

# **GAUTENG NATURE CONSERVATION BILL, 2014**

## **BILL**

**To provide for the sustainable utilization and protection of biodiversity within Gauteng; to provide for the protection of wild and the management of alien animals; protected plants; aquatic biota and aquatic systems; to provide for the protection of invertebrates and the management of alien invertebrates; to provide for professional hunters, hunting outfitters and trainers; to provide for the preservation of caves, cave formations, cave biota and karst systems; to provide for the establishment of zoos; to provide for the powers and establishment of Nature Conservators; to provide for administrative matters and general powers; and to provide for matters connected therewith.**

**BE IT ENACTED** by the Gauteng Provincial Legislature, as follows:

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### CHAPTER 1 INTERPRETATION, APPLICATION AND OBJECTIVES

#### Definitions

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

**“adequately enclosed”** in relation to land, means enclosed by –

- (a) a fence, wall or obstruction of any kind whatsoever forming an enclosure from which any wild animal of a species specified in a permit issued in terms of section 28(1) is unable to escape or enter without breaking the fence, wall or obstruction;
- (b) a natural boundary which any wild animal of a species so specified will not pass through or over; or
- (c) a combination of fences, walls, obstructions or boundaries referred to in paragraphs (a) and (b) so that any wild animals of a species so specified cannot escape from or enter such land;

**“alien animal”** means —

- (a) any live vertebrate, including a mammal, bird, reptile and amphibian, but excluding a fish, belonging to a species or subspecies that is not a recognized domestic species and the natural distribution of which is not in the Republic of South Africa or
- (b) the egg of such vertebrate;

**“alien invertebrate”** means an animal that does not have an internal skeleton, whether alive or dead and includes any part of such animal and any stage in the life cycle thereof belonging to a species or subspecies that is not a recognised domestic species and the natural distribution of which is not in the Republic of South Africa;

**“angling/angle”** means the catching of fish in an aquatic system by means of a line and hook, whether or not any rod or lure is used, and includes any such attempt or assistance, but does not include the catching of fish in such waters by jigging or snatching it; and includes the use of a landing-net or keep-net to land and keep fish caught by means of a line and fish-hook;

**“aquaculture”** means the farming of aquatic organisms including fish, molluscs, crustaceans and plants in a controlled or selected aquatic environment, with some form of intervention in the rearing process to enhance production, such as regular stocking, feeding and protection from predators;



**“aquatic biota”** means any organism that depends on an aquatic environment for its survival and includes the carcass, egg, ova, spawn, flesh (whether dried, smoked, salted, cured or treated in any manner), hide, tooth, bone, shell, scale, claw, nail, paw, fin, tail, ear, hair, feather, flower, seed, cone, fruit, bulb, tuber, stem, root or any other part or derivative of such organism;

**“aquatic growth”** means any plant that depends on an aquatic environment for its survival and includes the flower, seed, cone, fruit, bulb, tuber, stem, root, or any other part or derivative of such plant;

**“aquatic system”** means –

- (a) any area associated with rivers, streams, vleis, sponges, creeks, lakes, pans or any other natural or man-made water impoundment and includes any such area whether wet or dry;
- (b) all waters which do not permanently or at any time during the year form part of the sea and includes a tidal river.

**“artificial lure/spoon”** means a device which by its simulation of life or by its appearance or colour is designed or likely to delude, entice or attract a fish into seizing such device;

**“bait”** in relation to a protected wild animal means any living or dead animal matter, or anything else which on account of the edibility, smell or taste thereof may lure such animal, and “bait”, as a verb, has a corresponding meaning;

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

**“Biodiversity Act”** means the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004);

**“buy”** includes barter or exchange;

**“breed”** means where individuals of specific animal species are kept in a controlled environment for the purpose of producing offsprings;

**“capture”**, in relation to an animal, means, to catch or to take alive without killing the animal and includes an attempt or pursuit with the intent to capture, to catch or to take the animal alive;

**“carcass”**, in relation to an animal, means the whole or any part of the meat (whether dried, smoked, salted, cured or treated in any manner excluding biltong), the head, ear, tooth, horn, shell, scale, tusk, bone, feather, tail, claw, paw, nail, hoof, skin, hide, hair, viscera or any part whatsoever of the carcass, and includes the egg;

**“catch”**

- (a) in relation to a wild animal or alien animal or invertebrate means to catch or take, or attempt to catch or take, a wild or alien animal, or invertebrate alive, irrespective of
  - (i) the means or method used; and includes –
    - the search for, pursue, drive, lie in wait, lure or poison a wild or alien animal or invertebrate with the intent to catch or take it; or
    - (ii) injuring or killing of a wild or alien animal, or invertebrate when attempting to catch or take it;

- (b) in relation to fish, includes any means or method of taking (whether alive or dead), injuring, immobilising or killing or attempting to take, injure, immobilise or kill, or to pursue or willfully disturb or poison;

**“cave”** means a natural geologically formed void or cavity or manmade void or cavity beneath or above the surface of the earth;

**“cave biota”** means-

- (a) any form of life, relying either wholly or partially on a cave, sinkhole, mine or groundwater to complete a life-cycle;
- (b) any flora occurring within five metres of any cave opening; or
- (c) any biota which may at any given time be found within a cave;

**“cave formation”** means –

- (a) a wall, floor or ceiling of a cave;
- (b) a flow-stone, drapery, column, stalactite, stalagmite, anthodite, gypsum flower or needle or any other crystalline mineral formation, tufadam, breccia, clay or mud formation or a concretion thereof formed in a cave; or
- (c) any other natural matter formed in a cave;

**“cave gate”** means-

- (a) any structure erected to prevent access to any cave, whether temporary or permanent; or
- (b) any fence, wall or other obstacle erected within five metres of the opening to any cave;

**“client”** means any person who is not normally resident in the Republic, who pays or rewards any other person for or in connection with the hunting of a wild or alien animal;

**“Constitution”** means the Constitution of the Republic of South Africa, 1996;

**“controlled environment”** for the purposes of breeding means an enclosure designed to facilitate the intensive breeding or propagation of a wild animal through intensive human intervention or manipulation by providing food, water, healthcare and artificial habitat but excludes enclosed land on which self-sustaining wildlife populations of a species are managed in an extensive wildlife system.

**“Criminal Procedure Act”** means the Criminal Procedure Act, 1977 (Act 51 of 1977);

**“cull”** –

- (a) means an operation executed by a nature conservator or other suitably qualified person designated by the landowner to kill a specific number of specimens of a wild animal species within the area in order to manage the species in the area; or
- (b) in relation to a specimen of a wild animal species which has escaped from a protected area and has become a threat to life or property, means an operation executed by a nature conservator or other person designated by the MEC to kill the animal as a matter of last resort;

**“cultivate”** means the artificial reproduction of plants in any manner whatsoever;

**“daily bag limit”** means the number of any species which may be hunted as determined by this Act;

**“day”** means the period commencing half an hour before sunrise and ending half an hour after sunset on the same day;

**“Department”** means the Department responsible for nature conservation in the Gauteng Province;

**“derivative”** in relation to a wild 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 chemical compound derived from such part, tissue or extract;

**“Director”** means the head of the unit in the Department responsible for nature conservation;

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

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

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

**“export”**, in relation to a wild animal or plant or fish, means any form of shipment, parcel or package consigned from or taken out of the Province or an attempt to consign or take a wild animal or plant, carcass, part or derivative thereof from a position or place inside the borders of the Province to a position or place outside the borders of the Province in any manner whatsoever, including re-export;

**“firearm”** means a firearm as defined in section 1 of the Firearms Control Act, 2000 (Act 60 of 2000) and includes an air gun and a muzzle-loader;

**“firewood”** means the dead, dry wood of an indigenous plant that is used for domestic purposes, but does not include wood that has been cut, sawn or otherwise processed for the production of ornaments, implements or furniture;

**“fish”** means any live vertebrate animal having gills throughout life and limbs modified into fins, whether indigenous or alien as well as the ova or sperm thereof;

**“fishing tackle”** means any fishing gear, apparatus or other device or any part thereof normally used to catch fish;

**“game farm”** means land in relation to which a game farm permit has been issued;

**“game farm permit”** means a permit issued in terms of section 28;

**“gin trap”** means a leg hold or foothold trap made up of two tightly closing jaws, a spring of sorts, and a trigger in the middle, this includes a leg hold trap with off-set or padded jaw;

**“Head”** means the Head of the Department responsible for nature conservation in the Province;

**“hunt”**, in relation to a wild animal, means to, by any device, method or means whatsoever, cull, kill as well as capture, collect, disturb, follow, pursue, search for, drive, stampede, shoot at, discharge a missile at, injure, poison, lay poison, set a trap, lie in wait for, lure and willfully disturb with the intent to kill and includes any such attempt to assist, guide or escort another person to do any of the aforementioned including destroying the eggs of a bird or reptile or amphibian;

**“hunting outfitter”** means a person who –

- (a) presents or organises the hunt of a wild or alien animal for a client; and
- (b) is the holder of a permit in terms of section 63;

**“hunting right”** means the right of a landowner to hunt or to allow the hunting of a wild animal in terms of the provisions of this Act, on land of which he or she is the owner;

**“import”** in relation to a wild animal, alien animal, plant, fish or invertebrate, means any form of shipment, parcel or package consigned to or brought into the Province or an attempt to consign to or bring a wild animal, alien animal, plant, fish or invertebrate, carcass, part or derivative thereof from a position or place outside the borders of the Province to a position or place inside the borders of the Province in any manner whatsoever;

**“indigenous plant”** means

- (a) any living or dead plant which occurs naturally in the Republic of South Africa, whether artificially propagated or in its wild state; and
- (b) includes the flower, pollen, seed, cone, fruit, bulb, tuber, stem or root or any other part or derivative of such plant, but does not include a plant declared a weed in terms of any legislation;

**“invasive animal”** means any animal species whose establishment and spread outside of its natural distribution range –

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

**“invertebrate”** means an animal that does not have an internal skeleton, whether alive or dead and includes any part of such animal and any stage in the life cycle thereof;

**“karst”** means-

- (a) Any geographical region dominated by water soluble geologies such as, but not limited to, dolomites and limestones, in which water processes have historically and continue to play an active role in their formation and maintenance;
- (b) Any area deemed to be karst by the relevant authority and portrayed as such on official records;

**“keep”** in relation to a wild animal, means to keep live, to keep in captivity, to exercise control over or to supervise;

**“landowner”** means-

- (a) in relation to land –
  - (i) the person registered as the owner thereof in a deeds registry;
  - (ii) the person designated in writing as the owner thereof by such association, where the legal title thereto is vested in an association of persons, whether corporate or non-corporate;

- (iii) the bona fide purchaser thereof prior to the registration of the deed of transfer in his or her name, but after the contract of sale has been concluded, to the exclusion of the person contemplated in paragraph (i);
- (iv) the municipality concerned, in the case of land under the control or management of a municipality;
- (v) the Minister in the National Government or Member of the Executive Council of the Province, having control or management thereof or any officer designated for the purpose by such Minister or such Member of the Executive Council, in the case of State land not under the control or management of a municipality;
- (vi) the person who is in actual occupation of the land, who exercises general control over such land and who has been authorised in writing by the owner as contemplated in the said subparagraph (i) to exercise the rights conferred on a landowner by this Act, in the case of land not occupied by the owner as contemplated in subparagraph (i);
- (vii) the person in whom the administration of such land is vested as executor, responsible Member, trustee, assignee, curator, lawful heir, liquidator or judicial manager, as the case may be, where the owner as contemplated in subparagraph (i), (ii), (iii) or (vi) is dead or insolvent or has assigned his or her estate for the benefit of his or her creditors or has been placed under curatorship by order of court or is a company being wound up or under judicial management;
- (viii) the lawful heir of the person contemplated in paragraph (i) or of the purchaser contemplated in paragraph (iii), as the case may be, at the death of such person or purchaser or, where the land is subject to a usufruct, the usufructuary;
- (ix) the lessee of the land who has entered into a lease or any other person referred to in the lease, or the person to whom the land has been allotted in terms of the laws on land settlement subject to the right to purchase that land; or
- (x) the tribal chief or authority, in the case of tribal land
- (b) in relation to waters on privately owned land –
  - (i) the owner as contemplated by paragraph (a) of the land on which the waters concerned are situated or which abuts on such waters;

**“licence”** means a licence issued in terms of this Act;

**“livestock”** means farm animals including but not limited to horse, mule, ass, bull, cow, ox, heifer, calf, sheep, goat, pig or poultry;

