

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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THE PRESIDENCY

No. 530

24 July 2013

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

Act No. 14 of 2013: National Environment Management Laws Act, 2013



AIDS HELPLINE: 0800-123-22 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 24 July 2013)

ACT

To amend the—

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

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

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

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

(a) by the insertion after the definition of “biological diversity” or “biodiversity” of the following definition:

“ **‘biodiversity sector’** means any sector or sub-sector that carries out restricted activities involving indigenous biological resources, whether for commercial or for conservation purposes;”

(b) by the deletion in the definition of “bioprospecting” of the word “or” at the end of paragraph (b), the insertion in that definition of the word “or” at the end of paragraph (c) and the addition to that definition of the following paragraph:

“(d) the trading in and exporting of indigenous biological resources in order to develop and produce products, such as drugs, industrial enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours, extracts and essential oils;”

(c) by the insertion after the definition of “Board” of the following definition: “ **‘commercial exploitation’**, means the engaging in any bioprospecting activity with the intention of making a profit;”

(d) by the substitution for the definition of “commercialisation” of the following definition:

“ **‘commercialisation’**, in relation to indigenous biological resources, includes the following activities:

(a) the filing of any complete intellectual property application, whether in South Africa or elsewhere;

(b) obtaining or transferring any intellectual property rights or other rights;

(c) commencing [**clinical trials and**] product development, including the conducting of market research and seeking pre-market approval for the sale of resulting products; [**or**]

(d) the multiplication of indigenous biological resources through cultivation, propagation, cloning or other means to develop and produce products, such as drugs, industrial enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours [**and**], extracts and essential oils;

(e) trading in and exporting of indigenous biological resources to develop and produce products, such as drugs, industry enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours, extracts and essential oils; and

(f) commercial exploitation;”

(e) by the substitution for the definition of “competent authority” of the following definition:

“ **‘competent authority’**, in relation to the control of an alien or invasive species, means—

(a) the Minister;

(b) the MEC; or

[(b)](c) an organ of state in the national, provincial or local sphere of government [**designated by regulation**] delegated as a competent authority for the control of an alien species or a listed invasive species in terms of [**this Act**] section 42 of the National Environmental Management Act, 1998; [**or**

(c) **any other organ of state;**”

(f) by the substitution for the definition of “delegation” of the following definition:

“ **‘delegation’**, in relation to a duty, includes an instruction to perform the duty] has the meaning assigned to it in section 1 of the National Environmental Management Act, 1998;”

- (g) by the substitution for the definition of “Department” of the following definition:
“**‘Department’** means the national Department **[of Environmental Affairs and Tourism]** responsible for environmental affairs;”;
- (h) by the substitution for the definition of “derivative” of the following definition: 5
“**‘derivative’**, in relation to an animal, plant or other organism, means any part, tissue or extract[,], of an animal, plant or other organism, whether fresh, preserved or processed, and includes any genetic material or chemical compound derived from such part, tissue or extract;”;
- (i) by the substitution for paragraph (b) of the definition of “genetic resource” of the following paragraph: 10
“(b) the genetic potential **[or]**, characteristics or information of any species;”;
- (j) by the substitution for the definition of “issuing authority” of the following definition: 15
“**‘issuing authority’**, in relation to **[permits]** a permit or registration regulating **[the matters]** a matter mentioned in section 87, means—
(a) the Minister as contemplated in section 87A(1) or (3); **[or]**
(b) the MEC as contemplated in section 87A(2) or (3); or 20
[(b)](c) an organ of state in the national, provincial or local sphere of government **[designated by regulation in terms of section 97]** delegated in terms of section 42 of the National Environmental Management Act, 1998 or assigned in terms of section 41 of the National Environmental Management Act, 1998 as an issuing 25
authority for **[permits]** a permit or registration of the kind in question;”;
- (k) by the insertion after the definition of “restricted activity” of the following definition: 30
“**‘self-administration’** means the introduction of measures to facilitate compliance with provisions of the Act and standards set by associations or organisations recognised through the system contemplated in terms of section 59(f) of the Act, but excludes measures that relate to the issuance of permits in terms of Chapter 7 or functions of environmental management inspectors;” 35

Amendment of section 2 of Act 10 of 2004

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

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

Amendment of section 51 of Act 10 of 2004

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

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

Amendment of section 56 of Act 10 of 2004

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) by the addition of the following subsections:

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

(a) apply generally—

(i) throughout the Republic or a province, as the case may be, or only in a specified area or specified category of areas;

(ii) to all persons or only to a specified category of persons;

(iii) to all species or only to a specified species or specified category of species; or

(b) differentiate between—

(i) areas or categories of areas;

(ii) persons or categories of persons; or

(iii) species or categories of species.”.

