) ensure that indigenous biological resources are used in a manner that is ecologically sustainable, and takes into account the well-being of any faunal biological resource involved; and
- (h) ensure that a risk-averse and cautious approach is applied, so that where there is insufficient evidence that an activity will not cause a long-term adverse effect, it should be avoided. 10

CHAPTER 3 ADMINISTRATION

Functions of Provincial Minister

- 7. (1) The Provincial Minister must— 15
 - (a) exercise oversight over the Head of Department, CapeNature and the Board in the performance of their functions;
 - (b) develop and implement provincial policy on biodiversity and related matters;
 - (c) adopt a Biodiversity Spatial Plan and a Provincial Protected Areas Expansion Strategy for the Province as contemplated in sections 34 and 39, respectively; 20
 - (d) when approving, reviewing or commenting on a statutory or policy plan, ensure that the plan is aligned with the Biodiversity Spatial Plan; and
 - (e) periodically evaluate the effectiveness of the implementation and enforcement of this Act.
- (2) The Provincial Minister may— 25
 - (a) make subordinate legislation as provided for in this Act;
 - (b) establish, with the concurrence of the Provincial Minister responsible for finance, provincial government business enterprises as contemplated in the Public Finance Management Act to achieve the objectives of this Act;
 - (c) issue directives to the Board to ensure it functions efficiently and effectively in the discharge of its mandate; 30
 - (d) appoint a board of inquiry to consider the conduct of a Board member or the Board and take appropriate measures as contemplated in section 21 or 32, respectively; and
 - (e) perform any other function assigned to the Provincial Minister by or under this Act. 35

Duties of Head of Department

- 8. The Head of Department must, subject to section 7(1)(a) and (b)—
 - (a) advise the Provincial Minister, when requested by the Provincial Minister to do so and after consultation with CapeNature, on matters of law, subordinate legislation and provincial policy regarding nature conservation, biodiversity and coastal and estuarine management; 40
 - (b) after consultation with CapeNature, coordinate provincial strategies and programmes as approved by the Provincial Minister for nature conservation, biodiversity, coastal and estuarine management and the promotion and development of the biodiversity economy; 45
 - (c) in accordance with the Public Finance Management Act, exercise the powers of accounting officer responsible for the funds transferred to CapeNature and other entities for the implementation of this Act;
 - (d) establish a system for— 50
 - (i) the alignment of strategic and annual plans and associated programme budgets for nature conservation, biodiversity, and coastal and estuarine management, and the promotion and development of the biodiversity economy in the Province; and
 - (ii) the monitoring and reporting on the effectiveness of the use of funds transferred as contemplated in paragraph (c) and as planned for in accordance with subparagraph (i); 55

- (e) consider and comment on statutory and policy plans prepared in terms of this Act;
- (f) when the Head of Department is responsible for preparing, reviewing or commenting on a statutory or policy plan, ensure that the plan is aligned with the Biodiversity Spatial Plan; 5
- (g) support CapeNature in the implementation of the Provincial Protected Areas Expansion Strategy; and
- (h) make recommendations to the Provincial Minister on how to improve the effectiveness of the implementation and enforcement of this Act.

CHAPTER 4 10

CAPENATURE

Part 1

Establishment and functions of CapeNature

Establishment

9. The Western Cape Nature Conservation Board as established by the Western Cape Nature Conservation Board Act continues in existence as a juristic person and a provincial public entity responsible for the conservation of biodiversity in the Province, and is known as CapeNature. 15

Duties of CapeNature

10. (1) In relation to the conservation of biodiversity, and subject to section 7(1)(a), CapeNature must— 20

- (a) recommend to the Provincial Minister, areas to be declared as provincial protected areas, protected environments, mountain catchment areas and biodiversity stewardship areas according to the Provincial Protected Areas Expansion Strategy; 25
- (b) manage provincial protected areas and other areas where it is designated as the management authority;
- (c) promote and enable biodiversity stewardship;
- (d) maintain a register of provincial protected areas, protected environments, mountain catchment areas and biodiversity stewardship areas; 30
- (e) after undertaking an assessment and verification, make recommendations or comments to the Provincial Minister on written representations or objections received in terms of section 33 of the Protected Areas Act on the declaration or the withdrawal of the declaration of a protected area;
- (f) after consultation with the Head of Department, advise the Provincial Minister on— 35
 - (i) subordinate legislation and policy to be made by the Provincial Minister in respect of biodiversity related matters; and
 - (ii) the exercise of the Provincial Minister's powers in terms of section 7(1)(b), (c), (d) and (e); 40
- (g) establish a system for monitoring and reporting on—
 - (i) the status of biodiversity in the Province;
 - (ii) the status of invasive species;
 - (iii) the sustainable use of indigenous biological resources;
 - (iv) the management of provincial protected areas, protected environments, world heritage sites, mountain catchment areas and biodiversity stewardship areas; and 45
 - (v) compliance with authorisations issued under this Act, in order to—
 - (aa) enable the timely detection and mitigation of adverse effects; and 50
 - (bb) facilitate the evaluation of the effectiveness of this Act;
- (h) prepare biodiversity management plans as contemplated in section 43 of the Biodiversity Act, when requested to do so by the Provincial Minister;
- (i) provide advice to landowners to improve biodiversity or the conservation of the environment on their land or how to manage the interface between humans and indigenous biological resources; 55

- (j) advise the Provincial Minister on the export of indigenous biological resources for research;
 - (k) make recommendations to the Provincial Minister on matters that require research;
 - (l) report to the Provincial Minister on the state of biodiversity in the Province within two years of this Act coming into effect and at intervals of not more than four years thereafter, as required by the Provincial Minister; 5
 - (m) on land managed by CapeNature, manage, conserve and promote natural and related cultural heritage resources through best practice, access and benefit sharing, and sustainable use practices; 10
 - (n) review and comment on the consistency of spatial development frameworks and applications for environmental, water, agricultural and mining authorisations with the objectives of the Biodiversity Spatial Plan;
 - (o) in areas under its control, take measures that are necessary or desirable for the conservation of biodiversity or the management of adverse effects thereon; 15
 - (p) inspect and investigate non-compliance and offences in terms of this Act; and
 - (q) in areas under its control, take measures that are necessary for the safety of visitors.
- (2) CapeNature must—
- (a) manage the development and promotion of eco-tourism activities and facilities on land managed by CapeNature; 20
 - (b) facilitate research, monitoring and training on biodiversity conservation; and
 - (c) in relation to land under its control, promote—
 - (i) community-based conservation of biodiversity;
 - (ii) conservation- and ecotourism-related work generation, local economic development opportunities and the biodiversity economy; 25
 - (iii) access to protected areas for recreational, educational, research, cultural, spiritual and traditional purposes; and
 - (iv) environmental awareness, education and youth development.

Powers of CapeNature 30

- 11.** (1) CapeNature may, subject to the Public Finance Management Act, generate income by any lawful means, including through—
- (a) entrance fees, authorisations, concessions and leases;
 - (b) nature-based eco-tourism facilities, events and services;
 - (c) activities in the biodiversity economy; 35
 - (d) maintenance of ecosystem services;
 - (e) fees resulting from intellectual property rights; and
 - (f) conservation and other services.
- (2) CapeNature may for the purpose of performing its functions and to achieve the objectives of this Act— 40
- (a) subject to section 27(1), appoint its own staff;
 - (b) subject to any provincial policy contemplated in section 7(1)(b), enter into any written agreement with any person;
 - (c) subject to the approval of the Provincial Minister and the Provincial Minister responsible for finance, lease, purchase or otherwise acquire immovable property or any real right or mineral right in immovable property; 45
 - (d) acquire, dispose of, hire or let any right in or to movable property;
 - (e) conduct experiments, undertake research, make surveys, and conduct investigations;
 - (f) negotiate and cooperate with educational institutions regarding the training of persons for careers in nature conservation; 50
 - (g) display or otherwise disseminate information relating to conservation which may serve to further the achievement of the objectives of this Act;
 - (h) market and advertise its objectives, activities, services and facilities;
 - (i) maintain, construct, erect, demolish or remove infrastructure, works or amenities on areas under its control; 55
 - (j) allow commercial and community activities to take place in any area under its control provided that those activities do not have an adverse effect on biodiversity or the ecological infrastructure in that area;

- (k) erect, re-erect, maintain and repair on any land or in any watercourse the beacons, buoys, notices, notice boards, signs or other marks that are necessary or desirable for the implementation of any provision of this Act;
- (l) establish one or more advisory committees to assist it with fulfilling any of its functions in terms of this Act; 5
- (m) open its own bank accounts, but only with an institution registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990);
- (n) invest funds, subject to Part 5 of this Chapter;
- (o) subject to the Public Finance Management Act, insure itself against any loss, damage or risk; 10
- (p) perform any act in accordance with its powers and duties; and
- (q) institute or defend any legal action.
- (3) If CapeNature is satisfied on reasonable grounds that it is appropriate and necessary for it to take action for the conservation of biodiversity, an official or person designated by CapeNature may enter onto private land— 15
 - (a) with the consent of the landowner; or
 - (b) in a situation posing imminent risk to human life or biodiversity, without such consent.
- (4) CapeNature may at any time, in relation to any specimen of any species, undertake or authorise any action, including a restricted activity or restricted method, if the specimen— 20
 - (a) poses an imminent threat of injury or death to humans or any domesticated species;
 - (b) is wounded, diseased or injured;
 - (c) is causing damage to crops or plants on cultivated land or other property; 25
 - (d) has or may have an adverse effect on indigenous species, ecosystems or the environment; or
 - (e) should be captured or killed in the interests of conservation.
- (5) If a wild animal is captured or injured during a hunt, CapeNature may, if it is not able to establish the identity of the owner, kill the animal and destroy the carcass. 30
- (6) Before exercising any power in terms of this section on land not under its control, CapeNature must, if reasonably possible—
 - (a) consult with the landowner; and
 - (b) give reasonable notice to the landowner of the time when, the place where and the manner in which CapeNature proposes to exercise that power. 35

Part 2

Governing Board of CapeNature

Functions of Board

- 12. (1) CapeNature is governed by a Board, which is its accounting authority and must comply with the requirements of the Public Finance Management Act. 40
- (2) The Board must—
 - (a) maintain effective governance of CapeNature;
 - (b) ensure that CapeNature properly performs its functions in terms of this Act;
 - (c) approve and monitor compliance with the policies and strategies of CapeNature; 45
 - (d) provide strategic direction to CapeNature;
 - (e) develop a board charter to provide for a code of conduct for Board members and for meeting procedures, and to regulate matters further relating to corporate governance;
 - (f) identify and regularly monitor risk areas and performance in respect of CapeNature; and 50
 - (g) advocate for the sufficient resourcing of CapeNature to perform its functions.
- (3) The Board must perform its functions subject to any directives issued by the Provincial Minister.