**“management authority”** in relation to a protected area, means the organ of state or other institution or person in which the authority to manage the protected area is vested;

**“MEC”** means the Member of Executive Council responsible for conservation in the Province;

**“Minister”** means the Cabinet Member responsible for environmental affairs;

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

**“nature conservator”** means a nature conservator appointed in terms of section 81;

**“night”** means the period from half an hour after sunset on any day to half an hour before sunrise on the following day;

**“occupier”** in relation to land or land on which waters are situated, means, the person who legally occupies the land and is in control thereof;

**“open hunting season”** means the period in any year determined by notice issued in terms of section 7;

**“Peace Officers”** means a person appointed in terms of section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977);

**“Permit”** means a permit issued in terms of this Act;

**“Person”** means natural person and includes a juristic person;

**“pick”** in relation to plants includes to collect, to cut, to chop off, to take, to gather, to pluck, to uproot, to break, to damage or to destroy;

**“poison”** includes any poison, preparation or chemical used to catch, immobilise, sterilise, kill or to harm physically a wild animal, fish, aquatic biota, or invertebrate and any like word has a corresponding meaning;

**“possess/possession”**, in relation to a wild animal or the carcass thereof, or aquatic biota or a plant means to have physical control over any such animal or carcass thereof or any such plant, or to have the power and intention to exercise physical control over any such animal or carcass thereof or any such plant;

**“prescribe”** means to prescribe by regulation;

**“professional hunter”** means a person who –

- (a) conducts a hunt or offers or agrees to escort or accompany a hunting client in order to enable such hunting client to hunt a wild or alien animal; and
- (b) is the holder of a permit in terms of section 63;

**“Promotion of Administrative Justice Act”** means the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);

**“Province”** means the Gauteng Province of the Republic of South Africa;

**“public road”** means a road to which the public or section thereof have a right of access and includes an outspan, resting [place] or watering place;

**“public sale”** means a sale effected-

- (a) at a public market; or
- (b) by a holder of a permit as contemplated in section 28(1);

**“rehabilitation centre”** refers to a permanently-sited, legal facility which does not provide access to the public for recreational purposes and is exclusively administered for the temporary care of indigenous animals with the primary aim of their return to the wild and includes such similar institutions;

**“relative”**, in relation to the owner of any land means the spouse, life partner, parent, step-parent, adoptive parent, son/daughter-in-law, child, step-child, adopted child, brother, sister or grandchild of such owner; whether by consanguinity or affinity or law of such owner; provided that in relation to an owner of land which is an unincorporated association of persons, “relative” means the relative as defined herein of every member of such association;

**“schedule”**, means a Schedule to this Act;

**“sell”**, for the purposes of sale includes hawk, peddle, barter or exchange or offer, advertise, expose or have in possession for the purpose of sale, hawking, peddling, bartering or exchange and “buy” must be construed accordingly;

**“shoot”**, means to kill by means of a firearm, a weapon or any apparatus discharging or propelling a projectile;

**“specific environmental management Act”** in this Act means-

- (a) the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003);
- (b) the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004)

and includes any regulation or other subordinate legislation made in terms of any of these Acts;

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

**“specimen”** means-

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

**“snare”** means a noose of string or wire or of any other material which can be used for capturing any animal or bird;

**“spear gun”** means any implement or contrivance, whether mechanically operated or otherwise, used or which may be used by a diver for the spearing or capturing of fish;

**“statutory body”** means a body or organ of state, which exercises powers or performs statutory duties which are conferred or imposed upon it by any statute;

**“subordinate legislation”** in relation to this Act, means-

- (a) any regulation made in terms of a provision of this Act; or
- (b) any notice published in terms of a provision of this Act;

**“this Act”** includes any subordinate legislation issued in terms of a provision of this Act;

**“trade”** means to buy or to sell, to receive, to give, to accept as a gift or to donate, or to acquire or dispose of in any way by any means or method whatsoever a protected wild animal, protected game or protected bird or protected fish;

**“trainer”** means a person who is –

(a) responsible for –

- (i) the presentation of a prescribed curriculum to educate prospective professional hunters and hunting outfitters; and
- (ii) the conducting of examinations to evaluate prospective professional hunters and hunting outfitters

(b) the holder of a permit in terms of section 64;

**“transport”** means to convey, to move or otherwise to translocate by any means or method whatsoever;

**“trap”** means any contrivance or device by means of which a wild animal can be killed, injured or captured but excludes a snare;

**“vessel”**, means any means of transportation, whether on land, in or on the water or through the air;

**“waters”** includes a river, stream, creek, lake, vlei, pan, dam, reservoir, furrow or pond, whether the water therein is fresh or not, and includes the bank thereof and any part of such waters;

**“waters on privately owned land”** means a dam, reservoir, vlei or other inland waters completely surrounded by land owned by a private landowner or joint private landowners;

**“weapon”**, means:-

- (a) A firearm having a barrel exceeding one hundred millimeters in length and includes ammunition for such firearm, or
- (b) Any other instrument which is capable of propelling a projectile or which can itself be propelled or used in such a way that a wild animal or alien animal may be killed, injured or immobilized thereby and includes a spear, assegai, bow and arrow, cross bow, axe, knife, bush knife, or similar object and any chemical or preparation or narcotic used in connection with such projectile;

**“wild animal”** means any vertebrate animal, including a bird, reptile and amphibian of which the natural distribution is in the Republic of South Africa but excluding a fish, belonging to a species which is not a recognized domestic species and includes the carcass, egg, flesh, skin, thong, tooth, tusk, hoof, paw, tail, ear, hair, feather or derivative or any other part of such vertebrate, excluding any part of such vertebrate which has been processed into a final product and includes subspecies and hybrids;

**“zoo”** refers to a permanent sited and legal establishment primarily open to and administered for the visiting public where wild and alien animals are exhibited for the purpose of education and research and biodiversity conservation and where the principle business rationale is not the commercial trade in specimens or their products and excludes nature reserves, game farms, botanical gardens, plant nurseries, research laboratories, circuses, pet shops, animal dealerships/brokers and commercial breeding operations that are not open to the public, animal rehabilitation facilities and sanctuaries;



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

### **Objectives of Act**

2. (1) The objectives of this Act are –
- (a) to provide for the management and conservation of biodiversity, indigenous wild animals, plants, aquatic biota, invertebrates and their associated habitats in the Province;
  - (b) to provide for the management and control of alien species in the Province;
  - (c) to secure ecologically sustainable development and responsible use of natural resources in the Province;
  - (d) to generally contribute to the realisation of the fundamental right contained in section 24 of the Constitution; and
  - (e) to strengthen national legislation and give effect to ratified international agreements affecting nature conservation and biodiversity management which are binding on the Republic of South Africa.

### **Application of National Environmental Management Act and specific environmental management Acts**

3. This Act must be interpreted and applied in accordance with the national environmental management principles and be read with the applicable provisions of the National Environmental Management Act, 1998 (Act 107 of 1998) and the Specific Environmental Management Acts.

## **CHAPTER 2 WILD AND ALIEN ANIMALS**

### ***Part 1 – Protected wild animals and protected birds***

#### **Listing of protected wild animals and protected birds**

4. (1) The MEC may, by notice in the *Provincial Gazette*, publish a list of protected wild animals and protected birds, being any indigenous species facing an extremely high risk of extinction in the wild in the immediate future or being any species which are of high conservation value or provincial importance or require regulation in order to ensure that the protected wild animals or protected birds are managed in an ecologically sustainable manner.
- (2) The MEC may further categorise within the different categories of species listed in subsection (1) when compiling the lists referred to in subsection (1).
- (3) The notice contemplated in subsection (1) may apply generally throughout the Province, as the case may be, or only in a specified area or category of areas.
- (4) The lists published in terms of subsection (1) shall not include those species listed by the Minister in terms of section 56 of the Biodiversity Act.
- (5) The MEC must by notice in the *Provincial Gazette* review the lists published in terms of subsection (1) at least every five years.

#### **Restricted activities involving protected wild animals and protected birds**

5. No person may, without a permit –
- (a) export;

- (b) import;
- (c) hunt, outside the open hunting season
- (d) transport;
- (e) catch;
- (f) capture;
- (g) keep; or
- (h) trade in,

a specimen of a protected wild animal or protected bird listed in terms of section 4.

## ***Part 2 – Hunting***

### **Hunting of protected wild animal**

**6.** (1) No person may, without a permit, hunt a protected wild animal.

(2) Notwithstanding subsection (1), upon the written application of the landowner, a permit may be issued-

- (a) to the landowner; or
- (b) to any other person indicated by the landowner in the application,

which authorises the holder of the permit to hunt, on the land of the landowner, the number, sex and species of protected wild animal referred to in the permit.

### **Open hunting season**

**7.** (1) The MEC may, by notice in the *Provincial Gazette*, declare open hunting seasons for the hunting of protected birds.

(2) No person may hunt protected birds, except during an open hunting season declared in terms of subsection (1) and subject to the provisions of the notice declaring the open hunting season.

(3) The notice contemplated in subsection (1) must provide for-

- (a) the period in any year during which protected birds may be hunted;
- (b) the categories of persons that may hunt protected birds;
- (c) the number and species of protected birds that may be hunted; and
- (d) the magisterial districts in which those protected birds may be hunted.

### **Hunting licences**

**8.** Except where otherwise provided in this Act, no person may hunt protected birds during an open hunting season if he or she does not hold a valid hunting licence for the Province.

### **Written permission by the landowner**

**9.** (1) A landowner may give written permission to any other person to hunt in accordance with the provisions of this Act, any protected wild animal on the land of the landowner and to remove the hunted animal or the carcass of the animal from the land.

(2) A written permission referred to in subsection (1) must be given beforehand, reduced to writing and must reflect -

- (a) the full name, identity number and residential address of the landowner;
- (b) the full name, identity number and residential address of the person to whom it is granted;
- (c) the number, sex and species of the protected wild animal;
- (d) the date or period in respect of which it is granted;
- (e) the farm name, farm number and magisterial district in respect of which it is granted;
- (f) the signature and date on which the document was signed by the landowner;
- (g) the signature and date on which the document was signed by the person to whom the written permission was granted; and
- (h) the permit number and expiry date, if applicable.

(3) A landowner may not allow the hunting of a protected wild animal on his or her land without the written permission contemplated in subsection (1).

(4) The written permission referred to in subsection (1) may be combined with the document referred to in section 6(2).

(5) The holder of a written permission contemplated in subsection (1), must carry the document on his or her person at all times, while hunting, removing, transporting or being in possession of such animal or carcass or parts thereof.

### **Hunting of protected birds in excess of daily bag limit**

**10.** The holder of a hunting license contemplated in section 8 may not at any time hunt or be in possession of a greater number of any species of protected birds than the daily bag limit determined by the notice contemplated in section 7(1).

### **Circumstances in which the hunting of wild animals is prohibited**

**11.** (1) Without limiting the meaning of the word "hunt", no person may hunt a wild animal –

(a) by means of -

(i) fire;

(ii) a firearm that is capable of automatic fire;

(iii) a set gun,

(iv) setting a set trap, or poison firing apparatus;

(v) a spear, kierie, stick or any similar device;

(vi) birdlime,

(vii) the use of a boat for the purpose of chasing or killing the bird, in the case of a bird, in or upon any aquatic systems; or

(viii) any other device or method of which the use could result in injuring or killing an animal in a way which is not an acceptable humane hunting method;

(b) which is under the influence of a tranquilising or narcotic immobilising or similar agent;

(c) which is kept in captivity, confined to a cage, in an enclosure or trapped against a fence where it does not have a fair chance of evading the hunter;

(2) The provisions of section 11(1)(b) and (c) does not apply in respect of any wild animal caught by a registered veterinary surgeon in the practice of his or her profession and for the purpose of euthanising the wild animal.

(3) The MEC may, if it is in the public interest, set aside, by notice in the *Provincial Gazette*, any of the prohibitions referred to in subsection (1) –

(a) for a species of wild animal;

(b) for a particular period; or

(c) in a particular area or magisterial district, mentioned in the notice.

