

**COMMENTS RECEIVED ON THE  
INTEGRATED COASTAL MANAGEMENT (ICM) BILL AND  
SUMMARY OF ACTUAL CHANGE MADE TO ICM BILL**

(please note that the State Law Advisor may introduce additional changes)

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## 1. LIST OF COMMENTS RECEIVED

1	Jeany Lekganyane	Eskom
2	Susan Taljaard	CSIR
3	Lara van Niekerk	CSIR
4	Laurie Barwell	CSIR
5	Phil Denis Kilpin	Heuningnes Riparian Owners Association
6	Bernice McLean & Anique Greyling	Endangered Wildlife Trust
7	Erna van Zyl	South African Planning Institute
8	Rob Fryer	Overstrand Conservation Foundation
9	Captain Guy Barker	Personal Capacity
10	Dr Willie Marais & Peter Venter	Institute of Estate Agents of South Africa
11		LegalB
12	M Möhr-Swart	Chamber of Mines of South Africa
13		Duineveld Coastal Association
14	M L Roux	Habitat Council, CAPTRUST & Still Bay Conservation Trust
15	Di Dold	Wessa
16	P A Whittington	Personal capacity
17	Deborah Vromans	Personal capacity
18	E H Schumann	Personal capacity
19	Ashail Govender	Transnet
20	D Sewduth	Lifesaving SA
21	Rookan Podesta	Noetzie Conservancy Owners Association
22	Jessica Hayes	Personal capacity
23	Andy Gubb	Wessa
24	Andrew Mather	Ethekwini Municipality
25	K P Mackie	Personal capacity
26	K Mkhize	Ezemvelo KZN Wildlife
27		Guardians of the Garden Route
28	Lize McCourt	DEAT
29	Dr A M Avis	Coastal & Environmental Services
30	B B Biyela	Uthungulu District Coastal Working Group
31	Gerrit Burger	Steenbokfontein Private Nature Reserve
32	Natalie Way-Jones	Personal capacity
33	Wendy-Leah Dewberry	Noetzie Conservancy Association
34	M G Potgieter	Personal capacity
35	Miriam Haffejee	National Ports Authority
36	Alan Boyd	DEAT

37	C A Schoeman	Irvin & Johnson Limited
38	Dr A Oosthuizen	SANParks (Port Elizabeth)
39	Mike Beresford	Personal capacity
40	Prof Patrick H G Vrancken	Nelson Mandela Metro University
41	Municipality Manager	West Coast District Municipality
42		Blue Horizon Developments (Pty) Ltd
43	N.G Scarr	Chief Directorate: Environmental Affairs
44	M.L Roux (2 <sup>nd</sup> submission)	Habitat Council, CAPTRUST & Still Bay Conservation Trust
45	Dr Alan Carter	Buffalo City Environmental Trust
46	Suzanne du Plessis	Friends of DST
47	Dr Sharon R. Pollard	AWARD
48	Elisabeth Rautenbach	St Francis Conservancy
49	Rob Stegmann	Personal capacity (Reserve Manager-ELCNR)
50	Rudy van der Elst, Louis Celliers & Fiona Mackay	Oceanographic Research Institute (ORI)
51		Department of Minerals and Energy (Preliminary Comments)
52	Marguerite Huson	Personal Capacity
53	W.A Gericke	Personal Capacity
54	Charmain Cumberlege	Personal Capacity
55	Belemani Semoli	Personal Capacity
56	Lisa Guastella	AS Consulting
57	Tony Lubner	Ocean Research Conservation Africa Foundation (ORCA)
58		KZN Agriculture and Environmental Affairs
59	Kathy Leslie	Personal Capacity
60		Hessequa Municipality
61	Rory Botha	Personal Capacity
62	Robin Carpenter Frank	Personal Capacity
63		SANBI
64	Rory Wilkinson	Moreland Developments and Tongaat Hullets
65		Endangered Wildlife Trust (Comments for DBSA)
66	Ingrid Horwood	Friends of the Botriver
67	PJJ Franzsen	Gouritsrivier Bewaringstrust
68	Patrick Dowling	Kommetjie Residents & Ratepayers' Association
69	Deborah Vromans	SANParks Knysna (Personal Capacity)
70	D. Le Roux	Personal Capacity
71		National Association of Real Estate Agents (NAREA)
72	Brian Thompson	Richards Bay Minerals
73	A.J de Klerk	SA Council for Natural Scientific Professions

		(Prepared by Biotechnology & Environmental Specialist Consultancy cc)
74	Marius Adendorff	Personal Capacity
75	Jackie Rapson	Coastal & Environmental Services
76	Adrienne Edgson	Personal Capacity
77	Jan de Villiers	Jan S. De Villiers Attorneys
78	Richard Rundle	Woodbridge Island Body Corporate
79	D.D Airey	Personal Capacity
80	Alan Carter	Coastal & Environmental Services
81	Jean D. Lindsay	KwaZulu-Natal Conservancies Association
82	T.Tolmay	Department of Environmental Affairs & Development Planning
83		City of Cape Town
84		Western Cape Department of Environmental Affairs and Development Planning (George)
85	JFW Dempers	Personal Capacity
86	Jan and Eion Brown	Personal Capacity
87	Pierre Nel	SANParks (West Coast National Park)
88		Department of Land Affairs
89		Chief Directorate: Environmental Impact Management
90		Oceanographic Research Institute (2 <sup>nd</sup> Submission)
91	Chris and Iona Everett	Personal Capacity
92	Sandiso Zide	DEAT
93	Dr BWG du Toit	Personal Capacity
94	Johan van Vuuren	Belastingbetalersvereniging
95	Suretha Visser	Overberg Distriksmunisipaliteit
96	Clive & Suzanne Hook	Personal Capacity
97	Skhumbuzo Mpungose	Environmental Impact Assessment, DAEA - Empangeni
98	Henni de Beer	Biodiversity Management: Seekoeiriver District Office
99	Bruce Botha & Marylou Newdigate	Noetzie Conservancy, Knysna
100	Abigail Kamineth	Environmental Impact Assessment, Nelson Mandela Bay Metropolitan Municipality
101	Henry & Petra Loubser	Noetzie Conservancy Association, Knysna
102	Aubrey Wynne-Jones	Personal Capacity
103	Margaux Newdigate	Personal Capacity
104	Priscilla Bryson	Personal Capacity
105	Nicolette De Kock	Legal Services- Marine & Coastal Management

## **2. GENERAL COMMENTS**

### DEAT Comments:

*Some of the proposals made in this section have been incorporated into the revised Bill. This has been captured in the section-specific comments.*

[Guardians of the Garden Route]

We hope that the law will include regulations that clearly define the type of development that is desirable along our coastlines by:

- Taking careful account of domestic versus foreign ownership and ensuring that ownership remains a National interest
- Ensuring continued access to coastal resources by South African citizens
- Ensuring the continued prevention of activities listed in the Outeniqua Sensitive Coastal Area schedules
- Ensuring that Regional Coastal Forums have local representivity by receiving support from local and district municipalities

[Coastal & Environmental Services]

Relationship with certain sections of NEMA:

The Act makes no mention of Environmental Management Frameworks, prepared in accordance with Chapter 5 of NEMA. EMF's provide a legal framework for the preparation of SEA's, and are intended to more clearly define spatially and institutionally the requirements for various forms of development. It would seem that an EMF might be a useful mechanism to use to prepare an Integrated Coastal Zone Management Plan, but again the relationship between the EMF and the ICMP is not clear.

Once the Bill is passed, a critical aspect of its success will be the training of public servants at both provincial, district and local municipality level. Such training should be supported by the preparation of guideline documents, which need to be released shortly after the Act is promulgated. This is important since local authorities have two years to prepare their Coastal Management Program. Work on these guideline documents should already have been initiated.

[Coastal & Environmental Services]

Further detail on the requirements of an Integrated Coastal Management Program in the form of guidelines would be useful. In the near future it is likely that ICZMP's will need to be of a high enough standard that they are defensible in a Court of Law, as developers are likely to challenge their contents legally.

[Wildlife and Environmental Society of SA]

We would like to see all the “may”s become “must” or “shall” especially as they pertain to the pollution issues from Chapters 7 and 8.

Public participation processes should aim at *reaching consensus* with the public rather than simply showing that consultation happened.

Municipalities are amongst the main culprits in allowing or conducting inappropriate and unsustainable management practices along the coast: ignoring frameworks, guidelines etc. and then hiding behind co-operative governance. The Act needs to confront this problem in a clear, deliberate manner.

The Act should strongly promote and encourage the demolition of illegal and inappropriate buildings, private and public, in the littoral active zone.

In order for coastal development to be ecologically sustainable, it must involve protection of coastal ecosystems and the sustainable use of marine and coastal resources, particularly our fresh water resources. Coastal management must promote public awareness and shared responsibility, empowering disadvantaged individuals and communities, including women and the poor. This means very real, practical changes in government decision-making regarding approvals of *inter alia* elitist, gated golf and polo estates. For coastal management to be economically sustainable it must diversify opportunities, provide jobs and facilitate access to productive resources. We must strive to ensure that coastal management is institutionally sustainable through building solid partnerships between government, civil society and small, medium and large scale business.

In light of the significant value of our coast and the pressure on its resources, it is critical that Government continues to promote a co-operative style of management in which responsibility is shared between the different spheres of government and the wide range of stakeholders with interests in the coast, including business and civil society.

[Habitat Council, CAPTRUST & Still Bay Conservation Trust]

Frequent use of “after consultation” rather than “in consultation with”

Without listing where this occurs in the text of the Act, we wish to draw attention to this phenomenon.

In our understanding, “in consultation with” implies that there must be agreement/consensus on the issue in question, whereas “after consultation” means that whatever consultation took place can be happily ignored in the final decision.

This places the sincerity of the consultation process in question and makes of public participation mere window-dressing. We would like to see this put right.

[Endangered Wildlife Trust]

We suggest that more emphasis be given in the draft ICMB to the ecosystem approach, the importance of maintaining the ecological integrity of coastal systems, and the connectivity between inland coastal and marine environments.

1. We further recommend that the ICMB clarify how resource and capacity constraints at national, provincial and local levels will be overcome. This is particularly pertinent with the increased administrative burden anticipated for provincial and municipal authorities with implementation. We suggest inclusion of specific reference in the ICMB to options for strengthening capacity for coastal governance at all levels.
2. The ICMB would be much improved by inclusion of a specific mechanism to ensure that implementation, administrative costs (i.e. related to permitting) and enforcement activities are realistically considered and adequately covered.
3. While we recognize that the ICMB aims to promote integration and cooperation among different sectors and role-players, this challenging goal could be clarified further in the ICMB by ensuring that:
  - The role and responsibilities of relevant authorities, decision-makers, development partners and role-players are clearly outlined in the regulations to be drafted in support of the ICMB
  - Provincial coastal management units and relevant local government offices are strengthened and capacitated to implement the provisions of the ICMB
  - Specific mechanisms be developed to promote integration with existing and proposed land-use planning procedures and processes
  - Existing concessions and leases for activities in coastal areas are considered within the purview of the new provisions and are resolved accordingly
  - Integration with relevant authorities and enforcement officials is specifically promoted.
4. To this end we suggest the inclusion of an advisory committee to facilitate integration and collaboration between the different levels of coastal committees, sectors and stakeholders, and assist with the monitoring, evaluation and adaptation of the implementation of the provisions of the ICMB.
5. We further recommend aligning the provisions of the ICMB with relevant existing legislation in particular, the two sets of regulations drafted in terms of the National Environmental Management Act (107 of 1998) namely the EIA regulations and the regulations controlling the use of vehicles in the coastal zone.

6. Finally, we feel that linkages with inland provinces is an essential aspect that is lacking in the ICMB. It is increasingly realized that the inland provinces of South Africa have considerable impacts on the coast. Many of the economic and social drivers emanating from the inland provinces (especially from Gauteng province) have significant positive and negative repercussions for the coastal regions (i.e. coastal tourism, the seafood trade, coastal development etc.). We believe therefore that the role of and linkages with stakeholders (including government, the private sector, NGOs and civil society) from inland provinces be recognized in the ICMB.

[Steenbokfontein Private Nature Reserve]

- 1) Roads to close and in parts within the Coastal Zone along the west coast, in particular from the Berg River to the Olifants River in the north has led to uncontrolled access to beaches across farms and other privately owned properties in certain areas, with major damage to the ecosystem, properties and frontal dunes as a result. This situation has led to many landowners not willing to put their safety at risk in addressing the problem of poaching, ORV's, etc., on and across their properties. To ensure the sustainable development of the coast these areas should be safeguarded by seriously giving attention to alternative routes, which does exist, but at present not seriously pursued by Road Developers and Government.
- 2) Unnecessary and too much onus are put on our local municipalities to also manage the Coastal Zone in rural areas which should be the responsibility of all farm/landowner as well. Landowners in rural areas along the coast are not sufficiently encouraged to join conservation efforts and take the responsibility for and the management of their properties as is done in the Greater Cederberg Conservancies. Waste removal and the necessary facilities and upkeep of Coastal Access Land will put even further strain on municipalities having to cover great distances to manage and maintain these services in rural areas.

Another area of great concern is the disappearing of vast tracts of coastal wetlands and estuaries which forms an intricate and extremely important part of a healthy Coastal Zone. This is as a direct result of the over-extraction of ground water by the potato industry along the west coast and needs urgent attention. Already a 7km wetland south of Lamberts' Bay laid dry in the past 10 years bears witness.

[TRANSNET]

- The long title of the Bill states that the objective is to “...promote the conservation of the coastal environment and the ecologically sustainable development of the coastal zone”. This description contradicts the Preamble and Section 5 of the Bill. Section 5 provides that this Bill should be read in conjunction with the National Environmental Management Act, 1998 (NEMA).
- The definition given for sustainable development in NEMA, states that development should be economically, socially and environmentally sustainable, not ecologically.
- Although Section 24 of the Constitution refers to ecologically sustainable development, NEMA has set the new parameters within which sustainable development is measured.
- We submit that the long title does not give due regard to the economic importance of the coast, and the Ports of South Africa.

[P.A. Whittington (Personal Capacity)]

The legislation is only as good as the ability to enforce it and measures need to be taken to ensure that the bill becomes functional in this respect. A glowing example of this is the current blatant flouting of the law by perlemoen poachers and the lack of will, resources and ability to address the problem at the “grass roots” level. It provides an example of a renewable coastal resource being exploited for the benefit of a few individuals, in spite of legislation to prevent this. I think that the ICM Bill needs to have the “teeth” to deal with these sorts of problems but more importantly, the resources and determination need to be found to uphold the legislation.

It is these two concerns that make me uncertain as to whether the bill will really ensure that our coast remains a valuable national asset and protect its ecological integrity. The spectre of the development of an oil refinery at Coega with the associated threat to the breeding seabirds of Algoa Bay posed by the traffic of crude oil into the harbour, does nothing to alleviate these concerns!

[Natalie Way-Jones (Personal Capacity)]

- The overall impression is that there is an attempt to move away from legislation governing separate aspects of coastal management and an attempt to integrate all these aspects under one umbrella, or to institute “codification” of environmental legislation governing coastal areas.
  - However, this could present problems in terms of need for new institutions and lag time to administer the Act. If the legislation and implementing agency exists, rather

add to the legislation or improve implementation than create new legislation or institutions. E.g. waste, water and cultural heritage resources.

- This legislation should be subordinate to NEMA, Water Act and other overarching legislation, as the coastal zone is just one component of the environment.

- Delineating coastal areas with natural boundaries, such as the low and high water mark and littoral zone, is inherently problematic as, whereas property boundaries and municipal boundaries remain static, these are ever-changing. An up-to-date GIS model should be implemented and updated.

- Scheduled activities need to be regulated in terms of the EIA regulations. This would preclude the need for “integrated special permits” (Section 68).

- Remove all reference to repealed ECA e.g., reference to “sensitive coastal areas”.

- Definitions should be aligned across legislation- e.g. Marine Living Resources Act, EIA regulations under NEMA.

- References to the Seashore Act should be removed, as this Act is to be repealed.

- Marine protected areas could be considered coastal protected areas and will fall within the coastal zone but are governed by the Marine Living Resources Act and, in some cases, the Sea Fishery Act.

- Illegal developments within coastal public property can now be authorised under the CMA, even though unlawful in terms of NEMA. (through the coastal land lease) (Section 100).

- Certain provisions in the new Bill are covered under NEMA, e.g. Section 57.

- The waste assessment guidelines should be aligned with DWAF’s minimum requirements classification system and the Integrated Waste Management Bill.

- Section 93 provides for the issuing of directives by the MEC to local authorities. According to the provisions of the Constitution, an organ of state involved in an intergovernmental dispute must. make every reasonable effort to resolve the dispute.

- There is little provision for co-management areas, as provided for in the NEM Protected Areas Act, 2003.

- No mention of community-based natural resource management.

- One of the goals of the White Paper for Sustainable Coastal Development in South Africa (2000) is the "alleviation of coastal poverty through proactive coastal development initiatives that generate sustainable livelihood options". The new Bill addresses this only to the extent of making provision for special management areas to promote sustainable livelihoods and requiring that the National Coastal Management Program outline roles for sustainable livelihoods. Perhaps further regulations on this subject can be expected?

- Coastal management plans/ programs should be aligned with the biodiversity frameworks and plans as provided for in the NEM Biodiversity Act, 2004.

[Natalie Way-Jones (Personal Capacity)]

Park can be considered a coastal protected area, coastal public property, coastal buffer zone and also contains coastal wetlands.

- The IMP would be considered a statutory plan (as per Section 50) and must therefore be consistent with the Coastal Management Programs i.e. must be greater

consultation and consensus with three levels of government. Where there are discrepancies, the organs of state are compelled to discuss and resolve conflicts.

- The Coastal Forest Reserve (CFR) area forms part of the admiralty reserve, as per the definition, and coastal public property.

[Wildlife and Environmental Society of SA]

The Preamble refers. It is strongly recommended that the term "sustainable development" (in the Preamble and elsewhere) is replaced with 'sustainable management'.

In many cases, we would like to see the "may"s become "must" or "shall" especially pertaining to the pollution issues from Chapters 7 and 8.

[ESKOM]

The National Nuclear Regulator (NNR) is entrusted with issuing licences for nuclear installations and vessels. Some of these activities take place along the coast or off-shore. Although the NNR's performance of its legislative obligations have a direct impact or will be impacted directly by this Bill, the NNR and its activities or authority in relation to this Bill has not been set out. The role of the NNR or NNR Act (No. of .1999) needs to be covered in this Bill. Such role may include a delegation to the NNR to be the issuing authority in cases where a nuclear installation licence is required.

[Ezemvelo KZN Wildlife]

The Bill does not provide for a co-operative relationship with the provinces. There is, generally, insufficient bidirectional consultation. If this Bill is to become effective a solid co-operative foundation needs to be established with the provinces.

Comment is provided on various issues that concern Ezemvelo KZN Wildlife.

Where no comment is provided, the subject matter either falls outside of the jurisdiction of the Organisation, or is specifically supported in its current form.

The Bill needs to be expanded to ensure that any impact outside of the coastal zone, which may have an impact on it, is regulated.

[Kommetjie Residents & Ratepayers Association]

- Some of that participatory RDP spirit noticeable in the Green and White papers preceding this bill seems to have been lost may have been lost.
- The coastal zone receives many impacts generated elsewhere and so the bill should adopt a more catchment to coast approach
- Municipalities have been amongst the main culprits in allowing bad developments along the coast, ignoring development frameworks, zone schemes and so on and then hiding behind co-operative governance. The act needs to confront this problem in a stated and deliberate way that reintroduces the idea of civil society being an essential part of co-operative governance.

- Many 4x4 exemptions compromise the coast already not to mention all the illegal use. More exemptions could exacerbate the situation.
- The act needs to recognise current crises clearly: viz
  - ineffective application of laws espially in remote coastal areas
  - abalone extinction (using the seashore as launch pad for this)
  - overfishing, recreational and other - ditto
  - hugely inappropriate coastal developments
  - coastal mining aftermath and new proposals
  - coastal roads being proposed and their destructive potential
  - coastal encroachments and illegally claimed prescriptive rights not being challenged (ref p25)
- There should be no moving of dunes or sand by municipalities or land owners to provide views or shore up property too close to the beach.
- The act should enable the demolition of illegal and inappropriate buildings, private and public in the littoral active zone.
- The dictum regarding nodal development as opposed to ribbon development should be clearly spelt out.

The responsibility of mining companies for the degradation of large stretches of the coastline and the need for restorative work to be done by them should be clearly stated.

[Marius Adendorff (Personal Capacity)]

I see that no mention has been made of inland soil erosion and the effect thereof on coastal degradation.

Excessive sediments carried by rivers into estuaries, the coastal oceans and especially onto reef is one of the major factors causing coastal degradation. No coastal management system can be effective and successful without addressing this serious problem. This is especially important on our Eastern and southeastern coastal areas where soil erosion is a critical problem.

Careful to over regulate and creating more bureaucracies and ineffective committees. etc..

[Gouritsrivier Bewaringstrust]

Wanneer 'n mens die wet vergelyk met die "White Paper for sustainable coastal development" is daar sekere riglyne en voorskrifte in die "White Paper" wat in die wet ontbreek. Ek neem aan dat sulke aangeleenthede in die verordeninge aangespreek sal word en neem kennis dat, volgens Art 103(3) die "White Paper" intussen 'n sekere krag sal hê. Ek is egter bekommerd oor die lang tydperke wat toegelaat word vir die daarstel van hierdie verordeninge en protokolle, nl 3 tot 6 jaar. Hoewel mens begrip het vir die prosesse wat deurloop moet word om bogenoemde daar te stel, behoort die wet voorsiening te maak vir 'n begintyd vir die proses en nie net 'n eindtyd nie. Anders gaan die verantwoordelike instansies nie betyds begin om die sperdatum te haal nie.

[Endangered Wildlife Trust (General Comments for Development Bank of Southern Africa)]

More emphasis should be given in the draft ICMB to the ecosystem approach, the importance of maintaining the ecological integrity of coastal systems, and the connectivity between inland coastal and marine environments.

The draft ICMB aims to promote integration and cooperation with other sectors and role-players. This challenging goal could be clarified further in the draft ICMB by ensuring that:

- The role and responsibilities of relevant authorities, decision-makers, development partners and role-players are clearly outlined in the regulations to be drafted in support of the ICMB
- Provincial coastal management units and relevant local government offices are strengthened and capacitated to implement the provisions of the ICMB
- Mechanisms exist to promote integration with existing and proposed land-use planning procedures and processes
- Existing concessions and leases for activities in coastal areas are considered within the purview of the new provisions and are resolved accordingly
- Integration with relevant authorities and enforcement officials is specifically promoted.

[SA Council for Natural Scientific Professions (Prepared by Biotechnology & Environmental Specialist Consultancy CC)]

Definition and regulation need to be included in the ICM Bill that effectively deals with that portion of the coastal zone which is currently controlled by municipalities. There are many examples where these municipal facilities/amenities fall within the coastal zone and/or coastal buffer zone, and where such municipalities freely conduct activities which would in terms of the ICM Bill be regarded as illegal. It is important

that the ICM Bill “rope-in” municipality activities. Also the ICM Bill needs to provide more directives to force municipalities to act progressively | addressing known contraventions (both within the municipality and with the public domain).

The intent of the ICM Bill is well described and the management procedures and programmes required to implement the ICM Bill are well founded. However, one must question the capacity (human, financial and technical resources) of coastal municipality to put into effect the ICM Bill. It is important to take cognisance that the various categories of municipalities (i.e. A, B, C) have areas which significantly overlap or are fully embedded within other municipalities’ jurisdiction (e.g. Buffalo City Municipality and Great Kei Municipality both fall with the Amatole District Municipality), and as such one can expect significant problems resultant from different needs, capacities and bureaucratic regulations and in some case general lack of competence.

[Chief Directorate: Environmental Impact Management]

Concerns:

Although there is probably motivation for requiring EIAs / assessments for some activities, the Bill merely refers to EIAs and EIRs, without taking into consideration the distinction between basic assessment and EIA in the NEMA EIA regulations. The process requirements are also not spelt out.

[Woodbridge Island Body Corporate]

- We would rather prefer to see culpability for category 1 offences be widened to include all foreign (“foreign” to be defined as any material, wither liquid, solid or gaseous that is non-indigenous or that is of or may be construed as being a pollutant, whether noxious or aesthetic) matter from storm water drains and other open-ended discharge paths into the sea.
- We would like to have the culpability for category 1 offences be widened to include all pollutant discharges by shipping vessels, including water-born pollutants such as bilge water discharges, air-born pollutants such as sulphur dioxides and nitrous oxides, and all solid matter of a foreign substance.
- We are concerned that a pollutant may escape culpability under the Act by virtue of its escaping precise definition in the Act.
- We would like to have the culpability for category 1 offences be widened to include accountability for the Directors of Corporations, Members of Closed Corporations, and other similar organisations. Also to find a way of to deal with individuals in their personal capacity who in such organisation were responsible for such contravention if it can be shown that he failed to apply his mind or failed to follow the Act or the written procedures of his organisation.

- It seems the issue of electricity generation and other similar exploitation of the environment off and surrounding the coasts of South Africa has not been adequately covered in the Act. Presumably Special Committees would be able to resolve these issues with dispatch. Issues that because of the ever-evolving complexity of the exploitation of the environment of the sea and shore and coastal interior will continue to evade adequate circumscription or definition. In such a matter for example the EIA scoping and EIA and IIR should also be under review of this committee.

*Suggest also to include littering on beaches and along seashore as offences. The Sea Shore Act does not go this far and only states the Minister may make regulations on littering.*

[Adrienne Edgson (Personal Capacity)]

- It is widely accepted that the regulations of an Act are the “teeth” for that statute – when will the regulations for this statute be available and why is no time-span for such regulations to be promulgated stipulated to in this statute? Without putting in place strong regulations this Act lacks definition, strength and teeth.
- There is a lot of use of the term “may” – why not “shall” – surely the latter is more definitive and stronger in indicating the need and urgency of this long awaited statute.
- This Bill makes reference to several issues which Local authorities / municipalities have to undertake or accomplish – where will the budget and expertise come from to achieve this? Please do not refer to “co-operative government” – we all know this is a myth!
- Why has the requirement for legally appointed “coastal working groups” fallen away from the Bill w.r.t. District and Local municipalities – surely this type of forum could be a source of expertise and guidance for these spheres of government?

[Department of Environmental Affairs & Development Planning]

Duplication of Environmental Impact Assessment (EIA) regulations and National Environmental Management Act (NEMA)

The Bill requires environmental impact assessments (EIA's) to be conducted in relation to a number of activities in the coastal zone and environmental assessments to be conducted in relation to boundary demarcation proceedings in the coastal zone. However it does not specify any EIA procedures and it is envisaged that EIA's to be

conducted in respect of activities in the coastal zone will be conducted in accordance with the general procedures established under other environmental legislation. This would also mean that any EIA procedures under the Act would be required to meet the minimum conditions for EIA's specified in section 24(7) of NEMA.

This is a bone of contention as it would require two EIA processes (NEMA and ICM Act). The scheduling of activities in the Bill is not supported and should rather be included as part of the general EIA regulations. This might also cause further problems in future should NEMA or the EIA regulations be amended it would require that the ICM Act's schedules also be amended. It is recommended that the "coastal activities" that might cause an adverse impact on the coastal zone be included as listed activities in the integrated environmental management regulations ("IEM regulations"). The purpose of the Bill is to streamline legislative processes and bring about integrative environmental management. The inclusion of schedule activities will cause unnecessary fragmentation of the EIA regulations and be counter-productive.

Exemptions – what does an exemption entail and based on the statement in chapter 1 that this act supersede other acts, can a person be exempted from applying in terms of this Act and does that then exempt the person from applying in terms of another Act (e.g. the EIA regulations under NEMA). Alternatively this Act should simply follow the heritage legislation (section 38) to say if and when an EIA is triggered, then requirements of this Act fall away.

In due course, it would also be appropriate to review the sensitive coastal area regulations made under the Environment Conservation Act, which require environmental impact assessments to be conducted in respect of certain activities within identified sensitive coastal areas. It is anticipated that it will be possible to produce a more generic set of such regulations that could be applied to activities taking place in most, or all, of the coastal protection zone.

#### Enforcement and compliance with the Act

The Bill provide for the various organs of state to adhere and comply with certain provisions in the Act. It is however unclear who will be responsible for managing and monitoring compliance with the Act. The Act will be meaningless if its provisions are not applied and authorities don't cooperate. It is for this reason that the different spheres of government need to agree on the mandate that has been handed to them. Together with this a programme of assistance need to be worked out to guide and ensure provisions of the Act is implemented. The process of discussions and negotiations should be initiated and entered into before the Bill is published for comment as the various authorities need to take ownership of the process and final Act. The Act will not succeed if all the authorities don't agree on terms.

What would the role of Environmental Management Inspectors (NEMA) be in terms

of coastal management?

[Deborah Vromans - SANParks Knysna (Personal Capacity)]

Capacity

- Comment: An Environmental Officer should be employed by municipality to improve capacity.
- Motivation:
  1. Capacity in skill and numbers is an ongoing issue that is not being resolved adequately and within the necessary time-frame.
  2. Capacity is critical.
  3. It provides improved employment opportunities.

Long Title

Add 'unsustainable transformation of the coastal environment' to the last sentence, following '... pollution in the coastal zone.'

[Lifesaving SA]

While the BILL has covered the important areas of conservation and protection of the coastal environment in various forms, we submit that the BILL is silent on and needs to include aspects on the safety of bathers and other beach users.

In South Africa, it is roughly believed that almost 86% of our population do not know how to swim or do not have access to water safety education. Drowning is the second highest cause of fatalities among children up to the age of 14 years, after road deaths. (Medical & Research Council studies). We do acknowledge that this figure is increased by drownings in inland waterways and domestic pools.

However we feel that with the growing domestic and international tourism to our beautiful coastlines needs to cater for legislation that will reduce or prevent drownings along the coastline. The 2010 World Cup in S.A. will attract several hundreds of thousands of foreign tourists, all of whom will spend more time on our beautiful beaches than in football stadiums, especially if the games are played at night to suit European viewership times. Putting safety guidelines and plans in place for safe bathing in 2010 will also leave a lasting legacy for our own nation.

Rationale for the legislation on Water Safety or Drowning Prevention:

- Far too often there are unnecessary drownings along the coastline due to the fact there is no legislation to ensure that preventative measures are taken, for example, schools excursions are organized to the coastline with no consideration by the organizers to establish which are safe bathing areas, which beaches are patrolled by lifeguards and what are the times of the lifeguard patrols. (The case of the seven schoolchildren who drowned in May 2005 at Richards Bay on the KZN North Coast, is a case

in point, where it could be postulated that the drownings could have been prevented had the teachers been compelled to ensure that they check details of lifeguard services before embarking on their organized trip.)

- The same must apply to religious groups which organise prayer rituals at beaches, some even at night, which have often resulted in tragedy due to the fact that the participants of such rituals have underestimated the surf conditions. Possibly water safety guidelines and supervision by pre-arranged lifeguards could prevent unnecessary drownings.
- There does not seem to be any compulsion on Municipalities to conduct beach Risk Analyses, before they even develop a piece of the coastline for the purpose of recreational bathing. Legislation must compel the local authorities to ensure that they contact the experts, like Lifesaving South Africa, to ensure that expertise within our organization can advise and provide guidelines on proper risk analyses.
- There is no regulation governing the contracting of private and commercial lifeguard companies by municipalities. Often the services of lifeguarding are outsourced to service providers with no accreditation and scrutiny of service norms and standards. With the emergence of a plethora of local private and commercial service providers, there is a need to create a structure to ensure that the relevant norms and standards are adhered to. Far too often private and commercial providers have provided sub-standard services, under-age lifeguards, and under- or semi-skilled lifeguards by putting profit motives above proper standards.
- Often these “dodgy” contractors compromise the safety of the bathing public and places the local authority at risk of heavy public liability claims.
- Unlike the experience in many counties abroad, there is no legislation to provide for a national drowning prevention strategy and establishment of Water Safety Councils in South Africa. The international experience has shown that the drowning statistics in countries such as Australia, New Zealand and Ireland, have recorded ever decreasing statistics purely through their focus and interventions on safety and drowning prevention guidelines.

The name of this BILL is prefaced with the word “Integrated” and our organization feels that this BILL will not really address all matters if it excludes the interests of the recreational users of the beaches and coastline. It is our belief that recreational bathers and other recreational users are a large group as well as an ever growing number. We urge the department to engage us on the matters that we outlined above as we can assist to further the cause of water safety for our nation and its visitors.

[SANParks (Port Elizabeth)]

- Adequate guidance on land-use and spatial planning is a critical shortcoming of the bill. This is of particular concern in the Eastern Cape where coastal ribbon development is rife. The use of 100m and 1km as buffer zones is inadequate, and should be seen as minimum values only. The sensitivity of coastal environment differs at local scale and this should be taken into consideration
- .
- Appropriate coastal development. The development of private property and the associated environmental impact and contribution to urban sprawl or ribbon development is not addressed.

[Mike Beresford (Personal Capacity)]

- Concerns Regarding Process

The ICMB has been published for comment. It is expected that the comments from interested and affected parties will be read, considered, and that where valid concerns are raised the authorities will act on these concerns. Sadly this process has not been followed by the Department of Environmental Affairs (DEAT), or the subsection Marine and Coastal management (MCM) in the past. In the case of the regulation of scuba diving within Marine Protected Areas (MPAs), comments were largely ignored by the authorities. The “consultation” process was merely undertaken to give the impression that statutory provisions for consultation had been met. Decisions were made before comments had been considered. This was seen again in the case of the draft regulations on Shark Cage diving and Boat Based Whale Watching. Officials ignored comments, and declined to explain why they did so.

It is also noted that DEAT officials have regularly ignored requests in terms of the Promotion of Administrative Justice Act (PAJA), Promotion of Access to Information Act (PROATIA), and section 80 of the Marine Living Resources Act. Officials have refused to communicate with interested and affected parties, and gone back on undertakings given to the public. It is thus a major concern that issues raised during the comment period will simply be ignored. Since officials have demonstrated that they are prepared to ignore protections built in to legislation, the average member of the public is effectively excluded from the process. Only those wealthy enough to afford the legal costs of High Court action have any effective say in this matter. It is concerning that DEAT has chosen to publish the draft in the Gazette without discussing implications of the Bill with major stakeholders.

The Bill, if enacted, will have a significant effect on many sporting activities. To date no effort has been made to inform sporting disciplines of the potential impacts. These activities fall under the Department of Sports and Recreation. It is noted that the Constitution promotes co-operative Government, implying that DEAT should liaise with Sports and Recreation about potential impacts. It is suggested that a comprehensive review of all comments be published, and that any matters arising from this review are dealt with before proceeding any further. It is also suggested that officials be required to contact Sports and Recreation to further the consultation process.

- Concerns Regarding Management

The management activities envisaged under this Bill will no doubt form part of the tasks of

MCM. In the past MCM has proven itself incompetent in management. The failure to manage consumptive uses, the failure to prevent poaching, and the failure to control their own finances are examples. Under this Bill a vastly expanded management task will be required. It does not make sense to entrust this task to a department of proven incompetence.

Furthermore, the tasks envisaged will have a tremendous cost in terms of administration and enforcement. According to the guide issued with the ICMB, this cost will be incurred by

organs of State. In practice these costs will be incurred by the country, whether through tax or permit fees. Costs cannot simply be incurred; there must be some form of benefit to the

country for the expenditure. Without cost discipline, the whole exercise will simply become a “tax by stealth” funding of a pointless department.

It is suggested that all proposals for controls and permits be tested on a cost benefit basis

before any details are planned. Only those activities that have definite cost benefits should be allowed to proceed beyond planning. The Department should be required to draw all funding from central government funds, in order to prevent the Department from simply externalising their costs to those forced to buy permits.

- Concerns Regarding Public Participation in Regulations

In view of the poor track record of MCM with regards public participation, a concern is raised that this department will simply impose regulations without proper participation.

It is suggested that a proper consultation procedure be written into the ICMB, together with a proper appeal process. The appeal process should specify criminal penalties for officials who fail to abide by the provisions. This will avoid a repetition of the situation under the Marine Living Resources Act, where officials simply ignore the appeals process contained in Section 80 of that Act.

[Chamber of Mines of SA]

We wish to draw your attention particularly to the following issues of concern. We are concerned about the possible overlaps and/or contradiction with other relevant legislation as this is especially important with regard to permits, licenses and lease agreements already being regulated. The impact of public servitudes and access to coastal areas might have unforeseen consequences with regard to safety and this must be clarified. The admiralty strip along the coast must be well defined and it is of importance that clear transitional arrangements must be written into the Bill.

1. Access to the coast: It is of concern that the statement in the Bill ‘that the public should have “reasonable” access to the coast’ does not clarify this issue enough,

especially since there is a public perception that this right overrides all other rights, e.g. mining leases, etc.

2. The liabilities that the mining industry has in terms of the MSHA and their EMPRs on any areas that form part of their mining leases, even if the areas are not actively being mined at present, must be taken into account.

3. The issue of public servitudes to provide access to the coast (or rather the lack thereof) over private land and the responsibilities/liabilities of such access is of concern.

4. The reality of farm boundaries (most of the mine owned land are leased to private farmers) having to extend to the coastline to effectively separate farms, thus making unhindered access along the coastline impractical is a concern. In the absence of a clearly demarcated admiralty strip along the coast, it would also be impossible to fence that out of the property, which will also have financial implications as a result.

5. The ability of authorities to regulate (police) the coastline, should more areas be accessible to the public, is questionable.

6. The issue of integration of permits/licences/leases is especially cumbersome, especially the integration of the leases as per the Bill and the requirement of Environmental Management Programme and Social and Labour Plans in terms of the MPRDA. The Chamber of Mines recommend that, given the overlap between these two processes, DEAT and DME (and any other relevant government institutions) should get together and decide on an on-point-of entry system with integrated and aligned licensing requirements. As an example, mining houses that are buy applying for New Order Mining Rights, have to compile an extensive EMPR as part of their application, and will now have to apply for yet another lease in terms of Chapter 12 of this Bill.

7. The issue of coastal set-back lines and its impact on mining must be clarified.

The Chamber of Mines recommends the following:

1. A regulatory impact assessment must be conducted taking into account the possible overlaps and/or contradiction with other relevant legislation, this is especially important with regard to permits, licenses and lease agreements.

2. The impact of public servitudes and access to coastal areas might have unforeseen consequences with regard to safety and this must be clarified.

3. The admiralty strip along the coast must be well defined.

4. Clear transitional arrangements must be written into the bill.

[Heuningnes Riparian Owners Association]

We, the Heuningnes Riparian Owners Association, would firstly like to congratulate the minister on the proposed proclamation of the Integrated Coastal Management Act, 2006. It is long overdue. However, we are concerned at the proposed roll out period. A lot can go wrong in the meantime. It would seem to us that most areas of concern are known and that what is now required is a speeded-up process (obviously with the necessary public, interested and affected parties involved).

The other area of concern is enforcement. It is all well and good to have some of the best laws in the world but without enforcement, they will fail. The apparent lack of

success in dealing with the crayfish and abalone plundering along our coast is a case in point. Yes, the Act will give teeth but nowhere is mention made in the Act of financial support for this Act. A lot of delegation is seen, from national to provincial to municipal levels. Many municipalities in this country do not have the expertise or the money that might be needed. Government departments are continually downscaling and losing valuable human expertise which will be sorely missed in the process.

[Blue Horizon Developments]

- Blue Horizon Developments (Pty) Ltd is involved in the development of residential estates. We support sustainable development in South Africa and focus our developments on ensuring the preservation and conservation of our biological diversity, eco-systems, natural landscapes and seascapes.
- In our view the objectives of sustainable development, preservation and conservation are not supported by the National Environmental Management: Integrated Coastal Management Bill, 2006 (“the Coastal Bill”) which has been proposed. As we set out in our detailed comments below a large number of the provisions of this proposed statute are a duplication of existing environmental statutes and will in fact make rational and sustainable development in the coastal areas – which are often bordered by significantly deprived communities (who whole heartedly support development and the attendant job opportunities) – extremely difficult and will add significantly to the approval times and costs of such developments. In our view there has not been a sufficiently compelling case made out for this Bill, in addition to the existing protection of biodiversity in the Biodiversity Act <sup>1</sup> and provincial nature conservation ordinances and legislation, protected areas in the Protected Areas Act, <sup>2</sup> the environment in NEMA, <sup>3</sup> and marine protected areas in the Marine Living Resources Act, <sup>4</sup> and so on. We would urge Government to reconsider whether an additional layer of regulation in an already significantly regulated environment is in the best interests of sustainable development.

In concluding, although the Coastal Bill aims to harmonise coastal management in South Africa, many of the proposed provisions of the Bill duplicate requirements in terms other legislation thereby creating additional unnecessary restrictions to development along the coastline.

The Bill places environmental decision makers in an inappropriately prominent position in relation to developments within the coastal area and completely discounts the primary developmental role of municipalities. The environmental authorities

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<sup>1</sup> The National Environmental Management: Biodiversity Act 10 of 2004 (“the Biodiversity Act”).

<sup>2</sup> The National Environmental Management: Protected Areas Act, 57 of 2003 (“the Protected Areas Act”).

<sup>3</sup> The National Environmental Management Act 107 of 1998 (“NEMA”).

<sup>4</sup> Act 18 of 1998.

should not be charged with overseeing all developments in the coastal zone but only those in areas that have been specifically identified as needing such oversight in terms of the relevant environmental statutes such as the Biodiversity Act, the Protected Areas Act etc. Other environmental issues are dealt with in the NEMA EIA process.

In addition, certain of the proposed provisions adversely impact on a private land owners and on new developments in general. The need for the Bill itself and in particular the provisions discussed above should be further considered by the Department.

[South African Planning Institute]

The basis of defining any zone starts with the high water mark, which is constantly changing/moving (Section 14, p.26). Therefore, imposing a 100m or 1km buffer from the high water mark will also be moving constantly. A lot of confusion will be created by the reference to “land development plans”, “schemes”, etc.

The implementation of the Bill relies heavily on land management mechanisms (e.g. registration of restrictions in title deeds, zonings of land, zoning schemes and Spatial Development Frameworks etc.) and it is a great concern that the planning profession (which will be involved in the implementation of this bill on the ground through land use applications and preparation of Spatial Development Frameworks) has not been formally engaged in a focussed session or as a very significant interested and affected party in the drafting of the Bill. It seems from the Bill that there might be confusion between the applicable zoning of a particular property/erf, in terms of a Zoning Scheme, and the current land use of the same piece of land. The focus of the Bill is more on land use and the effect of changes in the land use, while the planning profession deals with the inter-relationship between the applicable zoning of a particular property/erf, in terms of a Zoning Scheme, and the current land use of the same piece of land. The focus of the Bill is more on land use and the effect of changes in the land use, while the Planning profession deals with the inter-relationship between Zoning and Land use as well as the effect and possible implications of different land uses under the same zoning. The very reason for Zonings is to group land uses of similar nature (and possible impact\_ together in a predetermined area. To try and address land uses without zoning and vice versa is not possible, given the magnitude of urban and rural planning local government, environmental, IDP/SDF/LSDF, transport, disaster management legislation. This new Bill will have to be screened against the existing legislation that governs development.

The incorrect use of town planning terminology and mechanisms, land use plans, Spatial Development Frameworks and zoning schemes to achieve the environmental goals in the ICM Bill is a concern. The town planning profession should be engaged in a focused session or consultation to ensure that this Bill can be implemented through the right mechanisms. It is difficult to set out the consequences of some of the sections of the Bill, that is why a focussed session is required. Through co-operation in the drafting process, to make the Bill easy to implement

through the right mechanisms, will be beneficial to all the stakeholders including the environmental profession, the planning profession and all spheres of government involved in the implementation of the Bill. This will prevent the waste of unnecessary resources to find solutions for problems created with clauses that can not be implemented, or which allows for different interpretations, or confusion of roles and responsibilities. An urgent plea is made to the Department of Economic Affairs Environment and Tourism to resolve these issues now and not leave it "to be addressed by the regulations".

Does this Bill prevail over the Development Facilitation Act and the Land Restitution Act? National input required on which act prevails.

This Bill has financial and capacity implications to Municipalities. Municipalities must (amongst others):

- \* register servitudes for coastal access land (Section 18)
- \* prepare a local coastal management programme (Section 46)
- \* demarcate the coastal set back line (Section 25)

The town planning profession should be engaged in a focused session or consultation to ensure that this bill can be implemented through the right mechanisms

The National Coastal Management Programme to be put in place first and not over 6 years. The framework for co-operative governance to assist provincial and local governments to resolve conflict is critical. The conflict between different Acts must also be addressed in the co-operative governance framework.

The definitions and terminology to be improved

Financial support and additional capacity be given to Municipalities to assist them to implement the Bill. A financial contribution to determine the coastal set back line (through a scientific process based on environmental sensitivity as part of a Strategic Environmental Assessment and incorporation into the Spatial Development Framework of each Municipality) and the survey of that line would be a suggestion.

[Institute of Estate Agents of SA]

The public is and should be entitled to access to our country's beaches, not just the rich who can afford holiday houses at the sea. In recent times some developers have not respected this right and have in fact deliberately restricted it.

But there should be a fair balance between the rights of the public at large and the rights of existing property owners, and this is not achieved in the proposed legislation.

There seems to be a number of instances in the Act where existing property owners will be obliged to accept changes, accommodate access by the public, even lose land, and the State will not be accepting any responsibilities towards property owners. This seems unbalanced and unfair. Existing property owners may be the losers here.

One vital theme that needs clarification is for the department to clearly spell out how this Act will affect existing private ownership of land. The proposed Act has a few stings in the tail in this regard, some so subtle that its impact may only fully become visible years from now.

The uncertainty regarding the status of coastal properties, which this act will bring about, will have a detrimental effect on property values.

[K.P. Mackie (Personal Capacity)]

The overall intent of the bill in consolidating much coastal legislation and in gaining control over the coastal zone in the public interest seems well founded and the expression competent except as hereunder. A notable feature seems to be a dominantly landward approach. There is a need for and equally comprehensive seaward component.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

As noted in the introductory paragraphs, whilst the intention of the Bill is accepted, provisions of the Bill, as it stands, are unacceptable and must be reconsidered. The current provisions will have, without doubt, a significant detrimental impact on development, investment, the tourism industry and will result in a major loss of socio-economic benefits. The Bill is unfortunately one-sided in terms of the green environment which is contradictory to the notion of what sustainable development is about.

[Department of Environmental Affairs & Development Planning]

#### People centred approach

The Bill focuses to a large extent on the biophysical environment and does not lend itself to the "People Centred Approach" the White Paper talks about. The coast is a national asset and belongs to the people of South Africa as such it should be protected in the interest of and for South Africans. In the current economy climate coastal communities are living in poverty and a concerted effort should be made to improve the quality of life of these individuals and communities so that they can make a meaningful contribution to their own livelihood and to the economy of South Africa as a whole. Concerns emanating from the Bill do not make it mandatory for organs of state to:

- Identify and develop livelihoods opportunities to alleviate poverty and create jobs;
- Measure migration patterns to the coastal towns and cities, which will place additional pressure on coastal resources ;
- Measuring the success and failures of coastal poverty alleviation projects and the lessons learned from these initiatives;

### The rights of existing title deeds holders to protect their private property

The Bill is silent about measures to protect private property from natural processes and disasters. The Bill does not provide adequate protection for coastal property owners. Although we agree that these properties should never have been alienated and development should never have been allowed there in the first place we cannot simply wish historical bad planning decisions away. They must be dealt with and provision must be made to allow for such protection but at the same time not encourage or promote future bad planning decision. Property rights are not absolute and can be limited in terms of the limitation clause in the Constitution. As with every right there is a responsibility attached to it and individual rights must be exercised and balanced in terms of other rights and in the best interest of the general public.

[Department of Environmental Affairs & Development Planning]

### Turf Battles (DWAF, DME)

Marine resources are DEAT's responsibility and coastal waters should be viewed as one of those resources. The quality of coastal waters is critical to the health of the living marine resources, and to their acceptability for human consumption. It is accepted that DEAT should have responsibility for marine resources and the marine environment, and then they should have control over all sources of marine pollution. Land-based sources of pollution comprise > 80% of marine pollution. Land-based sources are closely linked to land-use planning / developments in the coastal zone, and their control should therefore be an integral part of integrated coastal management.

Department of Water Affairs and Forestry's (DWAF) primary responsibility is to deliver water and sanitation to the general population, and their main area of expertise is therefore found in fresh water. They have only limited expertise in the marine environment - in contrast to DEAT. The current legislation of DWAF does not provide for pipeline discharges to the marine environment and currently a number of factories are operating without a permit because they have expired. If they do have a permit issued by DWAF it is *ultra vires*.

[Department of Environmental Affairs & Development Planning]

### Abstraction of sea water

Currently no policy exists at national or provincial level to regulate this. The absence of a regulatory framework is impinging on various coastal related activities such as

mariculture, commercialisation of sea water, cooling of nuclear and other power plants, etc. It is not clear how this issue will be dealt with and who will ultimately be responsible for permitting this. It is crucial that this is taken up in the Bill.

## IMPLICATIONS (Costing for implementation of the Bill)

### Staff

The implementation of the Bill will result in additional costs to organs of State at national, provincial and local spheres of government. These will be primarily related to the new functions of preparing comprehensive coastal management programmes, proactive coastal resource use planning and management, demarcation of boundaries, delegations, appeals, regulations, permitting, authorisations, state of the coast reports, coastal committees, law enforcement, etc.

At the provincial level, Interim Provincial Coastal Committees are already functioning and can be transformed easily into provincial coastal committees. The Western Cape already have a draft Integrated Coastal Management Programme and Coastal Zone Policy that went through an extensive public participation process that can relatively easily be converted into provincial Coastal Management Programmes and "Zoning Schemes/ Maps". Regional Coastal Committees have also been established.

However, provincial lead agents will need to develop and build capacity in their Coastal Management components to tackle all the functions and duties that will be derived from the eventual Act. In terms of staff complement and funding a proper costing must be done to establish the exact financial implications. This is important as the Act prescribes timeframes for completion of various tasks and to a large extent will put additional burden on the already overloaded workload of the existing structure. Service delivery on the outputs of the Act will be compromised if the staff complement is not expanded. It is also crucial that the current capacity of the sub directorate be analysed to deliver in terms of provisions of the expected Act.

### Financial

In terms of implementation of the Bill enough financial resources need to be provided by DEAT to assist the Provincial Coastal Management components to carry out its duties and to some extent provide assistance to district and local municipalities. Municipalities financial resources will be put under additional strain and mechanism must be found to assist them from national government coffers.

Ideally, the provincial government need to appoint a regional coastal coordinator on a contract basis for at least 3 years to built the capacity of

municipalities and provide guidance in terms implementation of the Act. This will definitely assist the lead agent in coordinating, integrating and cooperating more meaningfully with district and local municipalities. If this is not implemented coastal management issues will not receive the necessary attention it warrants.

It is essential that the Bill be properly costed and that the required resources be made available to provinces and local authorities to implement the Act.

[Western Cape Department of Environmental Affairs and Development Planning  
(Western Cape Department of Environmental Affairs and Development Planning  
(Region A1 George)]

Although there is a prohibition to undertake certain activities in the buffer zone and coastal public property, the act is silent on what will be regarded as acceptable in these areas.

#### GENERAL COMMENTS:

1. What about the Outeniqua Sensitive Coastal Area Regulations. Should this not be repealed as well and dealt with by Coastal Management.
2. It is suggested that Coastal Management take on all the EIA activities in the Coastal zone in order for the DEADP to function effectively and fulfill the aims of the Bill.
3. How will the intergovernmental cooperation work?

[Coastal & Environmental Services (East London)]

Based on our extensive experience of coastal management issues in the Eastern Cape particularly, one of the main challenges and areas of concern is the pressure for development along the coastline. In this regard, the Bill possibly may not adequately address the following areas:

#### 1. Land-use and spatial planning

This is the most CRITICAL shortcoming of the Bill, as it does not provide adequate guidance relating to land-use and spatial development planning issues at the municipal level particularly relating to the establishment of urban edges in coastal areas (i.e. when is it appropriate to extend the urban edge along the coastline, as currently this is determined very arbitrarily) and the nature of activities outside urban edges (i.e. what types of activities are permissible outside urban edges and at what densities, etc. etc.). The lack of guidance and uncertainty on these matters is leading to tremendous pressure on coastal areas.

#### 2. Appropriate coastal development

It is felt that the Bill should address issues relating to development in the coastal zone in more detail, such as:

- Coastal sprawl and specifically how to address the challenges relating to coastal sprawl.
- Circumstances under which development along the coastline permitted.

The Bill still leaves certain uncertainties open to interpretation, particularly relating to land-use planning with a risk that the current Bill will be applied differently by different municipalities.

It would also be useful to have some aesthetic guidelines for development along the coast.

[J.F.W. Dempers (Personal Capacity)]

I would like to see all pipelines on our shores be forbidden. At Lucien beach KwaZulu- Natal South coast is a sewerage pipe that lets out polluted water into the sea. Many people have been getting sick and all sealife on the rocks are dead or busy dying. The authorities cannot seem to find the source. This pipe is hidden in the rocks and can only be seen at low tide dumping its load into the sea.

[SANParks (West Coast National Park)]

A serious concern we do have is that the concepts of 'public access to the coast' and 'development in the coastal zone' are perhaps not adequately addressed. The new bill largely addresses requirements as laid down in the White Paper on sustainable coastal development. The problem arises when, the new Bill places a large amount of emphasis on protection and management of the coastal environment. However, in terms of the White Paper exploitation of the coastline should be on a more equitable basis. Both 'conservation' and 'development' are deemed very important features of the coast, but have not been particularly compatible in the past. Unfortunately I could not find enough evidence in the bill on how these two very different concepts will be managed effectively together, as stated in the White Paper. One of the underlying reasons for this may be that, for conservation to be effective a more restrictive approach will be needed whereas development will require more non-restrictive principles.

In a number of cases (Chapter 7 – Protection of Coastal Resources, Chapter 8 – Marine and Coastal Pollution Control) reference is made to the protection of marine living resources. A question I have here is how does this relate to other Acts that also have this function namely the Marine Living Resources Act (MLRA) and the Protected Areas Act. We must guard against loopholes or confusion if two acts cover the same items. We have certainly seen enough of this confusion between the 'old' National Parks Act and the MLRA. I am advocating that we keep things clear and simple and make sure that no confusion exists between this Bill and other related legislation.

As stated before, parts of the coastal zone in the Langebaan area are proclaimed national park and are managed in terms of the Protected Areas Act (57/2003). In terms of general implementation of the Act we would not like to see that SANParks would have to pay another organ of the state so that SANParks can effect management practices. This was the case with recent legislation regarding launch sites within the national park. In terms of this legislation, launch sites that were on property, which was proclaimed national park in terms of the National Parks Act

(57/1976) had to be registered with province and payments had to be made for this registration. As this property does not resort under the provincial authorities, it was certainly disappointing. The payment by one organ of the state to another is unnecessary and we object should this happen or, be construed, in the Integrated Coastal Management Bill. It is important to note that by this I am not implying that we are requesting exemption from regulations pertaining to listed activities on the coast, in the water area or on land. Here SANParks will ensure that the necessary scoping and environmental assessments are followed as prescribed by DEAT according to the applicable national legislation.

[Uthungulu District Coastal Working Group]

The impact (financial & capacity) on municipalities should carefully be considered in line with the responsibility of municipalities with regard to coastal access land. The Bill will be adding to the functions & responsibilities of municipalities without funding being made available, for instance for establishment, control & maintenance of coastal access land.

Capacity of municipalities should be strengthened to ensure that Coastal Public Property is used, managed, protected, conserved and enhanced.

The creation of a Coastal buffer zone ( 1000m above high water mark) in rural areas has quite some implications on tribal land, as municipalities do not have any direct control over the management of tribal land in practice. The municipalities cannot enforce any land use management system on tribal land as the authority lies with the tribal leadership. The latter needs to be consulted and informed of the implications of the Bill as part of the capacity building process.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]  
Principle Issues

- 1.1 We are fully supportive of the principles upon which the Bill is based and the overarching rationale for the need for such a Bill but we are concerned that, as it currently stands, the provisions of the Bill will have a significant, negative impact on the development and tourism industry, the economy of South Africa and private property rights.
- 1.2 The Bill, we submit, in its current format, will result in confusion, uncertainty, duplication and unnecessary additional bureaucracy and could well sterilise the prime real estate land in the country to which we strongly object.
- 1.3 It is stated that the Bill is based upon the White Paper for Sustainable Coastal Development, but, we submit, this is not the case and it could be argued that it is in direct conflict with the objectives of the White Paper which are based upon the following approach:-

- people centred around alleviating poverty
- facilitating sustainable coastal development
- promoting co-ordinated and integrated coastal management
- facilitatory style of management

The Bill does not, in its current format, adhere to the above principles and will, as well noted above, simply lead to duplication, confusion and a halt to new investment and development.

1.3 It is noted that the term “ecologically” has been added to the concept of sustainable development. This is clearly at odds with the accepted meaning of what sustainable development is about, namely, a balanced approach towards development that takes into account, not only ecological needs, but critically, social requirements and economic necessities. This is of concern as it suggests that ecological rights prevail over all other rights, which, in a country such as South Africa with its tremendous socio-economic challenges, is inappropriate. Again, this approach is anti development and investment.

1.5 The term ‘integrated payment’ is at the heart of the Bill but this objective/principle cannot be achieved unless there is a single approach to ‘managing’ the environment. This means a single piece of legislation, a single process, not a plethora of duplicated regulations and processes.

1.6 It is unclear, and therefore of concern, how this Bill is going to be practically implemented. Existing legislation and regulations that deal with development are already hugely problematic and having a major negative impact on new development and investment, specifically because of the lack of adequate and competent resources to implement such legislation. As it stands, this Bill is only going to compound such situation which is unacceptable. The Bill must therefore deal specifically with the issue of resourcing and implementation.

[K.P. Mackie (Personal Capacity)]

### Shoreline Geometry

A dominant feature of the Coastal Zone is the Shore Line. This is a “*fractal*” line and does not conform to the properties of “*Euclidean*” geometry. Mostly the wording of the Bill does not conflict with this fractal geometry. Those occasions where it does, have been noted in the comments with suggested rewording. Nothing much turns on

the rewording with regard to the intent of the Bill, only the elimination of potentially conflicting interpretations.

As a point of information, it is not possible to draw a line parallel to a fractal line. However, it is perfectly meaningful to specify that any specific point must always be either less than or more than some specified distance from a fractal line and very practical to check empirically that this is so.

### South African Coastline

Given the concept of fractal geometry, the fractal characteristics of the South African Coast can be measured and has been done<sup>5</sup>. The South African Coast turns out to be anomalous by world standards and, overall, is amongst the straightest coasts in the world with the least amounts of embayments, headlands and open estuaries and the least amount of naturally protected water for the berthing and mooring of vessels. By world standards, for the size of the land area and the population it serves, South Africa has an extremely short coastline which, as the population becomes more sophisticated with respect to the exploitation of the sea shore, can become severely overcrowded.

As a result of its extreme straightness, an unusually high proportion of the coast is a high energy shore. For people who have grown up on these shores and are sophisticated with respect to surfing and extreme surf swimming, this is a great asset. For people who are unfamiliar and naïve with respect to high energy shores such as underprivileged peoples from the interior or foreign tourists from Europe, this shore can be extremely hazardous.

The net effect of the nature of the South African coast is to severely restrict access to the sea both for recreational bathing and for small craft navigation, both commercial and recreational and to make these practices very dangerous.

The implication is that the public sector, variously National, Provincial and Municipal have a responsibility to intervene at the public expense, for the benefit of the general public, to ameliorate the situation. By and large this should be done by public works as a physical intervention. Examples where this has already been done are the suite of fishing harbours for small craft and the tidal pools for bathing. With few exceptions these are all in the Western Cape Province where the fractal index is somewhat higher than elsewhere.

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<sup>5</sup> The Anomalous Nature of the South African Coast and its Implications for the Coastal Environment. K. P. Mackie, SAICE Annual Congress, Durban, 1993, reprinted in Sea Changes No 16 (1994).

Overall, this implies that a competent Coastal Management Programme for South Africa must include both regulation and constructive intervention as counterbalance to each other.

It could be argued that the various wordings in the bill regarding Coastal Management Programmes together with procedures for allocation of funds to implement these programmes could be construed as including provision for such engineering construction as may be necessary to achieve the objectives of the Bill. This idea of active intervention to secure access to the sea and the sea shore comes out much more strongly in the Bill in the concept of “coastal access land”.

Overall, however, these interpretations are far too weak to properly counterbalance the regulatory interpretations which by contrast are extremely well thought out, coherent and strongly presented. However, given the peculiarities of the South African coast, unless we have an equally strong constructive intervention programme as counterbalance, the regulatory component will ultimately fail.

Failure of the public sector to intervene in the management of the coast by constructive intervention for the benefit of the whole population will lead to irresistible, creeping private development, particularly private small craft harbours or back-beach commercial development that will emerge despite the high-minded regulatory aspects of the bill. This kind of development is highly likely to be contrary to the spirit of the bill. Private small craft harbours are generally built for an exclusive clientele. Commercial back-beach development is likely to have similar impacts despite the provision of “coastal access land” and to spoil the aesthetic ambiance of the sea shore.

A case in point is the current initiative to explore the privatisation of the suite of fishing harbours, Hout Bay in particular. The suggestion that a policy of retaining these harbours as “working harbours” has been mooted as a possible guarantee that commercialisation will not destroy them. In fact it is the kiss of death. If implemented, it will allow the future development and exploitation of the harbour to be driven by exclusively commercial interests without recognition of the need of water-based activities for protected water at reasonable cost – costs well below potential yields for commercial development. A better statement would be:

*“In view of the rarity of protected water on the South African coast, the public stock of small harbours is a national maritime asset that may not be alienated from this function although it is recognised that, from time to time, it may be expedient to allow surplus resources to be allocated on a temporary basis to landward commercial activities.”*

A competent and coherent capacity to manage the constructive intervention aspect of coastal management is needed if it is to be a success<sup>6</sup>. To this end either the bill

should be reworked to prescribe an equally strong constructive intervention programme or else the present wording should be stripped of any ambiguity in this regard and limited expressly to regulatory aspects. In the case of the latter, other provisions should be made as, for instance, for another bill, to cover and implement constructive intervention.

SECTION	COMMENT
Preamble	See comments under South African Coastline in Introductory Comments above
Add as first statement:	
South Africa has an anomalously straight coastline and high energy shore with very few embayments, headlands or open estuaries and very little naturally protected water all of which severely restricts access to the sea and the sea shore for the people and makes such access extremely hazardous;	It is extremely important to remember the physical as well as the biological and social aspects of the coastal zone.

[Alan Boyd (DEAT)]

Municipalities have a frontline responsibility to minimise pollution, particularly into wetlands, rivers and estuaries. Doing this will result in both health and economic benefits.

A mechanism needs to be in place through the Bill to ensure that municipalities meet their obligations to meeting environmental and health standards. For example, they should not be able to pursue and/or authorise economic level housing and other economic level developments without planning and committing to the maintenance or upgrading of the necessary infrastructure. The Bill should ensure that the situation where the go-ahead for further development, whilst current infrastructure cannot contain sewage overflows and other pollution entering water courses, on other than a very occasional basis, is subject to review from a higher level of government, with the powers to intervene if necessary. The undertaking of sub-economic housing should also be accompanied by appropriate infrastructure upgrades, although holding up such service delivery is not the answer because social obligations and also because the pollution is probably worse without such development.

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S A Small Harbours - Need and Reality. National Maritime Conference, Cape Town, 1991  
The Debacle of the South African Fishing Harbours - a case study. Fifth International Conference on Coastal and Port Engineering in Developing Countries - Cape Town 1999  
The South African Suite of Fishing Harbours - a study in extinction. Poster Paper, 31<sup>st</sup> PIANC Congress, Lisbon, 2006

Similarly, a mechanism (or channel for assistance) need to be put in place for impoverished municipalities (with little opportunities for internal cross-subsidisation) to be assisted in meeting their environmental planning and infrastructure needs.

[Uthungulu District Coastal Working Group]

The existing capacity of municipalities should be considered and programmes implemented to enhance the capacity in line with the responsibilities and functions that will be added by the enactment of the Bill

[Ocean Research Conservation Africa (ORCA) Foundation ]

Our privately funded organization, The ORCA (Ocean Research Conservation Africa)Foundation, established in 2001, has been primarily involved in accumulating data related to the state of our reefs and reef fish in the area of Plettenberg Bay and the Tzitsikamma reserve. Also, we provide an ongoing weekly education program for local children of Plettenberg Bay. The main purpose of the ORCA Foundation being to provide local decision makers (municipality) with guidelines of how best to manage the natural marine resources so vital for tourism, commercial usage and long term environmental stability in this area.

The key to the ongoing success of this program, that should be incorporated in the ICM Bill for long term benefit, are:

1. Recognition and encouragement from National government of the findings regarding the research that NGO's such as our organization have accomplished, so that both local government and local communities support such management programs.
2. National government should implement an integrated plan that links local NGO's with the National plan. There seem to be so many 'splinter' groups doing their own thing and could be so more effective if they were part of the bigger picture. I see National government playing this unifying and facilitating role. (One of our main hurdles is getting local government to react to our findings and implement the recommended management plan)
3. Funding grants from government based on incentive schemes, such as matching rand for rand of funds raised, completion of significant research findings, contribution to the overall integrated coastal management plan etc.

[Hessequa Municipality]

- Most coastal property owners do not believe in the ability of government, particularly that of Marine and Coastal Management of the Department of Environmental Affairs and Tourism (DEAT), to manage and protect coastal resources. To prevent pillaging of these resources they take it upon themselves to prevent public access through their properties. The fact that they de facto ensure that they, their families and friends have almost exclusive use of the coast, a public amenity, is rather not mentioned publicly and is sometimes masked by a "conservation stance". The establishment of public access points along the coast by virtue of the powers vested in the

state also means that DEAT will have to invest in the effective policing of the activities of the users of the coast (see comments about clause 12 below).

- The Draft Bill is extremely worried about public access to the coast without linking that directly and strongly to the economic exploitation of the coastline, especially for the purpose of strengthening tourism-related activities. This linkage should perhaps be strengthened in the document.

[Kathy Leslie (Personal Capacity)]

Lacking special protection of dunes (especially definition) as many are found considerably inland of coast and are very sensitive to engineering. Denuding or stabilisation should receive more mention than in Schedules irrespective of whether alien or indigenous vegetated. A considerable number of disaster stories involve sand movement!

Don't limit to "ecologically sustainable" – this could lead to conflict

No mention of opportunities the coast has to offer.

Should stress economic value of coast.

Should not only be about "protection".

Unfair distribution continues (i.e. not only in the past)

I like bullet re "conservation and sustainable development..."

[W.A. Gericke (Personal Capacity)]

Die kuslyn van Suid-Afrika benodig riglyne/wetgewing om beligting op en langs strande en die huidige donker dele van die kuslyn te beperk/reguleer. In die naam van sekuriteit word die hele Kaapse kus deur enige een verlig, en versteur dit die nag atmosfeer wat deel is van ons besondere kuslyn.

Munisipaliteite bv Mosselbaai bring groot ligte op strande aan sonder breë raadpleging.

Die horizon langs die kus word al meer belig en verlig. Enige ontwikkeling langs die kuslyn moet sy beligting beantwoord. Daar behoort duidelike standaarde hieroor te wees bv.

a. Ligte moet nie weg skyn van die perseel waar dit is op ander huise/gebiede/dele van die natuurlike omgewing nie.

b. Ligte moet nie opwaarts in die lug skyn nie.

c. Ligte moet slegs die doel dien waarvoor dit nodig is, bv 'n straatlig moet die straat verlig en nie die hele omgewing verlig en veral nie opwaarts in die lug skyn soos die nuwe kegelvormige straatligte wat deesdae algemeen gebruik word nie.

[West Coast District Municipality]

The Local Government Sector which are represented by District Municipalities (Class C Municipalities) and Local Municipalities (Class B Municipalities) are not empowered under the Constitution to perform the function Coastal Management.

(Please see Schedule 4 and 5 (Part B) of the Constitution where it lists the areas which Local government have legislative mandates for.

Due to the fact that most Local (Class-B) Municipalities do not have the necessary resources in the form of environmental officers etc. it is the opinion that this function should be delegated to the District Municipalities because this is at least the platform where environmental capacity or conservation staff currently do exist (West Coast DM, Overberg CM & Cape Metro). An added advantage by empowering and mandating the coastal District Municipalities and the Metro would be the holistic approach which is much easier to implement than fragmenting the coastal regions into much smaller municipal units – each with its own set of rules and regulations. (With the aid of DEA&DP the District Municipalities and Metro are already represented at the Provincial Coastal Committee of DEA&DP and each District Municipality also already has its own Regional Coastal Committee running which integrates on a regular basis with one another). Furthermore most District Municipalities are also “closer to the fire” and in most instances also already have by-laws promulgated to address coastal management issues.

In the past District Municipalities were responsible via by-laws and signage etc to manage vehicles and vehicle access on beaches and within the coastal zone. With the Vehicle Ban in the year 2000, the ORV legislation over-ruled these by-laws. The lead agent for ORV's and its management were now shifted to DEAT, thus shifting the management and control from a local government level to a Provincial Level. This explains the reason why nature conservation and environmental capacity still only exists on a district level – unfortunately these officials do not have the mandate, environmental/coastal management function or funding they generated in the past by licensing ORV's.

The drawing up of Coastal Management Programmes and Strategies is definitely a step closer to solving the problems we are currently experiencing, but the enforcement and compliance is where the problem really exists.

The solution to most of the problems currently experienced would be to mandate District Municipalities to actively manage the coastal zone under their jurisdiction, including the active enforcement of the ORV Regs, Boat Launching Sites etc by delegating the function via the listed functions in the constitution to the District Municipalities / Local Government (Class C Municipality).

[KZN Agriculture and Environmental Affairs]

There is confusion over the meanings of permit vs license. We suggest that the Marine Living Resources Act (1998) is consulted.

The establishment of a National Coastal Committee is an absolute imperative and should not be an option. The Bill states that the Minister “may establish a National Coastal Committee and determine its powers”.

The Bill is silent on the responsibility of local municipalities to promote integrated coastal zone management (ICZM) by convening a multi-stakeholder forum similar to the Provincial Coastal Committees for the local sphere of government. In KZN there has been significant effort made to establish District Coastal Working Groups and these for a are a true representation of cooperative governance to achieve and promote ICZM. These fora also play a povital role in capacitating local municipalities in the concepts of ICZM by virtue of exposure to different coastal stakeholders and their respective needs and requirements. The need to establish such for a gains greater priority given that municipalities must develop a municipal coastal management programme (S46). Such for a will play a critical coordination and implementation role in this regard.

The Bill, while making reporting on the State of the Coastal Environment a requirement, has little to no reference to the requirement of monitoring. Specific detail should be provided in respect to this critical provision and should include matters such as, standardization, minimum standards and links between processes.

Throughout the Bill, there must be the ability to regulate the contained provisions.

[Habitat Council, Cape Environmental Trust and the Still Bay Conservation Trust]

#### DELEGATION and CAPACITY

As a general point, we are concerned that when the Bill comes into effect, the roles of who will be responsible for what will not yet have been prescribed., but clearly, the delegation of responsibilities is to be expected.

In as far as the Minister is given sweeping powers to delegate to MECs and from him to municipalities, we are concerned that there will not be the necessary capacity vested in the local government institutions to take responsible decisions. This is especially so with respect to the needs of the coastal and littoral systems. Particularly is this so when considering applications for exemptions and permits and the factors that have to be taken into account.

Minister's powers - May not MUST

Read in conjunction with Section 88: Regulations by Minister, we find that the Minister MAY make regulations to prescribe for example, S88 (1)(f)(v), (vi) and (vii). We find that there are too many instance where matters are let too open. Surely, the Minsiter MUST make regulations to prescribe such necessary procedues.

[Robert Stegmann - Reserve Manager: ELCNR (Personal Capacity)]

Where references are made to coastal cliffs the public should be allowed to access and partially traverse the length of the cliff without being prevented from doing so. It would be suggested that a setback line for coastal cliffs be

considered so as to not hinder or prevent access thereon and halt development onto the edge of cliff faces thus altering the skyline.

I would suggest a minimum set back of 100m for development thus creating public open space.

The Coastal Zone Management Bill does not seek to set a limit in respect of Municipalities from altering the buffer zone to make more prime coastal plots available for development. I am of the opinion that the Bill needs to state a figure whereby a percentage of all plots or areas set for development are filled before the urban edge should be allowed to be altered. This should include a distance landwards that the urban edge should extend before the coastal zone may be extended coastwise. A ration may be able to resolve this issue. Ribbon development does not promote the aims and objectives of this bill.

Problems around authorisations for sand and shingle mining resulting from the lack of capacity in the Department of Mineral and Energy Affairs needs to be addressed by forcing sand mining applications to be issued in terms of the Bill. Care needs to be taken to capacitate Organs of State on the ground that can check on compliance and to reduce the fragmentation of the compliance around coastal management issues.

The ability of the State to break down and rehabilitate or order the action for structures that were considered as historically illegal will have to be checked and carefully considered as I do not know if the current law will facilitate such a consideration.

[Friends of DST]

Firstly, the one grey area of this whole ICM Bill is too much onus is put on your local municipality, not enough clear definition on management by all spheres of government that sets out the states duty to fulfill the environment rights in the Coastal Zone to give effect to Section 24 of the Constitution and that sets out the relationship with NEMA. There is a conflict with bylaws and other legislations. Roles need to be defined more clearly relating to the enforcement of the Bill.

5. Chapter 2 section 8 - 1./2. "MAY"  
" 2 section 9 - 1. "MAY'  
" 2 section 10 - 1./3. "MAY" also chapter 5 part 1 section 35 1.  
"MAY'

Chapter 4 section 1.c - The Minister "MAY" when necessary amend the program.  
as in chapter 4 it should state THE MINISTER MUST WHEN NECESSARY AMEND THE PROGRAM which thereby puts the onus on the Minister to see that the laws are upheld.

as well as in Chapter 5 - 35. 1 it should read The Minister MUST by notice in the Gazette establish a National Coastal Committee and determine its powers

THE WORD " MAY" IS TOO OPEN TO OPTIONS WHICH CAN MISGUIDE LAWS.

As stipulated in the english Oxford dictionary "may" is too open to options as well as, in questions "may" emphasizes uncertainty. In Government Policies there should be no uncertainties.

Also there is no mention that areas of high ecological , heritage importance in our coastal zone should be addressed in the Spatial Development Framework so that it is protected within the scoping framework for future development .

[Chief Directorate: Environmental Affairs (Eastern Cape)]

It is contended that “much of the rich natural heritage of our coastal zone” is being squandered by an absence of active management, or a lack of appropriate management, in addition to, or arguably more so than by “inappropriate management.” It is proposed that consideration be afforded to inclusion of this factor in the Preamble.

In accordance with specific comment elsewhere in this document, it is submitted that the Bill does not define “the status of coastal land” adequately for the purposes of dealing with key challenges which presently threaten the integrity of the country’s coastal heritage.

[Buffalo City Environment Trust]

1. Provide further guidance for land-use and spatial planning in the coastal zone
2. Provide further guidance on appropriate coastal development and the control of coastal sprawl.

[Kwazulu-Natal Conservancies Association]

What about invasive alien plant species in the coastal and dune forests ?  
Would the implementation of CARA be used ? These invasive plants are threatening biodiversity and also resulting in dune slumps and erosion along our coasts.

[St. Francis Conservancy]

Does your bill make adequate provision regarding guidelines to municipalities for land-use and spatial development issues? How does the Bill propose to determine extensions of the urban edge along the coastline? We also find there is a need to address the problems relating to coastal sprawl and to define permissible development along the coastline, not least with regard to visual, aesthetic impact.  
There is also a need to monitor municipal involvement and decision-making in future coastal developments.

Most of our conservancy's members own private property along the coast and the Sand and Kromme River estuaries. To what extent does the Bill address future development and protection, as well as preventing inappropriate development, of private property? Another aspect to take into consideration here is the known fact of inappropriate development projects being approved by subjectively influenced EIA's as a result of lobbying by developers.

(Not to mention the systematic stripping of perlemoen along our coast - does that issue not fall under the jurisdiction of this Bill?)

Referring to the laws on pollution control: There are already strict laws in place, but their implementation is not successfully guaranteed. Our coastline is defiled on a daily basis by litter from the local chokka boats as well as passing ships. Sporadic coastal clean-ups, organised by various sectors of the public, are hardly making a dent in the ever-increasing volumes dumped on our shore. Apart from the obvious damage to the environment, the significant detrimental impact this has on tourism cannot be overlooked. We feel an urgent need to address this problem at national level in an educative manner in the form of eg. informative workshops to be held for those responsible for the littering. This we see as a long-term process, which already needs to start at school level with awareness campaigns, focussing on the sentiments expressed in your 'Preamble' (in conjunction with the Dept of Education, this should become part of the curriculum).

[National Ports Authority]

The National Ports Authority, by virtue of its location within the coastal area; its national, strategic and economic importance to South Africa; has a dedicated Act, the National Ports Act 12 of 2005 published in GNR 48 in Government Gazette No. 29421. The objects of which are to promote the effective and productive South African Ports Industry that is capable of contributing to the economic growth of our country, amongst others. The Coastal Management Bill, in so far its relation to ports is concerned, detracts from the objects of the National Ports Act, in placing restrictions on Port operations as described in the table below. It is therefore requested at the outset, and in closing, that the Ports are explicitly excluded from those obligations that would in any way deter from its optimal operational performance, and which in any way would conflict with the National Ports Act. There are powers conferred onto the municipality that could effect port operations. The NPA should be consulted with before any decisions are made related to port operations, and port boundaries, etc.

[Irvin & Johnson Limited]

As background to our attached comments please note that Irvin & Johnson Limited owns a farm on the Danger Point Peninsula in the Gansbaai Municipal area. This land borders the high-water mark for several kilometres. Furthermore, Irvin & Johnson Limited has established an aquaculture operation on the farm and has invested many millions of Rands in this venture.

All requirements in terms of existing legislation have been complied with in the fore mentioned aquaculture operations and effectively Irvin & Johnson Limited is lawfully conducting aquaculture/mariculture activities and all building structures etc. have been erected with the appropriate approval and leases have been entered into with the relevant authority in respect of structures erected on coastal public property (as defined in the Bill).

The attached comments have been addressed in so far as we have been able to identify areas within the Bill which impact on our current rights and legal position and

we have tried to highlight those areas where we believe the provisions of the Bill must be reviewed to ensure they do not unnecessarily intrude upon existing rights and the existing legal position nor constitute expropriation without compensation.

General ment

On a similar note, we feel that a stronger “oversight” committee is highly desirable. This need not be instead of the advisory committee, but could act in collaboration with each other. It is most important to track the progress or otherwise of the intent of this Bill.

The Bill could be much stronger in its expression for the need and implementation of a *State of the Coast* reporting system. In addition to the obvious biological and ecological reporting usually contained with a State of the Coast report, it could also be used to measure the success of the intention of the Bill to promote and effect integrated coastal zone management.

In similar vein to point 1 above, the documents lacks attention to developing capacity in ICZM. It is acknowledged that such capacity is required at many levels. The document should create space for such capacity building and inter alia place more emphasis on partnerships with the private sector and encourage support from CBOs and NGOs, such as institutes. For example ORI has and will continue to play a role, but facilitating this in the Bill would be of enormous benefit to both DEAT and to the institutes. In addition, this can provide for career paths of South Africans and contribute to employment levels.

The terms “reasonable” (ca. 20 times), “reasonably (ca. 13 times) is glibly applied throughout the Bill even though it is virtually impossible to find a uniform definition as to what would constitute “reasonable”. This vague term weakens many sections of the Bill.

The Bill is mute on the responsibility of local municipalities to promote integrated coastal zone management (ICZM) by convening a multi-stakeholder forum similar to the Provincial Coastal Committees for the local sphere of government. In KZN there has been significant effort made to establish District Coastal Work Groups and these fora are a true representation of cooperative governance to achieve and promote ICZM. These fora also play a pivotal role in capacitating local municipalities in the concepts of ICZM by virtue of exposure to different coastal stakeholders and their respective needs and requirements. This needs to be promoted and regulated by the Bill.

There appears to be too little emphasis on evaluating alternative options in many cases – such as for dumping and discharging. While the sea does provide extensive assimilative capacity it should not automatically be seen as an option for waste disposal.

The role and/or linkages with inland provinces is missing. At the very least there should be some opportunity for consultation. Inland provinces do have considerable impacts on the coast, both negative and positive. In fact, considering UNCLOS, where land-locked countries may be given access to the coast- poses some obligations here.

The 4x4 regulations and associated launching of craft should be incorporated into this Bill

We feel that the discharge sections, especially pipelines, should be treated more as a collective to deal with total loading and cumulative effects. Encouragement should be given to fewer but better pipelines rather than a plethora of individual discharges. Larger pipelines can be better managed and monitored and may be financially stronger.

[Dr. B.W.G. Du Toit]

In sake: Wetgewing oor kusgronde/kus-eiendomme

Ek erstaan dat u teen die einde van verlede jaar wetgewing of voorgenome wetgewing afgekondig het in verband met kusgronde en dat die publiek 90 dae he tom daarop te reageer. Ek het ongelukkig nêrens hierdie wetgewing onder oë gehad nie, maar sover ek gehoor het, kom dit blykbaar neer dat geen geslote of eksklusiewe seegrond mag wee swat nie vir alle lede van die publiek toeganklik is nie. As ek reg gehoor het, sou u gesê het diat die kuslyn regeringseiendom is wat dus vir u die bevoegdheid gee om wetgewing daarvoor in te dien. Verstaan ek die inhoud van hierdie wetgewing of voorgenome wetgewing reg?

