

LEGAL SITUATION ASSESSMENT

Supporting the Development of a Biodiversity Strategy and Action Plan for the Wild Coast

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Plan for the Wild Coast*

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Executive Summary

A clear understanding of the legal environment was required to inform the development of a biodiversity strategy and action plan for the Wild Coast. An assessment was therefore undertaken to provide an overview of the most relevant provincial and national legislation that affects the conservation of biodiversity within the Wild Coast. The relevant laws include the:

- Transkei Environmental Conservation Decree, 1992
- Provincial Draft Eastern Cape Environmental Conservation Bill, 2002
- National Environmental Management Act, 1998
- National Environmental Management: Protected Areas Act, 2003
- National Environmental Management: Biodiversity Act, 2004

Biodiversity issues were previously regulated primarily under the Transkei Environmental Conservation Decree, No. 9 of 1992. The relevant portions of the Transkei Environmental Conservation Decree will be repealed by the enactment of the Eastern Cape Environmental Conservation Bill, 2002 which is currently being finalized. This new Bill explicitly provides for the continuation of the Coastal Conservation Area established by section 39(1) of the Transkei Environmental Conservation which regulates development within 1km of the coast.

In addition to the changing regional legal landscape, there have also been recent changes in the national legal frameworks governing environmental and more specifically legal issues. This includes the incremental implementation of the National Environmental Management: Protected Areas Act, No. 57 of 2003, and of the National Environmental Management: Biodiversity Act, No. 10 of 2004, the implications of which are reviewed in this document. It is envisaged that the new legislation will create a number of new mechanisms for conserving biodiversity which represent important opportunities for implementing the Wild Coast Strategy. Similarly, when the proposed national Coastal Zone Management Bill is published for comment it will create an important opportunity to ensure that appropriate legal mechanisms are established to facilitate integrated management of the Wild Coast.

There are also many new Acts governing other sectors such as, land tenure and restitution, traditional authorities, municipalities and agriculture which are also relevant to the project. Perhaps the most important of these new Acts is the Communal Land Rights Act no 11 of 2004 which will repeal the existing use of the Interim Protection of Informal Land Rights Act 31 of 1996. The full implications of all these changes would however require a full legal review which was beyond the scope of this project. In view of the far reaching nature of these changes it is recommended that focused legal reviews are rather undertaken in support of very specific implementation processes.

It is also important to recognize that regionally specific customary law systems also still play a very important role in the governance of this region. These systems must be developed and strengthened and new means of integrating customary governance systems and municipal and provincial systems should be developed.

The changing legal environment requires a flexible incremental approach to implementation which strengthens and builds on existing initiatives wherever possible. In addition to sound legal frameworks, effective governance systems are crucial to the conservation of biodiversity. Provincial Authorities must enact the draft Eastern Cape Environmental Conservation Bill 2002, and develop sufficient capacity to use existing regulatory mechanisms effectively. Provincial, National and Traditional Authorities will need to work together if they are to overcome the legal challenges and achieve the objectives of the Wild Coast biodiversity strategy and action plan.

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ABBREVIATIONS AND ACRONYMS

EIP	Environmental Implementation Plan
EMP	Environmental Management Plan
IDP	Integrated Development Plan
MEC	Member of the Executive Council
NEMA	National Environmental Management Act 107 of 1998
SDF	Spatial Development Framework

LEGAL SITUATION ASSESSMENT

1. INTRODUCTION

The objective of the Wild Coast Conservation and Sustainable Development project is to promote the protection of the globally important biodiversity of the Wild Coast whilst optimizing sustainable development opportunities for impoverished local communities. It aims to do this through the development of an agreed biodiversity strategy and action plan with the stakeholders of the region. The development of this biodiversity strategy and action plan is to be informed both by the existing knowledge of stakeholders and by specialist reviews. This document forms a specialist review of the legal framework of the region.

The legal context of the Wild Coast reflects its history as one of the areas in South Africa most affected by apartheid. It was re-integrated into South Africa in June 1994 as part of the “independent homeland of Transkei”. It is important to recognize that although the area was officially integrated, the complex process of re-integrating the legal and institutional frameworks of this region back into South Africa is still in progress. As a consequence there is a great deal of change, this creates a challenging, unpredictable and often untested environment for implementation. The developing nature of both law and institutions also creates the opportunity for an integrative programme such as this, to influence and support the development of structures for effective cooperative governance of the environment.

During the last 10 years South African natural resource management and conservation have moved into an era concerned with human rights, access to natural resources, equity and environmental sustainability (PCAS 2003). There is a strong recognition that resource management must involve the users. The National Environmental Management Act, 1998 (NEMA) provides the framework for this drive towards co-operative governance and this philosophy is also integrated into much of the other new legislation.

The legal framework for the conservation of biological diversity in South Africa is currently in a state of flux. Historically the conservation of biological diversity has been regulated primarily in terms of provincial legislation, with the exception of national parks which were established and managed in accordance the South African National Parks Act No 57 of 1976. In the apartheid era, the Wild Coast area fell within the Republic of the Transkei and biodiversity issues were regulated primarily under the Transkei Environmental Conservation Decree, No. 9 of 1992. The relevant portions of the Transkei Environmental Conservation Decree will be repealed by the enactment of the Eastern Cape Environmental Conservation Bill, 2002 which is currently being finalised.

In the broader context, the conservation of biological diversity in South Africa is currently in the process of being transformed by the phased implementation of the National Environmental Management: Protected Areas Act, 57 of 2003 (“the Protected Areas Act”)

and of the National Environmental Management: Biodiversity Act, 10 of 2004 (“the Biodiversity Act”). The new legislation will have a significant influence on future implementation on the Wild Coast, once it is effective in this area.

It is also important to recognize that regionally specific Traditional Law also still plays a very important role in the governance of this region. It is therefore imperative that these structures are recognized and capacitated in order to ensure the successful implementation of the Wild Coast strategy and action plan.

This study provides an overview of the legal framework of the Wild Coast area. Section one introduces the study. Section two provides a brief overview of some of the most relevant legislation that affects the biodiversity of the Wild Coast and discusses its implications for implementation. Section three discusses the role of customary law in the Wild Coast and emphasizes how essential it is to strengthen these systems so that they can be effective in conserving biodiversity. Section four concludes by listing reasons why the new regulatory framework is not yet effective in the Wild Coast Area. It also highlights opportunities that can be derived from mechanisms created by the new legislation for implementing the Wild Coast Strategy.