Composition

55

- 13. (1) The Board consists of—
 - (a) at least seven and not more than nine non-executive members, appointed in terms of section 15; and

- (b) as executive members—
 - (i) an official of the Department, designated by the Provincial Minister; and
 - (ii) the Chief Executive Officer.
- (2) The Provincial Minister— 5
 - (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 may reduce the number only when a vacancy in the Board occurs.
- (3) Only non-executive members may vote in terms of section 25. 10

Disqualification as Board member

- 14. A person may not be appointed to the Board if he or she—
 - (a) is a member of the national Parliament, a provincial legislature or a municipal council;
 - (b) is an employee— 15
 - (i) of CapeNature;
 - (ii) of a municipality; or
 - (iii) in terms of the Public Service Act, 1994 (Proclamation 103 of 1994), excluding a person contemplated in section 13(1)(b) of this Act;
 - (c) has been convicted of a criminal offence involving dishonesty; 20
 - (d) is an unrehabilitated insolvent; or
 - (e) has been declared to be of unsound mind by a competent court.

Appointment to Board

- 15. (1) The Provincial Minister must appoint the non-executive Board members contemplated in section 13(1)(a). 25
- (2) When the Provincial Minister appoints a non-executive Board member, the Provincial Minister must—
 - (a) by means of a notice in the *Provincial Gazette* and notices in two newspapers circulating in the Province, at least one of which must be in print format, in the official languages of the Province, call for nominations from the public of suitable persons to be appointed; and 30
 - (b) consider all nominations received and, after consultation with the Head of Department and the Chief Executive Officer, appoint the required number of persons to the Board.
- (3) When making an appointment to the Board in terms of subsection (1), the Provincial Minister must— 35
 - (a) ensure that the person appointed is a fit and proper person for such appointment;
 - (b) ensure that the person appointed has appropriate qualifications, knowledge and experience, as may be determined by the Provincial Minister; and 40
 - (c) have regard to the need to appoint persons—
 - (i) who are broadly representative of the demographics of the Province; and
 - (ii) from appropriate community-based or representative organisations in the Province. 45
- (4) No decision taken by the Board or action taken on the authority of the Board is invalid merely because a vacancy existed on the Board or because a person who was not entitled to sit as a Board member sat on the Board at the time when the decision was taken or the action authorised, if the decision was taken or the action authorised by a majority of the Board members who were then present and entitled to sit as members. 50

Chairperson of Board

- 16. (1) The Provincial Minister, after consultation with the Board members—
 - (a) must appoint or reappoint a non-executive Board member as the Chairperson and another non-executive Board member as Vice-Chairperson;
 - (b) may, on good cause shown, withdraw any such appointment. 55
- (2) The Chairperson and Vice-Chairperson are appointed for a period determined by the Provincial Minister, which may not extend beyond the term as a member contemplated in section 17.

- (3) The Provincial Minister may appoint any Board member as Acting Chairperson of the Board—
- (a) if there is a vacancy in the office of Chairperson and Vice-Chairperson, until a Chairperson or Vice-Chairperson is appointed; or
 - (b) if the Chairperson and Vice-Chairperson are absent from two or more consecutive meetings of the Board. 5
- (4) If the Chairperson is for any reason unable to perform his or her functions, the Vice-Chairperson, and failing him or her, the Acting Chairperson, must perform the functions of the Chairperson.

Term of office of non-executive members of Board 10

17. (1) A non-executive Board member—
- (a) is appointed for a term of three years, subject to section 22(2);
 - (b) on completion of the term contemplated in paragraph (a), is eligible for reappointment by the Provincial Minister, after consultation with the Head of Department and the Chief Executive Officer, for one additional term of three years. 15
- (2) The Provincial Minister may extend the period of appointment of a non-executive member contemplated in subsection (1)(a) or (b) for a period not exceeding one year.

Conditions of appointment and remuneration

18. (1) The Provincial Minister, with the concurrence of the Provincial Minister responsible for finance, must determine the terms and conditions of appointment of non-executive members of the Board, including payment of remuneration and allowances as may be determined by the National Treasury in terms of the Public Finance Management Act. 20
- (2) CapeNature is responsible for the payment of remuneration and allowances to non-executive Board members. 25

Conduct of members

19. (1) A Board member—
- (a) must perform the functions of his or her office in good faith and without fear, favour or prejudice; 30
 - (b) must adhere to the code of conduct contemplated in section 12(2)(e);
 - (c) must disclose to the Board any financial or personal business interests that the member or his or her life partner, spouse or immediate family member may have in any matter before the Board, and must withdraw from the proceedings of the Board when that matter is considered; 35
 - (d) may not use confidential information obtained as a Board member or the position or privileges as a Board member for private gain or to benefit another person; and
 - (e) may not act in any other way that compromises the credibility, impartiality, independence or integrity of CapeNature or the Board. 40
- (2) A Board member who contravenes or fails to comply with subsection (1) is guilty of misconduct.

Termination of membership

20. A non-executive member ceases to be a Board member if—
- (a) the term of office of the non-executive member expires; or 45
 - (b) the non-executive member—
 - (i) is no longer eligible in terms of section 14(a) to (e) to be a member;
 - (ii) tenders his or her written resignation at least three calendar months before the date on which the member wishes to vacate office, unless the Provincial Minister allows a shorter period in a specific case; or 50
 - (iii) is removed from office in terms of section 21.

Removal and suspension

- 21.** (1) The Provincial Minister may remove a Board member from office on any of the following grounds:
- (a) misconduct, incapacity or incompetence;
 - (b) the member being absent from two consecutive meetings of the Board without the prior permission of the Chairperson, unless good cause can be shown for failure to obtain prior permission; 5
 - (c) insolvency; or
 - (d) conviction of a criminal offence involving dishonesty.
- (2) The Provincial Minister— 10
- (a) must remove the Board member from office as contemplated in subsection (1)(a) after a finding to that effect has been made by a board of inquiry appointed by the Provincial Minister as contemplated in section 7(2)(d); and
 - (b) may suspend a Board member who is the subject of an inquiry contemplated in paragraph (a). 15

Filling of vacancies

- 22.** (1) A vacancy on the Board is filled—
- (a) in the case of the Chairperson or Vice-Chairperson, by appointing another Board member as the Chairperson or Vice-Chairperson, as the case may be, as contemplated in section 16(1)(a); and 20
 - (b) in the case of a non-executive Board member, by following the procedure contemplated in section 15.
- (2) A person appointed to fill a vacancy holds office for the unexpired portion of the term of office of his or her predecessor.

Part 3

25

Operating procedures of Board**Meetings**

- 23.** (1) The Board must meet at least four times during the financial year of CapeNature, and the Chairperson may, and at the request of a majority of the Board members must, convene a special meeting. 30
- (2) The Chairperson must convene and preside at meetings of the Board, but if the Chairperson is absent from a meeting, the Vice-Chairperson must preside.
- (3) If both the Chairperson and Vice-Chairperson are absent from a meeting, the members present must elect another member to preside at the meeting, subject to section 16(3). 35

Procedures

- 24.** (1) The Board must determine its own procedure for conducting meetings, subject to section 12(2)(e).
- (2) The Board must keep a record of proceedings at meetings and of all decisions taken at meetings. 40
- (3) The Board may invite any member of the public to attend any meeting of the Board.

Quorum and decisions

- 25.** (1) A majority of the non-executive Board members constitutes a quorum for a meeting of the Board. 45
- (2) A matter before the Board is decided by the votes of a majority of the non-executive Board members present at the meeting.
- (3) If on any matter before the Board there is an equality of votes, the Board member presiding at the meeting must exercise a casting vote in addition to his or her deliberative vote as a member. 50

Committees

- 26.** (1) The Board may establish committees, including an audit committee, to assist it in fulfilling its functions, comprising one or more of the following:
- (a) Board members;
 - (b) employees of CapeNature; 5
 - (c) other persons who in the Board's opinion have relevant experience or expertise.
- (2) The Board—
- (a) must determine the functions of each committee established in terms of subsection (1); 10
 - (b) must appoint the committee chairperson and other members of each committee;
 - (c) may remove a member of a committee from the committee at any time; and
 - (d) must determine the procedures for each committee.
- (3) A committee may only recommend decisions for approval to the Board. 15
- (4) The Board may at any time dissolve a committee, except the audit committee.
- (5) Sections 18 and 19 apply, with the necessary changes, to committee members.