Die doel van my skrywe waarvoor ek asseblief u vriendelike aandag vra is die volgende: Ongeveer 36 jaar gelede het my skoonpa (reeds oorlede) 'n strokie seegrond van ongeveer 30 hektaar van 'n boer in Tsitsikamma, Oos-Kaap, gekoop wat vanselfsprekend oor die jare die vakansieplek van ons as kinders geword het. Met toestemming van die destydse streekdiensteraad van Humansdorp of Port Elizabeth (sover ek onthou) he tons daar vyf vakansiehuusies opgerig. Ek en my vrou beoog om ons na aftrede in 2009 daar te vestig, want ek is 'n predikant in diens van die NG Kerk wat na aftrede nie 'n ander heenkome het nie.

As natuurliefhebbers het al vyf ons aandeelhouers oor die jare streng natuurbewaring daar toegepas sodat die natuur- en seelewe daar floreer. Persone van buite moet deur 'n geslote hek en oor die plaasgrond kom om by die see te kom. Of andersins op die strand langs kom hoog- en laagwatergebiede wat, sover ek weet, allemansland is. Maar omdat die kus daar baie ru is, he tons nie veel besoek van vreemdelinge op die strand nie.

Sal hierdie wetgewing die situasie vir ons verander? Sal dit o.a. beteken dat enige persoon in die omgewing vrye toegang tot die grond en die strand hê? Indien dit wel so is – wat ek van harte hoop nie waar is nie – kan ek voorsien dat juis die teendeel van wat u blykbaar wil bereik, nl bewaring van kusgrond, die geval sal wees. Die omgewing van die grond, tussen Eersterivier/Oubos en Humansdorp, is wel nie dig bewoon nie, maar daar het hervesting van die Fingbos in die omgewing plaasgevind wat die situasie in die toekoms mag verander. (Die Fingos het juis 'n grondeis rakende daardie omgewing ingedien.) Dit gaan vir ons eerlik nie net om swart- of bruinmense nie, maar om alle mense in die omgewing. Ons het juis in die verlede van ons huise daar aan blanke mense vir 'n naweek of langer verhuur, maar moes dit stopsit omdat daar te veel skade aan die natuur en die rotslewe op die strand was.

Ons wil nie graag 'n situasie sien waar enige persoon eenvoudig net na die stukkie strand en see kan kom en dalk alles vernietig waarvoor ons jare beywer het nie. Dis nie 'n luukse oord nie, trouens die huise en berendeels eenvoudige huise van hout en asbes en net bedoel vir vakansie. Maar dis 'n kosbare plek en 'n natuurparadysie omdat ons streng reëls oor bewaring daar toegepas het.

Ek hoop u kan my gerusstel wat hierdie wetgewing betref. Verskoon asseblief as ek die kat aan die stert beet he twat die voorgenome wetgewing betref, maar ons wil tog die versekering hê dat ons dit kan bewaar wat vir ons oor die jare 'n kosbare erfenis geword het. Trouens, die lede van die maatskappy het my gevra om namens myself en hulle inligting in te win oor die inhoud van die wetgewing en indien dit impliseer wat ons vrees, dan ten sterkste daarteen aan te teken.

### **3. STYLE**

#### [DEAT Comments:](#)

*Some of the proposals made in this section have been incorporated into the revised Bill. This has been captured in the section-specific comments.*

[Endangered Wildlife Trust]

Section 59(3) - Correct typological error “96” to read “...is delegated to the MEC but may be exercised by the minister in accordance with Section 95

Section 60(3) - Correct typological error “96” to read “...is delegated to the MEC but may be exercised by the minister in accordance with Section 95

The draft ICMB could be strengthened with the inclusion of a set of guiding principles (i.e. risk-aversion, precautionary approach, priority allocation of resource use rights to coast-dependent inhabitants) for interpretation of the provisions. This would assist socially, economically and environmentally consistent and responsible decision-making.

[P.A. Whittington (Personal Capacity)]

Section 50: There are two subsection (7)s.

Section 51 (1) (b) (and other similar references): The term “take account of” is inappropriate. Taking account of public comment could mean that such comments are noted and summarily ignored. The terminology used should imply that comments will be given serious consideration on their merits and proposals/actions altered in view of such comment where appropriate.

Section 51 (3) (b): “parties” should be “party”.

Section 59 (4): There are two clause (ii)s.

Section 62 (2): “Considering” would seem an inappropriate term. “considering a report” does not imply that the organ of state has to take any notice of it! The wording of the bill should ensure that the organ of state follows the advice given by specialists in any environmental impact assessment report (otherwise there is little point in undergoing the assessment and commissioning the report in the first place).

Section 73 (4): The text in line 4 should be “an authorisation amend”.

Section 74 (7): There are two sub-clause (f)s.

Section 79 (2) (b): There are two sub-clause (ii)s.

Schedule 3, part C: there is a typing mistake in the heading – “Econominc” should be “Economic”.

[LEGALB]

## COMMENT ON REFERENCING ERRORS

(Errors in labels, wording, punctuation, indents and the like)

(a) Miscellaneous comment on simple numbering errors

s13(2)(d) is followed by a second s13(2)(d) instead of s s13(2)(e).

s26(1)(a) and (b) is followed by a second (a) and a (c) instead of a (c) and (d).

s28(e) is followed by a (g) instead of a (f).

s37(2) is followed by a second s37(2) instead of a (3).

s50(4) is followed by a (6), (7) and (7) instead of a (5), (6) and (7).

s74(7)(f) is followed by a second (f) instead of a (g).

[eThekwini Municipality]

The frequent cross-referencing in this document makes it difficult to read and appears to be the result of numerous changes to this document in its drafting. It is recommended that this be relooked at in this light so that an easier, simpler and readable version is redrafted.

Part 6 Coastal zoning schemes

There is a numbering problem with this as there are two sub-headings ‘Part 6’. Correct this to read ‘Part 7’.

[Natural Resources and the Environment]

Reference to the Department of Water Affairs should be consistent to prevent

confusion:

Section 74(4) refers to 'Department of Water Affairs'

Section 74(6) refer to 'Department of Water Affairs and Forestry'

[KZN Agriculture and Environmental Affairs]

- The frequent cross-referencing in this document makes it difficult to read and a simpler method of drafting is recommended.

## **4. PRINCIPLES**

[Endangered Wildlife Trust]

We believe that the ICMB could be strengthened with the inclusion of a set of guiding principles (i.e. risk-aversion, precautionary approach, priority allocation of resource use rights to coast-dependent inhabitants, polluter pays etc.) for interpretation of the provisions. This would assist socially, economically and environmentally consistent and responsible decision-making. Development of these principles could draw from those principles clearly set out in the White Paper for Sustainable Coastal Development. The principles would further strengthen implementation of the ICMB in that the Bill currently contains a large number of references to subjective and discretionary terminology and concepts (i.e. 'reasonable', 'public interest', 'extraordinary conditions' etc.) that would be challenging to enforce or monitor in the absence of guiding principles.

[Ezemvelo KZN Wildlife]

It is strongly suggested that specific coastal Principles be added to enhance the NEMA Principles. It is recommended that the Principles provided for in the White Paper for Sustainable Coastal Development in South Africa be added to strengthen the Bill.

[LEGALB]

We have further found that the drafters of the Bill have utilised wording and definitions that have very wide and/or very vague application. The wide meaning of and vague use of many key words utilised in the Bill is perhaps necessary to ensure that the Bill as an Act will be able to cope with predicted future pressures of land and resource utilisation, and of climatic change. However, the wide net that is cast by this Bill will inevitably encourage abuse of coastal resources, land ownership rights, even in the name of the Bill as an Act, which will require reference by those wishing to retain the integrity of the objectives of the Bill to have recourse in courts of law regarding constitutionality and basic constitutional rights. We are of the opinion that - as a solution and only to the extent that words and concepts in the Bill are necessarily widely stated in order to ensure the Bill is forward looking and able to cope with future exigencies due to unknown factors related to for instance climate

change dynamics - the drafters should have clearly grounded all widely stated words and concepts in statements of basic and primary principles so as to contextualise their interpretation and application. In summary, we find the statement of basic principles as the compass to its interpretation and application to be lacking in the Bill

For example, this Act uses numerous terms to describe physical areas and the relationship between these areas, and we find that the relationship of each such area to each section of the Bill and those with duties and responsibilities under the Bill, and hence the implications of the Bill, are really very unclear and uncertain. We feel that this is a consequence of the Bill having failed to explicitly ground these classifications and categories of land and area within the principles of ownership, proper administrative procedure, and hence notions of “public space”, “state ownership”, and “land held in trust by the state”, “rights of access”, “community participation” and “public participation” “expropriation” and so on. Therefore, concepts such as “equitable access” and “coastal public property” remain blurred despite intense analysis. Were they grounded in basic principles contained in our Constitution and the National Environmental Management Act, No. 107 of 1998 (“NEMA”) of administrative law, conservation, ownership, and so on, it the Bill could have been imminently understandable, and of great practical and heuristic use in achieving its objectives.

[The Overstrand Conservation Foundation]

The OCF believes that the principles that underpin the proposed legislation need to be spelled out clearly within the Bill to aid correct interpretation and application. For example, the principle that the rights of the community must take precedence over the rights of individual landowners in respect of access to and use of land within the coastal zone.

Given the protracted implementation timeframe and the rapid pace of coastal degradation due to development pressure, some mechanism needs to urgently be put in place to ensure that the principles that underpin responsible management of the coastal zone are used in all decision making with regards to the approval of developments. If a principles chapter is included into the Bill and it becomes mandatory that these principles are adhered to until such time and the specific coastal management plans have been adopted, this may go some way towards addressing the problem. Another suggestion is that the application of principles and policies set out in the White Paper become mandatory in the interim period.

If interim control measures are not put in place there is likely to be an increase in pressure to get developments approved that will be made more difficult once the Bill becomes an Act.

[eThekweni Municipality]

The coastal management principles in the Coastal Management White Paper must be included in the Bill, and reference should perhaps also be made to the National Environment Management Act (NEMA) principles.

[Uthungulu District Coastal Working Group]

It is the opinion that principles in terms of the legislation is lacking, such as those contained in the Development Facilitation Act. This will allow for improved decision-making *versus* mainly regulation as contained in the Bill. From a municipal point of view it would be considered crucial that the need & desirability of developments can be established and proofed in line with such principles. An example that can be used is that developments allowed in the coastal zone should in fact be "coastally dependant".

[Kathy Leslie (Personal Capacity)]

Without a doubt, PRINCIPLES are lacking. Amongst other things, they would provide a basis for integrated coastal management (ICM) and dealing with conflicts amongst other things – including development of CM programmes at all 3 levels of gov. (An alternative would be to take NEMA principles and develop clear goals for CM).

Principles are laid out in Draft 7 (March 2003). To pick up on just a couple of things that provide a basis for action = 1) explicit reference to risk averse approach (to avoid bad decision making) and 2) reference to "long term perspective" which is critical to understanding slow changes in coast due to various developments and may affect one's approach to section 15 (1).

Lacking special protection of dunes (especially definition) as many are found considerably inland of coast and are very sensitive to engineering. Denuding or stabilisation should receive more mention than in Schedules irrespective of whether alien or indigenous vegetated. A considerable number of disaster stories involve sand movement!

[Habitat Council, Cape Environmental Trust and the Still Bay Conservation Trust]

A UNDERLYING PRINCIPLE OF PRECAUTION TO BE ACKNOWLEDGED

We ask that the principle be acknowledged in the Act the decision should be done on the basis of being risk averse.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) This matter has been highlighted over recent weeks. It is accepted that the principles as captured in earlier versions of the Bill were a reasonable reflection of the core elements of the founding White Paper, and, as such, merit reintroduction.
- (ii) If they were too be reintroduced, greater emphasis should be placed on protection of the integrity of coastal landscapes and habitats (and less on *fauna and flora*), and on the aesthetic and economic value of the coast.

[KZN Agriculture and Environmental Affairs]

- An omission in the document is a set of generally endorsed “Principles”. Such principles provide the overall rationale and reference points for regulating coastal zone activities. A number of clearly defined principles were included in the White Paper for Sustainable Coastal Development with the purpose of providing ‘the point of departure for translating our vision into practice’. The principles outlined in the White Paper are informed by the principles listed in the Constitution and NEMA.

[Adrienne Edgson (Personal Capacity)]

1. There are no principles mentioned for this “Act”. Principles give direction as to the spirit of the Act and allow for direction to be considered when considering enforcement and judgment for non-compliance.

[Department of Environmental Affairs & Development Planning]

Integrated Coastal Management Principles as contained in the White Paper.

The obvious omission from this chapter is the principles on which the White Paper was founded. These principles formed the guiding principles on which the Bill was drafted. The danger of omitting it from the Bill could lead to the principles being ignored and could lead to future amendments to the bill conflicting with those principles. It is therefore important to contextualize the provisions of the Bill by referring to the underlying principles of integrated coastal management. It could become important when provisions are tested in a court of law and could provide valuable assistance to interpreting contentious provisions.

[Oceanographic Research Institute]

An omission in the document is a set of generally endorsed “Principles”. Such principles provide the overall rationale and reference points for regulating coastal zone activities. Just like the constitution of South Africa, a set of *Principles of Coastal Zone Development* would greatly strengthen this Bill. A number of clearly defined principles were included in the *Draft White Paper for Sustainable Coastal Development in South Africa* (hereafter termed the White Paper) with the purpose of providing “the point of departure for translating our vision into practice”. The White Paper is not vague in its expression of the importance of the principles. The principles outlined in the White Paper are informed by the principles listed in the Constitution and NEMA.

[DEAT Comments:](#)

*The principles were not included in the revised draft.*

## **5. FUNDING MECHANISMS**

[Endangered Wildlife Trust]

One of the biggest concerns we have of the current version of the ICMB is the lack of reference to financial support for implementation of its provisions. We recommend that the ICMB be further significantly strengthened by clarifying the availability and allocation of resources with which to ensure implementation, and where appropriate, enforcement of the Bill's provisions. In addition, we recommend clarification of the mechanism by which funds will be received and disbursed during implementation.

[P.A. Whittington (Personal Capacity)]

The bill does not, as far as I can see, make provision for a coastal trust or board to provide financial support to coastal management as recommended by the White Paper.

[Dr E.H. Schumann (Personal Capacity)]

An understanding of all the different systems in the whole coastal zone is essential, so that the correct decisions can be made. It is therefore disappointing that the Coastal Management Fund option has been discontinued. This fund could have been used for a number of purposes, in particular research to better understand the complex interactions in the coastal zone. At present it is not at all clear if other funds will be available to conduct such research, yet it is likely that the success or failure of developments will depend on knowledge gained through such research. Lack of knowledge will severely affect the predictive capability in terms of decisions that need to be made.

[Ezemvelo KZN Wildlife]

As an observation, the successful implementation of the Bill will require dedicated financial and administrative resources to implement that are likely to fall outside of implementing organ of state budgets. The Bill is, naturally, silent on this matter. It is recommended that the Bill provide a framework for the provision of financial and administrative resources at the municipal, provincial and national government levels. The alienation of land is seen to be both needy and problematic. In order to resolve this, it is strongly recommended that the Bill makes provision for the establishment of a "Land Purchase" fund.

[KZN Agriculture and Environmental Affairs]

- The Bill is also silent with regards to the implications of its implementation and the provision of capacity at National, provincial and local government level needs to be included as a legal requirement / responsibility that needs to be budgeted for accordingly in terms of the medium term expenditure framework.

[SANParks (Port Elizabeth)]

User pays principle to support research

A fund similar to Marine Living Resources Fund should be established to address coastal management and research. The environmental impact of coastal development, in all forms, needs to be addressed. Research need to focus on understanding the specific impacts as well as form the basis for appropriate management.

[eThekweni Municipality]

With regard to content, a significant flaw is the failure to mention financial and administrative resources to implement the Bill/Act. These relate especially to financial compensation for land that may be expropriated or acquired by the State as well as the administrative burden imposed on local authorities in implementing certain sections of the Bill/Act. The Bill should not be silent on the need for additional financial and human resources to ensure that it is adequately implemented.

[Robert Stegmann - Reserve Manager: ELCNR (Personal Capacity)]

Repair and removal notices. One of the greatest failings of NEMA and compliance notices specifically is the lack of funding for the removal and breaking down of structures then the remedial work and then there is the cost recovery which is costly. This places excessive burden on the responsible Organs of State which will result in the proposed system not being implemented unless a fund was created that could be administered by the National Coastal Committee established in terms of Chapter 5. The coastal committee would then be responsible to ensure that the funds are used in such a manner that problem issues are tackled along the coastline and that each issue would be considered on the strength of the motivation and support from the committees reporting to the National Coastal Committee.

The fund would have to be audited annually and the findings published.

Accountability would have to be enforced.

Contingency should be made for fines to split 50 / 50 with the first

50% going to the organ of State that is successful with the conviction and the remainder goes to the 'fund' as considered in terms of point 3 above.

This will result in a more motivated approach by organs of State to act against offenders and 'they will then own the legislation.' Alternatively if the penalties allowed for all the fine to be allocated to the Organ Of State undertaking the enforcement then the fund could be done away with once the initial implementation of the now Bill had been completed and the Departments had sufficient funds to undertake the action on their own.

[KZN Agriculture and Environmental Affairs]

- With regard to content, a significant flaw is the failure to mention financial and administrative resources to implement the Act. These relate especially to financial compensation for land that may be expropriated or acquired by the State as well as the administrative burden imposed on provincial lead agents and local authorities in implementing certain sections of the Act. Previous

versions of the Bill made reference to a “Coastal Fund” and it urged that the inclusion of such a provision be reconsidered.

[Jackie Rapson (Coastal & Environment Services)]

I am concerned that the fund which used to be available has been removed from the bill. If one looks at the coastal areas of our country it is immediately obvious that this is where a lot of the current development and growth is taking place. It would seem therefore that the coastal municipalities have a greater responsibility than inland areas especially as the coastal bill now places a large portion of the responsibility for coastal protection squarely on their doorstep. Surely it would be beneficial to have a fund that these municipalities can draw from in order to put these requirements into practice? The Eastern Cape coast is a rapidly growing holiday destination for a lot of South Africans and the municipalities are already under enormous pressure to provide services and infrastructure to meet the growing need. If the fines and fees from poachers, beach users etc were put back into the monitoring of the coastal areas then this would surely become a self-motivating and perhaps even self-sustaining activity. After all, if we don't have the funds to police our streets how are we going to police our coasts?

[Endangered Wildlife Trust (General Comments for Development Bank of Southern Africa)]

The draft ICMB could be further significantly strengthened by clarifying the availability and allocation of resources with which to ensure implementation, and where appropriate, enforcement of the Bill's provisions. No clear mechanism exists for receiving and disbursing funds. Furthermore, the draft ICMB lacks clarity on how resource and capacity constraints at national, provincial and local levels will be overcome. This is particularly pertinent with the increased administrative burden projected for provincial and municipal authorities.

The ICMB would be much improved by inclusion of a specific mechanism to ensure that implementation, administrative costs (i.e. permits) and enforcement activities are realistically considered and adequately covered.

[Deborah Vromans - SANParks Knysna (Personal Capacity)]

#### Funds

- Comment: A dedicated fund needs to be established given the inadequacy of the Marine Living Resources Fund. The fund should not be governed by MCM given the current capacity inadequacies.
- Motivation:
  1. Funding is an ongoing issue that is not being resolved adequately and within the necessary time-frame.
  2. Funding is critical.

It provides opportunity for capacity enhancement (as per comment 2 above).

[Adrienne Edgson (Personal Capacity)]

In the White Paper it was proposed that funding provisions for certain aspects of this Act would be made. This appears to have fallen away – or will it come in the regulations. There is so much environmental law which is “un-funded” resulting in excellent laws on paper but lousy in execution. It would appear that this statute could go the same way.

[Department of Environmental Affairs & Development Planning]

### Marine and Coastal Fund

The White Paper advocates a sustainable funding mechanism to underpin integrated coastal management. Such an instrument already exists in relation to the management of marine living resources in the form of the Marine Living Resources Fund (formerly constituted as the Sea Fisheries Fund). However, the Marine Living Resources Fund itself would not provide an appropriate funding mechanism for the wider task of supporting integrated coastal management. For example, the fact that it is established under the MLRA would mean that using the funds for purposes unrelated to marine living resources, would be *ultra vires* that Act. Furthermore, it would be inappropriate to use funds generated primarily from the fishing industry and intended for use in connection with the management of marine living resources, for a variety of purposes, some of which may be entirely unrelated.

On the other hand, government is not in favour of a proliferation of funds, each dealing with a particular aspect of coastal management. The Act should provide for the existing Marine Living Resources Fund to be restructured as a single Marine and Coastal Fund, within which separate sub-accounts could be established (e.g. for marine living resources, coastal management and marine pollution control).

It is important to note that the unique status of most of the coastal zone as coastal public property creates a particularly powerful rationale for establishing such a Fund. It is appropriate that at least a proportion of the income derived from the use of an asset owned by the people should be used to protect that asset and to rehabilitate any degradation of it.

There are also a number of inherent advantages in providing a single funding mechanism for supporting the implementation of national and provincial Coastal Management Programmes. In this way, funds may be allocated in accordance with a consistent set of policies and objectives designed to give effect to the White Paper, rather than on sectoral grounds. Furthermore, the Fund could be used to achieve a number of important objectives that currently are not adequately provided for. These include: funding the acquisition of additional land to be incorporated in coastal public property, providing short-term financing for dealing with emergency protective

measures to natural disasters and generally supporting initiatives that promote the attainment of the objectives of the White Paper.

Furthermore, the Marine and Coastal Fund can be used as a powerful non-coercive mechanism for promoting the sustainable use of the coast and to increase the productivity of the coast. This will be achieved both by restoring damaged ecosystems and by creating new opportunities for coastal communities to build sustainable livelihoods. Last but not least mechanism must be built into the Bill to allow provincial and local spheres to access funds.

[Oceanographic Research Institute]

The document seriously lacks any reference to funding. Without a proper allocation of funds, and mechanisms that allow for fund generation, it is unlikely that the activities demanded by this Bill will be undertaken and that implementation will make progress. It is no use espousing the economic benefits and virtues of the coast (as in GDP), and then failing to provide the support for this. There are international examples of generating revenue from the coast. In this document levies and royalties are mentioned, but there is no attempt to allocate these. There is even no clarity whether income generated is for account of municipality, province or state. We believe this is urgent and needs to be innovatively included.

[Belastingbetalersvereniging]

Ten slotte en spesifiek t.o.v. bepalings ingevolge waarvan pligte na munisipaliteite afgewentel word is dit ook nodig dat die kwessie van finansiering uitgeklaar word. Die nasionale gesag behou klaarblyklik die finale bevoegdheid en seggenskap. Die hele aangeleentheid soos deur die beoogde wetgewing aangespreek is inderdaad 'n nasionale bate en belang. Dit gaan naamlik oor toerisme en die beskerming en benutting van natuurlike en ander bates ten behoeve van die totale gemeenskap. Dit sou derhalwe onlogies, ongeregverdig en ook ongrondwetlik wees om die uitvoering en toepassing van die wetgewing op plaaslike owerhede aft e wentel sonder voorsiening van finansiering. Dit sal in elk geval futiel wees vanweë die finansiële posisie waarin plaaslike owerhede hulself bevind. Om van die funksionele basis van plaaslike owerheid in kusgebiede gebruik te maak is sinvol. Daarmee saam moet egter die finansiële steun gaan om hoegenaamd die gewenste of enige uitwerking te hê.

[EIA, Nelson Mandela Bay Metropolitan Municipality]

After the roles and responsibilities have been identified for municipalities National Government (DEAT) must provide the necessary support to municipalities to implement the Coastal Management Programme. DEAT must provide financial support , through Treasury, to assist with the implementation of this programme.

[DEAT Comments:](#)

*A funding mechanism was not included in the revised draft.*

## **6. LONG TITLE AND PREAMBLE**

[Oceanographic Research Institute]

National Environmental Management: Integrated Coastal Management Bill

To establish a system of integrated coastal and estuarine management in South Africa, including norms, standards and policies, in order to promote the conservation of the coastal environment, and the ecologically sustainable development of the coastal zone; to define rights and duties in relation to the seashore and other coastal areas; to determine the responsibilities of organs of state in relation to the seashore and other coastal areas; to prohibit incineration at sea; to control dumping at sea, pollution in the coastal zone and other adverse effects on the coastal environment; to give effect to South Africa's international obligations in relation to coastal matters; and to provide for related matters.

### DEAT Comments:

*Minor amendments were made to the Long Title. It now reads as follows:*

“To establish a system of integrated coastal and estuarine management in South Africa, including norms, standards and policies, in order to promote the conservation of the coastal environment, and maintain the natural attributes of coastal landscapes and seascapes, and to ensure that development and the use of natural resources within the coastal zone is socially and economically justifiable and ecologically sustainable; to define rights and duties in relation to coastal areas; to determine the responsibilities of organs of state in relation to the seashore and other coastal areas; to prohibit incineration at sea; to control dumping at sea, pollution in the coastal zone, inappropriate development of the coastal environment and other adverse effects on the coastal environment; to give effect to South Africa's international obligations in relation to coastal matters; and to provide for related matters.”

PREAMBLE

WHEREAS

- Everyone has the constitutional right to have the environment, including the coastal environment, protected for the benefit of present and future generations;

- integrated management of the coastal zone as a system is essential to achieve the constitutional commitment to improving the quality of life of all citizens, while protecting the natural environment for the benefit of present and future generations;

## **NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT BILL**

To establish a system of integrated coastal and estuarine management in South Africa, including norms, standards and policies, in order to promote the conservation of the coastal environment, and the ecologically sustainable development of the coastal zone; to define rights and duties in relation to the seashore and other coastal areas; to determine the responsibilities of organs of state in relation to the seashore and other coastal areas; to prohibit incineration at sea; to control dumping at sea, pollution in the coastal zone and other adverse effects on the coastal environment; to define transgressions and associated penalties; to give effect to South Africa's international obligations in relation to coastal matters and to provide for related matters.

### **PREAMBLE**

#### **WHEREAS**

- all South African citizens have a constitutional right to have the environment, including the coastal environment, protected for the benefit of present and future generations;
- integrated management of the coastal zone as a management system is essential to achieve the constitutional commitment to improving the quality of life of all citizens, while protecting the natural environment for the benefit of present and future generations;
- the coastal zone is a unique part of the environment in which biophysical, economic, social and institutional considerations interconnect in a manner that requires a dedicated and integrated management approach;
- much of the rich natural heritage of our coastal zone is being squandered by overuse, degradation and inappropriate management;
- the economic, social and environmental benefits of the coastal zone have been distributed unfairly in the past;
- the conservation and sustainable development of the coastal zone requires the establishment of an innovative legal and institutional framework that clearly defines the status of coastal land and waters and the respective roles of the public, the state and other users of the coastal zone and that facilitates a new co-operative and participatory approach to managing the coast; and
- integrated coastal management should be an evolving process that learns from experiences, takes account of the functioning of the coastal zone as a whole and that seeks to co-ordinate and regulate the various human activities that take

place in the coastal zone in order to achieve its conservation and sustainable use;

[DEAT Comments:](#)

*One minor amendment was made to the Preamble, namely:  
Bullet six has been changed to read: “the conservation and sustainable use of the coastal zone.....”*

**CHAPTER 1  
INTERPRETATION, OBJECTIVES AND APPLICATION OF ACT**

[DEAT Comments:](#)

*Chapter 1 deals with the objectives and application of the Act. Amendments have been made to various definitions and new definitions introduced in order to improve the formulation of subsequent sections. The sections dealing with the objectives of the Act, the state’s duty to fulfil environmental rights in the coastal environment, and the section dealing with conflicts with other legislation have all remained largely unchanged, with only minor grammatical changes made. The section dealing with the application of this Act has been amended to include “internal waters” – water in coastal bays, such as False Bay.*

**7. DEFINITIONS**

A

[DEAT Comments:](#)

*Amendments have been made to various definitions and new definitions introduced in order to improve the formulation of subsequent sections.*

“admiralty reserve”

[LEGAL B]

“admiralty reserve”

This definition in the Bill ignores possible mistakes on the face of, or contradictions between descriptions of the status of land in, various documents. Perhaps this definition should reflect that deeds and documents are “*prima facie*” evidence that land is in an admiralty reserve.

[eThekweni Municipality]

Admiralty reserve is by definition – portion of land which remain in state ownership after the subdivision and sale of land has occurred. Strictly speaking then ‘admiralty reserve’ is defined as “unalienated state land” The stated definition is much broader including the concept of a reserve over land owned by state and others. Perhaps it would be proper to restrict the definition of admiralty reserve to just unalienated state land as the other categories are more often then not portions of registered cadastral properties and may be better handled under a different grouping

[K.P. Mackie (Personal Capacity)]

“admiralty reserve”

Delete: “parallel to and adjoining the inland side of the high water mark”

It is not possible to draw a line parallel to a fractal line.

Substitute: “within some designated distance inland of the high water mark”

[Kathy Leslie (Personal Capacity)]

Admiralty reserve – remove "parallel to and" = superfluous

#### DEAT Comments:

*The definition has been amended to read as follows:*

“**admiralty reserve**” means any strip of land adjoining the inland side of the high-water mark which, when this Act took effect, was state land reserved or designated on an official plan, deed of grant, title deed or other document evidencing title or land-use rights as “admiralty reserve”, “government reserve”, “beach reserve”, “coastal forest reserve” or other similar reserve;”

#### “adverse effect”

[Kathy Leslie (Personal Capacity)]

Adverse effect – don't like "trivial or insignificant" as it is open to wide interpretation; take "significant" out of (b) and (c) as it is open to abuse especially in short term vs long term effects.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) The inclusion of the aspect of the definition which deals with cumulative effects is fully supported.
- (ii) Nevertheless, disquiet is expressed at the overall complexion of the definition.
- (iii) While the terms *insignificant* and *trivial* are unequivocal in their own right, one cannot but foresee dispute when the application of these terms to environmental situations is contemplated.
- (iv) A linkage between the effort in the Bill to qualify the concept of “adverse effect” as applied to the coastal zone, and uncertainty in relation to the term “significant pollution or degradation of the environment” in Section 28 of NEMA, is noted. It would appear that we have little option but to live with this uncertainty, and its ramifications for affiliated legislation such as the Bill.
- (v) In the circumstances one can speculate whether we may not be better off retention of a more simple definition of “adverse effect”, such as the one which was included in Version 9 of the Bill.
- (vi) While, as clearly stated, the inclusion in the definition of specific effects does not limit it, an expansive definition perhaps opens opportunities for interpretations which run counter to its intent.
- (vii) A case in point is worrying: could the references to human health, well-being and economic activity not be inverted to facilitate the practice of justifying harsh effects on the biophysical environment on the basis of claimed human benefits?
- (viii) One is left with the impression that this definition is something of a minefield.

[Oceanographic Research Institute]

“adverse effect” means any actual or potential impact on the environment that impairs, or may impair, the environment or any aspect of it to an extent that is more than trivial or insignificant and without limiting the term, includes any actual or potential impact on the environment that results in -

- (a) the health or well-being of a person being detrimentally affected;
- (b) a significant impairment of the ability of any person or community to provide for their health, safety or social and economic needs; or
- (c) a significant detrimental effect on the environment by virtue of the cumulative effect of that impact taken together with other  acts;

“adverse effect” means any actual or potential impact on the environment that impairs, or may impair, the environment or any aspect of it to an extent that is more

than trivial or insignificant and without limiting the term, includes any actual or potential impact on the environment that results in -

- (a) the health or well-being of a person being detrimentally affected;
- (b) a significant impairment of the ability of any person or community to provide for their health, safety or social and economic needs; or
- (c) a significant detrimental effect on the environment  virtue of the cumulative effect of that impact taken together with other impacts;

DEAT Comments:

*The definition has been amended to read as follows:*

**“adverse effect”** means any actual or potential impact on the environment that impairs, or may impair, the environment or any aspect of it to an extent that is more than trivial or insignificant and without limiting the term, includes any actual or potential impact on the environment that results in -

- (a) a detrimental effect on the health or well-being of a person
- (b) an impairment of the ability of any person or community to provide for their health, safety or social and economic needs; or
- (c) a detrimental effect on the environment due to a significant impact or cumulative effect of that impact taken together with other impacts;”

“aircraft”

[South African Planning Institute]

Some of the definitions and descriptions in the Bill are considered problematic and confusing:

- “Aircraft” versus “South African Aircraft”

[Department of Environmental Affairs & Development Planning]

- The definition of “aircraft” must include “as defined by the Civil Aviation Authority”.

DEAT Comments:

*The definition has not been amended.*

“authorisation”

DEAT Comments:

*The definition has been amended to read as follows:*

“**authorisation**” means an authorisation under this Act and includes a coastal waters discharge permit, a general authorisation, a dumping permit a coastal lease, a coastal concession and any authorisation that is regarded as being an authorisation under this Act by virtue of section 97, but excludes an integrated environmental authorisation;  
“

B

“biological diversity” or “biodiversity”  
[Ezemvelo KZN Wildlife]

1) The NEMA definition of biodiversity should be used. Failing this it is recommended that the following is added.

‘(d) and includes the ecosystem services provided to humankind and the environment as a whole’

[LEGALB]

The Biodiversity Act 10 of 2004 does not define “biodiversity” and leaves it up to the common and dictionary meaning of the word. We suggest that this definition be removed from this Bill so that the meaning of biodiversity can be similarly treated in the application of both Acts. As it stands, the definition in this Bill is so vague and wide that it is not of much use anyway. However, it could create confusion and should be removed.

[KZN Agriculture and Environmental Affairs and Ethekwini Municipality]

There are a few instances where the proposed definitions are inconsistent with other related acts or regulations, i.e. NEMA, NEM: BA and the EIA regulations of July 2006. In order to be consistent, we recommend that the preferred definition be used in the ICMB and, where necessary, the other acts should be amended to ensure consistency.

The following is a table of some of the definitions of concern with recommendations as to the most appropriate one.

Definition Where defined Source of recommended definition  
‘biological diversity’ or ‘biodiversity’ = ICMB, NEM:BA = NEM:BA

[Chief Directorate: Environmental Affairs (Eastern Cape)]

Definition	Where defined	Source of recommended definition
'biological diversity' or 'biodiversity'	ICMB, NEM:BA	NEM:BA

[Oceanographic Research Institute]

“biological diversity” or “biodiversity” means the diversity of animals, plants and other organisms, including the diversity of animals, plants or other organisms found within and between –

- (a) ecosystems;
- (b) habitats;
- (c) the ecological complexes of which these systems and habitats are part; and
- (d) species;

“**biological diversity**” or “**biodiversity**” means the diversity of animals, plants and other organisms, including the diversity of animals, plants or other organisms found within and between –

- (e) ecosystems;
- (f) habitats;
- (g) the ecological complexes of which these systems and habitats are part; and
- (h) species;

[DEAT Comments:](#)

*The definition has been amended to read as follows:*

“**“biological diversity”** or “**biodiversity**” has the same meaning ascribed to it in the Biodiversity Act;”

C

“coastal access land”

[National Ports Authority]

S 1 definitions: S 1 (vii) coastal access land S 1 (viii) coastal buffer zone S 1 (xvi) coastal public property S 1 (xviii) coastal set-back line S 1 (xx) coastal waters S 1 (xxi) coastal wetland S 1 (xxii) coastal zone S 1 (xxxvi) estuary. The Port of Durban may be defined as any one of these definitions due to its location. Clarity is required in respect of which definition is applicable to a port environment, as the implications become blurred and sometimes require additional management plans. Further, it is not clear as to what role the Port is to play. Ports/ harbours require a definition that is unique to its characteristics and function.

[DEAT Comments:](#)

*The definition has been amended to read as follows:*

“**coastal access land**” means land designated as coastal access land in terms of section 18 (1), read with section 26;”

DEAT Comments:

*A new definition has been included:*

“**coastal activities**” means coastal activities listed or specified in terms of Chapter 5 of the National Environmental Management Act;”

DEAT Comments:

*The definition for coastal buffer zone has been amended to read as follows (name changed):*

“**coastal protection zone**” means the coastal protection zone as determined in terms of section 16;”

“coastal environment”

[KZN Agriculture and Environmental Affairs]

'coastal environment'	This term should reflect the intent of the White Paper for Sustainable Coastal Development to allow a larger area that either impacts on the coast or may be impacted on by the coast, to be included in this 'coastal environment' rather than just the defined coastal zone. An example is in respect to catchment management and its impact on estuaries.
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[Oceanographic Research Institute]

“coastal environment” means the environment within the coastal e;

“**coastal environment**” means the environment within the coastal zone; including ????

DEAT Comments:

*The definition has not been amended.*

“coastal management”

[Department of Minerals and Energy]

Coastal Management	Definition should adopt a more holistic approach to	Planning is included in the definition and rehabilitation replaced with
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	sustainable development.	restoration and remediation, which is more appropriate to coastal management.
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[Department of Environmental Affairs & Development Planning]

Definition of Coastal Management vs. Coastal Zone management?? Delete “zone” from provisions in the Bill (Section 6) – confusing.

[Oceanographic Research Institute]

“coastal management” includes –

- (a) the regulation, management, protection, conservation and rehabilitation of the coastal environment; and
- (b) the regulation and management of the use and development of the coastal zone and coastal resources, including monitoring, compliance and enforcement;

[Kathy Leslie (Personal Capacity)]

Coast management – change to Coastal Zone Management

[DEAT Comments:](#)

*The definition for coastal land lease has been amended to read as follows (name changed):*

“**coastal lease**” means a lease awarded in terms of section 65 read with section 94;”

[DEAT Comments:](#)

*The definition has been amended to read as follows:*

“**coastal management**” includes –

- (a) the regulation, management, protection, conservation and rehabilitation of the coastal environment;
- (b) the regulation and management of the use and development of the coastal zone and coastal resources;
- (c) monitoring and enforcing compliance with laws and policies that regulate human activities within the coastal zone; and
- (d) planning in connection with the activities referred to in paragraphs (a), (b) and (c);

“

“coastal management objective”

[Kathy Leslie (Personal Capacity)]

Coastal management objective – obvious and clumsy reading. How about: "means a clearly defined objective established by a cmp established in terms of Chapter 6"

[Oceanographic Research Institute]

“coastal management objective” means a clearly defined objective established by a coastal management programme for a specific area within the coastal zone which coastal management must be directed at achieving;

DEAT Comments:

*The definition has not been amended.*

“coastal protected area”

[Endangered Wildlife Trust]

1. The definitions of ‘coastal protected area’ and ‘coastal zone’ should be defined independently. They currently make reference to each other in the definitions and this may result in interpretation difficulties.

[Natalie Way-Jones (Personal Capacity)]

- Terminology is confusing and sometimes misleading. For example, coastal protected areas actually refers only to those areas managed by or on behalf of state. This implies that the coastal protected areas should form part of the coastal public property.

[Wildlife and Environmental Society of SA]

The definition of "coastal protected area" (p 12) is unclear; there are too many "nots". Does it mean all protected areas except those managed by, or on behalf of, the state? In which case, what *are* the remaining protected areas?

eThekweni Municipality

- ‘coastal protected area’ & ‘coastal zone’ – these definitions refer to one another and this may result in interpretation difficulties.

[Department of Minerals and Energy]

Coastal Protected Area	This Act should not duplicate conservation areas legislation since it will be confusing to stakeholders. This Act	<a href="#">Existing and planned conservation areas in the coastal zone are dealt with under the Protected Areas Act, 2003.</a>
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	should deal with sustainable development and not specifics.	Currently, the Protected Areas Act only deals with conservation or protected areas on land and not in the marine environment. Department of Minerals and Energy (DME) strongly propose that the Protected Areas Act is reviewed to include the marine environment to deal with Marine Protected Areas (MPA's).
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[KZN Agriculture and Environmental Affairs]

'coastal protected area' & 'coastal zone'	These definitions refer to one another and this may result in interpretation difficulties.
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[DEAT Comments:](#)

*The definition has been amended to read as follows:*

“**coastal protected area**” means a protected area that is situated wholly or partially within the coastal zone and that is managed by, or on behalf of, an organ of state, but excludes any part of such a protected area that has been excised from the coastal zone in terms of section 22;”

“coastal public property”

[Belastingbetalersvereniging]

“coastal public property” – Die bepaling is belangrik vanweë die feit dat dit ter sake is i.v.m. beheer en toegang op strande en wat daarmee saamgaan. Die omskrywing verwys na art 7 wat sekere kategorieë bevat soos uiteengesit en verwys in sub.art. (d) na die “seashore” (strand) wat op sy beurt per definisie omskryf word. Die praktiese effek van omskrywing in die “Bill” is dat die “coastal public property” bestaan uit die kuswater en onderliggende bodem, die area tussen laag- en hoogwatermerk, onmiddellik aanliggende kranse (“cliffs”) en sekere verskuiwing van grenslyne. In die “Bill” word nie gehandel met aanliggende gebied direk langs die hoogwatermerk nie. Die feit is dat dit hierdie gebied is wat deur besoekers aan die strand betree en gebruik word, juis wanneer dit hoogwater is. M.a.w. ‘n sekere strook langs die hoogwatermerk moet ook in die woordskrywing ingebou word en die “Bill” doen dit nie.

[DEAT Comments:](#)

*The definition has not been amended.*

“coastal resources”

[Kathy Leslie (Personal Capacity)]

Coastal resources – what about "natural heritage" (should be defined as it is used in the Preamble. Check that application of Chapter 7 is not limited.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

“coastal resources”

- (i) The restrictions which this definition (read together with the definition of “cultural heritage”) place on the vast span of naturally occurring objects and material which comprise the bulk of the coastal zone are worrying.
- (ii) In confining the concept of resources to elements which are either of use to humans, or are “of aesthetic, architectural, historical, scientific, social or spiritual value or significance”, one is running the risk of excluding elements which constitute resources merely by virtue of being elements of the mother resource, viz. the coast itself.
- (iii) This is particularly the case in respect of naturally-occurring elements.
- (iv) On the other hand, does the definition not create a self-defeating (to the Bill) onus to demonstrate that something constitutes a resource?
- (v) While not necessarily directly related to the text of the definition, it (the definition) raises the issue of “resources” (elements of the coastal zone?) which are regulated by organizations whose core business is not coastal management, coastal forests being a case in point. (This point is being made notwithstanding the restrictions on the clearing of indigenous vegetation in terms of Section 64 & Part B of Schedule 3).
- (vi) While the Bill contains a provision (Section 62) governing the implementation of land use legislation in the coastal (buffer) zone, it does not appear to contain a parallel one to cover implementation of legislation such as the National Forests Act or the Conservation of Agricultural Resources Act.
- (vii) This is significant because activities authorized in terms of such statutes regularly give rise to significant and sometimes devastating impacts on the integrity of the coastal zone.

[Oceanographic Research Institute]

“coastal resources” means any part of –

- (a) the cultural heritage of the Republic within the coastal zone, including shell middens and traditional fish traps; or
- (b) the coastal environment that is of actual or potential benefit to humans;

“coastal resources” means any part of –

- (a) the cultural heritage of the Republic within the coastal zone, including shell middens and traditional fish traps; or
- (b) the coastal environment that is of actual or potential benefit to humans;



DEAT Comments:

*The definition has not been amended.*

“coastal set-back line”

[Chamber of Mines of SA]

The definition of ‘coastal set-back line’, is not very clear.

[Kathy Leslie (Personal Capacity)]

Coastal set-back line – remove "local" before municipality as municipality is defined as local and district.

Also "...structures *and services*..."

eThekwini Municipality

See comments under s25

[K.P. Mackie (Personal Capacity)]

“coastal setback line”

Delete: “means a line”

Substitute: “means a beacons boundary”

The public needs a definite, conventional boundary line to work to. The proposed substitution achieves that and dissociates the setback line from the fractal line of the high water mark. It is up to the MEC to ensure that the line is appropriately drawn with respect to the high water mark..

DEAT Comments:

*The definition has been amended to read as follows:*

“**coastal set-back line**” means a line determined by the MEC in accordance with section 25 in order to demarcate an area within which development will be prohibited or controlled in order to achieve the objects of this Act or coastal management objectives;”

“coastal use permit”

use permit”  means a permit issued under section 63, 65 or 66;

[Oceanographic Research Institute]

[KZN Agriculture and Environmental Affairs]  
See comments under s25(1)

DEAT Comments:

*The definition has been deleted.*

“coastal waters”

[Natalie Way-Jones (Personal Capacity)]

• The “coastal waters” definition includes marine waters, understood to mean the sea, and estuaries. However, estuaries requires their own estuarine management plans under the Act, separate from coastal management plans, and this could create confusion.

• Definition of “coastal waters” should refer to Section 21, not 26.

[Kathy Leslie (Personal Capacity)]

Coastal waters – does this extend to HWM? Pg 4 of Guide to Bill shows extends to LWM only.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

“coastal waters”

- (i) While the cross-reference to the Maritime Zones Act is clear enough, consideration should be given to also including a description of the spatial extent of the country’s territorial waters, if this is legally and practicably possible.
- (ii) Does the definition include low salinity estuary waters which are subject to tidal action in the vicinity of the tidal heads of estuaries?

[Oceanographic Research Institute]

“coastal waters” –

- (a) means marine waters that form part of the territorial waters or the internal waters of the Republic as defined in the Maritime Zones Act, 1994 (Act 15 of 1994); and
- (b) subject to section 26, any uary;

“coastal waters” –

- (a) means marine waters that form part of the territorial waters or the internal waters of the Republic as defined in the Maritime Zones Act, 1994 (Act 15 of 1994); and
- (b) subject to section 26, any estuary;

DEAT Comments:

*The definition has not been amended.*

“coastal wetland”

[Ezemvelo KZN Wildlife]

7) It is unclear why there is a ‘coastal wetland’ and ‘wetland’ definitions.

8) Coastal wetland should be modified as the following:

(i) ... is regularly or periodically inundated by water and includes salt marshes ...

[Kathy Leslie (Personal Capacity)]

Coastal wetland – (ii) remove "includes"

[LEGALB]

s1: The definition of “coastal Wetland (b)(ii) - The word “includes” appears to be extraneous and unnecessary, and we feel should be deleted for purposes of simplicity and clarity.

eThekwini Municipality

· ‘coastal wetland’ & ‘wetland’ - Is ‘wetland’ used on its own in the Bill? If not we suggest it be removed from definitions.

[CSIR]]

The Bill refers to ‘wetland’, ‘coastal wetland’ and ‘estuary’. This is confusion as, for example an ‘estuary’ can be classified as a ‘wetland’ or ‘coastal wetland’, and a ‘coastal wetland’ can be classified as a ‘wetland’. It is therefore recommended that the Bill explicitly defines how these three categories are linked/not linked to one another.

[KZN Agriculture and Environmental Affairs]

‘coastal wetland’ & ‘wetland’	Is ‘wetland’ used on its own in the Bill? If not, we suggest it be removed from definitions.
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[Oceanographic Research Institute]

“coastal wetland” –

(a) means any wetland in the coastal zone; and

(b) includes –

(i) land adjacent to coastal waters that is regularly or periodically submerged by water, salt marshes, mangrove areas, inter-tidal sand

and mud flats, marshes, and minor coastal streams regardless of whether they are of a saline, freshwater or brackish nature; 

(ii) includes the water, bed and banks of, and the subsoil beneath, any such wetland;

“coastal wetland” –

(a) means any wetland in the coastal zone; and

(b) includes –

(i) land adjacent to coastal waters that is regularly or periodically submerged by water, salt marshes, mangrove areas, inter-tidal sand and mud flats, marshes, and minor coastal streams regardless of whether they are of a saline, freshwater or brackish nature; and

(ii) includes the water, bed and banks of, and the subsoil beneath, any such wetland; 

DEAT Comments:

*The definition has been amended to read as follows:*

“**coastal wetland**” –

(a) means any wetland in the coastal zone; and

(b) includes –

(i) land adjacent to coastal waters that is regularly or periodically inundated by water, salt marshes, mangrove areas, inter-tidal sand and mud flats, marshes, and minor coastal streams regardless of whether they are of a saline, freshwater or brackish nature; and

(ii) includes the water, bed and banks of, and the subsoil and substrata beneath, any such wetland;”

“coastal zone”

[Endangered Wildlife Trust]

Ensure consistency with definition of “coastal zone” as defined in the NEMA: Regulations on the control of vehicles in the coastal zone.

[Natalie Way-Jones (Personal Capacity)]

- The “coastal zone” definition should include “coastal waters”.

[Ezemvelo KZN Wildlife]

Definition of “coastal zone” should include free flowing rivers.

*The estuaries, beaches and marine environment and the biota are highly dependent on free flowing rivers (sediment, completion of lifecycles, etc).*

[LISA GUASTELLA (AS CONSULTING)]

definition of "coastal zone" should be more specific in the "definitions" section - I find you have to go paging around to different parts of the legislation to get some physical definition, would be convenient if it was summed up a bit better under "definitions", although this may be difficult as there are so many different bits & pieces that pull together to ultimately define it.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) While the reasoning behind the provisional confinement of the landward extension of the coastal zone to the specified buffer zone boundaries is understood, it needs to be placed on record that such confinement, relative to the more realistic demarcations in the *White Paper for Sustainable Coastal Development in South Africa*, disappoints.
- (ii) Crucially, the confinement is held to constitute a severe constraint to action urgently required in order to arrest current land use trends which threaten the sustainable development vision articulated in the *White Paper*.

[KZN Agriculture and Environmental Affairs]

'coastal protected area' & 'coastal zone'	These definitions refer to one another and this may result in interpretation difficulties.
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[Oceanographic Research Institute]

"coastal zone" means the area comprising: coastal public property, the coastal buffer zone, coastal access land, and coastal protected areas, and includes any aspect of the environment on, in and above n;

[DEAT Comments:](#)

*The definition has been amended to read as follows:*

“**coastal zone**” means the area comprising: coastal public property, the coastal protection zone, coastal access land, and coastal protected areas, the seashore, coastal waters, the exclusive economic zone and includes any aspect of the environment on, in, under and above these areas;”

“coastal zoning scheme”

[LEGALB]

“coastal zoning scheme”

This definition and the sections of the Bill dealing with coastal zoning schemes do not provide any information as to what the possible content of a coastal zoning scheme may be, nor the reasons for establishing a coastal zoning scheme.

In this regard, see comment below on s55 and s56 of the Bill.

[Chief Directorate: Environmental Affairs (Eastern Cape)]  
“coastal zoning scheme”

- (i) The definition does not provide much insight into the intent underlying the entity.
- (ii) Additionally, the use of the word “scheme” has given rise to confusion as a result of the use of the same term within the land use planning domain.
- (iii) It is suggested that the crossover between aspects of the Bill and mechanisms in use with the land use planning domain be dealt with comprehensively and conclusively through, amongst others, engagement with representatives of the land use planning sector

[DEAT Comments:](#)

*The definition has not been amended.*

[DEAT Comments:](#)

*A new definition has been inserted:*

**“competent authority”** means a competent authority as identified in terms of Chapter 5 of the National Environmental Management Act;

“cultural heritage”

[K.P. Mackie (Personal Capacity)]

“cultural heritage”

Delete: “means any place or object of aesthetic, architectural, historical, scientific, social or spiritual value or significance”

Substitute: “means any place, object or vegetation of aesthetic, architectural, engineering, historical, scientific social or spiritual value or significance”

“Vegetation” has been added since there are non-invasive aliens that do qualify eg the African palms on Camps Bay Beach.

“Engineering” has been added since it is commonly clearly distinct from architecture. Examples include the Sea Point Promenade in Cape Town, the Victoria Embankment in Durban and Robinson Drydock in the V&A.

[Oceanographic Research Institute]

“cultural heritage” means any place or object of aesthetic, architectural, historical, scientific, educational, social or spiritual value or significance;

DEAT Comments:

*The definition has not been amended.*

D

“delegation”

[LEGALB]

“delegation”

The necessity of inserting this definition escapes us.

DEAT Comments:

*The definition has not been amended.*

“Department”

[Department of Environmental Affairs & Development Planning]

Insert in the definition of Department: “.....means the National Department of Environmental Affairs and Tourism”.

DEAT Comments:

*The definition has been amended to read as follows:*

“**Department**” means the national department responsible for environmental affairs;”

“development”

[Endangered Wildlife Trust]

The definition of ‘development’ should include land re-zoning as an additional subsection (e) as ‘a process initiated by a person to change the use, physical nature, or appearance of that place’.

[Ezemvelo KZN Wildlife]

The definition of development should be modified with the following

‘(d) ... - be it indigenous or otherwise.

‘(e) – an application to re-zone land in preparation for development.

[LEGALB]  
“development”

The word “place” in this definition makes this definition so wide as to allow the application of this Act to development that perhaps was not envisaged to fall within the ambit of this Act. We would recommend removing the definition (NEMA does not contain a definition of development) or narrowing the definition.

eThekwini Municipality

· ‘development’ - this should include a new subsection (e) – an application to re-zone land in preparation for development. If sub-divisions and consolidations are included, rezoning should be included. ‘development’ is very biased to land based development. Perhaps the definition needs to be expanded to talk about reclamation and offshore structures.

[K.P. Mackie (Personal Capacity)]

“development”

Add: (d) the artificial stabilisation of naturally dynamic land forms and topography

These two are activities that do occur in practice and can have environmental impacts in conflict with the spirit of the bill. They have been added for completeness.

Change: (d) to (e)

Add: (f) the artificial vegetation of naturally unvegetated areas

[Kathy Leslie (Personal Capacity)]

Development – (a) add "or services" at end. Does (d) imply indigenous vegetation or any?

[Chief Directorate: Environmental Affairs (Eastern Cape)]

“development”

- (i) As with “adverse effect”, reservations are expressed about whether the use of an expansive definition, including specific activities, may not result in interpretations which run contrary to the intent of the Bill.
- (ii) In fact, it is submitted that unlike in the *White Paper*, where the term *development* depicts a generic strategy, its use in the Bill conjures the impression of jargon.

- (iii) The term as defined could moreover aid its cynical manipulation or the misrepresentation of facts, in so far as activity which might be illegal or seriously destructive to the environment could at the same time, with the backing of the (future) Act, be portrayed by its protagonists as “development.”
- (iv) If possible, the term should be omitted altogether, through the use of alternative, more succinct terminology (such as construction, disturbance etc), preferably within specific activities such as those listed in Schedule 3.

[KZN Agriculture and Environmental Affairs]

‘development’	This should include a new subsection: (e) “an application to re-zone land in preparation for development”. If sub-divisions and consolidations are included, rezoning should be included.
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[Oceanographic Research Institute]

“development” in relation to a place, means any process initiated by a person to change the use, physical nature, or appearance of that place, and without limitation includes:

- (a) the construction, erection, alteration, demolition, or removal of a structure or building;
- (b) the subdivision or consolidation of land;
- (c) changes to the existing or natural topography of the coastal zone; and
- (d) the destruction or removal of vegetation;

“development” in relation to a place, means any process initiated by a person to change the use, physical nature, or appearance of that place, and without limitation includes:

- (a) the construction, erection, alteration, demolition, or removal of a structure or building;
- (b) the subdivision or consolidation of land;
- (c) changes to the existing or natural topography of the coastal zone; and
- (d) the destruction or removal of vegetation, minerals and other natural resources;

[SA Council for Natural Scientific Professions (Prepared by Biotechnology & Environmental Specialist Consultancy CC)]

Under the definition for “Development” provision is made for (d) “the destruction or removal of vegetation”. I believe that the ICM Bill should refer specifically to indigenous/protected vegetation, as the definition in its current form includes alien vegetation (and whereas and by reason other legislative requirements alien vegetation must be removed) and possibly also “garden escapees”.

DEAT Comments:

*The definition has been amended to read as follows:*

**“development”** in relation to a place, means any process initiated by a person to change the use, physical nature, or appearance of that place, and without limitation includes:

- (a) the construction, erection, alteration, demolition, or removal of a structure or building;
- (b) a process to rezone, subdivide or consolidate land;
- (c) changes to the existing or natural topography of the coastal zone; and
- (d) the destruction or removal of indigenous or protected vegetation;”

“dumping at sea”

[LEGALB]

“dumping at sea”

The term indicates that at one must one be “at sea” to dump. The Act defines “sea” as including all marine waters...” and “coastal waters” is defined as marine waters that form part of ... the internal waters of the Republic”. Ipso facto, “at sea” would include being at sea on internal waters. However, the content of the definition ‘dumping at sea’ appears to relate purely to the sea, proper, not to internal waters. If it is not the intention to include dumping in internal waters in the concept “dumping at sea”, this definition should be changed.

Subsection (a) of this definition would appear not to prohibit the dumping at sea of for example operational nuclear waste from nuclear powered vessels. We would recommend the wording be changed to ensure that this would fall within the prohibition.

Subsection (d)(i) of this definition, which refers to disposal of sea through sea out-fall pipelines, seems unrelated to the Subsection (d), under which it falls. The latter refers to the abandonment or toppling at site of a platform or other structure at sea. We would suggest that this inconsistency be resolved.

In our reading of the Bill, Subsection (c) of the definition is contradicted by Subsection (d), especially (d)(ii) and this contradiction should be resolved.

Subsection (d)(iv) will prohibit for example diamond mining by filter suction pipes and other exploration and mining processes... is that the intention?

eThekwini Municipality

· ‘dumping at sea’ & ‘incineration at sea’ - In terms of Chapter 8 and the definition, operational waste may be dumped at sea without a permit. We believe that there should be tighter control over the disposal of operational waste.

[K.P. Mackie (Personal Capacity)]

“dumping at sea”

These two are both potentially significant activities that need to be individually identified.

Add:

“(v) dumping of dredge spoil in the sea, on the sea bed or on the sea shore for disposal, for stockpiling or for land reclamation”

The wording given here is merely a suggestion. Further research could improve the wording.

“(vi) dumping of waste from demolition or spoil from excavations during construction work in the sea, on the sea bed or on the sea shore.”

[Department of Minerals and Energy]

Dumping at sea	Section d (vi) of definition excludes storing or depositing of marine mining residue generated by prospecting, exploration and mining in the Exclusive Economic Zone (EEZ). The Mineral and Petroleum Resources Development Act (MPRDA) (2002) deals with waste management and pollution control concept.	
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[Kathy Leslie (Personal Capacity)]

Dumping at sea – would like stormwater to be included please. Also why exclude (d) (ii) and (iii)? – open to abuse.

[KZN Environmental Affairs]

'dumping at sea' & 'incineration at sea'	In terms of Chapter 8 and the definition, operational waste may be dumped at sea without a permit. We believe that there should be tighter control over the disposal of operational waste.
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[Oceanographic Research Institute]

"dumping at sea" means –

- (a) any deliberate disposal into the sea of any waste or other material other than operational waste from a vessel, aircraft, platform or other man-made structure at sea;
- (b) any deliberate disposal into the sea of a vessel, aircraft, platform or other man-made structure at sea;
- (c) any storage of any waste or other material in the seabed and the subsoil thereof; or
- (d) any abandonment or toppling at site of a platform or other structure at sea, for the sole purpose of deliberate disposal, but does not include –
  - (i) the lawful disposal at sea through sea out-fall pipelines of any waste or other material generated on land;
  - (ii) the lawful depositing of any substance or placing of any thing in the sea for a purpose other than mere disposal of it;
  - (iii) abandoning anything referred to in paragraph (ii) in the sea; or
  - (iv) disposing of or storing in the sea any tailings or other material from the bed or subsoil of coastal waters generated by the exploration, exploitation and associated off-shore processing of mineral resources from the bed or subsoil of the sea;

"dumping at sea" means –

- (a) any deliberate disposal into the sea of any waste or other material other than operational waste from a vessel, aircraft, platform or other man-made structure at sea;
- (b) any deliberate disposal into the sea, unless authorised by a special permit of a vessel, aircraft, platform or other man-made structure at sea;
- (c) any deliberate disposal into the sea of unused or discarded fishing gear;
- (c) any storage of any waste or other material in the seabed and the subsoil thereof; or
- (d) any abandonment or toppling at site of a platform or other structure at sea, for the sole purpose of deliberate disposal, but does not include –
  - (i) the lawful disposal at sea through sea out-fall pipelines of any waste or other material generated on land;
  - (ii) the lawful depositing of any substance or placing of any thing in the sea for a purpose other than mere disposal of it;
  - (iii) abandoning anything referred to in paragraph (ii) in the sea; or
  - (iv) lawful disposing of, or storing in, the sea any tailings or other material from the bed or subsoil of coastal waters generated by the exploration,

exploitation and associated off-shore processing of mineral resources from the bed or subsoil of the sea;

[Department of Environmental Affairs & Development Planning]

Paragraph (c) needs to include the area beneath the subsoil i.e. bedrock as in certain instances, indestructible waste is normally disposed of in capsules excavated deep beneath the subsurface into the bedrock.

[Western Cape Department of Environmental Affairs and Development Planning (Region A1 George)]

Paragraph (c) needs to also include the area beneath the subsoil i.e. bedrock as in certain instances, indestructible waste is normally disposed of in capsules excavated deep beneath the subsurface into the bedrock.

*DEAT Comments:*

*The definition has been amended to read as follows:*

**“dumping at sea”** means –

- (a) any deliberate disposal into the sea of any waste or other material other than operational waste from a vessel, aircraft, platform or other man-made structure at sea;
- (b) any deliberate disposal into the sea of a vessel, aircraft, platform or other man-made structure at sea;
- (c) any storage of any waste or other material on or in the seabed its subsoil or substrata; or
- (d) any abandonment or toppling at site of a platform or other structure at sea, for the sole purpose of deliberate disposal, but “dumping at sea” does not include –
  - (i) the lawful disposal at sea through sea out-fall pipelines of any waste or other material generated on land;
  - (ii) the lawful depositing of any substance or placing of anything in the sea for a purpose other than mere disposal of it;
  - (iii) abandoning anything referred to in paragraph (ii) in the sea; or

- (iv) disposing of or storing in the sea any tailings or other material from the bed or subsoil of coastal waters generated by the exploration, exploitation and associated off-shore processing of mineral resources from the bed, subsoil or substrata of the sea;”

E

“effluent”

[TRANSNET]

Does the definition of “effluent” include storm water? This has implications for developments within the ports as there are limited options for the disposal of storm water.

[Ezemvelo KZN Wildlife]

The definition of effluent should be modified with the following

‘(d) ...dissolved or suspended in the liquid and ... should read as:-

...dissolved or suspended in any liquid and... from that of the water into which it is discharged be it directly or indirectly via the soil profile or as runoff.

[LEGALB]

“effluent”

This definition should to make it more specific and applicable perhaps read, “without limiting the afore-going” instead of “without limitation”, and should include a last phase “or which will over time result in water that has a substantially different chemical composition or temperature from that of the water into which it flows and/or assimilates “.

eThekwini Municipality

· ‘effluent’ - The definition of effluent is very wide and does not necessarily mean that created by industrial and commercial activities, this can cause problems with later clauses.

[KZN Agriculture and Environmental Affairs]

‘effluent’	Recommend consistency with the National Water Act which no longer refers to “effluent” but rather “water containing waste”.
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[DEAT Comments:](#)

*The definition has been amended to read as follows:*

“**“effluent”** means any liquid discharged into the environment as waste and without limitation, includes any substance dissolved or suspended in the liquid, and water

containing waste ; or liquid which is a different temperature from the body of water into which it is being discharged;”

“environment”

[Endangered Wildlife Trust]

The definition of ‘environment’ should be specified and written in full

eThekweni Municipality

‘environment’ - recommend that the NEMA definition be written out in full.

[KZN Agriculture and Environmental Affairs]

‘environment’	Recommend that the NEMA definition be written out in full.
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[Oceanographic Research Institute]

“environment” has the same meaning as that provided for in the National Environmental Management Act;

[DEAT Comments:](#)

*The definition has been amended to read as follows:*

**“environment”** means ‘environment’ as defined in the National Environmental Management Act;

“environmental impact assessment”

[LEGALB]

“environmental impact assessment”

NEMA does not specifically make provision for the establishment of minimum requirements for environmental impact assessments. Therefore, we suggest that to make this definition of practical application that the text “established by” in this definition read ‘established by or in terms of “.

[DEAT Comments:](#)

*The definition has been deleted.*

“estuary”

[Ezemvelo KZN Wildlife]

The definition of an estuary should be modified with the following

(c) and its immediate surrounds including but not limited to associated floodplains, salt marches and primary drainage lines flowing into the estuarine water body.

[Friends of the Bot River]

“ESTUARY” add “closed estuarine system” – eg: Bot River Estuary

[Alan Boyd (DEAT)]

On page 15, definitions, the definition of an estuary should include a part (c) which states

: “or in which the influence of the sea can be measured in terms of salinity higher than that of the fresh river water which flows into the system” .

The reason for this is that it is often difficult and or expensive to measure the upper extent of tidal influence due similar water elevation changes due to wind and other factors in some systems. This is also more consistent with the definition in the National Water Act, and with the Marine Living Resources Act, which states that “this Act shall not apply in respect of fish found in water which at any time does not form part of the sea.” The two indicators for forming part of the sea, namely tidal influence and the occurrence of water with a salinity above fresh river water, would thus both be covered.

[Department of Minerals and Energy]

Estuary	The inland boundary of an estuary is important and should clearly be indicated in the definition. This would assist DME to determine if an application is within an estuary or not.	<a href="#">Propose to add point c: “Inland boundary of an estuary is the high tide mark or the 3 – 5 meter contour”.</a>
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[KZN Agriculture and Environmental Affairs]

'estuary'	The “and” needs to be replaced with “or”. Consideration should be given to including reference to the “historical” tidal influence as a lot of estuarine systems are silted up, thereby greatly reducing the tidal influence. It is proposed that the originally included reference to saline influence, as reflected upon in the draft National estuarine protocol be considered.
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[Oceanographic Research Institute]

- The term “estuary” is defined as a body of surface water that is part of a water course. The question is which part of a water course and will this be uniform for all systems as South African estuarine types are varied and even vary in size seasonally. It is suggested that a more suitable definition be set for estuaries to incorporate this variability. For instance, the head of an estuary will be far inland of the coastal buffer zone; therefore the coastal boundary for its management and monitoring will be specific to each estuary. Who will be responsible for these activities and how will this be determined? The current estuarine definition would exclude coastal lakes such as St Lucia and Kosi in

northern KwaZulu-Natal where estuarine areas extend far from where the rise and fall of tide is observable.

[Oceanographic Research Institute]

“estuary” means a body of surface water that –

- (a) is part of a water course  is permanently or periodically open to the sea; and
- (b) in which a rise and fall of the water level as a result of the tides is measurable at spring tides when the water course is open to the .

“estuary” means a body of surface water that –

- (c) is part of a water course that is permanently or periodically open to the sea; and
- (d) in which a rise and fall of the water level as a result of the tides is measurable when the water course is open to the sea;

[CSIR]

The definitions of “coastal wetland”, “wetland” and “estuary” are confusing. You need to tease out the differences more clearly and indicate that an estuary is a subset of “coastal wetlands”

Your definition of the spatial boundary of an estuary is very narrow and in conflict with other planning initiatives currently being used to manage estuaries in South Africa. It is also in conflict with what is being recommended as part of Framework for drafting a Estuarine Management Plan in the C.A.P.E. Estuaries Management Programme.

It will be more beneficial from a planning perspective, to consolidate the various spatial definitions versus introducing a new definition. In fact, the proposed definition exclude parts of our larger estuaries. For example, your current definition leaves out the upper sections of the Klein Estuary (near Hermanus), Swartvlei and Wilderness. These are all estuaries that are ranked among the top 20% in terms of their biodiversity importance.

The methods for Resource Directed Measures for estuaries developed under the National Water Act (No 36 of 1998) provide the most appropriate administrative definition for the geographical boundaries of an estuary. This is currently being applied by estuarine scientists and managers around the country. It defines the boundaries of an estuary as:

\* Seaward boundary: Estuary mouth (however, there are systems where the ‘estuary’ often expands to the nearshore marine environment and where this boundary definition may need to be reconsidered in future).

\* Upper boundary: Extent of tidal influence, i.e. the point up to which tidal variation in water levels can still be detected or the extent of saline intrusion, whichever is furthest upstream.

\* Lateral boundaries along the banks: The 5.0 m above mean sea level (MSL) contour.

DEAT Comments:

*The definition has been amended to read as follows:*

“**estuary**” means a body of surface water that –

- (e) is part of a water course that is permanently or periodically open to the sea;  
and
- (f) in which a rise and fall of the water level as a result of the tides is measurable at spring tides when the water course is open to the sea; or
- (g) the salinity is measurably higher as a result of the influence of the sea;

“exclusive economic zone”

G

“Gazette”

[LEGALB]

The text “Provincial Gazette” in subsection (b) of this definition should read “Provincial Gazette of the province within which the MEC was appointed”.

DEAT Comments:

*The definition has not been amended.*

H

“high-water mark”

[Wildlife and Environmental Society of SA]

High Water Mark: How is this to be identified in practical terms? On any given day, one may not be able to identify this point?

[Endangered Wildlife Trust]

The definition of ‘high water mark’ should include estuarine high water tidal mark when the estuary is closed. In addition, given the dynamic nature of the boundaries of the high (and low) water mark, we recommend the establishment of a cooperative mechanism among relevant authorities to ensure the regular revision and update of such boundaries.

[Natalie Way-Jones (Personal Capacity)]

- The low and high water mark and littoral zone are subject to various natural processes and are dynamic over time. Thus the definitions should be refined to specify their delineation over time, e.g. average over XX years.

[Friends of the Bot River]

“high water mark” – would it not be suitable to include the 1:50 / 1:100 year flood plain eg: The Bot River Estuary cannot use tide as a basis for development issues or social issues eg: camping as we are only tidal every three years.

[eThekweni Municipality]

Definition	Where defined	Source of recommended definition
high-water mark'	ICMB, EIA regulations July 2006, Sea-Shore Act	ICMB

[K.P. Mackie (Personal Capacity)]

“high water mark”

Delete:

“means the highest line reached by the coastal waters as a result of either spring tides or ordinary storms occurring during the stormiest period of the year, but excluding exceptional or abnormal floods.”

Substitute:

“means the highest line reached by the water of the sea during ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods.”

The proposed new definition is the result of extremely sloppy legal draughting. It displays a complete lack of understanding of the concept of high water mark. It offers two fundamentally different criteria – storms and spring tides – without a basis for choosing one or the other. The difference on many parts of the coast can amount to substantial areas of land – generally in favour of private owners and contrary to the spirit of the bill – particularly the concept of “access”. If property boundaries extend down to the high tide elevation this will severely restrict access along the sea shore.

The proposed alternative is the old definition from the Sea Shore Act. It generally implies the swash line which is generally quite easy to fix on site by inspection only. Spring high tide is much more difficult to fix, particularly on a shore exposed to wave action. It requires an extended time series of observations and then a level survey to transfer that level along the shore line.

The old definition of the Sea Shore Act should be retained by default until and if a properly considered definition can be constructed. Despite some peculiarities of wording the old definition is fundamentally sound and has given exceptional service.

[ [Kathy Leslie (Personal Capacity)]

High water mark – who determines this? Naval charts or evidence of flotsam/jetsam?

[KZN Agriculture and Environmental Affairs]

'high water mark'	How is this to be identified in practical terms? This mark will vary especially as a result of sea level rise and climate change.
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[Wendy-Leah Dewberry (Noetzie Conservancy Association) and Charmaine Cumberlege]

*High water mark - "means the highest line reached by coastal water.....excluding exceptional or abnormal floods"*

Since we are to expect more frequent and heavier weather patterns due to global warming and other phenomenon, it would be prudent to not exclude exceptional or abnormal flooding levels, since these may occur more often. At least to qualify 100 year and 50 year highs.

[Oceanographic Research Institute]

"high-water mark" means the highest line reached by coastal waters as a result of either spring tides or ordinary storms occurring during the most stormy period of the year, but excluding exceptional or abnormal ds;

[Oceanographic Research Institute]

The definition of boundaries such as the high-water and low-water mark is obviously important within the Bill but will also prove to be problematic since these reference points are dynamic and hugely variable. The Oceanographic Research Institute has not been able to source "official" and updated information (documents, GIS layers etc) regarding these lines and this would imply that neither would any of the coastal managers. It may be prudent to clearly establish a link between DLA and DEAT in term of the designation and update of coastal boundaries.

[Oceanographic Research Institute]

The definition of boundaries such as the high-water and low-water mark is obviously important within the Bill but will also prove to be problematic since these reference

points are dynamic and hugely variable. The Oceanographic Research Institute has not been able to source “official” and updated information (documents, GIS layers etc) regarding these lines and this would imply that neither would any of the coastal managers. It may be prudent to clearly establish a link between DLA and DEAT in term of the designation and update of coastal boundaries.

DEAT Comments:

*The definition has been amended to read as follows:*

**“high-water mark”** means the highest line reached by coastal waters but excluding any line reached as a result of –

- (a) exceptional or abnormal floods or storms that occur no more than once in ten years; or
- (b) an estuary being closed to the sea;

“incinerate at sea”

[LEGALB]

“incineration at sea”

Would incineration at sea include the burning of coal and other combustible material used as the energy source to propel the vessel etc or machinery on a vessel etc or is this saved by the words ‘for the purpose of disposing of it’? We are of the opinion that this definition could be more clearly stated.

[Department of Minerals and Energy]

Incineration at sea	Not applicable to mining, Minerals and Petroleum Resources Development Act (MPRDA) already covers waste management.
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[KZN Agriculture and Environmental Affairs]

‘dumping at sea’ & ‘incineration at sea’	In terms of Chapter 8 and the definition, operational waste may be dumped at sea without a permit. We believe that there should be tighter control over the disposal of operational waste.
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DEAT Comments:

*The definition has not been amended.*

[DEAT Comments:](#)

*A new definition for “inert waste” has been inserted.*

**“inert waste”** means waste that –

- (i) does not undergo any significant physical, chemical or biological transformations after disposal;
- (ii) does not burn, react physically or chemically, biodegrade or otherwise adversely affect other matter with which it may come into contact; and
- (iii) its pollutant content and the toxicity of its leachate are insignificant and do not impact negatively on the environment.;

“interests of the whole community”

[Natalie Way-Jones (Personal Capacity)]

• The inclusion of a definition for “interests of the whole community” is not appropriate. The principles of Integrated Environmental Management, which provide the basis of sustainability in decision-making, already require that the various listed interests are considered in environmental decision-making. The definition could very easily be misinterpreted and misused. The emphasis should not be on prioritising the interests of one group over another, but the consideration of all interests in decision-making. NEMA requires that “Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably”. Distinguishing “coastal interests” runs counter to the requirement for coordinated and integrated decision-making.

[ESKOM]

“interests of the whole community” = The definition seeks to prioritise the interest of all persons living in the Republic. It is unclear how this definition or the term “whole community” as set out in this Bill differs from the term “national interest”. Is this a different term and if not, the use of the usual term that all persons are familiar with will alleviate confusion and difficulty of interpretation and is recommended. It the

term is intended to exclude “national interest” as widely understood, then we propose that national interest be added as a criterion to making decisions in this Bill.

[LEGALB]

This definition purports that this phrase is used in s13, s13(2), s21, s53(2), s63(2), s67(3) and (5), s69(1), s74(7) and (8), and s76(2) and (4). However, this phrase is not mentioned in some of the listed sections, and is used in other sections not listed. It is used in the Bill in s12(a); s14(2)(c); s21(a); s63(2)(b); s67(3)(b); s67(5)(a)(iii); the heading to s69; s69(1)(a); s74(7)(a); s74(8)(c); s76(2)(d); and s76(4)(v). This is so far removed from the listed mentions under the definition “interests of the whole community” as listed under s1 of this Bill, that it will be very hard to provide public comment on these sections of the Bill. It is suggested that an amendment to the bill be issued to facilitate a process of proper public comment. The following comments are therefore based on the face value of the text, rather than a reading of the text in the light of sections referred to at the start of the definition.

Further, subsection (a) of the definition appears to relegate the interests of individuals and local communities in favour of purely a national interest.. moreover, it is possible that the expropriation of the rights of individuals and local communities to coastal public property is not constitutional.

Further, the phrasing of subsection (a) is such that it is possible to interpret the definition as referring only to the interests of persons who are “living in coastal public property”. The interests of communities who may not be living in coastal public property may need, in some instances, to be put to the fore, over and above those living in coastal public property. The phrase “in coastal public property” should be deleted and the phrase “collective interests” should read “collective interests in coastal public property and environments”.

Further, the phrase “inheriting coastal property” in subsection (b) is seems a misnomer as this Bill clearly does not deal with inheritance. The word inheritance and derivative words are specific terms carrying specific legal meaning. A casual use of the word in a Bill such as this should be deleted. This word “inheriting” should be deleted.

[K.P. Mackie (Personal Capacity)]

“interests of the whole community”

Add to the beginning of (a): “the sum of the independent interests of all individuals, groups or sectors of the community over the whole community so far as they are not in conflict or otherwise, as a default position, .....

This addition allows a more holistic approach and eliminates unnecessary suppression of individual interests.

[Kathy Leslie (Personal Capacity)]

Interests of the whole community – (a) who lives in coastal public property? Except on islands? Are Prince Edward Islands considered part of Republic? Also, when used in context this phrase would sometimes be better substituted by "local community". Situations will arise where local community interests will have to be balanced against whole community.

[KZN Agriculture and Environmental Affairs]

'interests of the whole community'	Reference to section 12 should be included. The "and" should be replaced with "or". Clarity is needed in respect to who will determine what is in the "interests of the whole community"?
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[DEAT Comments:](#)

*The definition has been amended to read as follows:*

“**interests of the whole community**” means the collective interests of the

community determined by –

- (a) prioritising the collective interests in coastal public property of all persons living in the Republic over the interests of a particular group or sector of society;
- (b) adopting a long-term perspective that takes into account the interests of future generations in inheriting coastal public property and a coastal environment characterised by healthy and productive ecosystems and economic activities that are ecologically and socially sustainable;
- (c) taking into account the interests of other living organisms that are dependent on the coastal environment; and
- (d) taking into account any interests of persons or other living organisms outside the Republic that may be affected by the decision;”

[DEAT Comments:](#)

*The definition of “integrated environmental authority” has been amended to read as follows:*

**“integrated environmental authorisation”** means an authorisation granted in respect of coastal activities by a competent authority in terms of Chapter 5 of the National Environmental Management Act;”

“issuing authority”  
[LEGALB]

This definition needs to distinguish between competent authorities issuing authorities under Chapter 5 of NEMA, and the issuing authority referred to in this definition. See for instance, s68.

[DEAT Comments:](#)

*The definition has been amended to read as follows:*

**“issuing authority”** means the authority designated in terms of this Act to issue authorisations;”

L

“land development plan”

[Natalie Way-Jones (Personal Capacity)]

- Examples of “land development plans” should be provided and it should be specified that these refer only to areas within the coastal zone. (Refer to Section 16).

[LEGALB]

This definition needs re-wording as the phrase “that indicates...” could refer to a plan that indicates... or to legislation that indicates... and cannot mean both. The intention of the legislature needs to be stated more clearly than this.

[South African Planning Institute]

Land development plan (p.16) should refer to the Spatial Development Framework. The legal status of the SDF should be recognised in the Bill. “Land Development Plan” should clarify whether it refers to “Spatial Development Frameworks”.

[Department of Environmental Affairs & Development Planning]

- Confusion exists over the use of “Land Development Plan”, shouldn’t it read “SDF”;

[DEAT Comments:](#)

*The definition has not been amended.*

“land unit”

[Department of Land Affairs]

Clause 1 of the Bill provides for the definition of a “land unit”. In the said definition reference is erroneously made to section 103 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), instead of section 102 of the same Act.

[DEAT Comments:](#)

*The definition has not been amended.*

“land use scheme”

[LEGALB]

This definition is very vague, and “land use schemes” needs to be defined further . For instance, this definition may well allow a sectional title scheme to fall within the definition of a land use scheme.

[KZN Agriculture and Environmental Affairs]

“land use scheme’	This definition seems outdated and should reflect reference to both Integrated Development Plans and Land Use Management Systems as defined in the Municipal Structures Act.
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[Department of Environmental Affairs & Development Planning]

Some areas of concern highlighted in the Bill relates to:

- The definition of “Land use scheme” should acknowledge existing rights in existing Municipal zoning schemes;

[DEAT Comments:](#)

*The definition has been amended to read as follows:*

–**“land use scheme”**, in relation to an area, means a scheme established by or under legislation and that creates or regulates the use of land in that area, and includes a land use scheme, a town planning scheme, a zoning scheme and any other similar instrument that identifies or regulates rights to use land;”

“littoral active zone”

[Natalie Way-Jones (Personal Capacity)]

- The low and high water mark and littoral zone are subject to various natural processes and are dynamic over time. Thus the definitions should be refined to specify their delineation over time, e.g. average over XX years.

[Ezemvelo KZN Wildlife]

5) The definition of an 'active littoral zone' should be modified with the following (e) and any other area where the natural processes change the topographic, hydraulic, or any other natural feature or attribute of the coastal zone.

[LEGALB]

This term seems of little use worldwide and seems to have been picked up minimally in South Africa, and appears to have been sourced from one author, rather than the scientific community in general. Perhaps, given that the intention must be that this Bill be widely used and understood in South Africa, the term "surf, beach and dune zone" should rather be used, with maybe an explanation that these include beaches, sandbars, and sea sand.. These are common English words easily understood and easily translated.

Further, this definition fails to deal specifically with minerals in the "unconsolidated sand, pebbles, or other un-vegetated or partly vegetated material". It is suggested that the question of minerals be specifically dealt with because of the very destructive impact of mining in the "littoral active zone" , such as Richards Bay Minerals undertakes.

eThekweni Municipality

· 'Littoral Active Zone' is referred to as "Unstable" but is perhaps too harsh a term as the beaches are stable by respond dynamically to changes in sea conditions. This state is often referred to being 'in a state of dynamic equilibrium'. This zone is also characterised by estuaries particularly if they are open for extended periods.