2. CURRENT LEGAL SETTING OF THE WILD COAST

Many current and forthcoming laws have the potential to affect the implementation of the Wild Coast Biodiversity Strategy and Action Plan.¹ These include legislation dealing with land tenure and land restitution,² physical development and the provision of infrastructure;³ traditional authorities,⁴ municipalities,⁵ heritage and culture,⁶ agriculture,⁷ and various aspects of the environment.⁸ Since a full discussion of all these aspects is beyond the scope of this study, the following discussion is confined to those aspects of

¹ The key provisions of much of this legislation insofar as it is relevant to the implementation of the EU-funded Wild Coast Coast Community Tourism Initiative have been summarised in a useful document prepared by Masibambane Specialist Legal Consultants, entitled Revised Legal Manual on Environmental Management on the Wild Coast, August 2004.

² For example, the State Land Disposal Act 48 of 1961, the Restitution of Land Rights Act 22 of 1994 and the Communal Land Rights Act No 11 of 2004 (the CLRA is not yet in force but when it commences will repeal the Interim Protection of Informal Land Rights Act 31 of 1996).

³ For example, the Development Facilitation Act 67 of 1995, the Physical Planning Act 125 of 1991, the Land Use Planning Ordinance 15 of 1985, the Water Services Act 108 of 1997; and the Health Act 63 of 1977.

⁴ For example, the Traditional Leadership and Governance Framework Act 41 of 2003 (not yet in force).

⁵ For example, the Local Government: Municipal Structures Act 117 of 1998, and the Local Government: Municipal Systems Act 32 of 2000.

⁶ For example, the National Heritage Resources Act 25 of 1999.

⁷ For example, the Conservation of Agricultural Resources Act 43 of 1983.

⁸ For example, the Sea-Shore Act 21 of 1935; the Atmospheric Pollution Prevention Control Act 45 of 1965 and its successor, the National Environmental Management: Air Quality Act No 39 of 2004 (not yet in force); the Sea Birds and Seals Protection Act No. 46 of 1973; the Dumping at Sea Control Act 73 of 1980; the Environmental Laws Rationalisation Act 51 of 1997 (Schedule 1 of which both extends and amends the Sea-shore Act; the Sea Birds and Seals Protection Act and the Dumping at Sea Control Act to apply to the former Transkei and the Ciskei), the National Water Act 36 of 1998, the National Veld and Forest Fire Act 1998, the Marine Living Resources Act 18 of 1998, NEMA, the World Heritage Convention Act 49 of 1999, the National Environmental Management: Protected Areas Act 57 of 2003, and the National Environmental Management Biodiversity Act 10 of 2004.

current biodiversity-related legislation that have a direct bearing on the development and implementation of the Wild Coast biodiversity strategy and action plan.

2.1 THE TRANSKEI ENVIRONMENTAL CONSERVATION DECREE

In June 1994, after the Republic of the Transkei had been reabsorbed into the Republic of South Africa, the President of the Republic of South Africa assigned the administration of certain laws to the Province of the Eastern Cape,⁹ including most of the Transkei Environmental Conservation Decree.¹⁰ Subsequently, on 15 March 1996, the President used his powers under the Interim Constitution of the Republic of South Africa¹¹ to assign the administration of various sections of the Environment Conservation Decree, 1992, to the competent authorities within the Government of the Province of the Eastern Cape.¹² As a result of the assignment:

- (a) the Provincial Minister was given the power to appoint honorary nature conservation officers (section 8);
- (b) a Council for the Environment to advise the Provincial Minister was established (section 9(1) as read with sections 9(3), (10) and (11));
- (c) the Provincial Minister was given the power to declare any area to be a protected natural environment if in the Minister's opinion the declaration would significantly promote the preservation of particular ecological processes, natural systems, natural beauty, species of indigenous fauna or flora or the preservation of biotic diversity in general (section 34);¹³
- (d) the Eastern Cape Government became responsible for administering and enforcing the provisions of the Transkei Environmental Conservation Decree that prohibit:
 - (i) the carrying out of certain activities within a coastal conservation area except under the authority of a permit issued by the provincial department in accordance with a plan for the control of coastal development approved by a resolution of the provincial executive council (formerly the military council) (section 39);¹⁴

⁹ Government Notice 111 of 1994 published in *Government Gazette* 15813 of 17 June 1994.

¹⁰ The following sections of the Transkei Environmental Conservation Decree were assigned to the Eastern Cape Government: Chapter 3 (which deals with the protection of indigenous fauna); Chapter 4 (which deals with the protection of indigenous flora); Part 1 of Chapter 5 (which deals with the establishment and management of national wildlife reserves); Chapters 6, 8 and 9 (which deal with hiking trails, camping, caravanning and picnicking, and inland fisheries, respectively); the provisions relating to angling clubs and angling competitions, but only in respect of inland waters (section 63 and 64); the powers to make regulations in respect of national wildlife reserves, hiking trails and the coastal conservation area, but only in relation to the conservation of indigenous fauna and flora (sections 71, 71 and 72); as well as regulation making powers in respective camping, caravanning and picnicking (section 73) and inland fisheries (section 74).

¹¹ Section 235(8) of Act 200 of 1993.

¹² Government Notice R.12, 1996, published in *Government Gazette* 17031 of 15 March 1996.

¹³ Section 34 envisages that such protected natural environments could include marine areas. For example, section 34(2) makes reference to "waters" which is defined to include the sea and seashore in addition to inland waters. Section 34(4) also gives the Minister (i.e. the provincial MEC) the power to assign the control and management of a protected natural environment to any authority or government institution other than the relevant provincial department (provided that that authority or institution agrees).

¹⁴ The coastal conservation areas were established in terms of section 39(1). That subsection provides that:

- (ii) the driving or use of a motor vehicle on or along the sea-shore or on any state land in the coastal conservation area other than on a declared road, without a permit (unless the vehicle is a state vehicle being used for official purposes to administer a law or is being used for rescue or emergency purposes) (section 40);
- (iii) persons from discarding, dumping or leaving litter on land or water except in receptacles or sites set aside for that purpose (section 65);
- (e) the Eastern Cape Government became responsible for administering a system of waste management and control (section 66);
- (f) the provincial Minister was given the power to designate certain activities as being detrimental to the environment and to prohibit them from being undertaken except in accordance with a written authorisation from the Minister or a competent person authorised by the Minister (section 67);
- (g) the provincial Minister was given the power to declare areas to be limited development areas within which any development or action prohibited by regulation may not be undertaken except in accordance with an authorisation issued by the Minister or a competent authority to which that power has been assigned by the Minister (section 68);
- (h) the fact that the Sea-shore Act of 1979 would not be applied to any area forming part of a national wildlife reserve was reaffirmed (section 87); and
- (i) the fact that the Nature Conservation Ordinance, 26 of 1965, and regulations made under it would continue to apply in respect of the establishment of any nature reserve on land owned by a local authority was reaffirmed (section 93(3)).

