

PROVINCIAL PARKS BOARD ACT, 2003 (EASTERN CAPE)

Act No. 12 of 2003

ACT

To provide for the establishment of Provincial Parks Board and the appointment of members thereof; to provide for the management of biodiversity in Provincial parks; and to provide for matters connected therewith.

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Definitions

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

“biological diversity” or “biodiversity” means the diversity of animals, plants or other organisms, including the diversity of animals, plants or other organisms found within and between—

- (a) ecosystems;
- (b) habitats;
- (c) the ecological complexes of which these systems and habitats are part; and
- (d) species;

“Board” means the Eastern Cape Provincial Parks Board which governs Provincial parks declared in terms of this Act;

“communal land” means—

- (a) state land which is historically occupied or used by a community and which at any time vested in—
 - (i) the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936);
 - (ii) the government of any area for which a legislative assembly was established in terms of the former so-called Self Governing Territories Constitution, 1971 (Act No. 21 of 1971); or
 - (iii) Republics of Transkei, Bophuthatswana, Venda and Ciskei;
- (b) state land that is historically occupied or used by a community on a communal basis, and which—
 - (i) was listed in the Schedules to the Black Land Act, 1913 (Act No. 27 of 1913);
 - (ii) was listed in the schedule of released areas in terms of the Development Trust and Land Act, 1936 (Act no. 18 of 1936);
- (c) land which has been purchased by a community, and is held in trust by the Minister for the community;
- (d) land which was acquired by or for a community, but was not registered in its name because of racially discriminatory laws and practices; and
- (e) other state land which has been occupied or used by the community on a beneficial occupation basis for a continuous period since 31 December 1992;
- (f) land as contemplated in section 3 of the KwaZulu — Natal Ingonyama Trust Act, No. 3KZ of 1994 as amended;
- (g) land transferred in terms of section 20 of the Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991);

“Constitution” means the Constitution of the Republic of South Africa, 1996(Act No. 108 of 1996);

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

“Department” means the Department responsible for environment in the Province;

“Executive Council” means the appointed in terms of section 132 of the Constitution;

“Gazette” means the Provincial Gazette of the Province;

“Head of department” means the head of the Department;

“indigenous species” means an animal, plant or other organism that occurs, or has historically occurred, naturally in a free state in nature within the borders of the Republic, but excludes an animal, plant or other organism that has been introduced through human intervention;

“local community” means any community of people living or having rights or interests in a distinct geographical area, and includes a traditional community;

“management” in relation to a Provincial park, includes control, protection, conservation, maintenance and rehabilitation of the area;

“management authority”, in relation to a Provincial park, means an authority to whom the management of a Provincial park has been assigned;

“MEC” means the member of the Executive Council responsible for environmental matters in the Province;

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

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

“national environmental management principles” means the principles contained in—

- (a) section 2 of the National Environmental Management Act;
- (b) national legislation governing coastal management; and
- (c) section 2 of the National Environmental Management: Marine Living Resources Act, 1998 (Act No. 18 of 1998);

“owner in relation to land, means the owner of land registered as such in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), and “own” or “ownership” has a corresponding meaning;

“prescribe” means prescribe by the MEC by regulation in Gazette;

“private land” includes communal land;

“protected area” means a protected area referred to in section 35;

“Province” means the Province of the Eastern Cape established by section 103 of the Constitution;

“Provincial Parks” means the Provincial parks declared in terms of section 33;

“regulation” means a regulation made by the MEC hereunder;

“species” means—

- (a) a kind of animal, plant or other organism, including any subspecies, cultivar, variety, geographic race, strain, hybrid or geographically separate population; or
- (b) a single animal, plant or other organism, including 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;

“subordinate legislation in relation to this Act, means—

- (a) any regulation made in terms of section 58;
- (b) any norms and standards published in terms of section 5; or
- (c) any notice published in the Gazette in terms of this Act;

“this Act” includes any subordinate legislation made hereunder;

“traditional community” means a community which—

- (a) lives in a distinct geographical area according to customary law and tradition;
- (b) has established rights or interests in the biological resources of the area; and
- (c) uses their knowledge, innovations, practices and technologies to exploit those resources;

“vessel” means any waterborne craft of any kind, whether self-propelled or not, but does not include any moored floating structure that is not used as a means of transporting anything by water.

Objectives of this Act

2. The objectives of this Act are—

- (a) to provide, within the framework of the National Environmental Management Act, for the declaration and management of Provincial parks;
- (b) to give effect to international agreements on protected areas which are binding on the Republic; and
- (c) to provide for co-operative governance in the declaration and management of Provincial parks;
- (d) to provide for the management of Provincial parks in accordance with the provisions of the Eastern Cape Environmental Conservation Act.

Application of this Act

3. This Act applies in the Province.

Application of National Environmental Management Act

4. This Act must be interpreted and applied in accordance with—
- (a) the national environmental management principles; and
 - (b) environmental management principles provided in Provincial legislation,
- and read with Chapter 9A of the National Environmental Management Act.

Norms and standards

5. (1) In the performance and exercise of its powers and functions, the Board must comply with norms and standards issued by the MEC in terms of the relevant Provincial environmental legislation
- (2) The MEC may, by notice in the Gazette, issue norms and standards for—
- (a) the achievement of any of the objectives of this Act; and
 - (b) the management and development of protected areas.

CHAPTER 2

Part 1: Establishment, composition, powers and functions of the Eastern Cape Provincial Parks Board

Establishment of Eastern Cape Provincial Parks Board

6. There is hereby established the Eastern Cape Provincial Parks Board which is a juristic person.

Composition

7. (1) Eastern Cape Provincial Parks Board is governed by a board consisting of—
- (a) a representative of the Department; and
 - (b) no more than six other members appointed in terms of section 11.
- (2) The MEC must determine the number of members to be appointed in terms of subsection (1) (b).