[K.P. Mackie (Personal Capacity)]

"littoral active zone"

It is unnecessary to make (a) and (b) dependent on each other.

(a) Delete terminal "and"

More thought needs to be given to this term and its definition. Specifically there are a large number of different types of unstable landforms, beach or sea bed and they all behave in different ways which may well necessitate different treatment c/f section 16.

[Kathy Leslie (Personal Capacity)]

Littoral active zone –(b) why exclude consolidated sand – would this affect dunes at Langebaan? Are the Alexander dune fields include in LAZ?

[Chief Directorate: Environmental Affairs (Eastern Cape)]

While its incorporation is fully supported, it is felt that the reference to “only partially vegetated” unconsolidated landforms is likely to be vexing in implementation of the (future) Act, particularly where such landforms fall outside of coastal public property.

[DEAT Comments:](#)

*The definition has not been amended.*

“living modified organism”

[Natalie Way-Jones (Personal Capacity)]

- Replace the “living modified organism” definition with that for genetically modified organism from the Genetically Modified Organisms Act, 1997.

[LEGALB]

To what does the word “modified” in this term refer? The definition does not adequately distinguish “living organisms” from “living modified organisms”. This definition appears to be overly scientific and needs to be made more user-friendly, with perhaps the more scientific aspects directed at non-lay persons contained in regulations.

[DEAT Comments:](#)

*The definition has been deleted.*

“low-water mark”

[Wildlife and Environmental Society of SA]

Low water Mark: What is “ordinary”?

[LEGAL B]

“low-water mark”

This is defined in this Bill as the lowest line to which coastal waters recede during periods of ordinary spring tides. This raises the question of how under this Bill the land/water between the low-water mark and the beginning of the admiralty reserve is in practical application of this Bill, to be categorised and how the land/water between the low-water mark and the lowest water mark at neaps leaps is to be categorised.

[K.P. Mackie (Personal Capacity)]

The proposed definition in the bill is the

“low water mark”

Delete: “means the lowest line to which coastal waters recede during periods of ordinary spring tides.”

Add: “means the intersection with the land of the tidal plane at the mean height of low water for a tidal cycle of 18.6 years.”

old definition from the Sea Shore Act. This is defective in its use of the undefined term “ordinary spring tides”

The proposed substitute has been taken from the Maritime Zones Act by concatenating the definitions for “low water” and “low water line”. As worded it implies the mean between springs and neaps. It could be changed to conform to the intent of “ordinary spring tides” by inserting “spring” in front of “low water”. If this is done, however, it would define a different line to that in the Maritime Zones Act.

[KZN Agriculture and Environmental Affairs]

'low water mark'	'What is “ordinary”?’
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[Oceanographic Research Institute]

“low-water mark” means the lowest line to which coastal waters recede during periods of ordinary spring s;

[DEAT Comments:](#)

*The definition has been amended to read as follows:*

“**low-water mark**” means the lowest line to which coastal waters recede during spring tides;”

M

“MEC”

[LEGALB]

This definition uses the term “coastal province”. If it means a province part of whose boundaries are coastal, how then does this Bill deal with “non-coastal” provinces that create negative environmental impacts on the sea and shore. For example, the blue flag status of KwaZulu-Natal province’s beaches has largely been withdrawn because of problem of *ecoli* in estuaries sourced upstream, perhaps in other provinces. Would this problem be, as per this definition, classed as a national matter, rather than a matter to be dealt with by the non-coastal provinces? Does national have the powers to deal with all such issues?

[DEAT Comments:](#)

*The definition has been amended to read as follows:*

“**MEC**” means the member of the Executive Council of a coastal province who is responsible for the designated provincial lead agency in terms of this Act ; “

”municipality”

[LEGALB]

It is illogical that the definition of municipality does not exclude non-coastal municipalities, as is the case in respect of the definition of MECs and provinces.

[KZN Agriculture and Environmental Affairs]

Definition	Where defined	Source of recommended definition
‘municipality’	ICMB, Municipal Structures Act	Municipal Structures Act

[KZN Agriculture and Environmental Affairs]

‘municipality’	The definition as contained in the Municipal Structures Act as well as the associated assignment of responsibilities needs to be reflected upon prior to giving District Municipalities the ability to assign responsibilities in respect to this Act.
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[Belastingbetalersvereniging]

“municipality” Die woordomsyrywing sluit plaaslike en distriksmunisipaliteite in en bepaal dan dat, met betrekking tot die toepassing van die “Bill”, dit Dist. Mun. beteken tensy anders met plaaslike mun. ooreengekom is. Dit kan tot verwarring en onsekerheid lei. In praktyk sal dit waarskynlik plaaslike munisipaliteite wees swat sekere funksies sal uitoefen en nie distriksmunisipaliteite nie.

[DEAT Comments:](#)

*The definition has not been amended.*

N

“national estuarine management protocol”

[KZN Agriculture and Environmental Affairs]

‘national estuarine	Should be reflected as National with caps.
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management protocol'	
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[DEAT Comments:](#)

*The definition has not been amended.*

O

“operational waste”

[Natalie Way-Jones (Personal Capacity)]

- The distinction between operational waste and other waste is misleading. Operational waste is that which is produced during normal operation, which could be all encompassing.

[LEGALB]

The words at the end of this definition, “at sea”, do not have meaning unless the words “disposing that waste” are changed to “disposing of that waste” . This appears to be a grammatical error. Please also concerning this definition, see our comment on the definition “dumping at sea”.

[Oceanographic Research Institute]

“operational waste”, in relation to a vessel, aircraft, platform or other man-made structure, means any waste or other material that is incidental to, or derived from, the normal operation of a vessel, aircraft, platform or other man-made structure and its equipment, but does not include any waste or other material that is transported by or to a vessel, aircraft, platform or other man-made structure which is operated for the purpose of disposing that waste or other material, including any substances derived from treating it on board, at sea;

“operational waste”, in relation to a vessel, aircraft, platform or other man-made structure, means any waste or other material that is incidental to, or derived from, the normal operation of a vessel, aircraft, platform or other man-made structure and its equipment, but does not include any waste or other material that is transported by or to a vessel, aircraft, platform or other man-made structure which is operated for the purpose of disposing that waste or other material, including any substances derived from treating it on board, at sea;

[DEAT Comments:](#)

*The definition has been amended to read as follows:*

**“operational waste”**, in relation to a vessel, aircraft, platform or other man-made structure, means any waste or other material that is incidental to, or derived from, the normal operation of that vessel, aircraft, platform or other man-made structure and its equipment, but does not include any waste or other material that is transported by or to a vessel, aircraft, platform or other man-made structure which is operated for the purpose of disposing that waste or other material, including any substances derived from treating it on board, at sea”

“organ of state”

[LEGALB]

It is not clear whether an organ of state is a “person” under the Bill, and s239 of the Constitution to which it refers does not say.

The particulars of the Constitution of the Republic of South Africa (being Act number and year) should be included in this definition. There is nothing to assume that what is mean is the 1996 Constitution, which we suppose was the intention, but that would be second guessing the legislature.

[DEAT Comments:](#)

*The definition has not been amended.*

P

“pollution”

[Wildlife and Environmental Society of SA]

Pollution: Does this mean we have to wait for the pollutant to have an impact on a,b,or c?

[LEGALB]

We recommend that the definition of pollution should be expanded to include negative future impacts on the environment, which have yet to eventuate. An example would be the storage toxins in drums that will in future start leaking. As it stands, this definition includes pollution that has occurred or is presently occurring. We do not think that the words “has or will have an adverse effect” implies that this definition of pollution includes pollution that will occur in future. We note that the definition is virtually identical to the definition of pollution in NEMA except that the words “or will have such an effect in the future” have been omitted.

[Ezemvelo KZN Wildlife]

6) The NEMA definition of 'pollution' should be used. Failing this, point (c) should read as 'on materials or resources useful to people in any way.'

eThekwini Municipality

Definition	Where defined	Source of recommended definition
Pollution	ICMB, NEMA	NEMA

[KZN Agriculture and Environmental Affairs]

Definition	Where defined	Source of recommended definition
'pollution'	ICMB, NEMA	NEMA

Wendy-Leah Dewberry (Noetzie Conservancy Association) and Charmaine Cumberlege]

*Pollution – “ means any change in the environment caused by any substance.....”*

Light pollution, carbon emission and aesthetic pollution should be included.

[Belastingbetalersvereniging]

“pollution” Die omskrywing maak nie voorsiening vir ligbesoedeling nie. Dit is 'n acute problem en kom voor waar eienaars van eiendom binne seesig die praktyk beoefen om sterk beligting vanaf hul eiendom op die see te rig en sodoende 'n onnatuurlike en steurende effek te skep wat die natuurlike estetika van sonsondergang, maan/sterlig en waterweerspieëlings totaal vernietig en aanstootlik vir ander bewoners en besoekers is.

[DEAT Comments:](#)

*The definition has been amended to read as follows:*

“**pollution**” has the same meaning ascribed to it in the National environmental Management Act”

“protected area”

[Ezemvelo KZN Wildlife]

Protected area should include or equivalent proclaimed in provincial legislation

DEAT Comments:

*The definition has not been amended.*

S

“sea”

[LEGALB]

We would suggest that definition of “sea” include the air above the sea.

eThekweni Municipality

Definition	Where defined	Source of recommended definition
‘sea’	ICMB, EIA regulations July 2006	EIA Regs. 2006

[Chief Directorate: Environmental Affairs (Eastern Cape)]

“sea”

- (i) The definition of the term “internal waters” in the Maritime Zones Act has not been scrutinized, but it is presumed that it is adequate to cover the omission of inland tidal waters from the definition of “sea” in the Bill, in contrast to its inclusion in the Sea-Shore Act definition.
- (ii) In any event, the disparity between the inclusion of inland tidal waters in the definition of “sea” in the NEMA Environmental Impact Assessment regulations, and its exclusion in the Bill’s definition, is cause for concern, and it is urged that action be taken to harmonize these terms across the National Environmental Management legislative suite.

[KZN Agriculture and Environmental Affairs]

Definition	Where defined	Source of recommended definition
‘sea’	ICMB, EIA regulations 2006	EIA regulations 2006

[Oceanographic Research Institute]

“sea” means all marine waters, including –  
(a) the high seas;  
(b) all marine waters under the jurisdiction of any state; and  
(c) the bed and subsoil beneath those waters,  
but does not include estuaries; 

DEAT Comments:

*The definition has been amended to read as follows:*

“sea” means all marine waters, including –  
(a) the high seas;  
(b) all marine waters under the jurisdiction of any state; and  
(c) the bed, subsoil and substrata beneath those waters,  
but does not include estuaries;”

“seashore”

[Wildlife and Environmental Society of SA]

Seashore: (e): This is too impractical. Does this mean we have to time the extent of tidal reach?

[TRANSNET]

The definition of “seashore” indicates that “any land reclaimed from the coastal waters after the commencement of this Act”, will be defined as seashore – does this include any land reclaimed within the jurisdiction of a Port?

[LEGALB]

s1: The definition of “seashore” part (a) - The text “...whether or not submerged” may in the context refer to either land or to the high-water mark (both of these may at times be submerged), or may refer to both. What this text is referring to should be clarified.

This definition does not include the organisms / vegetation in or on the soil or water.

Note that this definition refers to “coastal waters” which is not defined in this Bill but which perhaps should be. This Bill does not appear to deal adequately with minerals in the sea shore.

In part (e) the coastal cliffs referred to (of presumably any height) that are not in continuous contact with the sea or tidal water of an hour or more each normal spring tide are very common along the coast. Given this definition, would this land be non-admiralty land ? It is further noted that the definition under (b) of this section is identical to the definition of “(f) any area that at the commencement of this Act was part of the sea-shore as defined in the Sea-Shore Act, 1935 (Act 21 of 1935)”. It

therefore appears that the either the definition under (b) or the definition under (f) is nugatory.

[K.P. Mackie (Personal Capacity)]  
“seashore”

Provided, as suggested above, coastal cliffs are defined separately.

(e)

Just “coastal cliffs”

[Kathy Leslie (Personal Capacity)]  
Seashore – (c) includes marinas? See 7(c) and (e)

[Chief Directorate: Environmental Affairs (Eastern Cape)]  
“seashore”

- (i) One is not convinced that the terms *soil* and *sub-soil* are appropriate – what about seabed substrate which does not consist of this material?
- (ii) It can be speculated that the term *coastal cliff* (not defined in its own right) is going to give rise to conjecture as to its precise meaning, and whether it is applicable to specific individual land-sea interfaces.

[DEAT Comments:](#)

*The definition has been amended to read as follows:*

“**“seashore”**, subject to section 26, means the area between the low-water mark and the high-water mark.”

“Southern African aircraft”  
[LEGALB]

This term is only used in s4(2) of the Bill, which section seems to extend jurisdictional application of this act in regard to vessels to beyond the territorial jurisdiction of South Africa and even into other countries territorial waters etc in stating that some provisions of this Bill apply to SA aircraft “also when outside the Republic. Would a permit to dump (eg see s76) be applicable to a SA aircraft in a foreign sea territory? Same difficulty refers in terms of s75(1)(f): What is if the foreign state has no requirement or procedure to dump?

[DEAT Comments:](#)

*The definition has not been amended.*

“South African vessel”

[LEGALB]

What is meant by “deemed to be”? Does it include “deemed to be in terms of foreign legislation”? This may be what the intention of the legislature is, given that s4(2) extends the jurisdictional application of this act concerning vessels to beyond the territorial jurisdiction of South Africa – see note below . Would a permit to dump (eg see s76) be applicable to a vessel “deemed” to be South African in a foreign territory of sea?

S4(2) which section seems to extend the jurisdictional application of this act in regard to vessels to beyond the territorial jurisdiction of South Africa and even into other countries territorial waters in stating that some provisions of this Bill apply to SA aircraft “also when outside the Republic”.

We have the same difficulty regarding s75(1)(f): How will this Bill assist us if the foreign state has no requirement or procedure relevant to dumping?

[DEAT Comments:](#)

*The definition has not been amended.*

“special management area”

[KZN Agriculture and Environmental Affairs]

‘special management area’	Needs to be properly defined and include reference to purpose, value, nature and potential size.
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[DEAT Comments:](#)

*The definition has not been amended.*

“special permit”

[Endangered Wildlife Trust]

Use of the term ‘special permit’ should consider terminology trends in other legislation such as ‘authorisation licence’

[DEAT Comments:](#)

*The definition has been deleted.*

T

“traditional authority”

[LEGALB]

“tribal authority”

Does this definition reflect the definition of tribal authority in other legislation. The concept “indigenous law” appears to have been added, which opens legal doors to a completely new set of legal and quasi-legal rules.

It is uncertain as to what the word “control” means in this definition, and we suggest this be clarified.

[DEAT Comments:](#)

*The definition has been amended to read as follows:*

**“traditional council”** means a traditional council recognised under the Traditional Leadership and Governance Framework Act, 2003 (Act No. 42 of 2003);”

V

[Natalie Way-Jones (Personal Capacity)]

- Align the definition of “vessel” with the Marine Living Resources Act.

[LEGALB]

“vessel”

We suggest that the text “moored floating structure that is not used as” be changed to “moored floating structure when not used as”

[DEAT Comments:](#)

*The definition has not been amended.*

W

[DEAT Comments:](#)

*A new definition for “waste” has been introduced.*

**“waste”** means any substance, whether or not that substance can be reused, recycled or recovered that –

- (i) is surplus, unwanted, rejected, discarded, abandoned or disposed of;
- (ii) The generator has no further use of for the purposes of production, reprocessing or consumption;
- (iii) Is discharged or deposited in a manner that many detrimentally impact on the environment;

and does not include –

- (a) radioactive waste that is regulated by the Hazardous Substances Act, 1973 (Act No. 15 of 1973), the National Nuclear Regulator Act, 1999 (Act No. 47 of 1999) and the Nuclear Energy Act, 1999 (Act No. 46 of 1999);
- (b) residue deposits and residue stockpiles that are regulated under the Mineral and Petroleum Resources Development Act, 2002 (act No. 28 of 2002);
- (c) the disposal of explosives that is regulated by the Explosives Act, 2003 (Act No. 15 of 2003);
- (d) the disposal of animal carcasses that is regulated by the Animal Health Act, 2002 (Act No. 7 of 2002); or
- (e) organic waste that emanates from agricultural activities or forestry. “

“wetland”

[Wildlife and Environmental Society of SA]

Wetland: (1): Place an exact figure .... What is “near” could be 0.5m or 5m?

(2): A “moist dune slack” may not necessarily contain hygrophytic vegetation due to exposure to maritime winds or high percolation rates. It is sometimes very difficult to determine moist slacks however, they are the closest point to the surface of freshwater behind any primary dune.

[Natalie Way-Jones (Personal Capacity)]

- Align with DWAF's "wetland" definition.

[Endangered Wildlife Trust]

The term 'wetland' is not included in isolation in the draft ICMB, it is always referred to as a coastal wetland. There is therefore no need for a separate definition thereof.

[Wildlife and Environmental Society of SA]

Wetland: (1): What is "near"; it could be 0.5m or 5m.

(2): Change the "and" in the latter part of the definition to "or"  
i.e. "... OR which land in normal circumstances...."

[Ezemvelo KZN Wildlife]

Definition of wetland should include the following ... typically adapted to life in periodically or permanently saturated soil.

[SA Council for Natural Scientific Professions (Prepared by Biotechnology & Environmental Specialist Consultancy CC)]

Wetland – specific mention should be made to include "salt marshes", which are commonly found along the banks/flood zones of estuaries.

[LEGALB]

"wetland"

It is suggested that the words "in saturated soil" should read "in or on saturated soil."

[The Overstrand Conservation Foundation]

Given the protracted implementation timeframe and the rapid pace of coastal degradation due to development pressure, some mechanism needs to urgently be put in place to ensure that the principles that underpin responsible management of the coastal zone are used in all decision making with regards to the approval of developments. If a principles chapter is included into the Bill and it becomes mandatory that these principles are adhered to until such time and the specific coastal management plans have been adopted, this may go some way towards addressing the problem. Another suggestion is that the application of principles and policies set out in the White Paper become mandatory in the interim period.

If interim control measures are not put in place there is likely to be an increase in pressure to get developments approved that will be made more difficult once the Bill becomes an Act.

[DEAT Comments:](#)

*The definition has not been amended.*

## **POSSIBLE DEFINITIONS TO BE INCLUDED**

### [DEAT Comments:](#)

*For this section see comments above.*

[Wildlife and Environmental Society of SA]  
We need a proper definition of “whole community” and “abandoned”.

[Endangered Wildlife Trust]  
Include definition of “community”, and whether they are considered as Interested and affected parties.

Include definition environmental impact assessment and associated regulations

Include definition of ‘interested and affected parties’ and clarify whether it is limited to organs of state, or includes civil society, private sector, NGOs etc. as well

Definition of ‘state-owned land’ is unclear as to whether it includes land owned by municipalities.

Definition of ‘reasonable access’ to be included.

[Natalie Way-Jones (Personal Capacity)]

- There is a need for definition of “coastal management area”, which would encompass the coastal zone any “coastal resources”.
- A definition is needed for coastal management area, or it should be specified that this is the “coastal zone”.
- Should add definition for “territorial waters”, as from the Maritime Zones Act.

[Ezemvelo KZN Wildlife]

“distance or distances” means the horizontal distance from a point or line.

The following definitions should be added

“Emergency” means a serious situation or occurrence that happens unexpectedly and demands immediate action in order to safeguard human life or the protection of the

natural environment, and does not include damage to structures are under threat from natural processes, unless damage to the structures would result in significant harm to the environment.

“ecosystem services” means those current and future utilitarian, aesthetic, spiritual, cultural, educational and scientific services provided by the natural environment which are required for the health and wellbeing of humans and the environment or components thereof;

“natural resources” means indigenous plants and animals, including any part or produce from these, as well as non-biological component of the landscape, such as rocks, soils and water”;

“offset” means an area or financial commitment, to be agreed upon by the Authority, set aside for nature conservation to offset the negative residual impacts of the application contemplated in order to ensure that there is a no net loss of biodiversity and a net improvement in the state of conservation of important and threatened ecosystems or species.

“reasonable” means just, rational, appropriate, ordinary or usual in the circumstances.

“significant” means that which is not trivial.

“special management areas” are those areas provided for in Chapter 6.

[LEGALB]

“competent authority”

A definition of this should be added to this Bill, and preferably, for consistency it should be one that can easily be reconciled with meaning of “competent authority” as use in Chapter 5 of NEMA.

[LEGALB]

“person”

A definition of “person” is missing from this Bill and it is not certain whether it is the intention that the common and case law of “person” is intended to apply to the interpretation and practical application of the Bill. Given the state of flux and change in the common law / case law as to what can be defined as a person, perhaps this needs definition. This would clarify the relation of things such as Trusts and Organs of state to the provisions contained in this Bill.

[LEGALB]

“Republic” – a definition of the word ‘Republic’ as the Republic of South Africa” should be inserted, or the use of the word “Republic” in the text of the Act should be changed to ‘Republic of South Africa’.

eThekwini Municipality

Possible definitions to be included:

- ‘designates’ – this needs to be clearly defined.
- ‘state-owned land’ - not clear in the body of the Bill if this includes land owned by municipalities.
- ‘reasonable access’ (see Section 13) needs to be defined or an indication of the meaning should be provided.
- ‘reserves’ this covers ‘government, beach, coastal forest reserve and any other reserve’
- ‘coastal management principles’ needed to be explicitly described
- ‘zoning scheme’ need to be clearly described as this varies between provinces and municipalities.
- ‘unprocessed sewerage’ as distinct from what level of processed sewerage

[South African Planning Institute]

- Add definitions in the Bill under section 1 for the following: “Urban”, “Rural”, “Coastal buffer zone”; “Coastal access land”, “Coastal protected areas” and “Coastal public property”.

[K.P. Mackie (Personal Capacity)]

Add:

“coastal cliffs” “means any permanent land form having a vertical to very steep slope that cannot be safely traversed on foot and rises from a point below the high water mark to a crest where the land form ceases to constitute a cliff.”

c/f “seashore” where reference to coastal cliffs occurs. The function of the definition is not given. This suggestion is based on simple logic applied to the reality of such landforms and the practicality of defining them c/f fractal lines.

Add:

“dredging” “means excavation underwater in any materials by any

This is an important coastal activity that needs to be formally recognised in this act. The wording given here is merely a suggestion. Further research could

means for any purpose.”

improve the wording.

[Department of Minerals and Energy]

National legislation	The Mineral and Resources Development Act (2002) should be included in the definitions since mining is referred to in the Act.	Add the MPRDA into the definitions of the Act.
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Kathy Leslie (Personal Capacity)]

Dune – please add definition of dune – they need special protection

[Chief Directorate: Environmental Affairs (Eastern Cape)]

Inclusion of definition of “voluntary coastal officer” and omission from the Bill of reference to “coastal officer”

- (i) Whereas the Bill makes provision for the appointment of voluntary coastal officers, it fails to qualify the terminology.
- (ii) At the same time, it is surprising that the Bill provides for *voluntary* officers without simultaneously providing for, and defining, coastal officers *per se*.

[KZN Agriculture and Environmental Affairs]

[Possible definitions to be included:

- ‘natural resources’ - as reflected on in 7(h), this needs to be broadly defined and should also reflect on mineral and gas deposits.
- ‘state-owned land’ - not clear in the body of the Bill if this includes land owned by municipalities.
- ‘reasonable access’ - (see section 13) needs to be defined or an indication of the meaning should be provided.

[KZN Agriculture and Environmental Affairs]

‘coastal concession’	This definition needs to be clearer to avoid misinterpretation as currently being experienced in the implementation of NEMA’s ‘Control of Vehicles in the Coastal Zone Regulations’.
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[SA Council for Natural Scientific Professions (Prepared by Biotechnology & Environmental Specialist Consultancy CC)]

Definitions:

No definition is provided for:- alienated land;

[Department of Environmental Affairs & Development Planning]

Section 1

The definition of “reasonable measures” and how it relates to the lay person.

[Department of Environmental Affairs & Development Planning]

Define “Coastal dependant activities”.

[Department of Environmental Affairs & Development Planning]

Define islands, man made islands and reference should be made to the nature of it (temporary or permanent).

[Department of Environmental Affairs & Development Planning]

Definition of “state” (e.g. section 12) is vague and reference to it must be more specific.

If any definition or word(s) is not contained in the Chapter 1 the meaning of such word(s) should be considered to be the generally accepted interpretation.

[LEGALB]

“coastal area”

A definition of “coastal area” needs to be inserted in this Bill. Although the areas referred to in s26(1)(a) to (c) may impliedly be taken to being part of the coastal area, this cannot from the wording of the section be taken to be the only areas which may form part of the coastal area.

[Derrick Airey (Personal Capacity)]

- No definition of a “coastal waters discharge permit”. Only one definition of a “permit”, yet there are four uses in the bill. Also the term “permit” is being phased out by other Departments in favour of a “license”.

[Oceanographic Research Institute]

We are concerned that the estuaries section is very weak. We are aware of the inter-departmental tensions around this matter, but that should in fact result in a strengthened section and not weakened. The definition of estuaries is especially weak and incomplete.

We recognise that the integrated nature of coastal management creates potential weaknesses and complicated trade-offs. But there are still many places that could be firmed up. The concepts of “public interest” or “benefit the whole community,” seem too loose unless they are better quantified – perhaps in the regulations.

We have uncertainty about the term community, person and other reference to human users or potential beneficiaries. It needs to be made clear in the definitions

who these people are. Is this Bill aimed at all people, only residents, only citizens of South Africa – or what? The fisheries legislation demands South Africa citizenship. The Constitution is specific about protecting citizens of South Africa, not foreigners. Is this different? We suggest that there should be some criteria. For example, it would be inappropriate to give a 20 years coastal lease to a person from Europe, when a local citizen may be denied benefit. In the case of the Kenyan coast for example, coastal hotels are often owned by Europeans so that the main economic benefits go ( or stay) in Europe – only local employees have some benefit.

There is confusion over the meanings of permit vs license. We suggest the MLR Act is consulted.

## **COMMENTS ON SECTIONS**

### **Section 2: Objectives of this Act**

[Kommetjie Residents & Ratepayers Association]

- We support the objectives but the idea of restoration and rehabilitation should come through more strongly (p20)

[Department of Environmental Affairs & Development Planning]

#### Section 2

Should include a reference to the “Duty of Care” provision in terms of NEMA to reinforce the idea of self regulation and placing the onus on people to act responsibly, be accountable and apply the rules of risk aversion and the precautionary principle.

[Wildlife and Environmental Society of SA]

What about private land? There is a need for control on development of private land adjacent to dunes, beaches etc.

[Endangered Wildlife Trust]

The objectives should be applicable to the entire coastal zone (not only coastal public property).

[Ezemvelo KZN Wildlife]

2(f) to retrospectively address unsustainable development or landuse within the coastal zone.

[eThekweni Municipality]

The objectives of this Act should be broadened to include all property (public and private) in the coastal zone.

[Kathy Leslie (Personal Capacity)]

Does not link well to preamble – it is less ambitious

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) See comments under definition of “coastal zone” – reservations are expressed about the adequacy of the Bill’s determination of the coastal zone.
- (ii) Given the title of the Bill’s founding White Paper, it is surprising that this section does not contain a provision relating directly to sustainable development.

[KZN Agriculture and Environmental Affairs]

2(c) & (d)	These objectives cover coastal public property only.	Objectives should be broadened to include all property (public and private) in the coastal zone.
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[Oceanographic Research Institute]

The objectives of this Act are –

- (a) to determine the coastal zone of the Republic;
- (b) to provide, within the framework of the National Environmental Management Act, for the co-ordinated and integrated management of human activities the coastal zone by all spheres of government in accordance with the principles of co-operative governance;

[DEAT Comments:](#)

*This section was amended as follows:*

- “(c) to preserve, protect, extend and enhance the status of coastal public property as being held in trust by the state on behalf of all South Africans, including future generations; .....
- (e) to give effect to the Republic’s obligations in terms of international law regarding coastal management and the marine environment.”

### **Section 3: State’s duty to fulfil environmental rights in coastal environment**

[LEGALB]

The text “the state” should read “the State” for the sake of consistency of grammar, if not of meaning.

s3(b)

This subsection read in the light of the initial text of s3, provides that the State must, in implementing this Bill as an Act, take reasonable measures to achieve progressive realisation of s24 constitutional rights in the interests of every person.

This is very broad. We suggest that the only s24 rights dealt with by this Bill are as they relate to the coastal environment. It is suggested that the wording should reflect that the environment referred to in this section is no more than the coastal zone environment.

Further, “every person” translates to “every single person”. Such refers to every person’s interests progressively realised, which is not feasible and or possible. It is suggested that “every person” should read “all persons”.

[DEAT Comments:](#)

*This section was not amended.*

**Section 4: Application of this Act**

[Wildlife and Environmental Society of SA]

District Municipalities are not bound by this Act? Good interpretation.

[Natalie Way-Jones (Personal Capacity)]

Is it appropriate for the Minister or MEC to administer dumping or incineration at sea outside the Republic?

[Professor H.G. Vrancken (Nelson Mandela Metro University)]

(e) The word “including” in clause 4(1) as it now stands, together with the juxtaposition in paragraph (a) of the term “territorial waters”, on the one hand, and the terms “exclusive economic zone” and “continental shelf”, on the other hand, could be interpreted as a claim by Parliament that the exclusive economic zone and the continental shelf of the Republic are part of the Republic. This is most probably not the legislator’s intention. If it were, there would be no basis for such a claim either in international law or in South African constitutional law. The formulation suggested takes into account and reflects the fundamental distinction between the territorial status of the internal waters, territorial waters and Prince Edward Islands, on the one hand, and the legal status of the exclusive economic zone and continental shelf on the other hand.

[LEGALB]

This section provides that the provisions in this Bill that relate to dumping and/or incineration at sea, apply to South African aircraft and vessels outside of the

Republic. It is understood that a vessel is treated as a person and as a person, this Bill would therefore apply to a vessel. However, is this not stepping outside of the jurisdiction of South Africa? How would this be enforce? Does this provision apply to the captain of a vessel or to a pilot of an aircraft? Can a fine, sentence be imposed for a crime in another jurisdiction? Is the intention that the words “outside the Republic” only refer to the high seas and management of vessels and aircraft registered in South Africa under international treaty management?

Secondly, the term “the Republic” is not defined, and should, especially considering that the section appears to deal with international matters, rather use the term “Republic of South Africa”.

Third, although aircraft is identified as “South African aircraft”, this is not the case for vessels. Therefore as it stands this Bill purports to apply to any vessel when outside the Republic, which is clearly not correct and should be rectified.

[Professor H.G. Vrancken (Nelson Mandela Metro University)]

Clause 4(1) provides that:

“[The] Act applies in the Republic, including –

- (a) its territorial waters, exclusive economic zone and continental shelf as described in the Maritime Zones Act, 1994 (Act 15 of 1994); and
- (b) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act 43 of 1948)”.

Suggestions:

It is suggested that clause 4(1) be amended as follows:

- |   |
|---|
| <p>“This Act applies -</p> <ul style="list-style-type: none"><li>(a) in the Republic, including -<ul style="list-style-type: none"><li>(i) its internal waters and territorial waters; and</li><li>(ii) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act 43 of 1948); and</li></ul></li><li>(b) in the exclusive economic zone and continental shelf of the Republic.”</li></ul> |
|---|

- (a) At present, clause 4(1)(a) refers to the “exclusive economic zone ... as described in the Maritime Zones Act, 1994 (Act 15 of 1994)” despite the fact that clause 1 has already defined the term “exclusive economic zone” as meaning “the exclusive economic zone of the Republic as described in the Maritime Zones Act, 1994 (Act 15 of 1994)”. The words “as described in the Maritime Zones Act, 1994 (Act 15 of 1994)” in clause 4(1)(a) are therefore repetitive and unnecessary as far as the exclusive economic zone is concerned. If clause 1 is amended as suggested above, the same would apply as far as the other maritime zones are concerned.
- (b) The Maritime Zones Act, 1994, created three maritime zones that are not mentioned in clause 4(1)(a): the internal waters, the contiguous zone and the maritime cultural zone. It is indeed not necessary to mention the contiguous zone and the maritime cultural zone in clause 4(1)(a) for the reason that they overlap with part of the exclusive economic zone (see sections 5(1), 6(1) and 7(1) of the Act). The internal waters, on the other hand, do not overlap with any of the zones mentioned in clause 4(1)(a). This is because the latter are seaward of the baseline (see sections 4(1), 7(1) and 8(1) of the Act) while the internal waters are defined as “all waters landward of the baselines” (section 3(1)(a) of the Act) [the Act is somewhat untidy with regard to harbours, see P Vrancken “The South African Baseline” (2002) 27 *South African Yearbook of International Law* 158 at 164-5]. By omitting to mention the internal waters, clause 4(1)(a) falls therefore short, without any apparent reason, in what seems to be the purpose of confirming that the Bill applies in all sea areas up to the outer edge of the Republic’s exclusive economic zone and continental shelf.
- (c) It could be argued that it is obvious that the Act will apply in the Republic’s internal waters because it will also apply further seaward (in the territorial waters, exclusive economic zone and continental shelf). One may then contend that it is also obvious (and therefore unnecessary to mention) that the Act will apply in the territorial waters since they are landward of the exclusive economic zone and continental shelf.
- (d) It could also be argued that it is obvious that the Act will apply in the Republic’s internal waters because the Republic’s internal waters are part of the Republic and clause 4(1) makes it abundantly clear that “[the] Act applies in the Republic” (including its internal waters). The argument is based on the international law rule that the internal waters of a coastal State are part of the territory of that State [see J Dugard *International Law. A South African Perspective* (2005) 3<sup>rd</sup> ed 358]. Such an argument gives rise to two difficulties in the present matter:
- (1) In international law, the coastal State also has sovereignty over its territorial waters (article 2(1) of the 1982 UN Convention on the Law of the Sea). There would therefore appear to be no more reason to mention the territorial waters than to mention the internal waters.

- (2) The Bill does not contain a definition of the term “Republic”. The Constitution defines the territory of the Republic by listing the nine provinces of which it comprises (section 103(1)). The Constitution then provides that the territories of the various provinces “comprise the sum of the indicated geographical areas reflected in the various maps referred to in the Notice listed in Schedule 1A” of the Constitution (section 103(2) as amended by the Constitution Twelfth Amendment Act of 2005). At the coast, substantial bodies of internal waters (for instance Algoa Bay) are clearly not included in the relevant geographical areas and, despite the unsatisfactory scale of the abovementioned maps, one gains the impression that, as a matter of principle, most, if not all, internal waters are excluded. This would mean that, in South African constitutional law, internal waters (and obviously also territorial waters) are not part of the Republic. This conclusion, which contrasts with international law and which one must not prefer in terms of section 233 of the Constitution, may only be avoided by interpreting section 103 of the Constitution as merely defining the mainland territory of the Republic. Such an interpretation removes the obstacle to the incorporation in South African law, in terms of section 232 of the Constitution, of the principle of customary international law that assimilates a coastal State’s internal waters to that State’s land territory. That assimilation was assumed in *Lawyers for Human Rights v Minister of Home Affairs* [2004 4 SA 125 CC] where the Constitutional Court implied *obiter* that the South African harbour waters are part of the territory of the Republic [at 7].

In view of the above, it is advisable to also mention the internal waters in the Bill.

- (e) The word “including” in clause 4(1) as it now stands, together with the juxtaposition in paragraph (a) of the term “territorial waters”, on the one hand, and the terms “exclusive economic zone” and “continental shelf”, on the other hand, could be interpreted as a claim by Parliament that the exclusive economic zone and the continental shelf of the Republic are part of the Republic. This is most probably not the legislator’s intention. If it were, there would be no basis for such a claim either in international law or in South African constitutional law. The formulation suggested takes into account and reflects the fundamental distinction between the territorial status of the internal waters, territorial waters and Prince Edward Islands, on the one hand, and the legal status of the exclusive economic zone and continental shelf on the other hand.

[National Ports Authority]

Since the Act applies to the area within which NPA dumps dredged material, what role must NPA play in controlling the area? Clarity is required in respect of the ports responsibilities in terms of dumping at sea.

[DEAT Comments:](#)

*This section was amended as follows:*

“(1) This Act applies to the Republic, including –

- (a) its internal waters, territorial waters, exclusive economic zone and continental shelf as described in the Maritime Zones Act, 1994 (Act No. 15 of 1994); and
- (b) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act No. 43 of 1948). “

**Section 5: Application of National Environmental Management Act**

[LEGALB]  
s5(3)

It is uncertain as to how this section would be applied in light of section 6(1) of the bill and the various requirements of Chapter 4 of NEMA.

[Wendy-Leah Dewberry (Noetzie Conservancy Association) and Charmaine Cumberlege]

Provision should be made for this act to be reasonably adhered to from 15 September 2006. This to prevent any activity which may intend to take advantage of the interim period and cause harm to any part of our Coast which this bill aims to protect. Any activity occurring between September 2006 and the passing of the bill that conflicts with this Draft Bill should be liable for scrutiny and repair.

[Oceanographic Research Institute]

The section dealing with the application of NEMA and the potential for conflict with other legal instruments are autocratic and ultimately unrealistic. To simply state that the section of this proposed Act prevails should there be conflict with other national legislation is simplistic and will be tested in court.

[DEAT Comments:](#)

*This section was not amended.*

**Section 6: Conflicts with other legislation**

[Chamber of Mines of SA]

The possible conflict with the MPRDA must be resolved.

[Department of Environmental Affairs & Development Planning]

Section 6

This section is contentious as this provision simply overrides any other legislation. The override clause should be considered in terms of other legislation and scope and nature of each case. What are the implications if other legislation contains the same override clause? Which national Act will take preference over the other?

- Delete the word “ zone” from section 6(1)
- Section 6(2) :- replace first comma ( , ) with or

[LEGALB]

s6(1)

It is uncertain as to how this section would be applied in light of section s5(3) of the bill and the various requirements of Chapter 4 of NEMA.

s6(2)

The term “that has been saved” in s6(2) does not to our knowledge occur in other SA legislation.

There is a confusion of subject-matter of between s6(2) and s103, because the content of s6(2) really has to do with the content of s103. This will result in confusion, especially as the Bill does not provide any cross-reference for the reader between the two sections.

It is therefore suggested that s6(2) and its contents be deleted, that its contents be placed under s103 of this Bill, and that consequentially s6(1) be de-labelled and a phrase at its end be added “...subject to s103(1) and (2)”. Alternatively, there should at least be some indication under s103 that subject matter relevant to s103 is contained in s6(2).

Further, this section provides that provisions in NEMA, its regulations or authorisations issued under NEMA shall prevail if in conflict with provisions in regulations or authorisations saved in terms of s103. However, NEMA defines itself as including its schedules, regulations and any notice issued under NEMA. Presumably therefore, because this Bill has specifically referred to NEMA regulations and not specifically referred to NEMA schedules or notices, this Bill would override NEMA schedules and notices in any conflict between these and the provisions and savings referred to in s6 of this Bill. It is not sure, given the lack of explanation, whether this effect is a result of lax drafting of this Bill, or whether it is by intention. This needs clarification, perhaps by a statement in NEMA or via an

amendment to this Bill in its Schedule 1, and/or a statement as to what would prevail in a conflict between this Bill and its savings, and NEMA schedules or NEMA notices.

[eThekweni Municipality]

Section 6(1) is a typical "sloppy Joe" clause. At common law the maxim is *lex posterior derogat priori* ie. the later law overrides the earlier law. If there is an ostensible conflict, the courts first attempt to read the conflicting legislation together and only then overrule the earlier statutes if they cannot be read together. Its always undesirable for legislation to be "impliedly repealed" by the Courts invoking the *lex posteriori derogat priori* rule or to have to attempt to construct a resolution to a conflict. A well drawn legislative text should repeal specifically the legislation it wishes to repeal. A 'sloppy Joe' clause adds nothing to the debate on how to handle ostensibly conflicting legislation and is thus mere verbiage.

Section 6(2) read with Section 103 purports to preserve the regulations made under the Seashore Act over which the Council will no longer have power. This is exceptionally undesirable in the coastal area of a major city when new events or circumstances can create problems which require immediate attention. Our bylaws only go out to our seaward boundary -which zigzags through some of the most densely occupied areas in the country during the season.

[KZN Agriculture and Environmental Affairs]

6(1)	Reference is made in this section to possible conflict between this Act and other national legislation but no mention is made to conflict between this Act and Provincial and/or Local legislation (by-laws). Is the assumption correct that this Act prevails over the core municipal planning tool, the Integrated Development Plan? Moreover, does this provision prevent the Act from being suspended by the Development Facilitation Act (1995)?
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[National Ports Authority]

1. The National Ports Act should not be overridden by this Bill, as it was specifically enacted (NPAct) to ensure safe, orderly and efficient port functioning: it also makes provision for a Ports Regulator which is to monitor port activities to ensure it performs its functions in line with government ' s objectives. 2. Will the Development Facilitation Act be able to override this Bill? 1. The Bill should not prevail over the National Ports Act in any matter, including coastal management.

[Department of Environmental Affairs & Development Planning]  
Areas of exclusive national, provincial and local competencies

Cohesive and mutually supportive relationships between the spheres of government will contribute significantly to achieving sustainable coastal development in South Africa. Government institutions will benefit from:

- Institutional structures that support horizontal and vertical integration within government with respect to coastal management ;
- Clearly defined roles and responsibilities and a simplified regulatory framework governing coastal resources that promotes integrated and coordinated coastal management ;
- Promotion of shared responsibility between government and civil society in the management of coastal areas; and
- Cohesive planning of coastal resources which ensures municipal and provincial coastal planning initiatives is aligned with national policy.

The province has exclusive powers over a limited number of matters such as provincial planning. Under certain circumstances provincial laws on concurrent matters are subject to laws of parliament, but parliament does not have unlimited authority over these matters. A provincial law will prevail if an Act of parliament on the same issue does not comply with the prescribed criteria. Disputes in this regard will be settled by the constitutional Court. (*Refer to Section 146 of Constitution*)

Section 6(1) states that if there is conflict between a section of this Act and other national legislation, the provision in the Act prevails, provided the conflict concerns coastal zone management. This creates confusion since it is not clear whether this refers only to national legislation and, therefore by definition, excludes provincial legislation such as the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985).

The fact that this legislation will prevail over other legislation, furthermore, also creates the perception of ignorance towards other existing legislation and processes and could lead to duplication and further time-consuming procedures. This is not considered to be good practice and not in the spirit of cooperative governance.

This section is contentious as the provision simply overrides any other legislation. The override clause should be considered in terms of the Constitution, other legislation and the scope and nature of each case. What are the implications if other legislation contains the same override clause? Which national Act will take preference over the other? What is the impact on exclusive provincial and/or municipal powers in terms of the Constitution?

[Department of Minerals and Energy]

6 (1)	Mining is not a listed activity and development of mineral resources is the jurisdiction of the Minister of DME. Therefore not applicable to mining since Section 40 of the MPRDA requires proper consultation with the relevant Government Departments.
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[Robert Stegmann - Reserve Manager: ELCNR (Personal Capacity)]

Section 6 regarding conflicts with other legislation needs to

consider protected areas set aside as Nature Reserves or State Land managed as protected areas and not merely declare that the Bill would have precedence there-over in the event of a clash. Consider the National Forest Act which subscribes to facilitating access where appropriate and not detrimental to the environment and ecological processes. (I have read Section 13.)

[DEAT Comments:](#)

*This section was amended to read:*

“(1) If there is a conflict between a section of this Act and any other existing and future legislation, the section of this Act prevails, if the conflict concerns coastal zone management.”

## **CHAPTER 2**

### **THE COASTAL ZONE**

[DEAT Comments:](#)

Chapter 2 deals with the different zones of the coast. Minor amendments have been made to the section dealing with the composition of coastal public property to improve clarity, and amendments have been made to the provisions dealing with the extension of coastal public property to make the preconditions for adding to coastal public property less onerous. The section on the position of the high water mark has been redrafted to take account of comments received and to make it clearer. The previous “buffer Zone” has been renamed a “protection zone” as some people felt a buffer zone carried negative connotations. The section dealing with the composition of the protection zone was redrafted to reduce confusion and bring it in line with land-use planning terminology.

*Part 1: Coastal public property*

[SANParks (West Coast National Park)]

Chapter 2 – The Coastal Zone

The areas and zones are well explained. Reference is made to municipal (local authority) and organs of the states' function. My question here is how does an organization like South African National Parks factor into the matter here as it is certainly not a local authority and possibly not an organ of the state. It is a parastatal organisation with a board appointed by the Minister of DEAT. The reason for me questioning this is that large areas of the coastline are part of the West Coast National Park (WCNP) and are proclaimed national park in terms of the Protected Areas Act (57/2003). Added to this, SANParks has contractual agreements with the *Postberg Nature Reserve* and *Stofbergfontein Home Owners Association* that relates directly to the coastal zone. The contracts recognize that SANParks is the management authority over these areas. Any changes to legislation affecting these groups and contracts is important, as it can render parts of the contract invalid. Changing or revising the contract needs to be done by negotiation. We, therefore, strongly recommend that these documents be read in accordance with the parks legislation in finalising the ICMB. The contracts can be made available should you require it.

Further to this if I understand the Bill correctly municipalities will not administer the ICMB in the Western Cape over the entire coast. Coastal waters on the other hand, will be administered by a specific organ of the state. I would think that the sheer size of West Coast National Park (and the complexity of the coastline) would pose a serious challenge for either the Saldanha Bay Municipality or the West Coast District Municipality in terms of management functions. Perhaps I understand the wording incorrectly but if not, I do not think this is possible. This Bill should clearly delegate management function of the coastal zone, if proclaimed national park, or a coastal zone/area abutting the terrestrial area, which is national park, to SANParks. Our concern is that often, municipal authorities do not have nature conservation or research functions and we certainly can assist in this regard. In light of the above the terms 'local authority' and 'organs of the state' needs to be critically defined.

[Institute of Estate Agents of SA]

PART 1: COASTAL PUBLIC PROPERTY; PARA 7 (b)(i) and PARA 14(1)(a) and 14(1)(b)

Summary:

Ownership will be lost, without any compensation, on portion/s of land that become situated below the high-water mark, due to sea-level rise, erosion of the coast or other natural causes, and possibly become public property.

Comment:

1. Global warming can create havoc for beach-front property owners.
2. The question is also not addressed, as to whether property lost in this manner, will be reinstated to the original owner, should the high-water mark change

again.

3. Flooding, which may result in a temporary or permanent change in the high-water mark, is also not addressed. The reality of the floods during 2006, in the Glentana area near George, where a few houses and at least one vacant stand were washed into the sea, emphasises the need for detail and clarification.
4. Will ownership change immediately, in case of a rise in the high-water mark? No time limit is mentioned. What would be reasonable? One month, one year, or more, to allow for a possible change again.
5. The possibility of a change at a later stage, which will revert the high-level mark back to its original level and therefore reinstate the portion/s of land is not considered.
6. The possibility and or right of the property owner, municipality, government body, or other person, to construct the necessary preventative measures to prevent flooding, is not considered.

[Kwazulu-Natal Conservancies Association]

Buffer zone for urban areas to be 200m in preparation for sea level rises due to Climate Change.

Equitable access to the sea for all people.

1:100 year and not 1:50 year flood line is recommended – Climate Change precaution.

All dunes to remain in tact – no development and no special permiss

### **Section 7: Composition of coastal public property**

[TRANSNET]

- Part 1: Coastal Public Property, with specific reference to Section 7, requires clarification in terms of it's implications for Ports. The extent of coastal public property in Ports should be enunciated.
- The definition of seashore provided for in the Bill includes reclaimed land, which in terms of section 7, becomes part of the Coastal Public Property. We reiterate that the implications for future Port development should be enunciated.

- We are concerned that Section 7 (h) (iii) – provides that natural resources within harbours (owned by organs of state), forms part of Coastal Public Property. This will have an impact on how the natural resources in the harbour are accessed, managed etc.

[ESKOM]

Coastal public property consists of any natural resource on or in any harbour, work or other installation in or any coastal public property of a category mentioned in paragraphs (a) to (h) that is owned by an organ of state. = An organ of state, as set out in the Constitution, includes a statutory body fulfilling obligations in terms of legislation. Such declaration of resources on land owned by statutory bodies such as Eskom will create a problem in that it creates rights in favour of the public, including right of access to such resources. Such land is usually purchased for a specific purpose such as to build infrastructure with a view to limit or prohibit access thereto for safety and other reasons. There needs to be a caveat for some or most of the resources on land owned by statutory bodies like Eskom to avoid claims by the public to rights on such land.

[Ezemvelo KZN Wildlife]

Section 7(b)(i) Invaded needs to be replaced by 'wholly or partially flooded or inundated'

[Kathy Leslie (Personal Capacity)]

(c) (ii) does a marina constitute and artificially created island?

(e) – does this conflict with (c). Again, does this include marinas. Does (e) exist in RSA?

(h) change to "any coastal resources..."

[KZN Agriculture and Environmental Affairs]

7(c)(ii)	This provision opens the door for the potential alienation of coastal public property and contradicts section 11(2) which states that coastal public property is inalienable.
7(f)	The Act needs to ensure that "Admiralty Reserve" or "Amenity Reserve" which currently vests in the ownership of municipalities via title deed is included in this provision.
7(h)	Natural resources need to be defined and specific reference made to the Act's intent with regard to mineral and gas deposits.

[National Ports Authority]

S 7 (h)( iii) includes natural resources in any harbour, but does not explicitly state that a harbour is coastal public property. However, S 7 (a) includes coastal waters as coastal public property. Since a harbour comprises coastal waters, are harbours considered coastal public property? Alteration of the common law principle is required specifically in respect of port land: due to the economic and strategic importance it has to the country. Please refer to the National Ports Act for clarity. Harbours should be explicitly excluded from the definition of coastal public property.

[Belastingbetalersvereniging]

Art.7. Kommentaar is gelewer in samehang met omskrywing van “coastal public property”. Die artikel behoort ‘n omskrywing of verwysing te bevat na grondgebied aanliggend tot die hoogwatermerk wat normaalweg deur mense as strandgebied gebruik word.

[DEAT Comments:](#)

*This section was amended to read:*

- “(b) land submerged by the coastal waters, including –
- (i) land flooded by coastal waters which subsequently becomes part of the bed of coastal waters; and
  - (ii) the substrata beneath such land;”

## **Section 8: Extending coastal public property**

[Endangered Wildlife Trust]

1. Section 8(2)(a)(b) - Suggest removal of restrictions referring to declaration of coastal public property (i.e. only if it is adjacent to existing coastal public property/forms part of littoral active zone). Include rather justification of declaration based on defensible ecological or socio-economic criteria.
  
2. Section 8(3)(a) – It is unclear as to who will classify as an interested and affected party, please refer to the definitions section where we suggested including a definition of “interested and affected parties”. Is the category only limited to organs of state or to any member of the public? This comment will apply to all references to interested and affected parties, throughout the Bill.

[Wildlife and Environmental Society of SA]

The declaring of state owned land as coastal public property in order to protect sensitive coastal ecosystems refers. In light of the current selling of state owned land it is strongly recommended that state land at risk of being sold to private investors is identified as a matter of priority. Such land that currently forms a part of the natural functioning of dynamic coastal processes must be protected at all costs, and not sold off to finance Municipalities running costs.

Section 8 (2) State land may be declared as coastal public property only if the land... WESSA suggests that the following is added to points (a) and (b):

(c) plays a role in the functioning of the coastal environment.

There are various examples of state owned land that that are not immediately adjacent to existing coastal property or within the littoral active zone, but play a critical role in the functioning of the coastal environment (e.g. state land in Nature's Valley, Bitou Municipality, Western Cape).

[ESKOM]

The extension of coastal public property only takes cognisance of access to the seashore by the public. There are other kinds of access that are required by juristic persons which will be in the national interest, e.g. for power generation, and the Minister should be empowered to reserve and protect such areas of a strategic nature on application.

[Department of Environmental Affairs & Development Planning]

#### *Storm water runoff & marine outfall pipelines*

Chapter 8 does not address the issues of rain and storm water runoff. It seems strange that this was overlooked as the impacts of urban waste and pesticides are well documented. Provisions in the chapter refer to "person(s)" and does not relate to municipal responsibilities to comply with certain marine and water quality standards. In terms of the constitution this is a municipal responsibility but it is not clear how this will be regulated. A plethora of marine storm water discharge pipes exist that are in a state of disrepair and some are even utilised by municipalities to discharge raw sewerage under emergency conditions when sewerage works cannot cope with sewerage inputs. Secondly the locations of some of these pipes are influencing water quality and are contributing to accelerated erosion of coastal land. These pipes do not only pose a health and environmental risks but the dangers could escalate into epic proportions as they are frequently situated close or adjacent to recreational beach areas. These pipelines need to be monitored and regulated and provision must be made in the Act to address it.

[Gouritsrivier Bewaringstrust]

Is dit wys om magte aan die minister te gee soos bv in Art 8(1) sonder raadpleging van die parlement op te tree terwyl daar in pt (4) van dieselfde artikel vereis word dat hy eers parlementêre goedkeuring moet verkry om sodanige besluit te verander? Op grond waarvan word hierdie onderskeid gemaak?

[LEGALB]

s8(1)

Does this section reflect an intention that state owned land that already falls within the definition of “coastal public property” in terms of this Bill is not to be considered “coastal public property”? If any presently state owned land can by definition of this Bill be classifiable as “coastal public property”, the means to identify that land should be contained in this Bill. If such land exists, s8(1) would require that the Minister must still go through the process of declaring it “coastal public property” even though it is already so by definition of this Bill. We would suggest that this process not be required, but that a means to identify, or process whereby such land can be identified, be given in the Bill.

It is not certain whether the “or” between (c) and (d) is an effective “or” or an effective “and/or because either way, an interpretation results in difficulties.

If “or” means “or” and not “and/or”, then the conditions 8(1)(a) or (b) do not make sense because the goal of public access to the seashore is not at one with the protection of sensitive coastal ecosystems along that seashore. However, the goals of (b), (c) and (d) would often coincide and the “or” would make the Minister’s actions irregular if his/her goal was to achieve any two or more of these goals.

If “or” means “and/or” not “or”, then the conditions 8(1)(a) or (b) do not make sense because the improving of public access to the seashore is not at one with protecting sensitive coastal ecosystems along that seashore.

Therefore, the objectives listed in 8(1)(a) to (d) will create difficulties that will in many instances be difficult for the Minister to reconcile in exercising his/her powers under s8(1). It is suggested that the meaning of “or” be clarified as part of the solution of this issue.

s8(2): The text “declared as” should for the sake of simple phrasing, read “declared” or “declared to be”.

What is the reason for the provision that only state owned land adjacent to existing coastal public property or that is part of the littoral zone, can be declared coastal

public property. Further, it is not clear from this section whether the intention is that state owned land that already falls within the definition of "coastal public property" as per this bill should not be regarded as "coastal public property".

s8(3): The text "state owned land as" should for clarity and consistency of meaning read "state owned land" or "state owned to be".

It is probably worth spelling out that the Minister must take account of matters raised during consultations with interested and affected parties. It is noted that the phrase "interested and affected parties" is not defined.

It is not clear from this section whether it is the intention that the consultation process that of an Environmental Impact Assessment ("EIA"). We would suggest that clarity be provided on this by the Bill, and that the Bill also define or set out principles regarding the necessary consultation process.

We feel that it is possible that a problem could arise because the Minister, failing the concurrence of the Cabinet member, may obtain what amounts to permission from the member of the Executive Council of the province responsible for the management of that state owned land, and then declare land to be state owned land. We feel that this may set the Minister at loggerheads with his own Cabinet and prejudice cooperative government between Cabinet and an Exco of a province.

s8(4)

It is suggested that consultation with interested and affected parties on the withdrawal of coastal public property from that status would be most important, but it is not provided for at all.

[eThekweni Municipality]

It is suggested that there should be a stated objective of extending coastal public property on a prioritized basis. This is to redress the loss through alienation of what would have ideally been coastal public property. Section 8 (2)(a) If there is no coastal public property in an area of coastline, how will land, that is outside of the littoral active zone, be declared coastal public property given the restrictions as laid out in 8(2)(a) and 8(2)(b)?. It is therefore suggested that the restriction should be broadened to the coastal buffer zone.

[Kathy Leslie (Personal Capacity)]

(1) Public access happens at local government level mostly. Would a municipality have to apply to the Minister for municipal land (state-owned) to be used for access etc?

(2) Why limit this? Access from a main road, for example, may traverse state land that is neither (a) or (b) but is necessary to reach the coast.

(3) Surely Minister must concur with municipality involved.

[KZN Agriculture and Environmental Affairs]

8	The provision of assigning responsibility to the Minister would appear to be in conflict with section 26(1)(c) where the improvement of public access is assigned to municipalities.
8(3)(b)	Should the “or” not be replaced with “and”?
8(4)	This provision should reflect co-operative government as contained in NEMA. It should not only refer to “the prior approval of Parliament” but to all spheres of government.

[Oceanographic Research Institute]

(2) State owned land may be declared as coastal public property only if the land

—

- (a) is adjacent to existing coastal public property; or
- (b) forms part of the littoral active  e.

[DEAT Comments:](#)

*This section was amended by deleting sub-section (2) and inserting new (e):*

“(e) to protect people, property and economic activities from risks arising from dynamic coastal processes, including the risk of sea level rise.”

**Section 9: Acquisition of private land by the state**

[Endangered Wildlife Trust]

Include reference to source/s of financial resources for acquisition of private land by the state.

[Department of Environmental Affairs & Development Planning]

Section 9

Section 9(1):-

Who will pay for the acquisition of state land and consider the timeframe in which this is supposed to happen?

[LEGALB]

s9: The title of this section should for clarity and consistency of meaning read “State” not “state”.

s9(1) It is not clear whether the intention is that the agreement referred to in s9(1)(c) only be an agreement of purchase or whether it can be an agreement of exchange of land for land, or whether the agreement with the owner take another form such as a donation. We suggest that the intention be clarified.

s9(2)

s9(2)(a) provides, if one reads s8(2) to which it refers us, that private land acquired must be State owned land that is adjacent to coastal public property or part of the littoral active zone. This is a contradiction as private land is not State owned land. The wording of s9(2) should be changed to clarify this.

Does s9(2)(b) require that each and every purpose set out in s8(1)(a) to (d) be the purpose of acquiring land in terms of s9, can the purpose be one or more of the purposes in s8(1)(a) to (d)? Please see query as to whether the “or” in s8(1)(a) to (d) should be read as “or” or “and/or”.

DEAT Comments:

*D Malan: This [(9(2) (a))] is a valid comment. See also my comment above that suggests that section 8(2) is deleted*

Recommendation:

*D Malan: Delete section 9 (2) (a).*

[eThekweni Municipality]

This section deals with expropriation and land acquisition for coastal public property but ignores the acquisition of coastal access land which we believe should be included in section 18 (see later comments). It is silent on the source of funding for these acquisitions and we believe that for this Act to make an impact the funding issues must be addressed and therefore the Act must include a section on financial resources

[Blue Horizon Developments]

Section 9 of the Coastal Bill allows the Minister to acquire private land for the purpose of declaring that land as coastal public property.

This section gives the Minister powers which go beyond what would be considered reasonable. In particular, the circumstances, contemplated under the Coastal Bill, under which an expropriation may be effected, are in fact too wide and may not be justified in the present legislative context.

Private land may be acquired under the Coastal Bill if it is adjacent to existing coastal public property or if it forms part of the littoral active zone and is being expropriated in order to:

- improve public access to the seashore;
- to protect sensitive coastal ecosystems;
- to secure the natural functioning of dynamic coastal processes; or
- to facilitate the achievement of any of the objectives of the Bill.

The powers to expropriate for the above objectives would for the most part already be allowed for in terms of NEMA,<sup>7</sup> the Biodiversity Act, the Marine Living Resources Act and the Protected Areas Act.<sup>8 9</sup>

1.1 In short, in view of the above, it is submitted that the purposes proposed in the Coastal Bill allowing for expropriation are in the first instance, too wide and unreasonable and secondly unnecessary given the legislative context within which the Coastal Bill is to operate. This section should be removed.

[Hessequa Municipality]

Clause 9 (c) stating “if no agreement is reached with the owner, by expropriating the land in accordance with the Expropriation Act, 1975 (Act 63 of 1975)” provides local authorities (and the state) with the “teeth” to act in public interest in cases where coastal property owners do not recognise that the community at large must have reasonable access to the shoreline, a public amenity. Unfortunately some coastal property owners seem to be reluctant to accept that there is a public right that they should heed. This principle is not new in South Africa. The Soils Conservation Act requires landowners to look after the soil for the benefit of all inhabitants. A landowner is not allowed to do with his soil what he pleases. In similar vein it is commendable that the Draft Bill will ensure that the public ownership of the coastal shoreline cannot be “sterilised” by recalcitrant owners of coastal properties.

[Kathy Leslie (Personal Capacity)]

(2)(a) Why?

[KZN Agriculture and Environmental Affairs]

9	The Bill deals with expropriation and land acquisition, but is silent on the source of funding as well as how priorities will be determined or what procedures are to be followed.	Include section on financial/monetary implications.
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<sup>7</sup> Section 36 of NEMA.

<sup>8</sup> Section 80 of the Protected Areas Act. Section 80(2) provides for the MEC to acquire private land which has been or is proposed to be declared as or included in a provincial protected area. In addition, South African National Parks Board is empowered to acquire private land which has been or is proposed to be declared as or included in a national park (section 81 of the Protected Areas Act).

<sup>9</sup> Furthermore, the purchase or expropriation of property for conservation or other purposes may be affected if this is in the public interest, by the Minister for Cultural Affairs, in consultation with the Minister of Finance and on the advice of the South African Heritage Resources Agency (“SAHRA”) in terms of the Heritage Resources Act. Section 46 of Act 25 of 1999 (“the Heritage Resources Act”)

[DEAT Comments:](#)

*This section was amended to read:*

“(2) Land may be acquired in terms of this section only if it is being expropriated for a purpose set out in section 8(1).”

**Section 10: Designation of state owned land for certain purposes**

[Habitat Council, CAPTRUST & Still Bay Conservation Trust]

Uncertainty about S10 [Designation of state owned land for certain purposes]; and ‘designate’ is not defined

Part of the problem is that the word “designate” is not defined in the Chapter 1, S1.

As a result, the actual meaning of S10 is not clear to us.

The dictionary meaning of “designate” is given in the Chambers’ 20<sup>th</sup> Century Dictionary as:

- To mark out so as to make known
- To show
- To name
- To be a name for
- To appoint or nominate

Is the first definition is applicable? Or does the section refer to the designation of management responsibility to specific authorities or departments??

Furthermore, S10 does not explicitly spell out what these ‘certain purposes’ are.

In S10(3) we are told that

“ The MEC may, by notice in the Gazette

(a) designate state owned land vested in the provincial government for the purpose of facilitating any of the matters mentioned in S 8(1)(a) to (d);

S8 [Extending coastal public property] explicitly spells out the purposes for which S 8 is created:

S 8(1)(a) to (d) gives the purposes for which such land may be declared as coastal public property, namely:

8(1)

- (a) to improve public access to the sea-shore
- (b) to protect sensitive coastal ecosystems
- (c) to secure the natural functioning of dynamic coastal processes; or
- (d) to facilitate the achievement of the objectives of this Act.

The objectives of this Act are given in S1(2):

- (a) to determine the coastal zone of the Republic
- (b) to provide, within the framework of NEMA, for the co-ordinated and integrated management of the coastal zone by all spheres of government in accordance with the principles of co-operative governance;
- (c) to preserve, protect and enhance the status of coastal public property as being held in trust by the state on behalf of all South Africans, including future generations;
- (d) to secure equitable access to the opportunities and benefits of coastal public property; and
- (e) to give effect to the Republic's obligations in terms of international law.

S10(5) does state that "State owned land designated in terms of subsection (1)(a) or subsection (3)(a) must be regarded as coastal public property".

The difference between S 8 and S 10 is in 8(2), which determines that "State owned land may be declared as coastal public property ONLY OF the land (1) is adjacent to existing coastal public property;

(2) forms part of the littoral active zone."

The question is: WHAT state owned land is S10 referring to??

#### Withdrawal of designation

S10(b) determines that the Minister or MEC may at any time withdraw a designation in terms of S10(1) (a) or S10(3) (a) respectively.

Considering that S 8(4) determines that the Minister may not withdraw a declaration of state owned land as coastal public property without the prior approval of Parliament (an important remnant of the Seashore Act (Act 21 of 1935), we find it a matter of concern that S10 does not equally protect the land here designated as coastal public land from losing its status. Withdrawal is allowed after mere consultation with the MEC or Minister, consultation with the managers of the land, and concurrence of the member of the Executive Council or Minister responsible for managing state owned land (see S10(2)(a),(b) and (c) and S10(4)(a),(b) and (c).

Question: How is this to be understood??

[Department of Environmental Affairs & Development Planning]

#### Section 10

Insert 10(1)(c):- Minister may not designate land for the purpose of "land restitution" or as part of "land reform process".

Insert in Section 10(2)(d):- Public interest

Edit Section 10(3)(b):-.....a designation in terms of paragraph 3(a)

Section 10 (4)(b)

"MEC must consult persons responsible for managing the state owned land".  
Does the designated person consult with the public (interested and affected parties)?

Section 10(4)(b)

Insert .....managing the state owned land and interested and affected parties.

[Ezemvelo KZN Wildlife]

Section 10 Add item (c) 'In exercising subsection 1(b) above, the Minister must give reasons for such action.

[LEGALB]

s10(5)

This makes the requirements in s8 that there be a process involved in the declaration of land as coastal public property, and makes the requirement that only land contiguous to coastal public property be declared coastal public property nugatory or extraneous. This section further renders section 26 nugatory considering that any land which is designated for the purposes of s8(1)(a) to (d) is automatically deemed to be "coastal public property" by this section.

[Oceanographic Research Institute]

Designation of state owned land for certain purposes

(1) The Minister may, by notice in the *Gazette* –

- (a) designate state owned land vested in the national government for the purpose of facilitating any of the matters mentioned in section 8(1)(a) to (d); or
- (b) at any time withdraw a designation in terms of paragraph (a). 

[DEAT Comments:](#)

*This section was amended to read:*

"(2) Before designating state owned land in terms of subsection (1)(a) or withdrawing a designation in terms of subsection (1)(b) the Minister must –

- (a).....

- (b) consult the persons responsible for managing the state owned land and interested and affected parties in terms of Part 5 of Chapter 6 ; and”

“(4) Before designating state owned land in terms of subsection (3)(a) or withdrawing a designation in terms of subsection (3)(b) the MEC must –

(a).....

- (b) consult the persons responsible for managing the state owned land and interested and affected parties in terms of Part 5 of Chapter 6; and”

### **Section 11: Ownership of coastal public property**

[Endangered Wildlife Trust]

Support provision protecting the inalienable status of coastal public property.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Section 11(1) is, with respect, a nebulous inclusion. The citizens of the country cannot own anything. Rather it is the State that can own property and manage, in effect, on behalf of the citizens of the country.

Section 11(2) provides for Coastal Public Property (CPP) to not be alienated. It should however make reference to Section 70 which provides for leases and make such provision explicit in this section. The leasing of CPP is fully supported.

[Department of Environmental Affairs & Development Planning]

#### Section 11

What about Leasing of the Sea Shore and administration of jetties? Who will be designated to issue permits / approvals? Currently Cape Nature Conservation deals with this in the province. The Minister must identify the coastal management responsibilities within 12 months of commencement of the Act (Section 43). It is unclear what the Minister’s thinking is around this. Will it be up to the MEC to designate who the issuing authority will be? What say does the MEC/ Province have in this matter?

[Western Cape Department of Environmental Affairs and Development Planning (Region A1 George)]

11. Ownership of private property

How will the Act redress the issue of private property built in the coastal zone or buffer zone in order to have the land reverted back to coastal public property. Furthermore, certain areas are owned exclusively by foreign investors, e.g. Camps Bay. How the Act addresses this issue and thereby safeguards the coastal zone.

[LEGALB]

s11(1)

It is possible that this section may have the far reaching effect of removing the right under common law, natural law, natural justice, of say Americans, to use any coastal public property. If this is the far-reaching intention, then this needs to be more explicitly stated.

This section provides that ownership of coastal public property vests in the citizens of the Republic. It is not certain how this concept "vest in the citizens" relates to State ownership. If the concept means State ownership, then this should be stated clearly. The term "vests in" and "held in trust" could make of the State an executor of a trust. Does this Bill in fact create a trust and place all coastal public property into that trust? Is any coastal public property privately owned? If so, this section would alienate that property from the owners. These questions cannot be answered because of the extraordinary multiplicity of terms used to describe the property referred to by this Bill and because of its vagueness. The Bill is in this regard so obscure and/or vague in meaning that public comment probably cannot be properly made for want of understanding, which makes public comment nugatory. The Bill terminology should have been clarified before public comment is sought.

If a trust is being created, is that trust governed by legislation relating to trusts in South Africa. Does that trust have legal personality? By the use of the word "vest" in the Bill, could one also make presumptions about ownership of the property and any rights in relation to that property within a trust?

If coastal private property can be privately owned but not alienated, and if this Bill provides that private ownership cannot be attached, then presumably whatever mortgages exist would be useless to the mortgagee banks. Again, the terminology of the Bill regarding the property, which is its subject matter, is so vague that one cannot tell if this scenario will eventuate. Proper opportunity to comment would only exist if the terminology could be cleared up.

s11(2)

This subsection provides that coastal public property is inalienable, and the section appears to identify the methods of alienation that would result in alienation of such property by specifying sale, attachment, prescription. Would a donation / gift over and other forms of alienation not listed as methods of alienation also amount to an alienation within the meaning of s11(2)?

How does one reconcile the concept that ownership of coastal public property vests in the citizens of the Republic and the concept that such is inalienable when considering the bundle of rights inherent in ownership? In addition, how does one reconcile the aforementioned concept of ownership vesting the citizens of the Republic and the ability of the State to remove such land from the ownership of the aforementioned citizens in light of section 26?

DEAT Comments:

[eThekweni Municipality]

Section 11(1) is also a retrogressive step legally speaking. It is unclear whether the "citizens of the republic" are owners of the property (a nationalist kind of version of the Roman Law "res omnium communes") with the "state" as the administrator or whether "the state" is the owner and the citizens hold the beneficial ownership only. If the state is the active party, the question that always arises is how the powers are divided between the 3 spheres of Government. It seems to me that the vesting of the coastal lands currently owned by the President remain vested in the President but that legislative authority be divided appropriately between the various Governments concerned.

The proposal to prohibit the alienation of Coastal Public Property is supported.

[Hessequa Municipality]

Clauses 11 (1) stating "The ownership of coastal public property vests in the citizens of the Republic and coastal public property must be held in trust by the state on behalf of the citizens of the Republic" and 11 (2) stating "Coastal public property is inalienable and cannot be sold, attached, or acquired by prescription and rights over it cannot be acquired by prescription" reinforces public ownership and, thus, the inalienable right of public access to the shoreline. This is needed.

[Kathy Leslie (Personal Capacity)]

(2)Shouldn't the Admiralty Reserve be included here. May limit prescriptive access from private property across reserve to Coastal public prop.

[KZN Agriculture and Environmental Affairs]

11(2)	Prohibiting the alienation - or acquisition by prescription - of coastal public property is supported. It is assumed that the provisions of the Extension of Security of Tenure Act (1997) and the Interim Protection of Informal Land Rights Act (1996), and other land related legislation, have been taken into account.
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[Adrienne Edgson (Personal Capacity)]

It is stated that land cannot be acquired by prescription – is this retroactive?

[National Ports Authority]

Transnet owns and has jurisdiction over the sea, sea-shore and sea-bed: as indicated under the South African Transport Services (SATS) Act No. 9 of 1989 (the first schedule) where the area has been indicated. (The subsequent Sea-Shore Act provides that the State President shall be owner of these area, EXCEPT of any portion thereof which was lawfully alienated before the commencement of this Act NPA is still the owner of these areas: sea-shore and part of the coastal waters as indicated in the SATS.

[DEAT Comments:](#)

*This section was not amended.*

## **Section 12: State public trustee of coastal public property**

[TRANSNET]

Similarly the provisions of Section 12 with regard to natural resources in ports require clarification.

[Wildlife and Environmental Society of SA]

This is a good point, allowing action against unscrupulous or poorly designed developments. We re-iterate the need for urgent protection of state land that has been identified “for sale”, particularly by Municipalities.

[LEGALB]

What is meant by “public trustee”. Does this Bill in fact create a trust and place all coastal public property into that trust? Is any coastal public property privately owned? If so, this section would alienate that property from the owners. These questions cannot be answered because of the extraordinary multiplicity of terms used to describe the property referred to by this Bill and because of its vagueness. The Bill is in this regard so obscure and/or vague in meaning that public comment probably cannot be properly made for want of understanding, which makes public comment nugatory. The Bill terminology should have been clarified before public comment is sought.

If a trust is being created, is that trust governed by legislation relating to trusts in South Africa. Does that trust have legal personality?

How does “interests of the whole community” relate to “interests of every person”.

[eThekweni Municipality]

Section 12(a) conflicts with Section 11. The "whole community" is an undefined concept but it certainly is wider than the "citizens of the Republic".

[Hessequa Municipality]

Clause 12 about the "State [as] public trustee of coastal public property" states that: "The state, in its capacity as the public trustee of all coastal public property must (a) ensure that coastal public property is used, managed, protected, conserved and enhanced in the interests of the whole community; and (b) take whatever reasonable legislative and other measures it considers necessary to conserve and protect coastal public property for the benefit of present and future generations". It is clear that this clause expects the State to have the ability to implement the clauses of the Bill.

[Kathy Leslie (Personal Capacity)]

There are a few places in the Bill where the intent is to "use, manage, protect, conserve and enhance" whereas in other instances it is to "conserve and protect". Surely the more integrated approach should be used. i.e. include "used, managed and enhanced in (b), and elsewhere in Bill.

[Wendy-Leah Dewberry (Noetzie Conservancy Association) and Charmaine Cumberlege]

I would like the provision for a person or group who feels that they have been wrongfully denied access to public areas to have a free facility of enquiry and if necessary, government legal representation to repair civil rights.

[Department of Environmental Affairs & Development Planning]

Section 12

Define "state" – national, provincial or local? Please specify who is referred to.

Section 12(a):- Add ....in the interest of the whole community and the coastal environment; and

Questions:

- Which organ of state will take the lead
- Who will make the regulations
- Potential for conflict
- Open to interpretation

[Hessequa Municipality]

Clause 12 about the "State [as] public trustee of coastal public property" states that: "The state, in its capacity as the public trustee of all coastal public property must (a)

ensure that coastal public property is used, managed, protected, conserved and enhanced in the interests of the whole community; and (b) take whatever reasonable legislative and other measures it considers necessary to conserve and protect coastal public property for the benefit of present and future generations". It is clear that this clause expects the State to have the ability to implement the clauses of the Bill.

[DEAT Comments:](#)

*This section was not amended.*

### **Section 13: Access to coastal public property**

[Jan S De Villiers (Attorney)]

The proposed section 13 should also provide therefore that public access to coastal public property be limited by the terms of a lease or other rights granted to any person. Without such a provision conflicts of rights may occur.

The reference in sub-section (5) to coastal public property that has been leased is not sufficient as it refers only to the charging of fees in terms of sub-sections (3) and (4) and does not limit the operation of sub-section (1), nor provide and extension to the provisions of sub-section (2).

[P.A. Whittington (Personal Capacity)]

Section 13 (5): I disagree with the non-application of subsections (3) and (4) in the case of property that has been leased. As it currently stands, the lessee would be able to charge a fee to enter coastal public property without providing any sort of service or facilities of benefit to the public. A fee should only be permissible if the lessee has to recover costs encountered due to provision of beneficiary services and facilities to members of the public that use them.

[Wildlife and Environmental Society of SA]

Does this allow for "pay beaches"? If so, are pay beaches not practical alienations?

[Department of Environmental Affairs & Development Planning]

Section 13

Not all coastal areas are suitable for public access and the section as it currently reads suggests that the public can demand access regardless of the sensitivity of the area in question. It is therefore suggested that:

- o Section 13(1)(a) be amended to read "...has the right of reasonable access to coastal public property were appropriate"
- o Section 13(1)(iii) ....an adverse effect to coastal environment.

Section 13(5)(c) :- Add “ Proclaimed fishing harbours”

[ESKOM]

13.2 Prohibition or restriction of access to, or the use of, any part of a coastal property is not prevented = The Bill does not set out who can prevent or restrict access and the form in which this can be done.

[Chamber of Mines of SA]

The general public will have to be educated with regard to their right of reasonable access to coastal *public* property, as this might have public health and safety consequences for the mines if not understood correctly.

[LEGALB]

s13(1)

This section provides that a natural person has a right to reasonable access to coastal public property, but does not give non-natural persons the same right. This would be unconstitutional unless this Act has, despite the wording of this section, not ousted the common law under which a non-human person has access to coastal public property.

Alternatively, if this section does not apply to non-natural persons, would these non-natural persons not be subject to s13 and its restriction on rights to use and enjoy coastal public property? This would be unconstitutional from the other end of the stick, as it were.

This section is also contradictory because in effect it provides that a member of the public have reasonable access to coastal public property for the purpose of using and enjoying that property if such does not adversely affect the rights of members of the public to do the same. One has visions of two members of the public doing different things, both claiming the same right to do what they are doing and both claiming that the other has interfered with his/her right under s13.

Should the text in s13(1)(b) “use and enjoyment” be interpreted as “use and/or enjoyment”? See comment iro s13(2). It is noted that only “use” is restricted by s13(1)(b)(i)-(iii) and that “enjoyment” is unrestricted. It further appears that the right of “reasonable access” under s13(1)(a) is unrestricted by s13(1)(b)(i)-(iii).

s13(1)(b)(iii) needs to be more concretely expressed so that it has practical application by the public and in a court of law. The intention here is apparently, from a reading of the words, not to ensure that use and enjoyment do not damage the environment, but to ensure that use and enjoyment does not prevent the State from protecting the environment. It cannot easily be imagined what facts would amount to a transgression of this provision.

s13(1)(b)(iii) is extremely widely stated and needs definition. That upon which an adverse effect is caused needs more definition. Kicking sand in someone's eyes has an adverse effect, for instance, or stepping on a rock and cutting ones toes is an adverse effect.

s13(2)

Does the "or" between 13(2)(d) and the second occurring s13(2)(d) mean "and/or".

Is enjoyment a subclass of use? If not, would the wording of s13(2) allow for prohibitions or restrictions on enjoyment of coastal public property?

This s13(2) seems to provide that prohibitions or restrictions on access to or use of coastal public property that forms a protected area, but does not define who may impose such prohibitions or restrictions. This may leave a gaping hole in the legislation, unless another section can save this situation

Does s13(2)(b) mean that a prohibition or restriction on access to or use of coastal public property, if it is to protect the environment, must be to protect the biodiversity, or may be to protect the biodiversity?

s13(3)

Upon what rights, process, or under what appeal system or what person/s is it envisaged that the Minister would ever approve the charging of a fee? What class of person/s could potentially apply to apply a fee?

s13(4)

It must be noted that NEMA does not refer at all, anywhere, to "public participation". NEMA does however, in its Part 5 of Chapter 6, deals with "community participation" which is an entirely different concept to "public participation". It is suggested that this Bill and NEMA be put on the same page, and that the process referred to in NEMA (community participation) be the process referred to in this Act. We suggest therefore that the concept "public participation" in this Bill be replaced with the concept "community participation".

s13(5)

Does s13(5)(a) mean that someone unrelated to the lease of coastal public property or protected area inside coastal public property can charge a fee for access to that coastal public property or protected area without any approval by anyone, and only if the lessor objects in terms of his/her/its rights under the lease can the fee charger be stopped?

Will there be any regulation of fees charged and if so, what legislation would so regulate such?

[Department of Environmental Affairs & Development Planning]  
Delegation to the lowest level of authority to ensure better decision making;

The spirit of the White paper in respect of co-operative governance and delegation of authority had been lost from the bill. The powers of provinces and municipalities have been curtailed significantly.

In particular, the following sections of the Bill were raised concern:

- Section 13(2)(a) – (d):- does not allow for the MEC to make regulations in this regard. This section should be read with Section 89(1)(c) which allows for the MEC to make regulations in consultation with the Minister regarding coastal public property only for recreational purposes. What about certain Commercial activities, Filming industry, Social activities, etc in the coastal public property. Surely the MEC should not be curbed to introduce such measures?

[SA Council for Natural Scientific Professions (Prepared by Biotechnology & Environmental Specialist Consultancy CC)]

13.3 “No fee may be charged for access to coastal property...” This clause has significant implications for municipalities who implement crowd control mechanisms during December by effecting a parking fee to beach front parking areas and thus effectively limiting beach access. The ICM Bill as such should ensure that mechanisms and procedures are put into place to ensure municipalities do not act in contravention of the ICM Bill.

[Friends of the Botriver]

(3) No fee may be charged for access ... without the approval of the Minister. This is not always feasible as such approval could take too long and in many cases some charge must be levied to cover cost.

(4) As (3) as such public participation is onerous and probably a waste of money.

[eThekweni Municipality]

Section 13 does not cover closure for events, e.g. surfing contests, lifesaving contests and the like. Clause 13(2) will be interpreted too narrowly if this section is not amended to preserve important tourist functions in this city. Section 13(3) read with (4) and (5) is cumbersome. The authority should be left to the Municipality concerned. To worry the Minister with fees for events like beach volleyball, beach soccer, beach cricket and the like seems to be unreasonable.

[Blue Horizon Developments]

This section must clarify that the right to access public coastal property does not include the right to traverse private property in getting to the relevant coastal public property. In the absence of this the Bill could be set aside as being unconstitutional and a violation of the right of private property owners to property set out in section 25 of the Constitution.<sup>10</sup>

[K.P. Mackie (Personal Capacity)M]

(2)

Extra clause needed here.