The 1996 assignment also assigned certain ancillary powers to the Government of the Eastern Cape to implement the sections referred to above and to conserve and protect listed fauna and flora other than marine fauna. (The classification, conservation and protection of listed fauna and flora are dealt with in Chapters 3 and 4 of the Environmental Conservation Decree and schedules 1 to 6). The assigned provisions included those dealing with:

- the establishment and management of national wildlife reserves (Part 1 of Chapter 5);
- the establishment and maintenance of hiking trails (Chapter 6);
- the management and control of camping, caravanning and picnicking areas (Chapter 8);

"There is hereby established on the landward side of the entire length of the sea-shore, excluding any national park, national wildlife reserve, municipal land, sea-side resort, site occupied in terms of Proclamation no. 174 of 1921 or Proclamation no. 26 of 1936, privately owned land and lease-held land, a coastal conservation area 1,000 metres wide measured –

- (a) in relation to the sea, as distinct from a tidal river and tidal lagoon, from the high water mark;
- (b) in relation to a tidal river or tidal lagoon, from the highest water level reached during ordinary storms during the most stormy period of the year, excluding exceptional or abnormal floods."

- the management of inland fisheries (Chapter 9); and
- the sections giving the Minister the power to make regulations in respect of national wildlife reserves, hiking trails, indigenous fauna and flora; camping, caravanning and picnicking, and inland fisheries (sections 72 to 74).

Despite this assignment, many of these provisions are not enforced by the Government of the Eastern Cape, in many cases due to limited capacity.

2.2 THE DRAFT EASTERN CAPE ENVIRONMENTAL CONSERVATION BILL, 2002

When the draft Eastern Cape Environmental Conservation Bill, 2002 is enacted it will repeal the whole of the Nature and Environmental Conservation Ordinance, 19 of 1974, of the Cape Province, and the Transkei Environmental Conservation Decree. However, the draft Eastern Cape Environmental Conservation Bill, 2002 provides¹⁵ that the coastal conservation areas established by section 39(1) of the Transkei Environmental Conservation Decree, will continue to exist in the districts which constitute the Wild Coast. It also provides that a permit issued by the Department in accordance with a plan for the control of coastal development approved by the Member of the Executive Council (MEC) is necessary to carry out any of the same activities that were listed in the Transkei Environmental Conservation Decree.

2.3 PROTECTED AREAS ACT, 57 OF 2003 (“THE PROTECTED AREAS ACT”)

The Protected Areas Bill that was initially submitted to Parliament dealt with the full spectrum of protected areas within both the national and provincial spheres of Government and it was intended that it would be enacted following the procedure used to pass legislation that deals with matters of concurrent national and provincial legislative competence (in this case, the environment).¹⁶ However, during its passage through Parliament it was decided that the Bill included elements which fell within the area of exclusive national legislative competence¹⁷ and accordingly those aspects were removed from the Bill which meant that the Protected Areas Act that was enacted had sections missing.¹⁸ However, a Protected Areas Amendment Bill containing those sections of exclusive national competence (e.g. dealing with national parks and marine protected areas) has been introduced into Parliament and once enacted and brought into force will complete the Protected Areas Act. The discussion below, unless otherwise indicated, refers to the complete Protected Areas Act in its consolidated form after the enactment of the Amendment Bill.

The Protected Areas Act is intended to provide the legal means for rationalising the complex and fragmented system of protected areas in South Africa in accordance with the new Constitutional and legal order in South Africa and with Government policy as set

¹⁵ In section 99 of the draft Bill published in 2002.

¹⁶ On this basis it should be enacted in accordance with section 76 of the Constitution.

¹⁷ These are required to be dealt with in terms of section 75 of the Constitution.

¹⁸ The date of commencement of the Protected Areas Act was 1 November 2004 (Proclamation 52 in Government Gazette 26960 of 2 November 2004).

out in the White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity (1997).

The overall objective of the Act as a whole (i.e. including those provisions to be inserted by way of the Amendment Bill) is reflected in the long title of the Act which is:

“To provide for the protection and conservation of ecologically viable areas representative of South Africa’s biological diversity and of natural landscapes and seascapes; for the establishment of a national register of all natural, provincial and local protected areas; for the management of those areas in accordance with national norms and standards; for intergovernmental co-operation and public consultation in matters concerning protected areas; for the continued existence, governance and functions of South African national parks; and for matters in connection therewith.”

The objectives of the Act are specifically set out in section 2, and importantly include among the objectives:

- “ (e) to promote sustainable utilisation of protected areas for the benefit of people, in a manner that would preserve the ecological character of such areas;
- (f) to promote participation of local communities and the management of protected areas, wherever appropriate.”

The Protected Areas Act requires the State to progressively give effect to the environmental rights contained in section 24¹⁹ of the Constitution by acting as the trustee of protected areas and by implementing the Act in partnership with the people.

The system of protected areas in South Africa is set out in Chapter 2 of the Act. Once the Act has been consolidated, protected areas in South Africa will fall within the following categories:

1. special nature reserves;
2. nature reserves (including wilderness areas);
3. protected environments;
4. world heritage sites;²⁰

¹⁹ **“24. Environment**

Everyone has the right -

- (a) to an environment that is not harmful to their health or wellbeing; an
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

²⁰ These are declared in terms of the World Heritage Convention Act, 49 of 1999.

5. specially protected forest areas, forest nature reserves and forest wilderness areas;²¹ and
6. mountain catchment areas.²²

The Protected Areas Act also provides that

- existing provincial protected areas which meet the requirements to be declared as a nature reserve or protected environment, must be treated as such for the purposes of that Act);²³
- an area which was a nature reserve immediately before the section dealing with the declaration of nature reserves (section 23) took effect, must be regarded as having been declared as a nature reserve in terms of that section.²⁴
- the Act does not affect the implementation of provincial legislation that regulates provincial or local protected areas to the extent that such legislation regulates matters not covered by the Act, is consistent with the Act, or prevails over the Act in terms of section 146 of the Constitution (which deals with the circumstances in which provincial legislation will prevail over national legislation);²⁵ and
- protected areas declared in terms of provincial legislation must be included in the register of protected areas²⁶ as either a nature reserve or a protected environment, depending on the purpose for which it was declared.²⁷

Consequently, in order to determine the legal regime applicable to existing provincial protected areas within the Wild Coast (excluding areas declared under the Mountain Catchment Areas Act or the National Forests Act) it will be necessary to examine the purposes for which they were established in order to determine whether they correspond most closely with the purposes for declaring a natural reserve or those for declaring a protected environment.