### **Restricted hunting methods or instruments**

**12.** (1) No person may, unless he or she is the holder of a permit and subject to the conditions set out in the permit, hunt a wild animal-

(a) by means of poison other than as indicated in section 23(2);

(b) by means of a vehicle or aircraft;

(c) during the night;

(d) by means of a trap or pitfall;

(e) by means of a trap cage;

(f) by means of a gin-trap;

(g) by means of a wire or rope snare or similar device;

(h) by means of an airgun;

(i) by means of a shotgun except in the case of hares and birds;

- (j) by means of a firearm which discharges a rim-fire cartridge of a 5.56 mm (.22 inch) calibre or smaller caliber except in the case of hares and birds;
  - (k) by means of a hand-gun or muzzleloader;
  - (l) by means of a poison-firing apparatus or any similar device;
  - (m) by means of darting or a device which injects an intoxicating or a narcotic agent or poison into such animal;
  - (n) by the use of a dog, except for the flushing, pointing or retrieving of birds, or for the purpose of searching for a wounded animal;
  - (o) by luring or by means of a simulation or recording of the natural sound made by an animal or by means of bait or scent or any other induced luring method;
  - (p) by means of any bird of prey;
  - (q) by means of a bow-and-arrow, crossbow, spear gun or similar device discharging an arrow or dart;
  - (r) by means of a blowpipe, catapult or similar device; or
  - (s) by means of a net,
- (2) The provisions of section 12(1)(m) do not apply in respect of any wild animal caught by a registered veterinary surgeon in the practice of his or her profession and for the purpose of euthanising the wild animal.
- (3) The provisions of subsection 12(1)(n) do not exempt the owner of the dog or the person in control of a dog, from liability for damage caused by such dog in respect of non-targeted animals on land belonging to another person.
- (4) The MEC may, if it is in the public interest, set aside, by notice in the *Provincial Gazette*, any of the restrictions referred to in subsection (1) –
- (a) for a species of wild animal;
  - (b) for a particular period; or
  - (c) in a particular area or magisterial district, mentioned in the notice.

### **Hunting with certain minimum-calibre firearms**

- 13.** (1) No person may, unless he or she is the holder of a permit use a firearm having a barrel with a calibre of less than 9.52 mm (.375 of an inch) to hunt a buffalo, giraffe or hippopotamus.
- (2) When any person has wounded or has presumably wounded an animal mentioned in subsection (1) without successfully killing or retrieving the animal and such animal holds a threat to human life or assets, he or she shall report it within 24 hours at the police station or the office of the nature conservator nearest to the place where such animal was wounded or was presumably wounded.

### **Hunting on or from a public road**

- 14.** No person may hunt on or from a public road without a permit.

## ***Part 3 - Alien Animals***

### **Listing of alien animals**

- 15.** (1) The MEC may, by notice in the *Provincial Gazette*, publish a provincial list of alien animal species in respect of which this Part 3 must be applied in the province.
- (2) The MEC must regularly review the provincial list published in terms of subsection (1), as may be appropriate and by notice in the *Provincial Gazette* amend or substitute the list.
- (3) The MEC may only publish or amend a provincial list in terms of subsection (1) or (2) with the concurrence of the Minister.
- (4) The list published in terms of subsection (1) shall not include those species listed by the Minister in terms of section 67(1) of the Biodiversity Act.
- (5) A notice in terms of subsection (1) may-

- (a) apply generally-
  - (i) throughout the 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 alien animals or only to specified alien animals or a specified category of alien animals; or
- (b) differentiate between-
  - (i) areas or categories of areas;
  - (ii) persons or categories of persons; or
  - (iii) alien animals or categories of alien animals.

### **Restricted activities involving an alien animal**

**16.** (1) No person may, without a permit-

- (a) import;
- (b) transport;
- (c) keep;
- (d) breed; or
- (e) trade in,  
a specimen of an alien animal.

(2) A person applying for a permit referred to in subsection (1), may be required to carry out a prescribed assessment of risks and potential impacts on biodiversity.

(3) A landowner may give written permission to any other person to hunt in accordance with the provisions of this Act, any alien animal on the land of the landowner and to remove the hunted alien animal or the carcass of the alien animal from the land.

### **Release of alien animals**

**17.** No person may release any alien animal in the Province except in a lawfully established captive environment.

### **Restricted activities involving certain alien animals totally prohibited**

**18.** (1) The MEC may, by notice in the *Provincial Gazette*, publish a list of those alien animals in respect of which a permit mentioned in section 16(1) shall not be issued.

(2) A person may not carry out any restricted activity involving a specimen of an alien animal published in terms of subsection (1).

(3) The MEC must regularly review a list published in terms of subsection (1).

(4) The MEC may, by notice in the *Gazette*, amend or repeal any notice published in terms of subsection (1).

### **Duty of care relating to alien animal**

**19.** (1) A person authorised by a permit, in terms of section 16(1), to carry out a restricted activity involving a specimen of an alien animal must -

- (a) comply with the conditions under which the permit has been issued; and
- (b) take all required steps to prevent or minimise harm to biodiversity.

(2) The Department may, in writing, with due regard to and in compliance with the provisions of the Promotion of Administrative Justice Act, 2000, direct any person who has failed to comply with subsection (1), or who has contravened section 16 or section 17, to take such steps-

- (a) as may be necessary to remedy any harm to biodiversity caused by the actions of that person;  
and
- (b) as may be specified in the directive.

- (3) If that person fails to comply with a directive issued in terms of subsection (2), the Department may-
- (a) implement the directive; and
  - (b) recover from that person all costs incurred by the Department in implementing the directive.
- (4) Should an alien animal establish itself as an invasive animal because of the actions of a specific person, the Department may hold that person liable for any costs incurred in the control and eradication of that species.

#### *Part 4 – General*

##### **Keeping and release of wild animals in captivity**

- 20.** (1) No person may, unless he or she is the holder of a permit-
- (a) keep any wild animal in captivity; or
  - (b) restrain any wild animal by means of a rope, cord, chain or any similar device.
  - (c) release any wild animal that has been kept in captivity.

##### **Import, export, keep, capture or transport of wild animals**

- 21.** (1) Subject to the provisions of subsection (2) no person may, without a permit, import into, export from, keep or transport in the Province a specimen of a wild animal.
- (2) A consignment of wild animals in transit through the Province does not require a permit if –
- (a) no wild animal is offloaded in the Province; and
  - (b) the consignment is accompanied by the relevant permits from the province of origin and the province of destination.
- (3) A person to whom a permit has been issued in terms of this Act to import, export, keep, capture or transport, a live wild animal, must comply with the requirements prescribed by the Act and other legislation relating to the capture, keeping and transport of wild animals.
- (4) No person may keep or transport a wild animal in conditions -
- (a) which are unhygienic; or
  - (b) in which the animal -
    - (i) may be injured or otherwise impaired; or
    - (ii) suffer unnecessarily.
- (5) A nature conservator may with due regard to and in compliance with the provisions of the Promotion of Administrative Justice Act -
- (a) issue a directive to a person who captures, keeps or transports a wild animal in contravention of subsection (3) or (4), or a person who has physical control of the animal, to follow the steps to rectify the matter within the indicated time;
  - (b) issue a directive to a person contemplated in paragraph (a) concerning the manner in which the wild animal must be captured, kept, transported or otherwise treated;
  - (c) remove the wild animal from the custody of a person contemplated in paragraph (a) without compensation if it is considered necessary to prevent injury, impairment, suffering or death of the wild animal; or
  - (d) keep, treat or release in a suitable environment a wild animal removed from the custody of a person in terms of paragraph (c) and such person shall be liable for the cost of keeping, treating or releasing the wild animal removed from his or her custody.

##### **Leaving or making of openings in certain fences**

**22.** No person may without a permit, on land upon which wild animals are found or likely to be found and which is fenced in such a manner that such wild animals cannot readily escape, make an opening in the fence with the intention to entrap so that wild animals entering the land through the opening, cannot easily find the opening to escape.

### **Placing of poison**

**23.** (1) Subject to the provisions of subsection (2), no person may place or cause or allow poison to be placed in a manner or in a place where it is likely to be assimilated or ingested by a non-targeted wild animal.

(2) The provisions of subsection (1) do not preclude any person from placing poison for the purpose of exterminating insects or rodents that are vermin, with due observance of the provisions of any law, norms and standards governing the use of the applicable poison.

(3) No person may use poison for a purpose or in a manner other than as specified on the original container thereof or on the original label on the original container thereof.

### **Entering land with weapons and conveyance of firearms**

**24.** (1) No person may enter land or be on land where wild animals are found or likely to be found while he or she is in the possession of a weapon, unless such person, is performing his or her official duty or has beforehand obtained the written permission from the landowner of the land concerned.

(2) No person may convey an open firearm on a public road traversing land on which wild animals are found or are likely to be found, but-

(a) the landowner or any person who is authorised in terms of this Act to hunt or capture a wild animal may convey an open firearm on the land of the landowner;

(b) any person may on such road convey-

(i) a handgun with a barrel, excluding the chamber, not longer than 100 mm; or

(ii) any other firearm whereof the barrel, bolt, chamber, tube or magazine is not loaded and which is contained in a thoroughly closed gun bag, gun case or gun holster specifically designed and made to legally carry the firearm.

(3) For the purpose of subsection (2), "hand-gun" means a revolver or pistol intended for self-defence and designed or suited for carrying in a holster on the body of a person.

### **Document pertaining to donation, sale and removal of a protected wild animal**

**25.** (1) No person may donate, sell or allow to be removed a protected wild animal or the carcass of a protected wild animal to any other person unless, when he or she delivers the protected wild animal or the carcass of the protected wild animal to the other person, he or she furnishes that person with a document signed by him or her.

(2) The document referred to in subsection (1) must be given beforehand, reduced to writing and must reflect -

(a) the full name, identity number and residential address of the person donating or selling the protected wild animal or carcass thereof;

(b) the full name, identity number and residential address of the person to whom the protected wild animal or carcass is given or sold;

(c) the sex and species of the protected wild animal;

(d) the date or period in respect of which it is given or sold;

(e) the signature and date on which the document was signed by the person donating or selling the protected wild animal or carcass thereof;

(f) the signature and date on which the document was signed by the person to whom the protected wild animal or carcass is given or sold to;

(3) In so far as this section relates to the selling or donation of the carcass of a protected wild animal or protected bird, originating from a hunt, the number of the hunting permit or licence, whichever is applicable, the date of the hunt and the full name and residential address of the hunter must also be reflected on the document.

(4) The holder of the documentation contemplated in subsection (1), must carry the document on his or her person at all times.

### **Conveyance of dead protected wild animal**

**26(1)** No person may convey a dead protected wild animal without a written permission from the landowner where such protected wild animal was hunted on the land belonging to the landowner

(2) No person may convey a dead protected wild animal without documentary proof of the purchase or donation in the case of a protected wild animal purchased or donated or the licence, permit or exemption in the case of a protected wild animal hunted or caught in terms of a licence, permit or exemption.

(3) The written permission referred to in section 26 (1) must be in writing and must reflect –

- (a) the name and address of the owner;
- (b) a description of the land on which the protected wild animal was hunted,
- (c) the species and number of protected wild animal to be conveyed;
- (d) the destination of the protected wild animal;
- (e) the name of the person who conveys the protected wild animal;
- (f) the signature of the owner and the date on which the owner signed the document;

(4) The documentary proof referred to in section 26 (2), in the case of a protected wild animal purchased or donated must be in writing and must reflect –

- (a) the name and residential address of the seller or donor;
- (b) the date on which and the address where the protected wild animal is delivered;
- (c) a description of the protected wild animal sold or donated;
- (d) particulars of the manner in which the protected wild animal came into possession of the seller or donor;
- (e) the name and residential address of the buyer or donee; and
- (f) the signature of the seller or donor.

(5) The holder of the documentation contemplated in subsection (1) and (2), must carry the document on his or her person at all times.

### **Restrictions regarding carcasses of protected wild animals**

**27.** (1) No person may, without a permit, be in possession of the carcass of a protected wild animal, unless -

- (a) he or she is in possession of the written permission contemplated in section 9, in the event of the animal having been hunted by such person on the land of any other person; or
- (b) he or she is in possession of a written document contemplated in section 25, in the event of such person having acquired the carcass from any other person; or
- (c) such person can provide a valid receipt of such legal procurement; or
- (d) he or she is in possession of a written authorisation by the Director to be in possession of the animal or carcass, in the event of such person having acquired the carcass by any other means,.

(2) No carcass of a protected wild animal may be sold by any person other than-

- (a) the owner of the land on which the protected wild animal concerned was hunted in accordance with the provisions of this Act;
- (b) a person who has legally obtained such protected wild animal and has documentary proof as contemplated in section 9 or section 25; or
- (c) a person authorised by a permit issued in terms of this Act, to sell such carcass.

(3) No person shall convey the carcass of a protected wild animal unless –

- (a) he or she purchased it at a public sale; or
- (b) he or she has hunted or caught it in terms of a licence or permit or written permission and is in possession of the licence or permit when conveying the carcass.



