

REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENTAL MANAGEMENT LAWS FIRST AMENDMENT BILL

*(As presented by the Portfolio Committee on Water and Environmental Affairs
(National Assembly), after consideration of the National Environmental Management Laws
Amendment Bill [B 13—2012])
(The English text is the official text of the Bill)*

(MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS)

[B 13B—2012]

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[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

To amend the—

- **National Environmental Management: Biodiversity Act, 2004**, so as to amend certain definitions and to define certain words and expressions; to revise the objectives of the Act to emphasise the need to protect the ecosystem as a whole, including species which are not targeted for exploitation; to revise the purpose of Chapter 4 to provide for the regulation of threatened and indigenous species to ensure that the utilisation of these species are done in an ecologically sustainable manner; to effect certain textual amendments to the provisions on protection of species; to address some of the regulatory gaps within the permitting system; to facilitate the implementation of self-administration; to extend the functions of the scientific authority to include assisting with species to which an international agreement regulating international trade applies; to revise the purpose and application of Chapter 6; to revise the provisions on the Bioprospecting Fund; to insert a provision to allow for the domestic or subsistence use of indigenous biological resources; to repeal the appeal provisions; to provide for circumstances under which a permit application or permit may be deferred, refused, cancelled or suspended; to extend the powers of the Minister to make regulations; to add offences and penalties; and to provide for Minister to declare amnesty in certain circumstances;
- **National Environmental Management: Air Quality Act, 2004**, so as to align the penalties with other specific environmental management Acts;
- **National Environmental Management: Waste Act, 2008**, so as to provide for textual amendment to the definition of waste;
- **National Environment Management Laws Amendment Act, 2008**, so as to correct an incorrect citation; and
- **National Environmental Management: Protected Areas Amendment Act, 2009**, so as to correct an incorrect citation,

and to provide for matters connected therewith.

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

Amendment of section 1 of Act 10 of 2004, as amended by section 29 of Act 14 of 2009

1. Section 1 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the insertion after the definition of “biological diversity” or “biodiversity” of the following definition:
 - “**‘biodiversity sector’** means any sector or sub-sector that carries out restricted activities involving biodiversity resources, whether for commercial or for conservation purposes;”;
- (b) by the deletion in the definition of “bioprospecting” of the word “or” at the end of paragraph (b), the insertion in that definition of the word “or” at the end of paragraph (c) and the addition to that definition of the following paragraph:
 - “(d) the trading in and exporting of indigenous biological resources in order to develop and produce products, such as drugs, industrial enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours, extracts and essential oils;”;
- (c) by the insertion after the definition of “Board” of the following definition:
 - “**‘commercial exploitation’**, means the engaging in any bioprospecting activity with the intention of making a profit;”;
- (d) by the substitution for the definition of “commercialisation” of the following definition:
 - “**‘commercialisation’**, in relation to indigenous biological resources, includes the following activities:
 - (a) the filing of any complete intellectual property application, whether in South Africa or elsewhere;
 - (b) obtaining or transferring any intellectual property rights or other rights;
 - (c) commencing **[clinical trials and]** product development, including the conducting of market research and seeking pre-market approval for the sale of resulting products; **[or]**
 - (d) the multiplication of indigenous biological resources through cultivation, propagation, cloning or other means to develop and produce products, such as drugs, industrial enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours **[and]**, extracts and essential oils;
 - (e) trading in and exporting of indigenous biological resources to develop and produce products, such as drugs, industry enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours, extracts and essential oils; and
 - (f) commercial exploitation;”;
- (e) by the substitution for the definition of “competent authority” of the following definition:
 - “**‘competent authority’**, in relation to the control of an alien or invasive species, means—
 - (a) the Minister;
 - (b) the MEC; or
 - [(b)](c)** an organ of state in the national, provincial or local sphere of government **[designated by regulation]** delegated as a competent authority for the control of an alien species or a listed invasive species in terms of **[this Act]** section 42 of the National Environmental Management Act, 1998; **[or**
 - (c) any other organ of state;]**”;
- (f) by the substitution for the definition of “delegation” of the following definition:
 - “**‘delegation’**, in relation to a duty, includes an instruction to **perform the duty** has the meaning assigned to it in section 1 of the National Environmental Management Act, 1998;”;

- (g) by the substitution for the definition of “Department” of the following definition:
 “**‘Department’** means the national Department **[of Environmental Affairs and Tourism]** responsible for environmental affairs;”;
- (h) by the substitution for the definition of “derivative” of the following definition: 5
 “**‘derivative’**, in relation to an animal, plant or other organism, means any part, tissue or extract[,] of an animal, plant or other organism, whether fresh, preserved or processed, and includes any genetic material or chemical compound derived from such part, tissue or extract;”; 10
- (i) by the substitution for paragraph (b) of the definition of “genetic resource” of the following paragraph:
 “(b) the genetic potential **[or]** characteristics or information of any species;”;
- (j) by the substitution for the definition of “issuing authority” of the following definition: 15
 “**‘issuing authority’**, in relation to a **[permits]** a permit or registration regulating **[the matters]** a matter mentioned in section 87, means—
 (a) the Minister; **[or]**
 (b) the MEC; or 20
 [(b)](c) an organ of state in the national, provincial or local sphere of government **[designated by regulation in terms of section 97]** delegated in terms of section 42 of the National Environmental Management Act, 1998 or assigned in terms of section 41 of the National Environmental Management Act, 1998 as an issuing 25
 authority for **[permits]** a permit or registration of the kind in question; “; and
- (k) by the insertion after the definition of “restricted activity” of the following definition:
 “**‘self-administration’** means the introduction of measures to facilitate 30
 compliance with provisions of the Act and standards set by associations or organisations recognised through the system contemplated in terms of section 59(f) of the Act, but excludes measures that relate to the issuance of permits in terms of Chapter 7 or functions of environmental management inspectors;”. 35

Amendment of section 51 of Act 10 of 2004

2. Section 2 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the insertion in paragraph (a) after subsection (1) of the following subparagraph:

- “(iA) the need to protect the ecosystem as a whole, including species which are not targeted for exploitation;”. 40

Amendment of section 51 of Act 10 of 2004

3. Section 51 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the deletion of the word “and” at the end of paragraph (c), the insertion of the word “and” at the end of paragraph (d) and the addition of the following paragraph: 45

- “(e) provide for the regulation of threatened or protected indigenous species to ensure that the utilisation of these species is managed in an ecologically sustainable manner.”.