Powers and functions

8. (1) The Board must—
- (a) manage Provincial parks in accordance with this Act;
 - (b) ensure the protection and conservation of Provincial parks, and the biological diversity in these areas;

- (c) on the MEC's request, advise him or her on any matter concerning Provincial parks, including the implementation of this Act and any international agreements relating to protected areas which are binding on the Republic; and
 - (d) take decisions in the exercise of its powers and functions.
 - (e) acting with the concurrence of the MEC, determine the employment policy for the Provincial Park Board.
- (2) The Board may in managing a Provincial park—
- (a) manage breeding and cultivation programmes, and reserve areas in the park as breeding places and nurseries;
 - (b) sell, exchange or donate any species occurring in the park, or purchase, exchange or otherwise acquire any indigenous species which it may consider desirable to introduce into the park;
 - (c) carry out any development, and construct or erect any works, necessary for the management of the park, including roads, bridges, buildings, dams, fences, breakwaters, seawalls, boathouses, landing stages, mooring places, swimming pools, oceanariums and underwater tunnels;
 - (d) allow visitors to the park;
 - (e) take steps to ensure the security and well-being of visitors and staff;
 - (f) provide accommodation and facilities for visitors and staff, including the provision of food and household supplies;
 - (g) carry on any business or trade necessary to provide services for the convenience of visitors and staff;
 - (h) determine subject to section 32 (d) and collect such fees for—
 - (i) entry to the park; or
 - (ii) any service provided by it;
 - (i) authorise any person, subject to any conditions and the payment of any fees it may determine, to provide—
 - (i) a service which it may provide in terms of this section; and
 - (ii) the infrastructure for such service;
 - (j) by agreement with—
 - (i) a municipality, provide any service in the park which that municipality may or must provide in terms of legislation; or
 - (ii) another organ of state, perform a function in the park which that organ of state may or must perform in terms of legislation; or

(k) do such other things as may be prescribed.

General powers of Board

9. The Board may—

- (a) appoint its staff, subject to section 28;
- (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment;
- (c) acquire or dispose of any right in or to movable or immovable property, or hire or let any property;
- (d) open and operate its own bank accounts;
- (e) invest, subject to section 30, any of its funds referred to in section 29;
- (f) borrow money, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (g) charge fees for any work performed or services rendered by it or collect royalties resulting from any discoveries, inventions or computer programmes;
- (h) insure itself against—
 - (i) any loss, damage or risk; or
 - (ii) any liability it may incur in the application of this Act;
- (i) insure members of the Board and staff members in respect of bodily injury, disablement or death resulting solely and directly from an accident occurring in the course of the performance of their duties; and
- (j) perform legal acts, including acts in association with or on behalf of any other person or organ of state.

Part 2: Board members

Qualifications

10. (1) A member of the Board must—

- (a) be a fit and proper person to hold office as a member; and
- (b) have appropriate qualifications or experience.

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

- (a) a person holding office as a Member of Parliament, a provincial legislature or a municipal council;

- (b) a person who has been removed from office in terms of section 17;
- (c) a public servant other than a person contemplated by section 7 (1)(a); and
- (d) a person convicted of a criminal offence of which dishonesty is an element.

Appointment procedure

- 11.** (1) The Head of Department must, on the commencement of this Act and whenever it is necessary to replace a member—
- (a) through advertisements in the media circulating widely in the Province, invite applications or nominations for appointment of such members;
 - (b) compile a list of the names of applicants or persons nominated, setting out the prescribed particulars of each individual applicant or nominee; and
 - (c) submit the list to the MEC.
- (2) Any application or nomination made pursuant to an advertisement in terms of subsection (1)(a) must be accompanied by—
- (a) the personal details of the applicant or nominee;
 - (b) particulars of the applicants or nominee's qualifications or experience in the matters listed in subsection (3);
 - (c) in the case of a nomination a letter of acceptance of nomination by the nominee; and
 - (d) a sworn declaration by the nominee that he or she is not disqualified in terms of section 10.
- (3) The MEC must make the required number of appointments from the list submitted in terms of subsection (1)(c).
- (4) When selecting persons for appointment, the MEC must—
- (a) have regard to the need for appointing persons disadvantaged by unfair discrimination; and
 - (b) have regard to the geographic representativity in the Province; and
 - (c) ensure that the board is composed of persons covering a broad range of appropriate experience and expertise.

Chairperson and Deputy Chairperson

- 12.** (1) The MEC must appoint a member of the Board as the Chairperson and another member as the Deputy Chairperson.
- (2) The Deputy Chairperson acts as Chairperson when—
- (a) the Chairperson is absent or unable to perform the functions of Chairperson; or

- (b) the office of Chairperson is vacant.

Term of office

13. Members of the Board are—

- (a) appointed for a period not exceeding three years; and
- (b) eligible for re-appointment for one additional term not exceeding three years.

Conditions of appointment

- 14.** (1) The MEC must determine the conditions of appointment of members of the Board.
- (2) The conditions of appointment of members who are not in the public service or in the service of a municipality or other public entity may include the payment of remuneration and allowances in consultation with the MEC responsible for Finance.
 - (3) Members who are in the public service or in the service of a municipality or other public entity are not entitled to remuneration and allowances, but must be compensated for out of pocket expenses in consultation with their respective institutions.