### **Auctioning of protected wild animals**

**28.** (1) No person may, without a permit, advertise, trade, buy, sell, keep or dispose of any protected wild animal at an auction.

(2) An auctioneer who conducts an auction contemplated in subsection (1) must, subject to the conditions set out in the permit-

- (a) keep a register in the format determined by the Director, on all protected wild animals which-
  - (i) have been traded, advertised, bought, sold, kept, exchanged, bartered or disposed of by the auctioneer; and
  - (ii) have died at the auction;

- (b) when he or she delivers to any other person a wild animal which has been auctioned, furnish such other person with a written document contemplated in section 25; and

- (c) make such register available to a nature conservator on request.

(3) No person may receive a protected wild animal in terms of this section, unless the auctioneer has provided him or her with the document contemplated in subsection (2)(b).

(4) Any person who receives a protected wild animal in terms of this section, must carry the document contemplated in subsection (1), (2)(b) or (5), as the case may be, with him or her when he or she transports such protected wild animal and must retain such document in his or her possession for the period during which such protected wild animal is being transported or is in his or her possession.

(5) Any person who receives a protected wild animal in terms of this section, must obtain the necessary permit contemplated in section 21 before such person may transport, import or export such wild animal.

### **Game farm permit**

**29.** (1) Any landowner whose property is adequately enclosed and on whose property wild animals are found, may apply in writing to the Director for a game farm permit in respect of the whole or any portion of such land for the catching, hunting, or selling of species specified on the permit.

(2) A game farm permit issued in terms of this section lapses upon the transfer or lease of the land or any portion of such land in respect of which it was issued.

(3) Any exemption granted in terms of section 47 of the Nature Conservation Ordinance, 1983 (Ordinance 12 of 1983), prior to the repeal of that Ordinance by section 102 of this Act, is regarded as a game farm permit issued in terms of this section and any such exemption remains valid for the period stated therein.

### **Rights of holder of game farm permit and certain other persons**

**30.** (1) Any landowner to whom a game farm permit has been issued, a relative of the landowner, a full-time employee of the landowner acting under the authority of the landowner and any other person acting with the written permission contemplated in section 9, may, subject to any condition specified in the game farm permit and on the land in respect of which the game farm permit was issued, hunt-

- (a) any number of the species of wild animal authorised in such permit;
- (b) during any time of the year;
- (c) at any time during the day or night; and
- (d) by the use of only hunting methods or instruments authorised by the permit which may not include the use of the prohibited hunting methods listed in terms of Section 11.

(2) The holder of a game farm permit may, subject to the conditions set out in the permit-

- (a) catch;
- (b) hunt; and
- (c) sell,

any wild animal or the carcass of the animal of the species authorised in the permit.

## *Part 5 Powers of MEC*

### **MEC may direct that wild and alien animals be hunted or caught**

**31.** (1) The MEC may, with the concurrence of the landowner where wild animals or alien animals are found, instruct a Nature Conservator or other suitably qualified person in writing to hunt, catch or remove any specific animal, if the identified animal –

- (a) is causing damage to livestock, cultivated trees or crops;
- (b) is present in such numbers that grazing is materially damaged;
- (c) is likely to constitute a danger to human life;
- (d) is causing damage to property other than as indicated in (a);
- (e) is wounded or injured;
- (f) should be hunted, caught or removed in the interest of environmental management; or
- (g) is to be caught or removed for the survival of the species.

(2) The Nature Conservator or person instructed in terms of subsection (1) to hunt, catch or remove an animal –

- (a) may, after receiving the written consent from the landowner, enter upon any land to hunt, catch or remove the wild animal or alien animal; and
- (b) must deal with the carcass or with the caught animal as indicated by the MEC or person delegated in the written instruction.

### **General powers of MEC**

**32.** The MEC may –

- (a) take steps that may be necessary or expedient –
  - (i) to breed or preserve any species of wild animal or to promote or facilitate research in this regard;
  - (ii) to destroy, reduce, remove or eliminate, either generally or in a particular area, any species of wild animal or alien animal which may be harmful or detrimental to the existence of any other species of wild animal; or
  - (iii) to import into the Province and acclimatise any species of wild animal;
- (b) institute any survey or investigation in connection with any wild or alien animal;
- (c) take steps that may be necessary or expedient to catch, purchase or otherwise acquire, sell, exchange, donate or otherwise dispose of any wild or alien animal; or
- (d) on approval by a recognised ethics committee of a project proposal, authorise any person in writing to do research on any wild animal or alien animal.

### **Regulations**

**33.** The MEC may for the purposes of this Chapter make regulations in terms of section 88 relating to –

- (a) the hunting or catching of wild animals or alien animals;
- (b) the taking, disturbing, destruction or collection of the egg or egg shell of a bird or reptile or amphibians to which this Chapter applies;
- (c) the sale, and donation of a wild animal or alien animal;
- (d) the import into or the export or removal from the Province of a wild animal or alien animal;
- (e) the breeding, possession, keeping, rehabilitation, conveyance or removal of a wild animal or alien animal;
- (f) the requirements for the capture, keeping and transport of wild animals;
- (g) the requirements to be complied with when any person has wounded a wild animal or alien animal;
- (h) the type or calibre of firearm with which any person may hunt a wild animal or alien animal, or category of wild animal or alien animal;
- (i) the poisoning of wild animals or alien animal;

- (j) the acquisition or transfer of hunting-rights;
- (k) bow hunting;
- (l) the marking of individual protected wild or alien animals for identification purposes;
- (m) the control of alien animals;
- (n) game farm permits;
- (o) admission of guilt fines; or
- (p) any other matter that may be necessary to facilitate the effective implementation of this Chapter.

### **Specific offences and penalties**

**34.** (1) Any person who contravenes or fails to comply with provisions of this Chapter is guilty of an offence and is liable on conviction—

- (a) in case of an offence referred to in section 5, 6, 7(2), 8, 10, 11, 12, 13, 14, 16, 17, 18(2), 20, 21(1) or 22 to a fine or to imprisonment for a period not exceeding 10 years or to both fine and such imprisonment.
  - (b) in case of an offence referred to in section 21(4) to a fine or to imprisonment for a period not exceeding 7 years or to both fine and such imprisonment.
  - (c) in case of an offence referred to in section 23(1), 24, 25, 26 or 27 to a fine or to imprisonment for a period not exceeding 7 years or to both fine and such imprisonment.
  - (d) in case of an offence referred to in section 28 to a fine or to imprisonment for a period not exceeding 10 years or to both fine and such imprisonment.
- (2) A fine in terms of subsection (1)(a) or (1)(b) may not exceed –
- (a) an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act No 101 of 1991); or
  - (b) an amount which is equal to three times the commercial value of the wild animal in respect of which the offence was committed, whichever is the greater.
- (3) Any person who -
- (a) falsely professes to be the owner or occupier of land and grants permission to any other person to hunt or catch a wild animal or an alien animal on the land of which he or she so professes to be the owner or occupier;
  - (b) permits or allows any other person to do anything which is an offence in terms of this Act;
  - (c) falsely professes that he or she sells a wild animal lawfully,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 7 years or to both such fine and such imprisonment.

(4) Notwithstanding the provisions of subsection (3), any person convicted of a contravention of subsection (3)(b) or (c) in respect of a protected wild animal shall be liable to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of the wild animal in respect of which the offence was committed.

### **General penalty**

**35.** In the case of any other offence not provided for in section 34, to a fine or imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

## **CHAPTER 3 PROTECTED AND INDIGENOUS PLANTS**

### **Listing of protected plants**

**36.** (1) The MEC may, by notice in the *Provincial Gazette*, publish a list of protected plants, being any indigenous plant species facing an extremely high risk of extinction in the wild in the immediate future or

being any plant species which are of high conservation value or provincial importance or require regulation in order to ensure that the protected plants are managed in an ecologically sustainable manner

(2) The MEC may further categorise within the different categories of species listed in subsection (1) when compiling the lists referred to in subsection (1).

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

(4) The list published in terms of subsection (1) shall not include those species listed by the Minister in terms of section 56 of the Biodiversity Act.

(5) The MEC must by notice in the *Provincial Gazette* review the list published in terms of subsection (1) at least every five years.

### **Restricted activities involving a protected plant**

**37.** (1) Subject to the provisions of subsection (2) no person may, without a permit issued in terms of this Act –

- (a) pick;
- (b) be in possession of;
- (c) sell;
- (d) purchase;
- (e) donate;
- (f) receive as a gift;
- (g) import into;
- (h) export; or
- (i) convey,

a specimen of a protected plant

(2) The provisions of subsection (1)(a) –

- (a) in so far as it prohibits the possession of a specimen of a protected plant, do not apply to a person who is in possession of a protected plant which grows in its natural habitat.
- (b) in so far as it prohibits the donation, receiving as a gift or conveyance of a protected plant, do not apply to a protected plant cultivated on land set aside solely for the cultivation of such protected plant;
- (c) in so far as it prohibits the import into or export or removal from the Province, purchase or conveyance of a protected plant, do not apply to a protected plant that is –
  - (i) lawfully bought or received as a gift from a person in another Province; or
  - (ii) lawfully bought or received as a gift from a person within the Province; or
  - (iii) obtained from a registered nursery
- (d) in so far as it prohibits the sale or donation or the export or removal from the Province of a protected plant, do not apply to a protected plant that is –
  - (i) acquired lawfully and sold or donated, exported or removed from the Province, by a person authorised to sell plants; or
  - (ii) sold or donated, exported or removed from the Province, by a botanical garden which is subject to the provisions of the National Environmental Management: Biodiversity Act, 2004.

(3) A person importing into or exporting or removing from, the Province or conveying a protected plant may rely on any of the exemptions granted in terms of subsection (2), only if that person can produce documentary proof indicating that acquisition of the protected plant was lawful.

### **Picking of indigenous plants**

**38.** (1) No person may, without a permit –

- (a) pick any indigenous plant-
  - i. On a public road;

- ii. On land next to a public road within a distance of 100 metres measured from the centre of the road;
  - iii. Within an area bordering any natural water course, whether wet or dry, up to and within a distance of 50 metres from the high watermark on either side of the natural water course; or
  - iv. In a provincial nature reserve, a protected environment or a private nature reserve; or
  - v. In a manner that constitutes large-scale harvesting or for commercial purposes.
- (b) collect firewood.
- (2) Subsection (1)(a)(ii) does not apply to the land owner or his or her relative picking an indigenous plant which is not a protected plant.
- (3) Subsection (1)(b) does not apply –
- (i) to the collection of a head load of firewood conveyed in any manner on land, except on land in a protected environment or a private nature reserve; or
  - (ii) to the collection of firewood in a protected environment or private nature reserve, by the owner of the land, or another person acting with the written permission of the owner.
- (4) No person may pick any indigenous plant on land of which such person is not the owner, without the owner's written permission.
- (5) No person may collect firewood or pick, transport or remove an indigenous plant on land of which such person is not the owner without the owner's written permission.
- (6) No person may-
- (a) receive an indigenous plant knowing that it was not picked lawfully;
  - (b) possess an indigenous plant in respect of which there is a reasonable suspicion that it was not picked lawfully and be unable to give a satisfactory account of such possession; or
  - (c) acquire or receive into his or her possession or handle an indigenous plant without having reasonable cause for believing, at the time of such acquisition, receipt or handling of such plant, that it was picked lawfully.

### **Powers of the MEC**

- 39.** (1) The MEC may –
- (a) take steps that may be necessary or expedient for research regarding the propagation, preservation or control of weed or alien plants;
  - (b) take steps for the importation, acclimatisation, picking, destruction, reduction, removal or elimination of any species of plant;
  - (c) on approval of a project proposal, institute any survey or investigation in connection with any plant referred to in this Chapter;
  - (d) take steps necessary for the identification of any protected plant, indigenous plant or alien plant ; or
  - (e) take steps to develop and control land for the purposes of this Chapter in collaboration with any other public or private body.

### **Regulations**

- 40.** The MEC may for the purposes of this Chapter make regulations in terms of section 88 relating to –
- (a) the number and species of plants that may be picked in terms of a permit or exemption;
  - (b) the control, possession, keeping, convey in, convey through, import into or export or removal from the Province of a plant referred to in this Chapter, including the marking of individual plants for identification;
  - (c) the control, importation, cultivation, destruction or combating of a plant that could be harmful to environmental conservation;
  - (d) research in connection with any plant referred to in this Chapter;
  - (e) the collecting of wood, including firewood, on any land; or
  - (f) any other matter that may be necessary to facilitate the effective implementation of this Chapter.