²¹ These categories are declared in terms of section 8 of the National Forests Act, 84 of 1998. Section 8 (Power to set aside protected areas) provides that:

“(1) The Minister may-

(a) declare a State forest or a part of it; (b) purchase or expropriate land under section 49 and declare it; or (c) at the request or with the consent of the registered owner of land outside a State forest, declare it,

as a specially protected area in one of the following categories: (i) A forest nature reserve; (ii) a forest wilderness area; or (iii) any other type of protected area which is recognised in international law or practice.

(2) The Minister may declare such an area only if he or she is of the opinion that it is not already adequately protected in terms of other legislation.”

²² Declared in terms of the Mountain Catchment Areas Act, 63 of 1970.

²³ Section 12.

²⁴ Section 23(5).

²⁵ Section 8.

²⁶ This register must be maintained by the national Minister responsible for the environment (i.e. the Minister of DEAT).

²⁷ Section 10.

The consolidated Act provides that a **nature reserve** may be declared:

- “(a) [to supplement the system of national parks in South Africa;]
- (b) to protect the area if the area -
 - (i) has significant natural features or biodiversity;
 - (ii) is of scientific, cultural, historical or archaeological interests; or
 - (iii) is in need of long term protection for the maintenance of its biodiversity or for the provision of environmental goods and services;
- (c) to provide for a sustainable flow of natural products and services to meet the needs of a local community;
- (d) to enable the continuation of such traditional consumptive uses as are sustainable; or
- (e) to provide for nature-based recreation and tourism opportunities.”²⁸

A **protected environment** may be declared:

- “(a) to regulate the area as a buffer zone for the protection of a special nature reserve, national park, world heritage site or nature reserve;
- (b) to enable owners of land to take collective action to conserve biodiversity on their land and to seek legal recognition therefore;
- (c) to protect the area if the area is sensitive to development due to its –
 - (i) biological diversity;
 - (ii) natural characteristics;
 - (iii) scientific, cultural, historical, archaeological or geological value;
 - (iv) scenic and landscape value; or
 - (v) provision of environmental goods and services;
- (d) to protect a specific ecosystem outside of a special nature reserve, national park, world heritage site or nature reserve;
- (e) to ensure that the use of natural resources in the area is sustainable; or
- (f) to control change and land use in the area if the area is earmarked for declaration as, or inclusion in, a national park or a nature reserve.”

On the basis of the above, it is most likely that existing nature reserves within the Wild Coast area will be classified and treated as such under the Protected Areas Act and that some or all of the coastal conservation area could be declared by the Minister or the MEC in terms of section 28 of the Protected Areas Act, to be a protected environment.

²⁸ Section 23.

Marine protected areas

The Protected Area Amendment Bill will reinsert the provisions dealing with marine protected areas. These are areas declared as such in terms of section 43 of the Marine Living Resources Act, 18 of 1998. The consolidated Protected Areas Act will provide that Chapter 1 (interpretation, objectives and application of the Act) and Chapter 2 (which establishes the system of protected areas in South Africa) will apply to marine protected areas as well as section 48 which restricts prospecting and mining activities within protected areas.²⁹

The consolidated Act also provides that although the other provisions of the Act do not generally apply to marine protected areas, if the marine protected area is included in a special nature reserve, national park or nature reserve, it must be managed and regulated as part of that protected area and in terms of the Protected Areas Act.

It is also important to note that the Act provides that marine and terrestrial protected areas with common boundaries must be managed as an integrated protected area by a single management authority.³⁰ This provision could have important implications for the management of areas such as the Pondoland Marine Protected Area.

Other provisions of the Protected Areas Act which are important to note are:

- the requirement that protected areas must be managed in accordance with specified criteria (notably for the purposes for which the area was declared) and in accordance with a management plan that meets certain minimum conditions;³¹
- management authorities for protected areas may enter into agreements with third parties for the co-management of the protected area or the regulation of human activities that affect the environment in the area, provided that the co-management does not lead to a fragmentation or duplication of management functions;³²
- the Minister and MEC are given powers to establish indicators to monitor management performance in relation to the protected areas for which they are responsible and if the management authority under-performs and fails to rectify the situation, the responsibility for management may be assigned to another organ of State;³³
- commercial prospecting or mining activities may not occur in a protected environment without the written permission of the national Minister of DEAT and the Minister responsible for Minerals and Energy Affairs, and is not

²⁹ Section 14 to be inserted by the Amendment Bill.

³⁰ Section 38(4).

³¹ Section 41.

³² Section 42.

³³ Sections 43 and 44.

permitted in special nature reserves, national parks, nature reserves, world heritage sites, national parks, specially protected forest areas, forest nature reserves and forest wilderness areas;³⁴

- the management authorities of national parks, nature reserves and world heritage sites may in certain circumstances, allow commercial activities within the protected area, or enter into a written agreement with the local community inside or adjacent to the protected area to allow members of the community to use, in a sustainable manner, biological resources within the protected area;³⁵
- the Minister or MEC is given the power to make regulations to restrict or regulate developments and activities within protected environments that undermine the purposes for which the area was protected;³⁶

2.4 THE BIODIVERSITY ACT, 2004

The Biodiversity Act seeks to manage and conserve South Africa's biodiversity within the framework of the national Environmental Management Act, to provide for the sustainable use of indigenous biological resources, the fair and equitable sharing of benefits arising from bio-prospecting from indigenous biological resources and the establishment and operation of the South African National Biodiversity Institute. The Act was assented to by the President on 31 May 2004 and its provisions are being brought into effect on a phased basis.³⁷ Furthermore, many of the provisions of the Biodiversity Act cannot be implemented until more detailed regulations have been made under the Act.³⁸

From the perspective of the Wild Coast project, two aspects of the Biodiversity Act are of particular importance. The first is the biodiversity planning and monitoring regime established by Chapter 3 of the Act, and the second is the mechanism for protecting threatened or protected ecosystems and species established under Chapter 4.