Conduct of members

15. (1) A member of the Board—

- (a) must perform the functions of office in good faith and without favour or prejudice;
 - (b) must disclose to the Board any personal or private business interest of that member, or any spouse, partner or close family member, may have in any matter before the Board, and must withdraw from the proceedings of the Board when that matter is considered, unless the Board decides that the interest of that member in the matter is trivial or irrelevant;
 - (c) may not use the position, privileges or knowledge of a member for private gain or to improperly benefit another person; and
 - (d) may not act in any other way that compromises the credibility, impartiality, independence or integrity of the Board.
- (2) A member of the Board who contravenes or fails to comply with subsection (1) is guilty of misconduct.

Termination of membership

16. (1) A member of the Board ceases to be a member when he or she—

- (a) is no longer eligible in terms of section 10 to be a member;
- (b) resigns; or
- (c) is removed from office in terms of section 17.

- (2) A member may resign by giving at least three month's written notice to the MEC, who may accept a shorter period in a specific case.

Removal from office

17. The MEC may remove a member of the Board appointed by him or her after a finding by the committee to that effect on the grounds of—
 - (a) misconduct, incapacity or incompetence; or
 - (b) absence except on good cause shown from three consecutive meetings of the Board without the prior permission of the Board.

Filling of vacancies

18. (1) A vacancy in the board occurs when a member—
 - (a) dies;
 - (b) resigns in terms of section 16(2);
 - (c) is subject a disqualification contemplated in section 10;
 - (d) is removed from office in terms of section 17; and
 - (e) has served his or her term of office.
- (2) The Executive Council may, at any time, if it considers it to be in the public interest or in the interest of the proper administration of this Act simultaneously terminate the term of office of all members of the Board and direct the MEC to replace such members in terms of section 11.

Part 3: Operating procedures of Board

Meetings

19. (1) The Chairperson of the Board must decide when and where the Board meets, but a majority of the members may request the Chairperson in writing to convene a meeting at a time and place set out in the request.
- (2) The Chairperson or the Deputy Chairperson presides at meetings of the Board, but if both are absent from a meeting, the members present must elect another member to preside at the meeting.

Access to meetings

20. (1) Meetings of the Board are open to interested persons, including the media, but the Board may close its meeting when it deliberates or votes on a confidential matter or on any other matter when it deems necessary.
- (2) No person may attend or be present at a meeting which has been closed in terms of subsection (1), except—
 - (a) with the permission of the Board; or

- (b) when authorised in terms of any legislation or an order of court.
- (3) The question whether a matter is a confidential matter must be determined in accordance with prescribed criteria.

Procedures

- 21. (1) The Board may determine its own procedures subject to the provisions of this Act.
- (2) The Board must keep a record of its proceedings.

Quorum and decisions

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

Committees

- 23. (1) The Board may establish one or more committees to assist it in the performance of its functions.
- (2) When appointing members to a committee, the Board may include in any of its committees such other persons as it may deem necessary.
- (3) The board—
 - (a) must determine the function of a committee;
 - (b) must appoint the chairperson and other members of the committee;
 - (c) may remove a member of a committee from office at any time; and
 - (d) may determine a committee's procedure.
- (4) The Board may dissolve a committee at any time.
- (5) Section 14 read with the necessary modifications as the context may require, applies to the conditions of appointment of committee members.
- (6) A staff member of the Board appointed to a committee is an ex officio member of the committee.

Delegation of powers and duties

- 24. (1) When necessary for the proper performance of its functions, the Board may delegate any of its powers or duties to—

- (a) a member;
 - (b) a committee referred to in section 23; or
 - (c) a staff member of the Board.
- (2) A delegation in terms of subsection (1)—
- (a) is subject to any limitations, conditions and directions the Board may impose;
 - (b) must be in writing; and
 - (c) does not divest the Board of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) The Board may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

Part 4: Administration of Board

Appointment of Chief Executive Officer

- 25.** (1) The Board must with the approval of the MEC appoint a Chief Executive Officer who must be an ex officio member of the Board but such a person must not be entitled to vote.
- (2) The person appointed as the Chief Executive Officer—
- (a) must have appropriate qualifications and experience for such appointment; and
 - (b) is employed subject to the terms and conditions of employment determined by the Board with the concurrence of the MEC.

Responsibilities of Chief Executive Officer

- 26.** (1) The Chief Executive Officer is the head of the administration of the Board.
- (2) As head of administration, the Chief Executive Officer is responsible for—
- (a) implementing the policies and carrying out the decisions of the Board;
 - (b) the formation and development of an efficient administration;
 - (c) the organisation, control and management of the staff; and
 - (d) the exercise of any of the powers of the Board—
 - (i) assigned to the Chief Executive Officer in terms of this Act; or
 - (ii) delegated to the Chief Executive Officer in terms of section 24.
- (3) The Chief Executive Officer must report to the Board on the administration as often as the Board may require.

Acting Chief Executive Officer

27. (1) Whenever the Chief Executive Officer is for any reason absent or unable to carry out the functions of office, or
- (2) whenever there is a vacancy in the office of the Chief Executive Officer, the Board may appoint another employee of the Board as acting Chief Executive Officer.

Employment of staff

28. (1) The Chief Executive Officer—
- (a) within the financial limits set by the Board, must determine a staff establishment necessary for the work of the Board; and
- (b) may appoint persons in posts on the staff establishment.
- (2) An employee of the Board is employed subject to the terms and conditions of employment determined by the Chief Executive Officer with the concurrence of the Board.
- (3) (a) A person in the service of another organ of state may be seconded to the Board by agreement between the Chief Executive Officer and such organ of state.
- (b) Persons seconded to the Board perform their functions under the supervision of the Chief Executive Officer.
- (4) A person in the service of the Board may, with the consent of that person, be seconded to another organ of state by agreement between the Chief Executive Officer and such organ of state.

