

PART ONE: FRAMEWORK OF THE PEIMP

Chapter 3: Legal framework



PRINCE EDWARD ISLANDS MANAGEMENT PLAN



Chapter 3

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3. *Legal status*

The Prince Edward Islands (PEIs) were formally declared and annexed as part of the Union (now Republic) of South Africa under the Prince Edward Islands Act (No. 43 of 1948). They were declared a Special Nature Reserve in 1995, in terms of the Environment Conservation Act (No. 73 of 1989). The spatial extent of the PEI Special Nature Reserve is described in Chapter 1 (1.4 Spatial Extent of the Special Nature Reserve, and Expansion Strategy). The islands are South Africa's only remote territory and, for the purposes of administering the laws of South Africa, they are considered to be part of the Cape Town magisterial district.

The primary aims for the management of the PEIs are set out here, according to the statutory requirements of the National Environmental Management Act, 1998 (No. 107 of 1998, referred to hereafter as NEMA) and its subsequent amendments, as well as the National Environmental Management: Protected Areas Act, 2003 (No. 57 of 2003, referred to hereafter as NEMPAA) and the National Environmental Management: Biodiversity Act, 2004 (No. 10 of 2004, referred to hereafter as NEMBA). Reference is also made to the National Environmental Management: Waste Act (No. 59 of 2008) and the Integrated Coastal Management Act (No. 24 of 2008).

This MP, as required under Section 11(2) of NEMA, is built upon these objectives, with the aim of protecting the islands' biological diversity and ecological integrity. It sets out the legal, regulatory and practical framework for management of the islands. Through the effective implementation of this MP, it is hoped that the natural values and features of the islands will be perpetuated while valuable scientific research is conducted.

3.1 Objectives for the management of the PEIs

The objectives toward which the PEIs are managed include:

- To ensure the long-term survival and maintenance of biological diversity, including genetic diversity, species diversity and the diversity of ecological processes;
- To minimise human interference with natural processes and the destruction or degradation of natural and historic features and objects;
- To encourage activities aimed at restoring and rehabilitating damage due to local human activities;
- To encourage research that will contribute to understanding effects of human-induced changes, including long term climate change;
- To encourage research and monitoring aimed at the conservation and management of the fauna and flora of the PEIs;
- To ensure that South Africa meets its obligations to, and the provisions of, all international agreements and conventions to which it is a signatory;
- To seek cooperation with all parties interested in the conservation of the Southern Ocean and its islands;
- To create an awareness of the value and fragility of the islands' ecosystems;
- To secure a favourable conservation status of species occurring naturally at the islands;
- To allow scientific research not in conflict with these objectives;
- To apply a risk-averse and cautious approach, taking into account the limits of current knowledge and the consequences of decisions and actions.

3.2 South African legislation

The Prince Edward Islands are afforded several degrees of protection under laws pertaining to the conservation of South Africa's natural and historical heritage.

3.2.1 *South African Constitution*

The Constitution of the Republic of South Africa Act (No. 108 of 1996) states that everyone has the right to have the environment protected for the benefit of present and future generations. This must be done through reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development and use of natural resources (Section 24 (b)) while promoting justifiable economic and social development.

3.2.2 *National Environmental Management Act (NEMA)*

NEMA is the 'umbrella' law governing the environmental management of the Prince Edward Islands. NEMA requires that management of the islands should comply with the principles of co-operative environmental governance as set out in the Act. The PEIs must be managed according to the national environmental management principles as set out in Section 2 of NEMA, along with the objectives of integrated environmental management (Section 24), duty of care (Section 28) and the environmental management co-operation agreements in Section 35.

3.2.3 *Environmental Impact Assessment Regulations and Listed Activities*

Since 1997, developments that could result in significant environmental pollution or degradation are required to go through a rigorous assessment of their possible effects through the Environmental Impact Assessment (EIA) process. The Second Amendment of NEMA (No. 8 of 2004) repeals all the provisions of the largely repealed and outdated Environment Conservation Act (No. 73 of 1989), which used to control the EIA process. The amendment provides for other assessment tools, such as Basic Assessments and Strategic Environmental Assessments, to be used where appropriate.

In 2006, new EIA regulations were adopted in terms of NEMA (Government Notice No. R. 385 of 2006). The aim of these regulations is to streamline decision-making about applications for developments and to provide for an environmental process that is more flexible to project-specific requirements. These regulations and the notices listing activities were amended and updated in 2010.