Part 4**Administration of CapeNature****Chief Executive Officer 20**

- 27.** (1) The Board, acting with the concurrence of the Provincial Minister, must appoint a person with appropriate qualifications and experience as the Chief Executive Officer of CapeNature.
- (2) The Chief Executive Officer—
- (a) is appointed for a term of five years; and 25
 - (b) may be reappointed by the Board with the concurrence of the Provincial Minister for a further term not exceeding five years.
- (3) The Chief Executive Officer is employed subject to terms and conditions of employment which the Board must determine with the concurrence of the Provincial Minister. 30
- (4) The Chief Executive Officer is responsible for the administrative and financial management of CapeNature and must—
- (a) assist the Board to fulfil its function as accounting authority of CapeNature and to comply with the Public Finance Management Act by ensuring that there are systems in place to provide the information and reports required by the Board; 35
 - (b) perform the duties and exercise the powers assigned or delegated to him or her by the Board;
 - (c) report to the Board on aspects of management, the performance of duties and the exercise of powers at the times and in the manner determined by the Board; 40
 - (d) prepare draft versions of the plans, reports and statements contemplated in section 28;
 - (e) appoint an appropriately qualified Chief Financial Officer;
 - (f) appoint members of staff, within the financial limits set by the Board and in accordance with an employment policy determined by the Board; 45
 - (g) manage the members of staff;
 - (h) ensure that CapeNature complies with the provisions of this Act, the Public Finance Management Act and any other applicable legislation; and
 - (i) in general, direct the affairs of CapeNature in order to achieve the objectives of this Act. 50
- (5) The Board, acting with the concurrence of the Provincial Minister, may appoint an employee of CapeNature as Acting Chief Executive Officer for a period not exceeding six months at a time when—
- (a) the Chief Executive Officer is for any reason absent or unable to perform his or her functions; or 55
 - (b) there is a vacancy in the office of the Chief Executive Officer.
- (6) An Acting Chief Executive Officer—
- (a) has the powers and duties of the Chief Executive Officer; and

- (b) must be appointed subject to the same terms and conditions contemplated in subsection (3).

Part 5

Financial matters

Financial accountability and reporting 5

28. The Board must ensure that strategic and annual performance plans, budgets, annual reports and audited financial statements are prepared, approved and submitted in accordance with the Public Finance Management Act.

Funds

- 29. (1) The funds of CapeNature consist of— 10
 - (a) income derived from the performance of its functions as contemplated in section 11(1);
 - (b) funds appropriated to it by the Provincial Parliament;
 - (c) grants and funds received from any person;
 - (d) voluntary contributions, donations and bequests; 15
 - (e) income derived from investments;
 - (f) fines received or recovered in respect of offences under this Act; and
 - (g) money derived from any other source, with approval of the Provincial Minister and the Board, subject to the Public Finance Management Act.
- (2) CapeNature must use its funds to perform its functions contemplated in sections 10 and 11 and to— 20
 - (a) cover its and the Board's operational, administrative and managerial costs; and
 - (b) contribute to the funding of its capital and maintenance costs.
- (3) The Chief Executive Officer must ensure that all funds received in terms of subsection (1) are deposited in CapeNature's bank account. 25

Reserve funds

- 30. (1) The Board may, subject to the Public Finance Management Act and with the concurrence of the Provincial Minister responsible for finance, create financial reserves from the funds received in terms of section 29(1) in order to perform its functions. 30
- (2) Any transfers into and out of these financial reserves must be ratified by the Board.

Investments

- 31. The Board may invest any of the funds of CapeNature that are not immediately required, subject to any investment policy prescribed in terms of section 7(4) of the Public Finance Management Act and with the concurrence of the Provincial Minister responsible for finance. 35

Part 6

Dissolution of Board or CapeNature

Dissolution of Board

- 32. (1) If the Provincial Minister suspects on reasonable grounds that the Board is not fulfilling its functions in terms of section 12, he or she must issue a directive contemplated in section 7(2)(c). 40
- (2) If the Provincial Minister is not satisfied that the Board has complied with the directive contemplated in subsection (1), the Provincial Minister may dissolve the Board by notice in the *Provincial Gazette*. 45
- (3) The Provincial Minister may perform the functions of the Board from the date of publication of the notice contemplated in subsection (2) until the appointment of a new Board contemplated in subsection (4).
- (4) The Provincial Minister must within a reasonable time frame after the dissolution of the Board appoint members to the Board as contemplated in section 15. 50

Dissolution of CapeNature

- 33. (1) CapeNature may not be wound up or dissolved except by an Act of the Provincial Parliament.
- (2) Upon its winding up or dissolution CapeNature must transfer its remaining assets and the proceeds of those assets to the Department or to an equivalent provincial public entity as defined in the Public Finance Management Act, as determined by the Provincial Minister. 5

CHAPTER 5

BIODIVERSITY PLANNING AND MONITORING

Biodiversity Spatial Plan 10

- 34. (1) CapeNature, after consultation with the Head of Department, must prepare a draft Biodiversity Spatial Plan within one year of the commencement of this Act and submit it to the Provincial Minister for adoption.
- (2) Before adopting the Biodiversity Spatial Plan, the Provincial Minister must—
 - (a) in the official languages of the Province, publish the reference to where the draft Biodiversity Spatial Plan may be accessed by the public— 15
 - (i) by notice in the *Provincial Gazette*; and
 - (ii) in two newspapers circulating in the Province, at least one of which must be in print format;
 - (b) make the draft Biodiversity Spatial Plan available and accessible to the public in a reasonable manner at the place specified in terms of paragraph (a); and 20
 - (c) allow a commenting period of at least 60 days from the date of publication of the notice in the *Provincial Gazette*.
- (3) The Provincial Minister must—
 - (a) consider all comments received; 25
 - (b) consult with the National Minister on the final Biodiversity Spatial Plan; and
 - (c) within 150 days of the expiry of the commenting period contemplated in subsection (2)(c), adopt the final Biodiversity Spatial Plan and publish it by notice in the *Provincial Gazette*.

Purpose of Biodiversity Spatial Plan 30

- 35. The purpose of a Biodiversity Spatial Plan is to—
 - (a) set biodiversity targets;
 - (b) spatially identify one or more categories of biodiversity priority areas that will ensure the continued existence and functioning of biodiversity and ecosystems, including the delivery of ecosystem services; 35
 - (c) provide guidelines that set out the desired management objectives for land and resource use in each category of biodiversity priority area;
 - (d) provide spatial planning and land use decision-making guidelines to ensure environmentally sustainable development and resource use and ecological and spatial resilience in the Province; and 40
 - (e) ensure that the ecological infrastructure in the Province is maintained, ecosystem fragmentation and loss are avoided, and the resilience of ecosystems and human communities to the impacts of climate change is strengthened.

Contents of Biodiversity Spatial Plan

- 36. A Biodiversity Spatial Plan must— 45
 - (a) be developed using the principles and methods of systematic biodiversity planning and must be based on the best available science and data;
 - (b) set biodiversity targets that must inform the categories of biodiversity priority areas;
 - (c) identify biodiversity priority areas according to the categories and targets contemplated in paragraph (b); 50
 - (d) include a spatial representation and spatial data of biodiversity priority areas; and
 - (e) include guidelines for desired management objectives for each category of biodiversity priority area identified in terms of paragraph (c). 55

Use and application of Biodiversity Spatial Plan

- 37. (1) The Biodiversity Spatial Plan is a provincial plan as contemplated in—
 - (a) sections 25(1)(e), 26(d), 27(2)(a) and 29(1)(c) of the Local Government: Municipal Systems Act;
 - (b) sections 12(4), 15(3)(b) and 16(c) of the Spatial Planning and Land Use Management Act; and 5
 - (c) section 4(3)(c)(ii) and (iii) of the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014),
 that establishes the priorities, objectives and strategies for biodiversity, ecological resources and related climate change adaptation. 10
- (2) The Biodiversity Spatial Plan must inform—
 - (a) the Provincial Protected Area Expansion Strategy and biodiversity stewardship;
 - (b) the identification of ecosystems and ecological infrastructure and the listing of species in terms of this Act and other environmental legislation; 15
 - (c) land use planning and decision-making;
 - (d) policies and guidelines developed in terms of environmental legislation;
 - (e) any decision-support system, environmental management instrument or strategic environmental assessment developed or used in terms of environmental legislation; 20
 - (f) decisions and actions by any organ of state whose policies and decisions have an impact on biodiversity in the Province; and
 - (g) biodiversity offsets.
- (3) When a municipality adopts or amends its spatial development framework in terms of the Local Government: Municipal Systems Act in respect of land use matters in areas identified in the Biodiversity Spatial Plan as biodiversity priority areas, it must indicate how the land use planning categories in the spatial development framework have taken into account the desired management objectives in the guidelines contemplated in section 36(e). 25
- (4) For the purposes of any requirement for authorisation for an activity specified in terms of environmental legislation due to the impact of such activity on biodiversity within a specific area, the Biodiversity Spatial Plan identifies the biodiversity priority areas which trigger such requirement. 30

Review of Biodiversity Spatial Plan

- 38. (1) CapeNature, after consultation with the Head of Department, must review the Biodiversity Spatial Plan at least every five years or when directed to do so by the Provincial Minister. 35
- (2) Section 34 applies, with the necessary changes, to the review and amendment of the Biodiversity Spatial Plan.
- (3) The Provincial Minister must at least every five years assess the Biodiversity Spatial Plan to determine whether and the extent to which the objectives and targets of the plan have been met. 40