Amendment of section 56 of Act 10 of 2004

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4. Section 56 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (d) of the following paragraph:
 “(d) protected species, being any species which are of **[such]** high 55
 conservation value or national importance **[that they require national protection, although they are not listed in terms of**

paragraph (a), (b) or (c)] or require regulation in order to ensure that the species are managed in an ecologically sustainable manner."; and

- (b) by the insertion after subsection (1) of the following subsections:

"(1A) The Minister may further categorise within the different categories of species listed in subsection (1)(a) to (d) when compiling the lists referred to in subsection (1). 5

(1B) The notice contemplated in subsection (1) may apply generally throughout the Republic or a province, as the case may be, or only in a specified area or category of areas." 10

Amendment of section 57 of Act 10 of 2004, as amended by section 35 of Act 14 of 2009

5. Section 57 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution for the heading of the following heading: 15

"Restricted activities involving listed threatened or protected species and species to which an international agreement regulating international trade applies";

- (b) by the insertion after subsection (1) of the following subsection:

"(1A) A person may not import, export, re-export or introduce from the sea, a specimen of a species listed in terms of the Convention on International Trade in Endangered Species of Wild Fauna and Flora without a permit issued in terms of Chapter 7." 20

- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following for the words: 25

"The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, prohibit the carrying out of any activity—";

- (d) by the substitution for subsection (3) of the following subsection:

"(3) [Subsection] Subsections (1) [does] and (1A) do not apply in respect of a specimen of a listed threatened or protected species or a species to which an international agreement regulating international trade applies conveyed from outside the Republic in transit through the Republic to a destination outside the Republic, provided that such transit through the Republic takes place **[under the control of an environmental management inspector]** with the required original documentation from the country of origin accompanying the shipment." 30 35

- (e) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 40

"(a) The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, exempt a person or category of persons from a restriction contemplated in subsection (1) or (1A)." 45

- (f) by the addition of the following subsections:

"(5) A notice in terms of subsection (2) or (4) may— 50

- (a) apply generally—

- (i) throughout the Republic or a province, as the case may be, or only in a specified area or specified category of areas;
- (ii) to all persons or only to a specified category of persons;
- (iii) to all species or only to a specified species or specified category of species; or

- (b) differentiate between—

- (i) areas or categories of areas;
- (ii) persons or categories of persons; or
- (iii) species or categories of species." 55

Substitution of section 58 of Act 10 of 2004, as substituted by section 36 of Act 14 of 2009

6. The following section is hereby substituted for section 58 of the National Environmental Management: Biodiversity Act, 2004:

“Amendment of notices

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58. The Minister may by notice in the *Gazette* amend or repeal any notice published in terms of section 56(1), [56(2)] or 57(2) or (4).”.

Amendment of section 59 of Act 10 of 2004

7. Section 59 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

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(a) by the deletion of the word “and” at the end of paragraph (e) and the substitution for paragraph (f) of the following paragraph:

“(f) may prescribe a system and the requirements for the compulsory or voluntary registration of persons, institutions, ranching operations, game farms, nurseries, captive breeding or keeping operations and other facilities or operations, and the recognition of associations relating to these persons, operations or facilities; and”;

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(b) by the addition of the following paragraph:

“(g) may prescribe a system and the requirements for the compulsory registration of professional hunters, hunting outfitters and trainers in the hunting industry.”.

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Amendment of section 60 of Act 10 of 2004

8. Section 60 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister must establish a scientific authority for the purpose of assisting in regulating and restricting the trade in specimens of listed threatened or protected species and species to which an international agreement regulating international trade applies.”.

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Substitution to section 61 of Act 10 of 2004

9. Section 61 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

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“(d) make non-detriment findings on the impact of actions relating to the international trade in specimens of listed threatened or protected species and species to which an international agreement regulating international trade applies, and must submit those findings to the Minister;”.

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Substitution of section 62 of Act 10 of 2004

10. The following section is hereby substituted for section 62 of the National Environmental Management: Biodiversity Act, 2004:

“Annual non-detriment findings

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62. (1) The [scientific authority] Minister must, by notice in the *Gazette*, publish [in the *Gazette*] any [annual] non-detriment findings made by the scientific authority on trade in specimens of listed threatened or protected species and species to which an international agreement regulating international trade applies, in accordance with [an] the requirements of the international agreement regulating international trade [in specimens of listed threatened or protected species which is] that are binding on the Republic.

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

(3) Before publishing a notice in terms of subsection (1), the Minister must publish any non-detriment findings made by the scientific authority in the *Gazette*, inviting members of the public to submit to the scientific authority, within 30 days of publication in the *Gazette*, written scientific information relating to the non-detriment findings.”. 5

Insertion of section 62A in Act 10 of 2004

11. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 62: 10

“Amendment of notices

62A. The Minister may by notice in the *Gazette* amend or repeal a notice published in terms of section 62(1).”.

Amendment of section 63 of Act 10 of 2004 15

12. Section 63 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Before publishing a notice in terms of section 52(1), 53(1), 56(1) [or], 57(2) or 57(4), or amending or repealing such a notice in terms of section 55 or 58, the Minister must follow a consultative process in accordance with sections 99 and 100.”. 20

Amendment of section 66 of Act 10 of 2004

13. Section 66 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 25

“(1) The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, exempt [from the provisions of section 65]—

- (a) any alien species specified in the notice; [or]
- (b) any alien species of a category specified in the notice; or 30
- (c) any person, from the provisions of section 65.”; and

(b) by the addition of the following subsection:

“(4) The notice in terms of subsection (1) may—

- (a) apply generally— 35
 - (i) throughout the Republic or a province, as the case may be, or only in a specified area or a specified category of areas;
 - (ii) to all persons or only to a specified category of persons;
 - (iii) to all species or only to a specified species or specified category of species; or 40
- (b) differentiate between—
 - (i) areas or categories of areas;
 - (ii) persons or categories of persons; or
 - (iii) species or categories of species.”. 45

Amendment of section 70 of Act 10 of 2004 45

14. Section 70 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the addition of the following subsection:

“(4) A notice in terms of subsection (1) may—

- (a) apply generally— 50
 - (i) throughout the Republic or a province, as the case may be, or only in a specified area or a specified category of areas;
 - (ii) to all persons or only to a specified category of persons;

- (iii) to all species or only to a specified species or a specified category of species; or
- (b) differentiate between—
 - (i) areas or categories of areas;
 - (ii) persons or categories of persons; or
 - (iii) species or categories of species.”.

Amendment of section 71 of Act 10 of 2004

15. Section 71 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the addition of the following subsections:

- “(3) The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, exempt a person from a restriction contemplated in subsection (1) or (2). 10
- (4) A notice in terms of subsection (3) may—
- (a) apply generally—
 - (i) throughout the Republic or a province, as the case may be, or only in a specified area or a specified category of areas; 15
 - (ii) to all persons or only to a specified category of persons;
 - (iii) to all species or only to a specified species or a specified category of species; or
- (b) differentiate between— 20
 - (i) areas or categories of areas;
 - (ii) persons or categories of persons; or
 - (iii) species or categories of species.”.