Part 5: Financial matters

Funding

29. The funds of the Board consist of—
- (a) income derived by it from the performance of its functions;
- (b) money appropriated for its purposes through the Department by the Legislature;
- (c) grants received from organs of state;
- (d) voluntary contributions, donations and bequests received by it;
- (e) money borrowed by it in terms of section 9 (f);
- (f) income derived by it from investments;
- (g) fines received or recovered in respect of offences committed within Provincial parks; and
- (h) money derived from any other source.

Investments

- 30.** The Board may invest any of its funds not immediately required—
- (a) subject to any investment policy that may be prescribed in terms of section 7(4) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
 - (b) in a manner approved by the MEC.

Financial accountability

- 31.** (1) The Board is the accounting authority in terms of the Public Finance Management Act, and must to that end comply with the provisions of that Act.
- (2) The Chief Executive Officer of the Board must—
- (a) keep the Board informed of all issues relevant to the financial management of the Board; and
 - (b) assist the Board to comply with its responsibilities in terms of the Public Finance Management Act.

Part 6: General

MEC's supervisory powers

- 32.** The MEC may—
- (a) monitor performance by the Board of its functions;
 - (b) issue directives to the Board to ensure that it operates efficiently and economically; and
 - (c) determine limits on fees charged by the Board in the exercise of its functions and powers.

CHAPTER 3

PROVINCIAL PARKS

Part 1: Declaration, withdrawal of declaration and exclusion of parts of Provincial parks

Declaration and keeping of register of Provincial parks

- 33.** (1) The MEC may by notice in the Gazette —
- (a) declare an area specified in the notice as a Provincial park; and
 - (b) assign a name to the Provincial Park.
- (2) A Provincial park includes the air space above the area to a level of 1000 metres above ground level.

- (3) In the case of an establishment of a Provincial park as contemplated in subsection (1), the MEC must cause to be maintained by the Provincial Parks Board a register called the Register of Provincial parks, which must reflect the following particulars in respect of each Provincial park:
- (a) the name of the park;
 - (b) the statutory provision in terms of which the park was declared;
 - (c) the category in which the park falls, including its approximate IUCN category;
 - (d) the specific declaration of the park or any part of the park, if the park or part of the park has been declared as contemplated in subsection (1);
 - (e) the size of the park in hectares;
 - (f) its location; and
 - (g) the name of its management authority.

Criteria for declaring Provincial parks

34. An area may be declared as a Provincial park only if the area—

- (a) is of unique Provincial biodiversity significance possessing outstanding or representative ecosystems, geological or physiological features or species;
- (b) requires the setting and implementation of strict conservation standards—
 - (i) to protect the components of biodiversity occurring in the area for present and future generations; and
 - (ii) to prevent exploitation and harmful occupation;
- (c) is either—
 - (i) owned by the state;
 - (ii) under the exclusive physical control of the state; or
 - (iii) owned by a person other than an organ of state who has consented to the declaration by way of a written agreement with the MEC; and
- (d) is to be dedicated exclusively to—
 - (i) conservation and scientific research;
 - (ii) nature based tourism; and
 - (iii) spiritual, educational and recreational opportunities which are environmentally and culturally compatible.

Withdrawal of declarations or exclusion of parts of Provincial parks

35. A declaration of an area as a Provincial park may not be withdrawn, and no part of a Provincial park may be excluded from the park, except by an Act of the Legislature.

Part 2: General

Initiation of declarations

36. (1) The declaration of private land as a Provincial park, or part of an existing Provincial park, may be initiated either by the MEC or the owners of private land in the affected area, acting individually or collectively.
- (2) Any request received by the MEC or a municipality from the owners of private land for their land to be declared as a Provincial park, or part of an existing Provincial park, must be considered by the MEC.

Endorsements by Registrar of Deeds

37. (1) The MEC must in writing notify the Registrar of Deeds whenever an area is declared as a Provincial park or as part of an existing Provincial park.
- (2) The notification must include a description of the land involved.
- (3) On receipt of the notification, the Registrar of Deeds must make an endorsement against the title deed of each affected piece of land reflecting the declaration.

CHAPTER 4

PROCESS FOR DECLARING AND DESIGNATING PROVINCIAL PARKS

Part 1: Provincial parks

Consultation

38. (1) Before declaring an area as a Provincial park, or designating an existing Provincial park or part of an existing protected area as a Provincial park, the MEC must follow a consultative process as may be appropriate in the circumstances.
- (2) The MEC must, as may be appropriate in terms of subsection (1)—
- (a) consult all national organs of state affected by any proposed declaration or designation of an area;
 - (b) in accordance with the principles of co-operative governance as set out in Chapter 3 of the Constitution, consult the municipality or municipalities in which the area or part of the area is situated; and
 - (c) allow public participation in the process in accordance with section 39.

Notice of declaration or designation

39. (1) The MEC must—

- (a) give notice in the Gazette and in at least one newspaper distributed in the area in which that area is situated of the intention to declare the area as a Provincial park or as part of an existing Provincial park in terms of Chapter 3; and
 - (b) send a copy of the notice by registered post to the last known postal address of every owner whose land will directly be affected by the declaration.
- (2) The notice must—
- (a) invite members of the public, including owners referred to in subsection (1)(b), to submit to the MEC written representations on or objections to the proposed declaration or designation within 30 days from the date of publication of the notice; and
 - (b) contain sufficient information to enable members of the public to submit representations or objections, and must include a clear indication of the area that will be affected by the declaration or designation.
- (3) The MEC may in appropriate circumstances allow any interested person or a traditional community to present oral representations or objections to the MEC or a person designated by the MEC. This subsection must be applied where the declaration or designation of an area will affect the rights or interests of a traditional community.
- (4) The MEC must give due consideration to all representations or objections received or presented before declaring or designating the area.