CHAPTER 6

PROTECTED AREAS, MOUNTAIN CATCHMENT AREAS, BIODIVERSITY STEWARDSHIP AND BIOSPHERE RESERVES 45

Part 1

Expansion of protected areas

Provincial Protected Areas Expansion Strategy

- 39. (1) In order to fulfil the objectives contemplated in section 2(g)—
 - (a) the Provincial Minister must take any appropriate measure, including— 50
 - (i) adopting a provincial strategy for the expansion of the provincial protected area network, which sets quantitative targets and recommends mechanisms for such expansion; and
 - (ii) declaring protected areas in terms of the Protected Areas Act; and

- (b) the Chief Executive Officer may apply any appropriate biodiversity stewardship category contemplated in section 42(1)(a).
- (2) CapeNature must, after consultation with the Head of Department, prepare a draft Provincial Protected Areas Expansion Strategy within two years of the commencement of this Act and submit it to the Provincial Minister for adoption. 5
- (3) Before adopting the Provincial Protected Areas Expansion Strategy, the Provincial Minister must—
 - (a) in the official languages of the Province, publish the reference to where the draft Provincial Protected Areas Expansion Strategy may be accessed by the public— 10
 - (i) by notice in the *Provincial Gazette*; and
 - (ii) in two newspapers circulating in the Province, at least one of which must be in print format;
 - (b) make the draft Provincial Protected Areas Expansion Strategy available and accessible to the public in a reasonable manner at the place specified in terms of paragraph (a); and 15
 - (c) allow a commenting period of at least 60 days from the date of publication of the notice in the *Provincial Gazette*.
- (4) The Provincial Minister must— 20
 - (a) consider all comments received; and
 - (b) within 90 days of the expiry of the commenting period contemplated in subsection (3)(c), adopt the final Provincial Protected Areas Expansion Strategy, and publish it by notice in the *Provincial Gazette*.

Part 2

Mountain catchment areas 25

Declaration of mountain catchment areas

- 40. (1) The Provincial Minister may by notice in the *Provincial Gazette*—
 - (a) declare an area to be—
 - (i) a mountain catchment area; or
 - (ii) part of an existing mountain catchment area; and 30
 - (b) assign a name to that mountain catchment area.
- (2) The Provincial Minister may make a declaration in terms of subsection (1)(a) if the control and management of activities and resources in the area concerned are required to—
 - (a) maintain the biodiversity and ecosystems in the area; 35
 - (b) sustain the ecological infrastructure and provision of ecosystem services, particularly water provisioning;
 - (c) ensure that the use of biodiversity and ecosystems in the area is sustainable.
- (3) The Provincial Minister may make a declaration in terms of subsection (1) in respect of any land, including privately owned land. 40
- (4) If the Provincial Minister is satisfied on reasonable grounds that a mountain catchment area, or any part thereof, is no longer required as such, the Provincial Minister may, by notice in the *Provincial Gazette*, as the case may be—
 - (a) withdraw the declaration of that mountain catchment area; or
 - (b) alter the boundaries of that mountain catchment area to exclude any part of it. 45
- (5) Before issuing a notice contemplated in subsection (1)(a), (3) or (4), the Provincial Minister must, in the prescribed manner, notify the landowners concerned of the intended notice and the consequences of the notice and afford them a reasonable opportunity to comment.
- (6) An area which, at the commencement of this Act, is a mountain catchment area by virtue of a declaration under section 2 of the Mountain Catchment Areas Act is regarded to have been declared a mountain catchment area under subsection (1). 50
- (7) An area ceases to be a mountain catchment area if that area is declared as, or included into, a special nature reserve, national park or nature reserve or part thereof, in terms of section 18, 20 or 23 of the Protected Areas Act. 55

Management of mountain catchment areas

- 41. The Provincial Minister may prescribe—
 - (a) specific requirements for the management of mountain catchment areas; or
 - (b) specific activities that are prohibited in mountain catchment areas, having regard to the requirements of section 40(2). 5

Part 3

Biodiversity stewardship

Biodiversity stewardship

- 42. (1) In order to implement the Provincial Protected Areas Expansion Strategy, the Provincial Minister may prescribe— 10
 - (a) different categories of biodiversity stewardship areas;
 - (b) criteria and conditions that apply to each category of biodiversity stewardship area;
 - (c) an application process for the registration, amendment of the boundary of, or withdrawal of the registration of a biodiversity stewardship area; 15
 - (d) the rights, duties and powers of landowners regarding biodiversity stewardship areas;
 - (e) the criteria and objectives for the management plans of biodiversity stewardship areas; and
 - (f) any other matter necessary for the proper management of biodiversity stewardship areas. 20
- (2) The Chief Executive Officer may enter into a biodiversity stewardship agreement with any landowner.
- (3) CapeNature must monitor the status of biodiversity stewardship agreements and biodiversity stewardship areas and report annually to the Provincial Minister thereon. 25
- (4) If a landowner who is party to a biodiversity stewardship agreement breaches that agreement, the Provincial Minister may impose an administrative penalty in terms of section 71.
- (5) The imposition of an administrative penalty as contemplated in subsection (4) does not affect any person's common-law rights. 30

Part 4

Biosphere reserves

Application for UNESCO designation as biosphere reserve

- 43. (1) Any person or organ of state may request the Provincial Minister's approval to proceed with an application for UNESCO designation of a biosphere reserve. 35
- (2) A request contemplated in subsection (1) must—
 - (a) be preceded by the prescribed public participation process;
 - (b) be in accordance with the prescribed format; and
 - (c) include the proposed composition of a biosphere reserve interim committee which is broadly representative of all interested persons, institutions and 40 communities.
- (3) The Provincial Minister may approve the request contemplated in subsection (2), with or without conditions, or refuse it.
- (4) If the Provincial Minister approves the request, the biosphere reserve interim committee must— 45
 - (a) be established in the prescribed manner;
 - (b) prepare the application for UNESCO designation of the biosphere reserve in the format as determined by the UNESCO Man and the Biosphere Programme;
 - (c) submit the application to the Provincial Minister within the prescribed period 50 or any extended period determined by the Provincial Minister; and
 - (d) if the Provincial Minister so requests, amend the application in accordance with the Provincial Minister's instructions.

- (5) If the Provincial Minister is satisfied that the application—
 - (a) complies with the relevant UNESCO Man and the Biosphere Programme criteria;
 - (b) is consistent with the objectives of this Act; and
 - (c) if applicable, includes the amendments contemplated in subsection (4)(d),
 the Provincial Minister may approve the application for UNESCO designation for forwarding to the National Minister for consideration before submitting it to UNESCO.
- (6) If UNESCO designates the biosphere reserve, the Provincial Minister must publish a notice of the designation in the *Provincial Gazette* within 90 days of UNESCO's making the designation.
- (7) The Provincial Minister must at least every 10 years, with effect from the designation of a biosphere reserve, review the status, functioning, effectiveness and framework plan of the biosphere reserve according to the relevant objectives, strategies and guidelines of the UNESCO Man and the Biosphere Programme.
- (8) If the Provincial Minister is of the opinion, after consultation with the management committee contemplated in section 44 and interested and affected parties, that a biosphere reserve no longer complies with the core functions of the UNESCO Man and the Biosphere Programme, and does not have the prospect of so complying, the Provincial Minister may recommend to the National Minister to submit a request for the withdrawal of the designation of that biosphere reserve to UNESCO.
- (9) A biosphere reserve established in the Province before the commencement of this Act is regarded as having been established in accordance with this Act.

Management of biosphere reserves

- 44. (1) After the publication of the designation of a biosphere reserve in the *Provincial Gazette*, the biosphere reserve interim committee must establish a management committee in the prescribed manner, after which the biosphere reserve interim committee dissolves.
- (2) The management committee must—
 - (a) ensure that the biosphere reserve fulfils its conservation, sustainable development and operational functions;
 - (b) prepare a Biosphere Reserve Framework Plan as contemplated in section 45; and
 - (c) report to the Provincial Minister annually, or at the shorter intervals determined by the Provincial Minister, on the achievement of the objectives and the operations of the biosphere reserve.

Biosphere Reserve Framework Plan

- 45. (1) A Biosphere Reserve Framework Plan must categorise all land within the biosphere reserve as core, buffer or transition areas, and may identify land uses that are appropriate within each category.
- (2) A Biosphere Reserve Framework Plan must be consistent with—
 - (a) the UNESCO Man and the Biosphere Programme;
 - (b) the management plans for protected areas within the biosphere reserve in terms of the Protected Areas Act;
 - (c) the Biodiversity Spatial Plan;
 - (d) the Provincial Protected Areas Expansion Strategy;
 - (e) the objectives of this Act; and
 - (f) any other prescribed matter.
- (3) The Provincial Minister may prescribe the contents of a Biosphere Reserve Framework Plan and the period within which the plan must be reviewed by the management committee of a biosphere reserve.

Funding of biosphere reserves

- 46. (1) The Provincial Minister may, in accordance with an appropriation by the Provincial Parliament, provide financial or other assistance in respect of the establishment, operation, management or extension of, or in respect of conservation within, a biosphere reserve.
- (2) The assistance contemplated in subsection (1) may be made subject to conditions determined by the Provincial Minister.