Insertion of section 71A in Act 10 of 2004

16. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 71: 25

“Prohibitions

- 71A.** (1) The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, specify a specimen of a listed invasive species for which a permit to carry out a restricted activity may not be issued in terms of Chapter 7. 30
- (2) The notice in terms of subsection (1) may—
- (a) apply generally—
 - (i) throughout the Republic or a province, as the case may be, or only in a specified area or a specified category of areas; 35
 - (ii) to all persons or only to a specified category of persons;
 - (iii) to all species or only to a specified species or a specified category of species; or
 - (b) differentiate between—
 - (i) areas or categories of areas; 40
 - (ii) persons or categories of persons; or
 - (iii) species or categories of species.”.

Substitution of section 72 of Act 10 of 2004

17. The following section is hereby substituted for section 72 of the National Environmental Management: Biodiversity Act, 2004: 45

“Amendment of notices

- 72.** (1) The Minister may, by notice in the *Gazette*, amend or repeal any notice published in terms of section 70(1)(a), 71(3) or 71A(1). 50
- (2) The MEC may, by notice in the *Gazette*, amend or repeal any notice published in terms of section 70(1)(b).”.

Amendment of section 79 of Act 10 of 2004

18. Section 79 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Before publishing a notice in terms of section 66(1), 67(1) ~~[or], 70(1), 71(3) or 71A(1)~~, or amending or repealing such a notice in terms of section 68 or 72, the Minister must follow a consultative process in accordance with sections 99 and 100.”.

Amendment of section 80 of Act 10 of 2004

19. Section 80 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The purpose of this Chapter is—

- (a) to regulate bioprospecting involving indigenous genetic and biological resources;
- (b) to regulate the export from the Republic of indigenous genetic and biological resources for the purpose of bioprospecting or any other kind of research; **[and]**
- (c) to provide for a fair and equitable sharing by stakeholders in benefits arising from bioprospecting involving indigenous genetic and biological resources; and
- (d) to ensure that the nation’s indigenous genetic and biological resources are developed and utilized in an ecologically sustainable manner while promoting social and economic development, in particular in the areas where the indigenous genetic or biological resources and associated traditional knowledge is accessed.”.

Substitution of section 85 of Act 10 of 2004, as amended by section 41 of Act 14 of 2009

20. The following section is hereby substituted for section 85 of the National Environmental Management: Biodiversity Act, 2004:

“Establishment of Bioprospecting Fund

85. (1) There is hereby established a fund to be known as the Bioprospecting Fund.

(2) The Bioprospecting Fund must be credited with all money arising from benefit-sharing agreements and material transfer agreements, and which is due to stakeholders.

(3) The money in the Bioprospecting Fund must be utilised for all payments to, or for the benefit of, stakeholders.

(4) The Director-General is the accounting officer of the Bioprospecting Fund in terms of the Public Finance Management Act, 1999.

(5) Notwithstanding subsection (2), where a stakeholder, in terms of a benefit-sharing agreement and material transfer agreement, has a bank account, all money arising from benefit-sharing agreement and material transfer agreement may be transferred directly to the bank account of the stakeholder, and proof of transfer of the monetary benefits arising from such agreement must be submitted to the Department by the permit holder within 30 days after such transfer.”.

Amendment of section 86 of Act 10 of 2004, as amended by section 42 of Act 14 of 2009

21. Section 86 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

(a) by the deletion in subsection (1) of the word “or” at the end of paragraph (a), the deletion in that subsection of the word “and” at the end of paragraph (b) and the insertion in that subsection after paragraph (b) of the following paragraphs:

- “(bA) declare that this Chapter does not apply to the activity of collection, use, propagation cultivation or trade of indigenous biological resources for domestic use or subsistence purposes; or
 (bB) declare that the benefit sharing agreements and material transfer agreements contemplated in section 83 and 84 do not apply to certain categories of commercial or industrial exploitation of indigenous biological resources.”; 5
- (b) by the deletion in subsection (1) of paragraph (c);
- (c) by the insertion after subsection (1) of the following subsection:
 “(1A) The Minister may amend or withdraw any notice referred to in subsection (1).”; and 10
- (d) by the substitution for subsection (2) of the following subsection:
 “(2) Before publishing a notice in terms of subsection (1), or amending or repealing such a notice in terms of subsection (1A), the Minister must follow a consultative process in accordance with sections 99 and 100.”. 15

Amendment of section 87 of the Act 10 of 2004

22. Section 87 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the deletion of the word “or” at the end of paragraph (c), the insertion of the word “or” at the end of paragraph (d) and the insertion after paragraph (d) of the following paragraph: 20

- “(e) the import, export, re-export or introduction from the sea, of a specimen of a species listed in terms of the international agreement referred to in section 57(1A).”.

Amendment of section 88 of the Act 10 of 2004

23. Section 88 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the deletion in subsection (2) of the word “or” at the end of paragraph (c), the insertion in that subsection of the word “or” at the end of paragraph (d) and the addition of the following paragraph: 25

- “(e) defer a decision to issue a permit if the applicant is under investigation for the contravention or failure to comply with any provision of this Act, until such time that the investigation is concluded and— 30
- (i) no prosecution in respect of such contravention or failure is instituted against the applicant concerned;
 - (ii) the applicant concerned is acquitted or found not guilty, if a prosecution in respect of such contravention or failure has been instituted; or 35
 - (iii) the applicant concerned has been convicted by a court of law of an offence in respect of such contravention or failure and the applicant has in respect of the conviction exhausted all the recognised legal proceedings pertaining to appeal or review.”. 40

Insertion of section 92A in Act 10 of 2004

24. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 92:

“Refusal of permits

- 92A.** (1) An issuing authority may refuse a permit— 45
- (a) if the carrying out of the restricted activity is likely to have a negative impact on the survival of the listed threatened or protected species;
 - (b) if the applicant has been convicted of an offence in terms of this Act; or
 - (c) in accordance with a ground for refusal contemplated in any regulation. 50
- (2) The Minister may from time to time issue directives, which are binding on the issuing authority, to ensure the effective implementation of subsection (1).”.

Amendment of section 93 of Act 10 of 2004

25. Section 93 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the deletion of the word “or” at the end of paragraph (a) and the addition of the following paragraphs:
 - “(c) the applicant or permit holder has been convicted of an offence in terms of this Act; or
 - (d) the carrying out of the restricted activity has a detrimental impact on the species.”; and
- (b) by the addition of the following subsection, the existing section becoming subsection (1):
 - “(2) An issuing authority may recover any reasonable costs incurred by that authority and necessitated by the cancellation of the permit, from the permit holder.”