2.4.1 Biodiversity planning and monitoring

Chapter 3 of the Biodiversity Act seeks to provide for integrated and co-ordinated biodiversity planning, the monitoring of the conservation status of various components of South Africa's biodiversity, and the promotion of biodiversity research.³⁹ The Act establishes a hierarchy of biodiversity plans. At the apex is a national biodiversity

³⁴ Section 48.

³⁵ Section 50(1).

³⁶ Section 51.

³⁷ The Biodiversity Act was brought into effect on 1 September 2004, with the exception of sections relating to monitoring (section 49); restricted activities involving listed threatened or protected species (section 57), restricted activities involving alien species (section 65) and exemptions in relation to these (section 66); restricted activities involving listed invasive species (section 71); and permits (Chapter 7), which will all commence on 1 April 2005; and the provisions regulating bio-prospecting, access and benefit sharing (Chapter 6) and dealing with existing bio-prospecting agreements (section 105), will become operative on 1 January 2006 (Proclamation R47 in GG 26887 of 8 October 2004).

³⁸ Draft regulations have recently been published for public comment.

³⁹ Section 37.

framework which must be adopted by the Minister within three years of the Act taking effect. The implementation of the national biodiversity framework must be monitored and the framework must be reviewed at least every five years. Among other matters, the national biodiversity framework must provide for an integrated, co-ordinated and uniform approach to biodiversity management by organs of State in all spheres of Government, non-governmental organisations, the private sector, local communities, other stakeholders and the public. It may also determine norms and standards for provincial and municipal, environmental conservation plans.⁴⁰

The Biodiversity Act empowers the Minister or the MEC for Environmental Affairs in the province, to declare a geographical region as a bioregion for the purposes of the Act: “if that region contains whole or several nested ecosystems and is characterised by its landforms, vegetation cover, human culture and history”. The Minister, or the MEC with the agreement of the Minister, may publish a bioregional plan for a bioregion.⁴¹

The Act also makes provision for biodiversity management plans to be prepared in respect of ecosystems, indigenous species or migratory species. These plans must be approved by the Minister and once approved will be published in the *Gazette* together with directions as to how the plan will be implemented and who will be responsible for doing so.⁴² The Minister may also enter into biodiversity management agreements with third parties regarding the implementation of a biodiversity management plan.⁴³

One of the key challenges which the Biodiversity Act seeks to address is how to integrate the biodiversity concerns expressed in the national biodiversity framework, bioregional plans and biodiversity management plans, into existing planning regimes. This is addressed in section 48 of the Biodiversity Act which unfortunately seems to contain an internal contradiction. Subsection 48(1) provides that the national biodiversity framework, bioregional plans and biodiversity management plans may not be **in conflict with an environmental implementation plan (“EIP”), an environmental management plan (“EMP”)**⁴⁴, an integrated development plan (“IDP”)⁴⁵, a spatial development framework (“SDF”), or any other plan prepared in terms of national or provincial legislation.⁴⁶ On the other hand, subsection 48(1) provides that an organ of State that is required to prepare an EIP or EMP, and a municipality that is required to adopt an IDP must: (a) **align** its plan with the national biodiversity framework and applicable bioregional plans; (b) **incorporate** into its plan those aspects of the national biodiversity framework or bioregional plan that specifically applied to it; and (c) demonstrate how it will implement them.⁴⁷

⁴⁰ Section 39.

⁴¹ Sections 40 to 42.

⁴² Section 43.

⁴³ Section 44.

⁴⁴ These are required in terms of Chapter 3 of the National Environmental Management Act.

⁴⁵ These are required in terms of the Local Government: Municipal Systems Act, 2000.

⁴⁶ Section 48(1).

⁴⁷ Section 48(2).

Therefore while the effect of subsection 48(1) appears to be that no provisions that conflict with existing plans may be included in biodiversity framework or plans, subsection 48(2) requires these other plans to be aligned with the biodiversity plans and to incorporate elements of them. This suggests that pre-existing EIPs, EMPs, IDPs, SDFs and similar plans will prevail over biodiversity plans in the event of a conflict, but compatible elements of the biodiversity framework and plans must in future be incorporated into EIPs, EMPs, and IDPs. However the no-conflict requirement in subsection 48(1) may well restrict the ability of the Minister and MEC to adopt appropriate biodiversity frameworks, bioregional plans and biodiversity management plans.

It appears likely that disputes between different organs of state may arise as to whether or not the national biodiversity framework, a bioregional plan or a biodiversity management plan is in conflict with existing EIPs, EMPs, IDPs, SDFs or other plan. The Biodiversity Act requires conflicts arising from the implementation of the Act to be resolved in accordance with Chapter 4 of NEMA.⁴⁸ Chapter 4 of NEMA (sections 17 – 22) makes provision for disputes to be referred to conciliation or to arbitration in terms of the Arbitration Act, 42 of 1965, and also enables the Minister to appoint persons to assist him in investigating matters and conducting public inquiries.

2.4.2 Threatened or protected ecosystems and species

Chapter 4 of the Biodiversity Act provides mechanisms for, among other matters, protecting ecosystems or species that are threatened or in need of protection.⁴⁹ These ecosystems may be listed by the Minister or MEC for Environmental Affairs in the province, if they fall within one of four categories, namely:

- “(a) **critically endangered ecosystems**, being ecosystems that have undergone severe degradation of ecological structure, function or composition as a result of human intervention and are subject to an extremely high risk of irreversible transformation;
- (b) **endangered ecosystems**, being ecosystems that have undergone degradation of ecological structure, function or composition as a result of human intervention, although they are not critically endangered ecosystems;
- (c) **vulnerable ecosystems**, being ecosystems that have a high risk of undergoing significant degradation of ecological structure, function or composition, as a result of human intervention, although they are not critically endangered ecosystems or endangered ecosystems; and
- (d) **protected ecosystems**, being ecosystems that are of high conservation value or of high national or provincial importance, although they are not listed in terms of paragraphs (a), (b) or (c).⁵⁰ [Emphasis added.]

⁴⁸ Section 6(2).

⁴⁹ Section 51.

⁵⁰ Section 52.

The need for protecting listed ecosystems must be taken into account in the preparation of EIPs, EMPs and IDPs.⁵¹ In addition, the national Minister may identify any process or activity in a listed ecosystem as a threatening process. The effect of this is that the specified activity may not be commenced within the listed ecosystem without an environmental authorisation from the competent authority as prescribed by Section 24(2)(b) of NEMA. (This is discussed more fully in section 2.5 below).