### **Offences and Penalties**

**41.** Any person who contravenes or fails to comply with provisions of this Chapter is guilty of an offence and is liable on conviction—

- (a) in case of an offence referred to sections 37(1) and 38(1) to a fine or to imprisonment for a period not exceeding 10 years or to both fine and such imprisonment.
- (b) in case of an offence referred to sections 38(4), 38(5) and 38(6) to a fine or to imprisonment for a period not exceeding 5 years or to both fine and such imprisonment.
- (c) in case of any other offence not provided for in paragraphs (a) and (b), to a fine or imprisonment for a period not exceeding 3 years or to both such fine and such imprisonment.

## **CHAPTER 4 AQUATIC BIOTA AND AQUATIC SYSTEMS**

### *Part 1 - Protected fish*

#### **Listing of protected fish**

**42.** (1) The MEC may, by notice in the *Provincial Gazette*, publish a list of protected fish species, being any indigenous fish species facing an extremely high risk of extinction in the immediate future or being any fish species which are of high conservation value or provincial importance or require regulation in order to ensure that the protected fish species are managed in an ecologically sustainable manner

(2) The MEC may further categorise within the different categories of species when compiling the list referred to in subsection (1).

(3) The notice contemplated in subsection (1) may apply generally throughout the Province, as the case may be, or only in a specified area or category of areas.

(4) The list published in terms of subsection (1) shall not include those species listed by the Minister in terms of section 56 of the Biodiversity Act.

(5) The MEC must by notice in the *Provincial Gazette* review the list published in terms of subsection (1) at least every five years.

#### **Restricted activities involving protected fish**

**43.** Subject to the provisions of section 45, no person may, without a permit -

- (a) catch other than by angling;
- (b) import;
- (c) export;
- (d) transport;
- (e) keep;
- (f) trade in; or
- (g) release, except in the case of angling, and if released at the point where caught, a specimen of a protected fish.

### *Part 2 – Alien Fish*

#### **Listing of alien fish**

**44.** (1) The MEC may by notice in the *Provincial Gazette*, publish a provincial list of alien fish species in respect of which this Part 2 must be applied in the Province.

(2) The MEC must regularly review the provincial list published in terms of subsection (1), as may be appropriate and by notice in the *Provincial Gazette* amend or substitute the list.

(3) The MEC may only publish or amend a provincial list in terms of subsection (1) or (2) with the concurrence of the Minister.

(4) The list published in terms of subsection (1) shall not include those alien fish species listed by the Minister in terms of section 67(1) of the National Environmental Management: Biodiversity Act, 2004.

(4) A notice in terms of subsection (1) may-

(a) apply generally-

(i) throughout the 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 alien fish or only to specified alien fish or a specified category of alien fish; or

(b) differentiate between-

(i) areas or categories of areas;

(ii) persons or categories of persons; or

(iii) alien fish or categories of alien fishes.

### **Restricted activities involving alien fish**

**45.** No person may, without a permit -

(a) import; or

(b) release in any aquatic system,

a specimen of an alien fish.

## ***Part 3 – General Provisions***

### **Closed season for angling**

**46.** (1) The MEC may, by notice in the *Provincial Gazette*, declare a period of the year to be a closed season during which angling in the aquatic system listed in the Notice is prohibited.

(2) No person may angle for a protected fish during the closed angling season declared in terms of subsection (1) and subject to the provisions of the notice declaring the angling season closed.

### **Catching of fish**

**47.** (1) No person may without a permit –

(a) catch fish in any aquatic system otherwise than by means of angling;

(b) place in any aquatic system any obstruction preventing the free passage of fish;

(c) drain or partially drain or attempt to drain any aquatic system in order to catch or kill fish in any manner whatsoever;

(d) catch fish during a closed season in an aquatic system specified in a notice issued in terms of section 46;

(e) wilfully damage, disturb or destroy the ova or spawn of fish or the spawning bed, bank or shallow where the spawn of fish is deposited;

(f) catch fish with a set line;

(g) catch, stun or kill fish by means of any explosive or electrical device;

(h) wilfully poison fish by any means or method;

(i) make a feeding area in waters by placing any animal matter, vegetable matter or other substance therein to lure fish; or

(j) angle in a provincial nature reserve, a protected environment or a private nature reserve.

(2) Subsection (1)(a) to (d), (f), (h) and (j) does not apply to the following persons with respect to an aquatic system that has been artificially created and that is totally surrounded by the land of the owner-

(a) the owner of such land; or

(b) any other person acting with the written permission of the owner.

(3) For the purpose of interpretation of the words "written permission" in subsection (2), the provisions of section 9 apply, read with the changes required by the context.

#### **Possession of fish net, fish traps or similar devices**

**48.** (1) No person may on land on which an aquatic system occurs, be in possession of a fish net, a fish trap or a similar device designed for the catching of fish, without the written permission of the owner of the land.

(2) Subsection (1) does not apply to the possession on land on which an aquatic system occurs, of a landing net or keep-net designed for the purpose of landing or keeping fish.

(3) Subsection (1) does not apply to the possession of a fish net, fish trap or similar device designed for the catching of fish by –

- (i) the owner or occupier of waters on privately owned land;
- (ii) a licensed dealer on the premises where he carries on business; or
- (iii) the holder of a permit issued in terms of section 47(1)(a).

#### **Prohibited activities involving aquatic systems**

**49.** No person may -

- (a) deposit into aquatic system any solid, liquid or gaseous substance or thing which may injure, damage or kill, or in any way be harmful to, aquatic biota;
- (b) cause or allow such substance or thing to enter or percolate into an aquatic system;
- (c) carry on a business or occupation which may result in any such substance or thing entering or percolating into an aquatic system, without taking adequate precautions to prevent such substance or thing from entering percolating into that aquatic system; or
- (d) destroy or cause or allow to be destroyed aquatic habitat in an aquatic system, riparian vegetation or instream spawning habitat.

#### **Restricted activities involving live fish**

**50.** (1) No person may, without a permit, import into, export from or transport in the Province any live fish or spawn of any such fish.

(2) No person may, without a permit, place or release live fish in waters.

(3) Notwithstanding subsection (2) any person who has caught a fish may thereafter place or release it alive in the waters in which he caught it.

#### **Trade in fish or aquatic biota**

**51.** No person may, without a permit-

- (a) sell or buy a fish which is a protected fish or spawn of such fish; or
- (b) sell or buy any fish which has been caught in contravention of this Act or any other law.

### *Part 4 – Powers of the MEC*

#### **General Powers of MEC**

**52.** The MEC may after due consideration and in compliance with the provisions of the Promotion of Administrative Justice Act, 2000 -

- (a) take steps that may be necessary or expedient for -
  - (i) research in connection with any matter dealt with in this Chapter; or
  - (ii) the propagation or control of any aquatic biota or aquatic growth;



- (b) take steps in connection with the catching, collection, destruction, reduction, removal, elimination, either generally or in a particular area, of any matter referred to in this Chapter that may be harmful to any aquatic biota;
- (c) conduct any survey or institute any investigation regarding any matter referred to in this Chapter;
- (d) take steps that may be necessary for the management or control of the purchase, sale or exchange of any aquatic biota;
- (e) take steps to develop and control land for the promotion of this Chapter in collaboration with any other public or private body;
- (f) on approval by a recognised ethics committee of a project proposal by the Department or the relevant university's ethics committee review in the case of a university related research, authorise any person or body in writing to do research on any aquatic biota; or
- (g) make management plans for the conservation or protection of aquatic biota.

### **Exemption from provisions for scientific purposes**

**53.** The MEC may grant a person exemption, in writing and subject to conditions, from any provision of this Chapter where that person is doing research on fish or fish food for scientific purposes.

### **Regulations**

- 54.** The MEC may for the purposes of this Chapter make regulations in terms of section 88 relating to –
- (a) the measurements, mass and size of aquatic biota that may be caught and retained;
  - (b) the control and regulation of the catching of fish;
  - (c) the taking, disturbing, destruction or collection of ova or spawn of fish;
  - (d) the sale of aquatic biota or aquatic growths;
  - (e) the import into or the export or removal from the Province of aquatic biota or aquatic growths;
  - (f) the possession or keeping of aquatic biota, or the conveyance or removal of aquatic biota from one place to another;
  - (g) the poisoning of aquatic biota;
  - (h) the supervision, control, development and protection of aquatic biota;
  - (i) the quantity, nature, measurements, form and construction of –
    - (i) fishing tackle, either generally or in relation to a particular species of fish; or
    - (ii) any other equipment used for the catching of aquatic biota;
  - (j) the control, import into the Province, cultivation, destruction or combating of an aquatic growth that is or could be harmful to aquatic biota;
  - (k) research regarding aquatic biota; and
  - (l) any other matter that may be necessary to facilitate the effective implementation of this Chapter.

### **Offences and Penalties**

- 55.** (1) Any person who contravenes or fails to comply with provisions of this Chapter is liable on conviction–
- (a) in case of an offence referred to in sections 43 or 45, to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment;
  - (b) in case of an offence referred to in sections 47(1), 48(1), 50 and 51 to a fine or to imprisonment for a period not exceeding 7 years or to both such fine and such imprisonment; and
  - (c) in case of any other offence not provided for in paragraphs (a) and (b), to a fine or imprisonment for a period not exceeding 3 years or to both such fine and such imprisonment.
- (2) Any person convicted of an offence in terms of section 50, and who after such conviction persists in the act or omission which constituted such offence, shall be guilty of a continuing offence and liable on

conviction to a fine, or to imprisonment for a period not exceeding 100 days, or to both such fine and such imprisonment in respect of every day on which he or she so persists with such act or omission.

## **CHAPTER 5**

### **INVERTEBRATES**

#### *Part 1 - Protected Invertebrates*

#### **Listing of protected invertebrates**

**56** (1) The MEC may, by notice in the *Provincial Gazette*, publish a list of protected invertebrates species, being any indigenous invertebrate species facing an extremely high risk of extinction in the wild in the immediate future or being any species which are of high conservation value or provincial importance or require regulation in order to ensure that the protected invertebrates are managed in an ecologically sustainable manner

(2) The MEC may further categorise within the different categories of species when compiling the lists referred to in subsection (1).

(3) The notice contemplated in subsection (1) may apply generally throughout the Province, as the case may be, or only in a specified area or category of areas.

(4) The list published in terms of subsection (1) shall not include those invertebrate species listed by the Minister in terms of section 56 of the Biodiversity Act.

(5) The MEC must by notice in the *Provincial Gazette* review the lists published in terms of subsection (1) at least every five years.

#### **Restricted activities involving protected invertebrates**

**57.** (1) No person may without a permit -

- (a) keep,
- (b) possess,
- (c) sell,
- (d) collect,
- (e) purchase,
- (f) donate,
- (g) receive as a donation
- (h) carry,
- (i) convey,
- (j) transport,
- (k) import into, or
- (l) export from the Province

a specimen of a protected invertebrate species.

(2) No person may without a permit –

- (a) catch,
- (b) kill,
- (c) exterminate,
- (d) harm or
- (e) damage.

any individual protected invertebrate or colony of a protected invertebrate species.

## ***Part 2 – Alien Invertebrates***

### **Listing of alien invertebrates**

**58.** (1) The MEC may, by notice in the *Gazette*, publish a provincial list of alien invertebrates species in respect of which this Part 2 must be applied in the Province.

(2) The MEC must regularly review the provincial list published in terms of subsection (1), as may be appropriate and by notice in the *Provincial Gazette* amend or substitute the list.

(3) The MEC may only publish or amend a provincial list in terms of subsection (1) or (2) with the concurrence of the Minister.

(4) The list published in terms of subsection (1) shall not include those alien invertebrate species listed by the Minister in terms of section 67(1) of the Biodiversity Act.

(5) A notice in terms of subsection (1) may-

(a) apply generally-

(i) throughout the 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 alien invertebrate or only to specified alien invertebrates or a specified category of alien invertebrate; or

(b) differentiate between-

(i) areas or categories of areas;

(ii) persons or categories of persons; or

(iii) alien invertebrate or categories of alien invertebrates.

### **Restricted activity involving alien invertebrates**

**59.** (1) No person may without a permit, import into the Province any alien invertebrate for entomology, commercial or collection purposes.

(2) A person applying for a permit referred to in subsection (1), may be required to carry out a prescribed assessment of risks and potential impacts on biodiversity.

(3) The MEC may, by notice in the *Provincial Gazette*, include any additional restrictive actions in respect of any one or more species of invertebrates listed in terms of section 58.