Insertion of section 93B in Act 10 of 2004

26. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 93A:

“Suspension of permits

- 93B.** (1) An issuing authority which issued a permit may suspend the permit if—
- (a) the carrying out of the restricted activity is likely to have a negative impact on the survival of the listed threatened or protected species; or
 - (b) the permit holder is under investigation for the contravention of or failure to comply with any provision of this Act or any condition of the permit.
- (2) An issuing authority may recover any reasonable costs, incurred by that authority and necessitated by the suspension of the permit, from the permit holder.”.

Repeal of section 94 of Act 10 of 2004

27. Section 94 of the National Environmental Management: Biodiversity Act, 2004, is hereby repealed.

Repeal of section 95 of Act 10 of 2004

28. Section 95 of the National Environmental Management: Biodiversity Act, 2004, is hereby repealed.

Repeal of section 96 of Act 10 of 2004

29. Section 96 of the National Environmental Management: Biodiversity Act, 2004, is hereby repealed.

Amendment of section 97 of Act 10 of 2004, as amended by section 45 of Act 14 of 2009

30. Section 97 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the deletion in subsection (1)(b) of subparagraph (i);
- (b) by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph:
 - “(iv) the facilitation of the implementation and enforcement of sections 57(1), 57(1A) or any notice published in terms of section 57(2);”;
- (c) by the insertion in subsection (1)(b) after subparagraph (iii) of the following subparagraph:
 - “(iiiA) the circumstances in which restricted activities involving threatened or protected species may not be carried out;”;

- (d) by the substitution in subsection (1)(b) for subparagraph (viii) of the following subparagraph: 5
- “(viii) the ecologically sustainable utilization of biodiversity[; **or**], including—
- (aa) limiting the number of permits for a restricted activity;
- (bb) qualifications or requirements necessary for the undertaking of a restricted activity;
- (cc) criteria for the equitable allocation of permits for a restricted activity;”;
- (e) by the addition to subsection (1)(b) of the following subparagraphs: 10
- “(x) the duty of care in respect of threatened or protected species;
- (xi) the management of threatened or protected species that cause damage;
- (xii) the collection of samples for genetic analyses;”;
- (f) by the deletion in subsection (1)(c) of subparagraphs (i) and (ii); 15
- (g) by the insertion in subsection 1(c) after subparagraph (ii) of the following subparagraph:
- “(iiA) the circumstances under which a restricted activity involving alien species or listed invasive species, may not be carried out;”;
- (h) by the substitution in subsection (1)(c) for subparagraphs (v) and (vi) of the following subparagraphs, respectively: 20
- “(v) the assessment of risks and potential impacts on biodiversity of restricted activities involving specimens of alien species or of listed invasive species; **[and]**
- (vi) the control and eradication of **[listed]** invasive species; and”;
- (i) by the addition to subsection (1)(c) of the following subparagraph: 25
- “(vii) the coordination and implementation of programmes for the prevention, control or eradication of invasive species;”;
- (j) by the insertion in subsection (1) after paragraph (d) of the following paragraph: 30
- “(dA) a system and requirements for the compulsory or voluntary registration of persons, institutions, ranching operations, game farms, nurseries, captive breeding or keeping operations and other facilities or operations;”;
- (k) by the deletion in subsection (1)(e) of subparagraph (i); 35
- (l) by the substitution in subsection (1)(e) for subparagraph (iv) of the following subparagraph:
- “(iv) the administration of the Bioprospecting **[Trust]** Fund;”;
- (m) by the substitution in subsection 1(f) for subparagraph (i) of the following subparagraph: 40
- “(i) the conditions subject to which issuing authorities may issue, renew or amend permits or registrations in terms of this Act;”;
- (n) by the substitution in subsection 1(f) for subparagraph (ii) of the following subparagraph:
- “(ii) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of applications **[for permits]** and issuance of permits or registrations;”;
- (o) by the insertion in subsection (1)(f) after subparagraph (ii) of the following subparagraph:
- “(iiA) the procedure to be followed and the fees to be paid in connection with the marking of specimens;”;
- (p) by the insertion in subsection (1)(f) after subparagraph (vii) of the following subparagraphs: 50
- “(viiA) timeframes for the consideration and issuance of a permit or registration by an issuing authority;
- (viiB) the conducting and evaluation of a risk assessment;”;
- (q) by the insertion in subsection (1)(f) after subparagraph (viii) of the following subparagraph: 55
- “(viiiA) the different types of permits that may be issued in terms of this Act;”;
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- (r) by the substitution in subsection 1(f) for subparagraph (ix) of the following subparagraph:
 - “(ix) the categories, form and contents of permits and the geographical area where permits apply;”;
- (s) by the insertion in subsection 1(f) after subparagraph (xi) of the following subparagraph:
 - “(xiA) the circumstances or conditions under which permits or registrations may be amended, refused or cancelled;”;
- (t) by the substitution in subsection 1(f) for subparagraphs (xiii), (xiv) and (xv) of the following subparagraphs:
 - “(xiii) the period of validity of [permits] a permit or registration;
 - “(xiv) the transferability of [permits] a permit or registration;
 - “(xv) the duties and reporting requirements of issuing authorities, [of the] permit holders and registration holders;”;
- (u) by the deletion in subsection (1)(f) of subparagraph (xvi);
- (v) by the insertion in subsection (1) after paragraph (f) of the following paragraph:
 - “(fA) self-administration within the biodiversity sector and the recognition of associations relating to persons, operations or facilities contemplated in section 59 of the Act;”.
- (w) by the deletion of the word “and” at the end of paragraph (g);
- (x) by the substitution of paragraph (h) for the following paragraph:
 - “(h) any other matter that may be necessary to facilitate the implementation of this Act[.]; and”;
- (y) by the addition of the following paragraph:
 - “(i) any matter that is necessary or expedient to achieve the objectives of the Act.”;
- (z) by the insertion after subsection (3) of the following subsection:
 - “(3A) Any regulation made in terms of this Act must be submitted to Parliament 30 days prior to the publication of the regulations in the Gazette.”.

Amendment of section 98 of Act 10 of 2004

31. Section 98 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution in subsection (1)(b) for subparagraph (iv) of the following subparagraph:
 - “(iv) generally with respect to all permits [or appeals] or only to a specified category of permits [or appeals]; or”;
- (b) by the substitution in subsection (1)(c) for subparagraph (iv) of the following subparagraph:
 - “(iv) categories of permits [or appeals].”;
- (c) by the addition of the following subsection:
 - “(3) Regulations made in terms of section 97 may differentiate between the penalties for the contravention of the different provisions thereof, but the maximum penalty may not exceed the penalty provided for in subsection (2).”.

Amendment of section 101 of Act 10 of 2004

32. Section 101 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 - “(a) section 57(1), 57(1A), 65(1), 67(2), 71(1) [or], 81(1) or 81A(1);”;
 - and
- (b) by the insertion in subsection (2) of the word “or” at the end of paragraph (a), the deletion in that subsection of the word “or” at the end of paragraph (b) and the deletion in that subsection of paragraph (c).