CHAPTER 7

PROTECTION OF ECOSYSTEMS, ECOLOGICAL INFRASTRUCTURE
AND SPECIES**Ecosystems or ecological infrastructure in need of special protection**

47. (1) The Provincial Minister, with the concurrence of the National Minister, may by notice in the *Provincial Gazette* identify an ecosystem or part thereof or an area of ecological infrastructure as in need of special protection to ensure the maintenance of their ecological integrity or the delivery of ecosystem services. 5

(2) A notice contemplated in subsection (1) may provide for—

(a) the prohibition or restriction of any activity; and 10

(b) the establishment of management requirements for any landowner, within the identified ecosystem or ecological infrastructure, permanently or for a specified period.

(3) Before issuing a notice contemplated in subsection (1), the Provincial Minister must, in the prescribed manner, notify the landowners concerned of the intended notice and the consequences of the notice and afford them a reasonable opportunity to comment. 15

(4) The Provincial Minister, with the concurrence of the National Minister, may by notice in the *Provincial Gazette* amend or withdraw a notice contemplated in subsection (1), or any part of the notice, if the circumstances which caused the Provincial Minister to exercise his or her powers in terms of subsection (1) have changed. 20

Biodiversity offsets and other mitigation measures

48. The Provincial Minister may prescribe requirements and publish guidelines for biodiversity offsets or other mitigation measures in the Province in order to attain the biodiversity targets set in the Biodiversity Spatial Plan and remedy residual adverse effects on biodiversity as a result of development. 25

Species in need of protection or posing threat to environment

49. (1) The Provincial Minister may, by notice in the *Provincial Gazette*, publish a list of restricted activities or restricted methods in respect of any species or any category of species listed in terms of subsection (2). 30

(2) The Provincial Minister may, by notice in the *Provincial Gazette*, publish lists of the following species or categories of species:

(a) species which are extinct in the wild;

(b) critically endangered species;

(c) endangered species; 35

(d) vulnerable species;

(e) species that require protection and are not listed in terms of paragraph (a), (b), (c) or (d), including species listed—

(i) by the IUCN as Near Threatened, Data Deficient or Not Evaluated; or 40

(ii) in appendices I, II and III of CITES;

(f) any other indigenous species not listed in terms of paragraph (a), (b), (c), (d) or (e);

(g) extra-limital species;

(h) alien species other than extra-limital species;

(i) species that require special management measures; and 45

(j) domesticated species.

(3) The Provincial Minister must at least every five years review the lists contemplated in subsections (1), (2) and (7).

(4) The Provincial Minister must prescribe the special management measures required for species listed in terms of subsection (2)(i). 50

(5) No person may carry out a restricted activity or restricted method involving a species listed in terms of subsection (2), unless authorised to do so in terms of section 51(1)(a).

(6) Subsection (5) does not apply to a listed species conveyed from outside the Province in transit through the Province to a destination outside the Province, provided that the transit through the Province takes place in terms of an applicable authorisation in terms of any law. 55

- (7) The Provincial Minister may, by notice in the *Provincial Gazette*, publish—
- (a) a list of species; and
 - (b) the list of restricted activities or restricted methods contemplated in subsection (1) involving a species contemplated in paragraph (a),
- in respect of which an authorisation may not be issued in terms of this Act. 5
- (8) No person may carry out a restricted activity or restricted method involving a species listed in terms of subsection (7).

CHAPTER 8 AUTHORISATION

Application for authorisation 10

50. An application for an authorisation that is required in terms of any provision of this Act must be made in writing to the Chief Executive Officer in the prescribed manner.

Decision on application for authorisation

51. (1) The Chief Executive Officer may, subject to section 79—
- (a) approve an application for authorisation with or without conditions; or 15
 - (b) refuse an application for authorisation.
- (2) The Chief Executive Officer may request further information, including an independent risk assessment or expert evidence contemplated in section 52, before making the decision contemplated in subsection (1).
- (3) The Chief Executive Officer must refuse an application if it is inconsistent with— 20
- (a) the principles of ecological sustainability contemplated in section 6 or any other provision of this Act;
 - (b) any relevant strategies or plans adopted or approved in terms of this Act;
 - (c) the Biodiversity Act; or
 - (d) subject to section 231 of the Constitution, any applicable international 25 agreement.

Risk assessments and expert evidence

52. Before making a decision on an application for authorisation, the Chief Executive Officer may require the applicant to furnish, at the applicant's expense, the independent risk assessment or expert evidence that— 30
- (a) is determined by the Chief Executive Officer as necessary in order to make a decision regarding the application; or
 - (b) is prescribed.

Proof of legal possession

53. No person may be in possession of a specimen unless also in possession of the prescribed documentation indicating proof of legal possession for the specimen. 35

Integrated authorisation

54. (1) If the Chief Executive Officer is empowered under another law to issue an authorisation in terms of that other law for an activity which also requires authorisation under this Act, the Chief Executive Officer may issue a single, integrated authorisation. 40
- (2) An integrated authorisation may be issued only if the application concerned complies with the relevant provisions of this Act and the other law.

Review, suspension, withdrawal and amendment of authorisation

55. (1) The Chief Executive Officer may review an authorisation or any part thereof granted by him or her and may in the prescribed manner amend or withdraw the authorisation at any time if— 45
- (a) he or she is satisfied on reasonable grounds that the activity or activities authorised by the authorisation are causing an adverse effect, or may cause a significant negative impact on the environment, not foreseen at the time of authorisation; 50

- (b) the holder of the authorisation—
 - (i) has submitted inaccurate, incorrect or misleading information in connection with any matter required to be submitted in terms of this Act and that would have materially affected the decision or action taken by the Chief Executive Officer; 5
 - (ii) fails to comply with any condition of the authorisation;
 - (iii) fails to comply with any provision of this Act or is under investigation for failure to comply with any other legislation governing or related to the authorised activity; or
 - (iv) has been convicted of an offence in terms of this Act or any other provincial or national legislation that relates to the authorised activity. 10
- (2) The Chief Executive Officer may in the prescribed manner suspend the authorisation or a part thereof before taking measures as contemplated in subsection (1).
- (3) An authorisation or part thereof that has been suspended remains suspended until the Chief Executive Officer— 15
 - (a) lifts the suspension;
 - (b) amends the authorisation; or
 - (c) withdraws the authorisation.
- (4) The Chief Executive Officer may—
 - (a) take any reasonable measures to remedy the situation that may arise as a result of the suspension or withdrawal of an authorisation or a part thereof due to non-compliance by the holder of the authorisation with the relevant legislation; and 20
 - (b) recover from the holder of the authorisation any reasonable costs incurred and necessitated by taking the measures contemplated in paragraph (a). 25

CHAPTER 9

COMPLIANCE AND ENFORCEMENT

Part 1

Compliance and enforcement officials and judicial matters

Designation of nature conservation officers, nature conservation rangers and honorary nature conservation officers 30

- 56.** The Chief Executive Officer—
- (a) may designate—
 - (i) a suitably qualified person employed by CapeNature as a nature conservation officer; 35
 - (ii) by agreement with the relevant employer, a suitably qualified person employed by a municipality or an organ of state as a nature conservation ranger; or
 - (iii) a suitably qualified person as an honorary nature conservation officer;
 - (b) must, when designating a person in terms of paragraph (a), specify the provisions of this Act or any other law which that person is designated to enforce; 40
 - (c) may at any time withdraw a designation contemplated in paragraph (a).

Declaration of nature conservation officers and nature conservation rangers as peace officers

57. The Chief Executive Officer may request the National Minister responsible for justice to declare nature conservation officers and nature conservation rangers to be peace officers in terms of section 334 of the Criminal Procedure Act for the performance of their functions in terms of this Act and in respect of powers delegated or duties assigned to CapeNature under any other legislation. 45

Mandate of nature conservation officers and nature conservation rangers 50

58. A nature conservation officer or nature conservation ranger is mandated to enforce, within his or her area of jurisdiction, compliance with—

- (a) this Act and authorisations issued in terms of this Act; and

- (b) any other law for which that nature conservation officer or nature conservation ranger has been designated to enforce.

Honorary nature conservation officers

59. (1) An honorary nature conservation officer may exercise only the powers set out in subsections (2) and (3) and only within a geographical area specified in the designation contemplated in section 56(a)(iii). 5

(2) An honorary nature conservation officer may request any person performing, or whom he or she reasonably suspects of having performed, any act for the performance of which an authorisation, exemption or order, or the written permission of a landowner or of any other person is necessary under any provision of this Act to— 10

- (a) present such authorisation, exemption, order or permission; and
(b) provide his or her name and address.

(3) An honorary nature conservation officer may assist CapeNature in— 15
(a) the detection and reporting of offences in terms of this Act; and
(b) the performance of any conservation-related activity, as instructed by a nature conservation officer.

Functions of nature conservation officers and nature conservation rangers

60. A nature conservation officer or nature conservation ranger, subject to section 58—

- (a) must monitor and enforce compliance with the law for which he or she has been designated; 20
(b) may investigate any act or omission that may constitute—
(i) an offence in terms of such a law;
(ii) a breach of such a law; or
(iii) a breach of a term or condition of an authorisation or other document issued or required in terms of this Act; 25
(c) must perform his or her functions—
(i) in accordance with instructions issued by the Chief Executive Officer; and
(ii) subject to any limitations and in accordance with any procedures that may be prescribed; and 30
(d) may be accompanied by an interpreter or any other person whose assistance may reasonably be required.

Identity card and letter of designation

61. (1) The Chief Executive Officer must issue an identity card and a letter of designation to every person designated in terms of section 56. 35

(2) When exercising any power or performing any duty in terms of this Act, a person designated in terms of section 56 must produce the identity card when requested to do so by a member of the public.