Concurrence of Premier in respect of Provincial land

40. The MEC may declare an area which consists of or includes Provincial land, as a Provincial parks area or as part of an existing Provincial park only with the concurrence of the Premier in terms of the Land Disposal Act, 2000 (Act No.7 of 2000).

CHAPTER 5

MANAGEMENT OF PROVINCIAL PARKS

Part 1: Management of Provincial parks

Management

41. The MEC must assign, in writing, the management of Provincial parks to the Provincial Parks Board.

Preparation of management plans

42. The Board must prepare a management plan for a Provincial park managed by it and submit a copy of the plan to the MEC for approval

Management criteria

43. (1) The Board must manage the area—

- (a) exclusively for the purpose for which it was declared; and
 - (b) in accordance with—
 - (i) the management plan for the area;
 - (ii) this Act and other applicable National and Provincial legislation.
- (2) The Board—
- (a) must report annually to the MEC on aspects of the area agreed on in the management plan; and
 - (b) may amend the management plan by agreement with the MEC.

Contents of management plans generally

44. (1) The management plan for a Provincial park must reflect—
- (a) the manner in which and the conditions subject to which the area must be managed;
 - (b) the existing infrastructure and any proposed infrastructure development for the conservation of the area, including the conservation of biodiversity in the area;
 - (c) norms and standards that must be met in—
 - (i) the management of the area; and
 - (ii) the conservation of the area, including the conservation of biodiversity in the area;
 - (d) indicators for monitoring compliance with those norms and standards;
 - (e) costing and funding arrangements with regard to—
 - (i) the management of the area;
 - (ii) the conservation of the area, including the conservation of biodiversity in the area; and
 - (iii) any land acquisitions, if this is necessary;
 - (f) any existing and proposed area within the Provincial Park designated or proposed to be designated as—
 - (i) a wilderness area;
 - (ii) a specially protected coastal area;
 - (iii) a marine reserve;
 - (iv) a wetland area of international importance;

- (v) a transfrontier conservation area;
 - (vi) a biosphere reserve;
 - (vii) a world heritage site; or
 - (viii) any other kind of special conservation area; and
- (g) any management arrangements that apply in any such area.
 - (h) the existing infrastructure and any proposed infrastructure development in the park for conservation and eco-tourism, including the conservation of biodiversity in the park;
 - (i) costing and funding arrangements with regard to—
 - (i) the management of the park;
 - (ii) the conservation of the park, including the conservation of biodiversity in the park;
 - (iii) infrastructure development and maintenance;
 - (j) expected rate of income from—
 - (i) tourism;
 - (ii) sale of resources; and
 - (iii) other revenue generating activities; and
 - (k) any proposed private sector—
 - (i) investment in the park; and
 - (ii) involvement in the management of eco-tourism or conservation.
- (2) When the management plan of a protected area allows activities in the area aimed at financing conservation of the area and the biodiversity in the area, those activities must be carried out in a sustainable manner, subject to section 49.

Co-management of Provincial parks

- 45.** (1) The Board may enter into an agreement with another organ of state, a local community or a local community association for—
- (a) the co-management of the area by the parties; or
 - (b) the regulation of human activities that affect the environment in the area.
- (2) A co-management agreement may provide for—
- (a) the delegation of powers by the Board to the other party to the agreement;

- (b) the apportionment of any income generated from the management of the protected area between the parties;
 - (c) the collection, catching or use of biological resources in the area;
 - (d) access to sites of cultural or religious significance in the area; and
 - (e) any other relevant matter.
- (3) A co-management agreement must be consistent with this Act.
 - (4) A co-management agreement must provide for cancellation by the MEC for reasons contemplated in subsection (5).
 - (5) The MEC may cancel a co-management agreement after giving reasonable notice to the parties if the agreement is not effective or is inhibiting the attainment of any of the Provincial park management objectives.

Part 2: Monitoring and supervision

Performance indicators

- 46. (1) The MEC may establish indicators for monitoring performance with regard to the management of Provincial parks and of the conservation of biodiversity in those areas.
- (2) If the MEC so requests, the HOD must—
 - (a) monitor the Board against any indicators set in terms of subsection (1) or (2); and
 - (b) report on his or her findings to the MEC.

Termination of mandates to manage Provincial parks

- 47. (1) If the Board is not fulfilling its duties in terms of the management plan for the area, or is under-performing with regard to the management of the area, including the biodiversity of the area, the MEC must—
 - (a) notify the Board in writing of the failure to fulfil its duties or of the under-performance; and
 - (b) direct Board to take within a specified time corrective steps set out in the notice.
- (2) If the Board fails to take the required steps, the MEC may request the Executive Council to Act in terms of section 18 (2).

Part 3: Access to Provincial parks

Access to Provincial parks

- 48. (1) No person may without the written permission of the Provincial Park—
 - (a) enter the park; or
 - (b) reside in the park.

- (2) If any part of the park has been designated as a wilderness area, a marine reserve, no person may without the written permission of the management authority—
 - (a) enter that wilderness area, marine reserve; or
 - (b) reside in that wilderness area or specially protected coastal area.
- (3) Subsections (1) and (2) do not apply to—
 - (a) an official of the Department or another organ of state designated by the MEC to monitor—
 - (i) the state of conservation of the park or any biodiversity in the park; or
 - (ii) the implementation of the management plan and this Act;
 - (b) an official of the Board to perform official duties in the park;
 - (c) any police, customs or excise officer entering the park or reserve in the execution of official duties; or
 - (d) a person travelling through the park or reserve by railway insofar as that person stay on the train or within the precincts of any railway station.
- (4) If the management authority of a park or reserve refuses permission to an official of an organ of state to enter the park or reserve or that wilderness area, marine reserve or specially protected coastal area for the performance of official duties, the MEC may—
 - (a) reconsider the matter; and
 - (b) either confirm the refusal or grant the permission.