The need for this clause is understandable. However it is contrary to the principles of free access to the sea shore and the sea and needs to be qualified to limit its use as far as possible.

Add (6)

"No fee may be charged for entry anywhere onto the sea shore or the sea."

This is a fundamental principle established in the Institutes of Justinian and needs to be clearly reiterated to ensure that it is upheld.

[LISA GUASTELLA (AS CONSULTING)]

Section 13 deals with access to coastal public property - point (3) states "No fee may be charged for access to coastal public property without the approval of the Minister" and point (4) deals with the public participation process if a fee were to be imposed. What happens now if a municipality (e.g. Dolphin Coast) has already been charging a flat rate to park, and this is the only access point to the beach? They are Municipal car parks and effectively provincial roads they are using to charge for parking, but there is no other reasonable place to park. Effectively fees are being charged to access coastal public property, in contravention of point (3), but is what they are doing illegal as these fees were imposed before the Coastal Bill came into effect? Can this section, therefore be expanded to specify that point (3) is applicable to Municipalities that impose these charges, when this is the only reasonable access point, even if the fees were in existence prior to the legislation. Perhaps Section 18(1) can be expanded to state that Municipalities may not charge the public for access to coastal public property or charge for parking to gain access to coastal public property.

I believe this is also happening on the West Coast, where one can't gain access to the shore because you have to drive through private land, and a fee is charged. Also, we don't want to degenerate into a system like America, where one is apparently charged to get access down to much of the coast.

[Kathy Leslie (Personal Capacity)]

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<sup>10</sup> The Constitution of the Republic of South Africa Act 108 of 1996 ("the Constitution")

1(b) Would this protect users against dogs, horses, nudists, kite flyers etc (as per the discussion at the 'workshop' held at 44 Wale Street)

2 (d) would this include mining

5 (a) where is the procedure for leasing coastal public property laid out

[Robert Stegmann - Reserve Manager: ELCNR (Personal Capacity)]

I support section 13(5) that facilitates a protected area being able to charge an amount to facilitate access to the coast. Management of land is the responsibility of the management authority and as such the user should pay for the access where there is a cost to facilitate the access. This should possibly considered outside of protected areas but then there is provision for this in Section 13(3).

Where Section 13 provide for initial access to the coast, however not all the users with access the coast at one place and then leave after their visit. In certain instances private individuals access the coast and traverse the length thereof before departing at another location, a third party will then derive income there from without contributing to the custodian for the management of the associated impacts of their visits. For this reason commercial ventures need to be provided for by means of agreement and the number of users of sensitive areas restricted.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) The term *use* strikes one as a bit open-ended when contemplating the extensive range of activities which are visited upon or proposed for coastal public property.
- (ii) In this sense, it is of concern that the use entitlement in this Section may constrain the State in declining permit applications in terms of Section 65.
- (iii) This all the more so given the reservations expressed in this submission about the definition of *adverse effect*.

[KZN Agriculture and Environmental Affairs]

13(1)(b)	The potential cumulative impacts of access to coastal public property should also be included.
13(3)	Does this allow for "pay beaches"? If so, are pay beaches not practical alienations? Is the status of existing pay beaches going to be reviewed?
13(4)	This provision would appear to in contradiction to recent NEMA provisions which assign most responsibilities, especially in respect to undertaking public participation, to the applicant and not to the decision maker. What guidance is provided to the Minister in respect to decision making? Is provision made for such revenue to be used for the maintenance of a proposed pay beach?

[Oceanographic Research Institute]

Access to coastal public property

- (1) Subject to this Act and any other applicable legislation, any natural person in the Republic –
- (a) has a right of reasonable access to coastal public property; and
  - (b) shall be entitled to use and enjoy coastal public property, provided such use –
    - (i) does not adversely affect the rights of members of the public to use and enjoy the coastal public property;
    - (ii) does not prejudice the performance by the state of its duty to protect the environment; and
    - (iii) does not cause an adverse effect on the environment of the coastal public property.
- (2) This section does not prevent prohibitions or restrictions on access to, or the use of, any part of coastal public property –
- (a) which is or forms part of a protected area;
  - (b) to protect the environment, including biodiversity;
  - (c) in the  interests of the whole community;
  - (d) in the  interests of national security; or
  - (d) in the national interest.

[DEAT Comments:](#)

*This section was amended to read:*

“(4) The Minister, before granting approval for the imposition of a fee, may require a public participation process in accordance with Part 5 of Chapter 6 to enable interested and affected parties to make representations.

- (5) Subsections (3) and (4) do not apply to coastal public property –
- (a) that has been leased; or
  - (b) that is, or forms part of, a protected area, sea that forms part of a harbour or a proclaimed fishing harbour.”

**Section 14: Changes in position of high-water mark**

[TRANSNET]

The Bill provides that "if the high-water mark moves inland due to the erosion of the coast, sea-level rise or other natural causes, the owner of the land situated inland of the high water mark - (a) loses ownership of any portion of that land that becomes situated below the high water mark....." (Section 14(1)(a)) – Transnet requires

clarification on the impact of this provision for our Ports as this may result in loss of ownership of land in the Ports.

[Natalie Way-Jones (Personal Capacity)]

The Bill of Rights (section 25 (1) of the Constitution) provides for compensation for any loss of land due to state (in the public interest).

[Ezemvelo KZN Wildlife]

Section 14 Changes in high-water mark. This section must include the air space above the high-water mark to prevent infilling or development being stilted.

Add subsection (3) to section 14, to read

(3) No person, without the relevant permit being issued, may excavate or take any measures to cause the high-water mark to altered (*i.e. to prevent back flooding of estuaries or their breaching*)

DEAT Comments:

*D Malan: Should be covered by the EIA Regs?*

Recommendation:

*D Malan: No amendments?*

[Department of Environmental Affairs & Development Planning]

Section 14

This section has the effect that a property owner in the coastal environment may lose big portions of his property in one year due to flooding and should accretion occur the following year(s) and the high water mark moves towards the sea the owner is not entitled to claim the portion he lost back or the additional portion. The implications are that areas that become flooded in future will be forfeited to the state which amounts to "expropriation". This seems unfair and a number of questions spring to mind:

- How will this be applied;
- Who will pay the expropriation fee if required to do so?
- Who will be responsible for affecting the cadastral boundary changes; and
- Does this include buildings?

It is anticipated that the Bill can be implemented without the State incurring liability to pay compensation to persons whose new rights to use land within the coastal zone have been restricted. Under the Constitution compensation must only be paid where an expropriation of existing rights is involved and no liability to pay compensation arises where new rights are restricted in the public interest by a law of general application such as the Act. However, compensation would be payable if private lands were to be expropriated for inclusion in coastal public property. Section 14 needs to be revisited and critically analysed in terms of its implications.

Confusion due to the high water mark changing continuously will result in land development plans changing in terms of 100m and 1000 m of the high water mark - problematic.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Section 14 is strongly contested and objected to. Private property rights are entrenched in the Constitution and to provide for such to be diminished unilaterally and arbitrarily is unacceptable. Provision must be made to enable property owners to protect owners to protect and defend their properties, to the approval of the relevant authority, but there must be cognisance taken of private rights.

Section 14(2) deals, versus 14(1), inequitably with circumstances where the seashore 'moves seaward'. Provision should be made for adjacent landowners to acquire portions of such area where necessary and/or desirable.

[SA Council for Natural Scientific Professions (Prepared by Biotechnology & Environmental Specialist Consultancy CC)]

Changes in position of the high-water mark – in particular the loss of ownership of land that becomes situated below the high-water mark. The Constitutionality of this clause is questionable, particularly when read in conjunction with clause 14.2. Land ownership is effectively described in terms of cadastral surveys in Title Deeds, and as such it is reasonable for a landowner to manage/rehabilitate any land that falls within the described cadastral contained within the Title Deed.

[LEGALB]  
s14(1)

Does this section mean that if the high water mark moves inland for reasons other than natural causes, that the owner of the land now situated seaward of the high water mark does not lose ownership of that land now under the sea?

If not, does this section mean that if the high water mark moves inland for reasons other than natural causes, that the owner of the land now situated seaward of the high water mark is not precluded from being entitled to compensation? To whom does the Bill envisage that he turns for compensation? Perhaps such a person should issue summons based on unjust enrichment against "the citizens of the Republic" as envisaged by s11 of the bill.

s14(1)(b)

In respect of whom would no claim for compensation lie? Insurance companies? Government? It is noted that the section does not define for what such non-compensation would be allowed.

s14(2)

Would the title deeds be changed as and when the high water mark changes? A statement in the relevant deeds Act would be needed to the effect that any boundaries of a property that abuts a high water mark shift with the high water mark.

[eThekweni Municipality]

The provisions in Section 14(1) (a)&(b) may prove controversial, but they are supported by the Municipality. What is unclear is whether the land owner can take steps to 'defend' his property from sea attack?. If so this should be included and the process of granting approval for such works be clarified. What 'emergency measures' if any could the land owner do must also be clarified. Perhaps a distinction also needs to be made between land with the HWM as its boundary – in which case we would imagine that one could not interfere with a NATURAL movement, verses properties with rectilinear boundaries, where a suitable defence should be allowed.

Section 14(2) seems to be unconstitutional as it deprives a property owner of important rights of accession for arbitrary reasons. This notion seems to conflict with Section 25(1) of the Constitution. The acceptability of this may be debatable and would hinge on the cause of the movement if it is via natural causes there may be conflict. Furthermore, the movement of a seaward curvilinear cadastral boundary is entrenched in Title Deeds and Court Cases. Movement caused by human activities could be treated in terms of this paragraph.

[South African Planning Institute]

Section 14(1) and (2) related to the change in the position of the high water mark is considered to be in conflict with the cadastral registration in the Surveyor General's office. The cadastral changes will also have cost implications.

[K.P. Mackie (Personal Capacity)]

14. Changes in position of high water mark

(1) (a)

Add: after "high water mark" the words:  
"as a result of changes in the position of the high water mark".

This serves to bring the wording into line with Section 14 (2) and is more complete.

(3)

New clause needed here.

This section does not address the situation where there is a cyclical process of erosion and accretion so that the high water mark alternately advances and retreats.

In the case of short term cycles, seasonal perhaps, it seems reasonable that the permanent high water mark be taken as the eroded line which would be in accordance with subsections (1) and (2) taken together.

The case of long term cycles is not so clear.

A case in point is the Keurbooms estuary. The mouth migrates over a fixed range with a period in the order of 100 years. Currently the mouth is approaching the southern limit and is about to expunge the land of Milkwood Manor. If the system follows its normal pattern, in a few decades the site will be re-established as dry land and will remain so for the best part of a century.

There should be some comment in section 14 to resolve and address this situation.

[Kathy Leslie (Personal Capacity)]

Add (c) "structures will (will not??) be prejudiced by moving set back lines" i.e. how does a moving HWM affect set back lines (existing vs new structures) e.g Woodbridge Island and Zonnekus Estate

[KZN Agriculture and Environmental Affairs]

14(1)(a) &	These provisions may prove controversial, but they are supported.
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(b)	When reflecting on the recent high tides and erosion/flooding events, the practical implementation of these clauses is questioned. Land owners strongly believe, as do officials authorised in terms of NEMAs EIA Regulations, that they have a right to protect their own property from the ravages of the sea. The ability (and willingness) of officials to prevent this happening should this clause not be amended (to be more reasonable) is questioned. It is deemed appropriate that extensive investigation be undertaken prior to establishing any long terms protective mechanisms but that land owners be allowed to erect short terms/temporary structures (soft solutions rather than hard engineering solutions) to protect their property. Funding should be provided to enable government to by-out such land owners where the protection of coastal properties is not financially viable – or if government adopts a ‘retreat’ rather than ‘defend’ strategy to coastal erosion.
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[National Ports Authority]

Due to the port 's importance to South Africa, loss of ownership of land due to these changes will be to the country 's detriment. Ports must be allowed to retain ownership of the land to be able to adequately control the land under its jurisdiction, to ensure safe, orderly and efficient port functioning.

[Belastingbetalersvereniging]  
Art. 14 Ook relevant tot art, 7

[DEAT Comments:](#)

*This section was amended to read:*

**“14. Position of the high-water mark**

- (1) If land has a curvilinear boundary extending to, or a stated distance from, the high-water mark that curvilinear boundary may be substituted by a boundary of another character by following the procedure prescribed by section 34 of the Land Survey Act, 1997 (Act No. 8 of 1997), provided that in addition to the requirements of that section the written agreement referred to in that section must be signed by –
- (a) the Minister; and
  - (b) the holder of real rights in the land or in land contiguous to it whose rights would be adversely affected by the replacement of the curvilinear boundary.

- (2) If a written agreement is not concluded in accordance with subsection (1) and section 34 as read with section 29 of the Land Survey Act, 1997 (Act No. 8 of 1997) then the provisions of subsection (3) to (5) of section 29 of that Act apply with necessary modifications.
- (3) Once a boundary line has been established in terms of subsection (1) it shall be regarded as the high-water mark as defined in this Act until a new boundary is established in terms of subsection (4).
- (4) If the high-water mark moves inland of the boundary line established in terms of subsection (1) and remains there for at least two years, a new boundary line on, or inland of, the high-water mark as determined by natural indications, may be determined in accordance with this section at the initiative of the Surveyor-General or by a written agreement referred to in subsection (1) being lodged with the Surveyor-General by –
  - (a) the Minister;
  - (b) the municipality within whose area of jurisdiction the boundary line is situated;
  - (c) the owner of a land unit affected by the movement of the high-water mark; or
  - (d) the holder of real rights in a land unit affected by the movement of the high-water mark.
- (5) If the high-water mark moves inland of the boundary line of a land unit due to the erosion of the coast, sea-level rise or other causes, and remains inland of that boundary line for a period of three years, the owner of that land unit –
  - (a) loses ownership of any portion of that land unit that is situated below the high-water mark; and

(b) is not entitled to compensation from the state for that loss of ownership unless the movement of the high-water mark was caused by an intentional or negligent act or omission by an organ of state and was a reasonably foreseeable consequence of that act or omission.

(6) If accretion occurs, whether as a result of natural processes or human activities, land which formed part of the seashore when this Act took effect and which subsequently becomes situated inland of the high-water mark as a result of a change in the position of the high-water mark, remains coastal public property, and does not become part of any adjoining property unless the property is bounded by the high-water mark or extends to a stated distance from the high-water mark. “

### **Section 15: Measures affecting erosion and accretion**

[Wildlife and Environmental Society of SA]

What happens if the state organ deems it unwise to take action to prevent erosion, even if it is a foreseeable consequence. Opens up argument regarding “foreseeable”.

[Natalie Way-Jones (Personal Capacity)]

Any person must take reasonable measures in terms of NEMA to prevent environmental damage. This should be specified in this section.

[Ezemvelo KZN Wildlife]

The following should be added to Subsection 15(1)

...of state or other person except where the intervention provides for the clear achievement of the objects of this Act.

*Concern is raised that structures belonging to the state may be treated differently to that of private property. Both the assets of the state and that of the public must be treated equally. The Bill should make provision for the state to undertake a risk survey and put in place a process to remove assets that may pollute from high risk areas.*

Add the following section

15A(1) The municipality in consultation with the authority, must identify developed areas, that are vulnerable to erosion, sedimentation, flooding or any other damaging natural process, for deconstruction and rehabilitation to a natural state.

(2) The identified areas in subsection (2) above are to be included in to the zonation and coastal management plans and any other relevant sectoral plan.

[LEGALB]

s15(1)

This section refers to “organ of state or other person”. The use of the word “other” would indicate that organs of state fall within the class “person”. Would this implied definition of an organ of state as a person extend to the rest of the section and indeed to the rest of the Act?

Does “action” include an “omission” to act in respect of erosion of the seashore or other coastal public property or land adjacent.

How does ones rights under s3 of the Bill relate to this sections provision that one cannot require anyone to take measures to prevent the erosion?

Perhaps this section refers only to non-naturally caused erosion, but then it must say so.

Further, it is noted that in terms of a literal interpretation of the act, the words “or other person” in this section would include the owner or occupier of land adjacent to the seashore or other coastal public property capable of erosion. In other words, the owner or occupier of such land could require an organ of state to take steps to prevent the erosion of such land in a situation where the erosion is a reasonably foreseeable consequence of an action by that owner or occupier.

s15(2)

What other provisions in this Act provide for the prevention, promotion, or accretion of the seashore?

[eThekweni Municipality]

This section is strongly supported by the municipality however Section 15(1) is problematic in that it opens up the possible claims against the state to actions/impacts whose cause might be debatable. It also makes the actions of ‘others’ the responsibility of the state to resolve. We believe the original intention of this section was to limit the states liability to only those actions which were taken in a negligent manner and one in which the affected party can prove that the State had operated negligently. Therefore it is proposed to replace “a reasonably foreseeable consequence of an action by that organ of state or other person” to “caused by a

negligent action of the state". Reading the State as National, Provincial and Local Government.

[CSIR]

15 (1&2): In areas where a "soft-engineering approach" has been followed through establishing a constructed vegetated foredune that is being maintained to protect the adjacent development (whether these are private properties or public amenities) it is of critical importance that these "structures" be managed, maintained and rehabilitated from time to time. There are numerous examples of such "soft-engineering structures" along the SA coast on which the adjacent developments are totally dependent.

[Blue Horizon Developments]

It is difficult to understand the intention behind this section.

If coastal public property is threatening erosion or the seashore and affecting adjacent property owners any common law rights of adjacent property owners to protect their property should not be interfered with. This section seems to allow a public owner to let their coastal property deteriorate and stop adjacent land owners from taking any action to stop this. This section should be re-examined and amended or deleted.

[Institute of Estate Agents of SA]

COASTAL PUBLIC PROPERTY; PARA 15(2)

Summary:

No preventative measures may be taken to prevent erosion of the seashore.

Comment:

Reasonable measures should be allowed to prevent loss of life and property

[Kathy Leslie (Personal Capacity)]

(1) "reasonable foreseeable consequence" This is a very difficult, pertinent and contentious matter. E.g. I would put money on the extension to container terminal in Table Bay Harbour resulting in further accelerated erosion on Milnerton Beach. NPA would fight any claim made against them in terms of this section. Also, St Francis Bay erosion due to sand spit stabilisation and Kowie River mouth siltation due to adjacent Marina development. I would go so far as saying that all erosion that results in a net loss (or accretion with net gain) over a period of more than 2 years is a result of an action by a person (or organ of state). How long after the man-made change can claims be made, and against whom, and who pays?? Repair costs are in the millions.

(2) this may conflict with "every persons right to protect their property" (Constitution) as was used at Zonnekus Estate, Milnerton

Section 15 is critical as many of the major physical problems experienced around the coast are concerned with accretion and erosion. Liabilities could (and should be high) to ensure improved decision-making. Sandy substrates are extremely vulnerable and

should not be altered unless absolutely necessary (not simply for property development!!)

[KZN Agriculture and Environmental Affairs]

15(1)	Is environmental authorisation of a development in terms of NEMA prior to the implementation of this Act deemed as an action by an organ of state as referenced in this section?  What provision is there for an organ of state to take measures to protect its own investment on coastal public property from erosion and accretion?  This clause needs to be clearly articulated to avoid potential conflict with private land owners who are unable to protect their own property versus government who may well need to protect its assets on coastal public property – e.g. municipal sewerage pump stations.
15(2)	It is proposed that the wording be “where the intervention provides for the objectives of this Act” rather than “as provided for in this Act”. This provision is very confusing as it seems to override the ‘no’.

[National Ports Authority]

The port has to supply Durban ’ s beaches with sand, due to the entrance channel that prevents the normal movement of sand onto the beaches. Should dredging activities not ensue, vessels may not enter or berth in the port. Ports should be allowed to takes such measures as are necessary for safe, orderly and efficient port functioning (National Ports Authority Act) this includes preventing erosion and accretion.

*Part 2: Coastal buffer zone*

[DEAT Comments:](#)

*This section was amended to read:*

“(1) The owner or occupier of land adjacent to the seashore or other coastal public property capable of erosion or accretion may not require any organ of state or any other person to take measures to prevent the erosion or accretion of the seashore or such other coastal public property, or of land adjacent to coastal public property, unless the erosion is caused by an intentional act or omission of that organ of state or other person.”

## **Section 16: Composition of coastal buffer zone**

[Wildlife and Environmental Society of SA]

(e) (ii): Is this “undermined land”? This applies to rural areas. Can have significant ramifications for rural people in areas of Transkei and Maputaland.

(f): Does this include the dune slack? Slacks are wetlands under some criteria ..... means that no development occurs along secondary dune????????

[Endangered Wildlife Trust]

Suggest more general reference to the areas zoned which can perform buffer functions (do not specify exact zones to avoid neglect of potential buffer areas). For instance, coastal protected areas under 16(1)(c) could include additional protected areas not only those under the protected Areas Act i.e. municipal nature reserves.

Sections 16 and 17 of the Bill describe the coastal buffer zone, but per definition [Section 1(d) (ii)] includes port land. We propose that the Bill exclude structures/developed areas in ports from the coastal buffer zone.

[Natalie Way-Jones (Personal Capacity)]

The buffer zone is surely overlapping with the coastal public property?  
Are admiralty areas not all coastal public property?

[SANBI]

- The definition of the coastal buffer zone (S16)  
The coastal buffer zone could include listed threatened or protected coastal ecosystems in addition to coastal protected areas.

[Department of Environmental Affairs & Development Planning]

### Section 16

It is not clear what kind and types of developments can and will be allowed in the coastal buffer zone. Although the purposes of coastal buffer zones are stipulated it is very open ended (Section 17). More clarity is needed as it will provide endless problems for permitting in terms of the EIA process.

[Friends of the Bot River]

P.27 Part 2: Coastal buffer zone – add flood plain levels?

[Coastal & Environmental Services (East London)]

The use of a 100m and 1 km for defining coastal buffer zones is somewhat arbitrary. In some instances, the coastal buffer zone may be in excess of 100km or 1 km. Suggest that these be defined as “minimum” distances. This is a very real issue as based on our experience in assessing developments and developing coastal management guidelines, municipalities tend to draw lines on maps and make decisions based on where these lines are located. There is thus a risk that activities could get endorsed or approved based on a line on a map irrespective of the local environmental sensitivities.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Part 2 – Coastal Buffer Zone

The provisions regarding what is termed a coastal buffer zone (CBZ) are of concern and are objected to. These provisions will have a significant detrimental impact on property rights and development, investment and tourism opportunities and must be reconsidered. This is particularly concerning given the provisions of Sections 62-69.

Inclusion of any land that is part of the littoral active zone and that is not CPP, as per Section 16(1)(b) must take into account any existing property and development rights and respect and protect same.

The references to a “land development plan” in Section 16(1)(d), whilst included in the definitions, is confusing and unclear. It is however assumed that land that has existing, formal zoning in terms of, in KZN, a Town Planning Scheme in terms of the Town Planning Ordinance No. 27 of 1949.

Section 6(1)(d) provides for only certain types of land use. It is unclear what happens to land that has another type of zoning. Similarly Section (1)(e) does not provide for other zoning types.

The use of an arbitrary 1 km distance, from the inland boundary of CPP, and the actual extent, is questioned and strongly objected to. The effect of this provision is to stop any and all development on the most sought after land in the country and which provides substantial, positive socio-economic benefits. Provision should rather be made for Municipalities to provide for a CBZ through its IDP and/or Town Planning Schemes, through a public consultative process.

What happens to unzoned land that is within 1 km of the CPP but there is existing zoned land with the 1km but say, only extends for 500m inland. The land situated between the 500m and 1k m should be excluded from the CBZ and this may be implicit but it should be made explicit.

[Department of Environmental Affairs & Development Planning]

Although there is a prohibition to undertake certain activities in the buffer zone and coastal public property, the Bill is silent on what will be regarded as acceptable in

these areas. This will be problematic because it is in this zone where are myriad of development rights has already allocated and will in future be exercised by the owners. This needs to be clarified as it will put authorities in a catch 22 situation.

[Department of Environmental Affairs & Development Planning]  
Zoning schemes and delineation of boundaries

The incorrect use of town planning terminology and mechanism, land use plans SDF and zoning schemes is not in line with accepted town planning terminology. For example mention is made of land that is zoned under a *land development plan* (section 16(d) (i)). In the Western Cape, zonings are, however, allocated to land in terms of the various applicable Zoning Schemes. These provisions necessitate detailed discussion between this department, the town planning profession, the South African Planning Institute (SAPI) and municipalities to:

- Eliminate confusion;
- Confirm the constitutionality of provisions of the Bill; and
- Ensure the desired environmental outcomes will be achieved.

[Department of Environmental Affairs & Development Planning]

- Section 16 is vague and is open to interpretation. Also it is difficult to understand what kind of development will be allowed in the buffer zone;

[LEGALB]  
s16(1)(a)

This refers to s17(1) of the Environmental Conservation Act, No. 73 of 1989, however:

- a. Such act has been repealed by Act 2003\_057\_090, which repealing Act was published in English rather than Afrikaans.
- b. Presumably, the repeal of Act 1989\_073\_017(1) would repeal any subordinate legislation produced in terms of it, which identified activities that may not be undertaken without authorisation.
- c. This would make it difficult, if not impossible to interpret s16(1) of this Bill.
- d. Further, the unrepealed and unamended versions of Act 1989\_073\_01(1) appear not to have referred to “sensitive coastal areas” at all, further confusing the interpretation of s16 of this Bill.

[eThekweni Municipality]

Section 16(1)(c) Why limit coastal protected areas to those declared in terms of the Protected Areas Act?. There are a number of municipal nature reserves (zoned public open space or for conservation purposes), which can perform similar buffer functions. Note that these areas are excluded in terms of Section 16 (d) and (e).

Section 16(1)(d) and (e) refers to land “zoned under a land development plan for residential, commercial, industrial or multiple-use purposes”. Land is only *zoned* in terms of land use (zoning) schemes. A land development plan (which in the case of eThekweni would be a Spatial Development Plan or a Local Area Plan) can only identify land use intentions for an area, but these do not have the legal weight of zoning in terms of a land use scheme. The use of zoning alone to define buffer areas is inappropriate. There is an assumption that zones awarded in the past (prior to the implementation of modern environmental legislation) are appropriate. Thus if an undeveloped and pristine coastal property is zoned for residential use and it is 105 metres above the high water mark it will not be considered as part of the coastal buffer zone. It is unclear then whether the intention of the Bill is to extend the coastal buffer zone to 1km when the land is not covered by a land use scheme (i.e. is not zoned) but is covered by a land development plan. However, it is assumed that the 1km buffer would only be applied in instances where no forward planning has been undertaken for an area, i.e. where no land development plan (e.g. a Local Area Plan) exists.

Taking the above into account the word ‘zoned’ should be replaced with ‘identified’ if referring to a land development plan, or if zoned land is the intention of this section, then ‘land development plan’ should be replaced with ‘land use scheme’.

Section 16(1)(d) and (e) refer to only certain types of land use zones but exclude other zone types e.g. worship, cemetery, education etc. Is this a deliberate limitation? Even within the highly developed eThekweni Municipal Area, there are coastal properties zoned (or soon to be zoned by scheme extensions) for uses other than residential, commercial, industrial or multi-purposes that are situated immediately above the high water mark. Such properties will not be caught by 16 (1) (d) or (e). Should such zoned areas be excluded from the buffer zone? It is preferable to refer to whether land is zoned or not zoned (i.e. the actual zone types do not need to be mentioned, or else should just be given as examples). Current land use schemes are outdated and many properties in the coastal area are inappropriately zoned taking into account their proximity to the sensitive littoral zone. This section assumes that if zoning is in place, some level of protection of the coastal zone is guaranteed – this is not correct. Section 16(1)(f) This definition needs to be extended to include estuaries. Section 16(1)(h) This line appears to be out of context as all admiralty reserve is defacto state owned and would be incorporated into coastal public property (Chapter 2, Section 7(f). If the comment in this letter referred to under definition above then perhaps 16(1)(h) should read any other reserves which are not coastal public property. This would cover other government and privately owned land parcels.

[Blue Horizon Developments]

This section is an extreme invasion into existing property rights of private land owners.

Section 16(1)(e) effectively places a significant regulatory hurdle in the way of any development in land situated one kilometre inland from the inland boundary. Any

tract of land for which the rezoning process has not been completed will effectively have an additional and unnecessary regulatory hurdle which stands in the way of cost effective and timely sustainable development. The coastal use permit required will be in addition to the rezoning and development approval and the environmental impact assessment that would in any event be performed in terms of NEMA before development can commence. NEMA ensures an assessment of the environmental, socio-economic circumstances of the development. We fail to understand what value could be added by an additional approval.

We understand that the coastal buffer zone is established for the purpose of enabling the use of land that is adjacent to coastal public property or that plays a significant role in a coastal ecosystem to be managed, regulated or restricted in order to, amongst other things, protect the ecological integrity, natural character and the economic, social and aesthetic value of coastal public property.

The areas of land establishing the coastal buffer zone as contemplated in the Coastal Bill are considerably wider than those areas previously declared, under other legislation, for merely for the preservation of specific sensitive areas as was the case under the ECA. In our view, the list of areas establishing the coastal buffer zone goes beyond the purpose of the coastal buffer zone. Not all coastal areas need specific protection in addition to the existing protection in the conservation, environmental and biodiversity statutes.

In our view to ensure integrated environmental protection the duplication proposed in the Coastal Bill should be removed and if necessary amendments should rather be made to the existing conservation and biodiversity statutes to deal with coastal areas rather than duplicating functions and responsibilities (and approval processes for developers).

[South African Planning Institute]

Section 16(d) and (e) is vague. The classification of zonings given is almost impossible to interpret. Not clear which zonings are included or excluded if one looks at different zoning schemes. No reference is made to the difference between rural areas and urban areas.

[Kathy Leslie (Personal Capacity)]

Suggest there is some info sharing with the team working on the Western Cape Supplementation to the EIA Regs project. An extensive mapping programme has been undertaken and it would be useful to have the buffer area zoned in accordance with this Bill/Act. May only be able to happen in next draft of the supplementation maps.

Suggest also that 100m or 1000m buffer should extend around dunes and dunefields as these should be part of the littoral active zone.

[Robert Stegmann - Reserve Manager: ELCNR (Personal Capacity)]

Section 16 needs to state that previous Coastal Conservation Areas established in terms of previous legislation needs to be carried over into the Bill and that the 1000m demarcation from the high water mark needs to be established and not allowed for change unless it specifically fell within an urban edge and then it should only be able to be altered by a Provincial Authority. This is necessitated by the need to regulate illegal development along the Wild Coast and the former Ciskei Coast, not so much the latter. If the Municipalities are able to determine what the width of the buffer zone should be, with the high levels of corruption and the flagrant disregard for common law, for instance where roads are created without complying with NEMA or the NFA which lead to either fishing spots on the Wild Coast or illegal developments there would not be a coastal buffer zone. The very law where people choose the coastal zone that they want will merely lead to a select few benefiting at the cost of the majority. Consider the work that has been done by the Wild Coast Illegal Cottage Task Group and the initiatives that have arisen as a result of their work to benefit the surrounding communities. Possibly where the land use is not defined by means of erf numbers and it is communal by nature the coastal buffer zone should be defined and not be allowed to be altered by Municipalities whose interests will not reflect the spirit in which this Bill seeks to attain.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) It is significant that components of the coastal zone which have been declared as sensitive coastal areas under the Environment Conservation Act are included in this Section.
- (ii) The current wholesale alteration of South African coastal landscapes, the proliferation of ribbon development, and corresponding changes in coastal zone usage, can be viewed as a serious threat to the sustainable development vision articulated in the *White Paper*.
- (iii) It can be argued that a first principle in addressing this threat is the inclusion of all coastal areas which are vulnerable to it within the coastal buffer zone.
- (iv) Regrettably, Section 16 fails in this respect.
- (v) The reasoning behind the predetermined and limited landward buffer zone boundaries is understood, as are the opportunities within the Bill to extend these boundaries.
- (vi) NEVERTHELESS, THE THREAT IS DIRE TO THE EXTENT THAT IF THE BILL IS UNABLE TO ADDRESS IT DECISIVELY AND WITH IMMEDIACY, THE INTEGRITY OF THE COUNTRY'S COASTAL ZONE AS A WHOLE MAY BE COMPROMISED IN A MANNER SUCH THAT THE ALL-ROUND VALUE OF THE BILL IS REDUCED SIGNIFICANTLY.

- (vii) At the same time, it is stressed that this view should not be taken as an indication that the 1000 meter demarcation is without value – indeed, if implemented with requisite foresight and rigor, it will be invaluable in countering current unsustainable practices.
- (viii) However, there can be no doubt that the Bill should aim high and seek at the outset to tackle, in its entirety, the phenomenon which is widely held to be the most pressing on the country’s coastal management agenda.
- (ix) On a technical level, it is unclear whether the buffer zone will include a 1000 meter expanse upstream of and diagonally opposite the tidal head of an estuary, since the term *inland* when applied to estuaries (as components of coastal waters) is presumed to refer to land located perpendicularly opposite estuary banks.

[KZN Agriculture and Environmental Affairs]

16(1)(b)	Who delineates the littoral active zone?	
16(1)(c)	Why limit coastal protected areas to those declared in terms of the Protected Areas Act? There are a number of municipal nature reserves (zoned public open space or for conservation purposes), which can perform similar buffer functions. Note that these areas are excluded in terms of section 16(d) and (e).	
16(1)(d) & (e)	Why are specific zones mentioned and others not mentioned? For example, land zoned for agricultural purposes is not included. Is this a deliberate limitation? There are coastal properties zoned (or soon to be zoned by scheme extensions) for uses other than residential, commercial, industrial or multi-purposes that are situated immediately above the high water mark. Such properties will not be caught by 16(1)(d) or (e).	Suggest broadening the range of zoning specified or do not specify specific zones.
16(1)(f)	Does this provision refer to the full extent of such wetlands should they extend outside the boundaries of the land unit referred to in 16(1)(d)(i) and (ii)?	
16(2)	This provision should allow for the coastal buffer to be extended as well.	

[Buffalo City Environment Trust]

Suggest that the use of a 100m and 1 km for defining coastal buffer zones should be “minimum” distances. (Coastal Buffer zones - Section 16 (d & e)).

[Irvin & Johnson Limited]

In terms of Sections 63 and 64, the activities listed in Schedule 3 of the Bill are prohibited in coastal buffer zones and can only be undertaken in terms of a specific authorisation or permit, issued in terms of the Bill. Although in terms of Section 101,

parties who are at the commencement of this Bill “lawfully engaged in” any activities listed in Schedule 3 of the Bill, as activities requiring permits, are to be deemed for a period of 24-months to be to the holder of such permit, they still have to apply for such permit.

Section 101 creates the impression that regardless of whether one is lawfully or unlawfully engaged in any of the listed activities at the commencement of the Bill. Should after the commencement of the Bill, the relevant authority not grant the requisite permit, the conducting of the listed activities will become unlawful, notwithstanding the fact that they may be lawfully conducted at the commencement of the Bill.

The ramification of the foregoing is very important when noting the definition of the coastal buffer zone as per the provisions of sub-sections 16(1)(b) and (e) which bring private owned land into the coastal buffer zone, purely because it adjoins the high-water mark of the seashore. Thus thousands of units of residential and other property inside and outside of Municipal areas are included in the coastal buffer zone. In Cape Town alone there are more than a thousand residential and commercial privately owned properties within 100 metres from the high-water mark.

This becomes more significant when noting that in terms of Part B of Schedule 3 specifically, Section B.2, the erection, construction, placing of any significant alteration or extension of a building or structure within the coastal buffer zone is an activity which requires a permit with the corresponding application procedure and environmental impact studies etc.

Surely it is not the intention that applications in terms of the Bill should be made for the erection or extension of every residential building within 100 meters from the high-water mark in every coastal city and town?

It appears something may be missing from the definition, maybe the intention is that these two sub-sections will only apply in respect of land adjoining land declared in terms of the Environment Conservation Act of 1989 (Act 73 of 1989) as a sensitive coastal area. Unfortunately as currently drafted all beach front homes in South Africa are affected.

If the intention is to include such privately owned land within the coastal buffer zone then the Bill should provide that in respect of land covered by sub-sections 16(1)(d) and (e) which at the date of commencement of the Bill falls within an existing township development within the Municipal boundaries of a Municipality, will be exempt from the provisions of clause B.2 of Part B of Schedule 3. This will allow for future developments to be regulated by the Bill and in any event such developments should be dealt with on a development by development basis rather than on an individual property basis.

In respect of Section 16, sub-section (1)(e), which includes agricultural farming land, similar exemptions should apply for any building erected on privately owned land which is closer than 1 kilometre from the high-water mark at the commencement of the Bill. This section is extremely important as it includes a large number of privately owned existing aquaculture operations in the coastal buffer zone. Due to the necessity of using sea water in many aquaculture operations all buildings, structures and other infra structure required by such aquaculture operations will be located within 1 km from the high water mark. These buildings, structures and other infra structures have in most instances being erected at great expense and comply fully with all existing legislation.

Upon the introduction of the Bill as currently worded all these lawful and expensive operations become suspect and are obliged to once again at great expense apply for the relevant authorizations to continue their operations.

Maybe, this issue should rather be dealt with in the spatial development framework of the relevant Municipalities which would specify where development can or cannot take place and identify where coastal buffer zones are desirable. This would enable a lot of unintended private land to be excluded and emphasize that coastal buffer zones are to be limited to around sensitive areas.

As currently worded these provisions of the Bill could constitute expropriation without compensation.

[Sandiso Zide (DEAT)]  
Section 16 & 22 of ICM Bill

*Coastal Buffer Zone:*

The Bill declares 1km strip in the areas not zoned under land development plan in Coastal Zone as Coastal Buffer Zone. My concern is that

1. Some of these areas are Communal Land referred to by communal Land Rights Act 11 of 2004 (section 2). The unoccupied communal land remains state land in those areas. I suggest that there must be a provision recognizing those communities and also controlling development in such areas as some development may be in conflict with current land use of those communal areas.
2. Some parts of this Buffer Zone in the Wild Coast are “No-development nodal areas”, Hiking trail, tourism sites like Hikers huts sites and Cottages Sites which may be subject to lease. Having these types of divisions or nodes in that 1km area has raised the Conservation Status of this Buffer Zone in that whole area. I regard the Buffer Zone, as it is stated on the Bill now, as reducing that conservation status as it calls for application to undertake any activity in any part of the Buffer Zone.

In both instances I suggest that there must be a provision to maintain or improve the Conservation Status of those areas, to ensure consultation with Department of Land Affairs and to protect communities rights. A reference may also be made to Wild Coast Tourism Development Guidelines that declare nodal development areas.

[EIA, Nelson Mandela Bay Metropolitan Municipality]

As zoning schemes are inconsistent in coastal areas a proposal was put forward to implement a 1km buffer zone.

[EIA, DAEA – Empangeni Office]

According to "Efining The Coastal Zone" diagram on page 4, the proposed buffer zone in rural areas will be 1 km wide. That area in some tribal areas is already occupied by traditional houses, e.g. Dokodweni area at Mthunzini, KZN. It is more likely the tribal authorities will continue plotting their people within this area you consider a buffer zone. The process of plotting their people is not subject to an EIA process. Their area is also out of Municipal boundaries. There is no government institution knows what tribal authorities are doing in their land. The tribal authorities are also not aware or educated enough to know about this buffer zone. How are you going to make sure they are also educated about this Bill? During the consultation process it is also important you also visit them, especially those administering land along the coast.

#### [DEAT Comments:](#)

*This section was amended to read:*

### ***"Part 2: Coastal protection zone***

## **16. Composition of coastal protection zone**

- (1) Subject to subsection (2), the coastal protection zone consists of –
  - (a) land falling within an area declared in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989) as a sensitive coastal area within which activities identified in terms of section 17(1) of that Act may not be undertaken without an authorisation;
  - (b) any part of the littoral active zone that is not coastal public property;

- (c) any coastal protection area, or part of such area, which is not coastal public property;
  - (d) any land unit situated wholly or partially within one kilometre of the high water mark which, when this Act came into force –
    - (i) was zoned for agricultural or undetermined use; or
    - (ii) was not zoned and was not part of a lawfully established township, urban area or other human settlement;
  - (e) any land unit not referred to in paragraph (d) that is situated wholly or partially within 100 metres of the high water mark
  - (f) any coastal wetland, lake, lagoon or dam which is situated wholly or partially within a land unit referred to in paragraph (d)(i) or (e)(i);
  - (g) any part of the seashore which is not coastal public property, including all privately owned land below the high water mark; or
  - (h) any admiralty reserve which is not coastal public property.
- (2) An area forming part of the coastal protection zone, except an area referred to in subsection (1) (g) or (h), may be excised from the coastal protection zone in terms of section 26. “

### **Section 17: Purpose of coastal buffer zone**

[Wildlife and Environmental Society of SA]

We suggest another point (g): *to allow for projected increase in sea levels and climatic change and associated erosion events, where applicable.*

[Endangered Wildlife Trust]

This section could be strengthened by including specific reference to other Sections in the Bill which deal with implementation mechanisms and responsibilities.

[Natalie Way-Jones (Personal Capacity)]

The coastal buffer zone appears to serve two functions- one is disaster management, and the other is ecological conservation.

It is suggested that the Protected Areas Act make provision for the declaration of areas to serve ecological purposes and that this is the better mechanism.

Who manages the coastal buffer zone?

Coastal access land can be used for ensuring access for emergencies and temporarily depositing....

[LEGALB]

Who is entitled to exercise the purposes identified in this section? Is it the State? Anyone? Is a duty to perform such purposes created? Who under the Bill has the duty to exercise the purposes if such is created? Is it envisaged that any of these purposes could, would or may interfere with rights in terms of private ownership of land? If so, would any consultative process be made with such private owners or would compensation be payable to such owners? If such is envisaged, such should be clarified in the Act.

[eThekweni Municipality]

No mention is made of how this will be implemented in the Act.

[Kathy Leslie (Personal Capacity)]

This purpose implies that the buffer should be related to height above mean sea level rather than distance of 100 or 1000m. e.g. coastal flood plains.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) It is noted that the purpose of the buffer zone includes (amongst others) protecting *the ecological integrity, natural character and the economic, social and aesthetic value of coastal public property*, on the one hand, and maintaining *the productive capacity of the coastal zone by protecting the ecological integrity of the coastal environment*, on the other.
- (ii) Persisting with the contention that the country's coast is under threat from unsustainable development, it is disappointing that the protection of the ecological integrity, natural character and the economic, social and aesthetic value of the buffer zone itself is not a primary objective of the Bill.
- (iii) One can anticipate concerted efforts, by applicants for permits to carry out environmentally damaging activities in the buffer zone, to demonstrate that the proposed activities will not compromise coastal public property, on the basis that if they are successful, it will be difficult for the permitting agency to decline the issuing of a permit.

- (iv) In the context where the buffer itself needs protection, this will be unfortunate.

[KZN Agriculture and Environmental Affairs]

17	There is no mention made of how the designation of the coastal buffer zone will be implemented.	This section must be cross-referenced with other sections dealing with implementation.
	No reference is made in respect to the provision of public amenity (car parks, ablutions etc) in the coastal zone. Is this proposed for the coastal buffer or what other portion? <i>This was previously provided by municipalities in terms of lease agreements on Admiralty Reserve.</i>	

*Part 3: Coastal access land*

[KZN Agriculture and Environmental Affairs]

Part 3	This part is silent on the costs of purchasing and registering servitudes and providing and maintaining the access, which coastal municipalities may incur in implementing this part of the Act. As these costs may be substantial, this issue needs to be addressed.
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[Buffalo City Environment Trust]

Ensure that development of private property in the coastal zone is adequately controlled.

[Coastal & Environmental Services (East London)]

Section 17

The greatest threat to the coastal zone is the inappropriate development of private property.

- How will the Bill address development and protection of PRIVATE property?
- Will the Act overall also adequately protect the environmental integrity of private property and the contribution of private property development to coastal sprawl?
- Does this section need to refer to the protection of private property?

The protection of private property may be implicit elsewhere in the Bill.

[Irvin & Johnson Limited]

When dealing with the coastal buffer zone it is very important to note that in terms of the definition of coastal buffer zone and specifically in Section 16, sub-section (1)(d) and (e), the coastal buffer zone includes privately owned land. Thus, when in terms of Section 17, the coastal ecosystem in the coastal buffer zone is managed, regulated or restricted in order to meet the objectives set out in sub-paragraphs (a) to (f), the reasonable rights of the private land owners whose land constitute part of the coastal buffer zone must also be taken into consideration.

Thus, the ecosystem must be managed, regulated or restricted in a manner which allows private property owners the reasonable enjoyment of their ownership rights and the Bill should place an obligation on the relevant authority to ensure these rights are protected and in the event where there is irreconcilable conflict between the purposes of Section 17 and the private ownership rights of private land owners in a coastal buffer zone, the land can be expropriated (at market value), if necessary, to give effect to the purposes of the Bill.

Any other interpretation of this Section will constitute expropriation without compensation. The proposed solution would be to re-look Section 16, the defining Section and adjust the definitions, and particularly sub-section (1)(d) and (e), to exclude as much as possible unintended privately owned land.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Section 17 (purposes of CBZ) is, in its current format, inappropriate and illogical and significantly restrictive. This is especially problematic given the extent of the CBZ proposed. Cognisance must be taken of developmental requirements and opportunities.

[Oceanographic Research Institute]

- (f) to make land near the seashore available to organs of state and other authorised persons for –
  - (i) performing rescue operations; or
  - (ii) temporarily depositing objects and materials washed up by the sea or tidal waters. Orto undertake rehabilitation activities 

[Overberg Distriksmunisipaliteit]

Uit 'n rampbestuur oopunt, die volgende kommentaar:

Rampbestuur wetgewing en die geïntegreerde kursbestuurswetsontwerp het dit in gemeen dat beide wetgewings poog om 'n geïntegreerde en koördineerde benadering te volg. Dit in beginsel verskaf 'n goeie basis wat aansluit by die ander munisipale wetgewings bv. Stelselwet

Uit 'n noodreddings situasies moet die volgende vrae onder die aandag van die opstellers kom:

Die wet maak voorsiening vir reddingsoperasies (artikel 17 f (i) ): Hulle s hulle maak plek beskikbaar naby die see vir noodoperasies, maar daars nie 'n aanduiding van hoe ver van die see af nie. As dit saamgelees kan word met artikel 20 (Verantwoordelikhede van munisipaliteite oor die toegang tot kus), kan ek hieruit aflei dat in die publieke deelname proses, munisipaliteite met hul rampbestuur komponent sal gesels oor behoeftes vir toegang tot die kus. Ek maak die aanname dat die idee is van die wet dat beheerde toegang tot die kus via plank loopbane verskaf sal word en in 'n noodreddingssituasie is dit egter dalk nodig dat voertuie en vliegtuie letterlik op die sand moet kom. Wat my uitbring by skedule 3 B , B9 en C11 waar die gebruik van vliegtuie verbied word op die strand asook die landing daarvan. Wanner die minister die regulasies uitvaardig (hfst 11) moet dit in ag geneem word dat in noodsituasies voertuie en helikopers wel op die strand benodig gaan word. Dit beteken by implikasie dat voertuie dalk oor bewaarde gebied kan ry om daar uit te kom.

Ten tweede moet die huidige oliebesoedelingsplan (Plaaslike Kusplan vir die bestryding van oliebesoedeling – Departement van Omgewingssake) ook in ag geneem word. Ten einde die impak van oliebesoedeling op die kus te verminder, is dit bv. Nodig dat stootskrapers op die kus kom om sandvalle te bou.

Wat nog nie duidelik is nie, wie gaan verantwoordelik wees vir die wetstoepassing van die wet op munisipale vlak, aangesien dit ook as funksie van Distrik/plaaslik aangewys word.

#### [DEAT Comments:](#)

*This section was amended to read:*

#### **“17. Purpose of coastal protection zone**

The coastal protection zone is established for the purpose of enabling the use of land that is adjacent to coastal public property or that plays a significant role in a coastal ecosystem to be managed, regulated or restricted in order –“

#### **Section 18: Designation of coastal access land**

[Department of Environmental Affairs & Development Planning]

#### Acceptance and agreements by various organs of state to provisions in the Bill

In Section 18 stipulates that each Municipality whose area of jurisdiction includes public property must, within four years of the commencement of the Act, make a by-law that designates strips of land adjacent to that coastal public property as Coastal Access Land. A dangerous assumption is made that municipalities are in agreement with this and will readily accepts these additional responsibilities.

Who agreed to this and was this negotiated with the four coastal provinces or municipalities? Before a mandate is passed from one government department to another consultations and discussion must first be done and then agreement reached. Municipalities will not readily accept this as this puts additional responsibilities on them and their resources.

Questions:

- Will DEAT provide funding to the provinces and municipalities to implement the Act?
- Do the municipalities have the expertise and capacity to perform this?
- Who will pay for the purchase, registration and maintenance of these servitudes – Land Affairs or Municipalities?
- Was this discussed and negotiated with the Department of Land Affairs and Municipalities?
- What will happen if these servitudes are used for illegal activities such as poaching, etc?

The White Paper went through an exhaustive public participation process and was endorsed by cabinet. The White Paper however did not grant DEAT an open book to formulate or pass mandates to other organs of state as they see fit. Provisions of the Bill /Act needs to be discussed, negotiated and agreed upon amongst the various organs of state before it is published for public comment.

*Enforcement agency in coastal waters –*

The definition of the Coastal Zone will place additional burden on coastal municipalities (12 nautical mile sea boundary). The Act should clearly indicate who will assume responsibility in terms of enforcement in the coastal waters. This could be a very costly for municipalities.

[Duineveld Coastal Association]

Subsection 18 (5) (b) is certainly problematic :

*... any place which, for at least five years immediately prior to the commencement of this Act, has been used by the public to gain access ... [to the sea]*

Comment 1

We believe a clear distinction should be made between permitted access for the public, and unauthorised access used by the public.

Surely unauthorised access should not be condoned by the proposed legislation? For instance, for some years the public has cut fences, ignored warning signs etc and used land at unmanned lighthouses of Portnet to gain access to the sea, thus jeopardising Portnet's communications infrastructure. Similarly, the public has been trespassing for some years on sensitive Defence Force land on the West Coast and in the Cape Peninsula, without any regard to the official signage there? Does Section 18 (5) (b) signify that all this is in order?

## Comment 2

The legitimately accepted norm for public access over private (or state) land is 30 years of -unrestricted access. This is an old established legal principle.

If the proposed legislation reduces the time period of "customary usage" to 5 years for the public access use to become legally enforceable, this precedent will impact property owners, homeland communities, mines and the state all over South Africa. Was this intended?

[MG Potgieter (Personal Capacity)]

A Municipality will not know the full extent of the issues concerning the creation of strips of access land '...in order to secure public access to...' a specific coastal public property. It is unfair to interested and affected parties (I&AP) not to debate such intentions. I&AP must therefore be given opportunity to respond to a Municipality's intentions to designate strips of land as coastal access land in terms of Section 18, Part 3. This can be done by adding the following to 18(3) (a): *by publication of a notice to I&AP to submit written comment on the intended creation of strips of access land which must be followed by appropriate meetings.*

[Wildlife and Environmental Society of SA]

Designation of coastal access land (1): Need to develop "beach management precincts".

[Endangered Wildlife Trust]

Section 18(6) – suggest clarification of the definition of "interested and affected party"

[Ezemvelo KZN Wildlife]

Section 18(5)(b) to read - ...registered boat launching sites ...

[Friends of the Bot River]

Part 3: Designation of coastal access land – (1) – must within two years make a bylaw etc.

comment: Municipalities are now ruled by politicians, in certain areas motivated by lack of experience, expertise and sometimes greed. eg: in the case of the Bot River estuary so-called traditional camping (below the high water mark) is espoused by a minority. Ecology is not taken into account and racism given as the reason why "pale" people do not wish camping to take place and not the degradation to the environment and anti-social behaviour.

We do not believe that local authorities should be given the power to make decisions as one set of rules established by one committee (political party) can be rescinded by

the next. Important ecological decisions should be made by experts such as CapeNature/Marine and Coastal Management. Local Authorities should be seen as the watchdog of the process contributing when relevant.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

### Part 3 – Coastal Access Land

The provision to enable private property to be turned into coastal access land (CAL) is tantamount to expropriation and a deprivation of rights and is contested and objected to.

Section 18(1) in effect, provides unilateral powers for a Municipality to take rights away and give to others over privately owned property. This is unconstitutional.

Section 18(1)(5)(b) should refer to legal access as opposed to illegal access.

[D. Le Roux (Personal Capacity)]

Public access needs to be defined. Since the banning of beach driving all access along the beach is by foot, therefore public access needs to be defined as say at intervals of 6 km, with 3km being about 1 hour's walking time for the average person.

[Department of Environmental Affairs & Development Planning]

#### Section 18

Section 18(4):-

With reference to access to coastal land for the general public. What about land that is protected under other legislation (E.g. Coastal reserves as defined by the Protected Areas Act). This provision should include areas that have "Protected Status". Section 18(3) (i) & (ii) deals with the above, but a general clause should be included with reference to the Protected Areas Act. It should also state the conditions of access and who can or may determine those conditions.

Public access land is determined by Minister (section 26) but municipalities must designate, register and take responsibility for enforcement, maintenance, of the servitudes. What about the cost implication? The provincial lead agent / MEC has a vital role to play and should be included in the decision making process.

What criteria will be used to determine this and does it only refer to land that has been lawfully used for this purpose? What measures will be taken to ensure that the over-development (more strips of land is demarcated than what is required) of Coastal Access Land do not take place?

[LEGALB]

s18(1)

This section would allow a municipality to designate strips of land adjacent to coastal public property as coastal access land. However, the Bill fails to deal with the issue of ownership of that land adjacent to coastal public property, which may be so declared "coastal access land. It may well be that the land so designated is privately owned, and this Bill would in effect allow a municipality to expropriate all or some rights held in private ownership to such designated land, whilst avoiding having to properly expropriate the land. It is probable that this would be considered unconstitutional.

s18(2)

The definition of the public access servitude as being "in favour of the local municipality" could create difficulties and should be phrased differently. A public access servitude is a servitude in favour of the public, so it may be a bit difficult to understand that it is "in favour of the municipality". This issue raises the question of who can prevent or force access of the public to coastal public property through coastal access land.

18(3)(b)

This section appears to be contradictory to s6.

s18(5)(b)

This section allows any land that has been used by the public for 5 years or to gain access to public coastal property, to be defined as part of the coastal zone. This definition allows such land, if private, to be declared public access land by a municipality. Such would amount to at least legalisation of trespass on private property by the public to gain access to the coast, or at worst expropriation of land without any proper expropriation procedures.

It also would allow for a situation in which private land, which falls within the coastal zone because of the above, to be subject to the MEC or Minister issuing a written repair and removal notice to the owner, if they consider it to have an adverse effect on the environment, and eventually forcing it to be demolished, upgraded, etc..

s18(6)

Is it envisaged that a municipality would be entitled to withdraw the designation of any land as coastal access land where such is regarded as having been so designated in terms of s18(5).

[Department of Environmental Affairs & Development Planning]

Section 18(5)(b) stipulates that Coastal Access Land must be regarded as, amongst others, any place which, for at least five years immediately prior to the

commencement of the Act, had been used by the public to gain access to public coastal property. It is further required that Municipalities must immediately delineate the coastal set-back line on maps that form part of its zoning scheme (section 25(3)). Although all land within the Western Cape Province is covered by zoning schemes, very few Municipalities have zoning maps for their entire area of jurisdiction, especially those areas covered by zoning schemes that were promulgated in terms of section 8 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985). The main reason for the above is that vast areas are covered by the latter and the cost implications involved in preparing zoning maps. Due to the level of detail required, many maps will need to be prepared, having further cost implications. The practicality of such provision is seriously questioned.

[The Overstrand Conservation Foundation]

Section 18 – 4 years to make by-laws designating coastal access land should be 2 years.

[eThekweni Municipality]

While this approach is supported it is very clear that there are significant costs associated with this being implemented. Municipalities are responsible for designating coastal access land. Some properties identified for coastal access purposes may be private land – has any consideration been given to the need to compensate landowners for gaining access across their land? This Part is silent on the costs of purchasing and registering servitudes/obtaining Rights of Way (ROW) and providing and maintaining the access, which coastal municipalities may incur in implementing this Part of the Bill. As these costs may be substantial this issued needs to be addressed.

Section 18(2). It would appear that this section creates an automatic Statutory Servitude on land designated in terms of Section 18(1). It is of course important that these designated areas are able to be defined on the ground, and unambiguously by the Registrar of Deeds in terms of Section 32. The better route is to create registered ROW servitudes, or acquire the land where applicable. There will of course be costs attached which is not addressed. The possible acquisition of Coastal access land by the MUNICIPALITY should be covered in Section 18.

Compensation is provided for other types of servitudes, and can be costly. Would provincial or national government fund such compensation including the costs of evaluation, consultations, survey and registration costs associated with the registered servitude rights of access. Most Municipalities have no spare funding to achieve this objective and therefore consideration must be given to some form of funding for this.

Section 18(6). It is unclear if a 'public access servitude' is a new form of ROW/road servitude. This clause must also include the process to be followed in withdrawing the designation of any land as coastal access land. Depending if these are registered

servitude rights (by notarial deed or by surveyed diagram) or ROW the processes are different and this must be spelt out. Once designated, public access land is likely to fall within the definition of a public street in terms of the Local Authority Ordinance No 25 of 1974. Any withdrawal would in theory require statutory closure processes to be followed in terms of this said Ordinance.

Sections 18 and 20(1). The National Government may vest in the Municipality with legislative authority in respect to a matter which is not within its normal constitutional powers. Where it does so the Municipality is given the power not the duty to make bylaws in terms of Section 156(2) - a Municipality may make bylaws.

Clause 18(1), by attempting to impose a duty on a municipality to make certain bylaws is invading the legislative authority of Local Government. Clause 18 and 21 also uses the word "must". Such behaviour by central government removes the executive authority of the Council and reduces it to a rubber stamp of central government. Rules of the "shall/must" variety may be imposed by the national government acting within its competent legislative powers only if it imposes the same rules on private citizens. Any other behavior constitutes " a dump" or as it is commonly called in Municipalities an "unfunded mandate".

[Blue Horizon Developments]  
(Sections 18 and 19)

These sections must be re-examined as they allow for an unconstitutional "taking" of the property of private land owners.

These sections would effectively require private land owners subject to such a servitude to grant unrestricted access to their property to members of the public.

There are no limits placed on the circumstances in which this power can be exercised and it would amount to an unconstitutional expropriation without compensation of private land owners' property. It is simply a *carte blanche*. It does not require the municipality to assess:

- whether the coastal public property to which access is being given is actually used or traditionally used by members of the public;
- whether the use is of such importance to justify taking of private property;
- the least intrusive way of giving access to public coastal land;
- the position of the servitude that will cause least disruption to the existing use of the property.

1.2           The section should, in addition to requiring the municipality to consider the issues listed above, also:

- 1.2.1 require the municipality to consider all other options before embarking on this extraordinary measure;
- 1.2.2 allow the private land owner to take security measures to protect their property from vandals or criminals;
- 1.2.3 allow the private land owner can take action to stop access in the event that it is abused by members of the public;
- 1.2.4 allow the private property owner to block access after dark or at other reasonable times.
- 1.3 The municipality should have to justify the necessity of the measure and the use of the coastal public property.
- 1.4 Private land owners should be given the right to refuse designation, in which circumstance, where necessary, expropriation would have to be considered by the relevant authorities, if this can be justified in the circumstances.

[Hessequa Municipality]

Clause 18 (1) that deals with the designation of coastal access land states: "Each municipality whose area includes coastal public property must within four years of the commencement of this Act, make a by-law that designates strips of land adjacent to that coastal public property as coastal access land in order to secure public access to that coastal public property". This is an extremely generous period and could be shortened given the economic and communal importance of the coastal public property.

Clause 18 (5) states that "Until strips of land have been designated as coastal access land in a particular municipal area, the following land must be regarded as having been so designated – (a) any public right of way, municipal servitude or other land which the public were entitled to use to gain access to public coastal property when this Act commenced; and (b) any place which, for at least five years immediately prior to the commencement of this Act, had been used by the public to gain access to public coastal property, including access to boat launching sites and proclaimed fishing harbours". This read in conjunction with the time period mentioned in clause 18 (1) means that important access problem situations might not be resolved for an extended period. In the case of Hessequa this would be unfortunate because of the importance of the coastal zone in future economic development.

[Kathy Leslie (Personal Capacity)]

(4) need to define "strategic facility"

(6) add at end "subject to Section 19 (or is this obvious?)

[KZN Agriculture and Environmental Affairs]

18(1)	See comment on section 17 above. Furthermore, what provisions will be made to deal with access to the coast in front of current 'gated estates' along the coast?
18(2)	What are the financial implications of public access servitudes over private land - especially in relation to the provision of public amenity?
18(6)	This provision should require consultation. It would also appear to be duplicated in 19(1).

[Irvin & Johnson Limited]

This Section and the following Sections create the impression that the local authority is obliged to immediately set about creating coastal access land to give the general public access to all coastal public property within the relevant Municipality's jurisdiction. Other than Section 19(2)(b), which obliges the local authority to consult with interested and affected parties, and Section 20(1)(f), which provides that the provision and use of coastal access land should not cause adverse effects, the Bill does not require a Municipality to first consider whether it is desirable that any particular stretch of coastal public property within its jurisdiction should be made accessible to the public or not.

In many parts of the South African coastline, particularly along the Western Cape South Coast, the coastal public property is very rough and rocky and not easily traversable and is hazardous. In many instances the adjoining land mass forms a barrier of rocks and cliffs which means that large stretches of the coastal public property is underwater at high tide and extremely dangerous to anybody caught the at high tide or when the tide comes in.

As the coastal public property is restricted to the high-water mark, members of the public caught on coastal public property when the tide comes in, will be forced to trespass onto private property in the interest of their own safety. If this becomes a frequent occurrence, it could create unnecessary friction in the community and the Municipality should, in setting out coastal access land, do it in a manner which ensures public safety and does not create friction or disharmony within the communities within its jurisdiction.

There is a very real danger that if a Municipality opens up portions of the coastal public property, which had not previously been easily accessible to the general public it may lead to an increase in traffic on such coastal public property. In the event of

such newly accessible coastal public property being unsuitable and even very dangerous the increased use by the public can result in serious injury or loss of life or increases in the incidence of such incidents.

The primary responsibility of a Municipality when designating coastal access land is to take cognisance of public safety, when determining which stretches of coastal public property within its jurisdiction is suitable for access by the general public. Currently the Bill does not highlight this very important responsibility of a Municipality and it can very easily be overlooked.

The Bill should prescribe that a Municipality must also take into consideration the suitability of coastal public property within its jurisdiction for general public access before designating coastal access land and we suggest that the Bill be amended to deal with this aspect.

Whenever a Municipality designates public access land and carries out its obligations in terms of Section 20(1), it is reasonable to expect that the public at large will regard it as an invitation to enter onto the relevant coastal public property is not suitable or very dangerous, members of the public may be injured or even lose their lives. This may result in litigation against the relevant local authority which must be avoided.

It is suggested that the first step a municipality must take is to decide which portions of coastal public property within its jurisdiction is suitable for access by the public at large.

In addition to determining which portions of public coastal property in a municipality's jurisdiction is unsuitable for public access the municipality must also identify which portions of public coastal land are occupied by structures or buildings in terms of permits or leases issued in terms of the Bill and also exclude such portions of public coastal property from public access.

Thus when designating coastal access land the totality of all coastal public property not accessible to the public must be excluded and only public coastal property to be accessed by the public at large must be serviced by coastal access land. Then thereafter the municipality can set about designating coastal access land giving access to such coastal public property.

It is possible that special interest groups may request a Municipality to designate certain coastal access land to enable them to gain access to a portion of coastal

public property which they may wish use but may be unsuitable or dangerous for the public at large. In such cases the Municipality must be obliged to deny the access. It will be impossible for a Municipality to police all coastal access land to ensure that only designated members of the public frequent certain parts of the coastal public property in any event, the Bill does not allow for selective access.

A municipality must take into consideration the likelihood of the existence of coastal access land attracting members from the wider public who do not know the area as well or realise the dangers of hiking over an inhospitable and rocky area and the risk of incoming tides.

In addition Municipalities should not only be obliged to consult with private land owners over whose land or adjoining to whose land the coastal access land is to be designated but the Bill should oblige a Municipality to take into consideration the reasonable expectations and rights of private land owners to privacy, security and protection them from trespassers.

Then, where public access servitudes are granted over private owned land, compensation for the loss of the use of such private land must be payable to the land owner concerned at market value. If the provisions of section 10(1) are enforced and the facilities envisaged in section 20(1) are erected then the land owner will for all practical purposes lose his usage rights.

If these issues are not dealt with clearly it could lead to a large number of appeals being lodged against the designation of coastal access land by municipalities. Thus to prevent a multitude of appeals against decisions made by local authorities it is incumbent on the draughtsman to set clear guidelines in the Bill.

The best way to deal with this would be to oblige the municipalities to determine the appropriate places for the placement of public access servitudes in conjunction with the relevant land owners, to control and grant access to the coastal public property to the public in a manner that does not infringe on property owners rights and does not encourage trespassing onto private property.

[Belastingbetalersvereniging]

Art. 18. Moet die Distr. Mun. die funksie vervul of met die plaaslike mun. ooreenkom om dit te doen.

[Oceanographic Research Institute]

#### Designation of coastal access land

- (1) Each municipality whose area includes coastal public property must within four years  the commencement of this Act, make a by-law that designates strips of land adjacent to that coastal public property as coastal access land in order to secure public access to that coastal public property.
- (4) No land within a harbour, defence or other strategic facility may be designated as coastal access land without the consent of the abinet member responsible for that facility.

#### [DEAT Comments:](#)

*This section was amended to read:*

“(5) Subject to section 19, a municipality may, on its own initiative or in response to a request from an organ of state or any other interested and affected party, withdraw the designation of any land as coastal access land.”

#### **Section 19: Process for designating and withdrawing designation of coastal access land**

[Endangered Wildlife Trust]

Section 19(2)(a) – Suggest clarification of how this will be done, and whether an Environmental Impact Assessment process will have to be undertaken.

[LEGALB]

Is it envisaged that a municipality would be entitled to withdraw the designation of any land as coastal access land where such is regarded as having been so designated in terms of s18(5).

[eThekweni Municipality]

There does not appear to be a clear process following public participation if the (private) land owner disagrees with the proposal to designate access land. No mention is made of the rights of the Local Authority to make use of the Expropriation Act if required, although this is probably implied since the access land will be for public usage, and is covered in Clause 25(2) of the Constitution. It would be better to spell this out.

[Habitat Council, Cape Environmental Trust and the Still Bay Conservation Trust]

With respect to Chapter 2: coastal buffer zone, Section 19(2)(a), we find that merely stating "(a) assess the potential environmental impacts of doing so" gives no reference to HOW such impact is to be assessed and BY WHOM. This must be clearly set out. Will the EIA process as in the EIA Regulations

be set in motion? Likewise 19(1) states that designation and withdrawal must be done by "following the same procedure"

[KZN Agriculture and Environmental Affairs]

19(2)(a)	Is it assumed that government will be required to follow the same procedures (as set out in NEMA's EIA regulations) in respect to the assessment of potential environmental impacts?
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[Department of Environmental Affairs & Development Planning]

Section 19

Provisions in this section need to be swapped around.

Section 19(1) and 19(2):-

Bill should first speak about designating coastal access land and then speak about withdrawing.

[Oceanographic Research Institute]

- (2) Before designating land as coastal access land or withdrawing any such designation, a municipality must –
- (a) assess the potential environmental impacts of doing so;
  - (b) consult with interested and affected parties in accordance with Part 5 of Chapter 6; and
  - (c) give notice of the intended designation or withdrawal of the designation to the owner of the land. 

[DEAT Comments:](#)

*This section was not amended.*

**Section 20: Responsibilities of municipalities with regard to coastal access land**

[Natalie Way-Jones (Personal Capacity)]

Capacity issues .

[Ezemvelo KZN Wildlife]

Section 20 Responsibilities of municipalities with regard access to coastal land  
*Here concern is raised that this may increase pressure on fish stocks as well as increase the administrative load for Ezemvelo KZN Wildlife in term of patrolling. What is needed is a more equitable access at the same time achieving an overall reduction in or consolidation of access points.*

[LEGALB]

This section is possibly in conflict with the concept of separation of powers between municipal and national government.

The term “adverse effects” contained in s20(1)(f) is not defined and lacks clarity. Is it envisaged that such section would create a statutory duty of care?

[Heuningnes Riperial Owners Association]

On the question of coastal access land, not a lot has been written about private landowners rights. The management of access corridors will not be easy and they could be costly. Section 19 (2) (a) and (b) covers some of the requirements but this Act does not emphasize the point above. Section 20 (1) (b) “controlling the use of and activities on, that land” will not be possible unless proper enforcement is in place. The same applies to the section 20 (1) (f). We see this as potentially problematic, especially where corridors might pass through farmlands, where crops and animals are farmed.

[eThekweni Municipality]

Much of what is suggested here would require environmental authorisation following a Basic Assessment process. There would incur significant financial costs for a local authority?. The Act needs to stipulate if National and/or Provincial support will be provided for local government to provide resources to conduct environmental authorisations. The establishment of coastal access infrastructure including potential removal of vegetation, and the construction of parking areas, toilets, boardwalks etc. Notwithstanding the above who would cover the costs of developing such infrastructure.

[South African Planning Institute]

Section 20(2)(a) Does “assess” mean and EIA must be done in terms of NEMA?

[Hessequa Municipality]

Clause 20 deals with the responsibilities of municipalities with regard to coastal access land. It states that: “(1) A municipality in whose area coastal access land falls must – (a) signpost entry points to that coastal access land; (b) control the use of, and activities on, that land; (c) protect and enforce the rights of the public to use that land to gain access to coastal public property; (d) maintain that land so as to ensure that the public has access to the relevant coastal public property; (e) where appropriate and within its available resources, provide facilities that promote access to coastal public property, including parking areas, toilets, boardwalks and other amenities, taking into account the needs of persons with physical disabilities; (f) ensure that the provision and use of coastal access land and associated infrastructure do not cause adverse effects; (g) remove any public access servitude that is causing or contributing to adverse effects that the municipality is unable to prevent or to mitigate adequately; (h) report to the MEC within two years of this Act coming into force on the measures taken to implement this section; (i) describe or otherwise indicate all coastal access land in any municipal coastal management

programme and in any municipal spatial development framework prepared in terms of the Municipal Systems Act; and (j) perform any other actions that may be prescribed. Municipalities affected by the Bill will have a lot of new responsibilities. It might be necessary for DEAT to ensure that municipalities have the capacity to handle these responsibilities, including providing the necessary training.

[KZN Agriculture and Environmental Affairs]

20	Much of what is suggested would require environmental authorisation following a Basic Assessment process. There are significant financial implications for a local authority.	Stipulate if financial support will be provided to local authorities for undertaking activities proposed on coastal access land.
20(1)(b)	More detail needs to be provided to ensure consistency with implementation by municipalities.	
20(1)(d)	Does “maintain that land” include the protection of indigenous coastal vegetation and the removal of alien invasive vegetation?	

[Irvin & Johnson Limited]

This Section should not only charge a Municipality to protect and enforce the rights of the public to use land to gain access to coastal public property but to also protect and enforce the rights of private land owners against trespassers and infringement by members of the public that access the relevant coastal public property. This can be done by making sure that in the coastal access land sufficient fencing and facilities are supplied which will prevent members of the public from having to venture onto private property to find facilities and to ensure that access is only given to public coastal property which is safe for use by the public and where a change in tides will not put members of the public in danger or force members of the public to trespass onto private property because the coastal public property may become impassable.

It is important that the Bill clearly state that there is no obligation on municipalities to make all public coastal property within its jurisdiction available to the public. The obligation should be on the Municipality to first determine the desirability and the feasibility of making coastal public property in its jurisdiction available to the public before actually doing it. The primary duty of a Municipality is to ensure the public safety in its jurisdiction and that is something it has to take into consideration when determining which public coastal property in its jurisdiction can be made accessible to the general public. Any coastal access land made available by a Municipality must be made available with the knowledge that the general public may through that coastal access land access coastal public property safely and enjoy it safely without any fear that the terrain or a change in tides may cause injury or other damage or may force members of the public to trespass onto private land in the interest of their own safety.

It is important to note that access must be given to the general public at large and not to selective embers of the public. In the event of requests by special interests groups (anglers, 4x4 enthusiasts etc.) to gain access to a specific area or public coastal property which is generally inhospitable and dangerous, a Municipality should have the power to refuse such access on the basis that they are only able to grant access to the general public at large and it is undesirable for the general public to gain access to that particular bit of coastal public property.

[Friends of the Botriver]

20. Responsibilities of municipalities with regard to coastal access land.

- (1) (a) – (j) local authorities seldom have the capacity to carry out these duties. A local environmental directorate must be created with expertise and finance to administer effectively and responsibly in collaboration with expert organisations.
- (2) a municipality **MUST** (not may) make bylaws for the implementation of subsection (1)

[Kommetjie Residents & Ratepayers Association]

- Signposting should be done in sensitive, clear but not intrusive way (p30)

[Department of Environmental Affairs & Development Planning]

Section 20

Section 20(1)(e) requires that the municipalities provide facilities such as ablution, parking, etc. which may trigger an EIA process. What process will be followed to assess these types of applications?

Did municipalities agreed to this? Who will provide funding for this or is it expected from municipalities to budget for this?

Who will monitor and ensure that the municipalities enforce their obligations in terms of the Bill re: coastal access land as provincial government / MEC has been excluded from this process?

[Western Cape Department of Environmental Affairs and Development Planning (Region A1 George)]

Point 20: Responsibilities of Municipalities with regard to coastal access land  
1 (e) requires that the municipality must provide facilities including parking areas, toilets, boardwalks and other amenities. Many of these activities in itself may trigger the EIA process. The question that arises is: Will the EIA process be done in terms of this Act and assessed by Coastal Management Staff bearing in mind that the Act calls for integration and coordination of functions between the various departments.

[Kathy Leslie (Personal Capacity)]

1 (h) time frame seems too generous (but maybe it's practical!)

1 (j) needs time frame e.g. within 4 years

[Oceanographic Research Institute]

Responsibilities of municipalities with regard to coastal access land

- (a) ensure that the provision and use of coastal access land and associated infrastructure do not cause adverse effects;

DEAT Comments:

*This section was not amended.*

*Part 4: Coastal waters*

**Section 21: Control and management of coastal waters**

[K.P. Mackie (Personal Capacity)]

This section is constructed as an omnibus clause and is limited to four brief lines.

This is an incredibly brief treatment of what amounts to a whole half of the subject matter of the bill.

Whereas considerable space has been given to coastal access land on land, there is no explicit provision for access to coastal waters – by and large, beach launching, landing places and associated boat ramps and otherwise small craft harbours.

While access to coastal waters and the sea and sea shore should be a fundamental right of all people and, given the peculiarities of the South African coast, a public sector responsibility to provide the necessary infrastructure, there will be needs to restrict such opportunity of access as, for instance for

matters of safety or for environmental protection or preservation of fish stocks. This aspect needs to be fully addressed in an equitable manner.

The failure to properly develop this component may well prove to be a fatal impediment to the whole bill.

[KZN Agriculture and Environmental Affairs]

21	Does “organ of state” as reflected in this section include municipalities, as a result of the fact that later sections in the Bill reflect on the preparation of coastal zoning schemes over the coastal zone (which includes coastal waters)? Does this therefore imply that municipal Integrated Development Plans need to be extended to include coastal waters?
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[Department of Environmental Affairs & Development Planning]

Section 21

Section 21(a) Add:- “.....of the whole community and the coastal environment”

[Oceanographic Research Institute]

(a) in the interests of the whole community; and

DEAT Comments:

*This section was not amended.*

## **Part 5: Coastal protected areas**

### **Section 22: Excision of protected areas from coastal buffer zone**

[Belemani Semoli (Personal Capacity)]

(a) The Minister or delegated authority may let any portion of the seashore and the sea for marine aquaculture purpose. Other circumstances under which the sea and seashore may be leased include ‘for the carrying out of any work for public utility’ and the ‘carrying out of any work which in the opinion of the Minister, serves a necessary or useful purpose.’ User conflict should also be taken into consideration before leasing of seashore or portion of the sea.

(b) Minister may delegate the powers which he has in terms of the section to any local authority by notice in the Provincial Gazette. In addition, before any such lease can be entered into the Minister is required to publish a notice in the Provincial Gazette and in a newspaper in the applicable area providing details of the proposed lease and providing an opportunity for members of the public to lodge an objection.

[Kommetjie Residents & Ratepayers Association]

- The issue of buffer zones and protected areas needs clarification. (p31)

[Adrienne Edgson (Personal Capacity)]

The control or management of the 'Buffer Zone'" appears to have only been considered in terms of "public property". What of the buffer zone that falls into private property? There is a strong need to regulate and control development on privately owned land in which dunes fall – yes this does exist! - and land which is immediately adjacent to dunes/littoral active zone.

What of inappropriate use of the coastal buffer area or even littoral active zone which has occurred where land appears to have been leased "in perpetuity".

[Oceanographic Research Institute]

Subject to section 92, the MEC may by notice in the *Gazette* declare that with effect from a specified date the whole or any part of a protected area, that is not coastal public property, will not form part of the coastal buffer zone. 

[DEAT Comments:](#)

*This section was amended to read:*

**"22. Excision of protected areas from coastal protection zone**

Subject to section 85, the MEC may by notice in the *Gazette* declare that with effect from a specified date the whole or any part of a protected area, that is not coastal public property, will not form part of the coastal protection zone.

The MEC may only publish a notice referred to in subsection (1) after consultation with the management authority of the protected area, if he or she reasonably believes that doing so will not prejudice the effective management of the coastal zone."

Part 6: Special management areas

**Section 23: Declaration of special management areas**

[TRANSNET]

The Bill is vague regarding the "introduction of measures": We submit that the Bill should provide more detail regarding the nature and types of measures. By providing more clarity, the bill will ensure national homogeneity and consistency in the implementation of the Bill.

[Natalie Way-Jones (Personal Capacity)]

Care should be taken in the provision for promotion of sustainable livelihoods, as local fisheries are governed by the Marine Living Resources Act.

[Ezemvelo KZN Wildlife]

Add section 23A and 23B Special management areas

23A Draft and have adopted by the Provincial authority a management plan within 6 months of declaration

23B The management plan shall include, but not limited to, objectives to be achieved, time frames, methodology to be used, budgeting, and role of players.

[The Overstrand Conservation Foundation]

Section 23 – 4 years to prescribe the National Estuarine Management Protocol should be 2 years.

[eThekweni Municipality]

Whilst special management areas may vest a power to administer in a Municipality, one is again dealing with the provincialisation of what is essentially a municipal function for it is the MEC who makes the rules.

[SANBI]

The declaration of special management areas (S23)

This may be especially justified if a coastal area is identified as a critical biodiversity area in a published bioregional plan or contains one or more listed threatened or protected coastal ecosystems.

[Friends of the Bot River]

When making decisions the Minister/MEC should not be swayed by “traditional/cultural” decisions – the environment and ecology of the area must be the most important factor.

[CSIR]

23: Since natural foredunes are automatically included in this section, it is suggested that

another bullet be added to include Constructed Foredunes that are specifically required to

protect adjacent development. It is of critical importance that the integrity of the foredunes

be maintained (in other words, the dune volume (height and width), position and vegetation cover used when the coastal setback line was determined by specialists).

[Belemani Semoli (Personal Capacity)]

Section 23 (3) (e)

Marine Aquaculture Areas: Areas with high potential for Marine Aquaculture or aquaculture should be identified and zoned for this purpose, provided that such activities optimize the potential of that locality, create livelihood opportunities for disadvantaged communities and do not have negative impact on coastal ecosystems. The areas may include or be part of land, estuaries, lagoons or sea.

[KZN Agriculture and Environmental Affairs]

23	The purpose, proposed value, nature and potential size of special management areas needs to be more clearly defined. Funding for such areas also needs to be reflected.
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[Kommetjie Residents & Ratepayers Association]

- The issue of special management areas needs to be approached cautiously - as destructive activities could creep in here. There needs to be a *caveat*.

[Oceanographic Research Institute]

- (3) An area may be declared as a special management area only if environmental, cultural  socio-economic conditions in that area require the introduction of measures, which in the opinion of the MEC, are necessary in order to more effectively–
- (a) attain the objectives of any coastal management programme in the area;
  - (b) facilitate the management of sustainable coastal resource usage by a local community;
  - (c) promote sustainable livelihoods for a local community; or
  - (d) conserve, protect, rehabilitate, mitigate or enhance coastal ecosystems and biodiversity in the area.

[DEAT Comments:](#)

*This section was not amended.*

## **Section 24: Management of special management areas**

[TRANSNET]

The Bill is vague regarding the powers and duties of the manager of the special management area. This should be rectified to ensure clarity and certainty regarding the scope and extent of the duties and powers. Such vagueness might impact negatively on the effective implementation of the Bill at a provincial level.

[Blue Horizon Developments]

The provisions of the Coastal Bill relating to the declaration of special management areas are not necessary.

It is not understood why these additional protected areas are required under the Coastal Bill when other legislation already provides for the adequate protection of these types of areas. For example, the Protected Areas Act, the Marine Living Resources Act, the Biodiversity Act and to some extent the Heritage Resources Act. The declaration of special management areas is an unnecessary additional mechanism to “protect” already protected areas and is in the circumstances excessive.

[Department of Environmental Affairs & Development Planning]

Section 24

Isn't Sensitive Coastal Areas (SCA) also special management areas and not part of the buffer zone (Section 16). Please provide reasons for its exclusion from this section.

[Friends of the Botriver]

MANAGEMENT OF SPECIAL MANAGEMENT AREAS – as (1) above re directorate

[KZN Agriculture and Environmental Affairs]

24(1) Procedures for appointing a manager need to be included.