In terms of section 24 of NEMA, activities that may not commence without environmental authorisation from the relevant authority and which require either Basic Assessment or Scoping and EIA are listed in terms of the amended NEMA EIA Regulations (Government Gazette No. 33306, 18 June 2010) and which came into effect on 02 August 2010.

3.2.4 *National Environmental Management: Protected Areas Act (NEMPAA)*

This law upholds the status of Special Nature Reserve given to the PEIs by the now largely-repealed Environment Conservation Act, 1989 (No. 73 of 1989), Section 18. NEMPAA provides for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes. It requires the adherence to national norms and standards applicable to their protection and requires intergovernmental co-operation and public consultation in matters concerning the islands as protected areas.

The land areas of Marion and Prince Edward Islands above the low water mark enjoy the status of a Special Nature Reserve because of the 'highly sensitive, outstanding' nature of the ecosystem (Section 18 (2)(a)). This is the highest level of environmental protection afforded under South African legislation. The protection extends to the air space above the reserve to a level of 2 500 feet above the highest point of the reserve (Section 47 (1)), i.e. Mascarin Peak on Marion Island at 1231 m above sea level.

As a Special Nature Reserve, the PEIs are reserved primarily for scientific research and environmental monitoring (Section 18 (2)(b)). This status may not be withdrawn or the boundaries altered except by resolution of the National Assembly (Section 19).

However, the extent of the Special Nature Reserve only includes land above the low water mark of both Marion and Prince Edward Islands, according to a declaration of the area as a Special Nature Reserve by the Minister in November 1995. The PEI Management Authority and this Management Plan (MP) have no jurisdiction over the waters seaward of the low water mark. All activities taking place in the ocean within 200 nm of the low water mark of the islands are under the jurisdiction of the Department of Environmental Affairs, as of 1 April 2010, all fishing activities are administered by the Department of Agriculture, Forestry and Fisheries. However, in order to protect the coastal (intertidal) and terrestrial environments, this management plan contains recommendations and requirements that extend seaward of the low water mark. These requirements must be adhered to until such time as the marine environment is effectively protected.

The Minister has declared a Marine Protected Area around the PEIs (April 2013) under the Marine Living Resources Act (No. 18 of 1998). The provisions of NEMPAA and its amendments will therefore apply to the management of this marine area.

3.2.5 National Environmental Management: Protected Areas Act Regulations for the Proper Administration of Special Nature Reserves, National Parks and World Heritage Sites

The Regulations for the Proper Administration of Special Nature Reserves, National Parks and World Heritage Sites (Government Regulation No. R 1061 of 2005) promulgated under Section 2 of NEMPAA apply to the PEI Special Nature Reserve. Should the marine protected area around the PEIs come into effect, then the regulations will also apply to the marine protected area.

Authorised officials are exempt from these regulations when they are performing their duties or exercising their powers. A person is also exempt from the regulations pertaining to prohibited activities in the PEIs if he/she is (Regulation 38):

- Performing obligations as an employee, agent or contractor of Prince Edward Islands Management Authority or to achieve the purposes of the regulations;
- Fulfilling duties as an authorised official.

3.2.6 National Environmental Management: Biodiversity Act (NEMBA)

NEMBA provides for the management and conservation of the islands as part of South Africa's biodiversity estate. Any policies or regulations dictating the management of the islands must be in line with the National Biodiversity Framework (Section 48(2)(a)).

3.2.7 Species Listed Under NEMBA

Draft regulations relating to alien species and listed invasive species have been published in terms of Section 97(1)(b), (c), (f) and (h) of NEMBA (Government Notice No. R. 347 of 2009). Included are a list of exempted

species, a list of prohibited alien species and a list of invasive species. Refer to Chapter 5, Table 5-1, for those listed species that occur at the PEIs.

In terms of Section 100 of NEMBA, regulations relating to listed threatened or protected species have also been published (Government Notice No. R. 152 of 2007).

3.2.8 National Environmental Management: Waste Act

This Act (No. 59 of 2008) regulates waste management so that health and the environment are protected. It does this by providing measures to prevent pollution and ecological degradation and to secure ecologically sustainable development. It also makes provision for institutional arrangements and planning matters, national norms and standards for regulating the waste management, and specific waste management measures. The Act provides for the licensing and control of waste management activities, the remediation of contaminated land, and a national waste information system. It also addresses compliance and enforcement.