Part 4: Restrictions

Prohibited activities

- 49.** (1) No person may within a Provincial park area—
- (a) be in possession of any weapon, explosive, trap or poison;
 - (b) hunt, catch, capture or kill any animal by any means, method or device whatsoever, or, with intent to hunt, catch, capture or kill, search for, pursue, lie in wait for, lure, allure, discharge a missile at or injure any animal;
 - (c) disturb or feed any animal;
 - (d) take, damage or destroy any egg or nest of any animal;
 - (e) take honey from a beehive;
 - (f) cause a veld fire;
 - (g) damage or destroy any site or object of geological, archaeological, historical, ethnological, oceanographic, educational or scientific value;

- (h) cut, damage, remove, chop off, uproot or destroy any plant, including any marine plant;
 - (i) remove a flower, seed or any other part from any plant;
 - (j) be in possession of or exercise physical control over—
 - (i) any animal, plant or other organism; or
 - (ii) any biological resource.
- (2) No person may—
- (a) take into a protected area any weapon, explosive, trap or poison;
 - (b) introduce into a protected area any animal, plant or other organism; or
 - (c) bring any domestic animal into a protected area; or
 - (d) cause or allow any domestic animal to stray into or enter a protected area.
- (3) The provisions of—
- (a) subsections (1) and (2) do not apply to a protected natural environment or a limited development area except to the extent that may be prescribed;
 - (b) subsections (1) and (2) do not apply to—
 - (i) the management authority of the protected area;
 - (ii) an official of the department or management authority of the Provincial park in performing official duties; or
 - (iii) a person acting on the instruction or with the permission of the Board;
 - (c) subsections (1)(a) and (2)(a) do not apply to any police, customs or excise officer entering the Provincial park and performing in the area official duties; and
 - (d) subsection (1)(j) do not apply to a person lawfully conveying animals, plants or other organisms or biological resources by railway through the Provincial park.

Commercial and community activities in Provincial parks

- 50.** (1) The Board may, with the written approval of the MEC—
- (a) carry out or allow—
 - (i) a commercial activity in the park, nature reserve or protected natural environment; or
 - (ii) an activity in the park, reserve or environment aimed at raising revenue; or

- (b) enter into a written agreement with a traditional community inside or adjacent to the park, reserve or environment to allow members of the community to collect biological resources in the park, reserve or environment for own consumption.
- (2) An activity allowed in terms of subsection (1)(a) or (b) may not negatively affect the survival of any species in or disrupt the integrity of the ecological systems of the park.
- (3) The MEC may—
 - (a) give an approval in terms of subsection (1) on conditions specified in the written approval;
 - (b) amend or withdraw in writing any condition or any such approval at any time; or
 - (c) set norms and standards for an activity allowed in terms of subsection (1).
- (4) The Board must establish systems to monitor—
 - (a) the impact on the park, reserve or environment and the biodiversity in the park, reserve or environment, of activities allowed in terms of subsection (1)(a) or (b); and
 - (b) compliance with—
 - (i) any norms and standards set in terms of subsection (3)(c); and
 - (ii) any agreement entered into in terms of subsection (1)(b).
- (5) (a) An activity referred to in subsection (1) must be regarded as having been approved in terms of this section if that activity was lawfully being carried out on the date immediately before—
 - (i) this Act took effect; or
 - (ii) the declaration of the area as a Provincial park, or as part of an existing park.
 - (b) The management authority may restrict an activity referred to in paragraph (a) to the extent that it was carried out around that date.
- (6) This section does not apply to activities mentioned in, and regulated by, the management plan for the park.

Certain rights and entitlements to be respected

51. Sections 48 and 49 may not be applied in a manner that would obstruct—

- (a) an owner of riparian land to exercise any rights to water in a public stream to which that owner is entitled in terms of the National Water Act, 1998 (Act No.36 of 1998), if that public stream, or the bed or any part of the bed, falls within a Provincial park area; or
- (b) members of a traditional community to collect in accordance with an agreement in terms of section 81 of the Act referred to in (a) above biological resources for own consumption in a Provincial park.

Part 5: Internal rules where tourism is allowed

Rules

52. (1) The Board where tourism is allowed may, in accordance with any prescribed norms and standards make rules for the proper administration of the area.
- (2) Rules made in terms of subsection (1) must be consistent with this Act and the management plan may in accordance with applicable laws include rules determining—
- (a) the powers and duties of officials of the Board, including powers and duties with regard to—
 - (i) the exclusion of the public from certain areas in the area;
 - (ii) the killing, capturing or impounding of any animals in the area and the disposal of animals killed, captured or impounded;
 - (iii) the burning of grass, the cutting of trees, reeds and grass and the gathering of marine plants in the area; and
 - (iv) the disposal of any animal, vegetable, mineral or other product of the area;
 - (b) the periods during which or times within which the area or any portion of the area will be open to the public;
 - (c) the conditions of a permission to enter the area;
 - (d) the points of entry to and tourist routes in the area;
 - (e) the conditions relating to the admission of vehicles and vessels to and the use of vehicles and vessels in the area;
 - (f) the regulation of traffic in the area;
 - (g) the requirements to which vehicles and vessels must conform;
 - (h) norms and standards of behaviour for visitors to the area;
 - (i) the conditions for the use and enjoyment of the area;
 - (j) the conditions on which food and refreshments, and any merchandise allowed by the management authority, including liquor, may be sold;
 - (k) the conditions subject to which any animals or goods may be conveyed through the area and the route or routes over which such animals or goods must be conveyed;
 - (l) the conditions on which any person entering, sojourning in or passing through the area, may obtain the services of any official of the Board, and the fees to be paid in respect of such services;
 - (m) the conditions relating to the taking of photographs in the area;

- (n) measures—
 - (i) to protect the area, its natural features and infrastructure, and the biodiversity in the area; and
 - (ii) to protect visitors and staff;
- (o) the conditions on which a staff member or other person to whom permission has been granted may reside in the area;
- (p) the conditions of appointment of persons and organisations interested in assisting the Board on a voluntary basis in the performance of any of its functions; or
- (q) the powers, duties and privileges of such persons and organisations.