[DEAT Comments:](#)

*This section was amended to read:*

“(2) The manager must have sufficient expertise and capacity to manage the special management area in a manner that will achieve the objectives for which it was established and may be –

(a) .....

(c) a traditional council; or”

## **Part 7: Coastal set-back lines**

### **Section 25: Establishment of coastal set-back lines**

[Coastal & Environmental Services]

Some further justification and explanation of what factors needs to be considered in the preparation of a Coastal Setback Line would be useful.

[SANBI]

Establishment of coastal set-back lines (S25)

The rationale for establishing coastal set-back lines could also include: to protect threatened or protected coastal ecosystems, and to protect coastal critical biodiversity areas identified in a published bioregional plan.

[Adrienne Edgson (Personal Capacity)]

When will the “coastal set-back lines” come into being – no time-span given for this such as that stipulated to for coastal municipalities to indicate coastal access land.

The same applies to the demarcation of the coastal lines on title deeds – when will this be done and what will happen to existing structures on this land; how will inappropriate uses of this land be decided and rectified; how will this be done i.t.o. privately owned land – alienation of admiralty reserve.

[Wildlife and Environmental Society of SA]

25(1): Does a local authority or person make application to the Minister for the establishment of a coastal set back line?

[Endangered Wildlife Trust]

1. In section 25(1), the word ‘may’ in ‘An MEC may in regulations published in the Gazette...’ should be changed to ‘must’ to increase the likelihood of implementation of the provision.
2. The ICMB should specify how the set-back lines will be managed from a land-use perspective.
3. Section 25(3) requires a local municipality to “... immediately delineate the coastal-set back line...”. Suggest clarification on the time frame of ‘immediately’.

[Transnet]

Section 25 provides that the Minister may in regulations prohibit or restrict the building, erection, alteration or extension of structures that are wholly or partially seaward of a coastal set back line - this will have a major impact on possible future port development. Transnet requests clarification on the process to follow to engage with the Department in this regard and the possible implications for future port development.

[Adrienne Edgson (Personal Capacity)]

The setback lines mentioned are 100mm – municipal & 1km – rural. These are both extremes and once again new legislation has not taken into account the interim peri-urban areas which prevail along our coastline. These normally fall within the boundaries of the smaller municipalities e.g. Elysium/Bayzley/Umzumbe/Mtwalume etc – are inadequately serviced i.t.o. roads; stormwater; sewerage but could certainly not be considered as municipally controlled or serviced areas such as Durban; Port Shepstone; Richards Bay etc.; nor do they fall within the wild coast “scenario”. Zoning in these areas still falls into the “indeterminate:” zone- setback lines must be set for areas like these – otherwise there will once again be confusion and lack of direction for these areas as there is with the new NEMA EIA regs.

[Ezemvelo KZN Wildlife]

Maps produced in 25(3) must be published by the municipality.

[eThekweni Municipality]

This section needs to clearly describe the risk associated with developing too close to the littoral zone. The importance of this concept and line needs to be spelt out as well as the importance of the protection of public as well as private land. If coastal erosion set-back lines are important the word “may” is not prescriptive enough. Maybe the word ‘may’ in ‘An MEC may in regulations...’ ought to be changed to ‘must’.

However the level at which this work should practically be done is questioned. The local authority should be properly charged with this authority and only in the case that the local authority is unwilling or unable to perform this work then the MEC can step in and carry on this action. In the event of no setback line being established then the MEC should give reasons why set-back lines have not been published.

Section 25(1). Coastal set-back lines should be used to protect both private and public coastal property. This should be explicitly stated in the Act. As this municipality has already established a coastal set-back line for its entire coastline at a cost of approximately R2 000 000, perhaps the question to be addressed is what happens to areas which have already (before the Act commenced) completed coastal setback lines?. We believe that existing coastal set-back lines determined by coastal municipalities should be regarded as coastal set-back lines in terms of this Bill/Act until the MEC publishes his/her lines. This would also minimise costs and reduce any confusion over the existing coastal set back line vis-à-vis the one to be established by the MEC.

These lines were established through a technical process and not through a public consultative process (as outlined in Chapter 6 part 5). The further debate then would be if these are acceptable given that no consultation had taken place with I & AP’s where the coastal setback lines have been established?. If these coastal setback lines are accepted then this would require a change to the definition of a coastal set-back line.

How will these set-back lines be managed from a land-use perspective?. EIAs are not a very effective solution. Need to establish means to manage land use within these boundaries other than through EIAs.

The expression "zoning scheme" does not have the same meaning in this Province that it has in some others and thus needs defining.

[CSIR]

The establishment of coastal set-back lines is a specialist field of coastal engineering. It is

suggested that this be specifically noted in the Bill. Specific guidelines and or specifications for establishing the coastal set-back line should be prescribed. For example,

the CSIR (an "Organ of State") follows internationally recognised procedures to determine

such coastal set-back lines and has much experience along the SA coastline. It is suggested that coastal set-back lines that have been established in specific areas in the

past by recognized scientific institutions or "Organs of State" should be accepted as the

specific coastal set-back line for that particular area.

[Blue Horizon Developments]

The need for the provision in the Coastal Bill dealing with coastal set back lines is not understood. Restrictions on building and erection of structures etc are already provided for in respect of the coastal buffer zone and also coastal public property. It is submitted that this provision is merely a duplication of the restrictions provided for elsewhere in the Bill and should be excluded from the Bill.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

Over and above preserving the aesthetic values of the coastal zone, an MEC should be able to establish set-back lines to preserve its landscape and ecological integrity, as well as its economic value.

[Irvin & Johnson Limited]

The Bill must oblige a MEC when establishing a coastal setback line to take into account buildings and structures erected lawfully prior to the commencement of the Bill. Either the setback line should be drawn in a manner which does not affect the existing buildings or structures or exemptions must be authorized to be granted to existing buildings or structures allowing them to protrude beyond the setback line.

In addition, when dealing with existing buildings and operations, a newly introduced coastal setback line must either be set so as to not affect existing buildings or structures or provide for exemptions for further developments complementing the existing buildings, structures, business or investment.

[Department of Environmental Affairs & Development Planning]

The imposition of a arbitrary setback line away from the high water mark is problematic as it requires a surveyed delineation of the line and continuous shift of the high water mark. Practical problems will be encountered as any change to the line will mean that a court process will have to undertaken to register the new line. It will have major cost implications;

#### Section 25

The possibility of introducing a default setback line should be explored. This will have the effect of controlling development in cases where a set-back line has not been set. The problem with such a set-back lines is that there will always be instances where such a set-back does not make sense (i.e. impractical or unnecessarily strict).

In the event that a default setback is considered, it is proposed that an additional sub-section 25(5) be introduced that reads as follows:

- A coastal set-back line of \*60m (*Please note 60 meters is a “minimum default”. In most cases this will be inadequate. The setback distance must be debated further.*)
- from the high water mark must be maintained in instances were the MEC has not established a setback line in terms of sub-section (1), (2) and (3) above.
- This set-back will not be applicable in areas where development is to take place on erven within existing urban areas if such development will occur behind an approved development setback line

The following definition is proposed for “development setback line”:

“Development setback means:

- (i) a building line in term of zoning scheme regulations or
- (ii) a building line determined in terms of development approval conditions or
- (iii) a building line determined in terms of approval conditions included in previous authorisations, rezoning or subdivision approvals and
- (iv) must be scientifically motivated.

Urban areas definition: “areas situated within the urban edge (as defined by provincial government), or in instances where no urban edge/boundary has been officially demarcated, it refers to areas situated within the edge of built-up areas.”

#### Section 25(3)

A coastal setback line must be indicated in the Spatial Development Framework and not in the zoning scheme. It will be difficult to implement such a line using the high water mark as the first reference point. This will imply that each Spatial Development Plan will require a surveyed delineation of the high water mark to avoid confusion. Who will pay for this?

[TRANSNET]

- We reiterate our concerns stated above i.e. where boundaries may be amended.
- Transnet proposes that a meeting be held with MCM on the matters raised above, to ascertain the implications for our operations, and explore mechanisms for co-operation in this regard.

[South African Planning Institute]

Sections 25 and 26: It appears that only the coastal setback lines MUST be determined and that coastal public property, coastal buffer zones, coastal management areas and coastal access land MAY be determined. Please ensure that the interpretation of Section 16 is clarified to assist Municipalities to determine these setback lines.

Section 25(3): The coastal set-back line must be delineated on the Spatial Development Framework and not in the zoning scheme. An approximate width (100m or 1 km) applied to an approximate high water mark will be impossible to implement. A surveyed delineation, line or boundary informed by a scientific process must be determined as part of each SDF and SEA per Municipality to avoid the problems of interpretation of each individual assessment.

[Uthungulu District Coastal Working Group]

The Bill gives power to the MEC to determine & adjust boundaries relating to zones. This will have an impact on zoning schemes of municipalities and the conflict in competencies should be clarified.

It is agreed in principle that municipalities should survey and register coastal boundaries, but provision needs to be made for funding assistance for the survey and other related costs.

[Kathy Leslie (Personal Capacity)]: Section 25

1 (a) add (v) "in response to change in HWM"

1 (b) add "...structures and services..."

3 The set back must be updated if in an area of eroding or changing HWM

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

#### Part 7 – Coastal Set-Back Lines

The principle of set-back lines is supported provided that the imposition of such does not create further, additional bureaucracy and that private property owners are fully consulted and engaged with and private property rights are respected and accounted for.

Section 25(2)(b) should refer specifically to affected landowners and their comments formally sought.

[KZN Agriculture and Environmental Affairs]

25(1)	Coastal set-back lines should be used to protect both private and public coastal property.	This should be explicitly stated. Furthermore, there needs to be guidance as to the criteria to be used in the establishment of a set-back, e.g. 1:50 or 1:100 year floodline.
	Is the MEC the only party responsible for the establishment or changing of coastal set-back lines? Can a local authority be proactive and approach the MEC to establish or change a coastal set-back line?	The proposed allocation of responsibility to the MEC for the establishment of coastal set-back lines should be extended to local municipalities where this can be more appropriately vested as a responsibility of the coastal manager/s of that municipality.

[DEAT Comments:](#)

*This section was amended to read:*

“(1) An MEC may in regulations published in the *Gazette* -

(a) establish or change a coastal set-back line –

(i) to protect coastal public property, private property and public safety;

(ii) to protect the coastal protection zone;”

(3) “A local municipality within whose area of jurisdiction a coastal set-back line has been established must delineate the coastal set-back line on a map or maps that form part of its zoning scheme in order to enable the public to determine the position of the set-back line in relation to existing cadastral boundaries.”

## CHAPTER 3 BOUNDARIES OF COASTAL AREAS

### DEAT Comments:

Chapter 3 sets out the procedures for demarcating areas within the coastal zone and for adjusting the boundaries of these areas. This chapter also allows for the establishment of coastal set-back lines (to protect lives and property from coastal processes and to ultimately reduce government spending). Amendments have been made to the procedure for endorsement by the Registrar of Deeds to bring it in line with the Deeds Registry Act 1937 (Act No 47 of 1937).

[SANParks (West Coast National Park)]

Chapter 3 – Coastal Boundaries

It is stated that boundaries are determined and adjusted either by the municipality, Minister or the MEC. Does this mean that these boundaries will not be delineated in protected areas or can we accept that the management authority of the protected area will, in fact, have this responsibility in that specific area. We would request clarity in this regard. Another point of concern in this chapter is to who the marking of these boundaries will be left up to. If there is to be proper management of buffer zones, boundary lines and setback lines etc., these lines will have to be properly surveyed and marked and communicated to the public. The principle concern is the financial implications thereof for management authorities having jurisdiction over these zones. We would certainly like to see clarity in the Bill on this 'responsibility of marking' issue.

[Oceanographic Research Institute]

The proposed allocation of responsibility of the MEC to the establishment of coastal set-back lines should be extended to local municipalities where this can be more appropriately vested as a responsibility of the coastal managers of that municipality.

An MEC may in regulations published in the *Gazette* -

- (a) establish or change a coastal set-back line –
  - (i) to protect coastal public property;
  - (ii) to protect the coastal buffer zone;
  - (iii) to preserve the aesthetic values of the coastal zone; or
  - (iv) for any other reason consistent with the objectives of this Act; and

[EIA, Nelson Mandela Bay Metropolitan Municipality]

There is a concern that the proposed setback line that has been developed to protect coastal processes will not reduce neither prevent ribbon development but that it might it worsen it.

Please provide municipality with DEATs legal opinion regarding the implementation of the proposed development setback line. How will this be addressed in relation to existing land use rights of private landowners?

### **Section 26: Determination and adjustment of boundaries**

[Department of Environmental Affairs & Development Planning]

#### Section 26

Section 26(1)(a):-

Add the words .. "in concurrence with the MEC"

Section 26(1)(b):-

Add the words "...in concurrence with the municipality"

Change Section 26(1) (a):- Incorrect numbering (duplication of numbering) to Section 26(1)(c)

Replace the word "special" in place of the word "coastal".

Change Section 26(1)(c):- Incorrect numbering to Section 26(1)(d) - in concurrence with provincial authorities.

Section 26(2)

Is this in line with the Constitution? This fall in the scope of Land use which is provincial competency and not a national competency? Therefore the Minister has no jurisdiction. Secondly the MEC is excluded from the process??? It is recommended that this should be done by the MEC in consultation with the WC: PCC.

It is recommended that section 26(4)(b) include the point: *(iv) the ecological and aesthetic value of the site.*

[National Association of Real Estate Agencies]

.Re Chapter 3 Section 26(1):

When determining or adjusting boundaries of coastal areas effected and in particular adjacent land owners must be notified in writing, alternatively must be notified by way of notices published in news papers circulating in the area in which the property is situated.

[P.A. Whittington (Personal Capacity)]

Section 26 (3) (b): I would prefer to omit this clause. If gives "carte blanche" to the minister, MEC or municipality to alter boundaries to suit their own agendas without any public participation process.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Chapter 3 – Boundaries of Coastal Areas

2.17 Section 26(4)(a) and (b) should make explicit and specific reference to property owners and the need to ensure that they are notified, consulted

and provided with a platform to make representations to the relevant authority. The same applies to Section 28.

[Wildlife and Environmental Society of SA]

26. (3) : change: "...boundaries may only be determined or adjusted..." to "boundaries may be determined or adjusted..."

26. (3) (b): add: "Where evidence is led and proven that coastal management of an area will be enhanced or prevailing negative impacts curtailed or reduced through such action."

26. (5): This implies that the local authority is not party to the process of adjustments. It is more than likely that no such adjustment would take place without Municipal agreement. A process of application from local authority should be instituted or, alternatively, close co-operation between the Minister / MEC and local authority must take place.

s26(1)(a): The text "sections 27" should either read "section 27" or section 7 read with section 27".

[eThekweni Municipality]

The responsibilities of each level of govt in determining each type of boundary is clear however the concern is that the process appears to be hierarchical and perhaps it needs to be explicitly stated that cooperative governance must be used. Section 29 is used, and again Part 5 of Chapter 6 is used re public participation. Earlier comments re rights of owners who disagree with the proposals, and use of expropriation refer.

[Institute of Estate Agents of SA]

PARA 26, 28(2) and 29

Summary:

The act will give Government the right to acquire privately owned property for the purpose of declaring it coastal public property, by means of purchase, exchange, or expropriation. Government will also have the right to change the boundaries of coastal public property and adjust boundaries of coastal access land.

Comment:

1. Are all beach-front property owners at risk of losing their investments, hoping to be replaced with inferior properties or being paid reasonable compensation?
2. Are developments and construction of buildings, dwellings, etc. that were done with proper approval from municipal authorities at risk of being expropriated?

[Department of Minerals and Energy]

26 (4)	The section refers to proposals by stakeholders but do not indicate the impact of these proposed boundaries on other legislation.	Strongly recommend to add a sub-section:  4 (d) Consult with the other relevant Government Departments where boundaries will have an impact on the administration and management of their legislation.
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[KZN Agriculture and Environmental Affairs]

26(1)(a-d)	The bulleted alphabets are incorrect.
26(1)(b)	The MEC needs to determine or adjust this boundary in consultation with municipalities. Co-operative government needs to be put into practice.
26(1)(c)	This provision is in contradiction of an earlier provision assigning this responsibility to the Minister.
26(4)	Should government not be required to undertake an environmental assessment prior to determining or adjusting a boundary? This exclusion would appear to be in conflict with section 19(2)(a) which calls for the assessment of environmental impact prior to designating land as coastal access land. It also conflicts with section 30(c) which requires the undertaking of an environmental assessment.

[DEAT Comments:](#)

*This section was amended to read:*

**“26. Determination and adjustment of coastal boundaries**

- (1) The coastal boundaries of –
- (a) coastal public property may be determined or adjusted by the Minister in accordance with section 27 by notice in the *Gazette*;
  - (b) the coastal protection zone may be determined or adjusted by the MEC in accordance with section 28 by notice in the *Gazette*;
  - (c) a special management area may be determined or adjusted by the MEC in accordance with sections 23 by notice in the *Gazette*;
  - (d) coastal access land may be determined or adjusted by the municipality in accordance with section 29 by notice in the *Gazette*.

- (2) The power of the Minister to determine or adjust the inland coastal boundary of coastal public property includes the power to make any consequential change to an adjoining coastal boundary of the coastal protection zone or coastal access land.
  
- (3) The coastal boundaries referred to in subsection (1) may only be determined or adjusted if, either:
  - (a) that coastal boundary –
    - (i) is uncertain or undefined;
    - (ii) is subject to disputing claims; or
    - (iii) has shifted due to natural or artificial processes; or
  - (b) the Minister, MEC or municipality concerned reasonably believes that the objectives of this Act will be achieved more effectively by doing so.
  
- (4) When determining or adjusting a coastal boundary the Minister, MEC or municipality in question must –
  - (a) give interested and affected parties an opportunity to make representations in accordance with Part 5 of Chapter 6;
  - (b) take into account –
    - (i) any representations made by interested and affected parties;
    - (ii) the interests of any affected local community;
    - (iii) any applicable coastal management programme, and
  - (c) comply with any other requirements that may be prescribed.
  
- (5) If the Minister or MEC determines or adjusts any coastal boundary under this section, he or she must immediately inform any municipality within whose area of jurisdiction the coastal boundary is situated to enable the municipality to reflect that coastal boundary on its zoning maps in accordance with section 31.”

## **Section 27: Determining and adjusting boundary of coastal public property**

[Duineveld Coastal Association]

This section enables the Minister, who is a political functionary, to adjust the high-water mark inland.

The high-water mark had been defined in the Sea-shore Act and had been refined and upheld by courts over 70 years, as is manifest in the definition now included in Section 1 of the proposed legislation. Section 27, in effect, makes a mockery of the definition in Section 1.

### Comment

The authority to determine and adjust the high-water mark should remain with the competent and impartial state expert who had been entrusted with this task all along, namely the Surveyor General.

[LEGALB]

Does an adjustment of boundaries referred to in this section of the Bill amount to an expropriation, and if so would expropriation procedures have to be followed?

[Wildlife and Environmental Society of SA]

(e): add: “*Maintenance of coastal biodiversity*”.

(27). (b) (i): This may result in conflicting views of where the high water mark is? It is suggested that the “datum high water mark or extreme high water spring” is used.

[Department of Environmental Affairs & Development Planning]

### Section 27

It is recommended that section 27 include: (e) *the habitat requirements of coastal fauna*. For example, many coastal birds including the charismatic African Black Oystercatcher require back dune areas for use as breeding sites. Boundaries, when set must take into account the species present and their requirements through the involvement of specialists.

Insert: - .....the inland boundary of coastal public property, the Minister in concurrence with MEC must take into account:-

Insert in Section 27(e):- Any factor that may be prescribed by the Provincial Coastal Committee.

Insert in Section 27(g):- Any factor that may be prescribed by the Provincial Coastal Committee.

### [DEAT Comments:](#)

*This section was amended to read:*

## **“27. Determining and adjusting coastal boundary of coastal public property**

When determining or adjusting the inland coastal boundary of coastal public property, the Minister must take into account –

- (a) .....
- (b).....
- (c) the importance of ensuring the natural functioning of dynamic coastal processes and of extending the coastal boundaries of coastal public property to include the littoral active zone and sensitive coastal ecosystems, including coastal wetlands; .....

### **Section 28: Determining and adjusting boundaries of coastal buffer zone.**

[Endangered Wildlife Trust]

If the MEC has the powers to determine and adjust the boundary of the coastal buffer zone, Section 16 should make the appropriate provision. As it stands, Section 16 defines tightly what land must form the coastal buffer zone.

[Ezemvelo KZN Wildlife]

Section 28 (d) *preventative measures should not include engineering remedies and provision should be worded to mean the use of natural measures*

[LEGALB]

What types of land ownership exist currently for land on the inland boundary of coastal public property? This is important because the Minister can in terms of s27 determine or adjust the inland boundary of coastal public property, and if there is privately owned land, and this is declared coastal public property, such may amount to an expropriation.

s28(1) and (2)

What types of land ownership exist currently for land on the inland boundary of coastal buffer zones? This is important because the MEC can in terms of s28 determine or adjust the boundaries of coastal buffer zones except the one adjoining coastal public property, and therefore if there is privately owned land at the non-

coastal public property boundary of a coastal buffer zone, and this is declared coastal buffer zone, such may amount to an expropriation.

[eThekweni Municipality]

Similar to the comments under section 20, it is likely that the establishment of coastal access areas will require EIA approval however there is no mention of following the EIA process in this section or section 20. This needs to be corrected. If the MEC has the powers to determine and adjust the boundary of the coastal buffer zone, Section 16 should make the appropriate provision. As it stands, Section 16 defines tightly what land must form the coastal buffer zone.

[South African Planning Institute]

Determining and adjusting coastal buffer zone should be a surveyed line determined by a scientific process, based on environmental sensitivity.

[K.P. Mackie (Personal Capacity)]

(3)(d)

Delete: "global climate change"

Substitute: "long term climate instability, both local and global"

Delete: "taking preventative measures to address these threats"

Substitute: "retaining flexibility to respond to changes in the nature, intensity or frequency of threats of natural disasters"

"Global climate change" is a currently fashionable term but is too limited in the face of the whole spectrum of potential climate instability.

Preventive measures can be put in place to address the current threats of the current climate where change is not a factor. Given the relatively rapid changes in economics, technology and culture, amongst others, which are taking place at the same time, specific predictions for more than 10 years become highly unreliable and this clause is addressing multi-decadal changes.

History is replete with accounts of fortifications where the guns pointed the wrong way when the threat materialised. So too for any fixed measures against possible future natural threats. Only flexibility is a reasonable option

[Kathy Leslie (Personal Capacity)]

(1) Not sure I understand, why or how this would work .

(2) e.g. state owned land? See 8 (2).

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) As indicated in comment on Section 16, a first principle of the Bill should be the addressing of unsustainable development by the inclusion of all vulnerable coastal areas within the coastal buffer zone at the outset.
- (ii) If mechanisms for achieving this cannot be formulated, Section 28 should specify that this be done as a matter of strictest priority by the MEC.
- (iii) In this regard, a period of two years could be regarded as the maximum period for such inclusion to take place.
- (iv) Separately, the provisions of 28 (3) (b) allude to protection of the buffer zone as an objective within its own right (rather than for the purposes of protecting coastal public property – see comment on Section 17).
- (v) It is urged that the thinking implicit in 28 (3) (b) be adopted in consideration of comment offered on Section 17.

[KZN Agriculture and Environmental Affairs]

28	If the MEC has the powers to determine and adjust the boundary of the coastal buffer zone, section 16 should make the appropriate provision. As it stands, section 16 defines what land must form the coastal buffer zone.
28(2)	How is implementation of this provision possible and why would an MEC need to do this?

[DEAT Comments:](#)

*This section was amended by changing “buffer” to “protection”.*

“

**Section 29: Determining and adjusting boundaries of coastal access land**

[M.G. Potgieter (Personal Capacity)]

Section 29 Chapter 3 refers to determining the boundaries of coastal access land. It is my opinion that sub par (f) infringes on the Constitutional Rights of citizens by subtly assuming that their rights will be restricted up front by stating ‘*When determining or adjusting a boundary of coastal access land a municipality must take into account: (f) the importance of not restricting the rights of land owners unreasonably.*’. The rights of the citizens of the RSA are enshrined in Chapter 2 of the Bill of Rights indicating ‘...*the state must respect, protect, promote and fulfil the rights...*’. It is proposed that Section 29(f) be changed to read as following: ‘*When determining or adjusting a boundary of coastal access land a municipality must take into account: (f) the rights of land owners and the importance of not restricting the rights of land owners unreasonably.*’

[Department of Environmental Affairs & Development Planning]

Section 29

Insert :- .....of coastal access land a municipality in concurrence with provincial lead agent must take into account -

[Wildlife and Environmental Society of SA]

29. (f): What is “unreasonably”? This opens adjustments up to extensive argument. Rather state: “*that the Municipality must show strong reason to restrict rights of land owners, where applicable*”.

[eThekweni Municipality]

While this section is clear regarding activities related to the process of adjusting boundaries it is unclear as to what will be permitted to be build thereon the land acquired thereafter. Refer also to the comments above in Section 26.

[Kathy Leslie (Personal Capacity)]

(f) the reasonable! rights of land owners

[LEGALB]

This section refers to the importance of not restricting the rights of land owners unreasonably when a municipality determines or adjusts a boundary of coastal access land. Where rights are restricted, will land owners be able to obtain compensation.

[DEAT Comments:](#)

*This section was amended to read:*

**“29. Determining and adjusting coastal boundaries of coastal access land**

When determining or adjusting a coastal boundary of coastal access land a municipality must take into account –“

**Section 30: Entry onto land**

[Endangered Wildlife Trust]

Section 30(c) - Suggest clarification of whether the “environmental assessment” is an assessment in terms of the EIA Regulations.

[Wildlife and Environmental Society of SA]

(e): How are adjustments including residential premises gauged, if no access is allowed? Can an authority obtain a warrant?

[eThekweni Municipality]

The power given to the executive branch is almost certainly too widely drawn for what is a police power in the American sense. The right to privacy goes beyond merely the home but includes commercial premises (See Section 14(b) of the Constitution). Sub sections (b) (c) and (e) are far too widely drawn.

Most coastal land in our municipality is zoned residential and so the reference to access to “any land or premises other than residential premises, without a warrant”... is confusing. All municipalities have the right to inspect all types of premises in the course of their work. This could again be addressed if this work is done on a cooperative basis by all spheres of government.

[Kathy Leslie (Personal Capacity)]

Why exclude residential land?

[KZN Agriculture and Environmental Affairs]

Should government not be required to undertake an environmental assessment prior to determining or adjusting a boundary? This exclusion would appear to be in conflict with section 19(2)(a) which calls for the assessment of environmental impact prior to designating land as coastal access land. It also conflicts with section 30(c) which requires the undertaking of an environmental assessment.

[Friends of the Botriver]

### 30. Entry onto land

It is agreed that access should not be denied – nevertheless where access is freely available along eg: the Bot River estuary where much degradation takes place. This is monitored by Botfriends & the public (litter removed) as the local authority does practically nothing to prevent/police the problem. This is a problem in most areas.

If one considers all the water bodies, rivers and coastal area of eg. the Overstrand Municipality then it is virtually impossible to control all areas – therefore perhaps one should not be too prescriptive regarding access to all to anywhere!

(Botfriends is rather grateful to all the private developments around the estuary – they at least, to some degree, monitor/maintain and protect the environment, in three cases dogs are restricted and cats prohibited, effluent is controlled – unlike at Fisherhaven where there is a free for all policy.)

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

- 2.18 Section 30 is, if submitted, overly broad and will be a significant invasion of privacy and is not supported. Private property ownership and business must be respected and accounted for.

[Department of Environmental Affairs & Development Planning]

Section 30

Section 30 should provide some reassurance that the entry by authorized persons will be controlled in terms of minimizing disturbance to the area they enter. They should not create new paths or cause excessive damage to vegetation when erecting beacons etc.

Delete the word "an" in the first sentence in between the Minister and MEC.

Insert "1" before the The minister.....

Insert "2" after 30(1)(e) and add the following text:

Any person duly authorized persons in terms of (1) should exercise caution and minimize disturbance to the area they entered.

[Western Cape Department of Environmental Affairs and Development Planning (Region A1 George)]

Point 30: Entry onto land

The concern here is that residential premises is excluded from this provision which presents a problem if that residential property contains activities that were authorized in terms of the EIA or Coastal Management Act activities but officials will be denied access to monitor compliance, conduct site visits and investigate illegal activities.

[LEGALB]

There is unlikely to be any urgency whatsoever in carrying out the functions listed under (a) to (e) and in these circumstances of no urgency the powers to enter any land or premises without a warrant are draconian in the circumstances.

It is suggested therefore that the words "...section 26, authorise..." should read "section 26, with the agreement of the owner or legal occupants of that land or premises, which agreement shall not be unreasonably withheld, authorise...." and that this section includes a provision defining the procedure to be followed should the agreement be withheld.

[Belastingbetalersvereniging]

Art. 30. Persone wat privaatgrond mag betree moet wel gemagtig wees. Terwyl 'n lasbrief nie noodwendig nodig is nie, is dit tog raadsaame en dienlik dat die betrokke magtiging of opdrag wat immers op skrif aan die betrokke beampte uitgereik word, by betreding getoon moet word.

[DEAT Comments:](#)

*This section was amended to read:*

"(1) The Minister, an MEC or a municipality may for the purpose of determining or adjusting a coastal boundary in terms of section 26, authorise any person to enter at any

reasonable time any land or premises, other than residential premises, without a warrant, to –“

“(2) Any person authorised in terms of subsection (1) to enter land or premises must on demand by any person, produce proof of his or her identity and authority to enter land or premises; “

### **Section 31: Marking boundaries on zoning maps**

[Ezemvelo KZN Wildlife]

Section 31 *Marking boundaries on zoning maps. These maps and schemes must be published in a local and provincial paper, and all relevant organs or state be notified in writing.*

[LEGALB]

It is suggested that, for reason of properly informing those affected, that the words “...delineate that boundary on a map or maps that form part of its zoning scheme in order to enable the public to determine...”

be amended to read “...delineate that boundary on a map or maps that form part of its zoning scheme, and cause the map or maps to be published in the Provincial Gazette, in order to enable the public to determine...”

[South African Planning Institute]

The boundary to be determined and delineated on the Spatial Development Framework. The mechanism suggested (zoning scheme) need to be reconsidered.

[Department of Environmental Affairs & Development Planning]

Sections 31 and 32 deal with the formal (legal) demarcation of coastal boundaries by way of the marking of boundaries on zoning maps and endorsement by the Register of Deeds. If the Minister, the MEC or a Municipality determines or adjusts a boundary in accordance with section 26, a local Municipality within whose area of jurisdiction the boundary is situated must immediately delineate that boundary on maps that form part of the zoning scheme. This is not a realistic timeframe and must be adjusted to allow more time and the role of the Surveyor General must also be included. The legal implications of any such action must be established in terms of existing rights and constitutional competencies.

#### Section 31:

Under section 31, the Minister must also notify the relevant organs of state who are to assume responsibility to enforce the applicable protection measures and maintain the area.

Section 31 should give a realistic timeframe .....in relation to existing cadastral boundaries within three months.

[Endangered Wildlife Trust]

Section 31 states a local municipality within whose area of jurisdiction the boundary is situated must immediately delineate that boundary on a map or maps. Suggest clarification on the time frame of 'immediately'.

DEAT Comments:

*This section was amended to read:*

**“31. Marking coastal boundaries on zoning maps**

If the Minister, the MEC or a municipality determines or adjusts a coastal boundary in accordance with section 26, a local municipality within whose area of jurisdiction the coastal boundary is situated must delineate that coastal boundary on a map or maps that form part of its zoning scheme in order to enable the public to determine the position of the coastal boundary in relation to existing cadastral boundaries.”

**Section 32: Endorsements by Registrar of Deeds**

[LEGALB]

This provides that either a description of the land or a diagram of the land signed by a land surveyor accompany the notification to the Registrar of Deeds referred to.

We would suggest that the notification of a boundary determination or adjustment in terms of s26(1) or of an area of land demarcated in terms of s26(2) or s26(3) to the Registrar of Deeds should always be accompanied by a diagram of the land involved signed by a land surveyor.

Therefore, we suggest that the word “or” at the end of s33(2)(a) be deleted and the word “and” be inserted.

[eThekweni Municipality]

Surely the Surveyor-General should also be informed and not only the Registrar of Deeds. If the Statutory Servitude route is followed, then the SG also needs to endorse same on the relevant parent property. Earlier comments regarding the unambiguous endorsement refer. The SG is adamant that rights such as these must be clearly identifiable on the ground. Our earlier comment regarding the preferred survey of these access land areas refers, as this would result in clear and unambiguous rights being created.

Section (2) (b) is rather unclear as to what type of diagram will be used to notify the Registrar of Deeds. Is it the original cadastral plan endorsed with the proposed

coastal access land or is it a special SG diagram undertaken by survey by a professional land surveyor or Notarial deed with the property registered by description?. As the Bill is silent on surveyed servitudes, and uses Section 18(2) instead, we believe that this probably refers to the parent diagram over which a designation has taken place, but this is not clear. Against this surely this does not just refer to a photocopy of the diagram, what purpose would this serve? We can understand the Registrar of Deeds wanting a new surveyed diagram.

[South African Planning Institute]

The mechanism to manage this boundary could be the SDF and should not be through the Registrar of Deeds. The SDF should be the tool for spatial implementation (which includes the Land Use Management System and the zoning scheme).

The mechanism prescribed by the Bill to manage boundaries of coastal access land is “endorsements by the registrar of deeds” (Section 32, p.36). Delineation should rather be done with the Surveyor General. The use of endorsements in title deeds has a number of consequences that should be considered. The SDF can show the delineated line and give it legal status and avoid any processes through the high court to amend or remove a line from a property in the event of the high water mark changing.

[Department of Environmental Affairs & Development Planning]

Section 32

Section 32 should include the Surveyor General and their role. This provision seems to be an overkill.

Spatial Development Plan will give delineated lines legal status. For the Registrar of deeds to effect changes it needs to go through the courts for amendments to be ratified and endorsed.

[KZN Agriculture and Environmental Affairs]

32(2)	The financial implications of surveying all boundary adjustments need to be considered. Who pays?
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[Department of Land Affairs]

The procedure prescribed in sub-clause 3 of this clause is cumbersome, because the words “all deeds” cannot refer to anything else other than the client’s copy of the relevant deed. It must also be noted that the Department of Environmental Affairs and tourism might not be in possession of such client’s copy at the time of determination or adjustment as contemplated in clause 26(1) or demarcation as contemplated in clause 26(2) or clause 26(3) and, perhaps, not even be in a position to get hold of such client’s copy.

In view of what has been said above, it is proposed that the said sub-clause be worded as follows:

“(3) On receipt of the notification, the Registrar of Deeds must make a note of such determination or adjustment or demarcation referred to in subsection 1(1) in his or her registers in terms of section 3(1)(w) of the Deeds Registries Act, 1937 (Act No. 47 of 1937)”

The effect of the suggested sub-clause would be to render the endorsement of either the deeds office copy or the client’s copy of a title deed unnecessary.

The Registrar of Deeds would then only note a caveat against the property concerned and endorse the client’s copy, with regard to determination, or adjustment, or demarcation, whenever the same is lodged for whatever reason.

A Chief Registrar’s Circular will then be issued, for the purposes of advising the Registrars of Deeds with regard to the proposed procedure, once the envisaged Act becomes operations.

Finally, your attention is drawn to the provisions of section 36 of the National Environment Management: Protected Areas Act, 2003 (Act No 57 of 2003). It appears that the principle therein is the same as the principle contemplated in clause 32 of the Bill.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Section 32(2)(b) refers to a diagram. It is unclear what this is actually referring to.

[DEAT Comments:](#)

*This section was amended to read:*

“(3) On receipt of the notification, the Registrar of Deeds must in accordance with section 3 (1)(w) of the Deeds Registry Act, 1937 (Act no. 37 of 1937) make a note in the relevant register of the determination or adjustment of a coastal boundary or a demarcation.”

**CHAPTER 4  
ESTUARIES**

[DEAT Comments:](#)

Chapter 4 aims to facilitate the effective management of all estuaries. No changes were made to this chapter.

[Endangered Wildlife Trust]

1. While the provisions in this Chapter for improving coordination of management of estuaries are strongly supported, the section could be significantly strengthened. The chapter should specify how provincial and local authorities, specialists, NGOs and civil society should be involved in the process of developing the national estuarine management protocol.
2. Suggest that the word 'may' in Section 34(2) be changed to 'must' to ensure that estuarine management plans do form an integral part of a provincial or municipal coastal management programme
3. Suggest specification of other organs of state (in addition to Municipalities) that may manage estuaries (i.e. provincial nature authorities).

[TRANSNET]

- If our interpretation of the definition of estuary is correct, then this entire section applies to Ports. We request clarification thereof.
- The national estuarine management protocol, and the estuarine management plans that are required, have the potential to place significant responsibility on Transnet/NPA with regard to the environmental management of the ports.
- Timelines to develop the estuarine management protocol appear to be protracted.

The Bill is not clear on who will have to develop an estuary management plan. We request clarification in this regard to prevent disparities in the implementation of this obligation between provinces.

[Ezemvelo KZN Wildlife]

As highlighted in the general comments, there appears to be no co-ordination between national and provincial organs of states. In the light of this it is strongly recommended that either of the following amendments are considered.

A. The national estuarine protocol be developed in consultation with the relevant provincial bodies,

or

B. A provincial estuarine protocol is developed by each province (*this would address common problems associated with changes in scale*)

*The status (conservation status, health and wellbeing) of estuaries is not specifically addressed. It is common cause, that in at least KZN, are under substantial pressure and have been significantly altered. As a result their functioning has been impaired. Provisions should be included to facilitate and direct estuarine rehabilitation.*

*The provincial estuarine protocol must determine time frames for the implementation of the estuarine management plans.*

[eThekweni Municipality]

This chapter is strongly supported by the municipality however the general comment is that this chapter is rather short and appears to be an add in. We believe that it could be further amplified.

[CSIR]

The inclusion of a specific chapter on estuaries is welcomed. However, I am of the opinion that this chapter should be expanded to also include specification on:

- Geographical boundaries of estuaries (or at least how these should be determined site-specifically)

The motivation here is that in the past there has been many disputes because legal geographical boundaries for estuaries were not properly defined. For example, default boundaries for estuaries as per the Ecological Water Requirement Methods under the National Water Act 36 of 1998 specify these as follows:

- Downstream boundary: The estuary mouth (However, there are systems where the 'estuary' often expands to the near-shore marine environment and where this boundary definition may need to be reconsidered in future).
  - Upstream boundary: The extent of tidal influence, i.e. the point up to where tidal variation in water levels can still be detected or the extent of saline intrusion, which ever is furthest upstream.
  - Lateral boundaries: The 5 m above Mean Seal Level (MSL) contour along each bank.
- The role of DEAT in the Classification and setting of Resource Quality Objectives (RQO) for estuaries, currently only a requirement under the NWA, Chapter 3, Part 2 (DWAf).

Considering that DEAT, through this Bill, will also have responsibilities within estuaries, it is very important that Classification and setting of RQO for estuaries be the joint responsibility of DWAF and DEAT.

I strongly recommended that you collaborate with DWAF in setting the Resource Quality Objectives (i.e. Environmental Management Objectives) for an estuary. Currently DWAF sets Resource Quality Objectives as part of the Reserve (Resource Directed Measures) process under the Water Act, but these management objectives overlap with aspects dealing with the living resources in estuaries and spatial planning in and around estuaries. This requirement should form part of Chapter 4

[Friends of DST]

Chapter 4 ESTUARIES - It does not define what organ of state apart from Municipalities that estuaries should be managed by. This area should also be managed by Cape Nature who ALREADY play an active role in Estuaries along our coast thereby funding should be provided in the Municipalities budget for Cape Nature to actively protect our estuaries. Utilize the organ of state that has expertise in these areas. Our local (B) Municipalities do not have any management protocol on the Environmental issues for our coast nor any department that can aid with issues relating to coastal issues/problems whereas for example the West Coast District Municipality has an environmental Department. Government should then grant that department more mandate in helping protect our coast.

[KZN Agriculture and Environmental Affairs]

This chapter is strongly supported. It is strongly recommended that the development of Estuary Management Plans be a 'must' and not a 'may' as reflected in the Bill. Reference here is made to the intent of the proposed national estuarine protocol which proposes such undertaking to be a 'must'.

[Kwazulu-Natal Conservancies Association]

Who controls estuaries - DWAF or DEAT ?

Sand mining – in estuaries – requires more monitoring of permits, full EIAs before permits are issued, and rehabilitation to be enforced and monitored.

[Oceanographic Research Institute]

- In terms of estuarine management, co-operative government is strongly promoted in Chapter 4 of this draft Bill, but how does the Reserve Directed Measures (RDM) protocol for the freshwater requirements of estuaries and their monitoring, as stipulated by the SA Water Act 36 of 1998 fit into this premise? Does one Act always take precedence over the other and would there be circumstances where this would not be the case?
- Chapter 4 of this Bill states that the national estuarine management protocol must determine a strategic vision and objectives for achieving effective integrated management of estuaries. What is meant by "integrated

management of estuaries”? Does this infer that estuaries are considered according to their type on a national, biogeographic or provincial level? This point is with respect to estuarine conservation and management. Will some estuaries be considered sacrificial over others, particularly if they are within an area that has a high abundance of the same type? Also,

- The Bill states that the National estuarine management protocol must set standards for the management of estuaries but what type of standards would be relevant here e.g. for their development, conservation or preservation?
- How will smaller municipalities deal with the estuarine EMPs? For example, rural municipal districts may be responsible for some of the most biologically important estuaries (St Lucia, Kosi). How will these municipalities apportion finances for these plans when it may be perceived that there are more pressing needs for the communities they serve? Would the Minister or MEC contribute towards management of estuaries of national or provincial interest?
- There is no clear indication of the initial selection criteria for estuaries that will be prioritised to have an EMP developed first. Will this be based on an estuary’s national conservation value, resource importance, size, biogeographic zone, urban vs. rural situation etc?
- Although estuaries have been allocated a dedicated chapter in the draft Bill, there are very limited instances where they are specifically referred to in other chapters. This may be a future loop hole in the uses and abuses of estuaries if the definition of estuaries is improved in Chapter 4 only, but not taken up in the other chapters.
- If the national coastal management plan is initiated last, how do the provincial and municipal plans answer to it, especially if they are to be formulated first?
- The chapter on the discharge of effluent into coastal waters appears to be vague in relation to the linkages with Chapter 4. This is critically important because the discharge of effluents into coastal waters (estuaries) will alter the flow characteristics and change the water quality objectives into an estuary. How does this link to the Department of Water Affairs RDM process in terms of the Water Act 36 of 1998?

[Kommetjie Residents & Ratepayers Association]

- Estuaries need buffer zones to resist marina creep - at least 100 m. (p37)

[Gouritsrivier Bewaringstrust]

Hoofstuk 4, wat handel oor estuariums, maak voorsiening vir die daarstel binne vier jaar van 'n estuarium beheer protocol. Die skade wat intussen aangerig kan word moet op een of ander manier verhoed word. Hoe? Die Gouritsrivier Bewaringstrust, 'n nie-regerings-organisasie, poog reeds vir baie jare om 'n beheer-en betuursplan vir die laer Gouritsrivier daar te stel omdat dit duidelik is dat die estuarium agteruitgaan. Tans lyk dit asof die plan binne die volgende paar maande die lig kan sien. Gaan die bepaling in die wet (Art 34) nie die proses vertraag nie?

[Woodbridge Island Body Corporate]

We would rather like to see a more thorough circumscription of the management of estuaries and lagoons.

Chapter 4 dealing with estuaries: What role will provinces play in the management of estuaries?

[Department of Environmental Affairs & Development Planning]

#### Chapter 4

This Chapter is extremely unclear.

Who will manage estuaries?

What role is province supposed to play in the managing of estuaries?

What are the implications in terms of manpower and funding in all spheres of government?

How does this chapter impact on the National Water Act and has a bilateral agreement been reached with DWAF in terms of management of estuaries?

Add section 33(3)(g) : Involve specialist input; and

### **Section 33: National estuarine management protocol**

[Habitat Council, CAPTRUST & Still Bay Conservation Trust]

We do, however, have concerns regarding the following:

The implications of the time frames set for the PREPARATION AND ADOPTION OF PROTOCOLS AND MANAGEMENT PROGRAMMES [(Chapter 4) Estuarine and (Chapter 6) Coastal Management ]

There is also the national estuarine management protocol. The provision of a protocol for the management of estuaries [S33.1] is a positive BUT the time frame [S 33(2)] grants the Minister 4 years in which to prescribe the protocol.

We urgently need clarity with respect to the above.

[Wildlife and Environmental Society of SA]

The National Estuarine Management Protocol should include stringent rehabilitation plans; many of our estuaries are in a very poor condition. Estuaries also need buffer

zones to prevent further inappropriate development.

[LEGALB]

s33(4) should include the development of guiding principles of good governance (such informed management, consensus-based decision making; accountability and public partnerships necessary to supporting non-legislated estuarine development by interest groups) and principles of integrated management (such as equitable access; integrated decision making).

We therefore suggest that an s33(a) be inserted that reads “develop guiding principles of good governance and integrated management”, and that the current s33(a) to (f) be relabelled s33(b) to (g).

[Heuningnes Riperial Owners Association]

The importance of proper estuarine management cannot be overemphasized. Many of South Africa’s coastal fish use these delicate rivers and wetlands as nurseries. Most of South Africa’s estuaries have been seriously degraded. The degradation must stop and the few estuaries that are ‘unspoilt’ should be thoroughly protected, even if it means limited or controlled access. The human carrying capacity of these areas needs to be determined and included, where possible, in the estuarine management protocol. The lack of estuarine protection will lead to further depletion of fish stocks which in turn, means less food, less income and fewer job opportunities in the fishing industry.

[eThekweni Municipality]

The impact of the national estuaries protocol may have significant impacts on municipalities and specifically the functions of water supply and sanitation and it is unclear at this stage the likely impacts these will have on these functions. It is also not clear if local authorities (and other interested and affected parties) be called on to provide input into setting up these protocols. Will affected local authorities be consulted once these protocols have been established? This area needs to be stipulated more clearly.

Section 33(2) We understand that the national estuaries management protocol is fairly advanced and is emerging out of the Cape Action for People and the Environment (CAPE) estuaries programme and therefore the four years for the minister to prescribe the protocol appears overly generous.

Section 33 and 34. It is assumed that the national estuarine management protocol will define estuaries, define the boundaries of an estuary management plan, its relationship to land use schemes etc. However has any thought at this stage been given to an estuarine buffer to coincide with the coastal buffer area, so that this is one seamless buffer area? Alternatively if this is included within the Municipal Coastal Management Plan this could be resolved.

[CSIR]

Section 33 (2) states that the national estuarine management protocol should be developed in 4 years, this timeframe should be shortened to 1 year. This will allow for the roll-out of Estuarine Management Plans over the next 5 years (a similar timeframe to the other coastal planning measures highlighted in the bill). If the protocol is not in place this will hold the process back by 4 years.

[Alan Boyd (DEAT)]

I think that the four year time period allowed to “prescribe a national estuarine management protocol “ is far too long and, seeing that estuarine plans must be developed to be consistent with the protocol.

I recommend that this should be changed to one year within commencement of the Act. This effectively gives the Department and partners 18-24 months to prepare and agree on the content of such a protocol.

[Department of Minerals and Energy]

33	DME do support the approach to effective managing of estuaries. The protocol needs and must allow mineral resource development since DME is committed to sustainable resource use in sensitive eco-systems. Prohibiting mining will lead and increase un-authorized activities.	Mineral development or mineral resource use be incorporated into the estuary protocol. DME will ensure that approved EMP's are in line with the estuary protocols.
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[Kathy Leslie (Personal Capacity)]

(1) remove “in”

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) It is unclear whether this Section relates to estuaries as a collective resource, or to individual estuaries.
- (ii) For strategic reasons, as well as from a practical perspective, it is urged that the Section be articulated in such a manner as to be applicable to estuaries as a collective national resource, to groups of estuaries (e.g. based on type or locality), and to individual estuaries.

[Department of Environmental Affairs & Development Planning]

Add section 33(3)(g) : Involve specialist input; and  
 Section 33(3) should include *(g) involve specialist input and (h) specify regulations from all applicable, current legislation that clarifies the level of development permitted in proximity to estuaries and what activities are/aren't permitted on and surrounding estuaries.*

[KZN Agriculture and Environmental Affairs]

33	Will provincial and local government (and other interested and affected parties) be called on to provide input into setting up the National protocol?	Stipulate more clearly the role of provincial and local government.
33(3)	Time frames for the completion of such plans need to be included.	

[Oceanographic Research Institute]

- (1) Estuaries within the Republic must be managed in a co-ordinated and efficient manner in and in accordance with a national estuarine management protocol.
- (2) The Minister, with the concurrence of the member of the Cabinet responsible for water affairs, must within four years of the commencement of this Act, prescribe the national estuarine management protocol.
- (3) The national estuarine management protocol must -
  - (a) determine a strategic vision and objectives for achieving effective integrated management of estuaries;
  - (b) set standards for the management of estuaries;
  - (c) establish procedures or give guidance regarding how estuaries must be managed and how the management responsibilities are to be exercised by different organs of state and other entities;
  - (d) establish minimum requirements for estuarine management plans;
  - (e) identify who must prepare estuarine management plans and the process to be followed in doing so; and
  - (f) specify the process for reviewing estuarine management plans to ensure that they comply with the requirements of this Act.

Estuaries within the Republic must be managed in a co-ordinated and efficient manner and in accordance with the national estuarine management protocol envisaged in (2).

The national estuarine management protocol must – establish key principles that will underpin long-term conservation and management of estuaries

- (a) determine a strategic vision and objectives for achieving effective integrated management of estuaries;

### **Section 34: Estuarine management plans**

- (1) Any person who develops an estuarine management plan for an estuary must –
  - (a) follow a public participation process in accordance with Part 5 of Chapter 6; and
  - (b) ensure that the estuarine management plan and the process by which it is developed are consistent with –

- (i) the national estuarine management protocol; and
- (ii) the national coastal management programme and with the applicable provincial coastal management programme and municipal coastal management programme referred to in Parts 1, 2 and 3 of Chapter 6.

(2) An estuarine management plan may form an integral part of a provincial coastal management programme or a municipal coastal management programme.

[Friends of the Bot River]

P.37/38 - 33/334. Estuarine management plans : for information: The Bot River estuary has an established (1993) monitoring committee (BREAC) and are quite well advanced with some management tools i.r.o breaching, bylaws, monitoring etc. Bird Counts are carried out monthly. The committee is chaired by CapeNature.

[Wildlife and Environmental Society of SA]

These management plans need to be fed into the various IDP's.

[Ezemvelo KZN Wildlife]

Section 34 Estuarine management plans need to be included in other sectoral plans.

[LEGALB]

This section refers to “any person who develops an estuarine management plan. The word “person” is undefined and therefore it would appear from this that any person whatsoever would be able to develop and implement such a plan.

Such a person, in terms of this section, must comply with the public participation requirements under Part 5 of Chapter 6 of this Bill.

However, those requirements relate only to someone exercising a power under the Bill. The powers under this Act under which any person can develop an estuarine management plan cannot be found, which would place such a person in the position that he must follow the public participation procedures under s51, but he is precluded from doing so as he is not exercising a power under this Act.

Further, given that a person may well develop an estuarine management plan for a very small geographical area, the requirement will be overly burdensome.

We suggest that this the words “any person” read ‘any person exercising a power under this Act’ .

[Kathy Leslie (Personal Capacity)]

(2) change “may” to “must” – surely that is what this Bill is all about?

[Robert Stegmann - Reserve Manager: ELCNR (Personal Capacity)]

Section 34 should make land management in water catchment areas a part of the estuarine management plans to prevent the early siltation of estuaries. I realise that the catchment areas will most likely be some distance from the coastline but if the integrity of the estuaries is to be maintained then this concern will need to be addressed.

[Coastal & Environmental Services (East London)]

Section 34: Estuarine management plans

This should be compulsory for coastal municipalities and must form part of the municipal coastal management programme. Clearly allocation of resources could be problematic for some municipalities, but they need to have a consolidated management programme for all estuaries and with more detailed management plans for specific individual high priority estuaries or systems.

[Department of Environmental Affairs & Development Planning]

Section 34

The word “person” should also be in the plural form i.e. “person(s)

Insert :- “..... plan for an estuary must be finalised within two years after the national estuarine protocol was ratified and endorsed.

Section 34(2)

Replace the word “may” with “must”.

[KZN Agriculture and Environmental Affairs]

34(1)	<ul style="list-style-type: none"> <li>• The use of the term “person” is confusing.</li> <li>• We agree that any ‘person’ who develops an estuarine management plan must ensure that it is consistent with the national, and where applicable, the provincial and municipal coastal management programme. However, does this mean that an estuarine management plan can only be developed once the above programmes are developed?</li> <li>• Reference must also be made to linkages with municipal Integrated Development Plans.</li> </ul>	
34(2)	It makes sense that if an estuarine management plan is developed, it “ <u>shall</u> ” form an integral part of a provincial or municipal coastal management programme.	Replace “may” with “shall”.

[Woodbridge Island Body Corporate]

Also under 34(2) to state “must” rather than “An estuarine management plan may”.

[Oceanographic Research Institute]

(1) Any person who develops an estuarine management plan for an estuary must –

- (a) follow a public participation process in accordance with Part 5 of Chapter 6; and
  - (b) ensure that the estuarine management plan and the process by which it is developed are consistent with –
    - (i) the national estuarine management protocol; and
    - (ii) the national coastal management programme and with the applicable provincial coastal management programme and municipal coastal management programme referred to in Parts 1, 2 and 3 of Chapter 6.
- (2) An estuarine management plan may form an integral part of a provincial coastal management programme or a municipal coastal management programme.

General Comment

[Department of Environmental Affairs & Development Planning]

Include (c) *involve marine/ estuarine specialists (scientists)* in section 34.

[Western Cape Department of Environmental Affairs and Development Planning  
(Region A1 George)]

Estuarine Management Plan

The word “person” should also be in the plural form i.e. “person/s”

[DEAT Comments:](#)

*This chapter was not amended.*

## CHAPTER 5

### INSTITUTIONAL ARRANGEMENTS

[DEAT Comments:](#)

Chapter 5 deals with institutional arrangements. The text of this chapter remains largely unchanged, apart from a new Part 4 that has been added which empowers local municipalities to establish municipal coastal committees, if they so wish.

*Part 1: National Coastal Committee*

[Deborah Vromans - SANParks Knysna (Personal Capacity)]

- Comment: The establishment of regional coastal committees should be provided for, albeit this is already being implemented by DEADP in terms of the White Paper on Sustainable Coastal Development, it could be reinforced by this Act as there is no mention of regional committees. It may be useful to state that district municipalities should be responsible for establishing such a committee.

- Motivation:
  1. This allows for strategic integration between coastal communities.
  2. Will provide improved incentive for a southern regional coastal committee to be established.

*[Endangered Wildlife Trust]*

Suggest inclusion of a coastal specialist advisory forum at the national level to provide expertise for informed decision-making and efficient implementation of the provisions and objectives of the Act.

[TRANSNET]

Sections 81 and 82 of the National Ports Act, 2005, make provision for the creation of a Port Consultative Committee and a National Port Consultative Committee, respectively. Options for alignment and even representation by the National Ports Authority on the National Coastal Committee (Sections 35 and 36) and/or the Provincial Coastal Committees (Section 38) should be discussed between DEAT (MCM) and Transnet.

[Natalie Way-Jones (Personal Capacity)]

- Although the White Paper called for limitation on new institutions, there are a number of new institutions proposed under the Bill, including the National Coastal Committee, lead agencies at provincial level, Provincial Coastal Committees and voluntary coastal officers. In most cases, existing organs of state would have to take on more responsibility and reporting requirements.
  - Then Marine and Coastal Management Unit, Consultative Advisory Forum for Marine Living Resources and Fisheries Transformation Council under the Marine Living Resources Act could carry many of the new functions.
  - The separation between use of marine resources and conservation of the coastal areas is similar to the split between DME and DEAT with regard to mining resources.
  - The voluntary coastal officers may duplicate efforts by the current honorary marine conservation officers. The “appropriate expertise” of these officers should be specified.

[Ezemvelo KZN Wildlife]

Add Part 4 to this section that brings into force the mandatory establishment of individual Municipal Coastal Committees.

*This omission is a serious oversight. Municipalities need to be guided on many complex coastal matters, and given the responsibilities levied on the municipalities in the Bill it would be appropriate to provide for such a facility.*

[Lifesaving SA]

We submit that the provision for National and Provincial Coastal Committees (Parts 1-3 of Chapter 5 of the Bill) should be expanded to cater for the institutionalization of National and Provincial (regional) Water Safety Councils. These structures must be inclusive of representations from various bodies such as Local Government, Tourism authorities, education departments, emergency service organizations and the full range of aquatic federations.

The purpose of these sub-committees would be to govern on areas of risk analyses; proper signage, life skills orientation and education, monitoring and assessment of qualitative services and so on.

[eThekweni Municipality]

Chapter 5 refers to national and provincial level coastal management arrangements as well as voluntary coastal officers. However, it importantly neglects the municipal level which plays a critical role in coastal management. No reference is made to municipal coastal working groups which are already operational in KZN or to the relationship between provincial and municipal level (apart from representation on the Provincial Coastal Committee). At a municipal level it is important to encourage municipalities to set up appropriate integrated structures like the coastal working groups (municipal departments, NGOs, broader public, other interest groups) to ensure integrated local level coastal management which is arguable the most important level.

[K.P. Mackie (Personal Capacity)]

There is no provision for the creation of artificial estuaries or the reactivation of sites that had ceased to be effective estuaries.

[Uthungulu District Coastal Working Group]

The role of NGO's and the scientific community needs to be clarified. Provision is made for national and provincial stakeholder bodies, and it is seen as of critical importance that bodies such as Coastal Working Groups should be established on municipal level.

[Friends of DST]

Chapter 5/6 INSTITUTIONAL ARRANGEMENTS/ COASTAL MANAGEMENT - The regional Coastal Committees that have been established that link to the Provincial Coastal committees have proved highly beneficial so far, it is the best forum on the coast that creates a platform for positive feed back to the Provincial Coastal Committee from organs of state/municipalities to conservancies /civil society. As pointed out in Chapter 5 referring to the White Paper and section 37/38 it needs to be firmly stated and regulated that Provincial Coastal Committees will be responsible

for co-ordinating coastal management in each province. This needs to be taken to include the Northern Cape Province up to our borders at the Orange River.

[Kwazulu-Natal Conservancies Association]

More co-operative governance needed between departments.

All IDPs to be aligned with this Act.

Local communities to be consulted and involved.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Chapter 5 – Institutional Arrangements

Explicit provisions should and must be made for representation by the private sector on all Coastal Committees as provided for in Sections 35, 36, 38 and 39.

[Department of Environmental Affairs & Development Planning]

- Chapter 5 dealing with institutional arrangements had left out the role of coastal provinces and coastal municipalities. The Bill is silent on the constitution of the Regional Coastal Committees (RCC) and what role they are supposed to play. This relates to:
  - Functions and duties of these committees;
  - Their committees composition; and
  - Linkage with the Provincial Coastal Committee.

If the Bill is to achieve integrated coastal management and ensure cooperative governance mechanisms must be put in place to achieve this. RCC have a major role to play here. Provision for this should be made in this chapter as Part 4.

#### Absence on provisions to enact Regional Coastal Committees

Shared responsibility between government and the general public is essential if coastal resources are to be used and managed wisely for the benefit of the majority. It is therefore crucial that regional representivity is encouraged and also made mandatory. Failing to address this issue in the Bill will inevitably result in non compliance by the various municipalities and will be deemed an unfunded mandate. The general public will benefit from:

- Improved physical access to coastal public property (particularly the seashore) through servitudes imposed over land adjacent to coastal public property (whether private or State owner) to facilitate public access.
- Participation in institutions that manage coastal resources and serve as “watchdogs”;
- Improved safety through the use of setback lines to protect property from storms and rising sea level ;
- Improved health through more effective control of activities polluting the coastal environment ;

- Improved coastal management through improvements funded by a Marine and Coastal Fund ; and
- Improved recreational opportunities as a result of a better-managed coastline that maintains coastal ecological integrity and promotes social equity.

#### Institutional Arrangements

- The National Coastal Committee must be enabled and the role of stakeholder groups needs further discussion.
- Provincial Coastal Committees must be constituted with clear roles and responsibilities to ensure they contribute meaningfully to integrated coastal management.
- The regularity of meetings and chairpersonship of the PCC also need to identified.
- Provision must be made in the Act for the establishment of Regional Coastal committee together with the composition, duties and functions and payment of allowances.

What will DEAT functions be in relation to local representative forums?

[Deborah Vromans - SANParks Knysna (Personal Capacity)]

- Comment: The establishment of regional coastal committees should be provided for, albeit this is already being implemented by DEADP in terms of the White Paper on Sustainable Coastal Development, it could be reinforced by this Act as there is no mention of regional committees. It may be useful to state that district municipalities should be responsible for establishing such a committee.
- Motivation:
  1. This allows for strategic integration between coastal communities.
  2. Will provide improved incentive for a southern regional coastal committee to be established.

[Woodbridge Island Body Corporate]

1. We suggest the concept of committees should be expanded to allow for smaller committees that will be responsible for smaller sectors or sections or stretches of the coast or that may be called into being to address special circumstances until the relevant matter has been resolved. The committees responsible for sectors of the coast would conceivably be permanent, standing committees that will on a permanent basis under the Act be tasked with monitoring or managing certain stretches or sectors of the coast, that will assure compliance with the Act and that will act as a source of experience and information for application in future

amendments to the Act. Committees for special circumstances conceivably will disband upon the successful resolution of the situation under evaluation.

2. The composition of the committees to be appropriate for the purpose. For the standing committees, interested and qualified individuals for no remuneration (i.e. on a voluntary basis) from that sector of section of the coast, as well as members seconded by the State, Province or Municipality, or the relevant Coastal Committee. The Chair to be decided by a majority vote of the members immediately following the confirmation/acceptance of their appointments. A quorum to consist of not less than 40% of the members. Minutes of the committee meetings that must be held not less than 4 times per annum are to be recorded by the civil members and archived in perpetuity. Such minutes to and be available for public scrutiny at any time. The venue of these committee meetings to be provided by the civil body or if it elects to meet at another venue, for no additional cost to the State, unless it is at State cost.
3. The composition of committees brought into being for special circumstances (for example a committee tasked with protecting the SA Abalone *Haliotis midae*, *speciosa*, *queketti*, *spadicea* and *parva*, and finding a means to propagate these in their natural habitats or in mariculture as well as through aquaculture) ought to have a public-private balance but to include local, national or/international specialists with the appropriate experience or qualifications for the matter at hand. The Chair to be decided by majority vote of the members immediately following the confirmation/acceptance of their appointments. A quorum to consist of not less than 40% of the members. Minutes of the committee meetings to be held not less than every 6 weeks are to be recorded and kept by the civil organ in perpetuity and be available for public scrutiny during the life of the committee. The venue of these committee meetings are to be provided by the civil body or if preferred at another venue for no additional cost to the State, unless this is covered by a specific budget approval. This committee will disband upon finalisation of its work. The scope and ambit of the duties of this special circumstances committee must be fully circumscribed by the responsible Coastal Committee. Where the circumstance to be evaluated, managed or monitored falls under more than one Act, and thus or which different civil departments have jurisdiction, the members of the committee ought to be constituted of each relevant department and the members and committee have a clear mandate to reach consensus.

[EIA, Nelson Mandela Bay Metropolitan Municipality]

Establish ongoing function of regional and subregional coastal management committees; identify what their roles and responsibilities will be; identify their mandate.

### **Section 35: Establishment and functions of National Coastal Committee**

[Department of Environmental Affairs & Development Planning]

### Section 35

Section 35 - National Coastal Committee – The National Coastal Committee must be enacted and a timeframe for it to become operational must be predetermined. Change the word “may” to “must”.

[Endangered Wildlife Trust]

1. Section 35 (1) - Strongly suggest that the word “may” be changed to ‘must’ to read ‘The Minister must by notice in the Gazette establish a National Coastal Committee and determine its powers.’
2. Section 35(3)(a)(iii) - Suggest including the words ‘or impacting on’ to read: ‘...between organs of state and other parties concerned with or impacting on coastal management

[Wildlife and Environmental Society of SA]

(1): Should read MUST or WILL not “may”.

[ESKOM]

35(3) AND 38(2) The roles of the committees seem to be unclear and may amount to duplication effort. For example, there does not appear to be a mandate for the two committees to co-ordinate their efforts or roles. The role of the National Committee is to promote integrated coastal management in the Republic and this includes provinces and local areas. The National Committee will also promote integration of coastal management concerns and objectives into national, provincial and municipal policies, plans and strategies. We recommend that you assess the need for two committees. One committee may suffice.

[Ezemvelo KZN Wildlife]

Section 35(1) should read as:

The Minister or the MEC as the case may be must by notice in the Gazette establish...

[LEGALB]

The powers which the Minister may under s35(1) to determine as the powers of the National Coastal Committee are not defined at all.

We would suggest, in order that this section have more practical application, that in s35(1) the words “and determine its powers” should read “and determine its powers necessary to carrying out its duties and obligations and achieving the objectives identified in subsection (3)”.

[eThekweni Municipality]

Section 35(1). In this section the word “may” is used which appears to make a mockery of the intentions of this Act. To make matters worse in section 38(1) the wording for Provincial Coastal Committees reads the MEC ‘must...’ - why should

there be any difference?. There is no question that the word 'may' in section 35(1) must be corrected as follows. 'The Minister may by notice...' should be changed to 'must'.

[Kathy Leslie (Personal Capacity)]

(1) Again, change "may" to "must" – surely that is what this Bill is all about? What if he/she chooses not to? If there is no NCC then there is no (3), and what happens to 74 (11)? Also include time frame as for the PCCs.

[Robert Stegmann - Reserve Manager: ELCNR (Personal Capacity)]

Section 35 commences with the 'Minister may' this must be changed to reflect the 'Minister must.' When the wording changes the degree of transparency and cooperative governance will increase as a result of the Ministers actions.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) It is submitted that it is beyond question that a national coordinating structure is required for the coastal management function.
- (ii) It is however moot whether or not such a structure needs to be provided for in the Bill, or whether it can take the form of (presumably) less formally constituted groupings such as the various national environmental Working Groups.
- (iii) Regardless of the precise mechanism whereby a national coordinating structure comes into existence, it is contended that it should coordinate the *effective implementation* of any legislation ordinarily administered by coastal management functionaries (e.g. the NEMA Regulations for Control of Vehicles in the Coastal Zone), and not just the Act itself.
- (iv) In this regard, it can be argued that legislatively, the state of the coast is presently being shaped primarily by the NEMA EIA Regulations, which are not generally administered by coastal management functionaries.
- (v) This applies to both the provisions in the Regulations which deal directly with coastal matters (activities in the sea or within 100 meters of the high water mark etc), and to those activities which are not specific to the coastal zone, but have a bearing on the state of the coast by virtue of being carried out there.
- (vi) Mechanisms to address this anomaly would have to be arrived at through detailed engagement with the relevant players, and the degree to which it could be dealt with in the Bill is unclear.
- (vii) Nevertheless it is submitted that the Bill should not be finalized without this most pressing issue being exhaustively contemplated, with a view to

establishing whether mechanisms can be included in Chapter 5 to address it.

[KZN Agriculture and Environmental Affairs]

35(1)	In this section the word “may” is used. In section 38(1) it is stated that the MEC “must...” - why should there be any difference?	The word “may” in “The Minister may by notice...” should be changed to “must”.
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[Oceanographic Research Institute]

Measured by the existing institutional arrangements, the establishment of a National Coastal Committee is an absolute imperative and should not be an option. The published Bill however states that the Minister “may” establish and determine the powers of a National Coastal Committee. The concept of Integrated Coastal Zone Management is rooted in healthy institutional arrangements to produce outcomes facilitated by cooperative governance. The “may” is counter-indicative of ICZM.

The Minister  by notice in the *Gazette* establish a National Coastal Committee and  determine its powers.

(2) The Department must provide administrative support to the National Coastal Committee. 

(3) The National Coastal Committee must promote integrated coastal management in the Republic and effective co-operative governance by co-ordinating the effective implementation of this Act and of the national coastal management programme, and in particular must –

(a) promote integrated coastal management –

- (i) within each sphere of government;
- (ii) between different spheres of government; and
- (iii) between organs of state and other parties concerned with coastal management;  
Between organs of state and civil society

[DEAT Comments:](#)

*This section was not amended.*

### **Section 36: Composition of National Coastal Committee**

[Department of Environmental Affairs & Development Planning]

#### Section 36

Edit: - Section 36(b) representative(s) from the PCC of each coastal provinces

Add to Section 36(2)(a) .....”and marine ecosystems”.

[Endangered Wildlife Trust]

Section 36(2)(b) - Given the impacts on the coastal areas from economic driving forces of inland provinces, strongly suggest the inclusion of a representative on the National Coastal Committee from inland provinces and in particular from Gauteng Province.

[Ezemvelo KZN Wildlife]

Subsection (2)(b) should read ‘a representative from the provincial department of environment and the conservation agency

*In addition, both the National and Provincial Coastal Committee should have scientific expertise or have the powers to set in place a scientific advisory forum. This would be in keeping with the appeal panel and the provisions of the White Paper.*

*Private members must be nominated to the MEC in order to be appointed onto the Provincial Coastal Committee*

[LEGALB]

s36(2)(c)

This Bill does not, as it does for provinces and MEC's, distinguish between municipalities in the coastal zone and those not in the coastal zone.

This section s36(2)(c) does however make the distinction, and we regard this as being of no purpose.

Therefore, we suggest that the s36(2)(c) text “municipalities in the coastal zone” should read “municipalities”.

s36(3)

The last unlabelled paragraph under s36(3) provides for the rate of remuneration and allowances payable to any member of the National Coastal Committee who is not an employee of an organ of state.

We would suggest that further text be added that reads, “A member of the National Coastal Committee who is an employee of an organ of state may not receive any additional remuneration or allowance by reason of his or her membership to the National Coastal Committee.

[Western Cape Department of Environmental Affairs and Development Planning (Region A1 George)]

Point 36(2)(d)

Should the South African Defense Force also not be include as that have numerous camps, outposts in the coastal zone

[eThekweni Municipality]

Section 36(3)(a) 'Alternate' should read 'alternative'.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) One is not convinced that it should be legislated that the NCC should include municipal representatives, given the heterogeneity of this sector, and the challenges which will arise in efforts to attain representivity.
- (ii) Conceivably it will be more appropriate for municipal representivity to be focused at provincial (coastal committee) level.
- (iii) Such an approach would not negate the option of accomplished municipal representatives holding positions on the NCC, but again it is suggested that this should not necessarily be obligatory.
- (iv) One is also not convinced that it is necessary or appropriate to specify individual State Departments which should be represented.
- (v) If however they are indeed specified, it is contended that the Department of Provincial and Local Government (DPLG), and the Department of Agriculture, should be included along with the other nominated Departments.
- (vi) It is critical that the DPLG and any other relevant organizations are included on the NCC in order to ensure adequate attention is directed on an ongoing basis to the pressing development and land use planning issues as articulated elsewhere in this submission.

[KZN Agriculture and Environmental Affairs]

36(2)(a)	Does this reference include representatives from the scientific community and NGO sector and are numbers restricted? Reference is made to the best practice process undertaken during the development of the White Paper for Sustainable Coastal Development.	
36(2)(c)	Reference should rather be made to the organisation representing municipalities, namely SALGA.	
36(3)(a)	"Alternate" should read "alternative".	Correct.

[Belastingbetalersvereniging]

Arts. 36, 27, 38. Die instelling van nasionale en provinsiale "coastal committees" plus 'n provinsiale "lead agency" lyk na onnodige duplisering van organisasies teen onnodige koste asook ten koste van effektiwiteit. 'n Nasionale liggaam waarop 'n kontingent van elke provinsie sitting het kan oorkoepelend funksioneer met direkte

insette en koördinerings van provinsiale behoeftes en daaropvolgende delegering na plaaslike munisipaliteite in stede van verskeie afsonderlike liggame wat afsonderlik werk en dan daarna moet koördineer.

DEAT Comments:

*This section was amended to read:*

“(2) The Minister must appoint persons to the National Coastal Committee who by virtue of the office that they hold or their expertise can assist the National Coastal Committee in fulfilling its functions and must ensure that the National Coastal Committee includes –

- (a) persons with expertise in fields relevant to coastal management and coastal ecosystems;
- (b) a representative from each Provincial Coastal Committee;
- (c) one or more members representing municipalities in the coastal zone;
- (d) representatives of national government departments which play a significant role in undertaking or regulating activities that may have an adverse effect on the coastal environment, including representatives of the departments responsible for agriculture, minerals and energy, transport, public works, provincial and local government, land affairs, water affairs and forestry and trade and industries;
- (e) one or more members representing the management authorities of coastal protected areas.”

Part 2: Provincial lead agencies

**Section 37: Designation and functions of provincial lead agency**

[Endangered Wildlife Trust]

Section 37(2)(f) – Clarify how this section will be implemented. If this review be done as part of the EIA process in terms of NEMA Regulations, the EIA Regulations needs to be amended to include this step.

[ESKOM]

37(f) The role of the agency in EIA reports is unclear. At what stage will it review the reports and what will happen to the results of the review?

37(h) Section 37 does not enable the provincial lead agency to enforce the provisions of this Act. It merely mentions that it shall take reasonable steps in attempt to achieve that and it is unclear what this means.

[Ezemvelo KZN Wildlife]

Additional functions of the PCC are required, namely:

(g) to adjudicate environmental impact assessments within the coastal zone contemplated in terms of Chapter 5 of Nema.

(h) advise the MEC or Minister, as the case may be, on the adjudication of any matter concerning the coastal zone and includes any appeals submitted.

(i) establish when necessary a local coastal committee or a coastal community association.

(j) determine, where necessary, the norms and standards for threat abatement and ecosystem recovery plans referred to in subsection 45(2).

[Department of Environmental Affairs & Development Planning]

Section 37

Replace in Section 37(f) – the number “Chapter 4” with “Chapter 3” - incorrect referencing.

Alternatively delete reference to “Chapter 4” completely.

Chapter 3 does not address or even mentions EIA’s and SEA’s. Please clarify.

Section 37(2)(b)

Insert:-

.....in accordance with the objectives of this Act and principles of the White Paper for Sustainable Coastal Development in South Africa.

Add 37(2)(j) Promote the development of Sustainable Coastal Livelihoods in the province

Edit incorrect numbering:- section 37(2) must be changed to section 37(3) and referral to the subsection (1) must be changed to (2).

[LEGALB]

s37(1)(f)

This subsection provides that the provincial lead agency review a wide variety of environmental impact assessment (EIA) and other reports.

Commonly the word “review” would refer to an administrative review of the decision made in respect of such a report by another person empowered under this Act to do so.

We see that elsewhere in the Act provision is made for persons / bodies other than the Provincial Lead Agency to make decisions on EIA and other reports. Therefore, as it stands the review referred to would be a review of a decision on a report rather than a review of the report itself.

We suggest in the light of the above that in s37(2)(f) the words “review environmental impact assessment reports...” should read, “review decisions made on environmental impact assessment reports...”.

We also suggest that the process required to bring a decision on review to the Provincial Lead Agency or organ of State to whom this function is assigned by the Premier under subsection (2) be specified in this section by way of a subsection (3).

[Kathy Leslie (Personal Capacity)]

(1) add "...relevant MEC"

2 (a) provide time frame

(g) add "...the management, protection..."

(h) remove "practical" otherwise already looking for excuse not to do something

(2) problem with numbering and reference to "subsection (1)"

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) It is debatable whether the term *coordinate* in 37 (2) (a) adequately empowers provincial lead agencies to oversee the implementation of provincial coastal management programmes.
- (ii) Similarly, the precise meaning of the term *monitor* in relation to 37 (2) (b) & (c) is unclear – is it up to the agencies to determine the level of monitoring activity? Or is it perhaps assumed that the state of the coast report required in terms of 37 (2) (d) will determine this? If so, it is trusted that this interpretation will be adopted without ado by the lead agencies.
- (iii) It is unclear why 37 (2) (d) requires that the provincial lead agencies should *coordinate* the preparation of state of the coast reports – surely the extent of their responsibility in this regard suggests a stronger term should be used?
- (iv) The structure of Section 37 is questioned. Should a provision of the nature of 37 (2) (i), viz. the performance of functions assigned to it under the Bill, as well under other coastal management legislation, not stand at the top of the list of responsibilities of the provincial lead agencies? As currently written, it appears that the provincial coastal management programmes are regarded as the primary business of the agencies, when in fact the programmes are merely a facet of a much wider range of responsibilities.
- (v) The last sub-section of Section 37 should be numbered (3) and not (2). Regardless, one is not convinced about its desirability.

[KZN Agriculture and Environmental Affairs]

37(2)	To add: "(j) promote the development of sustainable coastal livelihoods".
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[Irvin & Johnson Limited]

The provisions of Section 37(2)(f) create the impression that the lead agency needs to be involved all environmental impact assessment reports which is clearly not the case. We suggest that in the last line of this sub-section, the word 'Government' be added in after the words '... or that concern' and before the words 'projects or policies that may...'. As all other environmental assessment reports have to be submitted to the relevant authority. If it is the intention that the provincial lead agency must also be involved in all environmental impact assessments and reports, its involvement must be integrated with the existing processes as not to cause undue delays. This is already a lengthy process as is.

[Western Cape Department of Environmental Affairs and Development Planning  
(Region A1 George)]

Point 37(2) (a)

Will the lead agency in the case of DEADP by the Coastal Management Unit? If this is the case then they would seriously need to expand their staff component as one of the many functions includes:

(f) review environmental impact assessment reports and strategic environmental assessments.

If Integrated Environmental Management (IEM) is to be delegated this function then this will present capacity related problems unless the financial principle of "funds follow function" is applied.

[DEAT Comments:](#)

*This section was amended to read:*

“(f) review reports that relate to determinations and adjustments under Chapter 3 or that concern policies that may impact on the coastal zone;”

*Part 3: Provincial Coastal Committees*

**Section 38: Establishment of Provincial Coastal Committees**

[Endangered Wildlife Trust]

1. Section 38(2) - Suggest strengthening of this section by including reference resources and capacity building for implementing the roles designated to the Provincial coastal committee.
2. Section 38(2)(f) - This provision is very general. Suggest modification of sentence to read “perform any coastal governance function delegated to it”

[TRANSNET]

Whilst it is understood that the Provincial Lead Agency (Section 37) is the provincial government department responsible for this function, and the Provincial Coastal Committee (Section 38) consists of government and external stakeholders, the Bill should provide a clearer identification and separation between the mandate, functions and powers of these two entities.

[LEGALB]

This section provides that within twelve months of the commencement of this Act, the MEC must establish a Provincial Coastal Committee.

Given that the Bill and statute law provides that different sections of the Act may be commenced on different dates, one cannot from this alone identify the date by which this committee must be established.

s38(1) text “within twelve months of the commencement of this Act” should read “within twelve months of the first commencement of any section of this Act in terms of section 105”.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) It is submitted that the MEC should establish a Provincial Coastal Committee within six months of the commencement of the Act, and not twelve.
- (ii) In terms of 38 (2) (a), the Committees should be required and empowered to promote *the coordinated and effective implementation* of all legislation which has a bearing on the state of the coast, and not just this Act and the provincial coastal management programme.
- (iii) It is not clear what form of *delegation* 38 (2) (f) refers to.

[Department of Environmental Affairs & Development Planning]

Section 38

- (i) It is not clear who will assume the chairpersonship of the PCC. Will the MEC appoint the person?
- (ii) There is no indication as to how regular the PCC have to meet (at least once every quarter)

Section 38(1)

Replace timeframe (12 months) to 6months: - Each MEC must within 6 months of the commencement of this Act establish a .....

Insert:- Section 38(2)(g)

Add advise the MEC on Sustainable Coastal Livelihoods in the province.

Section 38(3)

A provincial coastal committee may establish sub committee(s) in terms of the PCC to advise the committee on a specific matter or issue.

[Oceanographic Research Institute]

The period provided for the establishment of Provincial Coastal Committees by the MEC is too long taking into account that all the coastal provinces have already established committees with a parallel function to the proposed PCCs in anticipation of the promulgation of this Bill

[Oceanographic Research Institute]

Each MEC of a coastal province must within twelve months of the commencement of this Act establish a Provincial Coastal Committee for the province.

[DEAT Comments:](#)

*This section was not amended.*

### **Section 39: Composition of Provincial Coastal Committees**

[Endangered Wildlife Trust]

Section 39(5) - Suggest that the word “may” be changed to ‘must’ to read “The Director general must appoint a member...”

[Wildlife and Environmental Society of SA]

We believe that there must also be “Regional Coastal Working Groups” so that the good work done by the Provincial Committee can be bolstered at Regional level.

[Ezemvelo KZN Wildlife]

Add subsection 39(6) the following:

“(6) the member appointed in subsection (5) herein above shall advise an consult with the PCC on matters of common interest and the contemplated actions of the Department.

[LEGALB]

s39(2): The text “subsections (1) and (2)” should read, “subsection (1)”.

[Woodbridge Island Body Corporate]

11. In 39(3) we would support replacing “The MEC may” with “must”.

[LEGALB]

s39(4) provides for the rate of remuneration and allowances payable to any member of the Provincial Coastal Committee who is not an employee of an organ of state.

We would suggest that further text be added that reads, "A member of the Provincial Coastal Committee who is an employee of an organ of state may not receive any additional remuneration or allowance by reason of his or her membership to the National Coastal Committee.

[eThekweni Municipality]

Section 39(2) (b) This section is ambiguous. Suggest this be reworded to "one member from provincial level representing each coastal province".