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

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

“Amendment of notices” 5

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

Amendment of section 59 of Act 10 of 2004

7. Section 59 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended— 10

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

“(f) may prescribe a system and the requirements for the compulsory or voluntary registration of persons, institutions, ranching operations, game farms, nurseries, captive breeding or keeping operations and other facilities or operations, and the recognition of associations relating to these persons, operations or facilities; and”; and 15

(b) by the addition of the following paragraph:

“(g) may prescribe a system and the requirements for the compulsory registration of professional hunters, hunting outfitters and trainers in the hunting industry.”. 20

Amendment of section 60 of Act 10 of 2004

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

“(1) The Minister must establish a scientific authority for the purpose of assisting in regulating and restricting the trade in specimens of listed threatened or protected species and species to which an international agreement regulating international trade applies.” 25

Substitution to section 61 of Act 10 of 2004

9. Section 61 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph: 30

“(d) make non-detriment findings on the impact of actions relating to the international trade in specimens of listed threatened or protected species and species to which an international agreement regulating international trade applies, and must submit those findings to the Minister;” 35

Substitution of section 62 of Act 10 of 2004

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

“Annual non-detriment findings” 40

62. (1) The **[scientific authority]** Minister must, by notice in the *Gazette*, publish **[in the Gazette]** any **[annual]** non-detriment findings made by the scientific authority on trade in specimens of listed threatened or protected species and species to which an international agreement regulating international trade applies, in accordance with **[an]** the requirements of the international agreement regulating international trade **[in specimens of** 45

listed threatened or protected species which is] that are binding on the Republic.

(2) Any interim findings of the scientific authority must be published in the *Gazette* by the Minister for public information within 30 days after the **[decision] finding** has been made. 5

(3) Before publishing, amending or repealing a notice in terms of subsection (1), the Minister must publish any non-detriment findings made by the scientific authority in the *Gazette*, inviting members of the public to submit to the scientific authority, within 30 days of publication in the *Gazette*, written scientific information relating to the non-detriment findings.”. 10

Insertion of section 62A in Act 10 of 2004

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

“Amendment of notices 15

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

Amendment of section 63 of Act 10 of 2004

12. Section 63 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution for subsection (1) of the following subsection: 20

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

Amendment of section 66 of Act 10 of 2004 25

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

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

“(1) The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, exempt [from the provisions of section 65]— 30

(a) any alien species specified in the notice; [or]

(b) any alien species of a category specified in the notice; or

(c) any person, 35

from the provisions of section 65.”; and

(b) by the addition of the following subsection:

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

(a) apply generally—

(i) throughout the Republic or a province, as the case may be, or only in a specified area or a specified category of areas; 40

(ii) to all persons or only to a specified category of persons;

(iii) to all species or only to a specified species or specified category of species; or

(b) differentiate between—

(i) areas or categories of areas; 45

(ii) persons or categories of persons; or

(iii) species or categories of species.”.

Amendment of section 70 of Act 10 of 2004

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

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

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| (a) apply generally— | 5 |
| (i) throughout the Republic or a province, as the case may be, or only in a specified area or a specified category of areas; | |
| (ii) to all persons or only to a specified category of persons; | |
| (iii) to all species or only to a specified species or a specified category of species; or | 10 |
| (b) differentiate between— | |
| (i) areas or categories of areas; | |
| (ii) persons or categories of persons; or | |
| (iii) <u>species or categories of species.</u> ”. | |

Amendment of section 71 of Act 10 of 2004

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

“(3) The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, exempt a person from a restriction contemplated in subsection (1) or (2).

