



Government Gazette

REPUBLIC OF SOUTH AFRICA
IRIPHABLIKHI YOMZANTSI-AFIKA

Vol. 588 Cape Town,
Kaapstad, 2 June 2014

No. 37710

THE PRESIDENCY

No. 445 2 June 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 21 of 2014: National Environmental Management: Protected Areas Amendment Act, 2014

OFISI KAMONGAMELI

Ino. 445 2 June 2014

Esi sisaziso sokuba uMongameli uwamkele lo mthetho ulandelayo nonikezelwa kuluntu jikelele kolu xwebhu:—

Ino 21 ka 2014: nguMthetho Wokwenza Utshintsho KuMthetho Wokulondolozwa Kwendalo Yesizwe: We ndawo Zolondolozo Ezikhuselweyo, 2014



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

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

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

(English text signed by the President)
(Assented to 30 May 2014)

ACT

To amend the National Environmental Management: Protected Areas Act, 2003, so as to amend or insert certain definitions; to authorise the declaration of marine protected areas; to provide for the management of marine protected areas; to provide for transitional measures; and to effect certain textual alterations; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 57 of 2003, as amended by section 1 of Act 31 of 2004

1. Section 1 of the National Environmental Management: Protected Areas Act, 2003 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the substitution for the definition of “Department” of the following definition:

“**Department**” means the national Department **[of Environmental Affairs and Tourism]** responsible for administering environmental affairs;” 10

(b) by the insertion after the definition of “environmental goods and services” of the following definition:

“**fish**”, when used as a verb, has the meaning, with the changes required by the context, ascribed to ‘fishing’ in section 1 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998);” 15

(c) by the substitution for the definition of “marine protected area” of the following definition:

“**marine protected area**” means an area declared as a marine protected area in terms of **[section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998)]** section 22A;” 20

(d) by the insertion after the definition of “marine protected area” of the following definition:

“**marine waters**” means waters that form part of the internal waters, territorial waters and the exclusive economic zone of the Republic, respectively referred to in sections 3, 4 and 7 of the Maritime Zones Act, 25

- 1994 (Act No. 15 of 1994), and includes an estuary defined in section 1 of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);” and
- (e) by the substitution for the definition of “national protected area” of the following definition: 5
- “ **‘national protected area’** means—
- (a) a special nature reserve;
- (b) a national park; **[or]**
- (bA) a marine protected area; or
- (c) a nature reserve or protected environment— 10
- (i) managed by a national organ of state; or
- (ii) which falls under the jurisdiction of the Minister for any other reason;”.

Amendment of section 2 of Act 57 of 2003, as amended by section 2 of Act 31 of 2004

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph: 15
- “(d) to provide for a diverse and representative network of protected areas on state land, private land **[and]**, communal land and marine waters;”.

Amendment of section 4 of Act 57 of 2003

3. Section 4 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 20
- “(b) to **[the exclusive economic zone and]** marine waters, including the continental shelf of the Republic[,] referred to in [sections 7 and] section 8 [, respectively,] of the Maritime Zones Act, 1994 (Act No. 15 of 1994).”.

Substitution of section 14 of Act 57 of 2003, as inserted by section 4 of Act 31 of 2004 25

4. The following section is hereby substituted for section 14 of the principal Act :

“[Marine] Continued existence of marine protected areas

14. [(1) Chapter 1, this Chapter and section 48 apply to marine protected areas.

(2) The other provisions of this Act do not apply to marine protected areas, but if a marine protected area has been included in a special nature reserve, national park or nature reserve, such area must be managed and regulated as part of the special nature reserve, national park or nature reserve in terms of this Act.] Any marine protected area which had been declared as such in terms of section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), and which exists when the National Environmental Management: Protected Areas Amendment Act, 2014, takes effect, must be regarded as a marine protected area declared as such in terms of section 22A.”. 35

Insertion of Part 2A in Act 57 of 2003 40

5. The following Part is hereby inserted in Chapter 3 of the principal Act, after Part 2:

“Part 2A

Marine protected areas

Declaration of marine protected areas

- 22A.** (1) The Minister may, by notice in the *Gazette*—
- (a) declare an area specified in the notice—
 - (i) as a marine protected area; or
 - (ii) as part of an existing marine protected area; and
 - (b) assign a name to the marine protected area.
- (2) A declaration under subsection (1)(a) may only be issued—
- (a) to conserve and protect marine and coastal ecosystems;
 - (b) to conserve and protect marine and coastal biodiversity;
 - (c) to conserve and protect a particular marine or coastal species, or specific population and its habitat;
 - (d) if the area contains scenic areas or to protect cultural heritage;
 - (e) to facilitate marine and coastal species management by protecting migratory routes and breeding, nursery or feeding areas, thus allowing species recovery and to enhance species abundance in adjacent areas;
 - (f) to protect and provide an appropriate environment for research and monitoring in order to achieve the objectives of this Act; or
 - (g) to restrict or prohibit activities which is likely to have an adverse effect on the environment.
- (3) A notice under subsection (1)(a) may only be issued after consultation with the Cabinet member responsible for fisheries.