Section 39(2) (c) This section is also ambiguous. Suggest this be reworded to "one member representing each coastal Municipality".

Section 39(3) (a) 'Alternate' should read 'alternative'.

Section 39 (4) Shouldn't councilors, MP's and other public office bearers also not be entitled to an allowance if employees are not entitled to allowances.

[Department of Minerals and Energy]

39	Some National Departments have only National competency like DME and DWAF. For DME to be involved in the Province, it will be non-voting representatives with the aim of communication, co-ordination and information sharing. Policy decisions of DME lay with Head Office in Pretoria.	Propose that Section 39 indicate the different organs of State as indicated in Section 36, referring to the National Coastal Committee.
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[Kathy Leslie (Personal Capacity)]

(1) put "management" before "conservation"

(5) couldn't this be an NCC member assigned to each province?

[Chief Directorate: Environmental Affairs (Eastern Cape)]

(i) 39 (2) should perhaps spell out that individuals, rather than organization representatives, must be appointed to the Committees. This in order to circumvent the perennial problem of organizational representation inconsistency.

(ii) The concept of voting, as alluded to in 39 (5), jars in a context where the emphasis is on cooperation and coordination.

[KZN Agriculture and Environmental Affairs]

39(2)(b)	Previous versions of the Bill outlined the minimum requirements in terms of who should be represented on the PCC. This is imperative, given that one needs to prescribe to a government department (e.g. Public Works), that their attendance is mandatory. Many of the representatives identified in Section 36(2)(d) work in the provincial offices of a 'national' department. Resultantly, their attendance of a PCC should be compulsory.	Ensure effective and mandatory government department representation on the PCC. See Section 36(2)(d).
39(3)(a)	'Alternate' should read 'alternative'.	Correct.

[Department of Environmental Affairs and Development Planning]

INSERT

THIS SECTION AFTER SECTION 39

Establishment and functions of Regional coastal Committees

- (i) Provide that the lead agent in concurrence with municipalities establish regional committees.
- (ii) Promote integrated coastal management in the province and the coordinated and effective implementation of the Provincial coastal management programme.
- (iii) Advise the provincial lead agent on matters concerning coastal management.
- (iv) Advise the municipal managers on developing, finalizing, reviewing and amending the municipal coastal management programme.
- (v) Promote a coordinated, inclusive and integrated approach to coastal management within the context of the regional district municipalities by providing a forum for and promoting dialogue, cooperation and coordination between the key organs of state and other persons involved in coastal management.
- (vi) Promote the integration of coastal management concerns and objectives into the plans, programmes and policies of other organs of state whose activities may have caused or may cause adverse effects on the coastal environment;
- (vii) Perform any function delegated to it from provincial coastal committee.

Composition of Regional Coastal Committee

- (i) A regional Coastal Committee consists of a number of persons appointed by the District Municipal Manager.
- (ii) A Regional Coastal Committee –
  - (a) must include persons with expertise in fields relevant to coastal management; and
  - (b) may include persons to represent any group or body with a material and direct interest in coastal management including: organs of state, persons that depend on the use of coastal resources for their livelihoods;

environmental interest groups, research establishments and coast dependent businesses.

[Oceanographic Research Institute]

- (2) The MEC must appoint persons to the Provincial Coastal Committee who by virtue of the office that they hold or their expertise can assist the Provincial Coastal Committee in fulfilling its functions and must ensure that the Provincial Coastal Committee includes –
- (a) persons with expertise in fields relevant to coastal management; and
  - (b) one or more members representing municipalities in the coastal zone.
  - (c)  representatives of national government departments who play a significant role in undertaking or regulating activities that may have an adverse effect on the coastal environment, including representatives of the Department of Minerals and Energy, the Department of Transport, the Department of Public Works, the Department of Land Affairs, the Department of Water Affairs and Forestry and the Department of Trade and Industries.

(a)

[DEAT Comments:](#)

*This section was not amended.*

[DEAT Comments:](#)

*A new section on Municipal Coastal Committees was inserted:*

***Part 4: Municipal Coastal Committees***

**40. Establishment and functions of municipal coastal committees**

- (1) Each metropolitan municipality and each district municipality that has jurisdiction over any part of the coastal zone may establish a coastal committee for the municipality and, subject to subsection (4), determine its powers.
- (2) Any local municipality that has jurisdiction over any part of the coastal zone may establish a coastal committee for the municipality and, subject to subsection (4) determine its powers, which may include the power to establish local sub-committees of the municipal coastal committee.

- (3) A municipal coastal committee may include –
- (a) persons with expertise in fields relevant to coastal management; and
  - (b) representatives of the management authorities of coastal protected areas or special management areas within the municipality; and
  - (a) representatives of communities or organisations with a particular interest in contributing to effective coastal management, such as port authorities, organs of state, persons whose livelihoods or businesses rely on the use of coastal resources, environmental interest groups and research organisations.
- (4) A municipal coastal committee referred to in subsections (1) or (2) may –
- (a) promote integrated coastal management in the municipality and the co-ordinated and effective implementation of this Act and the municipal coastal management programme;
  - (b) advise the municipal manager, the municipal council and the provincial coastal committee on matters concerning coastal management within the area of jurisdiction of the municipal coastal committee;
  - (c) advise the municipality on developing, finalising, reviewing and amending the municipal coastal management programme;
  - (d) promote a co-ordinated, inclusive and integrated approach to coastal management within the municipality by providing a forum for, and promoting, dialogue, co-operation and co-ordination between the key organs of state and other persons involved in coastal management within its area of jurisdiction;
  - (e) promote the integration of coastal management concerns and objectives into the municipality's integrated development plan and spatial development framework and into other municipal plans, programmes and policies that affect the coastal environment; and

(f) perform any coastal governance function delegated to it.”

*Part 4: Voluntary Coastal Officers*

**Section 40: Voluntary Coastal Officers**

[EIA, Nelson Mandela Bay Metropolitan Municipality]

More clarity needed on the roles and responsibilities of voluntary coastal officers.

[MG Potgieter (Personal Capacity)]

Part 4 is dedicated to the establishment of voluntary coastal officers. It must be remembered that the issues concerning access to public property (the sea and estuaries) are in many cases long standing and very sensitive to I&AP. Although commendable in certain instances, voluntary officers are not the best way to control and monitor the public at large regarding coastal public areas. Trained officers, including access to them 24 hour by 365 days per annum, are still the best solution to this issue.

[Coastal & Environmental Services (East London)]

Section 40: Voluntary coastal officers

This is a very useful instrument and was one of the recommendations for Buffalo City Integrated Coastal Zone Management Plan. We are concerned that if left for the MEC, that it will take a long time to initiate and implement such a programme. Perhaps there could be a National programme and appointment process in the interim. There is an urgent need for more “eyes and ears” out there. The establishment of a training programme for VCO may be necessary.

[Department of Environmental Affairs & Development Planning]

Section 40

Section 40(1)

Insert:- the MEC or delegated official of a coastal province may appoint or withdraw any such appointments of any member of the public who has appropriate expertise as a voluntary coastal officer.

Spelling error in section 40(3)(c). Identify card should be *identity* card.

[Derrick Airey (Personal Capacity)]

S 40. - Voluntary coastal officers – seems vague and not part of the bill. No other mention in the bill to these posts. If the intended use these persons as an officer as defined under NEMA, then use that reference, otherwise delete this section.

[Endangered Wildlife Trust]

1. Section 40(3) - Suggest the inclusion of guidance on what the maximum powers of the voluntary coastal officer can be.
2. Section 40(3)(c) – Correct typological error: ‘identity’ card.

[TRANSNET]

Voluntary coastal officers: the Bill does not provide clarity on their mandate, functions and the scope of their jurisdiction (provincial and/or municipal). With reference to their potential powers, the Bill should provide that the officers will ensure consistency between provinces. Alternatively, that the Minister shall develop Regulations in this regard. The Bill needs to enunciate the details.

[LEGALB]  
s40(1)

The text “any member of the public” is not defined. We would suggest that the text read “any member of the public, being a person who is not an official under this Act”. We make this suggestion because if an official under this Bill were included in “any member of the public” his role would not be that of a voluntary coastal officer, but would be a role determined by his official duties and obligations.

s40(4)

The text “at the request of a member of the public.” should read “immediately on the request of any person, and therefore should at all relevant times carry the identity card with him or her.”

Whether voluntary coastal officers would be considered employees within the meaning of Labour legislation should be considered, and if so, relevant text should be inserted as to their status, remuneration, and so on.

[eThekweni Municipality]

Whilst the idea of voluntary coastal law enforcement officer is laudable, they are potentially extremely dangerous in the light of Section 104(1)(b) of the Act (a "Tekere" clause). If one must employ a voluntary coastal officer, the liability of the province should be the same as it is for any other employee and it should make sure that it has sufficient reserves for insurance to pay out the claims that may arise from the wrongful acts of such persons - even if the officer concerned did things in good faith.

[Kathy Leslie (Personal Capacity)]

(1) "of a coastal province" is obvious, surely.

(2) add "...*manages* and conserves..."

(3) typo = "identification"

add (5) to the effect that VCO may not be interfered with while carrying out his/her duties

[Kommetjie Residents & Ratepayers Association]

- Volunteers should be endorsed by community orgs. (p42)

[Robert Stegmann - Reserve Manager: ELCNR (Personal Capacity)]

Section 40 makes allowance for volunteers to work as coastal officers. Any system that allows for public participation may have considerable positive spin-offs but for the system to work the volunteers need to be managed and their efforts to form part of a coordinated approach to issues. Thus the Bill needs to force organs of State to provide persons in their employ to have as a key performance area the management of volunteers. If it is not incorporated then the system is doomed to fail and the organ of State that they work for will be brought into disrepute.

10. Section 40(4) should be changed in order that volunteers must show his / her identity card when asked to do so when performing his / her duties. They should not only produce their identity cards when they feel that they are exceeding their powers. To leave this section unchanged will result in unnecessary conflict and reduce the credibility of a volunteer system.

[Wendy-Leah Dewberry (Noetzie Conservancy Association) and Charmaine Cumberlege]

Each Municipal area should employ a full-time qualified, professional Coastal Protection officer who is responsible for , among other activities, public awareness and motivation, guidance of voluntary officers, participation in draft scoping reports so that legitimate information is included in EIA's , inspection of building sites with regard to mitigation's

[Friends of the Botriver]

Voluntary Coastal Officers: we do not believe that these are practically. They are subjected to abuse and dangerous situations.

[Oceanographic Research Institute]

Voluntary coastal officers

The MEC of a coastal province may appoint any member of the public who has appropriate expertise as a voluntary coastal officer. 

The MEC must -

- (a) prescribe the powers and duties  voluntary coastal officers;

[DEAT Comments:](#)

*This section was not amended.*

## **CHAPTER 6 COASTAL MANAGEMENT**

### *DEAT Comments:*

Chapter 6 establishes a system of coastal management programmes within each sphere of government. The text of this chapter remains largely unchanged apart from the section dealing with zoning that has been reworded to bring it in line with land-use planning terminology.

### *Part 1: National coastal management programme*

#### *[Endangered Wildlife Trust]*

Both Part 1 and Part 2 should specify how local authorities and other stakeholders are involved in the process of preparing the proposed national and provincial coastal management programmes.

Correct the typographical error: Coastal Zoning Schemes should have a sub-heading of Part 7 (not Part 6)

#### *[SANParks (West Coast National Park)]*

##### Chapter 6 – Coastal Management

SANParks supports the efforts in this chapter. It certainly sets out an outstanding standard for transparency and communication between various departments and the broader public. We would like to impress upon DEAT that SANParks should be at present levels of coastal management programmes – national provincial and regional. Park staff should ideally play a role at the regional level. Currently staff from WCNP, attend the regional coastal committee meetings. It is important that all three levels ‘consult’ with park management plans where they apply to the coast so that pertinent information can be considered when decisions are taken at all three levels.

#### *[Coastal & Environmental Services]*

Relationship with other planning instruments:

The Bill does not clearly outline what the relationship is between an Integrated Coastal Zone Management Plan and other planning instruments. This is particularly pertinent at the local municipal level, where local municipalities are required to produce an Integrated Development Plan (IDP) as well as a Spatial Development Framework Plan (SDF). Also linked to the preparation of an SDF is the undertaking of a Strategic Environmental Assessment, all in terms of the Municipal Systems Act. What is the relationship between these planning instruments and the Bill? Furthermore, what is the situation if the local authority has already prepared an SDF and SEA, and possibly also a Land Use Management Plan? What planning instrument will prevail?

At present there is already confusion at local municipal level regarding the various documents and studies they are required to do, and the preparation of an Integrated Coastal Zone Management Plan will add to the plethora of requirements already in place. It is therefore important that the relationship between these different planning instruments be explained or clarified in the Act.

*[Habitat Council, CAPTRUST & Still Bay Conservation Trust]*

In S41(1) (a) of Coastal Management, [Part 1: National coastal management programme], the Minister is given 6 years to prepare and adopt a national coastal management programme.

Reading this section along with S 103 [Savings], it is clear that the *White Paper for Sustainable Coastal Development in South Africa of 2000* must be regarded as the national coastal management programme until a national coastal management programme has been adopted in accordance with S41.

This is a necessary and welcome provision to avoid a vacuum until such time as the programme is approved. However, the position regarding the other programmes (at provincial and municipal level) is not clear to us.

I refer to the following:

S 44(1)(a) The MEC of each coastal province must within 6 years .....prepare and adopt a provincial coastal management programme .....

and

Part 3: Municipal coastal management programmes

S 46(1)

(a) A coastal municipality must within 4 years prepare and adopt a municipal coastal management programme.

Furthermore,

Part 1 Provincial coastal management programmes

S43(1) The Minister is given 12 months to identify the coastal management roles and responsibilities of the coastal provinces, coastal municipalities and other organs of state.

Does S 103 [Savings], which determines that the *White Paper for sustainable Coastal Development in South Africa of 2000* must be regarded as the national coastal management programme until a national coastal management programme has been adopted in accordance with S41, refer equally to these other programmes and protocols. If so, this needs to be clearly and unambiguously stated, and if not, such a statement should be added to the Bill.

[Uthungulu District Coastal Working Group]

Provision should be made for the establishment of municipal Coastal Working Groups to give effect to municipal Coastal Management Programmes, as the institutional component of the plan.

Consideration should be given to provide guidelines to ensure that the content of the various levels of plans to be in line with those of other spheres of government or other legislation. Constitutional competencies (provincial vs. municipalities) should be clarified through such guidelines.

The timing of preparation of Coastal Management Programmes seems not to be aligned (6yrs for national and 4yrs for municipalities).

Funding should be provided to prepare / review municipal CMPs and to develop estuarine management plan/s as part of municipal CMPs

[Friends of DST]

Chapter 6 part 3 - COASTAL MANAGEMENT where you stipulate a coastal committee must be established. With a Regional Coastal Committee already established and "some" municipalities attending it should be mandatory that representatives from the individual municipalities MUST attend. It should not be necessary to establish other forums if these are already in place; utilize this expertise otherwise there are just too many committees.( Too much talk and no action!!)

Also if these programs must be established the dates for these programs should coincide in the same time frame as the Regional/Provincial Coastal Committees/.

[KZN Agriculture and Environmental Affairs]

Chapter 6	There are two sub-headings named 'Part 6'.	Correct.
	In general, the wording appears to imply that the Minister can do a lot of things without consultation!	Check and correct.

[Oceanographic Research Institute]

**Part 1: National coastal management programme** 

**Section 41: Preparation and adoption of national coastal management programme**

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Section 41 should make specific reference to the fact that the White Paper is the de facto National Coastal Management Programme with immediate effect..

[Derrick Airey (Personal Capacity)]

S 41. - National coastal management programme must be done within 6 years of promulgation of the act. Cf with S 44 & S 46 which is 4 years. Need to insert statement in this section that the White paper is the first NCMP.

[Department of Environmental Affairs & Development Planning]

- Chapter 6: allows for only the Minister to prepare and adopt the national coastal management programme. No provision has been for the MEC's and National Coastal Committee to guide this process. Does this mean that the Minister will be acting unilaterally on issues that affect the four provinces? (Section 41)

Insert in Section 41(1):- the minister in concurrence with the MEC's for the four coastal provinces

[Friends of the Botriver]

Chapter 6 – 41(1) (a) Six years is too long.

[LEGALB]

s41(1)(a)

This Act may, and is likely to, in terms of s105 commence on different dates. If this is the case, it will be difficult to identify the exact date by which the Minister must effect, prepare and adopt a national coastal management programme.

It is suggested that the text “within six years” read ‘within six years of the first occurring date of commencement of any section of this Act’.

s41(1)(b)

The words “every five years” should, to ensure that there can be a proper application of this section, read “every five years from the date on which the national coastal management programme referred to under s41(1)(a) is adopted.

s41(2)

The words “give notice to the public” should read, “give notice to the public in the Gazette” in order to dispel the lack of clarity as to how notice should be given.

[The Overstrand Conservation Foundation]

Sections 41 & 44 & 46 – 6 years to adopt a National Coastal Management Programme should be no more than 4 years and those of the Provinces and Municipalities should be developed concurrently under the strong leadership of DEAT. Otherwise there will be total confusion at the local levels and the Act will lose all credibility. Local government levels do not have the competence to develop their

own management programmes and will not assign sensible budgets to the necessary work.

[eThekweni Municipality]

This Section should be cross-referenced with Section 103 (3) so that it is immediately clear that the White Paper serves as the National Coastal Management Programme. Local authorities should be consulted and be allowed an opportunity to contribute to the national and provincial Coastal Management Programme during the process of preparing the national and provincial coastal management programmes. It is therefore recommended that a reference to this be included sections in 41 & 44 that address these shortcomings.

[Blue Horizon Developments]

The Coastal Bill provides that the Minister of Environmental Affairs and Tourism must within six years after the Bill takes effect, prepare and adopt a national coastal management programme for managing the coastal zone and must review the programme at least once every five years and may, when necessary, amend the programme.

The need for such management programmes is not justified and it would significantly erode the developmental role of municipalities within coastal areas.

Areas needing environmental, biodiversity or heritage protection are already given such protection in other statutes. The Minister of Environmental Affairs is the inappropriate Minister to have responsibility for management within the coastal zone. This provision would interfere with sustainable development within the coastal zone and give undue prominence to environmental concerns over other competing interests within the coastal zone. We propose that as this is a duplication of the sections dealing with a national coastal management programme that it be removed.

[South African Planning Institute]

Section 41, 44 and 46: The time frame of 6 years to prepare the National coastal management programme is considered to be too long if the provincial and local programmes must be done within 4 years. The National programme must include the vision and give direction to the other spheres of government. If Section 103(3) can serve as a national coastal management plan for 6 years, why would it then be necessary to prepare something additional over 6 years?

[Kathy Leslie (Personal Capacity)]

(1) links back to 35 (1). If no NCC is appointed then who will oversee the NCM programme? Consultants? Provincial programmes are expected within 4 years (S44 (1) (a)) – surely national should come before provincial?

(2) may be useful to link the NCM programme reviews to the State of the Coast reports (S97)

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) It is contended that the six year period provided for in 41 (1) (a) is hopelessly excessive, given the imperatives articulated elsewhere in this submission which require unequivocal strategic direction and leadership.
- (ii) The window of opportunity for addressing these issues meaningfully is extremely finite, and is closing as we proceed with formulation of the Bill.
- (iii) In the circumstances it is critical that the national coastal management programme be generated as a matter of the utmost urgency.
- (iv) The order of timeframe held to be commensurate with this urgency is held to be one year. Under duress from practical considerations, this could perhaps be relaxed to two years at the extreme, but it needs to be fully appreciated that the value of the programme is likely to be diminished in, at best, direct proportion to the delay in its formulation.
- (v) It is noted that the period specified for generation of the national programme exceeds that for the provincial ones. This strikes one as peculiar, given that the former should surely set the stage for and provide direction to the latter. The country as a whole needs to mobilize expediently to deal with the key threats to the integrity and sustainable development potential of the coast, and the national programme must set the state of play in this regard.

[KZN Agriculture and Environmental Affairs]

41	This section should be cross-referenced with section 103(3) so that it is immediately clear that the White Paper serves as the National Coastal Management Programme.
41(1)(a)	It is assumed that the existing White Paper is valid for a further 6 years. This is highly problematic as existing sections of the White Paper require immediate review given the changes that have taken place along the coastline since 2000 (the year the White Paper was gazetted).
41(2)(b) & 44(2)(b)	The manner in which the summary of the programme should be publicised should be prescribed – i.e. gazetted in the National or Provincial Government Gazette.

[Oceanographic Research Institute]

#### 41. Preparation and adoption of national coastal management programme

- (1) The Minister –
  - (a) must within six years after this Act takes effect, prepare and adopt a national coastal management programme for managing the coastal zone;

- (b) must review the programme at least once every five years; and
- (c) may, when necessary, amend the programme.

Preparation and adoption of national coastal management programme

(1) The Minister –

- (a) must within six years after this Act takes effect, prepare and adopt a national coastal management programme for managing the coastal zone;

[Natalie Way-Jones (Personal Capacity)]

National Coastal Management  
Program

Provincial Coastal Management Program

Municipal Coastal Management Program

Estuarine Management  
Plan

Coastal Zoning Schemes

- The timeframes for preparation of the plans do not match up with the planning hierarchy above. The NCMP should be put in place first, followed by the PCMP and MCMP.
- The NEMBA makes provision for a similar suite of programs and plans relating to biodiversity as a whole.
- Provincial land use planning is governed in KwaZulu Natal and Western Cape by legislation in the form of Development and Planning Acts.
- Separate zoning schemes for coastal areas is a move away from the integrated development planning required by the Municipal Systems Act.

[Endangered Wildlife Trust]

This Section should refer to Chapter 12, Section 103 (3) for clarification that the White Paper for Sustainable Coastal Development serves as the National Coastal Management Programme.

[ESKOM]

There seems to be a proliferation of management programmes. The content of the national, provincial and municipal programmes is similar and it is unclear why three different programmes addressing the same issues are necessary. There could be one national programme and plans at provincial and municipal levels to implement the national programme. There are only 3 coastal provinces in the Republic. Further, there is a conflict between s 41(1)(a) that requires the Minister to adopt a coastal management programme within 6 years of the Act and s 44(1)(a) in that requires the MEC to adopt such a plan within 4 years of the Act. This means that the

provincial programme will precede the national one which is supposed to set national vision and from the province must take cue.

[Belastingbetalersvereniging]

Arts. 41, 42, 43, 44, 45. Dieselfde argument as by voorgaande geld. Grondwerk in elke provinsie kan deur funksionarisse gedoen word wat dan in een nasionale liggaam insette lewer wat daar en dan verwerk word tot 'n nasionale bestuursplan met detail t.o.v. elke provinsie vir implementering deur die provinsie of munisipaliteite.

[DEAT Comments:](#)

*This section was amended to read:*

“(1) The Minister –

- (a) must within four years after this Act takes effect, prepare and adopt a national coastal management programme for managing the coastal zone; “

#### **Section 42: Contents of national coastal management programme**

[Habitat Council, CAPTRUST & Still Bay Conservation Trust]

“Marginalised and previously disadvantaged communities that are dependent on coastal resources for their livelihoods”

With respect to S42 (f) “a framework for co-operative governance to implement measures concerning coastal management that

- (i) identifies the responsibilities of different organs of state, including their responsibilities in relation to marginalised and previously disadvantaged communities that are dependent on coastal resources for their livelihoods”

Note: We welcome the recognition that the state has responsibilities towards communities that are dependent on coastal resources for their livelihoods. Does this acknowledgment of responsibility represent a change of heart within DEAT? We trust so, since it is our view that the Department in the recent past callously deprived a large number of West Coast subsistence fishermen of their livelihoods.

[Endangered Wildlife Trust]

Section 42(1)(b) - Contents of the national coastal management programme must provide for an integrated, coordinated and uniform approach to coastal management by all role-players. We strongly suggest a consultation process involving the relevant stake holders.

[Ezemvelo KZN Wildlife]

Add to Section 42(1) the following  
“(d) and give effect to this Act.

[TRANSNET]

- We submit that the approach envisaged to develop the municipal, provincial and national coastal management plans, is a bottom-up approach and is not the best approach to adopt, given the fact that there are national imperatives which guides all levels of planning in South Africa. We request the reasons for this approach being adopted.
- We are cognizant of the concurrent competency for environment with provinces, however we submit that the framework and context within which the provincial legislation and plans are developed, should first be set at a national level.
- The timelines to develop the national plan appear to be protracted; however we are cognizant that it was set to provide time for the other levels of plans to be developed first.
- We propose that the National Plan be developed and adopted prior to the municipal and provincial plans. Further, the timelines be reduced to 2 and 3 years, as these plans are the main management tools to facilitate efficient implementation of the Act.
- We submit that further clarity be provided regarding stakeholders' engagement for the development of the coastal management plans. We submit that stakeholder management is an important part of the development and it may be necessary to augment the reference to stakeholders' engagement for the development of the plans.
- We propose that each plan include a section regarding the respective functions and powers of each level of governance (national, provincial and municipal) regarding coastal management.
- The Bill creates new management plans and a consequence thereof is that we may create a fragmented environmental management framework. The proliferation of plans does not facilitate efficient and integrated environmental management. We propose including an annexure and/or amendment to existing environmental management documents (such as EMP, EIP, EMF, IDP, SDF etc) to incorporate the coastal management plans. We submit that a consolidated document is required for a decision-making process rather than a fragmented one.

- At a provincial level, the Spatial Development Frameworks (SDFs) would be the most appropriate plan/ document to incorporate the coastal management plans. At municipal level it would be the Integrated Development Plans (IDPs).
- At a national level, the principles, constraints etc for coastal management and development in South Africa, should be incorporated in the National Spatial Development Perspective (NSDP), as lead by the Presidency.
- We submit that further clarity should be provided regarding the aims and functions of the coastal zoning scheme and its management.

[Wildlife and Environmental Society of SA]

We would like to enquire as to what has happened to the “National Advisory Forum”? This seems to have been dropped?

There seems to be inconsistencies between the various “plans” within this programme.

Coastal Management programmes must meet all the Coastal Management Objectives.

[Jessica Hayes (Personal Capacity)]

Appropriate zoning parameters should be established pertaining to sensitive/’no-go areas’ which are not to be considered for development purposes.

[LEGALB]

s42(1)(b)

We find that s42(1)(b) is too prescriptive to the private sector and local communities. Therefore we would suggest that the words “, non-governmental organisations, the private sector and local communities” be deleted from this section and that a section 42(1)(c) be added with the text “(c) facilitate the integrated of non-governmental organisations, the private sector and local communities involvement in the national coastal management programme”.

s42(2)

The definition of principles of upon which the national coastal management programme is based is not included in the list of components of the national coastal management programme under s42(2). We therefore suggest that a new s42(2)(b) be inserted which reads “(b) principles for coastal management” and that the existing s42(2)(b) to (f) be consequentially relabelled (42(2)(c) to (g).

[South African Planning Institute]

Section 42(f) determines that the Minister must address the framework for co-operative governance as part of the national coastal management programme. If this framework is not put in place in a shorter time than the 6 years on national level, other spheres of government will be required to resolve conflicts without the Minister's framework. (Section 50(6)).

[Department of Environmental Affairs & Development Planning]

Insert in Section 42(2)(g):- Promotion and development of Sustainable Coastal livelihoods

[Kathy Leslie (Personal Capacity)]

2 (a) why be specific about sustainable use of resources? Rather add it as item (g) "Sustainable use of coastal resources"

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) The maintenance of the landscape and ecological integrity of the coast is regarded as crucial to the extent that it is suggested that this objective be included in 42 (2) (a).
- (ii) In regard to landscape integrity, one must bear in mind that the vision articulated in the *White Paper* opens with a statement about the diversity, beauty and richness of the coast.
- (iii) It is submitted that landscape integrity is consistently understated as a driver of good coastal management practice, in favour of more ecological and resource based arguments, and that one could conceivably attain greater achievements if greater accent was placed on these value-based concepts which find strong expression in the vision.
- (iv) While talking to issues of value, greater emphasis should similarly be placed on maintenance and optimisation of the economic value of the coast.
- (v) Finally, it is noted that the term *ecological integrity* features in the *White Paper* vision, which facilitates its listing in the Bill as a key consideration in the national coastal management programme.

[Oceanographic Research Institute]

Contents of national coastal management programme

- (1) The national coastal management programme must –
  - (a) be a policy  ctive on integrated coastal management; and

[DEAT Comments:](#)

*This section was not amended.*

### **Section 43: Identification of provincial and municipal roles in coastal management**

[Chamber of Mines of SA]

It is of critical importance that the mining industry actively participate during the preparation of the national coastal management programme, the provincial coastal management programmes and, even more importantly so, the municipal coastal management programmes. The outcomes of these programmes will have a direct impact on the mining operations.

[LEGALB]  
s43(1)

This Act may, and is likely to, in terms of s105 commence on different dates. If this is the case it will be difficult in practice to identify the exact date by which the Minister must in terms of s43(1) identify the coastal management roles and responsibilities of coastal provinces, coastal municipalities and other organs of state.

It is therefore suggest that the text “within 12 months” should read “within 12 months of the first occurring date of commencement of any section of this Act”.

[eThekweni Municipality]

Ideally the respective roles should have already been clarified and form part of this Act rather than in a separate notice. Is there not time to undertake this in parallel with the rewrite of the Bill?.

Section 43(2). This clause is illogical. One should insert the expression "intended to be" between 'authorities' and 'identified'.

[KZN Agriculture and Environmental Affairs]

43(1)	This provision would seem to be in conflict with the entire Bill which assigns the roles and responsibilities of coastal provinces, coastal municipalities and other organs of state.
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[Department of Environmental Affairs & Development Planning]

Furthermore Section 43(2) stipulates that the Minister must consult with authorities to identify roles and responsibilities in terms of coastal management. Does this include the MEC? Please clarify.

Insert in Section 43(2):- Before the notice referred to in subsection (1), the Minister must consult with the MEC's and the authorities identified in the notice.

*Part 2: Provincial coastal management programmes*

[DEAT Comments:](#)

*This section was not amended.*

**Section 44: Preparation and adoption of provincial coastal management programmes**

[Department of Environmental Affairs & Development Planning]

Section 44

Insert: - Section 44(1) The MEC in collaboration with the Provincial Coastal Committee:-

[Duineveld Coastal Association]

Section 44 (2) says the provincial MEC must inform the public about the provincial coastal management programme after it has been adopted.

Section 46 (2) likewise says a municipality must inform the public after the adoption of a municipal coastal management programme.

So, the stakeholding public is *excluded* from participation or say [inspraak] in the preparation of these coastal management plans - despite the provincial plan to be focused down to specific parts of the coastal zone ( Section 45 (2) (b) ) and the municipal coastal management plan dealing with the position in the municipal area (Section 47 (2) (a) ) and coming right down to "specific areas" within the municipality (Section 47 (3) (b) ).

Comment

Surely the intent of Section 51 is clear, that processes must include public participation. Unfortunately this principle is not clearly stated to include the process of coastal management planning preparation. Section 51 (1) ... *a power ... to be exercised in accordance with this section ...* seems to exclude other sections 44-47.

The solution would be to make Section 51 applicable to Sections 44-47.

[Endangered Wildlife Trust]

1. Section 44 - Strongly suggest the inclusion of a consultation process involving relevant stakeholders.
2. Section 44(2) - Suggest inclusion requirement for coastal management principles to be included in provincial coastal management programmes to promote consistency in decision-making
3. Section 44(3) - – In order to facilitate an integrated, coordinated and uniform approach to coastal management, we suggest that the word “may” be changed to

'must' to read "...it's coastal management programme must form part of that plan, programme or strategy"

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Provision must be made for public comment and responses and for such to be responded to prior to the finalisation of any Coastal Management Programmes, specifically at the Provincial and Municipal levels. Currently Sections 44(2) and 46(2) only provided for notification, not consultation. This is not acceptable. Section 51 does provide for proper consultation, apart from property owners specifically, and should be referred to in all areas of the Bill.

[LEGALB]  
s44(1)

Again, as pointed out in other sections, this Act may, and is likely to, in terms of s105 commence on different dates. If so, it will be difficult in practice to identify the exact date by which the Minister must in terms of s44(1) prepare and adopt a provincial coastal management programme for managing the coastal zone in the province.

It is therefore suggest that the text "within four years" should read "within 4 years of the first occurring date of commencement of any section of this Act".

s44(2)(a)(i)

The text "of the adoption of the programme; and" should read "of the adoption or amendment of the programme, as the case may be; and".

[eThekweni Municipality]

Section 44 and 46. It is suggested that it would be better if provincial coastal management programme are prepared first in order to inform municipal coastal management programme. Perhaps these two programmes need to be separate by one year in their preparation.

[Kathy Leslie (Personal Capacity)]  
(3) change may to must

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) As articulated above, provincial programmes should take their lead on key issues from the national equivalent.
- (ii) Hence the period specified for generation of provincial programmes should exceed that specified for the national one.

- (iii) Since it has been argued that a maximum of two years should be permitted for the generation of the national programme, it follows that the period for provincial programmes should be longer than two years.
- (iv) At the same time, it is submitted that the four year period currently specified is excessive, and in the circumstances, it is proposed that the period be three years.
- (v) It is noted that the provinces already have first-generation programmes, and in this sense it is unfortunate that, if we are to found provincial programmes on a national one (which in the present circumstances appears compelling, given the threats articulated in this document), the provinces cannot proceed to finalise and implement their existing programmes.
- (vi) Notwithstanding adherence to the view that the abovementioned threats are so serious as to warrant the need for their positioning, in the first instance, on the national agenda, perhaps consideration should be given to the specification in the Bill of some form of interim arrangement whereby the provinces implement their existing programmes, which then become subject to review upon production of the national programme.
- (vii) While doubts exist about the potential efficacy, across the (sea) board, of such a solution, it has to be presented in an effort to maximize the opportunity to deal with the stated threats while the national programme is formulated.
- (viii) Separately, with regard to 44 (3), surely this should be reversed, i.e. provincial coastal management programmes may form part of provincial land development plans or integrated development plans (correct terminology?), rather than vice versa?
- (ix) The difference is critical, given that the latter are not designed from coastal management points of departure.

[KZN Agriculture and Environmental Affairs]

41(2)(b) & 44(2)(b)	The manner in which the summary of the programme should be publicised should be prescribed – i.e. gazetted in the National or Provincial Government Gazette.
44 & 46	It would be better if provincial coastal management programmes are prepared first in order to inform municipal coastal management programmes. Perhaps separate their preparation by one year?

[DEAT Comments:](#)

*This section was not amended.*

## **Section 45: Contents of provincial coastal management programmes**

[Department of Environmental Affairs & Development Planning]

### Section 45

Insert in Section 45(2)(iv):- Promote and develop Sustainable Coastal Livelihoods in the province

Replace the word “may” with “must” in Section 45(3):- .....coastal management programme must include a programme of projected .....management programme.

[Ezemvelo KZN Wildlife]

Section 45 Contents of provincial coastal management programmes

Add the following to 45(1)(c)

(iii) any biodiversity sectoral or bioregional plan provided for by the National Environmental Management: Biodiversity Act 10 of 2004

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Section 456 must take into direct account Provincial Growth and Development Strategies/Plans and provincial government priorities. Explicit provision should be made for this in Section 45.

Similarly the same needs apply to Section 47 where any such programme should take account of Municipal priorities and Spatial Development Plans that are part of IDPs.

[LEGALB]

s45(1)(c)

There should, for purposes of integrated management of the programmes, be added a subsection 45(1)(c)(iii) with the text “(iii) coastal management programmes already in existence of provinces to which the province abuts in”.

s45(2)

The list of components to be included in a provincial coastal management programme should include the basic principles upon which the programme is based. However this is not listed as a component under s45(2).

We therefore suggest that a new s45(2)(b) be inserted with the text ‘(b) the coastal management principles upon which the programme will be based’, and that the existing s45(2)(b) to (d) be relabelled s45(2)(c) to (e) respectively.

[Kathy Leslie (Personal Capacity)]

2 (a) remove specific reference to sustainable use and move it to separate item (e) as in S42(2)

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) The points made under comment on Section 42 in so far as landscape and ecological integrity, as well as optimization of the coasts’ economic value, are equally applicable here.
- (ii) While the context (Sections 33 & 34 of the Bill) for estuarine management being singled out as a specific strategic focal area is understood, reservations are expressed about the identification of this resource class while other deserving classes (coastal forests, dune systems etc) do not receive mention.
- (iii) As mentioned elsewhere, the matter of design and implementation of strategies for good coastal management management practices in relation to resources not regulated by coastal management agencies (e.g. coastal forest), is likely to be challenging.
- (iv) Perhaps 45 (2) should include a provision covering the prioritization of or strategisation for other resource classes which require particular attention.
- (v) Similarly, it can be argued that 45 (2) should provide for the prioritization of or strategisation for specific geographical areas which require enhanced attention. In this sense, it is submitted that whereas Section 47 makes provision for the inclusion of such considerations in municipal programmes, the facility should be duplicated here, particularly to cover for where there is a lack of capacity or will at local level to deal with issues of this nature.

[KZN Agriculture and Environmental Affairs]

45(3)	It is considered problematic if provincial coastal management programmes are prepared without a related consideration of the projected expenditure required to implement the programme.	A provincial coastal management programme “may” include... should read “shall” or “must include...”
	This section should also reflect the implementation of special management areas.	

[Woodbridge Island Body Corporate]

11. In 45(3) we would support replacing “may” in “may include a programme of projected expenditure” with “must”.

[National Ports Authority]

What is NPA ' s role in respect of these? There must be clear indication of the Port Authority as a Parastatal: which is a distinct entity, and which is tasked in terms of the National Ports Act with ensuring port functioning as stated repeatedly above: there needs to be more involvement from NPA in the drawing up of the management plans affecting ports.

[DEAT Comments:](#)

*This section was not amended.*

### **Part 3: Municipal coastal management programmes**

#### **Section 46: Preparation and adoption of municipal coastal management programmes**

[Department of Environmental Affairs & Development Planning]

*Section 46*

46(3) No reference is made to the specific relevant sections of the Municipal Systems Act. This may not provide the public with detailed information as they require.

What is the procedure to have the National and Provincial Coastal Management Programmes being approved and implemented? Does it have to be tabled to (national and provincial) parliament for endorsement or does the Minister or MEC have the authority to sign it into being.

[Endangered Wildlife Trust]

Section 46(3) - Suggest that the term may be changed to read: “A municipality must prepare and adopt...”

[Ezemvelo KZN Wildlife]

Section 46 Preparation and adoption of municipal coastal management programmes

Subsection 46(3) Should read “A municipality must prepare...”

*The reason for this is that these programmes are fundamental to the success of this Act. The mandatory provision will ensure that parochial discretion within a municipality does not override medium to long term sustainable use of the coastal zone.*

The following is to be added to section 46:

(4) Each municipal programme must be aligned with the neighbouring coastal municipal programme.

[Friends of the Botriver]

(1)(a) two years for management plan (in four years will be into another election and new protagonists)

[[Moreland Developments (Pty) Ltd and Tongaat Hulett]

The Municipal Coastal Management Programme should be required after the completion and adoption of the Provincial Coastal Management Programme. Section 46(1) should make specific reference to this and the sequence of programme adoption.

[LEGALB]  
s46(1)(a)

Given that this Act may and is indeed likely to, in terms of s105, commence on different dates it will be difficult in practice to identify the exact date by which the municipality must in terms of s46(1) give prepare and adopt a municipal coastal management programme.

It is therefore suggest that the text “within four years” should read “within 4 years of the first occurring date of commencement of any section of this Act”.

s46(1)(b)

For reasons of clarity and practical application, it is suggested that the words “at least once every five years” be amended to read “at least once every five years after the date of adoption of the municipal coastal management programme”.

s46(2)

The text “(2) A municipality” should read “(2) A coastal municipality” for reasons of consistence with s46(1) and for general clarity and direction, as pointed out in other sections of this Bill.

s46(3)

The text of this subsection refers to “public participation requirements prescribed in terms of the Municipal Systems Act”. However, the Municipal Systems Act, No. 32 of 2000 as amended only refers to “community participation” which is a very different thing to “public participation”. In effect, as there are no public participation requirements in Act 32 of 2000, there are no public participation requirements in this Bill, and indeed, if the authorities under Act 32 of 2000 did prescribe requirements for

public participation, they were perhaps acting outside of the Act. It is suggested that as this Bill does contain text relevant to public participation (see s51 and 52) that perhaps these can be extended / amended to serve public participation requirements relevant to s46(3).

The text "(3) A municipality" should read "(3) A coastal municipality" for clarity and direction.

The text "integrated development plan and spatial development framework" should read, "integrated development plan or spatial development framework" .

Usually a section of an Act contains all that is needed for the reader to evaluate what has to be done in order to be in non-transgression of the section. This section, in referring to "public participation requirements in terms of this Act" cannot do so. It is therefore suggested that s46(3) be re-labelled s46(4), and that a new s46(3) be inserted with the text "(3) A coastal municipality must in preparing and adopting a coastal management programme comply with the public participation requirements contained in Part 5 of Chapter 6 of this Act, subject to provisions contained in section 46(4) of this Act".

[The Overstrand Conservation Foundation]

Section 46(3) says that the coastal zone may be integrated into provincial and municipal spatial development frameworks. This integration must become obligatory.

[eThekweni Municipality]

Section 46(3) indicates that a municipality 'may' prepare and adopt a coastal management plan. This surely must be changed to must given that the IDP is legislated as the guiding plan for management of development within the municipality. If this is left as optional for municipalities then it is likely that it will not be integrated into its planning making a mockery of the title of this proposed Act.

Section 46 and 47. This gives a fairly general overview of what should be included in the Municipal CMPs however it would be useful to develop generic CMP for municipalities to use as a starting basis. The Municipal coastal management programme should not be restricted purely to the land areas which fall in that jurisdiction but also the adjacent seas.

[Woodbridge Island Body Corporate]

12. In 46(3) we would support replacing "may" in "A municipality may prepare and adopt" with "must".

[Department of Minerals and Energy]

Part 3: 46-47: As long as the Municipal CMP is in line with the IDP, it is acceptable to DME since mine closure in terms of the MPRDA requires that mine closure be in line with the relevant IDP of the Municipality.

[Kathy Leslie (Personal Capacity)]

Are these at district and/or at local level?

(3) Surely it would make sense for the CMP to be integrated with the EMS, IDP or suchlike at least by the first CMP review i.e. within 9 years? They MUST be integrated in order to ensure INTEGRATED coastal management and to ensure that this Act has any impact at all.

[Robert Stegmann - Reserve Manager: ELCNR (Personal Capacity)]

As a manager of coastal protected areas I am concerned that a mandatory limit needs to be determined to offset development from the boundary of the protected areas. Currently the Municipalities are not enforcing setback lines and developments are taking place against the protected areas fences. This has management implications in that the developer insists that portions of the protected areas are cleared for firebreaks etc. If a compulsory setback line was determined then the conservation of biodiversity would be facilitated and along with the management of the protected areas. On the East London Coast developers have built onto and into the secondary sand dunes which abut protected areas, although relatively stable they are still a sensitive area and construction should not be facilitated in this area. A buffer zone would halt that activity. To assist the Municipalities to realise the value of their coastline part or a section of the local coastal zone management plan needs to elaborate on the resource economics. Possibly when the value of the coast is indicated in the form of a local context there would be considerably more support for maintaining buffer zones, (Section 46.)

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) Factors raised above in relation to suitable timeframes for the generation of national and provincial programmes, and specifically considerations related to the desired cascading nature of the programmes, have reference here.
- (ii) Taking these factors into account, it is logical to suggest that the period proposed in the Bill for the generation of municipal programmes, viz. four years, is appropriate.
- (iii) It is however stressed that in the event of provisions being introduced into the Bill to cover the short-term adoption of existing provincial programmes, the period applicable to the generation of municipal programmes could be shortened, although such adjustments would have to contain appropriate qualifications to allow for review after the finalization of the national programme.
- (iv) The generation of coastal management programmes is driven by different imperatives to those underpinning integrated development plans and spatial development frameworks, and the substituting of public participation processes conducted in terms of the latter for processes required for the former, is not supported.

[KZN Agriculture and Environmental Affairs]

44 & 46	It would be better if provincial coastal management programmes are prepared first in order to inform municipal coastal management programmes. Perhaps separate their preparation by one year?
46	The financial implications to municipalities in developing and implementing a coastal management programme need to be considered.
	Are ports to be included as part of a municipality's coastal management programme? Ports fall under the management and administration of Transnet.

[Belastingbetalersvereniging]

Art. 46. Die vraag na welke mun. werklik in die wetgewer se gedagte is ontstaan. Die woordomsyrywing van mun. dui op Dist. Mun. tensy by ooreenkoms gereëet plaaslike mun. As die plaaslike mun. nie wil ooreenkom ni? Die subart. (3) skep egter die indruk dat dit gaan om 'n plaaslike mun. waar dit na die GOP en ruimtelike ontwikkelingsprogram verwys.

[DEAT Comments:](#)

*This section was not amended.*

#### **Section 47: Contents of municipal coastal management programmes**

[Wildlife and Environmental Society of SA]

Part 3: Municipal coastal management programmes. (3):

The IDP should inform that programme and thus the programme should fall as a separate document for implementation with a specific budget. The CDP could be linked to the LUMS, rather than the IDP.

[Endangered Wildlife Trust]

Section 47(2) - Suggest inclusion requirement for coastal management principles to be included in municipal coastal management programmes to promote consistency in decision-making.

[Wildlife and Environmental Society of SA]

47. (3) (b): The programme should clearly set up structures for management of diversity within a municipal coastline which include coastal precinct plans and programmes, geared for specific areas of a local authority e.g. Rural vs urban areas within a single local authority.

[Ezemvelo KZN Wildlife]

Add the following to 47(1)(b):

(iii) the Provincial Estuarine Management Protocol.

Add to Section 47 the following:

(4) The municipality must report to the Provincial authority or PCC, where applicable) on the achievement on the alignment of the coastal management programme with the National and Provincial Estuarine Management Protocol, the biodiversity sectoral and bioregional plans and any other plan that provides for the sustainable use of the coastal zone

(5) The authority must review and recommend necessary amendments to the municipal programmes.

[LEGALB]

s47(1)(b)(i)

The text “national and provincial coastal management programmes” should read “national and provincial coastal management programmes of the province within which the coastal municipality lies or to which it abuts”.

s47(2)

The list of components to be included in a municipal coastal management programme should include the basic principles upon which the programme is based. However this is not listed as a component under s47(2).

We therefore suggest that a new s47(2)(b) be inserted with the text ‘(b) the coastal management principles upon which the programme will be based’, and that the existing s47(2)(b) to (d) be relabelled s47(2)(c) to (e) respectively.

[Kathy Leslie (Personal Capacity)]

2 (a) again move reference to sustainable resources to separate item.

3(a) move to end of (2). Cannot implement 2 a-d without 3 (a).

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) One is not convinced that it is going to be legally realistic and practical for estuarine management plans to be “owned” at municipal level, and in this sense reservations are expressed about their incorporation into municipal programmes.
- (ii) However, if their inclusion does not presuppose municipal ownership, these reservations fall away.

[KZN Agriculture and Environmental Affairs]

47(3)	Coastal access needs to be motivated and reflected on in municipal coastal management programmes.
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[Oceanographic Research Institute]

- (1) A municipal coastal management programme must –
- (a) be a coherent municipal policy directive for the management of the coastal zone within the jurisdiction of the municipality; and
  - (b) be consistent with –
    - (i) the national and provincial coastal management programmes; 
    - (ii) the National Estuarine Management Protocol.

[Woodbridge Island Body Corporate]

13. In 47(3) we would support replacing “may” in “A municipal coastal management programme may include” with “must”.

[SANBI]

Contents of municipal coastal management programmes (S47)

Municipalities should be required to integrate any listed threatened or protected coastal ecosystems explicitly into their coastal management programme. Municipalities for which a bioregional plan has been published should be required to integrate any coastal critical biodiversity areas identified in the bioregional plan explicitly into their coastal management programme.

[DEAT Comments:](#)

*This section was not amended.*

## **Section 48: By-laws**

[LEGALB]

No comment, but to state that NEMA provisions on by-laws may be at odd with provisions for and by-laws developed under this Bill, and our comment under s6 regarding possible conflict in legislation should be read in here.

[The Overstrand Conservation Foundation]

Section 48 says that A Municipality may administer its coastal management programme and may make by-laws to provide for the implementation, administration and enforcement of the coastal management programme. These must become obligatory; municipalities must administer coastal management programmes, must provide budgets to enable this administration and must make all by-laws necessary to effect this administration.

[Friends of the Botriver]

48. Bylaws MUST be made

[DEAT Comments:](#)

*This section was not amended.*

**Part 4: Co-ordination and alignment of plans and coastal management programmes**

**Section 49: Alignment of certain plans with coastal management programmes**

[LEGALB]

This section provides that an environmental implementation or environmental management plan in terms of Chapter 3 of NEMA must be aligned with the national coastal management programme and any applicable provincial coastal management programme.

This raises the question, in circumstances where there is a conflict between this Act and NEMA, of which Act (this or NEMA) would hold sway.

From a reading of NEMA, it appears that it will be NEMA, because it portrays itself as the Act under which other specific environmental Acts (such as this one) shall fall. For instance: s31A of NEMA would provide for the enforcement of this Bill once it is an Act, for the meaning of its words, and for offences under it to be offences in terms of Act 451 of 1977. s31D provides for the designation of persons as environmental management inspectors for the enforcement of this Bill as an Act. s31F would provide that an environmental inspector exercising powers or performing duties under this Bill would have to produce an identify card on demand, and that s/he could inspect or question a person about documents relevant to this Bill, and carry out duties relevant to this Bill. s31O would provide for the powers of the South African Police Service in relation to this Bill, and so on.

However, from a reading of this Act, especially s6 and this s49, it appears that this Bill envisages that where there is a conflict with NEMA, it would hold sway.

It is necessary to clarify, perhaps in this Bill or even by way of an amendment to NEMA, where each Act would stand in relation to each other in case of a conflict between the two.

[eThekweni Municipality]

This part is strongly supported by the municipality in that it increases the resources available to coastal managers and raises public involvement in the management of the coast.

[Blue Horizon Developments]

This section once again highlights the inappropriate nature of the national coastal management plan. The national coastal management plan is given priority over the other statutory development plans of municipalities such as integrated development plans (or IDPs) adopted by municipalities in terms of the Local Government: Municipal Systems Act.<sup>11</sup> The current wording of the Bill is such that these other statutory plans must be aligned with the coastal management programme and not vice versa. This is entirely at odds with the primary developmental role given to municipalities in the local government legislation.

By contrast section 48(1)(b) of the Biodiversity Act provides that national biodiversity framework, a bioregional plan and a biodiversity management plan may not be in conflict with any IDP adopted by municipalities. This is an appropriate acknowledgement of the developmental role of the municipality which is entirely discounted by the provisions of the Coastal Bill. At the least alignment provisions should be the same as the Biodiversity Act. (However, as we set out above in our view such national coastal management plans should be removed from the statute.)

In addition, the Coastal Bill does not provide for a consultative process in the same way that the Biodiversity Act requires when adopting or approving a national biodiversity framework. The Biodiversity Act requires that before adopting a national biodiversity framework, a bioregional plan or a biodiversity management plan, the Minister must follow a consultative process which involves consulting all cabinet members whose areas of responsibility may be affected by the exercise of the power, consult with the MEC for Environmental Affairs of each province that may be affected by the exercise of the power (in accordance with co-operative governance set out in chapter 3 of the Constitution) and also allow public participation.<sup>12</sup>

It is submitted that the adoption of the national coastal management plan should at least require consultation with all relevant organs of state in all spheres of government and in particular, consultation with municipalities and in some cases the consent of the municipalities that currently have authority over these areas.

[Kathy Leslie (Personal Capacity)]

YES!!! Very important. Now link this back to 46 (3), 44 (3) and 34 (3).

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) It is presumably intended that the provisions of this Section will ascribe “higher” status to national and coastal management programmes than the other plans which are mentioned.

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<sup>11</sup> Act 32 of 2000.

<sup>12</sup> Section 99 of the Coastal Bill.

- (ii) If so, it is urged that every effort be exercised to ensure that this hierarchy is legally unequivocal, if such effort has not already been exercised and the architects of the Bill are not already satisfied that the provision is as secure as it can be.
- (iii) In any event, the provision is regarded as an excellent one, which could go a significant distance in addressing the strategic challenges as alluded to in various statements in this submission.
- (iv) Nevertheless, it can be anticipated that attaining the specified alignment will be most demanding, from both a technical and political perspective.
- (v) Should spatial development frameworks not receive specific mention in this Section?

[KZN Agriculture and Environmental Affairs]

49	The responsibility to assess and align certain plans (as proposed) must be assigned in the Bill.
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[Deborah Vromans - SANParks Knysna (Personal Capacity)]

1. Section 49: Coastal Management Programmes

- Comment (1a): Linkage and incorporation into Spatial Development Frameworks (SDF) should not be optional but prescriptive. Any municipality that must adopt an integrated coastal programme (ICP) in terms of the Local Government: Municipal Systems Act, 2000, must – (a) incorporate the integrated coastal management plan as part of the IDP and SDF.
- Motivation:
  1. The SDF is already a required document and the ICP can and should be an addition to the IDP, as it is an integrated plan, which will ensure linkages etc.
  2. The SDF is supposed to be guided by Strategic Environmental Assessments and other relevant legislation (see below).
  3. EIA regulations are inadequate to control development where it should not occur, therefore: Although the Bill states that certain activities (development activities) may not occur along the coastal zone without approval, this still provides opportunity for development through the EIA process. Past and present track records prove unanimously that this type of approach is not working i.e. it provides an opportunity for development to occur, as the EIA is not a strategic tool no matter how we attempt to improve its capacity as such a tool. As a result, more prescriptive (boldness of legislative control) and legislatively supported spatial locations along the coast designated as no

development areas is a necessity to prevent linear coastal development.

4. Strategic spatial input in terms of no development areas along the coast is imperative, as this is really what we are attempting to achieve i.e. spatial control of linear coastal development. SDFs provide recommendations in terms of areas that should not be developed providing strategic areas located along the coast that should prevent linear and ad hoc coastal development. Many stakeholders are aware of this critical need, as demonstrated in the DEAT presentation. The Act should therefore provide legal support and be very clear that this is one of the main objectives.
  5. The provincial government (Land Use Management) is tasked with commenting on municipal SDFs, who are currently attempting to establish a committee specifically tasked with this aspect. The SDF therefore provides an opportunity for provincial government to comment on the documents adequacy.
  6. SDFs, although not a regulation, do have statutory capacity where approval from provincial government is necessary before it is passed by the council. The ICP will therefore have additional legislative support i.e. is more binding.
- Comment (1b): A statement with respect to the prevention of linear development along the coast as an objective should be provided and should be linked to the principle of nodal development, urban edge delineation and the designation of no development areas. This will ensure clarity of spatial planning objectives i.e. we know this is what is necessary, as a result, legislation needs to be bold and must provide provincial government the justification to refuse development (EIA) applications that are not supportive in terms of preventing linear development and strategic biodiversity issues along the coast. Local municipalities also need to ensure refusal of inappropriate development applications that are not subject to the EIA process.
  - Motivation:
    1. As per point 2 above, namely: Many stakeholders (government, conservation bodies, non-governmental organizations, general public) are aware of this critical need, as demonstrated in the DEAT presentation. The Act should therefore provide legal support and be very clear that this is one of the main objectives.
    2. More prescriptive and legislatively supported spatial locations along the coast designated as no development.
    3. Legislation is not prescriptive enough. The General Authorisations in terms of the National Water Act are a good example of prescriptive legislation/regulation.

4. We need to learn to say no where no is due and have clear legislative support for this.
- Comment (1c): Content alignment with the provincial SDFs should be stated, particularly with reference to Core 1, Core 2, Buffer 1 and Buffer 2 categories.
  - Motivation:
    5. To ensure clarity of content.
    6. According to policy, the SDFs must be consistent with the Provincial Spatial Development Framework (PSDF, 2005). The PSDF provides categories, namely Core 1, Core 2, Buffer 1 and Buffer 2, which provide classifications directly related to biodiversity priority pattern (e.g. vegetation type, habitat type) & process areas (e.g. river corridors, coastal corridors etc) and land use guidelines & land use management guidelines. For example: Core 1 includes Critically Endangered areas that prescribes no development except conservation oriented development i.e. no housing, no golf estates, no resorts etc. The Act can therefore give legislative effect of the policy i.e. stricter control of development along the coast in terms of spatial context.
    7. The provincial government (Land Use Management) is tasked with commenting on municipal SDFs, who are currently attempting to establish a committee specifically tasked with this aspect. The SDF therefore provides an opportunity for provincial government to comment of the documents adequacy in terms of alignment with provincial and therefore strategic spatial planning.
  - Comment (1d): Appropriate zoning for areas delineated as no development areas i.e. Core 1, Core 2 (sensitive areas) in terms of the Municipal Zoning Scheme and Provincial Zoning Scheme By-Law.
  - Motivation:
    1. Provides additional legislative support in terms of preventing inappropriate development rights.
  - Comment (1e): Content alignment with provincial bioregional plans and/or other biodiversity plans. The integrated coastal management plan, must – (a) align its plan with the national biodiversity framework and any applicable bioregional and/or biodiversity plan (partly provided in Section 50 of the Bill).
  - Motivation:
    2. To ensure clarity of content.
    3. There are numerous legislation that need to be integrated. This is largely provided for in Section 50 of the Bill. The word 'integrated' being the operative word. If the integrated coastal management programme seeks to be integrated, it needs to align itself with other relevant legislation, namely the

- Biodiversity Act. The Biodiversity Act also allows for strategic or bioregional (landscape) plans, which will support the need for strategic identification of no development areas along the coast.
4. The PSDF is strongly aligned with the policy of bioregional planning (DEADP), which is linked to the above PSDF categories and the Biodiversity Act. The Biodiversity Act deals with the compilation of bioregional plans, which states that (2) An organ of state that must prepare an environmental implementation or environmental management plan in terms of Chapter 3 of the National Environmental Management Act, and a municipality that must adopt an integrated development plan in terms of the Local Government: Municipal Systems Act, 2000, must – (a) align its plan with the national biodiversity framework and any applicable bioregional plan;
  5. Currently the CAPE programme has a number of biodiversity initiatives or biodiversity plans underway. Relevant biodiversity plans are the Cape Fine Scale Biodiversity Plan, Garden Route Initiative, Gouritz Initiative, Agulhas Biodiversity Initiative, Agulhas Marine Biodiversity Plan. These are consistent with bioregional planning (i.e. Biodiversity Act) policy and provides the framework into which an integrated coastal programme should fit, for example: a Core 1 area that is a no development area needs to be identified as such in the integrated coastal programme.
  6. Provincial government (DEADP) is currently undertaking a provincial biodiversity plan (into which the above plans will be incorporated once complete) which the integrated coastal plan needs to be incorporated or aligned with.

[DEAT Comments:](#)

*This section was not amended.*

**Section 50: Ensuring consistency between coastal management programmes and other statutory plans**

Ensuring consistency between coastal management programmes and other statutory plans (S50)

This section refers to bioregional plans published in terms of the Biodiversity Act as an example of “other statutory plans”. It may be possible to give additional guidance on how to ensure consistency between bioregional plans and coastal management programmes.

[Wendy-Leah Dewberry (Noetzie Conservancy Association) and Charmaine Cumberlege]

50. "Ensuring consistency between coastal management programs and other statutory plans

Punitive measures to individuals in positions of power who make or allow decisions that are contrary to the essence of this bill. Too many times in the past we have heard the lament: "But HOW did that get passed?" There must be recourse for greased palms, nepotism and other holes in the system.

[LEGALB]  
s50(1)

The text in the first paragraph of this subsection "and that may affect" should we think for purposes of grammatical correctness read "that may affect".

s50(4)

The text "Each municipality in the coastal zone" should we think for purposes of grammatical correctness read "Each municipality within whose boundaries a coastal zone occurs".

[The Overstrand Conservation Foundation]

Section 50(b) says "an integrated development plan adopted by a municipality in terms of the Municipal Systems Act." This must be amended to read "an integrated development plan including the Spatial Development Plan adopted by a municipality in terms of the Municipal Systems Act."

[Kathy Leslie (Personal Capacity)]

1 (g) add Geographic Area mapping in terms of W Cape EIA supplementation regulations (hopefully to be finalised in 2007)

1(h) include MLRA Act demarcations??

(4) "in the coastal zone" is obvious. Include coastal management plan here.

[Department of Environmental Affairs & Development Planning]

50(2) & (3) Clarity should be provided in terms of how "consistency" will be obtained and maintained between the National, Provincial and Municipal coastal management plans and other statutory plans.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

(i) Again, should spatial development frameworks not receive specific mention in 50 (1) (b)?

(ii) 50 (4) does not refer to statutory plans which are particular to or have a bearing on the coast – surely this is an omission?

- (iii) The use of the word “discuss” in 50 (6) is discouraged. It is submitted that the provision would be better articulated by reference to *engagement with a view to resolution of the conflict*, or suchlike.

[KZN Agriculture and Environmental Affairs]

50(1)	This clause needs to be extracted and included as a definition.
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[Dr S.R. Pollard (AWARD)]

Please note Part 4, Section 50 MUST talk to alignment with the Catchment Management Strategies that are required for all 19 Water Management Areas. This will include coastal catchments. Please refer to Guidelines for Catchment Management Strategies which will go onto the DWAF website next week. You are referred to Appendix 3. Please feel free to contact Bill Rowston, Derek Weston and Johnny Beumer for any further questions.

[Department of Environmental Affairs & Development Planning]

Section 50(6) should read Section 50(5) – incorrect numbering  
Likewise change Section 50(7) to section 50(6) and add “..... and principles of Integrated Coastal Management” after the word Act.  
Change Section 50(8) to section 50(7).

[eThekweni Municipality]

Section 50(6). This clause involves what is an intergovernmental dispute which ought to be dealt with in terms of the Intergovernmental Relations Framework Act, 2005 (Act. 13 of 2005).

Part 4 and 5 - No mention is made here of land use schemes – what is the situation with regard to a lack of consistency between CMPs and land use schemes?

[Oceanographic Research Institute]

Conflicts between a coastal management programme and other statutory plans must be resolved in a manner that best promotes the objects of this Act. 

[DEAT Comments:](#)

*This section was not amended.*

## **Part 5: Public participation**

### **Sectin 51: Consultative processes**

[Endangered Wildlife Trust]

1. Support the public participation outlined in Part 5. Suggest including specific reference to who an interested and affected party is if not defined in definitions section.
2. According to Section 51(2) it appears that interested and affected parties can only be organs of state whose area of responsibility may be significantly affected. However Section 52(1) states that "...request an organ of state, a person making an application under this Act, or any interested and affected party, to provide ...". Suggest clarification of whether interested and affected parties are limited to organs of state.

[Kommetjie Residents & Ratepayers Association]

- Public participation processes should aim at reaching consensus with public rather than simply showing consultation happened.(p50)

[Department of Environmental Affairs & Development Planning]

The notification of I&AP's / public is not detailed enough, no indication of time limits either. Has consideration been given to the Access to Information Act and the Administrative Justice Act, or has the public participation process been designed in terms of the requirements of the Municipal Systems Act.

[Department of Environmental Affairs & Development Planning]

Section 51(3)(b) delete the redundant word "an" after the word allow.

[LEGALB]

s51(3)(b): The text "allow an interested or affected parties" should read, "allow interested or affected parties".

s51(1)

This subsection can be read as either indicating that s51 will specify which powers the Minister, MEC, municipality or other person requires to be exercised in accordance with this section, or as indicating that any exercise of power by the Minister, MEC, municipality or other person under this Act must be exercised in accordance with this section.

If the first interpretation is the correct interpretation of this section, then it must be pointed out that s51 does not specify any particular powers which the Minister, MEC, municipality or other person must exercise in terms of s51.

s51(2)

For purposes of simple practical application of this Bill as an Act we would suggest that the text “(2) For the purposes of subsection (1) any national” should read “(2) For the purpose of subsection (1), but without limiting the generality thereof, any national”.

s51(3)

This section refers to a person exercising a power referred to in subsection (1), but no particular power is referred to in subsection (1). Please see comment iro s51(1).

The text “any group of interested and affected parties; and” should read “any group of interested and affected parties, or unfairly exclude any individual; and”.

s51(4)

What does the word “meaningful” mean in the context of s51(4(b))? The whole object of s51 is to provide for interested and affected parties to make comment and if that whole process is pre-empted by a decision that the comment is not meaningful, the whole purpose of s51 of the Act has de facto been fulfilled.

Therefore, the word meaningful is at most nugatory, and at worst preventative of proper participation process taking place in terms of s51 and we therefore suggest that the text “meaningful representations and objections” be replaced by the text “informed presentations and objections” .

[Blue Horizon Developments]

The Coastal Bill provides for a general consultative process which enables interested and affected parties to participate in decisions made in terms of the Bill. However, in most cases an extensive public participation would in any event be required under NEMA i.e. for the purposes of obtaining an environmental authorisation for an identified activity. This process should be harmonised with the NEMA EIA public participation process so as to avoid duplication of processes. The Coastal Bill should provide that compliance with the EIA Regulations public participation requirements prescribed in NEMA and the EIA Regulations during an EIA for certain specified activities (most of which are also identified under the Coastal Bill) will be regarded as compliance with the public participation requirements in terms of the Bill.

[Belastingbetalersvereniging]

Art. 51. Subartikel (2) bepaal dat enige nasionale, provinsiale of munisipale liggaam as “interested and affected parties” beskou sal word in die konsultasieproses. Dit is in orde solank die bepaling nie uitgelê word as sou dit eksklusief bedoel word nie. Die invoeging van die uitdrukking “inter alia” na die woord “must”, blyk raadsaam te wees.

Subart. 3(b) maak voorsiening vir “oral representations or objections”. Beswaarmakers behoort die geleentheid te hê om hul voorleggings ook op skrif te maak.

[Oceanographic Research Institute]

(4) If a person exercising a power referred to in subsection (1) consults interested and affected parties by way of a notice and comment procedure, the notice must, unless otherwise prescribed -

- (a) **be published or broadcast in a manner that is reasonably likely to bring it to the attention of interested and affected parties, including if necessary, by publishing or broadcasting it in more than one official language and in more than one form of media;**
- (b) **contain sufficient information to enable interested and affected parties to make meaningful representation or objections, and if appropriate, state where to obtain further information; and**
- (c) **explain how interested and affected parties may make representations and participate in the decision-making process.**

**Such a person must provide reasonable acknowledgement and feedback to the comments and objections received from stakeholders etc**

[DEAT Comments:](#)

*This section was amended by changing “party” to “parties”.*

## **Section 52: Commenting and provision of information**

[LEGALB]

s52(1): The word “it” as used in this subsection is inappropriate as some decision-makers under this Act should be referred to as he or she.

s52(1)

Would a decision-maker referred to in this section of the Bill be able to make a decision at all if information or comment provided is still believed by the decision-maker to insufficient to make a decision? This section appears to contain a logical inconsistency, which would make its practical application difficult.

s52(2)

Recent case law has, we believe, provided that blanket provisions such as this, precluding submission and consideration of comment for reason of late submission alone, are unreasonable. In the face of such case law, to have such a clause, could

be negatively interpreted as existing merely for the benefit of those processing submissions, at the expense of principles of participation.

It could be argued that the provisions of s52(3) take account of such case law. However, we do not think so because our reading of this section of the Bill is that the decision-maker may under s52(2) decide that the person who is out of time with his comment has no comment to make, and that once this decision is made, the decision-maker is not obliged to proceed to consider whether or not he or she should apply s52(3) because that would in the face of his decision under s52(2) be made nugatory.

s52(3)(a)

Please see comment on s52(2) above. We would suggest that the text "(a) grant a person" should read "(a) on application grant a person" .

ss52(3)(b)

Again, we would suggest that the text "(a) grant a person" should read "(a) on application grant a person" .

Further, if the decision-maker grants a person an extension under s52(3)(a), this grant would be made nugatory if the decision-maker did not consider the comment or information received in terms of that grant.

Therefore, it is suggested that the text in s52(3)(b) " , if it is satisfied that there are exceptional circumstances that justify doing so" be replaced with "."

[eThekweni Municipality]

A decision maker should have the power to subpoena person with information "duces tacum". If the person refuses to bring the info he should be guilty of an offence unless he can claim the normal rights under the Constitution.

[Kathy Leslie (Personal Capacity)]

3(a) include "reasonable extension ...."

[KZN Agriculture and Environmental Affairs]

52	How does the implementation of this provision relate to and impact on the implementation of NEMA's EIA regulations?
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[DEAT Comments:](#)

*This section was amended to read:*

"(1) A decision-maker that believes that there is sufficient information to make a decision that it is required by this Act to make, may at any time within the period

allowed for making the decision, in writing request an organ of state, a person making an application under this Act, or any interested and affected party, to provide information or to comment within a specified period.”

## **Part 6: Review of coastal management programmes**

### **Section 53: Minister’s powers to review coastal management programmes**

[Department of Environmental Affairs & Development Planning]

#### Section 53

Delete section 53(5): - MEC should have the discretion to review municipal Coastal Management Programmes. This provision seems like interference from the Minister into matters falling in the ambit of the MEC. The Minister should only be allowed to interfere if such a matters has been brought to her attention. However, procedures surrounding this must first be established.

[LEGALB]

s53(1) to (5)

It is not clear from the heading of this Act that this section provides only for the Minister’s review of provincial coastal management programmes.

Therefore, we suggest that the text “the coastal management programme” which occurs twice in s53(2) should read “the provincial coastal management programme”.

Alternatively, we suggest that the title of the section be relabelled “Minister’s and MEC’s Review of Coastal Management Programmes” and that s53(5) should be relabelled s53(2), and the existing s53(2) to (4) should be relabelled s53(3) to (5) respectively.

[eThekweni Municipality]

Section 53(2)(d) What are the ‘coastal management principles’ mentioned in this clause?. We understand that these are the principles in the White paper for sustainable coastal development in South Africa and therefore these must be explicated stated in this Act. These ‘coastal management principles’ deserve mention in the definitions.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

53 (2) (d) refers to “the coastal management principles.” Presumably this is a reference

to the principles which were excised from previous versions of the Bill, and is an error.

[KZN Agriculture and Environmental Affairs]

53	This section only makes reference to the review of provincial coastal management programmes. What about the national programme?	Section should include the review of the national coastal management programme as proposed in 41(1)(b).
53(2)(d)	What are the “coastal management principles”?	Add to definitions.

[Belastingbetalersvereniging]

Art. 53,54. Kan die hersiening van die bestuursplanne onafhanklik van mekaar geskied of moet daar wedersyds inspraak wees? Het mun. geen inspraak in wysiging van hul bestuursplanne nie? Weereens blyk dit date en nasionale liggaam meer effektief kan wees met insette van provinsies. In die verband moet gelet word op die bepaling van art. 98 wat oorlegpleging met mun. vereis. Die bepalings moet derhalwe onderhewig aan die nakoming van art. 98 gemaak word.

Hfst. 8 ‘n bepaling vir die hantering van ligbesoedeling moet in die hoofstuk ingevoeg word.

#### **Section 54: Review of municipal coastal management programmes**

[Department of Environmental Affairs & Development Planning]

##### Section 54

Replace the “provincial coastal management“with “Municipal coastal Management “in Section 54(3)

[LEGALB]

s54(2)

The text “the coastal management programme” should read “a municipal coastal management programme”.

s54(3)

The text “a provincial coastal management programme” should read “a municipal coastal management programme”.

s54(4)

The text “a municipal coastal management programme” should read “its municipal coastal management programme”.

[Kathy Leslie (Personal Capacity)]

(2) should be the same as S53 (2)

(3) replace "provincial coastal management plan" with "municipal pcmp"

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) While 54 (3) makes provision for the MEC to consider the advice of the Provincial Coastal Committee, it does not require him to seek it.
- (ii) Perhaps it is believed that this requirement is unequivocally implicit in the provision?

[KZN Agriculture and Environmental Affairs]

54(3)	Should "...provincial coastal management programme..." on the 1 <sup>st</sup> line not read "...municipal coastal management programme..."?	Correct.
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[EIA, Nelson Mandela Bay Metropolitan Municipality]

Error on page 52, section 54 (3). It should read " If, after considering the advice of the municipal official...".

[DEAT Comments:](#)

*This section was amended to read:*

“(3) If, after considering the advice of the Provincial Coastal Committee, the MEC believes that a municipal coastal management programme does not meet all the criteria referred to in subsection (2), the MEC must by notice to the municipality concerned, require the municipality to amend or replace the municipal coastal management programme in order to meet the requirements of the MEC within a reasonable period, which must be specified in the notice.”

## **Part 7: Coastal zoning schemes**

### **Section 55: Zoning schemes for areas within coastal zone**

[Oceanographic Research Institute]

[Department of Environmental Affairs & Development Planning]

#### Section 55

Section 55 (3) unconstitutional and taking away rights

Section 55 (5) needs to be addressed

[Ezemvelo KZN Wildlife]

Add to subsection 55(1) the following:

(v) identify areas for the establishment of protected areas and protected environments.

[SANBI]

Zoning schemes for areas within coastal zone (S55)

A coastal zoning scheme should be consistent with or at least take into account any applicable published bioregional plan(s), and should take into account any listed threatened or protected coastal ecosystems.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

The provision for Coastal Zoning Scheme (Section 55) is not supported as there are already in existence formal Town Planning Schemes across all Municipalities and often these already confer rights to property. If the intention is to review the areas along the coast within Town Planning Schemes, then this should be done via the normal Town Planning Ordinance provisions. Section 56 does provide for this to an extent but then also provides, in subsection (2), for there to be different schemes. It is reiterated that there are already in existing Town Planning Schemes (“Land Use Schemes”) which must be considered and respected.

The issue of private property rights does however have to be considered and accounted for and respected in accordance with the Constitution.

[Adrienne Edgson (Personal Capacity)]

What is the time-span for putting in place the Coastal Zoning Scheme?

Surely this should be linked with a Town Planning Scheme/ LUMS – not the IDP. In smaller municipalities the IDP is nothing more than a wish list which is not looked into by the Minister – probably because of the smallness and insignificance of the municipality.

[Department of Environmental Affairs & Development Planning]

Section 55 stipulates that a “coastal zoning scheme” established by the National Minister takes precedence over any other “coastal zoning scheme”. This terminology is confusing, since no “other coastal zoning scheme” exists at present. In the “Brief Guide to assist the public participation process” booklet reference is made to “zoning schemes”. The booklet states that Section 55 gives the various authorities responsible for coastal management (including marine areas), the power to establish zoning schemes and section 56 requires that land use schemes prepared in terms of other legislation be consistent with coastal zoning schemes. It is also stated that a coastal zoning scheme may not create any rights to use land or coastal waters. If, however, the coastal zoning scheme refers to a Municipality’s Zoning Schemes it is problematic, since the main purpose of the latter is to allocate use rights and is the

only tool to effectively manage land use. This, therefore, totally contradicts the purpose of 'town planning' Zoning Schemes which, as already mentioned, applies to all Municipalities within the Western Cape Province. This will take away existing rights and might be construed as unconstitutional. The Bill is to a certain extent dependant land management mechanism, zoning schemes and Spatial Development Frameworks (SDF).

[Department of Environmental Affairs & Development Planning]

- Part 6: Section 55 and 56- the use of coastal zoning schemes will cause confusion with the existing range of zoning schemes that are already in use in municipalities;

[LEGAL B]  
s55(1)

No provision is made that a municipal coastal management programme be consistent with a zoning scheme within a coastal zone.

s55(3)(d)

As far as we can tell, other than a municipality, only the Minister, MEC, or management authority may establish a scheme. Therefore, a coastal zoning scheme established by a municipality would not take precedence over any a coastal zoning scheme established by anyone other than the Minister, MEC or management authority.

If this reading of the Bill is correct then s55(3)(d) is unnecessary and could be deleted.

s55(4)

It is not clear whether a municipality has the necessary jurisdiction to establish a coastal zoning scheme that would extend into the sea further than 500 metres from the high water mark.

If a municipality does not jurisdiction that extends further than 500 metres into the sea from the high water mark, then it would not have the power to establish such a coastal zoning scheme.

We suggest that the jurisdiction of municipalities into the area of the sea be established and that their power to establish such coastal zoning schemes be clarified in the Bill.

s55(5)

This subsection provides that a coastal zoning scheme may not create any rights to use land or coastal waters. It is suggested that, because of this negative phrasing, that the definition of 'coastal zoning scheme' in s1 also be phrased in the negative.

Therefore, in the s1 definition of a coastal zoning scheme, it is suggested that the text "(a) reserves defined areas within the coastal zone to be used exclusively or mainly for specified purposes" should read "(a) reserves defined areas within the coastal zone which may not be used for anything other specified purposes".

[eThekweni Municipality]

A good idea but what will happen in practice when a municipal land-use scheme and a zoning scheme are in conflict? Potential conflict between land use schemes and coastal zoning schemes may arise where land use schemes already exist and therefore pre-date the coastal zoning scheme. Section 56 states that a coastal zoning scheme will prevail where it conflicts with a land use scheme established after the commencement of the Act. However, it is silent about land use schemes established prior to the commencement of the Act. Perhaps this could be addressed by requiring local authorities to re-visit existing land-use schemes within a certain time period.

Section 56(2). This Clause violates the principle of legislative interpretation that the later law overrides the earlier. A land use scheme may be included in bylaws which are now original legislation. As original legislation, they should not fall to what is clearly subordinate legislation trespassing into their Schedule 4B matter.

[South African Planning Institute]

Part 6: Section 55 and 56: The use of "coastal Zoning Schemes" will cause confusion with the existing range of Zoning Schemes that are already in use in all Municipalities. It is suggested that the terminology be amended to something like "Coastal Area Guidelines".

[Kathy Leslie (Personal Capacity)]

Find this section very confusing (maybe I'm tired!)

(4) "... 500metres seaward of the HWM..."

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) The actual, envisaged purpose underlying Part 6 of the Bill is unclear.
- (ii) To a degree, the situation is not helped by the discrepancies which have been pointed out between land use planning terminology, and terminology as used in the Act.
- (iii) As pointed out elsewhere, these crossovers need to be dealt with comprehensively and conclusively.

- (iv) The matter of hierarchies involving schemes proclaimed in terms of the Bill and those formulated in terms of land use planning legislation, needs to be addressed simultaneously.
- (v) In the circumstances it is difficult to comment on the usefulness of this Part of the Bill, and on whether the objectives which underpin it can be achieved through other mechanisms, e.g. land use planning legislation or coastal management programmes.
- (vi) Concern is expressed in relation to 55 (2) (b), in so far as local (municipal) nature reserves are concerned. Exposure to mismanagement of this class of protected area causes one to conclude that it would not be appropriate for the management authority to be in a position to establish a zoning scheme in terms of this Section.
- (vii) If the above offending provision is retained, 55 (3) (b) should include the words “and the MEC” at the end.
- (viii) Similarly, if the offending provision is retained, 55 (3) (c) should contain a qualification such that the provision is not applicable to zoning schemes established by a local nature reserve management authority.

[KZN Agriculture and Environmental Affairs]

55	A good idea - but what will happen in practice when a municipal land-use scheme and a zoning scheme are in conflict?	Local authorities should be required to re-visit existing land-use schemes within a certain time period.
The implementation of this provision needs to be considered taking the Municipal Structures Act into account.		
55(2)(c)	Any coastal zoning scheme prepared by the MEC must be for an area larger than a single municipal boundary. The ability of the MEC to plan in a municipal area of jurisdiction is questioned in respect to constitutional competencies.	
55(5)	Does this mean that a Municipality needs to extend its IDP (of which a coastal zoning scheme will form a part of) to include coastal waters and what funding will be provided for this to be implemented?	

[Irvin & Johnson Limited]

In respect of sub-section (5), we suggest that a coastal scheme may not remove any rights to use land or coastal waters without due compensation.

[Oceanographic Research Institute]

- A coastal zoning scheme must –
- (a) be established by notice in the *Gazette* ;

- (b) be consistent with –
  - (i) this Act;
  - (ii) the national coastal management programme;
  - (iii) the applicable provincial coastal management programme;
  - (iv) any estuarine management plan applicable in the area; and

[DEAT Comments:](#)

*This section was amended to read:*

“(1) A coastal zoning scheme is a scheme that facilitates the attainment of coastal management objectives by –

- (a) defining areas within the coastal zone or coastal management area which –
  - (i) may be used exclusively or mainly for specified purposes or activities; or
  - (ii) may not be used for specified purposes or activities; and
- (b) prohibiting or restricting activities or uses of areas that do not comply with the rules of the scheme.

(2) A coastal zoning scheme must –“

**Section 56: Coastal zoning and land use schemes of municipalities**

[South African Planning Institute]

The bill assumes that “land use schemes” or “town planning schemes” must still be adopted, but does not acknowledge existing rights applicable to land. Town planning schemes are already in existence and already grant land use rights to the owners of the land. The “environmental zoning” can prevail over existing land use rights in a new application for rezoning when the owner wants to increase his existing land use rights. (Section 56, p.54)

[DEAT Comments:](#)

*This section was not amended.*

**CHAPTER 7**

**PROTECTION OF COASTAL RESOURCES**

[DEAT Comments:](#)

Chapter 7 deals with the protection of coastal resources. Certain sections of this chapter have been extensively amended to reduce overlap and to streamline processes within government, primarily as it relates to environmental impact assessments and to align it with the proposed NEMA amendments. The needs for special permits and coastal use permits have been excised from the Bill. The title has been changed to "Protection of coastal environment".

*Part 1: Assessing, avoiding and minimising adverse effects*  
*[Endangered Wildlife Trust]*

To avoid the potential overlap with Part 2 (Regulation of coastal Buffer Zone) and the NEMA EIA regulations, recommend consolidation and alignment of all regulations relating to the coast.