CHAPTER 6

ACQUISITION OF RIGHTS IN OR TO LAND

Acquisition of private land by the Province

- 53.** (1) The MEC may, acting with the concurrence of the Premier, acquire private land, or any right in or to private land, which has been or is proposed to be declared as or included in a Provincial park, by—
- (a) purchasing the land or right;
 - (b) exchanging the land for other land; or
 - (c) expropriating the land or right, if no agreement is reached with the owner or holder of the right.
- (2) The Expropriation Act, 1975 (Act No. 63 of 1975), applies with respect to any acquisition of land or right in or to land in terms of subsection (1)(c).

Acquisition of private land by Board

- 54.** (1) The Board may, with the approval of the MEC and acting with the concurrence of the Premier, acquire private land, or any right in or to private land, which has been or is proposed to be declared as or included in a Provincial park—
- (a) by purchasing the land or right; or
 - (b) if the land or right is donated or bequeathed to it, by accepting the donation or bequest.
- (2) If the Board fails to agree on a purchase price for the land or right in terms of subsection (1)(a), the MEC may on behalf of the Board expropriate the land or right in terms of Expropriation Act, 1975 (Act No. 63 of 1975).

Cancellation of servitudes on, or privately held rights in or to Provincial land

55. (1) The MEC may, with the concurrence of the Premier, take any steps necessary to cancel a servitude on state land, or a privately held right in or to Provincial land, which has been or is proposed to be declared as or included in a Provincial park.
- (2) If the MEC fails to reach an agreement with the owner of the property in whose favour the servitude is registered or with the person holding the right, the MEC may expropriate the servitude or right in terms of the Expropriation Act, 1975 (Act No. 63 of 1975).

Cancellation of servitudes on, or privately held rights in or to, land owned by the Board

56. (1) The Board may, with the approval of the MEC, take any steps necessary to cancel a servitude on land owned by the Board, or a privately held right in or to such land, which has been or is proposed to be declared as or included in a Provincial park.
- (2) If the Board fails to reach an agreement with the owner of the property in whose favour the servitude is registered or with the person holding the right, the MEC may on behalf of the Board expropriate the servitude or right in terms of the Expropriation Act, 1975 (Act No. 63 of 1975).

Financing

57. (1) The MEC may finance the acquisition of private land or a right in or to private land in terms of section 53, or the cancellation of a servitude on, or a privately held right in or to, Provincial land in terms of section 55, from money appropriated for this purpose by the Legislature.
- (2) The Board may finance the acquisition of private land or a right in or to private land in terms of section 54, or the cancellation of a servitude on, or a privately held right in or to, land owned by the Board in terms of section 56, from the funds of the Board.

CHAPTER 7

ADMINISTRATION OF ACT

Regulations by the MEC

58. (1) The MEC may make regulations for Provincial parks in the Province—
- (a) assigning additional powers and duties to the Board;
 - (b) regulating—
 - (i) biodiversity management and conservation in those protected areas;
 - (ii) the use of biological resources in those Provincial parks to secure sustainability of those resources;
 - (iii) access to Provincial parks;
 - (iv) tourism in those Provincial parks where tourism is allowed;

- (v) activities that may be carried out in terms of section 50; or
 - (vi) the use of land and water in those Provincial parks;
 - (vii) to provide for the registration;
- (c) prohibiting or restricting—
 - (i) activities that have an adverse effect in those Provincial parks;
 - (ii) the use of biological resources in those Provincial parks when necessary to secure sustainability of those resources; or
 - (iii) land uses in those Provincial parks that are harmful to the environment; or
 - (d) providing for the establishment of advisory committees for those Provincial parks, the appointment of members and their powers and functions;
 - (e) setting, enforcing and monitoring of norms and standards issued in terms of section 5, and for any of the above matters; and
 - (f) providing for any other matter that may be necessary to facilitate the implementation of this Act.
- (2) Regulations made in terms of subsection (1) must be consistent with norms and standards prescribed in terms of section 32.
 - (3) Any regulation which will entail the expenditure of funds, may be made only with the concurrence of the MEC responsible for finance in the Province.
 - (4) Before publishing any regulations in terms of subsection (1), the MEC must publish draft regulations in the Gazette for public comment.

General

- 59.** (1) Regulations made in terms of section 58 may—
- (a) restrict or prohibit any act either absolutely or conditionally;
 - (b) apply—
 - (i) generally throughout the Province, as the case may be, or only in a specified area or category of areas;
 - (ii) generally to all persons or only a specified category of persons; or
 - (iii) generally with respect to all species or only a specified species or category of species; or
 - (c) differentiate between—
 - (i) different areas or categories of areas;

- (ii) persons or categories of persons; or
 - (iii) species or categories of species.
- (2) Regulations made in terms of section 58 may, when appropriate, provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to—
- (a) imprisonment for a period not exceeding five years;
 - (b) an appropriate fine; or
 - (c) both a fine and imprisonment.