(3) The Chief Executive Officer must indicate in the identity card and letter of designation the mandate and powers of the nature conservation officer, nature conservation ranger or honorary nature conservation officer concerned and any limitations in respect of that mandate or those powers. 40

- (4) A designation in terms of section 56 terminates when— 45
(a) in the case of a nature conservation officer, the officer leaves the employ of CapeNature;
(b) in the case of a nature conservation ranger, the officer leaves the employ of the municipality or other organ of state which employed him or her at the time of designation in terms of section 56(a)(ii);
(c) the designation is withdrawn as contemplated in section 56(c); or 50
(d) the validity period specified in the identity card or letter of designation has expired.

General powers of nature conservation officers and nature conservation rangers

62. A nature conservation officer or nature conservation ranger, subject to sections 58, 60, 63, 64 and 65 and the terms of their designation under section 56, for the purpose of performing their functions, may—

- (a) examine any document, book or record or any written or electronic information which may be relevant for the purposes of an investigation in terms of section 60(b); 5
- (b) copy, or make extracts from, any document, book or record or any written or electronic information contemplated in paragraph (a), or remove such document, book, record or written or electronic information in order to make copies or extracts; 10
- (c) require a person to produce or deliver any document, book or record or any written or electronic information contemplated in paragraph (a) to a place for inspection;
- (d) demand from any person whom he or she reasonably suspects— 15
 - (i) of having performed a restricted activity for which an authorisation or documentation as prescribed under section 53 is required in terms of this Act or any other law which he or she is designated to enforce;
 - (ii) of having committed an offence under this Act or any other law which he or she is designated to enforce; or 20
 - (iii) will be able to furnish evidence in connection with an offence committed or alleged to have been committed under this Act or any other law which he or she is designated to enforce, the name and address and any other information necessary for the identification of that person; 25
- (e) request from any person any information relevant to the commission of an offence or suspected offence, including, the name and address of a person suspected of committing such an offence;
- (f) examine and, if necessary, seize and remove any specimen, substance or other item which he or she reasonably suspects may have been used in committing an offence in terms of the law for which he or she has been designated; 30
- (g) take photographs or make audio-visual recordings by any means of anything or any person that is relevant for the purposes of an investigation or for an inspection;
- (h) subject to other relevant legislation, use a remote piloted aircraft for taking photographs or making audio-visual recordings that are relevant for the purposes of an investigation or for an inspection; 35
- (i) dig or bore into the soil;
- (j) take samples of any specimen or thing;
- (k) seize and remove any waste or other matter deposited or discharged in contravention of the law for which he or she has been designated; 40
- (l) instruct any person to assist him or her in the execution of an investigation or inspection;
- (m) seize and remove any trap, holding pen, poison or other device which is reasonably suspected to be used to hunt or capture a wild animal unlawfully or, if it cannot be seized and removed, destroy it or render it harmless; 45
- (n) seize and remove any livestock or other animal trespassing on land under the control of CapeNature;
- (o) instruct any person to cease with immediate effect any activity, action or process related to a contravention of the law for which he or she has been designated; 50
- (p) carry out any other action that is necessary for the purposes of enforcement of the law for which he or she has been designated.

Routine inspections

63. (1) A nature conservation officer, subject to section 58, may at any reasonable time conduct a routine inspection and, without a warrant, enter and inspect any premises or inspect any bag, box or other item for the purposes of ascertaining compliance with— 55

- (a) the legislation for which that nature conservation officer was designated in terms of section 58; or
- (b) this Act and a term or condition of an authorisation issued in terms of this Act. 60

(2) When carrying out a routine inspection, a nature conservation officer may, if he or she on reasonable grounds suspects that an offence has been committed in terms of the law for which he or she has been designated—

- (a) seize and remove any specimen or item that may be used as evidence in the prosecution of any person for that offence; 5
- (b) if he or she is a peace officer, arrest any person reasonably suspected of committing that offence.

Warrants

64. (1) A nature conservation officer or nature conservation ranger—

- (a) must, before exercising any power in terms of section 62 to enter or search any premises or to seize anything, apply to a magistrate for a warrant, setting out under oath or affirmation why it is necessary to enter and search the specified premises or to seize the specified item; and 10
- (b) may execute such warrant.

(2) Sections 20 and 21 of the Criminal Procedure Act apply, with the necessary changes, in respect of any application or warrant contemplated in subsection (1). 15

(3) If a nature conservation officer or nature conservation ranger has reasonable grounds to suspect that an offence is being committed on or by means of any premises in contravention of the law for which he or she has been designated, he or she may enter and search those premises, without a warrant, but only if— 20

- (a) he or she explains the purpose of the investigation and the person in control of the premises consents to the entry and search, after being informed that there is no obligation to admit the officer or ranger in the absence of a warrant; or
- (b) there are reasonable grounds to believe that a warrant would on application be issued, but that the delay that may be caused by applying for a warrant would defeat the object of obtaining the warrant. 25

(4) If a nature conservation officer or nature conservation ranger has reasonable grounds to suspect that an item—

- (a) is concerned in the commission or suspected commission of an offence in contravention of the law for which he or she has been designated; 30
- (b) may afford evidence of the commission or suspected commission of such an offence; or
- (c) is intended to be used in the commission of such an offence,

he or she may seize that item without a warrant authorising him or her to do so, but only if— 35

- (i) he or she explains the purpose of the seizure and the person in control of the item consents to the seizure, after being informed that there is no obligation to permit the seizure in the absence of a warrant; or
- (ii) there are reasonable grounds to believe that such a warrant would on application be issued, but that the delay that may be caused by applying for a warrant would defeat the object of obtaining the warrant. 40

Powers to stop, enter and search vehicles, vessels, aircraft and other conveyance

65. (1) If a nature conservation officer has reasonable grounds to suspect that a vehicle, vessel, aircraft or other conveyance—

- (a) is being or has been used, or contains or conveys anything which is being or has been used, to commit— 45
 - (i) an offence in terms of the law for which he or she has been designated; or
 - (ii) a breach of a term or condition of an authorisation or document issued or required in terms of this Act; 50

(b) may afford evidence of the commission or suspected commission of such an offence;

(c) transports persons who may be able to furnish information about the commission or suspected commission of such an offence;

(d) is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of such an offence; 55

(e) is being used in a manner that is likely to cause an adverse effect on the environment; or

- (f) contains or conveys a thing which may serve as evidence of such an offence or breach,
he or she may—
 - (i) instruct the on-board operator of the vehicle, vessel or other conveyance to stop, or the captain of the vessel to dock or the pilot of the aircraft to land; and 5
 - (ii) if necessary and possible, force the vehicle, vessel, aircraft or other conveyance to stop or dock or land, as the case may be.
- (2) Section 64 applies, with the necessary changes, in respect of the entry and search of a vehicle, vessel, aircraft or other conveyance contemplated in subsection (1) and the seizure of any such vehicle, vessel, aircraft or other conveyance or anything contained in or on it. 10

Duty to produce documents

66. A person to whom an authorisation or any other document has been issued in terms of this Act, or who is required to be in possession of such an authorisation or document, must produce that authorisation or document at the request of a nature conservation officer, nature conservation ranger or honorary nature conservation officer. 15

Treatment of seized specimen or item

- 67. (1) When a nature conservation officer or nature conservation ranger seizes and removes a specimen or item, including a record or written or electronic information, in terms of this Act, he or she— 20
 - (a) must provide a receipt for the specimen or item to the person who was in control of that specimen or item when so seized;
 - (b) may—
 - (i) deliver the specimen or item to a member of the South African Police Service; 25
 - (ii) retain the specimen or item; or
 - (iii) instruct the person who was in control of the specimen or item when so seized to take it to a place specified by the nature conservation officer or nature conservation ranger. 30
- (2) If no criminal proceedings are instituted in connection with a specimen or item contemplated in subsection (1), section 31 of the Criminal Procedure Act applies, with the necessary changes.
- (3) In order to safeguard a vehicle, vessel, aircraft or other conveyance that has been seized, a nature conservation officer or nature conservation ranger may immobilise it by removing any part thereof. 35
- (4) An item seized and removed in terms of this Act, including a part of a vehicle, vessel, aircraft or other conveyance contemplated in subsection (3), must be kept in such a way that it is as far as possible secured against damage.

Security for release of vehicles, vessels, aircraft or other conveyance 40

- 68. (1) If a vehicle, vessel, aircraft or other conveyance is seized in terms of this Act and is kept for the purposes of criminal prosecution, the owner or agent of the owner may at any time apply to a court for its release.
- (2) The court may order the release of the vehicle, vessel, aircraft or other conveyance on the provision of security determined by the court. 45
- (3) The amount of the security must at least be equal to the sum of—
 - (a) the market value of the vehicle, vessel, aircraft or conveyance;
 - (b) the maximum fine that a court may impose in terms of this Act for the alleged offence; and
 - (c) costs and expenses incurred or reasonably foreseen to be incurred by the State in connection with prosecuting the offence and recoverable in terms of section 55(4)(b) and 70(b). 50
- (4) If the court is satisfied that there are circumstances that warrant a lesser amount of security, it may order the release of the vehicle, vessel, aircraft or conveyance subject to the provision of security for such lesser amount. 55

Part 2**Administrative enforcement mechanisms and penalties****Administrative enforcement**

69. (1) If the Provincial Minister is satisfied on reasonable grounds that any person is undertaking an activity in contravention of this Act, undertaking an activity causing an adverse effect on biodiversity or ecological infrastructure, or failing to comply with any instrument or authorisation issued in terms of this Act, the Provincial Minister may, after having afforded the person concerned a reasonable opportunity to comment, issue a directive to that person to—

- (a) cease the activity;
- (b) take specific mitigation measures to remedy such adverse effect within a specific time frame;
- (c) comply with the relevant instrument or authorisation within a specific time frame.