(4) A notice in terms of subsection (3) may—

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| (a) apply generally— | 20 |
| (i) throughout the Republic or a province, as the case may be, or only in a specified area or a specified category of areas; | |
| (ii) to all persons or only to a specified category of persons; | 25 |
| (iii) to all species or only to a specified species or a specified category of species; or | |
| (b) differentiate between— | |
| (i) areas or categories of areas; | |
| (ii) persons or categories of persons; or | 30 |
| (iii) <u>species or categories of species.</u> ”. | |

Insertion of section 71A in Act 10 of 2004

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

“Prohibitions

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71A. (1) The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, specify a specimen of a listed invasive species for which a permit to carry out a restricted activity may not be issued in terms of Chapter 7.

(2) The notice in terms of subsection (1) may—

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| (a) apply generally— | 40 |
| (i) throughout the Republic or a province, as the case may be, or only in a specified area or a specified category of areas; | |
| (ii) to all persons or only to a specified category of persons; | |
| (iii) to all species or only to a specified species or a specified category of species; or | 45 |
| (b) differentiate between— | |
| (i) areas or categories of areas; | |
| (ii) persons or categories of persons; or | |
| (iii) <u>species or categories of species.</u> ”. | 50 |

Substitution of section 72 of Act 10 of 2004

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

“Amendment of notices

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

(2) The MEC may, by notice in the *Gazette*, amend or repeal any notice published in terms of section 70(1)(b).”

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Amendment of section 79 of Act 10 of 2004

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

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

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Amendment of section 80 of Act 10 of 2004

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

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“(1) The purpose of this Chapter is—

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

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

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

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

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“(bA) declare that this Chapter does not apply to the activity of collection, use, propagation cultivation or trade of indigenous biological resources for domestic use or subsistence purposes; or

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(bB) declare that the benefit sharing agreements and material transfer agreements contemplated in section 83 and 84 do not apply to certain categories of commercial or industrial exploitation of indigenous biological resources.”;

- (b) by the deletion in subsection (1) of paragraph (c);

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

“(1A) The Minister may amend or withdraw any notice referred to in subsection (1).”; and

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

“(2) Before publishing a notice in terms of subsection (1), or amending or repealing such a notice in terms of subsection (1A), the Minister must follow a consultative process in accordance with sections 99 and 100.”

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Amendment of section 87 of the Act 10 of 2004

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

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

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Insertion of section 87A in Act 10 of 2004

22. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 87:

“Issuing authority

87A. (1) The Minister is the issuing authority responsible for deciding an application for a permit for—

- (a) the carrying out of a restricted activity involving a specimen of a listed threatened or protected species—
 - (i) in a national protected area;
 - (ii) that is a marine species; or
 - (iii) applied for by an official, on behalf of—
 - (aa) a provincial department or provincial organ of state responsible for the conservation of biodiversity in a province;
 - (bb) a national protected area;
 - (cc) the South African National Biodiversity Institute; or
 - (dd) an organ of state in the national sphere of government;
- (b) the import, export, re-export or introduction from the sea, of a specimen of a species listed in terms of the Convention on International Trade in Endangered Species of Wild Fauna and Flora—
 - (i) originating from a national protected area;
 - (ii) that is a marine species; or
 - (iii) applied for by an official, on behalf of—
 - (aa) a provincial department or provincial organ of state responsible for the conservation of biodiversity in a province;
 - (bb) a national protected area;
 - (cc) the South African National Biodiversity Institute; or
 - (dd) an organ of state in the national sphere of government;
- (c) the carrying out of a restricted activity involving a specimen of an alien or a listed invasive species;
- (d) the commercialisation phase of bioprospecting involving any indigenous biological resources; or
- (e) the export of any indigenous biological resources from the Republic for the purpose of bioprospecting.

(2) The MEC is the issuing authority responsible for deciding an application for any permit not listed in subsection (1).

(3) Notwithstanding subsections (1) and (2), the Minister and the MEC may in writing agree that any application for a permit or a type of permit—

- (a) contemplated in subsection (1) may be decided by the MEC; or
- (b) contemplated in subsection (2) may be decided by the Minister.”.

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Amendment of section 88 of the Act 10 of 2004

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

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

Insertion of section 92A in Act 10 of 2004

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

“Refusal of permits

92A. (1) An issuing authority may refuse a permit—

- (a) if the carrying out of the restricted activity is likely to have a negative impact on the survival of the listed threatened or protected species;
- (b) if the applicant has been convicted of an offence in terms of this Act; or
- (c) in accordance with a ground for refusal contemplated in any regulation.