Database

- 60.** (1) The MEC must cause the establishment and regular update of an electronic database containing—
- (a) the text of this Act;
 - (b) the text of all subordinate legislation issued in terms of this Act;
 - (c) information in the Register of Provincial parks referred to in section 33;
 - (d) information about the Board, including—
 - (i) their names;
 - (ii) their functions;
 - (iii) the Provincial parks they manage; and
 - (iv) particulars of contact persons;
 - (e) information about any other matter that may be useful for the proper implementation of this Act.
- (2) The database must be accessible by any person.

Incentives

- 61.** The MEC may take steps to provide incentives, whether fiscal, scientific, technological or otherwise, to stimulate activities and programmes which contribute to the achievement of the objectives of this Act.

Extension of time periods

- 62.** The MEC may on reasonable grounds extend, or condone a failure by a person to comply with, a time period in terms of this Act.

CHAPTER 8

OFFENCES AND PENALTIES

General offences

63. A person is guilty of an offence if that person contravenes or fails to comply with sections 48 and 49.

Offences relating to the Board

64. A person is guilty of an offence if that person—
- (a) hinders or interferes with the Board, or a member or staff member of the Board, in the execution of official duties; or
 - (b) falsely professes to be a member or staff member of the Board, or the interpreter or assistant of such an officer.

Penalties

65. (1) Any person who is convicted of an offence under this Act is liable—
- (a) in case of an offence referred to in section 64 to a fine not exceeding R5000,00 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;
 - (b) in case of an offence referred to in section 63—
 - (i) on a first conviction, to a fine not exceeding R250 000 or imprisonment for a period not exceeding 15 years, or to both such a fine and such imprisonment; and
 - (ii) in the case of a second or subsequent conviction for the same, to a fine not exceeding R500 000 or imprisonment for a period not exceeding 30 years, or to both such a fine and such imprisonment.

Presumptions

66. (1) When any fire-arm, live wild animal, carcass of a wild animal including a fish or flora is found or is proved to have been in or on any vehicle, vessel, boat, craft, float, aircraft or other conveyance, it is deemed, until the contrary is proved, to have been in the possession of the person in charge of such vehicle, vessel, boat, craft, float, aircraft or other conveyance.
- (2) When any person is found, or is proved to have been, in possession of any endangered flora, protected flora or unprotected indigenous flora he or she must, unless the contrary is proved, be deemed to have picked such flora.
- (3) When any person is found or is proved to have been in possession of any live wild animal he or she must, until the contrary is proved, be presumed to have been keeping such animal in captivity at the relevant time.

- (4) When any person is found removing or is proved to have removed any wild animal or the carcass of a wild animal from a trap, snare, pitfall, net, birdlime or any other like device or substance he or she must be presumed, until the contrary is proved, to have laid or prepared such trap, snare, pitfall, net, birdlime or other like device or substance and to have captured the animal concerned.
- (5) Whenever—
 - (a) a vehicle, vessel, boat, craft, float, aircraft or other conveyance is being or has been used for the purpose of or in connection with the commission of an offence under this Act;
 - (b)
 - (i) any wild animal or the carcass of a wild animal including a fish in respect of which an offence has been committed under this Act; or
 - (ii) any weapon, implement, line, poison or any other object that could be used for the hunting or catching of any wild animal including a fish and that is being or was used or formed an element in the commission of an offence under this Act, is found or has been in or on any vehicle, vessel, boat, craft, float, aircraft or other conveyance, the owner of such a vehicle, vessel, boat, craft, float, aircraft or other conveyance as well as every person thereon or therein at the time of the commission of the offence or at the time when the wild animal, carcass or other object contemplated in paragraphs (a) and (b) is found or was in such vehicle, vessel, boat, craft, float, aircraft or other conveyance, must be presumed to have committed the offence concerned and be liable to conviction and sentence in respect thereof unless he or she proves that he or she did not commit such offence and did not take part in and could not prevent the commission of the offence.
- (6) Whenever any person is found to have in his or her possession on any public road any fire-arm (other than a pistol or revolver) that is loaded or is not enclosed in such a way that the barrel and the trigger are completely covered, he or she must be deemed to be hunting a wild animal on or from such road, until the contrary is proved.
- (7) Whenever in any prosecution under this Act it is alleged that an offence has been committed in connection with or in respect of any fauna or flora of the species stated in the charge, it must be presumed that such fauna or flora is of that species, until the contrary is proved.
- (8) If in any prosecution it is alleged in the charge that an act that constitutes an offence under this Act, was committed within the boundaries of a Provincial nature reserve or wilderness area, local nature reserve, private nature reserve, conservancy, hiking trail, coastal conservation area, protected natural environment or limited development area, that act must be presumed to have been committed within the boundaries of that Provincial nature reserve or wilderness area, local nature reserve, private nature reserve, conservancy, hiking trail or coastal conservation area, protected natural environment or limited development area, until the contrary is proved.
- (9) Whenever in any prosecution under this Act it is alleged that any fauna or flora that forms an element in the commission of an offence is of a specific dimension or mass, it must be presumed that such fauna or flora is of that dimension or mass, until the contrary is proved.

- (10) Whenever a person is found shining a spotlight and carrying a firearm he or she must be presumed to be hunting with the aid of artificial light.
- (11) A wild animal or indigenous plant in or on which an electronic transponder has been fixed must be presumed to have originated from the locality in which it was so fixed as recorded in the register kept for the purpose by the Department.

Jurisdiction as to punishment

- 67.** A magistrate's court has jurisdiction to impose any punishment provided for in this Act.

CHAPTER 9

MISCELLANEOUS

Short title

- 68.** (1) This Act is called the Provincial Parks Board Act, 2003 (Eastern Cape).