## ***Part 3 – Powers of the MEC***

### **Exclusions**

**60.** (1) The MEC may by notice in the *Provincial Gazette*, exclude any species of invertebrate, either generally or specifically, from all or any of the provisions of this Chapter for the area defined in the notice and indicate therein the persons or class or category of persons to whom the provision concerned shall not apply.

(2) The MEC's power to exclude under subsection (1) shall be exercised, amongst others, with reference to the following factors:

(a) short term advantages as opposed to long term disadvantages;

(b) short term impacts as opposed to long term impacts;

(c) offsets;

(d) emergency considerations;

(e) scientific considerations;

(f) commercial considerations related to farming and breeding;

(g) conservation considerations; or

- (h) any other consideration as may be prescribed.

### **General powers of MEC**

**61.** The MEC may, after due consideration and in compliance with any other law and the provisions of the Promotion of Administrative Justice Act, 2000 –

- (a) take steps that may be necessary or expedient for research in connection with, or the propagation or preservation of any invertebrate;
- (b) on approval of a project proposal, institute any survey or investigation in connection with any invertebrate; or
- (c) take steps to develop and control land for the conservation of any invertebrate in collaboration with any other public or private body.

### **Regulations**

**62.** The MEC may for the purposes of this Chapter make regulations in terms of section 88 relating to –

- (a) the species, number and sex of invertebrates that may be caught;
- (b) the control and regulation of the catching, collecting, possession, keeping or import into, export from or the conveyance in or through the Province of an invertebrate;
- (c) the regulation of the purchase, sale or exchange of an invertebrate;
- (d) the taking, disturbing, destruction or collection of the eggs, larvae or pupa of an invertebrate;
- (e) the sale or trade of an invertebrate;
- (f) the poisoning of an invertebrate;
- (g) research in connection with an invertebrate; and
- (h) any other matter that may be necessary to facilitate the effective implementation of this Chapter.

### **Offences and penalties**

**63.** (1) Any person who contravenes or fails to comply with provisions of this Chapter is liable on conviction in case of an offence referred to in section 57 or 59 to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.

(2) In case of any other offence in terms of this Act but not provided for in subsection (1) to a fine or imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.

## **CHAPTER 6 PROFESSIONAL HUNTERS, HUNTING OUTFITTERS AND TRAINERS**

### **Acting as professional hunters, hunting outfitters or trainer**

**64.** (1) No person may without a permit act as a -

- (a) professional hunter;
- (b) hunting outfitter; or
- (c) trainer

(2) The MEC may, by notice in the *Provincial Gazette*, exempt any group or class of professional hunters or hunting outfitters from the provisions of subsection (1).

(3) The MEC may determine the requirements to be complied with by a professional hunter, a hunting outfitter or a trainer from time to time.

### **Hunting of wild animals by clients**

**65.** (1) A client shall not hunt a wild animal or an alien animal, unless-

- (a) the hunt has been organised by a hunting outfitter; and

- (b) he or she is escorted by a professional hunter.
- (2) A professional hunter shall ensure that his or her client does not hunt contrary to the provisions of this Act by giving his or her client an unlawful instruction.
- (3) A client shall obey any instruction given in terms of subsection (2).
- (4) A professional hunter may while escorting a client and if this is necessary in defence of life or property or to prevent unnecessary suffering of a wild animal kill such wild animal.
- (5) A hunting outfitter and professional hunter may not present or conduct a hunt with a client under false pretences.

### **Hunting outfitters to be holders of hunting rights**

- 66.** (1) A hunting outfitter may not present, advertise, organise or conduct the hunting of a wild or alien animal for a client, unless the hunting outfitter –
- (a) is the holder of hunting rights on the land on which the hunting is presented, advertised, organised or conducted; or
  - (b) is authorised by the MEC in writing, to present a hunt of specific wild or alien animals.
- (2) A professional hunter may not escort a client on a hunt unless the hunting outfitter is the holder of hunting rights in respect of the land on which the hunting is presented or organised and the professional hunter must at all times carry a copy of such hunting rights on him or her while so escorting the client.

### **Regulations**

- 67.** The MEC may for the purposes of this Chapter make regulations in terms of section 88 relating to –
- (a) the requirements that must be complied with by a professional hunter, hunting outfitter or trainer before a permit referred to in section 64(1) may be issued to the professional hunter, hunting outfitter or trainer;
  - (b) the curriculum and other requirements to be complied with by professional hunting schools or trainers;
  - (c) the requirements to be complied with when a client has wounded a wild or alien animal;
  - (d) the registers, records, books or documents required to be kept by professional hunters, hunting outfitters, trainers and the inspection of such registers, records, books or documents;
  - (e) the supervision of hunting by a client, services and conveniences, agreements between a hunting-outfitter and a client, advertising to act as a hunting outfitter, the obtaining of licences, permits and exemptions from the qualifying requirements which must be complied with, the documents and written permissions for a client and the dispatching of trophies;
  - (f) the control and conducting of professional hunting schools; and
  - (g) any other matter that may be necessary to facilitate the effective implementation of this Chapter.

### **Offences and penalties**

- 68.** Any person who contravenes or fails to comply with the provisions of this Chapter–
- (a) in case of an offence referred to in section 64(1) is guilty of an offence and liable on conviction to a fine not exceeding R250 000 or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.
  - (b) in case of an offence referred to in section 65(1) or 65(3) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 5 years or to both a fine and such imprisonment.
  - (c) in case of an offence referred to in section 65(5), 66(1) or 66(2) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.
  - (d) in case of any other offence not provided for in paragraphs (a), (b) or (c) to a fine or imprisonment for a period not exceeding 3 years or to both such fine and such imprisonment.

## CHAPTER 7

### PRESERVATION OF CAVES, CAVE FORMATIONS, CAVE BIOTA AND KARST SYSTEMS

#### Restricted activities involving caves

69. (1) No person may without a permit –
- (a) enter or inhabit a cave;
  - (b) erect or construct a cave gate;
  - (c) construct or develop any form of facilities within a cave including, but not limited to staircases and ablution facilities;
  - (e) establish or operate any commercial venture within a cave;
  - (f) conduct any research or associated activities through any institution/body/organisation or not, that may impact a cave, or any immediate area surrounding a cave; or
  - (g) collect or remove any rocks (including but not limited to dolomite), within a karst region, unless collected or removed in terms of a written authorisation.
- (2) No person may without a permit issued by the Department or authorisation issued by a relevant management authority excavate, dig or in any manner alter the structure of a cave and such permit or authorisation shall be carried and retained as proof of having been so permitted or authorised.

#### Prohibited activities involving caves

- 70 (1) No person may –
- (a) deposit, dump or drain any refuse, waste, substance or thing, whether solid, liquid, gaseous or explosive, into a cave or near a cave or near a cave entrance, or cause or allow it to enter or percolate into a cave;
  - (b) disturb or alter the natural atmosphere of a cave in any manner, including, but not limited to, by way of burning any matter which emits smoke or gas in the cave;
  - (c) leave any container, rope, clothing, battery, candle, wax, food or any other object in a cave;
  - (d) take an aerosol container or other container containing poison, paint, chemical/s of any kind, dye or other colouring agent into a cave;
  - (e) break open, break, remove or in any other manner tamper with a cave gate erected in terms of section 68(1)(b) above to prevent unauthorised entry into a cave or any part thereof; or
  - (f) break, break-off, crack or in any other manner destroy, damage, mutilate or spoil a cave-formation in a cave or engrave, paint, write or in any other manner make a mark therein or thereon.

#### Restricted activities involving cave-formations and related cave features

71. (1) No person may, without a permit -
- (a) export;
  - (b) import;
  - (c) transport;
  - (d) keep;
  - (e) trade in;
  - (f) donate;
  - (g) exchange; or
  - (h) remove

a cave-formation; cave biota or any other natural matter found in a cave or any part or any derivative of a cave-formation or any such animal, plant or other natural matter unless he or she is the holder of a permit which authorises him or her to do so.

- (2) No person shall convey a cave-formation within the Province, unless
- (a) he or she is the holder of a permit which authorises him or her to do so; or

- (b) he or she has written proof that he or she purchased, exchanged or received as a donation the cave-formation from any other person who is the holder of a permit contemplated in subsection (1) which authorises such a person to sell, exchange or donate the cave formation.
- (3) An application for a permit in terms of section 71(1) and (2) may be made by a registered club or association on behalf of the members of the club or association.

#### **Construction of cave gate**

**72.** The MEC, with the concurrence of the landowner, may erect, construct and maintain a cave gate at any cave entrance in order to protect any cave, cave-formation or cave biota from physical abuse, degradation or human destruction except in the case of caves, cave formation or cave biota that fall within the management of another authority.

#### **Notification of existence of cave**

**73.** (1) Any person who by any action whatsoever, including but not limited to acts of construction, mining, development or the upgrading of facilities, unearths a cave or sinkhole, or parts thereof that were not previously open to the atmosphere, must notify the Department within forty-eight hours of such discovery.

(2) Any person who is aware of any cave on any land on which he or she is the owner, occupier, manager or resident must take measures to ensure that the Department is notified of the existence of such cave within forty-eight hours of becoming aware of the existence of such cave.

(3) Any person who, as part of an organisation or other institution, becomes aware of the existence of any cave must take measures to ensure that the Department is notified of the existence of such cave within forty-eight hours of becoming aware of the existence of such cave.

#### **Entry or admission to caves**

**74.** (1) The MEC, upon application from the landowner, may, except for caves under the management of another authority, by notice in the *Provincial Gazette* –

- (a) allow the commercialisation or development of a cave specified in the notice for tourism purposes;
- (b) limit the entry or admission of visitors to a cave specified in the notice; or
- (c) close a cave specified in the notice entirely or partially to visitors or any category of persons specified in the notice.

(2) Before publishing any notice in terms of subsection (1), the MEC must publish the draft notice in the *Provincial Gazette* and any widely circulated newspaper in the area for comments.

#### **Powers of MEC**

**75.** The MEC may, after due consideration and in compliance with the provisions of the Promotion of Administrative Justice Act, 2000 –

- (a) take steps to develop and control any cave in collaboration with any other public or private body;
- (b) take steps necessary or expedient for research with regard to caves and cave-formations and the preservation of caves and cave-formations;
- (c) conduct any survey or investigation in connection with any cave or cave-formation; or
- (d) collect and publish statistics and information regarding caves and cave-formations.

#### **Regulations**

**76.** The MEC may for the purposes of this Chapter make regulations in terms of section 88 relating to –

- (a) the activities in caves and the taking, disturbing or collection of cave-formations or cave biota;
- (b) the sale of or trading in cave-formations;
- (c) the possession or keeping, or the conveyance in or through, the import into or the export or removal from, the Province of cave-formations;

- (d) any research or associated activities in connection with caves and cave-formations; or research or associated activities that may have any influence either directly or indirectly on the functioning of natural processes within a cave;
- (e) any activities taking place within a karst region;
- (f) the establishment and review of a code of conduct for caving organisations, researchers and any other body wanting to make regular use of caves;
- (g) the adherence to such a code of conduct;
- (h) for the commercialization of caves, cave formations or cave biota; or
- (i) any other matter that may be necessary to facilitate the effective implementation of this Chapter.

### **Offences and penalties**

**77.** Any person who contravenes or fails to comply with the provisions of this Chapter is liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.

## **CHAPTER 8 ZOOS**

### **Establishment or operating a zoo**

**78.** (1) No person may, without a permit, establish or operate a zoo, including a bird garden, reptile park, snake park, or such similar institution unless he or she is the holder of a permit authorising him or her to do so.

(2) Subsection (1) shall not apply to an institution which is subject to the provisions of the Cultural Institutions Act, 1998 (Act 119 of 1998).

### **Regulations**

**79.** The MEC may for the purposes of this Chapter make regulations in terms of section 88 relating to –

- (a) the requirements for the establishment of a zoo, including a bird garden, reptile park, snake park, or such similar institution; or
- (b) any other matter that may be necessary to facilitate the effective implementation of this Chapter.

### **Offences and penalties**

**80.** Any person who contravenes or fails to comply with the provisions of this Chapter shall be guilty of an offence and liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.

## **CHAPTER 9 NATURE CONSERVATORS**

### **Appointment of nature conservators**

**81.** (1) The MEC may, subject to subsection (3), appoint any person on the establishment of the Department as a nature conservator.