Under Section 19(1), a list of waste management activities have been published that have, or are likely to have, a detrimental effect on the environment (Government Notice No. R. 409 of 2009).

3.2.9 National Environmental Management: Integrated Coastal Management Act

This Act (No. 24 of 2008) establishes a system of integrated coastal and estuarine management in South Africa in order to encourage the conservation of the coastal environment, sustain the natural attributes of coastal landscapes and seascapes, and ensure that development and the use of natural resources within the coastal zone is ecologically sustainable and socially and economically justifiable. It defines rights and duties in relation to coastal areas and determines the responsibilities of organs of state in relation to coastal areas. Furthermore, it prohibits incineration at sea and controls dumping at sea, pollution in the coastal zone, inappropriate development of the coastal environment and other adverse effects on the coastal environment. The Act also gives effect to South Africa's international obligations in relation to coastal matters.

3.2.10 Policy on the Management of Seals, Seabirds and Shorebirds

The Sea Birds and Seals Protection Act (No. 46 of 1973) governs the management of seals and seabirds within the jurisdiction of South Africa. New legislative amendments will be informed by the Policy on the Management of Seals, Seabirds and Shorebirds (Government Gazette No. R. 1717 of 2007). In this context, seabird refers to all those birds which obtain some of their food from the sea, as opposed to from the intertidal zone.

The general principles of this policy have been included in this Management Plan; these speak directly to the management and conservation of the seals, seabirds and shorebirds which breed, pass through or otherwise use the PEIs or the waters within 200 nm of the high-water mark (namely the territorial waters and the exclusive economic zone). The policy also provides for a coastal zone which extends as far inland and out to sea as is necessary for the conservation and sustainable non-consumptive use of these species. Thus the policy applies to all seals, seabirds or shorebirds breeding in South Africa's coastal zone, or that pass through the 200 nm radius and coastal zone or that use these areas for non-breeding purposes. This includes all species that breed on or pass within 200 nm of the Prince Edward Islands.

The primary objective of this policy is the conservation of these species in South Africa and its waters. The policy prohibits the killing, capture or wilful disturbance of seals and seabirds in this territory. The policy also prohibits the damaging of seabird eggs or collecting of eggs or guano unless permitted by the Minister.

3.2.11 Maritime Zones Act

All sea within a distance of 12 nm (where one nm is equivalent to 1 852 metres) of the low water mark of both islands (Section 4 (1)), constitutes the territorial waters of South Africa (this includes the sea bed and the subsoil (Section 1 (xi)). Therefore, all these waters, and the airspace above them, are subject to all laws, including common laws, of the Republic. Furthermore, all sea falling between the 12 nm boundary of the territorial waters and within a 200 nm radius of the low water mark is the exclusive economic zone (EEZ, formerly the fishing zone) of South Africa (Section 7 (1)). All the laws pertaining to territorial waters apply to the EEZ. The Maritime Zones Act also applies to the PEI (Section 14 (1)).

3.2.12 National Heritage Resources Act

All heritage resources on the PEIs are protected by the National Heritage Resources Act (No 25 of 1999). This includes structures over 60 years old, historical and archaeological sites and artefacts (including shipwrecks), graves, palaeontological sites and fossils and meteorites. Heritage resources also include the intangible heritage and cultural landscapes associated with such sites. Artefacts and sites dating back to before the 1948 annexation and those associated with the annexation itself have high historical value.

3.2.13 List of national legislation applicable to the PEIs

The following legislation (as amended) applies.

A. Main Acts

- Sea-shore Act (No. 21 of 1935);
- Prince Edward Islands Act (No. 43 of 1948);
- Sea Birds and Seals Protection Act (No. 46 of 1973);
- Dumping at Sea Control Act (No. 73 of 1980);
- Environment Conservation Act (No. 73 of 1989);
- Maritime Zones Act (No. 15 of 1994);
- Constitution of the Republic of South Africa Act (No. 108 of 1996);
- Antarctic Treaties Act (No. 60 of 1996);
- Marine Living Resources Act (No. 18 of 1998);
- National Environmental Management Act (No. 107 of 1998);
- National Heritage Resources Act (No. 25 of 1999);
- National Environmental Management: Protected Areas Act (No. 57 of 2003);
- National Environmental Management: Biodiversity Act (No. 10 of 2004);
- National Environmental Management: Air Quality Act (No. 39 of 2004);
- National Environmental Management: Integrated Coastal Management Act (No. 24 of 2008);
- National Environmental Management: Waste Act (No. 59 of 2008).