- (c) by the deletion in subsection (3) of the word “or” at the end of paragraph (c), the insertion in that subsection of the word “or” at the end of paragraph (d) and the addition to that subsection of the following paragraph:
“(e) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of subsection (1) or (2).”.

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Amendment of section 102 of Act 10 of 2004, as amended by section 47 of Act 14 of 2009

33. Section 102 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:

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“(2) If a person is convicted of an offence involving a specimen of a listed threatened or protected species, or an alien species or commencing the commercialisation phase of bioprospecting without a permit issued in terms of Chapter 7, a fine may be determined, either in terms of subsection (1) or equal to three times the commercial value of the specimen or activity in respect of which the offence was committed, whichever is the greater.”; and

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- (b) by the insertion after subsection (2) of the following subsection:

“(2A) If a person is convicted of an offence involving a specimen of a listed invasive species, a fine may be determined, either in terms of subsection (1) or equal to the estimated cost associated with the control of the specimen in respect of which the offence was committed or both.”.

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Insertion of sections 105A and 105B in Act 10 of 2004

34. The following sections are hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 105:

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“Emergency incidents

105A. (1) The Minister may, by notice in the *Gazette*, declare an emergency intervention for the purpose of the control or eradication of an alien species or a listed invasive species if that alien species or listed invasive species constitutes a significant threat to the environment.

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(2) A notice contemplated in subsection (1) must—

- (a) list the species to which the emergency intervention relates;
 (b) indicate the reasons for the intervention; and
 (c) provide the details relating to the intervention.

Amnesty

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105B. (1) In this section, ‘amnesty’ means indemnity against prosecution for the—

- (a) carrying out of a restricted activity involving specimens of listed threatened or protected species in terms of section 57(1), alien species in terms of section 65(1) or listed invasive species in terms of section 71(1); or
 (b) engagement in the commercialisation phase of bioprospecting, without a permit issued in terms of Chapter 7.

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(2) The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may determine in the notice, declare a period of amnesty to facilitate compliance with the provisions of the Act.

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(3) A notice contemplated in subsection (2) must specify—

- (a) the person or category of persons to whom the amnesty applies;
 (b) the species to which the amnesty applies;
 (c) the restricted activity to which the amnesty applies;
 (d) the period during which a person must apply for a permit; and
 (e) the period for which the amnesty applies.”.

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Substitution of certain words in Act 10 of 2004

35. The National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution for the words “designation” or “designated”, whenever it occurs, of the words “assignment” or “delegation”, except in sections 13(1)(b) and 100.

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Amendment of Table of Contents of Act 10 of 2004

36. The Table of Contents of the National Environmental Management: Biodiversity Act, 2004 is hereby amended—

- (a) by the insertion after item 62 of the following item:
“62A. Amendment of notices”; 10
- (b) by the insertion after section 71 of the following item:
“71A. Prohibitions”; 10
- (c) by the insertion after section 92 of the following items:
“92A. Refusal of permits”; 10
- (d) by the insertion after section 93A of the following item:
“93B. Suspension of permits”; 15
- (e) by the deletion of items 94, 95 and 96; and
- (f) by the insertion after section 105 of the following items:
“105A. Emergency incidents
105B. Amnesty”. 20

Amendment of section 55 of Act 39 of 2004

37. Section 55 of the National Environmental Management: Air Quality Act, 2004, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) Regulations made in terms of this Act may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable [on conviction to— 25
- (a) imprisonment for a period not exceeding five years;
- (b) an appropriate fine; or
- (c) both a fine and imprisonment] in the case of a first conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years 30
- and in the case of a second or subsequent conviction to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years and in respect of both instances to both such fine and such imprisonment.”.

Amendment of section 1 of Act 59 of 2008

38. Section 1 of the National Environmental Management: Waste Act, 2008, is hereby amended— 35

- (a) by the substitution for the definition of “waste” of the following definition:
“ ‘Waste’ means that any substance, whether or not that substance can be reduced, re-used, recycled [and] or recovered— 40
- (a) that is surplus, unwanted, rejected, discarded, abandoned or disposed of; 40
- (b) which the generator has no further use of for the purposes of production;
- (c) that must be treated or disposed of; or
- (d) that is identified as a waste by the Minister by notice in the *Gazette*; 45
- and includes waste generated by the mining, medical or other sector, but—
- (i) a by-product is not considered waste; and
- (ii) any portion of waste, once re-used, recycled and recovered, ceases to be waste;”; 50

Substitution of section 51 of Act 14 of 2009

39. The following section is hereby substituted for section 51 of the National Environment Management Laws Amendment Act, 2009:

“Short title and commencement

48. This Act is called the National Environmental Management Laws Amendment Act, [2008] 2009 and comes into effect on a date fixed by the President by proclamation in the *Gazette*.”. 5

Substitution of section 7 of Act 15 of 2009

40. The following section is hereby substituted for section 7 of the National Environmental Management: Protected Areas Amendment Act, 2009: 10

“Short title and commencement

[7]9. This Act is called the National Environmental Management: Protected Areas Amendment Act, 2009, and comes into effect on a date fixed by the President by proclamation in the *Gazette*.”.

Short title and commencement 15

41. This Act is called the National Environmental Management Laws First Amendment Act, 2012, and comes into effect on the date published by the President in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS FIRST AMENDMENT BILL, 2012

1. PURPOSE OF BILL

The purpose of the Bill is to amend certain provisions under the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004), the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), the National Environment Management Laws Amendment Act, 2009 (Act No. 14 of 2009) and the National Environment Management Laws Amendment Act, 2009 (Act No. 15 of 2009).

2. BACKGROUND

- 2.1 The National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) is the environmental framework legislation which provides for environmental management. Other specific environmental management Acts were promulgated to deal with specific mediums of the environment, namely the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (NEM: PAA), the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEM: BA), the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (NEM: AQA), the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (NEM: ICM) and the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (NEM: WA).
- 2.2 The Bill proposes amendments to certain provisions under the NEM: BA, and certain textual amendments to the National Environmental Management Laws Amendment Act, 2008 and National Environmental Management: Protected Areas Amendment Act, 2009. Most of the amendments were identified through the implementation of the legislation.

3. OBJECTS OF BILL

3.1. National Environmental Management: Biodiversity Act, 2004

Clause 1: Amendment of section 1 of Act 10 of 2004

Trade and export is integral to the process of bioprospecting. However, the bio-trading industry always contests that they are not regulated by NEM: BA because the biosprospecting activity of trade is not explicitly mentioned. The revision of the definition of “bio-prospecting”, “commercialization” as well as the inclusion of the definition of “commercial exploitation” will close a regulatory gap in regulating the bio-trading industry. The definitions of “competent authority” and “issuing authority” are also revised to include MEC’s with respect to the issuing of permits or registration under the Act. The section also inserts new definitions on “biodiversity sector” and “self-administration”.