(2) In the circumstances contemplated in subsection (1), if urgent action is required for the protection of an area identified in terms of section 47(1), the Provincial Minister may issue the directive without affording the person issued with the directive the opportunity to comment and provide an opportunity to comment as soon as is reasonably possible after the directive has been issued.

(3) If a directive issued to a person in terms of subsection (1) or (2) relates to something occurring or that may occur on land of which that person is not the owner, the Provincial Minister may also issue a directive to the landowner, in which case subsections (1) and (2) apply, with the necessary changes.

Failure to comply with directive

70. If a person fails to comply with a directive contemplated in section 69, the Provincial Minister may—

- (a) where applicable, cancel or vary the relevant authorisation or other instrument which is the subject of the directive; and
- (b) take any measures specified in the directive and any other necessary measures to remedy adverse effects on biodiversity and ecological infrastructure arising from the failure to comply with the directive, and recover the costs of doing so from the person who failed to comply.

Administrative penalties

71. (1) The Provincial Minister may—

- (a) impose administrative penalties for—
 - (i) contravention of or non-compliance with this Act;
 - (ii) a breach of a biodiversity stewardship agreement contemplated in section 42(4);
 - (iii) non-compliance with a directive issued in terms of section 69(1);
 - (iv) an offence listed in section 72; and
- (b) prescribe categories of administrative penalties and the procedure for imposing such penalties.

(2) Before imposing a penalty, the Provincial Minister must in writing—

- (a) inform the person on whom the penalty is intended to be imposed of the envisaged penalty;
- (b) specify the particulars of the alleged contravention, non-compliance or offence and the reasons for the penalty intended to be imposed;
- (c) specify the amount of the penalty intended to be imposed; and
- (d) provide an opportunity to the person contemplated in paragraph (a) to make representations within a period specified by the Provincial Minister.

(3) If a person on whom an administrative fine is imposed in terms of subsection (1) fails to pay the fine, the Provincial Minister may take a civil judgment against that person for the amount of the fine.

(4) The provisions of sections 56, 57 and 57A of the Criminal Procedure Act apply, with the necessary changes, to penalties, fines and written notices contemplated in this section.

**CHAPTER 10
OFFENCES AND PENALTIES**

Offences

72. (1) A person is guilty of a category 1 offence if that person—
- (a) fails to comply with a notice issued in terms of section 47(1) or amended as contemplated in section 47(4); 5
 - (b) contravenes or fails to comply with section 49(5) or (8);
 - (c) fails to comply with a directive issued in terms of section 69(1), (2) or (3);
 - (d) unlawfully commits any act or omission which causes or is likely to cause an adverse effect; 10
 - (e) alters, fabricates or forges—
 - (i) any authorisation or other document issued or required for the lawful performance of any act in terms of this Act;
 - (ii) on any document any official logo, letterhead, stamp, hallmark or date stamp of the Department or CapeNature, or the signature of any person in their capacity as an agent or employee of the Department or CapeNature; 15
 - (f) is in possession of any unlawfully altered or false document purporting to be an authorisation or an exemption issued under this Act, or attempts to pass off such a document as a valid authorisation or exemption issued under this Act; 20
 - (g) obtains or applies for any authorisation or document in terms of this Act—
 - (i) under a false name; or
 - (ii) while prohibited by an order of court from being the holder of such an authorisation or document;
 - (h) makes a false statement in any application made or document furnished in terms of this Act; 25
 - (i) conceals, removes from any premises, destroys or disposes of anything that could serve as evidence related to an offence under this Act, to prevent it being seized or detected, including any specimen, book, register, document, electronic record, vehicle, machinery, implement, container, firearm, weapon, explosive or poison; 30
 - (j) hinders or interferes with any official lawfully executing his or her mandate in terms of this Act or a device used lawfully by the official in executing his or her mandate; or
 - (k) falsely pretends to be a nature conservation officer, nature conservation ranger, honorary nature conservation officer or an employee or agent of the Department or CapeNature. 35
- (2) A person is guilty of a category 2 offence if that person—
- (a) trespasses on land on which there is, or is likely to be, any wild animal while in possession of a weapon, poison, or any means whatsoever that could be used to hunt, capture or kill wild animals; 40
 - (b) is found in possession of any specimen without proof of legal possession as contemplated in section 53;
 - (c) coerces any other person or allows any person to commit an act or omission in contravention of this Act; or 45
 - (d) is the holder of an authorisation or exemption issued under this Act and—
 - (i) contravenes or fails to comply with a term or condition of that authorisation or exemption;
 - (ii) is not in possession of such an authorisation or exemption while performing an act that may only be performed while in possession of such an authorisation or exemption; or 50
 - (iii) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of subparagraph (i) or (ii).
- (3) A person is guilty of a category 3 offence if that person—
- (a) fails to comply with an instruction of a nature conservation officer, nature conservation ranger or honorary nature conservation officer given in terms of this Act or when executing their powers in terms of this Act; 55
 - (b) fails to comply with subordinate legislation made in terms of this Act;
 - (c) when requested by a nature conservation officer, nature conservation ranger or honorary nature conservation officer in the execution of an investigation or 60

- inspection to furnish information, furnishes false or misleading information;
 or
 (d) without good cause refuses or fails on demand to furnish a nature conservation officer, nature conservation ranger or honorary nature conservation officer with his or her name and address or with any information or document required by that nature conservation officer, nature conservation ranger or honorary nature conservation officer for the purposes of performing his or her functions in terms of this Act. 5

Penalties

73. (1) A person convicted of a category 1 offence as contemplated in section 72(1) may be sentenced to— 10
 (a) a fine not exceeding R10 million;
 (b) imprisonment for a period not exceeding 10 years; or
 (c) both such fine and such imprisonment.
 (2) A person convicted of a category 2 offence as contemplated in section 72(2) may be sentenced to— 15
 (a) a fine not exceeding R5 million;
 (b) imprisonment for a period not exceeding five years;
 (c) both such fine and such imprisonment; or
 (d) in the case of a second or subsequent conviction— 20
 (i) a fine not exceeding R10 million;
 (ii) imprisonment for a period not exceeding 10 years; or
 (iii) both such fine and such imprisonment.
 (3) A person convicted of a category 3 offence as contemplated in section 72(3) may be sentenced to— 25
 (a) a fine not exceeding R1 million;
 (b) imprisonment for a period not exceeding two years;
 (c) both such fine and such imprisonment; or
 (d) in the case of a second or subsequent conviction— 30
 (i) a fine not exceeding R5 million;
 (ii) imprisonment for a period not exceeding five years; or
 (iii) both such fine and such imprisonment.
 (4) If any offence involves the capture, killing, harvesting, possession, offering for sale, sale, import or export of a specimen, a court may, in addition to the penalties contemplated in subsections (1), (2) and (3), impose a fine that does not exceed three times the market value of that specimen. 35
 (5) Subject to the Criminal Procedure Act, fines imposed by a court in terms of this Act must be made payable to and paid to CapeNature.

Cancellation of authorisations

74. The court convicting a person of an offence in terms of this Act may— 40
 (a) cancel any authorisation issued to that person;
 (b) disqualify that person from obtaining any authorisation for a period not exceeding five years;
 (c) issue an order that all competent authorities authorised to issue authorisations be notified of any disqualification in terms of paragraph (b). 45

Award of costs

75. If a person is convicted of an offence in terms of this Act and the act or omission constituting the offence—
 (a) caused any organ of state to incur any costs in order to seize any item, to rehabilitate any land or to investigate and prosecute that offence; 50
 (b) provided that person with a monetary advantage or a potential monetary advantage,
 the court convicting that person may, without pleadings, enquire into the monetary value of the costs incurred and advantage gained or likely to be gained by that person in consequence of that offence, and, in addition to any other punishment imposed in respect of that offence, may order an amount equivalent to that monetary value to be paid 55

directly to CapeNature as an additional fine, award of damages or compensation, as part of the sentence.

Forfeiture

- 76. (1) A court convicting a person of an offence in terms of this Act—
 - (a) must declare any specimen; 5
 - (b) may declare any item including any container, vehicle, vessel, aircraft, other conveyance or document, including an electronic document, involved in the offence, or that was used for the purpose of or in connection with the commission of the offence, and was seized under this Act, to be forfeited to CapeNature. 10
- (2) If any specimen forfeited to CapeNature under subsection (1) is still alive, CapeNature must ensure that the specimen is—
 - (a) where appropriate, repatriated to the country of export or returned to the place of origin at the expense of the person convicted of the offence involving that specimen; 15
 - (b) placed in an appropriate institution, rescue centre or facility, or with an appropriate person, that is able and willing to house and properly care for the specimen; or
 - (c) otherwise disposed of in an appropriate manner.
- (3) If any dead specimen or any other item is forfeited to CapeNature under subsection (1), CapeNature may— 20
 - (a) cause the specimen or item be deposited at an appropriate institution or museum; or
 - (b) dispose of the specimen or item in an appropriate manner.