- (2) A nature conservator may exercise the powers and perform the functions assigned to his or her office by or under this Act.
- (3) The Head may determine the qualifications and training programmes subject to which a nature conservator must be appointed.
- (4) Each nature conservator appointed under subsection (1), must be furnished with a certificate signed by the MEC stating that he or she is appointed as a nature conservator.
- (5) Whenever a nature conservator appointed in terms of subsection (1) performs a function under this Act in the presence of any person affected thereby, the nature conservator must, on demand by such person, produce to him or her the certificate referred to in subsection (4).

### **General powers and functions of nature conservators**

- 82.** (1) To comply with his or her mandate in terms of this Act, and in addition to the powers set out elsewhere in this Act, a nature conservator may exercise all the powers assigned to a police official who is not a commissioned officer, in terms of Chapters 2, 5, 7 and 8 of the Criminal Procedure Act.
- (2) The Director must, as soon as practicable after the coming into operation of this Act, apply to the Minister of Justice for all nature conservators or any other category of persons on the establishment of the Department to be declared peace officers in terms of section 334(1) of the Criminal Procedure Act, for the purpose of exercising their powers in terms of subsection (1) or any other provision of this Act.
  - (3) A nature conservator shall not exercise powers assigned to a police official until the Minister of Justice has declared that nature conservator as a peace officer.
  - (4) A nature conservator may, -
    - (a) demand the full name, identity number and address of any person who-
      - (i) has committed an offence in terms of this Act;
      - (ii) is reasonably suspected of having committed an offence in terms of this Act;
      - (iii) is reasonably believed to be able to give evidence relating to an offence committed or reasonably suspected of having been committed in terms of this Act or
      - (iv) is reasonably suspected of having evidence that an offence in terms of this Act has been or is to be committed;
    - (b) arrest a person without warrant and detain such person for a period not exceeding twelve hours or until such time as such name or address contemplated in paragraph (a) has been verified if the officer reasonably suspects that the name or address such person has furnished to the nature conservator is false;
    - (c) instruct a person who –
      - (i) commits an act in contravention of a provision of this Act to cease committing that act immediately or within a specified period; or
      - (ii) fails to perform an act required by a provision of this Act, to perform that act immediately or within a specified period or
      - (iii) has committed an offence, not to remove evidence referred to in the instruction or to deal with the evidence as instructed;
    - (d) instruct any person who in a protected or reserved area or on land which is used for purposes of this Act, contravenes or fails to comply with a-
      - (i) provision of this Act; or
      - (ii) requirement or condition prescribed or determined in terms of this Act,
 to leave such land;
    - (e) destroy a dog used in unlawful hunting and which is pursuing or searching for a wild animal;
    - (f) in exercising a power or performing a function in terms of this Act, make use of an interpreter and, if necessary, of one or more other persons, and such an interpreter or other person is regarded as a nature conservator while acting under control of the nature conservator;

- (e) copy, or make extracts from any document, book or record, or any written or electronic information or other thing relevant for the purposes of an investigation or remove any such document, book, record, or written or electronic information or other thing in order to make copies or extracts;
  - (f) take photographs or make audio-visual recordings of anything or any person that is relevant for the purposes of an investigation; and
  - (g) take a sample from any animal or plant that is relevant for the purposes of an investigation.
- (5) A nature conservator must -
- (a) provide a receipt for any document, book, record or written or electronic information, or any specimen, article, substance or other thing, seized or removed in terms of this Act; and
  - (b) exercise his or her powers in a way that minimises damage to, loss or deterioration of any immoveable property or moveable property.

### **Powers of nature conservators regarding inspections and compliance with this Act**

**83.** (1) A nature conservator may, subject to the provisions of the Criminal Procedure Act -

- (a) conduct inspections and monitor compliance with this Act;
  - (b) investigate an alleged contravention of this Act;
  - (c) question any person in respect of any matter connected with this Act, which may be relevant to an inspection;
  - (d) question any person whom the nature conservator reasonably believes may have information relevant to an inspection.
  - (e) at any time enter upon any land or premises if the nature conservator has reasonable suspicion that a provision of this Act has been breached, and carry out an investigation on that land or premises that may be necessary to establish whether such provision has been breached;
  - (f) subject to prior notification to the landowner where this is possible, enter upon any land for the purpose of performing an act ordered or authorised by the MEC together with such equipment and assistants as are required for the performance of the act; or
  - (g) enter upon any land or premises at any reasonable time and after reasonable notice to the owner, in order to investigate whether action is necessary to give effect to the provisions of this Act;
- (2) A nature conservator may, if he or she has reason to believe that any provision of this Act or a condition subject to which a permit, licence or other document issued in terms of this Act has not been complied with, issue a non-compliance notice, in the form determined by the Director, to the holder of a permit, licence or other document issued in terms of this Act and must provide a copy of the notice to the Director.
- (3) A non-compliance notice must set out the alleged non-compliance contemplated in subsection (3) and the steps to be taken and must provide for a reasonable period within which steps must be taken in order to comply with such provisions.
- (4) A compliance certificate may be issued if the Director or nature conservator acting on behalf of the Director is satisfied that the steps have been taken to rectify the non-compliance contemplated in subsection (3) and set out in the non-compliance notice.
- (5) If a person to whom a non-compliance notice has been issued in terms of subsection (3) fails to comply with the notice, a nature conservator, with the concurrence of the Director, may, at the expense of such person, take any reasonable steps to rectify the non-compliance and may –
- (a) pick, catch, capture or transport or
  - (b) eradicate, destroy or hunt,
- a specimen of a species, if the specimen is the subject of the alleged non-compliance.
- (6) The provisions of subsections (2), (3) and (4) must not be interpreted so as to prevent a nature conservator from instituting a criminal charge.

### **Power to demand production of licence, permit, exemption or similar documentation**

**84.** A nature conservator may, subject to any limitation imposed in terms of this Act and the Criminal Procedure Act –

- (a) demand from any person who performs an act or is reasonably suspected of performing any act which may not in terms of this Act be performed without a licence, permit, exemption, order, written permission or other document to produce such licence, permit, exemption, order, written permission or other document;
- (b) where any person has performed or he or she reasonably suspects any person of having performed on any land any act which may only be performed on land in respect of which a game permit has been issued in terms of section 29, demand from the owner of such land the production of such permit;
- (c) demand from any person whom he or she reasonably suspects—
  - (i) of having committed an offence under this Act or
  - (ii) will be able to furnish evidence in connection with an offence committed or alleged to have been committed under this Act, the name and address and any other information necessary for the identification of such person;
- (d) demand from any person who is required under this Act to keep or carry on that person any register, record, book, document, written permission, statement or invoice to produce such register, record, book, document, written permission, statement or invoice for inspection.

### **Power to stop, search and seize**

- 85. (1)** A nature conservator who has been declared a Peace Officer may and in compliance with the provisions of the Criminal Procedure Act –
- (a) at any time, direct the person in charge of any vehicle, vessel, boat, craft, float, aircraft or other means of conveyance to stop, or use such force as may be reasonable necessary to stop the vehicle, vessel, boat, craft, float, aircraft or other means of conveyance, if the officer has reasonable suspicion that the vessel contains or conveys a thing –
    - (i) which is or has been used for the purpose of or in connection with the commission of an offence in terms of this Act; or
    - (ii) which may serve as evidence of the commission or intended commission of such an offence;
  - (b) at any time question a person who the officer reasonably believes has information relating to a breach of a provision of this Act and order such person to furnish such information.
  - (c) without warrant and without permission, enter upon any land, premises, vehicle, vessel, boat, craft, float, aircraft or other means of conveyance and there conduct a search if he or she reasonably suspects that there is thereon or therein anything which—
    - (i) is used or has been used in;
    - (ii) forms or has formed an element in, or
    - (iii) which may serve as evidence of,
 the commission or intended commission of any offence under this Act;
  - (d) without warrant seize anything which he or she reasonably believes –
    - (i) is being used or has been used for the purpose of or in connection with the commission of an offence in terms of this Act;
    - (ii) may serve as evidence of the commission or intended commission of an offence in terms of this Act, or
    - (iii) is being or has been used for the conveyance of any fauna or flora in respect of which an offence has been committed under this Act and must provide a receipt for such seized articles;
  - (e) without warrant seize and confiscate any fauna or flora which is found in the possession of or being kept in captivity by any person, if—
    - (i) such person fails on demand by such officer to produce a permit authorising such possession or keeping, or

- (ii) such animal is in the possession of or being kept in captivity by such person contrary to any condition specified in a permit produced by such person authorising such possession or keeping or
  - (f) seize any stock or other animal trespassing in a protected or reserved area or on land used by the Department for the purposes of this Act, and despite the provisions of any legislation relating to pounds, retain that stock or other animal;
- (2) Anything seized in terms of this section shall, if no prosecution for an offence under this Act is instituted in connection therewith, be returned to the person from whose possession it was taken if such person can lawfully possess the seized item.

### **Power to conduct investigations**

**86.** (1) A nature conservator who has been declared a Peace Officer, may, subject to obtaining a court order and in compliance with the provisions of the Criminal Procedure Act -

- (a) conduct any investigation he or she considers necessary in order to ascertain whether any provision of this Act is being complied with by any person and may for such purpose without warrant and without permission enter upon any land, premises, vehicle, place, building, tent, vessel, boat, craft, float, aircraft or other means of conveyance and there carry out such inspection and investigation as may be necessary, including an inspection or investigation of any container or other thing found thereon or therein; and
- (b) in the course of any inspection or investigation in the exercise of his or her powers and the performance of his or her functions under this Act, without warrant and without permission, demand that any vehicle, vessel, boat, craft, float, aircraft or other means of conveyance be brought to a standstill and be kept stationary until he or she has searched it.

### **Offences in respect of nature conservators**

**87.** Any person who –

- (a) falsely professes to be a nature conservator;
- (b) willfully obstructs, hinders or interferes with a nature conservator in the exercise of a power or the performance of a function or duty conferred, entrusted or imposed in terms of this Act;
- (c) refuses or fails to comply forthwith with an order, instruction or demand given or made by a nature conservator or a person referred to in section 82(4)(f), in the exercise of a power or the performance of a function conferred, entrusted or imposed in terms of this Act or furnishes false or misleading information when he or she complies with such an order, instruction or demand;
- (d) has been stopped in terms of section 85(1)(a) and departs without permission of the nature conservator concerned or
- (e) furnishes false or misleading information when complying with an order, instruction or demand; shall be guilty of an offence and liable on conviction to a fine not exceeding R500 000 or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.

## **CHAPTER 10 ADMINISTRATIVE AND GENERAL PROVISIONS**

### **Part A – Administrative Provisions**

#### **Regulations**

**88.** (1) The MEC may, by notice in the Gazette, make regulations regarding-

- (a) any matter required or permitted to be prescribed in terms of this Act or
- (b) generally all matters which are reasonably necessary or expedient to be prescribed in order to

achieve the objects of this Act.

(2) Any regulation relating to the payment of fees to the Province or exemption from the payment of such fees, or which will entail the expenditure of provincial funds, may be made only in consultation with the Member of the Executive Council responsible for finance in the Province.

(3) Any regulations relating to the powers and duties conferred upon municipalities in terms of this Act must be made in consultation with the Member of the Executive Council responsible for local government in the Province.

(4) Regulations made in terms of subsection (1) 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 a fine or imprisonment or to both such fine and imprisonment.

(5) Before publishing any regulations in terms of subsection (1), the MEC must publish the draft regulations in the *Provincial Gazette* and one or more widely circulated newspaper for public comment for a period of not less than 30 days.

### **Norms and standards**

**89.** (1) The MEC may, by notice in the *Gazette*-

(a) issue norms and standards for the achievement of any of the objectives of this Act, including for the –

(i) management and conservation of the Province's biological diversity and its components; or

(ii) restriction of activities which impact on biodiversity and its components;

(b) set indicators to measure compliance with those norms and standards; and

(c) amend any notice issued in terms of paragraph (a) or (b).

(2)(a) Before publishing a notice in terms of subsection (1), the MEC must publish the draft norms and standards in the *Provincial Gazette* and one or more widely circulated newspaper for public comment for a period of not less than 30 days.

(b) The process referred to in paragraph (a) does not apply to a non-substantial change to the existing norms and standards.

(3) Norms and standards may apply-

(a) Province-wide;

(b) in a specific area only; or

(c) to a specific category of biodiversity only.

(4) Different norms and standards may be issued for-

(a) different areas; or

(b) different categories of biodiversity.

### **Offence in respect of non-compliance with norms and standards**

**90.** (1) Any person who does not comply with the provisions of any norms and standards issued in terms of this section shall be guilty of an offence and liable on conviction to a fine not exceeding R5000 or to imprisonment for a period not exceeding 2 years or to both a fine and such imprisonment.