The revision of the definition of “genetic resources” will give national effect to the obligations of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity.

Clause 2: Amendment of section 2

This amendment will ensure that the objectives of NEM: BA includes the need to protect the ecosystem as a whole (including species which are not targeted for exploitation).

Clause 3: Amendment of section 51

One of the objectives of NEM: BA is to provide for the use of indigenous biological resources in a sustainable manner, and the purpose of Chapter 4 is to make provision for, among others, the protection of species listed as threatened or protected and to “ensure that the utilisation of biodiversity is managed in an ecologically sustainable way.” However, the current provisions of section 51 appear not to clearly set out such intentions.

This amendment will clarify that the intention of Chapter 4 is also to ensure that the threatened or protected species (TOPS) are sustainably utilised. The inclusion of the proposed amendment in the purpose of the Chapter 4 will clarify such intention.

Clause 4: Amendment of section 56

Species listed as protected do not face the threat of extinction in the wild due to utilisation. However, many species that are commercially utilised (i.e. on game farms) are not of “national importance” or “high conservation value”, but the hunting of the species needs to be regulated to prevent over-utilisation; or translocation of the species also needs to be regulated to prevent hybridisation. In addition, species may be listed within the same category, because they have the same conservation status, but have attained that status for different reasons. Therefore, it is important to also regulate those species that are not of high conservation value in order to prevent the inclusion of such species in one of the threatened categories in future.

This amendment will provide the Minister with a legal mandate to regulate those species that are not of high conservation value in order to ensure that their utilisation in the ecosystem is sustainable.

Clause 5: Amendment of section 57

The current provisions of section 57 do not require a permit for species to which an international agreement regulating international trade applies. This amendment will ensure that permits are required for species to which an international agreement regulating international trade applies.

In addition, the current provisions of section 57(3) do not require that in transit shipments through the Republic of listed threatened or protected species are to be accompanied by the necessary documentation in line with the State party obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This amendment will also ensure that specimens in transit through the Republic are always accompanied by the necessary documentation.

Furthermore, the current provisions of section 57 do not allow the Minister to determine the conditions under which a person may be exempted from permit requirements with respect to the listed threatened or protected species restricted activities. This amendment will allow the Minister to exempt any person from the permit requirements subject to certain conditions. The amendment will also provide the Minister with a legal mandate to categorise, in respect of the threatened or protected species, when publishing notices in terms of sections 57(2) or 57(4).

Clause 6: Amendment of section 58

The amendment will correct the incorrect cross-reference to section 56(2) instead of section 57(2). This amendment will provide the Minister with a legal mandate to amend the notices published in terms of section 56(1), 57(2) or 57(4) of NEM: BA.

Clause 7: Amendment of section 59

The NEM: BA does not contain any provisions requiring the registration and recognition of persons, game farms, professional hunters, outfitters and trainers. This challenge manifests itself in the abuse of the permit process in that ruthless poachers pose as legal professional hunters and outfitters. The amendment will provide the Minister with a

legal mandate to prescribe a system and requirements for the compulsory or voluntary registration of persons and game farms as well as the recognition of associations relating to these persons operations or facilities.

This amendment will also provide the Minister with a legal mandate to prescribe a system for the registration and recognition of the professional hunters, outfitters and trainers in the hunting industry. This system can be utilised to monitor compliance of the professional hunters and outfitters through the professional bodies. The amendment is meant to address some of the regulatory gaps within the permitting system.

Clause 8: Amendment of section 60

The CITES requires the country's Scientific Authority to confirm that international trade in species, listed in the Appendices, will not be detrimental for the survival of the species in the wild. This international obligation had to be given effect through national legislation, of which the Threatened or Protected Species Regulations, 2007 (TOPS Regulations) were the first to be developed and implemented under NEM: BA. Although, the composition of the country's Scientific Authority is prescribed in the TOPS Regulations, the original intention with the establishment of the country Scientific Authority was to assist the Department in international trade of CITES-listed species.

This amendment will provide the scientific authority with a legal mandate in assisting the Department on the scientific work regarding the regulation of species to which an international agreement on international trade is applicable.

Clause 9: Amendment of section 61

The issuing of permits under NEM: BA may be refused based on non-detriment findings. These decisions may affect the existing rights of persons. Therefore, it is important that the non-detriment findings should be subjected to a public participation process in order for the members of the public to be informed about the issue that might affect them. The power to publish a notice in the *Gazette* is vested in the Minister and therefore it is important for the non-detriment findings to be submitted to the Minister for processing.

This amendment will provide clarity that the legal mandate of the scientific authority is to make recommendations to the Minister on non-detriment findings.

Clause 10: Amendment of section 62

The issuing of permits under NEM: BA may be refused based on non-detriment findings. These decisions may affect the existing rights of persons. Therefore, it is important that the non-detriment findings should be subjected to a public participation process in order for the members of the public to be informed about the issue that might affect them. The power to publish a notice in the *Gazette* is vested in the Minister and therefore it is important for the non-detriment findings to be submitted to the Minister for processing.

This amendment will provide the Minister with a legal mandate to publish the non-detriment findings in the *Gazette* on recommendations from the scientific authority. The amendment will also broaden the scope of the non-detriment findings to international agreement regulating international trade.

Clause 11: Insertion of section 62A

This is a new section. This amendment will provide the Minister with a legal mandate to amend or repeal a notice published in terms of section 62(1) of NEM: BA.

Clause 12: Amendment of section 63

This amendment is meant to ensure alignment with the proposed amendments to section 57 by requiring a public participation process. The amendment will require the Minister

to follow a public participation process when amending or repealing an exemption notice in terms of section 57(4).

Clause 13: Amendment of section 66

In some situations, it may be necessary for the Minister to exempt a person from the requirement of a permit or risk assessment with respect to alien species. These types of exemptions depend on each case presented to the Department. However, the current provisions of section 66 do not allow the Minister to deal with exemptions.

This amendment will allow the Minister to exempt any person from the permit or risk assessment requirements with respect to alien species (section 65(1) and (2)). The amendment will also provide the Minister with a legal mandate to categorise according to persons, areas or species when publishing the exemption notice in the *Gazette*. This amendment will prevent the repeated carrying out of risk assessments for the same species for the same activity.

Clause 14: Amendment of section 70

The current provisions do not allow the Minister to categorise within the list of invasive species notice published in terms of section 70(1). The categorisation is important when it comes to implementation.

The amendment will provide the Minister or MEC responsible for environmental affairs in a province with a legal mandate to categorise according to areas, persons or species when publishing the national or provincial list of invasive species.