In addition, the Biodiversity Act:

- gives the National Minister the power to publish lists of critically endangered species, endangered species, vulnerable species and protected species;⁵²
- prohibits any person from carrying out without a permit what is defined in the Act as a “restricted activity”⁵³ in respect of a specimen⁵⁴ of a listed threatened or protected species;
- provides mechanisms for restricting activities involving alien species and genetically modified organisms that pose potential threats to biodiversity and to regulate bioprospecting (Chapter 6).

2.4.3 Implications of Biodiversity Act for the Wild Coast Biodiversity Strategy and Action Plan

From the perspective of the biodiversity strategy and action plan being prepared for the Wild Coast, it will be important to give consideration to the following:

1. whether or not it would further the objectives of the strategy to declare a bioregion which encompassed some or all of the Wild Coast (bearing in mind the criteria for designation as a bioregion);
2. whether or not specific ecosystems, indigenous species, or migratory species, within the Wild Coast area merit the preparation of specific biodiversity management plans and if so:
 - (a) who should be responsible for the implementation of the relevant plans; and
 - (b) the persons, organisations or organs of state with whom biodiversity management agreements should be concluded in order to implement the biodiversity management plan; and
 - (c) what processes or activities, if any, should be identified as a threatening process in respect of a particular listed ecosystem, that should not be permitted unless an

⁵¹ Section 54.

⁵² Section 56.

⁵³ The term “restricted activity” is defined in section 1(1) to cover a wide-range of activities, including: killing, capturing or picking, possessing, breeding or growing, transporting, importing, exporting, selling or trading in listed threatened or protected species.

⁵⁴ Section 1 defined specimen as including not only living or dead animals, plants or other organisms, but also seeds, eggs, etc, derivatives from them and goods made from them.

Environmental Impact Assessment has been conducted and authorisation granted.

2.5 NATIONAL ENVIRONMENTAL MANAGEMENT ACT 1998 (“NEMA”)

2.5.1 The NEMA framework

NEMA is intended to function as a framework act and other national legislation dealing with the environment, including the Protected Areas Act and the Biodiversity Act, are intended to be read in conjunction with NEMA and to supplement and complement it. Two recent amendments to NEMA are of relevance to the Wild Coast Biodiversity Strategy and Action Plan. The National Environmental Management Amendment Act, 46 of 2003 (“the first NEMA Amendment Act”) introduces new enforcement measures and is discussed in section 2.5.2. The National Environmental Management Amendment Act, 8 of 2004, (“the second NEMA Amendment Act”) reforms the environmental impact assessment regime and is discussed in section 2.5.3.

2.5.2 Enforcement

The first NEMA Amendment Act⁵⁵ inserts a new Part 2 in Chapter 7 of NEMA dealing with the application and enforcement of NEMA and certain other environmental management acts. The first NEMA Amendment Act introduces a new definition of “specific environmental management Acts” which is defined to include the Biodiversity Act, the Protected Areas Act, and any regulations or other subordinate legislation made in terms of those Acts. The new Part 2 of Chapter 7 provides that Schedule 1 to the Criminal Procedure Act, 51 of 1977, is deemed to include an offence permitted in terms of NEMA, the Biodiversity Act or the Protected Areas Act.⁵⁶

The Minister is empowered to designate a staff member of the department or of another organ of state as an environmental management inspector, and the MEC is given similar powers to designate members of staff of provincial organs of state and of any municipality in the province. A person designated as an environmental management inspector must be given a specific mandate when appointed which determines which legislative provisions he or she is entitled to enforce.⁵⁷ The chapter also sets out the functions of inspectors,⁵⁸ their general powers,⁵⁹ the circumstances in which they may seize items,⁶⁰ stop, enter and search vehicles, vessels and aircraft,⁶¹ and conduct routine

⁵⁵ National Environmental Management Amendment Act, 46 of 2003, Government Gazette 26018 of 13 February 2004. The Amendment Act took effect on 1 May 2005 (Proclamation 20 in GG 27539 of 29 April 2005).

⁵⁶ Section 31A. The effect of this section is that any peace officer or private person may, without a warrant, arrest any person who commits or attempts to commit in his presence or whom he reasonably suspects of having committed, an offence of NEMA, the Biodiversity Act or the Protected Areas Act. (Sections 40 and 42 of the Criminal Procedure Act).

⁵⁷ Section 31D.

⁵⁸ Section 31G.

⁵⁹ Section 31H.

⁶⁰ Section 31I.

⁶¹ Section 31J.

inspections.⁶² Importantly, environmental management inspectors acting within their mandates may issue compliance notices requiring persons to rectify any alleged non-compliance with the law.⁶³ The first NEMA Amendment Act sets out a procedure for objecting to a compliance notice, but anyone who fails to comply with a compliance notice commits an offence.⁶⁴

The first NEMA Amendment Act also introduces a number of consequential and ancillary amendments designed to strengthen enforcement including: (i) extending the provisions of section 32 of NEMA (which are designed to encourage the public to use the courts to enforce environmental laws) to the enforcement of the Biodiversity Act and of the Protected Areas Act; (ii) making it an offence to hinder environmental management inspectors in the performance of their duties, (iii) providing for the payment of rewards to informants;⁶⁵ (iv) allowing for the cancellation of permits as a punishment for offences⁶⁶ and the forfeiture of items under certain circumstances,⁶⁷ (v) requiring security for the release of vehicles, vessels or aircraft; (vi) and the payment of admission of guilt fines.⁶⁸ It also amends section 42 which deals with the delegation of powers and duties by the Minister and Director-General. It specifically empowers the Minister to delegate, by agreement, powers under NEMA, the Biodiversity Act or the Protected Areas Act, to a range of parties including an MEC responsible for the environment; the management authority of a protected area, or any other organ of state. The first NEMA Amendment Act also introduces a new section 42A which specifies the power of the MEC to delegate, subject to the agreement of the party to whom the powers are delegated. These may include: the head of the MEC's department, the management authority of a provincial or local protected area, and a municipality or provincial organ of state.

2.5.3 Environmental Impact Assessment

The second NEMA Amendment Act⁶⁹ came into force on 7 January 2005.⁷⁰ The amendments which it introduced are designed to establish a better basis for the regulation of the environmental assessment of certain proposed activities and existing activities under NEMA in order to facilitate the bringing into operation of environmental impact assessment regulations under NEMA which will replace the existing regulations made under the Environment Conservation Act. (Draft Environmental Impact Assessment Regulations under NEMA have been published for comment⁷¹ and it is envisaged that these will be finalised and brought into effect during 2005.)

⁶² Section 31K.

⁶³ Section 31L.

⁶⁴ Section 31N.

⁶⁵ Section 34B.