(2) The Minister may from time to time issue directives, which are binding on the issuing authority, to ensure the effective implementation of subsection (1).”

Amendment of section 93 of Act 10 of 2004

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

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

Insertion of section 93B in Act 10 of 2004

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

“Suspension of permits

93B. (1) An issuing authority which issued a permit may suspend the permit if—

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

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Repeal of section 94 of Act 10 of 2004

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

Repeal of section 95 of Act 10 of 2004

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

Repeal of section 96 of Act 10 of 2004

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

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

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

- (a) by the deletion in subsection (1)(b) of subparagraph (i);
- (b) by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph:
“(iv) the facilitation of the implementation and enforcement of sections 57(1), 57(1A) or any notice published in terms of section 57(2);”;
- (c) by the insertion in subsection (1)(b) after subparagraph (iii) of the following subparagraph:
“(iiiA) the circumstances in which restricted activities involving threatened or protected species may not be carried out;”;
- (d) by the substitution in subsection (1)(b) for subparagraph (viii) of the following subparagraph:
“(viii) the ecologically sustainable utilization of biodiversity[; or], including—
(aa) limiting the number of permits for a restricted activity;
(bb) qualifications or requirements necessary for the undertaking of a restricted activity;
(cc) criteria for the equitable allocation of permits for a restricted activity;”;
- (e) by the addition to subsection (1)(b) of the following subparagraphs:
“(x) the duty of care in respect of threatened or protected species;
(xi) the management of threatened or protected species that cause damage;
(xii) the collection of samples for genetic analyses;”;
- (f) by the deletion in subsection (1)(c) of subparagraphs (i) and (ii);
- (g) by the insertion in subsection 1(c) after subparagraph (ii) of the following subparagraph:
“(iiA) the circumstances under which a restricted activity involving alien species or listed invasive species, may not be carried out;”;

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- (h) by the substitution in subsection (1)(c) for subparagraphs (v) and (vi) of the following subparagraphs, respectively:
- “(v) the assessment of risks and potential impacts on biodiversity of restricted activities involving specimens of alien species or of listed invasive species; **[and]**” 5
- “(vi) the control and eradication of **[listed]** invasive species; **and**”;
- (i) by the addition to subsection (1)(c) of the following subparagraph:
- “(vii) the coordination and implementation of programmes for the prevention, control or eradication of invasive species;”;
- (j) by the insertion in subsection (1) after paragraph (d) of the following paragraph: 10
- “(dA) a system and requirements for the compulsory or voluntary registration of persons, institutions, ranching operations, game farms, nurseries, captive breeding or keeping operations and other facilities or operations;”;
- (k) by the deletion in subsection (1)(e) of subparagraph (i); 15
- (l) by the substitution in subsection 1(f) for subparagraph (i) of the following subparagraph:
- “(i) the conditions subject to which issuing authorities may issue, renew or amend permits or registrations in terms of this Act;”;
- (m) by the substitution in subsection 1(f) for subparagraph (ii) of the following subparagraph: 20
- “(ii) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of applications **[for permits]** and issuance of permits or registrations;”;
- (n) by the insertion in subsection (1)(f) after subparagraph (ii) of the following subparagraph: 25
- “(iiA) the procedure to be followed and the fees to be paid in connection with the marking of specimens;”;
- (o) by the insertion in subsection (1)(f) after subparagraph (vii) of the following subparagraphs: 30
- “(viiA) timeframes for the consideration and issuance of a permit or registration by an issuing authority;
- “(viiB) the conducting and evaluation of a risk assessment;”;
- (p) by the insertion in subsection (1)(f) after subparagraph (viii) of the following subparagraph: 35
- “(viiiA) the different types of permits that may be issued in terms of this Act;”;
- (q) by the substitution in subsection 1(f) for subparagraph (ix) of the following subparagraph: 40
- “(ix) the categories, form and contents of permits and the geographical area where permits apply;”;
- (r) by the insertion in subsection 1(f) after subparagraph (xi) of the following subparagraph: 45
- “(xiA) the circumstances or conditions under which permits or registrations may be amended, refused or cancelled;”;
- (s) by the substitution in subsection 1(f) for subparagraphs (xiii), (xiv) and (xv) of the following subparagraphs: 50
- “(xiii) the period of validity of **[permits]** a permit or registration;
- “(xiv) the transferability of **[permits]** a permit or registration;
- “(xv) the duties and reporting requirements of issuing authorities, **[of the]** permit holders and registration holders;”;
- (t) by the deletion in subsection (1)(f) of subparagraph (xvi);
- (u) by the insertion in subsection (1) after paragraph (f) of the following paragraph: 55
- “(fA) self-administration within the biodiversity sector and the recognition of associations relating to persons, operations or facilities contemplated in section 59 of the Act;”;
- (v) by the deletion of the word “and” at the end of paragraph (g);
- (w) by the substitution of paragraph (h) for the following paragraph: 60
- “(h) any other matter that may be necessary to facilitate the implementation of this Act[.]; **and**”;