Clause 15: Amendment of section 71

In some situations, it may be necessary for the Minister to exempt a person from the requirement of a permit or risk assessment with respect to listed invasive species. These types of exemptions depend on each case presented to the Department. However, the current provisions of section 71 do not allow the Minister to deal with such exemptions.

This amendment will provide the Minister with a legal mandate to exempt a person subject to certain conditions from permit and risks assessment requirements (section 71(1) or (2)). This amendment will also allow the Minister to categorise according to areas, persons or species when publishing the exemption notice in the *Gazette*.

Clause 16: Insertion of section 71A

This is a new section. The current provisions in NEM: BA do not allow the Minister to prevent the carrying out of certain restricted activities with respect to listed invasive species. The current challenge is that it is sometimes difficult to protect and conserve certain listed invasive species in certain areas of the country. This may be important for the survival of certain ecosystems.

This amendment will provide the Minister with a legal mandate to prohibit the carrying out of certain restricted activities involving certain listed invasive species. This amendment will also allow the Minister to categorise according to areas, persons or species when publishing the notice in the *Gazette*.

Clause 17: Amendment of section 72

The amendment is meant to ensure alignment with the proposed amendments to section 70, 71 and 71A by allowing the Minister and MEC to amend or repeal those notices. This amendment will provide the Minister with a legal mandate to amend or repeal any of the notices published in terms of sections 70(1)(a), 71(3), or 71A(1). The amendment will also provide the MEC with a legal mandate to amend or repeal the notice published in terms of section 70(1)(b). The amendment will ensure proper cross-referencing.

Clause 18: Amendment of section 79

The amendment is meant to ensure alignment with the proposed amendments to section 71 and 71A by requiring the Minister subject such notices to public participation process before implementation. This amendment will require notices to exempt or prohibit invasive species to be published for public comments before final publication in the *Gazette*.

Clause 19: Amendment of section 80

The current provisions of section 80 are not reflecting some of the country's international obligations with respect to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity. The Protocol requires the country to protect genetic and biological resources including genetic information when utilised for bioprospecting. This amendment will provide the Department with the legal mandate to ensure proper regulation of bioprospecting involving indigenous genetic and biological resources. The amendment will ensure the application of Chapter 6 to genetic resources.

In addition, the current provisions of Chapter 6 are not explicitly encouraging the sustainable use of indigenous plants, animals and associated traditional knowledge. The amendment will also support socio-economic development where indigenous plants, animals and associated traditional knowledge is accessed and utilised for bioprospecting.

Clause 20: Amendment of section 85

The current Biosprospecting Trust Fund is managed in accordance with the legal requirements of the Public Finance Management Act, 1999 (PFMA). A trust fund requires a trust deed, trustees and also has additional financial implications. The current provisions require all monetary benefits arising from benefit-sharing agreements and material transfer agreements to be paid into the Bioprospecting Trust Fund; however the Department only has a supervisory role in monitoring that the monetary benefits are paid into the relevant stakeholder's bank account. Monitoring of the payment of the monetary benefits can be done through reporting by the permit holder on the transfer of such monetary benefits.

Accordingly, the intention of this amendment is to change the current Bioprospecting Trust Fund to become a Bioprospecting Fund. The amendment will also ensure that the bioprospecting fund is managed in terms of the PFMA. Furthermore, the amendment will also expedite payment of monetary benefits arising from bioprospecting agreements to beneficiaries that have established bank accounts. Therefore, the proposed amendments will ensure that all relevant stakeholders are included within the bioprospecting legal regime.

Clause 21: Amendment of section 86

The current provisions of section 86 do not allow the Minister to exempt a person using indigenous resources for domestic use or subsistence purposes. The implications are that traditional healers and traders of medicinal plants must obtain a bioprospecting permit before collecting, using or cultivating indigenous resources. This is against the purpose and intention of NEM: BA of promoting sustainable utilisation of indigenous resources by communities. This amendment will provide the Minister with a legal mandate to exempt persons using indigenous biological resources for domestic use or subsistence purposes from the provisions of Chapter 6. This amendment will also provide the Minister with a legal mandate to exempt certain categories of commercial or industrial exploitation of indigenous biological resources from the provisions of sections 82 and 84 of NEM: BA (Benefit-sharing and Material transfer agreements).

Clause 22: Amendment of section 87

This amendment is meant to ensure alignment with the proposed amendments to section 57 by requiring that permits are required for species to which an international agreement

regulating international trade applies. This amendment will ensure that permits are required for species to which an international agreement regulating international trade applies.

Clause 23: Amendment of section 88

This amendment is meant to address some of the challenges on the permit system with respect to the hunting of listed threatened or protected species, alien species or listed invasive species. Currently the permit system is being abused by ruthless individuals or syndicates to obtain protected and vulnerable species. This amendment will provide the issuing authority with a legal mandate to defer a decision to issue a permit if the applicant is under investigation for contravening the NEM: BA in relation to a similar restricted activity. The decision will be deferred until such time that the investigation is finalised. The amendment will strengthen the implementation of legal requirements and administrative processes to limit the possible abuse of the permit system.

Clause 24: Insertion of section 92A

This amendment indicates the circumstances under which a permit in terms of NEM: BA can be refused.

Clause 25: Substitution of section 93

This amendment is meant to address some of the challenges on the permit system with respect to the hunting of listed threatened or protected species, alien species or listed invasive species. Currently the permit system is being abused by ruthless individuals or syndicates to obtain protected and vulnerable species. The amendment will provide the issuing authority with a legal mandate to cancel a permit issued in terms of this Act if the permit holder is found guilty of committing an offence or if the carrying out of the restricted activity has a detrimental impact on the species. The amendment will also allow the issuing authority to recover any reasonable costs, incurred and necessitated by the cancellation of the permit, from the permit holder. The amendment will strengthen the implementation of legal requirements and administrative processes to limit the possible abuse of the permit system.

Clause 26: Insertion of section 93B

This amendment is meant to address some of the challenges on the permit system with respect to the hunting of listed threatened or protected species, alien species or listed invasive species. Currently the permit system is being abused by ruthless individuals or syndicates to obtain protected and vulnerable species. This amendment will provide the issuing authority with a legal mandate to suspend a permit issued in terms of this Act if the suspension will assist in the sustainable use of the species or if the permit holder is under investigation for contravening any provisions of the Act or conditions of the permit. The amendment will also allow an issuing authority to recover any reasonable costs, incurred and necessitated by the suspension of the permit, from the permit holder. The amendment will strengthen the implementation of legal requirements and administrative processes to limit the possible abuse of the permit system.

Clause 27: Repeal of section 94

The current appeals provision appears to be misaligned with the appeals provision in section 43 of NEMA. The misalignment has caused some confusion amongst appellants with respect to the applicable provisions. This amendment will repeal the appeals provision under the NEM: BA and appeals under the NEM: BA will be processed in terms of section 43 of NEMA. The amendment will ensure a single and aligned appeal process under section 43 of NEMA for all appeals in terms of NEMA or other specific environmental management Act.