### **Delegations**

**91.** (1) Subject to subsection (3), the MEC may delegate in writing any of his or her powers, functions or duties in terms of this Act to an official on the establishment of the Department.

(2) A delegation in terms of subsection (1)-

(a) must be in writing;

(b) may be made subject to conditions;

(c) does not prevent the exercise of the power or the performance of the duty by the MEC personally;

(d) may include the power to subdelegate; and

(e) may be withdrawn by the MEC.

(3) The MEC may not delegate the power to make regulations, to publish notices or to declare hunting or angling seasons.

- (3) The Head may delegate in writing any of his or her powers, functions or duties in terms of this Act to any official on the establishment of the Department.
- (5) A delegation in terms of subsection (4)-
  - (a) must be in writing;
  - (b) may be made subject to conditions;
  - (c) does not prevent the exercise of the power or the performance of the duty by the Head personally;
  - (d) may include the power to subdelegate; and
  - (e) may be withdrawn by the Head.
- (6) The Director may delegate in writing any of his or her powers, functions or duties in terms of this Act to any official on the establishment of the Department.
- (7) A delegation in terms of subsection (6)-
  - (a) must be in writing;
  - (b) may be made subject to conditions;
  - (c) does not prevent the exercise of the power or the performance of the duty by the Director personally; and
  - (e) may be withdrawn by the Director.

### **Licences, permits and exemptions**

- 92.** (1) Subject to the provisions of this Act, the Head may, upon application and payment of the prescribed fees, issue to any person a licence, permit or exemption provided for in this Act, which shall be valid for the period referred to in the licence, permit or exemption and shall be subject to such conditions as may be prescribed or the Head may deem fit to impose in any particular case.
- (2) The Head may, subject to the constitutional requirements of lawful and procedurally fair administrative action and the furnishing, upon request, of reasons in writing -
- (a) refuse to issue such a licence, permit or exemption;
  - (b) exempt any person from the payment of the prescribed fees;
  - (c) amend, suspend or cancel such a licence, permit or exemption or amend, delete or add any condition he or she is authorised to impose.
- (3) The Head shall notify the holder of a licence, permit or exemption of the amendment, suspension or cancellation thereof or of the amendment, deletion or addition of any condition in terms of subsection (1) and the holder shall submit the licence, permit or exemption forthwith to the Head where such licence, permit or exemption has been cancelled.
- (4) A licence, permit or exemption issued contrary to the provisions of this Act shall be null and void and the holder shall return it to the Head after such fact has come to his or her notice.

### **Offences in relation to licences, permits or exemptions**

- 93.** (1) The holder of a licence, permit or exemption issued in terms of this Act who -
- (a) contravenes or fails to comply with a condition to which the licence, permit or exemption is subject to; or
  - (b) fails to submit the licence, permit or exemption to the Head in terms of section 92(2) or to return it to him or her in terms of section 92(3),
- shall be guilty of an offence and liable on conviction to a fine not exceeding R250 000 or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.
- (2) Any person who -
- (a) alters, fabricates or forges any document issued or required for the lawful performance of any act in terms of this Act
  - (b) passes, uses, utters or has in his or her possession any altered, fabricated or forged document contemplated in paragraph (a);
  - (c) fabricates or forges any document for the purpose of passing, using or uttering it as a licence, permit, exemption or permission issued in terms of this Act;

- (d) applies for a permit, licence, exemption or permission under false pretences or willfully furnishes false information in order to obtain a permit, licence, exemption or permission,
  - (c) while prohibited by an order of court from obtaining a document in terms of this Act, obtains or applies for such document;
  - (d) being the holder of a document issued in terms of this Act authorising or directing him or her to perform any act or to perform any act in a specified manner, performs such act without having such document in his or her possession or performs such act contrary to the specified manner;
  - (e) fails to comply with a term or condition subject to which a document was issued to him or her under this Act;
  - (f) knowingly makes a false statement in an application made or in any other document furnished by him or her in terms of any provision of this Act; or
  - (g) permits or allows any other person to do anything which is an offence in terms of this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding R250 000 or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.
- (3) It is an offence to disclose information about any other person if that information was acquired while exercising or performing any power or duty in terms of this Act, except-
- (a) if the information is disclosed in compliance with the provisions of any law;
  - (b) if the person is ordered to disclose the information by a court;
  - (c) if the information is disclosed to enable a person to perform a function in terms of this Act or a corresponding law or for the purposes of the administration of justice; or
  - (d) if the permission of the person concerned is obtained.

### **Appeals to the MEC**

- 94.** (1) A person who feels aggrieved by any decision made in terms of this Act may lodge an appeal with the MEC against the decision within 30 days after having been informed of the decision.
- (2) The MEC may prescribe the administrative procedure for appeals;
  - (3) An appeal does not suspend the decision against which the appeal is lodged unless the MEC directs otherwise.

### **Appeal decisions**

- 95.** (1) The MEC may-
- (a) either uphold or refuse the appeal; and
  - (b) when upholding or refusing the appeal, make such other orders as may be appropriate.
- (2) The MEC must reach a final decision on an appeal submitted within 90 days of receipt of all documentation including any statements, supporting documentation, reports or any other additional information requested which may assist the MEC in the decision making process as the case may be.
- (3) The appellant may request written reasons to be provided for the decision of the MEC.

## **Part B – General Provisions**

### **General powers of the Head**

- 96.** (1) Subject to the provisions of this Act, the Head may, if the circumstances so require, take any step or prohibit, control or restrict the activity of any person in relation to a specimen of any species.
- (2) The Head may subject to any conditions grant exemption in writing from any provision of this Act to –
- (a) any person doing research on any animal, plant, fish or any other matter related to this Act; or
  - (b) a nature conservator for purposes of performing his or her functions in terms of this Act.

### **Suspension of application**

**97.** The Head may suspend the processing of a permit, licence or exemption application, if the applicant is under investigation for an alleged wildlife criminal activity until the investigation has been finalised.

### **Limitation of liability**

**98.** (1) Subject to subsection (2), anything seized or removed by a nature conservator in terms of this Act, must be kept in such a manner that it is secured against loss or damage or deterioration and must, if no prosecution for an offence under this Act is instituted in connection therewith, be returned to the person from whose possession it was taken, if such person may lawfully possess such thing.

(2) Pending the institution of criminal proceedings in terms of this Act or the resolution of such proceedings, any live specimen that has been seized in terms of this Act must be deposited with a suitable institution, rescue centre or facility which is able and willing to house and properly care for it, but in the event that a suitable facility cannot be found, the Director may act as the circumstances may require including issuing a directive for humane euthanasia.

(3) Neither the Gauteng Provincial Government, nor the Department nor any other person employed by the Department is liable for any damage or loss caused by—

(a) the exercise of any power or the performance of any duty under this Act; or

(b) the failure to exercise any power, or perform any function or duty under this Act,

unless the exercise of or the failure to exercise the power, or performance or failure to perform the duty was unlawful, negligent or in bad faith.

### **Retention of documents**

**99.** The document or a certified copy of every document required by this Act must be retained by the person to whom it was furnished for a period of at least five years from the date on which it was so furnished or while he or she is in possession of the species or specimen to which it relates, whichever is the longer period.

### **Forfeiture of certain goods and privileges**

**100.** (1) The court convicting any person of an offence in terms of this Act -

(a) may declare a wild animal, invertebrate, fish, indigenous plant, aquatic growth, or cave-formation in connection with which the offence was committed, to be forfeited to the Department;

(b) may declare a weapon, net, article, device or apparatus, of any nature whatsoever, used for the purpose of or in connection with the unlawful hunting or catching of a wild animal or invertebrate; catching of a fish with a net, to be forfeited to the Department;

(c) may declare a boat, aircraft, vehicle or any fishing tackle used for the purpose of or in connection with the commission of an offence, to be forfeited to the Department;

(d) may cancel a licence, permit or exemption issued to a person who is convicted in terms of this Act;

(e) may declare the convicted person unfit to obtain any licence, permit or exemption in terms of this Act for a period not exceeding 5 years.

(2) A forfeiture in terms of subsection (1)(b) or 1(c) does not affect the rights which a person other than the convicted person may have in the weapon, net, article, device or apparatus boat, aircraft or vehicle or any fishing tackle or other thing concerned, if it is proved that the other person -

(a) did not know that the vessel or other thing was used or would be used for the purpose of or in connection with the commission of the offence; or

(b) could not prevent such use.

(3) The MEC must deal with an object forfeited in terms of an order of the court -

(a) in accordance with the order; or

(b) in the absence of any specific instructions in the order, in a manner determined by the MEC in consultation with the Member of the Executive Council responsible for finance in the Province, except perishable goods which must be destroyed or otherwise disposed of expediently.



- (4) A forfeited object may not be destroyed or disposed of until –
- (a) any appeal against the conviction which led to the forfeiture has been decided upon;
  - (b) any appeal against or application for review of the forfeiture order has been decided; or
  - (c) the time allowed for an appeal against the conviction has lapsed,
- except for perishable goods which must be disposed of in terms of subsection (3)(b).

### **General penalty**

**101** (1) Any person convicted of an offence in terms of this Act for which no penalty is expressly provided for shall be liable to a fine not exceeding R10000 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.

(2) Notwithstanding the provisions of sub-section (1), any person convicted of a contravention of this Act in respect of protected species and for which no penalty is expressly provided for, shall be liable to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment, and to a fine not exceeding three times the commercial value of the protected species, as the case may be, in respect of which the offence was committed.

(3) Where reference is made in subsection (2) to the commercial value of a species for the purposes of determining an appropriate penalty for an offence under this Act and different commercial values for the specific item exist in the market at that specific point in time, whether nationally or internationally, the commercial value of such species must be determined by the calculation of the average of the various commercial values existing in the market at that specific point in time.

### **Repeal of law and savings**

**102.** (1) Subject to the provisions of subsection (2) and the transitional provisions in the Schedule to this Act, the Nature Conservation Ordinance, 1983 (Ordinance 12 of 1983) is hereby repealed.

(2) Unless otherwise provided in this Act, anything done or any document issued in terms of legislation or a provision repealed by this Act –

(a) remains valid to the extent that it is consistent with this Act until anything done under this Act overrides it; and

(b) is considered to be an action under the corresponding provision of this Act.

(3) Any person appointed as a nature conservator in terms of the repealed Nature Conservation Ordinance, 1983 is, from the date of commencement of this Act, regarded as having been appointed as a nature conservator in terms of this Act.

(4) Any application made in terms of the Nature Conservation Ordinance, 1983 (Ordinance 12 of 1983) that has been submitted but not finalised, must be finalised as if the Ordinance had not been repealed.

(5) Any pending criminal prosecution in terms of the Nature Conservation Ordinance, 1993 (Ordinance 12 of 1983) must be finalised as if the Ordinance had not been repealed.

### **Transitional arrangements**

**103.** Transitional arrangements in terms of this Act are provided in the Schedule.

### **State bound by this Act**

**104.** This Act binds the State.

### **Short title and date of commencement**

**105.** (1) This Act is called the Gauteng Nature Conservation Act, 2014, and comes into force on a date to be fixed by the Premier by proclamation in the *Provincial Gazette*.

(2) Different dates may in terms of subsection (1) be determined for different provisions of this Act.

**SCHEDULE**  
**TRANSITIONAL ARRANGEMENTS**

**Definitions**

1. In this Schedule “Nature Conservation Ordinance” means the Nature Conservation Ordinance, 1983 (Ordinance 12 of 1983).

**Chapters in Nature Conservation Ordinance to remain in force**

2. Chapter 3, 5, 6 and 7 of the Nature Conservation Ordinance shall remain in force until repealed by the MEC by notice in the *Provincial Gazette*.

**Regulations**

3. Any regulation made under the Nature Conservation Ordinance, which is in force immediately before the commencement of this item, remains in force until withdrawn by the MEC by notice in the *Provincial Gazette*.

**Repeal of Chapters 3, 5, 6 and 7 of the Nature Conservation Ordinance**

4. Chapters 3, 5, 6 and 7 of the Nature Conservation Ordinance must be repealed within two years of the Act coming into force.

**Provincial Lists**

5. The Lists envisaged in sections 4, 15, 36, 42, 44, 56 and 58 of this Act must be enacted within two years of the date on which this Act takes effect.

**Advisory Committee**

6. The MEC shall set up an advisory committee composed of experts in the various specialist areas of nature conservation, biodiversity management, research institutions, nongovernmental organisations as well as representatives of associations and interest groups to assist in the compilation of the lists envisaged in sections 4, 15, 36, 42, 44, 56 and 58 of this Act.