Withdrawal of declaration of, addition to, or exclusion from, marine protected areas

- 22B.** The Minister may, by notice in the *Gazette*—
- (a) withdraw a declaration made under section 22A(1);
 - (b) add to or exclude any area from a marine protected area; and
 - (c) assign a different name to a marine protected area.”.

Amendment of section 28 of Act 57 of 2003, as amended by section 8 of Act 31 of 2004

6. Section 28 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:
- “(a) to regulate the area as a buffer zone for the conservation and protection of a special nature reserve, national park, marine protected area, world heritage site or nature reserve;”.

Amendment of section 31 of Act 57 of 2003, as amended by section 9 of Act 31 of 2004

7. Section 31 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Subject to subsection 34, before issuing a notice under section 18(1), 19, 20(1), 21, 22(1), 22A(1), 22B, 23(1), 24(1), 26(1), 28(1) or 29, the Minister may follow such consultative process as may be appropriate in the circumstances, but must—”.

Amendment of section 34 of Act 57 of 2003, as amended by section 10 of Act 31 of 2004 5

8. Section 34 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“If it is proposed to declare an area under section 18(1) [or], 20(1) or 22A(1) as a special nature reserve [or], a national park [,] or a marine protected area, 10 or as part thereof, and that area consists of or includes—”.

Amendment of section 37 of Act 57 of 2003, as substituted by section 13 of Act 31 of 2004

9. The following section is hereby substituted for section 37 of the principal Act:

“Application of Chapter 15

37. Except where expressly stated otherwise in this Chapter, this Chapter only applies to a protected area which is a special nature reserve, national park, marine protected area, nature reserve or protected environment, and the expressions “protected area”, “national protected area”, “provincial protected area”, “local protected area” and “protected environment” 20 must be construed accordingly in this Chapter.”.

Amendment of section 38 of Act 57 of 2003, as amended by section 14 of Act 31 of 2004 and section 3 of Act 15 of 2009

10. Section 38 of the principal Act is hereby amended—

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

“(a) subject to paragraphs (aA) and (aB), may assign the management of any kind of protected area listed in section 9 to a suitable person, organisation or organ of state;”;

(b) by the deletion in subsection (1) of the word “and” at the end of paragraph (aA); 30

(c) by the insertion in subsection (1) after paragraph (aA) of the following paragraph:

“(aB) may assign the management of a marine protected area only to a suitable national organ of state, but the powers referred to in section 48A(2) may not be so assigned; or”;

 35

(d) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

(b) may assign the management of a privately owned protected environment to a suitable person, organization or organ of state, 40 provided that the owner and lawful occupier have requested or consented to such assignment, and the Minister has given the owner and lawful occupier notice in writing in terms of section 33.

Amendment of section 41 of Act 57 of 2003

11. Section 41 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (g) of the following paragraph: 45

“(g) a zoning of the area indicating what activities may take place in different sections of the area, and the conservation objectives of those sections, provided that in a marine protected area, the zoning must not conflict with a zoning in terms of section 48A(2)(a).”.

Amendment of section 48 of Act 57 of 2003, as amended by section 18 of Act 31 of 2004 5

12. Section 48 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Despite other legislation, no person may conduct commercial prospecting [**or**], mining, exploration, production or related activities—” 10

Insertion of section 48A in Act 57 of 2003

13. The following section is hereby inserted in the principal Act, after section 48:

“Restriction of activities in marine protected areas

48A. (1) Despite any other legislation, no person may in a marine protected area— 15

- (a) fish or attempt to fish;
- (b) take or destroy any fauna or flora;
- (c) undertake any dredging or extraction of sand, rock, gravel or minerals unrelated to any activities referred to in section 48(1);
- (d) discharge or deposit waste or any other polluting matter; 20
- (e) in any manner which results in an adverse effect on the marine environment, disturb, alter or destroy the natural environment or disturb or alter the water quality or abstract sea water;
- (f) carry on any activity which may have an adverse effect on the ecosystem of the area; 25
- (g) construct or erect any building or other structure on or over any land or water within such a marine protected area;
- (h) carry on marine aquaculture activities;
- (i) engage in bio-prospecting activities;
- (j) sink or scuttle any platform, vessel or other structure; or 30
- (k) undertake mineral exploration, and production of petroleum and other fossil fuels.