Clause 28: Repeal of section 95

The current appeals provision appears to be misaligned with the appeals provision in section 43 of NEMA. The misalignment has caused some confusion amongst appellants

with respect to the applicable provisions. This amendment will repeal the appeals provision under the Act and appeals under the Act will be processed in terms of section 43 of NEMA. The amendment will ensure a single and aligned appeal process under section 43 of NEMA for all appeals in terms of NEMA or other specific environmental management Act.

Clause 29: Repeal of section 96

The current appeals provision appears to be misaligned with the appeals provision in section 43 of NEMA. The misalignment has caused some confusion amongst appellants with respect to the applicable provisions. This amendment will repeal the appeals provision under the Act and appeals under the Act will be processed in terms of section 43 of NEMA. The amendment will ensure a single and aligned appeal process under section 43 of NEMA for all appeals in terms of NEMA or other specific environmental management Act.

Clause 30: Amendment of section 97

The current provisions do not allow the Minister to develop regulations on programmes to address invasive species, systems to register certain organisation that may assist the Department in the implementation of the NEM: BA. The amendment will provide the Minister with legal mandates, amongst others, to develop regulations on the duty of care relating to threatened or protected species; management of threatened or protected species that cause damage; to develop regulations on self-administration within the biodiversity sector; to control and eradicate invasive species; and on system for the registration and recognition of institutions, ranching operations, nurseries, captive breeding operations and other facilities. The amendment will also correct cross referencing within NEM: BA and repeal references to the repealed appeal provisions.

Clause 31: Amendment of section 98

This amendment will delete references to the repealed appeal provisions. The current provisions do not allow the Minister to specify different penalties for the different categories of species depending on their protection and vulnerability. Practically, the implementation is a challenge because the NEM: BA provides the species with different protection therefore the penalties should also be aligned with the protection afforded to the species. The amendment will also provide the Minister with a legal mandate to differentiate between the penalties for the contravention of the different provisions in the regulations made in terms of section 97 of NEM: BA.

Clause 32: Amendment of section 101

The current provisions do not make it an offence for any person engaging in bioprospecting discovery phase without proper notification to the Minister, and for any permit holders that allows someone to either contravene permit conditions or provisions of NEM: BA. Therefore, the Department is not able to fully enforce NEM: BA. This amendment will create offences for any person to engage in bioprospecting discovery phase without proper notification to the Minister as well as for any person to carry out a restricted activity, which has been prohibited, involving a listed invasive species. This amendment will further make it an offence for any person who is involved in an illegal restricted activity but who does not physically carry out the restricted activity. These amendments will ensure compliance by members of the public.

Clause 33: Amendment of section 102

Some of the large national and multinational industries are engaging in bioprospecting without the necessary permits. Because some of the current penalties are not deterrent enough to promote a culture of compliance with the NEM: BA. This amendment will ensure that heavy penalties are imposed against large national and multinational industries found guilty of bioprospecting related offences. The amendment will also ensure the imposition of a fine equivalent to the recovery costs associated with the control and eradication of invasive species.

Clause 34: Insertion of sections 105A and 105B

The current provisions of NEM: BA does not allow the Minister to declare certain areas for intervention with respect to addressing the challenges posed by alien species or listed invasive species. There are situations where alien species or listed invasive species may be a threat to a particular ecosystem and if no interventions are deployed to eradicate those species the ecosystem may be destroyed. The insertion of section 105A will provide the Minister with a legal mandate to declare an emergency intervention for the control or eradication of alien species or listed invasive species, if the Minister is satisfied that species constitutes a significant threat to the environment. The proposed section 105A will ensure that our environment is conserved for future generation.

Many persons are in possession of provincial permits but have not yet applied for permits in terms of NEM: BA. These persons may either not be aware of NEM: BA, or simply do not comply with NEM: BA, even though they have no intention of carrying out an illegal activity. The intention is to allow these persons to apply for permits, without the fear of being prosecuted for not having applied earlier. The insertion of section 105B will provide the Minister with a legal mandate to declare amnesty from prosecution for the purposes of facilitating compliance with the provisions of NEM: BA.

Clause 35: General amendment

This is a general amendment necessitated by the proposed amendment to the definitions of “competent authority” and “issuing authority”. This amendment will substitute the words “designation” or “designated” with the words “assignment” or “delegation” whenever it occurs in the NEM: BA.

Clause 36: Amendment of table of contents

This is a consequential amendment necessitated by the insertion and repeal of certain sections in the NEM: BA. This amendment will update the table of contents.

3.2. National Environmental Management: Air Quality Act, 2004

Clause 37: Amendment of section 55 of Act 39 of 2004

The current provision of section 55 is not in line with the penalties of other specific environmental management Act. The intention is to ensure that NEMA and other specific environmental management Act are aligned in most issues. This amendment will adjust penalties that may be imposed in terms of any regulations developed under the Act. The amendment will ensure that penalties are in line with penalties imposed in terms of other specific environmental management Act.

3.3. National Environmental Management: Waste Act, 2008

Clause 38: Amendment of section 1 of Act 59 of 2008

The current definition of “waste” contains a textual error with respect to the principles of waste management hierarchy. The amendment will ensure that the definition is in line with the principles of waste management hierarchy, namely, reduce, re-use, recycle or recover before disposal.

3.4. National Environment Management Laws Amendment Act, 2009

Clause 39: Amendment of Short title of Act 14 of 2008

This amendment will rectify the incorrect citation of the National Environmental Management Laws Amendment Act, 2009 (Act No. 14 of 2008).

3.5. National Environment Management Laws Amendment Act, 2009

Clause 40: Amendment of Short title of Act 15 of 2009

This amendment will rectify an incorrect section number in the National Environment Management Laws Amendment Act, 2009 (Act No. 15 of 2009).

4. DEPARTMENTS CONSULTED

The following national Departments were consulted:

- Agriculture;
- Forestry and Fisheries;
- Cooperative Governance and Traditional Affairs;
- Defence and Military Veterans;
- Energy;
- Health;
- Human Settlements;
- Labour;
- Mineral Resources;
- Rural Development and Land Reform;
- Trade and Industry;
- Transport and Water Affairs.

These Departments are identified in schedules 1 and 2 to NEMA as national Departments exercising functions which may affect the environment or that involve the management of the environment.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill does not create further financial liabilities to the State.

6. PARLIAMENTARY PROCEDURE

- 6.1. The State Law Advisers and the Department of Environmental Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within functional areas listed in Schedule 4 to the Constitution, namely “Environment” and “Nature Conservation”.
- 6.2. The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or custom of traditional communities.

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