⁶⁶ Section 34C.

⁶⁷ Section 34D.

⁶⁸ Section 34G.

⁶⁹ National Environmental Management Amendment Act, 8 of 2004, published in *Government Gazette* 26570 of 14 July 2004.

⁷⁰ Proclamation R1 in GG 27161 of 6 January 2005.

⁷¹ Government Notice 12 of 2005 in *Government Gazette* 27163 of 14 January 2005

Among other matters, the NEMA Second Amendment Act amends section 24(1) by abolishing the requirement for environmental assessments to be done in respect of any activity that both requires an authorisation by law, and secondly, may have a significant impact on the environment. NEMA now provides that an environmental authorisation must be obtained from the competent authority, in order to: (i) commence an activity listed in terms of section 24(2)(a) or (b); or (ii) continue an existing activity which has been identified under section 24(2)(d) as being one which may have a detrimental effect on the environment. In order to obtain an environmental authorisation, the potential impact on the environment of the activity must be considered, investigated, assessed and reported to the competent authority.⁷² In effect, this means that it is now only necessary to consider, investigate, assess and report to the competent authority, the potential impact on the environment of listed activities. Since no activities have yet been listed as required by NEMA, these provisions are not yet effective.

Importantly, from the perspective of the Wild Coast Project, the Minister of Environment (or the MEC responsible for the environment with the concurrence of the Minister) may not only identify a list of proposed activities which may not commence without an environmental authorisation, he or she may also identify existing activities in respect of which an environmental authorisation must be obtained, and geographical areas based on environmental attributes, in which specified activities are either prohibited, or may not commence without an environmental authorisation.⁷³ This means that NEMA now specifically envisages the possibility of identifying particular geographical areas (e.g. the coastal conservation area) in which the list of activities requiring environmental authorisations (and hence, in respect of which environmental assessments must be done) differs from that applicable in other parts of the country. This provides a potentially useful mechanism for establishing special rules in respect of the authorisation of existing and proposed activities, either throughout the Wild Coast, or in respect of specific areas within it, such as the coastal conservation area.

The following should be noted in this regard:

- the MEC with the concurrence of the Minister, may compile information and maps that specify the attributes of the environment and in particular, geographical areas, including the sensitivity, extent, interrelationship and significance of such attributes which must be taken into account by every competent authority;⁷⁴
- before listing an activity or geographical area the MEC or Minister must consult with every other Minister or MEC who has jurisdiction over the activity in question;⁷⁵
- environmental attributes identified in the compilation of information in maps must be considered in the investigation, assessment and communication of the potential impacts of activities.⁷⁶

⁷² NEMA section 24(1).

⁷³ Section 24(2).

⁷⁴ Section 24(3).

⁷⁵ Section 24(2).

- before identifying any activity or area the Minister or MEC must publish a notice in the relevant Gazette specifying the activity or area that he or she is proposing to list and inviting interested parties to submit written comments within a specified period;⁷⁷
- the MEC, with the concurrence of the Minister, may make environmental assessment regulations that comply with minimum requirements set out in section 24(4),⁷⁸ in respect of listed activities or areas for which the MEC is the competent authority;⁷⁹
- only the Minister may make regulations where the activity will affect more than one province or traverse international boundaries, or will affect compliance with South Africa's international law obligations;⁸⁰
- when listing activities, the Minister or MEC as the case may be, must identify the competent authority responsible for granting environmental authorisations in respect of those activities;⁸¹
- the MEC or Minister must publish in the relevant Gazette a notice listing the activities and areas identified, the competent authorities who to whom applications for environmental authorisations must be made, and the date on which the list comes into effect;⁸² and
- a person convicted of commencing a listed activity without an environmental authorisation, or of continuing with an existing listed activity after an application for an environmental authorisation has been refused, or of contravening the conditions of an environmental authorisation, is liable to a fine not exceeding R5 Million or to imprisonment for up to ten years, or to both.⁸³

The NEMA Second Amendment also introduces a new section 24G which specifically addresses the problem of activities that have unlawfully commenced without an Environmental Impact Assessment being undertaken and the unlawful continuation of existing listed activities. This provision could be used in respect of activities such as the unlawful construction of cottages along the Wild Coast. The section provides that a person who has committed an offence of unlawfully commencing, implementing or continuing with a listed activity may apply to a Minister or MEC to who may direct the

⁷⁶ Section 24(4)(i).

⁷⁷ Section 24A.

⁷⁸ Section 24(5).

⁷⁹ Section 24(6).

⁸⁰ Section 24(9).

⁸¹ Section 24C(1). Subsection (2) specifies the circumstances in which the Minister must be identified as the competent authority (for example if the activity is undertaken or is to be undertaken by a national department or a provincial department responsible for environmental affairs) although subsection (3) provides that the Minister and an MEC may by agreement provide that matters which would otherwise be dealt with by the MEC may be dealt with by the Minister, and *vice versa*.

⁸² Section 24D.

⁸³ Section 24F.

applicant to compile a report that provides information relating to: the impacts of the activity on the environment; the mitigation measures undertaken, and the public participation process followed in the course of compiling the report. The applicant may be required to pay an administration fee and provide any other specialist reports or information required, and thereafter the Minister or MEC must consider the report and may either issue an environmental authorisation or direct the person to cease the activity (either wholly or in part) and to rehabilitate the environment. It would be wise to anticipate that the owners of illegal cottages on the Wild Coast may well make such applications to the Minister or the MEC and that it would be appropriate to develop a policy in this regard (if this is not already in place).⁸⁴

The NEMA Second Amendment Act also deals with various other issues including:

- the minimum conditions to be attached to environmental authorisations;⁸⁵
- the recognition by the Minister of associations of environmental assessment practitioners;⁸⁶
- the appointment of external specialists to review assessments on behalf of the Minister or MEC;⁸⁷
- appeals to the Minister and the MEC against decisions taken under the Act or a specific environmental management Act (i.e. the Biodiversity Act or the Protected Areas Act);⁸⁸ and
- transitional provisions.

2.5.4 Implications of recent NEMA amendments for Wild Coast Biodiversity Strategy and Action Plan

The following implications for the Wild Coast Biodiversity Strategy and Action Plan of the recent amendments to NEMA should be considered.

- The designation of particular geographical areas (e.g. the coastal conservation area) as environmentally sensitive and the preparation of a list of activities, which do not currently require an environmental authorisation, but which should not be permitted within these areas, without an environmental authorisation.
- The need to establish policy guidelines (if these are not already in place) to deal with applications to the Minister or the MEC in terms of section 24G for environmental authorisation in respect of existing activities that were unlawfully commenced without an Environmental Impact Assessment (e.g. illegal cottages).