CHAPTER 11

APPEALS

25

Appeal against decisions by CapeNature officials

- 77. (1) Any interested or affected person may appeal to the Chief Executive Officer against a decision taken by a nature conservation officer or any other staff member of CapeNature, excluding the Chief Executive Officer, in terms of this Act. 30
- (2) An appeal in terms of subsection (1) must be lodged and dealt with in the prescribed manner, on payment of the prescribed fee and within the prescribed period.
- (3) The Chief Executive Officer may consider and decide an appeal or appoint an appeal panel to consider and advise the Chief Executive Officer on the appeal.
- (4) The Chief Executive Officer may, after considering an appeal, confirm, set aside or vary the decision or make any other appropriate decision, including a decision that the prescribed fee paid by the appellant in terms of subsection (2), or any part thereof, be refunded. 35
- (5) An appeal in terms of subsection (1) suspends the authorisation or condition attached thereto, but only where there is no threat of an adverse effect to the environment. 40

Appeal to Provincial Minister

- 78. (1) Any interested or affected person may appeal to the Provincial Minister against a decision taken by the Chief Executive Officer or a person acting under a power delegated by the Provincial Minister in terms of this Act. 45
- (2) An appeal in terms of subsection (1) must be lodged and dealt with in the prescribed manner, on payment of the prescribed fee and within the prescribed period.
- (3) The Provincial Minister may consider and decide an appeal or appoint an appeal panel to consider and advise the Provincial Minister on the appeal.
- (4) The Provincial Minister may, after considering an appeal, confirm, set aside or vary the decision and determine that the prescribed fee paid by the appellant in terms of subsection (2), or any part thereof, be refunded. 50
- (5) An appeal under this section suspends the implementation of the decision concerned and any authorisation or condition attached thereto, but only where there is no threat of an adverse effect to the environment.

CHAPTER 12
GENERAL AND TRANSITIONAL PROVISIONS

Exemption

- 79.** (1) The Chief Executive Officer may, subject to any conditions as the Chief Executive Officer may specify, exempt any person from the requirement in terms of this Act for— 5
- (a) an authorisation; or
 - (b) a condition of an authorisation.
- (2) The Provincial Minister may prescribe the process to be followed for the lodging and processing of an application for exemption to the Chief Executive Officer as contemplated in subsection (1). 10

Delegation

- 80.** (1) Subject to subsection (3), the Provincial Minister may delegate any power or assign any duty vested in him or her in terms of this Act, to— 15
- (a) the Head of Department;
 - (b) the Board;
 - (c) the Chief Executive Officer;
 - (d) CapeNature;
 - (e) a municipality, subject to applicable legislation; or
 - (f) any other organ of state. 20
- (2) A delegation in terms of subsection (1)— 20
- (a) is subject to any limitations or conditions that the Provincial Minister may impose;
 - (b) must be in writing;
 - (c) may include the power to subdelegate; and 25
 - (d) does not divest the Provincial Minister of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.
- (3) The Provincial Minister— 30
- (a) may not delegate a power or duty of the Provincial Minister to make subordinate legislation; and
 - (b) may, in writing, withdraw any delegation.
- (4) The Head of Department may, with the written consent of the Provincial Minister, delegate any of his or her powers or duties in terms of this Act to an official of the Department.
- (5) The Board or the Chief Executive Officer may, with the written consent of the Provincial Minister, delegate any of their powers or duties in terms of this Act to a CapeNature official. 35
- (6) The Board may not delegate its power to— 40
- (a) appoint or reappoint a person as the Chief Executive Officer;
 - (b) determine the conditions of employment of the Chief Executive Officer;
 - (c) determine an employment policy for CapeNature;
 - (d) set financial limits as contemplated in section 27(4)(f);
 - (e) approve the budget and annual financial statements of CapeNature.
- (7) Subsections (2) and (3)(b) apply, with the necessary changes, to a delegation in terms of subsection (4) or (5). 45

Regulations

- 81.** The Provincial Minister— 50
- (a) must make regulations where required in terms of this Act;
 - (b) may make regulations on any matter which is necessary or expedient to prescribe in order to achieve the objectives of this Act.

Public notices

- 82.** The Provincial Minister may publish a notice in the *Provincial Gazette*—
- (a) regarding any matter which in terms of this Act may or must be dealt with by way of a notice;

- (b) containing a reference to a plan, strategy or guideline for the implementation of this Act;
- (c) to announce any matter related to the administration of this Act.

Performance standards

83. The Provincial Minister may set performance standards for the performance of any function or requirement contemplated in this Act. 5

Consultation

84. (1) Before publishing any regulations or notice in terms of this Act, the Provincial Minister must—

- (a) publish the draft regulations or notice in the official languages of the Province in— 10
 - (i) the *Provincial Gazette*; and
 - (ii) two newspapers circulating in the Province, at least one of which must be in print format;
- (b) consult with organs of state whose areas of responsibility may be directly affected by the proposed regulations or notice; 15
- (c) provide an opportunity for interested and affected parties to comment for a period of not less than 30 days from the date of publication in the *Provincial Gazette*, except where a different period is specified by this Act; and
- (d) consider any comments received. 20

(2) The Provincial Minister may, where appropriate, extend the commenting period in terms of subsection (1)(b) for a reasonable time.

(3) When in terms of this Act the Provincial Minister is required to consult any person or organ of state, such consultation is regarded as having been satisfied if a formal written notification of intention to act has been made to that person or organ of state and no response has been received within the time frame specified in the notification. 25

Notices, legal documents and steps valid under certain circumstances

85. (1) A notice, authorisation or other document issued or published in terms of this Act—

- (a) which does not comply with any procedural requirement, is nevertheless valid if the non-compliance is not material and does not prejudice any person; 30
- (b) may be amended or replaced without following a procedural requirement of this Act if—
 - (i) the purpose is to correct an error; and
 - (ii) the correction does not change the rights or duties of any person materially. 35

(2) The failure to take any steps required by this Act as a prerequisite for any decision or action does not invalidate the decision or action if the failure—

- (a) is not material;
- (b) does not prejudice any person; and 40
- (c) is not procedurally unfair.

Limitation of liability

86. The Provincial Minister, the Head of Department, the Board, the Chief Executive Officer, CapeNature or any person delegated in terms of this Act is not liable for any damage or loss caused by a person who, acting in a reasonable manner and in good faith— 45

- (a) exercises a power or performs a duty in terms of this Act;
- (b) does not exercise a power or perform a duty in terms of this Act; or
- (c) performs a duty outside of their mandate.

Repeal of laws

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87. The laws contemplated in the Schedule are repealed to the extent indicated in the third column of the Schedule.

Transitional provisions

88. (1) A person who was a nature conservation officer, nature conservation ranger or honorary nature conservation officer as defined in the Ordinance immediately before the commencement of this Act is regarded as having been designated as a nature conservation officer, nature conservation ranger or honorary nature conservation officer, as the case may be, in terms of this Act. 5

(2) A licence, permit, certificate, written authority, exemption, order or other authorisation issued in terms of the Ordinance and that was valid immediately before the commencement of this Act, is regarded as an authorisation, exemption, order or directive, as the case may be, issued in terms of this Act. 10

(3) An application for a licence, permit, certificate, written authority, exemption, order or other authorisation submitted in terms of the Ordinance which has not been finalised when this Act takes effect, must, despite the repeal of the Ordinance by section 87 of this Act, be dispensed with in terms of the Ordinance, and a decision taken in terms of the Ordinance is deemed to be a decision taken in terms of this Act. 15

(4) The corporate identity and the assets, liabilities, finances, rights and obligations of the provincial public entity contemplated in section 9 are not affected by its change of name.

(5) A person who was a member of the Western Cape Nature Conservation Board immediately before the commencement of this Act is regarded as having been appointed as a Board member of CapeNature for the unexpired portion of his or her term of office. 20

(6) The Chairperson of the Western Cape Nature Conservation Board immediately before the commencement of this Act is regarded as having been appointed as the Chairperson of CapeNature for the unexpired portion of his or her term of office.

(7) All persons employed by the Western Cape Nature Conservation Board are regarded as having been appointed in terms of section 27(4)(f) as members of staff of CapeNature subject to the same conditions of service which applied to them immediately before the repeal of the Western Cape Nature Conservation Board Act. 25

(8) Subsection (7) does not affect pension, leave and other benefits which accrued to employees contemplated in that subsection before the repeal of the Western Cape Nature Conservation Board Act. 30

(9) An area which was established as a nature reserve in terms of section 6, 7 or 12 of the Ordinance at any time before the commencement of this Act and which is regarded—

(a) in terms of section 23(5) of the Protected Areas Act as having been declared as a nature reserve in terms of section 23 of that Act, continues in existence as a nature reserve in terms of that Act; or 35

(b) in terms of section 28(7) of the Protected Areas Act as having been declared as a protected environment in terms of section 28 of that Act, continues in existence as a protected environment in terms of that Act. 40

Short title and commencement

89. This Act is called the Western Cape Biodiversity Act, 2021, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

SCHEDULE: REPEAL OF LAWS

Number and year	Title	Extent of repeal
21 of 1935	Sea Shore Act, 1935	The whole
63 of 1970	Mountain Catchment Areas Act, 1970	The whole in so far as it has been assigned to the Province by Proclamation R28 of 1995
19 of 1974	Nature Conservation Ordinance, 1974	The whole
3 of 1982	Nature Reserves Validation Ordinance, 1982	The whole
15 of 1998	Western Cape Nature Conservation Board Act, 1998	The whole
8 of 1999	Western Cape Nature and Environmental Conservation Ordinance Amendment Act, 1999	The whole
3 of 2000	Western Cape Nature Conservation Laws Amendment Act, 2000	The whole, excluding section 2 and Schedule 2
6 of 2011	Western Cape Biosphere Reserves Act, 2011	The whole