- (x) by the addition of the following paragraph:
“(i) any matter that is necessary or expedient to achieve the objectives of the Act.”; and
- (y) by the insertion after subsection (3) of the following subsection:
“(3A) Any regulation made in terms of this Act must be submitted to Parliament 30 days prior to the publication of the regulations in the Gazette.”.

Amendment of section 98 of Act 10 of 2004

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

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

Amendment of section 101 of Act 10 of 2004

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

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
“(a) section 57(1), 57(1A), 65(1), 67(2), 71(1) [or], 81(1) or 81A(1);”;
 and
- (b) by the insertion in subsection (2) of the word “or” at the end of paragraph (a), the deletion in that subsection of the word “or” at the end of paragraph (b) and the deletion in that subsection of paragraph (c); and
- (c) by the deletion in subsection (3) of the word “or” at the end of paragraph (c), the insertion in that subsection of the word “or” at the end of paragraph (d) and the addition to that subsection of the following paragraph:
“(e) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of subsection (1) or (2).”.

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

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

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

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

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

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

“Emergency incidents

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

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

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

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Amnesty

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

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

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

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

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

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Substitution of certain words in Act 10 of 2004

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

Amendment of Table of Contents of Act 10 of 2004

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

- (a) by the insertion after item 62 of the following item:

“62A. Amendment of notices”;

- (b) by the insertion after item 71 of the following item:

“71A. Prohibitions”;

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- (c) by the insertion after item 87 of the following item:

“87A. Issuing authority”;

- (d) by the insertion after item 92 of the following item:

“92A. Refusal of permits”;

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- (e) by the insertion after item 93A of the following item:

“93B. Suspension of permits”;

- (f) by the deletion of items 94, 95 and 96; and
 (g) by the insertion after item 105 of the following items:
 “105A. Emergency incidents
 105B. Amnesty”.

Amendment of section 55 of Act 39 of 2004

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

“(2) Regulations made in terms of this Act may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable **[on conviction to—**

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(a) **imprisonment for a period not exceeding five years;**

(b) **an appropriate fine; or**

(c) **both a fine and imprisonment]** in the case of a first conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years and in the case of a second or subsequent conviction to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years and in respect of both instances to both such fine and such imprisonment.”.

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Amendment of section 1 of Act 59 of 2008

38. Section 1 of the National Environmental Management: Waste Act, 2008, is hereby amended by the substitution for the definition of “waste” of the following definition: 20

“**‘Waste’** means that any substance, whether or not that substance can be reduced, re-used, recycled **[and] or** recovered—

(a) that is surplus, unwanted, rejected, discarded, abandoned or disposed of;

(b) which the generator has no further use of for the purposes of production;

(c) that must be treated or disposed of; or

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(d) that is identified as a waste by the Minister by notice in the *Gazette*;

and includes waste generated by the mining, medical or other sector, but—

(i) a by-product is not considered waste; and

(ii) any portion of waste, once re-used, recycled **[and] or** recovered, ceases to be waste;”.

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Substitution of section 51 of Act 14 of 2009

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

“Short title and commencement

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

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Substitution of section 7 of Act 15 of 2009

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

“Short title and commencement

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

Short title and commencement

41. This Act is called the National Environmental Management Laws Amendment Act, 2013, and comes into effect on the date published by the President in the *Gazette*.