⁸⁴ Although Gauteng Province has already invited applications in this regard it is doubtful if this is competent because section 24G applies in relation to listed activities and these lists have not yet been prescribed.

⁸⁵ Section 24E.

⁸⁶ Section 24H.

⁸⁷ Section 24I.

⁸⁸ Section 43.

- The opportunities for training and designating a range of provincial officials as environmental management inspectors who will have the powers provided for in NEMA once the relevant sections are brought into force.

3. THE ROLE OF CUSTOMARY LAW

One of the most notable features of the Wild Coast is that most of the land area is occupied by people living in semi-traditional communities in which traditional authorities, traditional world views, cultural norms and customary law are important determinants of how people behave. Traditional African world-views or cosmologies typically emphasize the importance of human beings maintaining close relationships with ancestral spirits and other entities in the natural environment, while African customary law systems typically incorporate sophisticated mechanisms for protecting biological diversity and ensuring the sustainable use of the natural environment. (For example, it is not uncommon for a clan to have a totem animal species which they are required to protect, and for areas to be protected as sacred) These beliefs and customs often provide a better basis for building respect for biodiversity and a commitment to ecological sustainability than capitalist belief systems.

In many areas African customary law systems are being eroded rapidly and it may well be that in many areas these systems have been degraded or have changed to the extent that they are no longer able to protect biodiversity effectively. This is particularly likely in areas in which poverty creates a strong incentive for local people to over-harvest plants and animals. Furthermore, customary law systems are usually only able effectively to regulate members of particular community who subscribe to the same world view and are not able to control exploitation of the environment by outsiders.

It is clear that biodiversity cannot be conserved in the Wild Coast area without the active support and participation of local people. The State is not likely, in the foreseeable future, to have the resources to enforce legislation effectively in most of the Wild Coast. This means that in implementing the Wild Coast Strategy, it is essential that specific attention is given to strengthening, and where necessary developing, customary law systems so that they can be effective in conserving biodiversity.

In order to do this it will be necessary to identify the role currently played by traditional authorities in regulating the use and management of natural resources and how communities can participate effectively in environmental decision-making that affects them. This will require an investigation of the functioning of customary law systems in key areas as well as the implications of new legislation such as the Traditional Leadership and Governance Framework Act No 41 of 2003 (which is not yet in force). Specific communities should be consulted to gain an in-depth understanding of local customary mechanisms for achieving the ecologically sound use of land, water, plants and other species, and to ascertain their views on how decisions regarding the use of the environment in areas under customary tenure should be taken. This information can then be used together with scientific and other information as a basis for entering into a

dialogue with communities as to how best to use existing forms of social control to ensure better conservation of biological diversity.

The danger of not taking customary law into account is that attempts to impose culturally-foreign regulatory mechanism to protect biodiversity in remote traditional communities is likely to be very slow at best and ineffective and counter-productive at worst. Entering into a collaborative process of adapting existing social institutions and rules is likely to be far more effective and to be a productive learning experience for all concerned.

4. CONCLUSIONS

From a legal perspective, recent national legislation (notably NEMA, the Protected Areas Act and the Biodiversity Act) provides a sound legal framework for the conservation of biological diversity although the absence of legislation to support the integrated coastal management approach mandated by the White Paper on Sustainable Coastal Development for South Africa, remains a significant gap.

This new regulatory framework is not yet effective in the Wild Coast Area, for a number of reasons. These include:

- (a) the fact that much of the legislation is new and is in the process of being implemented for the first time throughout the country;
- (b) the absence of Provincial Conservation legislation (the draft Eastern Cape Environmental Conservation Bill, 2002 has not yet been finalised);
- (c) the fact that the Eastern Cape Parks Board is still being established; and
- (d) the general lack of resources and institutional capacity in the Province.

Despite the above constraints, the new legislation creates a number of new mechanisms for conserving biodiversity which represent important opportunities for implementing the Wild Coast Strategy. These include the potential for:

- (a) integrating aspects of the Wild Coast strategy into the National Biodiversity Framework and the National Biodiversity Strategy and Action Plan, and from there into municipal IDPs;
- (b) declaring a bioregion which encompassed some or all of the Wild Coast;
- (c) listing protected ecosystems and identifying processes that threaten them and consequently should not be permitted unless an Environmental Impact Assessment has been conducted and authorisation granted;
- (d) preparing biodiversity management plans for specific species or ecosystems and of entering into biodiversity management agreements to implement the plans;
- (e) designating particular geographical areas (e.g. the coastal conservation area) as environmentally sensitive and the preparation of a list of activities, which do not currently require an environmental authorisation, but which should not be permitted within these areas, without an environmental authorisation; and
- (f) training and designating a range of provincial officials as environmental management inspectors who will have the powers provided for in NEMA.

When the proposed national Coastal Zone Management Bill is published for comment it will create an important opportunity to ensure that appropriate legal mechanisms are established to facilitate integrated management of the Wild Coast. If the Bill is enacted it is anticipated that it would provide for the establishment of a coastal zone and a coastal buffer strip as well as integrated decision-making processes. These, and other mechanisms in the draft Bill, will be particularly useful in facilitating the effective and integrated implementation of the Wild Coast Strategy.

It is recommended that during the implementation phase a more detailed legal review be undertaken in relation to each of the key projects to be undertaken. Such reviews could go beyond identifying the applicable legislation and could provide more specific advice as to how existing legislation and institutions, as well as customary laws and traditional structures, can play a role in supporting the project in question. This is likely to require identifying the specific legal constraints and opportunities applicable to each project (e.g. land tenure issues, or the inability of a community to prevent outsiders gaining access to forest previously used exclusively by that community) and developing approaches to overcome these.

In conclusion it is important to appreciate that human activities pose the most significant threats to biodiversity within the Wild Coast area, and that many of the most damaging activities are undertaken by companies or individuals who are not normally resident within the Wild Coast Area. Consequently effective governance systems are crucial to the conservation of biodiversity, and if the Strategy is to be successful:

- (a) it must be integrated into existing planning systems as soon as possible;
- (b) the Provincial Authorities must enact the draft Eastern Cape Environmental Conservation Bill, 2002 and develop sufficient capacity to use existing regulatory mechanisms effectively; and
- (c) customary law systems must be developed and strengthened and new means of integrating customary governance systems and municipal and provincial systems, should be developed by means of pilot projects.