[TRANSNET]

- The Duty of Care principle places a responsibility on Transnet (specifically NPA) and the extent of this duty in relation to the Bill will have to be assessed.
- The issuing of permits provided for in this chapter requires clarification and consultation between Transnet and MCM.

[eThekweni Municipality]

There is overlap with the regulatory component of this section and the NEMA EIA regulations. This is likely to cause confusion and the potential for multiple applications. Consolidate all regulations relating to the coast either into a redrafting of the EIA regs or into the Coastal Management Bill.

Sections 57 through to 61 has possible implications for eThekweni Municipality sea outfall activities and therefore we would like an opportunity to discuss this with the drafters of this Bill as it deals with the wider assessing, avoiding and minimising adverse effects which in certain circumstances could be read as those activities which eThekweni Water Services perform wrt marine outfalls, industrial effluent discharges etc.

[CSIR]

It my opinion this chapter should include a section that explicitly addresses Resource Quality Objectives for coastal resources (other than estuaries, e.g. nearshore and coastal shelf regions), both in terms of meeting conservation and biodiversity targets, but also in terms of remaining fit-for-use, e.g. recreational activities, marine aquaculture and others. It is in this context, for example where reference could be made to the application of appropriate Water & Sediment Quality Guidelines.

In the case of South Africa, the *South African Water Quality Guidelines for Coastal Marine Waters*, published by DWAF in 1995, is still widely used to derive RQO for coastal waters. However, the NWA no longer recognizes coastal waters as a water resource under the Act, which implies that if this Bill does not explicitly cover the issue around RQO for coastal resources, this may become another 'legal loophole'. It is our opinion that DEAT can easily take custodianship of future updates of *South African Water Quality Guidelines for Coastal Marine Waters* (as they should) through this Bill, but this should be explicitly stated.

NOTE: RQO for estuaries is covered under the NWA (see above), but this does not extend into other coastal resources, e.g. near shore and coastal shelf regions.

[Uthungulu District Coastal Working Group]

The impact on municipalities in terms of funding of repair & removal notices should be considered.

[KZN Agriculture and Environmental Affairs]

Chapter 7	There is overlap with the regulatory component of this section and the NEMA EIA regulations. This is likely to cause confusion and the potential for multiple applications.	Consolidate all regulations relating to the coast either into a redrafting of the EIA regulations or into the Coastal Management Act.
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[Kwazulu-Natal Conservancies Association]

Basic EIAs to be implemented outside of permitted zoning or areas of special consent.

All illegal structures are to be demolished and removed and guilty parties to be responsible for rehabilitation.

**Section 57: Duty to avoid causing adverse effects on coastal environment**

[Department of Environmental Affairs & Development Planning]

Chapter 7 dealing with coastal management:

- Has left out provision(s) allowing the MEC to use her discretion. This precludes the MEC's from regulating the Bill at provincial level and applying her mind to activities that have the potential to cause adverse effects. – Sections 57 & 58.

Section 57

Refer to Section 28 of NEMA for layout issues (57, 58, 59)

Section 57(b) read with Section 28(8) of NEMA to ensure that 'person' is accurately captured

Section 57(2)(a):-

Insert the words ".....the Minister or the MEC ....."

[Endangered Wildlife Trust]

Section 57(1) – Suggest clarification of what the changes might be in the following sentence: “subject to any necessary changes...”.

[Wildlife and Environmental Society of SA]

57 2(b): There is no discussion of cumulative effects or who is responsible for assessing them (national, provincial and/or municipal authorities).

The Bill refers to operators of pipelines, but not the users as well, so when considering municipal or shared pipelines (Umbogintwini, Richards Bay), the users are only responsible in terms of "any person who produced a substance which caused, is causing or is likely to cause an adverse effect". If the effluent contains washings from mining for example, then has this substance been "produced"? Perhaps the words should be "waste" and "generated" to keep in line with NEMA etc.? Produced seems to imply manufactured (on purpose), not waste.

What if a waste contractor loaded waste and then dumped it in the coastal zone via a stormwater drain; he never produced it, just transported it. Would this incident be covered?

Section 57 (2) Duty of care refers. It does not appear that Municipalities are clearly included regarding persons to whom S 28 of NEMA applies, particularly in relation to assessing the cumulative impacts of a range of activities (e.g. water abstraction) on coastal resources.

[Chamber of Mines of SA]

Section 57(1)(a): a clear definition of ‘significant’ must be included.

Section 57(2): The presumption that an impact or activity will result in an adverse effect until contrary is proven, is contrary to the sustainable development concept adopted by the mining industry.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Chapter 7 – Protection of Coastal Resources

Part 1 – Assessing, avoiding and minimising adverse effects on coastal management

Sections 57 and 58 provide for the identification of activities, uses, permits, applications etc. This directly duplicates, adds to and confuses the already existing, plethora of regulations and requirements and must be avoided. The basis of “Integration” (the core of this Bill) is just that, integration and not separation, addition, duplication. Activities, permits, applications for any and all activities and uses should

be processed and dealt with through a single legislative process in a 'one stop shop' approach.

[Kommetjie Residents & Ratepayers Association]

- We feel that no adverse effects should be accommodated (p55)

[LEGALB]

s57(1)

The words "and that has an adverse effect" should for purposes of correct grammar read "that has an adverse effect".

From the wording of s57(1), it appears that before s28 can be applied, an impact which has an adverse effect on the coastal environment must have been caused by a person.

Further, for purpose of clarity of meaning, the text "for the purpose of such application..." should read, "for the purpose of applying s28 of that Act,...".

s57(1)(a)

The text "including an adverse effect on the coastal environment" should read "an adverse effect on the coastal environment".

If this change is not made, and the word "including" is not removed, this Bill has a reach far beyond its pronounced objective of coastal management.

s57(1)(b)

The text "including the coastal environment" should read, "means the coastal environment".

If this change is not made, and the word "including" is not removed, this Bill has a reach far beyond its pronounced objective of coastal management.

s57(1)(a)

The text "including a coastal management programme" should read "a coastal management programme".

If this change is not made, and the word "including" is not removed, this Bill has a reach far beyond its pronounced objective of coastal management.

s57(2)(b)

The text "the persons to whom section 28(1) and (2) of the National Environmental Management Act applies must be regarded as including..." should read "the persons, to whom this Act applies section 28(1) and (2) of the National Environmental Management Act, must be regarded as including...".

[Kathy Leslie (Personal Capacity)]

How do you deal with bad decision making or politically motivated decision-making? Such as harbour construction and extension, marina developments and mining. No marina development in SA has not had an adverse effect on the coastal zone. Does this mean they should be outlawed? I think so!!

Many adverse effects take more than 2 years to reveal themselves as irreversible or unbelievably expensive to fix, by which time the proponent has moved on.

Any change to a sandy substrate in coastal public property including buffer and littoral active zone will result in adverse effects at some stage! Yes, it could be engineered to mitigate but will always just shift the problem in time or space.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

(i) 57 (1) (a) & (b) seem somewhat obvious and unnecessary.

(ii) 57 (2) (a) is an excellent provision.

[National Ports Authority]

Storm-water drains: there is no mention of how storm- water inflow into the port is to be controlled or monitored. The litter that ends up in the port due to this influx causes pollution in the bay. The Bill needs to be explicit in terms of that the responsibility for clean-up and related costs does not rest on the Port Authority. Mechanisms must be put in place to prevent source and non-point source pollution: especially of storm-water from outside the ports jurisdiction, and must be clear on the role of Government and local municipalities.

#### [DEAT Comments:](#)

*This section was not amended.*

### **Section 58: Authorisation of activities causing adverse effects**

[Department of Environmental Affairs & Development Planning]

#### Section 58 –

Sections 58 & 59 should be swapped around with Section 59 before Section 58

Authorisation of activities causing adverse effects – Section 58(1) states that the "organ of state .....shall not grant authorisation unless he she has investigated

the matter ....." This section seems to suggest that the authorities must investigate implications?

This must be changed - surely this responsibility belongs with the person who perform or wants to perform the activity?

Section 58(2) states that before granting an authorization or consent, the Organ of State concerned must undertake a public participation process. This is burdensome for any authority and is not practical. If an EIA process in terms of NEMA is to be followed then the Public Participation Process should be according to the provisions of the NEMA regulations.

Differentiate between the State initiating a process versus any other party applying for an activity in the coastal zone.

Insert Section 58(1)(a)(iii):- is necessary and can be considered to be an emergency measure.

Section 58(2) –Confusion with regard the “state”. Who is referred to here ?

Section 58 (2) replace “organ of state” with “applicant”

The onus should be on the applicant and not on the authorities to conduct public participation processes. This will place an unnecessary burden on the authorities and will have financial implications.

Section 58 to be removed or rewritten as in Duty of Care of NEMA; or maybe take away the listed activities – causing too much confusion!

[Wildlife and Environmental Society of SA]

(1) (a) (i): mitigated: This should read: *“cannot be satisfactorily mitigated”*. Emphasis different.

(b): By their very nature, such actions causing adverse effects will not be consistent with such objectives.

We are concerned that authorisations do not require the authority to look at the cumulative effects of more than one activity, only the effects of the one under consideration, in isolation. We suggest that authorisations "must not jeopardise the achievement of any objective." Is there a weighting system, for example, if a mariculture business were to be established that would create jobs, but pollute the environment?

[Ezemvelo KZN Wildlife]

Add to subsection 58(1) the following:

(c) the authorisation shall not be in conflict with the zonation or any relevant Environmental Management Framework.

[eThekweni Municipality]

Section 58 can include granting of Trade effluent permits in its wider definition. That then further requires "must undertake a public participation process" which could mean the municipality will have to undertake a public participation process for any

industrial effluent discharged to sea. Currently the new Codified Bylaws this is interpreted as "may" which eThekweni Municipality has just done to a limited degree with the Engen permit, but "must" is too strong as the public participation process is taken care of through the DWAF licence for all the permits that we issue - as one finite process. This could mean serious problems for our industry as well as our already depleted staff complement, bearing in mind our two sea outfalls are in a heavily environmental NGO activity zone of South Industrial Basin.

[Kathy Leslie (Personal Capacity)]

58 (1) (a) "satisfactorily be mitigated" in what time frame e.g. Langebaan erosion!?? What about some sort of fund (eek!!) for rehab and erosion control measures for any activity in littoral active zone?

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) This Section goes some way to addressing concerns raised in this submission about the regulation of the use of coastal resources by organizations other than coastal management organizations, although reservations persist about its effective implementation.
- (ii) It is urged that all possible mechanisms to make this aspect of the provision watertight are considered, if this has not already taken place.
- (iii) 58 (1) (a) (i) highlights the dire need for expansion of the coastal buffer zone to its rightful dimensions, as argued for in this submission.
- (iv) Stating the obvious, the (future) Act will not constitute recourse for a range of environmentally degrading activities until such expansion has occurred.

[KZN Agriculture and Environmental Affairs]

58	What are the implications of this section on the Department of Minerals & Energy and prospecting and mining permits issued?
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[Western Cape Department of Environmental Affairs and Development Planning (Region A1 George)]

58. Authorization of activities causing adverse effects

From the DEADP perspective, it is unclear as to who "the organ of state" refers to. Is it IEM or is it Coastal Management (CM). The comment above also applies here.

[DEAT Comments:](#)

*This section was deleted. Certain elements were incorporated in other sections (see below).*

## Section 59: Measures to stop or mitigate adverse effects

[Wildlife and Environmental Society of SA]

There is no mention of rehabilitation in terms of fauna, just flora. In the marine environment this is critical, for example after a fish (and other fauna) kill.

There is no mention of anything about the marine environment, just the terrestrial.

Add flora: "...to take measures to protect indigenous fauna *and flora*..."

[SA Council for Natural Scientific Professions (Prepared by Biotechnology & Environmental Specialist Consultancy CC)]

59. Measures to stop or mitigate adverse effects: The ICM Bill should also make provision for past activities and structures put in place prior to the ICM Bill coming into effect (e.g. marine outfall sewers which are not designed and/or operated correctly; illegal or environmental disruptive jetties and bridges which are having a significant negative impact on the dynamics of estuaries).

Also the ICM Bill should reference those "inland activities" which can have negative impact on the coastal zone/coastal buffer zone (e.g. damming of rivers/water abstraction/inter basin transfer of water, soil erosion/siltation, pesticides and herbicide and other human, agricultural and industrial activities), and mechanisms and procedures included for management of such by the ICM Bill in order to proactively prevent disruption and impact to the coastal zone.

[Chief Directorate: Environmental Impact Management]

59	Provides for a written coastal protection notice, which could include the instruction to investigate and evaluate the impact of the activity in accordance with chapter 5 of NEMA. No reference is made whether BA/EIA is applicable.
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[Department of Environmental Affairs & Development Planning]

- Section 59 – Is this constitutionally correct. The Minister can only issues a coastal protection notice in the event that an activity:
  - o Transcends provincial boundaries;
  - o Issue of national interest;
  - o Et cetera

Would this apply to activities that fall squarely in the ambit of provincial competencies?

[Western Cape Department of Environmental Affairs and Development Planning (Region A1 George)]

Point 59. Measures to stop or mitigate.....

Here again, from the DEADP perspective, who will be responsible for assessing this, will it be IEM, CM or Strategic Environmental Management (SEM).

[Department of Environmental Affairs and Development Planning]

Section 59

Insert in Section 59(1): "If the Minister or MEC .....". Why can't the MEC regulate this?

Section 59(1) (b)(iii) replace 'stop or postpone' with cease

Insert Section 59(1) (b)(iv) For the area in question to be rehabilitated.

The jurisdiction of the Minister and areas of exclusive competencies is questionable. The provision gives the impression that the MEC is working for the Minister.

MEC to issue notices.

Then Section 59(b)(iii) where the MEC is also suddenly involved, will make sense.

Section 59(b)(iii) – the responsibility for a "*.....investigation to be carried out...*" is the responsibility of the person performing the activity.

Section 59(4)(b) – instruction to a person must include the instruction to investigate the impact (i.e. do an EIA) and to submit such a report

Insert in Section 59(4) (b)(ix):- To specify the timeframe for this to be done.

[Ezemvelo KZN Wildlife]

Subsection 59(4)(b)(viii) should read "to take measures to protect indigenous fauna and flora"

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

The provisions of Section 59(1) need to be based upon scientific, rigorous fact as opposed to sentiment and conjecture. This provision is open to abuse and is not acceptable as it stands.

[LEGALB]

s59(1)

The structure of this section is confusing and it is not certain which text and subsection, if any, applies to activities that are already prohibited in terms of this Bill, and which text and subsections do not. It is suggested that amendments to the text be made to clarify this.

The words "person responsible for that activity" will be difficult to identify in respect of persons who "intend" to carry out an activity but who have not yet carried out that activity. The wording should be amended to "person responsible for carrying out that activity, or persons who would be responsible for that activity if it is carried out".

Does the text "is having, or is likely to have" amount to has caused, or is likely to cause"?

The use of the words “is having” could refer to cause and effect and it would be better if this distinction was properly drawn, to avoid confusion about cause and effect, and how this Bill applies to each.

It seems to us that other Acts in NEMA and environmental Acts under NEMA focus on cause rather than effect.

Therefore, for consistency with NEMA and the tranch of specific environmental Acts, it is suggested that the text in the first paragraph of s59(1) “is having, or is likely to have” be changed to “is causing, or is likely to cause”.

#### s59(1)(a)

It appears from the words in s59(1)(a) “if not already prohibited”, that under this s59 the Minister may only prohibit activities that are not yet prohibited.

However, from other text of s59(1) it appears that perhaps the intention of s59 is also to enable the Minister to prohibit activities that are already prohibited in terms of this Act. If this is the case, it is suggested that the word “if” in s59(1)(a) be replaced with the word “unless”.

Further, there appears to be no requirement that, in the notice, the Minister identify the activity being prohibited, stopped, postponed, or investigated. s59(4)(a)(i) may be used at a push to argue that of course there is, but this is a long shot. Therefore it is suggested that the text in s59(1)(a) that reads “(a) prohibiting the activity” should read “(a) identifying and prohibiting the activity”.

#### s59(1)(b)(1)

The text “or any other applicable legislation” should be removed.

We feel it is probably incorrect that the Minister can be empowered in terms of this Bill to act on powers he or another may have under another Act. .

Our understanding is, that ff there are provisions in another Act requiring steps that are appropriate and the Minister acts in terms of that other Act, then unfortunately the Minister will, in requiring appropriate steps be taken, have to continue to act in terms of the other legislation, and will not be able to act in terms of the rest of this Bill.

If the Minister could mix and match Act to act under and pick and choose when to act under one or the other, legislation would become a smorgasboard array of legislation to manipulate.

To give an example of the absurdity: If s59 did not contain s59(1)(b)(i) it would be inherently unfair and ugly constitutional issues would arise.

Therefore (assuming that the wording of s59(1)(b)(i) has been used because there are other Acts that prescribe circumstances that would triggered the exact same requirement by the Minister that a person take appropriate steps), s59 of this Bill should either merely refer the Minister to act under such other Act, or should delete the words “or other applicable legislation” and contain specific provisions as to what should happen should a conflict arise between that other legislation and this Bill.

We suggest therefore, that If there is another Act with provisions which make the provisions in s59 superfluous then s59 should be scrapped.

Further, s59(1)(b) of the Bill appears to be concerned to “protect the environment” by stopping further adverse effect on the environmental, and appears not to be concerned at all with rehabilitation of the environment already adversely affected.

This is strange because the text of s59(1) indicates that an adverse effect on the environment that is occurring or has already occurred is a concern of this Bill.

Therefore, it is suggested that either this issue is dealt with in this Bill, or that the text of s59 refer the reader to specific provisions in other legislation that does deal with this issue.

s59(1)(b)(iii)

This Bill is not clear as to who would carry out that investigation in terms of Chapter 5 of Act 107 of 1998, which is referred to in s59(1)(b)(iii).

Nor is the Bill clear as to who would carry the costs of an investigation in terms of Chapter 5 of Act 107 of 1998, which is referred to in s59(1)(b)(iii), especially where a person is instructed to stop or postpone an activity to investigate its impact.

It is also not clear whether the Minister must identify the particular period for which the activity must be stopped or postponed.

Although s59(4) provides that a coastal protection notice must state the period within which anything required by the notice must be carried out, the action of stopping or postponing takes but a moment to carryout, and cannot therefore be a “period within which anything require” within the meaning of s59(4)(1)(a).

If the Minister is not required to identify the reasonable period, it would leave the person responsible open to decide what a responsible period would be to stop that activity, or postpone it before it could be commenced again.

Further, s59(1)(b)(iii) refers to a report but there is no indication as to who should compile the report, the format it should take, and so on. This should be coloured in.

s59(2)(b)

This section provides that, before issuing a coastal protection notice, the Minister must give the person to whom the coastal protection notice is addressed an opportunity to make representations.

Firstly, we suggest that it should be the person responsible, not the person to whom the notice is addressed who should be given the opportunity to make representations.

Further, we feel that the Bill should include some details as to how the person, to whom the notice is addressed, may make representation, or alternatively and preferably, this detail should be contained in the notice itself.

We suggest therefore that a new subsection s59(4)(a)(iv) be inserted in the Bill that states "(iv) that the person to whom the notice is addressed may make representations to the Minister in respect of the notice within \_\_\_\_\_ days by way of \_\_\_\_\_ and if no representations are made the notice takes effect".

s59(3)

The provision in this section that the Minister's power to issue a coastal protection notice in terms of s59(1) is fait accompli delegated by the Bill to the MEC is highly unusual, and the "delegation" referred to may not amount in law to a delegation at all.

Our understanding is that what is intrinsic to a delegation, is the decision to delegate.

The delegation of a power must always therefore be at the delegator's instance, and may not be by default.

The decision to delegate requires that the delegator turn his or her mind to whether or not to delegate.

Once a decision has been made to delegate, the delegator continues to bear responsibility for the act of delegating.

Therefore, it is doubtful whether what purports to be a power to delegate in s59(3) amounts to a delegation at all, because the delegation has already been effected by the Bill.

At the very least, the normal jurisprudence relating to administrative action of delegating will not easily be applicable should any matter end up in court.

This is especially problematic, because s59(3) provides that should the Minister himself or herself exercise the power of issuing a coastal protection notice, then this

must be done in accordance with s96 of this Act, which section only deals with powers of the MEC.

In effect s59(3) provides that the Minister must find powers under s96 in order to exercise his powers to issue a coastal protection notice. However, s96 does not contain any powers that the Minister may exercise. It only contains powers that the MEC may exercise.

Note also that the wording under s79, regarding appeals against the issue of a coastal protection notice, does not clearly reflect the delegation scenario painted by s59(3) – it appears that s79 does not make any provision for an appeal against a coastal protection notice if that was issued by the Minister.

It is therefore suggested that the text in s59(3) "is delegated to the MEC but may be exercised by the Minister in accordance with section 96" should read "may be delegated to the MEC who may exercise the necessary powers in accordance with section 96".

s59(4)(a)

We suggest that this section should provide that the coastal protection notice must identify the activity in respect of which it is issued.

This section does provide that the coastal protection notice must state the reasons for the notice, but this may not be taken to mean that the activity in respect of which the notice was issued must be stated.

s59(4)(a)(ii)

We suggest that the text "person to whom it is addressed" should read "person who is responsible for that activity".

[The Overstrand Conservation Foundation]

The word "may" in the third line of section 59 (1) must be changed to "must".

[CSIR]

59(4b) : It is suggested that a further bullet be added that states that the designed volume (i.e. dimensions) and vegetation cover of any Constructed Fore-dune that forms an integral part of the determined coastal set-back line be maintained at all times in accordance to an approved Management Plan.

[K.P. Mackie (Personal Capacity)]

(4) (b)(iii)

Delete: "To plant, cultivate, preserve or stop damaging indigenous vegetation at a specific case."

Substitute: "To plant, cultivate, preserve or stop damaging indigenous or cultural heritage vegetation at a specific place."

(4)(b)(v)

Add at end: "resulting from activities of the person" - This needs to be qualified as wind erosion resulting from activities of the person.

[Kathy Leslie (Personal Capacity)]

4(b)(ii) What about "opening public access"?

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) For practical reasons, related to the facilitation of expeditious responses to operational situations, this Section should grant powers to the MEC, as well as to the Minister.
- (ii) 59 (4) (b) should contain a provision relating to landscape disturbance.

[KZN Agriculture and Environmental Affairs]

59(4)(b)	Include (ix) "any other measures as deemed necessary".
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[DEAT Comments:](#)

*This section was amended to read:*

**"59 Coastal protection notice and coastal access notice"**

"(iii) to stop or postpone the activity for a reasonable period to allow for the investigation to be carried out and for the Minister to evaluate the report."

"(3) Notwithstanding section 87, the power of the Minister to issue a coastal

protection notice in terms of subsection (1) may only be delegated to—

(a) the MEC, who may sub delegate this power to a municipality in that province;

or

(b) an official in the Department..

(4) .....

(5) If the Minister has reason to believe that a person is carrying out, or intends to carry out, an activity that is having, or is likely to have an

adverse effect on the rights of natural persons to gain access to, use and enjoy coastal public property, then the Minister may issue a written coastal access notice to that person-

- (a) prohibiting the activity if it is not already prohibited in terms of this Act; and
  - (b) instructing that person to take appropriate steps in terms of this Act or any other applicable legislation to allow natural persons access to the coastal public property;
- (6) When issuing a notice referred to in subsection (5), the provisions of subsections (2) to (4) apply with the necessary changes.

#### **Section 60: Repair or removal of structures within the coastal zone**

[Wildlife and Environmental Society of SA]

This refers to structures that have been abandoned, but what about pipelines that are no longer used but not necessarily "abandoned" officially, as the company still exists and operate other lines?

How does one approach structures that have been abandoned, especially pipelines, when companies have become insolvent? A closure and rehabilitation plan (as with mines) needs to be included in the authorisation for the structure, to ensure that the effects of the wastes discharged are monitored until it is no longer detectable, within an agreed timeframe. If the effect continues to be detected beyond that timescale, then remediation intervention needs to take place.

Needs a definition for "abandoned", especially in the context of pipelines - suggest *"no longer used for the purpose for which the structure was designed and commissioned"*

Assessments to determine adverse effects are expensive, especially in the marine environment.

Who does the assessment to determine if it is the best option for a structure is to remain in situ or be removed, especially in the context of pipelines? Surely not the authorities? , It should be those who are/were responsible for it? Polluter Pays Principle needs to be invoked.

Who does the assessment to determine if a structure is causing adverse effects and if there is no responsible person?

The assessment cannot be based merely on economic criteria, but also what is best for the environment and these criteria need to be stated.

4(b): "to a natural state" - what is that if the environment is already polluted? In the case of a leaking pipeline, which is adjacent to another, where the adverse effects are from the discharges to sea over time, what is the "natural" state - the one before pollution occurred on a routine basis, or before the leak started to discharge undiffused effluent into the environment?

We would suggest including the requirement to locate and map all structures to assist the authorities to respond to emergency incidents and cases of abandonment timeously. An inventory must be drawn up by provincial authorities, which identifies and maps structures in the Coastal Zone. The database would also include those responsible for the structures, relevant authorisations, including those from other Departments.

[Ezemvelo KZN Wildlife]

Subsection 60(1) should read as follows:

"...may issue a written repair or removal notice to ...

Add the following subsection:

(6) A removal notice contemplated in subsection (1) herein above may be issued to any owner of property where build structures on that property negatively impact on important coastal or estuarine processes.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

The provisions of Section 60 are hugely concerning. To provide a relevant authority to be able to order a person to remove any structure after it has been approved through a formal process, is unconstitutional, unfair and unacceptable.

[Department of Environmental Affairs & Development Planning]

Section 60 – Change heading to read "Removal and rehabilitation of structures within the coastal zone"

Replace or reference to repair and removal .....zone" to " .....Removal and rehabilitation ....zone"

Section 60 (1)b Illegal structures for which a demolish notice is issued should have a fine attached to it.

Section 60(4):- Stipulate timeframe for this to happen in.

[LEGALB]

s60(0)

We feels that this section – given that s18(5)(b) allows any land that has been used by the public for 5 years or more by the public to gain access to public coastal property to be defined as part of the coastal zone – would allow for a situation in which private land, which falls within the coastal zone because of the above, can be made subject to the MEC or Minister issuing a written repair and removal notice to

the owner, if they consider a structure on that land to have an adverse effect on the environment, and eventually forcing it to be demolished, upgraded, etc..

If this is a correct reading of the Bill, then provision should be made in the Bill that this process be subject to proper expropriation procedures, and that the process be undertaken with due regard to property rights contained in the Bill of Rights of the Constitution.

s60(1)

We feel that the words “person responsible for that structure” needs to be phrased “person who owns the land upon which that structure is built”.

Further, in our understanding the “is having, or is likely to have” does not amount to “is causing, or is likely to cause”. The use of the words “is having” could refer to cause and effect and it would be better if this distinction was properly drawn, to avoid confusion about cause and effect, and how this Bill applies to each. NEMA and other specific environmental acts focus on cause rather than effect.

Therefore, for consistency, it is suggested that the text in the first paragraph of s60(1) “is having, or is likely to have” be changed to “is causing, or is likely to cause”.

s60(1)(a)

Clarity as to how a structure “by virtue of its existence” can be considered likely have an adverse effect on the coastal environment should be provided in the Bill.

This wide statement of possibility could, for instance, be interpreted a lack of aesthetic looks in relation to a structure as amounting to an adverse effect on the environment

*It would also seem to allow the MEC or Minister to issue and act in terms of a repair and removal notice in respect of an abandoned structure on private property, and the apparent lack of distinction between private and public property displayed by this Bill is of concern.*

We suggest therefore that the words “, by virtue of its existence, because of its condition, or because it has been abandoned” in s60(1)(a) be deleted.

s60(2)(a)

This section refers to “activity or proposed activity concerned”. There is a lack of clarity as to what activity is being referred to. It appears to refer to the activity of removing or repairing a structure that is the subject of a repair and remove notice. If this is the case, and accepting the private property can under s18(5) of the Bill be part

of the public zone, the possible organ of state that would be authorised or competent to authorise such activity on private property should be clearly stated.

#### s60(2)(b)

This section refers to a “coastal protection notice” instead of a “repair and remove notice”, which does not make sense within a section dealing with repair and remove notices.

Nevertheless, this section provides that before issuing a coastal protection notice, the Minister must give the person to whom the coastal protection notice is addressed an opportunity to make representations.

Firstly, we suggest that it should be the person responsible, not the person to whom the notice is addressed who should be given the opportunity to make representations.

Further, the Bill should include some details as to how the person to whom the notice is addressed may make representation, or alternatively, this detail should be contained in the notice itself, in which case s60(4)(a) should include a new subsection s60(4)(a)(iii) that states “(iii) that the person to whom the notice is addressed may make representations to the Minister in respect of the notice within \_\_\_\_\_ days by way of \_\_\_\_\_ and if no representations are made the notice takes effect”.

#### s60(3)

The provision that the Minister’s power to issue a coastal protection notice in terms of s59(1) is delegated to the MEC is highly unusual, and the “delegation” referred to may not amount in law to a delegation at all.

Please read our comment on s59(3) in this regard as those comments would apply to s60(3).

It is suggested that the text in s60(3) which reads “is delegated to the MEC but may be exercised by the Minister in accordance with section 96” should read “may be delegated to the MEC who may exercise the power in accordance with section 96.

#### s60(4)(a)

This section should also provide that the notice must identify the structure in respect of which the notice is issued. (This section does provide that the notice must state the reasons for the notice, but we suggest that this would not necessarily be taken as meaning that the structure’s identity in respect of which the notice was issued must be stated.)

s60(4)(a)(iii)

The text “that the person to whom it is addressed may appeal” should read, “the person who owns the structure or has an interest in it or derives a benefit from it may appeal”.

s60(4)(b)(i)

Given that this section of this Bill would allow a repair and removal notice to instruct a person who owns property in the coastal zone (see our comment under s18(5) relevant to ownership) to remove the structure, it is not clear from the Bill who would pay for the removal. We suggest that clarity as to liability of payment of costs of removal be provided in the Bill.

The meaning of the words “or place where it is” is not clear. We would guess that these words mean at least a place other than a coastal zone. However, from s60(1) it would appear that a notice to repair and remove could only be issued in a coastal zone. These words therefore make no sense and cast our understanding of this section in doubt.

s60(4)(b)(iv)

The meaning of the word “secure” in the context of this section is obscure. We would suggest that an appropriate word would be “effect” but as the import of the word “secure” is uncertain, we refrain from suggesting this change of wording.

[eThekweni Municipality]

This section is silent with respect to the cost associated with this notice. For completeness this needs to be spelt out as the owner/person responsible.

[KZN Agriculture and Environmental Affairs]

60(1)(a)	Include “interferes with natural coastal processes”.
60(1)(b)	Who determines the legality of the structure to be removed? Must this go to court?
60(2)(b)	Are representations written or verbal, or both?
60(3)	The point of this provision is questioned? Is it legally necessary?

[National Association of Real Estate Agencies]

Re Section 60(2)(b):

A reasonable opportunity must be afforded to the person to whom this coastal protection notice is to be addressed.

[DEAT Comments:](#)

*This section was amended to read:*

**“60. Repair or removal of structures within the coastal zone**

- (1) The Minister, may issue a written repair or removal notice to any person responsible for a structure on or within the coastal zone if that structure -
  - (a) is having or is likely to have an adverse effect on the coastal environment, by virtue of its existence, because of its condition, or because it has been abandoned;  
or
  - (b) has been erected, constructed or upgraded in contravention of any law including this Act.
  
- (2) Before exercising a power to issue a repair and removal notice under subsection (1), the Minister must—  
  
consult with any other organ of state that authorised or is competent to authorise, the undertaking of the activity or proposed activity concerned; and  
  
give the person to whom the repair and removal notice is to be addressed an opportunity of making representations.
  
- (3) Notwithstanding section 87, the power of the Minister to issue a repair and removal notice in terms of subsection (1) may only be delegated to—
  - (a) the MEC who may sub-delegate this power to a municipality in that province;
  - (b) an official in the Department..
  
- (4) A repair and removal notice in terms of subsection (1) –
  - (a) must state:

- (i) the reasons for the notice; and
    - (ii) that the person to whom it is addressed may appeal against the notice in terms of Chapter 9; and
  - (b) may instruct the person responsible for the structure:
    - (i) to remove the structure from the coastal zone or place where it is situated within a specified period;
    - (ii) to rehabilitate the site and as far as is reasonable, to restore it to a natural state;
    - (iii) to repair the structure to the satisfaction of the Minister or MEC within the time stated in the notice; or
    - (iv) to take any other appropriate steps in terms of this Act or any other applicable legislation to secure the removal or repair of the structure.
- (5) If a person responsible for a structure referred to in subsection (1) cannot be found readily, instead of issuing a notice in accordance with subsection (4), the Minister may –
- (a) publish a notice that complies with the provisions of subsection (2) once in the *Gazette* and once a week for two consecutive weeks in a newspaper circulating in the area in which the structure in question is situated; and
  - (b) affix a copy of the notice to the structure in question during the period of advertisement. “

### **Section 61: Failure to comply with certain notices**

[LEGALB]

This section provides that, if the person to whom the notice was addressed does not comply with it, then the Minister may instruct someone else to carry out the instructions and then recover the costs from the person to whom the notice was addressed.

We are concerned that, if the person to whom the notice was addressed was a person to whom the notice should not have been addressed, the consequence of that person not replying to the notice (and such a wrong addressee may well ignore a notice that clearly did not relate to them) could be extremely severe for the person who does have an interest or right in the property or should have mitigated adverse effects.

Further, this section provides that if the person to whom the notice was addressed was not the correct person, then the costs can be recovered from any person subsequently found to be responsible for the structure. Again, in circumstances where the person to whom the notice was addressed was the wrong person but just did not bother to reply to the notice, it would be too late for the correct person to make representations, and unfair.

The potential for erroneous addressing of notices is high, and the drastic consequences for the person to whom it should have been addressed are severe. It is therefore suggested that the Bill should contain provisions to audit structures which may fall into the category dealt with under s60, and should contain provisions to publicise the audited data and get confirmation of who the responsible persons are, and so on, to avoid the above scenario. It is also suggested that failing a reply to a notice, that provision be made in the Bill for the publication of the notice in two local newspapers and one national newspaper so that the notice can come to the attention of the person with an interest or right in the structure.

[Department of Environmental Affairs & Development Planning]

Section 61

Rephrase Section 61:- Failure to comply with notice issued

Replace Section 61 (b) "repair" should be replaced with "rehabilitation"

*Part 2: Regulation of coastal buffer zone*

[DEAT Comments:](#)

*This section was amended to read:*

"If a person fails to comply with a notice issued in terms of section 59(1) or (5) or section 60(1) which requires that person to carry out any specific action, or if the person responsible is not identified after publication of a notice in terms of section 60(5), the Minister who issued the notice may instruct appropriate persons to –"

**Section 62: Implementation of land use legislation in coastal buffer zone**

[Wildlife and Environmental Society of SA]

62(2): Organ of State may not authorise activity without first considering an evaluation of the proposed activity and identifying whether such activity is likely to have an adverse effect.

[Endangered Wildlife Trust]

1. Suggest more clarification of the form of the environmental impact assessment report required and how the ICMB will be aligned with the NEMA environmental assessment provisions. Suggest including reference in Section 62(2) to the activities listed in Schedule 3 which may impact negatively on the coastal environment
2. Section 62(2) - Suggest revising and making broader reference to the environmental impact assessment process under the NEMA EIA regulations.

[SANBI]

Regulation of the coastal buffer zone (S62-64)

There may be opportunities to strengthen these sections in relation to listed threatened or protected coastal ecosystems and/or coastal critical biodiversity areas identified in published bioregional plans.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Part – Regulation of Coastal Buffer Zone Part 3 – Permits

The provisions of this Part are hugely problematic and unacceptable in their current format.

Section 62 is problematic given the restricted nature of Section 17. This has a direct, specific restriction and limitation of land uses within the Coastal Buffer Zone (CBZ) and particularly given the extent of the CBZ, is unacceptable.

Section 62(2) discusses the issue of activities having “an adverse effect on the coastal environment”. This is problematic as it is purely subjective and open to interpretation and abuse.

Section 62 is furthermore, it is submitted, not constitutional nor valid as it is, in effect, in direct conflict with other existing legislation and authority powers. The Bill is assuming powers that it actually does not have.

[Department of Environmental Affairs & Development Planning]

- Section 62 can only be applied to new developments as existing rights cannot be curtailed or burden with additional requirements

[Department of Environmental Affairs & Development Planning]

Section 62

Section 62(2): - who is to compile the EIA and who must it be submitted to?

Section 62(2): Remove: 'environmental impact assessment report'. Rather refer to 59(b)(ii).

[LEGALB]  
s62(2)

The text "may have an adverse effect" should read, "may cause a significant adverse effect". Please see our previous comment on "cause".

[eThekweni Municipality]

Need to clarify what land falls in/out of the buffer zone (ie. Section 16(d) & (e)). If the buffer zone is 1km wide in some areas, it will be quite onerous for developers and the municipality to administer – i.e. an environmental assessment report will be required for all development within this area 'which may have an adverse affect'. Who decides whether or not an activity may have an adverse affect?

The form of the environmental impact assessment report should be defined and aligned with the NEMA environmental assessment provisions. The guide document indicates that the intention is to align the two pieces of legislation, but the alignment is not clear in the Bill. If Section 88 (g) is meant to deal with this point then the regulations will need to be published simultaneously with the Act.

Section 62(2). It would be helpful to give an indication of activities that may have an adverse effect on the environment, e.g. as listed in Schedule 3. EIAs are not the best tool to achieve coastal development and management objectives as they are site specific. If environmental authorisation is refused who will deal with compensation where existing rights are extinguished? Again there is the need to stipulate if financial resources will be provided to deal with compensation.

[South African Planning Institute]

This section can only be applied to new developments.

[Kathy Leslie (Personal Capacity)]

1 "...and the principles of this Act"

2 Check out EIA regs, national and provincial supplementation. May be useful to declare all coastal buffer as potentially sensitive in terms of EIA regs and therefore subject to at least a Basic Assessment.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) As per comment on Section 58, 62 (1) goes some way to addressing concerns about other organizations with powers to make decisions with implications for the state of the coastal environment, although again, reservations remain about its effective implementation.
- (ii) 62 (2) is viewed as being very weak. It will be relatively meaningless where the authorizing organ of state is not competent in reviewing environmental impact assessment reports, while at the same time, EIA's

should, as a matter of principle, not be specified without an accompanying framework for regulating the conducting, monitoring and review thereof.

[KZN Agriculture and Environmental Affairs]

62	The form of the environmental impact assessment report should be defined and aligned with the NEMA environmental assessment provisions. The guide document indicates that the intention is to align the two pieces of legislation, but the alignment is not clear in the Bill. If section 88(g) is meant to deal with this point then the regulations will need to be published simultaneously with the Act.
62(2)	It would be helpful to give an indication of activities that may have an adverse effect on the environment, e.g. as listed in Schedule 3.

[Buffalo City Environment Trust and Coastal Services (East London)]

With respect to EIA requirements referred to in Section 62(2), there is a problem here in that

EIAs and EIA practitioners are not always objective. If one EIA practitioner rejects a project, the developer will simply go and find another EIA practitioner that is willing to support the development. There is also a very real risk that with adequate lobbying of the provincial or other relevant authorising agency by a developer, that inappropriate development can get approved. There are various cases currently in the E Cape where there is strong lobbying by developers to get developments approved

[Chief Directorate: Environmental Impact Management]

62(2)	This section establishes the link with EIA by stating that an EIAR must be considered before land can be used / activities undertaken that may have an adverse effect on the coastal environment.
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[Oceanographic Research Institute]

The Minister may, under extraordinary conditions, grant an applicant a special permit to carry out an activity mentioned in subsection (1) in a specific area, if –

- (a) the socio-economic benefits of the activity outweigh the potential adverse effects on the coastal environment; and
- (b) the activity would be in the interests of the whole community.

[DEAT Comments:](#)

*This section was amended by changing “buffer zone” to “protection zone”.*

**Section 63: Activities that are prohibited in the coastal buffer zone except in exceptional circumstances**

[Chief Directorate: Environmental Impact Management]

63	Refers to Part A of Schedule 3, containing certain prohibited activities. In exceptional cases such activities will be considered for a special permit.
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[Department of Environmental Affairs & Development Planning]

Section 63

Section 63(2): What is “..in a specific area”? Who determines this “specific area”

Section 63(2)(a)(b):- Who determines this?

Rephrase Section 63(3)(a):- Consider the outcome of the studies conducted in terms of Section 59(b)(ii)

Section 63(3)(b):- Why must the Minister consult with I&APs? This is the responsibility of the applicant – the Minister must consider I&AP comments or concerns received in response to an application and reports submitted but not necessarily for Minister to consult directly with them.

[Western Cape Department of Environmental Affairs and Development Planning (Region A1 George)]

Point 63(3) (a)

From the DEADP perspective again, who will be considering the EIA reports?

[Chief Directorate: Environmental Impact Management]

[2] It is uncertain what they use as their mandate for prohibiting activities within the coastal buffer zone.

[Wildlife and Environmental Society of SA]

63(2): Special permits and 69:

Only if they have strategic socio-economic benefits or local to national benefit and that the potential adverse effects can be mitigated or alleviated and are localised.

Authorisation may be issued if the socio-economic impacts outweigh those of the environmental impacts - who makes this decision, surely not politicians or those who can corrupt the system for their own benefit? What is the definition of the "whole community"? A mariculture project would provide jobs in the short term, but in the long term affect a larger section of the population, by polluting the associated resources into which the wastes (including hazardous chemicals (eg drugs, growth hormones) and pathogenic organisms) are discharged. Who would influence the decision - the community for which the jobs would provide the benefit, or those who stand to lose in the long term once the environment has been degraded?

How can a special permit be granted if there are overwhelming negative impacts? This section must be removed, as it is against the principle of Sustainable Development. It is merely about short-term gain.

63 (2) and Schedule 3 (part A) refer. Considering the activities listed in Part A, it is unclear under what circumstances the socio-economic benefits of the activity would

outweigh the potential adverse effects on the coastal environment, and therefore gain authorisation? Why does Part 3 (Section 65) only refer to coastal public property and not all state-owned property within the coastal zone?

[Chamber of Mines of SA]

Activities that are prohibited in the coastal buffer zone excepting exceptional circumstances.

(1) Subject to subsection (2) [*special permit application*] and section 101 [*existing lawful activities in coastal buffer zone*], the activities listed as Part A of Schedule 3 are prohibited within the coastal buffer zone' – Schedule 3 A.2. Mining or quarrying.

[eThekweni Municipality]

The wording is misleading as 'prohibited' implies total prevention, not prevention subject to permit. Suggest that 'prohibited' be changed to 'prevented unless a permit has been granted by the Minister'.

Section 63 and 64. It might be worth mentioning that the permit is required over and above the authorization required in terms of Section 62. The organs of state in Section 62 and the issuing authority of Section 66 are likely to be two different authorities. However probably the most significant effect is the apparent double licensing/permitting of marine outfalls as well as some of our conventional works which discharge into so-called estuaries under Section 74, where unless there is a general authorisation on these by the DEAT Minister, we will be required to get a license from DWAF as well as a Coastal Water Discharge permit from DEAT - how is this possible in practice, with both seemingly asking for similar as well as different requirements. The penalties for the two abovementioned sections are serious at up to R 5 million rand, so it is not to be taken lightly.

Furthermore the intention of DEAT to become more proactive in disposal of effluent and sewage to sea from land is reiterated in the sections for which the minister may make regulations which includes amongst others the outcomes which must be achieved by managing and treating any category of effluent, discharges from stormwater drains and the monitoring of these. So who is actually in charge DEAT or DWAF?

{Department of Minerals and Energy]

Not applicable to mining since mining is not a listed activity. The current MPRDA does not make provision for Integrated authorisation with other legislation. It requires that separate approvals be obtained like under the NWA (1998) and the Air Quality Act (2005).

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) The activities listed in terms of this Section in Part A of Schedule 3 strike one as a peculiar mixture.

- (ii) Given especially the anomalies and imperfections in the activities listed under the NEMA EIA Regulations which have a bearing on the coastal zone, and the operational familiarity of provincial and local government with the nuances of impacting activities, it is proposed that the list is workshopped by jointly by national, provincial and local coastal managers.
- (iii) Strong reservations are expressed about 63 (2), which is excessively open-ended and unstructured.
- (iv) The comment directed at 62 (2) in relation to regulation of the EIA process, applies to 63 (3) (a).

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

The heading of Section 63 is confusing and concerning as it implies that the activities are actually prohibited, unless in “exceptional” (i.e. extremely limited) circumstances.

Sections 63(2), 64 and 67 provide for a specific permit to carry out certain activities within the CBZ. This is unacceptable as is a further, additional bureaucratic process and will simply lead to increased delays and costs and a significant disincentive for development and new investment.

[Richards Bay Minerals]

Existing activities, both within the coastal buffer zone and the exclusive economic zone, should continue to be lawful and not be subject to the requirement that they be permitted, as contemplated by Sections 63 and 65 of the Bill. The effect of Sections 63 and 65 of the Bill is that the Minister may prohibit existing activities when they have already been permitted by another Minister under the provisions of the Mineral Act or the Mineral & Petroleum Resources Development Act. This is contrary to the promotion of investment in the mining industry. The State has already decided that existing activities are in the public interest. It should not be granted an opportunity of reconsidering these issues by virtue of the provisions of the Bill.

The problem is exacerbated by the failure to deal with existing activities identified in Part C of Schedule 3. Section 101 deems existing lawful activities (for a period of 24 months) within the coastal buffer zone as being lawful. No similar provision is contained in regard to Section 65. Accordingly, all mining and prospecting activities, upon the Bill coming into force, will be deemed unlawful. This is despite the fact that such activities have been authorised, from an environmental perspective, by the Department of Minerals & Energy in consultation with other Departments.

[KZN Agriculture and Environmental Affairs]

63	Wording is misleading as “prohibited” implies total prevention, not prevention subject to permit.	Change “prohibited” to “...prevented unless a permit has been granted by the Minister”.
63(2) & 69	How can a special permit be granted if there are overwhelming negative impacts? This section should be removed as it is against the principle of sustainable coastal development.	
63 and 64	These sections should include the “Minister <u>and</u> MEC”. This will minimize the administrative burden (and associated time delays) associated with the proposed issuing of permits.	
63(3)	The possibility of applying ‘off sets’ as provided for in the KZN Biodiversity Bill should be considered.	

[Kommetjie Residents & Ratepayers Association]

- the socio-economic benefit over environmental considerations is problematic and could lead to subjective decision making leading to steady erosion of coastal zone integrity. (p60)

[Derrick Airey (Personal Capacity)]

Pg 49, S 63 (1&2) – activities prohibited in the coastal buffer zone include discharge of effluent “which may have an adverse effect on the coastal environment”. There are no definitions of the “coastal buffer zone” & “coastal environment” in the definitions on Pg 8. The Minister may grant a *special permit* to carry out the activity, and it “must be subject to appropriate conditions”. Is this “special permit” the same as a “coastal waters discharge permit” as mentioned in S 74 (1)??

[DEAT Comments:](#)

*This section has been deleted. Special permits are no longer required and most activities previously listed in terms of Schedule 3 has been incorporated into the revised NEMA EIA Regulations. Schedule 3 has been deleted.*

## **Section 64: Activities in coastal buffer zone that require a permit**

[Department of Environmental Affairs & Development Planning]

### Section 64

Exemptions – what does an exemption entail and based on the statement in chapter 1 that this act supersede other acts, can a person be exempted from applying in terms of this Act and does that then exempt the person from applying in terms of another Act (e.g. the EIA regulations under NEMA). Alternatively this

Act should simply follow the heritage legislation (section 38) to say if and when an EIA is triggered, then this Act requirements fall away.

Section 64 (1) speaks about permit and exemption; what is the procedure to follow when applying for an exemption?

Section 64(2) Exemption from activities / certain sections within the process-What process will be followed and who will regulate / control the exempted activity??

[Chief Directorate: Environmental Impact Management]

64(1)	Refers to a coastal use permit (CUP). Cross refers to Part B in Schedule 3, which contains 9 activities (no thresholds included) that should acquire a CUP before it may commence. Some activities overlap with activities listed in the EIA regs, e.g. indigenous vegetation and roads related.
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[LEGALB]

This section provides that activities listed in Schedule 3 Part B in a coastal buffer zone may not be undertaken except by permit, but that if the activity is authorised by special permit issued under s63(2), then no permit is necessary.

However, s63(2) special permits are issued in respect of activities, listed in Schedule 3 Part A, which are virtually entirely different to the activities listed in Schedule 3 Part B, for which permits may be issued under s64.

Therefore, we are concerned that in practical application these provisions are confusing and unworkable.

[Endangered Wildlife Trust]

It would be worth mentioning that the permit is required over and above the authorization required in terms of Section 62. The organs of state in Section 62 and the issuing authority of Section 66 are likely to be two different authorities.

[Blue Horizon Developments]

The Coastal Bill provides that no person may undertake an activity listed in Part B of Schedule 3 or a development that involves such an activity, within the coastal buffer zone except under and in accordance with a coastal use permit. In addition, an organ of State may not authorise land within the coastal buffer zone to be used for any activity that may have an adverse effect on the coastal environment without first considering an environmental impact assessment report. We have set out our objections to the coastal buffer provisions above.

The implication of this for new developments is that the developer would need to apply for a coastal use permit to the extent that the development is within the coastal buffer zone. Yet, certain of the activities identified in Part B of Schedule A would also require an environmental authorisation under section 24 of NEMA. As such, an EIA (or basic assessment depending on the circumstances of each activity) would, in any

event, need to be undertaken prior to construction of any new developments.

The Coastal Bill does provide for the integration of authorisations under other legislation and that an environmental authorisation may be regarded as a coastal use permit for the purposes of the Bill, either generally or in specific circumstances, the Bill should specifically state that the requirement for an additional permit only applies where an authorisation is not required under any other legislation. In instances where an environmental authorisation is already required under other legislation, an integrated/harmonised EIA is sufficient to ensure the management of development within the coastal buffer zone. We are of the view that the need for a specific coastal use permit in these circumstances is an unnecessary duplication of requirements and is excessive.

In the same way that the Biodiversity Act merely triggers the EIA process in respect of certain specified activities such as a threatening process in listed ecosystems<sup>13</sup> specified activities within the coastal buffer zone should merely be specified activities in terms of section 24 of NEMA.

[Department of Minerals and Energy]

Not applicable to mining since mining is not a listed activity. The current MPRDA does not make provision for Integrated authorisation with other legislation. It requires that separate approvals be obtained like under the NWA (1998) and the Air Quality Act (2005).

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) As per comment on Section 63, it is proposed that the activities listed in terms of this Section in Part B of Schedule 3 be subjected to joint workshopping by national, provincial and local coastal managers.
- (ii) The reservations expressed in comment on Section 1 about use of the term “development” are applicable here.

*Part 3: Regulation of activities within coastal public property and exclusive economic zone*

[DEAT Comments:](#)

*This section has been deleted. Special permits are no longer required and most activities previously listed in terms of Schedule 3 has been incorporated into the revised NEMA EIA Regulations. Schedule 3 has been deleted.*

## **Section 65: Activities within coastal public property and exclusive economic zone that require a permit**

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<sup>13</sup> Section 53 of the Biodiversity Act.

[Jan S De Villiers (Attorney)]

Section 65 read with part C of schedule 3 prohibits the occupation of any coastal public property. This should likewise be made subject to any exercising right.

[Chief Directorate: Environmental Impact Management]

65(1)	CUP, cross-refers to Part C in Schedule 3, which contains 11 activities (no thresholds) and overlaps with some water abstraction and sand removal activities in the EIA regulations.
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[Mike Beresford (Personal Capacity)]

In terms of Section 65, a Coastal Use Permit is required for the scheduled activities. Unfortunately the activities are so vague as to include almost anything. In particular, the

clause C3 ("The destruction, damage or disturbance of any coastal public property in a

manner that has or is likely to have an adverse effect on biodiversity or habitat") is concerning as DEAT have in the past applied a very broad interpretation of this clause. It can be argued that breathing in the controlled areas disturbs the environment, as it produces carbon dioxide. Without a clear guideline on the proof of damage necessary, the clause effectively becomes "in the opinion of an official". This contradicts clauses in the

Constitution requiring administrative decisions to be made on a sound basis. Without a

"standard of proof", the decision can be viewed as arbitrary and hence unconstitutional.

Current examples of behaviour by DEAT, where damage has been assumed without any

evidence being produced, raise concerns that this clause will be misused by officials.

It is suggested that this clause be revised to contain required standards of proof for environmental damage and degradation.

[Department of Minerals and Energy]

Not applicable to mining since mining is not a listed activity. The current MPRDA does not make provision for Integrated authorisation with other legislation. It requires that separate approvals be obtained like under the NWA (1998) and the Air Quality Act (2005).

[Kathy Leslie (Personal Capacity)]

2(a) with EIA.

[KZN Agriculture and Environmental Affairs]

65(1)	Who issues a coastal use permit for activities as described here?
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[DEAT Comments:](#)

*This section was deleted.*

## **Section 66: Prohibition of controlled commercial activities without permit**

[Department of Environmental Affairs & Development Planning]

### Section 66

Insert in Section 66(1): “The Minister or MEC .....

Who is the organ of state referred to in Chapter 7 and the issuing authority referred to in Section 67.

[Endangered Wildlife Trust]

Section 66(1) – Suggest include wording to read: “The Minister or MEC must, by notice in the Gazette...”

[Ezemvelo KZN Wildlife]

Subsection 66(1) should read as follows:

The Minister or MEC may,...

[Mike Beresford (Personal Capacity)]

Again, this section is problematic because of its vagueness. The concept that an activity may take place partially within a zone is misleading, and open to abuse. For instance, if a shop sells a person equipment to be used within a zone, this may be construed as falling partially within the zone. The concept of “using” the environment is also ill-defined, as “use” is not necessarily consumption. An artist painting a seascape “uses” the environment. The vagueness of this clause will lead to a situation where certain activities become controlled, and others not. The basis for this discrimination will not be fair, as it will entail the opinion of officials. It is suggested that this clause be dropped in its entirety, and replaced with activity specific regulations.

[KZN Agriculture and Environmental Affairs]

66	Do tourism operators, for example, now require an additional permit to access the coast from a designated boat launch site?
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[Oceanographic Research Institute]

Prohibition of controlled commercial activities without permit

- (1) The Minister may, by notice in the *Gazette*, declare any activity  it takes place partially or wholly within coastal public property or the exclusive economic zone

and that involves the charging of any person for experiencing or using any aspect of the environment, to be a controlled commercial activity.

DEAT Comments:

*This section has been deleted. It will be incorporated into the revised NEMA EIA Regulations.*

**Part 3: Permits**

**Section 67: Issuing of permits**

[Western Cape Department of Environmental Affairs and Development Planning  
(Region A1 George)]

Point 67: Issuing of permits

How will this process differ from an EIA?

Page 53

Mention is made of "issuing authority" and later "competent authority" Are these bodies the same and who exactly will they be?

[Chief Directorate: Environmental Impact Management]

67(1)	Regulations to this Act should specify who authorises CUP applications.
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67(2) Links to EIA, as it requires that the consideration of a CUP application should first consider a report that assesses the environmental, socio-economic and heritage impacts of the proposed activity.

[Wildlife and Environmental Society of SA]

Need to include a cumulative assessment of effects, especially in the marine environment and loss of habitats. Suggest including a new item under 3 and 5 or include the words "including cumulative" when considering the impact of the proposed activity.

(4) add:

*C no reasonable alternative sites are available*

*D the activity is seen to be of general economic benefit to the public in general*

*E Mitigation and management options are available*

[Richards Bay Minerals]

There is a duplication between the provisions of the Bill requiring special permits and coastal use permits (which need an environmental impact assessment before they may be proceeded with), the identified activities requiring an environmental impact assessment as contained in the National Environmental Management Act of 1998 and the regulations of April 2006 and the provisions of the Mineral and Petroleum Resources Development Act which similarly require an environmental impact

assessment before approval is granted for an EMPR. RBM potentially has to obtain approval under the three separate pieces of legislation when it should only require approval under one. We consider that the Department of Minerals & Energy should be the lead agent, and it should not be necessary for RBM to obtain separate permits or authorisations under NEMA and the Bill. We suggest that the Department of Minerals & Energy should, before granting approval under the Mineral & Petroleum Resources Development Act, be obliged to take into account the principles of NEMA and the Bill so as to ensure that the EMPR is integrated with general environmental norms and standards contained in NEMA and the specific norms and standards applicable to the coastal areas contained in the Bill.

[Habitat Council, CAPTRUST & Still Bay Conservation Trust]

S 67(3): Prioritisation of factors to be considered for issuing a coastal permit is questionable

S 67(4)(e): “the likely impact of the proposed activity on the coastal environment” is placed last of the five factors given.

Surely in an Act dealing with coastal management, this should be placed first.

G Replacement required in S 67(2): ‘a report’ to be replaced by ‘an EIA’ in terms of the EIA Regulations of April 2006.

Your little booklet, ‘brief guide’, p.9, states that an EIA is required; the Act should explicitly state the same.

[Endangered Wildlife Trust]

Section 67(2) - Suggest clarifying whether the report is required in terms of the NEMA EIA Regulations.

[ESKOM]

67(5)(b) The Bill does not specify any authority whose consent or approval is required to issue a coastal permit. As such, the reference to a consent or approval is confusing.

[Ezemvelo KZN Wildlife]

Add the following to subsection (3):

(f) and the appropriateness and potential success of any offset recommended.

Add the following to subsection (5)(a):

(iv) the activity contemplates sand winning or mining in estuaries or on beaches.

(v) the activity is not in keeping with the objectives of this Act.

[CSIR]

67(3) : It is suggested that a further point be added that captures the essence of the following: “Likely impact of prevailing coastal processes on the proposed activity”

67(5) : It is suggested that a further point (c) be added “in the opinion of a specialist where the prevailing coastal processes could negatively impact or put at risk the proposed activity”

[South African Planning Institute]

Section 67(3)(e) and Section (5)(a)(i): Does “impact” or “adverse effects” require an EIA to be done?

[Kathy Leslie (Personal Capacity)]

(2) is this equivalent to an EIR or Basic Assessment as per S62(2)?

(4) Move to S63, or is this the difference between permits issued by the Minister and those issued by issuing authority? Does this conflict with 63(2)?

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) Comment directed at 62 (2) & 63 (3) (a) in relation to regulation of EIA processes, applies equally to 67 (2).
- (ii) 67 (4) appears to hold considerable promise for judicious permitting of activities in the buffer zone, although its efficacy will be limited by the extent to which the purpose of the buffer zone is amplified in accordance with comment on Section 17.

[KZN Agriculture and Environmental Affairs]

67	The Bill seems to give direction in respect to the issuing authorities. Are regulations really necessary in this regard?	
	There is a need to include a cumulative assessment of effects, especially in the marine environment and to consider the loss of habitats.	Suggest including “cumulative” when considering the impact of the proposed activity.

[Oceanographic Research Institute]

Before deciding whether or not to issue a coastal use permit the issuing authority must consider a report  assesses the environmental, heritage and socio-economic impacts of the proposed activity and its implications in relation to the factors listed in subsection (3)(a) to (e) inclusive.

The issuing authority may only authorise an activity or a development within the buffer zone that is likely to have an adverse effect on the coastal environment or that is inconsistent with the purpose for which a buffer zone is established as set out in section 17 if - 

- (a) the very nature of the proposed activity or development requires it to be located within the coastal buffer zone; or

- (b) the proposed activity or development will provide significant services necessary or convenient for the public when using coastal public property or a coastal protected area.

If an application for a coastal use permit cannot be approved by the issuing authority because of a provision of subsection (5), but the issuing authority believes that issuing the permit would be in the public interest, the issuing authority may refer the application for consideration by the Minister in terms of section 69.

DEAT Comments:

*This section was deleted.*

**Section 68: Integration with authorisations under other legislation**

[Wildlife and Environmental Society of SA]

(6): Appears that a forum or adjudication committee (or committees) is a requirement here to avoid conflict.

[Western Cape Department of Environmental Affairs and Development Planning (Region A1 George)]

(2) (a)

Should IEM not delegate CM to deal with all EIA activities occurring in the coastal zone in order to avoid duplication and meet the aim of the act in terms of integration and coordination?

(6)

What about the other way around i.e. a coastal use permit should be regarded as an environmental authorization to achieve the spirit of true integration? The comments above apply here.

[Department of Environmental Affairs & Development Planning]

Section 68

Section 68(2)(b):- What piece of legislation is higher ranked, who will be responsible to issue authorization.

[Endangered Wildlife Trust]

1. Section 68(2) - Recommend clarification on the process that will be followed if the competent authority/ies decide/s not to act jointly and issue an integrated permit or if cooperation between authorities fails.
2. Section 68 - Further clarification on which authority is responsible for enforcement / amendment / withdrawal of integrated permits.

[ESKOM]

68(2) There is a huge benefit in the issue of single or consolidated permits rather than multiple permits which may have conflicting conditions, be confusing and create an administrative and monitoring burden for both the issuer and the recipient. The

method of issue proposed in this clause should be the norm rather than the exception.

68(6) The issuing authority has not been determined in this Bill. This provision suggests that a competent authority empowered to issue environmental authorisation may be the issuing authority for the purposes of this Bill. However, this may not be the case in all situations unless the regulations entrench this provision. We suggest that the competent authority for environmental authorisation be established by this Bill as the issuing authority to ensure a consistent application of NEMA principles, smooth, one-stop shop for all environmental permits. This would of course be done in consultation with all organs of state that have an interest therein in accordance with the Constitutional principles of co-operative governance.

[Chamber of Mines of SA]

The integration of the application of and obtaining different permits is very important as the mining industry cannot be subject to yet another permit requirement.

[eThekweni Municipality]

It is felt that integrating more than one set of rules may lead to confusion amongst stakeholders. Would it not be prudent to integrate these into one set of rules, either in EIA regs or Coastal Management Bill (as mentioned for Chapter 7 above)? The idea behind this section is good and it is hoped that we can implement this in our own Municipality where we already have difficulty coordinating the normal administrative decisions of building, health, fire, licensing, town planning, etc Sections 63-69. Although this section encourages the integration/alignment of the permit processes with other approval processes (e.g. EIA process), it is likely that this will be another layer of approval required. It would be helpful if these processes were fully integrated with the EIA process.

[South African Planning Institute]

Section 68(3): Which other legislation is referred to? Can an integrated permit be used to approve a development in terms of legislation such as the Land Use Planning Ordinance of 1985, the subdivision of Agricultural Land Act 70 of 1970, National Building Regulations?

[Department of Minerals and Energy]

Not applicable to mining since mining is not a listed activity. The current MPRDA does not make provision for Integrated authorisation with other legislation. It requires that separate approvals be obtained like under the NWA (1998) and the Air Quality Act (2005).

[Kathy Leslie (Personal Capacity)]

(1) YES. Does competent authority = issuing authority?

(4) must also specify appeal process?

(5) change is to are

Surely it is better to do without 2(a). Rather use 2(b) and 6 to cover the necessary.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

The reservations expressed in comment on Section 1 about use of the term “development” are again applicable here.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Section 68 is naïve and should rather provide for a single, administrative process as opposed to referring to other existing regulations etc. or, rather make use of existing legislation/regulations as opposed to providing for additional approval processes in this Bill. This is a fundamental issue as will, in its current form, result in an immediate halt to development and much needed investment.

[KZN Agriculture and Environmental Affairs]

68	Integrate into one set of rules, either in the EIA regulations or Coastal Management Act (as mentioned in Chapter 7 above).
68(6)	This provision should read “The Minister prescribes...” not “The Minister may prescribe...”

[Oceanographic Research Institute]

If the competent authority decides to issue a special permit or a coastal use permit it may –

- (a) act jointly with the other organs of state referred to in (1) and issue a single integrated special permit or an integrated coastal use permit that grants approval for the proposed activity or development for the purposes of this Act and of any other legislation specified in the permit; or
  - (b) issue the special permit or coastal use permit as part of a consolidated authorisation consisting of authorisations issued under different legislation by the persons competent to do so, that have been consolidated into a single document in order to ensure that the terms and conditions imposed by each competent authority are comprehensive and mutually consistent. 
- (3) If an integrated permit is to be regarded as a valid authorisation or approval for the purposes of other legislation specified in the integrated permit, then the decision-making process for issuing that integrated permit must comply with both the requirements of this Act and that of other legislation.  
The Minister may prescribe that an environmental authorisation may be regarded as a coastal use permit for the purposes of this Act, either generally or in specific circumstances. 

[DEAT Comments:](#)

*This section was amended to read:*

*Part 3: Integrated Environmental Authorisations*

**63. Integrated environmental authorisations for coastal activities**

- (1) Where an integrated environmental authorisation in terms of the National Environmental Management Act is required for coastal activities, the competent authority must take into account all relevant factors including:
  - (a) the representations made by the applicant and by interested and affected parties;
  - (b) the extent to which the applicant has in the past complied with similar authorisations;
  - (c) whether coastal public property, the coastal protection zone or coastal access land will be affected, and if so, the extent to which the proposed development or activity is consistent with the purpose for establishing and protecting those areas;
  - (d) the estuarine management plans, coastal management programmes and coastal management objectives applicable in the area;
  - (e) the socio-economic impact if the activity is authorised and if it is not;
  - (f) the likely impact of the proposed activity on the coastal environment including the cumulative effects of its impacts together with those of existing activities;
  - (g) the likely impact of coastal environmental processes on the proposed activity; and
  - (h) the objectives of this Act where applicable.
  
- (2) The competent authority must not issue an integrated environmental authorisation if the development or activity for which authorisation is sought—
  - (a) is situated within coastal public property and is inconsistent with the objective of conserving and enhancing coastal public property for the benefit of current and future generations;

- (b) is situated within the coastal protection zone and is inconsistent with the purpose for which a coastal protection zone is established as set out in section 17;
  - (c) is situated within coastal access land and is inconsistent with the purpose for which coastal access land is designated as set out in section 18;
  - (d) is likely to cause irreversible or long-lasting adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated;
  - (e) is likely to be significantly damaged or prejudiced by coastal environmental processes;
  - (f) would substantially prejudice the achievement of any coastal management objective; or
  - (g) would be contrary to the interests of the whole community.
- (3) The competent authority may issue an integrated environmental authorisation that authorises an activity or a development that does not meet the criteria in subsection (2)(a), (b) or (c) if -
- (a) the very nature of the proposed activity or development requires it to be located within coastal public property, the coastal protection zone or coastal access land; or
  - (b) the proposed activity or development will provide important services to the public when using coastal public property, the coastal protection zone, coastal access land or a coastal protected area.
- (4) If an application for an integrated environmental authorisation cannot be approved by the competent authority because of a provision of subsection (2), but the competent authority believes that issuing the authorisation would be in the public interest, the competent authority may refer the application for consideration by the Minister in terms of section 64.

- (5) The competent authority must ensure that the terms and conditions of any integrated environmental authorisation are consistent with any applicable coastal management programmes and promote the attainment of coastal management objectives in the area concerned.”

**Section 69: Minister may grant permits in the interest of the whole community**

[Wildlife and Environmental Society of SA]  
Need a definition of "whole" community.

[Ezemvelo KZN Wildlife]

Subsection (2) should read as follows:

Before deciding the application, the Minister may require the applicant to furnish additional information, including the results of any further studies undertaken and the identification of an appropriate offset.

[LEGALB]

Under this section, we see it unlikely that the interests of a local community would be favoured over the interests of the “whole” community.

Therefore, we suggest that the Bill provide for a process that would allow factors that weight in favour of the interests of particular local community to be identified and that the Minister be required to consider these before deciding whether to issue or authorise a permit for an activity.

Further, we note that, unlike other sections of the Bill where the word “effect” is used, the word “cause “ is used in this section in relation to adverse effects. This inconsistency in the Bill should be resolved. Please see previous comment on the use of the words “cause” and “effect” in this Bill.

[Heuningnes Riperial Owners Association]

In the preamble to the Bill, it mentions everyone’s constitutional right to have the environment, including coastal environment, protected for the benefit of present and future generations; currently much of this rich natural heritage is being squandered by overuse and inappropriate management. The Act gives the minister very broad powers which makes the fine line between under and over exploitation very difficult to define and govern. So Much so, that in spite of talking about sustainable use, protection etc, clause 69 gives the minister unprecedented power to act contrarily to the spirit of the Act in the so-called overwhelming interests of the whole community. This is a contradiction in terms, especially as so much of S. Africa’s coast has already been degraded, as mentioned in the preamble.

[Department of Environmental Affairs & Development Planning]

Section 69

Section 69 (1):- Should be subject to public participation process.

[Kathy Leslie (Personal Capacity)]

Still don't really like the use of "whole community". What about local community. An activity like mining always wins 'cos it is in the national interest vs local community or (potentially) affected community interest.

1(a) adverse effects in short or long term. Often long term effects are overlooked for short term "whole community" gain.

1(b) Who pays? E.g. Langebaan erosion. Effects most often take more than 2 years to show by which time proponent is long gone or in severe denial. NPA never contributed a cent to Langebaan problem yet were the unmentionable cause of the problem which was technically impossible to prove.

Add (3) A monitoring programme must be put in place at the cost of the proponent and all info made available to the Minister and the "affected community".

[Kommetjie Residents & Ratepayers Association]

- The whole community permit and leases clauses could be abused and do not necessarily take note of the national asset concept or future generation responsibility.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

Strong reservations are expressed about 69 (1), which is excessively open-ended and unstructured.

[KZN Agriculture and Environmental Affairs]

69(2)	This provision should be consistent with NEMA's EIA regulations and require the completion of a full environmental impact assessment.
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[Oceanographic Research Institute]

If an application for a permit is referred to the Minister in terms of section 67(6) the Minister may, after consultation with the MEC of the relevant province, issue or authorise the issue of the permit –

- (a) if the activity for which the permit is required is overwhelmingly in the interests of the whole community despite the adverse effect it is likely to cause to the coastal zone; and
- (b) on condition that any irreversible or long-lasting adverse effects must be mitigated as far as is reasonably possible. 

(2) Before deciding the application, the Minister must require the applicant to furnish full information, including the results of any further studies undertaken specifically to evaluate the negative impacts..

DEAT Comments:

*This section was amended to read:*

**“64. Minister may grant integrated environmental authorisation in interests of the whole community**

- (1) If an application for an integrated environmental authorisation is referred to the Minister in terms of section 63(4) the Minister may, after consultation with the MEC of the relevant province, issue or authorise the relevant competent authority to issue the integrated environmental authorisation –
- (a) if the activity for which the integrated environmental authorisation is required is overwhelmingly in the interests of the whole community despite the adverse effect it is likely to cause to the coastal zone; and .....

**Part 4: Coastal land leases and coastal concessions on coastal public property**  
**Section 70: Award of leases and concessions on coastal public property**

[ESKOM]

This appears to be another application over and above the coastal permit. There is no indication in the Bill on which application must be made first. Sequence of application must be explicit to avoid problems and unnecessary delays.

[Chamber of Mines of SA]

Section 70 and 71: The impact of the Bill on existing leases might be negative and solutions to this issue must be clarified.

[eThekweni Municipality]

Provision should be made for a public commenting process before a lease/concession is granted; particularly as this may impact on the general public's use of coastal public property.

[KZN Agriculture and Environmental Affairs]

70	Cross references to leases, i.e. section 72 and 100 is difficult to follow and interrupts the flow of interpretation and understanding.	Lease provisions should be covered in one section.
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[Irvin & Johnson Limited]

We would like to suggest that the provisions of Section 101(1) and 101(3) as amended as per our proposals here below also apply to leases and concessions.

Currently, a practice exists in terms of which leases to lay structures across public coastal property are granted on a per structure basis with the result that one party who wishes to lay or erect a number of pipes or structures across a stretch of coastal public property adjoining the same property has to enter into multiple leases, one for each structure. We would like to propose that the Bill provide that in such event, a coastal lease can be entered into by a party for a large enough portion of the public coastal property to allow multiple structures and that a party is not be required to enter into a separate lease for every structure.

Irvin & Johnson Limited are in the position of having entered into several leases to lay pipelines across coastal public property and to construct other structures, all in a 100 metre stretch of coastal public property each lease for a separate pipe or structure. Each lease covering a small strip of land. It would have been much more practical had we been able to enter into one lease for a stretch of 100-150 metres of coastal public property. Not only would this cater for any future changes, extensions or relocations of such structures/pipes, but would also facilitate proper security thereof. Pipelines pumping sea water ashore are the life blood of aquaculture/mariculture operations and the security and integrity thereof, is of the utmost importance to such operations.

We are pleased to note that the Bill provides for coastal leases not only to stretch for the requisite extent of coastal public property, but also can include a portion of the seabed and the water above it. This is of particular important where pipes are laid into the seawater to pump seawater ashore.

It makes more logical sense for a coastal lease is to extend for the whole length of the requisite portion of the seabed and for the water above it. If seen in conjunction with our proposal of being allowed to lease one continues section of coastal public property contiguous to the property on which the aquaculture/mariculture operation is conducted on, this means that the corresponding area of the adjoining seabed and water above it can be included in one lease to enable the farm to protect the integrity of its water inlets from pollution, tampering or even sabotage.

In addition, the Bill should clearly state that where a party has entered into a coastal lease, regardless of the size thereof, that the total extent of that lease area will be excluded from the general publics right of way on public coastal property and nobody shall have the right to cross such leased area without the written consent of the lessee.

This can easily be accommodated if Municipalities are obliged, prior to designating coastal access land, to first determine which portions of the coastal public property within its jurisdiction are suitable for public access and that areas of coastal public property let by coastal leases must be regarded as unsuitable. Then coastal access

land can be designated in a manner that public traffic is discouraged in areas where coastal public property is unsafe or occupied by coastal leases.

[Jan S De Villiers (Attorney)]

Section 70 should also exclude leases or rights to coastal public property in terms of section 99 and lawful activities in terms of section 101. The provisions of sections 99 and 101 do stand on their own, but there may be a conflict in interpretation as to which of sections 70 or 99 or 101 prevail.

[Nicolette De Kock – Marine & Coastal Management]

There is one issue that has arisen in relation to the bill which may require amendment of clause 70 which relates to coastal leases and concessions.

Aquiculture activities on the coast and in the sea have resulted in a number of issues arising.

An example of this is a recent application to secure sea space around a aquiculture sea inlet pipe for a land based abalone farm. The operator raised concerns about potential boat accidents in the vicinity of the pipe which could result in oil pollution being sucked into the pipe and hence contaminate the water supply to the farm. The suggestion was to erect a number of buoys within a 50m radius around the pipe to prohibit motorized vehicles into that area. Swimmers and other non-motorized boat users would still be able to utilize the area. The bill does not cover this eventuality or any other general use or permission with regard to the sea other than for a lease or concession. This scenario can not be regarded as a lease as the operator would not be utilising that area of the sea for his/her exclusive use.

The suggestion is therefor to add a subsection or additional section after clause 70 which is quite broadly framed to allow the Minister to grant a permit or permission in relation to coastal public property which is not covered by a lease or concession in terms of clause 70.

[DEAT Comments:](#)

*This section was amended to read:*

***“Part 4: Coastal leases and coastal concessions on coastal public property***

## **65. Award of leases and concessions on coastal public property**

- (1) Subject to sections 67 and 94, no person may occupy any part of, or site on, or construct or erect any building, road, barrier or structure on or in, coastal public

property except under and in accordance with a coastal lease awarded by the Minister in terms of this Chapter.

- (2) Subject to section 94, no person may claim an exclusive right to use or exploit any specific coastal resource in any part of, or that is derived from, coastal public property unless –
- (a) they are empowered by national legislation to do so; or
  - (b) they are authorised to do so in terms of –
    - (i) a coastal concession awarded by the Minister in terms of this Chapter; or
    - (ii) an authorisation issued under the Marine Living Resources Act.
- (3) A coastal lease or coastal concession may be awarded by the Minister either –
- (a) on application by a person; or
  - (b) if the Minister so determines in any specific case, through a prescribed bid process.
- (4) An application for a coastal lease or coastal concession must be lodged in the prescribed manner.
- (5) A coastal lease or coastal concession awarded in terms of this Chapter does not relieve the lessee or concessionaire from the obligation –
- (a) to obtain any other authorisation that may be required in terms of this Act or other legislation; or
  - (b) to comply with any other legislation.”

#### **Section 71: Terms of coastal land leases and coastal concessions**

[Wildlife and Environmental Society of SA]

(1) (a): Why this time period? Relevance?

There needs to be a requirement for review of performance of the lessee in terms of legal compliance on a regular basis by the relevant authorities.

[Endangered Wildlife Trust]

1. Section 71(1) – Recommend inclusion of a provision for renewal of a lease or coastal concession
2. Section 71(2) – Unclear, suggest clarification and rephrasing of provision

[ESKOM]

71(1)(a) The time limit will inhibit development of long-term infrastructure such as power generating plants and other projects with a longer life span. There should be a provision to exempt such special cases. Moreover, such longer life span activities may be of a strategic nature and the consequence of such short time limit may affect the economy of the Republic.

71(1)(c) Establishment of strategic infrastructure is for the benefit of the public at large. For organs of state, such infrastructure will be established to fulfil the state's obligations and charging of rent or royalty defeats the objective. There must be a provision to exempt some lessees or concessionaires where they perform a strategic or activity of national interest.

[KZN Agriculture and Environmental Affairs]

71	Reference should be made in this section to leases as described in Chapter 12 OR such matters amalgamated into one chapter to avoid confusion. Also see above.
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[SA Council for Natural Scientific Professions (Prepared by Biotechnology & Environmental Specialist Consultancy CC)]

71. The ICM Bill needs to address, more specifically, leases for property within the coastal zone that have already been put into effect, and in particular, exceed 20 years (i.e. the classic 99 year lease). Whereas clause 99 refers to existing leases the ICM Bill does not provide any mechanism to retain such a 99 year lease.

The ICM Bill need to address/make provision for servitude rights the coastal zone (and adjacent State property) for infra-structure needed for social and environmental benefit elsewhere (e.g. desalination plants and their pipe work, water supply to mariculture farms).

[Derrick Airey (Personal Capacity)]

S 71 (1)(a) awarded for fixed period of time of not more than 20 years – this needs to be renewable. In the case of submerged land – the lease should be longer ie 50 years – i.e. in the case of existing sub-sea pipelines.

[Department of Environmental Affairs & Development Planning]

Section 71

Replace in Section 71(1)(c) the word "reasonable" with "market related":- Must provide for the payment by the lessee or concessionaire of market related rent or royalty

[Oceanographic Research Institute]

- . Terms of coastal land leases and coastal concessions 
- (1) A coastal land lease or coastal concession –
  - (a) must be awarded for a fixed period of time of not more than 20 years;
  - (b) is subject to any prescribed conditions as may be determined by the Minister in any specific case; and
  - (c) must provide for the payment by the lessee or concessionaire of a reasonable  rent or royalty.On termination of the lease, the minister may require the lessee to rehabilitate the coastal land to its previous or similar condition as specified.  
If the lessee fails to adhere to the prescribed conditions referred to in (b) above, or, if in the opinion of the minister the land is unduly degraded, the minister may terminate the lease.
- (2) A coastal land lease or coastal concession on land that is partially or completely submerged by coastal waters may authorise the lessee to use the water above that land either exclusively or for specified purposes. ???

[DEAT Comments:](#)

*This section was amended by changing "coastal land lease" to "coastal lease".*

**Part 5: General provisions**

**Section 72: Temporary occupation of land within coastal zone**

[Wildlife and Environmental Society of SA]

Add: *"The granting of temporary occupation of such land must follow an assessment of the impact of such occupation and such authorisation must provide a timeframe for such authorisation. Such timeframe may be extended upon application to the Minister."*

[Department of Environmental Affairs & Development Planning]

Section 72

Section 72(1):- The, MEC or the Minister may direct that land within the coastal zone be temporarily occupied to build, maintain or repair works to implement a

coastal management programme, or to respond to pollution incidents or emergency situations, and may for this purpose –

- (a) take from the land stone, gravel, sand, earth or other material;
- (b) deposit materials on it; and
- (c) construct and use temporary works on it, including roads.”

Does this mean the NEMA EIA Regulations would not be applicable here and that exemption is assumed / granted?

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

#### Part 5 – General Provisions

Section 72(3) is unacceptably brief and provides too much discretion and power and in essence ignores private property and ownership rights. The word deprivation is used but no explanation follows nor is there any explicit provision for expropriation and/or compensation. This must be rectified.

[P.A. Whittington (Personal Capacity)]

Section 72 (3): I don't believe that an MEC or minister should have the right to allow temporary occupation of private property without first obtaining permission of the owner.

[LEGALB]

We would like to see this section include a provision that the duty of the state is to rehabilitate environmental adverse effects caused by undertaking activities described under s72(1)(a), (b) and (c).

It should be stated clearly in regard to s72(3) that occupation of private land in terms of s72(1) will be a last resort.

It is not clear whether the “deprivation” of property from a private owner would trigger compensation or not, and if it does trigger compensation, what legislation that compensation would be governed by.

[KZN Agriculture and Environmental Affairs]

72	It is concerning that this section makes no provision for the satisfactory mitigation of impacts or rehabilitation in the coastal zone as a result of the temporary occupation of land.  This provision needs to be linked to sections 14 and 15 but would appear to contradict with 15(2) in respect to the prevention of erosion?
72(2)	The legal provisions in respect to assignment / delegations of responsibility differ throughout the Bill and need to be consistent.