B. Other Acts

- South African Citizenship Act (No. 44 of 1949);
- Hazardous Substances Act (No. 15 of 1973);
- Carriage of Goods by Sea Act (No. 1 of 1986);
- Marine Pollution Act (No. 2 of 1986);
- Municipal Structures Act (No. 117 of 1998);
- National Nuclear Regulator Act (No. 47 of 1999);
- National Energy Regulator Act (No. 40 of 2004);

3.3 International conventions

South Africa is a signatory to several internationally ratified agreements pertaining to biodiversity and its protection, many of which specifically address the sub-Antarctic and Antarctic environments. Section 5 of NEMBA gives effect to those agreements to which the State is bound. Therefore the South African government has the following obligations with regard to the PEIs.

3.3.1 Convention on Wetlands of International Importance (Ramsar Convention)

The PEIs were designated a Ramsar Wetland of International Importance in 2007 – the first Ramsar site in the sub-Antarctic. The Ramsar Convention aims at ‘wise use’ of wetlands, defined as ‘the maintenance of their ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development’. The Ramsar Site consists of the whole of the terrestrial areas of the islands of Marion and Prince Edward, along with a 500-m-wide intertidal and kelp-bed zone around each island.

3.3.2 Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR)

CCAMLR, of which South Africa is a signatory, came into force in 1982 as part of the Antarctic Treaty System. The aim of the Convention is to conserve the marine life of the Southern Ocean, where the PEIs are located. Conservation measures adopted by CCAMLR are based on scientific advice and this requires the collection of large quantities of information and the development of appropriate scientific and analytical techniques. The Convention establishes a Commission to manage marine living resources. Members of the Commission are involved in fishing and/or scientific research in the Southern Ocean. These activities are coordinated and regulated by the Commission and a Scientific Committee, to fulfil Members' obligations under the Convention. South Africa is represented on the Commission and the Committee.

3.3.3 Bonn Convention: Agreement on the Conservation of Albatrosses and Petrels (ACAP)

ACAP, a multilateral agreement to which South Africa is a party, was negotiated under the Convention on the Conservation of Migratory Species of Wild Animals (CMS, or Bonn Convention) and came into force in 2004. ACAP seeks to conserve albatrosses and petrels by coordinating international activity to mitigate known threats to populations of these seabirds. It aims to stop or reverse albatross and petrel population declines by coordinating action between Range States to mitigate known threats. To this end, the agreement includes an Action Plan that describes a number of conservation measures which Parties should implement. These include research and monitoring, reducing incidental mortality in fisheries, eradicating non-native species at breeding sites and reducing disturbance, habitat loss and pollution.

3.3.4 List of international conventions applicable to the PEIs

- African Convention on the Conservation of Nature and Natural Resources (Algiers Convention);
- Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea;
- Antarctic Treaty:
 - Protocol on Environmental Protection to the Antarctic Treaty;
- Basel Convention (control of trans-boundary movements of hazardous wastes and disposals);
- Bonn Convention - Convention on the Conservation of Migratory Species (CMS):
 - Agreement on the Conservation of Albatrosses and Petrels (ACAP);
 - Biosafety Protocol;

- Convention for the Conservation of Antarctic Seals (CCAS);
- Convention on Biological Diversity (CBD);
- Convention on International Trade in Endangered Species (CITES);
- Convention on Prevention of Dumping of Waste from Ships and Aircraft;
- Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matters (London Convention);
- Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR);
- Convention on Wetlands of International Importance (Ramsar Convention);
- International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL);
- International Code for the Security of Ships and Port Facilities (ISPS);
- International Convention for the Regulation of Whaling (ICRW);
- International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries of the Food and Agriculture Organization of the United Nations (FAO IPOA-Seabirds);
- Kyoto Protocol to the United Nations Framework Convention on Climate Change;
- Montreal Protocol - Protocol for the Protection of the Ozone Layer Ratified;
- Paris Convention on Prevention of Marine Pollution from Land-based Sources;
- United Nations Convention on the Law of the Sea (UNCLOS);
- United Nations Framework Convention on Climate Change (UNFCCC).