(2) Notwithstanding subsection (1) but subject to section 48(1), the Minister may, in relation to a marine protected area, prescribe— 35

- (a) different zones to regulate different activities within that marine protected area; and
- (b) activities which require a permit.

(3) Before exercising the power referred to in subsection (2), the Minister must—

- (a) consult with the Minister responsible for fisheries and the management authority that is responsible for managing the relevant marine protected area; and 40
- (b) ensure that the zoning achieves the objectives referred to in section 2.

(4) Any zone declared in terms of section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), or created by regulation in terms of section 77 of that Act which exists when the National Environmental Management: Protected Areas Amendment Act, 2014, takes effect, must be regarded as a zone prescribed in terms of subsection (2).” 45

Amendment of section 52 of Act 57 of 2003, as amended by section 20 of Act 31 of 2004

14. Section 52 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) The management authority of a national park, marine protected area, nature reserve or world heritage site may, in accordance with prescribed norms and standards, make rules for the proper administration of the area.”; 5
 - (b) by the insertion in subsection (2) after paragraph (a) of the following paragraph:
 - “(aA) must be consistent with any zoning or permitting done in terms of section 48A(2), and if there is a conflict, such zoning and permitting prevails;”; 10
 - (c) by the deletion in subsection 2(b) of the word “and”; 15
 - (d) by the addition to subsection 2(c) of the expression “; and”; 15
 - (e) by the addition to subsection (2) of the following paragraph:
 - “(d) must be published in the Gazette.”; and
 - (f) by the addition of the following subsection:
 - “(3) Rules made in terms of subsection (1) which apply to marine protected areas must be made in consultation with the Department.”. 20

Amendment of section 90 of Act 57 of 2003

15. Section 90 of the principal Act is hereby amended by the addition of the following subsection:
- “(3) Section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), is hereby repealed.”. 25

Amendment of section 91 of Act 57 of 2003, as inserted by section 26 of Act 31 of 2004

16. Section 91 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
 - “**Savings and transitional provisions**”; and 30
 - (b) by the addition of the following subsection:
 - “(3) (a) Any regulation relating to a marine protected area prescribed in terms of section 77 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which exists when the National Environmental Management: Protected Areas Amendment Act, 2014, takes effect, must be regarded as having been prescribed in terms of this Act and remains of force and effect until it is repealed or amended in terms of this Act. 35
 - (b) Anything done in relation to a marine protected area in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), and which could have been done in terms of this Act must be regarded as having been done in terms of this Act. 40
 - (c) Any permission granted in terms of section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which was valid immediately before the commencement of the National Environmental Management: Protected Areas Amendment Act, 2014, remains valid and the person concerned must be regarded as having been issued with a permit contemplated in section 48A(2). 45
 - (d) Any application for a permit or exemption lodged in terms of section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which has not been finalised when the National Environmental Management: Protected Areas Amendment Act, 2014, takes effect must, despite the repeal of section 43 of that Act by section 90(3), be dispensed with in terms of section 43 of the Marine Living Resources Act, 1998, 50

and a decision taken in terms of section 43 must be deemed as a decision taken in terms of this Act.”.

Amendment of Arrangement of Sections of Act 57 of 2003, as amended by section 1 of Act 31 of 2004

17. The Arrangement of Sections which occur before section 1 of the principal Act is hereby amended— 5

- (a) by the substitution for item 14 of the following item:
 “14. **[Marine]** Continued existence of marine protected areas”; and
- (b) by the insertion after item 22 of the following heading:

“Part 2A 10

Marine protected areas”;

- (c) by the insertion after that heading of the following items:
 “22A. Declaration of marine protected areas
 22B. Withdrawal of declaration of or addition to or exclusion from
 marine protected areas”; 15
- (d) by the insertion after item 48 of the following item:
 “48A. Restriction of activities in marine protected areas”;
- (e) by the substitution for item 91 of the following item:
 “91. Savings and transitional provisions”; and
- (f) by the addition of the following items: 20
 “**SCHEDULE 1**
SCHEDULE 2”.

Short title and commencement

18. This Act is called the National Environmental Management: Protected Areas Amendment Act, 2014, and comes into effect on the date of publication in the *Gazette* 25 as contemplated in section 81 of the Constitution of the Republic of South Africa, 1996, or such earlier date as determined by Proclamation by the President in the *Gazette*.