[DEAT Comments:](#)

*This section was amended to read:*

**“67. Temporary occupation of land within coastal zone**

- (1) The Minister may direct that land within the coastal zone be temporarily occupied to build, maintain or repair works to implement a coastal management programme, or to respond to pollution incidents or emergency situations, and may for this purpose –
- (a) take from the land stone, gravel, sand, earth or other material;
  - (b) deposit materials on it; and
  - (c) construct and use temporary works on it, including roads.
- (2) Notwithstanding section 87, the powers of the Minister in terms of subsection (1) may only be delegated to—
- (a) the MEC, who may sub-delegate this power to a municipality in that province;
  - or
  - (b) an official in the Department..
- (3) If the land is private property, the Minister acting in terms of subsection (1) must, before occupying the land, give the occupier and the owner of the land reasonable notice, in writing, of the intention to occupy and such occupation shall be considered a deprivation.”

**Section 73: Amendment, suspension or cancellation of authorisations**

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Section 73(1) is totally unacceptable and strongly objected to and contested. The provision to allow for authorisations to be withdrawn is tantamount to ‘willy-nilly’ expropriation. This will have a significant detrimental impact on development and

investment and all activities and uses and, it is submitted, is unconstitutional. All that this provision provides is uncertainty and is a tool to stop development and investment.

[Department of Environmental Affairs & Development Planning]

Section 73

Section 73: Suspension of permits should provide for rectification requirements  
Re-look at 73(1), can have serious implications on the private person on his property.

73(3) – expiry: if the applicant has not acted upon his authorization, what are the repercussions if non compliant.

[LEGALB]

s73(4)

The text “notice” should read “reasonable notice” .

s73(9)(c)

The text “estuary” we feel should rather “read stream, river, estuary..” and so on

[Oceanographic Research Institute]

An issuing authority must by written notice delivered to the holder of the authorisation, or send by registered post to the holder's last known address, request the holder to make written representations within a period of 30 days from the date of the notice, why the authorisation should not be amended, revoked, suspended or cancelled, as the case may be.

[DEAT Comments:](#)

*This section was amended by substituting “Minister” with “issuing authority” and inserting new (7):*

“(7) A competent authority, when exercising the power to amend, withdraw or suspend an integrated environmental authorisation in terms of the National Environmental Management Act, must consider the additional factors in subsections (1), (4), (5) and (6) with the necessary changes”.

**CHAPTER 8  
MARINE AND COASTAL POLLUTION CONTROL**

[DEAT Comments:](#)

Chapter 8 deals with marine and coastal pollution control. The provisions in the Bill give effect to the Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matters adopted on 7 November 1996, and follow the text of that Protocol closely. The Bill has been amended to make it clearer that the Ministers responsible for the Environment and for Water Affairs have a joint responsibility for estuaries, but that the Minister responsible for the environment has responsibility for the marine environment.

[Captain G.J. Barker (Personal Capacity)]

In a brief examination of the Act it is noted that the Act will be applied to South African territorial and inshore waters including all waters bounded by the EEZ. The International Convention for the Prevention of Pollution from Ships, widely known as the MARPOL Convention, is applicable to all ships in and transiting South African waters.

[Reference: MARPOL Consolidated Edition 2006 published by the International Maritime Organization, London, 2006]

I have noted that no reference is made to this Convention in the above Act although its application is obliquely referred to, if this is the intention of the above definitions, by way of the definitions of “incinerate at sea” and “operational waste” and the outline of Chapter 8.

Chapter 8 does not clearly include a reference to the effect that the MARPOL Convention is and will be applicable as and when the South African government adopts and implements current and new legislation applicable to this Convention. It would appear that there is a requirement to make a cross reference to the MARPOL

Convention to ensure that the MARPOL Convention can be used to enforce the provisions of Chapter 8 and, thereby, provide a clear definition of what can be discharged at sea by ships within SA territorial waters and the EEZ as specified in the

regulations. In addition similar legislation applicable to the Oil Exploration industry should be referred to.

By way of example MARPOL Annex I – Regulations for the Prevention of Pollution by Oil and Annex II – Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk make provision for the control of operational discharge of oil and noxious liquids. This operational discharge is generally required during and after tank washing operations or the discharge of clean ballast. Similarly operational discharge of hold cleaning operations from bulk carriers may also require regulation.

After reading Chapter 8, as a layman, it is not very clear in my mind that the operational discharge of oil and noxious liquids as is clearly regulated in the MARPOL Convention falls under the definition of “operational waste” as expressed by this Bill.

I would therefore propose that reference should be made to the MARPOL Convention

(in terms of SA legislation) in some form to ensure that there is no conflict in the application of current MARPOL legislation and/or the SA Merchant Shipping Act and

this Bill.

DEAT Comments:

*Y Peterson*

*Agree. Need to make reference to MARPOL or relevant SAMSA legislation.*

Recommendation

*Y Peterson*

*Check SAMSA and Marine Pollution Act of 1986.*

*D Malan: Yazeed, can you please propose text and indicate where it should be inserted.*

[CSIR]

It appears as if the Bill only really addresses two potential sources of marine pollution, that is:

- Discharge of effluent
- Dumping and incineration at sea

However, there are several other source categories, including:

- Diffuse sources from land such as storm water run-off, agricultural and mining return flows, contaminated groundwater seepage (National Water Act 36 of 1998)
- Atmospheric emissions, e.g. originating from vehicle exhaust fumes and industries (National Environment Management: Air Quality Act 39 of 2004).
- Maritime transportation, e.g. accidental and purposive oil spills (Marine Pollution [Control and Civil Liability] Act 6 of 1981)
- Marine litter e.g. dumping of plastics and ship garbage (?)
- Ballast Water (?)
- Exploration and production e.g. oil exploration platforms Mineral and Petroleum Resources Development Act 28 of 2002).

Although many of these aspects may well be dealt with in other pieces of legislation (see above), an Integrated Coastal Management Bill should at least identify such legislation and specify how their requirements will be accommodated in integrated coastal management (i.e. deal with matters of potential overlap, synergistic effects, etc.).

Through (overarching) EIA regulations (promulgated under NEMA), DEAT, in my

opinion, has the primary control over any activity and development, including those in coastal areas. Furthermore, if the Integrated Coastal Bill explicitly gives DEAT the responsibility to set Resource Quality Objectives for coastal resources (see earlier comment), it is clear that DEAT will have the primary control over activities and development in coastal areas, with other pieces of legislation, e.g. those responsible for the management and control of specific activities and developments (see above), being subject to such approvals and specifications.

In this light, I therefore do not foresee major issues where the control and management of some potential pollution sources remain with other departments, so long as DEAT, through effective cooperative governance, are included in decision-making and operational management processes where of relevance to the coast. The latter should be explicitly stipulated in the Integrated Coastal Bill

Here coastal effluent discharges are an example. The Bill proposes that, in future, DEAT be responsible for issuing coastal effluent permits for discharges with a source on land. Currently, this responsibility is executed by Department of Water Affairs and Forestry under the National Water Act (being responsible for the management and control of land-derived waste and wastewater).

My concern in this regard is duplication of systems and resources. If DWAF is going to remain responsible for land-derived waste and wastewater discharges to land (e.g. landfills), rivers and estuaries (for which it already have systems and infrastructure in place), it seems counter productive to only shift permitting of coastal effluent discharges to DEAT. DWAF's license authorization (which in any case is subject to EIA approval) clearly identifies DEAT as a key role player and if the Integrated Coastal Bill explicitly stipulates DEAT's role in the licensing process and future operational management of such discharges, it will be more effective to keep licensing of land-derived waste and wastewater 'in one place'.

A further motivation for keeping management and control of land-derived waste and wastewater 'in one place' is the management of diffuse sources of land-derived wastewater such as urban storm water. These sources of pollution are increasingly becoming a concern and remain very difficult to manage and control. Internationally, economic incentive approaches have shown promise. Here I refer to, for example, Waste Discharge Charge Systems where polluters are charged per waste load disposed to the natural environment. DWAF is currently developing such a policy for land-derived waste and wastewater for South Africa, which can be applied to all natural resources, including the coast. My concern here is that if the control of only coastal discharges (that is if the Bill includes diffuse sources in its term coastal effluent discharges) is shifted to DEAT, conflict/confusion may arise in terms of the application of such a system to coastal discharges.

Specifying technology-based standards (or effluent limit values) for waste streams linked to specific industry types is also an approach that is being implemented internationally to reduce waste loads to the environment, e.g. EU, Canada and USA. These limits are based on 'best available' or 'best attainable' cleaner technologies aimed at eliminating, minimizing or improving waste streams from specific industries. Such standards are based on the industry and NOT the natural resource to which it is discharges. Currently DWAF would be the logical department to develop such legislation for land-derived waste and wastewater. As above, my concern here is that if the control of only coastal effluent discharges is shifted to DEAT, conflict/confusion may arise in terms of the application of such legislation to coastal discharges.

Other comments linked to this Chapter are:

- I suggest that the term 'effluent' be replaced by a more encompassing term namely, 'wastewater or water containing waste'. The motivation here is that this is more aligned with the terminology used under the NWA (which is explicitly referred to in this Chapter).

[Uthungulu District Coastal Working Group]

Pollution from storm water pipes, as well as land based pollution with a coastal effect are not covered.

Provision should be made for monitoring of pollution.

[Lisa Guastella (AS Consulting)]

Chapter 8 deals with Marine & Coastal Pollution Control, but control of stormwater run-off (and pollutants in the catchments) is not dealt with adequately (if at all). Much of this falls under local municipality control, therefore perhaps something should be included to the effect that Municipalities should act to minimise pollutants getting into the stormwater system and have adequate design to minimise pollutants in the stream, and sitings of outlets be selected to minimise erosion and health impacts.

[Friends of DST]

Chapter 8 - You have not addressed storm water drainage and its outlets in the Coastal Zone that is quite important when it comes to residential areas along the coast.

[KZN Agriculture and Environmental Affairs]

Chapter 8	No reference is made to stormwater outfalls and the associated discharge into the coastal and marine environment.	Include reference to stormwater outfalls.
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[Kwazulu-Natal Conservancies Association]

More control and monitoring of waste and effluent that is treated before entering the sea and estuaries.

More control and monitoring of storm water pollution into sea and estuaries.

Ensure that all necessary Accident procedures are in place.

**\*\* NO INCINERATION OR DUMPING AT SEA. \*\***

Fines for pollution – into a fund for rehabilitation work.

- persons to perform community work.

[Friends of the Bot River]

Chapter 8: see page of effluent from coastal towns into wetlands/estuaries/lakes must be urgently addressed (at the very least conservancy tanks should be installed)

[Adrienne Edgson (Personal Capacity)]

The issue of stormwater being discharged to beaches and the sea has not been addressed at all. This type of discharge currently results in severe pollution of beaches and poses a serious health risk as many people “illegally” discharge their conservancy (sewerage) tanks into stormwater drains and the local authorities are all either too cash strapped to do anything about this or too inefficient and incompetent.

[Department of Environmental Affairs & Development Planning]

- Chapter 8 dealing with marine and coastal pollution control makes no references to the role of provinces. Pollution of Coastal waters ultimately results in impacts on the terrestrial land.

[Department of Environmental Affairs & Development Planning]

## CHAPTER 8

Does it cover nuclear waste?

More clarity is required on who's doing what – DEAT vs. DWAF vs. DoA?

What about rain and storm water runoff?

## **Section 74: Discharge of effluent into coastal waters**

[Wildlife and Environmental Society of SA]

Why only land-derived effluents needing an authorisation? What about the effluent discharged from structures at sea, for example oil and gas drilling platforms, ships? "May not waste water" - how do you measure this? Will benchmarks be used? Will those who use water to carry waste to sea have to prove that they are not wasting? Must register with DWAF - why is this? What will registration involve?

(2): Does this mean Local Authorities? What about new stormwater outfalls?

(7): Include cumulative effects in this assessment.

(8): This section goes against the special permits criteria, for which socio-economic gain (short term) can over-ride environmental adverse effects (usually long term).

[Department of Environmental Affairs & Development Planning]

### Section 74

Section 74(6) (a)

Must read as follows: "must put in measures in place to minimize the wastage of water".

Section 74(10)

Replace subsection (10) with subsection (9) in the text 9 (incorrect reference):-

..... referred to in subsection (9) and the conditions

[Derrick Airey (Personal Capacity)]

S 74(1) – Discharge of effluent into coastal waters needs a coastal waters discharge permit . As with above, is this = a special permit ???.

[Endangered Wildlife Trust]

1. Suggest strengthening of this Section significantly particularly with respect to revisiting the existing assumption that the ocean provides an effective sink for wastes. Suggest use of the precautionary principle in the absence of certainty particularly considering emerging pollution issues (i.e. introduction of invasive alien species) and potential impacts on the integrity of ecosystems and species from aquaculture, agriculture and energy production activities.
2. Recommend inclusion of reference to cooperative governance with respect to provincial and municipal authorities.
3. Suggest an additional clause related to the 'polluter pays' principle underlying granting of a permit whereby a requirement exists for monitoring, broad consultation and development of provisions for mitigation for granting of permits.

4. Section 74(2) – Clarification of sentence to specify whether it is referring to a category of effluent to be discharged into the water or type of stakeholder
5. Section 74(6)(a) – suggest specifying the type of water to read: “must not waste fresh/potable water”
6. Section 74(9)(a) – Suggest including consultation with MEC in addition to the director-general of the department responsible for water affairs.
7. Section 74(10)(a) – Suggest modifying to read: “...within 3 years of the recommendations required in subsection 9 above, decide whether or not to issue a permit or permits referred to in subsection (9) and the conditions...”

[P.A. Whittington (Personal Capacity)]

Section 74 (9) & (10): Five years seems rather generous. These decisions should be made as soon as possible. Would two years not be an adequate timeframe?

[ESKOM]

This appears to be another application over and above the coastal permit and coastal land lease or concession. The Bill must enable application of different activities in one application to avoid administrative burden on both the applicant and the relevant authority. The permit in this regard will be issued by the Department. This is a deviation from the earlier provision in s68 that the issuing authority for coastal permit will be designated in regulations. As this application will be decided by DEAT, it would make a better case for DEAT to be the issuing authority for coastal permits and not to scatter authority in many places which may defeat the object of the Act and NEMA principles.

[Ezemvelo KZN Wildlife]

*Here this section must be modified to include effluent (sewage) seeping through the soil profile in to a water body. In KZN this seepage is a significant source of pollution of marine and estuarine waters*

The following is to be added to Subsection (8)

(d) to facilitate the establishment of structures within dynamic, vulnerable or sensitive areas, or increase the risk of pollution to important natural systems during catastrophic events.

The time period stipulated for subsection (9) is lengthy. It is recommended that this be reduced to a maximum of four (4) years.

[LEGALB]

It is not clear whether “discharge of effluent water” include effluent discharged up-stream into a river, and hence into coastal waters. we suggest that clarity be provided in the Bill as to this.

[eThekweni Municipality]

This could be quite severe for water and sanitation service providers and therefore this needs to be look at in more detail as to the consequences of the proposed legislation of these services.

It is assumed that the process to obtain a coastal waters discharge permit should align with the related EIA process where required, although no specific mention is made of the EIA process. This should be explicitly stated.

Non-point source pollution from stormwater and sewerage appears to have been completely ignored in this Act. As this is arguably the single biggest pollution impact for estuaries and sea shore/beaches there is a need to address this but it is unclear why this was left out.

There is also no reference as to who will be doing the compliance monitoring and enforcement. The Act needs to stipulate which organs of state will be doing the compliance monitoring and enforcement.

[CSIR]

- Section 74 (6) states that *any person discharging effluent into coastal waters –*
  - a) ...
  - b) ...
  - c) ...
  - d) *must comply with any applicable waste standards or water management practices prescribed under this Act or ~~under section 23 of the National Water Act, unless the conditions of the relevant authorisation provide otherwise: and~~*

It is proposed that reference to a specific section (in this case section 23) in the National Water Act be omitted. The motivation here is that in 2006, DWAF adopted an *Operational Policy for the Disposal of Land-derived Water containing Waste to the Marine Environment of South Africa* (refer to <http://www.dwaf.gov.za/Documents/>). This Water Management Practice was developed in collaboration with stakeholders which included DEAT (MCM). This operational policy was, however, developed under section 21 of the NWA. Another motivation is that by being section specific, one may also jeopardize the continued (interim) application of the *South African Water Quality Guidelines for Coastal Marine Waters*, (DWAF, 1995), e.g. until such time as DEAT revise these under the new Bill.

[Department of Minerals and Energy]

Not applicable to mining as indicated on the comments on dumping at sea and incineration at sea. MPRDA already deals with waste management and pollution control in a mining area

[Belemani Semoli (Personal Capacity)]

Please include:

- (a) Need for treatment of effluents from marine aquaculture activities before releasing into sea.
- (b) Restriction of boats within 150 metre radius around marine aquaculture operation sea water intake pipes to minimize pollution risk.

[Kathy Leslie (Personal Capacity)]

Must include stormwater. In many cases effluent enters the coastal system via discharges into stormwater.

- (7) Again would like to see reference to "local community"
- (11) What if 35 (1) has not happened?

[Kommetjie Residents & Ratepayers Association]

- The paragraph on discharges should go further than the immediate marine environment and include coastal catchments.
- The granting of discharge licences could cumulatively undermine the intention to reduce pollution

[Derrick Airey (Personal Capacity)]

S 74 (4)(a) – owners of DWA&F license need to apply within 24 months of commencement of this act.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

74 (8) (a) appears too open-ended, in so far as adverse pollution effects may be catastrophic in the short-term but not long-lasting or irreversible.

[Derrick Airey (Personal Capacity)]

S 74 (9) – DEAT and DWA&F DG's must within 5 years of commencement of the act review all effluent discharge authorizations issued before the commencement of the act for compliance with the requirements of the act etc etc.

At this time I do not believe that there is capacity in DEAT to administer this act. If the DEAT anticipate the transfer of DWA&F personnel, to administer the Act, there would be no knowledge left in DWA&F in order to comply with S74 (9).

S74 (10) – DEAT and DWA&F ministers must within 5 years of commencement of the act decide whether to issue permits – This conflicts with S 74 (4)(a) and (9). How can a DWA&F license holder apply for a permit from DEAT, 3 years prior to the respective Ministers deciding whether to issue permits, and the DG's reviewing the licenses. Rather include in the time period in S 74 (4)(a) a review period, prior to a DEAT permit being issued.

There is no time period stated for authorizations – The DWA&F licenses are valid for 40 years with a variable review period. In the case of an effluent discharge, the review period is every 3 years. It is suggested that the permit be valid for a longer period, and have closer review periods.

[KZN Agriculture and Environmental Affairs]

74	Why is only land-derived effluents needing an authorisation? What about the effluent discharged from structures at sea, e.g. oil rigs?
74(1)	What is relationship between general authorization proposed here and provisions for discharge in respect to licenses issued in terms of the National Water Act?
	What has happened to cooperative government and the role of both provincial and local government in these processes?
	References should be made in this section to proposed monitoring, consultative forums, determining cumulative impacts etc. and not just in Chapter 11 detailing potential regulations.
74(8)	This section goes against the special permits criteria, for which socio-economic gain can override environmental adverse effects.
74(11)	This provision presupposes that the National Coastal Committee will be established.

[Oceanographic Research Institute]

#### 74. Discharge of effluent into coastal waters

(1) No person shall discharge effluent that originates from a source on land into coastal waters except in terms of a general authorisation referred to in subsection (2) or a coastal waters discharge permit issued under this section by the Minister after consultation with the member of the Cabinet responsible for water affairs.

The Minister, after consultation with the member of the Cabinet responsible for water affairs, may by notice in the *Gazette* generally authorise all, or a category of persons to discharge effluent into coastal waters.

Any person who at the commencement of this Act is discharging effluent into coastal waters and who is not authorised to do so in terms of a general authorisation

under subsection (2) must apply to the Department for a coastal waters discharge permit and send a copy of the application to the Department of Water Affairs –

- (a) within 12 months of the date of commencement of this Act if the discharge is in terms of a licence or authorisation under the National Water Act; or
- (b) within 24 months of the date of commencement of this Act if the discharge is a continuation of an existing lawful water use in terms of sections 32 or 33 of the National Water Act.

(6) A person who discharges effluent into coastal waters –

- (a) must not waste fresh water;
  - (b) may only do so to the extent that it is not reasonably practicable to return any freshwater in that effluent to the water resource from which it was taken;
- The Minister and the member of the Cabinet responsible for water affairs, must, when deciding whether or not to issue a general authorisation referred to in subsection (2) or to grant an application for a coastal waters discharge permit, take into account all relevant factors, including–

- (a) *the interests of the whole community; ???*
- (b) the socio-economic impact if the disposal is authorised, as well as if it is not;

The cumulative and/or synergistic effects of such a discharge  
The assimilative capacity of the receiving waters  
The evaluation of possible alternatives to the proposed discharge

- (c) the coastal management programmes applicable in the area;

9 The Director-General in consultation with the director-general of the department responsible for water affairs must within three years of the date of commencement of this Act jointly review all authorisations issued before the commencement of this Act that authorise the discharge of effluent into coastal waters in order to determine the extent to which they comply with the requirements of this Act and of other legislation administered by those Departments, and must make recommendations to the Minister and to the member of the Cabinet responsible for water affairs as to whether or not–  
The Minister and the member of the Cabinet responsible for water affairs must within five years of the commencement of this Act decide whether or not to issue a permit or permits referred to in subsection (9) and the conditions that will apply to any permits issued, but before doing so, must give the holders of authorisations issued prior to the commencement of this Act a reasonable opportunity of making representations.

(11) An organ of state that issues a permit under subsection (4?) must report every three years in the prescribed form to the National Coastal Committee on the status of each pipeline that discharges effluent into coastal waters and its impacts on the coastal environment. Such reporting should include an assessment of assimilative capacity, cumulative and synergistic effects.

[Woodbridge Island Body Corporate]

In 74(11) we would support replacing “every three years” with “every year”.

**Section 74.** (4) Any person who at the commencement of this Act is discharging effluent into coastal waters and who is not authorised to do so in terms of a general authorisation under subsection (2) must apply to the Department for a coastal waters discharge permit and send a copy of the application to the Department of Water Affairs –

- 2) (d) must comply with any applicable waste standards or water management practices prescribed under this Act or under section 23 of the National Water Act, unless the conditions of the relevant authorisation provide otherwise; and
- (e) must register the discharge with the Department of Water Affairs and Forestry.

*Id*

[DEAT Comments:](#)

*This section was amended to read:*

**“69. Discharge of effluent into coastal waters**

- (1) No person shall discharge effluent that originates from a source on land into coastal waters except in terms of a general authorisation referred to in subsection (2) or a coastal waters discharge permit issued under this section by the Minister.
- (2) The Minister, may by notice in the *Gazette* generally authorise all, or a category of persons to discharge effluent into coastal waters.
- (3) Any person who wishes to discharge effluent into coastal waters in circumstances that are not authorised under a general authorisation referred to in subsection (2) must apply to the Department for a coastal waters discharge permit.
- (4) Any person who at the commencement of this Act is discharging effluent into coastal waters and who is not authorised to do so in terms of a general

authorisation under subsection (2) must apply to the Department for a coastal waters discharge permit –

- (a) within 24 months of the date of commencement of this Act if the discharge is in terms of a licence or authorisation under the National Water Act; or
- (b) within 36 months of the date of commencement of this Act if the discharge is a continuation of an existing lawful water use in terms of sections 32 or 33 of the National Water Act.

(5) Unless a person referred to in subsection (4) is directed otherwise by a person acting in terms of this Act or the National Water Act, it is not an offence for that person to discharge effluent that originates from a source on land into coastal waters if –

- (a) that person has made an application under subsection (4) but has not yet been notified if the application has been granted or refused; or
- (b) the applicable period referred to in subsection (4)(a) or (b) has not yet expired.

(6) A person who discharges effluent into coastal waters –

- (a) must not waste water;
- (b) may only do so to the extent that it is not reasonably practicable to return any freshwater in that effluent to the water resource from which it was taken;
- (c) must discharge the effluent subject to any condition contained in the relevant authorisation;
- (d) must comply with any applicable waste standards or water management practices prescribed under this Act or under section 23 of the National Water Act, unless the conditions of the relevant authorisation provide otherwise; and
- (e) must register the discharge with the department responsible for water affairs.

- (7) The Minister, must, when deciding whether or not to issue a general authorisation referred to in subsection (2) or to grant an application for a coastal waters discharge permit, take into account all relevant factors, including—
- (a) the interests of the whole community;
  - (b) the socio-economic impact if the disposal is authorised, as well as if it is not;
  - (c) the coastal management programmes and estuarine management plans applicable in the area;
  - (d) the likely impact of the proposed disposal on the coastal environment;
  - (e) the Republic's obligations under international law;
  - (f) the factors listed in section 27 of the National Water Act; and
  - (f) any other factors that may be prescribed.
- (8) The Minister must not grant an application in terms of subsection (3) for a coastal waters discharge permit if doing so is likely –
- (a) to cause irreversible or long-lasting adverse effects that cannot satisfactorily be mitigated;
  - (b) to prejudice significantly the achievement of any coastal management objective contained in a coastal management programme; or
  - (c) to be contrary to the interests of the whole community.
- (9) The Director-General must within five years of the date of commencement of this Act review all authorisations issued before the commencement of this Act that authorise the discharge of effluent into coastal waters in order to determine the extent to which they comply with the requirements of this Act and of other legislation administered by those Departments, and must make recommendations to the Minister as to whether or not—
- (a) the discharge should be prohibited;

- (b) in the case of a discharge into the sea, whether or not a permit should be issued under subsection (1);
- (c) in the case of a discharge into a estuary whether or not the discharge should be authorised in terms of a permit issued under subsection (1) and a permit issued under the National Water Act; or

(10) The Minister, must within five years of the commencement of this Act decide whether or not to issue a permit or permits referred to in subsection (9) and the conditions that will apply to any permits issued, but before doing so, must give the holders of authorisations issued prior to the commencement of this Act a reasonable opportunity of making representations.

(11) An organ of state that issues a permit under subsection (1) must report every three years in the prescribed form to the National Coastal Committee on the status of each pipeline that discharges effluent into coastal waters and its impacts on the coastal environment.

(12) The Minister may when exercising functions and powers in terms of subsections (1), (2),(7) and (10), enter into an agreement with any member of Cabinet. “

**Section 75: Prohibition of incineration or dumping at sea**

[Department of Minerals and Energy]

Not applicable to mining as indicated on the comments on dumping at sea and incineration at sea. MPRDA already deals with waste management and pollution control in a mining area

[KZN Agriculture and Environmental Affairs]

75	Consideration should be given to burials at sea and the process to be followed in this regard.
75(2)(c)	Provision should be included to allow for rehabilitation initiatives, if feasible, should materials be dumped in inappropriate locations or have significant negative environmental impacts.

[Department of Environmental Affairs & Development Planning]

Section 75

Section 75(2):- Prohibition of Incineration, dumping, discharge at sea

This clause should mention under what emergency conditions these discharges may be allowed

Insert Section 75(2)(d):- Whatever was disposed of at sea by a vessel etc during an emergency situation should be recorded (quantity, toxicity levels, mitigation measures taken etc) and the point of disposal (location) should be indicated. These records should be available on request.

[Oceanographic Research Institute]

Subject to subsection (2), no person may –

- (a) incinerate at sea any waste or other material –
    - (i) within the coastal waters or the exclusive economic zone; or
    - (ii) aboard a South African vessel;
- dump from a South African vessel, aircraft, platform or other man-made structure at sea, any waste or other material in any area of the sea under the jurisdiction of another state, except under and in accordance with the written permission of that state, but nevertheless approved by the minister.

DEAT Comments:

*This section was not amended.*

**Section 76: Dumping permits**

[Wildlife and Environmental Society of SA]

There must be a reference to the London Convention here, not only the allowable bits, but also the principles and "black" list.:

*One of the most important innovations is to introduce (in Article 3) what is known as the "precautionary approach". This requires that "appropriate preventative measures are taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects.*

*"The article also states that "the polluter should, in principle, bear the cost of pollution" and it emphasizes that Contracting Parties should ensure that the Protocol should not simply result in pollution being transferred from one part of the*

*environment*

*to*

*another.*

The 1972 Convention permits dumping to be carried out provided certain conditions are met. The severity of these conditions varies according to the danger to the environment presented by the materials themselves and there is a "black list" containing materials which may not be dumped at all. What happens if the allowable list changes? Will the Act be changed to accommodate these changes?

There is no reference to the waste to the Principles of the Waste Hierarchy (prevention, minimisation, reuse/recycle, treatment and ONLY THEN may disposal be considered) in the main body, only in Schedule 2. We would like to see it in the main section too.

[Endangered Wildlife Trust]

1. Section 76(2) – Suggest including additional factors for consideration by the Minister when deciding an application for a dumping permit including: i) standards and obligations in terms of regional and international agreements; ii) potential impacts on transboundary species, ecosystems or settlements; and iii) seasonal implications.
2. Section 76(4)(b)(ii) – suggest revising to read: “would cause a serious obstacle to fishing, navigation, tourism or any other marine coastal-dependant industry or activity” (i.e. energy production
3. Section 76(4)(b) – suggest including waste that could pose a human health or natural environment risk

[TRANSNET]

- Section (5) stipulates that the dredge disposal permits may not be issued with a validity period longer than one year. This will be problematic for Transnet's larger projects where dredging will extend over longer periods. This puts the dredging operations at risk if there is any delay in the issuing of a renewed permit.
- Section 78 of the Act stipulates that the Minister must “...progressively and subject to available resources, develop a National Action list...” Schedule 2 (Section 9) merely states that “...the Action list must specify an upper level and may also specify a lower level”. We request further clarification.
- One of the key problems that Transnet experiences with the dredge spoil disposal applications, is that the currently applied guidelines are not always appropriate (e.g. they fail to take into account natural variation in the levels of

some elements in the sediments to be dredged which are closely related to catchment geology– east coast has naturally high arsenic level which exceed the current guidelines). This provides us with both an opportunity and a potentially serious constraint. The opportunity relates to the fact that Transnet can assist the Minister in the development of this action list. The constraint relates to the fact that Transnet will still be making applications under the current guidelines for some time until the new action lists are developed. We would like to engage with the Department, to explore opportunities for co-operation in this regard.

- It is not clear how this Bill will be implemented in relation to the National Water Act, 1998. It may be useful to provide clarity regarding the scope of the two pieces of legislation and their concurrent implementation.
- Transnet would like to engage with the department on whether it is the most appropriate choice to incorporate dumping activities within this Bill. We are cognisant of the need to develop an integrated and comprehensive Bill to holistically deal with the coastal zone, and the activities within the coastal zone. However, by only incorporating dumping activities, confusion may arise as to why other issues e.g. oil pollution and other pollution from vessels within the coastal zone, are not included in the Bill. Accordingly clarification is required to substantiate the incorporation of dumping at sea in this Bill and the exclusion of other sources of pollution.
- Duplication of this section with the new EIA Regulations (R386-6) should also be clarified. In discussion with the Environmental Impact Management Chief Directorate in DEAT, it became clear that since dredging is a listed activity for which a Basic Assessment is required, it still required a permit under the MCM legal requirements.
- If this Bill is now incorporating the dredging permits, then this duplication within the current legislation should be addressed. This becomes very problematic for Transnet from a maintenance dredging perspective, in that annual permits now have to follow a basic assessment, according to R386-6.

[P.A. Whittington (Personal Capacity)]

Section 76 (4) (a): I would like to see an additional clause (iii) to cover anything containing toxic material and/or heavy metals.

[eThekweni Municipality]

Dumping permits generally assume that the sea acts as a waste disposal site and seems to allow 'free dumping' of certain materials that can cause impacts.

[K.P. Mackie (Personal Capacity)]

(2)

Add as (d): “the likely impact of the proposed dumping on the coastal morphology, coastal processes and the physical character of the coast.”

This is intended as a companion to (c). While (c) provides for the biological environment, the proposed (d) does the same for the physical environment of the coast.

Change (d) and (e) to (e) and (f) respectively

[Department of Minerals and Energy]

Not applicable to mining as indicated on the comments on dumping at sea and incineration at sea. MPRDA already deals with waste management and pollution control in a mining area

[KZN Agriculture and Environmental Affairs]

76	There must be a reference here to the London Convention (1972), its related principles and the associated “black list”.
	Again – no reference is made to cooperative government and the role of both provincial and local government. There is no obvious devolution or relationship with other spheres of government.

[Oceanographic Research Institute]

When deciding an application for a dumping permit, the Minister shall have regard to the following –

- (a) the Waste Assessment Guidelines set out in Schedule 2;
- (b) any coastal management programme applicable in the area;
- (c) the likely impact of the proposed dumping on the ecology and marine resources;
- the transboundary impacts 
- international obligations and standards
- (d) the interests of the whole community; and
- (e) any other factors that may be prescribed.

The Minister may not grant a dumping permit that authorises the dumping of any waste or other material other than –

- (a) dredged material;
- (b) sewage sludge, providing it can be shown not to be contaminated with industrial waste;
- (c) fish waste, or material resulting from industrial fish processing erations;

The Minister must not issue a dumping permit if –

- (a) the waste or other material proposed for dumping contains –

- (i) levels of radioactivity greater than as defined by the International Atomic Energy Agency and adopted by the contracting parties to the *Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* adopted on 7 November 1996);
- (ii) material which is capable of creating floating debris or otherwise contributing to the pollution of the marine environment and which could be removed from the material proposed for dumping;
- (iii) medical waste that could pose a human health risk
- (iv) man made chemicals that can not be shown to be assimilated by the environment

[EIA, Nelson Mandela Bay Metropolitan Municipality]

Which department will be issuing waste/sludge permits? More clarity needed.

DEAT Comments:

*This section was amended to read:*

“(2) .....

(c) the likely environmental impact of the proposed;

(d) .....

(4) .....

(iii) would prejudice the achievement of any coastal management objective contained in a coastal management programme; .....

**Section 77: Emergencies**

[Wildlife and Environmental Society of SA]

Include under 2, the following requirement:

*A risk assessment must be undertaken to ensure that the material for emergency dumping at sea has been properly considered and the effects of dumping understood before disposal is undertaken.*

[Department of Environmental Affairs & Development Planning]

Section 77

Deals with emergency incidents, but it does not include provisions for reporting such emergencies. Although this is covered under IMO and SAMSA regulations /Act the data is important to report on State of the Coast and State of the environment Reporting.

Who pays for cleanup operation should the cargo dispensed with cause environmental pollution or damage? Does the “Polluter pays” principle apply?

Can the Minister claim for damages from the shipping company? This clause is problematic- it is too open ended and can lend itself too abuse.

[Western Cape Department of Environmental Affairs and Development Planning  
(Region A1 George)]

Point 77 (1): Emergencies:

What about remedial/ repair work as a result of disasters like floods? (T)His also needs to be included.

*d*

[DEAT Comments:](#)

*This section's title was amended to read:*

**"72. Emergency dumping at sea"**

### **Section 78: National action list**

[KZN Agriculture and Environmental Affairs]

78	Again - no reference is made to cooperative government and the role of both provincial and local government. No reference is made to the role of industry or I&APs in this process either.
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[TRANSNET]

- We understand that the details relating to appeals might be contained in regulations (as set out in Chapter 11) that will follow the commencement of the Act.
- We would like to urge MCM to ensure that appeal processes are not undefined processes, and clear timelines and responsibilities are provided for.

[Kathy Leslie (Personal Capacity)]

(1) Why "progressively and subject to...". Just do it all within 4 years.

[DEAT Comments:](#)

*This section was not amended.*

## **CHAPTER 9 APPEALS**

[DEAT Comments:](#)

Chapters 9 – 11 deal with Appeals, Enforcement, General Powers and Duties and Miscellaneous matters. Only minor changes have been made to these chapters.

**Section 79: Appeals**

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Whilst the provision for appeals is necessary and desirable, it is critical that timeframes for the resolution of appeals (decisions by Minister) are regulated otherwise appeals tend to take an inordinate amount of time and have a major negative impact on development and investment.

[Department of Environmental Affairs & Development Planning]

Section 79

Section 79(1) :- Replace words “repair and removal” with Removal and rehabilitation”  
Replace in Section 79(5):- “equitable” with “extenuating circumstances”  
Insert in Section 79(6):- The Minister or MEC may dismiss an appeal that he or she considers reasonably to be trivial, frivolous or manifestly without merit.

[Ezemvelo KZN Wildlife]

Subsection (2) should read as follows:

The Minister or MEC may dismiss an appeal that he or she considers to be trivial, frivolous, malicious or manifestly without merit.

[LEGALB]

s79(1)

It appears that s79 does not make any provision for an appeal against a coastal protection notice if that was issued by the Minister, although it appears from s59(1), (2) and (3) that the Minister may issue such notices even although there is a default “delegation” (strangely) to the MEC of those powers.

We suggest that provisions be inserted in the Bill clarifying the procedure of appealing against a coastal protection notice issued by the Minister.

[Kathy Leslie (Personal Capacity)]

(5) what if this conflicts with EIA time frames?

[Western Cape Department of Environmental Affairs and Development Planning  
(Region A1 George)]

Point (4)

This is in conflict with the NEMA EIA appeal procedure and must be changed if EIA processes are going to be handled through this Act. We cant have a system where

there are two different appeal specifications as this may lead to abuse of the appeal systems.

DEAT Comments:

*This section was amended to read:*

**“74. Appeals**

- (1) A person to whom a coastal protection notice or coastal access notice in terms of section 59 or a repair and removal notice in terms of section 60, has been issued, may lodge an appeal against that notice with –
  - (a) the Minister if the notice was issued by an MEC exercising powers delegated by the Minister in terms of section 59(3) or 60(3);
  - (b) the MEC of the province concerned, if the notice was issued by a municipality in that province exercising powers delegated by the MEC; or
  - (c) the Minister if the notice was issued by an official in the Department exercising powers delegated by the Minister in terms of section 59(3) or 60(3);.
  
- (2) A person who is dissatisfied with any decision taken to issue, refuse, amend, suspend or cancel an authorisation, may lodge a written appeal against that decision with –
  - (a) the Minister, if the decision was taken by a person exercising powers granted to the Minister by this Act that have been delegated by this Act or by the Minister;
  - (b) .....
  
- (7) Appeals against a decision involving an integrated environmental authorisation must be dealt with in terms of the National Environmental Management Act.”

**Section 80: Appeal panels**

[Endangered Wildlife Trust]

Section 80(2)(b) – Suggest modification to read: “not appoint a particular individual who was involved...”

[Ezemvelo KZN Wildlife]

Subsection (2)(b) should read as follows:

not appoint an individual who was involved ...

*This is important in that organs of state may be excluded from sitting on the panel as they commented on the matter being appealed against. Here one cannot allow for such a process to override the mandates and jurisdictions of the organs of state. Naturally the discretion of the Minister should prevail to determine whether there is a real conflict of interest.*

[Kathy Leslie (Personal Capacity)]

2(c) “... in the *outcome of the* appeal.”

[DEAT Comments:](#)

*This section was deleted.*

## **Section 81 Interim orders by Minister or MEC**

[Oceanographic Research Institute]

- (2) The Minister with the consent of the Minister of Finance, or the MEC with the consent of the member of the provincial executive council responsible for finance, must determine the rate of remuneration and the allowances payable to any member of an appeal panel who is not an employee of an organ of state. This to include funding of the panel’s administrative and related activities.

[Department of Environmental Affairs & Development Planning]

Section 81

Insert in Section 81(4):- reasonable time for the minister or MEC to respond. (60 days)

[DEAT Comments:](#)

*This section was amended to read:*

“(3) The Minister or an MEC may make an interim order at his or her own initiative or in response to an application by a party to the appeal proceedings.”

### **Section 82: Proceedings of appeal panels**

[Endangered Wildlife Trust]

Section 82(2) – Suggest clarification of who an interested and affected party is and how they are to be procedurally involved.

#### [DEAT Comments:](#)

*This section was deleted.*

### **Section 83: Determination of appeal by Minister or MEC**

[ESKOM]

There is no time scale within which the decision must be made and we recommend that it be included.

#### [DEAT Comments:](#)

*This section was amended to read:*

#### **“76. Determination of appeal by Minister or MEC**

- (1) The Minister or MEC must consider the appeal and may -
  - (a) dismiss the appeal and confirm the decision appealed against;
  - (b) uphold part or all of the appeal and either vary the decision appealed against or set aside the decision and make a new decision.
- (2) In determining an appeal the Minister or MEC must have regard to -
  - (a) the purpose of this Act and any relevant coastal management objectives.”

## **CHAPTER 10 ENFORCEMENT**

#### [DEAT Comments:](#)

Chapters 9 – 11 deal with Appeals, Enforcement, General Powers and Duties and Miscellaneous matters. Only minor changes have been made to these chapters.

[Endangered Wildlife Trust]

Suggest clarification of which organs of state will have responsibility for the compliance, monitoring and enforcement activities relating to implementation of the provisions of the ICM Act.

[Jessica Hayes (Personal Capacity)]

- Competent Environmental Officers should be put in place to implement the Bill. So many times legislation is passed but not implemented adequately on the ground. Greater funds may need to be made available in providing this manpower but it is crucial in the long term.
- In instances where contravention of the Bill has occurred, penalties and jail sentences may in many instances be adequate measures yet the problem created is not stopped or suitably corrected. In many instances the penalty is easily paid but the damage is done and work may even continue in some cases. Mandates and permits should be revoked immediately and strict directives in terms of rehabilitation and mitigation measures should be implemented. The process of prosecuting offenders also needs to be sped up.

[KZN Agriculture and Environmental Affairs]

Chapter 10	There is no discussion as to who will be doing the compliance, monitoring and enforcement.	Stipulate which organs of state will be doing the compliance monitoring and enforcement.
	Actual penalties should not be determined in the Act itself. Inflation/ the devaluation of the rand will warrant the constant amendment of the Act.	

[Kwazulu-Natal Conservancies Association]

Suitably qualified EMIs to assist with enforcement.

[Western Cape Department of Environmental Affairs and Development Planning (Region A1 George)]

What about the inclusion of the possibility of site visits to enable the Minister to get a better feel for the area?

[SANParks (West Coast National Park)]

Chapter 10 – Enforcement

It is not clearly stated who in fact will be patrolling and enforcing regulations pertinent to this Act. We are certainly concerned if enforcement is left solely to municipalities. Some municipalities like Overstrand Municipality have shown dedicated coastal

management and enforcement practices. In Langebaan, however, despite our continued efforts at dialogue with the local authority, we have seen some serious violations of the Environmental Conservation Act and the regulations pertaining to the use of vehicles in the coastal zone. Vehicles are still allowed to drive on the beaches in this area and the Langebaan Yacht Club (private yacht club) was allowed to erect a structure directly adjacent the national park in municipal public open space. SANParks was never consulted by the municipality in this regard. We therefore advocate that municipalities' capacity be accurately reviewed before they are given the authority over enforcement issues along the coastline.

**Section 84: Offences**

[TRANSNET]

Section 84(e) - and offence to load, import or export any waste or other material to be dumped or incinerated at sea. Would this apply to a terminal operator? If so, then how would Transnet deal with this if we have no knowledge of the contents, e.g. a container, and how does one control what happens out at sea?

[eThekweni Municipality]

It is presumed that other legislation provides for inflation-linked increases to the fines.

[Chief Directorate: Environmental Affairs (Eastern Cape)]

- (i) 84 (2) (b) refers. It is felt that a person should be guilty of a category one offence in this instance.
- (ii) Similarly, it is felt that a person should be guilty of a category two offence in relation to 84 (4) (a).

This Section omits to create a category of offence for the hindering of an official in the execution of the official's duties

[KZN Agriculture and Environmental Affairs]

84(3)	Given the relative social, economic and environmental importance of the coastal zone, it is submitted that the minimum fine is too low to be an effective deterrent, e.g. only a R20,000 fine for mining undertaken illegally.
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[Oceanographic Research Institute]

- (a) knowingly makes any false statement or report, for the purpose of obtaining or objecting to, a permit, lease or concession.
- (l) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of paragraphs (a) to (k).

[DEAT Comments:](#)

*This section was amended to read:*

**“77. Offences**

- (1) A person is guilty of a category one offence if that person –
- (b) discharges effluent originating from a source on land into coastal waters in contravention of section 69;
  - (c) incinerates at sea any waste or material in contravention of section 70;
  - (d) loads, imports or exports any waste or other material to be dumped or incinerated at sea in contravention of section 70);
  - (e) dumps any waste at sea in contravention of section 70;
  - (f) dumps any waste or other material at sea without a dumping permit in contravention of section 70.
  - (g) alters any authorisation;
  - (h) fabricates or forges any document for the purpose of passing it as an authorisation;
  - (i) passes, uses, alters or has in possession any altered or false document purporting to be an authorisation; or
  - (j) knowingly makes any false statement or report, for the purpose of obtaining or objecting to an authorisation.
- (2) A person is guilty of a category two offence if that person–
- (a) fails to comply with a repair and removal notice issued in terms of section 60;
  - (b) hinders or interferes with the exercise by a duly authorised person of a power, or the performance of a duty, in terms of this Act; or knowingly falsely represents that he or she is a person authorised to exercise powers in terms of this Act;

- (3) A person who is the holder of an authorisation is guilty of a category two offence if that person –
- (a) contravenes or fails to comply with a condition subject to which the authorisation has been issued;
  - (b) performs an activity for which the authorisation was issued otherwise than in accordance with any conditions subject to which the authorisation was issued; or
  - (c) allows any other person to do, or to omit to do, anything which is an offence in terms of paragraph (a) or (b).
- (3) A person is guilty of a category three offence if that person –
- (a) fails to comply with a coastal protection notice or access notice issued in terms of section 59; or
  - (b) contravenes any other provision of this Act which is not referred to in subsections (1), (2) or (3).”

### **Section 85: Penalties**

[Ezemvelo KZN Wildlife]

Monetary fines should be changed to “an equivalent monetary fine”

It is recommended that all three penalties carry a mandatory community service in addition to the penalty prescribed

[Chief Directorate: Environmental Affairs (Eastern Cape)]

The penalties specified in 85 (2) & 85 (3) are viewed as having insufficient deterrence

value, given the vast amounts of money involved in coastal development activities.

[Wendy-Leah Dewberry (Noetzie Conservancy Association) and Charmaine Cumberlege]

A person who is guilty of transgressing the terms of an application should have the mandates revoked with immediate effect. Fines are not always a deterrent but could be merely seen as an additional cost. Refusals of further licenses and permits should also be considered.

[Department of Environmental Affairs & Development Planning]

Section 85

No provision is made for escalation of fines over time (according to CPIX).

Section 85(2):- Fines should be increased to a maximum of R 1 million rand

Section 85(3):-Fines should be increased to maximum of R 500 000,00

Section 85 (5)(c):- An option to become a voluntary coastal officer

DEAT Comments:

*This section was amended to read:*

**“78. Penalties**

(1) A person who is guilty of a category one offence referred to in section 77 may be sentenced to a fine of up to five million Rand or imprisonment for a period of up to ten years, or to both such fine and imprisonment.”

“(3) A person who is guilty of a category three offence referred to in section 77 may be sentenced on a first conviction for that offence to a fine of up to R50,000 (fifty thousand Rands) or community service for a period of up to six months or to both a fine and such service. “

“(5) A court that sentences any person-

.....

(b) for any offence in terms of this Act, may suspend, revoke or cancel an authorisation granted to the offender under this Act.”

**CHAPTER 11  
GENERAL MINISTERIAL POWERS AND DUTIES**

DEAT Comments:

Chapters 9 – 11 deal with Appeals, Enforcement, General Powers and Duties and Miscellaneous matters. Only minor changes have been made to these chapters.

*Part 1: Regulations*

[Wendy-Leah Dewberry (Noetzie Conservancy Association) and Charmaine Cumberlege]

To include proactive support to voluntary public officers for given areas. The qualifying volunteers should have access to enforcing (through recording and reporting) and protecting the Coastal environment as set out in this Bill.

[Department of Environmental Affairs & Development Planning]

- Chapter 11- General Ministerial powers:
  - No mention is made of cooperation or partnership on concurrent functions;
  - Provisions are too prescriptive and will limit the ability of provinces to regulate;
- Delegation – The bill should in more instances allow actions to be done by the Minister or the MEC with concurrence from the Minister (e.g. the MEC should also be able to designate state land as part of Public Coastal Land.

**Section 88: Regulations by Minister**

[Endangered Wildlife Trust]

1. Section 88(1) – Suggest modifying to read “The Minister in consultation with the National Coastal Committee must make...”
2. Section 88(3) – Suggest requirement for broader consultation with provincial and local stakeholders

[eThekweni Municipality]

Section 88(1). ‘The Minister may make...’ should be changed to ‘The Minister, in consultation with the National Coastal Committee, may make...’

[KZN Agriculture and Environmental Affairs]

88(1)	“The Minister may make...” should be changed to “The Minister, in consultation with the National Coastal Committee, may make...”
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[Derrick Airey (Personal Capacity)]

S 88 (1)(d)(iii) – regulations including fees, costs, charges, rents and royalties for use of coastal public property.

[Belastingbetalersvereniging]

Arts. 88, 89. Die bevoegdheid om regulasies uit te vaardig behoort net aan die Minister toegeken te word en nie aan die LUR ook nie. Weereens strook die uitgangspunt ook met die standpunt dat daar slegs een nasionale liggaam behoort te wees met betrokkenheid van provinsies met ‘n gekoördineerde bestuursplan met die Minister wat regulasies uitvaardig. Art. 94(5) bepaal inderdaad dat die Minister nie sy bevoegdheid om regulasies uit te vaardig kan deleger nie.

Art. 96. Die bepaling dat die LUR magte wat aan hom/haar gedelegeer is verder kan deleger is nie in ooreenstemming met die regsbeginsel van delegering nie.

[Oceanographic Research Institute]

The Minister must consult with – 

- (a) the Minister of Finance before making any regulations imposing levies, fees, charges, rents or royalties;
- (b) the member of the Cabinet responsible for water affairs before making any regulations concerning estuaries;
- (c) the MEC  before making any regulations concerning the coastal zone within that province.

The MEC of a province may in consultation with the Minister, make regulations that are consistent with any national norms or standards that may have been prescribed, relating to –

- (a) the implementation and enforcement of the coastal management programme of the province;
- (b) the management of the coastal buffer zone within the province;
- (c) the use of coastal public property for recreational, harvesting or cultural purposes; 

DEAT Comments:

*This section was amended to read:*

- (a) “the establishment of national norms, standards and frameworks to implement this Act, including systems, guidelines, protocols, procedures, standards and methods, concerning -
  - (i) .....
  - (viii) the uses of the coastal zone that do not conform with the relevant coastal zoning scheme;”
  - (ix) .....
  - (x) .....
  - (xi) the appointment, training, powers and supervision of voluntary coastal officers;
  - (xii) public safety and behaviour on coastal public property; .....methods, procedures and conditions of enforcing compliance with authorisations; .....

- (3) The Minister must consult with –
- (a) the Minister of Finance before making any regulations imposing fees, charges, rents or royalties;
  - (b) the member of the Cabinet responsible for water affairs before making any regulations concerning estuaries;
  - (c) the MEC and municipalities before making any regulations concerning the coastal zone within that province.”

And by changing “coastal land lease” to “coastal lease”

### **Section 89: Regulations by MECs**

[Endangered Wildlife Trust]

Section 89(1)(c) – Suggest including ‘subsistence’ and ‘cultural’ purposes

#### [DEAT Comments:](#)

*This section was amended to include:*

“(g) the management of special management areas;”

And by changing “buffer zone” to “protection zone”

#### [DEAT Comments:](#)

*Section 91 (b) referring to the deleted Schedule 3 was deleted.*

#### [DEAT Comments:](#)

*Section 92 was amended to read:*

(a) “straddles a coastal boundary between two provinces; or “

### **Section 93: Directives by MEC to municipalities**

[Wildlife and Environmental Society of SA]  
93: (3): Where does the budget come from?

[Department of Environmental Affairs & Development Planning]

Section 9-

Issuance of directives. This may have some implications for the principle of co-operative governance. To date, it is not clear how far you have to consult with municipalities before you can issue them with a directive.

DEAT Comments:

*This section was amended to read:*

**“86. Directives by MEC to municipalities**

(1) If an MEC has reason to believe that a municipality is not taking adequate measures to prevent or remedy adverse effects on the coastal environment, to to adopt or implement a municipal coastal management programme, to establish set-back lines, to implement or monitor compliance with provincial norms and standards, or to give effect to the provincial coastal management programme, the MEC may in writing direct the municipality to take specified measures to do so. ....”

DEAT Comments:

*Section 87 was amended to read:*

**“87. Delegation by Minister**

(1) The Minister may delegate any power or duty assigned to the Minister in terms of this Act to –

- (a) .....
- (b) .....
- (c) any other organ of state, statutory functionary, traditional council or management authority of a special management area, by agreement with that organ of state, statutory functionary or management authority. “

“(3) The Minister must give notice in the *Gazette* of any delegation of a power or duty to an MEC, organ of state statutory functionary, traditional council or management authority of a special management area.”

DEAT Comments:

Section 95 was amended to read:

“(2) If the MEC does not comply with a request under subsection (1) the Minister may exercise any powers given to the Minister by this Act in order to take any measures referred to in the request, including the power –

- (a) to issue coastal protection or coastal access notices and repair and removal notices delegated to the MEC in terms of sections 59 and 60 respectively;”

DEAT Comments:

Section 96 was amended to read:

“(1) The MEC may delegate any power or duty assigned to the MEC in terms of this Act to

–

- (a) the head of the provincial lead agency; or
- (b) any other organ of state or a statutory functionary, traditional council or management authority of a special management area, by agreement.....”

DEAT Comments:

A new section has been inserted:

**“90. General Emergency powers**

(1) The Minister may take any emergency measures necessary in order to achieve the objectives of this Act”

**Part 4: General matters**

**Section 97: Information and reporting on coastal matters**

[Endangered Wildlife Trust]

1. Section 97(1) – Suggest strengthening this section to promote proactive transparency and innovative cooperation arrangements to secure resource over and above the ‘available resources of the department’ for increasing accessibility of information. For instance partnerships with NGOs, academic institutions and the private sector.
2. Section 97(3) – Suggest specification of time frame within which the Minister must prepare and update a national report on the state of the coastal environment.

[KZN Agriculture and Environmental Affairs]

97	Can the ‘Marine and Coastal chapter’ of a province’s State of the Environment (SoE) report be considered as the provincial State of the Coastal Environment report?
	Such a report should be prepared every 5 years and not every 4 years.
	This section has no provisions regarding the consultation process and publishing the report respectively and these need to be included.

[Department of Environmental Affairs & Development Planning]

Delete in Section 97(1)the words:- “ ..... and within the available resources of the department”

Has there been absolute clarity on the discharge of land-based waste into a marine resource? Will DEAT take over this function from Department of Water Affairs and Forestry and has this been gazetted?

[Wendy-Leah Dewberry (Noetzie Conservancy Association) and Charmaine Cumberlege]

1. *The Minister must progressively, and within the available resources of the Department, .....to enable the public to make an informed decision...."*

Provision of resources must be made in this and all aspects of coastal protection, and must not be subject to availability. This relates to my point iii on Coastal management, where I have stated that provision must be made for full-time Coastal Protection Officers in each area.

[Woodbridge Island Body Corporate]

In 97(2)(a) we would support replacing “every four years” with “every year”.

[Oceanographic Research Institute]

The Minister must progressively, and within the available resources  the Department, make available and accessible to the public sufficient information concerning the protection and management of the coastal zone to enable the public to make an

informed decision of the extent to which the State is fulfilling its duty in terms of section 3.

The Minister must prepare and regularly update a national report on the state of the coastal environment based on, but not confined to, provincial reports submitted to the Minister in terms of subsection (2).

DEAT Comments:

*This section was amended by deleting the word "immediately".*

## CHAPTER 12 MISCELLANEOUS MATTERS

DEAT Comments:

*In this chapter "coastal land lease" was substituted by "coastal lease". See also changes below.*

[Chamber of Mines of SA]

It is very important that the transitional arrangements must be practical and reasonable to streamline the implementation of the Act.

### **Section 99: Existing leases on, or rights to, coastal public property**

[Department of Environmental Affairs & Development Planning]

*Existing leases on or rights to coastal property*

Concern was raised regarding existing rights and leases in coastal public property, especially as it relates to mining and concessionary holders. The Bill makes provision for all existing rights and leases on coastal public property to be reassessed. New rights and leases will be for a maximum period of 20 years. Activities in the coastal public property will have huge impacts on surrounding coastal communities and the environment. It is therefore crucial that the MEC / the provincial lead agent concur on the awarding of leases and concessionaires.

Past mining activities along our coast have caused major destruction of pristine ecosystems. The results of decommissioning of mining activities have left many areas uninhabitable with large scars across the landscape. It is therefore important that coastal land leases and concessions be regulated strictly with Environmental Rehabilitation Programmes (Plan) and that a fund be constituted for the rehabilitation of the areas in the event that mines going bankrupt or stopped for one or other

reason. These measures must be negotiated and agreed upon before any coastal land lease or concession is signed.

[Endangered Wildlife Trust]

Section 99(1)(a) – Suggest modification to read: a lawful lease on land or premises or access arrangements that form part of coastal public property...”

[Jan S De Villiers (Attorney)]

The portions of sections 99 and 101 which provide therefore that leases or other rights will terminate if a coastal lease or coastal concession should be refused, would amount to deprivation of property. This would be arbitrary and in any event without compensation and therefore contrary to the provisions of section 25 of the Constitution of the Republic of South Africa. To this extent the bill would also be inconsistent with the Constitution and therefore invalid as contemplated in section 2 of the Constitution.

[TRANSNET]

Transnet seeks clarity on the implications of Section 99 and the remainder of this chapter for our current and future operations. It is unclear at the moment what the impact of these timelines would be on our future port development and operations.

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Section 99 should respect any and all existing leases and the periods of such leases. There should be no requirement to reapply for permissions or the lease.

[ESKOM]

99(1) The provision specifies important infrastructure whose continuation is important and must be secured. However, it does not take cognisance of existing power plant along or near the coast. We suggest that you add paragraph (c) to sub-section 1 as follows “*power generating plant using specific coastal resource or in a coastal public property, that existed when this Act took effect*”.

[Department of Minerals and Energy]

99 (1)	<u>Not supported by DME</u> , the continuation of approved rights to prospect, mine or to exploit petroleum in the coastal zone lies with the Minister of DME.	Strongly recommend that Section 99 (1) (B) is deleted or mentioned as a separate section. Propose ” Existing approvals for mining or petroleum authorisation are not effected by this Act ”.
99 (2 – 5)	<u>Not applicable</u> to mining as mentioned above.	

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[DEAT Comments:](#)

*This section was not amended.*

**Section 100: Unlawful structures on coastal public property**

[Department of Environmental Affairs & Development Planning]

Section 100

Replace in Section 100(1):- the words “ .....within 12 months.... “ to “within 3 months of commencement of the Act”

Insert Section 100(1)(c):- If a person fails to comply with (a) or (b) the Minister or MEC may issue a removal and rehabilitation notice under Section 60.

Section 100(b)

Insert “within 12 months of commencement of this Act.

Section 100 (1) and (2): Definition of “site” required

[Ezemvelo KZN Wildlife]

The following should be added to subsection 100(1):

(b) Undertake an impact assessment of possible residual impacts of the development and its demolition in order to assist with the identification of offsets to be set in place

Add the Offset provisions (appendix A) as extracted from the KZN Biodiversity Bill as a section in this Coastal Bill

**Biodiversity Offsets**

1. (1) Any person or persons contemplating an activity that is likely to have a significant residual and negative impact on either the biodiversity, the ecological integrity of the coastal zone or the provision of important ecosystem services, be it either alone or in combination with other plans, projects or current activities, shall be required to apply to the Provincial Coastal Committee to establish a biodiversity offset for the loss of the natural integrity of the coastal zone, biodiversity and/or ecosystem services.

(2) For each application received in term of sub-paragraph (2), the Provincial Coastal Committee shall evaluate the implications of the residual impacts of the proposed activity on the biodiversity, ecological integrity or ecosystem services provided by the affected area in view of that area's contribution to both the Provincial and National biodiversity targets and conservation objectives.

(3) In the light of the conclusions of the evaluation, the Provincial Coastal

Committee shall determine an appropriate biodiversity offset and conditions thereto.

(4) Where the land contemplated in sub-paragraph (1) lies within an area deemed to be irreplaceable if biodiversity targets are to be met, contains viable samples of critically endangered habitat, critically endangered species or important and irreplaceable ecosystem services, the Provincial Coastal Committee may refuse the application for a biodiversity offset and shall give reasons for their decision.

(5) Where an application for an offset is refused, the person or persons contemplating the activity contemplated in sub-paragraph (1) or the owner of the land may not continue with the activity for which the offset is applied for.

(5) The conditions of the biodiversity offset as determined by the Provincial Coastal Committee in sub-paragraph (3) shall be binding on the person or persons undertaking the activity contemplated in subsection 2 above.

(6) The person or persons seeking to undertake the activity contemplated in sub-paragraph (1) may-

(a) within two months of receiving notice of the refusal of consent, or

(b) if no notice of a decision from the Provincial Coastal Committee is received by him or her within three months of an application for consent being made,

by notice in writing refer the matter to the MEC.

(7)(a) If on the matter being referred to the MEC in terms of sub-paragraph (6)(a) and 6(b) and he or she is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest, the MEC may direct the Provincial Coastal Committee to give consent to the operation.

(b) The directive issued to the Provincial Coastal Committee by the MEC in terms of sub-paragraph (6)(a) must be issued within three months of receipt notice and shall furnish reasons that had resulted in the decision.

(8) Where the area concerned lies within an area deemed to be irreplaceable if biodiversity targets are to be met, hosts special habitats or threatened natural habitat, or threatened species, or important and irreplaceable ecosystem services, the reasons for the directive referred to in sub-paragraph (7) must be either-

(a) related to human health, public safety or beneficial consequences of primary importance to the environment, or

(b) other reasons which in the opinion of the MEC are imperative reasons of overriding public interest and would satisfy the NEMA principles with regard to sustainable development.

(9) Where the MEC directs the Provincial Coastal Committee to give consent under this section, the MEC shall ensure that appropriate and sufficient measures are secured by the proponent to compensate for the loss of either the rare or threatened natural habitats, or a rare or threatened species, or important ecosystem services, as the case may be.

[CSIR]

The need to remove any unlawful structures within a determined coastal set-back line should also be addressed somewhere. Such structures should include anything made of a rigid material (such as concrete, stone or metal). Structures could include swimming pools, gazebos, garden furnishings etc placed on natural or constructed foredunes. It is therefore suggested that the heading for Section 100 be expanded to include the Coastal set-back line.

[DEAT Comments:](#)

*Section 100 was amended to read:*

“(4) This section does not affect –

- (a) any legal proceedings commenced prior to the commencement of this Act to enforce any prohibition or restriction on construction or other activities in terms of any other law; or
- (b) any legal proceedings commenced after the commencement of this Act to enforce any notice served prior to the commencement of this section that required the addressee to vacate or demolish any building or structure that was constructed unlawfully.”

**Section 101: Existing lawful activities in coastal buffer zone**

[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Similarly Section 101 should provide for existing authorisations and permissions with no need to reapply. This is, as above, tantamount to expropriation.

[LEGALB]

s101(1)(a)(ii)

The text “issued under section 63” should read “issued under section 64”.

s101(2): The text “applies to the Minister for special permit” should read ‘applies to the Minister for a special permit’.

[Department of Minerals and Energy]

Not supported by DME since it is not applicable to mining and petroleum authorisations. The responsibility lies with MPRDA to process and approve applications.

[Irvin & Johnson Limited]

The Bill does not define what lawful activities constitutes and it may be desirable to draw up either or a definition or a guideline of what will constitute lawful activities at the commencement of the Bill. When drawing such guidelines one will have to look to a number of parameters and we would like to suggest the following be included:

(a) That, at the commencement of the Bill, the relevant activities are being conducted in accordance with a licence or other authorisation issued by the relevant authority regulating such activities within the Republic of South Africa.

(b) That all buildings, structures, roads and other infrastructure being utilised by such activity have been built, erected, constructed or created in accordance with all relevant legal provisions applicable to such buildings, structures, infrastructures etc. at the time when it was built, erected or created.

© That any buildings, structures or infrastructure used in such activities which are based or used on the seashore, or what would be in terms of the Bill be defined as coastal public property, are at the commencement of the Bill held in terms of a valid lease.

It is possible that the relevant authorities may be swamped with applications for the necessary permits at the commencement of the Bill from parties who do not hold any current rights to occupy affected land or to carry out affected activities. The processing of such applications will be time consuming given the requirements for environmental impact studies to accompany such applications etc. Those parties who are lawfully engaged in carrying out the activities in the coastal buffer zone referred to in Section 101(1) should be allowed to continue such activities until all applications from parties who are obliged to apply, at the commencement, are first dealt with. It is conceivable that a 24-month period may not be sufficient time to deal with all such applications considering that the new applications have to submit environmental impact studies etc., and the evaluation thereof would be time consuming.

We would like to propose that the 24-month period proposed in Section should 101(1) be extended to at least 60-months.

Similarly, in respect of the provisions of Section 101(3), the 24-month period referred to in this Section should also be extended to 60-months by when the relevant issuing authority may issue the relevant permits to the parties envisaged in Section 101(1) without having them to submit an application. Taking into consideration that parties who are lawfully engaged in aquaculture/mariculture operations along the South African coastline have already, in terms of existing legislation, been obliged to have

environmental impact studies done, is it really necessary to redo such studies? Is it necessary to oblige such parties to redo such studies and incur the expense thereof a second time? In our view the focus should be to ensure as much as possible is done to ensure a seamless transfer of the current lawful rights to lawful rights under the Bill. To facilitate this process it may be better if the provisions of Section 101(3) clearly state that any party envisaged in section 101(1) will be (not may be issued with the necessary permits or leases as a matter of course within such 60-month period.

That the relevant authorities, must within a 14-month period, publish a list of the parties to be given their authorisations in terms of Section 101(3) to them allow those parties who may have been under the impression that they would fall within the ambit of Section 101(3), who are not on the list, to then approach the relevant authority to clarify their position and if necessary start the process of submitting applications.

We believe it is an unnecessary waste of expenditure to require activities lawfully conducted at the commencement of the Bill to incur the expense of submitting applications especially for having new environmental impact studies done and this should be avoided.

[DEAT Comments:](#)

*This section was amended to read:*

**“95. Existing lawful activities in coastal zone**

- (1) For a period of 24 months after the commencement of this Act, any person who, when this Act commenced was lawfully engaged in –
  - (a) carrying out, in the coastal zone, an activity requiring an integrated environmental authorisation:
  - (b) abstracting water from coastal waters must be regarded to be the holder of an integrated environmental authorisation that authorises that activity.
- (2) Any person referred to in subsection (1), who within 24 months of the commencement of this Act applies for an integrated environmental authorisation that will authorise the continuation of the activity referred to in subsection (1), shall continue to be regarded as the holder of the authorisation until the competent authority decides whether to grant or refuse the application.

- (3) This section does not affect –
- (a) the powers of an issuing authority under section 68 to amend, suspend or cancel an authorisation; or
  - (b) any obligation which a person referred to in subsection (1) may have under section 94(2); or”

**Section 102: Repeal and amendment of legislation**

[KZN Agriculture and Environmental Affairs]

102	Are bylaws created in term of the Seashore Act (1935) considered as being repealed too? e.g. eThekweni’s coastal bylaws.
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[Oceanographic Research Institute]

The legislation referred to in Schedule 1 is repealed and amended to the extent indicated in the third column of that Schedule. 

[DEAT Comments:](#)

*This section was not amended.*

**Section 103: Savings**

[Oceanographic Research Institute]

The *White Paper for Sustainable Coastal Development in South Africa* of April 2000 must be regarded as the national coastal management programme until a national coastal management programme has been adopted in accordance with section 41. Nice idea – but in practice not so easy.

[DEAT Comments:](#)

*This section was amended by deleting section (3) and amending section (1) to read:*

**‘97. Savings**

- (1) Subject to section 6 any regulation made in terms of a provision repealed under section 96 remains valid to the extent that it is consistent with this Act and shall be regarded as having been made in terms of this Act. ....”

## **COMMENTS ON SCHEDULES**

[LEGALB]

### **SCHEDULE 1**

Amendment to Act 107 of 1998:

1<sup>st</sup> paragraph of third column text should read, “specific environmental management Act” not “specific environmental management Acts”.

1<sup>st</sup> paragraph of third column text and its indented text should read “by deleting the word “or” where it appears after subparagraph (ii), by replacing the comma (,) at the end of subparagraph (iii) with a semi-colon (;) , and by inserting a new subparagraph (iv) after subparagraph (iii) reading ‘(iv) the National Environmental Management: Integrated Coastal Management Act, 2006,’ “. .

2<sup>nd</sup> paragraph text should read “Part (a)” not “part (a)”, and “Act No. # of 2006” should read “Act No. # of 2006” (where # is the Act number allocated to the National Environmental Management: Coastal Management Act, 2006)”. .

Amendment of Act 15 of 1994

“The text “section 8(2)” should read, “section 8(3)”.

Amendment of Transkei Environmental Conservation Decree No. 9 of 1992

Was this piece of legislation not assigned to the Eastern Cape Province, and if so is it not for that Province alone to amend it? If not, this piece of legislation was passed by the former Transkei military regime which only had jurisdiction within a part of the Eastern Cape Province, and as such would it only falls on the shoulders of the Eastern Cape Provincial legislature to amend?

This Decree prohibits the following, except under permit, in “declared coastal conservation areas”, which are areas within 1 kilometre of the high-water mark:

- the clearance of land or the removal of sand, soil, stone or vegetation
- the development of picnic areas, caravan parks or similar amenities
- the erection of buildings

- the construction of railways, landing strips, slipways, landing stages or jetties
- the building of dams, canals, reservoirs, water purification plants, septic tanks or sewage works
- the laying of pipelines or the erection of powerlines or fencing
- the establishment of waste disposal sites or the dumping of refuse
- the construction of public or private roads or any bridle paths or foot paths or
- the undertaking of any other activity which disturbs the natural state of the vegetation, the land or any waters which may occur in the demarcated area.

It seems to us that the repeal of Act 9 of 1992, which provides for the establishment of coastal conservation area, would leave a vacuum in controlling the above permitted activities unless the Bill provides for controls.

A reading of the Bill however does not indicate that all the activities that require permitting under the Transkei Environmental Conservation Decree 9 of 1992 would be activities that require permitting under, or could be controlled in terms of, the ICM Bill.

For example, it is possible that land that which fell within a "coastal conservation area" under Decree 9 of 1992 and that could be defined as coastal public property, could fall outside the coastal buffer zone, and therefore not be protected under this Bill. This is of some concern.

[Coastal & Environmental Services]

Boat launching sites should be listed as a permanent activity.

Deat Comment

S. Zide

*Agree that "Coastal Conservation Area" i.t.o. Decree 9 of 1992 could be defined as "Coastal Public Property". However, the Bill has provisions for the control of the activities identified under those repealed sections (39 & 40) in this area. Boat launch sites could not be listed as they have already been regulated under NEMA.*

Recommendation

S. Zide

*Amend text "section 8(2)" to read, "section 8(3)" under maritime Act 15 of 1994.*

[DEAT Comments:](#)

*Schedule 1 was amended by:*

- 1) *Deleting reference to the the Ciskei and Transkei legislation as this is a provincial competency.*
- 2) *Changing 2006 to 2007 and deleting the words "Sections 93 and 101"*

## **SCHEDULE 2**

[Wildlife and Environmental Society of SA]

Schedule 2: Guidelines for the assessment of wastes or other material that may be considered for dumping at sea:

There is no discussion of the expected life of the dump site and how it is (and who) decided that it is now "full".

There is no statement of who "owns" the dump site and whether or not one or more dumpers may use the same site simultaneously or must have separate dump sites.

There is no statement about for how long the dump site monitoring must continue post "closure" or after dumping has ceased.

Who will monitor for cumulative effects from the dump site(s) and adjacent discharges?

[LEGALB]

Schedule 2: The last sentence reads "Act No # of 2006 Integrated Coastal Management Bill Sections 93 and 101. The word Bill should perhaps read "Act" and there should be a closing double quotation (") at the end of this line.

Schedule 2: Point 15 contains text " – compliance monitoring - " which text makes no sense in the sentence as it stands. This text should perhaps be placed replaced with "(referred to as "compliance monitoring)".

[Department of Environmental Affairs & Development Planning]

## **SCHEDULE 2 & 3**

A pre-cautionary approach is adopted prior to any decision being made for dumping waste in the sea. This section places the responsibility for waste prevention/management at the initial source and dumping at the sea is only a last resort. What role is province to play in this? Schedules 3 for identified activities should be deleted and the activities to be included under the EIA regulations to prevent confusion, duplication and additional permitting

[DEAT Comments:](#)

*This schedule was not amended.*

## **SCHEDULE 3**

[Endangered Wildlife Trust]

Schedule 3: Part B – Activities that may not be carried out within the coastal buffer zone without a coastal use permit under section 64.

Suggest inclusion of the breaching of estuaries as an activity in need of a coastal use permit

Schedule 3: PART C - Activities that may not be carried out within coastal public property or the Exclusive Economic Zone without a coastal use permit under section 65

1. Correction spelling error in heading: Exclusive ‘Economic’ Zone
2. C.1 - Suggest inclusion of marine aquaculture operation or fish aggregating device as activities in need of a coastal use permit
3. C.7 – Suggest including discharge in addition to abstraction of water

[Lifesaving SA]

Specific submission on Schedule 3 in Chapter 12:

Part 3 refers to “Activities that may not be carried out within coastal public property .....Under section 65”

e.g.

Item 1 “The erection, construction, placing, alteration or extension of a building....promote accretion of the seashore.”

Item 2. “The disturbance of any coastal property in a manner .... Drilling or tunneling.”

We would like to humbly submit that most of the coastal lifesaving clubs occupy clubhouse facilities, many of which are leased from local municipalities. Due to the support from the same municipalities, corporate sponsorships, and the Lotto fund (NLDTF), there are efforts to expand and improve such facilities to grow and develop the provision of voluntary lifeguards and the related services. For the purposes already mentioned in our abstract, there is a need to consider the expansion of existing facilities as well as the erection of temporary stands (lifeguard huts, containers, etc) for the sole purpose of providing voluntary lifeguard services to promote safety along the coastline, prevent drownings and help contribute to the growing tourism industry.

[LEGALB]

Part A

A1. The text “highway or roads” should read “highway or roads, except for the removal of highways, railways or intercity roads or service areas associated with these”.

A2. The terms mining and quarrying must be defined.

A3. We would suggest that the erection of cellular masts, wind energy generators and wave energy generators be included in prohibited activities within the coastal buffer zone without special permit under s63(2).

[eThekweni Municipality]

There is a need to define the term unprocessed sewerage vis-à-vis processed sewerage.

[CSIR]

**PART B: ACTIVITIES THAT MAY NOT BE CARRIED OUT WITHIN THE COASTAL BUFFER ZONE WITHOUT A COASTAL USE PERMIT UNDER SECTION 64**

It is suggested that B8 be expanded to read as follows:

“The stabilization or destabilization of dunes other than for activities related to the maintenance and management of Constructed Foredunes undertaken under an approved Management Plan.”

**PART C: ACTIVITIES THAT MAY NOT BE CARRIED OUT WITHIN COASTAL PUBLIC**

**PROPERTY OR THE EXCLUSIVE ECONOMIC ZONE WITHOUT A COASTAL USE PERMIT UNDER SECTION 65**

It is suggested that C10 be expanded to read as follows:

“The stabilization or destabilization of dunes other than for activities related to the maintenance and management of Constructed Foredunes undertaken under an approved Management Plan.”

It is suggested that a further bullet be added that prohibits the planting of invasive vegetation on natural or constructed foredunes.

[Department of Minerals and Energy]

Schedule 3 A.2, B.4 and C.8	<u>Not supported by DME</u> , as previously mentioned, mining is not a listed activity and the function and approval still lies with Minister of DME. Currently there is no Memorandum of Understanding (MOU between DME and DEAT. Applicants must submit mining applications to DME, although the Act indicates prohibited or	Sections A.2, B.4 and C.8 needs to be removed since this Act cannot decide over where to mine or not, it's the jurisdiction of DME. Be replaced by an indication that mining applications in these areas are submitted to the relevant State organ to consult the relevant State organ administrating coastal
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	<p>controlled areas. Section 40 of the MPRDA requires DME to consult other Government Departments, therefore this ensures that DEAT / MCM are / be consulted on mining applications in these areas.</p>	<p>management .</p>
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[Moreland Developments (Pty) Ltd and Tongaat Hulett]

Schedule 3 is a duplication to the existing EIA activities and, as noted above, is unnecessary and unacceptable. It is further noted that there are activities that are already governed by specific legislation and it is actually not possible to make regulations in areas of specialist law.

Specifically, activity B2 is inappropriate and unacceptable as it amounts to requiring a permit for an alteration to a house, as an example.

[KZN Agriculture and Environmental Affairs]

<p>Schedule 3</p>	<p>This schedule should be correlated with the listed activities as contained in NEMA's EIA regulations especially in respect to:</p> <ul style="list-style-type: none"> <li>• When to undertake a basic assessment (part B?)</li> <li>• When to undertake a full impact assessment (part A?)</li> <li>• Thresholds</li> <li>• Activities</li> </ul>
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[Derrick Airey (Personal Capacity)]

Schedule 3, part A. – Prohibited activities in the coastal buffer zone, unless a special permit has been issued (S 68 (2)).

(A.4) The disposal of effluent likely to cause an adverse effect on coastal environment. Again there is the need to formalise the permit definitions.

[Western Cape Department of Environmental Affairs and Development Planning (Region A1 George)]

What about the inclusion of the following:

- Construction of windfarms
- Construction of desalination plants
- Artificial groundwater recharge of coastal aquifers

[SANParks (West Coast National Park)]

Schedule 3 – Part A

We recommend that the construction and erection of lighthouses be listed here as an activity that requires a special permit. Currently it appears that the construction of lighthouses is exempt from EIA regulations. We also advocate that a proper environmental management plan accompany any lighthouse and satellite (house etc.) construction activities. Recently on Marcus Island the 'old' lighthouse was replaced with a more rigorous structure. Eskom power was also laid on to this structure. Part of the agreement was that the old structure would be removed. However, under the current regulations no scoping report, EIA or EMP document was required. The new structure is still not operational after many years and the old structure has never been removed. The island forms part of the national park and these structures seriously detract from the area's aesthetic value.

[Oceanographic Research Institute]

**PART B: ACTIVITIES THAT MAY NOT BE CARRIED OUT WITHIN THE COASTAL BUFFER ZONE WITHOUT A COASTAL USE PERMIT UNDER SECTION 64.**

- B.1 The draining or reclaiming of any coastal wetland, including the artificial breaching of estuarine mouths.
- B.2 The erection, construction, placing, or any significant alteration or extension of a building or structure.
- B.3 The construction or any significant alteration or extension of a road.
- B.4 The winning of stones, gravel, or sand.
- B.5 The ploughing or cultivation of land which has not at any time during the preceding ten years been cultivated.
- B.6 The clearing of indigenous vegetation other than cultivated  indigenous vegetation.
- B.7 The breeding, cultivation or farming of marine living resources or aquatic animals or aquatic plants.
- B.8 The stabilization or destabilization of dunes.
- B.9 The landing or use of aircraft.

**PART C: ACTIVITIES THAT MAY NOT BE CARRIED OUT WITHIN COASTAL PUBLIC PROPERTY OR THE EXCLUSIVE ECONOMIC ZONE WITHOUT A COASTAL USE PERMIT UNDER SECTION 65.**

- C.1 The erection, construction, placing, alteration or extension of a building or structure on or in any coastal public property, including an artificial reef, or any structure designed to prevent coastal erosion or to promote accretion of the seashore.
- C.2 The erection, construction, placing, alteration or mooring of any structures on or in any coastal public property, including artificial reefs, fish holding cages or fish

aggregating devices (FADs) likely to have an impact on coastal ecology

- C.3 The disturbance of any coastal public property in a manner that has or is likely to have an adverse effect on the coastal environment, including any excavations, dredging, draining, drilling or tunnelling.
- C.4 The destruction, damage or disturbance of any coastal public property in a manner that has or is likely to have an adverse effect on biodiversity or habitat and ecosystem services..
- C.5 The breeding, cultivation or farming of marine living resources or aquatic animals or aquatic plants.
- C.6 The introduction of any species of alien invasive plant, exotic or non-indigenous plant or animal, exotic or non-endemic pathogens or living modified organism into coastal public property or into a place from which it is likely to invade coastal public property.
- C.7 The human? occupation of any coastal public property.
- C.8 The abstraction of water from coastal waters for residential, tourism, agricultural, commercial or industrial purposes, including for aquaculture and desalination, or in a manner that is likely to have an adverse effect.
- C.9 The discharge of water and waste into the coastal public property derived from residential, tourism, agricultural, commercial or industrial activities, including from aquaculture and desalination, or in a manner that is likely to have an adverse effect.
- C.10 The removal of any sand, stones, minerals or other natural material –
  - (i) for commercial purposes;
  - (ii) in such quantities that the material would have a commercial value; or
  - (iii) in a manner that may have an adverse effect on any aspect of the coastal environment;
- C.11 The carrying on of any other activity which in terms of a coastal management programme is prohibited without a permit.
- C.12 The stabilization or destabilization of dunes.
- C.13 The landing or use  aircraft.

#### Note B1

Cruise ships are important and they generate waste that must be dumped but according to MARPOL standards. Suggest that this is taken up as a separate issue as it has a growing impact. Should also include the issue of compulsory conservancy tanks on all vessels and yachts in South Africa coastal waters – as in Europe and the US.

B2

There needs to be emphasis on developing capacity in ICZM at each municipality or at least the designation of such persons. Contribute to training standards in ICZM,

B3

There needs to be clarity who is being referred to in context of communities or persons. South Africa citizens only? Legally in the country. Are foreigner rights equal to South Africa citizens. Not so in the MLRA! This matter should perhaps be included in an overall principle statement of intent.

[DEAT Comments:](#)

*This schedule was deleted. Activities are now listed in new NEMA EIA Regulations.*